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Abstract

The aim of this paper is to explore the relationship between recent policy changes made in California and the prison abolition movement. The prison abolition movement stems from perceived injustices in the systems of incarceration and criminal justice, and advocates for a shift in the state's response to crime away from punishment and towards prevention and rehabilitation. It looks at the underlying social causes of crime as deserving of remedy, rather than the act of crime itself. In recent years, the U.S. prison system has expanded dramatically, and only recently begun to be curbed. The state making the furthest strides towards curbing its use of prisons is California, where processes of realignment and decarceration have recently been put into effect. Most importantly, Proposition 47 (passed in 2014) eliminated felony sentencing for low-level nonviolent crime and reallocated state and county budgets away from incarceration and towards K-12 public schools, mental health and drug treatment, and victims' services. Proposition 47 fits into the prison abolition movement in a number of ways: it reduces prison populations, it changes the state's understanding of certain crimes, and changes responses to crime from purely punishment towards treatment and prevention. However, the law's full impacts remain to be seen.

I. Introduction: The Crisis of California's Prisons

Since the end of the 20th century, California's prison system has been in crisis. Based on 2010 Census Bureau estimates, California had 242,000 people incarcerated in various facilities (state and federal prisons, county jails and youth and immigrant detention centers), with a further 375,000 people on probation or parole (Prison Policy Initiative 2016). Incarceration rates in California skyrocketed in the last quarter of the 20th century. The oft-cited example that California built twenty-three prisons since 1980 and only one university in the same period should give every scholar and activist pause for thought. What does it mean that the state invests more in corrections and punishment than it does in education, prevention and treatment? What does this say of the way we conceive of crime and justice?

Mass incarceration is now a common term heard in discussions of the prison system in the United States. The prison boom of the late 20th century saw the prison population explode, corrections spending increase to previously unheard-of levels, and increased prison construction across the country. Michelle Alexander's groundbreaking book *The New Jim Crow* (2010) equated the system of racial control brought about through mass incarceration to a new era of Jim Crow laws, wherein the black population was not discriminated against outright, but heavily policed and incarcerated and subsequently faced discrimination based on the status of felon or convict. In response, largely to the racial injustices of the modern prison system, scholars and activists (most notably Angela Davis) have begun to call for the abolition of the prison system altogether.

Prison abolition takes on the challenge of imagining a world in which imprisonment and policing are no longer the go-to remedies for crime and social disorder. The work on prison abolition is thus far theoretical, looking to imagined solutions for social ills and societal

restructuring that have not yet come to pass. The issue with studying the efficacy of prison abolitionist policies is simply that they have not been put into effect yet. Though many states are making strides towards decarceration (see Section V below), serious policies to shift the way the state handles criminality away from incarceration and towards prevention and treatment have only just begun to be implemented. Perhaps the first major law that aimed to change the way the state handles crime was Proposition 47 in California, the Safe Neighborhoods and Schools Act, which passed in November 2014. The law eliminated felony sentencing for low-level nonviolent crime and reallocated the state and county budget savings from fewer prison inmates towards education, mental health and drug treatment, and victims' services.

The aim of this paper is to explore the ideas around prison abolition and reimagining crime, and to determine whether and how Proposition 47 fits into the abolition context. Has it been a first major step towards changing the way the American state handles criminality? Does it provide evidence that abolitionist policies can be successful in creating a more just, equitable and safe society? While it may be too early to tell the full impact the law will have on crime, prisons and communities, Proposition 47 is still a necessary case study to understanding abolition in practice and its impact thus far may provide crucial insight into the efficacy of the abolitionist project.

The following section of this paper provides a rationale for the research conducted herein. The third section looks at the idea of prison abolition and the theories that guide the movement. The fourth section provides background on the issue of incarceration in California, exploring the sociological theories that exist to explain imprisonment and crime, as well as the nature of the carceral state in California and the benefits and drawbacks of maintaining a prison system. The fifth section looks at decarceration in California and places it within the context of the prison

abolition movement. The sixth section focuses specifically on Proposition 47, its impacts and effects, and its role within the context of prison abolition. The seventh and final section offers conclusions.

II. Research Rationale

Much scholarly research has been done on the idea of prison abolition in the early 2000s (see Davis 2003; Davis 2005; Martinot 2014; McLoed 2015; Meiners 2011). Recognizing the crisis of mass incarceration, scholars have dedicated significant resources towards addressing the issue of prisons, the prison-industrial complex and the racialization of incarceration. The research is certainly necessary and timely – as noted in the Introduction, incarceration rates have skyrocketed since the 1980s – and have only recently begun to plateau, and in some states, decline.

The issue of decarceration, or actively reducing prison populations, has come to a forefront in both political and scholarly discourse. Ta-Nehisi Coates, the *Atlantic* columnist, wrote a 2015 article on the necessity of decarceration and what decarceration could mean for the prison abolition movement and the future of racial justice in the United States (see Coates 2015). Most notably, California has made sweeping movements towards decarceration since the passing of *Brown v. Plata*, a 2011 Supreme Court case that declared overcrowding in California prisons unconstitutional and required that the state reduce its prison population (Austin 2016). As decarceration continues to be put into effect across states (such as New York and New Jersey), research into its potential effects on crime, prison conditions, and social and racial justice require attention.

One of the most dramatic attempts at decarceration in recent years was, as noted above, California's Proposition 47 in 2014. By reclassifying numerous nonviolent crimes as misdemeanors and allowing for the resentencing of previous felony convictions for the crimes identified by the law, Proposition 47 poses a major threat to the system of mass incarceration in California. The law is not even two years old yet, but it already has had major impacts on California's prison and jail populations, as well as on public conceptions of crime and justice. Little scholarly research has been done on its impact thus far,¹ and no literature has yet analyzed Proposition 47 within the context of the prison abolition movement.

The aim of this paper's research is to contextualize Proposition 47 within the wider movement for prison abolition, and to analyze the effects of both Proposition 47 and California's wider decarceration movement in terms of how they contribute to building what Angela Davis calls "abolition democracy" (Davis 20015, p. 91).

