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**Punishment, Mass Incarceration, and Death in US and UK Prisons:  
Through the Eyes of Prison Chaplains**

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## **Declaration**

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (PhD) at the University of Edinburgh. I confirm that:

- This thesis has been composed by me.
- This thesis has not been submitted for any other degree or professional qualification except as specified.
- This thesis is the result of my own independent work/investigation, except where otherwise stated. Other sources are acknowledged by explicit references. The views are my own.

Signed: George Mitten-Gmah Walters-Sleyon (Candidate) Date: April 8<sup>th</sup> 2019

## Abstract

This thesis is a theo-criminal justice comparative investigation of the intersections between punishment, the phenomenon of mass incarceration, and “death” (both physical and civil [*civilliter mortuus*]) in the prisons of the United States (US) and the United Kingdom (UK) (Scotland, and England and Wales) through the experiences of prison chaplains. Considering the various shifts to penal harshness after 1970, it provides a data-driven analysis of the consequences of longer sentences reflected in the high rates of ageing, dying and death of prisoners as convicts and non-convicts on remand, in jails and imprisoned for violent and non-violent crimes. In so doing, it contends that these penal conditions describe the normalization of the prison cultures within which prison chaplains function as religious caregivers to ageing, dying and dead prisoners. An underlying exploration in this research is the theoretical and empirical analyses of prison chaplains’ recollection of their prison experiences under the shadows of the “turns” to penal harshness. It argues that prison chaplains have witnessed these consistent penal shifts, their existential consequences, and their theological implications as the basis for their theoretical and practical understanding of the prison cultures of the US and the UK penal systems.

In contrast to the argument that crime is the fundamental reason for the normalisation of penal punitiveness and its production of mass incarceration, I also argue that other factors have played central roles that are both historical and contemporary. The research contends that the processing and incarceration of prisoners, many of whom are economically poor and racially marginalised, (poor Whites, Blacks and Hispanics in the US; and poor Whites, Blacks, Asian, Minority ethnic groups in the UK) is disproportionate to that of any other group in the wider population and that this holds true—notwithstanding the differences of scale between them—for both the US and the UK. It is these penal conditions of harshness and mass imprisonment that prison chaplains have described as “the normativity of darkness” (PCS 111) based on their years of prison chaplaincy. The research asserts that a historical, criminal justice reform centred, and theological critique is needed in prison research described as (1) A penal crisis; (2) A moral crisis; and (3) An ethical crisis.

While previous prison research includes comparative penal analyses between the US and the UK, my research provides a critique that sheds new light on the phenomenon of mass imprisonment and efforts to confront it. As theoretical and empirical research, it is distinct from previous research in three ways: (1) The theoretical aspect explores how each nation after 1970 has arrived at the shifts

to penal harshness from an emphasis on rehabilitative sentences through penal laws and policies; (2) It comparatively explores the continuities between the shifts to penal harshness and the high rates of ageing, dying and death of prisoners (“natural in-prison deaths, homicides and suicides) in the US and the UK penal systems; (3) The empirical portion explores the prison recollections of prison chaplain participants’ in ministering to ageing, dying and dead prisoners in the US and Scotland. The empirical analysis is in addition to theoretical perspectives on the roles of prison chaplains in England and Wales particularly from the Church of England.

I do not assume that the penal systems of the United Kingdom are monolithic. The UK has three different legal systems: Scotland, England and Wales, and Northern Ireland. This research will focus specifically on the penal systems of Scotland, England and Wales while recognising the three penal structures associated with the United States penal system: Federal, State, and County. Similarly, this research does not assume that the prison recollections of prison chaplains and their various interpretations are monolithic. Instead, it provides a descriptive analysis of the prison chaplain participants’ reflections based on their diverse religious, social, educational and penal experiences within the scope and limitation of this research.

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## Lay Summary

My primary goal in this research is to compare the penal systems of the United States (US), and the United Kingdom (UK). In the UK, I focus on Scotland, England and Wales. I am writing about how changes in punishing people for violent and non-violent crimes in the US and the UK after 1970 have become harsher. These changes in punishment have affected two groups of people: (1) those who are charged for crimes and imprisoned, and (2) those who are not yet charged for crimes but are jailed in the US or on remand in the UK.

As a result of the changes in how these countries have punished offenders, prisoners are staying longer in prisons. The increase in time behind bars has led to an increase in the number of ageing prisoners, natural in-prison deaths, homicides, and suicides in the US and the UK penal systems. The ageing, dying and dead population are especially of two groups: (1) those who are poor; and (2) those who have received harsher punishment because of the colour of their skin, not primarily because of their crimes.

To compare the US and the UK penal systems, I have looked at common causes and practices responsible for the increases in prison populations as developments that are both old and new (historical and contemporary). In so doing, the research shows how these countries have turned to harsher laws for punishing offenders and some situations these changes have produced. I have described these situations as “conditions of death.” To make this comparison, I also conducted some first-hand interview sessions with prison chaplains in the US and Scotland.

The goal of the interview sessions was to understand how, as religious workers in the prisons, prison chaplains have taken care of ageing, dying and dead inmates and prisoners. Also, it was to understand how prison chaplains after 1970 have functioned under the conditions of penal harshness and carry out their ministries to ageing, dying and dead prisoners in the penal cultures of the US and the UK.

Based on the theoretical and empirical analyses provided in this research on the present state of punishment and their penal cultures in US and UK penal systems, I conclude with two forms of analytical recommendations as part of the “prescriptive task” of this research in Chapter 8: (1) *Ethical Principles on Sentencing and Punishment*, and (2) *The Future of Prison Chaplaincy in the Era of Mass Incarceration*.

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I also acknowledge the 31 prison chaplains in the United States and Scotland who were willing to share their stories. I am deeply grateful. I hope that the way I have shared the recollection of their prison experience will make the world to know the depth of sacrifice that prison chaplains make for many convicted and non-convicted individuals in the prisons of the United States and the United Kingdom. I also want to express my thanks and appreciation to the Scottish Prison Service and the leaders of the prison chaplaincy: Rev. Bill Taylor and Rev. Harry Schnitker for their support.

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**Section One**  
**Introduction and Methodology: An Interpretive Task**

## **Chapter 1 Introduction: Prison Chaplains in the Prison Culture**

This thesis brings together three interrelated components that are descriptive, empirical, interpretive normative and prescriptive (Hermans and Schoeman 2015). These components are designed to reflect a holistic narrative of the United States and the United Kingdom's penal systems: (1) sentencing and imprisonment; (2) prison population and "death" — civil and In-prison deaths ('natural', homicides and suicides); and (3) prison chaplains and their prison collections in caring for ageing, dying and dead prisoners. The goal of this chapter is to provide definitional backgrounds to the nature and embodiment of the prison cultures in the US and the UK. Furthermore, as a context within which prison chaplains function, this chapter also provides a definitional background of the prison chaplains' identity and roles. Therefore, as an introductory chapter, it is designed as follows: (1) A structure of the thesis; (2) A research definition of the "prison culture" and (3) A research definition of prison chaplains-literature review.

### **1.1 A Structure of the Thesis:**

#### Section One: Introduction and Research Methodology

Chapters 1-2 provide a research pre-supposition fundamental to the entire research. In Chapter 1, I provide the thesis structure and research definition of the prevailing prison cultures within which prison

chaplains functions in the US and UK. It also provides a literature review of the identities and roles of prison chaplains.

In chapter 2, I provide the methodological structure and definitions associated with this research. Inherent to the research approach in this thesis is what I refer to as the theo-criminal justice comparative approach. As a research project in PT and criminal justice reform /comparative criminology, the theo-criminal justice comparative approach provides an intersectional and interventionist perspective in prison research and PT.

### Section Two: A Penal Crisis in US and UK Prisons.

Chapters 3-5 provide a historical and modern trajectory of what I describe as the “shifts to penal harshness” and their penal consequences in the penal systems of the United States and the United Kingdom. Chapter 3 focuses on the US context by identifying two phases of mass incarceration: Phase One: 1863-1900s as “Lockean slavery” and Phase Two: 1970 to the present as “Lockean punishment.” I reference John Locke, a prominent British Enlightenment philosopher who was also a slave trader in the late 17<sup>th</sup> and early 18<sup>th</sup> centuries in the American colonies and defender of the institution of slavery as an interlocutor. He is famous for his defence of human rights. However, Locke’s defence of human rights was not egalitarian. In the US, the shift from Lockean slavery to Lockean punishment is grounded in the ratification of the Thirteenth Amendment of the United States Constitution in 1865 followed

by the enactment of the Black Codes, the Pig Laws and the Convict Leasing System.

In contrast to previous research, I argue that the US penal system operates on the concepts of Lockean punishment in its penal production of mass incarceration and conditions of death. According to Bryan Stevenson, “mass incarceration defines us as a society the way slavery once did” (Hedges 2012, 1).

Similarly, Chapter 3 provides a UK context. It is an analysis of the shifts to penal harshness in Scotland, England and Wales responsible for the increase in prison populations along with the increase in ageing, dying and dead prisoners. Through the various penal transformations, it shows areas of compatibility and incompatibility with changes in the US penal system.

Furthermore, Chapter 5 introduces data and analyses on ageing, dying and death of prisoners in the US and the UK prisons with particular reference to natural in-prison deaths, homicides and suicides. It also provides an empirical demonstration of prison chaplain participants’ responses to the counselling needs of ageing and dying prisoners from their various theological backgrounds.

In Chapters 3-5, I also argue that punishment in the US and the UK rests on the sentencing policies and practices of objective indeterminacy and endlessness for poor Whites, Blacks and Hispanics in

the US and poor Whites, Blacks, Asian and minority ethnic groups (BAME) in the UK (Saunders 1970).

### Section Three: A Moral Crisis in US and UK Prisons

Chapters 6 and 7 describe a moral crisis. This thesis demonstrates the intersections and impacts between the shifts to penal harshness and their production of massive forms of incarceration in the US and UK penal systems as backgrounds to the prevailing prison cultures. Chapter 6 provides a theoretical and empirical trajectory of the development of prison chaplaincy in the United States and the United Kingdom from the 18<sup>th</sup> century to the present. It highlights the roles of prison chaplains as penal reformers, founders of prison ministries, transition to “prison chaplains” and the development of the present praxis in prison chaplaincy. This is accomplished by focusing on three eras: the historical era; the modern era and state security; and the modern era and religious diversity in prison chaplaincy.

Chapter 7 provides an analysis of prison chaplain participants’ diverse concepts of “God-talk” with prisoners as an aspect of their process of counselling and theological conceptualisation. It argues that religion exists in prisons and prison chaplains are its facilitators. Prison chaplains are not monolithic in their responses and as such, this research recognizes their diverse religious backgrounds.

## Section Four: An Ethical Crisis in US and UK Prisons.

Chapter 8 describes an ethical crisis. It provides an ethical critique of punishment, mass incarceration and death in the US and UK penal systems as an ethical crisis. Concluding with a summary, it provides some prescriptive reflections on the future of prison chaplaincy in the US and the UK prisons systems in the era of penal harshness.

### **1.2 A Research Definition of the Prison Culture**

This brief analysis describes the penal ‘world’ that prison chaplains inhabit. A particular focus of this research is the claim that prison chaplains’ function in the prison cultures of the United States and the United Kingdom to ultimately ameliorate the “pain” of ageing, dying and death.

The prison culture in this research is the ethos and praxis of the modern penal systems in the US and UK. It reflects the logic of punishment and imprisonment. The prison culture is also the embodiment of the quality of the prison and the penal policies that fundamentally influence the production of the high rates of ageing, deaths, homicides and suicides in US and UK prisons. For Alison Liebling, the quality of any prison is described in relation to the treatment of its prisoners. She writes:

The aspects of prison quality most highly correlated with prisoner distress were safety, staff-prisoner relationships, respect, humanity, clarity and organization, and engagement in personal development projects. A determined ‘decency’ agenda, a comprehensive ‘safer’

custody' strategy, revised reception and induction procedures... led to considerably better quality of care for prisoners, and a transformed culture in some prisons (Liebling 2017, 22).

Analyzed as a "microcosm of the society" (Skotnicki 1991, 16), the prison culture embodies the concepts and practices of maximum disenfranchisement, a concentration of human imperfections and embodiment of the "absolutism" of the state. According to Donald Clemmer, imprisonment involves the adaptation and engagement with the process of "prisonization." It is "the taking on, in a greater or lesser degree, of the folkways, mores, customs and general culture of the penitentiary" (Clemmer 1958, 287).

For Ronald Aday, prisonization describes the prison culture as one of "depersonalization," "institutional dependency," "mortification and curtailment of the self," or "institutional neurosis" (Aday 2003, 121). Prisonization is the process when self, selfhood, and personhood become secondary to the identifications of the prison, its ethos, practices and consciousness. Whether voluntary or involuntary, it shows the perpetual induction of individuals into the world of the modern penal systems as numbers, objects, commodities, and economic units of chronic impersonality. It is both the physical and civil deaths of self for a penal identity and conversely, death from the outside world and distance from relatives. Aday explains:

As time passes, fewer visitors are received and eventually the last family member on the outside may die, leaving the ageing inmate resigned to spend his or her final months or years behind bars without any hopes for parole or family visits (Aday 2003).

