Contemporary prison overcrowding: short-term fixes to a perpetual problem.

Authors: Pitts, James M.A.[1] (AUTHOR)
Griffin III, O. Hayden[2] (AUTHOR) *hgriffin@uab.edu*
Johnson, W. Wesley[1] (AUTHOR)

Source: Contemporary Justice Review. Mar2014, Vol. 17 Issue 1, p124-139. 16p.

Document Type: Article

Subject Terms: *PRISONS
*PRISON overcrowding
*RECESSIONS
UNITED States federal budget

Geographic Terms: UNITED States

Author-Supplied Keywords: corrections policy
inmate population
prison overcrowding
sentencing

NAICS/Industry Codes: 921130 Public Finance Activities
912120 Provincial correctional services
922140 Correctional Institutions
911220 Federal correctional services
236220 Commercial and Institutional Building Construction

Abstract: Since the United States began using incarceration as its cornerstone of punishment for those who transgress the law, this method of discipline has been fraught with problems. One of the most ubiquitous problems found within correctional institutions are the conditions inmates are forced to live in particularly, when penal facilities are overcrowded. These conditions have led to extensive litigation, compelling the judicial system to change. Although overall conditions have improved, a perpetually increasing inmate population continues to plague correctional systems as costs continue to rise. As state budgets have become strained during the economic downturns, many states' officials view less punitive measures as possible solutions to the excessive

costs of administering punishment and overcrowded inmate populations. Due to facility overcrowding, several states have actually been placed under federal court order to reduce their inmate population in order to protect inmates' constitutional rights. Although this has resulted in a change of policies to help alleviate prison overcrowding, there is little evidence these are anything more than short-term fixes to a problem with no end in sight. [ABSTRACT FROM AUTHOR]

Author Affiliations: [1]University of Southern Mississippi, Hattiesburg, MS, USA
[2]University of Alabama at Birmingham, Birmingham, AL, USA

ISSN: 1028-2580

DOI: 10.1080/10282580.2014.883844

Accession Number: **95048143**

Publisher Logo:

Contemporary prison overcrowding: short-term fixes to a perpetual problem.

Since the United States began using incarceration as its cornerstone of punishment for those who transgress the law, this method of discipline has been fraught with problems. One of the most ubiquitous problems found within correctional institutions are the conditions inmates are forced to live in particularly, when penal facilities are overcrowded. These conditions have led

to extensive litigation, compelling the judicial system to change. Although overall conditions have improved, a perpetually increasing inmate population continues to plague correctional systems as costs continue to rise. As state budgets have become strained during the economic downturns, many states' officials view less punitive measures as possible solutions to the excessive costs of administering punishment and overcrowded inmate populations. Due to facility overcrowding, several states have actually been placed under federal court order to reduce their inmate population in order to protect inmates' constitutional rights. Although this has resulted in a change of policies to help alleviate prison overcrowding, there is little evidence these are anything more than short-term fixes to a problem with no end in sight.

Keywords: prison overcrowding; inmate population; sentencing; corrections policy

Introduction

In the United States, like many other affluent nations, law has become the blueprint by which society is governed. The concept of punishment is typically connected to or associated with the law, and usually follows as a consequence of non-compliance with those directives. As such, the means by which a society administers punishment is often thoroughly scrutinized to insure fairness and efficiency in obtaining justice. Incarceration has been the dominant form of punishment in American society for serious crimes (Ross, [49]; Verro, [61]). In fact, some would argue that incarceration has been overused to such a degree that it constitutes an inefficient use of resources.

In recent years, many states have become fiscally strained as the practice of mass incarceration has come under increased criticism (Ekland-Olson, Barrick, & Cohen, [16]; Harris, [27]; Lucken, [37]; Nagel [40]). As such, many of these states are beginning to re-evaluate their use of incarceration in an attempt to better utilize the limited resources at their disposal (Ekland-Olson et al., [16]; Feinstein, [18]; Harriman & Straussman, [26]; Harris, [27]; Judge, [31]; Kendrick, [33]; Marvell, [38]; Ornduff, [42]; Papy & Nimer, [43]; Smith & Akers, [54]; Spector, [56]). Despite efforts to reform the manner in which America manages its correctional system, such reforms seem to be primarily driven by the short-term need to balance state budgets, as opposed to the long-term goal of reducing prison populations. In keeping with the idea of how crises often dictate policy choices in criminal justice (Johnson, [30]), the task of seeking alternatives to incarceration does not represent a new trend in incarceration, but rather a quick fix to a pressing issue.

After years of turning a blind eye to problems within the correctional system of the United States, federal and state courts have unfailingly ruled that prison populations must be

reduced. Although these orders might appear to come as a welcome sign, due to the immediacy of complying with these court-ordered mandates, changes in policy have often resulted in short-term fixes to a perpetual problem. The policies of several different states will be reviewed and the implications of potential remedies to overcrowding will be discussed as to suggest whether the remedial efforts utilized in different states can be regarded as a shift from mass incarceration.

Context

Prison overcrowding has been a matter of concern for decades (Bogan, [5]; Ekland-Olson et al., [16]; Giertz & Nardulli, [22]; Levitt, [36]; Nagel, [40]; Ornduff, [42]; Smith & Akers, [54]). In fact, over the past few decades, America has experienced 'a dramatic increase in the number of people incarcerated' (Richards, Austin, & Jones, [47], p. 93). According to Angelos and Jacobs ([1]), 'American prisons ... have always been crowded, [and] prison populations typically exceeded design capacity' (p. 101). Several authors have noted the deplorable conditions in America's prisons, many of which are a direct result of overcrowding (Chung, [11]; Gaes, [21]; Ornduff, [42]; Steiner & Wooldredge, [57]; Thornberry & Call, [59]). A review of the literature concerning overcrowding within prisons reveals that it is a problem that originated in the 1970s and has continued to the present (Caplow & Simon, [10]; Chung [11]; Ekland-Olson et al., [16]; Gaes, [21]; Kendrick, [33]; Marvell, [38]). As such, correctional institutions operating above design capacity is not a new phenomenon.