III. The Idea of Abolition

In response to the perceived rampant injustices of the prison system, such as racialized arrest and sentencing discrepancies, poor treatment of inmates, and the United States' insistence on dealing with crime by incarceration as a form of punishment (see Gilmore 2007, p. 7), scholars and activists alike have begun to call for the abolition of prisons. Viewing prisons as tools for racial and social control, and prisons themselves as systems of inherent violence, the prison abolition movement conceives of a world in which crime can be deterred, prevented, and remedied without using prisons. Prison abolition is, in its simplest terms, a movement to end the reliance on police, incarceration, surveillance and punishment as the primary means of

¹ See Austin 2016 and SJAP 2015.

remedying social and economic problems. In place of the prison, American society would construct an array of institutions and policies to change its definitions of criminality (especially surrounding drug laws), prevent crime and seek justice beyond punishment for crimes committed to the point that such alternatives would “render incarceration unnecessary” (McLoed 2015, p. 1172).

Perhaps the most important text on the study of prison abolition is Angela Davis’ *Abolition Democracy* (2005). In a series of interviews, Davis lays out the fundamental arguments surrounding the abolition of prisons, torture, and institutional violence against the Black community in the United States. The term “abolition democracy” comes from the writings of W. E. B. DuBois, in which he referred to the abolition of slavery as a “negative sense” of abolition – the outlawing of one institution of violence, slavery (Davis 2005, p. 91). In order for the abolition democracy to be comprehensive, American society would need to shift abolition to the positive, by building institutions to reincorporate its Black citizens into the social order. Instead, the post-slavery period saw the needs for voting rights, the resources to build the Black community’s ability to economically subsist, and educational institutions remain unmet or even further eliminated under Jim Crow laws (Davis 2005, p. 91). In order to enact DuBois’ idea of an abolition democracy, Davis argues, the prison system itself must be abolished. What Davis envisions as abolition does not equate to replacing the prison in society with a different singular institution – rather it looks at unraveling the series of policies, social practices and situations that lead to prisons coming to be viewed as a necessity in the first place. She writes that an alternative to prisons means an alternative to the whole of the prison-industrial complex, and to the way the state interacts with communities, especially poor and racially marginalized communities, to build alternatives to incarceration from the ground up (Davis 2003, p. 106). The undoing of the prison-

industrial complex mandates that alternative solutions to each step of the criminalization process, from poverty to racialized policing to policing in schools to poor educational systems and poor mental and physical healthcare systems, be shifted in favor of policies of prevention, rehabilitation and community-based solutions (Davis 2003, p. 107).

The critique of prisons is a highly racialized one, given the highly racialized way in which criminal justice, police and prison systems operate. However, the abolition project itself is not purely an issue of race – rather it is one of building a more just society and re-conceptualizing the way society creates and deals with crime and criminality. Michelle Alexander, in *The New Jim Crow* (2010), and Davis tackle the racial issues of the prison system and build their critique from a point of view of racial oppression, however the full abolition project would seek justice not only for those detrimentally affected by current criminal justice practices, but for society as a whole. What Davis imagines as abolition democracy is a full democratization of society to counteract the reasons for crime and criminalization that exist in the first place. Prison abolition is inextricably linked to changing the way the state deals with issues of poverty, race, mental health, drug use, and the marginalization of communities.

Much of the scholarship on prison abolition still exists in vague frameworks (see Davis 2003; Davis 2005). The project of abolishing the prison has never been seriously undertaken by American society, and so studies of how abolition might work can only be undertaken theoretically. Abolitionists argue that increased investment in education, mental health programs and drug treatment, economic restructuring to end mass poverty and the existence of an economic underclass, changing the way society deals with race, and moving away from

neoliberal economic policies that make prison necessary for social control² will be the first steps in creating a society where prisons can be, to use Davis' term, obsolete (Davis 2003).

IV. Background: Incarceration, Crime and Prisons in California

Prison abolition, like all social movements, does not exist in a vacuum. It emerged as a response to serious concerns with the use of the prison system within the United States, and posits that a new, more just way of dealing with crime can be possible. The purpose of this section is to provide necessary background for understanding the roles of decarceration and Proposition 47 in the abolition movement in California. Section A explores the philosophy behind the use of incarceration; Section B looks at the sociological roots of crime, especially nonviolent crime; Section C shows a picture of the carceral state in California prior to the reforms of the last five years; Section D analyzes the efficacy of incarceration on maintaining the social order and deterring crime; Section E explores the questions remaining that the abolition movement must answer.

A. The Philosophy of Incarceration

The first step in understanding whether and how prisons should be abolished is to pin down the reasons prisons exist in the first place. In leftist literature, prisons are often viewed as a means of social and racial control, as well as a response to the failings of neoliberal capitalism (see Wacquant 2009; Alexander 2010). However, the function of the prison system and the philosophy behind incarceration are subtly but significantly different.

² See Wacquant, *Punishing the Poor* (2009).

In his 2014 paper, Steve Martinot argues that the fundamental ethos of incarceration is one of revenge. Incarceration is itself a form of violence:

“[Imprisonment] has the same structure as a number of different criminal acts. A person is forcibly removed from social space and social relationships, immobilized spatially, and made to suffer thereby. The removal from social space is an act of violence; the immobilization is an act of control over a person’s consciousness through control of the body; and the resultant suffering serves an intended ideological or political or psychological purpose.” (Martinot 2014, 190)

It therefore follows that the logic of incarceration is one of revenge. A person, labeled a criminal by the transgressions they have made against the law and, by extension, the state and the society it governs, will have violence inflicted upon them in turn through their incarceration. Martinot writes, “the core of incarceration is a revenge ethic” (Martinot 2014, 191). The goal of criminal justice is, in the case of incarceration, motivated by a societal system of revenge rather than one of justice. We can extrapolate from Martinot’s argument that to imagine a world of prison abolition is to imagine a philosophy of justice that does not equate to revenge.