Prisonization reflects the emotional and physical normalisation of imprisonment and the normativity of the prison experience. It is when release becomes a distant reality and the prison becomes the prisoners' immediate and external community. Take for instance the experience of this lifer:

*I'm here doing a long sentence, and to be honest I think what's the point? Nobody is bothered about me. There is nothing for me to go out to and what's left of my family have disowned me. I don't even have anywhere to live if I was to be released and I'm too old to be living rough at my age (HM Inspectorate of Prisons 2017, 37).*

The above resonates with prisoners serving whole life sentences in the UK or Life Without Parole (LWOP) sentences in the US. Unfortunately, if family members do not come to the prisoner, the prisoner cannot go them. The prison culture is associated with death as narrated by a lifer.

*I've seen a number of people who've come into prison after me and are dead today... Some are dead from AIDS, some from hanging themselves. Some are just dead from a broken heart. They just gave up. If you go down to the hospital there, at the back part, you'll see six to eight inmates lying there, waiting to die. There's something wrong with that picture. To keep a man in prison when you know he's going to die when his chances of being a threat to society are long passed ... I'm scared to death of that (Sheppard 2001, 31).*

However, the prison culture is the world that the prison chaplain inhabits and navigates on a daily basis. As an embodiment of the logic of punishment in the US and UK penal systems, the prison culture also highlights the need for sentencing that: (1) forestalls the practice of vengeful penology; (2) deterrence and community security tempered with the need for justice; and (3) that preserves the dignity of the offender.

As an entity of “disenfranchisement” and “vulnerability” (Lane 2015) (Masterton 2014), the prison culture is associated with shame and failure. Ageing, dying and death in prison is an isolating experience. More prisoners are ageing behind bars as Wahidin and Aday report. They write: “with the rise in the number of long-term prisoners and the reluctance for policymakers to utilise compassionate medical discharge, an increasing number of offenders is at a greater risk of dying in prison” (Aday & Wahidin 2016, 312, 313). They further explain that as a consequence of punitive sentences, the potential for high rates of ageing, dying and dead prisoners in the US and UK prisons increases every day. “As the number of older prisoners continues to rise, and with the lack of implementation of compassionate release programmes, a growing number of prisoners will remain behind bars for the rest of their lives” (Aday & Wahidin 2016, 323).

However, in contrast to Clemmer’s concern, this research demonstrates how prison chaplains respond to the existential problems of prisonization as custodial and correctional staff while caring for ageing, dying and prisoners (Athwal and Burne 2015, 17, 18). This research argues that the prison culture is composed of many forms of cultural expressions of human activities and penal realities, among which are four fundamental expressions germane to this research: (1) A penal culture; (2) A religious culture (3) A security culture; and (4) A culture of “pain.”

*The Prison Culture is a Penal Culture:* Prison is an embodiment of the concepts of total incapacitation through the turn to penal harshness in the US and UK. It reflects the apparatus of law enforcement against criminal behaviours (Gottschalk 2006), an explosion in the number of those impacted (Gottschalk 2013, 206), the burden of financial sustainability (Simon 2007) and the concepts of “penality” (Garland 2015). As a penal culture, prison reflects the objective and subjective penalization of crime and the embodiment of penal criminalization.

According to Liebling, “Prisons communicate meaning not just about crime and punishment but also about power, authority, legitimacy, normalcy, morality, personhood, and social relations” (Liebling 2005, 43). In the following, Steven Box and other criminologists address the ambiguity surrounding what is considered “serious” crimes, which are the actual criminals, and criminalisation as central components of the penal culture. Does he raise the question as to whether criminal laws are “hypocritical, ” designed for the privileged, wealthy and well connected or “objective”?

Box defines crime and criminalisation as “social control strategies” (Box 1983, 13). Criminal, criminal laws and the processes of criminalisation are expressions of social construction inherent to the penal culture. He writes:

Serious crimes are essentially ideological constructs. They do not refer to those behaviours which objectively and *avoidably* cause us the most injury and suffering. Instead, they refer to only a sub-section of these behaviours, a sub-section which is more likely to be committed by young, poor-educated males who are often unemployed, live in working-class impoverished neighbourhoods, and frequently belong to an ethnic minority (Box 1983, 13).

For Box, what constitutes serious crimes and how they are punished is highly subjective. Similarly, what constitutes the “official portrait” of crime and criminals is subjective. According to C. Coleman and J. Moynihan: “It is worth re-emphasising the point that the very definitions of crime are themselves the result of wider social processes, sometimes ancient, sometimes recent, which reflect religious, political and other considerations” (Moynihan, J; Coleman, C 1996, 32). Not every criminal is included in the official portrait of crimes and criminals.

Box contends that the public’s consciousness of crime is often associated with the notion of “a crime problem” rather than “*the* crime problem.” The a crime problem “is, in fact, an illusion, a trick to deflect our attention away from other, even more, serious crimes and victimizing behaviours, which objectively cause the vast bulk of avoidable death, injury, and deprivation” (Box 1983, 3). There are those who commit serious crimes, Box argues, but their crimes are “under-emphasized.” Unfortunately, it is not the case for those who are “officially portrayed as ‘our’ criminal enemies” (Box 1983, 3). The consciousness of the public has absolutised within it a particular group of individuals and communities as crime-prone. These communities they claim cannot escape the inability to commit crimes and are hence “pathological.” Box disagrees. The penal culture is selective as to who the criminals are and who the criminals are not. This selectivity does not reflect the entire image of who our “criminal enemies.”

There exists a dichotomy regarding crime, criminalisation and criminal laws in the penal culture. For Box, the “powerful” and the privileged commit serious crimes, but their criminal acts are regarded as “normal” and “rational”

behaviours. In contrast, the criminal acts of the powerless are regarded as pathological and “irrational.” He notes, “If we look up rather than down the stratification hierarchy and see serious crimes being committed by the people who are respectable, well-educated, wealthy, and socially privileged then the imagery of pathology seems harder to accept” (Box 1983, 4). What is formally defined as a crime, the legislation of criminal laws and the various process of criminalisation are socio-economically and politically constructed to advance the interests of dominant groups, individuals, and organisations. Criminal laws, procedures of criminalisation and definition of crime are not ultimately in the public’s interest.

To arrive at a clearer picture of how the official portrait of crime and criminals is constructed, Box wants us to be critical of the means and methods by which crime is defined, reported and the current official criminal statistics. He argues that a higher rate of serious crimes is committed than what is normally reported. The official criminal statistics and report on crime distort the accuracy of the actual crime statistics. Take for instance the aspect of “self-reporting.” Box explains that

Self-report data indicate that serious crimes are disproportionately committed by the younger uneducated males amongst whom the unemployed and ethnically oppressed are over-represented, but the contribution they make is less than the official data implies. There are, it appears, more serious crimes being committed by white, respectable, well-educated, slightly older males and females than we are led to believe (Box 1983, 5).

The official crime statistics reflect the “authorised version of crime and criminals” (Moynihan, Coleman 1996, 23) that the police and the other agencies

associated with the criminal justice system report to the public. They include offences that the police records, records of offenders that are convicted and not convicted, proceedings from the court, records of those that are sentenced as well as those on bail, jailed, imprisoned, or on remand. According to C. Coleman and J. Moynihan:

The offender data are best regarded as criminal justice statistics, recording as they do decisions which have been made about individuals in the criminal justice system. They are in essence indices of organisational processes and should be studied as such. They do, however, appear to give a limited amount of information about the characteristics of those who are processed and their offences. A number of points should be borne in mind when looking at these statistics in this way (Moynihan, Coleman 1996, 30)

The constituents of the official crime and criminal statistics are no different from those who constitute the official portrait of crime and those who are considered 'our criminal enemies.' The process is cognitively selective. The crimes of those considered 'our criminal enemies' constitute the top of the list. They are sensationalized, journalistically appealing and immediately gratifying to the public's conscience on crime and punishment as well as the quest for law and order (Box 1983). They fit the official portrait of crime and are the public's criminal enemies hence the justification of their criminalisation and discrimination (Reiner 2010, 140).

Selectivity in the official criminal statistics demonstrates various forms of discrimination. It maximises the crimes of those who fit the official portrait of criminals while minimising the validity of the crimes of those who do not "fit" the

official criminal profile. In this regard, the role of the police is seen as pivotal to the process of criminalization. According to Robert Reiner:

What all the mythologies oversimplify or ignore is the extent to which policing reflects the conflicts and contradictions of the wider social structure, culture, and political economy. Policing alone cannot achieve an orderly society, whether this is seen as desirable or repressive. On the other hand, it can never operate in the fully harmonious way implied by some prophets of community policing (Reiner 2010, 140).

Reiner provides an analysis of what he refers to as police discrimination. He admits, "There is a complex interaction between police discrimination and the differential criminogenic pressures experienced by social groups" (Reiner 2010, 159). Discrimination constitutes "prejudice," "bias," "Differentiation," and Discrimination proper which he defines as "a pattern of exercise of police powers which results in some social categories being overrepresented as targets of police action even when legally relevant variables (especially the pattern of offending) are held constant" (Reiner 2010, 160). He argues that six microforms of discrimination cause the existence of discrimination in policing: (1) the specific targeting of particular groups known as *categorical discrimination*; (2) *Statistical discrimination* which refers to the stereotypical treatment of a group or individuals because they assumedly fit the public profile of deviance though inconsistent with the claims of "reasonable suspicion." For example, police arresting Black men based on the assumption that the arrest will most likely generate the expected result. (3) *Transmitted discrimination* ensues when police serve as "passive conveyor belt" of "social prejudices." (4) *Interactional discrimination* occurs when a non-criminal behaviour of an individual is

criminalised resulting in arresting, and the action is “dubiously justifiable legally.”

(5) *Situational discrimination* takes place when socio-economic and cultural statuses including lifestyle are used as a means to justify police suspicion and their criminal targets. (6) Reiner notes that *Institutional discrimination* occurs due to the appeal to “structural bias of an unequal society” or the use of “irrelevant differences between different groups.” An example is a concentration of police’ presence in impoverished, urban or minority communities (Reiner 2010, 161).

The above approaches to crime confirm the claim that criminal laws and reporting are socially and ideologically constructed. Criminal laws perpetuate the interests of the powerful against the powerless. The crimes of the powerful are not punished equally as the crimes of the powerless even if similar crimes are committed. According to Box:

Some group of people benefit more than others from these laws. It is not that they are less likely to be murdered, raped, robbed, or assaulted – although the best scientific evidence based on victimization surveys shows this to be true – but that in the criminal law, definition of murder, rape, robbery, assault, theft, and other serious crimes are so constructed as to exclude many similar, and in important respects, identical acts, and these are just the acts likely to be committed more frequently by power individuals (Box 1983, 10).

A typical example for Box is death. He notes that criminal laws describe specific “avoidable killings as murder” but not death from “negligence” in the workplace, death from inappropriate safety standards, death from lack of adequate public policies on health risks, death from faulty drugs from drugs manufacturers and pharmaceutical companies, or death from defects in vehicles that manufacturers are conscious of. The list goes on. He writes, “We are encouraged to see

murder as a particular act involving a very limited range of stereotypical actors, instruments, situations, and motives ... In all instances, the perpetrators of these avoidable 'killings' deserve, so we are told, less harsh community responses than would be made to those committing legally defined murder" (Box 1983, 9). Avoidable killings can be avoided, and avoidable killing perpetrators should be subjected to the same criminal laws set aside for killings in the "murder category." Box argues that criminal laws and their implementation often lack objectivity in the penal culture and selective. He rejects the argument that criminal laws are "value-consensus." Instead, criminal laws, are subjected to competing interests of power, privilege and status (Box 1983, 12). Like the official portrait of criminals and crime, the "official view" of the official criminal statistics reflects the image of "our public enemies (Box 1983, 13).

"Public enemies" are those that the official criminal statistics designate as public enemies. The criminal justice system, law enforcement agencies as well as the media perpetuate the image of the public criminal enemies. The public criminal enemies are the "dangerous," and those suffering from "moral inferiority." Furthermore, morality, race and economic distinctions are made important causal agents in defining crimes, constructing criminal laws and the process of criminalisation (Box 1983, 13). According to Howard Becker, those designated public enemies are also considered "outsiders" in the penal culture (Becker 1966, 2).

Becker notes that "outsiders" are those the public designates as "deviant." However, what is considered deviance lacks "essences." It denotes a

form of imposition and labelling of the actions of individuals, groups and communities. Becker argues that groups create deviance. "Social groups create deviance by making the rules whose infraction constitutes deviance and by applying those rules to particular people and labelling them as outsiders" (Becker 1966, 8). Groups or society define what is "functional" and "dysfunctional" regarding human behaviours. The categories used to define human behaviours are sometimes a reflection of collective consensus or particular consensus of groups and individuals. Thus, for Becker, "Deviance is *not* a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender.' The deviant is one to whom that label has successfully been applied; deviant behaviour is behaviour that people so label" (Becker 1966, 9). Outsiders are therefore classified as deviant. Their sense of personhood and identity are categorised as "abnormal" and a central part of the official portrait of crime and criminality in the public's imagination and conscience (Becker 1966, 15).

To reiterate, Box contends that what constitutes the definition of crime; criminalisation and criminal laws are subjective in the penal culture. Criminal laws and their implementation are arenas of competing interests. Furthermore, criminal laws implicitly constitute the need to "rescue" the powerful from the abnormality of the powerless. Crime is the domain of the powerless, and it reflects a pathology that is associated with poverty, the racially inferior and the poor. He writes:

Thus, criminal laws against murder, rape, robbery, and assault do protect us all, but they do not protect us all equally. They do not protect the less powerful from being killed, sexually exploited, deprived of what little property they possess, or physically and psychologically damaged through the greed, apathy, negligence, indifference, and the unaccountability of the relatively more powerful” (Box 1983, 11).