As Haney ([25]) purports, 'the problems we now face [regarding prison overcrowding] were repeatedly predicted and certainly could have been avoided if the many early warnings had been heeded' (p. 267). Attempts to relieve prison overcrowding have been equally as prevalent, encompassing a host of different approaches. These include new prison construction, early release and parole reforms, diversion programs, and inmate transfers to other facilities (Bogan, [5]; Clear, Cole, & Reisig, [12]; Clements, [13]; Feinstein, [18]; Giertz and Nardulli, [22]; Haney, [25]; Harris, [27]; Judge, [31]; Kendrick, [33]; Marvell, [38]; Papy & Nimer, [43]; Smith & Akers, [54]; Wright and Rosky, [63]). Moreover, as prisoners are released, many states are closing prison facilities behind them to save even more resources that had been previously been allocated to corrections (Porter, [44]).

Prison overcrowding appears omnipresent throughout the United States. Chung ([11]) notes that as many as 33 states have operated at 100% capacity or higher. In at least 12 states, 'the entire prison system [was] under court control' (Levitt, [36], p. 326). Sturm ([58]) states that by 1993, 40 states were required by court order to reduce prison overcrowding or other conditions that constituted cruel and unusual punishment. Such judicial and legislative measures illustrate the urgency of the prison overcrowding situation. For instance, California

was recently the target of such a ruling in which a three-judge federal court panel ordered the immediate reduction of its inmate population, and mandated a population cap on inmate admissions to insure continued compliance in the future (Ross, [49]; Spector, [56]).

Prison overcrowding: causes and consequences

The issue of prison overcrowding and its associated problems are not new. The corrections literature has extensively documented the characteristics of America's overcrowded prisons for decades (Levitt, [36]). Most authors note the tremendous expansion of inmate admissions to prison beginning in the late 1970s and the high number of jurisdictions with facilities filled above design capacity (Chung, [11]; Gaes, [21]; Giertz & Nardulli, [22]; Haney, [25]; Wright & Rosky, [63]). For instance, Angelos and Jacobs ([1]) point out that 'prisons in at least one-half the states are under court order to reduce crowding' (p. 101). Nonetheless, some researchers assert that there have been relatively few periods in American history in which prisons were not thought to be overcrowded (Kelly & Ekland-Olson, [32]).

Both state and federal courts, as well as various state agencies and prisons have been inconsistent in their definitions of prison overcrowding (Bonta & Gendreau, [6]; Kelly & Ekland-Olson, [32]; Schoenfeld, [50]; Thornberry & Call, [59]). This creates methodological concerns for accurately measuring overcrowding in conjunction with its causes and effects (Gaes, [21]; Steiner & Wooldredge, [57]). In studies of overcrowding, 'crowding has been operationalized most frequently as spatial density or a ratio of a facility's total population to the maximum design or rated capacity' (Steiner & Wooldredge, [57], p. 215). This measure differs substantially from other studies that examined inmates' perceptions of overcrowding or how each individual prisoner is affected differently by their circumstances. For instance, Gaes' ([21]) assessed the effect of prison overcrowding on inmates using variables like personal space (unshared space), privacy, and perceived crowding. From his perspective, the concept of prison overcrowding slightly departs from structural constraints and expands to more adequately assess the total effect of overcrowded prison conditions. Still, others have assessed various physiological effects like added stress, increases in blood pressure, and higher levels of anxiety (Bonta & Gendreau, [6]; Clements, [13]; Ekland-Olson et al., [16]; Kendrick, [33], Ornduff, [42]; Thornberry & Call, [59]).

The effects of prison overcrowding are not limited to inmates. Prison overcrowding adversely affects prison staff, not only psychologically and physiologically, but also in terms of policy decisions (Haney, [25]). Clements ([13]) argued that when prisons are overcrowded, correctional facilities are typically unable to implement and maintain programs designed to prevent recidivism. He argued that this vacuum can prevent proper offender classification. Correctional staff has denied a very important measure in determining which inmates are

more serious about rehabilitation. In response to prison riots, which resulted in the death of corrections officials during the 1970s, prison administrators increased reliance on supermax confinement despite the practice being prohibited by the Supreme Court for long-term use during the late 1800s (Eisenman, [15]; King, Steiner, & Breach, [34]; Ross, [48]). The re-emergence of such long-term punitive measures was initiated in an attempt to maintain greater safety and security among inmates and staff. A similar example is also demonstrable in the unfair and adverse classification of many mentally ill inmates (Slate & Johnson, [52]), frequently resulting in supermax confinement (O'Keefe, [41]). Research has demonstrated that the added threat of violence posed by the mentally ill in overcrowded facilities routinely forces prison officials to unfairly confine these individuals to solitary units (Haney, [24]; Rhodes, [46]). Thus, the effects of prison overcrowding have real consequences, which affect all those involved in corrections through policy decisions.

The causes of prison overcrowding can largely be attributed to institutions outside correctional agencies. Perhaps the most direct influence on prison admissions comes from the courts 'determinate sentencing procedures that remove judicial discretion in sentencing length for inmates (Bogan, [5]; Griswold, [23]; Harris, [27]; Kendrick, [33]; Marvell, [38]; Reiman & Leighton, [45]). Beginning primarily in the early 1980s, this trend toward longer sentences carried considerable political popularity as it reaffirmed the value and utility of punishment (Giertz & Nardulli, [22]). Coinciding with this line of reasoning, determinate sentencing and restrictions on early release prevent state and local administrators from being able to control prison admissions or discharges to any degree (Giertz & Nardulli, [22]). If the individual states had the correctional facility infrastructure to deal with more inmates serving longer sentences, these changes in sentencing policy may not have overburdened the system. However, not only did the states lack the infrastructure which led to overcrowding, but also underfunding and a dearth of new prison construction did not allow the states to keep pace with a constantly increasing flow of inmates (Haney, [25]; Harris, [27]).

