

Moral Reformation in Penitentiaries Past, Present and Future:

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Moral Reformation in Penitentiaries Past, Present and Future

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There are many urgent issues facing prisons in the United States today including overcrowding, inmate violence, sentencing concerns and cost. Some communities are using faith-based moral rehabilitation programs in prisons to address these issues and attempt to reform convicts in body and soul. These efforts, exemplified by Louisiana State Penitentiary's moral rehabilitation program, have clear benefits for reducing in-prison violence and state costs, but they have also garnered ample criticism due to their use of religion in state facilities, the preferential treatment of some prisoners, unclear evidence of moral reformation and claims of abuse.

This study looks at modern moral rehabilitation programs and compares them to the early 19th century American penitentiaries, which had similar goals of moral improvement. By examining the function, advantages and disadvantages of these modern moral programs and comparing them to the history of early American penitentiaries; the functions and flaws of the Pennsylvania and Auburn Systems; and Gustave de Beaumont and Alexis de Tocqueville's analysis and criticism of the penitentiaries in their book *On the Penitentiary System...*; this study recommends the changes necessary to maintain the beneficial and laudable aspects of today's moral rehabilitation programs while addressing the criticisms and questions over this form of punishment. The conclusion is the recommendation of a reformed, less religious moral program with six components: incarceration, a strong community citizenship for inmates, education and mentoring, labor, a limited component of religion with the possibility of radical moral transformation, and certain punishment through solitary confinement.

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INTRODUCTION

At the end of 2016, there were nearly 190,000 inmates in federal prisons¹. There were another 2 million in state and local facilities². In the past 30 to 40 years, the inmate population and the prison system that houses them has grown significantly. The amount of research on crime and incarceration trends over this time period is significant and expansive. The data show a growing prison population as a response to a previous crime problem. Federal inmate populations doubled between 1984 and 1994 and quadrupled from 1984 to 2008³.

Social scientists, advocates, academics and journalists have argued over the causes and consequences of the crime and drug epidemics of the late 1980s and early 1990s as well as possible solutions. Many point to sentencing changes from this time for the subsequent rise in the prison population, particularly among drug crime offenders. When many critics and reform activists look at the data, they also observe disturbing racial trends disproportionately affecting young black men. Additionally, many are concerned with budgetary strain of mass incarceration, inefficient use of prison resources, violence in U.S. corrections facilities or the underlying socioeconomic issues that may contribute to crime in the first place.

¹Federal Bureau of Prisons: Current Inmate Statistics.

https://www.bop.gov/about/statistics/population_statistics.jsp (accessed March 7, 2017).

² Wagner, Peter and Bernadette Rabuy. "Mass Incarceration: The Whole Pie 2016." Prison Policy Initiative. <https://www.prisonpolicy.org/reports/pie2016.html> (accessed March 7, 2017).

Kaeble, Danielle and Lauren Glaze. "Correctional Populations in the United States, 2015. Bureau of Labor Statistics. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5870> (accessed March 7, 2017).

³ Federal Bureau of Prisons: Archive Inmate Statistics.

https://www.bop.gov/about/statistics/population_statistics.jsp#old_pops (accessed March 7, 2017).

Despite the numerous and diverse explorations of crime and incarceration over this important period of development in the United States, few have questioned the form of punishment itself. Debates over types of punishment typically center on capital punishment, both its permissibility and form. However, the number of death sentences handed down has steadily decreased since the late 1990s. Twenty-five states and the District of Columbia have not carried out an execution in at least 10 years and only seven states executed prisoners in 2014⁴, for example. There seems to be a wide consensus that imprisonment is the proper form punishment for most crimes in the U.S. From embezzlement or theft to assault or rape, this incapacitating punishment acts as a deterrent to other criminals and can be paired with restitution in civil courts and/or pecuniary fines for the state. There have not been serious or widespread efforts to install modern-day shame-based punishments, codified retaliatory violence or the gallows for any number of small crimes. Imprisonment is agreed upon for all but the extreme capital crimes, which typically include years or decades of imprisonment on death row too. Within this societal American agreement on incarceration however, there is plenty of discussion over the need for improvements to the prison system.

Aside from efforts to address underlying crime problems and sentencing law issues, prison reform ideas often revolve around the high levels of prisoner and gang violence that have become part of incarceration and advocate for better opportunities and more safety for inmates. There have been numerous efforts to improve prisoner conditions and help prisoners improve themselves, on both a federal and local level. There are vocational programs to teach job skills or educational programs for GEDs and

⁴ “Death Penalty Trends” Amnesty International. <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-trends>.

college courses in many correctional facilities. These programs aim to empower convicts with the tools for life outside prison walls and to possibly therefore reduce recidivism.

Many reform ideas lead to deeper questioning over the purpose of imprisonment and the justice system in the U.S. – is it to reform or to punish? These arguments are numerous and wide-ranging. They are all worthwhile areas of focus and should be addressed seriously. However, there is one more recent type of prison reform program that deserves immediate attention and may shape wider prison reform movements in the future: moral rehabilitation programs. These efforts are much more controversial than job training and their purpose can be traced back to the original penitentiaries of the U.S. just like incarceration itself.

Faith-based moral reformation or rehabilitation programs in prisons, particularly the influential one developed at Louisiana State Penitentiary (LSP) in the mid-1990s, have several goals. Some are shared by long-standing work programs in many prisons, such as teaching prisoners employable vocational skills. Others are more unique. The LSP moral rehabilitation program, started under former Warden Burl Cain, employs a combination of theological education, Christian values, a citizenship-inmate community model, labor and solitary confinement in an attempt to reform prisoners in body and soul. Advocates for the programs argue that they lead to improvement of individual prisoners as well as lower rates of recidivism and less prison violence. Moral reformation projects have also faced significant criticism. Pointing to problems with the use of religion in state and federal prisons, harsh conditions of solitary confinement and prison labor, and a lack of data supporting the programs' effectiveness, critics argue that these programs provide no benefit or can even create harm.

Moral rehabilitation programs, at LSP and other prisons around the U.S., have a wholly different goal than state programs that try to give a young gang member the skills to be employable when he is paroled at age 30. True moral reformation is a loftier goal and one that's difficult to define. However, it is very similar to the original purpose of the early 19th century penitentiaries. These penitentiaries were used in the early United States as a new form of punishment. Opposed to capital, corporeal or shame-based punishments, the penitentiaries incarcerated criminals in specifically designed one-person cells for a designated period of time. The physical construction of these penitentiaries in combination with strict behavioral codes and a focus on work, created a new form of punishment aimed to rehabilitate the man and his soul. Silence, solitude, worship and labor were used as reforming techniques. The facilities and their wardens sought to breed true penitence and transformation into the criminals. They would leave the prison better people for society and in the eyes of God. Like LSP today, 19th century penitentiaries, particularly those using the Auburn system or the Pennsylvania systems, had plenty of advocates and critics too.

Modern faith-based moral rehabilitation programs share similarities with the original 19th century American penitentiaries in both aim and form. Both carry ambitious goals, specific benefits and numerous faults. This study examines modern moral programs together with the original penitentiaries to develop useful recommendations to reform punishment and rehabilitation efforts in today's prisons to optimally fit the needs and restrictions of contemporary American liberal democratic society. Starting with an investigation of the facts and criticism of the modern moral rehabilitation programs at LSP and other prisons around the U.S., including commentary from journalists, religious

scholars and legal experts, this study establishes the current moral rehabilitation landscape while laying out the advantages and disadvantages of these programs. By next examining the theoretical origins of the first penitentiaries, reports on how they actually functioned, and the criticisms from Gustave de Beaumont and Alexis de Tocqueville's *On the Penitentiary System in the United State and Its Application to France*,⁵ one can see which punishment and criminal reformation ideas failed or thrived and why. This examination sheds light on what should and can work for the needs of a liberal democracy like the U.S. Through direct comparison with the modern moral programs and a thorough analysis, the lessons of these original penitentiaries can be used to form recommendations for the today's faith-based moral programs.

With this study of modern and original penitentiaries, it is clear that what would be both a permissible and useful form of prisoner reformation in the in the United States would be a revised moral rehabilitation system for convicts that is less dependent on religion but incorporates many of the important aspects of current and past moral programs including incarceration, a strong community citizenship for inmates, education and mentoring, labor, a limited component of religion, certain punishment through solitary confinement and the possibility of radical moral transformation.

⁵ Beaumont, Gustave de, and Alexis de Tocqueville. *On The Penitentiary System in the United States and Its Application in France*. Southern Illinois University Press, 1964.

1.0 MORAL REHABILITATION ON THE MISSISSIPPI

On the shores of the Mississippi River, surrounded by water on three sides, Louisiana State Penitentiary sits in a rural corner of state, far from any major cities. LSP is where Louisiana and its other correctional facilities send their worst criminals including death row inmates. With an 18,000-acre plot of land, LSP is the largest maximum-security prison by landmass in the U.S. and frequently compared in size to Manhattan. It is in the Mississippi floodplain, giving the location fertile farmland, which was why the land was a plantation until the Civil War. Now, prisoners grow corn, cotton, and soy and raise cattle. LSP is the biggest prison in the state that has the highest imprisonment rate in the U.S. – one particularly high among men⁶. Another Louisiana superlative exemplified at LSP is its harsh sentencing laws. About 75 percent of LSP 's 6,300 inmates are sentenced to life. For the rest, the average prison sentence at LSP is greater than 90 years⁷. Many inmates die as prisoners of LSP without having any serious hope of pardon or release⁸. Colloquially the prison is known as “Angola,” a nickname that tells as much about the prison’s own past as the complex history of imprisonment and punishment in Louisiana and the South.

⁶ Hallett, M., Hays, J., & Johnson, B. R. (2016). *The Angola prison seminary: Effects of faith-based ministry on identity transformation, Desistance, and rehabilitation*. United Kingdom: Routledge. Page 3.

⁷ *Life, Death and Raging Bulls*. The Economist, May 8, 2014. (<http://www.economist.com/news/united-states/21601853-god-and-daredevilry-give-prisoners-hope-and-dignity-says-burl-cain-life-death-and-raging>)

⁸ Shere, Dennis. *Cain's redemption: a story of hope and transformation in America's bloodiest prison*. Chicago: Northfield Pub, 2005. Page 38

The original LSP was a small building erected in Baton Rouge in 1835⁹. This early LSP was designed to be like the Wethersfield, Connecticut penitentiary in the North and a solution to the squalid conditions at the holding facilities where criminals were kept in New Orleans¹⁰. From the beginning, LSP prisoners and the building itself were leased to private contractors for labor and management. The Baton Rouge prison underwent a change in the 1860s when LSP was occupied and managed by Union troops during the American Civil War. Following the war, former Confederate major, Samuel James, won the lease to the LSP. He and his family ran the prison system in Louisiana privately through the end of the 1800s. During this time period, in 1880, James also purchased an 8,000-acre former slave plantation in West Feliciana Parish, north on the Mississippi River from Baton Rouge. James moved the prison's location to this new plantation, which was called "Angola." Angola got its name for the southwest African country which was the origin point for many of the slaves who originally worked the land now inhabited by the LSP. Others report that Angola is not named for the country of origin of the slaves, but rather where the plantation owner felt the *best* slaves came from¹¹.

The comparisons of slavery and the antebellum plantation to the new LSP at Angola are undeniable and go far past the nickname that's still in use today. The original prisoners at LSP were housed in Camp A, which were the same structures used for slaves years earlier. The prisoners are used as labor to work the fertile farmland. They constructed levees to keep the nearby Mississippi at bay. Although modern LSP prisoners no longer live in Camp A or antebellum slave quarters, the farm labor reminiscent of slavery at the Louisiana plantation remains and is a frequent point of criticism at the

⁹ "History of Angola" Angola Museum. <http://www.angolamuseum.org/history/history/>

¹⁰ Angola Museum

¹¹ Shere, 41

prison. Men work the fields with two armed guards watching from horseback and another on foot, ensuring constant and consistent labor¹². A significant number and percentage of inmates are and have been black throughout the LSP's long and recent history while most guards have been or are white. Columbia University's Knight Case Studies Initiative The Journalism School's "Voices Behind Bars" series notes the slavery connotation of this arrangement where the white guards have been referred to as "freeman" rather than guards as recently as 2008¹³.

Throughout the late 1800s, stories of abuse were frequent in local newspapers and led to the state taking back control over the prison system from the contractors. LSP at Angola was reclaimed from the James family on January 1st, 1901¹⁴. After Louisiana regained control over the penitentiary in 1901, the reported rates of abuse and death dropped significantly. LSP also expanded by 10,000 acres, added new housing facilities and replaced many guards with prisoner trustees who wielded weapons and power over their fellow inmates. The trustee program can be viewed as emblematic of many LSP reforms. The program was an attempt at reforming prison guard brutality in the 1900s, but it evolved into prison-sanctioned inmate-on-inmate violence and became one of the biggest problems at LSP in the 20th century. The history of the LSP during the first half of the 20th century is marked by reform attempts, size expansion, crop flooding, public mismanagement, drastic budget cuts and eventually general disrepair¹⁵.

¹² Shere, 108-110

¹³"Voices Behind Bars" National Public Radio and Angola State Prison." Columbia University's Knight Case Studies Initiative The Journalism School.
http://ccnmtl.columbia.edu/projects/caseconsortium/casestudies/54/casestudy/www/layout/case_id_54_id_547.html

¹⁴ Angola Museum; "Voice Behind Bars"

¹⁵ Angola Museum

Aside from the role of slavery and plantation life has in LSP's history, the most important period of the prison was likely the second half of the 1900s. Following World War II, LSP came back into the local political spotlight when 31 inmates cut their own Achilles tendons to protest against the labor and abusive conditions at LSP. Gubernatorial candidate Robert Kennon made cleaning up and reforming LSP part of his platform in 1952 and followed through on his campaign promises after he was elected, erecting new prison buildings and renovating others. However, in the 1960s, LSP again fell into disrepair and saw budget shortfalls. This is when Angola gained its name as the "Bloodiest Prison in The South." Inmate injury and abuse were rampant and continued for years. The New York Times reported that LSP was "notoriously brutal and bloody in the 1970s".¹⁶ One can see the LSP of the 1970s at the present day Angola prison museum, founded by former Warden Burl Cain and open to the public. There is a showcase of the various inmate weapons found throughout the years in the museum. The glass case of creative, vicious and deadly blades and bludgeons fashioned from hygiene tools and innocuous items illustrates the real violence of LSP. In the 1970s, an average of 12 inmates were stabbed to death each year with weapons such as these¹⁷¹⁸. One of the major factors toward ending this period of intense prison violence was a Federal lawsuit brought by one of LSP's inmates.

After the lawsuit, the state's governor appointed a new director of corrections and LSP saw some of its most significant changes. The trustee system was abolished, the

¹⁶Eckhom, Erik. "Bible College Helps Some at Louisiana Prison Find Peace." *The New York Times*, October 5, 2013. http://www.nytimes.com/2013/10/06/us/bible-college-helps-some-at-louisiana-prison-find-peace.html?pagewanted=all&_r=1

¹⁷Strochlic, Nina. "Locked Up in Louisiana: Inside America's Bloodiest Prison." *The Daily Beast*, January 28, 2015. <http://www.thedailybeast.com/articles/2015/01/28/locked-up-in-louisiana-inside-america-s-bloodiest-prison.html>

¹⁸ Oshinsky, Davis. "The View from the Inside." *The New York Times*, June 11, 2010. http://www.nytimes.com/2010/06/13/books/review/Oshinsky-t.html?_r=0

numbers of prison guards significantly increased, medical facilities were updated, renovations were made¹⁹, vocational programs were added²⁰, and new camps were constructed. By 1994, LSP became accredited by the American Correctional Association, making the prison once best known for its inmate violence on par with other state penitentiaries on a national level. Shortly after the ACA accreditation, Warden Burl Cain took over at LSP and added his bold, new reform concept: moral rehabilitation.

Prison reform across many parts of the U.S. reads similarly to reform at LSP. There were periods of abuse, this abuse was reported through lawsuits and newspapers, the state responded with reforms, some progress is made, time moves on, the reforms may flounder or budgets are cut, and then new issues arise. Prison reform follows a Tocquevillian ebb and flow of public opinion outrage where people advocate reform, act and then lose patience with the concept²¹. LSP went through several periods of significant reform in the 1900s, the 1950s, the 1970s and the 1990s. Most of these reforms were aimed at improving the physical conditions of the prison, decreasing abuse and improving the effectiveness of the institution itself. Only with Cain's changes in the 1990s did the reforms become much more ambitious and truly approach the lofty goals of the original penitentiaries in the U.S. with their strong moral component. When he became warden of LSP, Cain sought to use faith-based programs to morally rehabilitate the prisoners, regardless of if the prisoners were ever to be released from the prison or even if they were destined to be executed at LSP²².

