FORGING A PUNISHING STATE:

BY
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DISSERTATION
Submitted in partial fulfillment of the requirements
for the degree of Doctor of Philosophy in History
in the Graduate College of the
University of Illinois at Urbana-Champaign, 2010

Urbana, Illinois

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This dissertation examines two intertwined recent phenomena: welfare state retrenchment and burgeoning carceral institutions. Through research on seminal struggles over welfare, drug, and criminal sentencing policy, it chronicles a profound shift during the 1970s where programs that championed punishment, expulsion, and retribution supplanted policies that stressed rehabilitation and social reintegration. Specifically, it examines New York’s adoption of the nation’s harshest drug penalties in the Rockefeller Drug Laws; campaigns in Illinois and California designed to control “welfare abuses” through criminalization and community surveillance; and California’s passage of the first major determinate sentencing law, which abandoned rehabilitation as an aim of incarceration. The project explores legislators’ motivations for these policies, their fervent public support, and the constrained agency of prisoners, welfare recipients, and drug offenders. These legislative battles served a productive cultural role in rationalizing new economic conditions, demarcating membership in the polity, and redefining state legitimacy and responsibility.
ACKNOWLEDGEMENTS

A web of family, friends, colleagues, institutions, and advisors supported and inspired me throughout the years I spent working on this project. On an average day, I am overwhelmed by my gratitude to them, but in moments of reflection the awareness of my incredible fortune is almost paralyzing.

First, I must thank my advisor. My debt to Mark Leff can never be repaid. I can only hope to convey here the extent of my appreciation for his time, his patience, his encouragement, and his engagement with my ideas. His kindness, humor, and generosity are matched only by his wisdom and acuity. He has a rare and remarkable ability to evaluate the intellectual structures that other people build. He can easily discern the central pillars, the gratuitous clutter, the cracks, and the fundamentally unsound elements in any historical argument. Whenever Mark starts self-deprecatingly insisting he has no productive feedback, I brace myself. He usually proceeds to make a single comment or question that destabilizes the entire premise of the research. His mentorship has been critical in sharpening my thinking and my writing.

I have been similarly blessed with dissertation committee members that have exerted a profound intellectual and personal influence. Jim Barrett’s willingness to adopt me as a provisional labor and working-class history student greatly enriched my years in Champaign. His counsel, company, and encouragement sustained me throughout the past seven years in ways he could not realize. Even though my research has far too many elites for his taste, his consistent engagement has left a distinct imprint on my thinking and work. Clarence Lang’s astute, critical readings and extensive comments went far beyond the call of duty. Our long meetings over coffee helped me navigate graduate school and the dissertation process. As a lecturer and
seminar leader, Liz Pleck reshaped my understanding of American history, and inspired me to keep welfare and women at the center of my dissertation. Through in-depth conversations and various charts and diagrams, she helped me crystallize many of my foggy and half-formed ideas.

I am also grateful for the mentorship of Dave Roediger. His courses were instrumental in structuring my approach to U.S. urban history and his thoughtful engagement with my work redirected and focused my thinking at many critical junctures. All five of my committee members were more generous with their time and support than should ever be expected. As I figure out what kind of academic I want to become, they all will continue to serve as important role models.

In addition to my committee, I have benefited from the wider community of support at the University of Illinois, Urbana-Champaign. The history department, the graduate college, and the Illinois Program for Research in the Humanities all provided financial and academic assistance. Professors Dana Rabin, Leslie Reagan, and Stephen Hartnett offered kind and generous mentorship. The graduate students at the University of Illinois made my years in Champaign particularly enjoyable and I have missed the camaraderie since we moved away. I cherished the friendship and advice of the following students: Will Cooley, Amy Hasinoff, Erica Hill, Maurice Hobson, Abdulai Iddrisu, Jason Kozlowski, Anna Kurhajec, Marie Ledger, Shoshana Magnet, Sascha Mienrath, Ed Onaci, Craig Robinson, Melissa Rohde, Mike Rosenow, Martin Smith, and Roswell Quinn. In particular, I would like to thank the group of friends from my cohort that became my core conspirators and support during graduate school. Brandon Mills, Anthony Sigismondi, Kwame Holmes, and Brian Yates will be my allies and true friends for life.

I was also lucky to have had the intellectual and social community provided through the Working Class History Reading Group. Not only did members offer incisive criticism of earlier
versions of my dissertation research, but the group’s meetings provided a refuge when graduate
school seemed overwhelming or disorienting.

I have also received invaluable aid from institutions beyond the University of Illinois. I
benefited from the assistance of archivists at the California State Archives, the Illinois State
Archives, the New York City Municipal Archives, the New York State Archives, the Rockefeller
Archive Center, and the Ronald Reagan Presidential Library. Generous grants and fellowships
from the following organizations make it possible to complete this research, especially after
moving away from Champaign: American Association of University Women, American Council
of Learned Societies, Illinois State Historical Society, and New York State Archives. The
Journal of Social History gave my work a wider audience and its staff and reviewers offered
valuable feedback.

I am also grateful to an amazing network of friends and family outside the academy. This
project was inspired by political indignation that has only grown more intense as my
understanding deepened. Working with the community of anti-poverty, union, and welfare rights
activists in Washington state profoundly shaped my thinking and perspective on these issues.
Todd Crosby, Jean Coleman, Tony Lee, Aiko Schaefer, and Remy Trupin particularly influenced
me. I hope this research can in some small way honor and buttress the work they and others like
them do every day.

My family has offered ceaseless support through the many stages of this research. My
cousin Catherine Capellero’s editing saved me from numerous embarrassing mistakes. I am so
grateful to have married a man whose family I adore, especially Kay Pickard, Lara Finley, and
Willow Finley. My mother-in-law, Kay, has a seemingly endless reservoir of energy and
creativity that she has generously used to assist us again and again in the past years. I am also
thankful for my hilarious, loving sisters: Kate Madigan, Kelly Reese, Bridget Madigan, and Issa Kohler-Hausmann. In particular, I need to recognize my little sister, Issa, who has done so much for me that I cannot even bear to elaborate. I could not survive without her friendship and loyalty. I am so proud of the person she has become and am excited to be there as she charts her exciting path forward.

For someone who researches the tensions of managing the labor market and parenting, I was still unprepared for the difficulty of caring for a new baby while advancing my academic work. Thankfully, I was blessed to find lovely and trusted childcare that made it possible for me for me to complete this project. I will be forever grateful to Sompit Oerlemans and Kala Savage. Additionally, my parents and my mother-in-law rescued us over and over again by provided arduous and invaluable assistance with everything from childcare to moving.

I did not think my appreciation for Julilly Kohler, Charles Hausmann, and Jean Hausmann could grow even stronger. However, having my own son has made me recognize the depths of my parents’ sacrifice. They are infinitely loving, and are my most trusted advisors and confidants. Perhaps most important, they are my examples of how to live with compassion, dignity, and integrity. I owe them everything.

My husband Victor Pickard is the love of my life and my greatest inspiration. I could not have finished this dissertation without his ceaseless encouragement and assistance. Every facet of my life, from writing to exploring the world to parenting, is richer because I do it with him. Lastly, I want to thank my new son, Zaden, for making it so incredibly difficult to finish this project while simultaneously making me so much more determined to do work that will make him proud someday.
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INTRODUCTION

In the 1970s, the United States began an expansion of its penal institutions that decisively restructured politics and society. In high-profile political battles across the nation, politicians renounced traditional governmental approaches to social problems and championed new, “tough” punitive strategies to control crime, drug use, and mounting welfare costs. These early experiments did little to make citizens safer or ameliorate the problems plaguing urban centers. They were expensive and inefficient, and they repudiated specialists’ accumulated expertise about social problems. Nonetheless, legislatures across the country championed and replicated them. This dissertation seeks to understand why so many politicians and citizens zealously embraced this punitive movement.

My research is informed and influenced by the sophisticated body of scholarship that debates the various economic, social, and cultural factors that inspired the U.S. penal system’s explosive growth. Yet I do not weigh in on these debates over what triggered mass incarceration, but instead concentrate on how the process of building the carceral state restructured U.S. society. Therefore, rather than investigating what caused the incarceration boom, this dissertation examines the effects of the struggles to enact punitive legislation during the 1970s. The project treats dramatic prison growth and welfare-state retrenchment as one intertwined phenomenon that was animated by and rationalized by a growing punitive consensus. It focuses on the wider implications of the punitive reorientation in policy that legally and symbolically expelled highly stigmatized, racialized groups from the polity. In short, I investigate what was accomplished during the 1970s through the embrace of a punitive logic in U.S. criminal and welfare policy.

I argue that the political process of enacting punishing legislation had two profound effects beyond the obvious implications of increasing incarceration and constricting state aid.
First, it structured conceptions of citizenship and redefined who was part of the national community to which the state was accountable. At a time when notions of full belonging in the polity were being dramatically renegotiated through civil rights and other movements, these policies constructed racialized outgroups against which full citizenship was defined. Punitive policy both created and was predicated upon this divide between normative, “taxpaying” citizens and vilified, racialized “anti-citizens.” The manufacture of internal enemies—such as criminals, drug pushers, or welfare queens—who have little legitimate claim on the state served multiple political functions. It rationalized and sustained shifting economic and social conditions, and defined normative citizenship and productive lifestyles by graphically representing their opposite.

Second, the political spectacle of punitive law also forwarded a new vision of state authority. Legislation enacted in the 1970s abandoned programs that stressed reform, rehabilitation, and reintegration, and championed ideologies that individualized responsibility for social problems and privileged the punishment, surveillance, and segregation of deviance. With faith in government at an all-time low, these policies attempted to salvage and remake political authority by asserting a different, macho vision of state legitimacy.

The ascendancy of these punishing strategies was not inevitable. For a brief period between the 1960s and 1980s, competing visions clashed and individuals within marginalized populations—such as welfare recipients and prisoners—struggled to assert their own visions for state programs. Critics from both the left and right exposed the limitations and tensions of the liberal welfare state, discrediting many of its reigning assumptions and opening space for alternative visions of state intervention in society.¹ My story, therefore, ends where many

¹ Some key works in the huge literature on the development of the welfare state and its relationship to racial, gender and class hierarchies in American society are: Steve Fraser and Gary Gerstle, eds., The Rise and Fall of the New
narratives about welfare-state declension begin: in 1980, with the election of President Ronald Reagan. I argue, however, that Reagan’s election is best understood not as a sudden revolution, but as the culmination of a long struggle at the heart of American political culture over society’s dominant interpretations of social problems, especially regarding racial, gender, and economic inequality, and the fate of the welfare state. It marked the ascension of a wide punitive consensus among elites in both parties and large swaths of the population. The relatively rapid rise of this logic was facilitated by the limitations and tensions inherent in the American welfare state and liberal reformers’ ideology, which always offered constricted and contingent benefits to women and people of color and attributed poverty, crime, and inequality primarily to behavioral or cultural causes. Therefore, as opposed to being opposites, there was a consonance between punitive and welfairest strategies that eased the transition between them.

Three Studies in Building a Punishing Consensus

Although punishment has become the most obvious and politically safe response to social marginality, this was not always the case. This dissertation examines three of the key historical sites where punitive, “get tough” strategies became common sense and investigates how these notions were first cobbled together. It examines the political processes and arguments that


propelled this punishing logic to ascendancy and discredited alternative visions. I focus on historical pivot points, where old rehabilitative rationales for state intervention were crumbling but had not yet been replaced. At these critical junctures, we can examine how dueling notions of state responsibility, conflicting understandings of social problems, and competing structural imperatives were hashed out through the political process, resulting eventually—but not inevitably—in a new punishing consensus.

Through close examination of pivotal state-level political struggles, this dissertation chronicles how new punitive policies empowered specific groups, silenced others, and forwarded a distinct, macho vision of state authority. In order to explore these themes, the project is organized around three case studies, each representing key policy shifts at the state level in drug, welfare, and criminal sentencing policy. I focus on the state as opposed to the national level, in order to blend policy history and social history and to capture the interactions among cultural assumptions, material conditions, legislation, and local people’s perspectives. Linked together, these distinct institutional trajectories illustrate how punitive, exclusionary trends spanned diverse state bureaucracies and geographic areas and percolated at the state level before manifesting on the national scene. Specifically, the dissertation examines New York’s adoption of the nation’s harshest drug penalties in the Rockefeller Drug Laws; campaigns in Illinois and California designed to control “welfare abuses” through criminalization and community surveillance; and California’s passage of the first major determinate sentencing law, which abandoned rehabilitation as an aim of incarceration.

Since it is organized around statutory change, my research reveals the disproportionate power of politicians in designing these policies. It also highlights the influence of “law-and-order” voters, popular culture, social movements, and public opinion. In addition, it incorporates
the constrained agency of those groups targeted by these laws: prisoners, welfare recipients, and drug users. In order to capture the dynamic interactions within society that shaped these phenomena, this study puts in conversation social groups that are often studied separately. Locating political leaders, supporters of “get tough” politics, and target populations on the same analytical plane illustrates the complex interactions that fueled punitive trends. It reveals that a dialogic process, shaped even by the groups it stigmatized, gave rise to the cultural assumptions about the desirability and inevitability of punitive approaches to social marginality.

My careful attention to the contributions and attitudes of common people does not suggest they controlled political outcomes. Nor do I excavate their voices simply to include silenced but largely ineffectual voices. Within asymmetrical power relations, various groups of common citizens pressured elites and sculpted public debates. Within even more highly constrained parameters, drug offenders, welfare recipients, and inmates advocated for themselves. Their actions guided events, although not always in the ways they would have hoped. Political adversaries, for example, used activism by welfare recipients and prisoners to illustrate the need for crackdowns and redeployed the activists’ claims for new rights to advance a reactionary politics.

The policy paradigms forged in New York, Illinois, and California set the stage for subsequent national debates, producing legislative and programmatic models eventually taken up by other states and the federal government. These policy battles unfolded in the states with the major economic, cultural, and urban areas in the Midwest, West, and East. These states encountered most dramatically many of the hallmarks of the era: movement organizing, urban unrest, rising crime, and burgeoning welfare rolls, and became testing grounds for new ideologies and programs. Other states and federal authorities watched experiments in Illinois,
New York, and California carefully, making these states’ politics and policies disproportionately influential. Because these states hosted much of the period’s historical drama, their stories mistakenly stood in for the entire nation. They were, however, actually the dramatic, high-profile exceptions. New York City’s experience with extreme levels of heroin use and budget-breaking welfare costs made sensationalized news across the country because they were far outside the national norm. Yet, due to their high profile, the debates in these sites played critical roles in sculpting national discourse about poverty, crime, and drug addiction.

These state-level contests intersected with national politics. California’s Governor Ronald Reagan and New York’s Governor Nelson Rockefeller jockeyed for leadership of the Republican Party, and therefore often acted with a national audience in mind. Indeed, it would be difficult to assemble a persuasive national historical narrative about punitive trends without taking into account state-level developments. Reagan’s welfare reforms in California, for example, were instrumental in derailing President Richard Nixon’s guaranteed minimum-income proposal, the Family Assistance Plan. It was Reagan who designed and advanced the alternative, more punitive approach that Republicans (and President Bill Clinton) ultimately embraced.

These case studies represent historically influential chapters in the ongoing negotiations over culpability for pressing social problems and appropriate state responses. While they were early forays into “get tough” policy, I do not claim that the statutes or their direct descendants were the most significant policy triggers of today’s hyper-incarceration. The Rockefeller Drug Laws and mandatory drug sentencing were responsible for a large percentage of prison population growth. However, the influence of determinate sentencing was, especially in the early stages, more ambiguous. Welfare fraud convictions clearly were not a significant statistical factor in ballooning prison populations. Instead, I have chosen case studies that highlight specific
dimensions of the rising punishing consensus and evolving understanding of civil belonging and state responsibility. These policies did not simply index majority opinion; they were key sites where opinion was forged and new visions of political authority and civic belonging developed.

The three studies are linked together by their embrace of shared assumptions, but they do not follow the same narrative arc. On the contrary, their juxtaposition illustrates the diversity within the punitive trend and the divergent, specific factors that influenced it. While the studies are presented separately in this dissertation for narrative purposes, the politics of drugs, crime, and welfare were intertwined ideologically and overlapped chronologically. The exclusionary logic they shared developed strength, consistency, and legitimacy as it spread, although it did not operate the same way in every setting.

The first study examines New York’s passage of the renowned Rockefeller Drug Laws and establishes the foundation of my argument about punitive policy. In 1973, moderate Republican Governor Nelson Rockefeller abandoned aggressive drug addiction treatment programs in favor of draconian new penalties. Heralded as the “nation’s toughest drug laws,” the law mandated indeterminate life sentences for anyone convicted of selling narcotics. The case study opens by surveying the therapeutic programs Rockefeller first championed to combat the perception of an epidemic of crime and heroin use. It examines the political and programmatic stumbling blocks faced by New York’s therapeutic communities, methadone maintenance, and civil commitment programs. These complications joined with the governor’s national political ambitions to inspire his dramatic punitive conversion. Rockefeller’s embrace of draconian, “tough” drug penalties discredited and supplanted therapeutic approaches while also casting drug pushers as menacing, racialized enemies against which full citizenship was defined. Vilifying pushers and portraying drug abuse as a problem indigenous to central cities helped alleviate the consternation
surrounding the drug use and cultural upheaval among white, middle-class communities. Through this discourse about crime and drugs, various groups struggled to assign culpability for social problems and reallocate civil rights and responsibilities within the nation, especially regarding race. The Rockefeller Drug Laws, therefore, not only had devastating effects on those drug offenders caught in the state’s dragnet, but were also instrumental in the profound renegotiation of the state’s role, responsibilities, and character.

The second case study focuses on welfare reform during the 1970s and straddles California, Illinois, and federal politics to illustrate the ways punitive strategies migrated. Instead of centering the federal government, this study foregrounds state-level experiments and pushes national debates to the background. It focuses on efforts by politicians in California and Illinois to shrink welfare rolls and coerce recipients into wage labor through a relentless focus on welfare abuses and welfare chiselers.

This study begins by chronicling President Nixon’s and Governor Reagan’s divergent approaches to the fiscal and political “welfare crisis.” In 1969, Nixon introduced the Family Assistance Plan [FAP] to address welfare’s rising costs and public disdain, and to build his constituency among lower-income whites. The FAP proposed to institute a guaranteed minimum income to all low-income families, including subsidizing the wages of the working poor. It would have dramatically expanded the pool of people receiving public aid and diminished the saliency and stigma of the social category of welfare recipient. Reagan’s welfare reforms, while sharing some of Nixon’s assumptions and aims, were largely understood to be the FAP’s foil. California constricted access to welfare, and restricted peoples’ ability to work and receive welfare simultaneously. These eligibility changes—coupled with the increased surveillance and criminalization based on fevered anti-fraud campaigns—made the distinction between welfare
recipients and low-wage workers all the more stark. As a consequence, welfare recipients
became more economically destitute and socially stigmatized.

The second half of the welfare study explores how Illinois legislators appropriated the
themes of Reagan’s welfare reform and translated them into a high profile anti-fraud campaign.
Where the California section investigates the ways Reagan’s rhetoric and policy reframed
welfare and countered welfare rights activists’ claims, the Illinois section explores the
perspectives and influence of non-elite actors. It investigates the enthusiastic public participation
in identifying fraud and welfare recipients’ responses to the crackdown. These campaigns and
the surrounding cultural politics solidified the image of a criminalized “welfare queen” and her
co-conspirator, the inept welfare system.

This welfare case study builds on the drug law study to illustrate how punitive trends
manifested in the welfare bureaucracy, a state entity not technically charged with law
enforcement. Nonetheless, punishing politics played a similar role of discrediting the
therapeutically oriented welfare program and positioning recipients as the antithesis of full
citizens. Through heightened surveillance, restricted eligibility, and criminalization, the welfare
reforms of Illinois and California negated recipients’ claims to material support and cultural
respect. By positioning welfare recipients as the opposite of productive workers, these politics
enshrined the primacy of wage labor and depressed the value of unpaid domestic labor. The
relentless focus on welfare fraud further marginalized the work of child rearing while
simultaneously discrediting welfare-state programs.

The final case study of the dissertation explores the punitive shifts in criminal sentencing
through California’s passage of the first major determinate sentencing law in the country.\(^3\)

\(^3\) Maine passed a determinate sentencing law before California, although the specifics made it less precedent-setting
than California’s.
California’s 1977 law proclaimed punishment as incarceration’s primary purpose and formally abandoned the penal system’s rehabilitative mission. The old therapeutic rationale had been enshrined in indeterminate sentencing, where parole boards had near total control over sentence length and only released inmates once they were deemed sufficiently reformed.\(^4\) Prisoners themselves, resentful of this arbitrary power of parole boards over their lives, campaigned for a determinate sentencing law. While the new law eliminated much of the uncertainty resulting from open-ended prison terms, it transferred sentencing authority from the parole boards to the legislature, which steadily increased sentences and constricted inmates’ rights and privileges. This section chronicles the contingent historical process where a macho, punitive vision for state programs supplanted the reigning therapeutic rationale for incarceration. It explores the ways “get tough” politics interacted with organizing by prisoners and their allies against penal liberalism and the “rehabilitative ideal.” “Law-and-order” elites leveraged the openings created by repudiating the therapeutic rationale for incarcerations and advanced a new vision that relied upon ostracizing inmates from the civil society. Through this process, law enforcement professionals positioned themselves and their increasingly militaristic, punishing strategies as the inevitable, obvious guarantors of public order and safety.

These three high-profile political struggles were instrumental in forging a new consensus about government’s responsibility and capacity to manage social problems. Taken together, they illuminate how the spectacle of “getting tough” played a critical role in redefining who had legitimate claims on the state and to full belonging in U.S. society.

\(^4\) Although this was the reigning philosophy, punishment and vengeance have always been part of incarceration, and rehabilitation has always been unevenly embraced. For example, rehabilitation was not significantly integrated into the South’s convict leasing system, which predominantly affected African Americans. See Angela Davis, "Race, Gender and Prison History: From the Convict Lease System to the Supermax Prison," in Prison Masculinities, ed. Dan Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 35-45.
Integrating Punitive Trends into Recent United States History

The themes of this dissertation intersect with a rich and diverse array of scholarship. However, the specific focus—punitive trends in U.S. criminal and social policy during the 1970s—has been underscrutinized in historical literature and not fully historicized in the scholarship of other disciplines. Due no doubt to disciplinary imperatives, research in fields such as sociology and political science make general, broad historic claims, usually based on the national level, that are rarely rooted in deep archival research. Within the historical discipline, there is relatively little scholarship on the explosion of carceral institutions, and it is rarely even mentioned in textbooks and synopses of the period. My work contributes to our understanding of these core social policies by uncovering the politics, rhetoric, and dynamics at the ground level in these early formative struggles. It incorporates the participation and perspectives of non-elite actors: those people clamoring for “get tough” approaches and those targeted by them.

Historians have traditionally seen “law-and-order” crusades as a “backlash” against urban riots, rising crime rates, and protest movements, especially by African Americans, of the 1960s.

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6 See, for example, Thomas Byrne Edsall & Mary Edsall, Chain Reaction: the Impact of Race, Rights, and Taxes on American Politics (New York: Norton, 1991); and Michael Flamm, Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s (New York: Columbia University Press, 2005). Debates rage over the actual extent of the crime wave that began in the 1950s. It was probably statistically inflated by new reporting procedures and the inevitable result of demographic factors. Since baby boomers, the large cohort of babies born after WWII, began reaching early adulthood—the age bracket most prone to commit crime—in the late 1950s, scholars suggest increases in crime were assured. Others, such as David Garland, argue that higher levels of crime are the result of the disaggregated communities of late modernity. Regardless of the cause or the precise extent of the crime increase, there seems little doubt that there was a significant rise when compared to the previous decade. David Garland, The
According to this argument, politicians were responding to the public’s demand for order and retribution in the face of growing unrest and threats to their safety. I contribute to these debates by historicizing the assumption that rising crime rates and social disorder inevitably gave rise to calls for “get tough” programs. Failing to scrutinize this logic risks merely reinforcing the historical actors’ rationale for advancing punishing policy. Higher crime has not always resulted in punitive legislation or the public hostility directed toward courts, liberal politicians, and rehabilitative programs that characterized these experiences.\(^7\) As political scientist Vesla Weaver explains,

> Without elite goals and shift in power, crime and violence were merely objective conditions. Deep investigation into how the issue was framed and negotiated in the political process provides crucial insights into when and under what conditions crime came to be an urgent social problem... The simplistic assumption that increases in crime are behind changes that led to increasing prison populations ignores the politicization of the issue, how target groups were socially constructed, and elite incentives and agency.\(^8\)

Following this logic, a central objective of this research is to interrogate the punitive reflex among politicians and the public and to denaturalize their construction of these social problems and marginalized groups. I argue that the ascendancy of “law-and-order” politics was neither inevitable nor reflexive. Instead, politicians proactively and creatively used the spectacle of punishing policy (among other things) to mobilize support and reshape the political terrain.

Other recent historical work has countered “backlash” interpretations by studying right-wing movements on their own terms instead of as derivative of more high-profile left-wing

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mobilizations. Although this important scholarship has rightly emphasized organizing against taxes, government intervention, and the erosion of “traditional morality,” it has not scrutinized the central role and implications of punitive policy. As opposed to shrinking government, punishing programs were actually state-building enterprises. They played a key role in galvanizing the right’s resurgence and ideologically rationalizing key conservative projects, especially welfare-state retrenchment.

Threaded through this literature is a debate over whether the rise of the right and “law-and-order” politics were bottom-up or top-down phenomena. Scholars disagree over whether the change was animated by a white working-class “backlash” against civil rights victories, right-wing grassroots organizing, or elites strategically deploying controversial, racially coded issues to inspire the rejection of liberal programs and politicians. By putting political elites, enraged “backlash voters,” and targeted groups on the same analytical plane, this research illustrates that the popular assumption that the “urban crisis” demanded retributive policy was not simply the product of top-down manipulation by elites, nor the irrepressible political dictate of grassroots pressure. Instead, punitive policy was driven by a complex, dialectical interaction between political elites and groups of common citizens who felt a loss of stature and privileges as economic opportunities narrowed and traditionally marginalized groups gained new rights. Thus, although punishing policy reflected frustrations of the electorate and their fears about social and economic transformation, the policies were also performative and creative; they were instrumental in producing the common sense and worldviews they purported to reflect. This close scrutiny of high-profile examples of “get tough” politics also reveals the limitations of

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focusing exclusively on far-right conservatives and reveals the extent to which moderate
Republicans and Democrats were implicated in forwarding punitive policies.

As the past decades’ still-amorphous historical narrative comes into focus, punitive trends
should not be relegated to a sidebar. Instead they belong at the center of recent U.S. history.
These transformations did not affect only those people and communities targeted by punishing
laws; they also had profound implications for conceptions of national identity, civic virtue, and
state responsibility and character. Folding these themes into wider historical narratives recasts
our understanding of the entire period. When viewed from the perspective of those populations
targeted by these laws, this story becomes, on balance, declensionist and therefore unsettles
popular visions of the era’s triumphant struggles for racial, economic, and gender equality.

Scholars from outside the historical discipline—such as sociologists, geographers and
political scientists—have important insight into the macro-level economic, political, and social
changes that fueled the growing emphasis on punishment that began in the 1970s. I start from
the premise, which has been well-established by other research, that mass incarceration must be
understood primarily as a political phenomenon. Scholars’ close scrutiny of the chronology
debunks those theories that attribute prison expansion primarily to the era’s rising crime rates,
increased drug use, or the economic interests of private prison industries. Although they may
disagree about what motivated shifts in criminal policy, most scholars agree that changes in
criminal sentencing and the practices of law enforcement account for a disproportionate share of
the unprecedented increases in the number of people in prison and the amount of time they spent
there.

Sociologists of punishment stress that wider social transformations inspired exclusionary,

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University Press, 2006), 18-33; and Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition
punishing policies during this particular historical moment.\textsuperscript{11} In some of the most fully
developed work in this vein, David Garland argues that late modern capitalism, which was
marked by economic insecurity and social atomization, undermined the efficacy and public
legitimacy of “penal-welfarism,” with its focus on rehabilitation and therapeutic rationales for
state intervention.\textsuperscript{12}

Geographer Ruth Wilson Gilmore also approaches prison expansion as a response to
wider social transformations, but places greater emphasis on race and political economy.
Gilmore sees mass incarceration as a strategy to manage the crises generated by late global
capitalism. She argues that as the state abandoned military Keynesianism and full employment in
the 1970s, it moved toward a “post-Keynesian militarism,” where the prison boom sustained
rural economies and absorbed the surplus labor, land, and capital that globalization and
deindustrialization had generated.\textsuperscript{13} Focusing on structural transformations, she highlights the
role of spacialized racial subjugation in sculpting the geography and demographics of mass
incarceration. In addition, spotlighting the massive scale of African American and Latina/o
incarceration, other writers investigate the penal system’s role in maintaining racial hierarchies.\textsuperscript{14}

I build upon this research to illuminate how the punishing politics that built the new

\textsuperscript{11} David Garland, \textit{Crime and the Culture of Control}; Loic Wacquant, “The Great Penal Leap Backwards,” in John

\textsuperscript{12} David Garland, \textit{Crime and the Culture of Control}.

\textsuperscript{13} Gilmore, \textit{Golden Gulag}.

\textsuperscript{14} The work of Angela Davis highlights the important historical connections between the legacy of slavery, racial
oppression, and today’s hyper incarceration. See, for example, Angela Davis, \textit{Are Prisons Obsolete?} (New York:
Seven Stories Press, 2003); and Angela Davis, “Race, Gender and Prison History: From the Convict Lease System
to the Supermax Prison.” Other scholarship highlights the role of racism in the popularity of “get tough” politics—
illustrating that racial animus, more than other factors, predicted support for punitive policy. See, for example,
James Unnever and Francis Cullen, “The Social Sources of Americans’ Punitiveness: A Test of Three Competing
incarceration, see Bruce Western, \textit{Punishment and Inequality in America} (New York: Russell Sage, 2006).
carceral state reconstituted notions of citizenship and political authority. I focus on the productive cultural role that legislative battles served in articulating new social logics, defining membership in the polity, and remaking state legitimacy and responsibility. The three studies illustrate how these politics played out at the local level, and how the larger social and economic transformations underway in society were negotiated through the process of enacting punitive policy.

This focus on the rhetorical level does not minimize the importance of the economic or social transformations other scholars have examined, but instead explores how these factors were articulated and interpreted. Structural changes operated in the background of my case studies in important ways, such as enlarging the number of people needing public assistance or enhancing the economic importance of illegal economies, such as drug markets. However, rising crime rates, economic downturns, capital flight, and burgeoning welfare rolls did not carry inherent meaning. It is imperative to attend to the significance people attached to them. The purpose here is to explore how new political arrangements—especially welfare-state dismemberment and retrenchment—became politically palatable and acquired tacit or explicit acceptance from various groups in society. While changes in the political economy gave rise to mass incarceration, punitive policy also enabled structural transformations by offering social logics that rationalized historical conditions.

**Citizenship and Political Authority**

Recent historical work examines how welfare programs played central roles in negotiating social boundaries and defining which groups can claim the full range of rights and protections from the
Expanding upon this line of inquiry, I examine how recent criminal and social policy has intertwined in complex ways to relegate entire segments of the nation—predominantly low-income people of color—outside of full citizenship. The public policy examined in each of these case studies targeted groups of people popularly assumed to be predominantly Black or Latina/o. Therefore, the politics of drugs, crime, and welfare were often a vehicle to navigate through a highly charged and volatile racial landscape. As freedom movements exposed and threatened to disrupt unjust racial hierarchies, punitive legislation accommodated the new norms—forbidding explicitly race-based policy while simultaneously (re)constructing the poorest, most marginalized populations in communities of color as outside the polity. Race, therefore, cannot take a peripheral position in any interpretive schema concerning these themes. The two central themes tracked in this analysis—civic belonging and state legitimacy—were mediated through and sculpted by the racial landscape. While a crude reflection of public beliefs, state policy helped marshal public hostility, particularly racial animus, and direct it toward certain themes and targets. It not only reflected racism and other public prejudices, but also heightened stigmatization of people subject to particular state bureaucracies. In other words, public policy was productive: it mobilized and organized public sentiments. It was a condensation point where new cultural understandings were constituted.16

Framing these issues in terms of citizenship or belonging in the polity is not without liabilities, and warrants careful qualification. First, I employ here an expansive definition of citizenship that includes but stretches beyond the formal category of legal citizenship. Although I

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16 Some political science research has started to investigate how public policy influences civic participation and citizens’ beliefs. See, for example, Suzanne Mettler and Joe Soss, “The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics,” Perspectives on Politics 2, no. 1 (March 2004): 55-73.
have examined the issue in other work, this analysis does not take up the important ways immigration, foreigners, or military enemies constituted notions of civic belonging.¹⁷ Most of the people at issue in these debates were legal citizens. They were immanent outsiders, groups of highly stigmatized citizens that despite their technical belonging were positioned outside the polity and, through that process, helped define and reaffirm normative citizenship.

During this period, welfare recipients, prisoners, and drug users struggled to secure the most basic protections and rights within the nation. They strove for the abstract and symbolic benefits of full economic or social citizenship, but also for the more rudimentary protections of basic legal citizenship. Inmates fought bitterly for the vote, and for the right to free communication, expression, and legal representation within prisons. Welfare recipients fought for basic protections of their privacy and property. This does not imply that they yearned for assimilation or absorption into some idealized national civic body. In fact, activism by criminal offenders and welfare recipients was motivated less by an abstract, patriotic longing for full citizenship than by a desire for self-determination, economic security, and freedom from the harassment or intrusion of state agents. Unlike more privileged groups, these populations had no choice but to engage the rhetoric of the state and politicians. Their lives were so deeply entangled with government institutions that any expansion of their agency required direct engagement with the state. These groups did not have the option of ignoring or completely disregarding dominant ideologies, public policy, or political change.

I do not understand the historical struggles over citizenship as inherently democratizing, as a process by which more and more groups ultimately gain equal rights, representation, and

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inclusion. After all, hierarchy and differentiation within the polity have been constant features of U.S. society, perpetually remade in different alignments throughout the nation’s history. Therefore, otherness, or stigmatized out-groups, should not be considered incidental or vestigial to civic culture; conceptions of citizenship are usually constructed through and with the creation of outgroups. Chronicling punitive policy’s role in sculpting and solidifying various social outgroups exposes a haphazard, contingent process, and the relevance of specific historical conditions.

Notions of citizenship and civic belonging are not static; they are continually reconstituted through ongoing public debate and political struggles. Because of the social, economic, and political upheavals of the 1970s, these conceptions were particularly volatile and unsettled during this period. At a time of little apparent social cohesion or unifying moral or social standards, normative citizenship was defined through and against the images of these anti-citizens. However, anti-citizens were not a neat, unified, monolithic category that stood in opposition to citizens. The racialized and gendered class positions of welfare recipients, drug sellers, and criminal offenders profoundly inflected their representations in political discourse. For example, these debates defined work and productivity though the contrast with multiple negative examples, such as the welfare queen and the drug pusher. Therefore, the contours of normative citizenship were defined and its character given specificity through a dialogic process underway in multiple sites.

By closely scrutinizing these three pivotal political struggles, this dissertation chronicles how punitive policy facilitated the dramatic reconstitution of popular notions of civic belonging and state responsibility. By almost every measure, the consequences of these policies have been

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18 For a general discussion of alterity as a condition of citizenship, see Engin F. Isin, Being Political: Genealogies of Citizenship (Minneapolis, University of Minnesota Press, 2002), 1-5.
devastating, especially for low-income communities of color. They have helped build a society more fearful and alienated, but not more secure or economically stable. However, only so much can be revealed about this phenomenon by focusing solely on punitive policy’s brutality, waste, inefficiency, and myriad other programmatic failings. These policies were always more expressive than practical. It is critical to explore how “get tough” politics rewarded their proponents, and rationalized profound economic and social transformations. Incorporating this phenomenon into our narratives of U.S. history will reorient our understanding of recent decades and help denaturalize a destructive logic that much of society has come to embrace as common sense.

During his annual address to the legislature in 1973, Governor Nelson Rockefeller shocked the political establishment by declaring that New York State’s drug treatment programs—programs he had championed for over a decade—were abject failures. He explained that it was time to come clean with the legislature and the people of New York:

It is a time for brutal honesty regarding narcotics addiction...In this state, we have allotted over $1 billion to every form of education against drugs and treatment of the addict through commitment, therapy, and rehabilitation. But let’s be frank—let’s tell it like it is: We have achieved very little permanent rehabilitation—and have found no cure.19

What the situation demanded, the governor explained, was a stern new policy of deterrence that repudiated the state’s earlier emphasis on rehabilitation and reintegrating drug users into society. Rockefeller insisted this drastic move was imperative because “[t]he hard drug pusher destroys lives just as surely as and far more cruelly than a cold-blooded killer. He threatens our society as a whole.”20 To stave off this disaster, he called on New York State to punish drug dealing more harshly than rape, kidnapping, and even murder:

I, therefore, will ask for legislation making the penalty for all illegal trafficking in hard drugs a life sentence in prison. To close all avenues for escaping the full force of this sentence, the law would forbid acceptance of a plea to a lesser charge, forbid probation, forbid parole and forbid suspension of sentence.21

20 Ibid.
21 Ibid.
A few months later, the New York legislature answered Rockefeller’s call and passed a mildly
diluted version of his proposal, enacting the harshest narcotics laws in the nation.

This case study investigates what led to Rockefeller’s dramatic embrace of these
punitive policies and their implications. It explores the ideological and political work
accomplished by these high-profile policies—for policymakers, for members of the general
public who clamored for “get tough” strategies, and for drug users. To capture the implications
for political culture, I focus on the social and cultural history of New York’s drug programs, and
only tangentially follow the intricacies of the drug-policy debates or the institutional history of
drug treatment in New York. It is therefore most attentive to the meanings different groups—
such as legislators, drug users, or the bill’s supporters—attached to drugs and the state’s response
to drugs.

Because of their relevance at the time and their continuing salience today, the central
concern of this first study is the embrace of penal sanctions in the 1973 Rockefeller Drug Laws.
However, in order to understand the matrix of factors that gave rise to these laws, I first
investigate the state’s three therapeutic strategies for managing addiction and addict crime prior
to 1973. I investigate what made rising crime and drug use potent political issues in the early
1970s by analyzing how people framed these problems in their public comments and
 correspondence. This history demonstrates why Rockefeller reversed course and rejected the
era’s reigning assumptions regarding drug abuse, and also illuminates the larger political and
social ramifications of the anti-drug campaigns. Each proposal reflected politicians’ assessments
of the shifting historical terrain and evolving understandings of the relationship between drugs,
the state, and society, and particularly who was best empowered to manage addicts.

The second half of the study details Nelson Rockefeller’s break with his therapeutic
programs and his advocacy for and passage of the “toughest drug laws in the nation.” It excavates the public’s response and participation, changing conceptions of addiction and drug use, and the implications of the laws’ eventual passage. The study also investigates how drug offenders interpreted the new laws and represented themselves in the face of a program committed to ostracizing and silencing them. It concludes with a discussion of how this examination of the Rockefeller Drug Laws contributes to our broader understanding of punitive policy’s political utility and the specific ways such legislation empowered conservative politicians and rationalized neoliberal political projects.

The growing public alarm about rising drug use and crime caused “junkies,” “pushers,” and “addicts” to loom large in public consciousness during the late 1960s and 1970s. The growing heroin use seemed to threaten the nation at every turn. Newspapers warned that hunger for drugs drove people to steal, mug, and even kill to sustain their habits. Commentators attributed the era’s crime rates to surging heroin addiction and claimed that addicts transformed once welcoming neighborhoods into dangerous, forbidding spaces. Simultaneously, many were alarmed that heroin use no longer seemed confined to poor communities of color. White, middle-class youth were increasingly addicted and parents worried that drugs—like so many problems at the time—had breached the carefully guarded borders of suburban America. To make matters worse, vast numbers of soldiers were using the high-quality, affordable heroin in Southeast Asia to manage the boredom and terror of the Vietnam War. These specific crises were all the more


ominous because of the general upheaval throughout society: the mass movements; the sexual, cultural, and political rebellion of youth; and the inability of the U.S. military to suppress the enemy in Vietnam. According to popular rhetoric, the fate of the nation hung in the balance and drugs were tipping the scale toward catastrophe. Nelson Rockefeller echoed a chorus of voices when he explained in 1970 that, “The fiber of the American character has traditionally been strong. That is why the nation grew great. Drugs threaten to destroy that very fiber and to destroy the American future along with it.” President Richard Nixon injected the issue into national politics and used drugs as a way to mobilize frustration with the counterculture, youth rebellion, and social movements. In 1971, he branded drug abuse “public enemy #1” and declared an official “War on Drugs.”

Nowhere was the issue more salient than New York. New York City, the main entry point for heroin into the country, was supposedly home to half of the nation’s heroin addicts. The perception of a drug epidemic was both crisis and opportunity for lawmakers in New York State and no one more persistently or adroitly leveraged the issue than Rockefeller, who served as governor from 1958 to 1973. In the last decade of this tenure, Rockefeller devoted unprecedented physical, institutional, and monetary resources to a series of rehabilitative programs that approached drug addiction as a disease that warranted therapeutic intervention. Rockefeller’s first program, created by the Metcalf-Volker Law in 1962, positioned the addict as a victim of disease and allowed criminal offenders to opt for lengthy treatment programs instead

25 “The New Public Enemy No. 1,” Time, June 28, 1971. Despite tough talk and new investment in domestic and foreign law enforcement, key components of Nixon’s policies were not punitive. He established an unprecedented federal treatment infrastructure relying primarily on methadone maintenance. He also dramatically reduced sanctions for drug use in the military and implemented a large-scale drug-screening program for returning veterans. Baum, Smoke and Mirrors, 29-91. See, especially, page 52 for a discussion of Nixon’s reversal of the long-standing policy of dishonorably discharging or court martialing those caught using drugs in the military.
26 Schneider, Smack, x and 1-16.
of incarceration. The second initiative, administered by the Narcotic Addiction Control Commission (NACC), mandated the civil commitment of addicts on the grounds that they must be prevented from spreading their disease to others. Since segregating addicts in compulsory treatment programs proved to be expensive and programmatically ineffective, Rockefeller embraced methadone maintenance in 1970, hoping it would reduce crime without the huge costs of residential treatment. Again facing limited results and new conflicts over establishing methadone clinics, the governor searched for a new politically viable strategy to control drugs. In January of 1973, he proposed that the state make the penalty for sale of hard drugs, regardless of quantity, a lifetime in prison without any option of plea-bargaining, probation, or parole.

New York’s history with drugs—and heroin specifically—was unique and explosive and not representative of general experience across the nation. In fact, New York is a critical case study because it was so extreme, and yet its experiments and experiences were nationally influential. The state was unparalleled in its efforts to combat drug use and it had a disproportionate impact on policy and drug politics throughout the nation. The federal government and other states watched the outcomes of New York’s various experiments carefully, eventually steering a course that mimicked some features while avoiding others that seemed to backfire politically or programmatically. The Rockefeller Drug Laws served as inspiration for the “War on Drugs” policies enacted nationwide that have fueled the unprecedented recent explosion in incarceration. As an early experiment in articulating new visions for government, the passage of the Rockefeller Drug Laws was not only a formative historical event in its own right, but it also sheds light onto the wider phenomena of “get tough” criminal policies and rhetoric that escalated in the 1970s. Even more generally, the laws were instrumental in the profound renegotiation of the state’s role, responsibilities, and character that
was occurring in society at that time. First, debates about drugs were inevitably connected with the struggles—most visibly by the Black Freedom Movement—over who had full rights and autonomy in U.S. society and how to secure those rights in the face of gross social, economic, and racial inequality. Second, the laws were enmeshed in the ongoing debates about the state’s capacity to address social problems, especially through liberalism’s therapeutic government interventions. Focusing on this single policy allows us to see how high-profile, punishing legislation worked to salvage and remake state legitimacy, as well as to rationalize racial and other inequities spotlighted by the social activism of the period.

Regardless of party, few politicians in New York acted primarily in the interests of drug users. Politicians designed the various programs to control public anxiety, minimize the symptoms of rising drug use, and buttress their political position. As Jerome Jaffe, the chief architect of President Nixon’s national drug treatment efforts, stated simply: “The outpouring of concern for treatment did not stem from profound public empathy for the heroin addict, but rather from the belief that heroin addicts committed crimes and created other addicts.”

In Rockefeller’s early programs, however, this motivation was veiled by talk of helping drug users, a medicalized understanding of addiction, and emphasis on rehabilitation and reintegration. Therefore, even though therapeutic programs often seemed coercive and punishing to their patients, Rockefeller’s move in 1973 from a policy rhetorically committed to reintegrating drug addicts to a policy of social expulsion was highly significant.

Of course, the displacement of therapeutic for punitive rationales did not occur evenly across society. In fact, these strategies coexisted almost symbiotically: The growing medicalization of addiction and mental illness for the middle and upper classes has been

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conjoined with persistent criminalization of the same problems for the working classes, and especially poor people of color.\textsuperscript{28} While often working at cross-purposes ideologically and programmatically, the strategies shared assumptions about the individual locus of deviance and the role of the state in managing social marginality.

Nonetheless, rehabilitative intent in policy was theoretically democratizing, committed to reabsorbing marginalized citizens into the polity (on elites’ terms).\textsuperscript{29} By abandoning these rehabilitative and therapeutic rationales for marginalized populations, policymakers changed the definition of success for state intervention. What program administrators and politicians had presented as efforts to cure addicts of their disease, they now framed as efforts to protect “the public” from the “addict” and “pusher.” This dramatically revised the subject position of addicts, for not only was their welfare no longer at issue in these policies but they were also being constructed as emphatically outside of the public. Since the addict/pusher targeted by these laws was almost universally understood to be a Black or Puerto Rican man, these characterizations had wide political implications at a time when society wrestled over civil rights activists’ demands for full, equal citizenship. The laws positioned addicts as “anti-citizens,” the opposite of rights-bearing citizens.\textsuperscript{30} In terms of the dominant medical metaphor of addiction, pusher/addicts moved from being considered \textit{diseased} to being cast \textit{as the disease}.

Politicians constructed addict/pushers as outside of citizenship, holding them responsible not only for their own condition, but also for many of the problems plaguing society, such as


\textsuperscript{29} Bruce Western, \textit{Punishment and Inequality in America} (New York: Russell Sage, 2006), 2.

crime, deteriorating urban infrastructure, and mass racial and economic inequality. Locating the cause of these problems outside of the nation exonerated U.S. society from culpability and the American state from the responsibility of ameliorating these conditions—precisely the opposite arguments advanced by social movement participants who demanded the state redress past and present injustices.

Rockefeller’s drug laws were also a declaration of the failure of liberal treatment programs and specialists’ expertise, and provided a forum to remake the much-maligned welfare state into a tough, macho vehicle for establishing order in society. Thus, punitive policy allowed politicians to offer a new vision of state legitimacy at a time of profound social antipathy toward government. The laws were built upon the premise that therapeutic programs failed to effectively regulate social marginality, and they were also instrumental in reifying this assumption in public discourse. In other words, punitive policy helped naturalize highly political assumptions as social fact, in this case the alleged inability of rehabilitative state interventions to handle societal crises and secure public safety.

In addition to wider cultural implications, this shift in political rhetoric and policy rationale also had tangible consequences for addicts and for state institutions. The earlier emphasis on treatment and rehabilitation, however compromised, provided addicts and their families with some discursive leverage in negotiations with the state over their fates. Treating drug users as patients, instead of criminals, logically prescribed different services and attitudes. A treatment emphasis also supported a different economy from mass incarceration. Programs ostensibly devoted to rehabilitation hired more social workers than guards, and significantly more women, people of color, and ex-drug users than penal institutions. As the stigma associated with drug selling reached a crescendo and punitive strategies discredited and replaced therapeutic
rationales for intervention, offenders found they could claim entitlement to few rights and fewer services to facilitate recovery and employment.

It is important to distinguish between the way I employ terms such as “addicts” and “pushers” and how they operated in their historical context. Contemporary rhetoric presented “addicts” and “pushers” as stable, essential identities. With the exception of the occasional sensationalized news story about heroin-addicted mothers and babies, after World War II, the public almost universally imagined addicts or “junkies” to be Black or Latino men. Although this demographic was statistically overrepresented, heroin use was obviously never isolated to these populations.\(^\text{31}\) The popular emphasis on males contributed to the construction of a particular and ominous caricature of an addict—that of a hyper-threatening, criminal, poor man of color. Since it is a contingent and contested label, I primarily refer to addicts when analyzing the historical dialogue about narcotics or drug users’ self-identification. My usage of the term does not suggest that people’s drug use was homogeneous or that they suffered from a uniform affliction; nor, however, is it intended to deny the reality of substance addiction. It is also important to note that the relationship of drug users themselves to the concept of addiction has changed depending on context, policy regime, and time period. The same person might desperately struggle to be certified by the state as an addict in one setting while, in another, shun the label and its stigma.

The term “pusher” referred to those who sell drugs at the street level and also had a prominent position in these debates. It was even more imprecise than addict, since most poor, habitual heroin users sold and traded drugs to sustain their habit. Rockefeller’s early drug programs targeted for coerced treatment all users certified by state officials as addicts, while still holding open the possibility of reintegration. Criminal penalties distinguished low-level street

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\(^{31}\) Schneider, *Smack*, xi-xvi.
pushers, most of whom were habitual users, from the large-scale dealers. Bigger sellers were universally reviled and subject to lengthy sentences. By 1973, growing anxiety about drug use among middle-class youth, coupled with acceptance of the disease concept of addiction, inspired politicians to target “pushers,” as opposed to users, as they advanced their more punitive policy recommendations. Having to allow for limited empathy for victims of disease, elites laid responsibility for the entire drug problem at the feet of drug sellers. The term “pushers” suggests that drug sellers were involved in aggressively “pushing drugs,” recruiting new customers, and creating more addicts, as opposed to responding to an overwhelming demand.\textsuperscript{32} Although the term was often used interchangeably with addict, the focus on pushers was a subtle departure from the general criminalization of all users. When Governor Rockefeller proposed life sentences for all pushers, big and small, he and others familiar with the landscape knew that small time “street pushers,” the poor habitual users who were often African Americans and Puerto Rican, would be disproportionately affected.\textsuperscript{33} Elevating any drug selling to the most severe sanction accommodated medicalized rhetoric about addiction, and preserved a path for reintegration of middle-class users who were not directly implicated in the drug trade. It maintained the heaviest stigma on the most marginalized users who did not have alternative sources of money and had to sell drugs (or engage in other illegal “hustles”) to subsidize their habit. Targeting pushers therefore, further criminalized addiction for the poor.

\textbf{The Disease Concept of Addiction and New York’s Drug Free Treatment Experiments, 1960-1968}

The surge in drug use and the accompanying social panic that began in the 1960s was not

\footnote{32 Schneider, \textit{Smack}, 61-62. Schneider refutes the characterization of pushers aggressively recruiting new users, proving that most people sought out heroin or were introduced through their peer group.}

\footnote{33 For a discussion of the historical causes and consequences of the spatial concentration of heroin users and heroin marketplaces in urban, economically depressed communities of color, see Schneider, \textit{Smack}.}
unprecedented. The nation’s history is marked by cycles of intense public consternation about intoxicating substances, usually influenced as much by who was publicly associated with the drug as the dangers posed by the substance itself. Therefore, efforts to control the use of drugs and alcohol have always been connected to the larger projects of managing suspect populations and negotiating and enforcing societal norms.34

A cursory history of the state’s handling and interpretation of drug abuse contextualizes the events of the early 1970s. It illustrates that Rockefeller’s actions were not only responses to his particular social and political moment but also a part of a long, evolving debate over the boundaries of societal, governmental, and personal responsibility for substance abuse. Providing this context highlights the continuities and ruptures with the past that would be elided by just focusing on the period in question. Most dramatically, it locates these debates as an important pivot point in struggles about whether users were best treated as addicts through medicalized, therapeutic modalities or punished as deviant criminals.

Around the turn of the twentieth century, the United States faced growing opiate and cocaine use, which resulted in the increased regulation and eventual outlaw of the substances. Panic about cocaine use among African Americans peaked in the decades after Reconstruction. As Southern whites struggled to reassert white supremacy, they curtailed access to cocaine on the grounds that it stimulated lust, violence, and rebellion in Black users.35 While most addiction resulted from doctors’ morphine prescriptions to white, middle-class women, social tolerance decreased dramatically by the 1890s when the drug use was increasingly associated with marginalized racial groups. Opium was integral to the construction of Chinese immigrants as

dangerous and exotic during a period when labor competition in the West heightened anti-Chinese sentiments.

Since drug regulation was largely the responsibility of individual states, the federal government had minimal jurisdiction beyond issues of overseas importation and tariffs. In 1914, the federal government passed the Harrison Act, an attempt to curb drug use through the Treasury Department and increased regulation and taxation. Subsequent law enforcement and court interpretations of the law limited legal access to narcotics and suppressed physicians’ practice of treating addiction through drug maintenance—the ongoing (or tapering) proscription of opiates. As the drug trade moved into the black market, penal sanctions steadily escalated.

Although World War II almost completely interrupted heroin supply routes, the drug trade reopened after 1945. Heroin reappeared, primarily in the newly formed “second ghettos,” the densely populated Black and Latino communities created by mass internal migration and discriminatory housing practices in northern industrial cities. This trend coupled with emerging Cold War anxieties to stimulate another panic about drugs and inspire the passage of the 1951 Boggs Act. The Act dramatically increased penalties and introduced two-year mandatory minimum sentences for first offenders. Five years later, Congress increased the penalties eight-fold, and for the first time in U.S. history allowed juries to sentence those convicted of distributing drugs to death or life in prison.

These harsh penalties failed to curtail drug use. Their extreme nature motivated those who considered addiction a medical disease, including the American Medical Association and


37 William White, Slaying the Dragon (Bloomington, IL: Chestnut Health Systems, 1998), 234; Daniel Larson, “Killing Democracy; or, How the Drug War Drives the Prison Industrial Complex,” in Challenging the Prison-Industrial Complex, ed. Stephen Hartnett (Urbana, University of Illinois Press, forthcoming 2011); and Musto, American Disease, 230-231. The death penalty was reserved for those convicted of giving heroin to minors.
the American Bar Association, to advocate for reevaluation of punitive law enforcement strategies.\textsuperscript{38} The dramatic spread of heroin in the late 1950s and early 1960s strengthened the case for treating addiction as a disease. Despite the growing medicalization of addiction, little treatment was available. For example, until the 1960s, most New York hospitals were unwilling to make space in their wards for detoxification.\textsuperscript{39}

In the 1960s, courts helped transfer responsibility for managing habitual drug users from the penal system to health and social work specialists. This shift had wide implications for the social position of addicts, since the ill—no matter how stigmatized—were accorded greater social tolerance than criminals. Reflecting the growing disenchantment with purely carceral measures, the Supreme Court codified the disease concept of addiction in its landmark 1962 decision \textit{Robinson v. California}. It declared unconstitutional a California law that sentenced people to prison for 90 days for the crime of being an addict. Writing for the majority, Justice Stewart explained, “It is unlikely that any State at this moment in history would attempt to make it a criminal offense for a person to be mentally ill, or a leper, or to be afflicted with a venereal disease…We cannot but consider the statute before us as of the same category.” The court declared imprisonment for being an addict cruel and unusual punishment and a violation of the Eighth and Fourteenth Amendments. It explained: “To be sure, imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual. But the question cannot be considered in the abstract. Even one day in prison would be a cruel and unusual punishment for the ‘crime’ of having a common cold.”\textsuperscript{40}

The decision did allow, however, for the coerced institutionalization of addicts, as long as

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\textsuperscript{38} Musto, \textit{American Disease}, 232-233
\textsuperscript{39} White, \textit{Slaying the Dragon}, 233-235.
\textsuperscript{40} Robinson v. California, 370 U.S. 660 (1962).
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it was to treat and not penalize: “A State might determine that the general health and welfare require that the victims of these and other human afflictions be dealt with by compulsory treatment, involving quarantine, confinement, or sequestration.”\textsuperscript{41} Even from within this liberalized understanding of addiction, the court permitted restrictions on the liberty and rights of drug users to protect the “general welfare.” This ruling was ambiguous and controversial since it opened the possibility that illness relieved addicts of legal responsibility. It left it to lower courts to determine the implications of construing compulsive drug use as a medical condition that, like insanity, limited criminal culpability.