Perhaps the most famous work on the philosophy of incarceration and imprisonment is Michel Foucault’s *Discipline and Punish*. In discussing prisons, Foucault sees the use of imprisonment as a means of removing a person’s liberty, which is the cornerstone of citizenship in a modern democratic society (Foucault 1977, p. 232). Foucault calls imprisonment an ‘egalitarian’ punishment, one that can be inflicted equally on all transgressive members of a society (Foucault 1977, p. 232). Furthermore, prisons are “complete and austere” institutions – that is, they are designed to control and regulate all aspects of an incarcerated person’s life and body, and its process is constant and all-encompassing until such a time as the sentence is served

(Foucault 1977, 235). The philosophy behind prisons, for Foucault, is less rooted in the necessity of revenge than it is in the control of the imprisoned person. There is an element of revenge insofar as prison equates to a total removal of liberty, but the critical feature for Foucault is the totality of the prison institution.

According to Richard Wright's (1994: 12) research, there are two main models by which incarceration has an impact on society and on crime: the first is a recompense model, the second is utilitarian. The recompense model fits most strongly with Martinot's idea of incarceration as revenge, though Wright's take on the recompense model is slightly expanded: it argues that imprisonment serves to provide revenge, restitution and retribution, and that the most important feature of incarceration is that the severity of the punishment fit the seriousness of the crime committed (Wright 1994, p. 15). By contrast, the utilitarian model looks not at incarceration as a response to a crime committed, but as a tool for society to achieve the goals of crime deterrence, incapacitation of the criminal offender and rehabilitation (Wright 1994, p. 15). Incarceration, by Wright's model, serves not only to seek recompense for the offense committed, but to act on society as a means of ensuring the social order is retained.

Richard Lippke (2007) argues that the nature of the treatment of incarcerated individuals is the crucial factor in determining the justice of incarceration. Rather than rejecting incarceration outright as a revenge-based system, Lippke argues that incarceration is more a kind of state-sanctioned discrimination. Echoing Michelle Alexander's argument that the currently and formerly incarcerated populations are made second-class citizens along the lines of Jim Crow laws' discrimination, Lippke argues that the removal of prisoners from society and the subsequent denial of rights to them both during and after incarceration render a new class of person. Lippke instead argues that sentencing is too harsh, prisoner treatment is too poor and the

use of incarceration too widespread to be justified as it exists. It is the way in which the prison system is structured that communicates why a society chooses to incarcerate (Lippke 2007, p. 3), rather than the fact of incarceration itself.

What we gather from these philosophies of incarceration is an understanding of the prison system as one that is either inherently based on revenge, or based on creating a second class of citizen who can be overtly degraded, ill-treated and denied fundamental rights of citizenship. Its philosophical purpose is not to rehabilitate and treat, but to punish and control. It is a reactive response to crime, not a preventive one, and does not concern itself with eliminating the root factors that lead to crime in the first place.

B. The Sociology of Crime

To understand how to begin conceiving of a world without prisons, it is first necessary to look at the sociology of crime and criminalization of certain practices. By what standard does a society measure what is transgressive? What are the social causes that lead to transgressive acts? While a full psychological study of criminality is out of the scope of this paper, this section explores some of the sociological explanations of crime and the nature of criminality.

For decades, sociologists have observed the positive correlation between poverty and what McKeown (1948: 480) calls proletariat crime, such as murder, robbery, and assault. Hipp and Yates (2011) track the extent of that relationship, arguing that while higher levels of poverty are associated with higher levels of crime, the literature on crime and poverty does not specify the nature of that relationship, or at what poverty threshold in a given neighborhood crime will start to increase. The general conclusion reached by many scholars shows a vicious circle effect of poverty and crime, wherein middle class flight from impoverished neighborhoods will

compound the crime rate, and higher crime will in turn lead to more middle class flight and higher levels of poverty within the neighborhood (Hipp and Yates 2011, p. 957). The precise relationship has been debated, though Wilson (1987) attributes higher crime rates to a breakdown of the social order caused by a high concentration of disadvantaged residents, causing an exponential increase in crime. When poverty and high crime rates come to be the norm for a neighborhood, the neighborhood will become qualitatively different in the breakdown of social order (Hipp and Yates 2011, p. 958).

The idea of social order is crucial to understanding crime and crime control. Hagan and Leon (1977) cite Edmund Burke's theory that civil liberties can only play a substantial role in orderly societies, arguing that the repression of criminal conduct is essential to the maintenance of personal freedoms (Hagan and Leon 1977, p. 182). Their historical analysis of crime control in the United States shows that while due process has always been essential to the American response to crime, high levels of policing and strict penalization have come to be the norm (Hagan and Leon 1977, p. 201). The processes of policing and arrest are heavily drawn along class and racial lines, as the two are often related, to create a culture of criminalization for subordinate and marginalized groups in society (Hagan and Leon 1977, p. 202). The high level of criminalization in marginalized communities in turn marginalizes communities further, relating back to Wilson's (1987) analysis of an exponential relationship between poverty and crime.

Both Hagan and Leon and Wilson were writing at a time when the process of mass incarceration was only beginning. Between 1975 and 2005, the U.S. incarceration rate increased 342% (DeFina and Hannon 2009, p. 563). The wars on crime and drugs begun in the 1980s were largely unrelated to crime rates, instead stemming from an entirely new attitude towards crime

and crime control that more heavily penalized crimes that tended to be committed by those in poverty, such as drug use and sales, coupled with mandatory minimum sentencing and stricter responses to parole violations (DeFina and Hannon 2009, p. 563). DeFina and Hannon (2009: 565) argue that mass incarceration has increased poverty by removing primary earners from households and limiting the earning opportunities for the formerly imprisoned. Furthermore, returning to the argument around social control, high rates of incarceration for residents of a given neighborhood can increase social disorder by “breaking up families, removing purchasing power from the neighborhood, increasing reliance on government support programs, and generally erecting even higher barriers to legitimate development and financial well-being than are currently faced,” (DeFina and Hannon 2009, p. 565). Welfare reform enacted in 1996 brought with it a work-first approach to poverty reduction, which led to an increasing number of low-income workers vying for jobs that were not more readily available nor higher paying, making many poor people’s economic situations all the more tenuous (Monte and Lewis 2011, p. 2). Monte and Lewis (2011: 12) note that higher crime rates are associated with economic instability, which welfare reform pushed many low-income households into by limiting benefits and keeping welfare recipients in stagnant cycle of unstable, low-paying work.

