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Correctional Autonomy and Authority in the Rise of Mass Incarceration

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Abstract

Much of the literature explaining both mass incarceration and increasingly harsh punishment policies has been dominated by a focus on factors external to prisons, such as macrolevel explanations that point to political factors (like a popular rhetoric of governing through crime) or social structures (like the presence or absence of a strong welfare state). Where scholarship has focused on factors internal to prisons, explanations have often focused less on individual actors or correctional influence and more on processes, such as routinization, legalization, and risk management. This article argues for the importance of an additional explanatory factor in understanding the phenomenon of mass incarceration: the internal and relatively individualized influence of correctional officials, especially mid-level bureaucrats, who exercise autonomy and authority not only over prisoners and prison policy implementation but over policy initiation.

INTRODUCTION

“I designed Pelican Bay State Prison. If you go up to visit, you’ll see they have a plaque with my name on it,” Carl Larson, a California prison administrator, memorably (and proudly) said in an interview in 2010 (Reiter 2016a, p. 91). Pelican Bay, the prison Larson was proud of designing, opened in 1989 as one of the first and largest supermax facilities, designed for long-term solitary confinement, in the United States. Larson, formally the Warden of New Prison Design and Activation for the California Department of Corrections, represents a kind of administrative autonomy and authority frequently overlooked in institutional analyses generally and prison analyses specifically: mid-level bureaucrats (Reiter 2016a, p. 488; Rudes 2012), as distinct from either frontline workers (Liebling 2000, Liebling et al. 2011, Lynch 1998, Maynard-Moody et al. 1990, Vuolo & Kruttschnitt 2008) or the managerial class of prison directors and secretaries of corrections (Bennett 2016, Bryans 2007, DiIulio 1991). Mid-level bureaucrats, by contrast, include people like Larson: administrators working within state prison headquarters behind the public faces of appointed secretaries of corrections or directors of statewide prison agencies. Mid-level bureaucrats also include administrators working within individual prisons, like unit captains and program managers and, arguably, even institution-level wardens and superintendents (because they are usually subject to significant managerial oversight from agency-level directors and statewide secretaries).

These mid-level bureaucrats constitute an important category of study in understanding not only policy change and implementation in prisons but also policy initiation. In fact, focusing scholarly attention on mid-level bureaucrats provides a new lens for analyzing correctional autonomy and authority, as exercised by correctional officials at multiple levels of authority. Moreover, re-examining existing scholarship on the role of correctional bureaucrats, especially at the middle level, reveals that these bureaucrats have played an important and analytically neglected role in contributing to the rise of mass incarceration and in shaping its conditions, both in the United States and globally.

Much of the literature explaining both mass incarceration and increasingly harsh punishment policies has been dominated by a focus on factors external to prisons (Rubin & Reiter 2017), such as macrolevel explanations that point to political factors (like a popular rhetoric of governing through crime; Simon 2007) or social structures (like the presence or absence of a strong welfare state; Garland 2001, Pratt 2008). Where scholarship has focused on factors internal to prisons, explanations have often focused less on individual actors or correctional influence and more on processes, such as routinization, legalization, and risk management (e.g., Feeley & Simon 1992, Hannah-Moffat 2005, Jacobs 1977). This article argues for the importance of an additional explanatory factor in understanding the phenomenon of mass incarceration: the internal and relatively individualized influence of correctional officials exercising autonomy and authority not only over prisoners and prison policy implementation but over policy initiation.

This article first reviews an array of macrolevel explanations for mass incarceration and correctional change more generally, highlighting the absence of attention to correctional officials and administrative influence. The article next reviews current characterizations of internal, correctional influences on mass incarceration and prison policy more generally, highlighting how this research tends to focus on institutional processes and explaining how these processes limit the potential role of correctional influence, especially among frontline correctional workers (e.g., see Lipsky 1980, Viglione et al. 2015). Likewise, studies focusing on correctional leadership also tend to focus on institutional influences, like the existence of shared cultural attitudes and training in certain managerial styles (e.g., Bryans 2007). These existing studies of both frontline workers and correctional leadership, however, reveal important, indirect influences on both the phenomenon of mass incarceration and individual experiences of (frequently harsh) punishment.

In fact, over the course of the twentieth century, courts have delegated a wide range of discretion to prison officials—from frontline workers to mid-level bureaucrats to correctional leadership—in running prisons. As a result, correctional officials, especially mid-level bureaucrats, have been influential in shaping individuals' penal experiences, both substantively and procedurally; shaping workplace attitudes and practices of frontline correctional officers; and, ultimately, shaping correctional policies and practices, like durations of incarceration and rates of reincarceration. Focusing in on mid-level bureaucrats in particular, as we do in the final sections of this piece, both reveals this influence and suggests important areas for further study in the quest to understand the causes and consequences of mass incarceration.

MACROLEVEL EXPLANATIONS: OVERLOOKING ADMINISTRATIVE INFLUENCE

Understanding mass incarceration—from the policies that led to more, longer, and less comfortable prison sentences to those that facilitated the building of new prison facilities—has dominated criminological, sociolegal, and punishment and society literature for the last few decades, since the rise of mass incarceration in the United States in the 1980s. Much of the focus has been on understanding macrolevel causes of the phenomenon, whether economic (e.g., DeGiorgi 2006, Gilmore 2007, Lofstrom & Raphael 2016), political (e.g., Barker 2009, Beckett 1997, Gottschalk 2014, Miller 2008, Pratt 2008, Schept 2015, Simon 2007), or social (e.g., Alexander 2010, Garland 2001, Wacquant 2006).