¹⁹ Angola Museum

²⁰ Eckholm/NYT

²¹ Dumm, Thomas L. *Democracy and punishment: disciplinary origins of the United States*. Madison, Wis: University of Wisconsin Press, 1987. Page 139

²² Shere 5-30

Burl Cain²³ first became warden of a Louisiana prison in 1981 at Dixon Correctional Institution. Criminal justice and correctional work was not always Cain's focus. In college, he studied agricultural education at Louisiana State University²⁴. After college, Cain oversaw farming production at some prisons in the state, which led him to DCI. He was appointed warden of LSP 14 years later in 1995. Of becoming a warden for the first time, Cain wrote²⁵ that he would often think back to his own father's similar experience supervising German prisoners of war during World War II at Camp Polk in Louisiana. He said the prisoners appreciated his father's "fair but stern" philosophy. Cain's take away from these stories was that in 1981 his job as Warden was to do the right thing, to do what was expected and to do well wherever God puts him. Cain often thought of the concrete doll that those POWs made his father with construction material to show their appreciation as a totem and reminder of this philosophy.

Cain is described as possessing a larger than life stature in the dozens of profiles written about him and his prison. His stocky frame, "good ol' boy appearance" and strong, soft-spoken tone define his presence as warden. From the beginning of Cain's tenure at LSP his number one priority was to "keep the peace²⁶" and he said any reform and good works were bonuses. However, as Dennis Shere shows throughout his profiling book *Cain's Redemption*, the warden's influences and driving forces are more complex and otherworldly - this deeper, moral reformation goal is constant from the beginning²⁷.

²³ Cain resigned as Warden at LSP in late 2015 after political pressure and news reports of private real estate transactions between 2006 and 2009 near the prison that may have violated Department of Public Safety and Corrections rules. He was the longest serving warden at LSP. Local news report on the subject: http://www.theadvocate.com/baton_rouge/news/politics/article_d6826c2e-136d-5a19-a62d-fcf3383887e6.html

²⁴ Shere, 43

²⁵ Shere, 11 (Note from Cain himself)

²⁶ Shere, 16

²⁷ Dennis Shere, a lawyer and author, wrote *Cain's Redemption* with Cain's assistance. Some chapters are

Cain seems as determined to provide the opportunity for religious salvation or the possibility of moral reformation as he does to punish swiftly with strength. Stern and fair.

In his first week at LSP, Cain told the inmates he would be as good as they let him or as mean as they make him²⁸. He placed a new level of freedom, control and responsibility in the hands of inmates right away and warned of the consequences if they squandered it. In their 2016 examination of LSP and its faith-based ministry, *The Angola Prison Seminary*²⁹, social scientists Michael Hallett, Joshua Hays and Byron R. Johnson looked at the impact of Cain's programs and religion at LSP on the inmates. They pointed to this first week address as showing Cain's philosophy and relating to Philippians 3:13, which has been prominently posted on a monument near the gate of LSP: "You are entering the land of new beginnings." Cain sought a new beginning for LSP and for the inmates, giving them a fair chance and a stern warning about what will come.

Although Cain credits his father as the influence he thought of when he was first named a warden, Cain's mother and the Christian faith may be the two most important factors for him³⁰. The "wisdom" that Cain carries from his mother is frequently concerned with his relationship to or interpretation of God. "You just remember one thing. I raised you right – to know God – and God will hold you accountable one day. If you don't see that those prisoners have a chance to know Him, He will hold you accountable for their souls,"³¹ Cain's mother told him when he informed her of his job as

verbatim stories from Cain. The book lacks objective criticisms of Cain and the LSP, but the seemingly close and comfortable relationship between Cain and Shere allows for a text that can describe the philosophy, drives and impetus for moral reformation by Cain at LSP. Criticism is better found in references to Bergeron, Hallett and others.

²⁸ Hallett, 3

²⁹ Hallett - The authors spent three years at LSP studying the impact of religion and the ministry. The academic work takes a critical look at LSP and focuses ministry more than punishment.

³⁰ Shere, 25-32

³¹ Shere, 43

warden of DCI. Cain's faith in God and confidence in Christ as the way toward salvation flow through nearly every statement he makes about his role as warden and the opportunities for prisoners. His mother's impact seems to emphasize and influence the parts of religion that have become most important to Cain and his faith-based moral reformation project at LSP.

Although the general reform movement effectively started at LSP in 1970s, when Cain began his tenure in 1995 he found a prison still rich with "predators," fear and oppression³². These were the first things he wanted to change at LSP. Cain's solution to these problems was the addition of trust and hope. Without a realistic chance of pardon, parole or release for nearly every inmate, Cain had to create hope and trust through different means. This is the impetus for his moral reformation project. Cain is a strong advocate for reform of prison and prisoner and a harsh critic of sentencing laws³³, but with qualifications. Cain only sees benefits to prison reform within moral reformation. He states that other reformation practices, such as basic literacy or vocational education, greater permissions and better living conditions are wasted without moral improvement. "As my career as warden evolved," Cain said³⁴, "I had come to realize that criminals are selfish people. It is so simple to understand. They take your life, your property, anything they want for themselves. They don't ask. They just sneak around, lie, steal, kill, whatever they want. I realized I could teach them to read and write, could help them learn and trade – but without moral rehabilitation, I would only be creating a smarter criminal." Cain has also said, "Moral people are not criminals. That's why moral rehabilitation is

³² Shere, 41

³³ *Life, Death and Raging Bull*/ The Economist

³⁴ Shere, 34

the only true rehabilitation³⁵.” Cain has been quoted in numerous articles with similar sentiments. In 2014, he told *The Economist*,” If we don’t rehabilitate [inmates] consciences, all we do is just make smarter criminals³⁶.” For Cain and for the system he instituted at LSP, the only chance that any inmate has at meaningful reformation or improvement is through internal moral development. Ultimately Cain likely wants Christian salvation for repentant inmates, but there may be success with a more loosely defined moral reformation too.

What is clear is that without moral improvement, Cain sees no avenue toward real prisoner reformation. For Cain, morality is the key to transformation. It is what separates the good from the bad - the citizen from the criminal. Cain only wants to provide positive services to the prisoners past his requirements if there is a moral component. Morality separates him from being a transformative leader of fallen men or an armed guard.

Moral reformation at LSP is connected to being a good citizen of the prison community and theologian. “Moral reformation means learning to live, peacefully and productively, in a prison community,” Shere wrote of LSP³⁷, adding that at LSP it would be difficult without making peace with God. Hallett and authors also emphasize the community aspect of religious moral reformation: “Faith-based programs start with the presumption that society builds citizens through loving relationships.³⁸”

A branch of the New Orleans Baptist Theological Seminary, funded completely by outside donations, opened at LSP shortly after Cain became warden. He invited the

³⁵ Shere, 52

³⁶ *Life, Death and Raging Bull*/ *The Economist*

³⁷ Shere, 52

³⁸ Hallett 230

school to become part of LSP, although the first churches at LSP predate Cain³⁹. Through the seminary school, inmates can earn four-year degrees and study theology. It is the only way LSP prisoners can earn a college degree. Prison Fellowship, the Christian prison reform advocacy group, describes the impact of the seminary education at LSP as two fold⁴⁰. First, inmates learn how and why they are sinners and then they learn that Christ died for them. The school also provides space for worship, allows prisoners to become leaders within their church and prison communities and has even lead to prison missionaries. Marjorie Esman, the executive director of the ACLU in Louisiana, which closely watches Cain's religious actions at LSP, told The New York Times that the college has had positive effects. "I think that what Burl Cain calls moral rehabilitation is, in his mind, religious doctrine, but a lot of good has come of it," Esman said⁴¹. "I think it's unfortunate that the only college available is a Christian one, but the fact that a college is there at all is important."

The seminary has produced graduates with bachelors or associate degrees as well as certificates. While a small percentage gain degrees, many more interact with the seminary through bible study, informal teaching and worship services⁴². The seminary may be Baptist, but the inmates and services include some diversity. Protestant and Catholic worship dominate the mostly Black and Latino prison population, but Jewish, Mormon and Muslim worship and studies exist inside the prison walls as well. For example, although the college is Christian, there have been 15 Muslim graduates who

³⁹ Hallett 1-10

⁴⁰ Rempe, Steve. "Dignity and The Moral Rehabilitation of Prisoners." Prison Fellowship, September 2014. <https://www.prisonfellowship.org/2014/09/dignity-and-the-moral-rehabilitation-of-prisoners/>

⁴¹Eckholm/NYT

⁴²Eckholm/NYT

preach to the greater Muslim population of the prison⁴³. Faith is a critical tenet of LSP 's moral reformation attempt and Christianity is the driving force for Cain. The seminary and the organized and informal worship at LSP are designed for a stronger internal purpose.

Hallett and authors argue that the seminary's most important quality is allowing for inmate ministry. When inmates become ministers, run church services and work together with their peers, it benefits the inmates and the prison⁴⁴. Having to learn at the seminary and become ministers is a powerful and effective anti-violence measure. With the ministry, inmates learn to serve each other, to love thy neighbor rather than live in the isolating fear of prison, fighting for oneself. Serving other prisoners through ministry is the most transformative part of LSP's program, Hallett and authors conclude in their study⁴⁵. This all starts at with the seminary's education. For Cain's moral rehabilitation, inmates must understand the teachings and morality of his faith and practice them.

Despite the attention it gets, it is difficult to define exactly what Cain means by moral rehabilitation. Like Esman of the ACLU explains, it is likely the plain religious doctrine of Christian morality and accepting Jesus Christ as savior. However, Cain's statements are less blunt. He speaks of changing the person on the inside - of making a criminal moral and therefore no longer a criminal. Morality is not defined nor is the exact process of this transformation. What is clear is that religious education and contemplation are part of it for the internal transformation. To develop the hope and trust however, to combat the fear and oppression that Cain saw at LSP in 1995, the warden has installed numerous programs to entice the prisoners to become more moral.

⁴³ Eckholm/NYT

⁴⁴ Hallett 222

⁴⁵ Hallett 233-235

One program to improve prisoner morality at LSP that Cain instituted was the “good citizen” concept. While there are some parts of the prison, particularly Camp J, where prisoners are kept in isolation or extreme lockup, others are able to have more freedom and personal interaction. Cain starts his good citizen model by telling the prisoners to think of LSP like a city or community. Cells are houses and hallways are streets. Inmates are incentivized to police their own communities and keep their areas free of drugs and crime, because it is theirs. “Good Citizens” replaced the concept of “snitches” and “rats”.⁴⁶ The idea is that theft and violence are no longer just immoral under the bible or because of the risk of prison punishments, but now they’re also not in one’s self interest because it is one’s own community he is damaging. This is a significant prison paradigm shift Cain is attempting, to get prisoners invested in one another’s affairs rather than keeping to oneself. However, LSP may be in a unique circumstance for this to work. Because of the extreme sentences such a high percentage of inmates have and their unlikelihood of ever getting out, LSP really is their only remaining community. The community and citizenship concept at LSP was reinforced by rewards for well-behaved prisoners that could take years to accrue and be taken away swiftly for rule breaking.

Not every inmate connects to these ideas of community and citizenship within the LSP, but many have. Cain has repeatedly said that he will not be able to help rehabilitate every inmate but he will try to get as many as he can. “We don’t have any gangs here. We’ve got gangs for God. People want to belong to something, and if you don’t create something good for them to belong to they’ll create something sinister,” Cain told The

⁴⁶ Shere, 46-47

Economist⁴⁷. Creating a positive environment in the prison gives the inmates something positive to belong to and it helps reduce violence and keep the peace. “You can go with me and be involved in moral rehabilitation, or you can go with the predators. The choice is yours,” Cain said⁴⁸. For Cain, his view is black and white: the only alternative to moral reformation is further sin and predation.

The community concept also allows Cain to put the responsibility in the inmates’ hands, putting his speeches into action. Cain said that he never takes any privileges away from inmates; rather they give it to him through their misuse⁴⁹. When the on-premises park where the most responsible inmates could take visitors was used for illicit sexual conduct, the prisoners “gave up” that responsibility.⁵⁰ When one inmate used his personal microwave to boil water that he then threw at a fellow inmate, all of the “community” members lost their beloved microwaves and ability to pop popcorn.⁵¹ Cain was able to hold the community responsible for the misbehavior.

Cain exercises a similar responsibility-community concept with the structure of his prison management. He gave each unit a “mini-warden”. This creates greater authority for the unit managers and places more responsibility on them. This arrangement, which Cain praises, mirrors his good citizen arrangement. Here the deputy wardens are given more freedom to run their unit as they see fit but also face tougher scrutiny and are more responsible than in other arrangements⁵².

⁴⁷ *Life, Death and Raging Bull/ The Economist*

⁴⁸ Shere, 52

⁴⁹ Shere 102-104

⁵⁰ Shere, 102-104

⁵¹ Shere, 104-107

⁵² Hallett 11-12

In addition to community policing, Cain has numerous programs that give inmates a greater sense of dignity, humanity and purpose. Like at many prisons, LSP inmates can learn vocational trades. However, because so few will ever leave LSP, these vocational training will not be used for employment in life after prison. Rather prisoners are able to sell their wares to visitors at a prison store or at the annual LSP Rodeo. Prisoners are able to feel part of the larger world and the larger economy. They see some monetary benefit from their labor and work. They are able to experience the pride of a craftsman or artist. It gives the prisoners something positive. The prisoners who will be released are able to learn trades and skills from fellow prisoners as well, furthering the communal aspect of the program.

At a prison filled with unique qualities that separate it from its peers throughout the South, LSP most often makes the news for its biannual rodeo. Held in an 11,000-person amphitheater, built with donation money and attended by the public, LSP's rodeo is a spectacle. Cain points to participation in the rodeo as a reward that motivates inmates and helps them on their path to moral redemption. Prisoners have the chance to win money as well. For example, inmates will play poker at a table in the arena while a bull rushes toward them for one of the games called "liars' poker." The last remaining inmate at the table can win \$250 for their endurance - a steep increase from the few cents an hour inmates earn through prison jobs. The craft fair at the rodeo, where family, friends and the public buy many inmate-made goods, is seen as particularly important to moral rehabilitation. It places value on the wares created and the inmates who created them. The rodeo also rewards inmates with interaction with the outside world, which many are unlikely ever to enter again. It delivers the hope in a hopeless situation that is necessary

for moral rehabilitation when there is no chance at release. It is part of reforming the prison culture that Cain has worked toward.

Others argue that the rodeo exploits the inmates, making clowns and jesters of the convicts and puts them in harm's way for others' amusement. The Guardian⁵³, in a 2016 article that is one of the most recent of many profiles of the event, compared the Rodeo to the Roman Coliseum. Inmates are regularly injured during the event, which has been in practice for more than 53 years. The prisoners receive no rodeo training from LSP, but are now provided some protective gear such as helmets. Many of the criticisms of LSP's rodeo are based on the racial component of the majority black prison population injuring and endangering themselves for the pleasure of the rodeo attendees. Other might argue that an event so fun and lighthearted is inappropriate as part of a state punishment.

In addition to the morale boost and cash prize rewards, the rodeo is also practically beneficial to moral reformation at LSP by making significant profit for the prison⁵⁴. In 2014, 22,500 people attended the rodeo and brought in more than \$1 million for the inmate welfare fund⁵⁵. The revenue generated helps fund many of the programs at LSP that Cain champions as part of the moral rehabilitation process including prisoner-run hospice and vocational training. The rodeo also helps fund the most recent practical rehabilitation component, "the state's six-year-old re-entry program⁵⁶, which puts eligible inmates in a GED program, and trains them for certification in a trade such as auto repair

⁵³ Shen, Aviva. "Angola Prison Rodeo Offers Risks and Rewards for Louisiana's Hard-Knock Lifers." *The Guardian*, October 26, 2016. <https://www.theguardian.com/us-news/2016/oct/29/angola-prison-rodeo-louisiana>

⁵⁴ Shere, 66-70

⁵⁵ *Life, Death and Raging Bull*/ The Economist

⁵⁶ Purpura, Paula. "At Angola prison, short timers learn trades, coping skills from lifers." *The Times-Picayune*, November 26, 2014.

http://www.nola.com/crime/index.ssf/2014/11/at_angola_prison_short_timers.html

or air conditioner installation." These types of programs are liable to budget cuts without the rodeo's revenue.