It was a decade until courts settled the legal questions opened in \textit{Robinson} by narrowly interpreting the decision to simply prohibit criminalizing the status of addiction if accompanied by no other illegal act. In the interim, however, defendants and their lawyers threw the law into disarray by challenging the criminal sanctions for drug possession and purchase, as well as other crimes against property they claimed were the inevitable consequence of their disease. For example, in 1965, New Yorker Nelson Borrero pled not guilty to burglary and grand larceny on the grounds that he stole only to appease his insatiable desire for narcotics.\textsuperscript{42} Although the judges were ultimately not persuaded that Borrero’s status as an addict absolved him of criminal responsibility, the legal system was struggling to accommodate the disease concept of addiction. In their rulings, judges wrestled with the inherent contradictions of decriminalizing the status of addiction while maintaining criminal sanction for the very acts that constituted the disease: buying, possessing, and ingesting drugs.\textsuperscript{43} Lawmakers followed the liberal judicial rulings. By 1970, the U.S. Congress had abandoned the harsh mandatory minimum drug sentences enacted

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\textsuperscript{41} Ibid.
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during the 1950s and many state legislatures revised the harsh criminal penalties that were legacies of the past drug scares.

The passage of the Metcalf-Volker Law in 1962 suggests Governor Rockefeller also accepted the disease concept of addiction. The law allowed drug offenders to choose between a prison term and rehabilitative treatment in a state hospital. Recognizing that addiction invariably constituted or led to criminal behavior, the law hoped to divert addicts from prison to psychiatric hospitals to allow their eventual full reintegration into society. In advancing this legislation, Rockefeller positioned the state as savior and the addict as a victim of circumstances beyond his or her control:

This is a humane, practical approach to make it possible for many unfortunate victims of addiction, in trouble with the law because of their helpless dependence on drugs, to be rehabilitated and saved as self-respecting, self-reliant members of society before it is too late for them.44

In practice, the program was ineffectual and did little to curb the rising tide of drug use. Drug offenders frequently opted for prison because it was usually considerably shorter than treatment stays.45 The programs were underfunded and the Department of Mental Hygiene lacked expertise and enthusiasm for handling addicts. Studies reported that a huge percentage of the patients ran away from the facility, while 80 percent of those who did receive treatment were rearrested.46

New York soon faced an unprecedented explosion of drug use that existing institutions were ill-equipped to handle. There is considerable debate over the cause of these increases, particularly the “heroin epidemic” that surged between 1966 and 1976. Since the issue was so clouded by fear, racism, and clashing political motivations, it was difficult even to accurately

46 Connery, Rockefeller of New York, 267.
estimate the number of heroin addicts, let alone definitively identify the problem’s impetus. Heroin use and marketplaces concentrated and proliferated in poor, urban communities most ravaged by deindustrialization and institutional racism. Some increase in drug use resulted from the large cohort of baby boomers entering “heroin susceptible years.” Additionally, between 1960 and 1970, the gross national product doubled, increasing consumer demand for all types of commodities, legal and illegal. Many observers emphasized that drug use exploded when it became connected with popular cultural phenomena, such as the link between heroin and the jazz scene in Harlem or the connection between drugs, particularly marijuana, and the counterculture. Some analysts focused on the supply side and faulted corrupt police and ill-conceived Cold War foreign policy that enabled a new flow of heroin from Southeast Asia into U.S. cities.

Influenced in part by all these factors, the estimated number of heroin users increased tenfold during the 1960s, from 50,000 nationally in 1960 to approximately a half million in 1970. The estimated population of addicts in New York—25,000 in 1966 versus 200,000 in 1973—also grew precipitously.

Two issues associated with this mounting drug use were particularly troubling for legislators: rising street crime and growing drug use among the white middle class. In the period after World War II, the “addicts” and “dope pushers” were popularly understood to be Black or Puerto Rican men from poor, urban areas who committed crimes to buy drugs. Politicians

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51 Edward Jay Epstein, *Agency of Fear: Opiates and Political Power in America* (London: Verso, 1990), 42. Estimates varied significantly and it was remarkably difficult to establish the number of addicts with certainty. Abandoning efforts at precision, newspapers offered wide ranges; one article, for example, put the number of addicts in New York City between 150,000 and 300,000 in 1973. James Markham, “Is It True Nothing Works?,” *New York Times*, January 14, 1973, p. 5.
claimed that half of all inmates in New York City jails were there for drug related crimes.52 While it is impossible to accurately quantify the number of addicts or amount of crime committed by drug users, there is little question that the cost of maintaining a heroin habit required more money than most low-income people had readily available. Estimates vary widely but it seems users needed $50 to $100 a day to sustain a habit.53 There is also no question that the political rhetoric of the period grossly inflated the extent of addict crime. In assessing the amount of crime heroin addicts committed, the Rockefeller administration would simply multiply the estimated number of addicts by the amount of money it cost to maintain a daily heroin habit, resulting in the calculation that addicts stole $1,095,000,000 of goods in 1970. Since there was never more than $100 million of property reported stolen in New York during this period, the billion-dollar figure was probably inaccurate.54

Despite their dubious nature, these figures had very real consequences for policy and public perception; they proved to an anxious public that drug addicts were the cause of the crime and disorder many felt was eroding the nation. However, crime rates alone cannot account for the intense politicization of the issue of law and order during the 1960s. The social unrest and movements of the time exacerbated anxieties about loss of “law and order.” This upheaval was not a news story from far away; New Yorkers directly participated in or witnessed the mass, high-profile resistance. In 1963, Jesse Gray organized widespread rent strikes of 4,500 tenants in Harlem to redress devastating living conditions. The next year, the shooting of a 15-year-old

52 “Galiber Urges Use Of Methadone,” New York Amsterdam News, July 19, 1969, p. 6. Claims fluctuated considerably but many asserted a vast majority of crimes were connected to drugs.
54 Epstein, Agency of Fear, 42.
African American boy by a white police officer triggered the Harlem Riots and thrust the conditions in inner cities into the center of public attention. Many groups of citizens were agitated and resistant to the fundamental renegotiation of rights and privileges that movements demanded. In political rhetoric and media portrayals about riots, the habit of fusing political revolt and street crime intensified. Although drug policy was motivated by the specific, local imperatives surrounding narcotics, it was also a “racially sanitized” way to discuss conditions in central cities and direct responsibility to criminals and drug users and away from those blamed by movement participants: moneyed elites, systematic racism, and gross economic disparity.

Narcotics did not become a dominant political issue until drugs became visible in suburban communities and a pressing concern for white, middle-class families in the mid-1960s. For years, people living in predominantly African American and Latino communities were frustrated by what they felt was the state’s failure to respond to the drug problem in their neighborhoods. In 1965, only a year after the Harlem riots, the drug problem had grown so acute that middle-class African American community leaders called on police to crack down on dealers. Others, acknowledging police neglect, took matters in their own hands and formed vigilante groups to push dealers out of their neighborhoods.

Many observers alleged that the state’s motivation to dedicate its resources to fighting crime policy was motivated by the specific, local imperatives surrounding narcotics, it was also a “racially sanitized” way to discuss conditions in central cities and direct responsibility to criminals and drug users and away from those blamed by movement participants: moneyed elites, systematic racism, and gross economic disparity.

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56 Many scholars have noted politicians’ use of crime, drugs, and welfare as “racially sanitized” code words for race in a post-Civil Rights era when explicitly racist comments were increasingly unpalatable. Vesla Weaver argues that political focus on crime, for example, was a tactic of defeated Republican elites to shift the rhetorical terrain and recapture political advantage. See Vesla Weaver, “Frontlash, Race and the Development of Punitive Crime”: 230–265.
57 Connery, Rockefeller of New York, 266.
drugs only began once crime, addiction, and addicts became fears for white communities, especially white, middle-class communities.⁶⁰ Some linked the growing reliance on therapeutic expertise to the seeming inappropriateness of punishment for this new population of drug users. A leftist health newsletter explained:

Heroin, they say, is no longer an affliction of the “amoral or ignorant” lower classes and black and brown ghetto dwellers alone; its use is spreading like wildfire among the children of the respectable, white, middle class. As the daily rep fans the flames, and as frightened (and voting) middle class parents begin to demand action which will deal with “the problem,” treatment “experts” and politicians are moving to the fore with the “solutions.”⁶¹

Therefore, growing white involvement served to heighten panic about drugs as well as interest in therapeutic or medical remedies.

Narcotic use and its link to crime became an issue in the 1965 campaign for mayor of New York City. John V. Lindsay—an even more liberal Republican than Rockefeller—called for amending the Metcalf-Volker Law to make treatment mandatory for arrested addicts and to toughen sentences for pushers.⁶² Despite his calls for harsher enforcement, Lindsay’s political rhetoric depicted rampant drug use as a product of larger social forces. He stressed how systemic factors contributed to addiction and he portrayed punitive strategies as discredited relics of a less-enlightened past:

I should make it clear at this point that while drug misuse contributes greatly to criminal activity, it cannot be permanently cured by treating addicts as criminals…Arrest and punishment have not solved addiction; there is nothing in our experience to indicate that they will succeed in the future. The punitive emphasis is largely misplaced, for most addicts should be viewed as sick in need of a physician rather than criminals in need of judgment…For so long as people

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live in poverty, so long as they are denied even a basic chance for the exercise of their ambitions they will turn to the painless, euphoric world of drugs in which to lose themselves.\textsuperscript{63}

This language fortified the rhetorical link between crime and drug use while arguing that both emerged from the matrix of poverty and inequality of American inner cities.

Lindsay’s position was not far from his Democratic rival, Abraham Beame, although his challenger also favored drug maintenance. But it was William F. Buckley, Jr., running on the Conservative ticket, whose rhetoric best anticipated future trends. He advocated federally administered quarantine centers, where addicts would be segregated from society and be unable to spread their disease to others.\textsuperscript{64} This particular twist on the disease concept of addiction, portraying addicts as “infectious,” was popularized during the 1950s.\textsuperscript{65} Even though casting addiction as an illness opened the possibility of extracting users from the criminal system, there were also perils of medicalization for drug users. The same logic used to discredit penal strategies was also used to portray the addict as “contagious” and, as we shall see, legitimize calls for their quarantine.

\textbf{The Narcotic Addiction Control Commission (NACC)}

With continued reports of rising crime and spreading drug use, Rockefeller and Lindsay felt immense political pressure to take new action by 1966. Rockefeller warned of the problem’s scope in his annual speech to the legislature, “Narcotic addicts are said to be responsible for one-half the crimes committed in New York City alone—and their evil contagion is spreading to the

\textsuperscript{63} “White Paper on Narcotics Addiction,” October 1965, Reel MR 36, Subject Files, Folder: Narcotics, John Lindsay Mayoral Papers, NYCMA.

\textsuperscript{64} Pawlowski, “New York State Drug Control Policy during the Rockefeller Administration,” 93.

\textsuperscript{65} White, \textit{Slaying the Dragon}, 250. The complex politics of using medicalization to combat social stigma can be seen in other contexts. For example, people with leprosy faced this dilemma after organizing for a more medical approach to their condition. See Michelle Therese Moran, \textit{Colonizing Leprosy: Imperialism and the Politics of Public Health in the United States} (Chapel Hill: University of North Carolina Press, 2007).
suburbs.” In February, the governor introduced a plan of compulsory treatment of addicts for a maximum of three years, or five years for felons. The civil commitment of addicts was a strategy employed without significant success in California, though it had just weathered challenges to its constitutionality. It authorized the removal of any person certified as an addict to state-administered treatment facilities. Those not arrested for a crime were often committed to the program by friends, family members, or acquaintances who swore before authorities that the individual was an addict unwilling to undergo treatment. The program, administered by the newly created Narcotic Addiction Control Commission (NACC), had a double—and, many would argue, conflicted—mission: first, to reduce crime by “sweeping addicts from the streets” and second, to rehabilitate addicts. It would prove incapable of accomplishing either goal or satisfying any of the multiple constituencies it endeavored to accommodate.

Regardless, the new, mandatory treatment law paid immediate political dividends in Rockefeller’s third gubernatorial campaign. He championed the new policy, which was about to go into effect, throughout the 1966 race, running newspaper ads that stoked the racialized fear of addict crime. In one, an image of a dark arm with a hypodermic needle ran next to the words: “The stealing. The mugging. The Killing. All for this.” It concluded, “Get the addicts off the streets, put the pushers behind bars, and this crime will stop.” By suggesting that crime would end by removing addicts from the public, Rockefeller presented a simple and fast solution to what he had helped make a central concern of New York voters. Rockefeller’s Democratic challenger, Frank O’Connor, campaigned against the law as a violation of addicts’ civil rights, and advocated its repeal. It turned out that quarantining addicts was the more politically

67 Ibid., 122.
68 Ibid.
rewarding position, and Rockefeller was able to exploit his opponent’s opposition to compulsory
 treatment. The governor warned that “O’Connor’s election would mean that addicts were free to
 continue to roam the streets: to mug, to purse-snatch, to steal, and even to murder.”69 When
 Rockefeller won the race, both camps believed that his opponent’s stand against compulsory
treatment cost him the election.70

While politically pragmatic, in practice the new program’s twin commitment to
rehabilitative and custodial functions caused tension immediately. In early meetings of the
Narcotic Addiction Control Commission (NACC), members, who hailed from distinct
institutional backgrounds, clashed over the most basic attributes of the program: Should
employees carry batons and badges and be able to give half rations as punishment as they do in
prison? Do patients who run away from the program “escape,” as they do from prison, or
“abscond,” as they would from a mental hospital?71 Such seemingly mundane choices reflected
the struggles to actualize an internally conflicted policy that permeated all levels of the
program’s implementation. In 1974, a state audit would find that this tension hamstrung its entire
performance.72

In the initial five months of the program, one third of the first 1,200 who entered the
program were civilly committed, meaning they had not been arrested for a crime. Half presented
themselves voluntarily for treatment and the other half were confined against their will, usually
after being turned in by a spouse or other family member. The remaining 800 were committed

72 “The Acquisition and Construction of Drug Abuse Treatment Facilities,” Program Audit, Legislative Commission
S-9, S-15.
criminally, after arrest for a crime, and faced up to five years in compulsory treatment. The conditions residents faced at NACC facilities solidified their stigmatized position. Commonly located in old prisons, treatment centers were far more effective at their custodial functions than treatment and reintegration. Residents were called “patients,” but their visitors were controlled and their mail surveilled; there were three head counts a day. An in-depth study by the New York Times two years into the program found almost nothing positive to report about the institutions’ therapeutic capacities. Even people who voluntarily submitted themselves for treatment were led away in handcuffs. One man explained, “I am being treated like an animal in a locked cage.” With no coherent therapeutic philosophy and insufficient staff training, the caliber of treatment was almost universally condemned. The Times reported that the Edgecomb center’s staff severely beat residents and Woodbourne program guards, who were mostly trained at reformatories and prisons, carried clubs although, according to the director, they “did lots of informal counseling.”

These programs, colloquially called the “Rockefeller Program,” quickly encountered motley resistance. Unsurprisingly, public support for removing addicts from the streets did not easily translate into welcoming treatment facilities into the neighborhoods. Local communities fought fervently to prevent placement of new treatment centers in their neighborhoods, considerably slowing the acquisition of facilities and resulting in many centers locating within commercial and industrial areas. As word of the conditions spread, many of those arrested or committed fought desperately against being certified as an addict through procedural challenges.

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76 Ibid.
77 “The Acquisition and Construction of Drug Abuse Treatment Facilities.”
or hearings, especially if the “treatment” length exceeded the criminal sentence for their crimes. When legal avenues were exhausted, residents of the Rockefeller Programs often took drastic measures to escape. According to government reports, more than 7,000 of the 24,000 committed to NACC programs absconded, either from residential programs or aftercare. Of the departing residents placed in aftercare between March 1969 and March 1970, only 19 percent were still enrolled nine months later; the remaining 81 percent relapsed, absconded, or were rearrested. These statistics, which reflected the Rockefeller Programs’ highly permeable boundaries, alarmed residents and discredited the state’s pledge to isolate drug users from the community.

The political enthusiasm for the NACC programs barely outlasted the initial huge outlays to secure staff and facilities. The Rockefeller Program did not fully satisfy a single constituency, nor did it fulfill either of its conflicting missions. It never accomplished the therapeutic objectives, and also failed in its custodial ambitions, interning only 4,244 of the 64,240 “known addicts” as of December 1968. Lackluster progress reports and the inability to house even a small percentage of New York’s heroin users conspired to undermine political support for the program, and the legislature was increasingly unwilling to fund the program. State Senator Samuel Greenberg (D-Brooklyn) captured the general mood when he offered his verdict on the program: “The program is a failure. It is failing to get the addicts off the street. It is failing to rehabilitate those few addicts under its care. It is failing to halt crime.”

Negotiating Culpability: Addicts, their Families, and NACC Programs

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79 Pawlowski, “New York State Drug Control Policy during the Rockefeller Administration,” 211.
80 “The Acquisition and Construction of Drug Abuse Treatment Facilities.”
Despite the programs’ failures and highly coercive features, many arrested for drug crimes and their families embraced the state’s commitment to rehabilitation. Drug offenders often wrote the governor, pleading for him to intervene in their case, and asserting their status as addicts to gain entry into treatment programs or evade prison. With few archival sources capturing the perspectives of drug users, these letters offer welcome insight into prisoners’ relationship to various policies and the state. They are, however, like any source, a product of the context in which they are produced and reflect gross power differentials. Therefore, although they may not reflect the writers’ most intimate or even honest sentiments, the letters reveal the way drug offenders rhetorically negotiated the hostile political terrain to advance their own interests.

Medicalized understandings of drug use opened new space for people to maneuver within the criminal justice system to affect their fates. The disease concept of addiction also allowed judges and prosecutors to advance lenient or therapeutic rationalizations for criminal deviance in those cases where they saw fit. As illustrated by a letter from a woman whose son was randomly diverted to prison after being certified an addict, this by no means negated the arbitrary power of the courts. After fighting with various officials to have her son committed to the NACC facility, the mother was finally able to reach someone in the governor’s office who intervened on her behalf. Although her son was transferred from prison to a rehab facility that was itself housed in an old prison, she wrote the governor about her relief at the change of venue and her gratitude to the man who helped her:

He was concerned that I might be frightened at first seeing…Woodburne [Treatment Center] because it was a former prison facility. It seemed incredible that this kind, concerned human being should care whether or not Woodburne was the proper place for my son. I was so happy at the prospect of the boy’s release from the Tombs, that if Mr. Warner had said he was sending him to “hell”–I would have felt it was better than the Tombs.

After expressing relief at having her son out of prison, the woman went on to challenge the
state’s individualized response to drug use and highlight the implications of criminalizing huge numbers of citizens.

Governor Rockefeller, do you think the time will ever come when legislators, society, and government will accept part of the blame, and realize that drug addiction is a great social disease, not a crime?…Surely, the hundreds of thousands of our young people involved in today’s “drug culture” cannot possibly all be criminals…A lifetime where meaningful, decent employment will be forever denied them. By expressing my views, Governor Rockefeller, I do not wish to imply that my son is an innocent in the woods. I am not, unfortunately, naïve enough to believe that anyone, other than himself injected that heroine filled needle into his arm—or that anyone forced him to [do] things he may have done to obtain drugs. I am inclined to believe that he can be saved; and that rather than a criminal, he is merely a victim of his times.82

This mother resisted treating her son as a criminal or even as the victim of an individual illness. Instead, she argued that her son, although responsible for his own actions, suffered from a “social disease,” which was rooted in and attributable to contemporary conditions. Her letter, and many others like it, rhetorically embedded the addict back into society, asserted the possibility of redemption and, most importantly, rejected the brand of criminality.

NACC policy also inspired people who were not narcotic users to seek therapeutic, rather than penal, custody. Highlighting the haphazard and political nature of program development, one man wrote the governor to protest the failure of the state to commit any resources or legal allowances for alcoholics. The author started by associating himself with the more socially marginalized category of drug addict to assert his right to treatment.

I, sir, am an “addict” of a sort, also a criminal, substantiated by numerous convictions and most of my adult life spent in prison, but also and most important sir, I am a alcoholic, for over 20 of my 36 years. I have never committed a crime while sober, I have never hurt, injured or assaulted anyone in anyway in my entire life…I need professional help, rather than punishment and prison, the psychiatrist of this institution is in agreement—but there is no place for the judge to send me,

82 Ida C. M. to Governor Rockefeller [No Date], Reel 9, Rockefeller Gubernatorial Papers, 4th Administration, NYSA. Throughout the dissertation, I have removed the last names of those people who were possibly unaware that their correspondence would become part of the public record. I have retained the last names of those who spoke in public forums, such as to the media or at legislative hearings.
no alcohol program for the criminal alcoholic, no hospitals…I sir humbly pray for some help, some understanding, some understanding and intervention, from someone who cares, for someone to step forward and prevent a bigger crime from being committed against me than I ever committed against society.  

By putting his crimes in perspective to the state’s crimes against him, the author flips the conventional narrative about societal victimization. Instead of the alcoholic offending society, society and the state failed the alcoholic by neglecting to provide alcohol treatment.

Even though many drug offenders preferred treatment programs to prison, many complained directly about the hypocrisy and classism of the state’s treatment objectives.

[Since they] took it upon themselves to start the NACC to combat the rise of drug abuse in our great state, to do just more than lock the accused addicts [sic] up and keep him away from the so-called society whom in the first place “let” the drug problem get to where it is today without bothering to do any thing so longed [sic] as it stayed within the low class people, but once it stepped out of that class they rose up in arms to do battle with the great [beast] after seeing it was going to desegregate itself, but with all that in the past I will say thank you for giving my the chance to be able and sit down and write this letter to you…

What I mean is don’t you have a place that can train me to help others to leave the land of the walking dead and become real people again?…Please help me by sending my any information that may help me in regaining my manhood.

Fully aware that Rockefeller’s policies were motivated by fears of drug use in middle- and upper-class communities, the man still used the policy as an opening to make claims on the state for job training.

The authors of such letters used the state’s emphasis on rehabilitation to request a drug treatment and job training while stressing the inability of punishment to redress the serious problems posed by addiction. Contrary to the state’s rhetorical emphasis on therapy, it was clear that addicts viewed job training and education as integral to their vision of rehabilitation. A veteran who became addicted to heroin after his nervous breakdown in battle explained, “A state

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83 Daniel M. to Governor Rockefeller, [No date, 1972?], Reel 60, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
84 Kenneth R. to Rockefeller, March 2, 1971, Reel 60, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
prison term would be of no help to me. I want to help myself.” Reflecting the growing consensus that prisons served little rehabilitative function, he asserted his right, as a certified addict, to treatment: “There are stipulations [that allow treatment instead of prison]. A program where I will be able to finish school and learn a trade. A program where I can receive the therapy that I need so bad.”

Although letter writers were fully cognizant of the new laws and programs that committed the state to offer drug rehabilitation, most wrote in a suppliant tone, and people rarely demanded treatment as a right. For many drug offenders, the treatment regimes, while inherently coercive, allowed more mobility and agency than penal structures and, perhaps, hope for an alternative future. So, within highly constricted options, people maneuvered to affect the state’s role in their lives and called upon the government to act as a catalyst for a positive personal transformation. The possibility of this role for government in the lives of drug users, however compromised and problematic, would not last for long.

Therapeutic Communities

People who sincerely sought to end dependence on drugs rarely found the Rockefeller Programs helpful. Instead, many turned to therapeutic communities, a new and innovative trend in drug treatment, where ex-users designed and directed recovery. Therapeutic communities were drug-free residential treatment programs that aimed to fundamentally rebuild the addict’s personality and lifestyle before facilitating reintegration into society. Understanding drug abuse to be a symptom of a deeper character dysfunction, therapeutic communities facilitated emotional development through cultivating self-awareness and self-discipline. To achieve these ends, centers employed highly confrontational group therapy, which encouraged high levels of

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85 James E. to Senator Jacob Javits, June 9, 1973, Reel 61, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
personal and collective responsibility, and an elaborate system of demotions and rewards that moved patients within a strict hierarchy of residents. As residents progressed through their multi-year stay, they took on increasing leadership and control in the community. Therefore, while strictly autocratic, therapeutic communities were largely controlled and staffed by ex-addicts, many of whom had completed the same programs. By positioning the ex-addict as the expert on recovery, therapeutic communities saw ex-drug users as role models and agents of positive change in society, as opposed to corrosive and permanent outsiders. The popularity and prominence of therapeutic communities in the late 1960s suggests that New York’s eventual punitive approach to drug abuse was not the inevitable response to rising addiction, and that policy was contingent, conflicted, and largely shaped by political imperatives.

Synanon, the first therapeutic community, was founded in 1958 by a recovering alcoholic, Charles Dederich, in Ocean Park, California. Originally a fervent Alcoholics Anonymous adherent, Dederich developed an enthusiastic following for his unique program of communal living and group confrontation sessions. Raucous and free-wheeling, these group encounters, or “games” as they were called, were based on the rejection of the traditional, restrained treatment environments. An inversion of modern notions of therapeutic expertise, here patients were the catalysts of their own cures.

In 1963, leaders of the Probation Department of New York’s Kings County Supreme Court turned to Synanon as a model when they wanted to start an experimental program for the male drug felons under their department’s supervision. They founded Daytop, which became a formalized, functioning therapeutic community when they recruited David Deitch, a former Synanon resident, to oversee the program in 1964. Like Synanon, Daytop emphasized the

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addict’s role and responsibility in ending dependence on drugs. It was a regimented, intense environment, designed to create stressful conditions that residents learned to manage with new, healthy strategies. There was constant, mutual support but also mutual surveillance of every aspect of daily life. For seemingly minor transgressions, colleagues and staff publicly and belligerently berated residents. For example, a resident might be forced to wear a sign and a diaper to admit that he acted “like a baby” or carry a light bulb all day after forgetting to turn out the lights. Though appearing harsh to some, proponents explained that techniques of traditionally trained social workers and counselors, such as gentle questioning and observations, could not meaningfully pierce an addict’s elaborate shield of defenses, withdrawal, and self-delusion. Since they had themselves employed similar subterfuge, ex-addict counselors claimed to easily see through the manipulation and delusion that often would deceive other counselors. Advocates of therapeutic communities charged that traditional practices risked “killing with kindness,” since “people like us” needed persistent, forceful interventions and surveillance to arrest their destructive behavior.87

Desperate for a meaningful intervention into the drug problem, politicians were willing to experiment with a treatment program that empowered and employed addicts. In 1966, Mayor Lindsay backed Rockefeller’s tough civil-commitment legislation while also investing in these alternative programs. That year, he hired Efren Ramirez, a proponent of therapeutic communities who had directed successful programs in Puerto Rico, to lead New York City’s treatment efforts. With the help of Daytop staff, Ramirez established the Phoenix House and New York City became a major sponsor of these experiments in drug rehabilitation. For a number of years,

87 Barry Sugarman, *Daytop Village: A Therapeutic Community*, 95. The book is an anthropological study that explores the functions, philosophy, and organization of Daytop Village.
therapeutic communities were the centerpiece of the city’s drug treatment efforts. As opposed to the medical establishment or therapists, Dr. Ramirez felt that the addict, once “reformed,” was the best authority on recovery. He explained, “The rehabilitated addict, in our opinion, is an expert in drug addiction.” Although funding for these communities was motivated by the political desire to control drug use and the related crime, participants felt their mission to be fundamentally divergent. A co-founder of Daytop explained the difference:

There’s no doubt about it. Because of their numbers, addicts are a public menace, accounting for over 50% of the crimes against persons and property in New York City. But we must be careful not to confuse steps taken to protect society from the addict (jails, the “Rockefeller program,” the federal facilities in Fort Worth, Texas, and Lexington, Kentucky, and in my opinion, methadone maintenance) with those now being taken to rehabilitate the addict himself.

Casting addicts themselves as agents of their own rehabilitation inverted the dominant characterizations of the period, which either characterized addicts as unredeemable criminals or as needing specialists’ expertise. These programs positioned addicts as eminently redeemable, and—once sober—integral to the treatment of other drug users and therefore, to the general social welfare.

As a state strategy to control drugs and crimes, therapeutic communities posed political problems. They were residential programs with average stays of two years and were, therefore, expensive to establish and operate. Although they proliferated rapidly, the houses were necessarily small and intimate and the city did not have enough funds, time, or trained ex-addict staff to treat even a small percentage of the addict population in New York. Additionally, membership in a therapeutic community was considered a privilege and the strictly regimented

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environment caused many residents to be expelled or “split” before completing the program. Statistically, the program was very successful for those who finished, but had an almost 50 percent drop-out rate. Moreover, local communities engaged in extensive grassroots organizing to oppose the placement of treatment houses in their neighborhoods. In one of many examples, hundreds of community members picketed the Daytop House on Staten Island to oppose its placement and successfully delayed funding for many months. These confrontations forced politicians to choose between supporting addicts, an unpopular if not completely disenfranchised constituency, or the politically powerful and resourceful neighborhood councils, churches, and business owners.

Still, therapeutic communities captured the imagination of New Yorkers in the late 1960s, and became a part of the cultural landscape. On top of widespread social concern about heroin, people were probably drawn to the example of human struggle and renewal that ex-addicts represented. Their cause drew famous musicians, such as Pete Seeger, Duke Ellington, and the Grateful Dead, to play in Daytop’s four-day musical festival and fundraiser. There were television documentaries about Daytop and the members staged a long-running, critically acclaimed Off-Broadway show about their experiences in recovery.

Many, however, condemned the therapeutic communities. Critics, especially some African Americans and Puerto Ricans, charged that white program leaders preyed on communities of color, just like drug peddlers, and built institutions that were not accountable to

91 These statistics vary considerably depending on time period and research methods. See, for example, Sugarman, Daytop Village, 5-7.
or controlled by local communities. People also challenged the basic philosophical underpinnings of the therapeutic community, which located the locus of addiction in an individual personality defect. One commentator explained, “[T]he therapeutic community tends to reduce drug addiction to the level of an individual problem. This position derives from the concept of the addict as a sociopathic personality. If on the other hand, addiction is attributed at least partially to a sick society, then its cure is to involve the ex-addict in changing society.”

Therefore, these critics questioned the emphasis on reintegrating addicts into society, since society itself was seen as compromised and producing the very problems that generated drug addiction in the first place.

Inspired perhaps by these critiques, David Deitch, the director of Daytop, began articulating a new vision for therapeutic communities. Instead of reforming citizens to reenter a fundamentally righteous society, Deitch presented Daytop as a social movement exemplifying higher principles. The emphasis on living with absolute honesty, integrity, openness, accountability, and mutual concern was a positive example for mainstream society, not preparation for it. So he explained that recovered addicts must be trained to go back to the community to be agents of social change: “Our real job ain’t got nothing to do with just overcoming drugs. Our real job…is confronting a racist community and challenging them to live the life we show by example.” In this formulation, addicts were cast not as pariahs who threatened society, but as guides who could, by virtue of their experience and struggle in recovery, catalyze revolutionary change in society. The board of directors disapproved of Deitch’s new political objectives and struggled to assert more direct control over operations. A power struggle escalated and Deitch and the residents staged a sit-in at Daytop, refusing to leave

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96 Sugarman, Daytop Village, 123.
until the board eventually evicted them.97

The prominence of Daytop and other therapeutic communities illustrates the extent to which societal response to drug addiction was up in the air in the late 1960s. While many people only approved of programs that approached drug users as criminal pariahs, New York funded drug-free residential communities where addicts directed their own recovery.98 The costs and limitations of these programs, however, led Governor Rockefeller to begin disinvesting in residential drug-free treatment. He searched again for a strategy to control widespread drug use that could also enhance his political position. This time, abetted in part by the Nixon administration, New York abandoned a commitment to drug free therapy, and funded a controversial experiment in methadone maintenance.

“We are the prisoners”99: Citizens Demands for Their Rights Back

Between 1968 and 1970, the political importance of heroin in New York only grew. In fact, the tangle of treatment programs did little to appease the mass anxiety about drugs and crime. The panic about growing heroin use in white communities compounded fears about rising crime rates. These distinct but interconnected concerns put politicians in a precarious position. The stigmatizing, exclusionary drug-management tactics that targeted predominantly low-income,


98 As therapeutic communities became increasingly privatized and professionalized, the vision receded of recovering addicts serving as role models and catalysts for profound political and social transformation. The programs refocused on treating individual addicts with less severe techniques and have become key players in the large private drug treatment infrastructure today. Both Daytop Village and the other early therapeutic community, Phoenix House, have grown into large, independent, drug rehabilitation programs. Today, the Phoenix House is the largest non-profit alcohol and drug abuse treatment and prevention facility in the nation. Daytop has over 20 various program centers throughout New York and New Jersey.

99 Myra T. to Rockefeller, April 5, 1973, Reel A 16, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
communities of color seemed less appropriate for drug users from middle- and upper-class white communities. An emphasis on treatment and reintegration, grounded in the disease concept of addiction, appeared better suited to handle the drug abuse in affluent communities, whose families had more sway with many legislators. Yet, panic about rising crime rates, largely attributed to heroin use in poor communities, pulled policy in the other direction, as many demanded increasingly punitive state intervention to “restore order.” Federal politics and the war in Vietnam also conspired to keep New York’s approach to heroin in flux between 1968 and 1973.

Before exploring how the state’s large scale experiments with methadone maintenance reflected and helped resolve these tensions, it is important to investigate more closely the twin forces that drove public concern about heroin addiction: widening use and rising crime. It is impossible to comprehend the frenzy of public attention to heroin addiction without acknowledging its intimate connection to consternation about rising crime rates that began in the 1950s. The specific ways that these problems were framed in public discourse helps make sense of legislators’ subsequent political choices.

Rockefeller, therefore, did not embrace highly punitive policy on a random personal whim. He was embedded in the popular zeitgeist—which he, in turn, helped sculpt through his rhetoric and legislative agenda—that held particular beliefs about the causes of crime and the appropriate responses. Letters to Rockefeller offer valuable insight into the public attitudes he confronted, and they help reveal the particular ways Rockefeller’s constituents framed their concern about drugs and crime. Over his years in office, Rockefeller received hundreds of letters

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100 Within scholarly literature, rising crime rates are often cited as the obvious explanation for the appeal of “law and order” politics and increasingly severe criminal policy of the following decades. See, for example, Michael Flamm, *Law and Order*. 
on the need for “law and order.” Certain themes manifested clearly, especially the rhetorical habit of attributing rising crime to liberalism’s failures and the barely secured victories of civil rights organizing.

Rockefeller’s constituent mail persistently blamed rising crime rates on the permissiveness of the courts and social programs, asserting a causal connection between newly won legal and social rights for marginalized populations and “worsening” conditions in society. Some victims of horrible crime understood their experience through this lens. One woman, whose brother was killed, expressed this perspective to the governor:

There is too much emphasis on rights and the various minority groups and not enough on responsibilities and the majority…The convict or guy with a record has more rights than anyone. Money that is presently being handed out for welfare, Medicaid, youth services, senior citizens and the various minorities or gravy trains might better be used to create a responsible society. There is too much appealing, protests, etc. for more funds and not enough common sense to administer sensible programs that are for the majority and create a more responsible society.

These sentiments must be understood, at least in part, as connected to the high-profile struggles by people of color for new rights and protections.

In addition to legislative civil rights victories, the Supreme Court had dramatically revised criminal procedures during the 1960s. It granted defendants a whole series of new protections: people charged with crimes won the right to a public defender if unable to pay for counsel, the right to have a lawyer present during interrogations, and the right to be informed of their rights upon arrest. Critics of these changes often attributed conditions on the street to these new legal protections and other liberal state policy. In correspondence, constituents declared that their status and protection had been eroded as criminal defendants gained rights. In

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101 These politics were simultaneously local and national, and the rhetoric in state politics was influenced by calls for reestablishing law and order at the national level. Ibid.

102 Janet R. to Rockefeller, March 5, 1973, Reel A16, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.

103 Christian Parenti, Lockdown America, 5.
a letter advocating the reinstatement of the death penalty, one person wrote:

> Over the past several years I have been increasingly deprived of certain rights and guarantees, granted to me under the Bill of Rights. I refer to the right to walk the streets in peace and security and to feel safe within my home. We have, in fact, arrived at a reversal of the normal: the criminal walks the streets and the law-abiding, tax-paying citizen is locked up-voluntarily at his home, with several locks at the door and a lock at each window.\textsuperscript{104}

These arguments directly challenged a dominant tenet of the era—advanced by both mainstream liberals and radical social movements—that stressed the role of social inequality and racial injustice in producing criminal behavior. For example, President Lyndon Johnson argued that crime was rooted in social conditions and could be mitigated by expanding opportunities, which he proposed accomplishing through his Great Society programs; he declared that, “The War on Poverty is…a war against crime and a war against disorder.”\textsuperscript{105} Contesting this narrative, letter writers insisted that liberal programs and civil rights laws encouraged crime instead of lessening it, and—in a zero-sum formulation of rights where one group’s gain is another’s loss—subordinated the rights of “taxpayers” or “the majority.” Another woman wrote to express these frustrations after her home was robbed:

> This letter is written to you by a law abiding citizen who feels she is discriminated against in favor of dope addicts and welfare cheats. I am a widow who lives alone, works every day, pays taxes and lives by the rules. I get very little from my taxes when I can no longer walk on the streets and when I am afraid in my own home…I am sorry this letter is not typed. My typewriter was stolen.\textsuperscript{106}

This woman employed the language of activists challenging discrimination to articulate her belief that the state had betrayed the reciprocal arrangement between itself and the citizenry. The government failed in its responsibility to maintain her safety, even as she upheld her

\textsuperscript{104} Otto S. G. to Rockefeller, August 28, 1973, Reel A16, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.

\textsuperscript{105} Michael Flamm, \textit{Law and Order}, 47.

\textsuperscript{106} Ann S. to Rockfeller, February 6, 1971, Reel A16, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.
responsibilities of working, following the law, and paying taxes. She linked her growing insecurity directly to the state’s growing accountability to marginalized groups, specifically the “dope addicts” and “welfare cheats.”

Such feelings were heightened by class frustrations, especially the belief that the liberals who advocated for attention to “root causes” lived in segregated, suburban communities apart from the problems. A woman expressed this view in her correspondence with Rockefeller about her father’s murder:

On January 20, 1973, two black men attempted a robbery at my father’s place of business in New York City. My father died because of gun shot wounds to the heart, lungs, and face...The impunity with which murder can be committed and excused for by guilt ridden liberals who, because of the privilege of their affluence in the socio-economic spectrum make concessions to the criminal element...The social experiments they espouse for the majority rarely, if ever, effect their own family prerogatives of freedom of choice guaranteed by their socio-economic sanctuary. Conversely, once murder has been committed, they bend backwards to find root causes thereby condoning the very act of violence itself. The cycle of excuse and permissiveness feeds on itself until there is no safe society for anyone and the vast majority walk with fear...

    It must be reaffirmed that we value the life of the victim of violent crime more dearly than the imagined rights of the murderer, that the full extent of punishment that fits the crime is not cruel and inhuman but merciful to the memory of the victims and his family and is a proper deterrent to the commission of violence...

    The legal structure unjustly sets aside the rights of that life and stupidly seeks redemption and social value in the salvation of the murderer, instead of bringing all power to bear to the prevention of such crimes.107

This letter conveyed the prevalent sentiment that working-class people had been abandoned to deal with problems in the cities that elites fled. Perhaps most important, among a catalogue of possible explanations, the author ascribed rising crime to efforts to understand its root causes—“the cycle of excuse and permissiveness”—and posited a dichotomy where granting rights to a murderer inevitably and invariably restricts and devalues the victim.

107 Joseph B. to Rockefeller, April 30, 1973, Reel A16, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
The rhetoric in these letters often belittled and discredited welfare-state and therapeutic programs by gendering them female. In this and many other letters, citizens imply that paying attention to structural inequalities (“root causes”) and policies of rehabilitation were “permissive” and “over-indulgent,” and, therefore, had the pernicious effect of excusing and ultimately encouraging anti-social behavior. It is also strikingly reminiscent of long-held beliefs that the overindulgent, smothering mother was responsible for producing an array of social pathologies in her children.\textsuperscript{108} Again and again, citizens called for tough, hyper-masculine responses to these problems, such as the death penalty or a military presence in the streets. One man wrote Rockefeller, “We need the national guard in NYC. This educated moron [Mayor John] Lindsay is all but destroying us. I would rather see martial law or civil war than present conditions.”\textsuperscript{109}

Constituents repeatedly insisted that they lived in a world turned upside down, where the “wrong people” had rights and the “right people” were punished. One police officer wrote, “It seems like the law abiding citizen have no rights whatsoever, except the responsibility and obligation ‘to work in order to support and care for the parasites of society, the common and habitual criminal.’”\textsuperscript{110} Another police officer articulated a similar point when he wrote Rockefeller that, “It’s ironic that prisoners have a union and policemen don’t. It seems that as a policeman you lose some of your privileges and as a prisoner you gain…Let’s treat a prisoner like a prisoner and not like a poor unfortunate


\textsuperscript{109}Ron H. to Rockefeller, [No Date], Reel A16, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.

\textsuperscript{110}Wayne R. to Rockefeller, January 18, 1973, Reel A16, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.
who because of his social environment acted in a criminal manner.”

According to this logic, being treated “like a prisoner” was diametrically opposed to awarding rights or procedural protections, and most importantly, interrogating the “root causes” of criminal behavior. People who expressed their fear of crime often attributed the conditions on the street to these new legal protections and other liberal state policy. They stressed their belief that as criminals gained rights, their status and protection had been eroded. Intertwined with these calls for a tough new state role was a determined resistance to extending universal rights to all citizens.

Among the myriad factors to hold accountable for rising crime, these letters most often faulted government permissiveness, systemic explanations of deviance, and the expansion of rights for marginalized populations, especially racial minorities. As opposed to repudiating government intervention in society, this logic called for a new kind of state action, characterized by tough, masculinist, retributive strategies that constricted targeted groups’ rights. A state legislator captured this logic in a letter to Rockefeller explaining his support for a new death penalty law: “In the name of decent people who obey the laws of our country and contribute to our society, let’s stop playing nurse-maid to these cut-throats and murderers and give them what they deserve.”

In other words, to sanctify and honor normative citizenship, criminal deviance must be dramatically avenged.

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“They call it an epidemic now. That means white people are doing it”

Middle-Class Heroin Use

111 William A. to Rockefeller, February 18, 1972, Reel A16, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
112 Gerald Soloman, Assembly Member to Governor Rockefeller, July 26, 1973, Reel 60, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
113 Richard Pryor (Director and Writer), Richard Pryor Here and Now, Columbia Pictures Corp., 1983.
With persistent attention to rising drug use and crime rates, it is not surprising that the tangle of treatment programs in New York did little to appease the mass anxiety. In fact, it seemed that the more visible the attention to the problem, the more the demands for action and results escalated. According to political rhetoric of the time, it is difficult to exaggerate the danger drugs posed. Rockefeller constantly informed constituents that drugs abraded the very fiber of society and the fate of the nation hung in the balance.\textsuperscript{114}

Without acknowledging the profound social instability that plagued the nation in the early 1970s, this rhetoric could seem hyperbolic and bizarre. The intensity and fervor over drugs cannot be teased apart from the mass social movements of the time. A vocal counterculture rejected the mainstream values of their parents, embracing drugs and new notions of sexuality. Movements of people traditionally marginalized because of their race, ethnicity, sexuality and gender demanded the rise of a society dramatically reformed and reborn. Politicians’ claims that drugs unraveled the country’s social fabric were politically resonant in part because they were a way to give meaning to the turmoil throughout society. In Nixon’s campaigns and presidential addresses, he endeavored to discredit his political adversaries by persistently linking the counterculture and protest movements to an illegal, deviant drug culture. Drugs, therefore, provided an explanation for social upheaval that did not question American exceptionalism or the virtue of mainstream culture. Just as officials tried to blame urban riots on outside Communist agitators, this logic attributed discord and deviance to an enemy from outside the body politic, not from social or structural problems in the country. The need for a scapegoat to explain the dramatic social unrest and cultural revolt only became more desperate as it reached deeper and deeper into affluent, middle-class communities.

\textsuperscript{114} See, for example, “Draft of Crime Speech,” [1970].
As early as 1968, federally sponsored anti-drug advertisements designed by the Ad Council featured large font simply and ominously stating: “Heroin is moving to the suburbs.”

At a Senate hearing, Mayor Lindsay warned of the new dynamic:

> For too long, people thought of the problem of narcotics in the same way they thought of slums, unemployment, and welfare checks—all problems confined to the poor and to minorities, and to central cities. But the explosion of the drug culture has proven that wrong. Today, no family in America is immune from the possible discovery that their son or daughter suffers from drug abuse. All have become painfully aware that addiction knows no neighborhood lines, no county boundaries, and no racial or ethnic distinctions.

As the new decade began, reports of heroin use in the high schools of affluent areas of Brooklyn, Long Island, and Westchester heightened concern that drugs were “spreading” from inner cites. An article from the *Washington Post* read: “One thing is certain—the drug culture is spreading rapidly. It is spreading from the ghettos, where it has long been deeply embedded, to the white suburbs.” In articles such as these, drugs were presented as indigenous to inner cities; if they did appear in other communities, they were imagined as a weed or disease that had escaped from its traditional ecosystem to infect new territory. This language naturalized the high rates of drug addiction in poor areas, which itself was a relatively new historical phenomenon; normalized the devastating abuse of other substances—such as alcohol and prescription pills—in affluent communities; and erased the history of morphine addiction by upper-class women earlier in the century. Most important, it located the genesis of social problems in inner cities and deflected attention from other social, economic, and cultural factors that could inspire young, white people to use drugs.

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116 Testimony of Mayor John V. Lindsay before the U.S. Senate Subcommittee on Alcoholism and Narcotics, Washington D.C. May 5, 1971, Reel 16, Subject Files, Folder: Drugs, John Lindsay Mayoral Papers, NYCMA.

The changing demographics of heroin use intensified the political urgency of the problem, as some officials would occasionally publicly admit. An unnamed official in the Lindsay administration told a reporter, “As long as drugs were primarily a problem of the lower classes, there was a minimum amount of pressure to do any more than research the problem.”

In 1970, an official from the White House Office of Management and Budget generated outrage when he acknowledged before a House committee on drug abuse that as long as heroin was a problem isolated to the “ghetto,” “it was a problem we could live with.”

The urgency inspired by the new concerns about white, middle-class drug use did not escape the notice of Black commentators. A columnist for the African-American newspaper, *New York Amsterdam News*, wrote in 1971:

> Drug addiction is nothing new. Black kids have been destroyed for years by the heroin plague. Ghetto youth were easy prey for pushers whose little bags of dope brought the promise of escape from the dismal trap of poverty and racism. But now there is general alarm about the inroads dope is making. The reason isn’t hard to find. More and more victims are coming from white middle-class families. When black kids were hooked, society was silent. But now everyone is up in arms about it.

This also created frustration for those working in the state’s treatment programs, many of whom were already indignant about bureaucratic and philosophical impediments to their mission. A disillusioned senior training official explained her resignation from her job in a telegram to Governor Rockefeller,

> We have the answers but there are those who do not wish to see the problem solved. This is especially unfortunate because it has now gone full circle and it is not the black race which has the problems but the white race. Talk to any teenager in the ghetto or outside the ghetto and they can tell you where it’s really at. You have allowed the house to burn down but it is your family, the so-called silent

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119 Baum, *Smoke and Mirrors*, 35.

middle class majority, which is now inside.\textsuperscript{121}

Although concern about middle-class drug use probably inspired some more lenient, treatment-based, responses to drug users, it had the inverse effect on attitudes toward drug sellers, who were held responsible for spreading the habit. One critic wrote:

And now, the move afoot to reduce drug penalties for the mere possession of a drug (heroin and marijuana) and to increase the penalties for pushers, once again is in response of the needs of a frightened middle class segment of our society. In effect, the “liberalized” laws only represent a liberalization for the drug user who can afford to purchase his drugs. The poor, ghetto addict (who must sell to support his habit) will continue to be prosecuted to the full extent of an even harsher law.\textsuperscript{122}

Since most street dealers were low-income users themselves, the trend of increasingly harsh punishment for “pushing” essentially created a race- and class-based penalty structure for drug crime. Those with resources had a greater chance of diversion to treatment programs while the working class and poor, especially people of color, were usually channeled into the penal system, fueling visions of a criminalized, racialized “underclass” solidifying in American central cities.

**The Rise of Methadone Treatment**

With ceaseless reports of rising crime rates and expanding drug use, few politicians and members of the public felt that the Rockefeller Programs and therapeutic communities were managing the situation sufficiently. In fact, it seemed the problem was reaching crisis proportions. New York City officials reported 50 percent of the inmates in jail were addicts. Drug-related arrests had more than doubled from 22,000 in 1968 to 52,000 in 1970.\textsuperscript{123} As politicians searched desperately for a way to stem the tide, a new controversial approach to

\begin{itemize}
\item Telegraph from Selma Rice to Governor Rockefeller, January 11, 72, Reel 10, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.
\item Testimony of Mayor John V. Lindsay before the U.S. Senate Subcommittee on Alcoholism and Narcotics.
\end{itemize}

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heroin addiction was attracting national attention.

In the mid 1960s, a small research study conducted at New York City’s Rockefeller Hospital began dispensing methadone, a heroin substitute, to addicts. Methadone, a long-acting, synthetic opiate that sated the addicts’ craving for heroin, was particularly appealing because it supposedly mitigated the need to commit crimes to support the habit. Patients required only one dose daily, and, its advocates claimed, experienced little if any euphoria. Once treated, they were able to function normally and perform all social, work, and family obligations. Proponents saw the drug as treating the chemical imbalance that caused compulsive heroin cravings and acknowledged that some people would need to continue treatment indefinitely, often comparing methadone maintenance to diabetics’ long-term reliance on insulin. Although methadone users technically remained addicted to opiates, treatment experts emphasized their transformation into law-abiding “productive citizens” who could work and raise families. The treatment, therefore, promised to slash crime statistics while reintegrating heroin users into normative society. Arthur Dole, one of the study’s principal researchers, described the profound transformation methadone would catalyze in drug users’ status: “Our objective, after all, is to make citizens out of addicts.”

National interest in the new treatment was further piqued when, in 1969, the psychiatrist Robert Dupont conducted a highly publicized study that, for many, conclusively proved that crime rates were directly tied to burgeoning heroin use. DuPont’s researchers interviewed or tested the urine of around 200 people booked into Washington, D.C. jails during August and September and discovered 45 percent tested positive or admitted heroin use. In the next

124 Courtwright, *Dark Paradise*, 163-165.
126 Dan Baum, *Smoke and Mirrors*, 19.
months, Washington, D.C. instituted a methadone program in the Department of Corrections that was credited in a dramatic reduction in crime indices. Nixon staffers, desperate for ways to make good on anti-drug and anti-crime campaign pledges, funneled federal money toward the program and started crafting a national program. By the 1972 presidential election, crime rates in Washington defied national trends and fell by half from their high in 1969.\textsuperscript{127} The White House declared the federally supported citywide experiment a success.

For Republican politicians, methadone might seem dangerously permissive and verging on government drug handouts. However, the chance to quickly and dramatically reduce crime rates at relatively low cost was impossible to ignore for politicians—such as Nixon and Rockefeller—who had made high-profile pledges to reduce crime during their election campaigns.\textsuperscript{128} Methadone was particularly attractive to Rockefeller in 1970 as he approached his fourth reelection campaign for governor. The NACC’s compulsory treatment program faced all manner of public criticism: for its punitive emphasis, its inability to “sweep addicts from the streets,” the alleged slow pace of getting programs on line, its high cost, and the failure to dramatically reduce crime. Rockefeller’s Democratic opponent, Arthur Goldberg, made the governor’s failure to stem drug use one of his two main issues in the campaign. Rockefeller’s own polling confirmed the centrality of the issue, showing drug abuse to be the primary concern of voters.\textsuperscript{129} Acknowledging the limitations in his compulsory treatment programs, Rockefeller turned to methadone in the hope that it would provide dramatic reductions in crime at a far lower cost.

Rockefeller’s campaign rhetoric ratcheted up the tough talk about drug pushers. One

\textsuperscript{127} Transcript of interview of Robert Dupont for “Drug Wars,” \textit{Frontline},

\textsuperscript{128} White, \textit{Slaying the Dragon}, 251-256.

advertisement featured the image of an aging drug dealer sitting in a prison cell while a stern, booming narrator cautioned his colleagues: “A warning to dope pushers in New York State, Rockefeller has increased the maximum punishment for selling hard drugs to life imprisonment. And now, pusher, when you’re caught it can be for keeps…Rockefeller. He’s done a lot. He’ll do more.” 130 Speaking directly to pushers—with the intended audience, of course, being everyone else—provided the public spectacle of an empowered Rockefeller disciplining and punishing the recalcitrant drug pushers. Ironically, this rhetoric did not quite match the penal practices of the time and Rockefeller’s opponent was quick to point out that there were few drug sellers serving life sentences in New York.

New York’s methadone efforts were bolstered by new national scrutiny of heroin use. What had been a high-profile problem exploded into a full-blown political crisis when two Congressmen returned from a trip to Vietnam to report staggering levels of heroin use among U.S. armed forces. They reported that 10 to 15 percent of troops, between 26,000 and 39,000 people, used the drug on a regular basis.131 Republican Robert H. Steele warned that, “The soldier going to South Viet Nam today runs a far greater risk of becoming a heroin addict than a combat casualty.”132

The federal response to soldiers’ drug use illustrates again how different populations of drug users inspired radically different reactions from state officials. The image of American soldiers sat uncomfortably next to popular representations of heroin addicts and presented problems for the Nixon administration, which was intent on preventing the chaos and public relations nightmare of a wave of displaced, heroin-addicted veterans returning to the United

130 Richard Reeves, “This Is The Battle Of the Titans?,” New York Times, November 1, 1970, p. 70.
States. In contrast to the rhetoric about domestic drug users, government officials acknowledged
the situational factors that motivated drug use, such as stress and easy drug availability. As
opposed to the segregation and alienation of poor addicts in the United States, federal policies
emphasized soldiers’ inherent belonging within the American polity.

Years later, Dr. Beny Primm, a treatment specialist from New York, explained that the
situation demanded a different strategy than had been previously employed.