Generally, there is a consensus that overcrowded prisons foster negative effects, many of which exacerbate the seriousness of constitutional violations occurring within these facilities (Gaes, [21]; Specter, [56]; Steiner & Wooldredge, [57]). Not only does overcrowding affect the inmate on an individual level, it also contributes to organizational strain. Steiner and Wooldredge ([57]) offered an in-depth assessment of several studies conducted on the effects of prison overcrowding. They noted, 'crowding effects on facility operations are realized when a facility's population exceeds eighty percent of its design capacity' (p. 215). Perhaps the most widely known example of overcrowding causing organization strain is inmates' lack of adequate resources. Such resources include adequate medical attention,

meaningful work assignments, and even programs designed to reduce idleness and increase prisoners' marketability once released (Clements, [13]; Kurlychek, [35]).

California's massive overcrowding problem absorbed such an exorbitant amount of resources that the state was unable to address inmates' illiteracy. Research showed that more than 20% of the California prison population was reading at or below a third-grade level (Haney, [25]). California's overcrowding problem has also strained its ability to provide adequate medical care to such a degree that a federal court recently mandated population caps and the early release of thousands of prisoners in an attempt to insure that constitutional rights are not violated (Ross, [49]; Spector, [56]).

Even worse, Haney ([25]) stated that 'overcrowding ... leads correctional administrators to adopt problematic policies and practices that may worsen rather than alleviate other aspects of the prison experience' (p. 277). This is particularly evident when considering the plight of mentally ill offenders. As many mentally ill offenders have difficulty adjusting and adhering to prison rules, overcrowding can exacerbate these problems. Due to the fear that mentally inmates may become violent in overcrowded conditions, it has become a common practice to house them in solitary confinement to remove mentally ill inmates from the general population (Arrigo & Bullock, [3]; Haney, [24]; Rhodes, [46]). Given the Supreme Court's condemnation of long-term solitary confinement (Eisenman, [15]; Ross, [48]), this practice stands as a deplorable example of the way in which overcrowding negatively contributes to other aspects of the prison experience. Such practices exemplify that in criminal justice, crises often dictate policy choices (Johnson, [30]; Slate & Johnson, [52]). Too often society does not do what is just or in the best interests of the people whom it punishes. Ostensibly, society is simply more inclined to engage in what is cost-effective.

Overcrowding litigation

The courts have utilized several different approaches to identify prison overcrowding. Cases regarding overcrowding in prison are generally heard under the Eighth Amendment's protection against cruel and unusual punishment. Prior to the 1960s, the courts typically applied a hands-off approach to problems of overcrowding (Angelos & Jacobs, [1]; Chung, [11]; Griswold, [23]; Smolla, [55]; Thornberry & Call, [59]). Prisoners were typically left under the authority of state legislatures, and convicted criminals received little relief from the courts.

Beginning in 1965, the federal courts decided it was time to intervene in what had historically been considered state disputes and began to hear cases concerning prison overcrowding in Arkansas and Alabama. In each state, conditions of confinement were determined to be unconstitutional, decisions that were later upheld by the United States Supreme Court

(Angelos & Jacobs, [1]). During this time, the lower federal courts generally used the 'totality of conditions' approach to determine whether a violation of the Eighth Amendment had occurred. Cases were simply evaluated on an individual basis and the courts were responsible in determining whether the totality of the conditions constituted cruel and unusual punishment (Angelos & Jacobs, [1]; Chung, [11]). Such an approach does not typically instill long-term change because the individualized approach of analyzing the totality of conditions does not generally create precedence or general rules to guide future overcrowding cases.

A second approach utilized by federal district courts is the core conditions approach. When using this test, Chung ([11]) argues that a court must 'identify particular conditions that fail to meet constitutional requirements' (p. 2366). Such conditions must also deprive an inmate of essential necessities like adequate food, clothing, shelter, medical care, etc. This is a distinct approach, given that there cannot be a joinder of issues to suggest that the overall effect of overcrowding is unconstitutional. Finally, Chung suggests that lower federal courts use the per se approach. Although this method has not been clearly defined, its meaning ranges from conditions that 'shock the general conscience to those that offend contemporary standards of human decency' (p. 2368).

The Supreme Court uses a different approach when analyzing alleged violations of the Eighth Amendment regarding prison conditions. Following *Rhodes v. Chapman* (452 U.S. 337), the Court began to apply the deliberate indifference standard to assess cruel and unusual punishment claims. Under this standard, one must show that an official acted with deliberate indifference to inmates' medical needs (Chung, [11]). By using numerous approaches to assess constitutional violations, the courts have not improved either the understanding or definition of what constitutes prison overcrowding. It is possible that the courts contribute indirectly to the level of uncertainty surrounding conditions of confinement that could possibly be regarded as unconstitutional.

Solutions to prison overcrowding

Attempts to remedy overcrowding have been as numerous as the various causes. This is not unexpected, since a multifaceted problem typically requires a multifaceted solution. The effectiveness of various strategies employed to manage prison overcrowding varies, each with its own shortcomings. Consequently, it is important to understand the need to utilize each of these strategies, in combination with others, to adequately address prison overcrowding. While researchers have offered a plethora of approaches to manage prison overcrowding, Wright and Rosky ([63]) provided a model of how these approaches should be categorized. They asserted that there are three prevailing views of managing prison overcrowding. The first, and most straightforward, is to increase prison capacity. The second

is considered to be a front-end approach using various diversion programs which divert offenders from prison time. Third, backdoor strategies allow for early release of inmates to reduce prison populations.

Perhaps the most common attempt to remedy overcrowding involves the construction strategy. This entails building new prisons to accommodate the influx of prison admissions caused by tougher sentencing practices (Clear et al., [12]; Harriman & Straussman, [55]; Judge, [31]). In theory, as new space becomes available, the strain on overcrowded facilities will be relieved, allowing for more humane conditions of incarceration. While this approach is plausible, it is hindered by a few issues. First, the costs of implementation are tremendous (Vitiello, [62]). Studies indicate that the cost per cell for a new prison facility is approximately $75,000. Viewed in this manner, a facility designed to house 500 inmates would have a total cost of approximately $31 million (Clear et al., [12], p. 472). Additionally, the cost of building new prisons does not account for the added expense of operating them. California's recent prison expansion project is expected to cost between 7 and $15 billion (Clear et al., [12]). Despite the high cost of new construction, 'twenty-five states and the federal government had stable or increasing prison populations in 2010' (Porter, [44], p. 5).