The penal culture, therefore, entails the process of selective criminalization, a selective pursuit of crime and selective pursuit of incarceration (Becker 1966, 13). Liebling explains:

*Penal* cultures consist of ‘conceptions, values, categories, distinctions, frameworks of ideas and systems of belief. They also consist of *emotions*. The social practices of the prison are deeply shaped by such ‘cultural forms’. Dominant cultures matter as well as subcultures in the climate of the prison (Liebling 2004, 421).

While the penal cultures between the US and the UK are distinct in several ways, as research in comparative criminology, this thesis highlights the salient areas of similarity with respect to penal policies, penal praxis and their cumulative consequences reflected in the high rates of ageing, dying and death of prisoners. These are the penal trajectories that inform the penal world of the prison chaplain.

*The Prison Culture is a Security Culture*: The state’s need for national security is paramount in the prison cultures of the United States and the United Kingdom and prison chaplains function at the discretion of national rights and security regulations (Skotnicki 1991; Hicks 2012, 637; Phillips 2013; Todd, Slater and Dunlop 2014). While these regulations may vary contextually, the demands of national security and penal legislation in relation to prison

management precede the presence and pastoral care needs of prisoners (Bottoms, 2015).

Imprisonment reflects the right of the state to regulate the right of its citizens and in the case of violators of the law, to control their liberty (Shedd 2008; Ministry of Justice 2016L; Cabinet Office United Kingdom 2008; Kris 2011; Hamm 2007; The United States of America Government 2018; Coyle, Heard, & Helen 2016; Coyle 1991; McCallum 2017; Prison Reform Trust 2018). According to the Ministry of Justice:

The first duty of government is to keep people safe, and prisons are vital to making sure this happens.

Prisons deprive offenders of one of their most fundamental rights – liberty – in order both to punish offenders and protect the public. However for society to be safer, prisons must be more than criminal warehouses, they must be places of reform (Ministry of Justice, 2016L 5)

Georg W. Hegel defines the state as politically and philosophically an expression of “Absolute idealism.” Absolute idealism is Hegel’s concept of the state’s total power. It embodies Hegel’s concept of the all-inclusive being defined as the identity of thought and being. Absolute idealism is also the intricate union of being and consciousness unfolding in the world. According to Hegel, the Absolute Spirit (*Geist*), is all-encompassing. The Absolute is the Absolute Spirit (*Geist*) as the subject and as the substance (Hegel 1977, 25). In his political philosophy, Hegel argues that the state is spiritual and the concrete expression of the Divine (Hegel 1977, 10). The Spirit is never at “rest” since it is constantly moving forward and engaged in progressive movements with the goal

towards the encapsulation and reflection of the whole (Hegel 1991, 11). In the Absolute, everything is one: The state, according to Hegel, is the actualization of freedom as concrete. He writes:

The state is the actuality of the substantial will, an actuality which it possesses in the particular self-consciousness when this has been raised to its universality; as such, it is the rational in and for itself. This substantial unity is an absolute and unmoved end in itself, and in it, freedom enters into its highest right just as this ultimate end possesses the highest right in relation to individual [*die Einzelnen*], whose highest duty is to be members of the state (Hegel 1991, 258).

To experience the ultimate consciousness of freedom is to obey the state and be in “union” with it. Thus, the only means by which individuals can experience “objectivity, truth, and ethical life.” He notes: “Union as such is itself the true content and end” (Hegel 1991, 258).

According to John Pratt, the historic role of the state in punishing violators of its laws is akin to a process of “civilization.” (Pratt 2013). Pratt’s argument for the “the civilizing process” reflects the gradual transformation of the modes of punishment from abject cruelty, “public spectacle” and “privately inflicted punishment” to forms of “invisible” punishment for prisoners. It also reflects the development of emerging social institutions and political governance (Pratt 2013, 92, 96). He contends that the civilizing process in the UK penal system after 1877 shifted to one of “centralizations” and “bureaucratization.” It was associated with a prison management approach that was much more “restrictive” with “the autonomy of other prison professionals restricted and their status downgraded. This reduction in the role and significance of prison

professionals also impacted the role of religion as well as the significance and influence of prison chaplains. Post-1877 UK prison management became 'increasingly monopolistic' with two results. There is first, the development of a chain-based "penal bureaucracy" with prison professionals or workers acting as "bureaucratic representatives" rather than "individuals" (Pratt 2013, 43-64; Beckford 2011). The second result is demonstrated in the shift to an interest-based approach. This was reflected in the development of the penal system with the capacity to "shape, develop and report on prison policy as this suited its own interests and largely free from any public involvement" (Pratt 2013; Lerman 2013). Individual expressions in prison management were shaped by the interest of the bureaucracy rather than the "whims" of prison professionals or individual workers (Pratt 2013, 99).

The prison as a security culture demands that prison chaplains function within a state-religio model. This is especially evident in the "modern era" of prison chaplaincy (see Chapter 6). According to Peter Phillips, within this model, Anglican prison chaplains are bound by "acts of parliament" which defines their duties in theory while implementation at the local level is contextually determined. Phillips defines the prison chaplain as "an agent of the institution by being a statutory part of its structure and processes, which tend towards uniformity and suppression of individuality" (Phillips 2013, 128, 130). Furthermore, he explains: "There is no model for Anglican chaplaincy, but there [are] many models of Anglican chaplaincy. It might be possible to speak of

variant forms of ministry under the broad over-arching heading of Anglican prison chaplaincy” (Phillips 2013, 104-5).

Prisoners are lawbreakers deemed so by the state (Box 1983; Becker 1966). The housing of prisoners in prisons represents the role of the state as the absolute arbiter to punish violators of its laws (Beckford, 2000). Prison chaplains function within this paradigm of control and institutional regulation of human liberty (Beckford 1983). While immensely essential to the psychological management of prisoners and their rehabilitative development, prison chaplains are subject to the state’s penal and prison regulations (Hegel 1977, 16). Prisons are thus both penal and state institutions and I do not assume that they are religious institutions (Beckford 2000).

*The Prison Culture is a Religious Culture:* In prisons, an atmosphere of religious diversity and multi-theological praxis exist as a microcosm of the wider society. Prisons exhibit the tension between the prevailing religious experience of prisoners and religiosity and secularism in the wider society.

According to William James, religious instincts are illogical. He defines religion as the “Vague impressions of something indefinable, “which” have no place in the rationalistic system,” (Munce 2002, 106). Religion does not conform to the rules of logical abstractions, facts, hypothesis or logical inferences. James admits that despite their illogical nature, religious instincts and transcendent experiences exist in human consciousness (Munce 2002, 106). Having a

religious instinct is part of being human. This includes the prisoner, the lawbreaker and the violator of the peace. He writes:

If we look on man's whole mental life as it exists, we have to confess that the part of it of which rationalism can give an account of is relatively superficial. It is the part that has the prestige undoubtedly, for it has the loquacity, it can challenge you for proofs, and chop logic, and put you down with words ... Your whole subconscious life, your impulses, your faiths, your needs, your divinations, have prepared the premises, of which your consciousness now feels the weight of the result; and something in you absolutely knows that that result must be truer than any logic-chopping rationalistic talk, however clever, that may contradict it (Munce 2002, 106).

James is contending that having a religious encounter and desiring to engage in practices of religion is fundamental to the human subconscious life, which rational analysis or, in this case, imprisonment and criminality, cannot eradicate.

In communication between Sir Alexander Paterson, prison commissioner for England and Wales from 1922-1946 and Archbishop William Temple, Paterson wrote:

Religion is so deep and personal a thing that no rules can compass it, and no Order of Service can entirely meet the need of the individual. Being a thing of the spirit, it cannot be measured by the size of the prison chapel, the number of people who attend it, nor by the number of hours that the prison chaplain spends within the walls...however, the extent to which provision is made by setting aside places of worship and by appointing chaplains is some indication of the importance which the State attaches to religion as a necessary part of prison administration (Ruck 1951, 124)

In spite of their penal status and experiences, prisoners are inclined and oriented towards religion with instincts to have a theistic experience. According to Joel Thomas, religion is necessary for the prison because religion provides

“ontological security” for prisoners (Thomas 2012, 26). Religion “reinforces identity” by engendering an ongoing process of meaning-making and purpose construction for the prisoners (Thomas 2012, 28). Religion and the prison culture intersect at the level of human existential and religious experience.

According to The House of Commons Library report (2016), religious diversity exists in UK prisons. The Muslim population in UK prisons continues to grow but is below the population of Christians. The increase in Muslim prisoner members is also attributed to prisoners who have converted to Islam behind bars. Indicators of higher rates of prisoners’ conversion to Islam are not verifiable. However, it indicates that conversion is taking place in the prison environment either from nominal or non-Muslim background to converted and committed Muslim. The report states:

At the end of March 2016 just under half of the prison population was of a Christian faith – a decrease of 9 percentage points compared to June 2002. The proportion of Muslim prisoners has increased from 8% in 2002 to 15% in 2016. The proportion of prisoners with no religion in 2016 (31.4%) was down 0.6 of a percentage point compared to 2002 (House of Commons Library 2016, 13).

## Prison population by religious group, March 2016

	Number	% of prison population	% pt. change on 2002	% general population aged 15+
Christian	41,940	49.1%	-9.0%	61.3%
Muslim	12,506	14.6%	+6.9%	4.0%
Hindu	421	0.5%	+0.1%	1.5%
Sikh	732	0.9%	+0.2%	0.7%
Buddhist	1,558	1.8%	+0.9%	0.5%
Jewish	406	0.5%	+0.2%	0.5%
No religion	26,349	30.8%	-0.6%	24.1%
Other	1,437	1.7%	+1.1%	0.5%
Not recorded	92	0.1%	+0.1%	7.0%
<b>Total</b>	<b>85,441</b>	<b>100%</b>		

Based on the 30<sup>th</sup> June 2013 prison population statistics, prisoners in Scottish prisons with religious belief were 93% Christians. Muslim prisoners were 4.4% with Buddhist, Sikh, Jewish, Hindu and other religions consisting of 2.7% of the religious prison population. However, 3,270 prisoners (42% of the prison population) indicated no religious belief (House of Commons Library 2016, 21). In Scotland, the number of prisoners with no religious belief is very high.

In 2012, the Pew Research Center in the US conducted a 50-state survey in which it highlights the role of religious programs as vital to the post-prison reintegration process for prisoners. The report demonstrates the prevalence of religion and religious practices in US prisons and jails. Moreover, the Pew study notes that “America’s state penitentiaries are a bustle of religious activity” with every major Christian denomination and a religious group represented, including

Pagan/earth-based, Native American Spirituality, Mormons, and Orthodox Christians (Pew Research Center 2012, 11, 17). It explains:

These ministers, priests, imams, rabbis and religious lay people sit at the intersection of two social trends. The United States has the highest rate of incarceration in the developed world, with approximately 2.3 million men and women – or about 1-in-100 of the nation’s adults – behind bars. The U.S. also stands out among industrial democracies for its high levels of religious commitment (Pew Research Center 2012, 7).

The purpose of the survey was to look at the role of PCs in American prisons and the presence of religion in relation to its impacts on inmates. The Pew contacted approximately 1500 PCs with a range of diversity in gender, race, faith background and location. It notes the crucial role of religion in the rehabilitation of prisoners in US prisons. Furthermore, it shows how PCs are a necessary part of the process. The report intimates in several ways that PCs’ role as pastoral caregivers and religious program facilitators serves as a key to the reintegration and restorative process of prisoners in their post-prison lives. It notes: “More than seven-in-ten chaplains (73%) consider access to high-quality religion-related programs in prison to be ‘absolutely critical’ for successful rehabilitation and re-entry” (Pew Research Center 2012, 13). The report highlights the value and existence of religious programs as indispensable means of reducing prisoners’ recidivism and reoffending. It explains:

Overwhelmingly, state prison chaplains consider religious counselling and other religion-based programming an important aspect of rehabilitating prisoners. Nearly three-quarters of the chaplains (73%), for example, say they consider access to religion-related programs in prison to be “absolutely critical” to successful rehabilitation of inmates. And 78% say they consider support from religious groups after inmates are released from prison to be absolutely critical to

inmates' successful rehabilitation and re-entry into society (Pew Research Center 2012, 11).

Religious diversity among prisoners and the need for representation among PCs have been discussed in the UK for quite some time. James Beckford argues that prisoners have the right to identify with their religious groups (Beckford 1999a, 674). He defines the right to "religious and spiritual care" as a "matter of equal opportunities and therefore of social justice" (Beckford 1999b, 315; 2015). Beckford contends that accessing the services of PCs associated with prisoners' religious experience ought to be prioritized, considering the religious diversity among the prisoners in England and Wales. They include Buddhists, Hindus, Jews, Muslims, Sikhs and Christians, "other religion," "no religion" and a large group of non-religiously affiliated prisoners (Beckford 1999b, Todd 2011). A similar religious representation appears among prisoners in Scotland (National Records of Scotland 2013). In a particular way, this research suggests an emphasis on quality-based religious programs to prisoners (Skotnicki 2002). A quality-based religious program it claims negates the angst of ageing, "natural" death, homicide and suicide in prison. Furthermore, quality-based religious programs have the tendencies to reduce the rates of infractions and recidivism in and outside of the prison culture (Pew Research Center 2012). Prison chaplains are not monolithic in chaplaincy experiences.

