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THE POST-FORDIST REGULATION OF THE US PRISON SECTOR

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List of Acronyms

| | |
|-------|-------------------------------------|
| US | United States |
| FPI | Federal Prisons Industry (UNICOR) |
| RT | Régulation Theory |
| RoA | Regime of Accumulation |
| MoR | Mode of Régulation |
| SSA | Social Structures of Accumulation |
| PIECP | Prison Industry Enhancement Program |

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The journey at ISS that led me to this research paper topic began in Howard Nicholas' foundation course, *An Overview of Modern Economic Thought*. Prior to coming to ISS, I avoided anything to do with economics like it was the plague. However, the structure of the curriculum at ISS obliged me to engage with economics from day one, and Dr. Nicholas provided a forum that burst a lot of the economic bubbles that once kept me away. I am grateful to have learned in that course that I am not, in fact, lacking for not understanding classical and neoclassical economic modelling in the past but that it is the modelling itself, which is lacking.

I was further exposed to economics as an analytical lens in the SJP major course, *Contemporary Perspectives on Social Justice*, which was led by Rachel Kurian. Dr. Kurian pushed us to always have an eye on economic dimensions within social justice issues and she later became my second reader. I am very grateful to Dr. Kurian for continuously pushing me to produce a better economic analysis and being very generous with her time guiding me through my theoretical framework.

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Abstract

This paper seeks to answer a two-fold question; what were the economic and socio-political conditions that gave rise to a penal system which uses prison labour in the way we see today? And what, if any, role does the penal system play within these larger systemic issues? The prisoner strikes in the Fall of 2018 that specifically focused on prison labour sparked this reflection on the historical formation of the prison system from the late 1970s to the mid-1990s. In order to help me answer this question I am using Régulation Theory (RT) which has provided a methodology to investigate economic dimensions in relation to social and political institutions.

RT has allowed me to reach some interesting conclusions that refocuses the debate about the use of prison labour we see today. The current manifestation of the prison system and the use of prison labour therein has typically been attributed to the re-privatization of prison labour through the Prison Industry Enhancement Program legislated by Congress in 1979. While this is definitely a major point of departure which can be traced with the rise of neoliberalism, the economic and socio-political conditions that gave rise to the current penal system cannot be isolated to privatization. In conjunction, this means that the debate about neoliberalism, and the role that prison labour plays within it, also extends beyond these boundaries. By outlining the historical institutional moment before the economic crisis of the 1970s and how the response to the crisis led to the emergence of new institutional compromises, I am able to propose in this research paper that the rise of neoliberalism within the US prison sector was championed by the emerging work-first welfare strategies laid out by the state. This operated in tandem with international liberalization and the effects of the Volcker Shock at the beginning of the 1980s, which feed into the system that exacerbated economic inequality particularly by subjugating African American labour.

Relevance to Development Studies

ISS is an institution which prides itself on challenging the dichotomy between *developed* and *developing* countries. It is recognized across all majors, at least to varying degrees, that the rise of the US' influence after WWII on a global scale began to deploy terms such as developed or un-developed in order to justify a variety of interventions that were at many times more indicative of asymmetrical power dynamics than purely altruistic intentions. By focusing on the US, this research paper is a critical tension of challenging this dichotomy. At ISS we are also encouraged to question our own subjective position and the implications of typical development strategies which prioritizes those from the Global North *bringing* development to those in the Global South. Since I am from the US, these lines of inquiry are also a part of why I chose to focus my attention there.

What has become clear about the US in recent years, especially so since the elections in 2016 but not only since then, is that the US is in fact not an exception. It is clear that US is not immune to rising inequalities and hostilities across class, gender or racial lines, or to populism or even elements of authoritarianism. Just as there are political elites in the Global South that benefit from

certain economic and social structures, there are the poor and disadvantaged in the Global North that also suffer under these structures. These dynamics that perpetuate inequalities also have a place to be researched within development studies, specifically within a social justice perspective of development.

Keywords

US prisons, capitalism, neoliberalism, French Régulation School, post-Fordism, regulation

Chapter 1

Introduction

Over the last few years, prisons in the US and particularly the use of prison labour, has come under much more scrutiny from the media (Da Silva 2018) research institutes such as the Pew Research Center (Desilver 2018), as well as academia (LeBaron 2008 and 2012; Clark 2015; etc.). Especially since August 21, 2018 when prisoners across the US went on strike until September 9, 2018, the 47th anniversary of the 1971 Attica prison riot in New York (Da Silva 2018). The Attica prison riot is still a powerful reference point for prisoner rights activists today because even though the Attica prison uprising was just one of the many prison riots that occurred from 1967 – 1972 (there were in fact over 130 riots during this period), it was the bloodiest riot as it “ended in a bloody police assault ordered by Gov. Nelson Rockefeller that resulted in thirty-nine deaths, including twenty-nine prisoners and ten corrections officers and civilians” (Chase 2015: 74). The Attica riot started because prisoners were protesting against the deplorable conditions caused, in part, by overcrowding (Chase 2015: 74). The riot was the climax that ignited a debate at the time about who is entitled to certain rights (Chase 2015). In fact, prior to the Supreme Court decision of *Wolff v. McDonnell* in 1974, prisoners were legally considered slaves of the state and beyond habeas corpus claims, they were denied access to the courts (Clark 2015).

What sets the contemporary prisoner rights movement apart from the movement in the 1970s and 80s is the emphasis on prison labour. The strikes of 2018 specifically drew attention to the fact that on average a prisoner only gets paid between 33 cents and \$1.41 per hour (Sawyer 2017), even when they are engaged in dangerous employment, such as helping to help put out wild fires in California or working for multi-billion dollar corporations like Starbucks and Victoria Secret (Da Silva 2018). As this research paper was being written, over 2 million people were incarcerated in the US and 1.5 million of those incarcerated were being subjugated to exploitative labour practices within the penal system, the majority of whom are not only low-income but are also African American men (LeBaron 2012).

Rights-based activism, such as the 2018 strike, aimed to ensure that prisoners receive decent compensation for their work, safe working conditions and basic protections under legislation such as the Fair Labour Standards Act (FLSA). These are critical components of confronting the exploitative labour practices within prisons. However, endeavouring to understand how and under what conditions these practices arise is also a critical component of understanding and ultimately confronting these issues. The protest in the Fall of 2018 did not just point out how these practices are exploitative, but they are also highlighting how despite their physical isolation, prisoners are a part of the US economy and also a particular constituency of the labour market (Da Silva 2018). As Da Silva states, “[e]very single field and industry is affected on some level by prisons, from our license plates to the fast food that we eat to the stores that we shop at,” she [a spokesperson from the protest] said’ (2018: n.p.).

This growing awareness of how prisons are a part of a larger system triggered me to focus on an analysis which positions prisons and the labour therein within a larger system such as capitalism. However, as Karl Polanyi in *The Great*

Transformation has pointed out, economic dynamics cannot be disentangle from other institutions such as the state or legal institutions (2001). Those are the vary mechanisms that determine the regulation of the economy, even the decision to deregulate the economy requires policy and legal interventions (Polayni 2001). An analysis of the US prison sector reveals this problem quite vividly and is therefore the focus of my research paper. I seek to answer a question that is two-fold; what were the economic and socio-political conditions that gave rise to a penal system which uses prison labour in the way we see today? And what, if any, role does the penal system play within the these larger systemic issues? To conduct this analysis, I will be utilizing the theoretical framework provided by the French Régulation school of thought to investigate how economic and social systems have transformed labour within the prison system, from the late-1970s to the mid-1990s. Rather than explaining it through purely economic terms or through purely social (such as legal institutions) terms, the French Régulation school provides a mode of analysis to understand how, and in which ways, these embedded elements are interacting with each other in order to produce the world we see around us.

As I will elaborate upon in the conclusion, using Régulation Theory (RT) in this analysis provides a framework that could potentially refocus the debate about the use of prison labour in the US. Currently, as can be seen in the 2018 strikes, much of the debate about prison labour revolves around privatization. What gets lost by narrowing the focus to privatization is a more compressive discussion about neoliberalism, which includes privatization, but is not reducible to that one component. Private interests within prisons is definitely a component that has very serious implications, but as this research paper will argue, the transformation of the prison system cannot be isolated to the re-privatization of labour.

The section below provides some context of the US prison system as well as prison labour. This will be followed in chapter 2 by an in-depth description of Régulation Theory (RT) as my methodology which will also highlight some of the theory's limitations. Within the methodology section I will be positioning this research within the sectoral dimension of Régulation Theory (RT), which there is a precedent for, and I have decided that at certain moments it is more consistent to refer to it as a specific segment of the economy, i.e. sector. I will refer to it as a system when I am referring to it complex network and not just a segment of the economy. In chapter 2 I will also briefly situate my argument within the other literature that applies parts of RT to the US prison sector. Afterwards, chapter 3 will be an analysis of how prison labour was transformed by a particular conditioning of the prison system via social and political institutions under the rise of neoliberalism from 1979-90s, followed by some conclusions in chapter 4.

1.1 The Context of the Prison Sector within the US

According to the US Census Bureau, among the US population of 330 million people, over 2 million are incarcerated ('U.S. and World Population Clock' 2018; Prison Studies n.d.). This is the largest prison population in the world, even when compared to countries that have more than double the US' population such as India and China (Prison Studies n.d.). As with any large system, especially within a federalist system, it operates at many levels which in this case is federal, state and local (Galston and McElvein 2016). Figure 1 is a simple illustration of the breakdown of prison management in the US, for the reader to get a birds-eye view of the various levels.

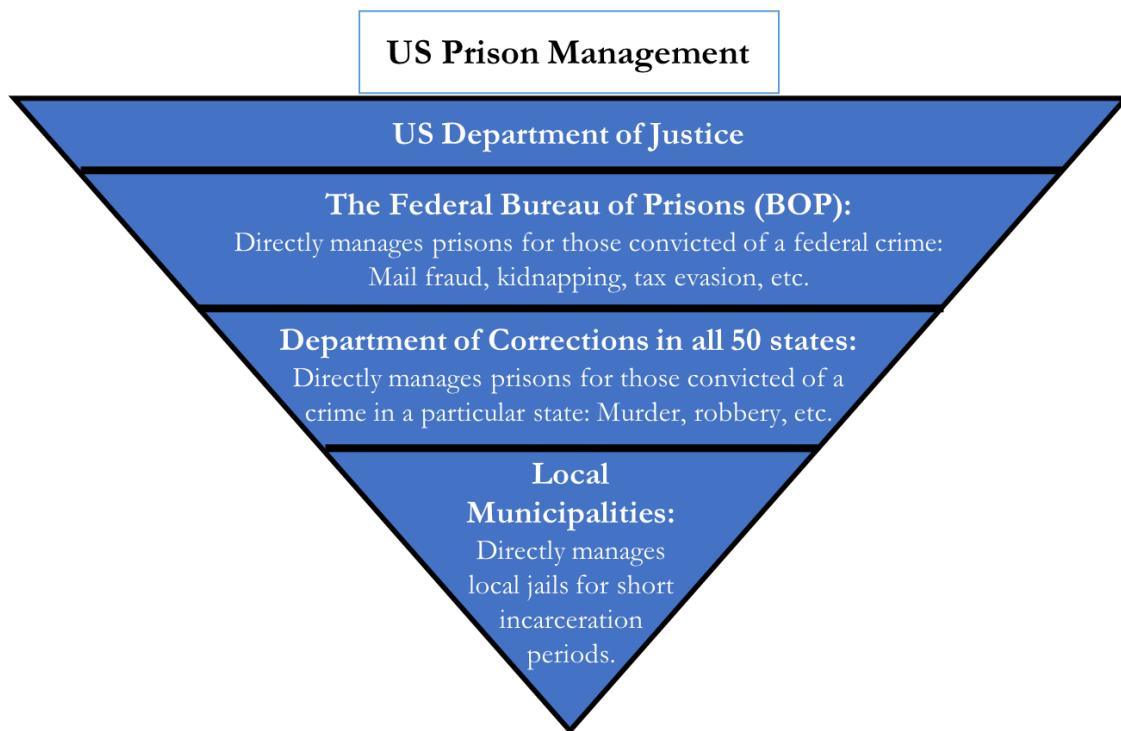


Figure 1 – US Prison Management. Source: (Galston and McElvein 2016).