One of the programs that has directly benefited from the rodeo under Cain is the hospice program at LSP, where prisoners can give one another care and spiritual comfort at the end of life. With the age and duration of sentences, many inmates die at LSP. This added level of community, compassion, and spirituality helps reinforce the moral ideals that Cain wants in practice during an inmate's end of life. It speaks directly to the transformative and connective power that Hallett and authors give inmates service to one another. Under the program, a few prison volunteers are allowed to sit with the dying inmate and hold vigil. "To me it's a way to give back, to help somebody in need. Staying with the patients gives the opportunity to have a familiar face around them, to feel as though somebody genuinely cares," hospice volunteer Frank Green said⁵⁷ in the mid-2000s.

Cain also worked to reform the funeral process, using wooden caskets made by prisoners and horses to carry the dead to their graveyard. These small touches to the process of dying, in a place where most people are planning to die there eventually, add dignity that carries real moral weight. Dignity is one of the most important parts of Cain's program. Hallett, in an interview with *The Economist* that predates his book said that at LSP, unlike many prisons, "the promise of dignity is delivered upon; you can get an education, learn crafts, participate in the rodeo, and receive a measure of freedom and dignity that [prisoners] really can't earn anywhere else⁵⁸." The entire idea only works if there is a moral element in the prisoners; it is only created with this want. The desire to

⁵⁷ Shere, 140

⁵⁸ *Life, Death and Raging Bull*/ *The Economist*

deliver end of life care, to make death more pleasant and to use hand-crafted wooden coffins rather than the old, cardboard coffins that gave way in rain, all play into Cain's concept of moral progress within the prison population. Although not all inmates take part in this program, and it may be a form of self-interest well understood, where inmates want to create a hospice program so that one day they may also benefit from it, it seems to embody many aspects that would fit Cain's idea of a moral man.

The hospice program can be seen as a tool for moral reformation at LSP or proof of successful rehabilitation. There are many other examples at LSP that fit these criteria. Prisoners donated \$15,000 of their own funds to the American Red Cross after September 11th, 2001 and have made charitable donations for other disasters⁵⁹. Prisoners have volunteered to repair bicycles and wheelchairs for the citizens of Louisiana⁶⁰. Many of the prisoners have also become missionaries to other prisons in the region. A select number of educated inmates are allowed to travel to other prisons and preach. These prisoners are preaching both the word of God and the program of Cain; helping other inmates set up similar programs and bring other prisoners into the fold. LSP also gets many visitors from other prisoners hoping to adopt some of these ideas into their own facility as well.

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The ideal moral rehabilitation for Cain may be seen in Antonio James, the second man Cain executed at LSP. Before James was executed, he and Cain prayed together. In the moments before his death, James was a devout Christian and apologized for the murder that landed him on death row. He had found Christ and given his life meaning

⁵⁹ Shere, 141

⁶⁰ Shere, 141

while in prison. His repentance and apologies did not grant him a pardon, but Cain clearly saw a moral reformation in James⁶¹. He was a criminal who was selfish, who committed a heinous crime, who then learned about a morality and understood the evil in his previous actions. James accepted Christianity and repented. He apologized to the victim's family. Despite this reported transformation and regret, James never left LSP and died there. It is a moral rehabilitation of the soul that Cain is aiming for. Without the opportunity to reenter society, Cain uses programs to instill hope, dignity and usefulness as further parts of his moral program. James' may not be the norm for all LSP prisoners, but he exemplifies Cain's vision. From the prisoner's perspective, this may be best summed up by what inmate Daryl Walters told the New York Times, "If I can help other people while I'm marching to the grave here, then I'll have lived a good life⁶²."

There are numerous advantages to Cain's program at LSP. The amount of prisoner violence has decreased significantly, dropping from 280 prison staff assaults and 1,107 prisoner assaults in 1990 to 55 assaults on staff and 316 among inmates in 2012⁶³. Although significantly decreased there are still many cases of violence and crime within the prison walls. The moral reformation program at LSP has been paired with a new reentry program for 100 or so "short-timers" at LSP. These prisoners, unlike most LSP inmates, will be released learn work skills through LSP's vocational programs and life skills from the long-term LSP prisoners. The sample size for this program is low, but the statistically insignificant recidivism rate of only 19 out of 62 is lower than the general prison average of 50 percent⁶⁴. Without a greater number of prisoners who leave LSP,

⁶¹ Shere 24-32

⁶² Eckholm/NYT

⁶³ Eckholm/NYT

⁶⁴ Purpura/Times-Picayune

there are few statistics to test the effectiveness of Cain's moral rehabilitation on inmates as re-introduced citizens. There is therefore little research in this area. Instead, most evidence of the benefits of moral reformation at LSP comes in the form of anecdotes, like the story of Antonio James' transformation before his execution, or observations, like those of Hallett and authors on the transformative impact of ministry and religiosity for inmates. Practical and spiritual benefits may be observable but are difficult to display empirically.

There are many criticisms of LSP, Cain and his programs as well. The harshest criticism of Cain and LSP in the recent past has been for its use of excessive solitary confinement. Herman Wallace who was in solitary confinement, in a 6-foot-by-9-foot cell by himself, for 40 years, was there for a crime he didn't commit and was released by a judge in 2013⁶⁵. He was released at the age of 71 as he was dying. He is often cited as the key example of excessive and inhumane solitary confinement at LSP. It continues to be a major source of criticism from all sides. Around the same time as Herman Wallace's release, the United States Congress asked the Department of Justice to investigate the "egregious and excessive use of solitary confinement and other troubling detention practices" at LSP in a letter⁶⁶. Many inmates and advocates complained specifically about the hot temperatures at LSP. Deputy Director of the Promise of Justice Initiative Mercedes Montagnes, who represents inmates at LSP who are suing over conditions at the prison told *The Atlantic* that stories about the faith-based and moral rehabilitation are missing some details.

⁶⁵ Kinsella, Helen. "The Angola Three's long, lonely quest for justice." *The Guardian*, October 2, 2013. <https://www.theguardian.com/commentisfree/2013/oct/02/angola-three-quest-justice>

⁶⁶ Richmond, Cedric, John Conyers Jr., Jerrold Nadler and Robert C. Scott. *Letter to Assistant Attorney General Thomas Perez*. July 12, 2013. 112 Congress. (<https://www.scribd.com/doc/153442059/Congressional-Letter-to-DOJ-Civil-Rights-Division>)

Angola continues to confine men in heat that would be illegal for any of the animals on the farm, provides them with little or negligent medical care, punishes the mentally ill with severe lockdown procedures and uses searches and solitary confinement as punishment, even when they are no longer necessary. While there is a focus on religion, the prison prevents prison ministers from meeting with inmates' families, supporting pardon or parole applications, or even communicate privately with inmates through letters. While some inmates appear to be able to secure favors through acts of devotion, the system does not foster hope, dignity or justice for the vast majority of men that work the fields, and fill the camps at Angola⁶⁷.

When men are already locked up for the rest of their lives, the last punishment is removing them from all contact with others. The harsh punishment may be made harsher by Cain's creation of a community within the prison which can then be taken away. Solitary confinement's role in the moral rehabilitation can be best described as the remaining form of punishment to ensure obedience and prison peace. The reported inner progress of prisoners may be a happy secondary consequence, but not the main purpose. Aside from potential benefits, it is the largest and most significant area of criticism for Cain and his prison.

LSP has also been criticized for its focus on religion despite being a state institution. Some inmates have complained that they have been punished harshly and unfairly for not becoming Christians or joining into the religious programs that are predominant in Cain's vision. Others have argued that the moral rehabilitation at LSP constitutes a violation of the separation of Church and State. In the summer 2011 edition of the Louisiana Law Review, Roy L. Bergeron, Jr. examines Cain's program at LSP under the Establishment Clause of the Constitution. He concludes that aspects of the program are likely in violation of the clause, but that the program's goals overall are

⁶⁷Cohen, Andrew. *At Louisiana's Most Notorious Prison, a Clash of Testament*. The Atlantic, October, 2013. <http://www.theatlantic.com/national/archive/2013/10/at-louisianas-most-notorious-prison-a-clash-of-testament/280414/>

“laudable” and the moral rehabilitation program itself may be able to be reformed to be more secular and acceptable.

This comment [in the Louisiana Law Review] only argues that some aspects of the moral rehabilitation program as it currently operates at Angola, could not pass constitutional scrutiny under the modern Establishment Clause analysis. Angola officials must take action and modify the program as detailed ... Angola did not err in allowing religion into the prison; it erred in becoming *actively* involved in religion. Although this involvement may be a good idea for penological reasons, the constitution simply does not permit it⁶⁸.

Hallett and authors argue for the positive impact of religiosity on individual inmates through the ministry and on the transformation of LSP from “the bloodiest prison.” They claim that some of the criticisms Bergeron makes have been remedied since the Louisiana Law Review article was published, such as funding for ministry not involving public funds, but acknowledge other concerns with religion at a state facility⁶⁹.

Discussing and defining moral rehabilitation at LSP under Burl Cain is difficult. The components of the process are clear: moral rehabilitation must contain religious study, religious acceptance, contemplation of the soul, labor and work, good citizenship, community participation, model behavior, hope, dignity, remorse, swift and harsh punishment, and moral improvement. But the specifics are more complicated and many of these components are problematic. Religious acceptance may be necessary for understanding Cain’s moral rehabilitation, but it creates legitimate legal barriers and permissibility questions for a state institution. Swift and harsh solitary punishment may be best for maintaining order and forcing change in prisoners for Cain, but it creates at least alleged inhumane conditions and disproportionately punishes those who are not

⁶⁸ Bergeron Jr., Roy L. “Faith on the Farm: An Analysis of Angola Prison’s Moral Rehabilitation Program Under the Establishment Clause”; Louisiana Law Review; (Volume 71, number 4, Summer 2011). Page 38 (<http://digitalcommons.law.lsu.edu/lalrev/vol71/iss4/>)

⁶⁹ Hallett 233-235

religious and accepting of Cain's moral plan. Hope may come from selling hand-crafted furniture and participating in a rodeo, but it also brings claims of exploitation and racism.

The ambition and religious zeal of Cain are critical to understanding the program as well as its criticisms. Because moral rehabilitation at LSP comes from one man's perspective, it is ill-defined, narrow and specific. The prisoners have to work to achieve the reformation he expects. There is no metric for examining the process of moral rehabilitation or statistics to study to watch its success or failure, because the program is a manifestation of Cain trying to save the inmates' souls while he governs a prison. A decrease in prison violence, recidivism and more are all planned consequences of Cain's plan, but his main focus is the accepting of Christianity and repentance of an inmate like James. This wouldn't be possible in a more secular version of moral rehabilitation like what Bergeron suggests in the Louisiana Law Review. But now, with Cain gone from LSP, the program is worth revisiting and reforming.

2.0 MODERN MORAL REFORMATION IN PRISONS AROUND THE U.S.

The moral rehabilitation program at LSP is the most widely reported on program in the U.S. due to its strong ideological founding, its perceived success, its charismatic leader, its controversial history and, of course, the rodeo. However, there are a number of other, similar moral reformation or rehabilitation programs at prisons throughout the U.S. Some of these programs have been explicitly based on the LSP model, with coaching from the Louisiana prison, but they are not necessarily identical. For example, West Virginia's corrections department started a voluntary moral rehabilitation program in its prisons in 2014 after spending time studying the program at LSP. After visiting the Louisiana prison, West Virginia lawmakers brought Appalachian Bible College into Mt. Olive Correctional Complex just as LSP brought in New Orleans Baptist Seminary. West Virginian Sen. Bill Laird, who visited LSP with lawmakers ahead of the establishment of his state's moral rehabilitation program said that the program was attractive because of its success creating a more peaceful prison as well as for societal reasons. "Our recent visit confirmed that moral rehabilitation has played a major role in the transformation of one of America's toughest institutions," Laird told a local newspaper. "I feel that this non-traditional program holds great potential in West Virginia for inmates attempting to

redeem themselves in seeking to return to society as law-abiding and productive citizens⁷⁰.” He did not talk about saving souls as the main purpose behind the program.

Other moral rehabilitation programs used in prisons come from separate origins than Cain’s LSP model, but work toward similar ends. For example, Horizon Communities corporate prison partner is a faith-based rehabilitation program with the mission of preparing prisoners to “live responsibly with others⁷¹.” It is a program with otherworldly components and goals in this world of simple, peaceful cohabitation. Horizon is multi-faith and even includes some non-faith-related character improvement programs. It uses a dormitory-style residential program approach with strict rules, classes on value concepts such as “fatherhood” and mentoring. There are also transition training for those leaving prison, computer skills training, substance abuse help and much more. The company keeps limited statistics on outcomes.

Horizon is based in Florida but operates in four states. Many faith-based and moral rehabilitation efforts are operated by companies like Horizon and are only in a few states throughout the South and Midwest. According to a 2005 Department of Justice report⁷² on faith-based programs in state prisons, many states outside of the South had none. These prisons are likely to have vocational training, substance abuse programs that may be faith-based in some way, such as a 12-step program, or even transition services, but the full, faith-based rehabilitation program is rare. Moral rehabilitation efforts are even rarer. Alabama, Alaska, Arkansas, California, Colorado, Florida, Hawaii, Idaho,

⁷⁰Pritt, Pamela. “Moral Rehabilitation Program Available for Prisoners.” *Times West Virginian*, September 12, 2014. http://www.timeswv.com/news/moral-rehabilitation-program-available-for-prisoners/article_e8de634c-3a54-11e4-98ba-133d3bc70378.html

⁷¹ “Horizon Communities in Prison.” Horizon Communities in Prison. <http://horizoncommunities.org/FactSheet.htm>

⁷² “Residential Faith-based Programs in State Corrections.” U.S. Department of Justice report, September 2005. <https://s3.amazonaws.com/static.nicic.gov/Library/020820.pdf>

Indiana, Iowa, Kansas, Louisiana, Minnesota, Mississippi, New Mexico, Ohio, Oklahoma and Texas each had at least one faith-based state corrections programs, all other states had none. Texas had the greatest number of different programs. InnerChange Freedom Initiative was the program that operated in the most states.

Although moral and faith-based programs are the most present in the South, analyzing these prison programs through a historical and theoretical framework can be the most difficult as well. Like with LSP, the history of slavery and brutal prison conditions throughout part of the South adds complications to honest or clear evaluation. These complicating factors can make tracking improvement and prison progress difficult to examine as an example of a larger American effort. However, slavery, Jim Crow and brutal prison conditions also may explain the need for such prison reformations in the region that have led to these faith-based solutions.

To avoid some of these complications, but still tackle the larger question of non-LSP faith-based moral habilitation in state prisons in modern America, Minnesota Correctional Facility in Lino Lakes, Minnesota serves as strong example for positives and problems of such a program. Minnesota has operated its program through the larger organization InnerChange Freedom Initiative (IFI), which is run by the Prison Fellowship. IFI was established at the 200-prisoner, men's facility at Lino Lakes in 2002 and then at the 50-person women's Shakopee Correctional Facility in Shakopee, Minnesota in 2006. Currently, IFI is only operated in Minnesota and Texas⁷³, however there have been IFI programs through the U.S. in other programs during the early 2000s.

⁷³ "Innerchange Freedom Initiative." Prison Fellowship website.
<https://www.prisonfellowship.org/about/reentry-support/innerchange-freedom-initiative/>

The Prison Fellowship is an evangelical Christian prison reform advocacy and prisoner outreach organization founded by Chuck Colson in 1976 following his seven-month incarceration for his role in the Watergate Scandal. Prison Fellowship operates across the country, at many prisons in several capacities, with multiple programs. The organization operates and staffs the IFI program and is completely privately funded, a move that helps avoid many of the legal challenges of a Christian program at a state facility. IFI specifically “provides educational, values-based services to prisoners on a voluntary and noncompulsory basis to help prepare [prisoners] to re-enter the workplace, religious and community life, and family and social relationships⁷⁴.” The program is defined by Christian values and rooted in teachings about the life of Jesus Christ, but allows participation of “any or no faith”. Prisoners in Minnesota are students of the program from 8 a.m. to 8 p.m. every day, with volunteers joining the teaching in the evening⁷⁵. Former Minnesota IFI participant Don Urbanski, who spent decades in prison, explained that the volunteers were a critical part of IFI. “The counselors start out teaching us how to change character through the teachings of Christ, and then in the evening volunteers come in — men and women with their work clothes on — and they are the example, the embodiment of what we have been taught during the day,” Urbanski, who had been a repeat offender in Minnesota, told CBS-affiliate WCCO⁷⁶. He said that the IFI program did not force religion on him and noted that the power the program had by forcing him to be honest with himself. Others credit the importance of religion in the IFI

⁷⁴ “Innerchange Freedom Initiative.” Prison Fellowship website.