What we did in Vietnam, we said these were soldiers, these were good American
boys over there fighting a war, red-blooded Americans, who happened to be in a
stressful situation and used drugs. We began to find other ways to describe
addiction rather than to say, ‘They’re second-class citizens. They’re the worst in
the world. They’re the dregs of the earth.’ That’s how addiction was thought
about for many, many years.\footnote{Program Transcript: Night 1, “Drug War,” Frontline,
http://www.pbs.org/wgbh/pages/frontline/shows/drugs/etc/script.html.}

While in Vietnam, U.S. forces were rarely characterized as junkies. This had much to do with the
low-cost, high-quality heroin readily available in Southeast Asia. With such pure narcotics,
troops had little need to inject heroin and, instead, were able use less direct, less-stigmatized
delivery mechanisms such as smoking or snorting. Most important, a heroin habit in Vietnam
cost between two and seven dollars daily, well within the budget of an average GI, as compared
to the $50 to $100 daily cost of much weaker heroin in the United States.\footnote{Smith,
"It’s So Good, Don’t Even Try It Once," \textit{7}; and “As Common as Chewing Gum,” Time Magazine, March
1, 1971.}

Unlike the emphasis on personal weakness or illness of heroin addicts stateside, soldiers’
less marginalized positions allowed them space to emphasize the circumstantial motivations for
drug use. They often claimed a therapeutic function for marijuana and heroin, emphasizing their
utility in managing the terror of combat. One explained the function this way:

All our guys used it [pot] in my outfit. I was point man [marched ahead of the
squad to look for booby traps, mines, and enemy ambush] for our squad...and I
smoked and shot up a little scag [heroin] you know, just to save my own ass!
When you get high, in a way it calms you down so you don’t shit your pants.\textsuperscript{135} Press coverage of this drug use reached a frenzied pitch in the summer of 1971. Politicians warned of the dangers posed by weapon-trained veterans joining the domestic drug culture. Iowa Senator Harold Hughes predicted that, “Within a matter of months in our large cities, the Capone era of the ’20s may look like a Sunday school picnic by comparison.”\textsuperscript{136}

With heroin use growing among the white middle class, registering as a top priority in public opinion polls, and now threatening entire military operations, it is not surprising that President Nixon took the stage at a press conference in June of 1971 to declare that “America’s Public Enemy Number One is drug abuse.”\textsuperscript{137} Like his declaration of a “war on drugs,” Nixon’s rhetoric positioned drug use as the menacing and alien “enemy” of American society, as opposed to acknowledging its long and indigenous history. At the same press conference, the president announced the formation of the most extensive federal drug-treatment initiative in U.S. history. Headed by Jerome Jaffe, a leading methadone researcher and treatment developer from Illinois, the new federal effort diverged from past practices by investing a majority of funds into treatment and education, as opposed to law enforcement. With a Republican administration sponsoring an unprecedented and massive treatment apparatus favoring methadone maintenance, the disease concept of addiction appeared ascendant. National drug policy was firmly under the direction of specialized treatment experts. Architects of Nixon’s program spoke hopefully of a growing consensus that the state was responsible for reintegrating drug users into society: “As the notion of the right to rehabilitation evolves into the consciousness of America, it will get us

\textsuperscript{135} Smith, “It’s So Good, Don’t Even Try It Once,” 67.
\textsuperscript{136} Quoted in Dan Baum, Smoke and Mirrors, 49.
away from the archaic thinking that the drug addict is an evil character.\footnote{138}

Drug use in the military was the administration’s priority and Jerome Jaffe was on a plane to Vietnam the day after Nixon announced his new initiative. There he implemented a new drug-screening program where two huge newly minted machines tested the urine of every returning service member. Those testing positive spent an extra week in detoxification—interestingly without the assistance of methadone—before returning to the United States for three more weeks of treatment. To enable this plan, Nixon reversed the long-standing policy of dishonorably discharging or court marshaling those caught using drugs in the military. In a single memo, he ordered the Secretary of Defense to stop considering drug use a crime in the Uniform Code of Military Justice.\footnote{139} This sudden decriminalization reflected the profound pragmatism of the Nixon Administration, the desperation for getting a handle on the problem, as well as an awareness of the political dangers of punitive policy that criminalized honored citizens, particularly U.S. soldiers.

When the screening results began to trickle back, White House officials were relieved to find far fewer heroin users than they feared. In the first seven weeks, only 5.4 percent tested positive for drugs.\footnote{140} While initial estimates were potentially inflated, Jaffe had anticipated that many soldiers would probably stop using once word got out about testing and that positive results could delay soldiers’ much-anticipated discharge. While many users probably brought their heroin addiction home with them, most left their habit in Vietnam along with the stressful war that had helped inspire it.\footnote{141}

Back in New York, the Nixon Administration’s pragmatic embrace of methadone

treatment buttressed the state’s burgeoning clinic infrastructure with federal funding and political legitimacy. The NACC, with financial help from the federal government, expanded methadone treatment dramatically by establishing clinics throughout New York. Funding for the Rockefeller Programs slowly decreased and methadone became the state’s dominant treatment modality. While some centers offered basic services, such as health or employment counseling, the new clinics simply dispensed methadone to patients once a day and were far less expensive than custodial care.\footnote{Walter Goodman, “The Choice for Thousands: Heroin or Methadone?,” \textit{New York Times}, June 13, 1971, p. SM14; and Richard Severo, “Addiction: Chemistry Is the New Hope,” \textit{New York Times}, March 19, 1971, p. 1, 23.}

In its execution, methadone was a particularly complicated program with diverse and seemingly contradictory implications. On one hand, it mitigated the stigma associated with drug abuse by medicalizing addiction and embracing the objective of restoring drug users to “productive citizens.” On the other hand, by treating addiction as an individual pathology managed by a simple daily prescription medication, methadone tended to absolve larger social forces from responsibility for drug epidemics and divert attention from the profound economic crises that fueled the drug trade in central cities. Methadone was born from a desire to protect “the public” from the addict, and in that sense, it further strengthened the perceived distinction between the two. Many who promoted methadone, in theory, did so out of willingness to accept any strategy to control crime, regardless of its impact on drug users. One Lower East Side resident explained he had lost all interest in protecting the rights or well-being of addicts. “I wouldn’t care if someone came along with a machine gun and killed all of them…I’ve been robbed, my wife has been robbed—I’m sorry, but I don’t care any more.”\footnote{Richard Sevaro, “Addiction: Chemistry Is the New Hope.”} A social worker’s comment to the \textit{New York Times} reflected the popular belief that methadone was needed to
protect the city, even if it did not address the root causes of addiction. “If your goal is to get people off the streets, you can give them methadone,” she explained. “If you are considering why they became addicted and you want to help them make their lives more productive, then you have to do something else. But you look around and you wonder if you shouldn’t get people off the streets before the city is destroyed.”

Ironically, in practice, methadone actually failed at “getting people off the streets.” Although methadone showed promise in reducing crime, it lost much community support, and therefore political support, because drug users remained enmeshed in public space. Residents of neighborhoods with methadone programs often recoiled at the groups of addicts congregating for their daily doses of the drug. Although methadone succeeded at reducing crime rates, a visible, salient presence of addicts in neighborhoods all over New York exacerbated hostility toward heroin users and government treatment efforts. All over the country, methadone clinics faced active and organized opposition from neighborhood groups opposed to the placement of clinics in their community. Locals fiercely resisted the clinics though lobbying, pickets, letter-writing campaigns, and even vigilante attacks and sabotage. These struggles, which had also surfaced in response to drug-free programs, continued throughout the decade. Methadone centers attracted special attention because they served higher numbers of people who had to pass through neighborhoods to visit the clinic daily. Residents claimed that the clients lingered, accosted locals, and generally disrupted communities. Race factored in many of these conflicts, as illustrated by a report to Mayor Lindsay concerning a public nuisance lawsuit against a private methadone clinic treatment facility. It explained simply, “In the case of Ithaca, there have been

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144 Ibid.  
thinner veiled racial overtones. The patients are predominantly Black and Puerto Rican and this is basically a white middle class neighborhood.”\textsuperscript{146} In other situations, communities of color resisted what they viewed as an unfair concentration of drug treatment centers in their neighborhoods. Such organized resistance from mainstream, reputable organizations inevitably made rehabilitation centers less attractive politically, especially for state legislators from the districts directly affected.

In letters opposing drug centers, people often voiced a zero-sum understanding of rights, where services or programs understood to help one group directly disadvantaged another. One letter to Mayor Lindsay that opposed a rehabilitation center reasoned that “bringing hardcore disadvantaged people and taking whites out of our area who represent middle income status is racially discriminating.” The author continued by asserting that her aversion to the neighborhood becoming a “ghetto” was not racist: “We don’t want to increase the density of population in this vicinity and especially the extension of another possible ghetto made of Hispanics and Blacks. This does not mean any feeling of discrimination either.”\textsuperscript{147} In this rhetoric, writers repeatedly asserted their positions as homeowners and taxpayers to legitimize their claims on the state and to distinguish themselves from a racialized population of addicts. For example, U.S. Representative (and future mayor) Ed Koch wrote to Mayor Lindsay about his constituents’ complaints regarding methadone centers. He argued that, “We must strike a balance between the addict’s needs and the public’s right for protection.”\textsuperscript{148} This seemingly mundane language saturated these debates and reflects the assumption that addicts and the “public” are separate and

\textsuperscript{146} Memo from Laura Blackbumke to Jay Kriegel re: Ithaca Methadone Program, July 25, 1973, Reel 37, Subject Files, Folder: Narcotics, John Lindsay Mayoral Papers, NYCMA.
\textsuperscript{147} Eugenie W. to Mayor Lindsay, June 12, 1973, Reel 34, Subject Files, Folder: Methadone Maintenance, John Lindsay Mayoral Papers, NYCMA.
\textsuperscript{148} Congressman Ed Koch to Mayor Lindsay, December 5, 1972, Reel 34, Subject Files, Folder: Methadone Maintenance, John Lindsay Mayoral Papers, NYCMA.
their interests are inversely related—so that what helps the addict, hurts the public, and vice versa.

Methadone clients recognized this and struggled to counter this image. The newsletter, *Breakthrough*, written by the patients and staff of a clinic at Jamaica Hospital, discussed strategies for countering the notion that they were an alien element. “We are part of local community,” one author asserted, despite the fact that local residents felt differently.

Most residents of this area still consider us junkies and a menace to their children, their businesses, and their piece of mind…The fact that we are on “methadone” does nothing to alleviate their fears for too many of them it is just another form of drug abuse…we are no longer addicts but human beings with the same ambitions, desires and feeling that they have. We have learned from our mistakes, which is one of the reasons we are on methadone, and this alone should show them our desire to become a productive part of society again.\(^{149}\)

The author seemed to take for granted that addicts were non-productive members of society that were barely considered human; here, he does not challenge these assumptions as much as struggle against the permanency of the label and for a chance at reintegration.

While organizing against treatment centers further heightened the gulf between addicts and full rights-bearing citizens, drug programs faced other fundamental obstacles and, like Governor Rockefeller’s previous programs, methadone would not relieve the political pressure. For many critics, especially those in the drug-free treatment community, methadone was akin to drug maintenance and denied more substantive healing to an addict. Others worried that methadone symbolized tolerance of the “drug culture” and accelerated social decay. Many radical Black and Latino activists saw methadone as a strategy to forestall organized political resistance by sedating their communities.\(^{150}\)

\(^{149}\) Jimmy H, “Community Outlook,” Breakthrough Newsletter of Jamaica Hospital Clinic #1Reel 34, Subject Files, Folder: Methadone Maintenance, John Lindsay Mayoral Papers, NYCMA, p. 4.

\(^{150}\) Courtwright, *Dark Paradise*, 170-174.
In addition to outside resistance, methadone also faced the daunting obstacle of delivering on its stated programmatic goal of successfully reintegrating ex-drug addicts into society. The concentration of drug use among low-income people of color forced programs that worked with that population to directly confront the structural racism in the United States. Beny Primm, the director of a methadone treatment program in Brooklyn, described the unique challenges of dealing with heroin use in African-American communities. He acknowledged the benefits of methadone: “Probably outstanding among these has been the conceptual transformation of the ‘junkie’ from criminal to patient.” This fact, however, did little to lessen the barriers to full integration into the polity, especially since African Americans still struggled to secure the most rudimentary rights and legal protections. Primm explained,

Even if we are able to overcome the psychic inertia among our patients—the lack of self-confidence, the lack of basic skills, and the lack of acceptable patterns for dealing with society’s demands—we have not altered the environment in which they developed and in which they must survive. Thus we are placed in a position of attempting to prepare individuals intellectually and emotionally to enter a society which really doesn’t want them…Society, and I’m talking about the white establishment, has made the black ghetto resident a deviant to begin with. Thus it is of little consequence in the eyes of society and in the individual’s own mind that he becomes an addict, a criminal, or dependent on welfare. I know, my staff knows, and my patients know that few employers are willing to hire an ex-addict or ex-convict…This means that the community must begin to accept treatment programs in their midst, that community residents must accept ex-addicts as *fellow citizens and workers* (emphasis added).151

In a society where normative citizenship was often based on consumption and productivity, few issues were more significant to rehabilitation and reintegration than access to jobs. However, cultural and political rhetoric that positioned heroin users as non-working, dangerous outsiders poisoned efforts to secure even the most basic work for recovering drug users. As Dr. Primm noted, this stigma was compounded by the more general barriers to economic opportunity that all

151 Beny J. Primm, MD, "Methadone is Not the Answer," [No Date] Reel 2, Subject Files, John Lindsay Mayoral Papers, NYCMA.
low-income communities of color faced and made the full integration of poor African-American and Latino heroin addicts into the nation’s economic mainstream a hollow and improbable proposition.

Recognizing that no promise of rehabilitation was viable if employers refused to hire people in the state’s programs, the state attempted to mitigate discrimination against recovering addicts in the job market. A state commission discovered that representations by the media and politicians made employers reluctant to hire addicts:

[Major employers] receive their information about addiction from the media; they constantly refer to such information, which they deem highly reliable; and they view the addict, as does the media, as a source of all of society’s problems… [The] exaggeration of addict-related crime through the media and certain otherwise responsible agencies of government is a significant factor in leading the major employers to believe that since addiction means crime, and most crime at that, rehabilitation is impossible.¹⁵²

These seemingly theoretical debates caused practical tensions between people charged with executing anti-drug campaigns. For example, the chief council of the NACC complained that New York City’s anti-drug advertisements directly sabotaged his efforts to convince employers to hire rehabilitated addicts. He argued that the campaign, which painted a frightening, sordid image of addicts as the “living dead,” was irrelevant to potential users since it failed to acknowledge the real reasons people start using drugs. He wrote to city officials:

To add to all this, the phrase, “living dead” suggests, as do all of the ads, no return for the rehabilitated addict. This is scary, all right, but it is scaring all the wrong people for all the wrong reasons, such as employers who recoil from hiring rehabilitated addicts. Your campaign has reinforced a stereotype in the most persistent and unenlightened way.

He went on to critique the hypocrisy of presenting narcotic use as the dark and repulsive habit of a distinct, perverse type of person when a vast majority of society relies on chemical substances.

Finally, you say that you are telling the truth [in these ads]. You are not. At best, you are generalizing with slogans. Drugs make people feel good, not bad. They give people pleasures available in no other way. And they provide a near perfect escape from reality. The truth is that we are a drug taking society, with nine million alcoholics, hundreds of thousands of respectable pill takers who can afford prescriptions, thousands who drink to excess on occasion, including before driving, untold millions who continue to shorten their lives with tobacco, and five hundred seventy thousand heroin addicts. The truth is we are all in the same boat.\textsuperscript{153}

Efforts such as these to counter the rhetorical and physical segregation of addicts from society were usually ineffectual. Individuals in treatment programs were, of course, the most acutely aware of the contradictions between policies aimed at reintegration and segregation. One man’s experience illustrated how these policies intersected in individuals’ lives. John Browski testified before the Temporary Commission to Evaluate Drug Laws about quitting heroin and trying to find work. “I have tried every existing program at that time and failed at all the programs. I was at Kentucky [federal drug treatment center] five times; I detoxed at hospitals five times…As soon as I would find work, I would spend the money on drugs and if it wasn’t enough, I would steal from the company,” he explained. This all changed when he enrolled in a methadone program: “From the first day of the program until this day, I have not touched a drop of junk which surprises me more than anybody.” Once stabilized on methadone and looking for employment, Browski lied in his interview with Western Electric about his past drug use. He worked at the company for a year and a half without incident until he was hospitalized after a workplace accident and informed his doctor he needed methadone. When the doctor reported this to Western Electric, Browski was fired.

I had a good work record and I thought that I had proven myself after working for them for two years. But I was informed that it is company policy not to hire meth patients and if I had told them at the time, they would not have hired me. So my services were terminated…I have been collecting compensation from the

\textsuperscript{153} Harvard Hollenberd to Harriet Michel, Director of Mayor’s Narcotic Control Counsel, October 11, 1972, Reel 61, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.
company for 1 1/2 years. They are actually paying me $50 a week not to work for them because they fired me.\textsuperscript{154}

His union did not take up his cause because they also viewed methadone as continued drug dependence. Browski’s subsequent attempts to get a license to drive a cab were also blocked by a policy prohibiting methadone patients. The interaction between state policies, employer practices, and cultural stigma effectively stymied recovering addicts’ job opportunities, often forcing them to either forgo sustainable employment or risk repercussions by misrepresenting their histories. Ironically, the government program dedicated to transform addicts into productive, contributing citizens simultaneously marked them as dangerous and risky propositions for employers.

The jobs most naturally available to ex-users were in the burgeoning drug treatment infrastructure. Many clinics and therapeutic communities recruited staff mainly from the ranks of their successful patients. In addition to providing jobs, this was effective programmatically since people intimately familiar with addiction counseled patients and provided role models of long-term sobriety. However, privileging personal experience over specialized training clashed with the professionalization trends within the health and social work fields and provoked hostility among some working in drug rehabilitation. A program administrator from California wrote to Rockefeller about his disdain for the implications of employing ex-drug users as counselors. He explained:

\textit{What has happened, however, it that the addict has become a sacred cow, he is in vogue. As a user-criminal he is in vogue because he is the subject of the greatest & most extensive (expensive) campaign in history to pamper, coddle, re-educate, rehabilitate, etc. Once he is temporarily rehabilitated, he is again in vogue. This time, as an “ex-addict counselor,” which means that he can skillfully parley a third grade education and some needle marks and 10 years in jail into a job a lot of college graduates, nurses, etc. would love to have…No Governor, money and

dedication are not the answer, as you know. The drug addict is a criminal, a cancer in society, eroding, crippling, draining. Lock him up.\textsuperscript{155}

Hostility toward employing ex-users, even among those working in the drug treatment industry, was probably intensified by the general decay in economic opportunities throughout the 1970s. These frustrations joined the rhetoric that emphasized the danger of heroin users and sabotaged efforts to curtail job discrimination and secure economic opportunities for recovering addicts.

\textbf{The Crossroads in Drug Policy}

Drug policy could have moved in a number of different directions in 1973. As chronicled in the previous sections, there were serious political liabilities, financial consequences, and institutional limitations to every treatment strategy advanced by Governor Rockefeller. However, the critical problem resulted from the tension inherent in policies ostensibly designed to rehabilitate that were marketed as protection for “the public” from a menacing group of outsiders. Still, punitive policy was not the inevitable result of these dynamics.

As late as 1971, New York City’s mayor, a man with national political ambitions, publicly floated the idea of imitating Britain’s network of heroin maintenance clinics, and actually dispensing heroin to addicts.\textsuperscript{156} Although the Republican Party had largely embraced the “get tough” logic, some challenged “law-and-order” political rhetoric. In a speech on crime, Mayor Lindsay directly questioned the practical value of such talk:

\begin{quote}
The rise of crime in the 1960s makes many Americans long for the comparative
\end{quote}

\textsuperscript{155} Ralph G. to Governor Rockefeller, August 26, 1973, Reel 61, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.

\textsuperscript{156} James Markham, “What's All This Talk of Heroin Maintenance?,” \textit{New York Times}, July 2, 1972, p. SM6; and Press release Re: Investigating Heroin Maintenance Program, Mayor’s Office, June 3, 71, Reel 72, Departmental Files, Folder: Drugs, John Lindsay Mayoral Papers, NYCMA.
tranquility of the 1950s...Now that feeling of security—if it really existed—is gone...The security all of us have lost will not be restored by hard words. The rhetoric of a George Wallace or a Ronald Reagan or a Richard Nixon can exploit this nation’s fear but it will not stop the rise of crime on your streets and mine.157

And regardless of the public fear about addict crime and the popularity of “law-and-order” political appeals, a vast majority of the population reported to pollsters that they viewed drug abuse as a medical problem. In 1971, Governor Rockefeller released a poll showing that 87.6 percent of respondents reported that drug addicts should be treated as sick people, not criminals.158

There were, therefore, no predestined political moves for Rockefeller in the early 1970s. His presidential ambitions were still much alive, even as his party pulled away from his liberal Republican tradition. After a hostile reception from Goldwater’s supporters (the crowds booed him) at the 1964 Republican Convention, Rockefeller became determined to court the steadily increasing conservative factions in his efforts to improve his standing in the party. When looking for clues to Rockefeller’s developing politics, perhaps the most important events occurred at Attica, an upstate New York prison. On September 9, 1971, inmates of the prison rebelled and took control of a section of the prison, holding 42 guards hostage. In the standoff that ensued, the prisoners released a list of demands, including amnesty for the revolt and remedies for the poor conditions, racism, and abuse at the prison. Russell Oswald, a relatively liberal prison warden, attempted negotiations with the prisoners through a group of intermediaries chosen by the inmates. Rockefeller, in one of the most controversial decisions of his administration, refused to visit the scene to take part in the negotiations and, on September 13, ordered state police to

157 John Lindsay, “Address by Mayor John Lindsay to Young Lawyers of Dade County Bar Association, Breakfast Meeting,” February 15, 1972, Reel 14, Subject Files, Folder: Crime, John Lindsay Mayoral Papers, NYCMA.
158 Press Release from Executive Chamber of Governor Nelson Rockefeller, June 24, 1971, Reel 37, Subject Files, Folder: Narcotics, John Lindsay Mayoral Papers, NYCMA.

Although much of the country considered the violent repression at Attica a travesty and a state massacre, the decision played very well among key sections of Rockefeller’s target constituency. It strengthened his appeal among conservative Republicans and was even cited as evidence of his growing viability with the right as a 1976 presidential candidate.\footnote{Helen Dewar, “Southern GOP Chiefs Soften On Rockefeller,” \textit{The Washington Post}, August 29, 1974, p. A4.} One typical constituent letter read,

Frankly, many times your actions have been too liberal for my taste, but this time I was delighted and fully supported your actions, as did almost everyone I know in business here in NYC and elsewhere. It seems to most of us middle class Republicans that all the rights nowadays belong to the drug addicts, burglars, rapists and murderers, with little thought given to the rights of their victims. I know that you know this is the true viewpoint of the majority and the majority gratefully supported you in your actions on Attica. Hooray!\footnote{Patricia B. to Rockefeller, May 1, 1972, Reel 18, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.}

For many, Attica represented the rejection of negotiations and accommodations, and the embrace of strong, decisive, and—if need be—violent action to maintain order. As another person explained in his letter celebrating Rockefeller’s decision, “the liberal over compensation has proven that bowing to unreasonable demands does not appease the complainants, but increases the clamor for more outlandish demands.”\footnote{Anglo C. to Rockefeller, September 14, 1972, Reel 18, Rockefeller Gubernatorial Papers, 4\textsuperscript{th} Administration, NYSA.} This letter writer did not deny the existence of injustice or inequality; he merely warned that liberal “over compensation” and “permissiveness” would not bring social order. This was a lesson Rockefeller took to heart as he contemplated the next phase in his struggle against drugs. The governor’s actions at Attica horrified many and tarnished his reputation in certain circles, making enemies of prisoners’ allies, civil liberties advocates, and the “liberal establishment.” However, those actions also built Rockefeller’s
credibility in a key and coveted demographic of Republican voters. The enemies he targeted and decisions he made at Attica hinted at the political tactics he would come to employ in drug policy.

By 1973, 56,522 people were enrolled in New York state drug treatment, 34,149 in methadone programs and 22,373 in drug-free treatment. This massive new infrastructure had not ended drug use or appeased public anxiety about street crime and the new drug cultures. In fairness, a review of the nation’s centuries-long efforts would suggest that it never should have been expected to produce dramatic results in such short periods. However, for politicians who demanded and promised safer streets and a restoration of law and order, these programs, originally intended to bolster their anti-drug credentials, quickly became a liability. While treatment undoubtedly intervened dramatically in the lives of individual addicts and did statistically mitigate the problem, the programs—often unfairly—were made to stand as evidence for the state’s incapacity to handle social problems and the impotence of liberalism’s answers to the crises of late modernity.

Paradoxically, the political rhetoric that rationalized these policies discursively ostracized the very people the programs were ostensibly designed to help. It was increasingly impossible to build support for state programs to heal, or mass acceptance for “the right to rehabilitation” for a population constructed as the “living dead” and anti-citizens within the polity. In fact, these debates crystallized the parameters of normative citizenship, as the nonproductive, deviant, parasitic addict cast in high relief the contributing, hard-working citizen. These sentiments were captured in a man’s letter to Mayor Lindsay protesting that any portion of his taxes would be used to support drug rehabilitation centers. He warned, “Soon there will be more addicts than tax

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163 Memo from Gordon Chase to Mayor John Lindsay, “Six Month Status Report on Addiction” Health Services Agency, July 9, 1973, Reel 2, Subject Files, Folder: Addiction Services, John Lindsay Mayoral Papers, NYCMA.
payers. The sooner an addict gives himself or herself an over dose the better off the public, the
tax payers and their families will be.”¹⁶⁴ This language placed the drug addict in diametric
opposition to the “taxpayer,” the classic proxy language for full citizen. Erased from this rhetoric
were the collective consequences in an interdependent society of exacerbating inequality by
economically, socially, and legally ostracizing the most vulnerable populations. When, in
January of 1973, Governor Rockefeller chose to demand the penal segregation of the hyper-
stigmatized “pusher,” he not only repudiated more than a decade of his own treatment policies
but also contributed to the fundamental renegotiations of social belonging and state responsibility
for social problems.

“Drug addiction in NY: Once an Illness, Now a Crime”¹⁶⁵: Rockefeller’s Embrace of
Punishment

It is impossible, of course, to isolate what led Rockefeller to abandon his drug treatment
emphasis and embrace draconian penalties for drug selling. Regardless of its veracity, the story
that the governor told of his conversion illuminates how his proposal intersected with many of
the themes discussed in the previous sections. Rockefeller’s narrative begins at a party in early
1972 when he was talking with William Fine, the president of Bonwit Teller department stores.
Fine had become concerned about narcotics after his own son’s struggle with addiction and he
was now board chairman of the Phoenix House, the therapeutic communities originally opened
by New York City.¹⁶⁶ That night, Rockefeller asked Fine if he’d be willing to go to Japan and

¹⁶⁴ Name Illegible (Staten Island citizen opposing treatment) to Mayor Lindsay, August 22, 1973, Reel 37, Subject
Files, Folder: Narcotics, John Lindsay Mayoral Papers, NYCMA.
¹⁶⁵ "Drug Addiction in NY: Once an Illness, Now a Crime," Daily News Tribune (Fullerton California), September
8, 1973, Reel 61, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
find out why they had the lowest addiction rate of any industrialized nation. Fine agreed, financed the trip himself, and spent a weekend meeting with health officials in Japan. He submitted his findings to the governor in March of 1972.

He reported that the Japanese did indeed have negligible drug addiction, affecting less than one percent of the population, and only a 0.13 percent relapse rate after treatment. Fine’s memo outlined their aggressive treatment strategies: 72 hour detentions in all suspected cases of drug use (with an additional ten-to-20-day hold if ordered), detoxification without any medical treatment to soften withdrawal symptoms, mandatory hospitalization for up to six months for confirmed addicts, community mentors to facilitate the transition from treatment programs, and the possibility of a life sentence for drug sellers. Although Fine detailed these various features in Japan’s aggressive anti-drug program, Rockefeller fixed on a single component: life sentences for drug sellers. He also took to heart Fine’s theoretical lesson from the trip. For Fine, the takeaway message from the Japanese was not the details of their program but what he considered their strategic disregard for the rights of the addict. He wrote:

The thing that impressed me most of all is the single minded conviction they have that public interest is above human rights when it comes to an evil. In other words, it becomes a detriment to the public interest when there is drug abuse; therefore, the human rights of those who get involved in narcotics, or push narcotics, are brushed aside quickly, aggressively, and with little or no recourse...It is incredible to me that they have had such success, but then, it really all comes down to what people are willing to give up to get, and the Japanese, obviously, were willing to give up the soap box movement on human rights in order to rid the public of the evil abuses of drugs.

Fine’s analysis barely touched upon the complex set of cultural, historical, and political factors that made drugs profoundly distinct phenomena in Japan versus the United States. His letter

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168 William Fine to Rockefeller. Emphasis in original.

169 In other places, reporters acknowledged the particular cultural and social context of drug treatment in Japan that
did, however, echo calls for a new balance between individual rights and the collective social
welfare that saturated Rockefeller’s mail and conservative rhetoric at the time. And it was these
themes that the governor would eventually make the ideological underpinning of his new drug
laws.

The governor seems to have quickly recognized the potential political utility of this
“Japanese model.” According to Joe Persico, a key Rockefeller aide, two months after sending
his report, Fine again found himself at a party with New York’s governor. This time, California’s
governor, Ronald Reagan, was also in attendance. Reagan was intrigued by Fine’s description of
his trip to Japan and requested a copy of his report and recommendations. However, when Fine
walked across the room to ask Rockefeller if he would mind sharing the report with Reagan, the
governor refused. Explaining Rockefeller’s thinking, Persico wrote: “This thunderbolt was to be
hurled by him.”

Rockefeller’s refusal makes even more sense in light of the fact that Reagan
was widely perceived as his chief opponent for the 1976 Republican presidential nomination.

The governor’s aides did not hear about Rockefeller’s new idea until they met at the end
of 1972 to discuss the next year’s legislative program and begin drafting the “State of the State”
address. According to Persico, the staff was uneasy as Rockefeller announced his plan to
sentence all drug sellers to life in prison without parole or any other escape. Their hesitation
about the plan infuriated the governor and he demanded that they advance it despite their
reservations. Michael Whitman, Rockefeller’s chief counsel, risked his relationship with the
governor to express his distaste for the idea.

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made it a singularly unhelpful model for American social policy. See, for example, Edwin McDowell, “Tokyo,
4th Administration, NYSA.

Persico, The Imperial Rockefeller, 144.

Howard Jones, head of New York’s Narcotic Addiction Control Commission and supposedly the governor’s key advisor on narcotics, was never consulted and only spoke with Rockefeller after he got wind of the proposal from other sources and requested a meeting. When they met, Jones outlined the many problems with the proposal: Juries would hesitate to convict addicts for such long sentences, jails could not hold them all, the budget could not afford the mandate, judges would lose sentencing discretion and, most critically, the law offered no hope for rehabilitation or second chances. Rockefeller listened coldly and silently throughout the meeting. After Jones left, he simply said, “He’s just worried about his people,” referring to the fact that the NACC head was African American.\[172\] His offhand comment reflected not only the governor’s disregard for the logistical and philosophical arguments against the plan but also the extent to which Rockefeller knew the law would disproportionately target people of color.

Rockefeller’s staff advanced the law despite their concerns. In retrospect, Persico claimed, “I never understood the psychological milieu in which the chain of errors in Vietnam was forged until I became involved in the Rockefeller drug proposal.”\[173\] The fact that Rockefeller rejected the counsel of drug-treatment experts was not merely incidental. His proposal was deliberately anti-specialist and the flagrant rejection of modern, social scientific knowledge was a key part of its appeal. By advancing his own “common-sense” solution and brazenly rejecting established expertise, Rockefeller tapped into and helped solidify a deep frustration with modern bureaucracy and liberal state policy. He proudly told reporters that a central feature of his plan, a $1,000 reward for information leading to the arrest of a pusher, was not generated by law-enforcement experts but was the idea of his college- and high-school-aged

\[172\] Persico, *The Imperial Rockefeller*, 142.

stepsons.\textsuperscript{174} He explained to a \textit{New York Times} reporter that his conversations with Fine inspired him to be his own drug expert. He continued, “So out of this I got to feel maybe we’ve got to focus on who is being mugged, mobbed, robbed, murdered, raped, and so forth—so how to restore civil liberties to our citizens.”\textsuperscript{175} Here, echoing Fine’s point from his report, Rockefeller signaled that he changed the intended object of legislation from curing and re-integrating addicts to protecting “society” and the victims of crime. He advanced a zero-sum understanding of rights, where the restoration of “civil liberties to our citizens” was predicated upon rhetorically and physically expelling addicts from the public. While rehabilitation had always been a conflicted and partially hollow mission, the new proposal made clear that the well-being of drug addicts would no longer be a barometer of success.

Rockefeller first publicly unveiled his plan in the “State of the State” speech on January 3, 1973. Beginning his discussion of drugs by establishing the depth of public concern about the issue, he said, “Virtually every poll of public opinion concerns documents that the number one, growing concern of the American people is crime and drugs—coupled with an all-pervasive fear for the safety of their person and their property.” He continued by declaring that citizens were right to demand firm action from the state to protect their interests: “The law abiding people of this State have the right to expect tougher and more effective action from their elected leaders to protect them from lawlessness and crime.” He emphasized the failure of all previous state efforts to curb addiction and the ongoing dangers drugs posed, declaring:

\begin{quote}
But let’s be frank—let’s tell it like it is: We have achieved very little permanent rehabilitation-and have found no cure…Addiction has kept growing. A rising percentage of our high school and college students, from every background and economic level, have become involved, whether as victims or pushers…Whole neighborhoods have been effectively destroyed by addicts as by an invading
\end{quote}

\textsuperscript{174} William Kennedy, “Rocky Is 64, Going on 35,” p. 17.
army. We face the risk of undermining our will as a people—and the ultimate destruction of our society as a whole.\(^{176}\)

In calling addicts an “invading army,” the governor not only positioned them as outsiders, without claims to citizenship protections, but also as a military enemy solely responsible for the destruction of entire communities. Drugs were all the more insidious because they were now spreading to new communities, presumably white and middle class. “This has to stop,” he declared, pounding the lectern. “This is going to stop.” He then outlined his intentions to sentence dealers to life in prison without the option of probation, parole, or plea-bargaining. Additionally, $1,000 bounties for information leading to a dealer’s arrest would ensure that, “For the first time ever, there would be a cash incentive to work for society instead of against it.”\(^{177}\)

Response to the governor’s proposal ran the gamut from shocked disbelief to fervent support. Legislators jokingly called it the “Attila the Hun Law,” apparently referencing the law’s invocation of a ruthless, barbaric masculinity. Organizations such as the American Civil Liberties Union and Legal Aid immediately opposed the policy. *The New York Times* editorialized against the program from the beginning, calling the governor’s speech “vengeful,” and arguing that he was abandoning treatment programs that showed signs of promise although they had not been fully implemented or funded.\(^{178}\) Much of the opposition focused on the logistical and financial implications of the proposed legislation, as commentators predicted catastrophic consequences for the state’s budget and prison and court systems.\(^{179}\) Judges expressed reservations about the proposed limitations to their discretion and the elimination of

\(^{176}\) *Annual Message 1973,* January 3, 1973, p. 16

\(^{177}\) Ibid.


plea bargaining, which they claimed prevented trial backlogs and induced low-level dealers to turn against the larger operators in the business.\footnote{Lesley Oelsner, “2 Top Judges See Court Paralysis Under Drug Plan.”} The most powerful opponent was probably John Lindsay, who had recently switched parties to run for the 1972 Democratic presidential nomination and would face most of the logistical fallout of such a law as New York City’s mayor. He called it “impractical, unworkable and vindictive,” and questioned the motivation for the proposal: \footnote{Max Seigel, “Lindsay Assails Governor’s Plan to Combat Drugs,” \textit{New York Times}, January 10, 1973, p. 1.}

\begin{quote}
We all know the urge to lash out, to take some drastic step, which will yield a final answer to this corrosive evil…We all know how empty it is to promise victory over crime by an emotional call to lock the criminals up and throw away the key. That is not a battle plan. It is merely a deceptive gesture, offering nothing beyond momentary satisfaction and inevitable disillusionment.\footnote{“Statement by Mayor John V. Lindsay,” January 9, 1973, Box 79, Folder 845, Series 10.4, RAC.}
\end{quote}

Other commentators charged Rockefeller with irresponsible politicking and throwing a tantrum.\footnote{“Rockefeller & Kleindienst: Life and/or Death,” \textit{Washington Post}, January 9, 1973, p. A16.} Pointing to the governor’s presidential ambitions, many dismissed the entire announcement as a ploy to rework his liberal image and appeal to the increasingly powerful right wing of the Republican Party that had thwarted his previous efforts at the nomination.\footnote{See, for example, William White, “Campaign Begins for ’76 Nomination.”}

Commentators noted that the harsh proposal politically insulated Rockefeller on two fronts. Remembering how O’Connor’s opposition to Rockefeller’s harsh drug proposals cost O’Connor the 1966 gubernatorial election, politicians realized that resistance to Rockefeller’s plan left them open to being branded as “soft on crime” and “soft on addicts,” both politically fatal in the contemporary climate. Second, since the logic of the new, punitive proposal rested upon the notion that New York’s treatment efforts were total failures, Rockefeller turned his earlier programs into evidence to support his new direction, thereby neutralizing them as political
liabilities in upcoming campaigns.\textsuperscript{185}

Politicians also recognized how the new drug plan could be symbolically deployed to further discredit liberalism and fashion a new vision of government responsibility that restored confidence in the state. The deputy Republican majority leader in the Senate connected his support of Rockefeller’s proposal to the larger project of restoring faith in the justice system:

Seldom in my lifetime have so many citizens expressed such failing confidence in our system of justice that they do today…Ironically, too often, we are thwarted by the very instruments created by our own hand. We are captives of both our compassion and our idealism.\textsuperscript{186}

By characterizing therapeutic programs as the product of misplaced compassion and idealism, politicians discredited specialist expertise and portrayed therapeutic social policies as naive, effete responses to the tough problems at hand.

Instead of aiming the law at high-level dealers who profited financially from the drug trade, Rockefeller explicitly diverged from past practice by targeting the small-time sellers commonly understood to be addicts. “It is time to stop listening to the bleeding hearts. It is time to start protecting ourselves. There is no question that young people who are sharing and selling relatively small amounts of heroin must be removed from society and isolated like carriers of a dangerous contagion.”\textsuperscript{187} Here Rockefeller rationalized his proposal by redeploying medical metaphors that traditionally framed addict/pushers as victims of illness and instead cast them as infectious agents spreading heroin addiction. Some medical authorities echoed his logic, even characterizing this criminalization strategy as being fundamentally grounded in a public health approach to drug use. In a letter to the editor, a doctor at S.U.N.Y’s Community Medicine Department wrote,

\textsuperscript{186}William Conklin to Rockefeller, February 20, 1973, Box 79, Folder 846, Series 10.4, RAC.
Governor Rockefeller’s new proposals for dealing with the drug problem by attacking sellers are strongly supported by epidemiological theory... Thus heroin addiction is similar in many ways to diseases such as malaria with its identifiable vector, the mosquito. Malaria has been controlled in many parts of the world, not by treating sick individuals and not by warning people against swamps, but by eliminating swamps and mosquitoes. Governor Rockefeller, having previously tried treatment (including methadone maintenance) and education programs for heroin addiction and seen them fail to control its spread, has opted for a public health approach which... has some real chance of success.  

By equating pushers with mosquitoes, the letter swiftly cast pushers not only as anti-citizens, but as non-humans whose fate was utterly irrelevant. This language buttressed assumptions that permeated Rockefeller’s rhetoric regarding the opposing position of citizens and pushers. In one example, the governor bellowed to a gathering of the Empire State Chamber of Commerce, “We, the citizens, are imprisoned by the pushers. I want to put the pushers in prison so we can come out, ladies and gentlemen.”

It is not surprising that addicts and drug dealers were almost entirely absent from these debates, although some people spoke on their behalf or challenged their expulsion from the American polity. In one rare instance, an “ex-junkie” was quoted by the New York Times challenging the governor’s assertion that the threat of life in prison would deter addicts: “The trouble with the deterrent theory is that politicians think that there was a logical process to my behavior... that I was thinking rationally about sentences, prisons, and deterrence while I was pursuing a white powder to inject into my body and which would strip me of any decency of purpose.” In a few limited forums, family members spoke publicly against abandoning the hope of rehabilitation of their loved ones. The father of a heroin addict even suggested that there were some former addicts who were “probably doing more to help their fellow man than the

average citizen.”¹⁹²

Paul Good, a prominent television and print journalist, admitted in an op-ed that his son was a recovering heroin addict. He explained that he understood the governor’s desire for retribution against pushers since he had often fantasized about murdering his son’s dealer. But he realized the futility of holding drug dealers responsible for his son’s actions:

I put the idea aside because I knew that virtually all of my son’s suppliers were addicts like he, hustling money in any way to insure their fix…My son did the same thing at times, buying bags cheap in Harlem and the South Bronx, and selling them at a profit in our Connecticut suburb, the profits going back into his arm…Where was Rockefeller when addiction began gaining a foothold as a basically black problem? He was nowhere to be heard.¹⁹³

Acknowledging his own son’s culpability, Good’s article implied that Rockefeller intended to punish and exile young and poor people of color as an answer to growing fears about drug use among young whites.

Treatment specialists spoke out against the proposal, although sometimes without challenging many of the governor’s core assumptions. Dr. Judianne Densen-Gerber, the controversial head of the drug-free treatment complex, the Odyssey House, wrote Rockefeller of her objections to his plan:

First of all, I agree with you totally that it is impossible for civilized society to continue in the present jungle situation. The streets must be safe for all citizens. However, long-term incarceration without the possibility of rehabilitation or the ability to change one’s destiny creates an angry, hostile, enraged prison population similar to Attica. Nor is long-term incarceration the most economical way of dealing with this disease; it is much more expensive than returning the individual as quickly as possible to the mainstream of society where he or she becomes a self-supporting and tax-paying citizen rather than a parasitic burden.¹⁹⁴

Here, Dr. Densen-Gerber reinforced the popular characterization of addicts as the opposite of

¹⁹⁴ Judianne Densen-Gerber to Nelson Rockefeller, January 4, 1973, Box 79, Folder 846, Series 10.4, Nelson Rockefeller, Gubernatorial, RAC.
citizens, even living parasitically off humans, because of their alleged lack of economic productivity. While advancing her own proposal of coerced institutionalization and treatment, she pushed back against the affront to her own authority latent in Rockefeller’s proposal. “Truly, Nelson, there is no substitute for expertise,” she reminded him at one point in her letter. Despite her disagreement over which institution was most appropriate to forcibly confine addicts, she concluded, “I agree first and foremost addicts must be removed from the streets! On that there is no debate.” Like much other opposition to Rockefeller’s plan, this protest did not challenge his underlying assumption that addicts must be cast out and purged from public space.

In its efforts to gauge support among African Americans, the press found mixed reactions. Many believed the law explicitly targeted Black people, while others welcomed aggressive action on a problem they felt had been too long ignored by law enforcement in central cities. Rockefeller’s tough proposal reinforced long-held skepticism toward the state and led many African Americans to believe that the policies, while ostensibly racially neutral, were part of ongoing sabotage and oppression of their communities. One man in a high administrative state post said that Rockefeller “is out of his mind—we see him now for what he is. He’s not dealing with social dynamics. When he starts talking about narcotics, he’s talking about the minority population.” An African culture educator echoed a prevalent critique when she charged that the governor was looking to “round up young black kids, young black boys, and put them in concentration camps.”

On the other hand, since many African Americans had long clamored for concerted, proactive state action to handle the drug problem, some may have held out hope that a

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195 Ibid.
crackdown would alleviate the burden on their communities.197 One Harlem social worker told a New York Times reporter that “Such a measure is long overdue and I support it 100 percent.”198 Leveraging these sentiments, the Rockefeller administration organized a news conference where the governor presented five community leaders from Harlem who supported his bill.199 Among them was Reverend Dempsey, a pastor who called for organized vigilante resistance to drug peddlers in the mid-1960s and would now travel with the governor to promote the bill. An African-American state senator dismissed this support, telling reporters, “But they were just palace pets, the usual ones who endorse him. The community can’t be fooled by that.”200

Although debate raged about the plan, it quickly became clear that, similar to his decision to authorize the brutal retaking of Attica during a 1971 prison uprising, the governor had mobilized a frustrated segment of society and directed its antagonism toward marginalized outgroups. His drug proposal became a national story, garnering valuable publicity for his anticipated presidential run. By early February, Gallup public opinion polls showed that 67 percent of the country supported his plan. Support was lowest among “nonwhites,” but among them, 59 percent supported putting dealers away for life.201 The governor’s mail was even more enthusiastically behind the plan; according to early reports, it ran 20 to one in his favor.202 By the end of 1973, Rockefeller had received 3,042 letters about his proposal; 2,353 of them, or 77 percent, supported it.203 Support came from all over the country. One woman wrote from Florida

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198 Gerald Fraser, “Harlem Response Mixed.”
203 Weekly Mail Reports, Reel 1, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
to express her enthusiasm for the drug plan: “Bravo! For the first time since 1964, I have the feeling that society is on my side in the struggle to raise my children to be decent, honorable, responsible citizens.” To this woman, the harsh punishment of addicts symbolized the recapture of the state and society from other antagonistic interests. A number of letters commented on the “courage” and “guts” it took for Rockefeller to “get tough” and stand up to the established medical and legal authorities. Many people were moved to contact Rockefeller after watching him and Reverend Dempsey debate the proposal with a doctor on Barbara Walters’s television show. One woman wrote, “I wanted to stand up and applaud after you spoke. I am sick to death of hearing these doctors and liberal lawyers be ‘so holier than thou.’”

This frustration was evident in another response to the show:

> You were great on “Not For Women Only” on TV. These so called goodie goodie people say don’t punish this one and that one...The doctor and his KIND are the cause of a lot of troubles in this country. If we don’t bring back the electric chair, too, we should put them in a small [pen]. No Privileges.

Discourse about these policies therefore not only spurred people to identify against the perception of deviant, nonproductive junkies but also galvanized hostility toward liberal specialists.

Because of this public support, it was politically risky for lawmakers in early 1973 to resist calls for increased punishment. Many legislators lined up in support, others condemned the plan, and others tried to tweak the details to make a more workable policy. Pushed by legislators and criminal justice officials worried about jail overcrowding and court backlogs, the governor made compromises as the bill moved toward becoming law. Rockefeller agreed to remove

204 Beatrice B. to Rockefeller, September 7, 1973, Reel 61, Rockefeller Gubernatorial Papers, 4th Administration, NYSA. It is impossible to know why this author cited 1964 as a turning point, but 1964 was both the year the Civil Rights Act passed and Barry Goldwater met a crushing electoral defeat.

205 See, for example, Mrs. E. to Rockefeller, September 21, 1973, Reel 61, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.

206 Genevieve W. to Rockefeller, March 20, 1973, Reel 16, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.

207 Mrs. K. to Rockefeller, March 20, 1973, Reel 16, Rockefeller Gubernatorial Papers, 4th Administration, NYSA.
hashish from the drugs included and to allow for limited plea-bargaining and parole. Under the new version, drug offenders would receive a sentence range dictated by the type and quantity of drug they sold. For example, an A-1 felony constituted the sale of at least one ounce of any narcotic or the possession of two or more ounces. This conviction carried a mandatory sentence of 15-years to life in prison, meaning that the person could not be eligible for parole until serving the minimum sentence of 15 years. After serving their minimum sentence, prisoners still faced parole boards that could set release dates at any time between the completion of the minimum sentence and the maximum, life in prison. Once released, people convicted of Class-A felonies could never be removed from parole; they were to be monitored by state agents until their death. The only way to avoid the prison time and be placed directly on parole was to become a police informant and provide authorities with information they deemed valuable. In practice, this provision rarely applied to street-level sellers since they seldom had significant intelligence on the higher-level drug operations. Since the new law prohibited plea bargaining out of a Class-A felony, people arrested with small amounts of drugs could not plead down to a lower class to evade lifetime parole or the possibility of life in prison. They had to be sentenced with at least one year to life.

With these amendments and heavy lobbying by the governor, the bill became law five months after Rockefeller proposed the idea. The Senate passed Rockefeller’s bill on April 27 with 41 votes in favor and 14 opposed. Soon after, the Assembly passed the bill by the smaller
margin of 80 to 65, with Democrats casting most of the dissenting votes.\textsuperscript{212} At the bill signing, Rockefeller explained that the state finally had the “tools to protect law abiding citizens from the drug pushers” and commended lawmakers for their courage in passing the bill:

This is the toughest anti-drug program in the nation. It ignited a heated debate and generated enormous pressures on our lawmakers. I applaud the courage of the majority leaders and members of the state legislature who stood firm against this strange alliance of established interests, political opportunists and misguided soft-liners who joined forces and tried unsuccessfully to stop this program.\textsuperscript{213}

The characterization of Rockefeller and his allies as besieged by the powerful, vested interests of the liberal state is, in many ways, misleading. Thanks in part to Rockefeller’s own rhetoric on the issue, there were few safer political positions in 1973 than being categorically against drug dealers. The fact that the drug law also appeared to have discredited and marginalized therapeutic, “permissive” approaches to social problems only added to its appeal. When Reverend Dempsey spoke, he explained that the law had provided an opportunity for leaders to show their manly courage in facing the drug problem: “Many things I think this particular legislation has done. One thing, it provided us an opportunity to see a separation of the men from the boys, and I didn’t know we had so many little boys in high positions throughout the City of New York and throughout the state.”\textsuperscript{214} Again, the punitive policy was presented as the strong, masculine policy in comparison to childish, naïve, or effeminate programs that emphasized treatment and reintegration.

To deal with implementation of the law, the governor dedicated new funds to prepare the treatment facilities in anticipation of a surge in addicts seeking help. He asked the legislature to


\textsuperscript{213} “Bill Signing Ceremony, Narcotics Bills,” May 8, 1973, Folder 265, Box 14, Series 12.3, Nelson Rockefeller Vice Presidential, RAC.

\textsuperscript{214} \textit{Ibid.}
create 100 new judgeships to handle the increased volume of drug crime trials.\textsuperscript{215} The state also sponsored a $500,000 public information campaign warning of the harsh new rules and established hotlines to access treatment and report drug dealers (and possibly qualify for the $1,000 bounty). In the weeks when the hotline was aggressively promoted, 100 callers a day reported incidences, usually low-level drug dealers in their areas.\textsuperscript{216} New York City’s Addiction Services Agency sponsored a “3 Day Drug Treatment Recruitment Marathon,” sending six vans around to high drug use areas to round up addicts for rehabilitation before the law went into effect.\textsuperscript{217}

The campaign’s tagline was “Don’t get caught holding the bag.” Many of the advertisements targeted not just drug users but all citizens, running under big black letters that read, “How the New Drug Laws Affect You.” Under the heading “Why did the State make this law in the first place,” officials listed the legislature’s motivations:

[T]o make it tough for the addicts, the junkies, the pushers to infect others. And to give them a chance to end their addiction. To stop the mugging and the crime which is a tragic by-product of drug abuse. To make the streets safe for you and your family.

These announcements declared that treatment was available for anyone finally convinced that the state was serious about cracking down on drugs. But the ads also announced the dedicated funds for new judges and prison space, and warned that “the State Means Business.”\textsuperscript{218} While these advertisements may have informed some drug addicts of the increasing risks of their habit, their more important function was performative, publicly displaying the state’s tough new stance

\textsuperscript{217} Press release from Health Services Administration, “Addiction Service Agency Sponsors Pre-September 1 Three Day Drug Treatment-Recruitment Marathon,” August 29, 1973, Reel 2, Subject Files, Folder: Addiction Services, John Lindsay Mayoral Papers, NYCMA.
toward drug users and invigorated commitment to acting as guarantor of public safety.

When the law was implemented on September 1, 1973, the effects were not particularly dramatic. For fear of flooding the courts, police did not undertake high-profile raids and generally kept arrest levels steady. Addicts did not seek treatment in dramatically higher numbers, nor did they flee to other states as many had predicted. A few reporters heard that dealers stayed inside or stuck to regular customers for a few days. Many reported higher drug prices, and over time, dealers relied increasingly on minors, who were not sentenced as harshly as adults, as drug runners. Without much interruption, users continued to buy and sell drugs to maintain their habit.219

Barely three months after the law went into effect, Nelson Rockefeller resigned as governor, claiming he wanted to devote more time to his National Commission on the Critical Choices for America.220 Most assumed that the real reason he resigned was to get a jumpstart on his presidential campaign in 1976 and avoid a potentially bruising gubernatorial election. Despite hopes that Rockefeller’s early departure would give his lieutenant, Malcolm Wilson, a leg up in the state election of 1974, Democrat Hugh Carey defeated Governor Wilson in a post-Watergate election that went badly for Republicans nationwide.

In the meantime, New York was left to implement the “nation’s toughest drug law.” Although it quickly fulfilled its drafters’ promise to send more people to prison for longer periods, the policy presented considerable logistical problems and had little measurable success in curtailing drug use. A comprehensive study published in 1978 found that while the laws may have temporarily deterred drug sales, they had no significant long-term impact on heroin use or


crime rates. The researchers reported that “Serious property crime of the sort often associated with heroin users increased sharply between 1973 and 1975. The rise in New York was similar to increases in nearby states.”\textsuperscript{221} They also found that “Heroin use was as widespread in mid-1976 as it had been when the 1973 revision took effect, and ample supplies of the drug were available.”\textsuperscript{222} The laws were not only ineffectual, but they also created backlogs that paralyzed the court system, especially in New York City. Because the law prohibited small-time drug sellers from plea-bargaining, a growing percentage of defendants demanded a trial. Before the laws’ implementation, only 6 percent of drug indictments went to trial; afterwards, the number of people demanding trials rose to 16 percent.\textsuperscript{223} This forced the state to spend a disproportionate amount of time handling A-III felons, the lowest level dealers who were usually habitual users themselves. Between 1974 and June of 1976, they represented 41 percent of all Class-A drug indictments, and 61 percent of the trial workload.\textsuperscript{224}

There were now also gross discrepancies between New York State punishments and other jurisdictions. New York was so out of step with sentences in the federal system that some federal agents would coerce full cooperation by threatening to transfer drug offenders’ cases to New York courts. A lawyer illuminated the sharp contrast in a 1975 letter to Governor Carey, writing, “My office is half way between the Federal Courthouse at Foley Square and Special Narcotics Courts at 11 Center St. The difference between these two courts is the difference between life imprisonment and probation.”\textsuperscript{225}

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\textsuperscript{222}Ibid., p. 7.
\textsuperscript{223}Ibid., p. 17.
\textsuperscript{224}Ibid.
\textsuperscript{225}Alvin Geller to Governor Carey, January 29, 1975, Reel 135, Carey Gubernatorial Papers, 1st Administration, NYSA.
\end{flushright}
These trends inconvenienced prosecutors and judges, some of whom joined earlier critics to ask Governor Carey to patch up the laws’ most glaring problems. Their critiques helped give Governor Carey political cover to re-examine the laws and alter their most glaring problems. In July of 1975, the legislature amended the law to expand plea bargaining and parole. It allowed A-III felons to plead guilty to as low as a Class-C felony with the consent of a judge and prosecutor. To keep the policy politically viable, legislators correspondingly toughened other sections of law by restricting plea bargaining for other felony classes. While some may have been motivated by compassion for small-time drug sellers, these amendments were primarily concerned with alleviating the stress placed on the legal system. Reforms enhanced the power of prosecutors, who could now exert more discretion in plea bargaining and had more leverage to entice low-level sellers to testify against their suppliers, but they did not fundamentally alter the mandatory prison terms and life sentences. After the amendments, New York’s drug policy was still the most severe in the nation.