Since the US was founded on federalist principles, with a central government but also comprised of regional governments, the prison sector has formed accordingly, which means prisons or jails are funded and managed by their respective local government offices. For example, local jails, which are specifically geared towards short-term incarceration up-to a year, are run by their respective county or municipal authorities and are funded out of the local government's budget (Bureau of Justice Statistics n.d.). State prisons (facilities geared towards long term incarceration), are run by a specific department in each of the 50 states as well as US territories called the Department of Corrections, and are funded from the state's budget (Bureau of Justice Statistics n.d.). Federal prisons are managed by a subdivision of the Department of Justice (DOJ), as can be seen above, called the Federal Bureau of Prisons (BOP) and they are funded by the federal government separately (Federal Bureau of Prisons n.d.). The federal prisoner population constitutes 9% of the total prison population, while the local facilities hold 32% and the state prisoners make up the majority at 59% (Galston and McElvein 2016). As can be seen from these percentages, local jails hold more prisoners than federal prisons. Despite that, I will not be factoring local jails into

my analysis because my argument does not hinge on the quantity of those incarcerated but rather more on the prisoners who are under the direct legal authority of state or federal authorities. Since local jails are mostly holding people *before* they are formally charged or convicted, the majority of that population are not yet under the formal jurisdiction of state or federal governments (Geiger 2017). Also, despite the decentralized nature of the prison system in the US, which means that each state has its own rules, regulations, and judiciary body to manage their respective penal facilities, they are all still subject to federal rules, regulations and sentencing handed down from the Supreme Court. Therefore, I will be focusing on the system as a whole, the systemic, but at various times will be looking at the state level to identify manifestations of that system.

When speaking of manifestations, it is impossible to explain the context of the US prison system without discussing race. The prison population had been historically racialized in the US (LeBaron 2012). Mass incarceration and policing policies disproportionately affect African American men, and for the majority of 20th century, they made up the significant majority of the prison population (Gramlich 2018). This has only changed in recent years since the peak of mass incarceration in 2009 (Gramlich 2018). However, while the gap between whites and African Americans in prison has shrunk, the visibility of the disparity lies in the fact that despite whites constituting 64% of the total US population, they make up 30% of the prison population and although “[t]he decline in the black-white gap between 2009 and 2016 was driven by a 17% decrease in the number of black inmates during that span”, African Americans are still 33% of the prison population and only 12% of the total US population (Gramlich 2018). Also, men are incarcerated at much higher rates than women, in fact they make-up 92.2% of the prison population (Federal Bureau of Prisons 2017). I am highlighting these factors because while I am not focusing on issues relating to how policing policies, court sentencing practices or how certain laws disproportionately affect African American men, dealing with race much more explicitly, I acknowledge that race is an intrinsic dynamic within the prison system. However, the limitations of this research paper, which I will discuss more in the methodology section, force me to make difficult choices. If I am not discussing the issues mentioned above, which in many ways covers issues before incarceration, I don’t believe that I can do justice to how the prison population in the US has been racialized in a particular way. Therefore my analysis will not focus on the process of racialization through incarceration, but I will take the fact that incarceration disproportionately affects African American men as an important starting point, and in the last portion of my analysis I will reiterate how the formation of the prison system has specific implications on this particular group of people.

1.1.1 Prison Labour:

Although the Bureau of Justice Statistics (BJS) has to report on the number of prisoners currently being incarcerated in the US, finding a total number of prisoners who are participating in some sort of labour is much more difficult. A contributing factor to this issue is the fact that there are several mechanisms through which to employ prisoners that are not centralised. The Federal Prison Industries, Inc. (FPI), publicly traded under the name UNICOR, which is a government corporation created in 1934 that produces a number of products using prison labour mostly for other government agencies has 59 factories and 3 farms at 51 facilities, and employed almost 18,000 prisoners in 2017 (Federal Prison

Industries 2017). However, these state-owned businesses only employ about 6% of the prison population, the majority of work done by inmates are in the prisons themselves, maintenance, laundry, food service, etc. (Sawyer 2017). The internal jobs as well as the jobs involved in labour leasing programs outside of the prison, for example the inmates who get paid up to \$2 a day to fight fires in California, are directed by the Department of Corrections in each state (LeBaron 2015). There are also jobs in and for private businesses through the Prison Industry Enhancement Certification Program (PIECP) that also employs inmates (Sawyer 2017). In fact, due to a stipulation in the 13th Amendment, any able-bodied person convicted of a crime can be forced to work and most penal facilities across the US do require inmates to do some sort of work in order to avoid idleness (Sawyer 2017). Therefore, even if work programs through the FPI or PIECP aren't available in some of the 1,719 state prisons and 102 federal prisons, the majority of the 1.5 million plus inmates spread across those facilities will be participating in one of the 4 forms of work mentioned above (Wagner and Sawyer 2018; Sawyer 2017).

When compared to the overall labour force which is 161.55 million, the numbers are quite small, but the prison industry is still a multi-billion-dollar enterprise (Trilling 2017). Two of the handful of private firms that own and manage prisons which hold 8% of the total state and federal inmates, CoreCivic (formerly Corrections Corporation of America or CCA) and the GEO Group, Inc. (both are publicly traded), combined made \$4 billion in revenues for 2016 (Trilling 2017). However, it is important to note two points at this juncture; the first is that there are multiple layers of privatization within the prison sector, and the second is that profits made by private companies are not the only indicator of how the prison system has been conditioned by neoliberalism. Regarding the first point, private interests not only profit from prisons by owning and managing the facilities themselves, as mentioned above, but also by contracting certain work out to private businesses, which has been a part of the US penal system since its founding in 1776 (Lindsey et al. 2016: 309). For example, “in 2001, public corrections agencies reported contracting out a wide range of services to private companies, including commissary services (85 institutions), drug treatment (190 institutions), health care (447 institutions), food services (144 institutions), and educational services (156 institutions)” (Lindsey et al. 2016: 311). This is different than the profits being made by the following companies that are using low-wage prison labour: “AT&T Wireless, Boeing, Chevron, Compaq, Dell, Hewlett-Packard, Honda, Honeywell, IBM, Intel, Lucent Technologies, Macy's, Motorola, Microsoft, Nordstroms, Nortel, Northern Telecom, Pierre Cardin, Starbucks, Target Stores, Texas Instruments, Toys R Us, TWA, Revlon, and Victoria's Secret” (LeBaron 2008: 72). While there are three separate levels of privatization within the prison sector, these practices are neither new nor the defining feature of exploitative labour practices. This will be further developed in the analysis chapter.

While the very small percentage of workers that do work for private business are actually among the few that are entitled to a “prevailing wage” that is similar to the wages paid for work outside of the prison, their wages are subject to deductions up to 80% for room and board and other pay-to-stay fees (Sawyer 2017). The wages paid to prisoners workers for state-owned businesses earn between 33 cents and \$1.41 per hour on average and are subject to the same deductions as those paid a “prevailing wage” (Sawyer 2017). And these wages are

roughly twice as much as the regular non-industry jobs within the prison, and some states don't pay inmates anything for the internal jobs (Sawyer 2017).

This context provides a glimpse into how prisons and prison labour functions within the US. The next chapter, which will provide an explanation of my theoretical framework and methodology, will be setting the stage for how I intend to move from describing the functions of prisons to how they are regulated through various political and economic factors. An important distinction to make between the context section above and the rest of this research paper is my use of the terms, the state and institutions. In the context section I am referring to states as a specific territory within the US that has its own borders and government, which I will still refer to when appropriate. However, throughout the paper I will mostly be referring the state as the legal and political authority which creates rules, patterns, and general orientation of the regulation of public spending and revenue (Boyer and Saillard 2002b: 339). Also, throughout this paper I will be referring to institutions in their sociological context, as patterned forms of behaviour among collective groups and governing bodies such as public services (Boyer 2002: 3). This is for the sake of consistency if I am going to use RT, which will be elaborated upon in chapter 2 below.

Chapter 2

Régulation Theory as a Framework and Methodology:

2.1 Theoretical Framework:

As alluded to in the previous chapter, Régulation Theory (RT) is particularly well suited to illuminate the complexities within prison labour because it is an excellent example of how “economic transactions are embedded into a dense web of social relations” (Boyer 2005: 45). Prisons, and their economic production, are by definition embedded within the state and legal apparatus while being mired within a field of complex political and economic arrangements; i.e. the politics/legality of determining who and under what circumstances they should be imprisoned, the political economy involved in their construction and funding the necessary infrastructures (guards, medical facilities, rehabilitation centres, etc.), as well as the various products and services they provide (Goossens 2018). All of these elements interact and occur simultaneously and RT provides a framework that allows us to make sense of how and under what conditions they do so.

2.1.1 A Critical Response

RT draws on the contributions of many different schools of thought, but it is primarily a critical response as well as a fusion of Marxist and macroeconomic theories (Boyer and Saillard 2002). RT scholars wanted to move away from the neoclassical economic programme that depicts the position of agents being determined predominately by rational calculation, but also not reducing agents to their structural role in the production of capital which might be the case in some Marxist theories (Boyer and Saillard 2002a). As an indication of their Marxist roots, their concern is with a capitalist mode of production and how it breeds and is fed by certain social relations, but as the theory evolved from Michel Aglietta’s foundational text in 1976 entitled *A Theory of Capitalist Regulation: The US Experience*, other prominent theorists such as Robert Boyer added in concepts from sociologists such as Pierre Bourdieu, in relation to how the mode of production is regulated by certain institutions and behaviours (Boyer 2008). However, instead of Bourdieu’s habitus, Boyer focused on institutionally situated rationality, which embeds agents’ objectives and preferences within institutional forms (Boyer 2008: 370). Boyer gives the following example:

“It can be shown that even if wage earners and employers share the same preferences and the same objectives, the level of wages and of employment itself depends on the interchanges that take place between actors...such as whether only the employers are organized or only the unions, or whether a professional organization has to negotiate with a single union, and they can differ radically” (2008: 370).

Therefore, RT tends to prioritize institutional configurations when explaining the stability or crisis’s within capitalism, but RT scholars do not discount the importance of cultural or social dispositions (Boyer 2008: 370). As Boyer and

Saillard state, “A mode of *régulation* establishes a set of procedures and individual and collective behaviour patterns which must simultaneously reproduce social relations through the conjunction of institutional forms which are historically determined and supported by the current accumulation regime” (2002a: 41). As can be derived from this quote, RT does take seriously “individual and collective behaviour patterns” but these patterns of behaviour cannot be explained outside of certain historically established institutional forms (Boyer and Saillard 2002a: 41). Also, RT diverges from Bourdieu because while “Bourdieu’s sociology aims at the construction of a general theory of fields but makes no attempt to question the fields’ connection or their coherence as a set” (Boyer 2008: 371), remembering their Marxist and macroeconomic foundations, RT does seek to have a perspective of capitalism that looks at issues that are inherent to the overall system, i.e. a systemic approach. RT does this by not only analysing particular institutional forms but also how these institutional forms are interacting as a set and what role they have in relation to the larger system of production in a specific place and time, what they call a Regime of Accumulation (RoA) (Boyer and Saillard 2002). The limitations of this paper do not permit me to outline all of the similarities between Bourdieu and RT, which can be further explained in Boyer’s 2008 chapter, but as an entry point of RT theory for the reader, I did want to discuss some of the similarities and differences.

2.1.2 Regimes of Accumulation and the Institutional Forms

For RT, the RoA is the dynamic between production and consumption, and the various value laden practices and social relations which stabilise those dynamics in order to perpetuate that particular type/pattern of accumulation, is called the mode of *régulation* (MoR). Similarities can certainly be drawn to Marx’s base/superstructure model, but RT is also concerned with the transformations of capitalism via disequilibria and conflict over long periods of time (Boyer and Saillard 2002). While the MoR is meant to provide a certain amount of stabilisation to the regime of accumulation, this does not mean that crisis is indefinitely avoided. RT delineates between crisis within the RoA and within the MoR, either exogenously (shocks from outside the MoR) or endogenous (crisis that come from within the MoR) (Boyer and Saillard 2002a: 43). RT tends to place less emphasis on exogenous crisis, because an exogenous crisis is usually only disruptive if there are already disequilibrium within the existing structures of the system (Boyer and Saillard 2002a: 43). By a similar token, I wouldn’t isolate the crisis to an external shock such as the oil shock in 1973. Instead, I will look at the dynamics of that crisis in conjunction with endogenous or structural crisis that originates from within the MoR and/or the RoA (Boyer and Saillard 2002a: 43). This particular position builds off of the concept within RT that regards capitalism as an ever-evolving system which manifests differently according to a particular historical-institutional context not only globally but also regionally (Boyer and Saillard 2002).