⁷⁵ “Faith-based Program Helps Inmates Stay Out of Jail, Saves Money.” *WCCO - CBS Minnesota*, November 26, 2012. <http://minnesota.cbslocal.com/2012/11/26/faith-based-program-helps-inmates-stay-out-of-jail-saves-money/>

⁷⁶ “Faith-based Program Helps Inmates Stay Out of Jail, Saves Money.”

program for the volunteers, if not the prisoners, as the motivating force for such involved and caring volunteerism⁷⁷.

As much as the program is Christian in message and method, the program is strongly communal, somewhat like Cain's at LSP. Prisoners live in the same housing areas for a year and a half, where they are educated and able to practice the moral improvements asked of them. They eat and pray together.

One major way where the IFI program at Minnesota varies from LSP is that inmates are released. IFI only accepts prisoners who are close to the end of their sentence. The IFI program works with released inmates for one year after they leave prison through "a local faith community" and provide mentoring and support. The volunteers who worked with inmates at the prison are another avenue of support outside its walls⁷⁸. These local faith communities could be an organized church or a faith-associated program such Alcoholics Anonymous.

IFI states its ambitious goal simply: "The InnerChange Freedom Initiative is designed to assist inmates who are seeking lifelong change and a new value system. As the result of a spiritual or moral transformation and the development of life skills needed for successful re-entry into their families and communities, inmates who complete the program leave prison better prepared to become productive citizens⁷⁹." The IFI program aims to provide prisoners a new system of morality, to change what they see as good and beneficial. It seeks improvements and changes in the soul of the prisoner as well as his actions and life skills - Improved citizenship and family membership. A main, yet subtle

⁷⁷ Shenoy, Rupa. "Christian-based program helps keep inmates from re-offending." *Minnesota Public Radio*, February 14, 2012. <https://www.mprnews.org/story/2012/02/14/prison-ministry>

⁷⁸ "Faith-based Program Helps Inmates Stay Out of Jail, Saves Money."

⁷⁹ "Faith-based Program Helps Inmates Stay Out of Jail, Saves Money."

difference between IFI and the moral rehabilitation program at LSP seems to be the end goal. For IFI, moral reformation of the inmates is the method toward a better citizen on the outside of the prisoner walls – a better father, a more productive employee, a law-abiding person. At LSP, the goal is a true moral reformation. Inmates are still expected to be good community members who follow the rules, but the ultimate goal for Cain may be salvation. Moral rehabilitation is the means and the end.

In 2012, ten years after IFI was established at Lino Lakes, the state of Minnesota released statistics on prisoners who participated in prison programs throughout the state. IFI was one of the most effective. The 732 IFI participants who were released between 2003 and 2009 and analyzed in the study were 40 percent less likely than the average Minnesota prisoner to be incarcerated again⁸⁰. IFI participants were also less likely to be rearrested or reconvicted and obtained employment at a higher rate. For many in the state, these statistics have the extra bonus at coming at no added cost to the state budget because the program is privately funded. "There is no cost to the taxpayers of the state of Minnesota. Yet it does reduce recidivism. And when offenders are not out there committing new crimes, the public is safer. That's a very practical reason for working with IFI," David Crist, deputy commissioner of the Minnesota Department of Corrections, told Minnesota Public Radio in 2012.

Crist has credited the faith-based component of IFI as possibly one of the most important aspects. The volunteer and mentoring aspects of IFI are clearly critical to released inmates' success after prison and also theoretically imitable through a secular

⁸⁰ Duwe, Grant. "What Works with Minnesota Prisoners: A Summary of the Effects of Correctional Programming on Recidivism, Employment, and Cost Avoidance." *Minnesota Department of Corrections* report, July 2013.
http://www.doc.state.mn.us/PAGES/files/6213/9206/2384/What_Works_with_MN_Prisoners_July_2013.pdf

program. However, Crist told MPR that the religious backing of IFI doesn't just provide a moral teaching, it's also what fuels the volunteers and leads mentors to be committed – a secular program may not have the same level of enthusiasm and zealous participation from outsiders. "The religious aspect of the program provides a calling for the volunteers to be mentors that you don't often get from other volunteers," Crist said. The devotion Crist alludes to may not just explain why the volunteers are committed to the prisoners, but also why the cost of the program is low – monetary motivation is not the driving force as it might be in a secular program.

IFI is supported by state officials and religious leaders for its anecdotal stories of moral rehabilitation and statistical evidence of lower recidivism rates and low cost. The program has also received a fair share of criticism in Minnesota and abroad. The Minnesota IFI program has been criticized broadly for its religious approach at a state facility as well as specifically criticized for its restrictive selection of only certain inmates who don't just want to participate but also meet the nearing release criteria.

Criticism of surveys done for IFI in Texas specifically may be able to be applied to the program more broadly. In the fall 2011 edition of the *Alabama Law Review*, Emory Law School Assistant Professor Alexander Volokh looked at the data on faith-based prison programs. He largely found that the data was insufficient to find conclusions and simply "there is no strong reason to believe that faith-based prisons work" because the data around them is so weak. "It is hard to determine the effect of faith-based prison programs because they are voluntary, and volunteers are more likely to be motivated to change and are therefore already less likely to commit infractions or be re-arrested ...

The only credible studies done so far compare participants with nonparticipants who volunteered for the program but were rejected,” Volokh wrote in his introduction⁸¹.

Most studies that Volokh analyzed were invalidated because of self-selection errors that rendered them insignificant. However, the Texas IFI study conducted by Bryon Johnson and David Larson was categorized by Volokh as “potentially valid” because of its use of rejected inmates. Johnson and Larson compared three data sets related to the IFI program in Texas 1. Participants, 2. Eligible inmates and 3. Those who were eligible and volunteered but were not necessarily selected to participate. The study didn’t find significant improvement for IFI participants. Volokh notes that IFI only shows lower rearrest and recidivism rates if the definition is changed from IFI participant to graduates. “IFI’s definition of ‘graduation’ is ‘quite restrictive’ and includes completing 16 months in the IFI program, completing 6 months in aftercare, and holding a job and having been an active member in church for the 3 months before graduation. Inmates could be removed from the program ‘for disciplinary purposes,’ ‘at the request of IFI staff,’ ‘for medical problems,’ and ‘at the voluntary request of the applicant’⁸²,” Volokh explained. Although he is outlining flaws in the data and expressing the conclusion that participants in IFI have no better outcome than their average inmate peer, Volokh also shows that a narrow definition of IFI graduation may be necessary to an inmate’s success. Maybe there is only success in the IFI programs in Texas and elsewhere if the inmate jumps through all of these required hoops, behind bars and afterward. Following this restrictive set of rules and becoming the narrowly defined graduate might be an inherent part of the process. The criticism of the program and the study by Volokh in his study

⁸¹ Alexander Volokh. “Do Faith-Based Prisons Work?” *Alabama Law Review* (Volume 63:1;43, 2011) <http://www.law.ua.edu/pubs/lrarticles/Volume%2063/Issue%201/2-Volokh.pdf>

⁸² Shere 81, Volokh

seem valid. However, they may or may not apply to facilities outside of those surveyed and it doesn't necessarily invalidate the program itself.

Although the IFI program in Texas is similar to the Minnesota program, and these are the only two currently in operation, there are still other complicating factors. A closer comparison to Minnesota may be the IFI program in Iowa at Newton Correctional Facility. Operating from 1999 to 2007, the IFI at Newton was partially funded by the Iowa Department of Corrections. In 2003, the advocacy group Americans United for the Separation of Church and State sued Prison Fellowship Ministries for its IFI program in Iowa. With IFI employees required to be Christian, IFI inmate participants held in separate housing facilities “immersed” in a Christ-based rehabilitation program and the state paying some of the cost, AU brought the suit under the establishment clause⁸³. The initial suit was brought in District Court for the Southern District of Iowa, tried in 2005 and found the IFI program in violation of the establishment clause leading to the program being expelled from the prison and requiring Prison Fellowship to repay Iowa the \$1.5 million that the state had paid IFI over the years to fund the program. The decision was appealed to the eighth circuit court of appeals and largely upheld, with IFI only having to repay the state funds after the initial trial but not before⁸⁴. AU successfully argued that there was discrimination related to the program against non-Christian inmates, much of which related to the living arrangement in the Newton facility for the IFI participants.

Although the IFI program was closed by the district court, and that ruling was upheld by

⁸³ “Americans United v. Prison Fellowship Ministries/Ashburns v. Mapes.” Americans United for the Separation of Church and States website. <https://au.org/our-work/legal/lawsuits/americans-united-v-prison-fellowship-ministriesashburn-v-mapes>

⁸⁴ Americans United for Separation of Church and State, et al., Appellees, v. Prison Fellowship Ministries, Inc., et al., Appellants. No. 06-2741 U.S. Court of Appeals for the Eighth Circuit. 2007. (<http://media.ca8.uscourts.gov/opndir/07/12/062741P.pdf>)

the appellate court, there is no permanent ban on Prison Fellowship or InnerChange from operating at prisons in Iowa⁸⁵.

As previously discussed, in the LSU Law Review article from Roy L. Bergeron, Jr., he similarly and flatly concludes that the LSP program would not withstand constitutional scrutiny in the way that it's operated, regardless of its potential benefits⁸⁶. However, Bergeron also introduces several potential ways that LSP or possibly other modern faith-based programs can get avoid legal issues. He argues that LSP could begin offering education pursuits through a secular medium rather than only through the seminary. LSP could create other programs that allow inmates to leave the prison, so that ministry inmates no longer get preferential treatment by being allowed to leave. And most importantly, the ministry and seminary could not get any funding from state funds, although Hallett and authors note that LSP currently has the ministry funded through the private seminary and donations⁸⁷. These recommendations could be applied to programs around the U.S. other than LSP broadly as well. Bergeron's recommendations avoid many of the criticisms of faith-based moral rehabilitation programs – forced religion, preferential treatment for religious members, misappropriation of funds for religious purposes – but also creates a program that is significantly more secular.

The AU case shows the many complications that can arise from the relationship between strong, ideological faith-based moral reformation programs and a state facility tasked with doling out punishments for crime. The lawsuit made clear the limitations of Christian programs in a prison and how these may be avoided with outside funding. Outside funding is now key to IFI and the program at LSP to insulate it from lawsuits.

⁸⁵ Ibid, 28

⁸⁶ Bergeron

⁸⁷ Hallett 15

However, this may be avoiding the larger arguments about if faith-based programs deserve such a large role in prisons and if it should be so beneficial for prisoners who participate. Criticism for LSP, IFI and other faith-based prison programs often focuses on cost, discrimination of non-Christians and equal access to participation. People are less focused on the role of moral reformation in the process of state punishment. Should the role of the state involve strictly punishing the criminal for the crime they were convicted of or giving them an opportunity to improve their moral values and save their souls? Is this type of opportunity for betterment still a punishment or an opportunity unavailable to many of the unincarcerated needy?

These programs are lauded by state leaders for their ability to provide prisons a free way to hold prisoners without cost and by believers for the successes of transforming hardened criminals into moral, practicing Christians. Many of the strongest criticisms are focused on the problematic data around faith-based programs in past surveys. However, neither state officials nor program advocates are interested in reforming their data or finding data that does not support the programs. Likewise, separation of church and state critics can dismantle some of these programs without the need for additional data gathering. To find the true effectiveness of these programs, across the nation, on a large scale, with significant data, much more research would need to be done. For now, it seems that the programs will have practical supporters liking the tight spending and low recidivism numbers, and religious supporters donating for the salvation of prisoner souls.

3.0 19TH CENTURY PENITENTIARY ORIGINS

At the corner of Fairmount and Corinthian avenues in Philadelphia, just blocks from the art museum and Schuylkill River, the tall walls of Eastern State Penitentiary still loom large. In a neighborhood of gentrifying, narrow brick homes and businesses, the long, 30-foot-high stone walls of the 19th century prison are still striking and ominous. It remains impressive in spite of the neighborhood playground, community garden and climbing green vines that surround the structure. The aging stone walls with their crenulated towers and crouching gargoyles give Eastern State a medieval feel - a castle out of time and place.

The Quaker-inspired penitentiary hasn't held criminals in more than four decades, officially closing in 1971, but the building remains busy. It has become a popular tourist attraction, possibly most famous for holding Al Capone in 1929. Visitors can walk through the old cell blocks learning from exhibits on "Race in U.S. Prisons" and viewing a display on an escape tunnel from 1945. The crooked city block that Eastern State occupies becomes particularly popular around Halloween, when visitors can hunt for ghosts and experience the former penitentiary as a haunted house.

Eastern State Penitentiary, despite now being tucked away in this residential neighborhood, is one of the most controversial and influential penal institutions that has ever existed. When it was built in the early 1800s, it was among the first institutions

created to hold criminals for long periods of time in individual cells; to imprison as a punishment. It was designed specifically to reform criminals - to help them become better citizens after they were released and save their souls while they were locked up. The solitary confinement that defined the penitentiary was the result of hopeful prison reformers and the subject of harsh criticism still through this day. Eastern State Penitentiary and the reformers behind its construction can be viewed as some of the earliest steps that led to modern mass incarceration in the United States. The penitentiary model centered on incarceration as a punishment for its convicts. Proponents argued that it could help reform inmates, in body and soul.

This incarceration that defined Eastern State when it was freshly constructed was popularized in 19th century America, but the concept of incarcerating many criminals for their own good as well as society's began centuries ago. In colonial America and throughout much of the world, criminals were regularly sentenced to pecuniary, capital, corporal or shame-based punishments. Jails were used for those awaiting execution or debtors and all were local institutions⁸⁸. It wasn't until after the Revolutionary War in the U.S., that the use of imprisonment and deprivation of liberty became a more popular option for punishment itself. In addition to punishing the criminal by depriving them of freedom, the jailing was designed to have the added benefit of moral reformation in the prisoner by forcing them to contemplate and reflect on their sins and misdeeds. This idea was not fully implemented until the creation of the first penitentiaries.

⁸⁸ Rafter, Nicole H., and Debra Stanley. *Prisons in America: a reference handbook*. Santa Barbara, Calif: ABC-CLIO, 1999. Print. Page 2

In *The Rise of the Penitentiary*⁸⁹, Adam Hirsch argues that early American penitentiaries have their history in three movements found in England. The first was the Tudor period treatments for idleness, the second was the Philanthropist concept that crime came from a person's distance from God, and finally was the work of English rationalists⁹⁰.

Idleness was viewed as the cause of sin and crime. Reformers sought to cure these ills by placing vagrants into workhouses where they would be transformed and reformed to be both no longer idle and learn the idea of work. The vice of idleness could be broken with hard labor and crime would decrease. Hirsch notes that workhouses were designed to be both rehabilitative and deterrent, mirroring the purposes of the penitentiaries to come later. The workhouses of the 1500s and beyond faced many issues with ineffective administration and funding shortfalls – issues that persist throughout prison reform time and time again. Hirsch argued that this movement was not a sincere attempt at inner reform and rehabilitation, but rather “habituation” addressing exterior actions. There were periods of reform and attempts at greater incarceration during this period as well as moves toward harsher, bloodier penalties as well. It was period of significant flux in criminal treatment, especially between tried criminals and vagrants.

The Philanthropist movement saw the issue of crime due not to idleness, but to an individual's distance from God⁹¹. They wanted to reform English law to make it more Christian and charitable and less brutal. Instead of hard labor and work houses, the Philanthropists focused on reforming specific criminals through incarceration and

⁸⁹ Hirsch, Adam Jay. *The Rise of the Penitentiary*. Yale University Press, 1992. Print.