The combination of welfare reform and the wars on drugs and crime have led to a fundamental reimagining of crime and crime control. What McKeown (1948) calls crimes of the proletariat have been more heavily policed and more harshly punished, leading to a dramatic increase in the incarcerated population. High rates of incarceration, particularly within already disadvantaged neighborhoods, have in turn increased economic instability and disadvantage, leading to a vicious circle of poverty and crime. Thus crime control is intrinsically linked to poverty control, though the dual processes of the wars on crime and drugs and welfare reform

have created a punitive attitude towards poverty and crimes of necessity that in turn increases both. If the root causes of crime can be attributed to anything other than psychological criminality, such as poverty, marginalization and a broken social order, fixing these social ills has the potential to substantially reduce crime. However, the United States has adopted criminal justice policies that often further the vicious cycle of crime, social disorder and poverty.

C. Mass Incarceration in California

Punitive responses to crime have become the norm across the United States, and California is no different. California holds the distinction of being the most populous state in the country, as well as home to nearly one-tenth of the United States' incarcerated population. It is also the nation's most diverse state in terms of race, economic status and crime rates (Petersilia 2016, p. 11). As such, it serves as an important case study in understanding the penal system of the entire United States.

California's, and indeed the entire country's prison boom in the last quarter of the 20th century was unprecedented. Since 1984, California has built twenty-three new prisons (compared to only twelve between 1852 and 1964), at a cost of \$280-\$350 million per prison (Gilmore 2007, p. 7). In the same period, California's imprisoned population grew by nearly 500%, despite a steady decline in crime rates since 1980 (Gilmore 2007, p. 7). In 2011, California's total prison population was roughly 162,000, the majority of them Black and Latino men from impoverished backgrounds (Petersilia 2016, p. 10; Gilmore 2007, p. 7).

In her groundbreaking work *Golden Gulag* (2007), Ruth Wilson Gilmore analyzes the response of the state of California to neoliberal economic policies and how the prison has come to embody much of the framework for regulating social order in an era of new economic

stratification and privatization. She writes that the prison boom of the late 20th century was a response to industrial investment and capital movement, the product of “surpluses that were not put back to work in other ways,” namely land, investment in public debt and roughly 160,000 low-wage workers (Gilmore 2007, p. 88). 1977 saw a shift from prisons used primarily as a means of rehabilitation to exclusively a tool for punishment. Prior to 1977, indeterminate sentences rested on the idea of prisoners being released once they were deemed fit to reenter society. The passing of the Uniform Determinate Sentencing Act in 1977 declared that “the purpose of imprisonment for crime is punishment,” in an era that begun serious shifts towards mandatory minimum sentencing (Gilmore 2007, p. 91; Free 1997).

The penal system in California was further intensified by sentencing reforms in the 1980s, especially for mandatory minimum sentencing on drug offenses. The mandatory minimum sentence enforced for crack cocaine, notorious for its racialized undertones when compared to the minimum sentence for powder cocaine,³ led to a skyrocketing of Black prisoners nationwide.⁴ In 1977, drug offenses accounted for roughly 10% of new admissions to California prisons and jails; by 1990, that number rose to 34.2% (Gilmore 2007, p. 108). So-called “three strikes” laws implemented harsher sentencing for repeated offenders, which was primarily applied to Black and Latino offenders⁵ (Gilmore 2007, p. 113). What emerged from this era was a new understanding of crime: drug crimes carried much heavier sentences, repeated offenders were forced into longer sentences, and the incarcerated population exploded while prisons continued to expand.

³ Crack cocaine is traditionally more heavily used by the Black population, powder cocaine by the White population.

⁴ See Free 1997 for further analysis of the racialized effects of mandatory minimum sentencing.

⁵ Gilmore writes, “In 1996, 43 percent of third-strike prisoners were Black, 32.4 percent Latino, and 24.6 percent Anglo,” (Gilmore 2007, p. 113).

The carceral state in California grew substantially larger and more severe throughout the end of the 20th century, finally hitting a peak in 2011 with the passing of *Brown v. Plata* and AB 109. It is clear from both prison expansion and the increase in the incarcerated population that mass incarceration had pervaded California completely, and caused significant changes to the understandings of crime and the role of prisons in society. The use of incarceration to combat crime has gone largely unquestioned; it is a social norm, though its efficacy can be called into question.

D. The Efficacy of Incarceration

Despite widespread critique of incarceration and the prison system by scholars and activists alike, a strong current exists that sees prisons as the best possible solution to problems of crime and violence. Certainly, from the perspectives of crime deterrence and social control there are strong cases to be made for retaining the prison system. However, some scholars have debated the efficacy of incarceration at maintaining the social order and preventing crime.

Richard Wright's *In Defense of Prisons* (1994) looks at the impact of incarceration from two angles: deterrence and incapacitation. To work effectively, prisons must incapacitate offenders and remove their ability to commit crime, while at the same time deter potential criminals from transgressing or from prior transgressors from committing crimes again. Wright finds that imprisonment is "modestly effective" in achieving the outcomes of deterrence and incapacitation. Incapacitation specifically serves to curb chronic offenders, or those who are the least inclined to abide by laws. In terms of deterrence, Wright finds that the certainty of arrest and detention coupled with the severity of incarceration as punishment serve as effective deterrents for criminals (Wright 1994, p. 165). In addition, Wright argues for a negative support

for prisons – that nonintervention in the face of crime would be inadequate to sustain a functioning society (Wright 1994, p. 166).

One of the most important models used to support the need for prisons and incarceration is Gary Becker's economic analysis of criminal activity. Becker's argument, when simplified, states that incarceration creates a rising opportunity cost for committing crimes, and thus deters crime through the potential criminal's rational analysis of the costs and benefits of committing a crime versus facing incarceration (McLoed 2015, p. 1202). Johnson and Raphael (2012) tested the hypothesis that incarceration reduces crime rates by analyzing the correlation between crime rates and incarceration rates over time. They conclude that "the effect on crime rates of incarcerating one more inmate has declined drastically over the past quarter century," thus showing the marginal rate of decline in crime based on incarceration has itself declined substantially as incarceration rates have skyrocketed (Johnson and Raphael 2012, p. 302). Furthermore, McLoed (2015) outlines certain flaws in Becker's rational choice model. First, McLoed notes that much criminal behavior occurs out of a state of rational choice, such as in relation to drug or alcohol addiction, severe mental illness and rage (McLoed 2015, p. 1202). Second, McLoed points to the fact that incarceration does not incapacitate offenders; rather it shifts the location of crimes committed from communities to prisons themselves, as many violent and nonviolent crimes are still committed within prisons (McLoed 2015, p. 1204). McLoed summarizes that the evidence supporting a positive link between crime deterrence and incarceration is "mixed at best," (McLoed 2015, p. 1207).