RT tracks the major evolutions within capitalism via the transformations in how growth is accumulated. However, given the multifaceted dimensions of economic production in the 20th and 21st century, this can be rather difficult to empirically establish. Therefore, RT studies the RoA through the MoR, more specifically, the manifestation of the MoR which RT has identified as five basic institutional forms. These are the monetary regime, wage-labour nexus, form of competition, nature of the state, and insertion in the international regime (Boyer

and Saillard 2002a: 44). These forms are not predicated on industrial firms according to sectors, such as Foot Locker in relation to the shoe industry, rather, they are the categorization of certain economic and social mechanisms that cut across a wide variety of industries. While each institutional form has its own characteristics in relation to the specific area that it covers, they are not isolated from one another and actually operate in ways that *complement* each other; but the MoR isn't just stabilised because these forms are working in tandem but because there is hierarchy with one dominant form that the other institutional forms are adjusting to (Boyer 2005). As mentioned above, institutional forms are historically determined and supported by a RoA, and they reproduce particular social relations according to their complementarity as well as hierarchical configurations, and these dynamics establish a set of individual as well as group behaviour patterns which RT calls the mode of régulation (Boyer and Saillard 2002a: 41).

While interrelated, the institutional forms have distinct definitions which are listed below:

- The monetary form is, “not a particular type of commodity, but a means of establishing relations between the centre of accumulation, wage earners and other merchant subjects” (Boyer and Saillard 2002b: 341). Basically it is the valuation of the connection between economic entities (Boyer and Saillard 2002a: 39).
- The wage-labour nexus is, “the configuration of mutual relations among different types of work organization, life-styles and ways in which the labour force is reproduced” (Boyer and Saillard 2002b: 345).
- The form of competition indicates “how relations between producers are organised” (Boyer and Saillard 2002a: 39).
- The forms of insertion into the international regime is characterized by the relationship between the nation state and the international realms which doesn't just include economic dimensions but also political (Boyer and Saillard 2002a: 40).
- And last but not least, the form of the state which is the “group of institutionalized compromises” (Boyer and Saillard 2002b: 339) that are determined by many factors such as the fiscal and financial regime which “refers to a correspondence between legal and expenditure forms of state legitimacy through the intermediary of the tax-levying process” (Boyer and Saillard 2002a: 40).

An example of how these institutional forms work together within a hierarchy embedded within a particular RoA is RT's conceptualization of how the capital-labour compromise (via the wage-labour nexus) was the dominant institutional form which characterised the MoR of the Fordist regime. RT refers to Fordism as “the development of a mass consumption market adequate to sustain expanding production through rising labour productivity and the introduction of mass production line systems as pioneered by Henry Ford” (Lea 1997: 42). The post-war period between 1945 and the mid-1970s was characterised as the Fordist regime, and was considered to be an intensive RoA, explained below (Boyer 2015).

By studying the MoR, Régulation theorists are able to identify particular RoAs at particular historical moments which is usually the interim period between two crisis and thus far they have identified two *ideal* types of RoA's, extensive and intensive (Lipietz and Vale 1988). Ideal types refers to the fact that

although in reality at any given moment there may be extensive aspects to an intensive RoA or visa-versa, these general trends are identifiable and more dominant in certain times than others. Several Régulation theorists have identified various manifestations within those ideal types, such as an intensive RoA with or without mass consumption, but those two are the basic forms (Lipietz and Vale 1988). Since a RoA is a, “[d]ynamic compatibility between production, income distribution and the generation of demand” these ideal types explain the different configurations of these dynamics (Boyer and Saillard 2002a: 44). They are defined in the following ways:

“Extensive accumulation relates to the capitalist development that conquers new branches and new markets, spreading its production relations to new spheres of economic activity, without altering conditions of production and the efficiency of labour or capital in any significant manner...in a regime of intensive accumulation, conditions of production are systematically transformed with a view to increasing the productivity of labour. New investments primarily take the form of an increase in the capital stock per worker” (Juillard 2002: 154).

Unlike the inter-war period (between WWI and WWII) which was an intensive regime *without* mass consumption, meaning that the intensive growth spurred by competition at the time didn’t incorporate workers consumption capacity as an element of demand within the economy, the Fordist regime did integrate employee consumption, i.e. intensive accumulation *with* mass consumption (Boyer 2000).

The Fordist growth regime is often referred to as the Golden Age in the history of American capitalism by Régulation theorists due to the long period of stabilized growth and low inequality (Boyer 2015). Building off-of the Taylorism (increased division of labour in separate tasks, the mechanization of production, and the further dichotomization between design and product) organization of work and the institutionalization of profit sharing with employees not only through higher wages but also through social protection systems, created a cycle of internal consumption that drove the intensive accumulation during the Fordist regime (Boyer and Saillard 2002b: 338). The stabilization of the Fordist accumulation was achieved via the institutional hierarchy that positioned the wage-labour nexus as the dominant institutional form (Boyer 2000). The political compromise between labour and capital that determined the nexus between wage and labour, called the capital-labour compromise, was a set of legal and political attainments made by workers to share in the productivity gains (Boyer 2000: 280). Figure 2 below illustrates the institutional hierarchy during the Fordist era.

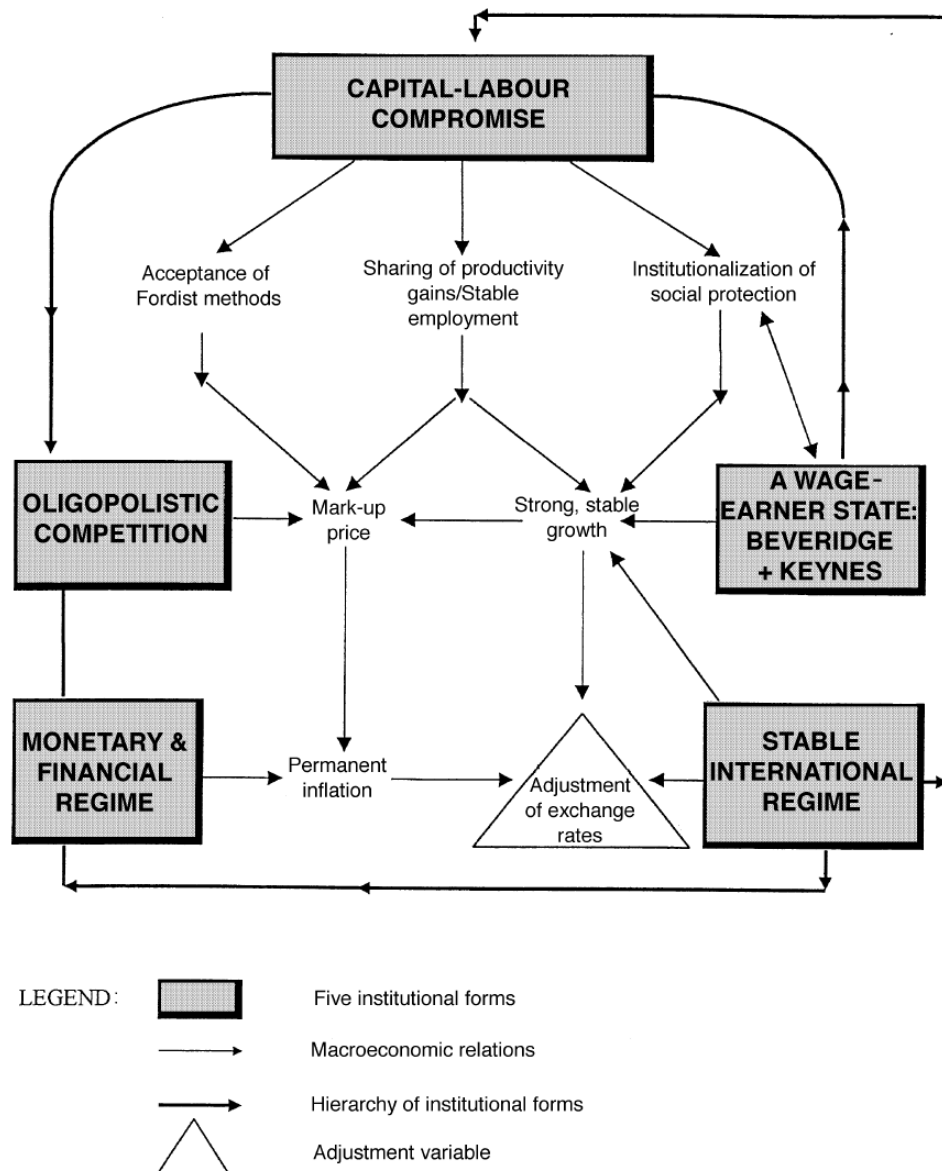


Figure 2 – Institutional hierarchy under Fordism. Source: (Boyer 2000: 280).

The capital-labour compromise sharing of gains meant that households had more money. Therefore, demand for consumer goods gave rise to a form of competition geared towards those few firms that could meet the production needs, oligopolistic competition. This also meant that “the state was no longer restricted to the sole function of providing the traditional major functions of government, since it had also become a wage-earner state: the structure of public expenditure and of social protection recorded this major change” (Boyer 2000: 280). The public expenditure and social protection programs that were started during the Fordist era were very much determined by Keynesian policies, and accordingly the configuration of the state at the time was referred to as the Keynesian welfare state (Jessop 1994: 15). With the capital-labour compromise at the top of the hierarchy, this favoured Keynesian policies to secure full employment by focusing on demand-side management (Jessop 1994: 17). This meant that the aims of these policies were the following:

“[T]o regulate collective bargaining within limits consistent with full employment levels of growth, to generalize norms of mass consumption beyond those employed in Fordist sectors so that all citizens might share the fruits of economic growth (and thereby reinforce effective domestic demand), and to promote forms of collective consumption favourable to the Fordist mode of growth” (Jessop 1994: 17).

This shows how the capital-labour compromise during the Fordist era conditioned the form of competition as well as the form of state in a particular way. Thus, what becomes a primacy issue of analysis is not necessarily each institutional form but the dominant institutional form that produces a hierarchy, and tracing the shift in hierarchy over time.

In the RT literature, there isn't consensus about when exactly the Fordist regime ended, but it is generally accepted that the early to mid-1970s was a moment when these various forms of crisis came to a climax (Boyer 2000). Therefore, I find it to be a helpful conceptualization of the *point-of-no-return* for Fordism. As Boyer states, the seeds of the crisis were sown through the “slow but pervasive structural transformations set in motion by the success of this [Fordist] unprecedented growth regime” (Boyer 1997: 20). By focusing on crisis as a starting point the question of not only why a crisis emerged but also what are the factors that had been causing the relative stability before the crisis need to be interrogated in analysing the MoR and RoA (Lipietz and Vale 1988). Therefore, before going into the period of crisis, I will briefly mention the period of stability before it in the analysis section of chapter 3.

Now that the fundamentals of RT have been broadly explained, I turn to the methodology of this research paper and how I intend to use this theory and why, which will further clarify some of the aspects of RT that may have been glossed over thus far.

2.2 Methodology:

Part of RT's method is to identify the RoA and how those particular growth processes condition and are conditioned by the various institutions around us. This is done via the MoR, which is a complex entanglement of not just the economic system but also the legal apparatus, political negotiations, etc. My aim, therefore, is to identify how the crisis of Fordism in the 1970s led to a shift in the RoA and gave way to a new configuration of the MoR towards the end of the 1970s, beginning of 1980s. I am focusing on the new configuration because an analysis of the actions taken during a crisis are more geared towards managing the crisis in that particular moment, which may or may not have stabilizing effects (Jessop 1994). Focusing on which strategies worked and which do not in these moments is a research topic in and of itself, but not necessarily indicative of new stabilizing dynamics between the RoA and the MoR (Jessop 1994). Stabilization takes some time to emerge after a crisis as a coherent *regulation* (as RT refers to regulation) and in relation to the prison sector this moment of relative cohesion began to form in 1979, which will be shown in chapter 3.

I will be using the analytical tools laid out by RT, MoR and RoA, and apply them to the prison sector in particular. Although RT is mostly a macroeconomic theory, there are those that have focused on a meso-level of analysis, in relation to specific sectors, which is the importance of the structures under which micro

and macro dynamics play out instead of focusing on one or the other (du Tertre 2002). RT can and has been used to analyse sectors within a larger economy, most commonly in relation to the agricultural sector (Allaire and Mollard 2002) but it has also been applied to areas such as the service sector (du Tertre). While RT has been applied to the aspects of criminology, mostly focusing on the relationship between the labour market and practices of incarceration (Lea 1994; Michalowski and Carlson 1999), a sectoral analysis of the prison system more generally and the role that prison labour plays within that system has not been done and is where this research paper might have some added-value.