For Deuchar Ross et al., religion and spirituality in prison are conversion oriented. They argue that religion and spirituality lead to positive forms of desistance (McNeill 2014). They arrive at this conclusion after investigating the impact of religion and spirituality in the lives of young men and their encounters with PCs in Danish and Scottish custodies during two phases of their imprisonment: the transitional phase when they first enter the prison, and the stabilizing phase when they begin to adjust to prison life. The study explores the experiences of these young men in custody to determine how PCs' religious and spiritual cares contribute to "behavioural change and increased commitment to criminal desistance" (Deuchar 2016, 131). It concludes that religion and spirituality have the potential to increase desistance to crime. Deuchar writes:

We therefore, argue that religiosity and spirituality can be drawn upon and offered as additional resources to young prisoners, within the context of a 'moral prison' environment, which in some cases may help to nurture initial turning points and stimulate identity and behaviour change linked to transitional masculinity and (projected) post-prison biographies that foreground desistance (Deuchar 2016, 147).

Many prisoners see religion as a means of hope in the afterlife. Religion is pivotal to their emotional wellbeing (Aday and Wahidin 2016) as expressed by a female prisoner serving life:

*As I begin to see that death looms ahead, I need to know more about where I stand with God. There's something about the transition from this physical life to the afterlife that is scary—the unknown. Heaven or Hell— that's all there is. As a Christian, I am excited by the belief that death is followed by a new existence and body. Although I may not receive the good life on earth, this life is merely a nanosecond in comparison to eternity (Aday et al. 2014, 249).*

This idea that there is life after death is important because it serves as a means of resistance against the pain of sentences like Life Without Parole (Johnson 2008) and Whole Life (Liebling 2017). Prisoners sometimes define hope in the afterlife as a communal experience. Pain, suffering, hopelessness, meaninglessness, sickness and death are collective experiences in prison. She speaks:

*I have lost several dear friends in here. While I miss the times we have spent sharing, I feel so happy that they have reached their goals of being with the Lord. When they do die in here, I always hope they were saved and are now in heaven (Aday et al. 2014, 248).*

The lifer wishes that other lifers would experience the hope of a better life after death. Religion plays a pivotal role in enduring the pain of imprisonment. Hope in the afterlife for the prisoner is both individualistic and communal (Moltmann, 1975). Pain, suffering, hopelessness, meaninglessness, sickness and death are collective experiences in the prison environment (Aday et al. 2014, 248).

In their role as pastoral caregivers, prison chaplains are conversant with the gradual decline of prisoners as they age and when they die (Aday & Wahidin, 2016). They are conversant with these conditions as part of the prison culture. In relation to their roles as religious facilitators, prison chaplains create conditions in which hope after death becomes a means of resistance to the immediate pain of imprisonment (Moltmann, 1975). A female prisoner serving life expresses this notion:

*As I begin to see that death looms ahead, I need to know more about where I stand with God. There's something about the transition from this physical life to the afterlife that is scary—the*

*unknown. Heaven or Hell— that's all there is. As a Christian, I am excited by the belief that death is followed by a new existence and body. Although I may not receive the good life on earth, this life is merely a nanosecond in comparison to eternity (Aday et al. 2014, 249).*

While some prison chaplain participants in this research acknowledge the symbiosis between their responsibilities in the church or Mosque and their work in the prison as symbiotic and linear, others have highlighted important distinctions based on culture, location, logic, relationship, and individual freedom. Distinctively, the prison culture they argue is different from the culture of the Church or Mosque.

However, this research suggests that prison chaplains do not separate their concept of God from their lived experience in the prisons. Instead, their concepts of God are inherent to their ministries; I argue that PCs are continually functioning in neo-orthodox and undogmatic roles of pastoral care and theological formulations. The claim that the prison culture is also a religious culture is immediately demonstrated by the religious orientations and inclinations of the prisoners (Pew Research Center 2012).

*The Prison Culture is a Culture of "Pain"*: In his description of the angst of imprisonment, the conditions of prisoners, and praxis of punishment, Gresham Sykes explores the depth of penal painfulness. The modern prison functions on the philosophy of inflicting pain to the point of recreating violence in the penal experience of the prisoner. Sykes contends that the prison functions as a "society within a society" (Sykes 1958, xxx) (Skotnicki 1991) with the ultimate

goal of creating structures and experiences that “maintain total or almost total social control” (Sykes 1958, xxxii). The process of imprisonment is the process of impoverishment, enduring the pain of destitution symbolically and concretely to satisfy the demands of the states because prisons are instruments of the state. The fundamental functions of imprisonment are retribution, deterrence and reform (Sykes 1958). Imprisonment is meant to transform vices in prisoners into virtues but because of its ethos, conditions the vice it is designed to curb. Imbued with power and normalcy, the modern prison functions as a cauldron of power and submission. He notes:

The lack of a sense of duty among those who are held captive, the obvious fallacies of coercion, the pathetic collection of rewards and punishments to induce compliance, the strong pressures toward the corruption of the guard in the form of friendship, reciprocity, and the transfer of duties into the hands of trusted inmates—all are structural defects in the prison’s system of power rather than individual inadequacies (Sykes 1958, 61).

In relation to its personification of power and control, prison creates and recreates pain as means of “prisonization”—“The process by which the individual acquired the values, norms, and attitudes of the inmate subculture, with less attention paid to the question of why the subculture existed in the first place” (Sykes 1958, 138). Sykes describes this pain as follows: “the deprivation of liberty” as a penal expression. The “deprivation of goods and services,” “the deprivation of heterosexual relationships,” “the deprivation of autonomy” and the “deprivation of security.” He explains, “Imprisonment, then, is painful.” However, “the pains of imprisonment remain, and it is imperative that we recognize them, for they provide the energy for the society of captives as a system of action”

(Sykes 1958, 65-78). Sykes' analysis reaches the crux of the penal crisis. The process of prisonization also perfected: by attire: prison clothing; by attitude: prison worldview; by atmosphere: prison climate; by action: adjustment to prison regulation; and by anonymity: prison de-personalisation.

In this research, I argue that the present practice of mass incarceration cannot be isolated from historical events, past penal logic and penal practices in the United States and the United Kingdom. According to Robert Perkinson, "The evolution of the prison has had surprisingly little to do with crime and a great deal to do with America's troubled history of racial conflict and social stratification" (Perkinson 2010, 8). The shifts to penal harshness and mass incarceration in the US replicate patterns and concepts of Lockean slavery that I call Lockean punishment. What has not changed with respect to penal objectivity and depravity is the historic targeting of poor Whites, Blacks and Hispanics in the US penal system as well as poor Whites, Blacks, Asians and minority ethnic groups in the UK penal systems. These patterns are more evident in the normalisation of mass imprisonment, and the industrialisation of punishment sustained using prisoners' bodies as economic units. Furthermore, the logic of penal normalization in the modern penal system has increased in the production of ageing and dying prisoners. The modern penal culture is associated with high rates of natural in-prison deaths, suicide and homicide, as we shall see.

Liebling notes: "We wish to clarify what it is that makes the prison experience painful, and in some identifiable circumstances, immoral, and the

practice of imprisonment always morally dangerous” (Liebling 2004, 165). It is necessary for indicators that reflect the moral and ethical implications of just punishment be used to evaluate the shifts to penal harshness (Liebling 2004, 57). In the absence of such indicators, limitations and boundaries are disregarded (Liebling 2004, 50). She explains:

It was arguably intended between 1995 and 1998 that the prisoner should experience imprisonment as more painful. The prison was deliberately dehumanized and made more punishing. A return of visible staff violence in some establishments (e.g. Wormwood Scrubs, Portland, and Dartmoor) could be linked to the messages staff were receiving about who prisoners were (Liebling 2004, 46).

Prison is thus an “emotional climate,” but particularly a “moral climate” in which PCs function as moral and religious agents. Liebling notes that every prison has its own culture and “emotional tone.” The emotional tone of every “prison life is raw, real, and distinctive” (Liebling 2004, 419). Prison chaplains work simultaneously in several prisons, conversant with and existentially engaging the various prison cultures and their emotional tones.

In the above analysis, I have described the penal cultures within which prison chaplains function. I argue that prison chaplains function within the various expressions of the prison culture as ameliorators of the pain of prisonization. In the next section, I provide an analysis of the identity and function of the prison chaplain in the prison culture.

### **1.3 Prison Chaplains and their Prison Identities:**

According to Skotnicki, three major assumptions undergird the modern penal systems of the US: (1) that modernity and the penal system of the US are upshots of religious institutions. (2) “That the penitentiary is a microcosm of the society in which it functions.” (3) “That there is a constant tension among prison administrators and reformers, and therefore within society itself” (Skotnicki 1991, 16). Skotnicki contends that prison chaplains are an inherent part of the penal and social development of the ethos and logic of the prison culture as insiders rather than outsiders (Skotnicki 1991, 22). According to Sophia Gilliat-Ray et al.

A chaplain is an individual who provides religious and spiritual care within an organisational setting. Although this role has evolved from within the Christian churches, the term ‘chaplain’ is now increasingly associated with other faith traditions. Chaplains may be qualified religious professionals or lay people, and while religious and pastoral care might be central to their role, the increasing complexity of many large public organisations has led to an expansion in the range of their activities (Gilliat-Ray, Pattison, & Ali, 2013, 5).

Gilliat-Ray’s et al.’s definition is a general assessment of the identity of chaplains in various professions. Michael Maness argues that there are two categories of chaplains: “Professional chaplains” (Maness 2015, 9) and “Traditional chaplains” (Maness 2015, 9). He defines the professional chaplain as a highly credentialed chaplain with administrative responsibilities. He or she occupies a “broader role” as facilitators of “faith groups” while operating in “specialized settings” that include “public and governmental services.” They also serve as resource facilitator for all religious groups in an institution (Maness

2015, 9). In contrast, traditional chaplains are credentialed chaplains but unlike professional chaplains, they operate within the context of their particular faith group and “seek to guide others into their own faith group” (Maness 2015, 9). In this research, I focus, particularly on prison chaplains.

There are over 1,600 prison chaplains in local jails, state and federal prisons serving in part-time and full-time capacities across the US (Pew Research Center, 2012). Similarly, there were 60 prison chaplains serving in volunteer, part-time and full-time capacities in Scotland (see Chapter 2) at the time this information was provided. In Addition, based on the Ministry of Justice June 2017 statistics, there were 461 prison chaplains in England and Wales (Ministry of Justice, 2017k). For the United States and England and Wales, the above numbers do not include individuals or religious organizations providing chaplaincy services on a volunteer basis.

*Prison chaplains are multi-prison-faceted and neo-orthodox:* In this research, I describe prison chaplains as *multi-prison-faceted* and *neo-orthodox* in their chaplaincy practices. Prison chaplains are multi-prison-faceted because their roles in the US and UK prisons are “dynamic.” How they navigate between prisons responding to prisoners’ emotional, religious and psychological needs demonstrates this dynamism. Prison chaplains are also neo-orthodox — theoretically and practically undogmatic in their roles as religious workers in the prison environment. Their identity and roles as dynamic and undogmatic reflect how PCs respond to the needs of prisoners, the angst of the prison cultures and

their theistic responsibilities as also they formulate ways of “God-talk” with prisoners. I have based this conclusion on analysing the responses from PC participants in the US and Scotland with a theoretical understanding of PCs’ roles in England and Wales.

According to Jody Sundt and Francis Cullen, prison chaplains have been referred to as “jack-of-all-trades, performing a wide range of duties from conducting religious services to selecting the weekend movie” (Sundt & Cullen 1998, 275). They are responsible for a broad range of responsibilities. Their ability to navigate the thin lines of secular and spiritual demands also makes it possible to acquire practical knowledge in prison management (Murton 1979).

In 1998, Sundt and Cullen observed in their study that prison chaplains are increasingly directed into administrative responsibilities coupled with their correctional obligations to prisoners. They note that the contemporary prison chaplains have worked to “recast” their image and roles when confronted with processes of managerial marginalization. Sundt and Cullen explain: “In other words, the value of prison ministry came to be defined primarily by the extent to which it could advance central correctional goals as defined by the secular professionals administering the prison” by “managing” prisoners from a spirituals and rehabilitative perspective (Sundt & Cullen 1998, 273-4).

They suggest that in the 1900s, prison chaplains began to experience pressure to function as spiritual and secular agents in addition to the increasing marginalization of religion. The consequence was the increasing replacement of prison chaplains with specialists and the value of prison chaplains questioned.

Prison chaplains had to reeducate themselves. In addition, Sundt and Cullen continue:

During the 1950s, leading penologists began to stress the importance of winning public support for rehabilitation to obtain adequate funding for a treatment program, chaplains were called on to use their community contacts to campaign for rehabilitation. The 1970s saw chaplains' spiritual roles broaden and become more ecumenical to ensure inmates' newfound religious freedoms...Chaplains who perform the traditional role of pastor risk being replaced with volunteers who are arguably able to meet the diverse religious needs of inmates and do so at no cost to the prison system (Sundt & Cullen 1998, 274).

While the above development reflects a "new" direction in the role of prison chaplains from one in which they only provided religious-based services, I contend that prison chaplains involvement in both administrative and correctional responsibilities in the prison is not new. The practice dates back to what I refer to as the "historical era"(see Chapter 6). Prison chaplains have historically "played an important role in the lives of inmates" (Sundt 2002, 370). Notwithstanding, Sundt and Cullen argue that PCs' roles are often subject to "reinterpretation" and associated with "role ambiguity" and "role conflict." These determinants are influenced by "individual characteristics of chaplains, such as their ages, their levels of education, and, to an extent, their races" (Sundt & Cullen 1998, 294). While prison chaplains often find themselves caught between the demands of custodial responsibilities and "the model of prisonization," prison chaplains are influenced by their religious convictions and the overwhelming pursuit of the "rehabilitation model" of correction (Sundt 2002, 369). Sundt and

Cullen conclude that prison chaplains are committed to the spiritual and rehabilitation needs of prisoners.