For instance, Gilmore (2007) has argued that shifting allocations of capital and labor, especially out of rural areas with fewer and fewer agricultural and manufacturing jobs, facilitated geographic and economic investments in mass incarceration, especially in California. According to Gilmore, politicians exploited these economic shifts to advocate for an infusion of a new industry—prison building and operation—into newly impoverished rural areas. In this account, elected officials have primary authority and autonomy in making criminal justice policy decisions; as Gilmore (2007, p. 94) argues, California legislators in the 1980s, during California's prison-building boom, kept the California prison system “under close scrutiny and direction by elected officials.” But other work shows that prison officials in California (and elsewhere) actually avoided a fair amount of legislative scrutiny, making decisions like the one Larson made to build the Pelican Bay supermax with little legislative oversight (Reiter 2016b; see also Lynch 2010). And more recent work on prison building suggests that local political interests and efforts to destigmatize abandoned rural areas can be as influential as state-level politics and broader economic shifts (Eason 2017).

Likewise, other scholars have argued that variations in political structures can facilitate or discourage trends like mass incarceration. For instance, Simon (2007) has argued that the US government relies on fear of crime in generating social policy, whereas Pratt (2008) has argued that robust social welfare states, as in Scandinavia, tend to allocate fewer resources to harsh incarceration practices than nations with weaker social safety nets in place, like the United States. As with Gilmore's argument, these political arguments focus on macrolevel social trends, often to the exclusion of attention to internal administrative decisions that also shape the scale and conditions of incarceration. For instance, even though Scandinavia has not experienced the same scale of mass incarceration as the United States, scholars have argued that Scandinavian states tend to overuse solitary confinement, in terms of both how many prisoners experience isolation and the durations of isolation used (Reiter et al. 2017, Smith 2012). As in the United States, decisions in Scandinavia about who goes to solitary confinement, for how long, and the conditions of confinement in solitary are made not by politicians but by prison officials, either at the frontline or among mid-level bureaucrats.

Other scholars of politics have argued for attention to the power not just of political structures but of specific, often counterintuitive, political groups. For instance, Murakawa (2014) has argued that liberal politicians in the US Congress contributed to the buildup of the modern prison state; Fortner (2015) has argued that a “black silent majority” of working- and middle-class blacks also supported the buildup; and Forman (2017) has argued that African American religious and elected leaders in major urban centers like Washington, DC, and Atlanta advocated for the harsher criminal justice policies that ultimately contributed to mass incarceration. Hinton (2016) has argued with a bit more nuance that factions like liberal congressmen and the black working class were part of bipartisan political collaborations supporting mass incarceration policies, even if they were not wholly responsible for initiating the phenomenon. Only a few scholars have touched on the political influence of correctional officials themselves, in California and New York (Page 2011; Thompson 2016, pp. 544–48); these studies are discussed in more detail below.

Still other scholars have argued for understanding mass incarceration from a more sociological perspective—as the result of shared social norms around how to respond to violence and racism, through a “culture of control” (Garland 2001); as the result of the criminalization of poverty (Wacquant 2006); or as an extension of oppressive and exclusionary racial policies like Jim Crow laws, with mass incarceration functioning as a “new Jim Crow” (Alexander 2010). These kinds of sociological explanations for mass incarceration and harsh punishment practices might well be reflected in the actions and decisions of prison bureaucrats, whether frontline, mid-level, or managerial, but more attention to these bureaucrats and their influence is warranted.

Indeed, in a recent piece in *Theoretical Criminology*, Rubin & Phelps (2017, p. 423) argued that much of the existing literature seeking to explain penal change focuses on the role of the “penal” or “carceral” state, “treating penalty and penal actors as a coherent, unified entity” while overlooking “conflict among those actors and groups that constitute the penal state.” Whereas Rubin & Phelps focus on the conflict between various agents and actors seeking to influence penal change, including frontline workers and elite policy makers, we focus not just on the presence (or absence) of conflict but on the particular ways these actors influence penal change, especially in the era of mass incarceration. Although we first examine the frontline and the elite influence, we ultimately focus on the mid-level bureaucrats, key and often overlooked agents of conflict and influence within the fractured penal state Rubin & Phelps describe.

MICROLEVEL EXPLANATIONS: COMPARTMENTALIZING ADMINISTRATIVE INFLUENCE

British criminologist Alison Liebling and colleagues (2011, p. 3) have argued that “few detailed narratives exist of prison work.” Those narratives of prison work that do exist tend to focus on either the discretion frontline prison staff exercise in implementing (or not implementing) existing rules and policies or the routinization of decision making and work for frontline (and also managerial) staff.

According to Lipsky (1976, 1980), who is credited with the term street-level bureaucrats, frontline workers are people who implement policy, interpreting it only within the constraints of the demands of their jobs. One foundational sociolegal perspective on frontline workers is that they interpret the “law on the books,” translating it into on-the-ground policies (or “law in action”) that work in specific circumstances and with specific individuals (Abel 2010). For instance, Goodman (2008, pp. 751–59, 763) describes how prison officers in a California reception center negotiate with individual prisoners about how to categorize each prisoner’s race and gang affiliation to fit into the classifications established on an administrative form designated by the number 1882, using “speech and actions” to both facilitate categorization and make and remake “racialized spaces.”

Goodman's emphasis, then, is on how frontline workers, like prison officers, interpret and apply an existing policy, like the 1882 form.