After failing to stop the Rockefeller’s policy in the legislature, opponents turned to state and federal courts in their efforts to derail the law. Legal Aid groups challenged some of the early sentences on the grounds that the law was “disproportionately severe” and therefore, unconstitutional. The ensuing legal battles revealed in stark terms that the policy’s logic and legality rested on scapegoating sellers for the entire drug epidemic. Many of the legal debates centered on whether drug crimes warranted such extreme punishment and to what extent dealers could be held accountable for drugs’ social and collateral damage.

In 1973, Imogene Broadie, a 24-year-old woman, received the mandatory indeterminate life sentence for selling $1,300 dollars worth of cocaine. She challenged the sentence and the

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entire drug law in state court, claiming that it was unduly harsh. Both appeals courts rejected her plea, acknowledging that the laws were severe but privileging the state’s need to address the urgent drug situation. The highest state court, the Court of Appeals, based its decision on the perceived failure of other strategies to manage the problem: “Facing a high recidivism rate in drug related crimes and an inadequate response to less severe punishment, the Legislature could reasonably shift the emphasis from rehabilitation to isolation and deterrence.”227 The court explicitly echoed Rockefeller’s assumptions about drug use: that pushers, as opposed to catering to widespread demand for drugs, were the force driving the drug epidemic and were therefore responsible for all its consequences:

The drug seller, at every level of distribution, is at the root of the pervasive cycle of destructive drug abuse…The legislature could reasonably have found that drug trafficking is a generator of collateral crime, even violent crime. And violent crime is not, of course, the only destroyer of men and the social fabric. Drug addiction degrades and impoverishes those whom it enslaves. The debilitation of men, as well as the disruption of their families, the Legislature could also lay at the door of the drug traffickers. (Emphasis added.)228

The court claimed that the lengthy sentences, which might at first seem grossly disproportionate, appeared rational once drug sellers were defined as the malignant force behind all the social problems associated with drugs. These legal decisions added to a growing consensus that held sellers responsible for the drug problem and exonerated social conditions.

Plaintiffs tried but failed to have the laws declared unconstitutional by the U.S. Supreme Court. In the case of Carmona v. Ward, a U.S. District Court ruled the new drug laws unconstitutional because they were out of proportion to the severity of the crime. Martha Carmona was a 41-year-old Puerto Rican woman, living in New York and supporting her 21-year-old daughter. Apparently not an addict, Carmona sold drugs on consignment and after two

227 People v. Broadie, 37 NY2nd 100 (1976), 113.
228 Ibid.
arrests, pled guilty to one count of possessing more than an ounce of cocaine in her apartment.\textsuperscript{229} After the plea reduction, she was sentenced to six years to life. Her co-defendant, Roberta Fowler, a 23-year-old mother of two, who had previously been in a methadone treatment program, was sentenced to four years to life for selling $20 of cocaine to an undercover agent. Since all drug felons faced the possibility of life in prison regardless of the degree of their involvement in the drug trade, the lower court saw little proportionality in the law and ruled it unconstitutional. A higher court, the U.S. Court of Appeals disagreed and reversed the decision in 1978, claiming that the legislature, not the courts, should determine what punishment is appropriate for a crime. Thwarted at the appellate level, Carmona and Fowler asked the Supreme Court to consider their case. Although the highest court denied their petition, Justices Marshall and Powell took the unusual step of issuing a dissenting opinion, which argued why the court should have heard the case. Justice Marshall wrote that the punishments were disproportionate and unfairly held Carmona and Fowler responsible for the entire consequences of the drug trade: “In sum, by focusing on the corrosive social impact of drug trafficking in general, rather than on petitioners’ actual—and clearly marginal—involved in that enterprise, the Court of Appeals substantially overstated the gravity of the instant charges.”\textsuperscript{230} The justice also attacked the notion that the particular severity of New York’s drug problem shielded extreme, draconian policy from constitutional challenge: “However serious its narcotics problem, New York cannot constitutionally [punish] those with peripheral involvement in drug trafficking as if they were responsible for the problem in its entirety.”\textsuperscript{231} Despite these challenges, courts’ general affirmation of the Rockefeller Drug Laws reinforced the notion that racially coded “pushers”

\textsuperscript{229} Carmona pled to a lesser charge. She was actually arrested for selling almost 8 ounces and 3 ounces of cocaine to an undercover agent on separate occasions in 1974.


\textsuperscript{231} Carmona v. Ward, 63.
drove the epidemic, as opposed to responding to its demands.

“A Meaningless Conviction”: Drug Offenders’ Perspectives on the Rockefeller Drug Laws

Not surprisingly, drug offenders offered a profoundly different perspective and a unique interpretation of the laws. While fewer wrote Rockefeller in the later years of his administration, many inmates wrote Governor Carey after he signaled his intent to moderate the laws upon entering office in 1975. While some people wrote in hopes of inspiring direct intervention in their individual case, others simply wanted to share their perspectives. Prisoners felt the drug law was profoundly unfair, both in conception and application, and often blended their criticisms of the policy with their own experiences of the failure of prison to address their struggles. One man explained:

I am married and have 3 children and I miss them very much. I write this letter to ask you to please amend this drug law, this is the first time I have ever been in trouble and I feel I was sentenced very harshly just because I was a sick man and didn’t realize it until it was too late…This law is ridiculous. I agree that a man who is trying to get rich by selling drugs should be put in prison for a long time, but that should be left up to the judge, not Mr. Rockefeller…I lost my home because my wife couldn’t keep up the cost without going on welfare which I feel very strongly should be avoided, she is working and living at her mother’s house till I get home. The last year that I worked (1974) I paid $2,000 dollars in taxes and this year because of a mistake any man could make I am costing the state thousands of dollars to keep me in a place like this.232

The letter persistently asserted the author’s connection to society as a father, a husband, a taxpayer, and a worker—all identities explicitly erased in popular rhetoric about addicts. He points to the consequences of extracting him from his community, costs that public debate rarely addressed because addicts were consistently presented as isolated and apart.

Other writers struggled to communicate how the policy interfaced with their lives, the drug trade, and drug addiction in ways that politicians could not have intended. These realities

232 Raul S. to Carey, [No Date], Reel 135, Carey Gubernatorial Papers, 1st Administration, NYSA.
and perspectives were muted, if not totally silenced, in the public debate. One man wrote,

Are such laws effective in achieving the desired end? I say no! Not when, in an effort to circumvent them, the drugs are put into the hands of our youth for sale and distribution, thus spreading the disease to the most vulnerable of our population. Not when the increased sanction only serve to raise the price of drugs thus enhancing the profits of those willing to take the chance. Not when we realize that the addict is a sick person who cannot be frightened away from his drug dependence by the harsher penalties. Not when the flow of drugs into this country continues mitigated. Not when addicts are sent to a prison, only to return to society with the same problem they went in with. 233

Writers explicitly acknowledged that these laws juxtaposed their well-being to that of “society,” and willingly sacrificed their interests. The author concluded that some balance must be struck between the two: “In such laws, some equipoise must be arrived at between the rights and interests of society and those of the addict criminal victim.” 234

Over and over again, addicts explained that the threat of punishment would not dissuade drug users. They repeatedly challenged the popular notion that long prison sentences, even without access to narcotics, would break an addict of the compulsion to do drugs. One representative letter outlined the futility of a long imprisonment that did not address addiction:

Holding a man in prison for a long span of time does not liquidate the disease of drug addiction. You and I both know this…My sentence of six to twelve years will not serve any purpose unless I can receive the proper treatment and return to the mainstream of society as a meaningful and productive citizen. 235

Others prisoners felt that despite the semantic emphasis on “corrections,” prison administration reinforced this fundamental divide between full citizens and those incarcerated: “Reformation and rehabilitation is the rhetoric and systematic dehumanization is the reality…The penitentiary today amounts to a banishment from civilized society to a dark and evil world completely alien to the free world, a world that is administered by criminals under unwritten rules and customs.

233 Gerard P. to Carey, January 31, 1975, Reel 135, Carey Gubernatorial Papers, 1st Administration, NYSA.
234 Ibid.
235 Cornell A. to Carey, February 26, 1976, Reel 136, Carey Gubernatorial Papers, 1st Administration, NYSA.
completely foreign to free-world culture.”

Other letters spoke to the ways poverty and racism affected outcomes within the criminal justice system:

Like me most of the inmates here at Attica Correctional Facility are poor black and addicted...This world don’t make any sense to me any more. I am serving a six year to life sentence for selling a drug I don’t remember doing...On the behalf of the inmate serving time all over the state can we look forward to the day when someone will stop and take a good look at those that have long histories of drug addiction and help us. Most of us are not violent criminals but people with heavy mental problems; drugs ease that problem when we are high...Being black is enough to get you convicted always. Even the all white middle class juries think they did their thing for justice with the young assistant district attorney walking out of the court room proud as a father of a newly born baby. A meaningless conviction. But it look good to those who don’t know any better including the member of the juries. Just another junkie off for a life bid in prison. Not just a black junkie, but any member of a poor family in New York state. There is no justice for the poor. Those who are caught in the web of dope world justice are out of the picture.

The man’s letter highlighted the vast gulf between his subjectivity as an addict who does not recall being arrested, much less committing a crime, and the subjectivity of the white juries and district attorney who pride themselves on jailing him. He recognized that the jury and district attorney seemed to sincerely feel justice was served by his conviction; the whole process looked valid “to those who don’t know any better.” His letter, and many others like it, stressed the inability of long prison sentences to produce any positive outcome for those incarcerated. Instead, these punishments simply positioned poor drug users outside of the polity or “out of the picture.” Of course, Rockefeller’s plan was never to be judged by its ability to “help” addicts, nor did it claim prison should play any meaningful role for those arrested. For the purposes of the bill, long prison terms served only as an example to others, a graphic reminder of the consequences of transgressing the social norms.

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236 Gilbert J. to Wilson, [No Date], Reel 11, Wilson Gubernatorial Papers, 1st Administration, NYSA.

237 Lawrence D. to Carey, Reel 135, Carey Gubernatorial Papers, 1st Administration, NYSA.
While Governor Carey softened Rockefeller’s drug laws and began pardoning groups of people with sympathetic cases, the policy remained largely unchanged throughout the 1970s.\textsuperscript{238} Interestingly, even with the near financial collapse of New York City and fiscal pressures on the state during the mid-1970s, there was little political will to revise the massive expense mandated by the Rockefeller Drug Laws. Treatment programs, widely discredited and without a viable constituency, were further dismantled in the years after Rockefeller left office. In 1974, New York City provided $15 million for Addiction Services Agency activities. Four years later, by the fiscal year 1978, the city only invested $3.3 million, a 77 percent decrease. New York, after leading the nation in drug-treatment programs, largely retreated from the field, leaving private and non-profit programs to offer addiction services with only limited government support. In 1977, there were still 53,310 addicts in New York State treatment, costing about $135 million a year. At the same time, the state spent $190 million to house a fraction of that number of addicts—13,900—in prison.\textsuperscript{239}

Treatment advocates constantly couched their opposition to program cuts in comparative terms, defending treatment on the grounds of cost savings. A letter from the Phoenix House protesting a proposed 25 percent cut to drug treatment read,

\begin{quote}
Although austerity is needed in our present financial crisis, the above cutbacks are both cruel and senseless. Cruel in terms of human suffering, and senseless in terms of economic illogic. It costs $13,634 a year to imprison an addict, and for juveniles the cost is even higher. In residential, drug-free treatment facilities such as the Phoenix House, the cost is only $2,677 a year. In other words, one of your tax dollars goes to jailing an addict and 25 cents to treat him. “Either way, you must pay.”\textsuperscript{240}
\end{quote}

\textsuperscript{238} For example, see Tom Goldstein and Peter Bramley, “Even as Amended, It's the Toughest in the United States”; and “Carey Acts to Free 4 Jailed for Drugs,” \textit{New York Times}, January 28, 1979, p. 21.
\textsuperscript{239} Memo from Jerome Hornblass, Commissioner ASA to Mayor Abraham Beam, January 12, 1977, Mayor Beam Department Correspondence, 74-77, Reel 10, Subject Files, Folder: Addiction Services Agency, Abraham Beam Mayoral Papers, NYCMA.
\textsuperscript{240} Irvin Simmons to Justice Pleary, March 3, 1977, Reel 136, Carey Gubernatorial Papers, 1\textsuperscript{st} Administration,
These considerable economic tradeoffs, no matter how often and forcefully they were pointed out, failed to significantly undermine support for the mass incarceration of drug addicts.

Over the next few years, national studies and frequent press investigations would confirm that the policies had little positive effect.241 The laws endured, despite delivering exactly the disaster opponents predicted: they did little to lessen drug use, addiction, or trafficking while they dramatically increased pressure on the courts and criminal justice system. Although heroin use slowed in the 1980s because of supply interruptions, demographic changes, and the petering out that typically characterizes cycles of addictions, the laws failed to halt the next drug spate on the horizon—crack-cocaine—which would inspire a new level of hysteria, misery, and repression in the following years.242

Nor did the passage of time improve the Rockefeller Drug Laws’ dismal record. Study after study concluded that drug treatment was a far more economical and effective way to reduce drug abuse and crime.243 The policy continued to flood the prison system with low-level, non-violent offenders. In 1980, 11 percent of the prison population was drug offenders; by 2007, 35.6 percent New York State’s inmates were incarcerated for drug crimes. Of all drug offenders in prison in 1999, almost 80 percent had never been convicted of a violent felony. The laws have disproportionately affected communities of color. Ninety percent of drug offenders in New York State prisons are African American or Latino, despite the fact that a majority of drug users and

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242 Courtwright, Dark Paradise, 170-185.
243 See, for example, JP Caulkins et al., "Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money?,” (Santa Monica, CA: Rand Corporation, Drug Policy Research Center, 1997), p. 1-193. The Drug Policy Alliance also offers analysis of the laws and their ineffectiveness at curtailing drug use, as well as a bibliography of studies done on mandatory minimum drug sentencing. See http://www.drugpolicy.org/.
sellers are white. Yet despite some reforms over the following decades, the Rockefeller Drug Laws were remarkably resilient, resisting decades of activists’ efforts to repeal or seriously amend them. In 2009, New York again faced monumental state deficits, and opponents hoped that the opportunity of considerable savings could finally inspire revision of the state’s drug laws. In his January 2009 State of the State speech, New York Governor David Paterson, a longtime critic of the Rockefeller Drug Laws, again reiterated the near total failure of the laws to control drugs, saying, “Few public safety initiatives have failed as badly and for as long as the Rockefeller Drug Laws.” Finally, in that spring, New York’s economic crisis and Democratic political majorities aligned with persistent community organizing to inspire substantive reform.

While focusing on their high costs and decades-long record of failure, it is difficult to understand the political longevity of punitive drug laws. However, for many people, the laws were a striking success. Although punishing policy may not have improved drug abuse or crime rates, they did critical work for important constituencies. This helps explain why, as opposed to avoiding New York’s example, 48 states instituted anti-drug laws with mandatory minimum sentencing in the decade after the Rockefeller Drug Laws passed. “Law-and-order” legislation paid handsome political dividends and Rockefeller’s case was no exception. His tough drug laws proved to be an invaluable asset to his political fortunes in the following years. All over the

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247 Musto, American Disease, 273-274.
country, people explained that Rockefeller’s viability as a Republican presidential candidate in an increasingly conservative party rested upon his actions at Attica, his crackdown on “welfare cheaters,” and perhaps most important, his success at passing the toughest drug law in the nation. Although Rockefeller did not capture the presidency, Gerald Ford appointed him as vice president after President Nixon’s resignation in 1974.

The New York laws succeeded because they empowered groups that felt marginalized by the tumultuous previous decades while providing an explanation for conditions in central cities and the rebellion and growing drug use among middle-class youth. The laws helped construct and shame a reviled outgroup that was held responsible for social disequilibrium and provided an object against which full citizenship could be measured. They not only expelled troublesome figures from public space but they constructed a caricature of deviance that stood in sharp contrast to normative, productive lifestyles. They helped repress the powerful critiques that freedom movements had thrust into the public consciousness while also setting the stage for deregulation and program cuts by further delegitimizing the United States’ tattered welfare state. These high-profile, performative laws promised an officially sanctioned assault on the public’s enemy, drug pushers, and tapped into a vein of public opinion that was furious about the alleged incompetence of liberal crime-control strategies. Through these “tough” laws, Rockefeller asserted a different vision of government; he painted the picture of a powerful, vengeful state that seemed unburdened by the legitimacy crisis of liberalism. The image of an authoritative, macho state was supremely attractive in the uncertain 1970s. Rockefeller’s deployment of the drug issue was an early illustration of the profound utility of graphically punishing legislation.


President Ford replaced Rockefeller with Kansas Senator Bob Dole on the Republican ticket before facing Jimmy Carter in the 1976 election. Despite Rockefeller’s rightward tack on some social policy, party officials viewed Rockefeller’s lingering reputation as an east coast moderate as a liability.
and helped ensure the dominance of punitive social policy in American politics for decades to come.
Linda Taylor received Illinois welfare checks and food stamps, even though she was driving three 1974 autos—a Cadillac, a Lincoln, and a Chevrolet station wagon—claimed to own four South Side buildings, and was about to leave for a vacation in Hawaii.250

—Chicago Tribune article, September 29, 1974

Linda Taylor was the original “welfare queen.” In 1974, she was charged with defrauding Illinois’ welfare programs by collecting welfare cash grants, social security, and food stamps under multiple aliases. At a time when welfare fraud was a national obsession, Taylor’s story generated sensationalized media coverage in her hometown of Chicago and across the country. Although the specifics fluctuated dramatically between accounts, news media and politicians described her deceptive techniques in careful detail. One Chicago Tribune article reported she had at least 27 different names, 31 addresses, 25 phone numbers, and several husbands (most dead except for one 26 years her junior).251 Another explained that Taylor had illegally received more than $200,000 by using more than 100 aliases in 12 different states.252 Taylor’s physical form was as elusive as her legal identity. Investigators alleged she had 30 different wigs and had claimed benefits as a white, an African American, and a Filipina.253

251 Ibid.
Although prosecutors were ultimately only able to prove Taylor had defrauded the state of $8,000 using four separate aliases, the case was a huge embarrassment for the welfare administration. Instead of treating Taylor’s actions as an anomaly, key conservative politicians and state bureaucrats claimed it was symptomatic of the permissiveness and incompetence of the entire welfare system. They used the controversy to spur an extensive campaign to crack down on welfare fraud; this served the politically expedient goals of pruning the caseloads and discrediting and disciplining the welfare bureaucracy.

Illinois legislators were not the only people to exploit the story. Ronald Reagan told crowds the tale of the “Chicago Welfare Queen” at almost every speaking engagement during his 1976 bid for the Republican presidential nomination. Although it was Chicago newspapers that originally crowned Taylor the “welfare queen,” Reagan borrowed the term and gave it national visibility. 254 His version usually assessed the cost to the state at $150,000 and fixed the number of aliases around 80, and it was typically paired with reports of his victorious battles against welfare abuses as governor of California. 255

Welfare queen was a new moniker, but it encapsulated a set of stereotypes and assumptions Reagan had been drawing from since the early 1960s. For almost a decade, he had been railing against abuses and incompetence in the welfare system and reaping considerable political rewards. Although Reagan failed to capture his party’s nomination in 1976, he knew welfare was a winning issue for him. His welfare reforms in California had brought national acclaim, and were constantly used to evidence his fitness to lead the country and the newly

revitalized conservative movement.

The media spectacle of the welfare queen was embedded in anti-welfare politics that were instrumental in solidifying new understandings about work, family, and state responsibility during the 1970s. Born at a time of profound social upheaval and economic reorganization, Illinois’s and California’s high-profile welfare reform efforts were key sites where society wrestled over what constituted socially valuable work, appropriate gender roles, and the state’s responsibility to enforce these cultural norms. Hashing out these vital social negotiations within the framework of welfare abuse enabled the dominance of a punitive logic in the state’s response to economic inequality, especially concerning poor women of color. It forged links between income support programs, poverty, and criminality—associations that were central in stigmatizing welfare recipients and rationalizing an increasingly restrictive benefit structure.

This study traces the image of the “welfare queen” back to its origins and investigates the political, cultural, and economic matrix from which it was born. It examines how a politically-driven panic about welfare abuses intensified the increasingly racialized antagonism toward the state benefit program for single parents, Aid to Families with Dependent Children (AFDC). Legislators’ punitive policy responses to welfare abuse—especially their recruitment of the criminal justice system—solidified welfare recipients’ cultural position as the antithesis of “workers,” and therefore, the opposite of taxpaying, respectable, productive citizens. The campaigns crystallized these conceptions and enshrined them in popular mythology while also clashing with—and stifling—the perspectives of welfare recipients. At a time when recipients were organizing a vocal, powerful welfare-rights movement, these state initiatives directly challenged activists’ claims to state support by virtue of their roles as mothers, citizens, and
consumers. In fact, they were instrumental in positioning welfare recipients as outside the polity without legitimate claims on the state. Similar to the politics surrounding the Rockefeller Drug Laws, these campaigns reoriented the purported mission of state programs from serving the marginalized population to protecting the “public” from that population.

By stressing the role of policy in exacerbating racially charged anti-welfare beliefs as opposed to simply reflecting them, I argue against conceptualizing hostility to welfare as a mechanical reaction to African-American activism and political gains. As Neubeck and Cazenave’s *Welfare Racism* points out, “Typically racial state actors are portrayed as mere puppets of public opinion. This portrayal ignores the active role of racial state actors and other political elites in helping to generate and inflame these white racial sentiments and the periodic white racial backlashes they in turn fuel.”256 Since hostility toward recipients intensified during the highly publicized efforts to shrink welfare rolls through work requirements and fraud persecutions, this study stresses the powerful role of punitive state policy in directing public antagonism and racial animus toward specific targets.257

The first half of this study chronicles the landmark welfare reforms that Ronald Reagan spearheaded as governor of California in the early 1970s. Through his high-profile campaign, Reagan articulated particular understandings of the causes and remedies for the “welfare mess” that would eventually become common sense. At the time, however, Reagan’s punitive approach to welfare was not seen as obvious or inevitable. In 1970, it was the Family Assistance Plan

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(FAP), President Nixon’s guaranteed minimum income proposal that seemed destined to be law and become the dominant framework through which the state approached family poverty.

Reagan’s reforms further stigmatized and ostracized welfare recipients through constricted eligibility standards, heightened scrutiny, strict work requirements, and increased reliance on criminal prosecutions in handling fraud and child support collections. While not as transparently punishing as “get-tough” criminal sentencing, eligibility reforms and work requirements were key components of a wider punitive trend in welfare policy. They positioned recipients outside mainstream society by subjecting them to state discipline and mandates.

Reagan’s welfare reforms were a decisive historical event embedded in a wider punitive transformation. They had a profound impact on the shape of the U.S. welfare program as well as wider understandings of civic belonging and political authority. Where Rockefeller’s punitive legislation repudiated his own earlier drug treatment programs, Reagan offered his welfare reforms to manage California’s welfare program as well as counter Nixon’s FAP. This study, therefore, demonstrates that punitive politics at the state level also intervened directly in federal politics.

This focus on the political process highlights the rhetorical maneuvers and strategic organizing that went into enacting Reagan’s landmark welfare package. This approach illustrates that far from being inevitable or an insuppressible grassroots demand, punitive welfare policy and the accompanying heightened stigmatization of recipients were the result of concerted political organizing, especially among political elites.

The second half of this study explores how the politics initiated in California were transplanted and reinterpreted in Illinois. It focuses on the state’s high-profile campaign to manage welfare fraud during the 1970s. In addition to being home to the notorious, original
“welfare queen,” Illinois is an apt case study because it was both a forerunner and a model for the anti-fraud efforts that accelerated across the nation throughout the decade. Where the section on California’s reforms focuses primarily on lawmakers, the Illinois section investigates the public support for the anti-welfare campaigns. It spotlights those people who reported their acquaintances for welfare fraud and examines how their participation reshaped the state’s anti-fraud campaign. It also examines how the anti-fraud initiatives interacted with welfare recipients’ strategies for making ends meet on low monthly cash grants and explores how recipients interpreted and resisted the new policies.

The anti-welfare fraud initiatives during the 1970s illuminate how charges of criminality were critical to accelerating the stigmatization of welfare recipients. The public spectacles of fraud prosecutions, mediated through a complicit media, further undermined support for the entire welfare program as heightened access to the program by morally and racially stigmatized parents dramatically increased welfare program budgets. Although the structure of the economy and low welfare grants made extensive fraud predictable, the state responded to these conditions with criminalization and surveillance, instead of social or economic intervention.

Although it is rarely a focus in historical work, the perception that welfare recipients were fraudulent and deceptive was a primary factor in undermining support for the program. In *Why Americans Hate Welfare*, Martin Gilens’ extensive review of public opinion polls revealed the importance of the link between race, fraud, and criminality.

[A] large majority of Americans agree that government should provide monetary support to those who are unable to support themselves. But the

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perception of welfare abuse is widespread. Indeed, as the survey evidence…suggests, it would be hard to exaggerate the level of cynicism toward welfare recipients held by the American public. *This perception of welfare recipients’ dishonesty and freeloading is at the core of Americans’ conviction that welfare spending should be cut* (emphasis added). 259

The state’s anti-fraud campaign framed welfare recipients—who were already burdened in the public discourse by the intersecting stigmas of race, class, and gender—as deceptive criminals. This obscured families’ material conditions and discursively constructed an isolated, suspect population. Cultural assumptions evident in this rhetoric were translated into policies that scrutinized and punished recipients while simultaneously constricting the availability of material support to low-income people. Instead of simply mirroring public attitudes, the relentless media attention about welfare fraud convictions and indictments tangibly linked criminality to what had been a more elusive, moral stigma against poor, single—usually Black—motherhood. 260 The spectacle of the actual indictments framed welfare recipients as dishonest criminals, eclipsing their status as mothers and citizens. Additionally, these policies converged with other state initiatives, such as punitive criminal and drug policy explored in this dissertation’s other studies, to help solidify the public perception of a racialized, criminal “culture of poverty.”

Characterizations of fraudulent welfare recipients were almost always accompanied by charges of laziness. Ironically, anti-fraud efforts in practice usually targeted those welfare recipients with unreported income, usually penalizing people who were working outside the home and receiving welfare. Therefore, while the era’s anti-welfare politics positioned recipients

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260 Arrests and criminal indictments have historically served key roles in heightening stigmatization. See, for example, Ellen Schrecker’s discussion of how criminal prosecutions of Communists during the 1940s hardened public opinion against the Party. Ellen Schrecker, *Many are the Crimes: McCarthyism in America* (Princeton, NJ: Princeton University Press, 1998), 120.
as lazy non-workers, in practice the fraud campaigns criminalized those recipients in the formal workforce. The insidious effect of these politics was to erase both the wage and childrearing labor from public discourse while further restricting the financial resources of low-income parents.

Contrary to the claims of many politicians, welfare was one in a collection of strategies families used for economic survival and not necessarily a significant part of recipients’ core identity. Welfare recipients floated between wage work and welfare or care-giving work, often using both simultaneously to support their families. My research seeks to denaturalize depictions of recipients as isolated types of poor people and “non-workers.” It problematizes the separation of welfare recipients from the working class or working poor. I argue that anti-welfare rhetoric constructed and maintained this distinction by obscuring the labor involved in parenting, and depicting those recipients who did join the workforce as fraudulent and criminal, as opposed to average workers.

Reforming Welfare during Economic Upheaval

The profound economic transformations during this period intensified the political potency of the welfare issue. Among other things, welfare became a lightning rod for frustration over the disappearance of “family wage jobs” and accompanying pressure on women to enter the labor market while still balancing their domestic responsibilities. Dramatic capital reorganization beginning after World War II diminished the availability of blue-collar and industrial jobs, particularly in the northern urban centers. According to one estimate, only 40 percent of jobs in

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261 For some background on this debate, see Katz, ed., The “Underclass” Debate: Views from History.
1976 provided enough money to support a family.\(^{262}\) In response to these structural changes, surging inflation, and a desire for greater economic autonomy, women entered the formal workforce in unprecedented numbers throughout the decade. Where only 30 percent of women with children under six years old worked outside the home in 1970, 43 percent were employed in 1976. By 1985, half of all mothers with preschool-age children help paying jobs.\(^{263}\)

As fewer working and middle-class women stayed in the home to care for their own children, the belief that welfare provided that opportunity to poor women of color was particularly infuriating. Of course, no group of mothers was more acquainted with the pressures of managing wage work and unpaid domestic labor than the population served by AFDC. Still, the era’s anti-welfare politics portrayed recipients as the antithesis of workers, often erasing altogether the labor of parenting and the domestic sphere. Unlike white feminists’ demands for greater access to the workplace and various professions, women of color in the welfare-rights movement fought for state support sufficient enough to allow parents to forgo wage labor. The welfare-rights movement called for notions of citizenship that did not depend on participation in the formal workforce. The politics of welfare reform in California and Illinois pushed in the opposite direction, positioning paid employment as the principal avenue to full citizenship and excluding welfare recipients from symbolic belonging in the polity through stigmatization, surveillance, economic marginalization, and criminalization.

Denigrating the domestic labor and social value of welfare recipients helped to normalize and rationalize the economic arrangements that increasingly pushed all members of working-class


\(^{263}\) *Ibid.*
families into the workforce. The rhetoric surrounding these campaigns incessantly championed the virtue and American character of wage work, no matter how menial or unpleasant. It drew a sharp distinction between welfare “dependence” and wage labor, demeaning the first to exalt the latter. With capital reorganization upending traditional gendered labor arrangements, welfare recipients were used to advance and articulate definitions of valuable, dignified work by graphically representing its opposite. Of course, the very real psychological and social benefits of being positioned above welfare recipients did little to improve low-income workers’ economic conditions.

Managing Caseloads: Race, Class, Gender and U.S. Welfare History

The reform initiatives in California and Illinois were embedded in the long history of welfare bureaucracies’ struggles to limit costs while policing intersecting racial, gender, and class hierarchies. Since the earliest relief efforts, women who have received charity and public assistance have been the objects of suspicion and intense scrutiny of their financial and moral “worthiness.” 264 Many of these practices were incorporated into the federal welfare program, Aid to Dependent Children (ADC—later renamed AFDC, for Aid to Families with Dependent Children), which was inaugurated by the landmark 1935 Social Security Act. ADC was originally intended to enable single mothers, usually white widows, to stay at home and raise their

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To prevent undermining the male breadwinner ideal, the sculptors kept grant levels low to ensure that remarriage remained more lucrative than receiving welfare. State aid programs policed morality by implementing “suitable homes” regulations and “man-in-the-house” rules, which made women ineligible for welfare if found living with a male companion.

Racism and racial politics also fundamentally shaped social welfare programs, especially those instituted during the New Deal. Domestic and agricultural workers, commonly understood to be African Americans, were ineligible for social insurance, such as Social Security and unemployment insurance. When they were able to access state support, African-American families were forced to rely on the more paltry programs, such as ADC. In the South, many states barred Black women entirely from state aid, especially when their labor was in high demand during harvest times. These policies reinforced the long held assumption that African-American women should belong to the formal workforce and remain ungoverned by white notions of domesticity. By barring many African Americans and unwed mothers, program administrators protected ADC from public criticism while keeping costs low and enforcing the dominant society’s morality.

During the mid-1960s and early 1970s, many welfare regulations were liberalized due to War on Poverty programs and pressure from “poverty lawyers” and civil and welfare rights

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266 Gordon, Pitied but Not Entitled. For the early history of fraud investigations in Illinois’ mother’s pension program, see Joanne Goodwin, Gender and the Politics of Welfare Reform.
268 Bell, Aid to Dependent Children.
activism. A vocal welfare-rights movement composed predominantly of poor women of color demanded—and, in many cases, received—larger grants and a more responsive grievance procedure. Activists advanced a unique feminist ideology that challenged their stigmatized position and claimed the right to state support by virtue of their status as mothers, citizens, and consumers.

In the pivotal 1970 case, *Goldberg v. Kelley*, the Supreme Court ruled that welfare was an entitlement that could not be summarily suspended without due process. Welfare grants increased in real economic terms, and courts ruled most states’ “substitute parent” or “man-in-the-house” laws unconstitutional by the early 1970s. These and other landmark cases greatly expanded access to welfare programs by constricting the state’s ability to arbitrarily cancel grants or use morality or race as a rationale to deny aid.

Legal reforms and welfare-rights activism combined with de-industrialization’s devastating impact on urban areas to swell the number of people receiving assistance, particularly among African Americans. Between 1965 and 1970, the program’s size doubled, growing from 3.3 million to 7 million people nationally. Although the majority of welfare recipients had always been white, after 1958, almost half were people of color. As reforms opened the program to new groups, they also opened it to new attacks. Welfare administrators had long allayed public

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hostility by denying aid to the most stigmatized women: African Americans and women with children born out of wedlock. As these people entered the welfare rolls in large numbers, the public’s already limited approval of welfare waned. Hostility toward the program intensified as welfare budgets grew and people increasingly saw the program as disproportionately serving African Americans. In this climate, the program struggled to find new ways to limit expenditures while simultaneously managing the socially marginalized populations now contained within the welfare program, instead of excluded from it.

Fraud investigations, always a part of welfare administration, took on new importance as other tools to reduce welfare expenditures were ruled illegal. In 1961, the city of Newburgh, New York instituted a collection of draconian welfare policies that included forcing all recipients, who were commonly pictured as African-American migrants from the South, to pick up their checks at the police station for eligibility audits to “weed out the chisellers.” In 1962, a U.S. Senate hearing vilified the allegedly lax social workers in Washington D.C. who tolerated welfare fraud. These early, nationally publicized, anti-fraud initiatives targeted African-American communities and inflamed the racialized and stigmatized public image of welfare recipients. The policies simultaneously limited program costs by thinning the rolls and discouraging new people from entering the highly scrutinized caseload.

By the late 1960s, welfare faced mounting criticism for its failure to incentivize wage labor. In 1967, the U.S. Congress responded by passing a series of amendments to the Social Security

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276 Rick Perlstein, Before the Storm: Barry Goldwater and the Unmaking of the American Dream (New York: Hill and Wang, 2001), 130. I would like to thank Jason Kozlowski for bringing this to my attention.
278 Ibid., 112-114.
Act, instituting a Work Incentive Program (WIN) requiring any recipient deemed ready for employment to get a job or enter a training program. Although the work requirement was rarely strictly implemented, states technically received the authority to designate what constituted “employable,” and could refer any mother, no matter the age of her children, to work if adequate childcare was available. Those failing to comply would lose their portion of the grant.

In addition to the punitive features, the amendments addressed the erosion of grants’ buying power by mandating that states adjust benefit levels to reflect the community’s standard of need. They also implemented the $30 and one-third rule to entice recipients into the work force. The policy disregarded the first $30 of monthly earnings as well as one-third of the remaining income for calculating eligibility. In practice, this allowed recipients to maintain some cash support from the state as they earned new income from wage work. In theory, the amendments represented a significant departure from the original intent of AFDC, which was to enable mothers to raise their children without relying on earned income.281

Hostility toward welfare hardened throughout the late 1960s, and the idea that recipients squandered their grants on frivolous consumer goods developed significant cultural resonance.282 There was even a hit country song, Guy Drake’s “Welfare Cadillac,” that topped charts for more than a month in 1970. The song caricatured a family living in a dilapidated, neglected house while using their welfare checks toward the payments on a brand new Cadillac.

Now the way that I see it

These other folk are the fools
They’re working and paying taxes
Just to send my young’uns through school
The Salvation Army cuts their hair and
Gives them clothes to wear on their backs
So we can dress up and ride around
And show off this new Cadillac.²⁸³

In the midst of his struggle to overhaul AFDC, President Nixon asked Johnny Cash to sing
“Welfare Cadillac” during a performance at the White House. Cash refused the administration’s request, but the president strove to find other ways to manage the welfare crisis while building bridges to those populations receptive to the themes in “Welfare Cadillac.”²⁸⁴

Dueling Approaches to the “Welfare Monster”: Nixon’s Family Assistance Plan versus California-Style Welfare Reform

Faced with widespread urban unrest, ballooning welfare budgets, and mounting antagonism toward AFDC from all quarters, Nixon set out to dramatically reform the welfare program. He announced his proposal in a nationally televised speech on August 8, 1969. He opened by explaining that the country grappled with two fundamental, but intertwined crises: “We face an urban crisis, a social crises—and at the same time, a crisis of confidence in the capacity of government to do its job.”²⁸⁵ Nixon proposed to remedy these problems by replacing AFDC and its intricate social work regulations and bureaucracy with a new, simplified cash benefit to all

²⁸⁴ “Nixon’s numbers,” Time Magazine, 13 April 1970. I am indebted to Brandon Mills for telling me about this event.
families with dependent children living in poverty. While the details of the political struggles need not be rehashed here, certain features of the debate merit attention to put features of Reagan’s reforms in high relief.

Nixon’s Family Assistance Plan was based on the concept of a negative income tax or guaranteed minimum income, which had been gaining adherents throughout the 1960s. A negative income tax triggered payments from the government to beneficiaries when earnings fell below specific levels. This effectively built an income floor below which no citizen would be allowed to fall. Throughout 1970 and 1971, lawmakers floated competing versions of the guaranteed income program, some with higher benefit levels, others at lower levels with more stringent work provisions. As originally introduced, Nixon’s Family Assistance Plan guaranteed a minimum income for all families, granting $500 a year for each of the first two family members and $300 a year for each remaining member. Therefore, the state would pay a family of four with no additional wages $1,600 a year, approximately $9,000 in 2010 dollars.

The FAP proposed to subsidize the income of low-wage earners, regardless of family composition. This feature was the most profound modification to AFDC, which only served families with an absent parent, usually assumed to be the father and primary wage earner, and did not offer grants to two-parent households. Under FAP, families could keep the first $720 of annual earnings in addition to their state benefits. As earnings increased above that amount, the welfare grant decreased by fifty cents for every additional dollar earned until the grant disappeared. A family of four could have earnings up to $3,810 before they lost state support. In this way, the planners hoped to address the two principal criticisms that plagued AFDC: that the

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286 Steensland, The Failed Welfare Revolution, 30-34.
policy discouraged wage work and encouraged the breakup of families. The FAP was designed to incentivize both; it ensured that families with wages and two parents would always be better off financially than those without.\textsuperscript{287}

The Family Assistance Plan remained the centerpiece of the Nixon administration’s domestic legislative agenda until it abandoned the proposal in 1972. In the interim years, the policy was widely accepted as a mainstream, even a conservative, approach to income inequality and the “welfare mess” in the United States. Nixon officials hoped that the FAP would address both the “welfare crises” and the “backlash” it supposedly generated. It was originally conceptualized as a program to address the unrest associated with African Americans, and aimed to ameliorate the urban turmoil and uprisings by restoring Black men as patriarchs and breadwinners in their families.\textsuperscript{288} However, in the months leading up to Nixon’s announcement, the FAP morphed into a policy aimed at white, male low-wage workers. The president’s political strategists intended the policy to build new Nixon loyalists amongst his coveted “silent majority” by offering new state support to disaffected, white working-class voters, especially from the South.\textsuperscript{289}

\textsuperscript{287} Jill S. Quadagno, \textit{The Color of Welfare: How Racism Undermined the War on Poverty} (New York: Oxford University Press, 1994), 118; and Moynihan, \textit{The Politics of a Guaranteed Income}. The FAP included a significant work incentive, which administrative officials characterized as a work requirement. The program mandated that any employable recipient who refused to work or enter job training would forfeit their portion of the family’s benefit. Mothers with pre-school age children and those unable to work would not face this penalty. The program, however, did not actually force recipients into work, it merely withheld a percentage of support and relied upon recipients to act in their own economic interests and join the formal workforce.

\textsuperscript{288} Administration officials believed that reestablishing traditional gender authority would help restore social peace. This was based on assumptions most notoriously espoused in the 1965 “Moynihan report” about the allegedly pathologizing effects of matriarchal families in Black communities. Daniel P. Moynihan, \textit{The Negro Family: The Case for National Action} (U.S. Department of Labor: Office of Policy Planning and Research, 1965); and Quadagno, \textit{The Color of Welfare}, 123-124.

\textsuperscript{289} Steensland, \textit{The Failed Welfare Revolution}, 116. For detailed information about the debates within the Nixon Administration over the policy and politics of their welfare proposal, see 78-119.
The FAP renounced those features of AFDC that were designed to accommodate the unique position of single mothers. With low grant levels for unemployed parents, it was designed to encourage women to rely upon a male breadwinner or wage work to make ends meet. For this and other reasons, the National Welfare Rights Organization vehemently opposed the FAP, claiming that it trapped women in unwanted or potentially unsafe relationships and coerced them into low wage, dead-end jobs without sufficient income to raise a family. They were primarily opposed to the standard grant levels, which were considerably higher than benefits in many southern states but actually lower than benefit levels in northern urban centers, where welfare-rights organizing was most active.\(^{290}\)

Although the FAP prohibited states from decreasing benefits, NRWO organizers saw it as comparable to the fixed flat grants and other cost-saving measures they had fought at the state level across the country. The organization did endorse the idea of a guaranteed *adequate* income, and advanced legislative proposals with universal coverage (not just serving families with dependent children), a benefit floor of $5,500, and robust legal and procedural protections.\(^{291}\) Welfare-rights activists insisted that benefit levels be high enough to allow single parents the opportunity to forgo wage work if they chose to do so. With this demand, the overwhelmingly Black and Latina welfare rights activists advocated for a choice that had rarely been open to women of color and was increasingly unavailable to other women in the United States.

\(^{290}\) States whose welfare benefits were already above $1,600 annually were required to supplement the federal contributions to maintain existing grant sizes. The states whose grants fell below these levels, mostly in the South, would be brought to the new minimum levels. All states stood to gain new federal assistance with their welfare budgets, a fact welcomed by many state and county officials. Nixon Administration officials hoped this would slow the tide of migrants fleeing the low wages, joblessness, and paltry income supports of the South for the social turmoil of the North’s urban centers.

The FAP promised to have as profound effect on the cultural and political landscape as it would have on the welfare administration. By expanding the program to serve the working poor, the FAP would have eliminated a program dedicated predominantly to serving unemployed, single mothers—increasingly from communities of color. The program designers intended the FAP to lessen the stigma of state support by folding the AFDC caseloads into the same administrative unit as the employed poor, thus eliminating the scrutiny of casework and eligibility qualifications. Daniel Patrick Moynihan, policy advisor to both Johnson and Nixon, emphasized this dimension of the plan in a memo to Nixon, explaining that under the FAP “receiving assistance is not conditioned upon being dependent; the working poor receive it as well as the non-working poor. Thus the great stigma of welfare is removed.”

Removing the degraded category of welfare recipient would have eliminated a touchstone of growing importance in U.S. political culture. Increasingly, welfare recipients were the objects against which normative, taxpaying citizens, and productive workers were defined. The FAP threatened to erase the distinction between programs serving employed and non-employed poor people, and therefore threatened to blur age-old divisions between deserving and undeserving poor. Although the political rhetoric did not often emphasize this point, the implications were not lost on members of the Nixon administration, many of whom opposed the policy on exactly these grounds.

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Nixon officials also intended for the FAP to confront the crises of political authority. Nixon integrated the theme into his August speech, claiming that the new system would “show that government can be made to work.” At the conclusion of his address, he reiterated the mission, asserting that his proposal could help turn the corner “from an ominously mounting impotence of government to a new effectiveness of government.” Nixon planned to build his political constituency by intervening in the economy and offering concrete material benefits to lower income people. This is not to overplay the radicalism of the FAP, since in many ways it amounted to a public subsidy for low-wage employers. Nonetheless, it proposed making economic benefits and basic subsistence a right of citizenship for families. Under the FAP, receipt of state benefits might have become a symbol of civic belonging, as opposed to a marker of social marginality and exclusion.

Despite these potentially transformative programmatic features, members of the Nixon administration employed more conventional anti-welfare rhetoric in their advocacy for the FAP. They continually disparaged the AFDC system and its alleged corrosive impact on the work ethic and family cohesion. They positioned wage work as the main avenue to full citizenship for low-income parents, which helped to supplant discourses that attached a distinct, suppressed social value to work in the “domestic sphere.” Although the FAP united the working and non-working poor programmatically, the rhetoric of the administration used to sell the proposal constructed a sharp, hierarchical divide between the two groups. For example, at a speech in Moynihan, *The Politics of a Guaranteed Income*, 214.

April of 1971 before the Republican Governors Association, Nixon decried the state of the welfare bureaucracy:

> It is incredible that we have allowed a system of law under which one person can be penalized for doing an honest day’s work and another can be rewarded for doing nothing at all…The person on welfare can often have a higher income than his neighbor who holds a low paying job.\(^{296}\)

Describing welfare recipients as “doing nothing at all,” his language obscured the parenting responsibilities that enabled families to qualify for welfare in the first place. Instead of faulting the economic transformations for the preponderance of low-paying jobs, Nixon channeled public attention to allegedly ill-conceived program regulations. By directing public hostility about economic hardship toward people’s neighbors and the state’s social service bureaucracies, this rhetoric elided other contributing factors.

As Nixon struggled with Congress over the FAP, California lawmakers, spurred on by Governor Reagan, took matters into their own hands and attempted to control welfare through reforms at the state level. The welfare reforms advanced by Nixon and Reagan shared many objectives and cultural assumptions. They both aimed to decrease state welfare expenditures, to shore up traditional notions of family responsibility, and to position wage work as the remedy for systemic family poverty. In key ways, however, Reagan’s approach was at odds with Nixon’s. Instead of expanding access to state support, Reagan’s reforms constricted it. Instead of enlarging the state’s economic responsibility and imparting a new notion of economic citizenship, Reagan restricted the groups eligible for benefits and positioned those sustained by state

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subsidies as outside of the civic body. Opposed to demonstrating state competency by offering material improvements, Reagan asserted government legitimacy though enhancing its punitive functions: the capacity to surveil, monitor, and discipline marginalized populations.

“California…Showing the Way”: Governor Reagan Tackles Welfare Reform

Governor Ronald Reagan began his second term in 1971 determined to tackle the state’s welfare system. Popular opinion judged California’s AFDC program to be spiraling out of control, and administrators warned that the mounting costs could bankrupt the state. The state’s program had grown even faster than the national average. Welfare caseloads increased 262 percent, with the number of recipients in California rising from 630,000 in January of 1960 to 2.29 million in March of 1971. Each month, 40,000 new people enrolled in the program, causing costs to rise 25 percent.

Beyond fiscal pressures, Reagan had political and ideological motives for focusing on welfare. The timing was auspicious because Nixon, Reagan’s rival for the 1968 Republican presidential nomination, had recently introduced the FAP, a policy easily caricatured as an unprecedented, foolhardy expansion of the welfare system. Jockeying for leadership of the Republicans’ increasingly powerful conservative wing, Reagan used the FAP specifically and welfare more generally to build his profile and distinguish his approach to governance. These were politically astute calculations and the governor’s welfare politics paid handsome political dividends in the short and long term.

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298 Welfare Reform in California…Showing the Way (Sacramento: California State, 1972), 8 and 28.
In 1970, however, welfare was not the obvious winning issue for conservatives that it appears in retrospect. Reagan’s reform campaign in California was critical in forging the cultural logic and crafting the social narratives that made the issue into such a potent force throughout the subsequent decades. In fact, when the governor considered tackling the “welfare mess” in California and making it a centerpiece of his agenda, all but one of his advisors argued against it.

Robert Carleson, a key architect of Reagan’s welfare program, explained that

[I]n those days the worst thing a governor could possibly do, and it wasn’t happening anywhere in the country, was to take on this insoluble mess, because to clean it up, you had to step on so many toes politically and emotionally that it was considered something every governor should stay away from. I have been told that he [Ronald Reagan] gritted his teeth and said, “It’s got to be done so we’re going to do it.”

According to Carleson, the governor had a dual mission in trying to reform California welfare system. First, he explained, was addressing the fiscal crisis: “We had to bring it under control to survive—for the budget to survive.” The second was more transparently political. Reagan wanted to show that welfare could be fixed at the state level and need not be taken over and expanded by the federal government. The governor’s reforms were “one last effort to prove that the state, even under all of the federal rules and regulations that existed at the time, could do the job.”

Although Reagan had a different philosophical approach to the issue than Nixon, he also saw welfare as a site to renew and rebuild faith in government.

From the onset, therefore, Reagan’s reforms were connected with the larger project of discrediting the policy approaches entailed in Nixon’s Family Assistance Plan. While Reagan

remained circumspect and ostensibly loyal to his party’s leader through portions of the debate, his objections to the president’s program were widely recognized. During the few years the FAP was before Congress, Reagan testified against the plan in the Senate, lobbied California’s congressional delegation to withhold its support, and opposed the reforms in various other public settings. \(^{301}\) A 1970 *Washington Post* article stated simply that “everyone knows it is Governor Reagan leading a rearguard action against [the FAP].”\(^{302}\)

In an open telegram to the Chairman of the Senate Finance Committee, Senator Russell Long, Reagan explained that his reservations about the program “stem from both financial anxiety and philosophical antipathy.” He saw the FAP as an expansion of welfare and ascribed the same deleterious effects to both programs, claiming that

[The FAP legislation] includes substantial incentives for desertion; in some cases, it could encourage the dissolution of families...[I]t would further weaken the moral fiber and fiscal integrity of the nation; it would drain the productive wellspring of America. Many individuals who are now being encouraged to break loose from welfare would, under the new provisions of the Act, find it more comfortable to sink back into a state of federal dependency.\(^{303}\)

As opposed to enhancing their capacity to support their families, Reagan believed giving government assistance to the working poor diminished their social position by placing them in a state of dependency. In this view, it was dependency on government— not poverty or lack of access to basic needs—that denigrated poor families.


While Reagan was attempting to scuttle Nixon’s national reforms, he also clashed with the White House over the administration of California’s AFDC program. He defiantly refused orders that the state implement the cost-of-living increases mandated by the 1967 amendments to the Social Security Act. California grant levels were woefully inadequate and did not approach the amount official government figures—which were notoriously low—deemed necessary to survive financially. State officials considered the minimum income for a family of four to be $328 a month, but the most AFDC provided was $221, only 67 percent of the recognized need. Benefits had not been increased for twelve years, and had lost much of their buying power through their failure to keep pace with inflation. California risked losing millions of dollars in federal welfare funds in penalty for Reagan’s noncompliance.

Facing mounting fiscal pressures and the risk of federal intervention, the governor resolved to have a plan in place to tackle welfare if reelected to a second term. In August of 1970, he convened a task force to develop his own recommendations for reforming the AFDC program. Reagan’s chief of staff, Edward Meese, penned a memo—sent under the governor’s name—that announced the group’s formation and outlining its mission of formulating administrative and legislative solutions to the welfare crisis. Sent to all senior staff and cabinet members, the memo introduced the binary schema that saturated the entire subsequent political debate: “This study will place heavy emphasis on the tax-payer as opposed to the tax-taker; on the truly needy as

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opposed to the lazy unemployable." Lest there be any doubt about the state’s position vis-à-vis welfare recipients, the memo concluded:

I am determined to reduce these programs to essential services at a cost the taxpayers can afford. This is our NUMBER ONE priority. Therefore, I am asking you to make available your best employees including directors for this all-out war on the tax-taker. If we fail, no one ever again will be able to try. We must succeed.

This rhetoric suggested that the state’s responsibility be limited to helping those citizens deemed productive and contributing. Declaring war on the tax-takers positioned welfare recipients (or only the subset of recipients imagined to be unworthy) not merely as a marginal group within society, but as categorical outsiders without claims on the state.

Operating in secret and staffed by managers from agencies outside the welfare bureaucracy, the task force conducted hundreds of interviews and combed through all the relevant state and federal regulations. In December of 1970, it reported to the governor that the welfare system was indeed careening out of control, and dragging the state toward certain fiscal disaster.

Attributing the problem to expansive interpretations of the enabling laws and regulations, it recommended a series of reforms, predominantly aimed at controlling costs, restricting eligibility, prompting workforce participation, and strengthening the support required of families, particularly absent fathers. These recommendations provided the framework for the detailed program of administrative and legislative reforms that Reagan championed at the outset of his second term.

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306 Cannon, Governor Reagan, 349.
307 Ibid.
Facing staggering welfare costs, states across the country were struggling to find ways to manage their budgets. Some attempted simple across-the-board cuts to grant levels. New York, for example, implemented a flat grant designed to arrest the runaway welfare costs, and in 1969, the legislature, at Governor Rockefeller’s urging, cut welfare budgets by 8 percent. California attacked the problem differently, through more targeted reforms. The Reagan Administration released a publication in 1972 that trumpeted its efforts, and positioned California’s approach as a model that deserved national emulation. Aptly titled, *Welfare Reform in California ... Showing the Way*, the publication compared California’s efforts to control welfare costs to the strategies of other states.

Whereas some states were eliminating entire programs (such as AFDC-U) or rolling back grants across the board, California’s reform planners chose to “purify” the system, the goal was to preclude or uproot those from the system who legally “didn’t belong there,” while making grants more equitable—even increasing them as warranted—among eligibles who really did.

Politicians predicated the strategy of winnowing the welfare rolls on the premise that an influx of ineligible or undeserving people had caused the growth in program costs.

This reform strategy rested upon the notion that significant numbers of recipients were fraudulent or otherwise malingering, thereby helping to etch that assumption into public opinion. Although program administrators often claimed that purging the welfare rolls of ineligible or unworthy beneficiaries would redeem public faith in the welfare system, this strategy had the opposite effect. Incessant political and media attention to these campaigns solidified public suspicion of welfare recipients. It framed the welfare budget crisis as a product of deceitful, lazy

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311 *Welfare Reform in California...Showing the Way*, 10.
recipients and an incompetent bureaucracy, rather than as a function of demographic and economic shifts.

To initiate his efforts, the governor first implemented a series of administrative reforms that did not require approval from the Democrat-controlled legislature. Reagan appointed Robert Carleson—an assistant director from the transportation department with no prior experience in welfare administration—to head the department during the transition. Carleson had been an enthusiastic member of Reagan’s task force, and had formulated most of the committee’s recommendations.

Carleson first moved to rectify the welfare department’s allegedly incompetent, negligent management by replacing whole swathes of leadership and staff. The report that touted the state’s reforms program explained that the expertise and bureaucratic habits of social workers were antithetical to the administration’s new orientation: “Out the window went the tradition of having the Department run by social workers or unwitting captives; in the door marched a management-legal-fiscal-oriented team intent upon reshaping welfare into a viable system under which both the genuinely needy and the troubled taxpayer would find equanimity and relief.”

A series of seemingly banal reforms revealed the state’s efforts to reorient the program from servicing welfare recipients to serving “the public,” and reducing the costs for the taxpayer. In an oral history interview years later, Carleson explained that he needed to purge the department’s administrators, most of whom were social workers who “really believed that they were representing the people who came in the door. They weren’t representing the people who

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312 Ibid., 11.
were paying the bill or who were running the department.\textsuperscript{313} These comments reflected the administration’s assumption that taxpayers and welfare recipients were fixed, distinct social categories with antagonistic interests.