*Prison chaplaincy is an intersectional entity:* In prison management, prison chaplains exist as an intersectional entity in tandem with the religious and pastoral needs of prisoners, the security needs of the state and their religious roles. Their practices are best reflected in their reliance on religion, faith and spirituality. According to Allison Hicks:

Simultaneously, however, chaplains identified the main purpose of incarceration to be the protection of society, implying a perception of inmates as dangerous and troublesome. Religious volunteers have noted this tendency, claiming chaplains are less likely to see the “injustices” of the institution (Hicks 2012, 638).

For Hicks, PCs are “risk managers” in the prison culture especially in relation to its emphasis on “security.” She contends that the prison institution fosters a culture “defined primarily by risk management” which prison chaplains “internalize” and within which they are socialized (Hicks 2012, 636). She notes: “The concrete walls, gates, and fences lock individuals inside while also locking society out. Such experiences have profound ramifications for the individuals who work inside the confines of total institutions” (Hicks 2012, 639). Based on the length of service as chaplains, the number of prisons visited and their engagement with the broad categories of prisoners, prison chaplains over time develop the intuition to navigate the system. According to Hicks: “As a consequence, there are distinctive cognitive tendencies associated with this

occupational group. Chaplains learn to ‘watch out’ while simultaneously providing for the religious needs of offenders” (Hicks 2012, 643). For Hicks, prison chaplains develop cognitive skills to navigate the penal culture. I argue that these cognitive tendencies are religiously and spiritually influenced. They reflect the prison chaplains’ reliance on their religious background and vocation.

Hicks notes:

Chaplains’ relationships with both inmates and other correctional staff shaped their perceptions of risk. In addition, there were structural factors— such as institutional policy and the physical structure of prison—that contextualized these interpersonal experiences. Chaplains were trained to be cognizant of their surroundings and to seek out and neutralize risky situations (Hicks 2012, 644)

Prison chaplain participants in this research describe their “institutional context” as a security culture, the accumulation of “human imperfections,” the accumulation of “sadness” and the “normativity of darkness” (Hicks 2010). The prison is associated with “risk” and the work of the prison chaplain is risky (Hicks 2012, 654). Hicks argues that risk management is inherent to prison chaplaincy. She notes that they don’t like to talk about the prison environment “directly” in contrast to talking directly about the state of prisoners in the prison environment (Hicks 2012, 655). “Over time, chaplains developed barometers of risk; working in corrections became a process of checking the pulse of the facility and identifying indicators of future problems” (Hicks 2012, 656). Not only do prison chaplain navigate the prison space and negotiate risk by “learning to watch out” and working in the “yellow zone,” they also partially negotiate risk through their faith” (Hicks 2012, 657).

According to Hicks:

These perceptions of risk, then, can help explain the schism between the objective and subjective realities of correctional work ... This ensures that chaplains work in the yellow zone, watching out for trouble. Although over time, chaplains may become comfortable in the prison setting, they are taught that this feeling is dangerous; chaplains fear a false sense of security (Hicks 2012, 659).

Prison chaplains execute their duties in an environment that is constantly in a “flux,” changing but is also institutional and paradoxically normative. As religious workers and pastoral caregivers, prison chaplains function as “risk managers” in the prison environment. However, they are also engaged in managing the spiritual, emotional and psychological needs of prisoners. Prison chaplains are constantly confronted with the existential angst of imprisonment and the depth of human frailty in the prison environment. They navigate these experiences through their religious understanding and faith communities. Their management of risk within the prison context does not apply to external risk alone but their personal internal and emotional risks.

*Prison chaplains as Practical Navigators of the Prison Cultures:* Prison chaplains have learned to navigate the various expressions of prison cultures, attitudes of staff and the “unpredictability” of prisoners and their needs. Take for instance the observation of R. N. Ristad. Ristad has been a prison chaplain for over 40 years in various prisons and administrative capacities including president of the Associated Chaplains in California State Service (ACCSS) in

the California Correctional Department in the United States. He argues that prisoners have “rules” and “ethics” and it is in the best interest of the prison chaplain to learn and be conversant with those rules for the following reasons: to adequately navigate the prison system, to help the prisoners and finally to be effective (Ristad 2008, 295). He writes:

It offers them a chance to examine and understand the anxieties, insecurities and fears that cause their violence—be it emotional or physical. This expands their thoughtfulness and empathy for loving themselves and others. It offers them the ability to feel the costs of being violent and the rewards of being non-violent in love and forgiveness for themselves and others. It offers us the same things toward them if we stop being violent in our attitudes, prejudices and punishment of them (Ristad 2008, 295).

To acquire a holistic understanding of the PC’s role in the prison context, Ristad argues that the prison culture must be interpreted from the following perspectives: (1) the perspective of the state as the one that punishes; (2) the perspective of the prison management staff as the one that implement the mandates of the state; (3) the perspective of the prisoner as the one that is punished; and (4) the perspective of the prison chaplain as a religious person functioning in a pastoral caregiving capacity. He notes: “the systemic cultural ethos of prison is autocratic bullying violence that maintains distance and control” (Ristad 2008, 296). Ristad describes the prison as emotionally charged with the need for prison chaplains to understand the rules and to ‘survive’ the angst of the prison culture. He writes:

Prison is a small area where three to ten thousand dysfunctional men live intimately in dehumanizing conditions with little care and respect. These conditions and the closeness of quarters exacerbate tensions,

anxieties, fears and prejudices in dysfunctional inmates and staff. (Ristad 2008, 295).

*Prison chaplains are a “part” of the system:* Prison chaplains are members of the prison staff as volunteers or part-time and full-time employees. While their function and responsibilities are religiously centred; they are “socialized” within the penal system. As a result of this socialization, the prison chaplains are also “confident” with “instincts that as Hick argues are “sharpened and fine-tuned by engaging in correctional work and negotiating risk. This suggests that the working personality developed by chaplains has a latent function as a social control mechanism used by institutions to encourage staff to adhere to institutional norms” (Hicks 2012, 661). Considering that prison chaplains have developed these penal instincts to navigate the prison environment, I argue that their “presence” as religious agents in the prison environment counteracts the pain of prisonization. Furthermore, their presence is cathartic for prisoners. However, in contrast to Hicks’s theory of prison chaplains as “risk managers,” my research contends that prison chaplain participants are more concerned about the high rates of existential angst, of human mortality and the impact of the concentration of imperfection in the prison environment as reinforcing and criminogenic. Hicks contends that:

The risk to chaplains comes from their “clients.” Prisons advocate a negative folk psychology of inmates and therefore client needs are given less weight and are contrasted with the need for safety—in almost every case the need for safety being prioritized. In this way, prisons decrease the chance chaplains will feel ambivalent about their clients and their work (Hicks 2012, 660)

For Andrew Denney, prison chaplains are capable of managing both “internal” and “external” conflicts in the prison environment. They are aware that they are susceptible to “manipulation” from prisoners to “receive various goods and services” and as a consequence, carry out their duties with a sense of “inherent suspicion” (Denney 2017, 196). Furthermore, Denney argues that it is not only the prisoners about who prison chaplains harbour suspicion but non-prison chaplain staff members. He explains: “Many chaplains reported they had been labeled as a ‘Hug-a-Thug’ by custodial staff. This term references the perceived proinmate and anticustody approach of their role” (Denney 2017, 197). In case of conflict management, Denney contends prison chaplains manage conflict based on the following strategies: “(1) using their role as a ‘safety valve’ within the institution and (2) demonstrating respect to inmates and staff” as well as “maintaining personal and professional boundaries” (Denney 2017, 200). Denney’s research findings discover that the “role” of the prison chaplain is susceptible to a conflict in the prison environment that is both personal and professional. The basis for the conflict is the dialectic between the prison chaplain’s custodial role and their correctional role. According to Denney What prison chaplains “side with inmates upholding institutional policy, custodial staff view them negatively as they assume, they are anticustody. This conflict cannot only affect their professional life but can also affect their personal life (Denney 2017, 205).

In contrast to Hicks, I argue that PCs are earnestly engaged in prison duties not necessarily with an overwhelming concern for their safety but as a

personalistic concern from their religious backgrounds for prisoners. This is especially evident in their care for the ageing, dying and dead prisoners.

Fundamental to their presence in the penal system is their religious commitment and calling. I describe this as theistic and personalistic. Prison chaplains have faith in the transcendent to navigate the abnormalities of the prison environment part of its culture. The foundation of their faith and spirituality is not grounded in the prison environment but pre-supposes in most cases their prison experiences. They come with their religion, faith and spirituality to the prison. While their religious commitment, faith engagement and spirituality may be strengthened and enhanced by the “yellow zone” (Hicks 2012), their experiences of the angst and abnormalities of the prison environment do not often eliminate their religious commitment (Pew Research Center, 2012).

Furthermore, prison chaplains are not accidental to the legitimate management of prisons and their daily operations in the United State and the United Kingdom. By demonstrating the various multi-prison-faceted and neo-orthodox roles of prison chaplains, I argue that prison chaplains are an inherent and indispensable part of the prison culture, prison management and the penal systems. In addition, the thesis cumulatively seeks to provide answers toward an understanding of prison chaplains’ roles that consider their presence as central to the issues of prison research, the scholarship of criminology, PT, criminal justice reform and the broader penal and public debates (Pew Research Center 2012, 7).

The thesis suggests a holistic understanding of the roles and relevance of prison chaplains in the US and the UK penal systems with the context of the moral and ethical analyses (Johnson 2008; Leigey & Ryder 2015; Clemmer, 1958). In confronting the depth of hopelessness during their sentences, many prisoners rely on the discussion sessions with prison chaplains. These discussions are religiously cathartic for prisoners in the prison environment (Sundt 1997; Pew Research Center 2012). As a part of the theo-criminal justice comparative approach, deriving a holistic understanding of the modern prison chaplain requires the adoption of “strategic lenses”. These lenses, I contend, reflects on the development and transformation of prison chaplains — their roles, identities and function over the centuries as well as the present era of penal punitiveness post-1970 (See Chapter 6). As a central argument of this research, I argue that prison chaplains function within a person-centred caring approach for ageing and dying prisoners based on personalistic assumptions regarding the humanity of prisoners.

According to Walter Muelder (Knudson 1927), three fundamental ethical norms, referred to as “Three Communitarian Laws” should contribute to how social norms and penal laws ought to help govern society: (1) “The Law of Cooperation”; (2) “The Law of Social Devotion”; and (3) “The Law of Ideal Community” (Muelder 1966). Muelder asserts the need for what he refers to as the concept of “Communitarian Ethics” (Knudson 1927). His goal is to analyse the dynamics between theory and practice towards the formulation of ethical concepts that will aid in the “shaping of future community life according to

norms” (Deats 1972a) based on values that are universal and ideal (Muelder 1983). It advances the question as to how best the prison culture can reflect the ideals of a communitarian ethics. As a theistic personalist, Muelder was an ardent critic of oppression and racism considering their sociopolitical, economic and penal implications (Deats 1972a). It is worth noting that the rate at which PCs are performing their intersecting roles as enforcers of shared values of humanity has increased due to the growth in the prison population conditioned by penal policies of incapacitation.

### **Conclusion**

This chapter has provided the structure of the thesis. It argues that the modern prison cultures within which prison chaplains function are not monolithic. It is an embodiment of various intersecting expressions. The chapter also argues that prison chaplains are indispensable to the modern penal cultures of the US and the UK as well as their cumulative increase in human mortality. They are both custodial and correctional agents but fundamentally led by their religious obligations and commitments. Finally, it suggests that prison chaplains have navigated the existential angst of the prison cultures of the US and the UK and their various expressions in absolute reliance on their religious experiences and background. The religious influence of the prison chaplains’ experience will be historically reflected in Chapter 6. In the next chapter, I will provide an analysis of the methodology associated with this research.

## Chapter 2: A Theo-Criminal Justice Comparative Approach

This chapter provides an introduction of the methodology and structure of the empirical portion of the thesis. It further introduces the working definitions of punishment and mass incarceration in relation to the intersection between PT and the disciplines of criminal justice reform and criminology.

### Research Questions

There are four central research questions associated with this research and appropriated from the framework of Hermans and Schoeman.

1. *Descriptive task*: What is going on? It consists of the phase of information gathering and a detailed description. The task is to describe the shifts to penal harshness in the US and the UK, its production of mass incarceration conditions of death as theological situations, and description of the prison culture in which prison chaplains function: Chapters 1-5.
2. *Interpretive task*: Why is this going on? This task embodies the methodological developments associated with theo-criminal justice comparative approach as a means of interpreting the shifts to penal harshness witnessed by PCs: Chapters 6 & 7.

3. *Normative task*: What ought to be going on? This research raises normative questions from the humanities, the social sciences and criminology in the process of ethical analysis of penal harshness and massive forms of imprisonment: Chapter 6 & 7
  
4. *Pragmatic task*: How might we respond? It entails the formulation of solutions that are both theoretical and practical. The programmatic task leads to best practice development and intervention (Hermans and Schoeman 2015, 11): Two forms of analytical recommendations in Chapter 8: (1) *Ethical Laws on Sentencing and Punishment*, and (2) *The Future of Prison Chaplaincy in the Era of Mass Incarceration*.

### **Research Goals**

1. To provide a theo-criminal justice comparative analysis of the shifts to penal harshness and their production of massive forms of imprisonment of poor Whites, Blacks, Asian & Minority Ethnic (BAME) in the UK, and poor Whites, Blacks and Hispanics in the US prison research that is both historical and contemporary post-1970.
  