The second criticism of prison construction, as a strategy to alleviate overcrowding, is that prison building is a long-term process. Estimates suggest that construction of new facilities requires approximately 7–8 years (Clear et al., [12]). As such, there is no immediate impact on prison overcrowding if a decision is made to invest in new construction. A construction strategy should be viewed as a long-term approach that is an immediate remedy for overcrowding.

Opponents suggest that building new prisons is not a solution to overcrowding and question its benefits. The massive influx of prison admissions produces a situation where inmates are often waiting in county jails until prison space becomes available. Once these new facilities open, they are immediately filled, eliminating the possibility for crowding relief in state prisons (Clear et al., [12]; Kendrick, [33]). Proponents of the prison construction approach have touted the construction of new prisons as a catalyst for economic development in rural areas. Studies indicate that while prison building does create jobs, these jobs are often filled by contractors from outside the community where the facilities are built. These contractors typically import skilled labor to construct new facilities rather than training new workers from the local applicant pool (Eisenman, [15]). For instance, a study conducted in Corcoran, California, revealed that 'only forty percent of new prison jobs were filled by residents of the host community' (Hooks, Mosher, Genter, Rotolo, & Lobao, [29], p. 241). This suggests that the benefits of new construction on area development in rural areas are somewhat illusory.

Indeed, according to Hooks et al. ([29]), 'there is mounting evidence that prisons do not solve the economic problems of rural areas but do create new ones' (p. 240).

Other strategies to reduce overcrowding include intermediate sanctions, such as community corrections, restitution, fines, probation, and other similar alternatives to incarceration (Clear et al., [12]; Feinstein, [18]; Harris, [27]; Judge, [31]; Kendrick, [33]; Papy & Nimer, [43]; Smith & Akers, [54]). These strategies have the effect of diverting offenders from the prison system, not only saving prison space but also preserving fiscal resources in relation to incarceration. In the midst of the United States' current economic downturn, such alternatives to incarceration have the added benefit of saving tax dollars while relieving strain on the criminal justice system (Porter, [44]). Nonetheless, critics contend that intermediate sanctions take a considerable amount of time to work, especially since these policies are infrequently applied retroactively (Clear et al., [12]). These approaches shift system strain from prison facilities to probation officers and the community, since someone must be responsible for their supervision. Opponents of intermediate sanctions have suggested that this approach is only available for non-violent, low-risk offenders (Turner, [60]). Ultimately, since intermediate sanctions are less punitive than incarceration, a belief that this might lead to net widening has been debated. If true, this could overburden the system in a number of ways (Byrne, Lurigio & Petersilia, [7]; Ezell, [17]; McMahon, [39]). The relief that this solution provides is often minimal. Despite these criticisms, if used in conjunction with other approaches, intermediate sanctions can have an effect on prison overcrowding by providing more time to build new facilities and using the fiscal resources that become available through decreased reliance on incarceration.

Generally referred to as backdoor strategies, prison population reduction usually entails providing early release incentives to inmates who qualify for such programs. Parole, parole reforms, home confinement/house arrest, work release, and good time credits all could be classified as means of directly reducing prison populations (Clear et al., [12]; Feinstein, [18]; Harris, [27]; Judge, [31]; Kendrick, [33]; Papy & Nimer, [43]; Smith & Akers, [54]; Turner, [60]). Population reduction also entails 'changes to reduce revocations for probationers and parolees' (Turner, [60], p. 917). Another type of backdoor strategy includes inmate transfers to other less-crowded facilities, often out of state or to private institutions (Shichor & Sechrest, [51]; Spector, [56]; Young, [64]). The primary advantage of using this strategy is that it can have an immediate impact on the availability of prison space. As such, correctional officials can utilize their own discretion in determining the degree to which such strategies are necessary to accommodate fluctuations in prison admissions.

While there are numerous advantages associated with the backdoor approach (such as cost savings and additional prison space), they are not without shortcomings. Austin ([3]) noted the difficulties presented by a lack of interagency collaboration in his study of prisoner re-entry programs in 10 different states. He suggested that attempts to relieve prison overcrowding can be thwarted by parole officers' attempts to be stricter on prisoners who are released early. Another problem associated with prison population reduction is that it is frequently circumvented by state legislators who are hoping to bolster their image as tough on crime (Feld & Schaefer, [19]). In many instances, the use of such an approach is unavailable, due to parole restrictions mandated by sentencing guidelines and/or truth-in-sentencing laws (Bogan, [5]; Clear et al., [12]; Marvel, [38]). Similarly, prison employees' unions have been effective at organizing opposition to people who have advocated more lenient sentencing policies. This has helped prevent a decline in prison admissions and the closure of facilities (Porter, [44]). Despite these hurdles, the unavailability of adequate fiscal resources has led to a resurgence in the use and popularity of such proposals. Thus, there is increased optimism for the use of population reduction, even if it is only utilized as a last resort.

The final approach to managing overcrowded prison facilities can hardly be called a strategy. The null strategy suggests that criminal justice administrators should simply 'do nothing' about overcrowding (Clear et al., [12]). While this approach is most consistent with tough-on-crime politics, it is also perhaps the least humane strategy of all that exist. Moreover, many contend that this does not constitute an actual approach to remedying overcrowding, but rather is simply another available policy option. However, the consequences of this strategy are considerably more dangerous than other remedies. By refusing to implement efforts at reform, as prisons become more overcrowded, this will undoubtedly lead to increased litigation from prisoners. The potential cycle of associated problems, such as inadequate medical attention, could be ongoing and endless. It is difficult to envision how this strategy could result in anything positive when considering the totality of the circumstances.

State responses to overcrowding

Clements ([13]) argues that states should concentrate more on better assessment and classification of inmates' type of custody. While conducting a court-ordered reclassification of the prison system in Alabama, Clements and colleagues found that at least half the prison population in Alabama should have been placed in minimum or community custody. They found similar issues in Tennessee and other states as well. They believed that in many states, once prisons were constructed, correctional administrators withstood pressure to fill those facilities. Aggravating this phenomenon was that the institutions with the most space were typically maximum-security facilities. Additionally, prison programming was often neglected because of overcrowding. Thus, many inmates who did not need to be in restrictive

custody in the first place have been denied rehabilitation services due to the overcrowding. Clements believed this led to a 'vicious circle' with no end in sight until prison administrators and state legislatures considered long-term policy reforms.