The department codified eligibility standards to mitigate the efforts of social workers, who had a “tendency to regard themselves as advocates for their clients,” to give recipients the advantage of extra benefits when regulations were vague. Reagan officials also made benefit calculations the purview of less expensive “eligibility workers” who were trained in technical regulations but did not have social work degrees.\textsuperscript{314} Other reforms tightened eligibility, reformed income limits, and instituted new efforts to prevent and correct abuse and fraud.\textsuperscript{315} Ostensibly because of the budget crisis, the department leadership submitted the new regulations as emergency measures to be implemented immediately, therefore bypassing the usual review and comment period in which officials anticipated resistance and challenges from welfare-rights groups.\textsuperscript{316}

Many of the reforms desired by the Reagan administration, however, needed to be enacted legislatively, and Reagan requested permission to address a joint session of the legislature to unfurl his legislative agenda.\textsuperscript{317} The Democratic leadership, aware that the governor intended to gain political advantage and reluctant to grant him a platform it, made the unusual decision of

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\item \textsuperscript{313} Oral History of Robert Carleson, “Stemming the Welfare Tide,” p. 35.
\item \textsuperscript{314} Welfare Reform in California...Showing the Way, 25.
\item \textsuperscript{315} Ibid., 11
\item \textsuperscript{316} Oral History of Robert Carleson, “Stemming the Welfare Tide,” p. 60.
\item \textsuperscript{317} The following synopsis of the events leading up to the California Welfare Reform Act is distilled from the office files at the Reagan Presidential Library, the oral histories quoted throughout, and published accounts by Reagan biographer Lou Cannon.
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refusing Reagan. The governor characterized the Democrats’ move as protecting the embattled welfare program, and he vowed to take his plan for action directly to the people. He unveiled his plan on March 3, 1971 at a public speech in Los Angeles. The televised address and surrounding controversy attracted considerable media attention.

Unlike those federal and state officials willing to tolerate the “uncontrolled upward spiraling of the welfare caseload,” Reagan declared that he stood resolved to tackle the problem. His speech acknowledged that the welfare system failed to provide sufficiently for the “truly destitute,” but did not attribute this to economic pressures or inadequate benefit levels. Instead, the system failed because its incompetent administration allowed suspect and un-needy populations to infiltrate the rolls. He explained that “[welfare] is spread thin in attempting to provide for too many who are not needy but who through loopholes are legally eligible to claim welfare benefits, and too many who are receiving aid illegally because there is just no way to prevent their cheating.”

When the Reagan administration introduced its detailed welfare reform package in the legislature, the governor positioned his reforms as a model for the nation, clearly signaling that his proposals were intended to counter Nixon’s Family Assistance Plan. “No other solution is in sight anywhere in the nation,” he declared. “As usual, California is leading the way

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319 Cannon, Governor Reagan, 351.
320 Ibid.
with courage and imagination down the always uncertain and sometimes slippery path of reform.”

At the outset, the Democratic-controlled legislature did not feel insurmountable pressure to acquiesce to the governor, and his package languished in various committees through June. In the interim, Reagan officials initiated a full-scale campaign to organize public understandings of the crisis and generate support for the administration’s reforms. He consistently portrayed his punitive proposals as the only commonsense response to a corrupt system careening out of control. In one statement to the legislature, Reagan outlined the essential contours of his arguments for reforms: “Changes in our laws are imperative if we are to restore the balance between the legitimate interests of the taxpayer, and those of the honest, truly dependent welfare recipient.” He again portrayed welfare recipients—even the “honest” ones—and taxpayers as opposing and separate categories with inversely related interests. In claiming responsibility for only the “honest, truly dependent welfare recipient,” Reagan absolved the state of any accountability to the supposedly significant number of recipients he considered illegitimate and dishonest.

In his advocacy for reform, Reagan also directly challenged the claims of welfare rights activists who demanded the freedom to choose whether to enter the workforce or to decline employment they deemed undesirable. In an interview with *U.S. News and World Report*, Reagan used the growing number of employed mothers to undermine welfare’s traditional mission of

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removing women from workforce while raising children. Celebrating the story of a woman and her mother who carefully coordinated their childcare responsibilities in order to manage their shifts as firewatchers, he asked “When you look at that—well, by what right does a welfare worker say that just because a women has children no one should expect her ever again to be self supporting? There are millions of women who are out working and supporting their kids.”

Although Reagan’s comments were ostensibly racially neutral, his subsequent comments implied that it was the African-American and Latina women agitating for welfare rights who lacked a work ethic.

I remember a statement in one hearing where one of these women from the Welfare Rights Organization got fired up and screamed out: “And don’t talk to us about any of those menial jobs.” Now, I don’t think jobs are menial. You know, here’s a woman who is demanding her right to be supported by the working people, and she’s saying to millions of other people who are chambermaids in a hotel or maids in homes—she is insulting them and saying that somehow they’re beneath her and that she will only work if you can guarantee that the job will be at the executive level.

Such pronouncements positioned welfare recipients’ activism as an affront to other struggling families, and insisted that recipients, widely assumed to be women of color, were antagonistic to other wage-earning women. These politics relied on a racialized, symbolic logic to create the impression of a gulf between the material interests of working poor families and families receiving welfare.

In early April, the *New York Times* ran an opinion editorial by Reagan titled “Welfare Is a Cancer.” He claimed that welfare is “a cancer that is destroying those it should succor and

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threatening society itself.” Not only had welfare failed those unfortunate destitute people who had no other way to support themselves, but “it has failed those who want to find their way into productive lives as people—individuals with a purpose and a goal—not a faceless mass whose destiny is the dole.” With this language, the governor positioned productivity, individuality, and social value as antithetical to receiving welfare. At the editorial’s conclusion, he again reiterated the dichotomous positioning of welfare recipients and normative citizenship, declaring that the “only way to measure the success of the program is not by how many people have been added to the rolls, but how many have been removed and made productive citizens.” Within these discursive confines, there were few ways to be both a welfare recipient and an honored member of the civic community. With this rhetoric, popular notions of productive citizenship were given specificity through their contrast to welfare recipients and the particular collection of negative attributes ascribed to them.

Although Reagan officials were outwardly confident of public support for their endeavors, they left little to chance. In addition to extensive public appearances by the governor himself, the staff took the unusual step of organizing a citizens committee to generate public pressure on the legislature for reform. The committee was a diverse bipartisan group of reform supporters from around the state, which included administrators, a town mayor, a minister, a union leader, a law student, and a divorced working mother who chose not to receive welfare. Not a single welfare

327 Ibid.
328 Ibid.
recipient served on the committee. At the press conference announcing the committee’s formation, a reporter questioned the governor about appointing his own advocacy group:

“[A]ren’t you in effect organizing your own pressure group and will it be part of their function to—to communicate with the legislature?” Reagan explained that he intended his committee to counterbalance the high profile welfare-rights activism:

[Y]es, I’ve been perfectly frank about it. I think there has to be a voice of the people that is heard, and I believe from my observation that the overwhelming majority of the people, regardless of party lines, are totally convinced that we are on a wrong path and that welfare is, as has been described here, a mess, and it must be reformed. Now, I am—if you look at the hearings that have been held so far, if you look at the demonstrations that have been held so far, a stranger in our midst would get a completely different idea. He would believe that public opinion was on the other side, and I think every one of you knows that public opinion is not on the other side, and I feel therefore anything they can do to simply reveal where the people stand is of great service.

By claiming that his appointed committee represented the “voice of the people,” Reagan’s rhetoric underlined the distinction, made throughout these debates, between full citizens—who the state was charged to serve—and suspect welfare recipients, who were outsiders without legitimate claims on government or their elected representative. Through such pronouncements, Reagan tapped into a vein of racialized hostility toward AFDC, helping to produce the public support he claimed legitimated his efforts.

The statewide citizens committee coordinated the work of 120 local committees, which were largely organized by local Chamber of Commerce branches across the state. The Chamber

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330 Ibid., p. 12
of Commerce selected welfare as one of its main issues and dedicated significant resources to aid Reagan’s campaign. The Chamber loaned executives to staff the local committees, which ranged from ten to a few hundred members. They also ran ads in newspapers to pressure recalcitrant lawmakers. For example, one conservative Democratic senator encountered a full-page advertisement that inquired “Why is Senator Collier holding back welfare reform?” in his district’s hometown paper.\textsuperscript{332}

The citizens committee also printed thousands of glossy brochures describing the welfare crisis and Reagan’s proposed reforms. Next to photos of Franklin Delano Roosevelt, Bobby Kennedy, and Reagan, the brochure featured their quotes about welfare’s destructive, degrading effects on recipients’ spirits and the national fiber. “Remember!” the pamphlet proclaimed, “The burden you bear promises to grow larger every year…unless reforms are made NOW!” Supporters could tear off a section of the brochure to send the cards into their state legislators after checking off which aspects of the plan they “particularly liked.” For many voters, there was probably little to oppose in Reagan’s reforms as the brochure described them: “Requiring work-for-welfare for the able”; “removing free loaders from the welfare rolls”; “limiting the amount of aid being paid those with high income”; and “tracking down absent, negligent fathers.”\textsuperscript{333}

Californians sent thousands of these cards into legislative offices through the spring and early summer of 1971, undoubtedly increasing the pressure on lawmakers to deliver some measure of welfare reform.\textsuperscript{334}

\textsuperscript{332} Ibid., 75
\textsuperscript{333} California Citizens Committee for the Governor’s Welfare Reform Program, Welfare Reform Pamphlet, Box GO186: Folder: Research File-Health and Welfare-Welfare, 1971 (1/6), Reagan Gubernatorial Papers, RRPL.
\textsuperscript{334} Carleson, Government Is the Problem, 25
In the event that the committee’s public relations and letter writing campaign did not convince its opponents, the Reagan administration secretly prepared to field a ballot initiative on welfare reform. The staff planned to rely on the infrastructure established by the welfare reform committees to quickly gather the needed signatures and place the measure before voters in the 1972 primaries. The initiative threatened incumbents who had not supported reform by providing a readymade issue for their challengers. The administration designed the initiative to pressure both recalcitrant Democrats and Republican supporters of Nixon and the Family Assistance Plan. “Supporters of FAP knew that if Reagan succeeded in welfare reform in California, the largest state, their efforts to nationalize welfare were dead,” Robert Carleson explained in his autobiography.

Therefore, we were fighting not only the Democrats in Sacramento; we were fighting the Nixon Republicans in Sacramento and Washington. This situation made a Reagan-led welfare reform initiative in the 1972 primary a threat to all of his opponents—Democrat and Republican, state and federal. We code-named the secret initiative plan “Operation Crossfire.”

Someone in the governor’s office probably leaked the plans for Operation Crossfire to key members of the legislature as resistance slowly softened among Democrats and Nixon loyalists in the Republican caucus.

**The California Welfare Reform Act of 1971**

Then, on June 28, 1971, Robert Moretti, the Assembly speaker, broke the impasse by sending a letter to Reagan calling for productive and substantial bi-partisan negotiations of those issues.

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335 Ibid., 24.
most pressing to California, the foremost being welfare. Commentators at the time and since have debated what inspired Moretti’s overture. Reagan claimed in his subsequent and frequent retellings of the story that Moretti was hounded to the bargaining table by the political pressure his campaign had generated. He would tell of how Moretti arrived at his office and declared “Stop the cards and letters, Let’s negotiate.” Others have claimed that Moretti was motivated to deliver some significant legislative achievements after four years of the gridlock with the Reagan administration.

Starting in late July of 1971, the parties entered into almost two weeks of intense deliberations, led primarily by Moretti and Reagan. Reagan was an accomplished negotiator seasoned by years as president of the Screen Actors Guild and emerged delighted with a final reform package where both sides had gained (and lost) key provisions. Accounts differ over which side prevailed on substantive policy matters, but few would dispute that Reagan triumphed politically. Carleson claims that through savvy negotiating and the governor’s ability to disguise which provisions were most important for them, Reagan was able to secure 80 percent of their desired reforms, surrendering to the Democrats on nothing they deemed vital.

Moretti, on the other hand, maintained that the legislation ultimately reflected the Democrats’ principles and objectives. He claimed in an oral history interview years later that his team supported the new eligibility restrictions and anti-fraud measures that Reagan’s side presented as Democratic concessions. Moretti explained, “We[Democrats on the welfare

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337 See, for example, Lou Cannon, Governor Reagan, 350-360.
338 Carleson, Government Is the Problem, 15-33.
negotiating team] had no desire to protect the goddamn welfare cheats. We were just as glad to get
rid of them as he [Reagan] was, but we were interested in protecting the aged, the blind, and the
disabled mostly, and the children.” He continued by recalling that Reagan “wrote provisions in
there that we never dreamed he and his people would accept—ongoing cost of living increases,
expansion of day care programs and education programs...So we both paid to some extent, but I
think we clearly won the legislative battle, the battle of writing the law, and he clearly won the
PR battle.”

The California Welfare Reform Act of 1971 passed the legislature and was signed into law
by the governor at an exuberant bipartisan press conference on August 12, 1971. Reagan relished
his victory, telling reporters, “I expect to be happy for the next few weeks.” Because it
reflected a political compromise, the provisions of the bill ultimately enacted by the California
legislature were not totally ideologically consistent.

Contrary to Nixon’s proposed Family Assistance Plan, these reforms marginally benefited
those populations with no outside income, while dramatically constricting state support to those
working for low wages. California increased grant levels to come into compliance with federal
mandates, and the legislation codified ongoing cost of living increases to grants. Once
implemented, the state, which had only provided between 67 and 71 percent of recognized need,
finally covered 100 percent of the amount deemed necessary to survive. The reform package
was also loaded with new features that intensified the scrutiny and stigmatization of welfare
recipients. The legislation severed the program that served the blind, disabled, and the elderly

    History 70 (Fall 1991): 285.
341 Welfare Reform in California...Showing the Way, 20
from the programs that assisted families headed by single and unemployed parents. People in the first category were transferred to a program modeled on pensions, like Social Security, to spare them from the more demeaning features—such as the continual eligibility reviews—of the standard AFDC administration.

The Reagan administration declared that one of the four central objectives of its reforms was to “strengthen family responsibility as the basic element in our society.” Instead of offering wage supplements to install male earners as heads of households as Nixon’s Family Assistance Plan proposed, the Reagan administration relied heavily on the criminal justice system and other punitive policies. Largely obscuring the material hardship and lack of job opportunities facing parents in urban areas, the Reagan administration construed parents’ lack of economic contribution primarily as a moral and criminal failure and relied on punitive mechanisms to induce support payments. The California Welfare Reform Act stipulated that absent parents were obligated to the county for any benefits paid to their dependents, up to the court-ordered amount of child support. In other words, as the administration’s synopsis explained succinctly: “For the first time, the absent parent becomes legally indebted to the county for any aid paid to his children.”

The state rationalized relying upon district attorneys because it assumed the parents in question to already be criminals: “non-supporting absent fathers are often unstable individuals frequently known to the district attorney through his other work.” The administration

342 Ibid., 13
344 Welfare Reform in California...Showing the Way, 41.
assumed people in this population were inherently suspect and would only respond to punitive state intervention. The administration’s report explained, “The district attorney has a far better chance at making these men ‘believers’ than any other local official, as he literally holds the key to the jail cell.”

Recognizing that prosecutors were often loath to deal with child support issues, the law included economic incentives and annual audits to entice district attorneys to devote more of their scarce resources to what were previously low priorities.

In order to facilitate any future child-support collection efforts, the law also mandated that from this point forward every birth certificate identify the child’s putative father with his Social Security number. Coercing identification of the father not only endangered women facing domestic violence, but bound poor women and children more tightly to fathers, husbands, and the state at a time when women were seeking economic and legal emancipation. Taken together, these punitive features interlocked to position mothers and children as liabilities for their children’s biological parent, abrogating the state’s financial responsibility without diminishing government authority and control.

Where the FAP approached recipients as rational economic actors who would respond to economic incentives, architects of the Reagan plan assumed recipients were lazy and had to be coerced into the labor market. To do so, the reforms employed work requirements that mandated employment through threat of penalty and sanction. Any able-bodied recipient with school age children and adequate daycare was required to accept whatever job was offered, or enter a training

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345 Ibid.
346 The law allowed counties to retain a significant percentage of the revenue district attorneys collected. In case financial incentives failed to motivate district attorneys, the law established annual audits of the collections programs designed to politically pressure the elected district attorneys to procure all the child support reimbursements entitled to the taxpayers.
program. If these two options were unavailable, the state became the employer of last resort and provided a job in the community. These work assignments offered no wages and recipients were compelled to work 80 hours a month in exchange for their benefits.

These work programs were not allowed under the federal legislation enabling AFDC, so Reagan officials lobbied the Nixon administration for a waiver allowing this experimental program in California. More akin to penal work programs than job training, these policies succeeded symbolically by demonstrating the state’s intent to discipline recipients. Programmatically it never really launched and Governor Jerry Brown ultimately abandoned it in 1973 as impractical and inefficient.348

In negotiations with the Nixon administration over the court order to increase benefit payments, Reagan agreed to bring California into compliance and to curtail his assault on the FAP. In return, Nixon agreed not to withdraw millions in federal welfare support and eventually granted California the waiver from federal law needed to implement the pilot work program. Nixon perceived Reagan as a political threat and potential challenger in the 1972 elections, and recognized that welfare was a powerful tool to hammer him with from the right. A Los Angeles Times article explained the president’s predicament: “On the strength of this one issue, if it is handled adroitly, Reagan could mount an impressive national political campaign. The White House is aware of this fact, which is probably why it backed down this month and agreed not to cut off $700 million in welfare funds for California.”349 By granting the waiver, Nixon may have bought himself some temporary reprieve from Reagan’s attacks, but he cleared the way for the

348 Cannon, Governor Reagan, 360.
governor to implement punitive work provisions in California. Even at the time, the Nixon
administration recognized the potential danger of allowing California to implement “successful”
reforms.\footnote{Steensland, \textit{The Failed Welfare Revolution}, 169.}

\textbf{Cracking Down on Chiselers: California’s Campaign Against Welfare Abuse}

While the workfare provisions of Reagan’s legislation forced recipients into jobs, the other prong
targeted those recipients already in the workforce. He intended his reforms to purge the rolls of
non-needy recipients that collected grants illegally or through some “loophole.” His language
consistently blurred the distinction between people with jobs who received welfare through fraud
and those who qualified legitimately. The governor committed himself to purging the program of
both categories, and suggested that both were “cheats” and “chislers,” even though many were
legally eligible for aid. In order to encourage labor force participation, the 1967 Social Security
amendments had allowed people to retain a portion of their benefits as they added earned income.
The governor charged that the way benefits were calculated under these regulations allowed
people to collect welfare who lived comfortable—even lavish—lifestyles. A \textit{Reader’s Digest}
article described the way Reagan framed the issue in his speeches:

“\textit{How many of you know you are paying welfare to a man making $16,800 a
year?}” he asked. He told of an all-too-typical welfare mother receiving $339 a
month who took a $582- a-month job. “\textit{Did she go off the rolls?}” Reagan asked.
“\textit{Not at all. Instead they reduced her grant by $29. Here is an individual making
$892 a month, a good portion tax-free, and eligible for free medical care and food
In these comments, he indignantly equated the regulations allowing recipients to add some earned income with fraud, obfuscating the multiple economic rationales for the policies.

To curtail the practice, his reform package included a series of mechanisms intended to constrict the ability of people to supplement welfare with low wages. In an era when both welfare and low-wage work failed to provide sufficient income to support a family, these changes promised to have profound implications for people’s daily lives. Through tightening and eliminating income disregards and work-expense deductions, the law reduced the amount and type of income people could receive and still be eligible for welfare.352

In addition to limiting people’s ability to legally receive aid while employed, the reform package took new steps to crack down on those illegally using welfare to supplement low wages. The alleged welfare-fraud pandemic was an overriding justification for punitive welfare reform, and Reagan’s package included a number of provisions designed to crack down on the problem. While consternation about unworthy or non-needy people receiving state benefits have been a part of state aid since its inception, the issue of welfare fraud took on a new urgency in the 1960s and 1970s. Arguably more than any other politician, Reagan recognized the issue’s potential saliency early, and captured and deployed it in ways that resonated with the public and furthered key political objectives. His particular framing of fraud powerfully influenced wider public dialogue about welfare and poverty.

352 They proposed to amend the application of the $30 and $1/3 formula established by the 1967 Social Security Amendments. Prior to reform, intake workers based their eligibility decisions on people’s income level after subtracting the allowed earnings and work expenses deductions. The Reagan Administration wanted to simply use gross income (with no deductions for childcare expenses, etc.) to determine whether someone qualified for state support. While a seemingly technical detail, using gross income instead of net income in eligibility calculations would considerably reduce the number of people eligible for benefits, disqualifying all those with relatively higher earnings but still struggling financially.
Fraud inquiries are inherently politicized, and recipients have always been subject to considerably more scrutiny in AFDC than in other programs. Yet efforts to ferret out fraud almost always stumble over the rudimentary problem of defining which behaviors technically constitute fraud. Actions interpreted as criminal theft in one instance could be construed as error or overpayment in another. Assumptions about the social position of program beneficiaries were embedded in policy, since administrators responded to the same behaviors differently depending on which population they served. California regulations directed that cases of suspected fraud in the AFDC program be referred to the district attorney to pursue criminal indictment. However, if the fraud was committed by a recipient of Old Age Assistance or Aid to the Blind, restitution was sought first by request, then civil action, and only after those failed were cases transferred to the criminal system. In practice, this meant that fraud within those programs virtually never resulted in criminal action.353

As early as 1967, Reagan authorized a panel to clear up debates about the actual extent of fraud and identify ways “to weed out welfare cheats now on California’s welfare rolls.”354 In the following years, a series of publicized studies discovered alarmingly high levels of fraud. Instead of basing estimates on the number of prosecutions, the new reports uncovered vast reservoirs of undetected fraud by carefully auditing sample sections of the caseload, searching for unreported income and other deception. A study released in 1970 found that 15.75 percent of the sample had

some evidence of fraud, mostly unreported income.\textsuperscript{355} Subsequent reports estimated still higher levels.\textsuperscript{356}

Politicians often used these reports of endemic fraud as evidence of the low moral character of many welfare recipients. More quietly, however, officials were aware that low grants and low wages made extensive fraud inevitable. In his oral history interview, Robert Carleson explained that the AFDC bureaucracy tolerated widespread misreporting of income because everyone realized that it was impossible to subsist on grants that had not increased since 1958. He explained that “the benefits were too low and people really couldn’t make it on those benefits, so the whole system was looking the other way.”\textsuperscript{357} The brute economic conditions made law enforcement officials reluctant to pursue criminal sanction since “the district attorneys weren’t going to prosecute welfare fraud and go before a judge when this person was only getting $221 and they needed more money.”\textsuperscript{358}

Despite this awareness, the Reagan administration only moderately increased benefit levels (under pressure from the federal court order) and took few other steps to address the economic factors that would logically give rise to welfare fraud. Instead, they tackled the high profile problem through a series of reforms that increasingly surveilled and criminalized the caseload. The California Welfare Reform Act required that the income declarations of aid applicants be verified through crosschecking, as opposed to accepting their reporting on faith as had been the case. The law weakened privacy protections by authorizing caseworkers to inspect income tax or

\begin{itemize}
\item \textsuperscript{355} Recipient Fraud Incidence Study, January 1970, GO19, Folder: Welfare Fraud- The Recipient Fraud Incidence Study, Reagan Gubernatorial Papers, RRPL.
\item \textsuperscript{357} Oral History of Robert Carleson, “Stemming the Welfare Tide,” p. 40.
\item \textsuperscript{358} Ibid., 41.
\end{itemize}
unemployment insurance records to verify eligibility and double check applicants’ declarations. The periodic eligibility reviews filled out by welfare recipients became formalized legal declarations, and thereby turned any false reporting into perjury.\textsuperscript{359}

The Reagan administration also leveraged the newest computer technology to integrate and synchronize records of the various bureaucracies, diminishing the chance of collecting aid in various localities or from multiple programs. The most important new anti-fraud program was called the Earnings Clearance System. It allowed the state to cross-list recipients’ declared earnings with wages reported by employers for unemployment insurance. The discovery of significant discrepancies between these amounts signaled fraudulent reporting and was among the most common type of welfare fraud. The first run of the program in late 1971 found 41 percent of the targeted sample had significant discrepancies between the wages reported by employers and recipients. Following significant publicity about the program, the second run in early 1972 found unreported income in 26 percent of the sample.\textsuperscript{360}

The Department of Social Welfare claimed that the Earnings Clearance System increased fraud investigations by 50 percent.\textsuperscript{361} To handle the new influx of cases demanding scrutiny and follow-up, officials formed new administrative units, both within the welfare bureaucracy and the district attorney’s office, which were tasked specifically with ferreting out welfare fraud. Legislation increased the penalties for fraud, making the unlawful receipt of more than $200 a

\textsuperscript{359} Synopsis of the Welfare Reform Act of 1971.
\textsuperscript{361} Ibid.
felony punishable for up ten years incarceration.\textsuperscript{362} Not surprisingly, the state’s commitment to fraud detection resulted in dramatic increases in investigations and convictions. Fraud convictions doubled between 1971 and 1972.\textsuperscript{363} Ninety percent of the fraud in 1972 consisted of recipients concealing or under-reporting income.\textsuperscript{364} In the fiscal year 1971/1972, the operations security office accepted 15,054 investigations, and received convictions or favorable judgments in 1,425 cases. By fiscal year 1973/1974, the agency initiated 47,582 investigations that resulted in 13,087 convictions or court ordered restitutions, representing more than a nine fold increase in state issued fraud penalties in only four years. That year, courts ordered AFDC recipients to repay almost $9 million to the state.\textsuperscript{365}

As I examine more closely in the Illinois case, welfare fraud became a frame through which a variety of problems were mediated, ranging from the budgetary pressures of growing AFDC caseloads to the most intimate family conflicts. Conditioned by the state’s emphasis and responsiveness to the issue, citizens used fraud as an avenue to elicit government intervention in their lives. In one example, a lawyer earning a “substantial income” wrote Reagan complaining about abuse perpetrated by those determining eligibility for welfare. He told Reagan of a father, later revealed to be himself, who inadvertently received a letter implying that his 17-year-old daughter applied for and received state medical aid. The lawyer “contacted the eligibility worker and advised her that the child was presently on a tour of Europe, paid for by her father, and that the father would and could well afford any medical attention that would be needed by his

\textsuperscript{362} \textit{Welfare Reform in California...Showing the Way}, 66.
\textsuperscript{364} \textit{Fraud Control, California and New York}, 8.
\textsuperscript{365} \textit{Ibid.}, Appendix U.
daughter. The only answer that the father received was that the file was ‘confidential.’” Unable to get information from the welfare bureaucracy, the lawyer turned to the governor: “As a father, I would like to know how one’s daughter can receive aid without the parents’ knowledge and as a taxpayer, I would appreciate some investigation as to the facts behind this application.” The man used space created by the anti-fraud campaign to demand that the state intercede on his behalf in a controversy primarily between him and his daughter. Reagan officials researched the lawyer’s complaint only to find that the daughter had received aid to secure a therapeutic abortion, which was confidential information that the state could not release.  

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Others endeavored to use the campaign to publicize the behavior of unruly family members. In one example, an engineering professor wrote a long letter detailing his concern about his ex-daughter-in-law’s parenting. While the narrative contained few actions that technically constituted welfare fraud, it recited a series of anecdotes juxtaposing the mother’s frivolous consumption with her children’s poor hygiene, dress, and nutrition. He recounted his alarm upon realizing his grandchildren were accustomed to eating their cereal with water instead of milk: “In this affluent age what would cause kids to expect water on cornflakes? The answer is found in the behavior and habits of their mother Mary Jane.” Although the state had little control over how recipients spent their stipends, the grandfather assumed that stories of Mary Jane’s disturbing consumer consumption evidenced the need for intervention in her case. In the cover letter introducing the longer narrative statement, the professor synopsized the plot:

Briefly it is the story of Mary Jane, a young mother who, for no other reason than laziness and selfishness had become a welfare moocher. All of her cash income from

welfare, plus everything she can gain by selling free food and gifts from any source is spent on her own clothes and travel. Within the past year she has spent 6 weeks in Guadalajara, a month in New York area and eastern seaboard towns, and two weeks in Hawaii...Meanwhile, her 4 and 6 year old daughters, quite unnecessarily, suffer from malnutrition and a variety of illnesses, live in filth and are growing up in a psychological and moral atmosphere which is about as low as it can get.

After a full-page diagram graphically representing the various characters, their interrelationships, and class positions, the professor detailed how the mother locked her children in an unventilated basement and ignored an ongoing kidney infection. Instead of framing such behaviors as child neglect, the professor sought remedy through the governor’s anti-fraud campaign.

He explained in his letter that stories such as these were the key to inciting public outrage and organizing political support for welfare reform. He recommended that the governor exploit these narratives in his political battles:

This leads to the suggestion that you give wide publicity to a series of case histories. The amount and variety of material is almost infinite. A good writer could present them in a manner sufficiently interesting and exciting to upstage much of what we hear and see in the media. Presented as true stories in frequent newspaper columns, broadcasts and/or news conferences these would surely result in reactions as violent and sincere as the reactions to Mary Jane’s stories have been. I am confident that there would follow a wave of public protest strong enough to overwhelm your legislative opponents.367

Interestingly, the professor quite accurately prophesied the role individual anecdotal narratives played in rationalizing punitive reforms and welfare program retrenchment.

The spectacle of purging ineligible recipients from the rolls did little to redeem the image of AFDC. On the contrary, continual reports of fraud convictions and investigations only further stigmatized the programs and its beneficiaries. Public suspicion was only confirmed through the

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hundreds and hundreds of articles uncovering people living shamelessly in luxury at the public expense. Strengthening the links between welfare and the criminal justice system, both symbolically and programmatically, hardened public antagonism and created greater symbolic distance between recipients and normative families.

Although the archival collections of citizen correspondence with Reagan remain unavailable to researchers, evidence suggests that the news reports chronicling fraud ignited fierce public support and indignation. A form letter response to citizens’ letters about fraud indicates there was heavy volume of mail on the topic, which probably encouraged Reagan to continue emphasizing the issue. It also acknowledged the critical role the media played in amplifying Reagan’s message. The stock response assured constituents that Reagan and most other taxpayers shared their outrage

We receive hundreds of letters daily from overburdened taxpayers citing news accounts of welfare fraud—accounts which have been investigated and verified, not merely rumored. We have a responsibility to restore a balance between the legitimate interests of our taxpaying citizens and those of the genuinely dependent welfare recipient.

Amid the ongoing public spectacle of welfare fraud exposés and prosecutions, Reagan positioned himself as the agent who restored equilibrium to a social system favoring the poor and people of color over “taxpaying citizens.”

The Aftermath of California’s Welfare Reforms


The programmatic effects of California’s Welfare Reform Act are difficult to definitely establish. The Reagan administration claimed that its program caused dramatic reductions in caseloads and pruned the rolls of the high-income recipients, while increasing support to the most destitute. While the number of recipients reached 2.29 million, the caseloads began a precipitous drop in 1971. By 1974, they had decreased 15 percent to 1.94 million.\textsuperscript{370} In an era when most officials would have been delighted to simply slow the rate of growth, caseload decreases were big news.

There were many, however, who disputed Reagan’s claims of success and attributed the decreases to general economic improvement, lower unemployment, smaller family sizes, and the leveling off that was inevitable once most eligible families were enrolled in AFDC. In the long run, the reforms did little to control costs, and welfare expenditures more than doubled in the decade following the enactment of the California Welfare Reform Act.\textsuperscript{371} Economists Frank Levy attempted to quantify the effects of the reforms while accounting for economic trends. He concluded that California’s welfare-reform program probably had little impact on cost and only should be credited for six percent of the much vaunted caseload decline.\textsuperscript{372}

This is not to suggest that Reagan’s reforms were irrelevant or inconsequential. While marginally increasing benefits to families with no additional income, they dramatically diminished the support that had previously been available to poor families with outside earnings. One poverty lawyer characterized the reforms as a “very perverse, Marxian redistribution of income amongst the poor” that reduced the benefits of the top third of welfare recipients to increase

\textsuperscript{370} Oral History David Swoap, p. 39.  
\textsuperscript{371} Burbank, 287-288. Some of the cost increases are attributable to the high inflation during the 1970s.  
\textsuperscript{372} Cannon, \textit{Governor Reagan}, 361; and Burbank, “Governor Reagan and California Welfare Reform, 288.
payments to the bottom third.\textsuperscript{373} The thousands of fraud investigations entailed unprecedented interventions and scrutiny into many recipients’ lives, and even more dramatic consequences for those indicted, convicted, or forced to pay restitution to the state.

Although debates continue about the programmatic effects of California’s reforms, the political implications were indisputably profound and clear-cut. Reagan’s welfare program steered national welfare policy away from guaranteed income proposals and toward an alternative, more punitive, and more restrictive path. They propelled Ronald Reagan further into the national limelight, and helped establish the terms of the national welfare debate for decades to come. They were instrumental in establishing what has become common sense about poverty, work, parenting, and the state’s capacity to meaningfully intervene in society.

In the short term, Reagan’s programmatic accomplishments through the California Welfare Reform Act positioned him as the Republicans’ innovator in welfare policy, displacing and discrediting the Nixon administration’s approach to the problem. Through its much vaunted, inflated claims to success, Reagan’s program proved (to Republicans especially) that there was an alternative, efficient path out of the “welfare mess” that did not include a massive expansion of state entitlement programs. By the time the Nixon administration introduced a revised version of the Family Assistance Plan to Congress in 1971, commentators viewed California’s welfare reforms as the principal competing vision. Nixon sold the FAP as a way out of the current crisis, and did not emphasize the unique attributes of his approach or the merits of creating a guaranteed income floor for all Americans. Reagan’s “success” in California made the FAP seem like an

unnecessary risk. Lou Cannon, Reagan’s principal biographer who covered him for years in the
capital press corps, explained, “The Family Assistance Plan had been on life support since
Reagan first opposed it. The CWRA [California Welfare Reform Act] drove the final nails in the
coffin.”

In “California-style welfare reform,” there was a consonance between Reagan’s rhetoric and
his policies that combined to make a winning political formula. While there was a tension
between the FAP’s programmatic design and the language employed to sell it, Reagan’s reforms
contained features designed to address the various negative stereotypes of welfare recipients. As
eyear as 1971, commentators noted how the absence of punitive mechanisms compromised the
Nixon plan and opened him to political assault from Reagan. A Los Angeles Times article
explained that

FAP, even the revised version, is basically a guaranteed minimum income plan that
would double welfare rolls, but which is sold as a scheme to somehow save money
and promote the virtues of work. Nobody really buys that argument, and that is
why FAP is in trouble; every congressman sees it as an affront to that abiding
Calvinism which is the American religion: work or go hungry; make it big and go to
heaven.

It is the popular acceptance of that belief, and an accompanying contempt of
the poor, that makes Reagan’s outright challenge to the Nixon Administration such a
powerful political movement just now.

Daniel Moynihan explained that fears of Reagan attacking the FAP loomed over President
Nixon’s daily morning meetings: “The Right, in the person of Reagan, had come within breathing
distance of the Republican nomination in 1968. The question had to be asked whether the

374 Lou Cannon, Governor Reagan, 361.
375 D. J. R. Bruckner, "Reagan is Faring Well With Hot Political Issue Provided by Poor."
president, who had barely held his conservative support in 1968, would not lose it in 1972.”

These were not the unfounded fears of a paranoid president. There was evidence that Reagan’s political efficacy, especially regarding welfare, had people wondering if he was not uniquely suited for the presidency. The American Conservative Union newsletter reported that conservatives were questioning their endorsement of Nixon: “For the first time political observers have noticed a private, though not yet public, willingness on the part of Southern GOP leaders to admit they may have been mistaken in backing Nixon over Gov. Ronald Reagan in 1968.”

In 1972, the U.S. Senate Finance Committee voted to sever the FAP from the welfare bill, H.R. 1, and not a single Republican voted to support Nixon’s plan. The president, with diminishing enthusiasm for his signature domestic policy proposal, abandoned any effort to reintroduce or amend his program. In October, H.R. 1 passed Congress with no guaranteed income plan. The legislation did include, however, a series of provisions designed to press recipients into work. Senator Long designed the provisions with guidance from Robert Carleson, California’s welfare director who now advised the powerful chair of the Senate Finance Committee.

As the news media amplified and reinforced the governor’s claims of success, the Reagan reforms also became models for other states. One critic of the governor explained that the media helped position California’s reforms as a national model by failing to scrutinize Reagan’s rhetoric.

I think they [other states’ officials] substantially believe the Reagan rhetoric about it [California’s reforms]. I think they believe it brought about reductions in the caseload. I think this reflects a serious limitation of the press—theyir inability to

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376 Moynihan, The Politics of a Guaranteed Income, 375
377 Ibid.
stay on top of a story. Their interest in welfare in California waned because it was kind of a boring, confusing story. There are a number of reporters who didn’t believe what Reagan was claiming, but nobody took the time (to check it out).379

In 1973, Nixon affirmed California’s position in the vanguard of welfare policy by appointing Carleson as U.S. welfare commissioner and special assistant for welfare to the Secretary of Health, Education, and Welfare.380 From this post, Carleson worked to encourage other states to adopt California’s approach to welfare.

Carleson and other conservatives in the Nixon administration became increasingly influential as the administration approached its notorious demise. This conservative drift reflected base political calculations, and not necessarily the dictates of an increasingly reactionary public. As the Watergate controversy escalated, Nixon catered to conservatives in Congress because their support represented his best chance to avoid impeachment proceedings. Commentators recognized that these dynamics served to entrench Reagan loyalists in Washington. Lou Cannon prophetically reported at the time that “it now seems likely that Reagan appointees and Reagan programs will outlast President Nixon.”381

When he did eventually win the presidency, Reagan brought his blueprint for welfare reform to the White House. He took many off guard by how quickly and effectively his administration attacked the welfare system. As historian Edward Berkowitz explained, “The

379 Jack Thomas, “Reforming Welfare in the Reagan Style”
381 Lou Cannon, “Reaganism on the Potomac.”
administration moved so quickly on welfare because it had over a decade of preparation. It hit the beach running, but running on a course set a decade before.”

California’s welfare reforms cast a long shadow that extended even beyond Reagan’s presidency. The seminal 1996 welfare reform law that abolished AFDC is widely understood, especially in conservative circles, to be the culmination of the project begun in California in 1971. Bob Carleson remained a powerful force throughout the decades, and he was instrumental in drafting and passing the legislation that finally abolished the federal entitlement to welfare support.

Beyond their long-term policy effects, the reforms staked out a tough stance toward welfare that further marginalized recipients. They entrenched a logic that obscured the influence of market forces and interpreted poverty as the result of individual, cultural, and racial pathology. Other politicians, anxious to upstage Reagan or at least keep pace, rushed to match his rhetoric and replicate his policies. Nelson Rockefeller, who had preempted Reagan with his drug policy, hurriedly ratcheted up his attacks on the welfare program and welfare cheats. An article in the *Sacramento Bee* chronicled the competition between the two presidential hopefuls and speculating on who would appear tougher: “In New York this year that are saying Rockefeller, with his anti-narcotic program, has out-Reaganed Reagan on the law and order issue. Rockefeller also mimicked Reagan on the welfare fraud issue.”

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383 Carleson, *Government Is the Problem*. See especially the opening quotes from various conservative leaders testifying to the long-term impact of California’s reforms and Carleson specifically.
Welfare reform became “the cornerstone” of Reagan’s political legacy as governor of California. Although innumerable contingent factors aligned to cause the reforms to exert such a powerful force on U.S. political culture, Reagan skillfully deployed punitive politics to navigate political challenges and rationalize his vision for government. He trumpeted his success throughout the following decade to evidence his capacity for grappling with the nation’s tough social problems. Years later, Robert Moretti, Reagan’s adversary in the initial 1971 negotiations, discussed the political consequences of the law: “That was the basis on which, I think, he became president or certainly one of the main factors, because he continually pointed to, and still points to, welfare reform in California.” Throughout his future campaigns, Reagan continually recounted (in an arguably dramatized version) his exploits disciplining the excessive, permissive welfare system of California. During his 1976 speaking tour, he juxtaposed his success with stories of Linda Taylor’s extravagant abuse. Through these public pronouncements and the surrounding politics, the collection of racial stereotypes intertwined with mounting preoccupation with welfare costs and fraud to coalesce into the caricature of the “welfare queen.”

Creating Criminals: Illinois State Anti-Fraud Initiatives

Although Reagan co-opted the welfare queen story, the scandal surrounding Linda Taylor originally emerged from the local politics of Illinois. In the mid 1970s, bad publicity, federal

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385 Cannon, Governor Reagan, 360
Where California’s welfare reforms were driven by the governor’s office, the main impetus for reform in Illinois was a powerful bipartisan committee of state legislators called the Legislative Advisory Committee to Public Aid (LAC). This committee was charged with advising and assisting the agency that actually administered the welfare program, the Illinois Department of Public Aid (IDPA). Led for most of this period by Republican State Senator Don Moore (R., Midlothian) and emboldened by the high profile fraud case of Linda Taylor, the Legislative Advisory Committee became singularly committed to reducing welfare rolls through stringent eligibility reviews. Although Republicans enjoyed significant support from Democratic lawmakers, they strategically championed the anti-fraud cause throughout much of the 1970s in their struggle to regain control of the General Assembly.

The following section uses Illinois’ state anti-fraud campaign to explore how the themes that coalesced in California translated in the politics of other states. This research also explores the ways that citizens—both the targets and the fervent supporters of the anti-fraud initiative—understood and influenced politicians’ anti-fraud efforts. Illinois is an apt case study because it was both a forerunner and a model for the anti-fraud efforts that accelerated across the nation throughout the decade. Despite the fervency and high-profile nature of its anti-fraud initiatives, the Illinois case was not an aberration and can provide insight into the larger national phenomenon. Illinois’ exponential growth in fraud arrests and investigations during the 1970s corresponded roughly with national trends.

Illinois welfare rolls surged between 1967 and 1973. Controversy regarding incompetent management had circled around the Department of Public Aid since the late 1960s and the state’s high error rates put Illinois in danger of sanction by the federal government. Often indistinguishable from bureaucratic bungling and the results of chronic understaffing, mistakes in cash grant amounts were handled administratively prior to 1973. Fraud by recipients was rarely prosecuted since it was extremely difficult to prove criminal intent. When an overpayment was detected, the state simply readjusted the grant amount or dropped the recipient from the rolls.

In 1974, the Chicago Tribune began covering the bizarre case of Linda Taylor. Although Chicago journalists dubbed Taylor the “welfare queen,” high-ticket welfare fraud was hardly Taylor’s only legal transgression. The Chicago Tribune recounted tales of Taylor’s alleged robberies, bigamy, and kidnapping and told how she had collected fees as a “voodoo doctor” and tried to claim the inheritance of a policy runner who had died with $700,000 in his home.

Despite these diverse charges against Taylor, welfare fraud remained her defining feature and the press always referred to her as the welfare queen.

Connecting queens to popular images of welfare recipients symbolically transmitted multiple messages with derogatory racial, gender, and class subtexts. Surrounded by

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392 For writings about the implications of the welfare queen in later periods, see the important discussions in Roberts, Killing the Black Body; Wahneema Lubiano, “Black Ladies, Welfare Queens, and State Minstrels: Ideological War
extravagant luxuries and services, queens are assumed to perform neither caregiving work nor waged labor. Linking these images to welfare recipients discredited poor women’s voices and insinuated that their claims of material hardship were disingenuous and malicious. By evoking socially unsettling images of politically powerful women, the phrase welfare queen also had racial connotations. It implicitly referenced popular beliefs, associated most frequently with the Moynihan Report, which attributed the “pathology of the Black family” to its alleged matriarchal structure. Since it could instantly convey multiple stereotypes, it should not be surprising that the moniker welfare queen quickly gained such currency.

State legislators used the Taylor case to evidence the need for a comprehensive crackdown on welfare abuse. The welfare administration, IDPA, responded to political pressure by initiating a series of bureaucratic efforts to identify ineligible recipients. In February of 1975, it instituted a “redetermination program,” which called for caseworkers to visit the home of each welfare recipient three times a year; it resulted in the cancellation of more than 40,000 cases in the first two rounds. To find people who were illegally working, state officials used newly developed computer technology to cross list the names of people receiving welfare with lists of state employees or recipients of unemployment insurance. Despite the worsening economic climate, bureaucrats strived for “caseload stabilization,” which meant stopping and even reversing the caseload increases. Through these programs, IDPA dropped people from the program faster than


Report to the Legislative Advisory Committee by James Trainor, Director of the Department of Public Aid, March 17, 1976, Legislative Advisory Committee, Administrative Files, 616.002, Illinois State Archives, 8.
new eligible cases were added, and caseloads stabilized in 1974 for the first time in more than three years. The caseload even decreased for a few months that year despite the recession.\footnote{\textit{Annual Report: Illinois Department of Public Aid, 1974}, 32. See, also, graphs on pages 10 and 11.}

Still frustrated by the alleged lack of cooperation by the IPDA, LAC initiated numerous efforts to coerce collaboration through threat, public humiliation, and enticement. Legislators worked closely with the media to publicize stories about the inefficient welfare bureaucracy and the behavior it tolerated.\footnote{Neal Caauwe, Fred Pennix, Gerald Kush, and Jack Sherwin, Progress report by investigative unit of the Legislative Advisory Committee, November 14 and 19, 1974, Legislative Advisory Committee, Administrative Files, 616.003, Illinois State Archives, 6.} Although IDPA already employed fraud investigators, the LAC hired its own staff of off-duty police officers to track down ineligible welfare recipients.\footnote{Gardiner and Lyman, \textit{The Fraud Control Game}, 155.} In practice, this meant identifying the two behaviors that most frequently constituted fraud: failing to report additional earned income or an extra wage earner (usually a husband or a boyfriend) living with the family.

The LAC also established an anonymous, 24-hour-a-day hotline that people could call to report suspected fraud. LAC investigators circulated memos to police stations that implored officers to include welfare fraud in the crimes they watched for during patrols.\footnote{Caauwe et al., Progress report by investigative unit of the Legislative Advisory Committee, 1.} After researching cases, LAC staff would hand over the files to welfare caseworkers for termination or readjustment of the cash grants. If there was sufficient evidence, they would send the cases to the state’s attorney’s office for criminal prosecution. The members of the committee staff would
then proceed to badger the reluctant and understaffed state’s attorney’s offices and local law enforcement into prosecuting the cases.398

The LAC also sponsored legislation that was designed to entice prosecutors to prosecute welfare fraud more enthusiastically. Concerned that low penalties discouraged prosecution, legislators crafted a bill that allowed welfare fraud to be tried as a felony instead of a misdemeanor. Other legislation allowed the state’s attorney offices to keep 25 percent of the money recovered from welfare recipients after successful prosecutions. Chairman Moore explained, “This incentive plan should help ‘sweeten the pot’ and inspire our prosecutors to even greater heights.”399 In 1977, the state’s attorney office established a separate division dedicated entirely to prosecuting welfare fraud.400

To eliminate theft and prevent recipients from falsely reporting missing and stolen welfare checks, Public Aid started mailing all grants directly to banks and currency exchanges, instead of peoples’ homes.401 Recipients had to report in person to collect their checks and were required to present three forms of identification and sign a receipt in order to match signatures.402 Although this program was expanded to the entire state in 1977, it was tested in Chicago starting in 1975. Intensive scrutiny of all welfare recipients illustrated the extent to which these policies were directed at a stigmatized group of people, not specific criminals within a group of respected

398 In numerous letters, investigators and other committee staff demanded progress reports on leads from LAC. The committee also called representatives from the State’s Attorney’s office before the committee to testify as to why they were not more effective at convicting welfare cheaters. See, for example, Testimony of Mr. Gross before the Legislative Advisory Committee on Public Aid, March 22, 1977, Legislative Advisory Committee, Committee Meeting Minutes, 616.001, Illinois State Archives, 89-123.


400 Gardiner and Lyman, The Fraud Control Game, 163.

401 Ibid., 161,188.

402 Report to the Legislative Advisory Committee by James Trainor, Director of the Department of Public Aid, March 17, 1976, Legislative Advisory Committee, Meeting Minutes Summaries, 616.002, Illinois State Archives, 7.
citizens. Both the language used and the location of the pilot programs revealed a particular concern about urban, usually Black, welfare recipients.

Efforts to start fingerprinting the entire caseload were perhaps the most dramatic evidence that officials saw all recipients as suspect. Although fingerprinting ostensibly served the administrative purpose of preventing recipients from collecting grants under multiple aliases, it also clearly reinforced an already stigmatized position by linking the recipients to explicit images of criminality.\textsuperscript{403} Despite its obvious parallel to processing criminals, the plan received considerable support.\textsuperscript{404}

By the time that prosecutors were finally able to convict and sentence Linda Taylor to three to six years in prison, media attention and public outrage had shifted from her individual story to the hundreds of fraud cases that the state’s campaign had unearthed.\textsuperscript{405} In October of 1978, the \textit{Chicago Tribune} remarked on how the pervasiveness of welfare fraud made Taylor’s case seem less remarkable and instead simply representative of a larger pattern.

Once the focus of national outrage, the flamboyant and mysterious Chicago woman has relinquished her throne to hundreds of others who have developed equally outrageous schemes to bilk the welfare system of millions of dollars each year.\textsuperscript{406}

Although the idea of the welfare queen never lost its link to fraud and criminality, its original connection to Linda Taylor and high-ticket welfare fraud receded as welfare queens multiplied before the public gaze.

\textsuperscript{404} “Way to Curb Aid Abuse; Judge Backs Welfare Fingerprinting,” \textit{Chicago Tribune}, April 24, 1979, p. 3; and Robert Carleson, Commissioner of Welfare, Department of Health, Education and Welfare to Don Moore, Chairman of Legislative Advisory Committee, October 29, 1974, Legislative Advisory Committee, Meeting Minutes Summaries, 616.002, Illinois State Archives.
\textsuperscript{406} Jane Fritsch, “Welfare Queen Becomes Case Study,” p. 42.
Over the course of the decade, Illinois devoted increased resources to investigating fraud. In 1979, agencies initiated 5,833 investigations and referred almost 2,000 cases to law enforcement for prosecution. This represented a 479 percent increase over the number of cases initiated in 1971 and a 1015 percent increase in the number of cases referred to law enforcement. Although practices varied among states, this remarkable growth in fraud investigations was paralleled at the national level. Between 1970 and 1979, there was a 729 percent increase in the number of fraud cases initiated nationwide.407

Initiatives sponsored by the LAC enjoyed wide support within the Illinois General Assembly. For example, the bill to raise penalties for welfare fraud sailed through the Democratic-controlled House of Representatives 124 to 26.408 The main critics of these policies were African American legislators and community leaders from Chicago. For example, Senator Richard Newhouse (D-Chicago) spoke out in the community and in the Senate. At a public meeting in 1977, he explained:

“Welfare cheaters” has become the new code word for the poor, for minorities in general and those temporarily down on their luck. Here in Illinois, we presently have three separate agencies seeking out “welfare cheaters” at goodness knows what cost to the taxpayer.409

407 Disposition of Public Assistance Cases Involving Questions of Fraud, (U.S. Department of Health, Education, and Welfare, National Center for Social Statistics, 1972, 1973, 1974, 1975, 1976, and 1979). These numbers reflect those cases suspected of deliberate and, therefore, possibly criminal fraud. They do not reflect the number of people whose grants were adjusted and cancelled through other routine aspects of the anti-fraud initiatives, such as the redetermination and data matching programs discussed above. It is extremely difficult to access the number of recipients directly materially affected by the campaigns. For example, many people probably removed themselves from the rolls to avoid scrutiny or sanction after hearing about the new policies. Those cases would obviously not be reflected in the official numbers.

408 Transcripts of Illinois House Debates, November 11, 1977, 10.

409 “Leaders Meet on Poor,” Chicago Defender, November 26, 1977, p. 3.
In 1978, Senator Newhouse issued a press release condemning the state for “squandering more than $3 million peeking under the beds of welfare recipients.” He also challenged the much-publicized idea that the anti-fraud efforts resulted in savings for the state. “Then—with appropriate fanfare—the state proudly proclaimed that it had recovered the magnificent sum of $1 million as the result of its $3 million effort.” He insisted that anti-fraud efforts were racially charged initiatives designed to stigmatize the poor, especially from Black urban neighborhoods.

Jesse Jackson called the fraud investigators “welfare bloodhounds” and pointed out that the state made no similar effort to track down the $100 million of uncollected income taxes. Because the dominant discourse about fraud erased recipients’ poverty and rendered their perspectives suspect, these critical voices were unable to significantly intervene in the public discourse about welfare fraud.

Although Illinois was not monolithically behind efforts to crack down on welfare fraud, only a few legislators wasted political capital on impeding anti-fraud initiatives directed against socially stigmatized poor parents. In fact, bureaucratic inertia was probably legislators’ biggest adversary in their efforts to politicize the fraud issue and shrink the welfare program. To implement their policies, the LAC had to pressure two reluctant, overburdened agencies into expending their limited resources on criminalizing actions that had previously been handled administratively. This transformation could not happen overnight and required considerable political and bureaucratic mobilization. As the LAC’s chief investigator acknowledged in a front-

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411 Ibid.
“We’re trying to convince people that welfare fraud is a crime just as bank robbery and homicide.” Despite these struggles, legislators had powerful allies in their campaign: a large percentage of the public and the media. The more people heard about welfare fraud, the more infuriated they became; many even embraced the opportunity to join in the campaign themselves.

**Cadillacs, Turtles, and Revenge: Community Participation in Identifying Fraud**

Most of the public became informed about the state’s anti-fraud efforts through the media. Although some media, such as the African-American newspaper the *Chicago Defender*, published articles critical of the campaign, most mainstream papers tacitly assisted the investigations. Members of the LAC worked closely with journalist George Bliss from the *Chicago Tribune* in his multiple exposes about Linda Taylor and the resistance of IDPA to initiate further investigations. Investigators’ reports acknowledged his help in generating public pressure on welfare administrators. The LAC clearly saw the *Tribune* as a partner in their efforts, as illustrated by a letter to the *Tribune* editor that concluded: “We certainly appreciate the support of the *Chicago Tribune* in our ongoing investigations.”

In addition to echoing the indignant and alarmed tone of state legislators, newspapers publicized the state’s hotline for reporting welfare cheaters. They frequently included the phone number in stories about the LAC’s efforts and occasionally even designated separate space in

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414 Caauwe et al., Progress report by investigative unit of the Legislative Advisory Committee, 2.

415 Joel Edelman, Executive Director of LAC, to Clayton Kirkpatrick, Editor of the *Chicago Tribune*, February 17, 1976, Legislative Advisory Committee, Administrative Files, 616.003, Illinois State Archives.
their articles to promote the state’s hotline. Set apart from the article with lines or a box, the announcements were essentially advertisements for the hotline and a clear endorsement of the state’s campaign. A 1976 article that ran in the *Markham Star Tribune* assured readers that there was no risk in reporting fraud and that all tips would be taken seriously. “All calls will be confidential and callers are not required to identify themselves. All reports will be checked.”

The *Chicago Tribune* also aided the campaigns by publishing the lists of names of those charged with welfare fraud. When the state’s attorney started returning indictments in groups of 50 or 75, the paper would run all the names, along with addresses and places of illegal employment, at the end of the article in smaller print. This public shaming of welfare recipients broadcasted the LAC’s message more powerfully than simply repeating legislators’ allegations or speeches. Reading about actual indictments played a key role in convincing the public that the welfare program wasted their tax dollars on financially secure, manipulative criminals.