⁹⁰ Hirsch, 13-17

⁹¹ Hirsch, 18-22

solitude. This “spiritual recovery⁹²” sought to change the morality of a prisoner by keeping him from the corrupting influence of others and allowing a closer connection to God. Inmates would be able to meditate on themselves. Some voluntary work was allowed to avoid idleness. Advocates of this 18th century movement were selective with participants, preferring younger criminals more likely to reform. This program ran into significant budgetary issues.

Also in the 1700s, the Rationalists argued for criminology reform⁹³. As Hirsch explains, they varied from previous reformers in that they saw crime not as sin but as a negative societal impact. The rationalists saw punishment as necessary only to prevent further social impacts. Controlling crime in a society lies in its environment in some way. One of the most influential texts of the rationalist movement in England was Cesare Beccaria’s *On Crime and Punishment*⁹⁴.

The 18th century Italian treatise was written during the Milan Renaissance, translated in the 1760s and widely read by politicians around the world. It has been quoted by John Adams and Thomas Jefferson and was influential to Jeremy Bentham⁹⁵. Beccaria, a politician and jurist, wrote this early work on penology to argue for reforms in the criminal law system. The treatise covers a wide array of subjects ranging from dueling and idleness to suicide and capital punishment. Beccaria firmly bases his arguments for punishment reform in social contract theory, repeatedly referencing the self-interest of each citizen and their reasoning for forming society out of mutual defense. He argues that because of self-interest, society is “only the sum of the smallest portions

⁹² Hirsch, 19

⁹³ Hirsch, 20-31

⁹⁴ Beccaria, Cesare, et al. *On crimes and punishments, and other writings*. Cambridge New York: Cambridge University Press, 1995.

⁹⁵ Hirsch, 20-31

of the private liberty of each individual⁹⁶.” In this lens, crimes are more simply selfish actions that don’t respect the shared loss of liberty within the societal contract.

Beccaria argues that man retains his right to life, in contrast to earlier theories like that of Hobbes. Hobbes argues that the sovereign's right to punish comes from retaining the right to violence in the state of nature when all the subjects lay theirs down. It is not a gift, and a man cannot willingly cause himself harm, but functionally the sovereign has the absolute authority to use violence and to punish⁹⁷. Beccaria’s argument contends that individuals cannot and do not give up the right to their own lives as part of a social contract. “Did anyone ever give to others the right of taking away his life? Is it possible that, in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all good, life?” Beccaria argues strongly against death penalties as punishment, saying their brutality is “pernicious to society” because of its barbarousness and akin to a state of war of the state against one man. He only permits capital punishment in the case where a man is already imprisoned but still presents a danger to the society’s existence, such as in the case of a revolutionary leader⁹⁸.

Instead of capital punishment, Beccaria argues for incarceration or a “perpetual slavery,” which he finds as cruel and a more dissuading punishment to criminals as death. “A punishment, to be just, should have only that degree of severity which is sufficient to deter others. Now there is no man who upon the least reflection, would put in competition

⁹⁶ Beccaria, 66-73 (The Death Penalty)

⁹⁷ Hobbes, Thomas, and E. M. Curley. *Leviathan: with selected variants from the Latin edition of 1668*. Indianapolis: Hackett Pub. Co, 1994. Print. Page, 204.

⁹⁸ Beccaria, 66-73, 10-12

the total and perpetual loss of his liberty, with the greatest advantages he could possibly obtain in consequence of a crime,” Beccaria wrote ⁹⁹.

The essence of Beccaria’s argument is that it is liberty that an individual gives up when entering a social contract, not the rights to his life. Therefore, a just punishment, under that contract, is more right to take away that limited liberty from the individual rather than his or her life. Further, Beccaria argued that the sentence of deprived liberty should relate to the severity of a crime. Treason is the most serious because of the damage it could cause to the society, whereas petty theft deserves a lesser sentence. Beccaria also argued that certainty of a punishment was more significant for deterrence than the severity of punishment. These ideas have remained in use today in sentencing laws.

Beccaria didn’t strictly argue for incarceration, but rather a continuous labor akin to state-run slavery. His arguments were influential on other and later criminal law reformers, particularly Bentham. While Beccaria argued for reforms to the law, Bentham added a social environmental element to the equation. Rationalists understood their inability to prevent crime completely and therefore decided the best outcome would be to rehabilitate the criminals themselves, to limit the negative societal impact. Incineration served the added purpose of removing the criminals from the population and therefore limiting their ability to commit crimes as well as serving as a looming reminder of what punishment would await criminals.

In America, the underlying British principles that Hirsch explains influenced prison reform efforts and were combined with additional religious ideologies. They were put into practice after the Revolutionary War with the first penitentiaries.

⁹⁹ Beccaria

There were several houses of correction or places of incarceration that developed around the same ideas and time period, such as Castle Island in Massachusetts¹⁰⁰, but the most-cited first penitentiary was the Walnut Street Jail in Philadelphia¹⁰¹. This penitentiary, built in 1773, operational in 1790 and abandoned by 1835, was designated to implement the ideas of the Quaker religion and Pennsylvania's founder William Penn. In his original declaration of Pennsylvania's laws, in 1682, Penn outlined the use of imprisonment in a house of corrections or workhouse for punishment rather than the use of execution or lashes. The Quakers did not permit the use of capital punishment due to their peaceful religious beliefs. During the British Colonial period, the Pennsylvania population did not have complete control over their criminal code and were required to use British penal laws. It is likely that some workhouses were built in Pennsylvania during the early 1700s, but they were not used as Penn suggested and operated as holding cells rather than places for reform¹⁰².

Walnut Street Jail was originally erected in the early 1770s to help with the growing city size and rise in property crime hitting the city. After the Revolutionary War, Philadelphia began to use the Walnut Street Jail as a house of punishment and reformation itself. In 1787, Benjamin Rush, a U.S. founding father and doctor, helped found the Philadelphia Society for Alleviating the Miseries of Public Prisons, which became a driving force behind Philadelphia and U.S. prison reform. Rush argued for the abolishment of the death penalty in Pennsylvania following Penn's ideas and echoing many of Beccaria's arguments. He said that except in the case of murder, the state should

¹⁰⁰ Hirsch, 20-31

¹⁰¹ Teeters, Negley K. *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia 1773 - 1835*. Temple University, 1955.

¹⁰² Teeters, 10

not carry out capital punishment because a man does not own his own life, a man owns his property and liberty, and taking of these are more just punishments. In addition to advocating incarceration, Rush's organization made greater calls for isolation. As explored earlier with the Christian reformers in England, isolation was seen as the only way to avoid corruption from fellow criminals when people are incarcerated and give reformation a chance. This became a major tenet of the Pennsylvania and U.S. penitentiary reformation movement.

Replacing capital and corporal punishments, Philadelphia prison reformers used deprivation of liberty as the punishment itself in Walnut Street. Local authorities had more power over punishment following the war than they had had under British rule, and the concentrated Quaker population had a significant impact on penal changes in the city¹⁰³. The jail was built like a home at first, with large rooms for holding multiple prisoners. In the 1790s, 16 single cells were added inside. These were designed to hold the worst offenders alone and away from the others. It served the practical purpose of criminal segregation based on crime severity as well as the Quaker hope that this removal from the rest of the population could lead to penitence. In these single cells maybe the criminal would contemplate his crime and his punishment. Maybe he was still able to be redeemed; maybe he could find his "inner light" toward God that Penn preached.

The Walnut Street Jail became the model for numerous penitentiaries and prisons around the U.S. that were constructed specifically to incarcerate convicts for a period of time as a punishment. Although a model for others, Walnut Street Jail quickly became overcrowded and impractical. The real innovative penitentiaries were those that were inspired by Walnut Street and determined to improve upon and replace the old jail house

¹⁰³ Rafter, 3

style. These new penitentiaries were constructed specifically to enforce the values the reformers wanted; they created a physical and social environment of punishment aimed only toward reformation and rehabilitation. Adding to the older ideas of labor and incarceration as punishments, these newer 1800s penitentiaries included focuses on isolation, silence and solitary confinement, stronger than was first introduced by the Philanthropists in England. Although there were several penitentiaries constructed around this time period that built on these same core ideas, the two most notable, ideologically strong and influential are the Pennsylvania System and the Auburn System. The two systems were chronicled and analyzed in *On the Penitentiary System in the United States and its Application to France* by Gustave de Beaumont and Alexis de Tocqueville in their 1830s visit to the United States with the aim of reforming penal practices in France.

4.0 THE PENNSYLVANIA SYSTEM

Eastern State Penitentiary¹⁰⁴ was commissioned to replace the Walnut Street Jail. It officially opened in 1829. The northwest Philadelphia prison was designed to fit the reform ideas of the Philadelphia Society for Alleviating the Miseries of Public Prisons and was funded by the state legislature. With 450 single cells, Eastern State Penitentiary was significantly larger than Walnut Street, which had only 16. Most importantly, the penitentiary was designed to have no shared cells or holding areas. Eastern State's design, created and overseen by British architect John Haviland, was both state of the art and highly influential. The prison included a radial or wagon wheel design where seven cell blocks radiate out from the central building like spokes. The radial design has been used by hundreds of other prisons subsequently. Each cell block included one hallway and a row of 8-foot-by-12-foot cells on either side of the hall with outdoor access on each side. This allows for each individual cell to have access to the outside without ever interacting with another prisoner. Inmates would never even need to walk past another cell. Surrounding the 11-acre radial design was a 30-foot-high stone wall, designed to project strength¹⁰⁵. Eastern State is often acknowledged as the first penitentiary in the

¹⁰⁴ Multiple Eastern State Penitentiary sources: "Timeline." Eastern State Penitentiary website. <https://www.easternstate.org/learn/timeline>; Bowditch, Christine. *Eastern State Penitentiary*. Video Documentary. Dir. Christine Bowditch. Waterville, ME : Forged Images Production Cooperative, ©1998.; Rafter

¹⁰⁵ Colvin, Mark. *Penitentiaries, reformatories, and chain gangs: social theory and the history of punishment in nineteenth-century America*. New York: St. Martin's Press, 1997. Print. Page, 85

world. It was founded on the ideals of and represented the Pennsylvania System of penitentiary reform. It was highly admired in Europe for unique approach to punishment and reform, but practically the Pennsylvania System was less adopted than the Auburn System in the United States¹⁰⁶.

The ideology that drove the Pennsylvania System and the reality that ruled Eastern State penitentiary were different. The Pennsylvania model was first defined by its absolute solitude and silence¹⁰⁷. The environment of silence and solitude was supposed to create a space for inmate meditation and soul reclamation. The use of labor and moral instruction would help inmates pursue that goal¹⁰⁸. The prison also sought to create a “model citizen¹⁰⁹.” The model citizen was one who worked industriously by himself - a self-sufficient, laborer, isolated man.

The construction of the penitentiary allowed for prisoners never to interact with another inmate, and the rules of the prison required absolute silence from every prisoner. These policies served several purposes. First, a prisoner would have a level of anonymity and form no new connections with other criminals. Therefore, when a prisoner was released after serving a sentence, he would not be able to be identified or congregate with fellow prisoners - an attempt to limit crime growth within and outside prison walls. Secondly, and more ambitiously, the solitude was designed to force a prisoner to reflect on his crime. A chance for him to feel sorrow and regret - to become truly penitent. The life of solitude could lead the prisoners to the inner light the Quaker’s desire and a closer connection with God.

¹⁰⁶ Rafter, 6

¹⁰⁷ Kahan, Paul. *Eastern State Penitentiary: a history*. Charleston, SC: History Press, 2008. Print.; Eastern State Penitentiary official Sources, Rafter

¹⁰⁸ Colvin, 83

¹⁰⁹ Colvin, 88

The solitude of the prison was not complete desolation, however. Inmates were allowed to work on artisan crafts. The labor was designed to avoid the ills of idleness as well as provide the criminal with a skill when he was returned to society. It is one of the many aspects of the Pennsylvania model that serves a moral reformatory and practically rehabilitative purpose. The majority of criminals at Eastern State in the 1830s were in there for larceny, with other popular crimes including burglary, horse theft and forgery¹¹⁰, which makes teaching the inmates an employable skill a logical rehabilitative practice. The most popular work was shoemaking sewing, carpentry, brush-making and other artisan skills¹¹¹. All of the work would be done in the single cells. The prisoners often “begged for work,” seen by reformers as proof of the practice’s effectiveness¹¹² but can be viewed as evidence of boredom and idleness inherent in solitary confinement. Some of the small, solitary cells would be filled with large looms and other work materials. Although the purpose of having labor being restricted to these areas was to allow the prisoners to work on their own when they returned to society, other argued that people were being trained for obsolete jobs. The inmates were being trained for old crafts, which were still thriving in and around Philadelphia, rather than the new free labor need in the changing industrial economy¹¹³.

In addition to work, the inmates did interact with some people. The warden, overseers, Society for Alleviating the Miseries of Public Prisons volunteers and doctors would visit inmates’ cells. The warden was supposed to interact with every prisoner every day. These visits were to ensure that the prison was operating as it was designed to

¹¹⁰ Kahan, 35

¹¹¹ Kahan, 31

¹¹² Colvin, 87

¹¹³ Colvin, 83-90

as well as to provide a level of moral instruction to the prisoners to aid their reformation. The inmates would often talk to the warden or reformers about their regrets and remorse. These confessions rarely saw a reduction of sentence however, with most Eastern State prisoners filling their entire sentence without leaving their cell¹¹⁴. Inmates were also able to read to bible and practice religion as part of their solitude. Three of the eight core rules of Eastern State Penitentiary refer to respecting the authority and directions of the warden and other prison staff; another is concerned with respecting the Sabbath. The remaining rules required silence, industriousness in work and mindful improvement, returning of uneaten food, and cleanliness¹¹⁵.

Practically, the solitary confinement at Eastern State was also viewed as a fittingly harsh punishment to replace capital and corporal punishments. The Society for Alleviating the Miseries of Public Prisons described the harshness of solitude in prison as a positive. “It may be assumed as a principle that the prospect of a long, solitary confinement, hard labor, and a very plain diet, would, to many minds, prove more terrible than even an execution; where this is the case, the operation of example would have its full effect, so far as it tended to deter other from the commission of crime.”¹¹⁶

Eastern State’s solitary confinement practices were criticized soon after the prison opened. Most importantly and famously, Charles Dickens argued against solitary confinement at Eastern State Penitentiary following a visit in 1842’s *American Notes*. He wrote,

Looking down these dreary passages, the dull repose and quiet that prevails, is awful. Occasionally, there is a drowsy sound from some lone weaver’s shuttle, or shoemaker’s last, but it is stifled by the thick walls

¹¹⁴ Colvin, 87

¹¹⁵ Kahan, 31

¹¹⁶ Kahan 31

and heavy dungeon-door, and only serves to make the general stillness more profound. Over the head and face of every prisoner who comes into this melancholy house, a black hood is drawn; and in this dark shroud, an emblem of the curtain dropped between him and the living world, he is led to the cell from which he never again comes forth, until his whole term of imprisonment has expired... He is a man buried alive; to be dug out in the slow round of years... I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature.¹¹⁷

In 1842, the penitentiary stopped using the term “solitary confinement” and replaced it with “separate confinement” arguing that the prisoners had interaction with some people, just not fellow inmates.

Solitary confinement was not the only controversy that Eastern State Penitentiary and the Pennsylvania system faced. The methods of punishment used in Eastern State to punish rule-breakers were highly controversial. Without the ability to resort to solitary confinement (because of its necessity to everything the prison did) and the ideological opposition to corporal punishment, Eastern State had to turn to other methods. At times administrators would limit the few pleasures a prisoner had, such as taking away the one hour of solitary outdoor recreation or the amount of limited, plain food he received. Other punishments included, most infamously, the iron gag which was placed in a prisoner’s mouth and chained to the back of his head to prevent talking. The iron gag was seen by some reformers as a humane punishment, but it did kill at least one inmate¹¹⁸. Other “humane” punishments included straitjackets, tranquilizing chairs and

¹¹⁷ Dickens, Charles. *American Notes*. New York, St. Martin’s Press, 1985. Print.