2. To provide a theoretical and empirical analysis of prison chaplains' response and care of ageing, dying and dead prisoners in the modern prison cultures of the United States and the United Kingdom.

3. To provide a descriptive and analytical understanding of the multi-prison-faceted and neo-orthodox roles of prison chaplains and their prison recollections under the various expressions of the modern prison cultures as penal, security, religious and painful in the United States and the United Kingdom.
  
4. To explore the production of the penal conditions of deaths — natural in-prison deaths, homicides and suicides as a result of the shifts to penal harshness in the US and the UK penal systems as situations of theological concerns and an interdisciplinary investigation

### **Research Context**

The shifts to penal harshness from the 1970s to the present have radically altered the population demographics of prisons in the US and the UK. Poor and racially marginalised individuals and communities (Prison Reform Trust 2010a) now represent the face of mass incarceration. For further clarification, this research does not assume that economically marginalised and minority groups are “crime” free (Webster 2014, 8) or should be punished leniently (Chambers 1995). In contrast, it contends that the shifts to penal harshness have disproportionately affected poor Whites, Blacks and Hispanics in the US, and poor Whites, and Black, Asian Minority Ethnic members (BAME) in the UK negative implications.

According to The Howard League, England and Wales, 'Obsession with crime and punishment is a relatively new phenomenon.' It is one that started in the 1970s in which crime and justice have become reckoning forces in English political life. It explains:

Elected to office on promises of reducing crime and instigating tougher punishments for offenders, governments since the late 1970s have cultivated then appealed to punitive misunderstandings of crime, fear, risk and punishment. We have grown used to a mantra that 'prison works' and that severe forms of punishment are the only solutions to problems of crime and disorder (The Howard League 2009, 1.9).

Since the 1970s, studies have shown that emphasis on imprisonment as an absolute form of punishment increased in the UK and the US, leading to growth in prisoners' boom (Huling 2002; Prison Reform Trust 2017a). Armstrong and McNeill (2009) attribute the increased use of imprisonment in this context to the historical lack of distinction between punishment and imprisonment, with prisons becoming synonymous with punishment.

## **2.1 Methodology**

According to Liebling, prison research is "synthetic," a composite of different parts (Liebling 2001). She notes:

Analysis (the difference between administrative empiricism and good quality research) involves reflection, deconstruction, moral engagement and sensitivity to possible political consequences. Synthesis between different or competing perspectives, within this broad analytic framework, sharpens our focus ... when theory and data are welded together in an ongoing cumulative search for the 'truth.' In this sense, our allegiances, and our struggle to balance them can be a crucial part of our research (Liebling 2001, 482).

I reference Liebling to establish the claim that the interdisciplinary nature of this research is designed to uncover layers toward truth in prison research as recollective and collective experiences for PCs. The process is both a deductive and inductive reflection as mutually inclusive in engaging the present mode of penalty in the US and the UK.

Christian Ethics' approaches to the conundrum of mass imprisonment can be classified into four positions: (1) *The Church-historic position*, (2) *The Restorative justice position*, (3) *The Existential position*, and (4) *A Theological Approach*. In contrast to the above approaches, I advance an innovative approach referred to as a theo-criminal justice comparative approach.

*The Church-historic approach*: This view is associated with authors who trace the "continuity" between the development of Christian theology on sin, punishment, penance, and the modern retributive justice system. They argue that the Church's teachings and historical practice in addressing crime and isolation of offenders from the "community of believers" are influential to the development of the modern prison system and its practices of solitary confinement (Skotnicki 2004, 795; Danaher 2014).

*The "Restorative" justice approach*: This approach focuses on sentencing and the goal to provide a realistic alternative to the retributive justice system (Ristad 2008, 292-303). Advocates argue that restorative justice provides adequate alternatives to the retributive justice system by bringing the offender

and the offended face to face (Howard Zehr 2002; John Braithwaite, Gerry Johnstone, Christopher Marshall; Coakley 2014; Mihut 2014; Soltis 2011).

*The Existential approach:* This approach deals with the cumulative consequences of the retributive justice system from a subjective and phenomenological perspective. Those who adopt this approach have analysed the immediate sociopolitical, economic and emotional consequences of mass incarceration. (Loury 2002; Farrigan 2007; Gerace 2010; Pettit and Western 2010; Wildeman Fall 2010; Western 2004, 2002; Christie 2000; Wacquant 2009b, 2001)

*The Theological approach:* This approach focuses on the use of theological concepts to critique the phenomenon of mass incarceration and penal harshness. It is both theological and Biblical by referencing themes centred around justice, fairness, respect for human dignity, biblical notions of punishment, the image of God, and equality, inclusive of elements of theo-criminal justice comparative approach (Logan 2008, 4; Marshall 2001; Wright 1996; Wright 2004).

## **2.2 Theo-Criminal justice comparative approach: (TCJCA)**

I advance the claim for a theologically centred research method in prison research that explores the penal cultures of the modern penal systems of the

United States (US) and the United Kingdom (UK). Designed as an interdisciplinary approach, I argue that the theo-criminal justice comparative approach provides a theoretical and empirical structure suited for an intersectional approach between PT and criminology/criminal justice reform research. This section provides a definition of the theo-criminal justice comparative approach as a prison research method in PT. An important question that the theo-criminal justice comparative approach addresses is: How does one conduct a theologically focused prison research on sentencing, prisons, and the massive forms of imprisonment also from an international perspective? A primary goal of the theo-criminal justice comparative approach is to interpret the unusual turns to punitive sentences and the angst of imprisonment as “lived experiences” in the penal cultures of the US and UK as theological concerns with ethical and personalistic implications.

*Introduction:*

Liebling contends that prison research “is reform.” Prison research “transforms”, “informs,” and “describes” as a humanistic process (Liebling 2009, 19). She writes, “Research is reform, or it can be, as we strive to reconceptualise, or articulate, the strange and painful world that is the prison” (Liebling 2014a, 482). Liebling’s description of prison research draws on Martin Buber’s “I-Thou” dialectic to produce a framework of prison research in contrast to the existing practice. She notes that adequate forms of prison research advance “questions of penal and moral philosophy, the roles of management

and law, and the legitimacy or otherwise of contemporary penal policy and practice” (Liebling 2009, 19). The qualities of good prison research are non-negotiable. Liebling explains: “The collective aim of prison scholarship, I believe, is to make the prison world, and the individuals within it, ‘intelligible” (Liebling 2014a, 485).

Research demands skills, both analytical and technical — adequately to communicate the felt experience of the research participant as an “honest intellectual inquiry” (Liebling 2015, 20). For Liebling, research is personal: “The kind of prison research I do is *sociological, systematic, and cumulative* ... If I had to summarise the findings of this body of research, I would say that its fundamental message is that human beings need certain virtues: justice, reason and love” (Liebling 2015, 20).

The goal of prison research is to affect public policy. Liebling explains: “my research has been used to introduce changes to policy in many areas: perhaps, especially, in suicide prevention.” Prison researchers she contends “Operate as sociological detectives. There is never a single ‘culprit’ or perspective. Often simply finding a language in which to describe the world we are studying serves to bring it into relief” (Liebling 2015, 23, 29). Research as a whole raises questions, and prison research raises questions about the prison culture and climate or what Liebling terms the “moral performance” of the prison. True prison research, Liebling argues, cannot detach itself from “empathy.” It is the “capacity to feel, relate, and become involved” (Liebling 2001, 474).

According to Gresham Sykes:

The prison wall, then, does more than help prevent escape; it also hides the prisoners from society. If the inmate population is shut in, the free community is shut out, and the vision of men held in custody is, in part, prevented from arising to prick the conscience of those who abide by the social rules (Sykes 1958, 8).

By advocating that researchers look beneath the situation; Liebling's brand of prison research resonates with the task of PT. It is the task of Don' Browning's descriptive theology in which PT uncovers the thick layers of the theological situation (Browning 1996, 77). It is also a reflection of Hans-Gunter Heimbrock's contention of the task of PT as a discipline that also interprets the lived experiences of prison chaplains and their understanding of the prison environment as a particular kind of "social reality" (Heimbrock 2005).

*Definition: Theo-Criminal Justice Comparative Approach (TCJCA)*

The theo-criminal justice comparative approach is an intersectional and interventionist research method in prison research. It seeks to explore the moral, ethical, and existential ramifications of penal policies, punishment and forms of imprisonment in the modern penal systems of the US and the UK. The theo-criminal justice comparative approach's interlocutors are drawn from the humanities, social sciences, criminal justice and criminology. It is descriptive, analytical and prescriptive. Furthermore, the theo-criminal justice comparative approach directly investigates the depth of human experience and problems of human sufferings in the modern penal systems from a theoretical and empirical perspective. Its ultimate goal is penal reform.

According to Heimbrock, in a theoretical and empirically based theological research (Heimbrock 2005, 273; 2011), the starting point is to recognise the distinctions between method and methodology and how they are appropriated. “Method” he argues, is a process based on concrete steps, which also includes data collection (Heimbrock 2005, 275). It is the “inquiry that addresses the question of why to research one way and not another way. It relates to the meta-*niveau*, theoretical reflection about choices for methods within the framework of a scientific discipline.” Methodology expounds on the interests of the research about the research objects, analysing the fundamental concepts, and “the implicit norms and expectations of research design,” with examples including: “logical deduction, hermeneutics, action theory, and ideology critique” (Heimbrock 2005, 275). The theo-criminal justice comparative approach is both qualitative and ‘synthetic’ (Liebling 2001) as a research method. According to Hermans and Schoeman:

Qualitative research aims at depth of understanding of a phenomenon, and internal validity. Depth refers to the variety of the phenomenon, which demands for interpretative and comparative ways of analysing the data namely whether the observed data reflect the ontological reality which exists ‘out there.’ The focus of qualitative research calls for small samples, and labour-intensive processes of data collecting and data analysis (Hermans and Schoeman 2015, 17).

As a qualitative research approach, the theo-criminal justice comparative approach is value-laden. It provides a critique of punishment and imprisonment in reference to “moral indicators” of fairness, respect for human

dignity, just distribution of justice and respectful “management” of prisoners’ lives (Liebling 2004).

As a synthetic approach, the theo-criminal justice comparative approach provides a descriptive analysis defined as a counter-narrative towards best practices (Fulkerson 2007). In that light, the basis of this research method is to look at the merits and de-merits of penal policies and practices.

The basis of TCJCA are six essential expressions and evaluative premises for critical reflection on punishment, mass incarceration and death in the modern penal systems of the US and the UK: the theo-criminal justice comparative approach as (1) Contextual methodology; (2) Ethical criminology; (3) Empirical theology; (4) The task of PT; and (5) Prison Chaplain Participants’ Self-Identification: Who Are They?

### **2.3 The Theo-Criminal Justice Approach as Contextual Methodology**

This expression of TCJCA consists of four essential contexts for penal engagement in prison research: (1) Interdisciplinary; (2) Comparative; (3) Historical; (4) Scriptural.

An Interdisciplinary Context: The theo-criminal justice comparative approach is interdisciplinary. It incorporates principles of religious ethics, PT, philosophy, criminal justice and the social sciences to develop its analytical foundation (Muelder 1973). Cumulatively, fundamental concepts to be explored include: Aspects of social stratification and power (race, poverty and inequality);

Aspects of penal practice (punishment, imprisonment and conditions of death);  
Aspects of theological concern (the ethics of humane penal treatment, “theology of the person,” and respect for human dignity) (Sparks and Simon 2013; Garland 1990; Liebling 2004). A primary question for TCJCA is: How can an interdisciplinary approach to prison research uncover the depth of human suffering in the penal system that reflects the principles of descriptive and prescriptive engagements? (Liebling and Maruna 2005).

As an intersectional investigation, the theo-criminal justice comparative approach explores the “lived experience” (Heimbrock 2011, 14) of prison chaplains with respect to this research. Similarly, the approach strategically incorporates qualitative and quantitative research methods to arrive at its conclusions.

Browning argues for a “strategic” approach in practical theology that is correlational. It makes provision for a “relativeness of results” from an interdisciplinary perspective. His approach starts with “theory” rather than practice and correlation of theory and practice. He notes

Strategic practical theology is indeed the crown, as Schleiermacher said, of theology. But strategic practical theology is no longer the application to practice of the theoretical yield of biblical, historical, and systematic theology as it was in the old Protestant quadrivium ... Strategic, practical theology is the culmination of an inquiry that has been practical throughout (Browning 1991, 57).

John Klaasen rejects Browning’s “correlation of theory and practice” approach as “theory, practice and theory.” He claims that Browning’s approach “reduces PT almost to professionalism and principles for ministry” and “could also result in

an antagonistic relationship between practice and theory as practice is reduced to theory or academic” (Klaasen 2014, 1). Browning asserts the role of “practical reason” in his conceptual development of strategic practical theology. According to Klaasen, PT is a form of “engaged practical reasoning” in an interdependent relationship with practice and theory. He writes; “Practical reason is an activity in which engagement happens at every stage. For this to happen, theory and practice interact as equal variables that have a bearing on each other, not to reduce the one or the other, but to complement each other in a lateral hermeneutical process” (Klaasen 2014, 1).

In this research, I adopt a cyclical model of conceptualising the participants’ theological understanding of their prison experience. The process I contend is practice to theory to practice to theory as an engagement in “practical thinking” and theological conceptualisation. The cyclical model informs the practical experience of the participants in their engagements with prisoners. Theological conceptualisation in this context begins with the concrete experience of the prison environment and its “climate” (Liebling 2004) by referencing Browning’s correlational method of “practice to theory to practice.”