In the specific context of prison institutions, Rothman (1980) has described the law-on-the-books versus law-in-action conflict in slightly different terms, as an inherent conflict between conscience, or progressive and humane reform agendas, and convenience, or practical implementation of reform in the face of (often overpowering) institutional agendas. Goodman et al. (2015) survey a rich body of prison studies documenting the ways in which the convenience of frontline custody staff undermines the conscience of rehabilitative reform agendas. As Goodman et al. (2015, pp. 324–25) note, frontline custody staff in prisons are always “capable of undermining Treatment practices in the name of ‘security.’” Again, the emphasis is on response and reaction: Frontline workers do not initiate policy but resist, reformulate, or reshape existing mandates. Viglione et al. (2015, p. 104) sum up the literature on frontline workers in the correctional context: “They implement organizational policies and practices while simultaneously making critical discretionary decisions.” Rubin & Phelps (2017, p. 434) echo this point: “Frontline workers often chafe against programs, initiatives, and ideologies imposed from above, leading to various forms of rule bending, rule violation, and creative interpretations of formal mandates.”

Where the literature on frontline correctional workers analyzes their independent decision-making authority, it tends to focus particularly on the mechanisms by which this authority becomes rationalized or routinized, often toward specific mechanistic goals like risk management. Jacobs (1977) describes this process in his classic book, *Stateville: The Penitentiary in Mass Society*, about the historical evolution of one of the highest-security prisons in Illinois: from an independent institution led by a charismatic and authoritarian warden to an institution that became part of a centralized state prison bureaucracy, with leadership and line officers alike structuring their increasingly limited interactions with prisoners around increasingly specified rules. More recently, Liebling (2006) has noted a similar process, arguing that, as modern correctional institutions have gradually evolved to integrate more rehabilitative objectives, the job role of the correctional officer has become more bureaucratized.

In another classic piece, delineating “the New Penology,” Feeley & Simon (1992) argue that the kind of transition Jacobs observed at Stateville (and that Liebling would later describe in the United Kingdom), toward a rationalized, bureaucratized authority focused on managing aggregated risk rather than targeting individuals for punishment or reform, came to dominate the American criminal justice system in the late twentieth century. Since *Stateville* and the New Penology, scholars have analyzed how these macro trends shape decision making among frontline workers in the criminal justice system (Grattet & Jenness 2005, Hannah-Moffat 2005, Hannah-Moffat & Yule 2011, Lynch 1998, Rudes 2012, Simon 1988). Hannah-Moffat & Yule (2011, p. 169), for instance, have argued that Canadian parole board members have considerable discretion in deciding whether or not to release female prisoners, but this discretion tends to be both shaped and constrained by “a dominant correctional logic that requires women to take responsibility for their choices and comply with programmes that target dynamic risk factors.” Lynch (1998, p. 861), however, argues that parole field officers in California, while also exercising discretion and actively interpreting the rules and functions of parole, resisted the use of “actuarial categorization devices and aggregate management methods” and instead continued to prioritize individualized, face-to-face interactions with parolees. In analyzing parole decision making, Lynch and Hannah-Moffat debate the influence of social context and popular theories on frontline workers in the criminal justice system, but they tend to agree on the principle that these workers are reacting to and interpreting, rather than initiating or generating, policies.

More recently, scholars have explained frontline criminal justice workers' constrained influence and lack of initiative in terms of the overwhelming array of responsibilities and stressors

correctional officers face, documenting how responsibilities and stressors contribute to both paralysis and a lack of impact on either individual prisoners' lives or broader correctional policies. Bourbonnais et al. (2007) argue, for instance, that today's correctional officer is typically expected to successively, or concurrently, ensure security, facilitate the rehabilitative process, and promote services to prisoners. These responsibilities are often contradictory and in tension with one another, creating an environment in which correctional officers are unable to satisfy all the demands placed upon them with the limited resources available while, according to much of the literature, simultaneously holding little decision-making power. The varieties of stress reactions experienced by correctional officers suggest multiple mechanisms that might encourage frontline correctional staff to be especially passive and unlikely to exert much influence over prisoners or policies. For instance, in a review of 43 investigations from 9 different countries, Schaufeli & Peeters (2000) cataloged the high prevalence of various stress reactions among correctional officers, particularly turnover and absenteeism rates (Cheek & Miller 1983, Greuter & Castelijnns 1992, Jurik & Winn 1987, Wright 1993), psychosomatic diseases (Cheek & Miller 1983, Dollard & Winefield 1998, Härenstam et al. 1988, Slate & Vogel 1997), job dissatisfaction (Cullen et al. 1990, Grossi & Berg 1991, Toch & Klofas 1982, Triplett et al. 1996, Whitehead et al. 1987), and burnout (Dollard & Winefield 1994, Lindquist & Whitehead 1986, Schaufeli et al. 1994). Recent studies further support these findings, highlighting more specific contributors to correctional staff work stress, such as organizational and administrative issues (i.e., poor communication, lack of participation in decision making, and training and managerial styles of organizational leaders) (Armstrong & Griffin 2004, Black 2001, Lambert et al. 2009); role ambiguity, or correctional staff lacking clarity regarding how to satisfactorily fulfill the obligations of their job without provision of proper resources or training (Black 2001, Conover 2000, Griffin 2006, Lambert et al. 2008, Triplett et al. 1999); and safety concerns stemming from understaffing (Gibbons & Katzenbach 2006) and perceived or actual prisoner violence (Morgan et al. 2002, Wells et al. 2008, Whiteacre 2006). This long-term stress reaction is commonly characterized by emotional exhaustion and depersonalization, or some combination of a negative and excessively detached response to those who are the recipients of care (or control, as the case may be) (Maslach 1993, Schaufeli & Peeters 2000).

Studies have also found that the militaristic structure of correctional institutions, the use of shift-based working hours, and the tension created by incompatible demands between the administration and prisoners further contribute to the experiences of occupational stress for correctional officers (Moon & Maxwell 2004, Morgan et al. 2002). As with analyses of police officers' experiences of psychological stress, occupational stress has been strongly linked to higher levels of anxiety and depression among correctional workers, even more than their actual experiences of stressful work encounters (i.e., negative interactions with prisoners) (Brough 2004, Gehrke 2004, Hart et al. 1993). In sum, recent research suggests that, in addition to routinization and an institutional focus on risk management, high levels of stress and common perceptions of conflicting responsibilities further limit the ability of frontline correctional workers to implement (not to mention to interpret or to initiate) new policies.