Sectoral based RT analysis is warranted because via this research, RT identifies how and when certain sectors can either be in conflict or complementarity with the RoA and also that there are particular sectors which have an interplay with the overall RoA and MoR in a particular way (du Tertre 2002). Since a given sector is involved with a specific set of institutions, different compromises, complementarities and hierarchies can be identified thus giving way to a sector-level MoR that is being impacted as well as having an impact on the RoA of the time (du Tertre 2002). This research paper will do exactly that, namely identify the MoR as it relates to the prison sector and how that is interacting as well as acting upon the post-Fordist RoA and demonstrating how prison labour plays a very particular role within the penal MoR. Due to space limitations, I will be placing the bulk of my analysis on the solidification on the emerging hierarchy within the MoR. This means that I will be describing the Fordist regime as well as the crisis in the 1970s but most of the analysis will be focused on 1979 to the mid-1990s.

Considering RT's emphasis on the systemic, it would be inconsistent to only focus on prison labour. Therefore, I will talk about prison labour within a larger system via the process mentioned above. Systemic analysis looks to the occurrences or elements that constitute the system and how they are interacting with each other as a whole. In other words, I am not just identifying how the prison sector is conditioned according to the capitalism system, which is of course a part of it, but an RT analysis necessitates looking beyond that dimension at the system as a whole, which isn't just capitalist but also the product of specific institutional compromises at a specific moment in time in relation to a particular type of accumulation.

In order to contend with the word-limit restrictions of this research paper, it would be too much to focus on each institutional form individually. Hence, I will be narrowing my focus to the dominant form within the institutional hierarchy. An institutional form becomes dominant when it imposes, "its logic outside its own sphere of action" (Boyer 2000: 287). While there is usually one main institutional form that is conditioning the others, RT has long documented how the dominant institutional form usually has particular complementary with one or two other forms that will determine the overall hierarchy of a MoR. The hierarchy is very sensitive to time and place and it defines the coherence of the MoR because through various political and economic compromises, it is considered more important than the other forms and therefore the others have to adapt to it (Boyer 2000: 286-287). This gives the whole system some cohesion (Boyer 2000: 286-287). My goal therefore is to identify the particular institutional hierarchy that defines the MoR, which gave the prison system its cohesion in relation to the shifting RoA in the late 1970s. It should be noted that although RT acknowledges the stability that is produced via institutional hierarchy, it is also

quick to point out that cohesion and stability doesn't negate crisis, in fact the very reason why a particular MoR is stable, may eventually lead to a structural crisis and transformation in either/or, or both the MoR and RoA (Boyer 2000: 286-287). To isolate the particular MoR I will be following the methodology laid out by RT, which states that an institutional form's role in directing individual and group behaviour patterns is examined by RT through three principle actions which are, "first of all, law, rule, regulation or any other constraint; next, compromise or negotiation; finally, the community of a system of values and representations or routines" (Boyer and Saillard 2002a: 41). I will be focusing on one major piece of legislation at the time which was crucial to transforming prison labour's role within the prison system, the Justice System Improvement Act of 1979. From that legislation I will identify the compromises and negotiations that were made in order to pass this legislation and how that in turn led to a series of norms and values that resulted in a stabilization of the prison system within a particular RoA.

While I will, and more so have to, provide some empirical data which illustrates the points made above, due to the limitations of this paper, I cannot include detailed economic data on all of the points mentioned. For example, in the first section of chapter 3 about Fordism, I cannot show empirical economic data proving RT's analysis of that regime and then on top of that also provide empirical data about the 1970s-90s in relation to the prison sector, the space restrictions prevent it. In any event, it would be redundant to do so since the RT literature has done so on many occasions. Thus, I will summarize RT's discussion about Fordism and the 1970s crisis, and then focus the bulk of the analysis on the MoR within prison system from the late 1970s-90s.

2.2.1 Limitations and Justifications of Choices

As indicated in the previous section, there are many limitations, beyond size restrictions, of this research paper. Recent information about the prison system, especially prison labour is quite difficult to come by. Prisons are generally not open to the public, and as such it is difficult to do research or report on ongoing issues within prisons. There is a lag of at least 4 years before any updated information about prisons gets reported on, and then an additional few years for academics to conduct their research accordingly. Thus, I could not do justice to describing the absolute latest issues facing the prison system. Instead, I positioned my research to focus on the dynamics that led to the most recent manifestation of the prison system, as is indicated by my research question. Prisons and specifically prison labour legislation was static for over 40 years until new legislation was passed in 1979 which had the most bearing on current penal institutions, and I decided to focus my attention on that transformation. I chose RT in order to help me describe this transformation because I found its theoretical position to be compelling.

Instead of focusing on just economic or material conditions that led to this shift, RT has a sophisticated way of explaining how the material interacts with social and cultural institutions which are also a part of our everyday lives, but by themselves can also not always account for how things change. However, like any theory, RT is not perfect. While RT can be a very effective tool in describing transformation, as a theory in and of itself it doesn't always have a way to explain why the change occurs in the first place. Individual RT scholars have come up with their own explanations but there isn't any consensus on this front (Boyer

and Juillard 2002: 240). This isn't necessarily a weakness, but is indicative of how RT is a framework and not a predetermined argument about what something is or isn't. Although, as a framework it doesn't provide any guidance when evaluating issues such as race or gender, which is also one of the reasons why my ability to discuss race in relation to the prison system is limited. Perhaps with more time and space I could find a way to do so using RT, but with the limitations of this paper an in-depth analysis of race won't be possible. However, I do accept that the prison system seriously and disproportionately affects African American men and I will return to this in my conclusion by highlighting how the elements of RT has implications on certain segments of the population. Although I can't do a full analysis of the racialization process, the arguments made in my conclusion will be also of value-added to RT since it will specifically locate race as a dynamic within inequality while most RT literature focuses only on class inequality.

Another challenge I faced when using RT for this research paper is that the discussion about neoliberalism is limited within the literature, especially within the time frame I am focusing on. Before the late 00s, many of the big names in RT such as Boyer, hardly referred to neoliberalism. In the beginning they were sceptical about what neoliberalism was and how it differed from capitalism more generally, but with the passage of time and more analysis of the 1970s-1990s (when neoliberalism began to take hold of the US economy) it has been incorporated into the RT framework. The discussion of neoliberalism outside of the RT literature is quite vast and I am not able to cover the breadth and depth of those debates. Therefore, I will provide a definition of neoliberalism that suits the purpose of this research paper.

It should be noted that the definition of neoliberalism I provide here is neither static nor complete. Neoliberalism is a little bit of a moving target that has multiple facets which, depending on the time and place, will manifest differently. Generally, it is perceived to describe the shift towards laissez-faire economic liberalism which prioritizes privatization and deregulation (Stockhammer 2009: 62). However, it has been realized that neoliberalism isn't just deregulation but selective deregulation (Stockhammer 2009: 62). Also, while there is deregulation, neoliberalism is also a series of re-regulations that restructure the economy in a particular way (Stockhammer 2009: 62). The restructuring of the economy under neoliberalism has been documented to take the following forms:

“For the public sector, it involves privatisation, liberalisation, and an imposition of commercial criteria in any residual state sector; for the private sector, it involves deregulation and a new legal and political framework to provide passive support for market solutions” (Jessop 1994: 30).

In other words, neoliberal strategies tend to prioritize commodification and marketization and these elements can be seen in both strategies of accumulation and regulation, as intended by RT, depending on the type of analysis one is doing (Jessop 1994). For my analysis I will be focusing on the neoliberal strategies that seek to restructure the economy towards deregulation in some areas and re-regulation in other areas to specifically support market criteria.

2.3 Situating the Literature:

Variations of RT have been used to study issues surrounding imprisonment and the role of incarceration, but it has been quite rare. In fact, throughout this research process I was only able to find three academic articles using RT elements in relation to imprisonment and they were mostly focusing on the rates of crime and incarceration (Lea 1997; Michalowski and Carlson 1999; Weiss 2001). Weiss as well as Michalowski and Carlson were both building off of Rusche and Kirchheimer's work. Although their ideas were not taken up by other academics until the 1970s, since then the work of Rusche and Kirchheimer are referred to a great deal in the political economy literature about prisons. Their main theorization focuses on how governments strategically use penal systems to enforce particular socio-economic conditions, such as reducing the number of unemployed by incarcerating them and taking them out of the labour market (Michalowski and Carlson 1999). However, their analysis mostly focused on the transition from feudalism to capitalism and didn't specifically focus on the socio-economic dynamics and its relationship to the prison system within different forms of capitalism (Michalowski and Carlson 1999: 219), which as I have shown above, RT does. However, in order to overcome some of the short-comings of Rusche-Kirchheimer's work, Michalowski and Carlson are combining it with the social structures of accumulation (SSA) approach, not specifically RT. SSA is based on some of the concepts within RT but uses more neoclassical modelling and regression techniques than traditional RT does. In regards to their article applying SSA to the penal system, they seek to identify how the "changes in the qualitative relationship among capital, labour, and the state are reflected in quantitative changes in the relationship between rates of unemployment and imprisonment" (Michalowski and Carlson 1999: 217). As I have mentioned, the object of my analysis is the prison sector as a whole in regards to a particular MoR, which stabilizes the RoA, and not the role of imprisonment within the MoR.

Robert Weiss also discusses Rusche-Kirchheimer's work and draws on some arguments from RT but doesn't employ a full RT methodology (2001). Through using Rusche-Kirchheimer's work he is also focusing on the dynamics between labour markets and penal institutions, particularly within post-Fordist modes of production (Weiss 2001: 253). However, his article specifically looks at the reprivatisation of prison labour within post-Fordism (Weiss 2001) and while I acknowledge that privatization is a facet to post-Fordism, as I will show in the next chapter, the role of prison labour within the prison system goes beyond just privatization. Also, my argument does not limit the economic dimensions at play to just the labour market factors but instead looks towards the system as a whole, the systemic, and how that is manifesting in the prison sector.

John Lea does use RT primarily to look at the changes in crime and crime control from Fordism to post-Fordism (1997). While his approach is the most similar to my own in terms of using RT to track a shift within the penal system, he is focusing more on the discussions that involve the correlation between poverty, generated in a particular way within the RoA and MoR, and how that correlates with crime control policies (Lea 1997).

While the limited literature using RT in relation to the prison sector provides an added-value to this research paper by contributing to this literature in a way that hasn't been done before, it also presents its own challenges. Mainly that I am not able to draw from many RT theorists when discussing the prison sector,

therefore I am left to draw on works from outside of the RT literature. I mitigate any potential conflicts between different literatures by mainly focusing on the work of political economists who are focusing on economic and political dynamics within the prison system (for example, LeBaron 2008 and 2012). I am also drawing upon legal studies scholars that are focusing on economic dynamics within the prison system (for example, Clark 2015 and Smith and Hattery 2007), which can be seen in the analysis chapter below.

Chapter 3

The Analysis

3.1 Fordism and Prison Labour:

Prison labour has been a part of the US' punitive system since before its independence in 1776 (LeBaron 2012). However, it did take on different forms depending on the economic and legal context of the time. As mentioned above, while the strong collective bargaining rights of workers as well as the development of welfare commitments which stabilized the mass production through mass consumption did not solidify until post-WWII, these dynamics were starting to bud in the 1930s, during the crisis of The Great Depression, under legislation such as the Fair Labor Standards Act in which “the elimination of unfair competition [in relation to labour] was one of the recorded legislative goals” (Clark 2015: 769). This extended to the prison industry as well since in 1935 Congress passed The Ashurst-Sumners Act which prohibited the sale of inmate produced goods across interstate lines because there were concerns at the time of how these goods might compete with goods made by non-inmates (Clark 2015: 770). The Ashurst-Sumners Act was a unifying national law in response to its predecessor, The Hawes-Cooper Act (1929), which originally just stipulated that prisoner made goods were subject to laws of the receiving state about inmate labour competing with free labour (Kach 1936). While legislation might not be a form of accumulation in and of itself, identifying the legal context is very important for RT since it has implications on how the economy is regulated (Boyer 2015: 485).