People responded to this news of rampant welfare fraud in various ways. Some angry citizens answered the articles by writing letters to their paper’s editorial page. One man demanded that judges who handed down light sentences for welfare fraud be removed from their jobs immediately, and asked, “Aren’t such judicial decisions tantamount to aiding and abetting

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criminal acts?^{419} Another woman, furious about the waste of “our money,” wanted to be a part of the effort to hunt down welfare cheaters.

I could think of a hundred people, including myself, who are tired of seeing our money wasted, and would love the opportunity to volunteer for a part in the investigations, without a penny for it. Just for the satisfaction of doing something! But that’s the trouble with the system, they’ll never let the people become involved.^{420}

It seems that these sentiments were not aberrations. As the anti-fraud investigations produced more and more convictions, the public became increasingly invested in identifying and punishing “cheaters.” Concern seemed to intensify throughout the decade as people became convinced that fraud was endemic to the entire program. One legislator wrote to encourage the LAC to expand their work after reviewing a poll from his district that revealed 96 percent of his constituents thought “too many people on welfare are receiving benefits to which they are not entitled.”^{421} In 1978, a poll of 800 Illinois voters showed that 84 percent ranked controlling welfare and Medicaid fraud and abuses their highest legislative priority, polling above controlling crime and government costs generally.^{422}

Despite their similar economic and social positions, many living among recipients shared these anti-fraud sentiments. In the fiscal year of 1977, the state’s fraud hotline received 10,047 calls, with the numbers mounting each month.^{423} Between 1977 and 1980, it received more than

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^{421} Rep. Thomas Miller to Don Moore, February 10, 1976, Legislative Advisory Committee, Correspondence Files, 616.004, Illinois State Archives. The poll was taken in December, 1975-January 1976 in Illinois’ 10th legislative district (which included South Holland, Dolton, Harvey, Lansing, Riverdale and Thornton.)
Since the tippers reported specific instances of welfare fraud, these numbers suggest extensive involvement by people who frequently interacted with or lived near welfare recipients.

Although the intake records for the hotline are not available, it is possible to piece together anecdotal evidence about why people participated in this campaign. Tippers rarely had a clear understanding of what technically constituted fraud and instead turned in the more traditional targets of state sanction, such as morally stigmatized unmarried mothers. Many tips were inspired by a sense of frustration and injustice about a cheater who seemed to be getting ahead unfairly. The tippers expressed anger that others were getting financial support that they had not “earned.” These complaints echoed the state’s assumption that work did not include unpaid domestic labor or raising children. Tippers directed their complaints at objects of personal frustration and were remarkably unsuccessful at identifying criminal behavior. The almost 32,000 tips resulted in the adjustment or cancellation of 3,400 grants, making the informers effective in finding fraud only about 10 percent of the time.\textsuperscript{425}

Tippers were most frequently alerted to fraud by seeing material possessions denoting status. These complaints reflected the assumption that welfare recipients should not have access to consumer goods. Recent historical work has argued that the ability to acquire consumer goods had become increasingly understood as a right of citizenship. In her book, \textit{Consumer’s Republic}, Lizabeth Cohen argued that citizenship and consumerism became hopelessly intertwined in American society in the prosperous decades after World War II. A new material abundance was

\textsuperscript{424} Gardiner and Lyman, \textit{The Fraud Control Game}, 155.  
\textsuperscript{425} \textit{Ibid.}, 155.
omnipresent in political rhetoric and corporate advertising but the poor, especially people of color, were largely excluded from the fruits of the post-war consumer boom.\textsuperscript{426}

In her work on the National Welfare Rights Organization (NWRO), Felicia Kornbluh illustrated the importance of this new consumerism for welfare-rights activism.\textsuperscript{427} She showed that recipients demanded sufficient resources to support their families in dignity, which implied access to consumer goods. Kornbluh explained,

One key way that welfare recipients understood and expressed themselves as rights-bearing citizens was as consumers in an affluent society. NWRO members criticized both the private marketplace and the welfare system for failing to allow welfare recipients to participate fully in the post-World War II consumer economy.\textsuperscript{428}

Like other women in the United States, welfare recipients insisted that they were entitled to consumer goods, such as perfume or a decent dining room table. These activists articulated a different claim to rights and dignity, one based on their positions as mothers and citizens, which did not depend on participation in wage work. By claiming entitlement to material comforts by virtue of their citizenship, recipients directly challenged dominant ideas about the social and material value of domestic and care giving labor while also collapsing the category of consumer and citizen.

In contrast with the high-profile activism of the NWRO, many people were offended when welfare recipients possessed consumer goods. Tippers who notified the state about fraud assumed that nice or new possessions were sufficient evidence to establish the guilt of the


\textsuperscript{427} Kornbluh, “To Fulfill their ‘Rightly Needs’: Consumerism and the National Welfare Rights Movement.”

\textsuperscript{428} \textit{Ibid.}, 79.
recipient. In one typed, anonymous letter sent to a state senator, the author reported that the family next door had a house full of children and that the parents floated between welfare and wage work. Offended by the family’s unimpeded access to various commodities, the author explained, “They made the comment that whatever they want they will go buy…They go to town every week and spend between $40 and $50 for new clothes and foolishness. They buy turtles, guinea pigs, white mice and a lot of toys that are broken up in one day.”429 The crime, in this writer’s mind, was illustrated by the existence of frivolous toys and pets. Although there was no explicit fraud stated in the letter, the investigators followed up on this tip and found that the family had not received aid for more than a year.430

Although not stated explicitly, it seemed that the tipper could not afford such luxuries for his or her own family and found the comparison with his or her neighbors disturbing. The author wrote, “These people are living high on the hog and sitting home doing nothing and we have to get out and work to support them.”431 Tippers assumed that their neighbors were not contributors to the state organs that funded welfare programs. This rhetoric created a dichotomy between “taxpayers,” which served as a proxy for full citizen, and welfare recipients, who were inaccurately presented as not contributing to the polity and therefore, having no claim to the benefits of citizenship.

The use of “we” suggests that both parents in the tipper’s family were forced to work for wages. As the economy struggled throughout the 1970s and women continued to move into the


formal workplace, fewer and fewer families could rely solely on one breadwinner’s wages. Therefore, assumptions about a “family wage,” on which welfare policy was originally built, were increasingly inapplicable to the lives of poor and working-class families. Their inability to earn enough to keep a member of their own family at home probably contributed to resentment toward welfare.

Other examples suggest that tippers may have felt that welfare gave their neighbors unfair advantages, especially when used to subsidize low-wage work. Chief Investigator Tom Coughlin explained to reporters that the best informants were “the outraged, average community taxpayer.” He explained, “One man called here and started chastising me…He accused me of not doing my job because the man across the street was on aid, working, and driving a new car.” In this case, the new car, a symbol of status and consumerism, angered the neighbor and inspired him to inform the authorities. The investigator explained that there was nothing he could do unless the tipper could name the place of employment. An hour later, the tipper called the investigator back to report that he had looked through his neighbor’s window with binoculars and, upon seeing his work shirt, found out he was employed at Sears.432 The press and law enforcement usually would have condemned spying on people as a violation of privacy but in this discourse, welfare recipients had entered a semi-criminal category where surveillance was encouraged.

One man wrote a letter to LAC Chairman Moore to remind him that food stamp fraud was also a problem. Although he had no specific person to report, he simply wanted to alert the authorities that there were a lot of people using food stamps and some of their actions made him

432 “1,000 Cheats a Month,” Chicago Defender, December 17, 1977, p. 1.
suspicious. “What makes this so noticeable is that some of these people using food stamps are often dressed in fine clothing and purchasing items considered for expensive taste. Need I say more?” The concluding question revealed that the author assumed a common understanding about the limits of recipients’ rights to nonessential or frivolous commodities. According to this logic, people surrendered their cherished American rights of consumer choice once they started receiving food stamps. Simultaneously, it became any citizen’s right to monitor, judge and report recipients’ decisions. By excluding welfare and food stamp recipients from this consumer society, tippers were also reinforcing the image of recipients as a separate and degraded category of second-class citizen.

The campaign against fraud also caused people who were bothered by deviant social behavior to feel that the state might intervene to discipline their neighbors. Another anonymous letter, written in 1974, testified to the power of the media’s representations of welfare queens. “In wake of recent newspaper stories concerning welfare cheaters, I would like for you to investigate another ‘unfortunate’ person who is collecting food stamps and welfare checks while riding around in a white late model Cadillac.” Again, this tipper named no act that technically constituted welfare fraud. Instead, the welfare recipient’s guilt was established by her access to status symbols and her sexual impropriety. The letter detailed the woman’s use of her parents’ Cadillac, her lack of attention to her child, and her “marathon sexual activities.” It concluded, “As a concerned citizen of this area, I think you should investigate this woman’s daily activities

433 John K. to Don Moore, June 24, 1974, Legislative Advisory Committee, Administrative Files, 616.003, Illinois State Archives.
435 Ibid.
(and nightly ones as well). This tipper seemed more interested in convincing the state to regulate the recipient’s sexual behavior than addressing her use of the welfare program. By highlighting her inappropriate connection to a key symbol of post-War prosperity, the Cadillac, the complaint interlaced traditional assumptions with more contemporary concerns. It connected the older rhetoric that considered normative sexual behavior a condition for receiving aid with the more modern anxiety regarding poor women’s inclusion in the consumerist society.

Revenge and personal disputes also motivated people to report their acquaintances for welfare fraud. Although it is difficult to establish what percentage of the tips were thus inspired, it is not surprising that this would occur. The state promised to investigate all leads and did not require any proof or documentation from the anonymous tippers. Even welfare officials occasionally acknowledged that the calls were not always civically motivated. As one Public Aid employee explained, “We get a lot of grudge calls from people upset with their neighbors, and we have a couple of callers who just give us doses of music, but we’re obligated to check all calls if they give us the necessary information.”

A few specific examples illustrate this phenomenon. In one case, it was clearly a woman’s estranged husband who informed authorities she was working while receiving welfare. He even went on a stakeout with LAC investigators to help identify her. In another example, a couple testified against their downstairs neighbor who had not reported to Public Aid that her husband

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436 Ibid.
438 Daniel Egler, “Welfare Fraud ‘Hotline’ Pays Off for Taxpayers.”
resided with the family. The defendant attempted to have her neighbors’ testimony thrown out on the grounds that they had frequently fought and were biased against her. It also turned out that the witnesses were themselves under investigation for welfare fraud and were possibly hoping for leniency if they cooperated with their neighbor’s prosecution. Although the files do not clearly establish what happened, it seems that the parties involved reported each other and were certainly using the state to settle personal scores.

These examples suggest that people became involved in the fraud campaign for reasons that deviated from the state’s motivations. Not aware of the specifics of welfare policy, neighbors watched recipients for signs of social and cultural transgressions. They duly noted evidence of sexual impropriety, even though the state could no longer legally deny benefits using this criterion. Many of these tippers were probably struggling financially—only one accident, lost job, or pregnancy away from welfare themselves. The staggering unemployment and inflation throughout the period undoubtedly exacerbated these frustrations. Since neighbors were notoriously ineffective at identifying actual welfare fraud, the hotline’s main success seems to have been providing an outlet for dissatisfaction about constricting economic opportunities. By helping find “cheaters,” citizens were able to harness the state’s power to address concerns in their personal lives. Their participation, however, further legitimized the state’s campaign and added another technique for monitoring poor families. This street-level surveillance enabled

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440 *People of the State of Illinois vs. Bobbie Baugh*, 80-1456, (Appellate Court of Illinois 1st District, 4th Division, 28 May 1981). Although most of the events regarding this case occurred around 1977, it did not reach the appellate level until 1981.
citizens to intervene in the *performance* of recipients’ stigmatized position; it barred recipients from subverting that position through acquiring consumer goods connoting status.\(^{441}\)

**“The Crime of Survival”: Welfare Recipients and Fraud Prosecutions**

The LAC legislators were probably correct when they charged that welfare fraud was rampant in Illinois in the 1970s. A high percentage of recipients probably committed fraud as the state defined it; there is little other explanation for how they managed to survive on the checks from Public Aid.\(^{442}\) The final section of this study investigates how recipients used fraud to survive on paltry cash grants and how they reacted to the state’s anti-fraud initiatives.

Welfare recipients were personally, racially and socially diverse. However, they supposedly all shared two conditions: poverty and parenthood. They probably also shared an awareness that it was incredibly difficult, if not almost impossible, to support a family on a welfare grant.\(^ {443}\) In 1974, the welfare grant for a family of four was approximately $288 per month, plus $65 in food stamps. Based on 1972 prices, this was 35 percent below the lowest floor set by the federal government for a four-person family.\(^{444}\) Even after adding wage work, many families still lived below the federal poverty line.\(^ {445}\) This difficulty was exacerbated by the failure of the already low grants to keep pace with the era’s rampant inflation. The national

\(^{441}\) Nasaden argues that welfare activists advocated for credit cards in order to replace these outward signs of poverty. Premilla Nadasen, *Welfare Warriors*, 114.
\(^{442}\) See Kathryn Edin, “There’s a Lot of Month Left at the End of the Money: How Welfare Recipients in Chicago Make Ends Meet” (Ph.D. diss., Northwestern University, 1989).
\(^{443}\) Neubeck and Cazenave, *Welfare Racism*, 100.
\(^{444}\) Lee Strobel, “Coalition of 40 Groups Backs 10 Percent Aid Payment Hikes,” *Chicago Tribune*, June 11, 1974, p. 3.
\(^{445}\) For one example, see Mae Gentry, “Man Indicted for Fraud Blames Welfare System,” *Chicago Defender*, October 14, 1978.
recession, which started in 1973, added to the economic insecurity of poor families. Unemployment rose to 8.3 percent by 1975 and real weekly earnings fell 0.4 percent annually during the 1970s.\footnote{Lizabeth Cohen, 
\textit{A Consumer's Republic}, 389.}

The state’s indictments illustrate that many of the cases that became defined as fraud were attempts to supplement welfare grants with additional income from low-wage work or living with another wage earner. Herbert Saul was a typical case. He was sentenced to two years probation and $13,024 in restitution for working at a furniture store while also receiving welfare. He explained his crime to a journalist concisely, “I have a wife and three kids and I’m loaded with medical bills. That is all I can say.”\footnote{William Juneau, “Aid Cheat ordered to Pay Back $13,024,” \textit{Chicago Tribune}, June 28, 1974, p. 1.} Although recipients were depicted as lazy, the main crime constituting welfare fraud was \textit{working}, holding a job on top of raising children. Similarly, although publicly viewed as promiscuous single mothers, Public Aid most often sanctioned women for living with their husbands or longtime partners after claiming to be single, deserted, or separated.

Investigators’ files also illuminated the techniques parents used to make ends meet while on welfare. Many recipients chose not to notify welfare administrators when they got new jobs in order to avoid having their cases reassessed and grants reduced. Although many people held low-wage jobs with formal employers, one woman’s grant was reduced because she failed to report babysitting income.\footnote{Welfare fraud report on Anna B., March 10, 1977, Legislative Advisory Committee, Administrative Files, 616.003, Illinois State Archives.} Some worked under different names, usually maiden names, or used fake social security numbers to avoid detection by Public Aid. Other recipients reported checks
missing and cashed both the original and the duplicate. One woman paid her nephew’s friend $40 to rob her on the way home from cashing her welfare checks. After she reported the money stolen, the fake robber returned the original money. In one particularly bizarre case, investigators struggled to ascertain who had been cashing the checks of a man murdered months before.

It is impossible to ascertain the true extent of fraud without access to extensive interviews or surveys where recipients felt safe enough to tell the truth about their behavior. Surveys conducted during the 1970s in Seattle and Denver showed that 50 percent of recipients admitted to “cheating” in order to get by financially. In an interview with the Chicago Tribune, an ex-fraud investigator for IDPA estimated that 25 to 50 percent of welfare recipients committed some degree of fraud. She explained that, “the extent of the fraud varies. Some of it is rather minor, some of it is huge. But people are forced into committing fraud because of the silly rules of the system.”

Many of the less extreme techniques mentioned above must have been relatively well known, and recipients shared information about how to supplement grants without being detected. One woman told a reporter how she was terrified to find out that people were suddenly being jailed for working while on welfare.

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451 Edin, “There’s a Lot of Month Left at the End of the Money,” 253. Edin suggests that the percentage might have been even higher since many respondents were probably not convinced of the survey’s confidentiality.
“I had a good job,” she said, “but then I got laid off. I had a baby and so I got on welfare. But then I got my job back and everyone told me to just stay on welfare and not tell them that I was working again. So I did. Everyone was doing it… But now what am I going to do? Go to jail?”

She and other welfare recipients had come to believe that this behavior was not risky or could not be detected.

The woman went on to explain how the extra income from fraud impacted her family. “I moved from my apartment with roaches to a decent apartment. I could go to the store and load up the basket instead of buying hamburger and chicken necks. I could send my baby to Catholic school.” In this case, she felt fraud was the only way to raise her family’s standard of living to what would be considered comparable to an average American family.

Other recipients also felt that the state’s anti-fraud campaign blocked one of their few available avenues for economic advancement. When one woman was arrested for working while receiving welfare, the investigator reported that “she felt she was getting arrested for trying to upgrade herself, and she thought this was just terrible.” She then informed the men that when she got out of jail, she intended to kill herself and her two children.

Some committed fraud out of what they considered dire financial need. The Chicago Defender carried a story about Shelley Miller, father of three, who was indicted for illegally collecting aid while he was employed as a community service worker for the Chicago Department of Human Services. In the article, he admitted to lying about this income but refused to plead guilty because he held the system responsible for his situation.

454 Ibid.
455 Welfare fraud report on Beverly B.
Prior to applying for this assistance two years ago, my family was nearly starving. I couldn’t buy clothes for my wife or shoes for my kids... The money we were receiving from Public Aid we weren’t stealing from the poor, because we are the poor. And if you add that $261 a month to my income of $5,000 a year, I still was below the poverty line.456

The article explained that Miller was an upstanding and active member of the community who was recognized by both Mayor Richard J. Daley and Alderman Vito Marzullo for his work with West Side youth. Because of the pride in his commitment and connection to his community, Miller explained to the reporter that he almost cried when asked to resign from his job.

I grew up on the West Side. I’ve worked in the community with the youth and I’ve never been involved in crime. But if I’m convicted and put on probation, then it will be three strikes against me. I’m black, I don’t have a college education and I’ll have a criminal conviction on my record.457

The indictment would cripple his ability to support his family, who were already struggling to get by.

The state’s crackdown probably had equally severe implications for other families. The lives that were most disrupted were those families where a parent was sent to jail or became a felon. Recipients endeavored to mitigate the consequences through various strategies, such as legal challenges or fair hearings. Miller, for example, collected more than 120 signatures in a petition to support his not-guilty plea. In addition to the families convicted criminally, thousands more had their grants reduced or eliminated through new stringent administration. The deployment of new technologies that matched the welfare rolls with employee lists forced many to choose between welfare or wage work, neither of which provided sufficient income

457 Ibid.
Anti-fraud efforts contributed to the increased surveillance of poor urban neighborhoods. Recipients’ homes were inspected more frequently and they were forced to comply with continual bureaucratic examinations of their personal and financial decisions. This heightened presence of state officials intertwined with the increased policing that followed the massive social and political upheavals of the late 1960s and 1970s and contributed to the growing criminalization of inner-city space.

Many of the strategies implemented to prevent fraud had far-reaching, negative consequences for poor communities generally. For example, Mary Cowherd, a resident of Chicago’s Robert Taylor Homes, testified before a legislative committee about the consequences of the decision to send all welfare checks to currency exchanges instead of people’s homes. She explained that on the day that the checks arrive “it looks just like a bread line…it’s like a concentration [camp] line…Then you go to the currency exchange and they charge you 5 or 6 dollars to cash a check. And then…you get ripped off outside of the place.” Since the whole community could see who had just cashed their check, the state’s anti-theft initiative turned recipients into “sitting ducks” and increased robberies. The punitive policy was therefore both demoralizing and counterproductive. It also forced all recipients to perform in a degrading theater that constructed them as a distinct, suspect segment of society.

This formal monitoring by various state agencies was intensified by the knowledge that neighbors, acquaintances and ex-lovers had the power to report recipients to Public Aid. Welfare-rights activist and recipient Kathi Gunlogson explained:

458 Testimony of Mary Cowherd before Sub-Committee on Emergency Assistance on LAC, November 29, 1976, Legislative Advisory Committee, Administrative Files, 616.003, Illinois State Archives, 66.
I really feel like when someone applies for Public Aid, they are giving up a great majority of their constitutional rights. And one of those things is privacy. If somebody down the block from you sees somebody moving in a new table, which they may have given you, and you never had one before, they can go and call Public Aid and tell them that you are going against the laws. And Public Aid [does] not have to tell me who that person is that informed on me. But they can decide to cut my grant.\textsuperscript{459}

Reminiscent of previous examples, Gunlogson’s anecdote illustrated that recipients also understood that consumer goods triggered fraud complaints. In becoming a welfare recipient, Gunlogson felt that she had forfeited her right to privacy and the right to face a hostile accuser. She argued that these conditions amounted to stripping welfare recipients of the intertwined rights of citizenship and participation in the consumer economy.

In testimony before members of the state legislature, Frank Smith articulated a similar sense that welfare policy deliberately degraded recipients. He explained,

\begin{quote}
I think that the Department [IDPA] is geared to cause people to commit crimes…[T]hey treat us as if we are less than human beings…You know, but I have personally went out and committed a crime, a crime I call survival. And a lot of guys that’s sitting down there in Menard [Prison] right now committed that crime of survival because they were unable to take care of their families. And it’s mainly because of the Department of Public Aid not taking them at heart [sic] once they come to you and have no other place to go.\textsuperscript{460}
\end{quote}

Smith felt financial options were so constrained that poor people could not survive without breaking the state’s rules. His language united welfare policy and criminal law into a single, undifferentiated oppressive structure. Indeed, he saw his survival within these structures as essentially and inevitably a criminal act. Shelley Miller, the recipient profiled in the \textit{Chicago}

\textsuperscript{459} Verbatim testimony of Kathi Gunlogson, February 2, 1979, Commission to Rewrite the Public Aid Code, Meeting Minutes and Transcripts, 557.003, Illinois State Archives, 122.

\textsuperscript{460} Testimony of Frank Smith before Sub-Committee on Emergency Assistance, November 29, 1976, Legislative Advisory Committee, Administrative Files, 616.003, Illinois State Archives, 26-28.
Defender, echoed these sentiments when he explained that welfare forced people to “live worse than animals.” He claimed that the structure of the welfare program made crime inevitable: “they force people who are unemployed and on welfare to go out there and commit crimes because they don’t provide enough on their welfare budget to coincide with the cost of living today.”

Although opinions about the welfare program undoubtedly varied among recipients, it should not be surprising that a percentage of them considered the entire program a dehumanizing effort to criminalize the poor, especially people of color.

Examining recipients’ perspectives on fraud highlights the immense gap between legislators’ rhetoric and the material conditions of poor families. The architects of Illinois anti-fraud initiatives were not in conversation with welfare recipients nor with statistics about falling wages and rising prices. Their policies were designed to discipline the welfare queen: a deviant woman burdened by neither work nor family. They almost never acknowledged brutal poverty in Illinois or that the welfare grant kept families living below the federal poverty level. They did not discuss racism and the devastating levels of unemployment in central cities. Their language and policies reflected the assumption that only wage labor constituted “work.” In this rhetoric, work and welfare were diametrically opposed. The caregiving labor that welfare was originally designed to remunerate was rendered invisible and irrelevant.

The campaigns of Illinois and California also restricted welfare recipients’ ability to use low-wage and informal work to subsidize the unmanageably low welfare stipends. They

\[461\] Gentry, “Man Indicted for Fraud Blames Welfare System.”

\[462\] For example, in 1974, even after a 10 percent cost of living increase, the cash grant totaled $3,804 a year for a family of four. The poverty threshold, according to the federal government, was $5,038. It should also be noted that the federal poverty thresholds are frequently critiqued for underestimating the actual costs of living, especially in metropolitan areas. Annual Report: Illinois Department of Public Aid, 1974, 27; and “Historical Poverty Tables-Poverty by Definition of Income,” U.S. Census Bureau, http://www.census.gov/hhes/poverty/histpov/rdp01a.html.
constricted the amount of financial support available to poor parents at a time of narrowing economic opportunities, especially for communities of color in northern urban centers. Juxtaposing elites’ rhetoric and the experience of people on welfare illuminates the human costs of the welfare queen trope once its logic was translated into state policy. It reveals that legislators’ political responses were the product of specific cultural, racial, and economic assumptions that were divorced from the material realities and perspectives of most recipients. Instead of new financial supports or other drastic social intervention, legislators responded to welfare fraud through costly punishment: increased scrutiny, stigmatization, and criminalization.

The political spectacle of tough work requirements and fraud prosecutions solidified a salient, maligned social category against which productive workers and taxpayers were defined. By portraying welfare recipients as the antithesis of full citizens, elites used the degraded image of welfare recipients to buoy the social and cultural (but emphatically not the economic) position of low-wage work. The focus on crime, laziness, sexual impropriety, and fraud obscured—if not completely expunged—the material conditions of struggling families from the public dialogue.

In 1976, California state lawmakers from across the ideological spectrum joined together to abolish the central pillar of half a century of penal practice: the indeterminate sentence. An equally diverse and unlikely collection of interest groups supported their work. Prisoners, law enforcement professionals, prosecutors, leftist radicals, and “law-and-order” activists all joined in their rejection of the indeterminate sentence and its underlying rationale, the “rehabilitative ideal.” Under this long-reigning philosophy of penology, the stated purpose of incarceration had been to cure deviance, rehabilitate offenders, and reintegrate them back into the polity. Ever since the Progressive Era, prisons’ purported function was primarily to reform criminals, not to avenge their crimes, and sentencing policy had reflected this rehabilitative mission. Instead of a fixed prison term set upon conviction, the judge handed down a sentence range—an indeterminate sentence. Parole boards actually controlled the duration of incarceration, periodically evaluating prisoners and setting a release date once a prisoner was deemed sufficiently reformed. When longstanding critiques of the state’s efforts to rehabilitate criminals escalated in the 1970s, support for indeterminate sentencing evaporated almost completely, which lead lawmakers to replace it with determinate, or fixed, sentencing.

With the old rationale for penal custody largely discredited and abandoned, lawmakers faced the more contentious task of constructing a new justification for incarceration. This process

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inspired fervent disagreements over prisons’ core function, who should control them, and ultimately, whose interests they should serve. People of all political persuasions used this critical juncture to advance their unique visions for the penal system and reinvigorate the public’s beleaguered faith in the state’s legitimacy and competency. Proposals from the left reflected aspirations to build a more democratic society that expanded the rights, opportunities, and participation of marginalized groups, while finding alternatives to coercive institutional practices. More radical voices called for fundamentally reorganizing society to alleviate the structural inequalities that caused crime and led certain groups, especially within communities of color, to be constructed as criminal. Politicians on the right forwarded policies that moved in the opposite direction, entrenching the boundaries between normative and criminal citizens and narrowing the populations that the state was committed to serve, cultivate, and protect. “Law-and-order” proponents pressed for “tough,” punitive new approaches that positioned law enforcement and militaristic (as opposed to welfarist) strategies as the best antidote to rising crime and disorder.

The implications of struggles over sentencing stretched much beyond criminal policy. Through these debates, society renegotiated the state’s basic responsibilities to its law-abiding and criminal citizens. The debates also provided a forum from which people staged their resistance to the liberation struggles of African Americans and other mobilized groups. Ultimately, therefore, resolving these policy struggles was part of answering larger questions about who should be held responsible for social problems; whom the state ultimately served; and who merited full rights and responsibilities in society.

This study chronicles the fall of the indeterminate sentence and the rapid—but highly contested—rise of a new, punitive sentencing regime. Although this story primarily unfolded in
the California legislature, it also engages relevant developments and discourse within the media, popular culture, and prisons. Primarily, I trace how discrediting the rehabilitative ideal eventually led to the ascendency of mandatory sentencing regimes, the phenomenal growth in carceral institutions, and a particular notion of appropriate state functions and character. In-depth research of these struggles reveals that far from being inevitable, the rise of punitive criminal policy was the product of unique conditions, contingent developments, and the strategic and discursive postures taken by participants with varying degrees of agency. Embedding the legislation in its cultural, social, and political matrix illustrates its larger relevance, and enables a more nuanced, textured understanding of what drove events.

Prisoners and their representatives played a central role in destroying the indeterminate sentence and the therapeutic rationale for incarceration, which they felt was at the heart of the hypocrisy and oppression of penal practice. Although not always audible to those outside prison walls, inmates were actively engaged in political deliberations about the institutions that governed them. In the early 1970s, inmates appeared to be on the verge of gaining more voice, responsibilities, and authority within prisons and criminal policy. They testified on the conditions they endured, compiled and issued reports on their grievances, and almost secured the right to organize union-like structures within the prison. They helped sculpt the arguments that discredited the indeterminate sentence and convinced legislators of the hollow promise of rehabilitation. Prisoners hoped that abolishing indeterminancy would help reduce their stigmatization and enhance access to full citizenship and economic opportunity. However, just as they seemed to be making headway, the political terrain shifted dramatically. Fear of crime escalated, law-and-order politics triumphed, and prisoners quickly lost their foothold in public discourse. Instead of further integration, lawmakers enacted more punitive policy that fortified
the rhetorical, physical, and legal isolation of convicts from civil society.

Contrary to the popular assumptions about this phenomenon, the drive for punitive criminal policy was not simply a Republican or even conservative project. During the 1970s, prisoner rights activists accepted punishment as a legitimate function of incarceration, arguing that it was better to acknowledge the system’s true function than sustain the legitimacy bestowed by the phony emphasis on rehabilitation. More important, however, were the many Democratic politicians whose “get-tough” proposals helped position punitive strategies as the common-sense response to crime and disorder. Although they ultimately reaped fewer political rewards than Republicans, Democrats were instrumental in “stiffening” criminal penalties and entrenching a punitive logic. At the heart of this dynamic was a near-compulsive political imperative to appear “tough” on crime and embrace policies that advanced a macho and muscular vision of state authority. In both parties, police and prosecutors became popular political candidates because few challenged their masculine authority and resoluteness. Politicians feared being characterized as “soft” or unmanly on crime, even where there was little evidence that “tough” approaches were effective. Results, efficiency, and productive use of tax resources were secondary concerns. The reform and reintegration of offenders was periodically and inconsistently pursued. And by the end of the 1970s, the idea that criminal policy should account for or address “root causes” of crime had almost completely disappeared from public discourse, and was inevitably branded as “soft” and permissive when it did appear.

Racial antagonism drove punitive trends in criminal policy, and this research illustrates the manner in which various groups, especially law enforcement, harnessed it. This case study, however, will not recapitulate the racializing and “otherizing” processes that anchor the drug-law study. The purpose here is to complement this analysis by focusing on how prisoners, moderate
politicians, and gendered renderings of the state intersected with these dynamics and influenced events. As evidenced throughout the case study, this emphasis does not diminish the central role of racialized fear and antagonism. Nor does it suggest that prisoners and other activists were hoodwinked or bungled into inadvertently enabling the punitive ascendency. In fact, I reject the overly mechanistic notion that leftist activists’ strategic miscalculations or increasing radicalism triggered their opponents’ rise.\textsuperscript{464} Refocusing on the political and intellectual landscape that historical actors navigated helps reveal why they embraced particular choices and how the various contingent forces conspired to produce the particular politics and policies that manifested in California.

This study is divided into two sections. The first half examines the social, political, legal, and programmatic factors that led to the widespread repudiation of the rehabilitative ideal. It briefly reviews the origins of the indeterminate sentence in the early 1900s before exploring how the policy actually operated in California during the 1960s and early 1970s. It then investigates the movements and intellectual dialogue concerning the role of prisoners and prisons in society and concludes by illustrating how historical developments affected specific debates about criminal policy, particularly inmates’ critiques of the indeterminate sentence.

The second section reviews the actual legislative developments, focusing on the law that first abolished indeterminate sentencing and legislators’ subsequent attempts to “fix” problems in the original law. It chronicles how the original coalition that favored reform fell apart and “law-and-order” advocates came to monopolize the issue, forwarding escalating punishments and increasingly silencing

\textsuperscript{464} Much scholarship about the 1960s and the rise of the right characterized the later activism, such as the Black Power movement, as being too extreme, alienating mainstream America, and therefore inspiring a backlash and conservative ascendency. See Todd Gitlin, \textit{The Sixties: Years of Hope, Days of Rage} (New York: Bantam Books, 1987); Edsall and Edsall, \textit{Chain Reaction}. Although she does not indict them for complicity, Marie Gottschalk emphasizes the role of activists on the left in inadvertently abetting the development of the carceral state. See, Marie Gottschalk, \textit{The Prison and the Gallows: The Politics of Mass Incarceration in America}. 
prisoners. The final section discusses the ways these political events helped determine that punitive toughness would become the dominant, essential attribute of criminal policy.

**The Long History of Therapeutic Incarceration and the Repudiation of California’s Indeterminate Sentence**

The indeterminate sentence was a key Progressive reform born out of distaste for penal practices that were established during the Jacksonian era. Those Jacksonian-era strategies were themselves the result of “civilizing reform” to the habits of punishment of the colonial period. In the early days of the republic, Americans, influenced by European enlightenment philosophers such as Cesare Beccaria, began to question the effectiveness and morality of corporeal punishments, such as public pillory, flogging, and executions. Reformers insisted that these practices were not only inhumane but also ineffective in controlling crime or inspiring respect for government authority. States began instead to confine offenders in carceral institutions, which had previously been reserved for debtors and those awaiting trial or corporeal punishment.465

Beginning in the 1820s, new generations of reformers, often Quakers, advanced the notion that punishment should discipline and reform the deviant’s mind, not merely hurting, scarring, or killing the body. Believing that new social mobility and instability caused criminality, these reformers designed prisons to offer the solitude, silence, discipline, work routine, and moral guidance thought to be lacking in society. Reformers hoped that isolating offenders from corrupting influences would enable their eventual reintegration, while prisons, in turn, could provide a positive model to society. In practice, however, these new institutions became violent,  

coercive, and corrupt, often marked more by torture and idleness than penance and rehabilitation.

It is therefore not surprising that Progressive-era reformers scrutinized the prison and its unfulfilled promise. These activists, overwhelmingly white middle-class reformers concerned about the social consequences of rapid industrialization, urbanization, and mass immigration, fundamentally revamped penal practices while maintaining earlier reformers’ faith in prisons’ capacity to rehabilitate offenders. Abandoning the earlier hope that an ideal prison routine would cure all deviance, they insisted that each prisoner’s treatment must reflect the individual’s unique background and circumstances. In alliance with prison officials, Progressives rebuilt the institution, largely abandoning the lockstep shuffle, enforced silence, and the infamous striped uniform. They allowed more freedoms, such as visitation and correspondence. They instituted sentencing reforms that reflected their emphasis on individual casework. Progressives argued that the fixed sentence length, set by judges at an offender’s trial, was merely retributive and did not account for a person’s unique past and progress within the institution. In its place, they implemented the indeterminate sentence, where judges—under the legislature’s general guidance—issued a sentence range determined by the crime committed and the person’s circumstances. The power to actually release inmates, however, was transferred to newly created parole boards. These boards monitored the inmate’s progress and decided when the convict was reformed and ready to reenter society. For those people best treated in their communities, states instituted a system of probation, which released offenders directly after conviction and supervised them in their communities to ensure good behavior and compliance with the court’s specific terms.

Such reforms were often grounded in a medical analogy for crime. The criminal offender was characterized as ill, demanding the expert care of trained specialists. Just as a doctor could not predict when a patient would fully recover, reformers argued that experts needed to monitor
criminals individually to evaluate when they were sufficiently rehabilitated. The massive transfer of discretionary power to unaccountable parole boards and probation workers did not disturb Progressive reformers, who trusted in the benevolence of the state and specialist expertise. In fact, many argued that only the state had the capacity and responsibility to reconcile the antagonistic interests in society, cure the various forms of social deviance, and integrate the maximum number of people into mainstream, middle-class norms. These reforms entrusted the state with immense power and discretion on the faith it had the capacity to transform marginalized and deviant characters into productive, contributing, tax-paying citizens. Unlike the later generations of activists, who targeted the penal system during the 1960s and 1970s, Progressives did not call for the revolutionary remaking of society, especially the economic and racial order, to reduce crime. Although many believed criminality often grew out of poverty, they saw no need for radical economic restructuring, merely the profound and concerted intervention by a well-meaning state.

Appearing first in the 1870s, states quickly embraced the new policy and by 1922, 37 states had adopted some form of indeterminate sentencing and 44 had instituted parole boards. By 1923, half of all people held in state prisons were serving indeterminate sentences. This swift transition cannot be explained by the moral suasion of idealistic reformers alone. A majority of criminal justice officials found something convenient or profitable in the transition to greater indeterminacy. District attorneys found probation and sentence ranges strengthened their hand during plea bargaining. Through indeterminate sentences, prison wardens gained an invaluable

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468 Rothman, *Conscience and Convenience*, 44.
leverage over inmates, since they held the power to extend an individual’s sentence almost indefinitely. Less reliant on physical discipline, prisons also gained new social legitimacy by replacing corporal punishment and their custodial mission with curative, rehabilitative institutional purpose. Politicians appeared humane in their approach to crime while simultaneously deflecting public outrage about crimes committed by released offenders onto parole boards that did not have to answer to the public in elections.\textsuperscript{469}

Despite the advantages to the various institutional actors, indeterminate sentencing failed to deliver on its lofty promise. From the outset, rehabilitation remained a largely elusive goal. Recidivism rates stayed high and therapeutic programs were usually lacking in quality and availability. Likewise, probation was poorly implemented, with inconsistent supervision and little treatment.\textsuperscript{470} Although it is difficult to isolate the exact effect of the indeterminate sentence over time and various state administrations, it probably increased the average time people served in prison.\textsuperscript{471} Prisoners also deeply resented being subjected to the arbitrary power of parole boards and guards.\textsuperscript{472} Nowhere was the promise of rehabilitation more hollow than in the penal systems of Southern states. The legacy of slavery, a demand for cheap labor, and a violent commitment to maintaining white supremacy combined to produce convict-leasing systems across the South that barely even paid lip service to the new rehabilitative trends.\textsuperscript{473} Even outside these Southern penal systems, racial disparities saturated the implementation of the indeterminate sentence.

\textsuperscript{469} Ibid., 72-80.
\textsuperscript{470} Ibid., 82-116.
\textsuperscript{471} Ibid., 194.
\textsuperscript{472} Ibid., 80.
For decades, a commitment to rehabilitation and corrections was the central ideological column that supported the criminal justice system. In application, these programs were sustained by their usefulness to politicians and prison authorities and less by their ability to fulfill their promise. When a series of factors undermined faith in the state and the political utility of the indeterminate sentence in the 1970s, the coalition that had sustained and defended the indeterminate sentence quickly dissolved.

**Life Under Indeterminate Sentencing: California’s Prisons Before Sentencing Reforms**

California had the exemplar state correctional system and its rehabilitative programs and indeterminate sentence were considered national models.474 Established in 1917, the state’s indeterminate sentencing system granted almost complete discretion over male prisoners’ sentences to the Adult Authority, California’s parole agency. Female prisoners were monitored by the separate, but parallel, Women’s Board of Terms and Parole. Judges sentenced convicted offenders to “the term proscribed by law,” which was usually a broad sentence such as one year to life. After serving a percentage of their minimum term, prisoners appeared before the parole board, usually every year, to be considered for release. The Adult Authority consisted of nine members appointed by the governor for four-year terms. The authority broke into teams of three (or two) to conduct approximately 25 hearings a day, customarily lasting between seven and 20 minutes each. One member would interview the prisoner about his activities in prison, his attitude toward his crime and imprisonment, and anything else that might appear of interest in the file. The other board members were often silent because they were reading the file of the next

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case, where they would lead the interview.475

Adult Authority members based their decisions on their interview and the inmate’s central file. The file could hold comments and reports from judges, district attorneys, psychiatrists, and prison guards. The prisoners had no representation or access to the information in their files that weighed so heavily in the hearings’ outcomes. Guards and other correctional staff did not write formal recommendations for parole boards, but they recorded any disciplinary infractions, complaints, and hearsay they deemed relevant. Prisoners frequently complained about the power of “silent beefs,” the negative reports in their files from unknown sources. Since there were no strict codes designating what evidence was admissible, prisoners claimed that information was used against them that had never been proven in court. Take, for example, the story of an 18 year-old sentenced to five years to life for an armed robbery in which no one was injured. His file contained a letter from the district attorney accusing the young man of a vicious double homicide. Even though the district attorney was unable to prove the case after three jury trials, the prisoner believed the Adult Authority held the charges against him in parole hearings, causing them to hold him in prison for 15 years—eight years longer than the average time served for a convicted first-degree murder and fourteen years longer than the average for a first-offense robbery.476 Inmates also claimed that they were penalized for conducting legally protected acts, especially activism within the prison or pursuing legal appeals regarding their individual cases or prison conditions. Even associating with known “writ writers” could compromise one’s chances of parole.

476 Jessica Mitford, Kind and Usual Punishment: the Prison Business (New York: Vintage Books, 1974), 101. Clearly told from the perspective of the prisoner, there is no way to corroborate Mitford’s interpretation of the board’s motivation since Adult Authority members did not justify their rationale for denying parole.
There were no transcripts and few formal records of the hearings, and parole boards were not compelled to explain their verdicts. Prisoners were informed of the Adult Authority’s decision a few days later and there was no option of appeal. If the board was not inclined to divulge its logic, prisoners could never be sure of the real grounds for their decisions. In some instances, examiners might suggest that an individual would be well-served by further vocational education, addiction treatment, or religious instruction. However, since inmates appeared before different examiners each year, there was no guarantee that the suggestions offered would further prospects for parole from the next year’s panel. This led to an atmosphere of paranoia and tension within institutions, since inmates would spend hours analyzing board members’ questions and rulings, trying to find patterns in their decisions or clues to how the board would rule in their own cases.

Not surprisingly, therefore, the principal complaint against the parole boards was that they exercised their considerable authority arbitrarily. There was inconsistency between the time served within criminal categories. For example, two people imprisoned at the same time and same place for the same crime could be released years apart. Sordid anecdotes of murderers getting paroled before burglars spread quickly in prison yards and caused significant hostility and unrest. Although unpredictable in individual cases, trends in Adult Authority’s decisions did reliably reflect general societal prejudice and panics. There were well-documented racial and gender disparities in time served. Although slightly more difficult to isolate statistically, there was little doubt that people of color fared worse before parole boards. Women, whose hearings were conducted by the separate women’s parole board, unquestionably served less time than men for similar crimes. As originally conceived, the indeterminate sentence’s ability to adjust to an

individual’s unique circumstances was its most innovative, promising feature. In practice, the policy’s uneven application and apparent arbitrariness undermined its claims to deliver justice.

The rehabilitative emphasis was not consistently integrated into penal practice and clashed with other policies. Perhaps most inconsistent with the rhetorical emphasis on reincorporating prisoners into society was the practice of considering inmates in a legal status of “civil death.” This extended beyond denial of civil rights during imprisonment to the critical period of reentry and re-assimilation during parole supervision. The document issued to parolees explicitly announced their limited civil rights. “Your Civil Rights have been suspended by law,” it explained. “You may not marry, engage in business, nor sign certain contracts unless your Parole Agent recommends, and the Adult Authority approves, restoring such Civil Rights to you.”

Although employment rights were restored—such as access to disability compensation, unemployment insurance, and social security—parolees were required to disclose their criminal records to potential employers. Inmates claimed this all but ensured that the most critical path to social reintegration—a job—was barred to them. Until 1974, California law denied people who had served time in state prisons the ultimate symbol of civic belonging—the vote—for life, even after they had served their time and were removed from parole. After 1974, prisoners were still prohibited from voting while incarcerated and on parole.

Prisoners and Social Movements

In addition to being home to the most robust prison treatment programs in the nation, California

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was also the site of the most active and radical prisoners’ rights organizing during the 1960s and early 1970s. Through concerted organizing, prisoners struggled to position themselves as social agents and critics with a legitimate voice in public discourse. In the process, they challenged the state’s therapeutic role and fundamental tenets of liberalism. Experiencing the indeterminate sentence and the institution of civic death as part of a single, oppressive system, prisoners attacked them both. They also challenged prisoners’ symbolic role in society, the limitations of their rights, and social assumptions about the responsibility for crime and deviance.

From its earliest incarnations, this movement was intimately intertwined with social movements in the world outside of the prison. It was enabled by the legal challenges from imprisoned World War II resisters and the Nation of Islam during the 1950s and early 1960s, whose efforts opened up prisons to increased public scrutiny and reformed penal operation, especially regarding racial segregation and religious observation.\textsuperscript{480} Outside movements became more sympathetic as arrests during protests and civil disobedience brought new groups into contact with the penal system and highlighted the role of the law in defending what many came to consider a brutal and unjust status quo.

In the 1960s, demographic shifts in the inmate population and political changes ushered in an era of increasing revolt and instability within institutions. Large numbers of inmates joined independent study groups, educating themselves about their ethnic and racial heritage and reading critical political writings. Tension mounted as Black prisoners, influenced by the Nation of Islam and the growing Civil Rights Movement, resisted the racism in prison administration and among white prisoners. As convicts became more politicized and organized, many turned toward more structural and class-based critiques of prisons and their role in society. Riots

\textsuperscript{480} Gottschalk, \textit{The Prison and the Gallows}, 171-175.
mushroomed over the following decade, with five nationally in 1967, 27 in 1970, 37 in 1971, and 48 in 1972. Although some of these uprisings were attributed to racial tension between inmates, most were sparked by prison conditions.

Following a 1967 riot between ethnic and racial groups at San Quentin prison, prison activists called for inmates to de-emphasize their divisions and identify as an oppressed collective that had a common enemy in the prison administration. The fact that treatment staff—such as librarians, counselors, and teachers—took up weapons to help guards regain control of the prison further strained prisoners’ faith in rehabilitative programs. More and more, inmates interpreted the rehabilitative mission as hollow verbiage papering over the reality of brute, punitive custody. In late 1967, a San Quentin underground newspaper, The Outlaw, publicized a list of grievances shared by inmates, paramount among them being the Adult Authority; it called for prisoners to put aside racial divisions and participate in a general strike beginning on February 15, 1968. The nonviolent “Convict Unity Holiday” lasted a week and, at times, shut down 75 percent of the prison. Outside of San Quentin’s gates, between 400 and 500 supporters rallied in support of the striking prisoners, entertained by bands such as the Grateful Dead.

The developing affinity between prisoners, Black Power groups, and San Francisco Bay area New Left activists brought unprecedented attention to the conditions and social significance of incarceration. Activists called into question the fundamental legitimacy of the prison, positioning prisoners not as individual deviants but as members of an oppressed class—often considered political prisoners—whom the state targeted because they resisted subjugation. Activists challenged dominant notions of criminality, arguing that survival within a capitalist

482 Cummins, The Rise and Fall of California’s Radical Prison Movement, 90-91.
483 Ibid., 116-118.
system forced many to commit acts defined as crime. Flipping the conventional script, these voices positioned the convict as a new breed of outlaw hero and argued that the true criminals were the elites perpetuating a violent and unjust exploitative system. One of the most influential examples of this trend was Eldridge Cleaver, a former San Quentin inmate and Nation of Islam minister who eventually become a powerful and charismatic leader of the Black Panther Party. Cleaver’s hugely influential 1968 book, *Soul on Ice*, rejected the notion that crimes were caused by individual pathology demanding therapeutic treatment. Instead, crimes could be considered insurrectionary acts, or at least desperate attempts by subjugated people to lash out at their oppressors.484 Many in California’s New Left looked to radical inmates as potential movement leaders and prisons as a central battleground in their struggle against the American state.485

While many radical prison activists called for open insurrection against the state, more moderate elements pushed for limited legal reforms through courts and the legislature. Among the most critical changes was the legislature’s 1968 revision of Section 2600 of the Penal Code that retreated from considering inmates “civily dead.” The bill guaranteed access to most printed materials and the right to correspond privately with legislators and legal counsel. Inmates also secured the right to inherit personal property and own their written material. These changes unleashed a flood of confidential correspondence to lawmakers, who now had exposure to the vast range of inmate grievances. They also sparked a series of lawsuits throughout the early 1970s in which the courts steadily expanded prisoners’ rights.486

With new protections and support from outside the prison, inmates kept up the pressure inside carceral institutions. In August of 1968, a second convict strike at San Quentin demanded

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485 See Cummins, *The Rise and Fall of California’s Radical Prison Movement*, especially chapters 5, 6, and 7.
486 Cummins, *The Rise and Fall of California’s Radical Prisoner Movement*, 130-133.
fair wages and an end to the indeterminate sentence. During the strike, a group secured permission from the warden to collect prisoners’ grievances about the institution.\textsuperscript{487} The inmate activists gathered 4,500 comments from the four major cellblocks and compiled the complaints into a report to the state legislature.\textsuperscript{488} However, the San Quentin warden refused to release the more than 70 page “Convict Report on the Major Grievances of the Prison Population” to the legislature when the authors submitted it for duplication and approval. Not deterred, the inmates made copies clandestinely, and delivered the contraband document to legislators in front of the committee, three reporters, and a surprised warden.\textsuperscript{489} The very first sentences of their report read:

Prison “time” does not rehabilitate. On the contrary, it corrodes whatever creative individuality a person possesses, and operates against realistic readjustment on release...The California Adult Authority and the Department of Corrections, while mouthing policies of “rehabilitation” to sell their staggering budget to the Legislature, in reality follow the philosophy of “punishment,” and terms are fixed and release dates are determined accordingly.\textsuperscript{490}

According to the report, punishment and control were the true objectives of the penal system and rehabilitation merely hypocritical legitimization. In fact, the authors insisted that prisons accomplished the opposite of their purported goals, as inmates became less prepared for life outside the longer they were imprisoned:

“[T]he California penal system has little or no corrective or rehabilitative value. We feel to the contrary, that is it more likely to be destructive to the individual character, and that, overall, the prison environment as presently constituted has a design such that it serves as the primary obstacle to the necessary and desired reformation of character of those so imprisoned.\textsuperscript{491}

\textsuperscript{488} Cummins, \textit{The Rise and Fall of California’s Radical Prisoner Movement}, 129.
\textsuperscript{489} Buck Walker, “History of a Convict Report on my Anniversary,” p. 79.
\textsuperscript{490} \textit{Convict Report on the Major Grievances of the Prison Population, San Quentin}, p. 4.
\textsuperscript{491} \textit{Ibid.}, 12.
The authors saw “civil death” as an absurd and backward way of preparing people for full citizenship, writing that “The theory that an offender may come to appreciate more highly the values of citizenship by having that citizenship, and its inherent values, taken from him is an obvious exercise in illogic.”\textsuperscript{492} They continued, “While fairness and equity and the rights of man are being preached at him, the prisoner finds that he cannot find fairness in his treatment, nor equity in his term of imprisonment, and his rights are non-existent. He treated like an animal, and told to act like a man.”\textsuperscript{493} Throughout, the paramount example of the system’s injustice was the Adult Authority. In the report, imprisoned people positioned themselves as the legitimate authority—and even specialists—on managing criminality and the conditions of their captivity.

The most famous person who served an indeterminate sentence in California was George Jackson. Convicted for the armed robbery of a gas station at 18 years old, he received a sentence of one year to life in prison. During the eleven years he spent incarcerated, Jackson become an outspoken and high-profile revolutionary writer and a flashpoint for both the left and right in debates surrounding prisons. An active Marxist organizer and educator, he eventually joined the Black Panther Party. In January of 1970, prison officials at Soledad prison charged Jackson and two other radical inmates with murdering a white guard (supposedly in retaliation for a guard’s shooting of an inmate days before). The case became a cause célèbre for the left, which believed the three men, widely know as the “Soledad Brothers,” were innocent and targeted for their political work. Jackson became even more notorious when, in August of 1970, his brother, Jonathan Jackson, stormed a Marin County courtroom, taking five hostages and demanding the immediate release of the Soledad Brothers. All the abductors, save one, and the hostage judge, were killed as Jackson tried to make an escape. George Jackson’s collection of letters, entitled

\textsuperscript{492} Ibid., 9
\textsuperscript{493} Ibid., 11.
Soledad Brother, was released in fall of 1970, bringing him even more celebrity among the New Left and antagonism from the Department of Corrections.

In August 1971, prison guards shot and killed Jackson during what authorities claimed was an escape attempt. Two guards and three white prisoners were also killed during the confrontation, their throats slit before authorities retook the area. The details of the confrontation remain sharply contested to this day, and inconsistencies within the shifting official narrative made movement participants immediately suspicious that Jackson had been the victim of a targeted political assassination by the state. For many on the left, he instantaneously became a movement martyr, an iconic fallen revolutionary hero whose demise proved the true brute nature of the American system. For the right, George Jackson epitomized many of the perils threatening the nation: the danger of organized, militant people of color, the failure of the liberal state to maintain order, and the lack of respect for traditional authority, especially law enforcement. For these “law-and-order” constituents, the fact that leftist activists lionized an incarcerated Marxist Black militant, charged with murdering multiple guards, proved how far things had deteriorated and how desperate was the need to reestablish order and sanity.  

This sentiment only intensified in early September when the prisoners of New York state’s Attica prison, agitated by the news of George Jackson’s death, took over a block of the prison, holding 42 guards hostage and demanding improvements in prison conditions and treatment. After days of negotiations and the accompanying national media frenzy, Governor Nelson Rockefeller ordered state police to retake the prison. They killed ten hostages and 29 inmates in the frenzy of their attack. Again, the country was polarized between horror at the

494 See Cummins, Rise and Fall of California’s, 151-187.
state’s action, which many considered a brutal massacre, and disgust that social order had deteriorated to the point where mutinous inmates were voicing demands through mediators of their choosing.

During this period, there was a fascination with prisoners that extended beyond those on the left and permeated popular culture. The rebel hero of 1960s film could be a convict, presented as a viable subject struggling against oppressive authority. The popular 1967 film Cool Hand Luke depicted a prideful prisoner—played by Paul Newman—whom the state was intent on breaking. The film highlighted Luke’s virtue by juxtaposing an oppressive, venal penal system to his perseverance, loyalty, anti-authoritarianism, and independence.

The next year, Johnny Cash recorded a concert before the incarcerated men at Folsom Prison. Singing most of the songs from the perspective of criminals and prisoners, Cash bluntly described crimes, voiced antipathy to prison administration, and expressed a longing for repentance and social connection unmediated by the state. He even debuted a song, “Grey Stone Chapel,” which was written by an inmate in the audience—directly giving voice to the supposedly civilly dead. Initially skeptical of such a risky project, Columbia Records released Johnny Cash at Folsom Prison with little fanfare and promotion. Nevertheless, the album slowly gained popularity among underground DJs, and eventually caught fire on the pop and country charts.496

With prisoners becoming increasingly powerful symbols in popular culture, they continued to agitate to improve their conditions. Despite tensions between them, radical and more moderate groups came together to organize an action at Folsom Prison in November of 1970. Prisoners went on strike for 19 days, demanding the right to unionize, and an end to the

indeterminate sentence and the Adult Authority.\textsuperscript{497} Although the strike was broken, afterwards prisoners, ex-convicts, and outside allies banded together to form the Prisoners’ Union, an organization dedicated to building a rank-and-file collective to influence penal policy and practice.\textsuperscript{498} While the organization was moderate compared to those committed to building a revolutionary vanguard, all prison activists agreed that the determinate sentence was among the most despised and emblematic of the correctional system’s hypocrisy and viciousness.