The benefits of incarceration in terms of crime control are thus debatable, but at the same time, there are certain questions to which the prison abolition movement must answer. Wright notes the deleterious effects of doing nothing in response to crime, and Becker's model of crime

deterrence through the threat of incarceration requires a response. The abolition movement must then provide an alternative means of crime deterrence.

E. Questions Remaining

Scholars and activists (McLoed 2015; INCITE! 2014) have conducted research into community-centered methods of violence and crime reduction through restorative and transformative justice,⁶ and still others (e.g. Sherman 2002) have looked at alternative means of crime prevention such as education, drug treatment and mental health treatment. The question that thus remains for the abolition movement is how to implement these alternative policies while working to end the prison-industrial complex. How can incarceration rates be decreased without increasing crime rates? How can the state tackle crime prevention? The following sections explore efforts at reducing mass incarceration in California with an eye on how these policies fit into the prison abolition movement.

V. Decarceration

In response to the overcrowding and corrections budget explosions caused by mass incarceration, many states, and California in particular, have begun adopting policies of decarceration. Verma (2016: 110) defines decarceration as “the system-wide reduction of incarceration in state prisons and local jails,” aimed at deinstitutionalization and reduction of the prison population rather than simply reshuffling the incarcerated population between prisons and jails. Decarceration has begun to have effects on both prisons and society that need to be explored, and has an important connection to the abolition movement. This section explores the

⁶ See McLoed (2015) for an analysis of restorative justice and prison abolition.

effects of decarceration on imprisonment and recidivism, as well as its position in the process of abolition.

Decarceration requires more than simply closing prisons or reducing prison populations. The Center for Social Development (CSD) has created a task force on smart decarceration that defines the process of decarceration broadly as requiring that, “(1) the incarcerated population in U.S. jails and prisons is substantially decreased; (2) existing racial and economic disparities in the criminal justice system are redressed; and (3) public safety and public health are maximized” (CSD 2014, p. 1). The CSD argues that racial and economic disparities in the incarcerated population have long been inextricably linked to mass incarceration; mass incarceration would not have been possible without targeting people of color, especially black people, poor people, and people with mental illness (CSD 2014, p. 1). Like the abolition movement, smart decarceration necessitates that societal disparities and marginalization be addressed in the process of decreasing the incarcerated population. Decarceration also requires that other institutional changes be made to ensure a safe return to society for previously incarcerated people. Lamb and Weinberger (2014) track the similarities between the deinstitutionalization movement for the mentally ill and decarceration, noting that without proper resources in place, such as education, jobs training and social work, decarceration may be a failure for those released and lead to high rates of recidivism and a failure to reintegrate into society. While decarceration is already underway, in order to be a lasting movement, as Ta-Nehisi Coates noted in *The Atlantic* (2015), it must be done right.

A. Decarcerating California: Brown v. Plata and AB 109

As Gilmore (2007) noted, cited in the above section on mass incarceration in California, the end of the 20th century saw a prison crisis in California. Overcrowding and poor conditions were rampant as the prison population skyrocketed and prison expansion boomed. It wasn't until the beginning of the 21st century that California began the process of turning this around. Two landmark changes, a Supreme Court decision and bill passed in the California Assembly, began the process of decarceration in California.

In May of 2011, the United States Supreme Court ruled on *Brown v. Plata*, requiring that the state of California reduce its prison population by 38,000 to 46,000 persons (*Brown v. Plata* 2011, p. 1928). At the time of the ruling, California's prisons (designed to house around 80,000 inmates) housed roughly 156,000 people, and the state's prisons had operated at roughly 200% capacity for the previous 11 years (*Brown v. Plata* 2011, p. 1924). The case arose from the allegation that overcrowding and subsequent inadequate medical treatment of prisoners in California constituted a violation of the Eighth Amendment, banning cruel and unusual punishment (*Brown v. Plata* 2011, p. 1922). The court noted that the state of California would likely be unable to expand its prisons within the sufficient time to alleviate overcrowding, and as a result, ruled that California must reduce its prison population to within 137.5% of design capacity within two years (*Brown v. Plata* 2011, p. 1928).

The same year, California Governor Jerry Brown signed into law Assembly Bill (AB) 109, commonly referred to as realignment. The purpose of AB 109 was to reduce prison overcrowding by transferring authority for numerous convicted felons to California's 58 counties, and allowed "non-violent, non-serious, and non-sex offenders to serve their sentence in county jails instead of state prisons" (Petersilia 2016, p. 10; CDCR 2013, p. 3). AB 109 noted that no inmates were to be transferred from state prisons to county jails, and no state prison

inmates were to be released early (CDRC 2013, p. 3). By June 2015, California's prison population had plummeted to 111,341 inmates, placing it below the 137.5% design capacity benchmark (Petersilia 2016, p. 10).

In addition to *Brown v. Plata* and AB 109, California has pursued every major decarceration policy enacted by other states thus far, including “diverting drug offenders to probation, shortening parole supervision, coordinating reentry planning, [and] using risk assessments for prison release” (Petersilia 2016, p. 11). Most recently, Proposition 47 (to be discussed in the following section) has contributed not only to a substantial reduction in the prison population, but a shift in the understanding of crime and how to address its impacts on society. As the country's most populous state, California's practice of decarceration can set the standard nationwide as the United States grapples with the pressing need to end mass incarceration.