California

California has a long history of overcrowded prisons (Feinstein, [18]; Kendrick, [33]; Spector, [56]). In fact, the state is widely considered to have 'one of the most severe overcrowding problems in the country' (Ross, [49], p. 31). A common effect of overcrowded prison facilities has been an increase in litigation challenging allegations of unconstitutional prison conditions (Levitt, [36]). As such, inmates have more often brought litigation against the state challenging questionable conditions of confinement. Two California district court cases, *Coleman v. Schwarzenegger* and *Plata v. Schwarzenegger*, were adjoined into one case, *Plata v. Schwarzenegger* (560 F.3d 976, 2009), which was heard by a three-judge district court panel (Harvard Law, [48], p. 752). The three-judge court for the Eastern District of California ruled that a reduction in California's prison population was necessary in order to protect inmates' constitutional rights under the Eighth Amendment. The case was initiated from a class action suit by inmates challenging the inadequacies of medical attention provided to prisoners by the state.

The case and final ruling encompasses litigation spanning nearly two decades without any meaningful reforms implemented by the state. *Coleman* was originally filed in 1990 to challenge 'the inadequacies in the delivery of mental health care to inmates' (560 F.3d 976). *Plata*, on the other hand, originated in 2001 alleging 'constitutional violations in the delivery of medical care in California prisons' (560 F.3d 976). Despite the state's concession to voluntarily implement remedial plans for reform in 2002, three years later, the court found that efforts to implement reforms to improve medical care and comply with court imposed standards had not been completed in a single prison (560 F.3d 976). Since the court reasoned that remedial efforts had been constrained by overcrowding and that the inadequacies in medical attention were a direct result of overcrowding, the court ordered that many prisoners would be released immediately in order to comply with their constitutional right to be protected from cruel and unusual punishment (Harvard Law, [48]; Spector, [56]).

In order to comply with requirements mandated by the three-judge panel, California has begun to enact bold policies, the ramifications of which are yet to be fully realized. Nonetheless, California's multifaceted approach, commonly referred to as 'realignment', does not illustrate a novel strategy to reduce the state's prison population. In fact, the approach utilized in California is more of a comprehensive strategy involving a compilation of various strategies employed throughout the United States (Spector, [56]). The 2011 Public Safety

Realignment is designed to deal with prison population reduction and also issues of recidivism which have plagued California's prison system for years (California Department of Corrections and Rehabilitation (CDCR), [8]). This strategy includes several initiatives to reform the system, as well as a plan that will partially finance the effort.

Commonly referred to as Assembly Bill (AB) 109, this legislation, passed by the California legislature in 2011, 'allows for non-violent, non-serious, and non-sex offenders to serve their sentence in county jails instead of state prisons' (CDCR, [8], p. 2). However, in the event that jail space is unavailable, counties are allowed to contract corrections services from the state in order to punish local offenders. This new legislation will not affect serious or high-risk offenders, as they will continue to be sent to state and federal prison for punishment. The law also stipulates that inmates currently in prison will not be released early.

Despite this change, almost 60 crimes classified as non-serious are to be punished as serious or violent crimes at the request of law enforcement (California State Association of Counties (CSAC), [9]). Thus, while AB 109 will have some effect on future incarceration practices, the effectiveness of this legislation will be somewhat minimized by the increased severity of punishment to these offenses. Ultimately, AB 109 mandates an increase in the number of offenders under county-level supervision in order to reduce prison populations. In addition, the California Department of Corrections and Rehabilitation (CDCR) 'must notify counties of an individual's release at least one month prior' to their transfer (CDCR, [9], p. 3).

AB 109 also provides guidelines concerning county-level post-release procedures (CSAC, [9]). Previously, inmates paroled from prison remained under the jurisdiction of the state. This new policy mandates county-level supervision for inmates paroled from prison (CDCR, [9]). However, not all inmates will be eligible for county supervision. The following groups will remain under state jurisdiction for parole supervision by the CDCR: inmates paroled from life terms, offenders considered to be violent or serious, high-risk sex offenders, offenders with mental disorders, and offenders paroled prior to 1 October 2011. Additionally, the CDCR ([9]) 'must notify counties of an individual's release at least one month prior' (p. 3).

Presently, California is experimenting with non-revocable parole (CDCR, [9]). This is particularly important since California has been struggling with the issue of recidivism for many years (Haney, [25]). Beginning on 1 July 2013, the state parole board was no longer responsible for conducting the hearing process. Instead, the 'parole revocations will become a local court-based process' (CDCR, [9], p. 3). As such, only offenders paroled from a life sentence can be sent back to prison for parole violations. In addition, AB 109 allows parole revocations of up to 180 days, instead of the complete remainder of one's sentence, and such

punishment must be served in a local county jail. As California has embarked on a bold effort to reform its prison system, albeit court-ordered, the process has not been developed without careful planning. Nonetheless, it seems these efforts in California are merely a matter of shifting responsibility from state prisons to local jails.

Despite the willingness of counties to rely upon incarceration at the local level, state prisons are also releasing inmates early. Reports suggest that many non-violent female inmates are scheduled for early release as part of an Alternative Custody Program, which targets women. Under this program, 'female inmates can serve their time outside of prison, either with relatives or friends' (Small, [53], p. 1). Estimates suggest that the program could potentially lead to the early release of as many as 5,000 women, approximately half of the female prisoners in California prisons (Frank, [20]). Several qualifications must be met in order to qualify. For example, female inmates who are primary caregivers for their families and have less than 2 years left of their sentence will be primary candidates for the program. Further supervision will be continued using GPS monitoring (Small, [53]). Additional requirements include the presence of familial support, a suitable home, and transportation (Corral, [14]). Estimates suggest that 'if the Department of Corrections can keep 500 female inmates on alternative custody next year, it will save $6 million' (Small, [53], p. 1). Thus, the budgetary incentives to implement this plan are numerous.