According to Browning:

The view I propose goes from practice to theory and back to practice. Or more accurately, it goes from present theory-laden practice to a retrieval of normative theory-laden practice to the creation of more critically held theory-laden practices (Browning 1996, 7).

For Browning, the process is informed by “practical thinking” as the crux of “human thinking.” It reflects on how the human thought process works, moving

from immediate practical experience to theoretical analysis rather than theory to practice (Browning 1996, 8, 9).

As part of the prison environment, prison chaplains possess a kind of “practical rationality” of the prison culture (Browning 1996, 11). The process of practical thinking is historical. It provides a background to the present situation with the employment of hermeneutical strategies and principles (Browning 1996, 15). In this dialogue, participants bring their prison experiences to share in the process of meaning development and understanding as “practical theological dialogue” (Browning 1996, 31). Browning contends that practical theology “describes practices to discern the conflicting cultural and religious meanings that guide our action and provoke the questions that animate our practical thinking” (Browning 1996, 48).

Browning proposes a three-prong model: “(1) interpretations of the practices, inner motivations, and socio-cultural history of individual agents; (2) interpretations of relevant institutional patterns and practices; and (3) interpretations of the cultural and religious symbols that give meaning to individual and institutional action” (Browning 1996, 61). The theological conceptualisation is thus “personal, institutional, and cultural” (Browning 1996, 67). I define theological conceptualisation also as a form of practical thinking contextually developed to understand the impact of penal harshness and the penal conditions it produces.

To arrive at a strategic development of practical thinking as a conceptual process, Browning advances what he calls “The five dimensions of practical

thinking” (Browning 1996, 105). Their goal is to aid the process of theological conceptualisation, description of the theological situation at hand as part of the practical process of “moral thinking.” They are: “practical moral thinking” as follows; (1) *visional* dimension; (2) *obligational* dimension; (3) *tendency-need* dimension; (4) *environmental-social* dimension; and (5) *rule-role* dimension (Browning 1996, 105-6). He writes; “I will recommend the use of these five dimensions both for describing the theory-laden practices found in contemporary situations and for describing and critically assessing the Christian witness” (Browning 1996, 71).

The five dimensions describe “contemporary situations” about the participants’ theological witness as a form of descriptive theology. Furthermore, practices, rules, roles and patterns of communication “representing the thickness of human actions and practices” are influential to the five dimensions (Browning 1996, 111). In that light, I adopt Browning’s notion of descriptive theology to describe the experience of prison chaplains.

Descriptive theology is a process of “thick description” (Browning 1996, 94). Its task is to engage in the descriptive aspect of the human “situation” as well as “in all of its situated richness” (Browning 1996, 77, 94). It reflects the theological interpretation of human experience. He writes: “for descriptive theology to gain justification, it must do what any hermeneutical social science must do; it must make its formative religious and ethical assumptions explicit and test them critically” (Browning 1996, 92). Contextually, the process of descriptive theology is practical. It is a theological critique of the penal praxis

generated by human actions and institutions (Browning 1996, 93). The process begins by asking essential questions that provide a thick description of the situation. In this context, this requires interrogating – penal harshness and its production of conditions of death in the US and the UK prisons as backgrounds to prison chaplains' experiences. They provide the immediate platform for theological description as empathetic, identity-oriented and historically interpreted. Browning notes: "Descriptive theology in attempting to understand people and groups in their concrete situations, communicates affirmation, preserves the cohesion of selves and identities and builds on strength" (Browning 1996, 284).

For his part, Ottmar Fuchs explores the claims that practical theology has subordinated itself to the social sciences rather than a "partner" of the social sciences. He argues that empirical methodology in practical or theological exploration should remain a theological engagement. He writes:

Difficulties arise when the theological intent does not enter into the methodological awareness of the empirical work, creating the impression that empirical results are being used to shore up theological positions, their factual nature being presented as a particularly persuasive and practically irrefutable strategic argument in intra-theological discourse (Fuchs 2001, 6).

While Fuchs recognises the importance of investigating human actions through a joint means of theology and the social sciences, he argues for the indispensability of theology. He writes: "Let us be clear: the analytical methods of exegesis, of the historical and the social sciences, are necessary, even though they cannot in and of themselves determine the theological value of that

which has been found empirically” (Fuchs 2001, 8). Such a value-laden process he argues should emerge from theological reasoning. Fuchs further explains that the task for “practical theology is...to provide theological reason (be it positive or negative) for the *neuralgic* theological positions vis-à-vis particular phenomena of praxis” (Fuchs 2001, 9).

According to Heimbrock, practical theology is engagement in a “reconstructive” act. It is about first, reconstructing the lived experiences and secondly, engaging in two kinds of reconstruction: hermeneutical reconstruction and conceptual reconstruction on a case-by-case basis. The product is “theoretical reconstruction” of an ideal case. He explains: “The particular case work will lead to theoretical constructions of an ideal case. But case studies do not proceed inductively... rather described and interpreted in order to come to a ‘fuller’ meaningful understanding of the particular in its singularity and concreteness” (Heimbrock 2011, 168). For the theo-criminal justice comparative approach, the issues associated with these two kinds of reconstructions include, (1) sentencing and imprisonment; (2) prisoners and prison chaplains, and (3) crime, poverty, the influence of race in the sentencing process. Heimbrock argues for a phenomenological expansion of the horizons of ‘lived experience’ as part of the theological investigation. “This type of theology follows other intentions in the analysis of experience with particular focus on elements and dimensions of the experiential side of reality” (Heimbrock 2011,169).

In light of Heimbrock’s claim, practical theology is an intersectional form of theology located between theological abstraction and theological

contextualization. It is situated between a dichotomy on the one hand often blind to the concreteness of human experience and on the other hand, the extreme emphasis on the concreteness of human theological experience to the detriment of ethical indicators, theological scrutinise and empirical analysis. Practical theology is also an ethical and empirical engagement.

Terry Velling explains that practical theology functions as the medium for “connecting theories/ideas/texts with practice/life/reality” (Velling 2011, 35). As a result, practical theology is also a form of theological practice and analysis of experiences based on human and concrete experiences that are often outside the norms of theological presuppositions. “Practical theology sees theory and practices as partners that belong together. They are made for each other. They require each other. Action requires reflection. Reflection requires action. They are not one or the other; they go hand-in-hand” (Velling 2011, 37).

The theo-criminal justice comparative approach views the immediate prison experience as the grounds and context for a non-theological pre-supposition. Its basis for knowledge is immediate sense experience, metaphysical and theological derived from the context of the prison environment. In exploring the phenomenon of imprisonment, the theo-criminal justice comparative approach explores ways in which practical theology can provide a fair critique of the practice of criminal justice and the culture of imprisonment (Velling, 2011). The validation of the Theo-criminal justice comparative approach’s research goals are descriptive, empirical, interventionist, and conceptual (Hermans 2015, 22).

As a research method, Friedrich Schweitzer contends that practical theology should not restrict itself to “one” methodological analysis (Schweitzer 2014,139). Practical theology’s mode of praxis should remain interdisciplinary. The discipline presupposes the praxis and the adopted methodology yet defined within a theological framework. No one method of doing practical theology is absolute. Practical theology and its methodological framework are disciplinarily contextual.

In relation to the theo-criminal justice comparative approach, practical theology provides analytical tools to analyse human actions, institutional actions and penal policies. Schweitzer delivers three crucial “extensions” to clarify how practical theology relates to professional action:

- (1) *Beyond the church*: this extension calls for a paradigm of praxis in practical theology that moves beyond the conceptual restriction of “church” to what he refers to as “societal paradigm of practical theology” (Schweitzer 2014, 144). “Ecclesial praxis” in this context refers to prison chaplains functioning as sacred agents in secular institutions. It is not based on the “pastoral or the ecclesial paradigm” but the “presuppositions of ecclesial praxis in culture and society” that includes a “religious hermeneutics of culture as well as a type of system-related analysis” (Schweitzer 2014,144).
- (2) *Beyond the traditional forms of preaching, teaching and counselling*. Influenced by the social sciences practical theology should consider praxis of ethical action not confined to the norms of “professional ecclesial praxis” but also penal research and criminal justice reform (Schweitzer 2014,144).
- (3) *Beyond the pastoral focus, this extension involves para-church ministries but not clergy centred*. It entails volunteers but non-clergy centred individuals. Schweitzer is concern about “professional praxis” (Schweitzer 2014, 144). Practical theology is thus interdisciplinary and inclusive of professional and non-professional clergy centred

actions (Schweitzer 2014, 147). He explains: “The focus is on ecclesial praxis in a professional sense which actually may sound quite narrow, but I view this praxis as embedded in an intentionally very broad social, cultural, and religious context that also has to be studied empirically...” (Schweitzer 2014, 146).

*A Comparative Context:* The theo-criminal justice comparative approach is comparative. It embraces the practice of comparative criminology by investigating the similarities and dissimilarities of two or more distinct penal systems. The goal is also to explore the effects of penal policies and practices on human wellbeing and experiences associated with the penal systems comparatively. Secondly, it seeks to explore areas of best practice development in penal policies and practices. Its primary question is: What are the common patterns in the causes and effects of shifts in penal policies and practices about human suffering and flourishing in these penal systems? This research approach can also be used to explore the lived experience of prisoners. In this research, the theo-criminal justice comparative approach looks at these distinctions and similarities between the penal systems of the US and the UK (Scotland, England and Wales), and their shifts to penal harshness. The high rates of ageing, dying and dead prisoners due to the imprisonment of especially poor and racially marginalised individuals demonstrate the magnitude of these penal developments.

As comparative research in penal policies and practices, I have adopted the suggestions of Trevor Jones and Tim Newburn (2005, 2006). In comparative research of this nature, they suggest an objective process of penal comparison

by which certain distinctions regarding penal policy formulation and practices should be recognised. Penal distinctions should be defined in relation to their locality. However, they acknowledge that the interest in both penal systems is also due to recent development and similarities in penal policies and practices.

They write:

The increasingly punitive nature of penal policy discourse in both countries appears to have given rise to similar developments, such as 'three strikes' sentencing, youth curfews, sex offender registration schemes, 'zero tolerance' policing, etc. At the same time, governments in both countries have adopted a more 'managerial' approach towards criminal justice, including the development of 'risk-based' interventions, and expanding the role of the private sector in the criminal justice system (Jones and Newburn 2005, 56).

In their 2006 article, they explored areas of continuity and discontinuity regarding the passing of two and three-strikes sentencing laws in the US and the UK. They argue for two ways of looking at these distinctions: penal policy as substantial, one that is implemented to the letter; and penal policy as symbolic, with limited or no implementation. They note: "In the United Kingdom, the substantive impact of the two/three strikes provisions has been rather limited to date" (Jones and Newburn 2006, 788). The UK's version of the two/three strikes laws contrasts with the US where the two and three strikes laws are "Substantially more punitive than those in England and Wales." Another major difference is that in England and Wales, "the judge retains discretion to set the recommended number of years of a life sentence that should be served in custody" (Jones and Newburn 2006).

In aggregate changes of these kinds, most of which have tended in the direction of increased restriction and severity, penal harshness has produced a significant shift while making mass incarceration the new face of punishment most notably in the United States. Like penal harshness, mass incarceration is instrumental. It functions in several ways but poignantly reflects a “Shift from prison as a tool of individualisation to a tool of categoric or class control” with historical connections (Sparks and Simon 2013, 11; Simon 2014; Kilgore 2015; Travis 2016).

The theo-criminal justice comparative approach compares, contrasts and analyses the effects of punishment in the UK and US concerning historically salient practices, sentencing policies, and the extent of incarceration. Per Francis Pakes, a comparative criminal justice approach is “the academic study of criminal justice arrangements at home and abroad. Using, documenting, analysing and contextualising criminal justice processes and institutions elsewhere and comparing them to more familiar settings a broader understanding of criminal justice can be gained” (Pakes 2004, 1). A typical example is the high rates of ageing, dying and death of prisoners due to the effects of harshness in sentencing for violent and non-violent crimes.

*A Historical Context:* The theo-criminal justice comparative approach is historical. In this context, it argues that the present development of penal policies and practices cannot be divorced from past penal policies and practices informed by social and economic policies, and actions of law enforcement. Its primary question is: How have past penal policies and practices informed

existing penal policies and practices? A theo-criminal justice comparative approach also is concerned about the influences of socio-political and economic interests in the development of penal policies and practices, and their historical implications about the present. In this context, it investigates the impacts of penal policies and practices in prison research concerning groups—Blacks, Hispanics, and poor Whites in the United States, and poor Whites, and Black, Asian Minority Ethnic groups (BAME) in the United Kingdom. Historically, this research argues that punishment in the US and the UK intersects with aspects and consciousness of past penal practices.

According to Gerben Heitink, PT ought to capture the theoretical and empirical foundation of human experience to describe human suffering and oppression theologically. To accomplish this task, PT should take “empirical data with utter seriousness,” viewed “as its starting point and keep them in mind as it develops its theory” (Heitink 1993, 7). This process of theological conceptualisation shares some similarities and dissimilarities with exegetical, systematic, historical, and philosophical approaches. The social sciences are highly influential in Heitink’s definition of PT. He emphasises the use of “communitive action” as a paradigm. Also, Ray Anderson contends that “Practical theology, then, is more than mere practice; it is a strategic perspective that links the hermeneutical with the empirical to achieve an integrative theological model that underlies the theological task as a whole” (Anderson 2001, 26).