B. Decarceration and Abolition

Despite the substantial gains California and other states have made towards decarceration and the positive reception decarceration policies have received, it is a mistake to assume that decarceration and prison abolition are one and the same. While decarceration logically fits into the movement for prison abolition, it does so with certain caveats. In a 2015 article in *The Atlantic*, Ta-Nehisi Coates writes,

“Thinking you can decarcerate by releasing a bunch of 20-year-old potheads who've never hurt anybody is wrong. Thinking we can decarcerate without grappling with the impulse toward vengeance is wrong. And, too, thinking you can decarcerate, release

injured people into injured communities with more injured people, and have sane criminal-justice policy is wrong” (Coates 2015).

The need to fit decarceration into a broader movement of abolition and societal restructuring is still unmet. California’s decarceration thus far has brought about serious improvements in prison conditions and the release and realignment of thousands of inmates. However, simple reduction in population does not mean that California is moving away from its reliance on prisons. Paris (2007) argues that decarceration must be fit into a complex movement of shifting social relationships and reducing racial and economic disparities, as well as changing the way society conceives of dealing with crime away from a revenge ethos and towards an idea of rehabilitation and reintegration. In order to successfully support abolition, and to move away from the failures of deinstitutionalization, decarceration must work in tandem with an increase in social services, an improvement of education, and a comprehensive redistribution of economic and racial power. Thus, while decarceration is an important tool for the abolition movement, decarceration on its own cannot bring about the “abolition democracy” Davis envisions.

In California, decarceration has not brought with it a serious shift in economic or welfare policy, nor a substantial policy program to combat racialized injustice within the criminal justice system. Fully moving away from a reliance on the prison-industrial complex in California will require more, such as a change in the way the state deals with crime and criminality, as well as more comprehensive social projects aimed at targeting racialized hierarchies and economic disparities.

VI. Proposition 47

One of the most important laws to be passed in recent years aimed at diminishing the effects of mass incarceration was California's Proposition 47. Passed by a referendum vote in November 2014, Proposition 47 marked the nation's most sweeping sentencing reform on nonviolent crime to date. The nature of the law was simple: it eliminated felony sentencing for low-level nonviolent crime such as petty theft and drug possession by reclassifying these crimes as misdemeanors.

This section explores the impact of Proposition 47 as well as its place in the prison abolition movement. Section A looks at the language of the law and the arguments surrounding its passage; Section B analyzes the preliminary results of Proposition 47's impact on crime rates; Section C looks at how Proposition 47 has impacted California's prisons and jails; Section D explores Proposition 47's impact on wider society; finally, Section E places Proposition 47 in the context of the prison abolition movement.

A. Background

Proposition 47, also called the Safe Neighborhoods and Schools Act, was originally introduced in an effort to curb overcrowding in California prisons (MyProp47 2015). It was drafted by George Gascón, San Francisco's district attorney, and William Landsowne, the former police chief of San Diego (Ballotpedia 2016). It changed the status of six low-level nonviolent crimes from felonies to misdemeanors as follows:

“[S]imple drug possession, petty theft under \$950, writing or forging a bad check under \$950, receipt of stolen property and shoplifting under \$950. The measure maintained all laws related to robbery, assault, residential burglary, theft of vehicles, possession of drugs

for sale, the use of any substance to attempt sexual assault, and possession of stolen firearms” (MyProp47 2015).

The change in status of crimes could also be applied retroactively, meaning that thousands of nonviolent offenders would have their sentences reduced and fewer people would be entering the prison system for new crimes. However, sentences could only be reduced provided that the offender did not have a prior conviction for a violent or sex felony such as rape, murder, child molestation or anything falling under the umbrella of sex offenses (Proposition 47 2014).

Furthermore, Proposition 47 mandated that the state budget money saved from being spent on incarceration of criminals reclassified under the law be applied to “mental health and drug treatment programs, K–12 schools, and crime victims,” (Proposition 47 2014).

The impact of Proposition 47 has the potential to be substantial. First, it allows previous offenders for nonviolent crimes the chance to remove their felon status, giving them more opportunities to acquire jobs, housing and public services (MyProp47 2015). Second, by saving California millions on incarceration, the state has the chance to improve and expand services that reduce crime and provide treatment for victims and potential offenders.

Proposition 47 was vehemently opposed by the majority of California’s law enforcement agencies, including the California District Attorneys Association, the California Police Chiefs Association, and the State Sheriffs Association (Alliance for a Safer California 2014). The No on 47 camp cited the danger of releasing violent offenders from prisons and jails, the potential difficulty in getting drug abusers into treatment, and the redundancy of the law as reasons to oppose it (Alliance for a Safer California 2014). Groups that supported the proposition included the American Civil Liberties Union (ACLU), who cited the necessity of reducing prison spending and putting money towards crime prevention and services as reasons to support the

law, as well as the California Democratic Party, numerous victims' and survivors' organizations, and county branches of the NAACP in California⁷ (ACLU 2016; Ballotpedia 2016). On November 4, 2014, Proposition 47 was voted into law with 59.61% of the vote (Ballotpedia 2016). In the nearly two years since its passing, its impact has already been felt across the state, both in prisons and jails and in communities outside prison walls.

B. Impact on Crime

Proposition 47's impact on crime has been speculated at, though the law is so new that its impact cannot yet be fully determined. Some law enforcement officials and members of the media have cited Proposition 47 as the reason for higher crime rates in some California cities since its passing, though many have argued the cause of increased crime is still up for debate (Chang et al. 2015).

In a 2015 article in the *Los Angeles Times*, repeated misdemeanor offender and drug user Smisi Sina cited Proposition 47 as the reason why he feels more comfortable committing crimes. He told reporters, "Now you can get away with [low-level crimes] because of Proposition 47," (Chang et al. 2015). Following Becker's law of incarceration as deterrence for crime commission, one might naturally assume that Proposition 47 can be faulted for the increase in crime in the past two years. Since the law's passing, many cities in California have seen an uptick in crime, especially property crimes (Chang et al. 2015). The property crime rate in Los Angeles County increased by double digits, and both violent crime and property crime reportedly increased in Sacramento and Yolo County (Chang et al. 2015; Greenwald 2016).

⁷ See Ballotpedia (2016) for a full list of supporters and opposition.