However, research on correctional officers' attitudes and the influence of their institutional environments suggests that, in some situations, frontline staff may exert a fair amount of influence over individual prisoners and institutional policies, in ways that can be either beneficial or harmful. For instance, Whitehead & Lindquist (1989) find that effectively achieving custodial goals within a prison setting is necessarily related to correctional officers' attitudes, both overall and specifically toward prisoners. Specific to the correctional context, Whitehead & Lindquist (1989, p. 83) noted that "organizational structure, goals, and climate" may have substantial impact on the professional orientation of correctional officers and highlighted the importance of including structural and agency-level variables in research. Likewise, Jurik (1985) reveals that supervisory

personnel set the tone for operations in correctional institutions, and correctional officers tend to conform “to the goals of management.” Further, evidence suggests that managerial quality determines organizational performance and function in correctional facilities (Dias & Vaughn 2006) and that transformational leadership is significant for supporting both functional employee attitudes and a climate that facilitates organizational change (DeCelles et al. 2013). In a study of 132 Australian correctional officers, supervisor support was found to moderate the relationship between job demands and job satisfaction (Brough & Williams 2007), whereas social support from fellow line officers was not strongly related to either job satisfaction or work-related psychological well-being (Brough & Pears 2004). And findings from Ulmer’s (1992) study of approximately 200 frontline correctional officers indicated that line officer–supervisor relations could be strengthened through increasing communication between line officers and superiors, including incorporating line officers’ input in workplace decision making, fostering rehabilitative orientations among officers, and providing officers with more opportunity and support for enacting rehabilitative goals in their everyday work (Ulmer 1992).

Not only can a tone set by management facilitate beneficial interactions between prisoners and frontline correctional staff, and encourage frontline correctional staff to implement policies, but the individual attitudes of frontline correctional staff, whether shaped by management or other organizational factors, can also influence interactions and policy implementation. Studies have highlighted the importance of policy buy-in among correctional workers, correctional staff culture, and correctional officers’ attitudes for implementation of penal reforms (Crewe 2011, Lerman & Page 2012, Liebling 2008, Lin 2000). Indeed, findings from a study of correctional officers working in a juvenile detention facility suggested that changes in the organizational environment of facilities, such as the implementation of reformatory policies and procedures, may limit punitive orientations among staff more effectively than other strategies, such as a focus on recruitment efforts (Bazemore & Dicker 1994). Further, in a recent Belgian study, Brosens and colleagues (2014) found that correctional officers could provide both instrumental and emotional support to prisoners, encouraging participation in available educational and vocational programming. This study emphasized the importance of correctional workers’ attitudes toward prisoners to both advancing reformatory policy and facilitating prisoners’ access to rehabilitative services.

Correctional attitudes and organizational culture can also facilitate negative actions by frontline staff, who can exercise discretion to treat prisoners badly or to discourage implementation of new policies. For example, in units with higher custody levels (such as maximum-security solitary confinement units), correctional officers have reported higher perceptions of dangerousness and resulting perceptions of prisoners as less deserving of resources and rehabilitative services (Cullen et al. 1985, Lombardo 1981). Other research has indicated that when prisoners are reluctant to participate in offered programming, this can be because of correctional officers’ negative influence, or because of an aversion to burdening staff (Brosens et al. 2014, p. 521). Similarly, in their UK study of 73 correctional officers working in a newly designed maximum-security unit for prisoners diagnosed with serious personality disorders, Bowers et al. (2006) found a constant and negative changeability in workers’ attitudes over the long term and traced this changeability not to individual attitudes but to contextual factors like management, education, supervision, and support of staff.

In studies of both mid-level correctional workers and managerial correctional workers, scholars have also focused on how workers at various steps up the correctional hierarchy, like frontline workers, interpret and implement (rather than initiate) policy. For instance, in Rudes’s (2012, pp. 23–24) examination of middle managers working in California parole organizations, she argues for more attention to the role of middle managers but focuses on their discretion in interpreting policy rather than on any autonomy to initiate policy. Calavita & Jenness (2014, pp. 97–129) describe how “midlevel ranks of correctional officers” play an important role in overseeing prisoner

complaints and grievances in California but describe how these officers tend to reach remarkably consistent outcomes (denying the vast majority of grievances), constrained as they are by a military-like hierarchy and pressures toward consistency. Likewise, Bryans's (2007, pp. 163–65) examination of British prison governors, or wardens, documents how regulations, competing responsibilities, and a culture of managerialism constrain governors, and Bennett's (2016) examination of prison managers documents how managers are “microagents” subject to managerial cultures and performance-monitoring mechanisms, exercising influence largely through discretionary choice among rule interpretation and implementation.

DiIulio's (1987) classic *Governing Prisons: A Comparative Study of Correctional Management* is an exception to this trend in the mid-level and managerial corrections influence analyses. In *Governing Prisons*, DiIulio argues for the power of individual prison managers to initiate and affect significant culture and policy shifts. Scholars of prison culture, like Irwin (1987) and Lombardo (1989), criticized the book for exactly this focus on managerial autonomy and authority, noting that DiIulio failed to account for the constraining power of social context.