In other words, regulation via the legal apparatus plays a key role within the MoR as it is one of the processes that structure social and economic relations (Boyer and Saillard 2002a). This is not to say that law's only function is to perpetuate capital accumulation, as it might be characterized by some Marxist and neo-Marxist scholars, but that law is embedded and interacts and re-acts to certain economic mechanisms in particular ways. For example, in a journal article from 1936, it is stated that “[s]ome claim it [the Hawes-Cooper Act] is the child of Organized Labor, conceived in selfishness and raised on legislative coercion. Fairer opinion recognizes that the public at large should not tolerate factories manned by prisoners underselling free labor, especially with our millions of worthy idle” (Kach 1936: 539). Within the context of The Great Depression, ensuring employment became a paramount concern for the MoR in order to stabilize the intensive RoA, and accordingly, unfair labour competition from the penal system was targeted. It was even targeted by the administration of Franklin D. Roosevelt in an Executive Order creating a corporation to oversee all of the industries within prisons to ensure “no single private industry shall be forced to bear an undue burden of competition with the products of the prison workshops” (Roosevelt 1934). This corporation was called the Federal Prisons Industries, Inc. (FPI), and is still in existence today under its publicly traded name, UNICOR. This is indicative of how the capital-labour compromise is, as Boyer states, an example of a political compromise having a “determining – and for a long time positive – influence on the dynamic of accumulation” (2000: 280). Although it is not specifically isolated, law, is a part of what Boyer is referring to

as the political and therefore it is not to say that law cannot be a powerful force, but that it cannot be disembedded from the material dynamics of production and consumption. In fact, the legislation mentioned above was the standard for over 40 years until the crisis of the 1970s, when new legislation was passed.

However, before diving into the shift to the post-Fordist regime it should be noted that the use of prison labour and also prison labour contracted out to private companies is not a new phenomenon. Prisons have been realms that further entrench regimes of accumulation since the beginning of capitalism, and they have played a particular role in the institutional arrangement that influences the trajectory of growth within an economy. As LeBaron explains, the industrial prison contract system in the Northern states from the mid-to-late 19th century, spurred by rapid demand for industrialization, factories were being built inside prisons and solidified the practice of using labour within the context of punishment (LeBaron 2012: 333). Free labour with no concern for conditions, duration of work, and the use of violence if met with resistance was certainly an appealing option for corporations at the time and it is perhaps unsurprising that instead of eradicating slavery, the adoption of the 13th Amendment in 1863 simply shifted it to prison population as part of their punishment.

The 13th amendment states, “Neither slavery nor involuntary servitude, *except as a punishment of crime whereof the party shall have been duly convicted* [emphasis added], shall exist within the United States, or any place subject to their jurisdiction” (The Library of Congress, n.d.). Although it started to take on different forms as time went on, the first regulation implemented in relation to prison labour was the Hawes-Cooper Act (1929) followed by the Ashurst-Sumners Act (1935). However, even though these acts were not regulations of the prison labour conditions themselves, they were an indication at the time of the rise of the wage-labour nexus as the dominant institutional form since this legislation was specifically concerned with how goods made with low-wage prison labour might compete with goods made with non-inmate labour and thus negatively impact workers getting paid fairer wages (Clark 2015: 770).

Private interests in prison labour were curtailed under the Ashurst-Sumners Act (1935) since it restricted the circulation of products in the private market made with inmate labour, but one of the exceptions to this regulation were commodities manufactured for the state or federal government, or non-profit organizations (Clarke 2015: 770). Therefore, prison labour was still used to produce goods sold to other government agencies or non-profits such as state funded universities. In other words, while the re-insertion of private interests into the prison system in the 1970s is a particular exploitative development, it is important to highlight that the exploitation of prison labour extends beyond its benefit to private companies or more generally beyond the realm of privatization.

What follows in the next section is an explanation of the crisis within Fordism in the 1970s. It is followed by a description of the RoA and MoR within the prison sector, which includes the re-emergence of privatization but does not define the overall logic of its MoR.

3.2 The Crisis of Fordism – 1970s:

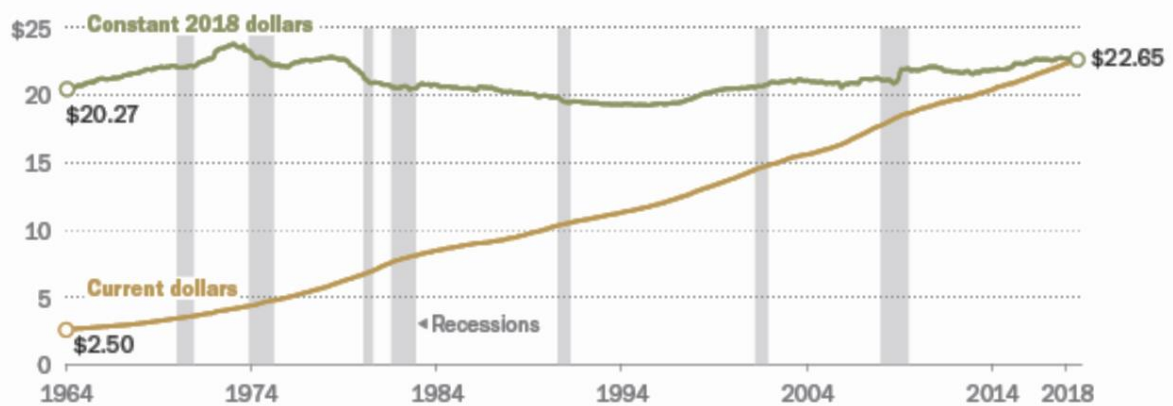
From an RT standpoint, the MoR is meant to provide a certain amount of stabilisation to the RoA. Hence, one can delineate between crisis within the RoA and within the MoR. Furthermore, one can acknowledge moments when the MoR can have contradictory or conflictual elements which cause destabilising effects but not necessarily to the underlining RoA (Boyer and Saillard 2002a: 43). An example of their different conceptualizations of crisis can be seen in the following statement by Boyer about the Fordist regime after WWII:

“Mass production techniques were converted from the military to the civilian sector, i.e. the mass production of consumer goods; the related increasing returns to scale allowed reductions in relative prices and/or increases in real incomes. The tendency to build excess capacity was overcome and did not trigger the price increase seen in the 1930s because the stronger bargaining power of labour entitled unions to negotiate collective agreements that in effect codified an explicit indexing of nominal wages to inflation and productivity” (2015: 491).

Boyer is highlighting here how the intensive regimes of accumulation during the inter-war period and under Fordism were both predicated on “the tendency to build excess capacity” (2015: 491). However, unlike Fordism, the MoR during inter-war period didn’t have the solidified capital-labour compromise that stabilized this excess capacity by ensuring that the labour force had the means to consume the increase in productivity, which led to a crisis (the Great Depression) in the MoR but not necessarily in the RoA (Boyer 2015: 491). What this, and also the legislation mentioned in the previous section, is indicative of is that crisis and change are not black and white phenomena that either suddenly eliminate or create certain societal or economic dynamics after a specific event. For example, the capital-labour compromise wasn’t as solidified or prevalent in all other institutional forms until after WWII, but that doesn’t mean that the capital-labour compromise wasn’t beginning to form in relation to specific industries before WWII. As I have shown in the previous section, prison industries were one of the first industries to be dominated by the capital-labour compromise before Fordism. However, depending on the crisis, one could potentially also see prison industries at other times being realms of relative lag in the changing MoR and/or RoA, such as at the turn of the 20th century when prisons were used as a way to keep some stability in the use of forced labour after the abolition of slavery (LeBaron 2012). The crisis within the inter-war period differed from the crisis during the Fordist regime because instead of just being a crisis within the MoR, it was a “transformation of the productivity regime itself” i.e. a crisis of the RoA itself (Boyer 1997: 21).

Although there isn't a cohesive consensus about the exact cause of the crisis, there are some commonalities among the different descriptions such as, "the productivity slowdown which took place after 1967 and the modification of wage formation that appeared in 1971" (Boyer and Juillard 2002: 240). The decline in productivity, the ratio between the quantity of inputs such as labour and capital and levels of output, can be seen most clearly in the private nonfarm business sector which, "declined from an average annual rate of 2.5% over 1948-69 to 2.0 over 1969-73, and to 0.5% from 1973 to 1979" (Munnell 1990: 3). In tandem with the decline in productivity, real wages began to decline (Boyer and Juillard 2002: 240) and have remained virtually stagnant ever since. Figure 3 below, from the Pew Research Center, demonstrates this.

Average hourly wages in the U.S., seasonally adjusted



Note: Data for wages of production and non-supervisory employees on private non-farm payrolls. "Constant 2018 dollars" describes wages adjusted for inflation. "Current dollars" describes wages reported in the value of the currency when received. "Purchasing power" refers to the amount of goods or services that can be bought per unit of currency.
Source: U.S. Bureau of Labor Statistics.

PEW RESEARCH CENTER

Figure 3 – Real wages in the US 1964-2018. Source: (Desilver 2018)

The changing dynamics of accumulation led to steady inflation, which was further exacerbated by the energy crises in 1973 (OPEC oil embargo which quadrupled the cost of oil in the US) and 1979 (when the Iranian revolution further restricted the amount of oil on the market and consequently caused prices to rise again) (Bryan n.d.). While inflation had been a little over 1% in 1964, "[i]nflation began ratcheting upward in the mid-1960s and reached more than 14% in 1980]" (Bryan n.d.: n.p.). This inflation was stoked by the Vietnam War which didn't end until 1975. Also, a moment marking a major shift in the monetary market at the time was the fact that in 1971, President Nixon took the US dollar off of the gold standard, and the extreme anti-inflationary monetary policies that were introduced by the Federal Reserve Board in the beginning of the 1980s under Paul Volcker (Bryan n.d.; Boyer and Juillard 2002: 241). All of these factors caused debt to rise exponentially, in fact the deficit in the US balance of payments was already \$9.8 billion in 1970 and it soared to \$29.8 billion in 1971 (Cohen 1977). This was particularly due to the fact that while productivity was in decline, many of the Keynesian era public spending were still in place, which emboldened conservative calls to reduce the role of the government (Boyer and Juillard 2002: 241). All of these events were part of the structural crisis within Fordism, marking its end, and thus new accumulation dynamics

began to arise in the late 1970s and early 1980s and new institutional arrangements formed in order to cope with these changes.

3.3 Post-Fordism 1979-1996 and the US Prison Sector:

After the crisis within Fordism, what became clear over time is that the new adjustment principles led to a growth regime that focused more on:

“extensive forms of growth, combining job creation, extended work hours and low growth in productivity and wages. However, this regime is still based on mass consumption, offering an element of continuity with typical Fordism” (Boyer and Juillard 2002: 242).

Although there is still mass consumption in post-Fordism, it is predicated on the fragmentation of different social classes which is created by intensifying inequalities (Boyer 2015). Taking these descriptions as a general starting point, in this section I illustrate how the shifting RoA began to manifest in relation to the US prison system and what MoR was present, within the prison sector, in order to stabilize this form of accumulation.

The crisis within Fordism led to widespread unemployment in the US in the 70s and 80s. In fact, after achieving a fifteen year low in 1969 of 3.5% unemployment, by 1971 this had jumped to 5.9%, 8.5% in 1975 and 9.7% in 1982 (Chiricos 1987: 187). As Chiricos states, “By the spring of 1982, unemployment topped 11% in six states. Hardest hit were teenagers, young adults, minorities, and blue-collar workers. For example, unemployment during 1982 reached 14% for 20-24 year-old adults, 18% for construction workers, 28% for auto workers, and 42% for black teenagers” (Chiricos 1987: 187). This correlated with a dramatic increase in violent crime rates, as Figure 4 below shows. In keeping with the tone of Chiricos’ article, I am careful not to say causation here because as he notes there are a variety of reasons as to why crime rates rise at certain moments in time, such as new legislation which criminalizes certain kinds of behaviour or is specifically targeting behaviours like homelessness which is associated with poverty (Lea 1997; LeBaron 2012). However, his study demonstrates that it is reasonably safe to identify a correlation between unemployment and crime rates. Consequently, a “law-and-order crusade” was established as a response to these emerging dynamics, fear of which was being stoked by the media at the time (LeBaron 2008: 62). This was characterized by the “war on drugs” policies started under President Richard Nixon, and continued on into the 1980s under the Reagan-Administration’s “tough on crime” campaign that created new penal policies that enforced minimum sentencing and criminalized certain “disorderly” behaviours like loitering, all of which resulted in the rates of incarceration to grow rapidly, particularly among African American men (Smith and Hattery 2007; LeBaron 2012). However, crime control initiatives were not only championed by Republicans such as Reagan and Nixon, the increasing intensity of this social issue made it a bi-partisan platform.