The Center for Juvenile and Criminal Justice (CJ CJ) conducted a study in March 2016 to put the theory to the test. Statewide, California saw an increase of 11% in violent crime and 7% in property crime between 2014 and 2015 (Males 2016). Citing a report from the Public Policy Institute of California (PPIC), Yolo County District Attorney Jeff Reisig noted that California is “leading the way in violent crime increases,” and blamed the “Prop. 47 population” being released back into society as responsible for the increase (Greenwald 2016).

However, the evidence is not strong to show significant causation between Proposition 47 and the increase in crime across California. The CJ CJ’s report found little reason to assume Proposition 47 was the cause of increased crime rates:

“In fact, the cities in 11 counties with the largest decreases in both total jail populations and felony jail populations showed equivalent changes in violent crime, and smaller increases in property and total crime, than the cities in 10 counties with the smallest decreases in jail populations” (Males 2016, p. 2).

Their ultimate finding was that there were “no obvious effects associated with Proposition 47” on an increase in crime (Males 2016, p. 5). While the knee-jerk reaction of much law enforcement may be to blame Proposition 47 for the crime increase, the CJ CJ’s report cautions against this thinking. Furthermore, as Northern California Correctional Officer Harriet Fox notes in a 2015 article, the full effects of Proposition 47 have yet to be realized because the budgetary reallocation towards education, mental health and drug treatment has not yet been put into effect and will not go into effect until August 2016 (Fox 2015).

The issue of treatment remains crucial to understanding Proposition 47’s impact. One of the most notable issues with the law is that misdemeanor offenders for drug crimes are not required to report for treatment (Chang et al. 2015). After Proposition 47 passed, enrollment in

court-recommended drug treatment programs fell by 50% across Los Angeles County (Chang et al. 2015). The law has made it more difficult to force users into treatment, despite its focus on rehabilitation in place of incarceration. However, as Fox noted, the impact of Proposition 47 on crime rates and drug use cannot yet be determined, as the budget reallocation has not yet gone into full effect. A further analysis of the impact of the law must be conducted once the shift in state and county spending is underway.

C. Impact on Prisons and Jails

The impact of Proposition 47 on California's prisons and jails has already been felt, despite the fact that resentencing of past convictions is still underway and the law is still being put into effect. Its impact thus far has been twofold: on the one hand, it has significantly reduced the prison population and overcrowding therein. On the other, it has led to inmates serving longer sentences due to the reduced need to remove them from prison or jail for reasons relating to overcrowding.

As intended, Proposition 47 has already had a significant impact on prison overcrowding. The Stanford Justice Advocacy Project (SJAP) conducted the first major study into the impact of Proposition 47 on prisons and prisoners. As of October 2015, approximately 13,000 people had been released from prison under retroactive resentencing, and the county jail population across California decreased by around 9,000 (SJAP 2015, p. 1-2). In February 2015, California reached the required decrease in the prison population required by *Brown v. Plata*, though across the state, prisons are on average operating at 30% above maximum capacity (SJAP 2015, p. 2-3).

Hand-in-hand with the significant reductions in prison and jail populations, Proposition 47 has also led to many inmates in county jails serving longer sentences. Prior to the passing of

Proposition 47, many inmates would serve only 5% of their sentences due to overcrowding (Gerber et al. 2015). Since November 2014, jail populations have plummeted and sheriffs have now kept more inmates in jail for 90% or more of their sentence (Gerber et al. 2015).

In terms of recidivism, the SJAP study found that fewer than 5% of inmates released under Proposition 47 went on to be returned to prison, and that there was no evidence to support linking the rising crime rate since the law's passage with the population of former felons released (SJAP 2015, p. 2). The recidivism rate following Proposition 47 is exceptionally low; on average, 42% of former inmates released from state prison go on to be incarcerated again within the next year (SJAP 2015, p. 6). The low rate of recidivism is likely due to the fact that many of the crimes likely to be committed by the population released under Proposition 47 will themselves no longer be classified as felonies, and thus not incur a prison sentence for their commission (SJAP 2015, p. 6).

Proposition 47 has already had an important impact on prison conditions and prison use. It has relegated prison as the exclusive domain of serious offenders, and reduced overcrowding substantially. Furthermore, the money saved by incarcerating fewer people has had, and will likely continue to have, an important impact on Californian society at large.

D. Impact on Society

Perhaps more difficult to measure than Proposition 47's impact on crime and prisons has been its impact on society and communities outside prison walls. While the long-term impacts of the law are not yet possible to measure, it has already begun to have crucial impacts on state and county budgeting, the lives of the formerly incarcerated and California's relationship to prisons and the use of incarceration.

One of the first places Proposition 47 has had a calculable impact is in state and county budgeting. Part of the language of Proposition 47 requires California's Department of Finance to measure the savings accrued by reduced rates of incarceration and apply that money directly to the Safe Neighborhoods and Schools Fund, which supports mental health and drug treatment, K-12 public schools, and victims' services (SJAP 2015, p. 5). 65% of those savings are to be spent on mental health and drug treatment, 25% on K-12 school programs aimed at reducing truancy and the drop-out rate, and 10% for victims' services (SJAP 2015, p. 5). Based on estimates by the Departments of Correction and Finance, the annual savings from Proposition 47 should be roughly \$93 million at the state level, with another \$203 million saved at the county level⁸ (SJAP 2015, p. 5). Since its passing, Proposition 47 has led to the release of 4,400 state prisoners, with a further 1,100 expected to be released throughout 2015, which should lead to a total savings since November 2014 of \$156 million (SJAP 2015, p. 5). When the Safe Neighborhoods and Schools Fund is fully implemented, these savings can have a serious impact on the ability of schools to combat truancy and drop-outs, mental health and drug treatment facilities to provide much-needed resources to patients, and victims' services to achieve their goals of helping to care for and rehabilitate victims.