¹¹⁸ Kahan, 39

the shower bath¹¹⁹. These punishments were criticized along the lines of solitary confinement for their cruelty, but show the thinking of reformers at the time well. The uses of incarceration, solitary confinement, labor, and straitjackets all cause limited bodily harm, but can lead to significant mental and emotional damage. They attack soul and mind, not just body. The agony and insanity that Dickens sees in his assessment is a whole new outcome of punishment. For centuries the idea of punishment was physical or shame-based. It was an outside force creating the punishment, either whip, noose or town's person. But now, with the isolation, the prisoner can torture himself. His own mind provides the cruel punishments and the reformers have simply provided the restricted environment for the seed to germinate.

Thomas Dumm concluded that the Pennsylvania System was in a narrow way a success in his 1987 book *Democracy and Punishment*, which examines penitentiaries through a political context. However, Dumm sees the prison's impact and purpose not as moral reformation or true rehabilitation. He argued that because there is no hard data on recidivism for penitentiaries at this time period that analyzing the system by its impact on recidivism is unhelpful. Rather, he wrote that the ultimate effect of the Pennsylvania System was closer to Benjamin Rush's initial goal when starting Eastern State Penitentiary, which he views as social and political manipulation. "The Pennsylvania system punishment represented the completion of Rush's revolutionary vision. As Rush hoped, a method for achieving total control over the behavior of subjects was quite possible and useful or effecting change in their character. If they failed to be reformed - in the sense of receiving in their blessings of Inner Light - at least the prisoners in the

¹¹⁹ A torture device combining movement restriction with pouring water over the inmate - Similar to combining the pillory with waterboarding.

Pennsylvania system would learn one fundamental lesson, that they were alone in the world. Perhaps they would learn that solitude is the condition of all members of society¹²⁰.” Dumm concluded that these isolated individuals work perfectly in the republican form of government.

Although many see the Pennsylvania System punishment practices as particularly and uniquely cruel compared to the somehow simpler corporal and even capital punishments, the way they attack the soul and mind seems to be aimed at something good. The cruelty of the punishments was not a sinister, hidden purpose of the original reform ideas, but rather an unintended, disastrous outcome. The reform efforts for true moral and civic reformation seem sincere and were at times successful. There are reports of prisoners feeling “reformed” and of wardens who saw entire cell blocks of happy men each day. However, the stories that dominated were those like Dickens describing countless broken, bleak men on the cusp of insanity¹²¹.

Eastern State Penitentiary ended its official operation in 1971 and has since become a tourist attraction. The isolation model so important to the Pennsylvania model ended earlier however, in 1913. Separate cells were unofficially ended in the 1860s due to holding needs during the Civil War. Although built on lofty goals, there was no time when Eastern State Penitentiary or the Pennsylvania System fully and properly implemented the ideals reformers wanted. Prisoners were able to communicate with each other through architectural flaws and there is at least one example of a prisoner having an affair with a American Philosophical Society member who volunteered at the prison¹²². The complex and ambitious system built on solitude, silence, labor and penitence may

¹²⁰ Dumm, 111

¹²¹ Kahan, 39

¹²² Kahan 47

have been too complex to fully implement as a practical prison for criminals. The Pennsylvania System died during the Civil War. It was no longer the cutting edge, popular or useful penal option and began to disappear. It was never fully realized and may not even be possible. The idea of placing a criminal in a secluded, specially designed space for him to transform himself into a better citizen, an able worker and a morally rehabilitated man with help from the bible and penitentiary support is noble, but unprecedented and very ambitious. Although there may be a chance at radical moral reformation, true penitence and wholesome regret, the inmate is trapped in the prison and will be broken into an isolated being unable to leave his cell. It is a punishment of body, soul and mind.

5.0 THE AUBURN SYSTEM

The New York penitentiaries, Auburn and Sing Sing, collectively referred to as the Auburn System, had a different approach and goals than the Pennsylvania System. The Auburn System came out of the same impulses for penal reform in the U.S. in the late 18th and early 19th centuries, and had the same strong concept of incarceration, but the religious and intellectual tradition was reduced and different from the Pennsylvania model. The spiritual and intellectual concerns of the Quakers and Philadelphia society under Rush were not predominant in Auburn¹²³. Instead, the region was largely Calvinist and greatly affected by Charles Grandison Finney and the religious awakening of the 1820s. This movement preached repentance which helped drive support for the Auburn System in the region at the time, but ultimately didn't have the same long-term religious presence in the prison as the Pennsylvania Quakers.

The penitentiary in Auburn, New York, was built in 1817. Auburn is about 250 miles from Manhattan and not along a main river, making it a less popular attraction for visiting prison researchers and Europeans than Sing Sing which is on the Hudson River and near New York City. In Auburn's early days, before its "system," was created, it was modeled on and operated like Walnut Street Jail, using solitary confinement and seeking

¹²³ Colvin, 89

to instill penitence¹²⁴. However, by 1823, Auburn moved away from solitary confinement. The shift may have been because it was driving inmates insane, because the prison wanted to have inmates labor more productively together in groups, or a combination of these two reasons. Auburn was also not constructed the same at Eastern State Penitentiary. It was not built specifically to hold inmates in solitary confinement for long periods of time. Though, there were single cells with thick walls making it difficult for inmate communication and impossible to see guards before they were in front of the cell, which instilled fear and discomfort in the prisoners.¹²⁵ The cells were small and there were no outdoor prison yards easily accessible. Five of the first 80 inmates died under the solitary confinement policy¹²⁶. Also, sanitary conditions were poor under the solitary model at Auburn.

As the prison moved away from solitary confinement, the state was forced to create a new model: the Auburn System. The solution was to break the spirits of the prisoners in order to maintain the penitentiary idea and avoid a return to capital and corporal punishment. The Auburn System is defined by solitary confinement at night, labor with others during the early morning and day, strict obedience to a rigid daily schedule and complete silence at all times. The silence was used along with rules against eye contact with other inmates or communication at any time to create a virtual isolation. There was constant surveillance of the inmates when they were together to create an extra set of walls around each prisoner. The Auburn System was defined by strict code of conduct, swift discipline and complete oppression. The system became more refined and

¹²⁴ Colvin, 89

¹²⁵ Colvin, 89

¹²⁶ Dumm, 116

brutal when it was instituted at Sing Sing, which was built in 1828¹²⁷. The constant surveillance and silence allowed for uninterrupted labor and complete control by the prison administration but avoided the costly overhead of specially designed cells and buildings that Eastern State Penitentiary had¹²⁸.

The Auburn System's goal to break the prisoners down completely would help ensure peacefulness within the prison and allow for the possibility of reformation by stripping away everything. The goal was a mental state of submission and men who were completely silent work machines¹²⁹. There was little effort made at religious or spiritual instruction, unlike that seen in Eastern State Penitentiary. There were no rewards for good behavior or deviations from the daily schedule. The Auburn System required six monotonous days of labor each week¹³⁰. Inmates would carry their water, food containers and toilet buckets in the same way each morning to start the day - in the same hand, on the same route, marching the same way.

Punishment for breaking these strict rules and routines was harsh. Punishments included flogging, a sharp contrast from Pennsylvania System. Flogging was allowed by New York in 1819 and was used by the Auburn System administration to maintain their system. This corporal punishment ran counter to the original intent of the incarceration model that the penitentiary was founded on. Physically violent punishments were used at Auburn and were particularly cruel at Sing Sing, where administrators operated with little oversight and great fear of prison riots¹³¹. Excessive and unnecessary flogging was

¹²⁷ Colvin, 91

¹²⁸ Dumm, 117

¹²⁹ Lewis, W D. *From Newgate to Dannemora : the rise of the penitentiary in New York, 1796-1848*. Ithaca, N.Y: Cornell University Press, 2009. Print. Page, 84-88

¹³⁰ Colvin, 88-107

¹³¹ Colvin, 88-107

frequent at Sing Sing¹³². The violence helped keep prison peace and maintain the public opinion of discipline with the Auburn System.

The Auburn System was politically popular because of its potential profitability. Prison officials would make money from prisoner labor through contracts with private businesses. If income was not sufficient, prison officials were able to ensure profits by reducing the quality of inmate food and care, leading to poorer prison conditions. Despite bad conditions, officials used coercion and discipline to maintain the level of prisoner labor they wanted. Versions of the Auburn System were adopted all across the United States in the 1830s, easily sold to legislatures for its profit and the possibility of reformation¹³³.

One of Auburn's core concepts - the necessity of silence - actually presented difficulties for the profitability and business aspect of the model. The practical function of the system for making money undercut the philosophical component of penitence. Rather than being able to communicate directly to laborers throughout the day, the private contractors who hired the prison labor would have to talk through prison officials, an inefficient means of communication. To fix this issue, eventually contractors were allowed to communicate with the inmates. This ultimately and permanently hurt the integrity of the discipline and silence that the system was built upon. Overcrowding in the prisons, construction flaws at Sing Sing and other defects also led to an erosion of the Auburn System in the 1830s¹³⁴. Internal issues, such as these, were compounded by

¹³² Lewis, 150

¹³³ Colvin, 95-99

¹³⁴ *ibid*

criticisms of cruelty from Pennsylvania System advocates and New York and Massachusetts reformers and political elites¹³⁵.

It is doubtful that true moral reformation along that of the Pennsylvania System was ever the goal of the Auburn System. The use of corporal punishment within the prison and a lack of strong philosophies when shifting away from the Pennsylvania model support this point. Further, although there was labor and silence and some solitude, there were no positive contributions to reformation. The tools were there to tear down criminals, but there were no volunteers and teachings to help them reform into better people. The Auburn System was a profit-focused attempt to make money off of holding criminals as punishment, which led to its popularity and wide adoption, but the practical concerns of maintaining the penitentiary as a business damaged any attempt it had at greater reform. The inmates were more important to the prison officials as obedient, quiet employees than as penitent men ready for reformation. Thomas Dumm plainly stated that Auburn's goal was to "reshape prisoner action" not "reconstitute the inner self of the inmate¹³⁶."

¹³⁵ *ibid*

¹³⁶ Dumm, 119

6.0 BEAUMONT AND TOCQUEVILLE'S ANALYSIS OF U.S. PENITENTIARIES

In the 1830s, Gustave de Beaumont and Alexis de Tocqueville traveled from France to the United States to study penitentiaries. On this journey, Tocqueville made the trips and observations that led to his famed *Democracy in America*. But the stated purpose of the trip was simpler: Beaumont and Tocqueville were sent to the U.S. to observe, describe and analyze the penitentiary models of the U.S. and see how they could be used to improve penal practices in France. Beaumont and Tocqueville spent the majority of their text looking at the Auburn and Pennsylvania systems. Their descriptions of the penitentiaries are eloquent and accurate in light of modern descriptions and analyses of the penitentiaries. For example, about the Pennsylvania System the authors wrote, “What would become during the long hours of solitude, without this relief, of the prisoner, given up to himself, a prey of remorse of his soul and the terrors of his imagination? Labor gives to the solitary cell an interest; it fatigues the body and relieves the soul¹³⁷.” Here, Beaumont and Tocqueville describe the theory and practice of solitary confinement in the Pennsylvania System. They are critical of its dangers to sanity, acknowledge solitude’s possibility to produce remorse, and explain the purpose and necessity of labor to the whole project. With the Auburn System, the authors wrote, “We

¹³⁷ Beaumont and Tocqueville, 57

see that silence is the principal basis of the Auburn system; it is the silence which establishes that moral separation between all prisoners, which deprives them of all the dangerous communications, and only leaves them those social relations which are inoffensive¹³⁸.” Beaumont and Tocqueville define the most important aspect of the Auburn System and describe how it disarms and neuters the prisoners, erecting invisible walls among them. Their descriptions are as useful for modern readers of *On the Penitentiary System* as they were for 19th century lawmakers, but it's the conclusions and analysis by the authors that are most important for analyzing modern moral reformation and penal practices.

Beaumont and Tocqueville see the Pennsylvania and Auburn system diverging along practical and philosophical lines. The Auburn System is more strictly useful and creates more practical skills in the inmates, but the Pennsylvania System is more ambitious, more philosophical and possibly has more promise for a deeper, moral change.

Beaumont and Tocqueville wrote:

[S]ince there exist no moral communication among them. At Auburn they are really isolated, though no walls separate them. Their union in the workshops has, therefore, nothing dangerous; it has, on the contrary, it is said, and advantage particular to it, that of accustoming the prisoner to obedience.... it is to give him the habits of society, and first to teach him to obey... It is thus that the Auburn discipline gives the prisoners the habits of society which they do not obtain in the prisons of Philadelphia¹³⁹

There is a sense that in *On the Penitentiary* that the authors see the reform at Auburn as more realistic and societally useful. Auburn's conditions were less connected to a strong theory of moral reformation like that of the Pennsylvania system and were therefore also closer to the real world. Auburn's inmates would leave with the knowledge of how to

¹³⁸ Beaumont and Tocqueville, 59

¹³⁹ Beaumont and Tocqueville, 58-59

work with others in a shop or factory and feel their own sense of isolation at the same time without needing physical barriers.

Despite viewing the Auburn System as more practically useful for society, Beaumont and Tocqueville admired the ambition and philosophical backbone of the Pennsylvania System.

This system is undoubtedly a conception that belongs to the highest philosophy; in general, it is simple and easy to put into practice... in the prisons of Auburn, Wethersfield, Sing Sing, and Boston, the system of reformation does not rest upon so philosophical a theory as at Philadelphia... The Auburn plan, which permits the prisoners to assemble during the day, seems indeed, less calculated than that of Philadelphia to produce reflection and repentance¹⁴⁰.

The authors further argue that the Pennsylvania System may have a greater impact on those who are more intelligent, learned and introspective already. They note that the impression made by the system is “deep” but possibly fleeting and ending with the sentence of the prisoner - that the walls and system are necessary to change the criminal but that they return to their old ways after release¹⁴¹. The isolation created a false world of repentance and once the criminal is released he will not know how to act - it was a trial of moral strain he can now overcome once released. “Is it not to be feared that he will greedily search for those social enjoyments of which he has deprived so completely? He was dead to the world, and after a loss of several years he reappears to society, to which, it is true, he brings good resolutions, but perhaps also burning passions, from their being the longer repression,”¹⁴² they questioned.

Analyzing the flaws and promise of the two different approaches helped serve Beaumont and Tocqueville’s purpose of finding the best features of the combined

¹⁴⁰ Beaumont and Tocqueville, 85

¹⁴¹ Beaumont and Tocqueville, 84

¹⁴² Beaumont and Tocqueville, 84

penitentiary idea to report back to the French. If the ultimate goal was to reform penal practices in France, the specifics of the Auburn or Pennsylvania system are only important to understand what works best, what is flawed, how and why. Therefore, their ultimate conclusions about penitentiaries review both the systems and the underlying theories. The authors strip away the ambitious philosophy underlying the Pennsylvania System and the complicating factors of violence and profit-focus in the Auburn system to find the core advantages of a unified penitentiary system. Beaumont and Tocqueville find three advantages to the penitentiary system in the U.S.: the inability for inmates to corrupt one another due to isolation or silence; the likelihood of better “habits of obedience and industry” through labor which can make them more productive citizens; and the possibility of “radical reform¹⁴³.” These three advantages are found in both systems and beneficial to the greater society. A penal practice that prevents the problem of incarceration (mutual corruption), creates better citizens and could lead to moral reformation is plainly positive.

One of the most striking aspects of their assessment of penitentiaries is the belief that moral rehabilitation is possible but should not be counted on. They do not argue that the system can create moral rehabilitation as the reformers who invented the prison systems tried. Beaumont and Tocqueville explain that the attempt at true moral rehabilitation is an “admirable” goal, but one that is “too rarely obtained.” They argue that if the true purpose of the penitentiary is to create moral rehabilitation then the legislatures should close down the prisons, because it is unlikely, unrealistic and should not be the penal goals of the society. “Moral reformation of a man, which is an important affair for a religious man, is little for a politician ... an institution is only political if it be

¹⁴³ Beaumont and Tocqueville, 91

founded in the interest of the mass; it loses character if it only profit a few¹⁴⁴,” they wrote.

Beaumont and Tocqueville write often on the democratic nature of penitentiaries and the role of public opinion. The operation of penitentiaries and the use of corporal punishment are only permissible as far as public opinion permits, surveilling the prison officials as they do to the inmates at Auburn and Sing Sing¹⁴⁵. Thomas Dumm compared the descriptions of penitentiaries in this work to *Democracy in America*, while noting the similarities and arguing for the uniquely liberal democratic characteristics of penitentiaries. He wrote that the waning and waxing nature of prison reform movements in the U.S. mirror Tocqueville’s description of the “shallowness of enthusiasm” in democratic masses¹⁴⁶. Similarly, Dumm compares the descriptions of penal practices by Beaumont and Tocqueville to the descriptions of democratic citizens by Tocqueville later noting their similarities, such as the emphasis on isolation¹⁴⁷.