The Prisoners’ Union disseminated its views through its newspaper, \textit{The Outlaw}. Originally an underground newspaper published by inmates at San Quentin, the Prisoners’ Union took over \textit{The Outlaw} after the authorities finally suppressed its publication within the prison in late 1968.\textsuperscript{499} In \textit{The Outlaw}, the Prisoners’ Union advocated convict unity and warned against riots, which it felt played into prison officials’ hands.\textsuperscript{500} While they repudiated violent resistance and eschewed revolutionary rhetoric, the members of the Prisoners’ Union did not see themselves as mere reformers. Willie Holder, the group’s leader, explained the union’s mission in this way:

\begin{quote}
The Prisoners’ Union is an organization of convicts, ex-convicts and interested citizens dedicated to bringing about change in a decadent, barbaric prison system, a system designed to de-humanize men and women in the most agonizing ways that only men can devise, one that has over the years of penology become ultrasophisticated; a sophistication that would shame a sophist but only elicits the word REFORM from the penologists...We in the Prisoners’ Union do not want reform, we want a permanent change. This means a good hard look at structure. Unity is the only answer for a solution.\textsuperscript{501}
\end{quote}

\textsuperscript{497} Cummins, \textit{Rise and Fall of California’s Radical Prisoner Movement}, 202.
\textsuperscript{499} Untitled article, \textit{Outlaw} 1, no. 3 (Jan-Feb 1972), Reel 274, Underground Press Collection, p. 11.
\textsuperscript{500} Untitled article, \textit{Outlaw} 1, no. 1 (November 1971), Reel 274, Underground Press Collection, p. 1.
\textsuperscript{501} Untitled article, \textit{Outlaw} 1, no. 2 (December 1971), Reel 274, Underground Press Collection, p. 1.
These calls for inmate solidarity and structural change appealed to many prisoners and the organization grew in numbers and influence during the early 1970s.

The Prisoners’ Union built membership within the prisons and support outside. Inside organizers, most notably the Nation of Islam member Harlan Washington, united previously warring factions within San Quentin prison. The union organized mass interracial meetings until the warden realized what was happening and transferred leaders to other institutions. By 1973, more than 3,000 inmates belonged to the Prisoners’ Union, and *The Outlaw* boasted a circulation of 5,000 within the prisons, with 25,000 total subscribers by mid-decade. Although never as high profile as individual prisoners such as Eldridge Cleaver and George Jackson, the Prisoners’ Union was seen as a legitimate representative of inmates’ interests in public forums throughout the 1970s. The organization inserted prisoners’ voices into debates in the legislature and the media and positioned inmates as active, rights-bearing citizens. Because of its engagement with public policy, it was integral to the development of California’s determinate sentencing law.

Between revolutionary prisoners, violent revolts, and activist organizing, California’s prisons seemed virtually unmanageable. When paired with many politicians’ increasing sympathy to prisoners’ plights and the persistent interventions of the courts, the entire system seemed unstable and poised for profound change by the early 1970s. Prisoners, more impatient and politicized than at any time in recent history, faced brutal repression but also unprecedented opportunities for alliances with sympathetic groups and movements on the outside. Outside allies joined prisoners’ assault on the status quo and together they were instrumental in tarnishing the image of carceral institutions. Law enforcement officials felt their authority threatened by the

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political changes, particularly the viability of prisoners’ voices in public discourse. With this backdrop of general chaos and upheaval in California’s carceral institutions, various groups, motivated by divergent interests, turned their attention to the policy that seemed to symbolize all that was wrong with the system, the indeterminate sentence.

**Discrediting Indeterminate Sentencing in California**

The indeterminate sentence had few fervent supporters by the mid-1970s. Depending on perspective, opponents condemned the unchecked power of parole boards for being overly lenient, excessively punitive, or wholly arbitrary. While indeterminate sentencing had never been without critics, this scrutiny intensified in the 1960s and 1970s and within a few decades, fixed sentencing replaced indeterminate sentencing laws in almost every state in the nation.\(^{503}\) This transformation is often understood as part of the right’s political ascension through “tough-on-crime” rhetoric and policy. Originally, however, it was prisoners and critics from the left who first led the assault on the status quo within the penal system.

The more radical critiques of indeterminate sentencing were animated by the social movements of the time. One of the first and most prominent of these was *Struggle for Justice*, published in 1971 by the American Friends Service Committee (AFSC). Previously, reports of the failures of correctional programs were attributed to insufficient funding or flawed implementation. *Struggle for Justice* called the entire logic into question. Challenging the fundamental tenets of the therapeutic model, the AFSC argued that indeterminate sentencing put a benevolent disguise on penal practice and was deeply implicated in the oppression of the poor,

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\(^{503}\) Garland, *Culture of Control*, 60.
minorities, and other marginalized groups.\textsuperscript{504} Seeing crime as an outgrowth of systemic inequality, the authors ultimately saw the best hope for remedies in government policy that reallocated power and resources within the nation. They proposed that incarceration be used minimally and sentences become standard and proportionate, dictated by the crime committed and not the vagaries of the individual criminal.\textsuperscript{505}

Two years later, the journalist Jessica Mitford published \textit{Kind and Usual Punishment}, an influential and scathing attack on the legitimacy of the entire penal system. A work of muckraking based largely on evidence from California, Mitford’s book aimed at a wide, popular audience.\textsuperscript{506} She detailed the hypocrisy, paternalism, and brutality of the system and called for systematic restructuring of penal practice. She saw hope in the nascent prison union movement, which she believed fundamentally challenged the legal and discursive separation of the prisoner from society:

\begin{quote}
The union movement is no modest reform proposal, no effort to gild the cage. By striving to establish the rights of the prisoner as citizen and worker, it seeks to diminish the distinction between him and those on the other side of the walls. In a profound sense the ultimate logic of such a movement is abolition, for to the degree that those distinctions are obliterated, to the same degree the prison is stripped of its vital functions.\textsuperscript{507}
\end{quote}

These indeterminate sentencing critics often presented the commitment to therapeutic custody as a thin veneer painted over a brute, violent, repressive system. They charged that cloaking these oppressive functions with benevolent, therapeutic rationales shielded their true operation but also legitimized them. The belief that these policies crushed individual authenticity and produced conformity led some critics to actually favor explicitly retributive and punishing law. In their

\textsuperscript{504} Ibid., 60.
\textsuperscript{506} Jessica Mitford, \textit{Kind and Usual Punishment}.
\textsuperscript{507} Jessica Mitford, \textit{Kind and Usual Punishment}, 324.
estimation, abandoning the normalizing, reformative aspirations of prisons and embracing a punitive rationale was more honest and better protected individual autonomy. By 1975, conservative critics such as Ernest van den Haag and James Q. Wilson joined writers on the left to argue that retribution and fixed sentencing had a legitimate role in penal practice.

Legal professionals also took aim at the indeterminate sentence. In a widely debated work, Federal District Court Judge Marvin Frankel called for the state to link the degree of punishment directly to the crime committed and not the individual offender. He advocated for sentencing commissions—removed from political pressure but subject to judicial and legislative approval—to set guidelines for the fixed sentences associated with each crime. In 1974, the criminologist Robert Martinson synthesized decades of empirical studies on therapeutic programs into an oft-quoted and highly influential article called “What Works in Prison Reform?” Martinson argued that cumulatively, the research illustrated rehabilitative efforts were fundamentally ineffective and did not significantly reduce recidivism. The article was often cited to evidence the increasingly resonant (but not necessarily factually accurate) mantra within criminology that “nothing works.” This emphasis on the state’s impotence in the face of rising criminality served as a dramatic repudiation of the Progressive-era faith in government’s ability to regulate marginality and conquer deviance.

Interestingly, Michel Foucault’s influential Discipline and Punish academic work echoed these concerns. It portrayed efforts to reform a prisoners’ behavior or “soul”—as opposed to inflicting pain on the body—as a permanent feature of modern western society and critical to larger projects of discipline and normalization. Foucault saw the “soft power” the state exerted through rehabilitation programs as a more refined, but not significantly less coercive, method of maintaining power relations in society. Michel Foucault, Discipline and Punish. See also Garland, Culture of Control, 54.


Declining support for the rehabilitative mission coincided with these attacks from intellectuals and professionals on the left and the right. However, while these critiques certainly facilitated this process, it seems unlikely that these manuscripts drove the rapid disavowal of indeterminacy. Attacks on the legitimacy of corrections professionals, especially the arbitrary power of parole boards, cannot be separated from the wider scrutiny of authority during the time period. Mass social movements challenged the righteousness and wisdom of previously venerated individuals and institutions, such as politicians, police, military officials, the clergy, and college administrators. There was also widespread frustration across the political spectrum toward bureaucratic administration and specialists’ authority. Within this context, people from all walks of life questioned the capacity, legitimacy, and benevolence of the state, especially regarding its claims to protect citizens through therapeutic incarceration.

**Prisoners’ Assault on the Indeterminate Sentence**

Regardless of the influence of larger cultural trends, California legislators turned their attention to prisons and sentencing policy because the inmates themselves made it impossible to do otherwise. In the late 1960s and early 1970s, California prisons were increasingly volatile and the turbulent conditions within prisons combined with escalating fear of crime outside to make criminal policy highly politically charged. The affinity between inmate and outside movements increased the stakes of struggles with corrections officials for everyone involved.

Despite rhetoric that positioned inmates as civilly dead and nonviable actors in the public sphere, prisoners had a large influence on the shape and texture of the criticism of determinate sentencing. While the writings of radical prisoners heavily influenced attitudes about incarceration, especially for the New Left, average prisoners also played a powerful role in
public debate. Prolific inmate correspondence informed legislators and social critics, such as Jessica Mitford, about the realities of penal practice. Therefore, attention to these voices is critical because prisoner critiques actually shaped debates, popular understanding, and ultimately, public policy.

Although accorded little attention in scholarly accounts, contemporary observers often attributed the willingness to reevaluate penal policy to the upheavals within prisons. One journalist explained that, “Out of the violence and turmoil inside American prisons that boiled over in the late ‘60s and early ‘70s, a new consensus is emerging. Mainly, that the basic assumptions on which prisons have been operating for the last 50 years have been disastrously wrong.”\textsuperscript{511} And in their own efforts to explain the escalating revolts and desperation, prisoners again and again faulted sentencing practices. The McCay Commission, appointed to investigate the uprising at New York’s Attica prison, found the indeterminate sentence and parole release “were by far the greatest cause of inmate anxiety and frustration.”\textsuperscript{512}

Prisoner hostility toward sentencing practice in California must have been exacerbated by Governor Ronald Reagan’s direction of the Adult Authority. Reagan faced prison crowding and fiscal constraints in the late 1960s, but he rejected calls to build new prisons and instead used the indeterminate sentence as a mechanism to manage corrections budgets. He called on the Adult Authority to reduce prison populations.\textsuperscript{513} In practice, this meant granting parole to larger percentages of the inmates at their annual hearings, thus relieving population pressure by releasing more prisoners. This policy decreased California’s inmate population from 29,000 to

\textsuperscript{512} Griset, \textit{Determinate Sentencing}, 36.
19,000 by the end of 1971.\textsuperscript{514} Even though this massive release of convicts did not statistically increase crime rates, prison unrest and newspaper reports of crimes committed by parolees—especially a high-profile murder of an Orange County schoolteacher—pushed parole board decisions into the public spotlight.\textsuperscript{515} Probably because of these pressures, Reagan reversed course in January of 1972 and had aides meet with Adult Authority members to request that they “get tough” in their parole reviews. As one newspaper article explained, the fallout from this “secret meeting” was “that sentences of virtually all male felons in California prisoners were arbitrarily stretched out.” It continued, “This decision came at a time when the Adult Authority had been progressing toward more early releases and the recidivism rate was near the lowest point in California’s history.”\textsuperscript{516} The results of Reagan’s order were dramatic: between 1971 and 1973, the percentage of prisoners actually paroled fell from 44.7 percent to 29.5 percent.\textsuperscript{517} And parole revocations increased, climbing from 1,654 in 1971 to 2,255 in 1973.\textsuperscript{518} In 1971, more than 70 percent of prisoners who came before the parole board received release dates. After the order, that number plummeted and by 1975, less that 20 percent of inmates were given the certainty of fixed release dates at their hearings.\textsuperscript{519} This could only have heightened the sentiment among inmates that sentencing in California was arbitrary, political, and unfair.

An article published in The Outlaw captured the hostility many prisoners felt toward the indeterminate sentence:

\textsuperscript{514} Oral History of Jan Marinissen, “To Let the Legislature Know,” p. 13.
\textsuperscript{517} Ibid.
\textsuperscript{519} George Williams, “Reagan Order Jams Up Prisons.”
The Indeterminate Sentence and Adult Authority or parole boards are perpetrators of a terminal disease; a cancer devised by man to dehumanize men, women and children. They are the most sophisticated, nonjudicial, arbitrary, paternalistic, arrogant, abusive, inhumane, insensitive, manipulative, bureaucratic, redtape, double-talking, bullying administrative body that sits in judgment over other human beings.\footnote{“Terminal Cancer,” Outlaw 3 no. 2 (March 1974), Reel 274, Underground Press Collection, p. 2.}

In fact, it is virtually impossible to overstate prisoners’ hatred of the indeterminate sentence. Jessica Mitford reported that the indeterminate sentence was prisoners’ number-one complaint.

She wrote,

> At a meeting of ex-convicts, I asked what they conceived of as the major grievance of the California prison population. There was near unanimity: surprisingly, the wretched physical conditions of prison life are by no means the major concern. The food, they say, is generally lousy. Medical treatment amounts to criminal neglect in many instances. The highly touted vocational training is a fraud... But these features of prison existence, disheartening, degrading, and dangerous though they are, pale in importance, say the convicts, beside the total arbitrariness of the bureaucracy that rules every aspect of their existence. One former inmate summed it up: “Don’t give us steak and eggs; get rid of the Adult Authority! Don’t put in a shiny modern hospital; free us from the tyranny of the indeterminate sentence.”\footnote{Jessica Mitford, Kind and Usual Punishment, 95}

An Outlaw article written by two ex-convicts echoed this appraisal, bluntly asserting that the Adult Authority was the primary political issue for California’s inmate population: “The abrogation of the indeterminate sentence is the first and foremost proposal that must be submitted to the legislature. This is more paramount than any facet of reform in relation to the penal system in California.”\footnote{Larry West and Kenneth Divans, “Prisons or Slavery,” Outlaw 1 no. 2 (November 1972), Reel 274, Underground Press Collection, p. 6 and 9.}

To understand the urgency with which prisoners revolted against the rehabilitative ideal, it is imperative to explore their critiques more closely. Without scrutinizing their understanding of the indeterminate sentence, inmate demands that punishment be the stated function of incarceration and willingness to grant politicians sentencing authority can seem imprudent or
even downright foolhardy. At an operational level, most disdained the Adult Authority’s
arbitrary power over their lives and the uncertainty and tension produced by living year to year
without a certain release date. Ideologically, prisoners varied in their assessment of indeterminate
sentencing; some faulted the entire premise, while others condemned the administration of
principles they generally accepted.

Most inmates critiqued the hypocrisy of a system that claimed to cure but actually
punished. They experienced this allegedly benevolent institution as torturous—made all the
worse by its professed claims to rehabilitate. One prisoner wrote to Jessica Mitford, “That the
indeterminate sentence is predicated on one’s supposed adjustment in the institution and chance
of making it on the outside is just so much rubbish. Punishment is the hallmark of this penal
system, just as it is in most of the others.” 523 Advocates echoed prisoners’ claims that
punishment was already the reality of the system. The AFSC’s report Struggle for Justice
claimed that, “Although punishment is no longer a fashionable rationale for criminal justice, the
punitive spirit has survived unscathed behind the mask of treatment.” 524

This cynicism about the operation of penal institutions does not suggest that all prisoners
and their allies thought it impossible for the state to facilitate rehabilitation. In their writing,
organizing, and study groups, inmates forwarded their own visions of redemption and
reintegration. Many people argued that the key to true rehabilitation lay in removing the legal
and symbolic barriers to full citizenship. Among male prisoners, these claims were often
connected to wider concerns about restoring or securing masculinity, which many felt was
deliberately undermined by prison administration. Two inmate authors writing for The Outlaw

523 Frank Hatfield to Mitford, November 12, 1972, Jessica Mitford Collection, Box 59, Folder 3, Jessica Mitford Papers, HRC.
linked calls for conjugal visits and jobs to this need to preserve their manhood:

This [minimum wage jobs in prison] would enable prisoners to make allotments to their families, thus maintaining their status as the bread winner…Prisoners should be allowed to maintain their responsibilities as providers and continue their sex life. These are the two components essential for his manhood. Should a prisoner be denied his manhood because he is a prisoner? 525

Many focused their criticism on the administration of rehabilitation programs but did not reject the notion outright. The frustration with bureaucratic administration and social science expertise among the general population was particularly acute among prisoners. One man wrote to Jessica Mitford that he preferred dealing honestly with brute punishment than “compassionate professionals.”

God help us from the “gung ho” professionals who want to help us. Too often they’re just as dangerous as the retired, military orientated, correctional officer, who sees every “number” as a threat, psychopath, and lunatic, who should be treated as such. At least he’d find his satisfaction in harassing you, or clubbing you to death. While the compassionate professionals will keep you incarcerated, for however long, in the interests of helping you.” 526

The same author explained that true reform entailed allowing prisoners a degree of self-determination and listening to what they needed: “Perhaps if they began putting rehabilitation into the hands of the experts (US). Rather than the ‘professionals,’ there could be such a thing as rehabilitation. But of course even this poses problems in itself. FACT: the professionals have failed.” 527 Therefore, between the “soft power” of therapeutic corrections professionals and “hard power” of brute, punitive custody, some inmates actually favored the latter. Such sentiments were undoubtedly bolstered by the widespread cynicism and disrespect throughout U.S. society for professional, bureaucratic expertise and, more specifically, by the mounting attacks within the criminal justice field on the effectiveness of rehabilitative programs.

525 Larry West and Kenneth Divans, “Prisons or Slavery.”
526 Adrian S. A. to Mitford, July 22, 1971, Box 15, Folder 2, Jessica Mitford Papers, HRC.
527 Ibid.
The stigma people experienced upon their release from prison only intensified their scorn for authorities’ claims of benevolence. The prejudice and hardship faced by newly released convicts, especially those on parole, totally discredited officials’ declared intention of reintegrating people into society as full citizens. The families of inmates also felt that, in practice, prison administration served to segregate and ostracize former prisoners from society, as opposed to reintegrating them. A flyer produced by a San Francisco organization of families and friends of convicts articulated this critique:

We find we are stigmatized by the public just for loving a convict. We risk losing jobs if our associations with convicts are known and may run the same risk in friendships. Often we are unable to rent housing, obtain credit, and we have difficulty being licensed for various professions. We are penalized for telling the truth. When our men are released, the stigma they carry makes it extremely difficult to find employment, and they even lose some of their rights as citizens. Society refuses to take any of the responsibility, responding only with never-ending blame; the myth of rehabilitation serves only to salve the social conscience.528

From this perspective, the “myth of rehabilitation” cloaked the true operation of the penal system and meant little for those actually subject to the system.

Other prisoners rejected the entire premise of rehabilitation and challenged the state and dominant society’s definition of deviance and criminality. In their critiques, they challenged not just the coercive and ineffective nature of therapeutic programs but also the normative assumptions about the ideal citizens the programs aspired to build. An ex-convict explained in an Outlaw article how the training programs that parole boards pushed did more to enforce the performance of dominant gender roles than prepare people for a trade. She wrote:

[N]one of the [sic] courses or trades can be related to the real job statistics on the outside. Sisters in prison are encouraged to participate in group therapy; where a sister tends to role play when the pressure is on, or to superficially pretty herself, when all the time she’d been geared toward rehabilitation; breaking the sisters

528 Flyer: “Connections,” [No Date], Box 37, Folder 3, Jessica Mitford Papers, HRC.
into society’s role: passive, brainless and obedient. For our brothers, they are encouraged in the same ways, only to be programmed to fit his predefined role as a “man in society.” By doing this to our brothers and sisters the prison officials are attempting to mold them into submissive subjects of society.529

These assessments were embedded in a sweeping, structural critique of how power operated in society. Prisoners resisted the efforts of corrections programs to create normative, docile citizens, as well as the penal system’s role in producing deviance and constructing them as “others.” Resonating with critiques advanced by social commentators outside the prison walls, many prisoners denied having an individual pathology and instead saw their criminal actions as stemming from economic, racial, and social injustice. One inmate wrote to Jessica Mitford:

We no longer personally assume the identity, or assimilate the labels of “the sick,” “the evil,” or “the criminal,” and we are thusly further liberated. Crimes are often committed with brazen faces—but they are always committed with underlying desperation of one form or another. We are tugged, towed, twisted, shoved, held back, shaped and formed through physiological, sociological, and environmental factors which are, or were evidently beyond our control. In retrospect, we see that we are no less than the overt reflection, or the symptom of the illness of society from which we are derived.530

This rejection of being labeled as “criminal” was buttressed by the wider trend, most pronounced among intellectuals and activists on the left, of interrogating how mainstream culture maintained an unjust status quo through constructing marginalized people as deviant.

Inmates, therefore, opposed the rehabilitative ideal on both ideological and practical grounds in the growing number of forums open to their input. Simultaneously, law-and-order advocates, who perceived the rehabilitative mission as ineffective coddling of prisoners, joined the attacks against the indeterminate sentence. With crime rates climbing, therapeutic programs were easy targets for critics long hostile to welfare-state strategies. And once these critics added their voices to those on the left in calls for abolishing the indeterminate sentence, the policy

would not withstand the assault.

**Remaking Penal Practice: The Legislative Struggles to Destroy and Rebuild Sentencing Policy**

By the early 1970s, the indeterminate sentence had few remaining defenders. Observers on the right claimed parole boards released violent and dangerous criminals too soon, endangering the public in an era of skyrocketing crime rates. Critics on the left argued the opposite: that the policy kept people in prison too long, reflecting an overreliance on ineffectual and punitive custody. Prison administrators, who yearned to cool down their turbulent institutions and alleviate the pressure of intense public scrutiny, were increasingly open to reform. While these groups had little in common beyond their opposition to the indeterminate sentence, together they easily overcame the institutional inertia and any remaining proponents of the policy.

As early as 1971, the Adult Authority and Governor Reagan’s head of Corrections, Raymond Procunier, initiated reforms to start informing inmates of their release dates within the first months of their incarceration. Officials believed this would limit the unrest and frustrations the uncertainty of open-ended sentences caused. The plan lost momentum, however, in the midst of Governor Reagan’s “get-tough” crime policies, and was ultimately abandoned.

Not long after, courts introduced new urgency by issuing a collection of opinions that challenged the status quo of penal practice. Throughout the 1960s, prisoners, with the assistance of activist lawyers, successfully challenged their status and treatment. The resulting legal decisions enhanced due process protections for prisoners and criminal defendants. Richard

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533 Earlier decisions had weakened the indeterminate sentence by establishing proportionality tests for sentence lengths, undermining parole boards’ authority to hold “un-rehabilitated” offenders indefinitely. See discussion of *In Re: Foss* and *In Re: Lynch* in Griset, *Determinate Sentencing*, 50-52.
McGee, who headed the California Department of Corrections from 1944 to 1961, saw the courts’ new assertion of prisoner rights as the catalyst for the shifts in sentencing. In a law journal, he offered his explanation for the sudden traction of reform efforts:

[T]he California [indeterminate sentencing] law and the manner in which it was administered has been subjected to criticism from many sources and for numerous reasons for many years. As long ago as the late 1940s, I remember standing before a legislative committee to defend the law against an abortive attempt to repeal the act...It was not, however, until the Federal courts began taking note of the constitutional rights of prisoners and parolees that the system began to crumble.\footnote{Richard McGee, "California’s New Determinate Sentencing Act," \textit{Federal Probation} 42 (1978), p. 3.}

The subsequent efforts to adjust penal practices with the court’s new orders created openings for people intent on abandoning indeterminate sentencing all together.

In \textit{Re: Lynch} (1972) and \textit{Re: Foss} (1974), the California Supreme Court intervened in California’s practices, declaring there must be symmetry between the crime committed and the punishment. They found the upper limit of some sentences to be unconstitutionally long, constituting cruel and unusual punishment. The implications for the 1975 case \textit{Re: Rodriguez} extended beyond the individual petitioner and forced the state to revise its practices. Rudolpho A. Rodriguez, a Santa Monica man imprisoned 22 years for lewd conduct with a child, challenged the Adult Authority’s right to incarcerate him indefinitely.\footnote{Daryl Lembke, “Man Confined 22 Years for Sex Crime Challenging Indeterminate Sentence Law,” \textit{Los Angeles Times}, February 23, 1975, p. 22.} Corrections officials classified Rodriguez—despite his near-perfect record in prison—as a “warehouse case,” and repeatedly refused to release him or set a parole date. He was diagnosed with schizophrenia (although “in remission”), and declared unfit to reenter society. Rodriguez’s lawyers claimed that his feelings of persecution were actually caused by interminable incarceration and multiple
rejections by the parole board. While the court upheld the legality of indeterminate sentencing, it concurred with Rodríguez’s lawyers that the Adult Authority had violated the cruel and unusual clause of the state constitution by not setting a release date proportionate to the crime (or, by never setting a date at all and potentially holding him for his entire life). Together, these rulings diminished the weight of therapeutic considerations in sentencing by ordering that parole boards must also strive for consonance between the crime committed and time served.

Meanwhile, in the legislature, John Nejedly, the Republican State Senator from Walnut Creek and Chairman of the Senate Select Committee on Penal Institutions, started exploring proposals to replace California’s indeterminate sentence. Nejedly would become a chief architect and shepherd of legislation to replace the old sentencing scheme. Compared to other ex-district attorneys, he was moderate on criminal justice issues, and held the arbitrary and unjust application of indeterminate sentencing responsible for prison unrest. In December of 1974, he first introduced Senate Bill 42 (SB42), the determinate sentencing bill that would slowly wend its way through multiple revisions to eventually sweep away almost 60 years of penal practice.

Coupled with recent court rulings, the looming threat posed by SB42 intensified pressure on the Adult Authority. Raymond Procunier, the controversial, blunt-talking, prison administrator who previously headed the Department of Corrections, was tapped by Democratic Governor Jerry Brown to lead the Adult Authority and its effort to align its practices with the shifting legal and political landscape. Hoping administrative reforms could stave off a more drastic overhaul, in April of 1975 Procunier issued Directive 75/20, which ordered parole boards to immediately set offenders’ release dates commensurate with their crime and prior criminal records. The move, backed by Governor Brown, was widely interpreted as a bid to contain

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damage from attacks on the Adult Authority from prisoners, the courts, and the legislature. It would not be successful. In reevaluating all prisoners to set release dates, the new policy inspired the release of approximately 5,000 inmates, many of whose sentences had been arbitrarily stretched out by Reagan’s “get-tough” order in 1972. This, in turn, set off an avalanche of attacks from law enforcement and other law-and-order proponents, who charged that the surge of released felons endangered society. These claims were undoubtedly bolstered by news reports that Rudolpho A. Rodriguez, the man whose lawsuit helped spur these releases, was rearrested only four months after his release for fondling a young girl.

It was the courts, however, that derailed the Adult Authority’s efforts to save the indeterminate sentence. In early 1976, they struck down Procunier’s directive on the grounds that it failed to conform to the indeterminate sentencing law’s mandate that parole boards consider an individual’s rehabilitation in prison when setting prison terms. Since Directive 75/20 ordered sentences fixed before an inmate’s progress could be evaluated, the Adult Authority could not account for personal development in prison. Thus the last administrative effort to salvage indeterminate sentencing was thwarted by the policy’s insistence that sentence length reflect a prisoner’s attitude behind bars.

By the time the court struck down Procunier’s administrative directive, SB42 had already passed the Senate by wide margin. The proposed legislation abolished the indeterminate sentence

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and replaced it with a sentencing grid that detailed set prison terms for various offense levels. In
the new scheme, a judge would choose among three possible sentences for each crime category:
an average or median sentence, which would be used in most cases; a mitigated sentence, which
reduced the term to account for extenuating circumstances; and an aggravated sentence, which
lengthened the sentence when some factor made the crime exceptionally objectionable. All
prisoners would additionally qualify for “good time,” which allowed for a one-third sentence
reduction for good behavior in prison. The new system retained parole supervision upon release
for an established period of time, usually just one year.

As the law moved through various committees, the diverse coalition of prisoners,
prisoners’ advocates, and law enforcement fundamentally agreed on the failure of the state’s
rehabilitative mission and the need for certainty in sentencing. They differed, however, on policy
 specifics, most significantly the appropriate duration of sentences. SB42 resolved these disputes
in the short term by not succumbing to calls to either lengthen or shorten prison terms and
holding them relatively steady. The sentence lengths in the proposed bill roughly corresponded
to the average time inmates had served under the indeterminate sentence. With the possibility of
an additional one-third reduction for good time, people had reason to believe that sentences
would actually be reduced by the new system. 541

Prisoners and prisoner advocacy organizations fervently supported abolishing the
indeterminate sentence and played an active and influential role in SB42. The sponsoring
legislative committee received testimony and input from inmates continually throughout the
process. Willy Holder, the leader of the Prisoners’ Union, testified so regularly before the
committees that he developed a familiar rapport with legislators. Throughout 1975 and 1976, as

541 Griset, Determinate Sentencing, 48-49.
SB42 moved toward final passage, the Prisoners’ Union remained at the table in negotiations over what would replace the indeterminate sentence, pressuring politicians to reduce sentence lengths, abolish parole supervision, and limit the amount of arbitrary discretion in the system.

This involvement reflected a growing and highly controversial assumption that inmates and ex-convicts could be a trusted source of expertise on their own punishment. Outside groups, such as the AFSC and the Prisoners’ Union, kept California’s incarcerated men and women informed about legislative negotiations and identified the key officials to pressure throughout the process. Soliciting prisoners’ participation in designing policies that governed them had vast political significance. It moved against the tradition of an inmate’s “civil death,” countering the long practice of rhetorically and physically severing prisoners from the “public” while they were incarcerated, on parole, and even long after they were released.

Some prisoners and ex-convicts felt their separation from the polity acutely, which contributed to their cynicism toward the Department of Corrections’ claims to rehabilitate. This issue surfaced at a Senate hearing in an offhand exchange between Senator Parnas and Willie Holder, the director of the Prisoners’ Union who served 20 years on and off in prison for burglary and forgery.

HOLDER: The prime goal of all criminal justice legislation should be to increase prisoner confidence as well as public confidence in the administration of justice.

PARNAS: Excuse me for interrupting you, but I simply wanted to indicate that in drafting this statement we considered prisoners part of the public, and by saying improve or increase public confidence we meant to include prisoners, ex-convicts, convicts, what have you.

HOLDER: Having been an ex-convict, you know, a good majority of my life, and a citizen just about the same amount of time, you know, I felt that I was excluded. I really did, and I’m sure that the prisoners that read this will feel that they were being excluded, too, because of all the monkeys that you’ve got on your back.543

Holder’s testimony reiterated the common sentiment among prisoners that penal practices conspired to expel them from the public, despite all the insistence to the contrary.

Ironically, it was legislative advocacy around SB42—a law designed to repudiate the state’s commitment to reintegrate convicts into the public—that inspired many prisoners to feel like viable, engaged citizens. One man held at California’s Men’s Colony wrote to Nejedly that, “For the first time in ten years of being under the Department of Corrections’ thumb, myself and every other state prisoner feels that we have a chance to be heard through your bill, SB42.”

More remarkable, many politicians viewed prisoner support for SB42, not as a liability for their legislation, but as evidence of its soundness. When the bill was before the Senate Judiciary Committee, Senator Nejedly presented six boxes, which held 9,000 letters from inmates and their families, to demonstrate the inmate’s overwhelming engagement and support for the proposed reform.

Correspondence sent to legislators revealed prisoners’ intense investment in the fate of SB42. In the letter quoted above, the inmate described the anxious hopeful mood in California’s carceral institutions:

At this very moment, on every prison yard, in every prison in California, the attention of the prisoners are drawn to one thing, the passing of your bill SB42. The anticipation is near the point of a person waiting on a last minute stay of execution, only to a lesser degree. What it is, is that we are waiting for the lights to be turned on. We have been in kept in darkness so long that is doesn’t even seem realistic. If we could see the light at the end of the tunnel there would be less time spent in despair, and less “living for the moment” and one could plan for the future, no matter how far away.

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545 Nejedly explained that 95% of the letters supported abolishing the indeterminate sentence. “Fixed Prison Terms? Indeterminate Sentence Ban Gains in Senate,” Sacramento Bee, April 16, 1975, Senate Select Committee on Penal Institute Working Papers: 1972-1976, LP161: 211, CSA.
546 Letter from inmate (“name withheld to protect identity”) to Nejedly, February 24, 1975.
Another letter revealed how closely inmates monitored the legislation’s progress:

I was very happy to learn that your Senate Bill 42 got out of committee. You never realized how much all of the inmates here were hoping it would. All day they asked—has it passed the committee? Do you think it will go through? So much concern and so much thanks and happiness after learning that it did clear. You are to be congratulated and commended for such a humanitarian book of revised statues that treat an inmate as a human being.\(^{547}\)

Writers equated indeterminate sentencing with denial of citizenship rights and an assault on their very humanity, and connected passage of the bill with expanding prisoners’ faith in the political system and society in general.

I placed the copy of the Senate Bill no. 42 in the prison law library where is was read by hundreds of prisoners…From my conversations with them, I gather that if this bill becomes law, there will be a rebirth of respect for the law and the State of California in the way which its justice is administered. To send a man to prison to destroy him is one thing; to send him to prison as a societal experience whereby he acquires a respect for the society is quite different and produces a better citizen.\(^{548}\)

While these correspondents may have amplified prisoners’ enthusiasm for Nejedly’s benefit, there is little doubt that inmates followed SB42 extremely closely, believing it intimately intertwined with their fates.\(^{549}\)

The Senate passed SB42 by 36 to one on May 15, 1975. This wide margin reflected the diverse coalition arrayed against the indeterminate sentence from across the ideological spectrum. The bill stalled, however, a few months later in the Assembly when the Criminal Justice Committee declined to vote on it. Liberal advocates thwarted SB42’s progress, although the District Attorney’s Association also opposed the bill on the grounds that sentences were too

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\(^{547}\) Charles L. to Nejedly, April 21, 1975, Senate Select Committee on Penal Institute Working Papers: 1972-1976, LP161: 210, CSA.

\(^{548}\) Ibid.

\(^{549}\) The various official prisoner newspapers from California institutions illustrated the same level of engagement reported in these letters. These papers, while censored, were written and edited by inmates and followed SB42’s legislative developments in careful detail.
lenient. The Assembly Criminal Justice Committee was known to be among the most liberal in the legislature and was traditionally the source of progressive criminal justice legislation. The liberal members saw themselves as the brakes on “get-tough” legislation that came from other committees and the Senate. When SB42 came before the committee, it heard testimony from the American Civil Liberties Union (ACLU) of Northern California, which opposed the legislation because the sentences were too long. Furthermore, since the bill allowed the legislature to set sentence length, the committee saw no mechanism to stop lawmakers from lengthening them in the future. It also called for increased administrative discretion in setting early release for deserving prisoners. Allegedly convinced by this testimony, the committee, led by longtime champion of prisoners’ rights legislation, Alan Sieroty, chose not to vote on the bill. This effectively ended the legislation’s chances of passage during the legislative session, although it did not kill the bill outright.

The Prisoners’ Union was furious with the ACLU. They publicly attacked it for elitism and failing to consult with inmates, and organized a picket in front of the ACLU office. Willie Holder charged that,

> The ACLU lives in a world of abstract civil liberties and ivory towers, more appropriate to an academic setting than the reality of prison life. Their lobbyists rode in on a high horse right before the hearing and made pronouncements that the bill wasn’t pure enough. They never asked convicts or us or any other prison group what their ideas and feelings were. I’d like to know who in the hell these people think they represent.\(^{550}\)

These criticisms caused a rift between the ACLU’s board of directors and its staff. After the public clash, the board sided with the Prisoners’ Union and prohibited its staff from working against determinate sentencing legislation in the future. The confrontation between the Prisoners’ Union and the ACLU illustrated the extent to which prisoners’ interests and philosophies guided

legislative advocacy and ultimately, influenced policy development. It is remarkable that the union representing criminals was able to publicly rebuke an established organization, such as the ACLU, and force it to reverse its position. In this climate, prisoners were able to assert their right to be represented and expected advocacy groups and politicians to respect, accommodate, and even acquiesce to their interests.\textsuperscript{551}

Prisoner activists complained that ACLU staff, despite their benevolent motives, failed to comprehend the profound differences between facing a fixed sentence and an indeterminate one. An article published in \textit{The Outlaw} explained:

What they [ACLU] cannot grasp is that quantitative time and qualitative time are not necessarily the same. If a man or woman has a flat three years to do, and knows that most other people who committed the same act are looking at the same three years, it is possible to kick back, think it over, get what you can from what’s there, and make plans for getting out. The body is caged but the mind is free.

If a man or woman only spends two years inside, but all the while has hopes that a petition of some kind would cut them loose sooner (because others have made it), and fears that they would be trapped inside for far longer (because others have lost it) and wasted mental energy trying to fall into the right category for the Graders and Sorters—then that two years can be a draining, embittering eternity. It is Death Time; time that generates a “fuck ’em in their ass” attitude.\textsuperscript{552}

As the author explained, many inmates found that the discretion exercised by liberal, therapeutic treatment specialists seemed far more difficult to tolerate than the certainty of a fixed sentence, even if applied in the name of brute punishment. The Prisoners’ Union claimed that female prisoners also supported the repeal of indeterminate sentencing, even though they stood to lose, since they averaged far shorter sentences than men for comparable crimes. Activists claimed that being governed by the arbitrary whims of parole boards was so heinous that female prisoners would accept longer prison terms in exchange for the certainty of fixed release dates. Patricia

\textsuperscript{551} For the confrontation between the Prisoners’ Union and the ACLU, see coverage Mike Snedeker, “‘The Indeterminate Sentence Lives and Breathes,’” \textit{The Outlaw} 4, no. 4 (September/October 1975), Reel 216, Underground Press Collection, p.16-18); and Griset, \textit{Determinate Sentencing}, p. 49

\textsuperscript{552} Mike Snedeker, “‘The Indeterminate Sentence Lives and Breathes,’” \textit{The Outlaw} 4, no. 4 (Sept. Oct. 1975), Reel 216, Underground Press Collection, p. 4-5.

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Holder explained to a reporter that, “I’m not advocating longer sentences by any means but I’ve talked to the women in prison and they would rather do double time than do time under the Adult Authority. They’d rather know how much time they’ll spend.”

These debates are not the only evidence of inmates’ growing authority in matters concerning their custody. During 1975, high-level officials from the Department of Corrections entered into negotiations with the Prisoners’ Union about plans to organize union-like structures to represent inmates inside institutions. Although the plan ultimately galvanized opponents and rationalized new efforts to curtail inmates’ influence, the negotiations marked a high-water point for the Prisoners’ Union. The union put forward what the corrections administrators saw as a “reasonable and moderate” proposal to build trust between the parties. They planned to initially build union support and infrastructure inside a single institution and then slowly expand into others. The Prisoners’ Union proposed forming committees—comprised of one Prisoners’ Union member, one Department of Corrections representative, and one member chosen by both—that would rule on conflicts over appeals, transfers, and disciplinary matters, as well as examine prison policies generally. Although the committee’s decisions would not be binding at first, the parties agreed they would carry moral and social influence. Despite their limited initial proposal, the union openly declared that its ultimate aim was to abolish the Adult Authority, restore prisoners’ human and civil rights, and act as representatives in collective bargaining over wages, conditions, and disciplinary hearings. For this brief moment, both corrections administrators and the Prisoners’ Union saw the possibility and appeal of sharing power and

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responsibility for administering prisons.

In January of 1976 the administrators were about to introduce this plan to a wider group of corrections personnel when the California Correctional Officers Association (CCOA) got wind of it. Enraged, the union that represented correction officers released the proposal to the press, accompanied by a scathing attack. They threatened to strike if such a plan were implemented and demanded the resignation of the director of corrections and the secretary of health and welfare for even considering such an “insane” and “idiotic” idea. Almost every major news outlet in California—and some national programs—carried the story, paired with the indignant comments of wardens and superintendents furious about the proposal. “Law-and-order” politicians soon joined the fray. H. L. “Bill” Richardson, state senator and Republican whip, who had made crime his signature issue, told the press, “Any appointee who has actively helped in this insane effort should be fired…We’re talking about Bolsheviks, inside and outside who want to foment as much internal strife in this country as they possibly can.”555 While CDC administrators probably negotiated with the Prisoners’ Union because they saw the organization as a moderate alternative to revolutionary prisoners advocating armed resistance, conservative legislators labeled all prisoner activism dangerous and saw dialoguing with them as treasonous.

The political fallout of the leaked plan immediately shut down the negotiations to allow Prisoners’ Union organizing in one institution. The union interpreted the resistance as politically motivated “calculated hysteria” but also saw a deeper significance in the refusal to grant inmates authority within prisons. An article in *The Outlaw* explained,

> A more formidable obstacle, however, is an insidious, mistaken notion which we strongly believe is at the root of the prison administrations’ unwillingness to accept the proposed plan. This is the belief that prisoners are fundamentally inferior. They are either dangerous animals or mostly weak people subject to

domination by the few dangerous animals. They are, according to this view, incapable of participating in sustained, responsible action and becoming dignified, honorable human beings.556

According to this analysis, corrections employees rejected the notion that prisoners were capable of reasoned civic participation, especially for the responsibilities of self-government. For inmates, the adamant refusal to acknowledge their capacity for “responsible action” or being “capable human beings” underlined the hypocrisy of the Department of Corrections’ claims of facilitating rehabilitation and reintegration into the polity. Reiterating a familiar theme, prisoners equated being excluded from full citizenship with being permanent outsiders who were perceived as less than human.

The Prisoners’ Union, however, retained more faith in the political system than the officials had in them. In an Outlaw piece entitled “Prisoner Organizations Are Inevitable,” the author advanced a whiggish understanding of history, where prisoners and other marginalized groups would inevitably gain greater rights and respect.

One of the few consistent trends over the past few decades has been a slow, very painful, but steady increase in the rights of people formerly excluded from any decision making arena. The struggle is no less intense now; the outcome in any single situation is problematic, but overall the extension of power to more and more people cannot be stopped…

Two hundred years ago, the only people who could vote were white male landowners who were not in prison. The requirements that a person own property, be of a particular race or a favored sex have been dropped; only those classed as felons remain disenfranchised. The process of extending basic recognition to prisoners has begun—100 years ago a Judge in Virginia could correctly say that prisoner forfeit all rights save the right to breathe.

Things are different now. Whether we will be the particular agents who enable a union of prisoners is an open question, dependent on forces larger than our energies or hopes. What is not open is the increased recognition of the humanity of people locked inside, and of what is necessary if they are to remain fully human; this includes the right to organize around the problems common to all.557


557 “Right to Participate: A Modest Proposal,” The Outlaw 5, no. 1 (January/February 1976), Reel 216, Underground
This faith in the certainty of progress through struggle was probably common among activists on the left. For prisoners, it carried a potential risk. Throughout the efforts to expand inmates’ rights and reform California’s prisons and sentencing procedures, the momentum seemed to be on the side of “progress.” For many, the notion that events could reverse course or policy could move in a more restrictive direction did not seem to be a serious threat. Prisoners and their allies often saw the long-term struggle as between the discredited status quo of liberalism and the inevitable expansion of marginalized people’s autonomy. Most contemporary commentators also assumed that the United States was poised to decrease reliance on all institutions of overt social control, especially the prison. Few anticipated the era of unprecedented mass incarceration and dramatic constriction of inmate rights that was around the corner.

Simultaneously, “law-and-order” advocates—particularly corrections employees—attacked prisoners’ new rights in the hopes of recalibrating the balance of power within institutions and in politics generally. Prison guards and wardens, enraged by perceived attacks on their authority from both their bureaucratic managers and the prisoners they guarded, became an increasingly organized, influential force. While inmate activists proceeded on the assumption that society would inevitably expand rights and widen inclusion in society, law-enforcement interests joined with conservative forces; they were determined not merely to return to the status quo by rolling back inmates’ recent gains, but actually to remake the penal landscape altogether. Instead of integrating prisoners into society, “law-and-order” reformers operated on the premise that law-abiding citizens were diametrically separate from criminal elements. Emboldened by their success at derailing the Prisoners’ Union’s plan, wardens and the Correctional Association

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became more effective at rhetorically positioning their interests as synonymous with the public’s, depicting themselves as the tough, manly antidote to the violent chaos on the streets and within prisons.

The calls for punitive crime-control strategies by elites developed dialectically with discourse among the general populace. Those conceptualizations and arguments that resonated were repeated incessantly, eventually solidifying into mantras that echoed persistently throughout these debates. The themes appeared and reappeared in citizen letters, politicians’ speeches, newspapers, and conversations at family dinner tables and employee lunchrooms. Proclamations about the need for tougher, more punitive responses to social disorder were most remarkable for their redundancy and consistency. People reported feeling endangered and enraged at the government’s failure to protect them, which they equated with being robbed of their citizenship rights. They accused the state of protecting the rights of criminals and other outsiders at the expense of “tax-paying” and “law-abiding citizens.” Letter writers were indignant about a topsy-turvy world where the wrong people had rights and protections. In one representative letter, a woman explained:

I think we have cried long and hard for the criminal, it is about time for the victims whose families weep in silence while the American Civil Liberties Union and ambulance chasing lawyers get front page coverage for the poor deprived, lonely, persecuted criminal who may finally serve some time in a correctional facility after having been picked up perhaps two dozen times for various offences…I certainly don’t believe housing them in country clubs and spoon feeding them will ever make worthwhile citizens out of a criminal, particularly those involved in violent crime.559

The writer explicitly rejected the notion that decent prison conditions or therapeutic programs could “make worthwhile citizens.” The letter did not propose that a tougher approach would be more effective at reforming criminals, but instead rejected the possibility of ever making

criminals into citizens.

Embedded in this type of critique was profound hostility to reliance upon therapy, rehabilitation, or structural reform to address crime. Many commentators insisted that attending to “root causes” was counterproductive; they argued that emboldening and coddling criminals actually made the problems worse. An editorial that articulated this logic ran in the Herald Examiner:

It has seemed that while more and more dollars have been allocated to crime prevention programs, and a greater emphasis at all levels of government on social services which address themselves to alleviating the conditions on which the criminal element thrives, we have witnessed not only more violations of the law, but a tendency toward more violence in the acts committed.\(^{560}\)

Therefore, therapeutic approaches to criminality were not merely ineffective, but actually exacerbated violence and crime. Such letters portrayed social services as harmful, even jeopardizing the safety and security of law-abiding communities. Instead of expanding the groups within society that possessed full rights and autonomy, people felt that authorities’ attention to marginalized, racialized populations constricted the rights of average citizens. This zero-sum understanding of rights suggests that many people’s claims to full citizenship were predicated upon its denial to other groups. The sentiment that the state no longer served the right people was particularly resonant in an era marked by government interventions (however limited) on behalf of women, people of color, and other traditionally marginalized groups. A couple wrote to Senator Nejedly: “It is time we become less concerned with the rights of the criminal, and more concerned with the rights of the innocent victims…We all know it is an erosion of the rights of the people to be protected…Today wrong is right in the eyes of too many

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of our government who make the laws.” A letter to the editor echoed this same theme: “It is high time to reexamine our criminal laws and legal procedures and put the emphasis where it belongs—on the rights of all law-abiding citizens of California who are the direct or indirect victims of crime.” In this language, people asserted rights to state resources and protections by virtue of their position as normative, tax-paying, law-abiding, productive workers. Positioning claims to full citizenship protection in this way negated the entitlement of other groups. It rhetorically excluded marginalized populations just at the moment when these boundaries were so heavily contested.

In another letter to Senator Nejedly, a man wrote that after eight armed robberies and eight burglaries, he was the “record holder in the City of Pittsburgh as a victim of crime.” He explained:

I’m writing to you in a cry for help, not only for myself but for thousands of other citizens...I’m going to work armed, even at home...My question is What happened to our laws which is supposed to protect all citizens? Are our today’s leaders getting soft? Some of them seem more concerned about the welfare of our prisoners, (bums, radicals, etc, etc,) then us who are trying to make a honest living. We need men with guts in today’s society, to stand up and show us that we also have rights, also the right to work in peace without looking over our shoulders or keeping our fingers on the trigger...All I and others want is to live in peace without fear.

While it is not surprising that this person became enraged after 16 robberies, it is interesting to note his particular analysis of these events, which featured politicians’ cowardice, “soft”-ness, and lack of guts as the cause of crime, essentially charging elites with lacking manly prowess and resolve. This discourse framed efforts to address the root causes of crime and enhance the

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561 Mr. and Mrs. Wm. W. to Nejedly, March 10, 1977, Senate Select Committee on Penal Institutions Bill Files: SB42, LP218:231, CSA.
563 Harry F. to Nejedly, February 26, 1976, Senate Select Committee on Penal Institute Working Papers, LP161: 243, CSA.
rights of marginalized citizens—especially prisoners—as effete and wimpy. The writer deplored that fact that everyday citizens were forced to step into this void of masculine leadership and protect their families and property by arming themselves. When elites presented their policy recommendations in ways that aligned with or reinforced these increasingly prevalent themes, they captured much popular support and political momentum.

Despite the gathering strength of their political adversaries, the prisoners’ rights movement and the Prisoners’ Union remained adamant in their support of SB42 during the following legislative session. This support persisted even as the political process exacted new compromises with law enforcement. During the 1976 session, SB42 encountered virtually no opposition. After California courts struck down Directive 75/20, Governor Jerry Brown abandoned his efforts at administrative reform and supported the bill. He and his staff played a critical role mediating conflicts and building compromise legislation palatable to all the parties involved.

While many prisoners and their advocates were undoubtedly ecstatic about Governor Brown’s intervention and SB42’s resurgence, close observers saw his involvement with the bill as more complex. Brown was certainly not motivated by an affinity with those behind bars. Although the right reviled Brown as a typical liberal, his record on criminal justice was actually quite different. In an oral history, Alan Kline, Brown’s Legal Affairs Secretary between 1975 and 1980, explained that the governor was not at all inclined to spend political capital on prisoners: “Jerry Brown was not a bleeding heart liberal. I know there were a lot of people who think that he must have been or were sure that he was, but let me assure you—and I was there—when it came to sentencing issues, Jerry Brown was not a liberal.”

drive punitive trends to the extent Rockefeller did in New York, Brown aligned staunchly with “law-and-order” positions on criminal policy.\textsuperscript{565}

There were others who anticipated that determinate sentencing could create problems for the left. Some political operatives warned against granting politicians sentencing authority, fearing that they would be subject to public pressure to increase punishment. In analysis of the bill, committee staff prophetically acknowledged the potential dangers. They wrote: “the Legislature has been a reactive body in the area of criminal sentences. Other than in the case of marijuana, there has been no significant legislation that attempts to reduce sentences.”\textsuperscript{566} The sentencing reforms also enhanced prosecutors’ power, since they chose whether or not to charge the enhancements that lengthened sentences for factors such as prior offenses or using a firearm. The legislative staff recognized that these proposed reforms did not remove discretion and arbitrariness from the sentencing process, as the bill’s proponents claimed. Instead, it changed the locus of decision making from parole boards to prosecutors: “The ultimate sentencer becomes the Prosecutor who decides the length of sentence by the enhancements he alleges.”\textsuperscript{567} Others also saw risks associated with SB42. Michael Dufficy, the attorney who defended one of the San Quentin Six who were charged in the confrontation where George Jackson was killed, told a reporter, “I think there is no question that this bill is going to backfire for the liberals and the radicals.”\textsuperscript{568}

\textsuperscript{565} Despite signing legislation that made punishment the principal function of incarceration, Brown did not totally abandon the notion that prisons could facilitate rehabilitation. Ruth Wilson Gilmore, \textit{Golden Gulag}, p. 92.

\textsuperscript{566} “Staff Concerns and Proposals over SB42,” April 7, 1976, Assembly Criminal Justice Committee, SB42, LP319: 68, CSA.

\textsuperscript{567} Ibid.

“The Purpose of Imprisonment for Crime is Punishment:” California’s Legislature Enacts Determinate Sentencing

In negotiations over the final version of SB42, there was little resistance to abolishing the indeterminate sentence, which was politically and legally unviable by 1976. The debate centered instead on the appropriate length of the fixed sentences, an ironic stumbling block considering that once lawmakers gained control over term lengths, there was no obstacle to constantly revising them. Kline explained this dynamic in his oral history interview:

But once you took the power to set sentences away from the Adult Authority and placed it in the legislature, you were giving the legislature the ability to lengthen sentences. You also gave it the ability to shorten sentences, but it’s politically unrealistic to think they would ever do that, and to my knowledge they have not.\(^{569}\)

By keeping prison terms roughly consistent with California’s earlier averages, the final bill maintained the compromise between competing interests and resisted pressure to either lengthen or shorten prison terms.

On August 4, 1976, SB42 easily passed the committee that had stalled its passage the previous year. Pressure from the Prisoners’ Union and the governor’s involvement nullified any incentive for the Democratic members to scuttle the legislation. The Assembly’s Criminal Justice Committee voted four to one in favor of SB42. Alan Sieroty cast the only opposing vote, claiming that the law opened the door to a dangerous cycle in which lawmakers would perpetually extend sentences in response to public pressure or political motivations.\(^{570}\) After further compromises, the bill finally passed both houses. On September 20, 1976, Governor Brown signed the groundbreaking determinate sentencing law and three other anti-crime bills at


a press event surrounded by law enforcement officials.\textsuperscript{571} The prisoners and their allies, who had been so instrumental in the bills’ passage, were nowhere to be seen.

The new bill abolished the Adult Authority and the Women’s Board of Terms and Parole, and replaced the indeterminate sentence with a fixed, or determinate, sentencing system. The law aimed to standardize sentences and equalize the amount of time people served when they were convicted of similar crimes. Implicit in this endeavor was the discursive abandonment of the decades-long rehabilitative mission of prisons. The law spelled out this unprecedented conversion with its famous declaration: “the purpose of imprisonment for crime is punishment.” Retribution was now the official motive for incarceration in California.\textsuperscript{572}

The final version of the law replaced the discretion of the parole board with a middle, lower, and upper term for each felony. Unless mitigating or aggravating factors existed, the judge was expected to sentence offenders to the middle term. Prison terms could be extended if prosecutors chose to charge any of the enhancements available for a variety of factors, such as previous convictions or the use of a firearm during the crime. The law instituted “good time,” a standard one-third reduction in sentence length for good behavior in prison. Most offenders faced a single year of parole upon release from prison. The Community Release Board replaced parole boards. The new board’s authority was limited to decisions about parole suspension, “good time” reductions in prison terms, and release dates for inmates serving life sentences (which remained indeterminate).\textsuperscript{573}

unthinkable only a decade earlier. Yet, early on, some prisoners warned that the particulars of the bill were not as favorable as many imagined. An inmate journalist cautioned his readers against unrealistic expectations in the California Medical Facility’s newspaper:

From talk on the yard there seems to be as many interpretations of SB42 as there are convicts. Unfortunately, many cons are extracting from the bill that part which is most favorable, blinding themselves to the various negative provisions. For instance, SB42 does not provide for a mandated mass exodus of overdue convicts on July 1, 1977…Beware your local jailhouse lawyer, as he may subject you to a bitter disappointment later on…Anyone who truly believes that SB42 is light stuff should re-read the bill. It may be great for first-timers, but don’t come back for seconds…certainly not thirds.”