The impact of Proposition 47 on former felons is also important to note. With thousands of people getting their felony sentences erased, former convicts can find jobs, receive public services and find housing with much more ease than they could previously. Human Impact Partners (HIP) conducted a study in September 2014 to measure the potential impact of Proposition 47 on public health in California. It found that the potential of the law to reunite

⁸ Based on an estimated 3,300-person reduction in prison sentences per year and an estimated marginal cost of \$28,300 per inmate for state prisons, and 10,000-person reductions at the county jail level at an average marginal cost of \$20,300.

roughly 5,000 inmates with their families, improving family and community stability (HIP 2014, p. 4). Furthermore, it noted that the law's ability to impact truancy and drop-out rates by investing millions more in schools each year would have a substantial effect on crime rates, as they found a 10% decrease in California's high school graduation rate could cause as much as a 20% decrease in the violent crime rate (HIP 2014, p. 4). Finally, an increase in spending on victims' services could reduce rates of post-traumatic stress disorder, depression and substance abuse (HIP 2014, p. 4). While the full impact in the shift of spending under Proposition 47 remains to be seen, the research into the possible impacts of the law are incredibly promising.

Proposition 47 has been one of the first major blows to the prison-industrial complex since the era of mass incarceration began. In response to Proposition 47, California Governor Jerry Brown has proposed cutting California's reliance on out-of-state private prisons by 50% (St. John 2015). The savings incurred from Proposition 47 have led to a reprioritization of state and county budgets, changing the nature of the way the state responds to crime. If the long-term effects of Proposition 47 prove beneficial, California may serve as a role model for the rest of the country in battling mass incarceration through investing in alternative means of crime prevention such as education, mental health and drug treatment. Realignment in California in general, and Proposition 47 in particular, have shifted the way the state treats crime and criminality in favor of prevention and treatment, rather than the state's previous ethos of punishment-first as noted by Gilmore (2007). As the impacts of the law begin to be felt, it will be important to pay attention to the long-term crime rate, as well as changes in drug addiction patterns, high school drop-out rates and mental health-related crimes.

E. In the Context of Abolition

Despite the myriad of positive impacts Proposition 47 has had and may continue to have, its relationship to the prison abolition movement needs to be further problematized. In terms of the prison abolition movement, Proposition 47 can be viewed as both a step in the right direction and a double-edged sword. What is first worth noting is that the initial aim of Proposition 47 was not necessarily to support abolitionist gains. It came as a response to prison overcrowding, though with an aim at creating a more just criminal justice system. The gains it made in terms of decarceration and changing the state's response to crime in favor of treatment and prevention are important to note, but as too is the fact that the law is not enough to achieve Davis' idea of abolition democracy in a vacuum.

One of the first major ways Proposition 47 has applied to the abolition movement is by changing the perceived nature of criminality and the conception of crime. By reducing the status of drug possession in particular, Proposition 47 has changed the nature of drug crime from a serious offense and towards something still illegal but viewed as far less serious. Furthermore, petty theft, often associated with necessity, has shifted the state's view of crime away from a criminalization of poverty. On the one hand, this change supports the prison abolition movement by reducing penalties for offenders and reducing the state's harsher responses to crime, especially nonviolent crime. On the other, it further supports the perceived necessity of prisons by relegating them to be the exclusive territory of serious or violent offenders. To some extents, it reinforces the necessity of prisons in society by asserting that there are, in fact, offenders who deserve and need to be there.

Perhaps the most crucial way that Proposition 47 supports the prison abolition movement is in its reallocation of state and county budgets. The clause in the proposition that asserts that all money saved from incarcerating fewer people and releasing previously incarcerated offenders be

spent on education, particularly drop-out and truancy reduction, mental health and drug treatment, and victims' services has also changed the nature of the way the state not only conceives of crime, but responds to it. The argument of prison abolition theorists is that punishment for crimes should be replaced by efforts at prevention and rehabilitation is supported by the changes made by Proposition 47. Reallocating state and county budgets to focus on education and treatment is one of the fundamental tenets of prison abolition's response to crime. As the impacts of Proposition 47 play out, it will be interesting to see to what extent the law is able to prove or disprove the idea that prevention and treatment can be as effective at reducing crime and maintaining a just society. However, it is important to note that the money saved by Proposition 47 on prison and jail spending may be overstated. Some estimates show the savings from Proposition 47 being as little as \$40 million per year (LA Times Editorial Board 2016), a seriously lower estimate than the roughly \$296 million per year put out by SJAP's 2015 report.

In terms of decarceration, the impact of Proposition 47 may again be twofold. On the one hand, the reduction of the prison population and simple act of incarcerating fewer people contributes to the overall goals of prison abolition. On the other stands the fact that the reduction in prison population caused by Proposition 47 has put California's prison population below the requirement set by *Brown v. Plata* and will likely continue to keep it under that threshold. If California's prisons are deemed constitutionally humane and the issue of overcrowding eliminated, the state may have few or no incentives to continue the process of decarceration and changing its approach to crime.

In the context of the abolition movement, Proposition 47 has made some serious gains. However, these gains may be overstated given the limited impact the law has been able to have thus far. It will require further study of the law's long-term impacts to determine whether or not

Proposition 47 supports the abolition movement, its movement is certainly in the right direction for abolitionist thinking.

VII. Conclusions: Utopian v. Pragmatic Thinking

In response to the question of whether or not Proposition 47 supports the prison abolition movement, the answer remains an unsatisfying “we’ll see.” While it made substantial gains for the abolition movement in terms of putting theories around prevention and treatment into practice, the efficacy of these policies have yet to be seen, as does the issue of whether California will continue its decarceration movement in the future. The past several years have seen the trends of mass incarceration beginning to reverse, and the signs are promising, however to declare victory too soon would be a mistake.

The problems of Proposition 47 for the prison abolition movement stem largely from a need to match pragmatic policies with utopian ideals. The prison abolition movement stems from a desire to create a freer, more egalitarian and more just society and eliminate the deleterious effects of the criminal justice system on marginalized communities and society as a whole. However, achieving abolition cannot happen overnight. Simple decarceration and more complex restructuring like Proposition 47 are necessary steps towards the abolition project, but they are steps alone. Their potential positive impact will likely continue to be mitigated by politics, public fear of crime and criminals, and budgetary constraints. Proposition 47 was thus a pragmatic step towards abolition, without fully encapsulating the utopian ideals it sets out.

It remains to be seen whether Proposition 47 will herald a new era of crime prevention and treatment and reinvestment in education and public health. If it does, then the United States may not only make its first movements towards ending mass incarceration but towards ending its

reliance on incarceration as the remedy to crime. While Proposition 47 can be viewed as a step in the right direction for the abolition movement, it is still only a step.

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