In a more recent, place-based study of prison reform in Florida, Schoenfeld (2010) describes another example of at least one group of correctional managers exercising some independent influence over correctional change. Schoenfeld (2010, p. 752) describes how the secretary of corrections and his staff worked with state legislators to “increase the state's capacity to build” prisons, as a means to comply with statewide litigation challenging overcrowded prison conditions. Prison officials, judges, and legislators agreed that overcrowding had created unconstitutionally dangerous and unhealthy living conditions, but prison leaders did much of the work to develop solutions to render the system constitutional. Legislators supported prison officials' proposed solution to build more prisons, and prison officials identified cheap locations for prison siting and advertised the benefits of prisons to the relevant communities. Florida prison managers, then, were constrained by constitutional rules and political goals, but they initiated new prison-building and -siting policies within these constraints.

In sum, although Liebling has argued that few detailed narratives of prison work exist, a robust body of research has at least sought to identify, through interviews, surveys, quantitative analyses, and meta-analyses, what role, if any, frontline correctional officers have in shaping both prisoners' experiences of incarceration and policy implementation. The vast majority of this research has been conducted in the context of the rise of mass incarceration, both in the United States and globally, and so constitutes a valuable set of perspectives on the role of correctional authority and autonomy not just in prison culture generally but in the late-twentieth-century and early-twenty-first-century prison culture of ever-increasing rates of incarceration and hardening of punishment policies.

As reviewed in this section, this work has largely presumed that a wide variety of factors, from institutional routinization to macrolevel trends away from individualized rehabilitation and toward group-based risk management, to organizational culture, staff attitudes, and individual levels of stress, all shape and constrain the influence of frontline correctional staff. More recently, Cheliotis (2017, p. 314) noted this trend in the scholarship to dismiss or downplay the autonomy and authority of correctional officials; scholars, he said, often treat “penal agents as executive automata or docile bodies entrapped in the ‘iron cage’ of an over-rationalized criminal justice system.” For instance, Garland (1997), one of the leading theorists of mass incarceration, has argued that even the minimal discretion frontline workers have in the criminal justice system is often subsumed in processes of rationalization and risk management. Cheliotis (2017, p. 321), however, argues for renewed attention to the human agency inherent in the correctional workers' day-to-day decision making, complementing Rubin's and Phelps's calls for more attention to the agents operating within the fractured penal state. Indeed, the legal history of the discretion

allocated to administrative agencies generally, and to correctional officials specifically, over the course of the late twentieth century suggests that correctional officials—whether frontline, mid-level, or managerial—have surprisingly robust agency, not just in interpreting and implementing but also in initiating policy. This agency, or autonomy and authority, deserves more attention.

DELEGATED DISCRETION: EXPANDING ADMINISTRATIVE INFLUENCE

According to scholars of law and institutions, administrators in agencies throughout the US government have drafted “foundational legal principles governing the relationship of the individual and the state” (Collins 2017, p. 1728; see also Desai 2007, Eskridge & Ferejohn 2013, Kessler 2014, Lee 2010, Schiller 2007, Tani 2012). In particular, legal scholars have analyzed the independent “autonomy and authority” exercised by actors within administrative agencies, like immigration enforcement agencies (Collins 2017, p. 1727). Indeed, US administrative agencies from the Drug Enforcement Administration to Immigrations and Customs Enforcement to the Federal Bureau of Investigation—to name just a few of the agencies related to criminal justice administration—wield significant power and “rule-making authority.” And debates over degrees of discretion, autonomy, and authority among administrative agents dominate policy and legal analysis (e.g., Cann 2007, Shapiro 1983), especially in the criminal justice literature (e.g., Forman 2017, Grattet & Jenness 2005, Pfaff 2017).

Discretion is often seen as the narrow set of decisions frontline workers, mid-level bureaucrats, and even managerial officials make, either in choosing between which of many rules to apply or in interpreting vague policies (Grattet & Jenness 2005, pp. 894, 899–901). Focusing on decision making among police and sheriff’s agencies, Grattet & Jenness (2005, p. 900) argue that discretion must be analyzed both at the level of individual action and at the level of aggregate decision making, as shaped by “collective and contextual decisions.” Indeed, as scholars have grappled with making sense of mass incarceration in particular, they have analyzed discretion in the criminal justice system, arguing that where various actors exercise discretion over rule enforcement, whether police officers (e.g., Fagan 2010, Grattet & Jenness 2005), elected officials and judges (e.g., Forman 2017, Reiter 2016a), or prosecutors (e.g., Frase 1980, Pfaff 2017), they often have significant influence over outcomes in the criminal justice system, from individual experiences of punishment to lengths of sentences to the overall number of people who go to prison.

In the correctional context, this kind of analysis of the influence of discretion, at the levels of both individual action and aggregate decision making, as Grattet & Jenness suggest, is especially important, because correctional discretion has especially broad practical and legal implications, especially in the United States. Because of a series of late-twentieth-century judicial decisions and legislative enactments governing both prison litigation and prison operational procedures in the United States, correctional officials arguably have even broader discretion than that of law enforcement officials, judges, and prosecutors, as described and analyzed by scholars like Forman and Pfaff. Simultaneous with the rise of mass incarceration in the United States, courts increasingly deferred to prison administrators regarding both interpretation of constitutional prison conditions and initiation of new prison policies. This deference created increasingly broad swaths of discretionary authority, especially for prison administrators, not just to interpret but to initiate and defend policy (e.g., see Dolovich 2012, Reiter 2015).

This deference represented a gradual retreat of the US judiciary from a robust line of case law established between the 1950s and 1970s, which had granted prisoners the rights to challenge the conditions of their confinement, to sue prison officials directly for constitutional violations, and to demand both equal treatment (regardless of race or status) and basic medical care [Feeley &

Rubin 1998, Reiter 2012; *Procunier v. Martinez* (1974)]. By 1981, there were more than 8,000 prisoners' rights lawsuits pending in the United States and more than 24 states with individual prison institutions or entire state prison systems under orders to improve unconstitutional conditions of confinement [*Rhodes v. Chapman* (1981)].