Florida

Similar to California, Florida has long suffered from prison overcrowding (Baird & Wagner, [4]; Harris, [27]; Papy & Nimer, [43]; Smith & Akers, [54]). According to Harris ([27]), 'Florida has spent millions of dollars to alleviate overcrowding, and yet neither the crisis nor the crime rate has subsided' (p. 489). He noted one of the main culprits of prison overcrowding was the 1972 implementation of sentencing guidelines (Harris, [27]). In Florida, sentencing guidelines were an effort to eliminate disparate sentencing practices. Although a noble goal in theory, Griswold ([23]) argued that 'even though Florida's guidelines may reduce sentencing disparity, they may promote neither justice nor fairness' (p. 32). Furthermore, sentencing guidelines mandate prison sentences for first-time or petty offenders. Before guidelines existed, many of these offenders would likely have been left under community control and would not be incarcerated. Harris speculated that it would cost $7 billion to construct enough prison facilities to comply with court decisions that forbid overcrowded conditions and the increasing number of people who in the future would be convicted and incarcerated.

One of the methods Florida chose to alleviate prison overcrowding was creating a system of early release credits based upon rewarding prisoners for good behavior. Harris noted a change in policy in November of 1990 would probably require the release of 900 inmates a

week. In one instance, an offender convicted of attempted murder was released after serving only one and a half years in prison. The released prisoner later killed two Miami police officers. Harris found that on that prisoners' day of release, 10 felons were admitted to prison facilities for writing bad checks. Although early release credits seem necessary, Harris believes that correctional administrators not only need to be more cognizant of who is released from prison, but also of the types of offenders admitted to these facilities in the first place.

One of the most significant legislative endeavors Florida enacted to manage prison overcrowding was the Community Control Program. In 1982, Florida's prisons were placed under court supervision and maximum capacity was set at each prison facility, as well as the entire prison system (Baird & Wagner, [4]; Papy & Nimer, [43]; Smith & Akers, [54]). Smith and Akers ([54]) noted that Florida began a rapid expansion of prison facilities to comply with these court mandates; however, immediate action was needed because prison facilities could not simply be built overnight. The Community Control Program established a system of electronic monitoring and house arrest (Baird & Wagner, [4]; Papy & Nimer, [43]; Smith & Akers, [54]). Violent offenders were not eligible to participate in the program (Baird & Wagner, [4]). The program placed curfew restrictions on offenders, required offenders to be employed and to participate in self-improvement programs. Additionally, community control officers were limited to 20 cases per officer, required to be able to work on weekends and holidays, and make at least 28 contacts with offenders. Offenders were required to fill out daily activity logs (for officers to review) and because an officer could potentially be working every day, an offender could expect a random visit at any time (Papy & Nimer, [43]).

One unforeseen problem with the program was that the technology required to monitor the offenders was often unreliable. Additionally, Papy and Nimer ([43]) argued that the program required probation officers to develop different skills they were not traditionally required to have. Although Papy and Nimer found the program to be 'generally successful' (p. 33), Smith and Akers ([54]) concluded that offenders in the program recidivated at the same rates as people released directly from prison. Baird and Wagner ([4]) noted that despite the presence of sentencing guidelines in Florida, which required a large number of offenders to be sent to prison, that of the 25,000 offenders who were enrolled in the program, as many as 50% would have been sent to prison if the program did not exist. Thus, the program was seemingly effective, in the sense that it reduced the prison population, but only enough to keep the system operating at or near maximum capacity.

Michigan

Prison overcrowding has plagued the Michigan correctional system since 1975 (Judge, [31]). Baird and Wagner ([4]) noted that over a five-year period the Michigan corrections budget increased from $256 to $614 million. Fearing similar prison riots and court interventions that were plaguing other states, in 1980, Governor William G. Milliken and the state legislature appointed a task force to study the problem. One of the task force's implementations was the creation of the Prison Overcrowding Emergency Powers Act. If the rated design capacity of the Michigan prison system is exceeded for 30 consecutive days and all administrative remedies are exhausted, the Michigan Corrections Commission will certify the overcrowding to the Governor. According to the statute, once the Governor receives certification, the Governor must declare a state of emergency within 15 days. After a state of emergency is declared, all prisoners serving minimum sentences will have their sentences reduced by 90 days. The goal of this policy is to increase the number of prisoners eligible for parole. Thus, rather than just merely releasing prisoners, the parole board still has the ultimate decision of who is granted early release. If this process does not reduce the prison population at or below 95% capacity, all prisoners will have their sentences reduced another 90 days. During a state of emergency in 1981, 875 prisoners were granted early release (Judge, [31]).

Oregon

Although many states with sentencing guidelines have seen their inmate populations swell, a few states have decided to consider existing corrections populations within sentencing guidelines. According to Bogan ([5]), in 1980, a federal court ordered a 750 bed reduction among Oregon's penitentiaries. In 1987, 18 of 33 jails were under federal court order to reduce populations. Several facilities had caps set by federal courts. The state had been proactive in fighting swelling corrections populations and in 1977 had established an objective parole process that determined parole outcomes based upon offense severity and criminal history. Although the new parole process was expected to reduce prison overcrowding, the problem still persisted. Borrowing an idea from Minnesota and Washington, Oregon required sentencing guidelines to factor expected prison capacity and alternatives to incarceration such as probationary sentences.

West Virginia

Although traditionally West Virginia has had one of the smaller inmate populations, admissions to correctional facilities began to expand rapidly in the mid-1990s. In 2009, Governor Joe Manchin III established (by executive order) a commission on prison overcrowding. One of the commission's first findings was that 1300 offenders who were due to be sent to prison were actually in regional jails due to a lack of prison bed space. Exacerbating the problem was that the commission expected three additional inmates to be admitted each day. The commission concluded that due to so many inmates being housed in

regional jails, it not only infringed upon the ability of the jail to carry out operations, inmates who were supposed to be in prisons did not have access to rehabilitative services and treatment programs. The commission believed that this would continue to make matters worse, because without treatment programs, further recidivism would occur. West Virginia has not been a state that has traditionally utilized community corrections. The commission believed that needed to change and greater numbers of minor offenders needed to be diverted from prisons into community corrections (Kendrick, [33]).