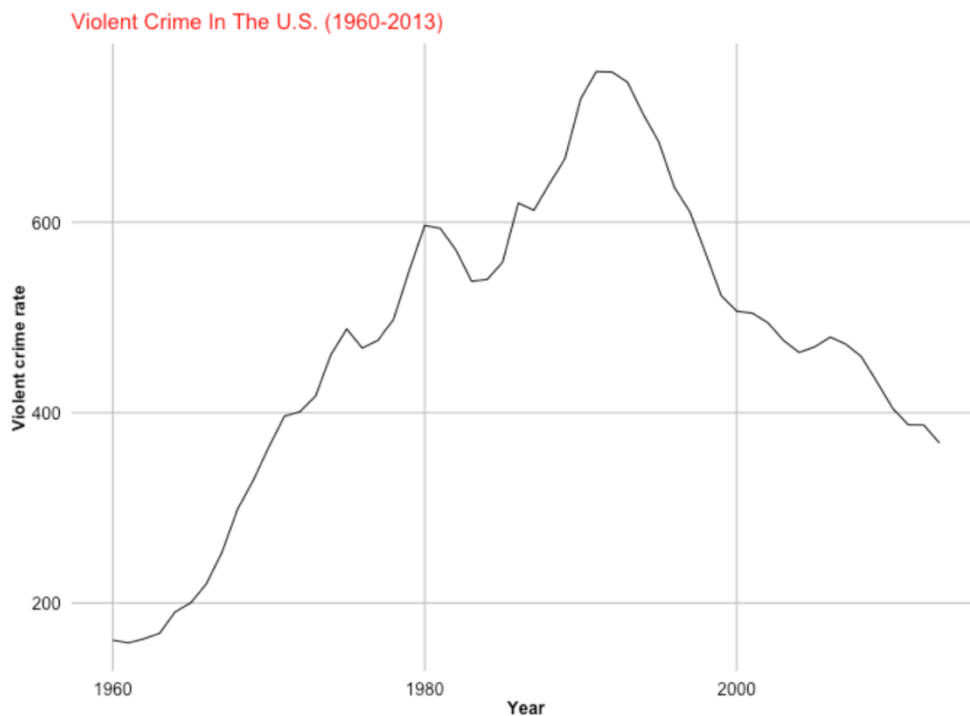


Figure 4 – Violent crime rates in the US 1960-2018. Source (Eisen 2015).

Crime control became an increasingly visible issue throughout the 1970s and in 1979 the Justice System Improvement Act was passed in order to restructure state and local justice systems. It was sponsored by a Democrat Senator, Edward ‘Ted’ Kennedy from Massachusetts, in order to deal with “the high incidence of crime in the United States”, which, “is detrimental to the general welfare of the Nation and its citizens, and that criminal justice efforts must be better coordinated, intensified, and made more effective and equitable at all levels of government” (Justice System Improvement Act 1979: 1169). One of the initiatives was to create the Law Enforcement Assistance Administration which was empowered to provide grants for various criminal justice programs, and one of the guidelines outlined for providing grants was the following:

“[E]ncouraging the development of pilot and demonstration projects for prison industry programs at the State level with particular emphasis on involving private sector enterprise either as a direct participant in such programs, or as purchasers of goods produced through such programs, and aimed at making inmates self-sufficient, to the extent practicable, in a realistic working environment” (Justice System Improvement Act 1979: 1180).

This particular guideline was carried out through a new program that was piloted through this legislation called the Prison Industry Enhancement Certificate Program (PIECP) (Justice System Improvement Act 1979). It was a small pilot of just 7 projects that would be eligible for an exemption from the Acts mentioned in section 3.1 that put restrictions on the selling of prisoner made goods across interstate lines. However, taking into consideration concerns in the past about these goods competing with free labour, there were some stipulations such as prisoners participating in these projects had to receive wages which are not less than what is paid for similar work in the area by non-inmates (Justice System Improvement Act 1979). Also, it stipulated that their “status as offenders” was not a justification to deny their “right to participate in benefits made available

by the Federal or State Government to other individuals on the basis of their employment, such as workmen's compensation" (Justice System Improvement Act 1979: 1215). There were specific items that prisoners could not claim such as unemployment compensation and although they had to receive similar wages as those paid to non-inmate workers, up to 80% could be garnished in order to cover taxes, charges for room and board, family support and payment into funds in order to compensate victims (Justice System Improvement Act 1979: 1215).

The insertion of private interests as well as setting the precedent of prisoners being responsible for their own incarceration was a major policy shift and it was done because in order to get this legislation passed, certain institutional compromises had to be made. Seven Republicans and 5 other Democrats co-sponsored this bill and under the looming economic crisis of the 1970s if Democrats wanted to pass this legislation, a new consensus about funding had to be formed.

3.3.1 Post-Fordist Accumulation in the Prison Sector

The crisis in the 1970s seemed to indicate that the Keynesian regulation tactics which focused on "demand-side state intervention to secure and maintain full employment" had failed (Neilson 2012: 166). The crisis gave much more legitimacy to voices in Congress at the time who were identifying the cause as stemming from the government over spending on welfare programs and the labour market inflexibility caused by these programs driving up wages which they targeted as causing inflation (Lipetz 1997: 3). All of these were demand-side factors and this spurred a growing trend to prioritize supply-side economic factors (Lipetz 1997: 3). In other words, there was a shift from a demand-side focus which prioritizes issues relating to consumption, to a supply-side focus on issues relating to production (Lipetz 1997: 3). With regards to the prison sector, as more facilities needed to be built with rising incarceration rates throughout the 1970s, the former funding mechanisms could no longer be relied upon. While in the past these projects were funded by state bonds and this debt under the Fordist growth regime was typically paid for by taxes, the state fiscal crisis, i.e. high inflation, high unemployment and increasing debt, meant that the funds available to revamp existing markets became very restricted (Jessop 1994). This was particularly urgent given the rising costs of incarceration. In fact, \$38.5 billion was added to the total state corrections expenditures between 1982 and 2001 (Kyckelhahn 2012).

In response, prisons began to be touted as a mechanism through which local municipalities could develop their economies and throughout the 1980s, actually began bidding for contracts with local governments to build prisons in their districts (LeBaron 2008). For example, LeBaron states that in Texas, "the town of Abilene offered an incentive package of over \$4 million to the local government" (LeBaron 2008: 65). The notion that prisons could be a hub of industry was due to the fact that not only were non-inmate jobs created, but prison industries were seen as being able to generate commercial activity, in fact in the example mentioned above, the "package included a 316-acre site for the prison as well as 1,100 acres of farmland adjacent to the facility, capable of generating \$500,000 in cotton per year if the cultivated by inmate workers" (LeBaron 2008: 65).

The need to build more prisons was used by local states to try and re-establish industry, and the federal government saw an opportunity to not only develop industry but also to do so with as little federal money as possible (LeBaron 2008).

Prison labour not only became an incentive to cultivate prison industries but also to lower the costs of the facilities' since inmate labour could also be used in their construction (LeBaron 2008). Also, the local government through the Department of Corrections had the option of leasing out prison labour for highway repair, garbage clean up, etc. to reduce costs to the state in other industries beyond the prison sector (LeBaron 2008). Under these conditions of the emerging RoA *extending* itself into different markets, prison labour became incorporated into the metabolic cycle of the prison system as an outlet to avoid public spending. Essentially, the structure facilitated more extraction of the surplus-value of labour, upon which capital accumulation is based (Aglietta and Fernbach 1979: 87). The surplus-value of labour is the excess value created by the workers above the cost of their labour (Aglietta and Fernbach 1979: 87).

The extraction as well as the cycle of absorption of the surplus-value began to shift in the 1980s as prisons began to move into rural areas in the US (Huling 2002). This process began in the 1960s and 70s, but at an average rate of only 4 new prisons a year (Huling 2002: 197). However, "[d]uring the 1980s that figure increased to an annual average of 16 and in the 1990s, it jumped to 25 new prisons annually. Between 1990 and 1999, 245 prisons were built in rural and small town communities" (Huling 2002: 197). Uncoincidentally, these were the regions hit the hardest by the productivity slowdown in the 1960s resulting in job-losses in industries common to those areas such as, "farming, mining, timber-work and manufacturing" (Huling 2002: 197). However, despite the claims that prisons could spark economic recovery, very few of the non-inmate jobs went to locals (Huling 2002: 199). Many of the management positions, which were also the higher paying jobs, required experience and educational backgrounds that many of the local residents didn't have which means that most of these roles were filled with people from outside those communities (Huling 2002: 199). On top of that, jobs outside of the prisons began competing with inmate labour (Huling 2002: 200). Encouraged under the guise of "community relations", work for churches, hospitals, libraries and other government organizations began going to prisoners as the following example shows (Huling 2002: 200):

"In Cossackie, New York, home to two state prisons and 3,000 prisoners, work performed for the community varies widely according to the prison guard coordinator of the inmate work crew: 'We've done a lot of painting this year, painting a community centre building in Athens, painted the inside of a church parish hall, put a roof on the town of New Baltimore town hall, had them sealing blacktop...just about everything. They get an industrial rate which amounts to 42 cents an hour' (Huling 2002: 200).

These examples have not even touched upon the use of prison labour by private industries or the building of privately owned prisons. I will be discussing those issues in the next section, but I wanted to make clear that although private interests are certainly benefiting from the system of incarceration, the particular configuration of the prison system and the labour therein is not due to private interests superseding the interest of the state. In fact, the form of the state itself is the main driver of this particular configuration and the biggest benefactor.

3.3.2 Post-Fordist Institutional Forms and Regulation

Responding to the crisis of Fordism took a variety of forms. In relation to the prison sector, a particular fiscal and financial regime began in order to respond to “Keynesian stagflation, the fiscal crisis of the state, slower productivity growth in the welfare state compared to the private sector” (Jessop 1994: 21). The fiscal and financial regime is defined by RT as three major forms and their interconnected cycle of operation which are the following:

“[F]irst, the pure political forms of sovereignty...next, legal forms of legitimacy...and lastly fiscal forms. These three operating forms gradually converge in what is termed the organic circuit of the state. In demonstrating how, in a given historical situation, this organic circuit effectively ‘forms a loop’ by authorising the financial growth of the state and the development of political power, a fiscal and financial regime and mode of *régulation* of the corresponding political order emerge. A fiscal and financial regime ensures a functional connection between the legal and public spending forms of legitimacy of the state through the intermediary process of levying taxes” (Boyer and Saillard 2002b: 337).

As mentioned in this quote, the fiscal and financial regime are a central component of the *form* of the state (Boyer and Saillard 2002b: 339). The form of the state is defined by the institutional compromises that “create rules and patterns in the evolution of public spending and revenue” (Boyer and Saillard 2002b: 339). I will illustrate below the form of the state that emerged in relation to the growing prison sector by focusing on the fiscal and financial regime. This is also the institutional form that defines the hierarchy of the MoR within the prison sector.

3.3.2.1 The Workfare State

The rising crimes rates became an urgent issue that had to be managed if the political legitimacy of the state was going to be maintained. Accordingly, this legitimacy was sought out through legal forms, such as the Justice System Improvement Act (1979). These make up the first two aspects of the circuit of the state. However, there was a major transformation in the fiscal forms which had a particular effect on the cyclical nature of fiscal and financial regime.

This transformation can be seen in the changing dynamics of the state from a welfare state to a workfare state. Workfare refers generally to “work first” welfare strategies (Peck and Theodore 2000: 120). For example, requiring those who are unemployed to apply for government placement programs which are typically low-wage temporary positions, in order to be eligible to receive certain benefits (Peck and Theodore 2000: 120-121). Peck and Theodore state that, “as prevailing explanations of the causes of poverty and unemployment have been reformulated in supply-side terms as problems of ‘welfare dependency’, low motivation and inadequate ‘employability’”, strategies that emphasised work-first and *then* welfare began to be prioritized (2000: 120). The focus was no longer on purchasing power (demand-side) being the driver of the economy and therefore ensuring that those at the bottom of the labour market had the means to afford basic needs (in fact those began to be seen as ineffective and costly) (Peck and Theodore 2000: 120). Instead, everyone who could work needed to be formally obliged to work because businesses needed access to more labour at a competitive price, i.e. cheaper labour (supply-side) (Peck and Theodore 2000: 120). In

other words, “social policy objectives [were] increasingly subordinated to labour market imperatives” (Peck and Theodore 2000: 120).

Both sides of the aisle (Republican and Democrat) were on board with these perspectives. They were actually championed under Bill Clinton through legislation such as the 1996 Personal Responsibilities and Work Opportunities Reconciliation Act, “which devolved welfare to the states while demanding exacting work-participation targets” (Peck and Theodore 2000: 121). However, although the legislation above is indicative of the solidification of this new political consensus, their foundations percolated in other areas prior to this, such as the prison sector.