Beginning in the 1980s, however, federal courts (and ultimately the US Congress), overwhelmed by these thousands of cases, began to limit the rights of prisoners to bring litigation challenging the conditions of their confinement. A 1987 US Supreme Court case, *Turner v. Safley*, introduced a test to determine when prison administrators have the right to infringe on the constitutional rights of prisoners. The *Turner* test required prison administrators to show that any potential infringement of a prisoner's constitutional right is "reasonably related" to "legitimate penological interests." This flexible standard, prioritizing the safety and security needs of institutions ("legitimate penological interests"), as articulated by prison officials, over prisoners' constitutional rights, became the justification for upholding new policies restricting prisoners' individual rights across the United States, including a ban on visits to prisoners by all minors, even siblings and other relatives [*Overton v. Bazetta* (2003)]; a ban on homosexual prisoners sharing cells [*Veney v. Wyche* (2002)]; a policy of opening all outgoing prisoner mail [*Altizer v. Deeds* (1999)]; and a policy of housing prisoners in long-term solitary confinement indefinitely [*Madrid v. Gomez* (1995)]. These examples highlight some of the ways in which the *Turner* test has granted prison administrators discretion over shaping the penal experiences of individuals—directly contributing to the conditions of their confinement, the lengths of their sentences, and their access to rehabilitative services during their incarceration, among other policies.

Legal scholars have noted (and criticized) this broad deference courts have granted to prison officials (Dolovich 2012, Fallon 2006, Raghunath 2009, Reiter 2015, Resnik 2010, Shay 2010, Weidman 2004). Deference to prison officials in the case law is so pervasive, in fact, that prison law scholar Dolovich (2012, p. 246) has even argued for a typology of the kinds of deference courts grant to prison officials: deference to construct new doctrines, deference to revise procedural rules, and deference to reframe situations to justify potentially rights-infringing policies. But this acknowledgment and analysis by legal scholars of deference to prison officials has not necessarily translated into increased social science analyses focused on the agency prison officials, from frontline workers to mid-level bureaucrats to managerial officials, have in initiating and defending policies that have directly contributed to mass incarceration in the United States, especially.

Legislative delegation of authority to prison officials has paralleled (and complemented) this judicial delegation. In 1996, the US Congress passed the Prison Litigation Reform Act, which strictly curtailed prisoners' ability to bring litigation challenging the condition of their confinement by enacting rigid procedural and timeliness rules and by limiting attorneys' fees and settlement terms in prison reform cases (Calavita & Jenness 2014; Reiter 2015, p. 97, n. 33). In addition, state and federal legislation generally exempts prison regulations from the administrative procedural rules governing rule making (and requiring public oversight and transparency) in most other state and federal agencies (Shay 2010). Beyond these legislative delegations of authority, US prisons generally avoid public oversight, controlling and limiting the kinds of data collected and published about prisoners and prison operations; limiting, or in some cases even forbidding, journalist access to prisoners and prison facilities; and, in most jurisdictions, being completely free of investigations by the kind of independent oversight agencies that exist in much of Europe and Canada (Deitch 2012; Reiter 2014, p. 421).

Although scholars have acknowledged the relatively high degree of autonomy and authority exercised by administrative agencies in the United States generally, this autonomy and authority is even more marked for correctional agencies. The twentieth-century legal and legislative changes detailed in this section suggest that, institutionally, correctional officials are likely to

have a significant degree of agency, not just over policy interpretation and implementation but over policy initiation. This legal context, in turn, suggests the importance of reconsidering the many analyses of frontline, mid-level, and managerial correctional workers, which tend to compartmentalize these workers' influence over policy, describing the many constraints on their potential influence. Indeed, close attention to the role of mid-level correctional bureaucrats, who mediate between frontline and more supervisory workers, turns out to provide a particularly fertile place to explore the surprising agency of correctional officials over individual experiences of incarceration, institutional policies, and even national trends like mass incarceration.

MID-LEVEL ANALYSES: CORRECTIONAL AUTONOMY AND AUTHORITY

Macrolevel explanations of mass incarceration provide context for understanding influences on institution-level decision making, and microlevel explanations of administrative influence explain how individuals navigate decision making within the constraints of specific policies and rules. But scholars have only recently begun to pay attention to the role prison administrators, especially those at the middle level, play in correctional change at an individual, institutional, and even national scale.

The first step in this process is to identify “specific actors” enacting change (Rubin & Phelps 2017, p. 427; Schoenfeld 2011, p. 474). Both Carpenter (2001) and Collins (2017, p. 1729, n. 5) argue that mid-level bureaucrats are “best positioned within agency hierarchies to develop durable policies and to ensure that they are implemented.” Likewise, Rudes (2012, p. 3) argues that the role of middle managers is often assumed to be to “translate policy for subordinates,” but “their role in reform processes is often more complex.” Mid-level bureaucrats, mediating as they do between frontline actors and managerial officials, are an especially worthwhile category of analysis within which to seek to identify specific actors.

If few detailed narratives of prison work exist (Liebling et al. 2011), even fewer detailed narratives of the influence of mid-level bureaucrats exist. But the existing scholarship is growing, and it provides practical analytic frameworks for reorienting toward a new perspective on correctional change. Much of the scholarship that does exist on mid-level bureaucratic influence has focused on the local level, examining policy initiation and mass incarceration trends within states and at the district court, county, or specific institution level of jurisdiction, allowing for a much more detailed analysis of who initiates policy and how. These analyses reveal how prison officials play an important role (often unacknowledged in the scholarship) in policy decision making beyond simply exercising discretion to implement or interpret policy.