In this and other pieces, inmates ruminated over the new statutes, searching hopefully for clues about how the new law would affect their fates. Although most prisoners welcomed the end of indeterminate sentencing, some also anticipated that the full import of the new legislation was not yet evident.

Before the bill was even signed by the governor, conservative and “law-and-order” interests began attacking SB42 for being overly lenient on prisoners. Motivated in part by the looming 1978 elections, politicians portrayed the bill’s prison terms as dangerously short and warned of disastrous consequence should officials issue fixed release dates for the thousands of inmates sentenced under the old indeterminate system. They rushed to call for repeal, revisions, and amendments that would make penal policy better protect the public. Republican State Senator H. L. Bill Richardson started the Law and Order Campaign Committee, a direct mail fundraising organization devoted to unseating “soft-on-crime” legislators. The first organization of its type nationally, Richardson’s new campaign committee hoped to channel public concern about rising crime to the political and financial advantage of conservative

legislators. This massive direct mail apparatus positioned conservative lawmakers as the manly protectors of public security, generated an influx of new funds, and discouraged lawmakers’ opposition to “law-and-order” bills at the state capitol. It would become an increasingly powerful and feared force in California politics in the coming years.

Senate Bill 42 also became a pawn in the upcoming gubernatorial election battles. Ed Davis, the tough-talking, controversial chief of the Los Angeles Police Department, retired from the force and made a bid to become the Republican nominee for governor. His likely rival, Evelle J. Younger, also had a law-enforcement background, having served as Los Angeles County District Attorney before becoming State Attorney General in 1971. Younger was certainly not aligned with prisoners’ rights groups; he supported mandatory life sentences and declared in 1975 that, “I’d rather run the risk of keeping the wrong man a little longer than let the wrong man out too soon.” But Younger had supported SB42, which became a political liability. In a series of public pronouncements and opinion editorials, Davis relentlessly attacked the provisions in SB42 that required corrections employees to assign release dates for inmates serving indeterminate sentences. Referring to those prisoners held far beyond the average term for their respective crimes, he claimed that this policy would release into the population a torrent of particularly violent felons who should instead be warehoused indefinitely by the state. In an influential and provocative Los Angeles Times opinion editorial, Davis wrote: “A new escape tunnel has been dug for San Quentin prisoners, but this one had the help of the Governor and the Legislature. Because of this tunnel, you can expect a sharp increase in violent crime. More than 56% of the most violent and vicious criminals presently warehoused in state institutions will be released.” In case there was any doubt about whether Davis was trying to generate panic, he

576 Ibid.
continued: “Does that scare the hell out of you? Well, it should!” He portrayed this “prison break” as worse than mere bungling, charging the governor and courts with recklessly and deliberately endangering law-abiding citizens:

On one side of that door are the predators of society: while on the other side, in the relative quiet of our communities, lie the potential victims—fearful of possible intrusion. Who is going to provide these potential victims with compassion?...At the center of this turnstile sit the executive and legislative branches of government. Will these representatives of the people continue to add grease to the doors of justice?  

With this rhetoric, Davis played upon (and, in turn, escalated) fear of crime, while insinuating that he had the experience and resolve to protect the public from criminal predators and their unwitting accomplices: the executive and legislative branches of government.

Although Davis’s claims were hyperbolic, his attacks on SB42 effectively painted Attorney General Younger and Governor Brown into a corner as “soft on crime.” Both now called for changes to the law. Senator Nejedly accused the candidates of knuckling under to Chief Davis’s “vituperative” attacks. “These hysterics are all posturing to get some preeminence as the architect of law and order,” he told the San Francisco Chronicle. “The governor’s caught in the political maelstrom. Like the AG [Attorney General Younger], suddenly he’s got problems with the bill.” These political realities did not escape inmates, who continued to watch policy developments very closely. An analysis written for the prisoners’ newspaper at California Medical Facility explained the risks: “Considering that 1978 is an election year, and the political ambitions of the pervert from Los Angeles [Ed Davis], SB42 could become a political football

with Chief Davis playing quarterback.”

With SB42 already passed, lawmakers scrambled to modify the law before it became effective on July 1, 1977. Much of the controversy zeroed in on the provisions concerning issuing release dates to inmates who still had open-ended sentences. Critics charged that the law triggered the release of criminals parole boards had deemed too dangerous to release after serving the average prison terms for their crimes. Governor Brown attempted to head off these attacks by forwarding his own revision, or “clean-up” legislation. Representative Daniel Boatwright introduced Assembly Bill 476 (AB476). Boatwright was a Democratic member of the Assembly and former deputy district attorney for Contra Costa County who championed “tough positions” on crime. Although the sponsors resisted pressure to increase SB42’s base prison terms, the law amended the cap on enhancements and limits on consecutive terms, thus enlarging the discretion of prosecutors to further lengthen sentences. It extended the routine parole supervision from one year to 18 months. It also altered the retroactive sentencing of those who were being held under the indeterminate sentences. The Boatwright Bill [AB476] empowered authorities to review, revise, and postpone the “tentative” release dates that Community Release Boards had begun issuing upon the passage of SB42.

Politicians’ rush to amend SB42 was clearly motivated by the new attacks characterizing the bill as overly lenient. One typical newspaper article read: “The proposed changes follow accusations by some law enforcement officials that sentences in the new law, scheduled to take

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effect this July, are too soft.” As opposed to discussing the punishments merely in terms of length (i.e., too long or too short), reporters and officials more frequently cast the bill as “soft” and overly indulgent. Depicting state programs, officials, and policy in such gendered terms instantly linked with larger themes in public discourse that disparaged welfare-state programs by portraying them as weak, effeminate, and therefore, generally ineffective. On a more concrete level, politicians, and Governor Brown in particular, wanted to avoid the political debacle that would undoubtedly ensue if any prisoners released under the new law were to commit any newsworthy crimes. Some critics suspected that lawmakers were planning to simply postpone release dates until after the 1978 elections.

While the right attacked AB476 as insufficiently severe, the architects of SB42 were alarmed to see the policy they had championed and carefully crafted careen off course so suddenly. Raymond Parnas, one of the two principal drafters and negotiators of SB42, wrote a detailed analysis of these developments in the *Sacramento Bee.* He explained that SB42 was careful, rationally deliberated legislation resulting from two years of debate, public hearings, negotiations, and study, and eight different drafts. Boatwright’s legislation, on the other hand, was hurriedly assembled and informed by little more than political pressures. At his article’s conclusion, Parnas acknowledged that he and his allies had failed to anticipate the full consequences of transferring sentencing authority to politicians. He confessed that the liberal Senator Alan Sieroty, one of the SB42’s few opponents, had anticipated this dynamic: “I would, however, hate to admit that Senator Alan Sieroty was right in distrusting the collective ability of his legislative brethren to withstand the pressures of the multitude for perpetually higher

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penalties.” Senator Nejedly also recognized that the shifting political landscape spelled serious problems for the delicate compromises in his determinate sentencing law. He wrote to one constituent that, “the whole subject of crime and lengths of incarceration has become a political football which threatens the very existence of SB42. I think it is clear that some measure ‘toughening SB42’ will pass, or we will most certainly face a repeal or initiative measure drastically increasing sentences.” In another letter responding to a woman concerned about the cost and effectiveness of the longer sentences in AB476, Nejedly again warned of the gathering strength of “law-and-order” proponents:

While harboring serious reservations about the contents of AB476, I have even greater reservations about attempts by law enforcement groups and individual legislators to “toughen” the bill still further…Given the political clout of judges, district attorneys, sheriffs, police and other law enforcement groups, and the existing political climate, perhaps a bill such as AB476 was inevitable. Emphasizing his conviction that longer sentences, while appearing “tough,” did nothing to reduce crime, Nejedly continued, “I can only hope that as our prisons become overcrowded and crime remains unabated we will discard the fallacious belief that longer prison terms will somehow make our streets and homes safer.”

The changes heralded by AB476 were most alarming for prisoners themselves. Inmates reacted immediately to the proposed legislation, recognizing the implications for the material conditions of their captivity and for the larger cultural milieu. In a letter to Senator Way opposing AB476, the Prisoners’ Unions’ Willie Holder expressed a sense of betrayal by the legislative process.

587 Nejedly to Virginia R., June 20, 1977, Senate Select Committee on Penal Institutions, Bill Files: 476, LP218: 232, CSA.
SB42 evolved over a two year period of intense discussions with the author, liberal and conservative politicians, law enforcement, judicial associations, community groups, and the Governor. During these two years there were many compromises—all in good faith. Good faith like good will must withstand enormous pressure and requires strong convictions of a basic principle of equity. It is a highly unethical practice for the Governor to duck the leadership necessary to give what we and many others see as a compromise legislation, at best, a chance to work.\(^{588}\)

Holder’s comments suggest that the new bill violated the rules of fair play. Prisoners’ Union members felt double-crossed as the concessions they secured through hard compromises and relentless organizing were quickly swept away.

One letter to Assemblyman Charles Maddy, the chair of Assembly Criminal Justice Committee, expressed a similar sense of betrayal by convicts’ sudden expulsion from the political dialogue concerning their fates. The author asked, “First, why were over 9,000 letters from prisoners, their families, and other concerned groups used to help SB42 through the legislative process, and now that the Boatwright Bill [AB476] proposes to completely rewrite SB42…no one is asking for our input or feelings?”\(^{589}\) The letter pointed to the wider trend where inmate voices had become less legitimate and less audible as policy recommendations became more punitive.

The same writer spoke to the personal torment and disillusionment that resulted from extending the tentative release dates issued after SB42’s passage. The inmate requested that the governor and Representative Boatwright “tell my wife and children that I have to serve these added years of imprisonment because of the coming gubernatorial race and that it’s nothing personal toward me. I can’t explain it, all they know is that I received a ‘tentative date’ and that

\(^{588}\) Willie Holder to Senator Way, March 3, 77, Senate Select Committee on Penal Institutions, Bill Files: 476, LP218: 232, CSA.

\(^{589}\) Samuel M. to Assemblyman Charles Maddy, April 5, 1977, Assembly Criminal Justice Committee, Bill Files: AB 476, LP319: 83, CSA.
Daddy is coming home."\textsuperscript{590} Over and over again, inmates’ letters attempted to impress upon legislators the impact of suddenly revising release dates, especially for their families and friends on the outside. Another man wrote to Representative Maddy:

Do you have any idea how much SB42 meant to people like myself? Or how we have counted the days since last August 31\textsuperscript{st}, waiting for the time to creep by until the first of July this year and a chance to be free again?…Can you imagine the resentment this kind of disappointment will cause among the men in prison expecting to go home this summer?...We are people too, with the same feelings as everyone else, and we can differentiate between justice and injustice. I’ve never gotten mad about any of the years I’ve spent in prison yet, because I knew what I was doing when I broke the law, so I could not rightly complain about paying for my actions.\textsuperscript{591}

Their letters suggest that inmates thought they were in a reciprocal relationship with the state, where both sides had rights and responsibilities. Many seemed to accept prison terms as punishment for breaching this covenant, but were dismayed when they felt lawmakers violated this social contract by readily exchanging years of prisoners’ lives for political gain. Prisoners resisted being silenced and used as pawns in battles that sacrificed their interests for lawmakers’ gain. A public letter sent by more than 500 inmates at the California Medical Facility denounced AB476 as cynical maneuvering and all the more objectionable because it betrayed prisoners’ nascent faith in the system.

California prisoners have waited many years for an alternate system that would remove the inhumane and debilitating cloud of indeterminancy from our lives. Time and time again we of the convicted classes and our families have been used and manipulated in this political and economic game of chess in which human beings are considered expendable by those forces in control of this society. After years of struggle, bloody riots, demonstrations, and the death of many of us, we finally ceded to those who asked up to stop using violence and to learn to work within the system. From that point many compromises were made in order that SB42 could become a reality…There are many reasons why the prisons of this state and this country remain full, but you know and we know that prisons are not full because of any soft or “PERMISSIVE” laws. We also know that the public

\textsuperscript{590} Ibid.

\textsuperscript{591} Howard Jay B. to Ken Maddy, Chair of Assembly Criminal Justice Committee, April 1, 1977, Assembly Criminal Justice Committee, Bill Files: AB 476, LP319: 83, CSA.
will not be any better protected by longer prison sentences nor will punishment ever act as a deterrent to crime or unwanted social behavior.\textsuperscript{592}

Just as prisoners entered the public sphere as legitimate voices on matters that concerned their own custody, they thought that disingenuous politicking dashed their incipient trust in the political process and expelled them from dialogue. Inmates objected to the wanton disregard of their time, interests, and loved ones. To counter the persistent rhetorical erasure of their ties to society, they continually highlighted their connections to their communities, especially to family. They repeatedly asserted their own humanity and notions of justice, both of which they felt were compromised by law-and-order politics. One man explained:

People tend to talk about years out of a person’s life as if it were nothing, every day in prison is hard…and when you talk about 8, 10, and 12 years it’s an eternity of misery. I’ve neither killed nor hurt anyone yet to be told that 13 years isn’t a full pound of flesh, and that I have to give 3 or 4 more years to support a politicians’ platform and further his political career, is neither fair nor just and only breeds negative and resentment.\textsuperscript{593}

Frustration extended beyond disappointment with the policy changes proposed in AB476.

Writers resented that their opinions and fates were so flagrantly, and deliberately, disregarded. They were alarmed by political elites’ rhetoric that renounced state accountability to prisoners and implied further exclusion from the polity.

Many letters warned of the consequences of betraying prisoners’ trust and already strained faith in the justice of the legal system. Forty men imprisoned in Chino sent an open letter to Senator Nejedly, which opposed the proposed postponement of implementing SB42. They explained: “At Governor Brown’s words, we were told SB42 would come into effect on July 1, 1977. We told our families. Plans were made. Now we might have to tell them, all the

\textsuperscript{592} Form Letter from Prisoners at California Medical Facility to State Public Defenders Office, April 6, 1977, Assembly Criminal Justice Committee, Bill Files: AB 476, LP319: 83, CSA.

\textsuperscript{593} Kenneth C., Prisoner to Assemblymen Maddy [March 22, 1977] Assembly Criminal Justice Committee, AB 476, LP319: 83, CSA.
hopes were for nothing…Some people ask why there is no faith in the system. Need we say more to understand? One inmate warned that, “The added years of punishment after we have received ‘tentative’ release dates under the provisions of a bill that was legally passed and signed into law—will, no doubt, cause an uproar and an injustice that will be remembered for years to come.” If politicians would not reconsider the punitive policies for benevolent motivations, this writer suggested that they might do so in the interest of maintaining peace within institutions.

In an effort to reason with policymakers, some inmates’ correspondence painstakingly explained the realities of how policies operated in their daily lives. In response to the provisions in AB476 that extended the period of parole supervision for ex-convicts, one man wrote at length about how parole actually functioned to prevent independence and reintegration into society as a law-abiding citizen.

A lot of people will advise you that a longer parole term is necessary to control and guide the men released from prison. This is the opposite of the truth. The parole system does not exist to help the parolee remain out of prison. Its actual function, regardless of what anyone may say to the contrary is to perpetuate a high rate of recidivism and keep the prisons filled…I could go straight and work, and get along fine, even on escape or when I was a bailbond fugitive. But a parole is such a handicap that I could not make it. They always insisted that I had to tell my employer about my past. The only jobs I could get was when I lied, or did not reveal my past, and I was fired when my parole officer told my employer the truth. On each parole, I was unemployed for months, until I gave up and took off. Then I started robbing again.

Inmates were acutely aware of the political pressures motivating revisions to SB42. If lawmakers were going to ignore prisoners’ perspectives, inmates argued that they should at least consider the studies and academic knowledge produced by other elites. Their letters expressed indignation

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594 Letter signed by 40 Chino Inmates to Nejedly, January 28, 1977, Senate Select Committee on Penal Institutions, Bill Files: AB476, LP218: 237, CSA.
596 Howard Jay B. to Ken Maddy.
at the chasm between specialists’ knowledge and the policy recommendations that grew out of the legislators’ inflammatory rhetoric. One wrote, “We all know that AB476 is politically motivated, it is not based on any recommendations from learned bodies or national commissions, nor have the proposed amendments resulted from study, analysis, of public hearings.”

Opponents of AB 476 repeatedly decried the pretense of claiming that harsher punishment improved public safety. A prisoner-rights activist echoed prisoners’ accusations: “The real reason why you legislators want to change SB42 is because of the scare tactics who have hit more newspapers. You do not hear organizations and people like myself who know—as you do—that long-term punishment is not and never has been a deterrent.”

Despite this fervent opposition, AB476 easily passed both chambers of the legislature. With little debate, the Senate approved the law by 27 votes to six. In the Assembly, 59 approved passage and only one opposed the measure. Governor Brown signed AB476 into law as emergency legislation on June 29, 1977, just two days before SB42 went into effect. This bill, however, did little to alleviate the political pressures on the Brown administration, which was now attacked from the right for failing to increase penalties sufficiently, and from the left for succumbing to pressure from law enforcement. Again framing the debate in gendered terms of strength and weakness, Chief Davis attacked AB476 as a “sell out,” rejecting the claim that Boatwright’s law “toughened” SB42 as “absolute malarkey.”

Inmates resisted the new policy in every forum they could. In addition to writing lawmakers and coordinating advocacy with groups such as the Prisoners’ Union, they organized

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597 Edward A. to Members of the Criminal Justice Committee.
598 Statement by Florence Kelly, [No Date], Assembly Criminal Justice Committee, Bill Files: AB 476, LP319: 83, Kelly included with her statement a sample letter from prisoners opposing AB 476. Supposedly inmates sent 500 similar letters to lawmakers.
599 “Both Houses Okay Longer Prison Terms” The Communicator 23, no. 25 (July 1, 1977), California Men’s Colony F3717: 1844, CSA.
fundraising drives within various California prisons in order to hire lawyers to challenge AB476 in the courts. For example, a committee organized more than sixty men to solicit donations on their respective floors at California Men’s Colony, raising more than $3,000 to challenge the constitutionality of AB476.601 Prisoners found the courts no more sympathetic to their pleas than the legislative branch, and AB476 went into effect without significant hindrances. The policy effectively prevented the feared exodus of criminals and kept release rates low.602

Confronted with these changes and the increasing calls for “law and order” in mainstream politics, some inmates began to reevaluate or nuance the fervent rejection of the rehabilitative ideal. One in-depth commentary ran in the institutional paper of California Men’s Colony and warrants being quoted at length. The article started by revisiting why rehabilitation had fallen from favor so suddenly:

Across the country, the death knell is being sounded for rehabilitation programs in our prisons. Conservatives, who have always opposed the concept of rehabilitation, are watching in silent satisfaction as liberals and academics rush to recant their faith in the ability of psychiatrists and psychologists to alleviate prisoners’ antisocial tendencies. Once derided as barbaric and ineffectual, punishment is making a strong comeback as the radical-chic answer to the problem of crime in American…Meanwhile, prisoner-rights groups complain that existing rehabilitation programs are, more often than not, forced on them. Such programs, they also charge, have turned prisons into an Orwellian nightmare where inmates, denied firm date for getting out, are reduced to playing endless games to prove that they have achieved “insight” into the psychic causes of their crimes.

After acknowledging why rehabilitation lost support, the author warned of the dangers of discrediting therapeutic rationales for incarceration.

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601 Inmates raised over $3,000 in two separate fundraising drives. Although organizers expressed disappointment that they did not raise more money, they claimed it was the most collected at any prison. “Fund Drive Nets $1,645 for Legal Defense ‘Kitty,’” The Communicator 24, no. 17 (May 12, 78), California Men’s Colony, F3717:1845, CSA; “Legal Fund Committee Thanks Everyone for Their Help”; The Communicator 24, no. 19 (May 26, 78), California Men’s Colony, F3717:1845, CSA; and “News from Attorneys Is Bad but Not Hopeless.” The Communicator 24, no. 21 (June 9, 1978), California Men’s Colony, F3717:1845, CSA.

True, the time is long overdue to limit this power of psychiatrists and psychologists in deciding, almost single handedly, who goes to prison and how long they stay there. These “experts” should also be deterred from forcing their wares on a—quite literally—captive audience...However, it should be clearly understood that treatment has always been the exception rather than the rule. Most of the time “rehabilitation” has just been a convenient excuse for placing enormous discretion in the hands of prison officials...Yet the hasty retreat from the excesses and overpromises of the “rehabilitative ideal” poses a serious danger not only for prisoners after their release but also for the larger society. The danger is that legislators at both federal and state levels will seek to cut expenditures and balance budgets by seizing on the current climate of pessimism about rehabilitation to justify eliminating even the woefully inadequate amount of treatment now being provided.  

These warnings proved prophetic. While inmates appreciated being liberated from the arbitrary power of parole boards, they faced a climate that was increasingly hostile to providing them basic educational, recreational, and social services. Discrediting the rehabilitative ideal also coincided with the growing opposition to convicts’ civic participation and inclusion in the polity.

**Prison Guards Revolt at Susanville**

AB476 did little to mollify “law-and-order” advocates. It was an abortive attempt to stave off even more punitive policy, and a harbinger of things to come. And these trends were not confined to the legislature. As law-enforcement interests gathered strength in Sacramento, corrections employees struggled to assert more total control of prisons by wresting away authority from prisoners and upper-level bureaucratic management.

Events at the rural prison in Susanville in 1977 sent a powerful message throughout California’s prison system. The confrontations there illustrated the ongoing struggles to recalibrate the balance of power within prisons in the aftermath of social mobilizations around carceral issues. Previously a lower-security conservation camp, Susanville became a medium-security prison after local citizens fiercely opposed CDC plans to close the institution in 1973.

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The atmosphere at the prison was particularly tense, especially as the overwhelmingly black and Latino inmates clashed with the predominantly white workforce. On February 9, 1977, inmates organized a peaceful work stoppage to protest prison conditions and policy. Guards reacted violently, breaking the strike with riot sticks and almost 120 rounds of rifle ammunition. The attack injured ten inmates, three from gunfire. Scandal erupted when the Department of Corrections’ investigation into the incident blamed racism, terrible conditions, and failure to implement affirmative action programs for the confrontation. “Law-and-order” advocates and corrections employees were horrified by this public rebuke, especially the CDC’s move to discipline twelve guards involved in the clash. Enraged officers retaliated by organizing their own work action, and more than 160 guards staged a sickout to protest the investigation specifically and affirmative action programs and expanded inmate rights more generally. In public comments, the California Correctional Officers Association (CCOA) charged that CDC administrators were in “cahoots” with the Prisoners’ Union and had “shifted the staff’s authority to the inmates.” By presenting the guards’ union as a check on the excesses of prisoners and CDC management, the CCOA enhanced its authority within institutions and its influence on public debates over the new directions in penal practice. The fact that guards were struggling to assert control over prisons was not secret. Assistant Director of Corrections Phil Guthrie explained to the *Sacramento Bee*, “There’s a feeling, although sometimes it’s vague, that changes in society and how prisons are run have caused a loss of control and reduced their

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606 Sigrid Bathen, “Susanville: Crisis Blamed on Racism, Poor Detention Facilities.”
[guards’] authority.607 As the new determinate sentencing policy diminished therapists and parole boards’ authority, guards struggled for dominance in the new balance of power emerging within prisons. Through aggressive organizing and rhetorically positioning themselves as protecting “the public’s” interest in safety and order, law enforcement (and the CCOA in particular) became increasingly influential in criminal-justice debates.608

Prisoners’ efforts to remain viable civic participants suffered other blows as the decade wound to a close. For years, courts heard arguments about inmates’ right to unionize, and in 1977, the U.S. Supreme Court overturned two lower-level decisions issued in North Carolina, and ruled that prisoners had no guaranteed right to form a union. In their dissent, Justices Marshall and Brennan called the court’s move “a giant step backwards” to “a time not so very long ago when prisoners were regarded as slaves of the state.”609 In choosing this language, the justices, perhaps unwittingly, echoed prisoners’ and activists’ analyses that asserted a continuum between race slavery and a legal system that disproportionately incarcerated people of color.

This court decision dashed the already-waning hopes for inmates’ collective representation and an organized, independent voice within prisons. On a symbolic level, it was another public declaration of prisoners’ status as outsiders without the rights and protections of other citizens.

As law enforcement made new gains in courts and within prisons, it also continued to push for criminal sentencing reforms at the California legislature. Only months after SB42 and AB476 went into effect, lawmakers moved again to increase prison terms. State Senator Robert Presley, another Democratic politician with a law-enforcement background, led the charge. He had campaigned as the “Undersheriff of Riverside County” and credited his electoral victories—

607 Ibid.
608 Janssen, “When the ‘Jungle’ Met the Forest”: 725.
particularly the ability to attract Republican support within his swing district—to his stance on crime issues and his professional background. Disturbed by the allegedly short sentences proscribed by the new fixed sentencing scheme, Senator Presley introduced legislation to extend the terms. His bill, Senate Bill 709 [SB709], added two to four years to middle and upper terms for violent crimes and some property crimes. For example, the indeterminate sentence for a convicted rapist had been three years to life in prison. Under SB42, rape was punished by a lower (or mitigated) term of three years, a middle term of four years, and an aggravated sentence of five years. SB709 increased the terms for rape to three years, six years, and eight years, respectively. The sentence for assault with the intent to kill, which had been two, three, or four years, depending on severity, was increased to three, five, and seven years by SB709. A companion bill, Senate Bill 1057, extended the average length of parole supervision from 18 months to three years. For those sentenced to indeterminate life sentences and released at the discretion of the new Community Release Board, SB1057 increased parole from three to five years.

Law-enforcement interests and their political allies used the proposed fixed sentencing laws as a vehicle to assert a muscular vision of state power. Prosecutors and police groups, principally the District Attorney’s Association, justified SB709 by presenting the punishments in SB42 as weak. In public pronouncements and media coverage, SB709 was characterized as an attempt to “strengthen,” “toughen,” or “stiffen” criminal penalties. Editorialists spoke of SB709 as “putting teeth” in determinate sentencing, and described it as a “Bill with Backbone.”

Officers also couched their calls for expanded parole supervision in gendered terms. A letter to Senator Presley from a unit supervisor of the Parole and Community Services Division, explained that, “It appears to us that some legislators and outside groups wish to emasculate and eventually eliminate paroles, for whatever their reason.” SB1057 was needed to “toughen” or “strengthen” parole workers, and—the logic followed—in turn enhance public safety. The key to protecting the public was fortifying the power of law-enforcement agencies.

While this reasoning is so naturalized today it may seem bizarre to reflect on it, this logic is neither inevitable nor self-evident. Little research suggested that increased parole or prison time enhanced public safety. When factoring in the significant costs of added monitoring and incarceration, there was not significant evidence to suggest any net positive social value to punitive policy shifts. In the debate surrounding SB709 and SB1057, some opponents disputed whether the bills would provide enough social benefit to justify an additional $370 million dollars in corrections spending between 1981 and 1986 alone. Governor Brown “raised questions about cost” but chose not to oppose the law in an election year.613 Most politicians joined him in endorsing the revisions, and SB709 passed the Senate 27 to two. The only opposing votes were Senator Nejedly, who originally shepherded SB42 to passage, and Alan Sieroty, who had opposed determinate sentencing from the beginning for fear of lawmakers’ inclination to perpetually increase sentences.614

Legislators were right to worry about the political costs of opposing these “tough-on-crime” bills. When SB709 moved to the Assembly, H. L. Bill Richardson’s advocacy

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organization, the Law and Order Campaign Committee, coordinated a media and grassroots campaign with the District Attorney Association and other law-enforcement groups. It unleashed intense pressure, especially on the members of the Criminal Justice Committee, who had historically thwarted efforts to increase punishments. In one mailing, the Law and Order Campaign Committee alerted 10,520 constituents of Criminal Justice Committee members that their representatives had not yet committed to supporting SB709.615

After clearing the Criminal Justice Committee, the Assembly easily passed SB709 and SB1057. On September 5, 1978 Governor Brown signed these bills and three other anti-crime measures into law. He held a press conference at the Los Angeles Sheriff’s office, again surrounded by law-enforcement personnel.616

“The Walls Are Getting Higher, and the Steel Bars Are Getting Closer Together”: The Aftermath of SB42 and Determinate Sentencing

Senator Presley believed his law “fixed” the major problems in California’s new sentencing system and that legislators would resist “emotionalism” and not pursue further, more punitive changes.617 However, like AB476, SB709 did not end the clamor for more punitive laws. In the following decades, statutes that increased punishment, enhanced “victims’ rights,” or otherwise “toughened” policy became staples of California’s politics. And the reward for championing such legislation was increasingly apparent. In 1978, H. L. Richardson introduced Senate Bill 1840, a law that in effect doubled the penalty for rape, making it higher than punishment for

617 Lipson and Peterson, California Justice Under Determinate Sentencing, 11.
first-degree murder in some cases. When the Assembly Criminal Justice Committee blocked the legislation because it believed it created a warped, disproportionate penalty structure, Senators used a rarely successful parliamentary maneuver that forced the entire Assembly to vote on whether to bypass the committee and bring the bill directly to the floor. Although the effort to bypass the Criminal Justice Committee failed by five votes, Richardson’s Law and Order Campaign Committee used legislators’ opposition on the procedural question to attack them as “soft on crime” and “soft on rape” in the upcoming election campaigns. Voters sent almost a dozen new Republican legislators to the Assembly who had made “tough” stands on crime central to their campaigns. Many of them were supported by funds from Richardson’s campaign.618 Legislators attributed some of their colleagues’ subsequent defeat in the 1978 elections to these attacks and, not surprisingly, were even more reluctant to oppose the next round of anti-crime legislation.

Seizing the momentum, Senator Richardson repeated the same play in 1979, and introduced essentially the same rape bill, titled Senate Bill 13. When the Criminal Justice Committee again obstructed the legislation, opponents seemed on the verge of assembling a bipartisan coalition with enough votes to pry the law from committee and move it before the full body. Democrats, fearful of handing “law-and-order” proponents another vote to hammer them with in the 1980 elections, relented and the Criminal Justice Committee negotiated another hearing for Senate Bill 13. Soon afterwards, the law passed the legislature. It mandated severe enhancements for repeat violent sex offenders and eliminated caps on consecutive sentences. In practical terms, it roughly doubled the sentences for serial rape, making California’s penalties the

most severe in the country.\textsuperscript{619}

Soon Richardson would look beyond state lawmakers and focus his organizations’ political energy on members of the judiciary. When California Supreme Court Justice Rose Bird authored a decision that undermined the 1975 “Use a Gun, Go to Prison” law, the Law and Order Campaign Committee invested almost a quarter of a million dollars into an effort to defeat her. Confronting an unprecedented public attack in what were usually routine reconfirmations, Bird barely retained her seat in the 1978 election.

The ascendancy of these punitive politics joined with mandatory sentencing to balloon California’s prison population. While the growth started before the passage of SB42, with prison commitment rates climbing steadily from 1972, the rate of increase accelerated considerably after sentencing reform.\textsuperscript{620} And although there is some scholarly debate over what caused the explosion in incarceration, contemporary observers drew a direct correlation between punitive new laws and the increasingly crowded prisons. With mandated sentences, authorities lost the ability—employed so successfully by Ronald Reagan when he was governor—to use parole releases to alleviate population pressure within institutions. In addition to the more mechanical policy effects, some population growth was attributable to the cultural reverberations of these debates. Some judges felt more willing to hand down prison time, knowing that the offender faced a set punishment and would not be held indefinitely.\textsuperscript{621} Others defensively erred on the side of longer sentences and higher commitment rates, fearing that their decisions were being


carefully scrutinized for signs of “softness.”

These factors conspired to cause unprecedented growth in the number of people housed by California’s prisons. Those convicted were sentenced to prison more frequently, as opposed to other options, such as probation, jail, or some combination of the two. In 1971, only 10 percent of convicted felons were sent to prison, versus 33 percent in 1978. Judges in Los Angeles County issued 34 percent more prison sentences in 1978 than 1977. And California’s prisons quickly filled to capacity, raising the politically dicey issue of whether to fund new prison construction or institute reforms to reduce the population that left lawmakers open to “soft-on-crime” attacks. In January of 1979, institutions housed 20,000 inmates in facilities designed to accommodate 19,000. By 1981, the population reached 24,000, with 10 percent of inmates sharing cells built to house one person. (By 2010, California’s 33 prisons house 165,000 people, more than double the 84,000 inmates the institutions were designed to hold.)

Because diverting precious state resources to prison construction was less popular than demanding “stiff” sentences, it was here where liberal state politicians made another stand against punitive trends. For a period in the late 1970s, the issue of prison costs reopened debates about punitive mandatory sentencing. When overcrowding prompted demands for construction funds, Assembly members blocked the proposals, arguing that other approaches would be a more productive use of resources. In article after article, journalists deliberated whether the public’s taste for longer prison terms would translate into a willingness to fund, build, and sustain a massive carceral apparatus. One editorial predicted that the price tag of punitive policy would

622 Lipson and Peterson, California Justice Under Determinate Sentencing, p. 25.
inspire new reforms. “Despite the current tough mood of citizens toward criminals, it may be
tempered somewhat when the high cost of this attitude really sets in. These incarceration costs
may help renew interest in devising effective rehabilitative programs.”626 The issue was often
presented as a duel between the public’s two most pressing concerns: crime and taxes. One Los
Angels Times article began: “As much as Californians want government spending held down,
they also want criminals locked up.”627 Members of the Assembly continued to block major
prison construction funding until the law-enforcement community took the issue directly to the
voters through ballot initiatives. Californians approved bonds for prison construction every few
years throughout the 1980s.628 Senator Presley, who carried many of the stymied prison
construction bills, remembered that the bond initiatives passed easily when put directly to the
people, especially in Southern California. “It seemed to be a self-starter. We didn’t put much of a
campaign to get them passed I think in the public. A lot more than in the Legislature, there
seemed to be a law-and-order sentiment out there.”629

Most often, punitive shifts in criminal policy were characterized as the inevitable response
to the populace’s growing concern about crime and the state’s inability to manage it. Newspaper
reports often took for granted that the public demand for security resulted in longer prison terms.
A typical story from the San Diego Evening Tribune read: “The mood of the California public is
reflected in recent actions by the legislature mandating stiffer penalties for crimes involving a
gun and getting specific sentences for certain violent crimes.”630 Other articles reiterated the

626 “Heavy Burden of New Prisons,” The Enterprise, April 11, 1979, Corrections Administration News Digests:
1979, F3717: 1641, CSA.
629 “Oral History Interview Robert Presley,” p. 54. The interviewer’s questions suggest that there were some
educational campaigns to encourage passage of the prison bonds.
630 “Stiff laws demand prison expansion,” San Diego Evening Tribune, August 23, 1979, Corrections Administration
assumption that bottom-up pressure drove legislators’ actions: “Over the last few years, in response to the public outcry over rising crime, the Legislature has enacted measures which set fixed prison terms, increased the length of sentences and limited judges’ discretion in granting probation.”

Legislators also pointed to public pressure to explain their support for increasingly draconian punishments. There is little doubt that they felt trapped by insurmountable pressure from the public not only to address rising crime rates, but to do so in a “tough” and punitive manner. Howard Way, a moderate Republican who cosponsored SB42 with Senator Nejedly, explained his dismay when colleagues voted for extreme anti-crime bills that he knew they found objectionable.

[N]o one wants anybody to be soft on crime. That’s the kiss of death. That’s why so many of my liberal colleagues, when I approach them on whey were casting some of those votes for harsh penalties, they would reply, “Just not to be labeled soft on crime.” And they can just take one vote, you know, on one obscure bill, and say, “Look, he’s soft on crime.”

In the same oral history interview, Way reiterated how this fear, coupled with legislators’ newly acquired sentencing authority, affected the fate of SB42:

[W]hat happened after the bill became law on July 1, 1976, almost immediately the legislature began tampering with it. Assembly Bill 476 increased terms and mandated sentences for certain crimes. And they continued to do that every year, which was very distressing to those of us who had pushed for determinate sentencing. And I think it would be fair to say that neither Senator Nejedly nor I anticipated that this would happen. As long as sentences and the punishment of crime is left in the hands of publicly elected officials, I think you’re going to see this. I would go over and talk to my liberal former colleagues—Senator Petris, for example, would be one—“Why did you vote for this bill?” Well, there was just one simple answer: “I want to stay in office, and this is what my constituents want.” And this is a very, very dangerous precedent...What’s happened here in California is that—and I have said this many times—we’ve just gone berserk in terms of...
punishment.\textsuperscript{633}

The assumption that public opinion drove punitive trends naturalizes these changes and portrays them as an inevitable result of rising crime. Yet, these transformations in penal practice were actually a highly contingent and historically specific outcome. It is therefore critical to examine how these issues were presented in public discourse, as well as who controlled and advanced the issue. It should not be taken for granted that reports of skyrocketing crime would enhance the political and cultural prestige of police and law enforcement. Also, claims that the public uniformly demanded the empowerment of law enforcement through “tougher” state responses to crime equate the public with primarily white communities where “law and order” polled the best. This can further marginalize urban communities of color, who had much more conflicted relationships with state power, especially the police. It is therefore vital to excavate the role of individuals and groups, such as the Law and Order Campaign Committee, which deployed these issues in savvy, resonant ways that both accommodated and shaped the political beliefs of various constituencies.

Not everyone accepted that the public pressured lawmakers to enact longer sentences. There were alternative explanatory schemas. Although infrequently framed in these terms, commentators occasionally noted how attention to one explanation for disorder distracted from alternate theories. For example, when discussing the attacks on the judiciary in the late 1970s, an ACLU lobbyist explained, “It sounds great—you blame it [crime] on judges so people don’t think law enforcement is responsible for not doing a good job.”\textsuperscript{634} The public could logically hold police and prosecutors responsible for rising crime rates, instead of blaming liberal politicians and judges. Law enforcement was, after all, directly tasked with maintaining order,

\textsuperscript{633} Ibid., p. 31.
and failed to apprehend or convict anyone for the majority of crimes reported.

Two factors were integral to successfully positioning law enforcement and punitive policy as the common-sense solution to the era’s perceived crisis in law and order. First was the ability of groups—usually associated with law enforcement—and legislators, typically assumed to be Republican, to connect themselves with muscular, macho assertions of state power. These people projected a vision for government that was fresh, resolute, and unsullied by the historical baggage of liberalism. These visions were uniquely attractive at a moment when critics besieged traditional authority and expertise from every angle. Punitive policy’s second key contribution was symbolically (and often technically) expelling highly marginalized, radicalized groups from society. Debates about escalating criminal penalties were platforms from which people could resist demands to dismantle racist institutions and increase the representation and autonomy of people of color. As opposed to balancing the diverse, conflicted interests in society, these laws portrayed the state’s primary responsibility as serving and protecting the allegedly uniform interests of taxpaying, law-abiding, “productive” citizens. The rhetoric and policy reaffirmed traditional notions of “the public” that failed to accommodate the fraught, incremental movement toward a more democratic multi-racial society.

Staking out a “tough” position was a political and rhetorical maneuver that was most often associated with the Republican Party. Although in the final analysis these politics were most beneficial for the GOP, it is a mistake to assume Republicans monopolized the issue or were singularly responsible for moving it into the core of political culture. In fact, as California’s history illustrates, Democrats were the architects and sponsors of many punitive sentencing reforms, and often attempted to preempt Republicans from passing laws that could be used to paint them as “soft on crime.” In his analysis of what went wrong with determinate sentencing,
Jan Marinissen of the AFSC argued that it was Democrats who undermined the promise of SB42. “[T]he two people who did the greatest damage to the determinate sentence were Mr. Boatwright and Jerry Brown, of course. They were the two greatest perpetrators of screwing over what was initially a very good bill.”

Efforts to head off conservatives by co-opting “law and order” politics—usually undertaken by more conservative Democrats associated with law enforcement—frequently divided the party. And while Democrats could never successfully wrest the mantle of “toughness” away from Republicans, bipartisan participation in “law-and-order” politics legitimized the core messages and assumptions about the appropriate responses to crime. In fact, as opposed to seeing punitive politics as the fruit of Republican enterprise, many contemporary observers faulted Democrats for their own political vulnerability on “law-and-order” issues generally, and determinate sentencing in particular. A columnist for the Sacramento Bee suggested Democrats had created the beast that now threatened them: “It has taken them a while to catch on, but Democratic lawmakers have awakened to the fact that, in helping to end the system of indeterminate prison sentences in California, they have created a Frankenstein monster which is threatening their political careers.” The article continued by reminding readers that some had predicted this outcome, and quoted Democratic Assembly member Alister McAlister’s earlier warning that “I fear SB42 will return to haunt us.”

In most cases, Democrats were trapped by their participation in anti-crime discourse that presented “toughness,” punishment, and retribution as the common sense solution to crime. Despite their embrace of more punitive policy, they could rarely outflank Republicans. An Assembly staffer explained that “[n]o matter how much we [Democrats] adapt, the Republicans can always take one more step to the right than we can. I expect them to try and to continue to

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make that an issue.” While Democrats could neutralize the political viability of these issues by adopting their adversaries’ punitive positions, they were unable to undermine Republicans’ claim to muscular, tough governance. The developing consensus favoring macho penal strategies helped discredit any program or person that could be characterized as its opposite: “weak,” “soft,” or otherwise effete. Raymond Procunier, known for his blunt talk, explained that Republicans’ monopoly of this macho politics allowed them political latitude unavailable to Democrats:

> You’ve got a lot more freedom to be decent under the conservatives than you ever have under a liberal administration. Look what [Jerry] Brown did, appropriated all kinds of money, got tough on law and order, hollered “Kill ‘em” and Old [Pat] Brown put some board members that should have never been on there, just to make it look like he was tough. Reagan did not have to look like he’s tough, just like I don’t, the way I talk and raise hell and bark and stuff. I don’t ever have to do anything tough to make sure I’m tough.638

By successfully painting Democrats and liberals as “soft,” their conservative opponents ensured that politicians advocating for therapeutic, systemic reforms to handle crime operated in uncomfortably cramped rhetorical space.

Prisoners were quite aware that lawmakers were using their lives to illustrate and perform their macho resolve. After the incredible disappointments following Boatwright’s AB476, they were cynical about future political developments and the repeated escalation of punishments. One inmate sarcastically described this dynamic in a prison newspaper article about Senator Richardson’s efforts to enhance rape penalties:

> With the legislative sessions coming to a close last week, our lawmakers held to their usual pattern of passing penal legislation that increases the terms of imprisonment for some crimes. This year they concentrated on rape penalties. Last year it was something about “use a gun, go to prison.” Next year it will be:

637 Ibid.
“Commit a crime, get the gas chamber.”

With the rise of increasingly punitive policy, space for inmates in civil society and in public debates narrowed. Fewer and fewer inmates testified before committees. Fewer bothered to write their legislators. Legislative staff stopped listing the Prisoners’ Union as opposing punitive legislation or supporting alternative measures. These trends converged to further expel prisoners from the polity.

Prisoners’ civic participation, which was never widely celebrated, became increasingly unwelcome and controversial. And inmates clearly grasped the implications of these trends. One man depicted the situation in an article for the California Medical Facility:

You don’t have to be a weatherman to know that things are getting hot for convicts. If you’re semi-conscious, mildly literate and occasionally capable of adding two and two, then you know that, in a manner of speaking, the walls are getting higher, and the steel bars are getting closer together. It seems like every time we turn around some new bill is being introduced, to give convicts more time for a given offense, or to expand the number of offenses for which a prison term is mandatory. Moves are being put on our visiting rights and our rights under the 1st, 6th, and 14th Amendments to the US Constitution. Lifers sentenced under the indeterminate Sentence Law are having their terms fixed under the Determinate Sentence law, without fair compensation in the areas of good time and work credits…In terms of attitude towards prisoners, the people in the free world are definitely regressing. Believe it.

The only hope to counter these trends and be heard, the author argued, was for prisoners to unite:

We need a union to stand up for the continuously diminishing rights of convicts, so that there will be no return to Dark Ages of penology. We need a union to act as a liaison between convicts, the public, and the powers that be. We need a union to promote a greater awareness of the problems of prisoners and how those problems relate to the free world. We need a union to identify the true causes of criminality, and when possible, to alleviate those causes. We need a union for access to the media, so that our position on matters that affect prisoners can be

voiced…

The author went on to explain that these new dynamics foreclosed the possibility that outside allies will make prisoners’ case:

“Who should we depend on for our survival? The police? Politicians? Professors? No there is only ourselves. Ourselves and those precious few people in the free world who realize that there is a lot more to criminality than the commission of crimes; and who believe that no matter how badly some of us may stumble, the human spirit is always capable of redeeming itself.”

With fewer organized advocates and diminishing rights, inmates saw their already constricted agency further stifled. The platforms for prisoners to be heard, even by each other, shrunk as criminal policy became more punitive. For example, the California Department of Corrections shut down all prison-based newspapers in 1982, responding to inmates’ legal challenges to press censorship. Following pressure from the ACLU and allied lawmakers, the papers were reopened under strict control, serving essentially as administrators’ organs.

Simultaneously, law enforcement and “law-and-order” politicians expanded their power and prestige. Their enhanced authority was predicated upon the perceived need to surveil, discipline, and punish prisoners. New policies, which were opposed to facilitating convicts’ reintegration into society, charged state agents with guarding the boundary between criminal and law-abiding citizens. Prisoners were presented as the antithesis of citizens and positioned emphatically and dramatically (if not always permanently) outside of the polity. The rejection of their rights and belonging worked to secure the rights and security of normative, law-abiding citizens. In fact, the authority of law enforcement, its “law-and-order” political allies, and the reformulated legitimacy of the state itself were all predicated upon the discursive, physical, and legal exclusion of prisoners from society. This dramatic expulsion of convicts from the polity not

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641 Ibid.
642 Eric Cummins, *Rise and Fall of California’s Radical Prisoner Movement*, 269.
only made people feel safer, but also provided social cohesion at a time when society seemed to disaggregate and traditional visions of the national character seemed to disintegrate.
CONCLUSION: ASSEMBLING AN UNDERCLASS THROUGH THE SPECTACLE OF PUNISHMENT

The punishing policies enacted during the 1970s were both creative and destructive. They helped tear down old state bureaucracies and undermine the reigning assumptions about the appropriate response to crime, poverty, and drug abuse. Simultaneously, they advanced a new macho vision of state power that built and expanded the state’s punitive apparatus. This political process—the spectacle of debating, passing, and implementing punishing policy—forged new notions of citizenship and state authority. These studies chronicle how punishing politics recast the professed mission of government and entrenched a cleavage in society between normative, rights-bearing, taxpaying Americans and racialized, stigmatized “anti-citizens.”

These policies emerged during an especially volatile, explosive time in U.S. history, marked by momentous economic and cultural transformations and profound social desegregation. During the 1970s, traditional authority experienced a profound crisis of legitimacy.643 The state, in particular, was undermined from within by its own corrupt and dubious practices, and from without by an onslaught of criticism from social movements on the left and right. Freedom movements, particularly African Americans’ bitter confrontations with racist institutions across the country, contested traditional notions of citizenship. At the same time, economic opportunities diminished as the capital reorganizations that began after World War II triggered a steady decline in the percentage of blue-collar jobs in northern urban centers. Women entered the workforce in unprecedented numbers, profoundly unsettling family dynamics and established gender roles. As these factors conspired to spotlight the limitations of

643 It is a persistent trope about the 1970s that the nation witnessed a crisis of leadership and faith in government. President Carter’s declared in a renowned 1979 speech that “a crisis of confidence” was plaguing the United States. See, for example, Peter Carroll, It Seemed Like Nothing Happened, Part Two: Crisis of Leadership, p. 139-235.
the U.S. welfare state, groups of elites long hostile to the New Deal seized on the opportunity to defund and dismantle its legacy. 644

These interlocking factors exerted intense destabilizing pressure, rendering old social assumptions and economic arrangements vulnerable and opening space for the rise of a new order. The welfare and criminal policy debates examined in this dissertation were a principal site for forging that settlement. On this unstable stage and with varying degrees of agency, groups met and struggled over how the state should serve and protect its citizens. Empowered by social movements, welfare recipients and criminal offenders claimed new authority and made new claims on the state. Their political engagement reshaped policy debates, unsettled societal hierarchies, and undermined liberalism by laying bare the quiet brutality behind many of its rehabilitative claims and therapeutic regimes.

Simultaneously, hostile groups, such as law enforcement interests and conservative politicians, used the heightened visibility of marginalized populations as a foil to circumscribe normative citizenship. These groups forwarded punitive legislation embedded in a distinct narrative about the causes of poverty, crime, and drug addiction. The political process of enacting these laws etched this powerful social logic into public consciousness. This logic held malicious individuals and pathologized groups responsible for the era’s formidable social problems, effectively absolving other influences such as state fiscal policy or structural economic reorganization. Framed in this manner, punishment, social expulsion, and surveillance became the commonsense response to these social problems.

Punitive policy transformed programs ostensibly designed to reintegrate marginalized populations into programs responsible for protecting normative, tax-paying citizens from these

groups. Welfare reforms reoriented the AFDC’s mission from serving its beneficiaries to protecting taxpayers from recipients’ abuses. Rejecting the earlier mandate to rehabilitate offenders, new sentencing policies claimed to serve and protect the public by quarantining felons from society.

Although earlier welfarist and rehabilitative programs had rarely lived up to their purported mission, they left welfare recipients and criminal offenders with some rhetorical claim on the state. The punitive policies, on the other hand, positioned them as outsiders to whom the government was not accountable. These politics, therefore, helped to constrict the circle of people with full claims on the state at the precise moment that social movements were prying it open. They were instrumental in constructing and guarding the barrier between these anti-citizens and taxing public.

Although punitive policy negated the state’s accountability to poor drug sellers, welfare recipients, and criminals, it did not relieve the state of responsibility for managing social marginality. Nor did these changes diminish the role of government, despite the anti-statist rhetoric of many of the policies’ proponents. Juxtaposing debates about welfare and crime highlights the dominance of personal responsibility and racialized group pathology rhetoric in the response to these social problems. Without recognizing the growth of spending on incarceration, welfare state retrenchments may appear as a callous means to save money or shrink government. However, interpreting attacks on welfare as simply anti-government fails to explain elites’ enthusiastic support for expensive programs that disciplined, monitored, and punished. Welfare state retrenchment represented a change in tactics and a redirection of resources, not an abdication of government authority or responsibility.
Examining social policy since 1970 without incorporating punitive trends and the expansion in incarceration is like studying international relations without examining the military. If studied in isolation from the armed forces, the State Department’s expenditures and emphasis on diplomacy would be a misleading indicator of the nation’s engagement overseas. Just as the scale of military spending reveals critical aspects of the nation’s cultural, political, and economic orientation, the colossal penal apparatus constructed during the final decades of the twentieth century reflects core attributes of the political economy and cultural landscape of the United States.

Contrary to many politicians’ professed aim to diminish the size and role of government, these trends actually enlarged the prestige, resources, and power of punitive state agencies. Opposed to merely denigrating the social work bureaucracy or therapeutic specialists, these changes enhanced the authority and social respect of law enforcement, fiscal managers, and the lawmakers espousing these strategies. They were instrumental in relegitimizing and restructuring the state during an era that had seen profound challenges to government authority and bureaucratic expertise.

The three main problems examined in this dissertation—crime, welfare, and drug use—were all propelled into the limelight by distinct economies and exigencies. Throughout the 1960s and 1970s, their politics merged and intersected, resonating together to create something larger than the sum of its parts. In 1977, the front page of Time magazine announced the discovery of the “underclass,” an entire new social system divorced from the cultural norms and prosperity of the rest of the nation. The article described this population in menacing terms: “Behind its crumbling walls lives a large group of people who are more intractable, more socially alien and more hostile than almost anyone had imagined. They are the unreachable: the American
Depicted as a minority within racial minorities, the underclass was considered to be the source of social turmoil. The article explained, “Thus the underclass minority produces a highly disproportionate number of the nation's juvenile delinquents, school dropouts, drug addicts and welfare mothers, and much of the adult crime, family disruption, urban decay and demand for social expenditures.”

Building upon the centuries-old binary between the deserving and undeserving poor, the emergence in the 1970s of the “underclass” was nonetheless new and significant. It explicitly united the various racialized anti-citizens into a distinct, self-perpetuating ecosystem. In this formulation, “criminals,” “drug pushers” and “welfare queens” were not only gendered representations of poor, hyper-stigmatized Blacks and Latino/as, but they were also the stages in a cycle by which the “underclass” reproduced itself. In this “culture of poverty,” the sexually deviant, single mother transmitted her pathology to her children, destining them for delinquency, criminality, and welfare.

Isolated and alien from society, the “underclass” was nonetheless a constant moral and physical threat to the mainstream. This threat, in turn, rationalized other punitive policies that further reinforced the symbolic and legal barricade between the “underclass” and normative mainstream society. In the final decades of the 20th century, a dynamic interaction between the penal and social welfare system consistently fortified the border. The welfare system used the criminal justice system to prosecute, monitor, and surveil recipients, and therefore perpetuate the stigmatizing link to criminality. Many states followed California’s lead and enlisted the

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646 Ibid.
quintessential law enforcement technology — fingerprinting — to monitor the caseload, prevent fraud, and signal recipients’ marginalized social position.\(^{648}\)

Simultaneously, punishing policies have entrenched felons’ position outside of civil society by withdrawing access to social services and civil rights. A few of the many examples illustrate the trend. In 1994, prisoners lost the right to receive Pell Grants, effectively barring their ability to receive higher education while incarcerated.\(^{649}\) The Prison Litigation Reform Act of 1995 constricted inmates’ right to press civil suits against the state, making it almost impossible to resist the conditions of their imprisonment through the court system.\(^{650}\) The 1996 welfare reform law not only abolished the federal entitlement to welfare but also enacted a little-debated provision that permanently barred drug offenders from eligibility for food stamps and cash assistance.\(^{651}\) In many states, convicted felons cannot be licensed in certain occupations, including careers with few criminal temptations such as hairdressing.\(^{652}\) Together, this tangled net of regulations effectively severed many legitimate paths to economic self-sufficiency and full citizenship, while simultaneously reinforcing the image of a distinct population—a criminal underclass with few claims upon the state.

These politics helped construct a political landscape where welfare recipients, criminals, and drug offenders were positioned as enemy outsiders responsible not only for their own conditions but for the nation’s most pressing social problems. Therefore, although a majority of U.S. citizens do not encounter the penal system and other punishing institutions on a regular


basis, their symbolic operations saturate society and have been instrumental in forging national identity, preserving state legitimacy, and perpetuating interlocking gender, racial, and class hierarchies. With this logic governing popular understandings, it is not surprising that vast swathes of the public are not only indifferent to these groups’ fates, but antagonistic toward any effort to increase their access to economic or educational opportunity, enhance their agency, or reintegrate them into the polity. Nor should it be surprising that there has been little political will to grapple with the structural features of U.S. society that help produce and perpetuate gross economic, social, and racial inequality. This history suggests that as long as social problems are interpreted as the product of hostile, menacing outsiders, the United States will continue to display an insatiable appetite for containment, surveillance, punishment, and retribution.
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