Conclusion

A general reluctance to embrace alternatives to incarceration is evident in that such alternatives are seemingly only considered as a last resort. Despite the inhumane conditions in prisons throughout the United States, the current changes in corrections have not arisen in an attempt to ameliorate unconstitutional conditions in prison. In fact, state officials previously consented to reforms under the supervision of the courts, yet were typically unable or unwilling to implement those reforms without a judicial mandate. Only as prison resources and funds have been exhausted have administrators turned towards considering alternatives to incarceration. For that reason, it is plausible to assume that the current changes in incarceration are not representative of new trends in corrections. If state budgets recover and fully fund corrections, the threat of returning to mass incarceration remains in light of a political and social climate that seems to be completely dependent upon incarceration as the primary method of social control. However, given that states' budgets may be unable to return to surplus levels, causing these new developments to be widely accepted across various states for a longer duration, then these changes could likely become new trends in incarceration.

Changes to incarceration policies have presented mixed results of success. With the implementation of new laws and guidelines, many of the enacted changes suggest a departure from an over-reliance on state prisons rather than a departure from mass incarceration. As such, the realignment campaign in many states resembles one more closely tailored to problem shifting rather than problem-solving. As many inmate transfers will now be held in county jails or diverted to community corrections, it is possible that states will not experience a significant change in the number of people who the correctional system must supervise. Furthermore, realignment in many states specifically targets corrections while ignoring the collective influence of other factors. The courts contribute through sentencing, police contribute through arrests, and state legislatures contribute due to their unwillingness to depart from tough on crime policies that have damaging budgetary effects. Without a collaborative multifaceted approach that includes all associated agencies and considers available resources, remedying overcrowding problems within the United States correctional

system will be a daunting, and possibly impossible task. Only through a concerted effort to depart from mass imprisonment, embraced by *all* major agencies in criminal justice, can states adequately manage their prison populations in a manner that promotes individual rights while simultaneously protecting public interest efficiently. Too often, we focus upon the frequency of those who are incarcerated and/or forced into diversionary programs. Perhaps we should instead ponder why and/or if many people should be subjected to social control within the criminal justice in the first place.

References

1 *Angelos, C., & Jacobs, J. B. (1985). Prison overcrowding and the law. Annals of the American Academy of Political and Social Science, 478, 100–112.*

2 *Arrigo, B. A., & Bullock, J. L. (2008). The psychological effects of solitary confinement on prisoners in supermax units: Reviewing what we know and recommending what should change. International Journal of Offender Therapy and Comparative Criminology, 52, 622 –640.*

3 *Austin, J. (2001). Prisoner reentry: Current trends, practices, and issues. Crime & Delinquency, 47, 314–334.*

4 *Baird, S. C., & Wagner, D. (1990). Measuring diversion: The Florida community control program. Crime & Delinquency, 36, 112–125.*

5 *Bogan, K. M. (1990). Constructing felony sentencing guidelines in an already crowded state: Oregon breaks new ground. Crime & Delinquency, 36, 467–487.*

6 *Bonta, J., & Gendreau, P. (1990). Reexamining the cruel and unusual punishment of prison life. Law and Human Behavior, 14, 347–372.*

7 *Byrne, J. M., Lurigio, A. J., & Petersilia, J. (1992). Smart sentencing: The emergence of intermediate sanctions. Thousand Oaks, CA: Sage.*

8 *California Department of Corrections and Rehabilitation (CDCR). (2011). 2011 public safety realignment fact sheet. Retrieved from http://www.cdcr.ca.gov/about%5fcdcr/docs/realignment-fact-sheet.pdf*

9 California State Association of Counties (CSAC). (2011). 2011 public safety realignment key provisions in AB 109/AB 117: Adult offender population transfers to counties. Retrieved from www.cpoc.org/php/realign/csac-cssacpoc(22July2011)updateonAB109-AB117.pdf

Caplow, T., & Simon, J. (1999). Understanding prison policy and population trends. Crime and Justice, 26, 63–120.

Chung, S. Y. (2000). Prison overcrowding: standards in determining Eighth Amendment violations. Fordham Law Review, 68, 2351–2400.

Clear, T., Cole, G., & Reisig, M. (2011). American corrections. Belmont, CA: Wadsworth/Cengage Learning.

Clements, C. B. (1982). The relationship of offender classification to the problems of prison overcrowding. Crime & Delinquency, 28, 72–81.

Corral, R. (2011). Many California female inmates could get early release. Retrieved from http://sanfrancisco.cbslocal.com/2011/09/13/many-california-female-inmates-could-get-early-release/

Eisenman, S. F. (2009). The resistable rise and predictable fall of the US supermax. Monthly Review, 61, 31–45.

Ekland-Olson, S., Barrick, D. M., & Cohen, L. E. (1983). Prison overcrowding and disciplinary problems: An analysis of the Texas prison system. The Journal of Applied Behavioral Science, 19, 163–176.

Ezell, M. (1989). Juvenile arbitration: Net widening and other unintended consequences. Journal of Research in Crime and Delinquency, 26, 358–377.

Feinstein, J. (2011). Reforming adult felony probation to ease prison overcrowding: An overview of California S.B. 678. Chapman Law Review, 14, 375–414.

Feld, B. C., & Schaefer, S. (2010). The right to counsel in juvenile court: Law reform to deliver legal services and reduce justice by geography. Criminology & Public Policy, 9, 327–356.

Frank, S. (2012, January 6). California in process of releasing half of the women from state prisons-feel safer? Retrieved from http://www.capoliticalnews.com/2012/01/06/ca

Gaes, G. G. (1985). The effects of overcrowding in prison. Crime and Justice, 6, 95–146.

Giertz, F. J., & Nardulli, P. F. (1985). Prison overcrowding. Public Choice, 46, 71–78.

Griswold, D. B. (1985). Florida's sentencing guidelines: Progression or regression. Federal Probation, 49, 25–32.

Haney, C. (2003). Mental health issues in long-term solitary and "supermax" confinement. Crime and Delinquency, 49, 124–156.