One recent, foundational analysis of the role of mid-level bureaucrats in policy initiation is Page's (2011) *The Toughest Beat*, which analyzes the influence of the California Correctional Peace Officers Association (CCPOA), the union representing prison guards, over state prison policy. Although Page does not explicitly call the CCPOA a group of mid-level bureaucrats, the category neatly fits CCPOA's role. By definition, the union members are not correctional managers or gubernatorial appointments. And although much of the CCPOA membership includes frontline workers, the CCPOA leaders Page profiles mediate between these frontline workers and correctional leaders, like the state secretary of corrections. Importantly, Page (2011, pp. 10, 211) identifies the specific union actors who exercise agency and describes how they cultivate the “legitimate authority to determine penal policies and priorities.” He notes that increases in rates of incarceration “fueled” the power of the CCPOA, and state bureaucratic norms and political influences interacted with the CCPOA to shape “possible paths of action.” But Page also describes multiple examples of CCPOA officials initiating new policies that ultimately influenced

both the conditions and scale of incarceration in California (p. 11). For instance, the union officials like President Don Novey, Vice President Lance Corcoran, and Executive Secretary Percy Smith, who mediated between frontline workers and correctional leaders, provided “financial backing and political assistance” to victims’ rights groups throughout the state, “transforming” these groups into CCPOA allies and influential political actors (p. 108). With CCPOA backing, victims’ rights groups like Crime Victims United of California and the Crime Victims Bureau advocated for less sympathy for criminal defendants, more focus on public safety, and harsher sentencing policies both for individuals and in statewide legislation.

Page also details how CCPOA leaders played active roles in drafting, passing, and defending the state’s harsh Three Strikes and You’re Out law, which mandated life sentences for third felony convictions; in promoting punitive segregation; in halting efforts to privatize prisons in the state; and even in directly constraining and limiting managerial authority, shifting “managerial rights and discretion from ‘the suits’ to the workers,” to gain and maintain control over “key workplace functions” like disciplining workers (pp. 14, 161). In sum, Page identifies multiple specific actors and mechanisms, along with concrete outcomes, associated with the autonomy and authority of mid-level correctional bureaucrats.

In another body of work focused on California, Reiter (2016a,b) identifies the specific mid-level bureaucrats—like Larson, mentioned in the introduction to this piece—who both designed and implemented prison plans and operational policies during the state’s 1980s prison building boom. Specifically, Reiter describes how legislators delegated to mid-level bureaucrats authority over prison funding (permitting prison officials to negotiate privatized lease-revenue bonds instead of requiring voters to approve general obligation bonds), prison siting, and prison design. This process paralleled the judicial delegation of authority to correctional officials, described in the preceding section. As Reiter (2016b, p. 511) notes, Larson, working with other mid-level bureaucrats like Richard Kirkland, who was in charge of state prison construction, and Steve Cambra, a prison warden, ultimately designed, built, and oversaw “the biggest, highest security prison in the United States, with more than 1,000 beds for segregating and concentrating California’s highest security prisoners—as assessed by prison administrators, not judges or legislators.” Moreover, Reiter notes that the authority and autonomy mid-level bureaucrats like Larson exercised over prison design and operation in California, like the authority and autonomy Page describes CCPOA officials exercising over sentencing policy and prison conditions in the state, functioned to reinforce and insulate prison policies enacted by mid-level bureaucrats from judicial, legislative, and even managerial regulation (Page 2011, p. 14; Reiter 2016b).

More recent work by Reiter suggests that mid-level bureaucrats in several states, including Washington, North Dakota, and Maine, have been similarly instrumental not only in implementing but in designing policy—in this case both procedural and substantive reforms to solitary confinement practices (Reiter 2018). For instance, Reiter identifies a key agent of reform in Washington State: the mission housing administrator, a classic mid-level bureaucrat, who, appointed by the secretary of corrections, mediates between the highest-level officials in the Washington Department of Corrections and the line officers and supervisors working in and overseeing the operation of isolation units in each prison across the state. In this role, this mission housing administrator has not simply relayed dictated policy along a chain of command but rather has initiated various policies and practices to fundamentally reshape Washington’s use of isolation units and practices around mentally ill prisoners. For instance, the administrator established a new process for overseeing which prisoners get sent to isolation, for which reasons, and for how long; established a weekly team meeting of mental health and custody staff to review individual prisoner files; and initiated new training programs to educate security-focused staff in how to respond to mentally ill prisoners, diverting such prisoners from punitive to care-based settings (Quirk 2015, p. 60).

In recent years, historians have also reexamined the earlier history of punishment in the United States and argued for similar attention to mid-level administrators in understanding policy shifts. For instance, Rubin (2013, 2016; see also Rubin & Reiter 2017) has documented how prison administrators, even at the level of individual institutions, resisted interference from both legislators and reformers in maintaining the Pennsylvania system of “separate confinement” (in opposition to the Auburn system of “congregate labor”) in the United States in the early nineteenth century. And McLennan (2008, p. 383) has documented how early-twentieth-century prison administrators implemented “disciplinary activities as alternatives to labor” in the absence of legislative authorization. Likewise, Cummins (1994, pp. 21–32) describes the role of supervising prison librarian Herman Spector (another mid-level bureaucrat) in establishing rehabilitative bibliotherapy programs in California’s San Quentin State Prison. Both Thompson and Reiter detail how, in response to moments of organized unrest and dramatic violence in both New York and California, correctional officials initiated and developed new policies to manage politicized prisoners, including long-term lockdowns, limited contact with the outside world, and ultimately supermax prison facilities (Reiter 2016b, Thompson 2016).