The average annual state expenditure per prisoner from 1982 to 2010 for “the 25th percentile fluctuated between \$21,243 and \$26,452, and the 75th percentile fluctuated between \$37,084 and \$43,178” (Kykelhahn 2012: 5). Under the looming crisis of the 1970s, but needing to contend with rising incarceration and its costs, a shift to lowering the costs of social expenses began to take shape in relation to the prison sector. The shift manifested in more and more states passing legislation allowing “pay-to-stay” fees being charged to the prisoners for room, board, meals, medical expenses and even basic necessities like toilet paper, and by 1988, “forty-eight states authorized some correctional fees” (Eisen 2014: n.p.). The fees charged to inmates per day vary from \$142.42 in the Riverside County, California to as low as \$6.00 a day for room and board at Pennington County Jail in Rapid City, South Dakota (Eisen 2014). These fees were a notable transition to focusing on personal responsibility for services provided by the state. As Eisen states, “[o]ne Iowa Sheriff said about the practice of charging inmates, ‘if they are violating the law, then they should be the ones to pay for it’” (2014: n.p.). This is particularly indicative of personal responsibility being placed on the poor since 80% of those incarcerated are indigent, and while fees are waived for those who cannot afford them, more often than not the appropriation of the prisoner’s labour became the main mechanism through which the inmates would pay for these fees (Eisen 2014).

The rising role of the workfare state within the prison sector defines the institutional compromise between crime control and reducing the costs of incarceration to the state. It is the institutional form that is at the top of the hierarchy, conditioning all of the others below.

3.3.2.2 International Liberalization

The second institutional form that has one of the leading roles in the MoR of the prison sector, is the insertion into the international regime. The institutional compromise between crime control and reducing the costs of incarceration under the rising workfare state, gave way to private sector access to prison labour. It is under the burgeoning conditions of the workfare state that we can begin to understand why the 1979 Justice System Improvement Act had a specific guideline that specified encouraging prison industry programs, and the insertion into the international regime is how we can understand why there was “particular emphasis on involving private enterprise” (Justice System Improvement Act: 1180). First and foremost, the prison industry programs were supposed to be “aimed at making inmates self-sufficient, to the extent practicable, in a realistic working environment” (Justice System Improvement Act: 1180). This is indicative of an early experiment in what would become skills-based welfare-to-work strategies, which “presume a ‘deficit model’ of the unemployed:

that one of the reasons why they are out of work is that they do not know (or have somehow forgotten) *how* to work” (Peck and Theodore 2000: 124). In this case, part of the assumption is that they are criminals because cannot or do not know how to work. In their annual report, FPI or UNICOR states the following:

“UNICOR operates at no cost to taxpayers, reduces our nation’s criminal justice costs, improves public safety and, through job and life skills training and experience, provides federal inmates a ‘second chance’ to become productive tax-paying members of our communities upon release from prison” (Federal Prison Industries 2017: 1).

This description falls under the heading “The ‘Business’ of Reducing Crime” (Federal Prison Industries 2017) and is indicative of the prioritization to restrict public spending as well as the skills-based welfare-to-work strategies.

Wages paid to prisoners by a third party provided a garnishing mechanism in order to pay for their incarceration, which was an added benefit of private enterprise collaboration. From 1979 to the second quarter of 2018, a total of \$887.8 million has been paid in gross wages to inmates through the PIECP, 68% of which or \$276.4 million, has been garnished to cover just room and board (NCIA 2018). The access to prison labour was made possible due to the emerging “set of rules that organise the nation state’s relationship with the rest of the world” (Boyer, R. and Y. Saillard 2002b: 339).

One of the shifts in accumulation that occurred since the early 70s was the “penetration of the national market by foreign producers” (Boyer 1997: 23) and as a result industries begin to outsource certain processes under the new dynamics of globalisation and increased competition due to trade liberalisation (LeBaron 2008). The PIECP started through the 1979 Justice System Improvement Act, got rid of the previous restrictions on collaboration between private industries and the prison sector. Those enterprises that participated in the program were allowed to sell prisoner made goods across interstate lines, opening up the market. Prisons became a low-wage zones that industries could re-locate their production to under these new conditions of globalisation (LeBaron 2008). As LaBaron states, “While these sites were often located offshore, some firms were able to stay in the USA by moving production into state prisons – a strategy that peaked during the 1990s in the face of surging competition” (2008: 63). Not only were the wages low but the PIEP regulated through the FPI “pays its inmates between 23 cents and \$1.15 an hour, is exempt from OSHA [Health and Safety regulations] [and] taxes, and does not have to provide employee benefits” (LeBaron 2008: 71). This made prison labour considerably cheaper than non-inmate employment within the US. In fact, this is exactly how the FPI has been marketing itself, as a form of “repatriation and bringing sale otherwise sent to foreign countries back into the United States of America” (Federal Prison Industries 2017: 29). Prison labour was marketed as a competitor with low-wage labour abroad, which was a new condition under the new dynamics of trade liberalization in the 1980s and 90s.

The PIEP not only led to an increase in private companies using prison labour, but also private companies constructing and managing corrections facilities in their entirety, and for their services the federal government actually pays them a set fee for each inmate they house (LeBaron 2008). However, in terms of adult state and federal incarceration (the focus point of this research paper), very few inmates are held in private facilities. Approximately 131,300 state and

federal prisoners are held in private facilities (Lindsey et al. 2016: 309). While profit is being incurred by private companies from these private facilities, the majority of their profits, that measure in the billions, come from immigration detention centres and juvenile detention centres (Lindsey et al. 2016). Although the implications of the privatization of those facilities would certainly be interesting, it is unfortunately outside of the scope of this paper.

3.3.2.3 The Volcker Shock

The third institutional form, which is the third point in the hierarchy triangle, is the monetary regime. It is no coincidence that the transformation in prisons and prison labour, coincided with the first few years of Paul Volcker's chairmanship of the Federal Reserve (LeBaron 2012: 341). As chairman, Volcker specifically targeted the rising inflation rates of the 1970s and sought to reduce them by any means necessary (LeBaron 2012: 341). His method of choice was to constrict the economy by raising the federal funds rate (the interest at which bank and credit unions lend to other banks or credit unions) and the prime lending rate (the interest at which banks lend to consumers) (Hager 2012). The prime lending rates saw an "increase from 7% in 1976 to 19% in 1981" (Hager 2012: 76). This drastically reduced the spending of commercial banks, and as a result unemployment rates increased by 66% from 1979 to 1983 (LeBaron 2012: 342). The farming, manufacturing and textile industries that managed to survive the recession in the 1970s, by borrowing from banks, were crushed by these interest rates, exacerbating the unemployment in those industries and drastically adding to the reserve army of labour which further reduced collective-bargaining power (LeBaron 2012). With so many people out of work, any employment became good employment, a critical component of the workfare state (LeBaron 2012: 341-342). This accomplished Volcker's goal and inflation fell to an average of 3.5% by the mid-1980s, but it came at a high price (Bryan n.d.).

Not only did this monetary policy increase unemployment, reducing the collective-bargaining power, it also transferred more power to financial capital. While commercial banks were constricted under the interest rates, investments banks were not as affected (Hager 2012). Although a full comprehensive discussion about this shift isn't possible within the confines of this research paper, one of the examples of how this monetary policy benefited investment banking is by making the loans more costly, this made commercial paper (promissory notes provided by companies) favourable (Hager 2012: 77). On top of the fact that rising debt bolstered the securities market which is predicated on buying and selling debt through investment banks (Hager 2012: 77). This led to more and more innovations in finance, such as a rise in credit to compensate for the reduction in real incomes, as well as strong control of firms through finance, particularly in relation to international financial markets (Boyer 2000: 285). As financial markets began to boom, this financialization of the economy contributed to the concentration of income at the top (Boyer 2015: 483). The disparity between average incomes and that of CEOs since 1970s can be seen quite dramatically in Figure 5 below.

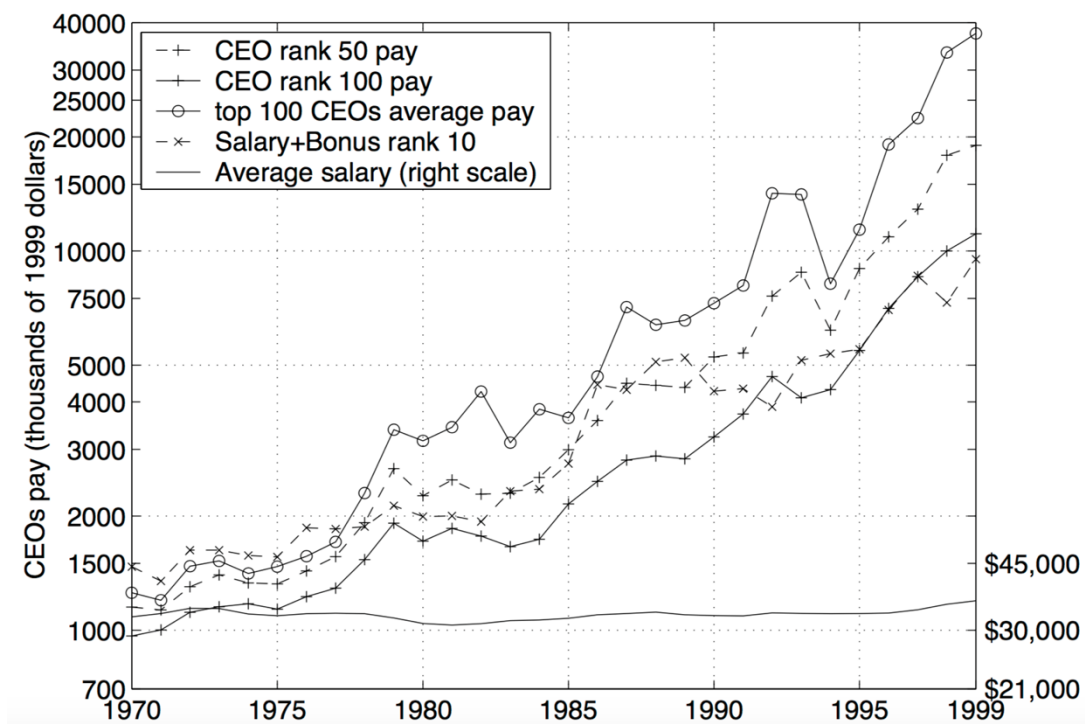


Figure 5 – CEOs Pay vs. Average Salary. Source: (Picketty and Saez 2003).

However, in relation to the prison sector, what is more significant about this monetary policy is not its effect to the top income brackets although the stratification is a part of it, but rather its effect on the bottom income bracket, as will be explained below.

3.3.2.4 Stiff Competition

The institutional forms that constitute the bottom of the hierarchy are the form of competition and the wage-labour nexus. Their place at the bottom is an indication that they have very little role in defining the overall MoR and is also why they will receive less attention here.

The structural constraints imposed from the MoR hierarchy outlined above, created much stiffer competition. RT refers to competition as the relations between the centres of accumulation, which mostly refers to firms (Boyer and Sallard 2002b: 338). Under trade liberalization, competition became determined by international markets which made the use of prison labour appealing to those firms that wanted to keep some production within the US but still compete with products being made abroad. However, in the 1980s access to prison labour was still relatively restricted and competition between firms was limited in this arena and hence my reference to stiff competition. Eventually, democratic Senator Joseph 'Joe' Bidden Jr., sponsored the 1990 Crime Control Act which set the ground work for easing the restrictions on accessing inmate labour. The 1990 Crime Control Act contributed to prison industries in two ways: The first is by creating a mandatory work requirement for all prisoners, solidifying the state's ability to forced prisoners to work (Crime Control Act 1990). The second is by increasing the PIECP from 7 programs to 50. Any concerns about price competition with these products were considered to be completely off-set by the PIECP's stipulation that inmates had to be paid a prevailing wage. However, paying just a prevailing wage that didn't include benefits was still cost effective

for the private sector and considering that between 1980 and 1994 prison sales went from \$392 million to \$1.31 billion most of which was reabsorbed into the penal system via deductions, it was certainly cost effective for the state (Wahad et al. 2017).