For Beaumont and Tocqueville, the moral realm of penitentiaries should have a lesser role, one of only possibility, while the limiting of prisoner corruption and civic reformation are most important. They view the reformation that the penitentiary is capable of as slow, slight and societal. “Perhaps leaving the prison he is not an honest man, but he has contracted honest habits. He was an idler; now he knows how to work. His ignorance prevented him from pursuing a useful occupation; now he knows how to read and write; and the trade which he has learnt in prison, furnishes him the means of

¹⁴⁴ Beaumont and Tocqueville, 89

¹⁴⁵ Beaumont and Tocqueville, 64-65

¹⁴⁶ Beaumont and Tocqueville, 114

¹⁴⁷ Dumm, 139

existence,” they wrote¹⁴⁸. Beaumont and Tocqueville saw a penitentiary that was more school than the moral rehabilitation reformers aimed for. These less ambitious goals are useful however in achieving the authors’ three advantages of the penitentiary and fit well into the political, public opinion role of the penitentiaries. In analyzing the data, Beaumont and Tocqueville state clearly that the penitentiaries are significantly better than older jails in the U.S and Europe with recidivism at nearly one-fourth the rate¹⁴⁹.

At the end of their study and report, Beaumont and Tocqueville come to two conclusions. First, they state that they have discovered that any free prison communication is damaging to the inmates. They wrote this statement as a timid recommendation of the penitentiary and a confident negative about alternatives. “As for us, as much as we believe that the system founded on isolation and silence is favorable to the reformation of criminals, we are equally inclined to believe that the reformation of convicts who communicate with each other is impossible¹⁵⁰,” they recommended.

Secondly, Beaumont and Tocqueville made a recommendation of what France should do based on their research on the penitentiaries in America. From their recommendation, readers can understand what they think are the most important aspects they observed in the penitentiary model both practically and theoretically. Not just what they liked the most, but what they think can work in a real penitentiary. Although in their account it is filtered through French cultural, legal and political concerns, it is still the most useful part of their report for understanding potential improvements that could be made to modern U.S. moral reformation practices. Beaumont and Tocqueville wrote,

¹⁴⁸ Beaumont and Tocqueville, 90

¹⁴⁹ Beaumont and Tocqueville, 102 - Unclear what data they’re using here

¹⁵⁰ Beaumont and Tocqueville, 118

We have signaled in the first two parts of this report the advantages of the penitentiary system in the United States. The inflexible severity of a uniform system, the equality of punishment, the religious instruction and labor substituted for the system of violence and idleness; the liberty of communication supplanted by the isolation or silence; the reformation of the criminals instead of their corruption; in the place of the jailors, honorable men who direct the penitentiaries; in the expenditure, economy, instead of disorder and bad management; these are the character which we acknowledged in the new American system,” the authors wrote before calling for a serious deliberation of the legislature and stating a hope for true prison reform¹⁵¹.

These concluding statements draw both from the realities of each prison system and add a sense of hopefulness about their management going forward. In *On the Penitentiary*, Beaumont and Tocqueville analyze the theory of the penitentiary system and the realities of the Auburn and Pennsylvania systems. They allude to the aspects that would be the ultimate undoing of the systems and outline its best potential advantages. The authors examine the history of the penitentiary system through the purpose of some of the punishments. By referring to the place of labor in punishment, the role of the prison in fighting illness, and the concept of incarceration itself, they’re showing the parts of the earliest theories and reform movements that made it to the 1830s. They describe the realities of the prisons with poetic detail and analytical insight, painting the silence of Auburn as haunting and effective, for example. Beaumont and Tocqueville also focus on the need for honorable jailers and the danger of corporal punishment being a tenet for the penitentiary practice in case fickle public opinion changes. They note the damage that a sincere moral reformation attempt can do if it's the ultimate political end. In these was, Beaumont and Tocqueville saw some of the paths that ultimately led to the decline of penitentiaries.

¹⁵¹ Beaumont and Tocqueville, 134-135

They outline all the advantages of the system plainly in their concluding recommendation to the French people: Orderly facilities, honorable jailers, practical reformation of criminals, isolation or silence, labor, opportunity for religious instruction, uniform punishment, and rigid structure.

7.0 COMPARING PAST AND PRESENT

Comparing Beaumont and Tocqueville's analysis and conclusions, which encompass the original theories and goals of the old penitentiaries, to the new moral reformations movements, particularly the program at LSP, illuminates the similarities between the systems as well as crucial differences.

A clear similarity, and the most important lasting impact, of penitentiaries on the modern moral reformation programs and in U.S. penal systems overall is incarceration. Although not long discussed by Tocqueville and Beaumont in their examination, incarceration is inherent in their study and recommendation of penitentiaries. Since the introduction of long-term holding with Walnut Street Jail as a more humane form of punishment, incarceration has largely been the punishment of choice in the United States. This is most important legacy of the penitentiary experiment. The classical liberal formation of the state's right to a citizen's life as a form of just punishment, as articulated by Thomas Hobbes for example, is still permissible in the United States, with many qualifiers. However, the arguments made by Beccaria and Rush have had greater sway with the public opinion that Beaumont and Tocqueville credit so greatly as needed for penal reform, and have affected sentencing law and practice. The federal government and many state governments retain the right to execute criminals for certain crimes in modern America, but the right is not always exercised and most crimes are treated with

imprisonment instead, taking away a man's liberty rather than life. Although incarceration itself, as opposed to flogging or shame-based punishments, has become the predominant form of punishment in America and has greatly expanded since the early 19th century, the form of holding and prison construction has changed greatly. Despite the many changes and controversies previously described in the history of LSP, it incarcerates criminals, just as Eastern State Penitentiary and Auburn did. This practice seems unlikely to change without a massive shift in public opinion about the correct form of punishment.

One of the areas of the 19th century American penitentiaries that Beaumont and Tocqueville noted as necessary for success was orderly operation of penitentiaries and honorable administrative leadership. Whether this was ever achieved in the Pennsylvania System or Auburn system is debatable. Eastern State Penitentiary for example never was operated completely according to the theory it was created for, and Sing Sing was administered with extreme violence and little oversight. Modern penitentiaries and moral rehabilitation seem to be judged in similarly murky waters. At LSP, Warden Burl Cain likely sees his task as honorable. He seems sincere in his approach to reach the souls of his prisoners and to institute a community of good citizenship and moral reformation. However, Cain was removed from his post as warden for breaking the law, his program has faced ample criticism for abuse and many view the inmates as exploited for the entertainment of others through the rodeo event. Although the honorable leadership of a penitentiary may be as difficult to judge today as it was in the 1830s, the orderliness of both prison systems seems undeniable. Cain's tenure at LSP and his moral rehabilitation program correlates to a significant decrease in violence inside the prison walls. Violence

was dealt with swiftly and surely leading to an orderly operation not unlike Auburn's silent regimen. For Beaumont and Tocqueville, the efficiency and economy of the prison is an important advantage of a penitentiary over the disorderly old jails. LSP operates with donations to fund its church programs and sales of the rodeo and farm labor to ensure it financial security.

On the Penitentiary System argues that the purpose of the penitentiary should be moderate practical reformation rather than a radical reformation of the man and his soul, which may be possible but is unlikely. The modern moral rehabilitation programs, such as at LSP or through IFI, are decidedly devoted to that radical transformation of the soul; however, practical reformation is a significant part of the program as well. Beaumont and Tocqueville note the benefit of Auburn System inmates learning to read and write on their ability to become employees and citizens who can contribute to society after their release. LSP inmates may be less likely to leave the prison, but they still have the opportunity to learn behind the prison walls. In addition to basic literacy skills, LSP prisoners have the opportunity to earn college degrees and take bible study classes with fellow inmates at the seminary. These modern aspects are evolutions of the original school-like aspects of the 19th century penitentiaries. They contribute to the practical reformation of the prisoner, giving him or her skills necessary for success in greater society, regardless of the fact that many will never leave. Viewed either with cynicism or optimism, penitentiaries can still create better workers or employees for society at large, just as Beaumont and Tocqueville said in the three observations of the original penitentiaries. These aspects of Beaumont and Tocqueville's analysis seem intact today and were greatly developed upon over the several decades of more secular prison reform.

In the Pennsylvania System, solitary or separate confinement was the most important aspect of the incarceration to force the prisoner into a type of meditation on their life and crimes. For the Auburn System a combination of nightly isolation and daily silence with constant surveillance was used for its similarly reformatory ends. LSP and IFI do not use silence or solitary confinement to the same ends. Although Beaumont and Tocqueville were warning against the use of corporal punishment in the 19th century penitentiaries when they commented on the power of public opinion for punishment, it seems that the use of solitary confinement has been a major consequence. Solitary confinement was criticized at Eastern State Penitentiary and is criticized much more today. A prison designed for constant solitary confinement and silence, especially if the criminals were mostly thieves and burglars, would likely face a very strong backlash today from public opinion. Practical considerations, such as simple communication at Auburn or overcrowding at prisons such as Eastern State, also contributed to the demise of these practices. At LSP there is a cell block, Camp J, that uses solitary confinement for extended periods of time, but this is reserved as a space for punishment within the prison and is not a core aspect of the moral rehabilitation practice. Instead, Cain's moral reformation at LSP uses constant surveillance and the good citizenship model to similar purposes as the silence and isolation of the original penitentiaries to limit free and damaging communication. The good citizenship model rewards peer surveillance and enforcement of the prison's values - possibly a stronger form of surveillance than simply staff observers. Cain's model also uses a system of strict obedience to a set of norms and a negatively reinforced reward system, where all inmates lose a benefit if one "citizen" makes an error. The traditional armed guards and other prison staff are also used to create

a secure and oppressive environment, but inmates are freer to associate and communicate in a way completely unlike that of the Pennsylvania or Auburn systems.

The use of and criticism for swift and certain punishment exists at both the original and modern penitentiaries. The major difference is the type of punishment. For the Pennsylvania System punishment was doled out with odd “humane” contraptions such as the iron gag while the Auburn System used flogging freely to punish any rule-breaking. Today, the solitary confinement that defined the Pennsylvania System is used as the punishment for modern prisons. The Quakers would likely agree with this as a humane choice; however there have been many reports of terrible conditions, dangerous heat and excessive use in the solitary confinement punishment at LSP. LSP also punishes by taking away certain rewards from the prisoners. The use of certain punishment may be more important to prison management than to the reformation process itself, however without punishments for rule-breaking it would be impossible to operate orderly and maintain the system. The penitentiary at Minnesota and other modern rehabilitation projects use similar punishments. Although the types of punishment differ, the use of punishment remains certain.

At the original penitentiary, Beaumont and Tocqueville note that labor is beneficial because of the way it helps combat idleness and violence within the prison. Additionally, the industrial-style labor in the Auburn system and the artisanal trade work in the Pennsylvania System helped deliver the inmates an employable skill, hopefully preventing the theft and idleness that may have led to their crime in the first place. LSP and other modern prisons have similar programs that teach trades and require work from prisoners. At LSP the crafts that inmates could work on, such as carpentry carried a

special place. The inmates were able to sell furniture at the rodeo for some personal income and a sense of self-worth. Others built caskets for fellow inmates, adding to the sense of prisoner community and humane worth that Cain sought to create. The exact details of the labor in the original penitentiaries (looms in the solitary cell or contract labor outside the prison walls) are not the same at LSP and modern prisons, but the integral role of labor to the rehabilitation project remains. Below these practical concerns of the benefits of labor for profit, distraction, self-worth and learning of a skill, there is a spiritual and Christian notion of the value of honest labor in both the old and new penitentiaries. The idea is that labor carries advantages in prison and after, during life and after.

Religion and Christianity are foundational to the creation of the original and modern moral rehabilitation efforts as well as the areas where we can see the most divergence. The original theory of incarceration and labor that lead to penitentiaries has religious footing as way to combat sin for the English reformers and as a humane way to punish in the Quaker faith. These early theories were only built upon with the creation of Rush's organization and the Pennsylvania System. Prisoners were held in isolation with the hope of creating repentance and a connection to God - a type of religious awaking to reform the criminal. The only connection the isolated Pennsylvania System prisoners had to the outside world was through moral and religious volunteers, the warden, and their bibles. The entire program was created to force a spiritual and religious connection in these criminals who were sinners and lacked their "inner light." The grand experiment of the Pennsylvania System and the original penitentiaries was to see if men's souls could be saved through a specifically designed punishment that was the penitentiary. The

Auburn System lacked many of the religious aspects of the Pennsylvania System, with a much greater emphasis on discipline, oppression and worldly goals, but moral reformation was still seen as a possibility. Beaumont and Tocqueville listed religious instruction as one of the major advantages of the penitentiary model along with labor because it fought violence and idleness. However, they doubted the chances of a true spiritual reformation and focused on the numerous practical benefits of the penitentiary system. Religion only holds a small role, through instruction to a larger cause of practical inmate information for Beaumont and Tocqueville.

In the modern moral rehabilitation programs such as IFI and LSP, religion is the core transformative tool. Cain has made no doubt that Christianity is the key to his efforts at LSP. He explained that he wants to give each inmate the chance to save his soul and learn about Christ. Cain invited the seminary into the prison and has supported inmate-run Christian charities. LSP has inmate missionaries and religious services of multiple faiths. For Cain, the ultimate goal of his moral rehabilitation is for inmates to accept Christ and to have their souls saved. All of the other practical benefits to the reformation project seem to be ancillary to this larger goal. The IFI programs are also noted by their focus on religious improvement, so much so that the Iowa program was found to violate the equal protections clause of the Constitution. Although the theory of both original penitentiary systems were strongly rooted in Christian teachings and values, it seems that the modern moral rehabilitation programs may be more overtly religious in their practice when compared to the Auburn System.

Religion was a component inherent in the original penitentiaries that decreased over time as circumstances changed, but there was a major emphasis on the inmate

establishing his own connection to God through meditation, labor and study. Within the Auburn System the religious goals of the penitentiary were more likely lip service than the true aim of the administrators. With LSP and IFI in Minnesota, the programs are explicitly referenced as faith-based. The programs are run as private, Christian volunteer operations. At LSP, Cain spoke personally to the prisoners about Christianity and the inmates can study religion at the seminary in the prison. One of the most significant criticisms of LSP has been that religious prisoners may even get preferential treatment by cooperating with the moral rehabilitation system or more importantly that nonreligious inmates get punished more harshly than their peers. Religion has run through the LSP and IFI system explicitly and completely. Because the moral rehabilitation systems from LSP and IFI are operated in addition to the normal operation of the prison they may have more longevity than the Pennsylvania System, in which everything was dependent on one another.

By comparing Beaumont and Tocqueville's recommendations for a good penitentiary to the moral rehabilitation programs operating in the U.S. today, one can track the progress that has been made and see the gaps that have yet to be filled. Beaumont and Tocqueville's work synthesizes the history, theory and operational descriptions of the Auburn and Philadelphia systems into one slim volume that ends with an analysis of strengths and flaws and recommendations for a new penitentiary in France. The modern U.S. prisons and moral programs fit many of the criteria that Beaumont and Tocqueville recommend. The young French men would likely be happy with many of the aspects of these new prisons and programs. But, as shown in this comparison, there are several areas of divergence too, such as regarding the involvement of moral things in the

political realm and the possibility of radical transformation. By focusing on the areas of the modern programs that most align with Beaumont and Tocqueville's recommendations, the parts that have proven successful over time, and the aspects that have garnered the most criticism recently and historically, one can begin to make simple recommendations for improvements to the modern penitentiary that are in line with historic goals.

8.0 RECOMMENDATIONS FOR THE FUTURE

Beaumont and Tocqueville traveled to the U.S. to study the American penitentiary system. They sought to examine the theories, principles and operation of these correctional facilities looking at everything from their cost to the results on crime and criminals. They reported their findings in *On the Penitentiary*, explaining what aspects of this experimental new punishment really work, the many parts that don't and how these two systems can be distilled and improved into something that will work. Their goal was for the French government to adapt the U.S. model to their suggestions and to French culture and law. However, their report could also have been read to show U.S. reformers how to improve their aging penitentiary system. It could have been used to maintain the original spirit of the penitentiary experiment with a greater focus on practicality and results.