Together, this body of work, though limited, suggests the significant influence of mid-level correctional bureaucrats, both historically and today, in initiating and controlling multiple aspects of prison policies, from lengths of incarceration to conditions of confinement. This influence, in turn, suggests that mid-level bureaucratic decisions affect not only individuals and institutions but broader correctional trends, like mass incarceration.

POTENTIAL AVENUES FOR FURTHER RESEARCH: MANAGERS AND REFORMERS

In addition to studies that explicitly identify mid-level bureaucrats, some recent studies have also focused on the correctional autonomy and authority exercised by managerial prison officials, like secretaries of corrections (e.g., Lynch 2010, Schoenfeld 2010). Although studies documenting the influence of higher-level prison officials are, perhaps, less surprising than those documenting the influence of mid-level officials, they still deserve attention for two reasons. First, these studies document another aspect of the often-overlooked authority and autonomy of correctional officials at all levels. Second, these studies suggest fertile avenues for further analysis, as secretaries of corrections do not work alone. The mid-level bureaucrats within correctional agencies, who help to design and implement the policies for which secretaries of corrections get credit, deserve further attention if we are to better understand who exercises agency—not to mention when, why, and how they exercise this agency—in prison institutions.

For instance, in her book *Sunbelt Justice*, Lynch (2010) details how secretaries of corrections in Arizona, like MacDougall and Lewis, first designed new programs to manage prison overcrowding in the 1970s and 1980s and then secured the passage of local and then federal legislation to limit prisoners’ rights to litigate the conditions of their confinement in the 1990s. Specifically, Arizona prison officials worked closely with Arizona politicians to draft the federal legislation that became the Prison Litigation Reform Act (described in the prior section) (Lynch 2010, pp. 190–91). Such analysis reveals the significant influence individual prison administrators had, not only over local prison policies but also over federal prison regulation. Further analysis of the role of mid-level bureaucrats in working with secretaries of corrections in designing such policies could be especially useful in better understanding the agency of mid-level bureaucrats in shaping correctional policies.

As scholars and advocates have paid increasing attention to the consequences of mass incarceration and explored possibilities for reform of prison conditions and reduction in incarceration rates, the potential influence of mid-level bureaucrats seems increasingly relevant to future analyses. For

instance, two examples of recent initiatives widely reported in national news outlets suggest new avenues for further sociolegal analysis on the influence of mid-level bureaucrats in corrections.

First, the Association of State Correctional Administrators recently partnered with the Arthur Liman Program at Yale Law School to publish two ground-breaking reports (*Time-In-Cell* in 2015 and *Aiming to Reduce Time-In-Cell* in 2016) analyzing both the scope of solitary confinement use across prisons in the United States and the efforts initiated by state prison officials to reduce the scale and duration of solitary confinement use. These two reports may provide another example of specific correctional bureaucrats exercising autonomy and authority in policy making, in this case both building the infrastructure for better data collection and more transparency around solitary confinement (which federal agencies, at least as of 2015, had failed to do) and initiating reforms to reduce reliance on use of solitary confinement.

Second, national news outlets like *The Marshall Project* and *The Atlantic* have reported on new initiatives, piloted by nonprofits and think tanks in the United States (such as the Vera Institute of Justice), “to expose forward-thinking prison officials to places that embrace rehabilitation over punishment,” such as prison systems in Germany and Scandinavia (Chammah 2017). Such initiatives seek to inspire correctional officials, including both mid-level bureaucrats like program managers and wardens and high-level leaders like state secretaries of corrections, to initiate policy changes and promote cultural shifts in their own American institutions (Chammah 2017). Again, these initiatives suggest an underlying assumption that both mid-level and managerial correctional officials may have significant influence over designing and initiating correctional policy, such as developing the kinds of more humane and less punitive prison environments that exist in Northern Europe, where, incidentally, mid-level correctional bureaucrats exercise significant influence (Reiter et al. 2017).

CONCLUSION

Scholars of prisons, law, and organizations have all contributed to analyzing the variety of roles played and kinds of influence exercised by people working at all levels of prison institutions, from frontline staff like prison guards, to mid-level bureaucrats like Washington’s mission housing coordinator, to correctional leaders like Arizona’s Secretary Lewis. But the role of these workers in significant policy change, or their influence on major trends like mass incarceration, has too often been discounted or overlooked. This article has sought to encourage a refocusing on the power of correctional authority and autonomy from multiple perspectives.

First, as Rubin & Phelps (2017) and Cheliotis (2017) have argued, the “carceral state” and the rationalized “criminal justice system” must be disaggregated into their many component parts, including identifying specific actors (Schoenfeld 2011) and delineating these actors’ relative positions, assumptions, and values within the system, state, or “penal field,” as Page (2011) describes it. Second, although systems and fields certainly constrain prison workers at all levels, these workers also have agency, not just in choosing among various constrained options but in influencing the options available to them, and this agency deserves renewed attention (Cheliotis 2017, Eason 2017). Third, the legal history in the United States of regulation of administrative agencies generally, and the lack of regulation of prison administrations specifically, provides important context and justification for paying closer attention to the power and influence of prison administrators over prison culture and policy.

Finally, mid-level bureaucrats can be a particularly valuable category of correctional administrators to identify and analyze in seeking to understand agency and influence. Although the category of mid-level bureaucrat is open ended (and deserves further definition and disaggregation along with further study), it provides an important analytic framework for identifying specific

legal actors below the obvious organizational figureheads and leaders. In fact, the very process of identifying mid-level bureaucrats, in part because they are neither obvious leaders proclaimed on state institutional websites nor part of the masses of frequently overwhelmed and overworked frontline workers throughout correctional institutions, forces researchers to think more carefully about which specific actors are enacting which specific policies within correctional institutions.

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