3.3.2.5 Subordinated Labour

What has resulted from the configuration of the institutional forms above is that the wage-labour nexus has fallen to the very bottom of the MoR due to the fact that all of these forms required a flexible labour market to function. The supply-side logic of placing the responsibility of cost reduction on the incarcerated, touted not only as incentivisation for the inmates but also as penance for their crimes (workfare), is very complementary to deregulated flexible labour markets (Peck and Theodore 2000: 120). Part of the supply-side logic is that more competition at the bottom (among low-wage workers) is beneficial to the economy because it reduces wages and therefore the labour cost to companies. This is also complementary to private enterprises under the new dimensions of international liberalization. Producing more competition through unemployment was actually the goal of the Volcker Shock since the labour market *inflexibility* of Fordism, with high wages and social protection, was seen as the cause of inflation during the 1970s. Also, more labour regulation would certainly not help in easing access to prison labour under stiff competition. All of the pressures from the other institutional forms were brought to bear on labour, which was continually reduced to its role as a cost within production and increasing subjected to the needs of the market (Boyer 2000: 293). As Boyer states, “[t]he attack against wage-earners’ power and protection has been consistently pursued under the banner of deregulation of previously protected sectors with high union density. Consequently, most of the coordinating mechanisms for wages via institutionalization have been cancelled” (2015: 493). Thus it’s decline to the bottom of the MoR hierarchy.

Now that I have described the hierarchy of the prison sector MoR, I will describe it’s general cohesion in the next section. As I will explain, with the workfare state playing a defining role within the MoR, I am referring to the cohesion of the MoR within the prison sector as coercive neoliberalism.

3.3.3 Coercive Neoliberal MoR in the US Prison Sector

Below is Figure 6, which illustrates the coercive neoliberal MoR of the US prison system which I have described above.

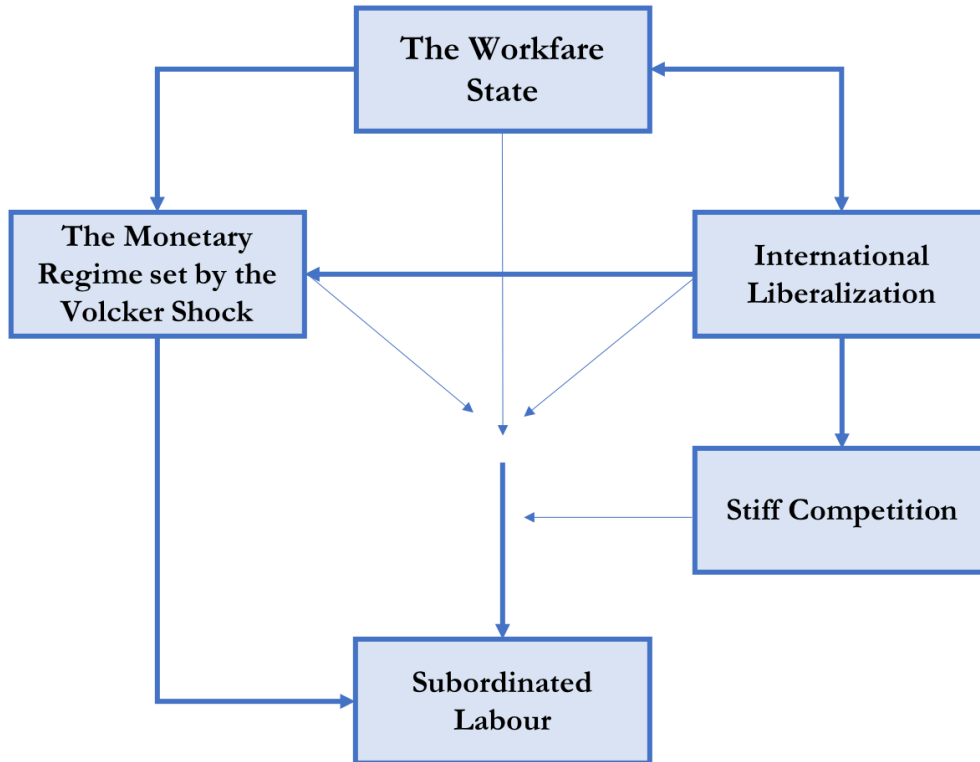


Figure 6 – Neoliberal MoR in the US prison sector.

Coming off the economic crisis in the 1970s, the prison sector in the 1980s and 1990s was transformed under the emerging trends of the workfare state to place the burden of economic instability on the individual instead of the state (Peck and Theodore 2000: 119). This burden shifted through the mechanism of incorporating prison labour into the metabolic system of incarceration (re-regulation). Under trade liberalization private enterprise was given access to prison labour and even to the system of incarceration itself with privately owned penal facilities (deregulation). These forms were intensified by the Volcker Shock, which was a targeted attack on inflation by restricting the economy to drive up unemployment (deregulation) (LeBaron 2012: 341-342). The stiff competition for prison labour by private enterprise under this intensification eventually led to some opening up through 1990 Crime Control Act (re-regulation). All based on the subordination of labour to market dynamics (deregulation). These series of re-regulations and deregulations is indicative of a neoliberal strategy that is geared towards “privatisation, liberalisation and an imposition of commercial criteria in any residual state sector” (1994: 30). Neoliberalism is not limited to workfare, nor is workfare a necessary component of neoliberalism, my aim here is to show that in the particular case of the prison sector from the late 1970s to mid-1990s, workfare played a particular role in institutionalizing neoliberalism within the prison sector.

For example, with the institutional compromise between crime control and cost savings mechanisms to the state, which in this case forms the logic of the workfare state, the increase in prison construction in the 1980s mentioned in

section 3.3.1, was not directed to rural areas by accident. An added benefit to prison facilities being built in the Southern US and rural areas, was that they had a lower density of collective bargaining agreements than their Northern counterparts (LeBaron 2008: 65). Although the 1979 Justice System Improvement Act specified that representatives of any labour organization in the area had to be consulted before a PIECP could begin, considering how essential prison labour was becoming to the very function of the prison system, they got around this stipulation by moving into areas that had very few, if any, labour organizations or unions (LeBaron 2008: 65). For example, in Texas, the percentage of the population that was covered by a collective bargaining agreement was 11.9% in 1983, compared to New York during the same time that had 36% of its population covered (Hirsch and Macpherson 2002). This activity was allowed because the emerging extensive RoA was being stabilized in this sector by a coercive neoliberal MoR, defined by the workfare state within the hierarchy.

I refer to the neoliberal MoR as coercive because the MoR doesn't just have a stabilizing effect on a particular RoA, but can also direct the RoA in certain ways. While flexibility in the labour market is an essential element within the neoliberal MoR of the prison sector, it is also what gives the MoR its coercive quality in relation to the RoA. As I mentioned in the beginning of section 3.3.2 of this chapter, although there is still mass consumption within the extensive RoA of post-Fordism, it is predicated on the fragmentation of different social classes which is created by intensifying inequalities (Boyer 2015). The neoliberal MoR of the prison sector is one of the mechanisms that is intensifying inequalities, particularly among the African American population in the US.

Smith and Hattery state that, "African American men are 7–8 times more likely to go to prison than their white counterparts. Nearly 1 in 3 African American men will be incarcerated during their lifetimes" (2007: 277). This means that the neoliberal MoR led by the workfare state is not just subordinating labour in general, but African American labour specifically. Most African American men are poor when they enter prison, in fact their median income before incarceration is \$17,625, compared to the national median income which is around \$50,000 (Rabuy and Kopf 2015). After being incarcerated, even after participating in one of the work programs that is supposed to provide better opportunities for prisoners upon release, not only are they still poor but their chances of escaping poverty are severely reduced because of their incarceration (Western and Sirois 2017). Western and Sirois explain that, "[t]hrough the effects of criminal stigma or eroded human capital during incarceration, serving time in prison has itself found to reduce employment by as much as a third, and hourly wages by 10% to 20%" (Western and Sirois 2017: 1). There is evidence which substantiates the claim that work programs do provide better economic prospects for prisoners after release, 72% of those who participated were employed within one year compared to 63% who didn't participate and their recidivism rates were lower as well (Western et al. 2001: 421). However, while it may reduce the harm of incarceration on their employment opportunities it does not alleviate it, and the training received in these programs are usually low-wage trade jobs (Western et al. 2001: 414). Also, their criminal record does limit their ability to secure union positions since most union jobs are in the public sector and require higher levels of trust (Western et al. 2001: 414). These dynamics are not only increasing competitive pressures in the labour market but they are also geared towards enforcing low-wage work, specifically among African American men (Peck and

Theodore 2000: 120). Even if they are ‘job ready’, their employment and readiness is subject to the needs of the market (Peck and Theodore 2000: 123). The neoliberal MoR within the prison sector is producing a “secure labour supply for insecure work”, coercively enforcing labour market flexibility (Peck and Theodore: 123). It is in this way that the MoR is not just stabilizing the RoA within the prison sector but also feeding it by reproducing and re-enforcing an inequality along racial lines.

Chapter 4

Conclusion

This research paper was triggered by the prison strike in the Fall of 2018. The specific focus on prison labour of those strikes and the awareness that prison labour involves more than just the function of incarceration, but also the economic and social system as whole, inspired me to find a mode of analysis that would allow me to look into the system holistically. I found my way through this complexity by using RT. Through the use of RT, I was able to do the following things: The first was to identify the moment before the most recent and drastic transformation of the prison sector, which was the rise of the capital-labour compromise to the top of the institutional forms that would eventually come to define the era of Fordism. The second was to identify the crisis of the 1970s which led to the transformation within the emerging RoA and MoR at the end of that decade. Thirdly, in response to the crisis and working within the new confines of an extensive RoA, I was able to identify a new institutional compromise between crime control and cost saving strategies of the state that was consolidated within the prison sector by the 1979 Justice System Improvement Act. This led to me illustrate how the emerging workfare state at the top of the hierarchy, which demonstrated the most compatibility with the liberalized international regime and the monetary regime set by the Volker Shock, stabilized this new institutional compromise because the cohesion of the MoR was predicated on coercive neoliberalism.

To many, it would be unsurprising to hear that the *regulation* of the prison sector in the US is defined by neoliberalism. However, this research paper has illustrated a diversified operationalization of neoliberalism. Although privatization is a component of neoliberalism, and one that should be taken seriously within the realm of incarceration, the neoliberal re-regulation and deregulation of the economy and state towards commodification and marketization is not limited to privatization. In fact, the main driver of neoliberalism in relation to the prison sector in the 1980s and 90s was the state. The overall logic that is being imposed on all other institutional forms from the workfare state is that prisoners should be responsible for their own incarceration and their labour became built into the metabolic system of incarceration. Accordingly, private enterprise that now needed access to cheap labour under new dynamics within the international regime, provided a compatible mechanism of accumulation for the prison system. What is important to note is that the MoR directing the form of accumulation is not predicated on privatization, although that is complementary to the MoR, but it is predicated on the logic of work-first neoliberal welfare strategies.

It should be mentioned that the neoliberal MoR within the prison sector predicated on a workfare state is not necessarily a static configuration. My analysis was focused on the late 1970s to mid-1990s in order to answer, what were the economic and socio-political conditions that gave rise to a penal system that uses prison labour in the way we see today? In the late 1990s and 2000s privatization was intensified and may now play a much more prominent role within the MoR of the prison system. These are opportunities for further research. How-

ever, the continuity through time of this analysis can be identified when answering the second part of my research question; what, if any, role does the penal system play within these larger systemic issues? The workfare state led neoliberal MoR which infused prison labour into the systems metabolic consumption, steered the extensive RoA of post-Fordism by intensifying labour market flexibility through racial inequality. Considering that real wages have barely increased since the 1970s and the fact that post-Fordism is still predicated on mass consumption, intensifying inequality becomes the mechanism that ensures there is still a line of production to meet the needs of those at the bottom of the income bracket. It is a sad statement to make that over 100 years after the abolition of slavery and over 60 years after the passing of the Civil Rights Act, this inequality is still brought to bear on the backs of African Americans in the US.

These conclusions would most likely not have been possible without looking beyond the system of incarceration towards the system as the whole, or what I have been referring to as the systemic. Through the interplay between the RoA and the MoR I have been able to propose a particular configuration of the political and economic dynamics that make up the systemic which has implications on the formation of particular sectors, such as the prison sector, at particular moments in time. Although this is just one piece to the puzzle of incarceration, I hope that by adding to the body of knowledge that is critically looking at the structuration of incarceration that I am able to contribute, at least in a very small way, to confronting the injustices within the US prison system. Particularly by showing that the state is just as responsible for perpetuating these injustices as private interests are. In fact, in addition to privatization, what may be driving the exploitation of prison labour is the idea that prisoners should be responsible for their own incarceration.

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