I have a similar goal with modern moral rehabilitation programs. Using the history of the Auburn and Pennsylvania systems, the report by Tocqueville and Beaumont, and the underlying theories that led to the original penitentiaries I can address the issues of the modern moral rehabilitation programs in prisons today, such as LSP and Minnesota, with the aim of improvement.

The benefits of the modern moral rehabilitation programs have been outlined in there descriptions. There is anecdotal evidence that the moral programs help give inmates

a better quality of life, people feel remorse for their crimes, inmates are able to learn practical skills and earn degrees, some inmates connect with God and religion, and recidivism may be reduced when prisoners are released. There are data to support that these programs have led to a reduction in prison violence, such as at LSP, and has improved the economic situations of the prisons, such as in Minnesota. There are also numerous criticisms of the IFI and LSP programs including a lack of reliable recidivism data to prove the programs' effectiveness, an unconstitutional connection between church and state, brutal prison conditions, unsettling racial elements, and preferential treatment for more religious or participating criminals. Because the benefits and criticisms of these models are so closely intertwined and in many cases inherent in the project itself, it's important to look at the core theories that allow for the program to exist at all.

The role of reform and rehabilitation along with punishment has been a topic of discussion for as long as laws have existed. Plato famously makes the argument through Socrates in *Gorgias*¹⁵² that a person who does an injustice should want to be punished rather than escape uncaught because it will cure the ills of his soul. Punishment is the only path to happiness for criminals – it is reforming in and of itself. Punishment should be wished on one's friends and one's enemies should never be punished so that they never feel its positive effects. Many centuries later Jeremy Bentham tackled many more issues of punishment directly, with an eye toward influencing penal reformations. He argued¹⁵³ that with the view of utility, all acts of punishment are evils and are only to be permitted if they lead to the prevention of a greater evil. Punishment should only exist for a future good – an end beyond sentencing laws. Aside from the permissibility of the

¹⁵² Plato, and James H. Nichols. *Gorgias*. Ithaca, NY: Cornell University Press, 1998. Print. Page, 67-69.

¹⁵³ Bentham, Jeremy, and James T. McHugh. *The rationale of punishment*. Amherst, N.Y: Prometheus Books, 2009. Print. Page, 63

punishment generally, Bentham allows for a form of punishment that would have a moral teaching character. This would carry the future good of moral improvement for criminals and possibly society.

From Plato and Bentham to Hobbes and Hegel, there are numerous philosophies on the subject of punishment - What is the state's right to execute citizens? Is imprisonment the best form of punishment? Which crimes should receive which punishment? But in the context of modern faith-based moral reformation programs in the United States, many of the philosophical arguments are settled. Public opinion and law dictate the necessity for incarceration as punishment to many U.S. crimes, a certain level of quality of life within the prison and access to basic care. Incarceration makes natural sense in liberal democracies such as the U.S. The value of freedom is strong and its removal is a clear punishment in modern America. However, this regime type also presents further complications to the form of punishment today. Although the question of incarceration may be settled in this place at this period of time, the other components of moral rehabilitation programs beg questions about permissibility, legality and right. What should the American state's role be as the punisher - Should faith-based or moral rehabilitation be part of it? What role should solitary confinement play in U.S. prisons? Is moral rehabilitation or reformation even possible through punishment? These questions would not have a role in a theocratic regime with codified laws and sentences from scripture or in a monarchy where moral improvement is the will of the sovereign, but in a liberal democracy and the contemporary U.S. these questions point to serious concerns.

Christianity and religion are at the core of LSP's and IFI's programs. Not only is faith what keeps the Minnesota program staffed with volunteers or the privately funded

seminary what allows for LSP inmates to earn college degrees, but the idea of religious awakening and salvation is likely the best definition for what these organizations want through “moral rehabilitation or reformation.” It is difficult to make an argument that these goals should align with the state’s responsibility to punish for a crime. Deterrence, incapacitation and retribution are all clearly goals of U.S. incarceration, but faith-based reformation is not plainly in the law or mores or public opinion. It is the concern of a small, enthusiastic percentage and not necessarily permitted by law. Creating such a comprehensive religious program of moral reformation, like that at LSP, incentivizes participation and therefore religious worship. Regardless of the benefits that may be involved in the study of theology, participating in a traveling ministry, the practice of prayer and values of Christianity, the LSP program and the IFI programs are too preferential to the religious prisoners. Without a clear change in law as to the purposes of punishment in America, one that includes faith-based moral rehabilitation as its end, these programs should not be so fully ingrained into the penal system of any state. As Bergeron explained in the Louisiana Law Review, it is unlikely that LSP’s program would withstand a legal challenge under the Establishment clause¹⁵⁴. Although there is clearly a role for religion in prison, it is the extent of the religion at LSP that is so problematic. “Angola did not err in allowing religion into the prison; it erred in becoming *actively* involved in religion,” Bergeron wrote. The Iowa IFI program was struck down on an actual challenge under the establishment clause. Although the use of federal money for only some programs and private money for the religious program insulates the prison from many legal challenges, it is clearly against the spirit of the laws and American

¹⁵⁴ Bergeron, 38

mores that favor of the separation of church and state. There is a role for some public and much personal religion in prison, but to implement it in the way that LSP has throughout the prison or that IFI with its exclusive and preferential character, oversteps that role by implementing its necessity into the punishment itself. When Burl Cain sees his responsibility as trying to save the soul of the death row inmate just before the execution by teaching him about Jesus Christ, he has overstepped his role as the warden of a state prison. There can be a role for moral reformation in state-run punishment, but not through such overtly religious means – saving the soul through Christ cannot be the purpose.

Removing the strong religious component to modern moral rehabilitation programs creates an identity and purpose problem. One of the greatest difficulties of examining faith-based programs is understanding exactly what moral rehabilitation means. For Cain, this seemed to be accepting Jesus Christ as savior, repenting one's sins and preaching to peers. To the Quakers, it was the acceptance of God's light in prisoners after years of silent, lonely meditation. Moral rehabilitation is firmly based in one's definition of morality – both what moral depravity requires rehabilitation and what that rehabilitation would look like. Once the strong religious component is stripped away from these programs, the rehabilitation must fit modern American democratic ideas of punishment and morality. It should be based in American law and mores, secular in design with allowance for religious pluralism, fair and just without preferential treatment for any group, and provide a certain level of quality of life. Following Beaumont and Tocqueville's report model, my recommendation for modern moral reformation projects

is based more in practical considerations than the hope for radical, spiritual transformation. This moral improvement is for the whole of one's actions and intents.

Examining the modern moral rehabilitation programs, the original penitentiaries and *On the Penitentiary* together, leads to the recommendation of a new, less religious moral punishment with six components.

First, the punishment should be founded in fair, equal and just incarceration. This was one of the major innovations of the original penitentiary and it is the part that remains to the day. It has a natural fit in liberal democracies and few Americans today disagree over incarceration as the proper form of popular punishment for most crimes. Beccaria referred to incarceration as a type of self-interest understood in relation to the social contract. There are many other controversies around incarceration today, such as harsh sentencing laws, overcrowding in prisons, private prison management and more, but this doesn't affect the core concept of incarceration.

Secondly, moral rehabilitation programs in prison should be based firmly in a community or citizenship model. Although the earliest penitentiaries were designed specifically to avoid inmate interaction through silence and isolation, the experiment failed. For practical reasons penitentiaries such as Eastern State were forced to abandon their original model to incarcerate more prisoners and critics such as Dickens reported the hellish impact of isolation. Beaumont and Tocqueville recommend some isolation to avoid criminals contaminating one another and creating new criminal connections that lead to greater recidivism, but the only two options aren't to either isolate everyone or allow everyone to mix freely in a gaol. The modern citizenship/community model exemplified in LSP was arguably the most successful part of LSP's program, and may

help achieve the same future-crime limiting aspects that Beaumont and Tocqueville praised in the Pennsylvania and Auburn models through a different means.

The basis of the moral rehabilitation should be along the lines of Cain's good citizenship concept in a "peaceful and productive community". A program could be instituted to have prisoners think of their cell block or prison as their city. Self-interest correctly understood as in Cain's model will be the driving force toward less crime and more peace within the cell block - replacing gangs and violence with community responsibility. This model teaches useful societal skills for better citizens after release from prison, instills individual and community responsibility, allows for development of further programs such as LSP's hospice program, and could work well at prisons where inmates are likely to be released. The added freedom also helps provide the hope, trust and dignity that Cain pointed to as critical to combat the fear and oppression that lead to prison violence and predation. The Horizon Communities residential model could be a useful way to combine the original penitentiary concept of environmental reform with Cain's community idea, if the issues of exclusion could be avoided. The IFI's communal eating, living and teaching may serve as examples as well.

The community model also helps avoid many of the pitfalls of the early penitentiary model. Although both the original penitentiaries and modern programs were aimed at the reform of the inmates, the silence and isolation functionally led a breakdown of the person. A strictly controlled community model allows for discipline but avoids the problems of isolation.

Hallett notes that the ministry aspect further allowed for moral transformation by allowing the inmates to serve one another in this religious community. Other components

of LSP such as hospice, also allow for greater dignity and respect among the community. This was the aspect of the moral rehabilitation programs that had the most anecdotal success at improvement and helped reduce prison violence. Implementation of a citizenship model/inmate community may be difficult, but it doesn't require a strong religious component. If operated properly it should help inmates become better people inside the prison walls and after they're released through everyday practice. It also has the practical impact of peer policing and less managerial difficult than strict isolation.

The third component is education. LSP's moral rehabilitation efforts used the seminary as part of its program and the early penitentiaries taught vocational skills for trade employment after release, but a program should have more than one type of education. Vocational education or jobs training is found at many correctional facilities throughout the U.S. and should remain a part of the new moral rehabilitation programs - it fits American mores on work and the power of labor well. Theological education can have a role for interested prisoners as well, but as legal critic Bergeron writes about LSP, there should be a secular option as well. LSP's education program is positive to the moral rehabilitation project because of how it added hope, dignity, pride and knowledge to the inmates as well as helped create a greater community. Many of these factors could be added through some sort of secularized education component as well. Another important model for the improved moral rehabilitation programs is the education delivered in Minnesota and at other prisons. Aside from any religious teaching, classes on how to be a parent, education on ethics and values, and courses on basic life skills serve a practical and moral purpose. Inmates may not jump at the chance to take a course on "American Ethics" but these concepts can be incorporated in other practical education. Further

education can come from mentors and counselors. These have been a powerful component of successful programs during incarceration and particularly after. Although cost and volunteer involvement may be problematic without the overt religious component, it is not a hopeless endeavor. Some of the craft and charity initiatives used at LSP could work well to combine labor and moral reformation, such as volunteering to fix wheelchair wheels.

One criticism of education in prison may be that it's rewarding criminals with opportunities when they should be being punished. This gets at the foundations of punishment in the U.S. If the goal is only punishment, education and this study are unnecessary. If the project is to rehabilitate, education is a critical tool to add a positive influence and practical skills. It helps avoid the pitfalls of the Auburn System, where prisoners were torn down with nothing to help them reform.

Fourth, a moral program must have a component of labor. Dating back to the original impetus for penitentiaries in the work houses, labor has been turned to combat idleness and crime. Although the early efforts were focused on habituation, there is still a role for labor today. In the penitentiaries, men asked for work to cure their boredom and isolation, but today labor has been a way for inmates at LSP to connect with the outside world. Inmates at LSP have been able to sell crafts they helped create to the public and experience the feelings of profit and pride that come along with their labor. The exact type of labor is debatable. For example, at LSP, anecdotal evidence suggests a power in the crafting of coffins but little spiritual benefit to farm work. Additionally, the extent of the labor must be controlled to avoid the sweatshop conditions of the old workhouses, the hard-working of the inmates in the Auburn system and the slavish labor of inmates on the

plantation fields. Fair and honest work fits capitalist values and many aspects of this uniquely American project. There is a risk that focusing on labor as part of the moral rehabilitation project could, as Dumm argued, lead to habituated, socially controlled, drone workers who are perfect for republican rulers. And there is a hope, that labor could be one of the tools to help rehabilitate the criminal into a true citizen – a productive member of society who participates and pays.

Fifth, moral rehabilitation programs can contain a religious aspect, but in a more limited manor. Prisoners should be able to pursue theological study and seek spiritual advice possibly from an associated private religious organization, but the administration of the moral reformation program and the prison itself should not be dependent on religion for operation. Inmates should not receive preferential treatment in the view of religion. As shown in Minnesota and noted by Hallett and authors, incorporating religion and religious groups adds a great cost savings, engages prisoners and volunteers alike and has transformative potential. Religion is undoubtedly powerful and has a positive influence on many. By analyzing the areas of greatest criticism in contemporary moral rehabilitation projects one can see the problematic roles of religion. This can be used to understand its new role. For example, the goal of the moral rehabilitation should not religious conversion, Christians should not receive preferential housing and state funds should not pay for religious classes. However, on a voluntary basis, worship, peer ministry, theological education, charity, and work with outside Christian groups all have shown promising signs to moral rehabilitation efforts.

The sixth component is a form of punishment within the prison program already. By most standards it seems that solitary confinement under humane and fair conditions is

the best, but lawmakers should consider all of the criticisms shown in the early penitentiaries through the LSP lawsuits. If done properly, solitary confinement is a further exercise of the removal of liberty used in incarceration and clearly unpleasant enough to qualify as a punishment.

This is a strong area of criticism for this recommendation, as the question of solitary confinement in prisons has been debated going back to the original penitentiaries. In 2014¹⁵⁵ and 2015¹⁵⁶ bills were introduced in the U.S. Congress to investigate the use and role of solitary confinement. There are a number of advocacy groups lobbying for the end to solitary confinement, particularly long-term solitary like that of Herman Wallace. The conditions of the cells used for solitary confinement at LSP have also been criticized heavily. Generally, the mental impact of solitary confinement seems to most significant area of criticism. The original penitentiaries put a high value on solitary confinement, but the results of the practice didn't lead to the spiritual enlightenment in criminals that reformers hoped. In reality, it led to horror as Dickens observed, little real radical change as Beaumont and Tocqueville noted, insanity in some cases and a number of practical issues the creators of the Auburn System found. Long-term solitary holding as a punishment seems to have been settled as an unreasonable and cruel option based on the experience of the early penitentiaries. But its use in small doses as a punishment in prison is very much alive. For the question of solitary confinement, it seems most logical to use Beaumont and Tocqueville's formulation when referring to flogging. There needs to be a form of punishment inside the prison to affect those already being punished through

¹⁵⁵ Solitary Confinement Study and Reform Act of 2014, H.R. Res. 4618, 113th Congress.
<https://www.congress.gov/bill/113th-congress/house-bill/4618>

¹⁵⁶ Solitary Confinement Study and Reform Act of 2015, H.R. 3399, 114th Congress.
<https://www.congress.gov/bill/114th-congress/house-bill/3399>

incarceration if they are disobedient. In the original penitentiaries, these punishments were flogging in the Auburn System or the strange “humane” contraptions of the Pennsylvania System like the iron gag. Beaumont and Tocqueville argued that corporal punishment like flogging would work in the Auburn System until the public opinion turned and the legislatures acted. At the time there was some honor for flogging because of its use in the military for obedience. Now, solitary confinement is used as a form of punishment for rule breaking within the prison. It certainly seems more humane than the past alternatives under our current laws and mores, particularly under the proper conditions. However, there is room for public opinion to evolve and laws to change. For now, when used sincerely and humanely as a punishment for rule-breaking, short-term solitary confinement seems a permissible punishment in modern U.S. penitentiaries and with moral reformation programs.

The role of U.S. prisons is to serve justice and punishment for those convicted of crimes, first and foremost. However, America has a long history of trying to rehabilitate criminals and help them transform into better citizens. Some of these earliest efforts to help criminals reform themselves, to turn convicts into productive members of society and to have the hope of a radical spiritual change, can be instituted in U.S. prisons today in the form of new moral rehabilitation programs. These six components, shown in much greater details through the discussions of LSP, Minnesota’s prison, the original penitentiaries and Beaumont and Tocqueville, could lead to positive results and fit the needs and restrictions of American democracy. A program with these components could help lead to lower rates in prison violence as seen in LSP, provide prisoners with a better quality of life, foster practical improvements through labor and education, retain the

possibility of radical transformation, and allow for rehabilitation while maintaining the purpose of a punishment.