Haney, C. (2006). The wages of prison overcrowding: Harmful psychological consequences and dysfunctional correctional reactions. Washington University Journal of Law and Policy, 22, 265–294.

Harriman, L., & Straussman, J. D. (1983). Do judges determine budget decisions? Federal court decisions in prison reform and state spending for corrections. Public Administration Review, 43, 343–351.

Harris, C. M., Jr. (1991). Prison overcrowding: The time for policy change has come! Florida State University Law Review, 18, 489–512.

Harvard, Law. (2010). Recent cases: Constitutional law - Eighth Amendment - Eastern District of California holds that prisoner release is necessary to remedy unconstitutional California prison conditions. Harvard Law Review, 123, 752–759.

Hooks, G., Mosher, C., Genter, S., Rotolo, T., & Lobao, L. (2010). Revisiting the impact of prison building on job growth: Education, incarceration, and county-level employment. Social Science Quarterly, 91, 228–244.

Johnson, W. W. (2011). Rethinking the interface between mental illness, criminal justice and academia. Justice Quarterly, 28, 15–22.

Judge, F. T., III (1982). Relief for prison overcrowding: Evaluating Michigan's accelerated parole statute. University of Michigan Journal of Law Reform, 15, 547–575.

Kelly, W. R., & Ekland-Olson, S. (1991). The response of the criminal justice system to prison overcrowding: Recidivism patterns among four successive parolee cohorts. Law & Society Review, 25, 601–620.

Kendrick, K. (2011). The tipping point: Prison overcrowding nationally, in West Virginia, and recommendations for reform. West Virginia Law Review, 113, 585–620.

King, K., Steiner, B., & Breach, S. R. (2008). Violence in the supermax: A self-fulfilling prophecy. The Prison Journal, 88, 144–168.

Kurlychek, M. (2011). What is my left hand doing? The need for unifying purpose and policy in the criminal justice system. Criminology and Public Policy, 10, 909–916.

Levitt, S. (1996). The effect of prison population size on crime rates: Evidence from prison overcrowding legislation. The Quarterly Journal of Economics, 111, 319–351.

Lucken, K. (2011). Leaving mass incarceration: The ways and means of penal change. Criminology and Public Policy, 10, 707–714.

Marvell, T. B. (1995). Sentencing guidelines and prison population growth. Journal of Criminal Law and Criminology, 85, 696–700.

McMahon, M. (1990). 'Net-widening'. Vagaries in the use of a concept. British Journal of Criminology, 30, 121–149.

Nagel, W. G. (1977). On behalf of a moratorium on prison construction. Crime & Delinquency, 23, 154–171.

O'Keefe, M. L. (2007). Administrative segregation for mentally ill inmates. Journal of Offender Rehabilitation, 45, 149–165.

Ornduff, J. S. (1996). Releasing the elderly inmate: A solution to prison overcrowding. The Elder Law Journal, 4, 173–200.

Papy, J. E., & Nimer, R. (1991). Electronic monitoring in Florida. Federal Probation, 55, 31 –33.

Porter, N. D. (2012). On the chopping block 2012: State prison closings. The Sentencing Project. Retrieved from http://sentencingproject.org/doc/publications/On%20the%20Chopping%20Block%202012.pdf

Reiman, J., & Leighton, P. (2009). The rich get richer and the poor get prison. Boston, MA: Allyn & Bacon.

Rhodes, L. A. (2007). Supermax as a technology of punishment. Social Research, 75, 547 –565.

Richards, S. C., Austin, J., & Jones, R. S. (2004). Kentucky's perpetual prisoner machine: It's about money. Review of Policy Research, 21, 93–106.

Ross, J. I. (2007). Supermax prisons. Society, 44, 60–64.

Ross, J. I. (2010). Resisting the carceral state: Prisoner resistance from the bottom up. Social Justice, 36, 28–45.

Schoenfeld, H. (2010). Mass incarceration and the paradox of prison conditions litigation. Law & Society Review, 44, 731–767.

Shichor, D., & Sechrest, D. K. (2002). Privatization and flexibility: Legal and practical aspects of interjurisdictional transfer of prisoners. The Prison Journal, 82, 386–407.

Slate, R. N., & Johnson, W. W. (2008). The criminalization of mental illness: Crisis and opportunity for the justice system. Durham: Carolina Academic Press.

Small, J. (2011). More California women inmates serving time at home. Retrieved from http://www.scpr.org/news/2011/12/29/30564/how-alternative-custody-californias-women-inmates-/

Smith, L. G., & Akers, R. L. (1993). A comparison of recidivism of Florida's community control and prison: A five-year survival analysis. Journal of Research in Crime and Delinquency, 30, 267–292.

Smolla, R. (1984). Prison crowding: Prison overcrowding and the courts: A roadmap for the 1980s. University of Illinois Law Review, 1984, 389–421.

Specter, D. (2010). Everything revolves around overcrowding: The state of California's prisons. Federal Sentencing Reporter, 22, 194–199.

Steiner, B., & Wooldredge, J. (2009). Rethinking the link between institutional crowding and inmate misconduct. The Prison Journal, 89, 205–233.

Sturm, S. P. (1993). The legacy and future of corrections litigation. University of Pennsylvania Law Review, 142, 639–738.

Thornberry, T. P., & Call, J. E. (1983). Constitutional challenges to prison overcrowding: The scientific evidence of harmful effects. Hastings Law Journal, 35, 313–351.

Turner, S. (2011). More than just early release: Considerations in prison reduction policies. Criminology & Public Policy, 10, 917–924.

Verro, M. A. (2010). Incarceration: Psychological pros and cons. Sociological Viewpoints, 31 –40.

Vitiello, M. (1997). Three strikes: Can we return to rationality? Journal of Criminal Law and Criminology, 87, 395–482.

Wright, K. A., & Rosky, J. W. (2011). Too early is too soon: Lessons from the Montana department of corrections early release program. Criminology & Public Policy, 10, 881–908.

Young, R. L. (1983). Supreme court report. American Bar Association Journal, 69, 805–816.

~~~~~~~~

By James M.A. Pitts; O. Hayden Griffin III and W. Wesley Johnson
~~~~~~~~

Reported by Author; Author; Author