For Paul Ballard and John Pritchard, PT stands to benefit if it considers the following expectations: a process of theological conceptualisation that is “descriptive activity,” “normative activity,” “critical activity” and theology that is “apologetic activity” (Ballard and Pritchard 1996, 10). They argue that “because of its focal concern for Christian practice, PT draws on the methodologies of the social sciences as its critical partners” (Ballard and Pritchard 1996, 17). The relationship between PT and the social sciences is evident in the fact that social science enhances the methodological tools and framework for analysing the social reality in which theologians operates. Thus “Practical theology raises the question of the presence of the Kingdom of God in our history” (Ballard and Pritchard 1996, 17). John Swinton and Harriet Mowet also argue that for practical theologians to understand the reality of human experience, they must take into consideration the influences of the social sciences. They note “The social sciences have offered practical theologians vital access to the nature of the human mind, human culture, the wider dimensions of church life and the implications of the social and political dimensions of society for the process of theological reflection” (Swinton and Mowat 2006, vi). While others have criticised the alignment of PT with the social sciences (Milbank 1990), Swinton and Mowet emphasise the need for practical theologians to consider adopting research approaches from the social sciences. They, therefore, argue “Practical Theology is critical, theological reflection on the practices of the Church as they interact with the practices of the world, to ensuring and enabling participation in God’s redemptive practices in, to and for the world” (Swinton and Mowat 2006, 6).

Similarly, John Reader notes that practical theology has a transformational goal. He argues “Practical theology is unsystematic because it is engaging with a fragmented and complex world which is in a state of constant flux” (Reader 2008, 7). About understanding its social reality and function, Reader argues that:

Practical theology is socio-politically aware and committed to engaging with real problems, often from a grass-roots perspective. This is where theological reflection comes into play as Christians are encouraged to analyze, respond to and develop critiques of current practices which are perceived to be damaging to human life (Reader 2008, 7).

Practical theology begins with human experience while theologically interpreting and making sense of the said experience. It is a theological process that seeks to comprehend the immediate social reality as a theological situation. According to Swinton and Mowat, practical theologians should begin with the following questions:

What *appears* to be going on within this situation, what is *actually* going on? Practical Theology approaches particular situations with a hermeneutic of suspicion, fully aware that, when the veil is pulled away, we often discover that what we *think* we are doing is quite different from what we are *actually* doing (Swinton and Mowat 2006, v).

The goal of the practical theologian is to describe human experience about the claims of Scripture and tradition as a process of critical reflection (Swinton and Mowat 2006, v).

*A Scriptural Context:* The theo-criminal justice comparative approach also draws on scriptural insights on punishment to explore the concepts of sentencing, punishment and imprisonment in the modern penal systems of the

US and the UK. An example of this is the Old Testament's concept of stalling vindictive and retaliatory sentences and punishment. The reference to "Scripture" is not limited to the Christian Scripture per se. Its principles and applications can be adopted by other religions. In regard to the Christian Scripture, a pivotal part of the Old Testament concept of punishment is the law of *Lex talionis*: "an eye for an eye."

According to Christopher Marshall, the *Lex talionis* was used to express the "principle of equity." *Lex talionis* is referenced in the Mosaic Law three times, including the major one in Exodus 21: 20-25, Lev. 24: 19-22, Deut. 19:18-21 and Gen. 9:6). Historically, the *Lex talionis* existed before the development of Israel as a nation in the legal codes of the Babylonians and the Canaanites. However, the Hebrew version of the *Lex talionis* contains distinctions from that of the Babylonians and Canaanites. It was considered humane and limited to injured persons, not property. Furthermore, Israel's version of the *Lex talionis* was applied to all persons regardless of class, or economic status. It was limited to the offender and not extended to their relatives, in contrast to the Mesopotamian codes where the law was applied based on socio-political and economic status. Revenge was not a part of the Hebrew the *Lex talionis*: The Old Testament promoted one standard of judgment that was applied to all. The notion of "vicarious or collective punishment" was not applied in the Bible (Deut. 24:16; 2 Kings 14:6; Ezek. 18:1-32). Similarly, revenge was not the underlining thrust of the *Lex talionis* as often interpreted since it was usually not sanctioned (Lev. 19:18; Deut. 32:35; cf. Prov. 20:22; 24:29). The goal of the *lex talionis* was to

limit retribution and establish a fair basis for restitution or reparation. Marshall writes, “Far from encouraging revenge, the *Lex* limited retaliation to the appropriate measure of the offense so that excessive reprisal was ruled out. The ‘eye for an eye’ was a law of proportion: *only an eye for an eye and no more*” (Marshall 2001, 70-80).

The application of the *Lex talionis* was contextual. It was associated with a rare case as previously indicated. Miscarriage because of two men fighting was not something that often occurred (Exodus 21:18-25) (Marshall 2001, 82). Furthermore, in the New Testament, *Lex* several external factors influence *talionis*. The conflict is between those who favour the literal application of *lex talionis* without any negotiation on compensation and those who favour compensation instead of equal bodily mutilation. Jewish legal analysts favoured less rigid and less literalist application of *Lex talionis*. Instead, monetary compensation was demanded (Marshall 2001, 83).

#### **2.4 Theo-Criminal Justice Comparative Approach as Ethical Criminology**

According to Liebling and Maruna, “Prisons communicate meaning not just about crime and punishment but also about power, authority, legitimacy, normalcy, morality, personhood, and social relations” (Liebling and Maruna 2005, 43). The task of the theo-criminal justice comparative approach entails providing a theological investigation of “human actions” as an ethical critique. Schweitzer contends that because practical theology is contextual, it is ethical as a discipline. “Practical theology and ethics can then be treated as one and

the same discipline” (Schweitzer, 2014, p. 143). Ethics he argues is about human action, practical theology he contends is about human action. Schweitzer contends that:

If ethics relates to human action in general, it must also include professional action ... Ethics can at best offer a general framework for all actions, but it must depend on other disciplines for the question of how this framework can be used in different fields ... The body of professional knowledge studied and produced by practical theology is what makes this discipline a neighbour of ethics, rather than only a part of it (Schweitzer 2014, 143).

As ethical criminology in prison research, the theo-criminal justice comparative approach advances the claims for fairness and humanness in punishment.

Fairness as just human action in punishing crime minimizes the impact of penal harshness and long-term imprisonment.

In this section, I provide definitions of punishment and mass incarceration as a background to understanding the contexts of PCs’ lived experience in the prison culture. The question this section seeks to answer is: what is theologically ethical about criminal justice reform that meets the task of ethical normativity or ‘what ought to be going on’ in US and UK prisons?

### *A Definition of Punishment*

According to Easton and Piper, “A key feature of punishment is that it rests on a moral foundation, expressing a moral judgement. It is reflective and based on reasons” (Easton and Piper 2008, 4). In this definition, I inquire into the current conceptual framework advanced by criminologists.

The passing of penal laws bringing a shift to penal harshness, an increase in the prison population, an increase in prison construction and an increase in the collateral consequences including conditions of death enhanced by penal industrialisation have influenced the changes in punishment after the 1970s (Gottschalk 2006; Savelsberg 1994; Simon 2007). Punishment has emerged as a strategic form of “social control” (Garland 2001). These shifts in punishment are “morally dangerous” and morally problematic (Liebling 2005). I refer to the above as “penal storms.” They describe the turn to policies of “tough on crime” in the US and the UK from the 1970s to the present (Farrall et al. 2017). These developments are not isolated factors but as Farrall et al. argue, they are influenced by government’s economic and social policies thus leading to both “social storms” and “economic storms” (Farrall et al. 2017; ACLU 2011b; Annison 2015; Grapes 1999).

The lawbreaker remains a member of society and punishment is influenced by the ethos of social norms and community relationships. According to Garland “Punishment is a social process with social causes and social effects, not—or not merely—a reaction to crime” (Garland 2013, 24). He argues that the sociological understanding of crime should establish the process of punishment rather than its penological demands or attractiveness. Criminality, Garland argues, is secondary to how crime should be punished because of the value of “social conventions and historical development” (Garland 2013, 24). From a Durkheimian perspective crime and punishment represent the influence of social values and norms superior to the instrumentalist understanding of punishment

because of its “communal” importance. Crime and punishment are “communally” important (Comfort 2008). As such, punishment is “collective” and should thus include the collective moral imagination of the community in how it is imposed (Garland 2013, 25).

Garland notes that the “social processes” for mass imprisonment in the United States are not historically new, however; they have given rise to questions regarding their influences on penal laws and policies “comparatively” “state-focused” (Garland 2015, 345). He notes: “We should recognize that the *proximate* causes of changing patterns of punishment lie not in social processes but in *state and legal* processes: chiefly in legislative changes made to sentencing law and in the actions of legal decision makers such as prosecutors, sentencing judges, corrections departments, and parole boards pursuant to these legal changes” (Garland 2015, 346). For Garland, the shifts to penal harshness are due to legislative and legal policies that have filtered down to the various apparatus of the penal system in the US.

Elizabeth Hinton agrees with some of Garland’s premises. However, she attributes the growth and stabilisation of the prison population with Blacks and other economically marginalised communities in the US to the high rates of poverty, illiteracy and unemployment in these communities. These conditions she contends were also enhanced by the extraordinary intervention of the federal government in the war against crime. “Socio-economic conditions” and economic disparities Hinton argues, led to the initial high rates of incarceration of Blacks and other minority communities across the US. She explains:

In 1972, when 42 percent of all Americans in jail were black, 34 percent of black Americans lived below the poverty level, as opposed to 10 percent of the white American population. In Philadelphia, where the jails came to house African American almost exclusively in the early 1970s, 40 percent of black youth were unemployed. Access to educational and employment opportunities declined further as the federal government withdrew from its fight against poverty during the Nixon administration, and the absence of such opportunities often determined the likelihood of future incarceration (Hinton 2016, 174).

Crime is not the only factor that leads to prison normalisation. In contrast to Garland's emphasis, Hinton argues that mass incarceration took a racial turn due to two developments: The Federal government's interest in crime control and negation of the war on poverty, and secondly, the Nixon administration's programs and provision of incentives toward prison construction. She explains, "The forces of inequality in low-income urban neighbourhoods took on new forms as the carceral state grew dramatically during and after Nixon's presidency" (Hinton 2016, 178). The idea of a causal relationship between penal harshness, mass incarceration and the incarceration of the poor is not farfetched. Hinton argues that the stabilisation of mass incarceration in the US is due to the massive introduction of the poor and racially marginalised into the penal system and their indeterminate attachment to it.

Although policymakers, law enforcement officials, and scholars justified the unyielding wave of prison construction by citing the high rates of reported crime during the 1970s, in reality, incarceration rates had little relationship to actual crime rates. Instead, incarceration rates correlated directly to the number of black residents and the extent of socioeconomic inequality within a given state (Hinton 2016, 174).

This research contends that there are multiple factors as causes for the penal storms. While crime is undoubtedly one of them, mass incarceration reflects the

strategic turn to rhetorics and policies of “tough on crimes” in the US and the UK from the 1970s to the present (Annison 2015).

In considering the UK context, Farrall et al. explain: “We find that crime was related to these macro-level ‘storms’, although ultimately they were driven by economic variables. Our analyses show how political decision making can shape long-term trends in crime rates” (Farrall et al. 2017, 220; Hinton 2016; Western and Pettit 2014; Western 2002). Commenting on the Scottish context, Hazel Croall et al. note that “Crime rates have also fallen significantly since the 1990s and there has been a sustained decline in serious crimes. These decreases are consistent with the ‘crime drop’ found elsewhere” (Croall et al. 2016, 52). The decline in violent crimes undermines the argument that crime is the sole reason for penal harshness and its production of mass incarceration. We must look at other factors which have and continue to sustain the emphasis on the use of prison, and its normalisation.

For the prisoners, penal harshness is an existential experience that transcends the confines of the prison as civil death in and outside of the prison. It reflects the development of three kinds of punishment: (1) Primary punishment: penal harshness and its historical antecedents. (2) Secondary punishment: sentencing and imprisonment along with the physical conditions of death: ageing, dying and death in prison. (3) Tertiary punishment: civil death and the “mark” of a convict characteristic of the post-prison experience of former prisoners.

From the prisoner's perspective, civil death ensues upon their confinement because punishment is theoretically and practically indefinite as (1) Penal storms—sentencing and imprisonment as dehumanizing, (2) Penal prejudice—the targeting of the poor and racially marginalized, (3) Penal control influences the emphasis on incapacitation, the industrialization of punishment, and the use of prisoners as economic units. Prisoners experience these structures of punishment as civil death during their in-prison and post-prison lives. Penal harshness enforces structures of marginalisation for prisoners and former prisoners as normative.

In 2005, Roger Houchin released a report exploring the structural intersection between socio-economic deprivation and incarceration in Scotland. At the time, the Scottish prison population was 6,857 (Scottish Executive National Statistics Publication 2006). The report concluded that the number of people imprisoned from minority communities reflects the marginalisation of their communities (Houchin 2005, 6). Using three concepts to determine rates of disadvantaged status — “poverty”, “social deprivation” and “social exclusion” — the report discovered that: “Throughout the range from most prosperous to the most deprived communities there is a near-absolute correlation between level of deprivation and imprisonment rate” (Houchin 2005, 16). The report further intimates that an increase in deprivation leads to an increase in the probability of imprisonment. According to Houchin, “poor educational achievement” coupled with various forms of social marginalisation demonstrates “the systemic link

between social deprivation and imprisonment” (Houchin 2005, 18). Houchin further contends that social deprivation normalises imprisonment.

The policy problem that has to be confronted is not that there are high levels of illiteracy among prisoners or that the prisoner population is characterized by chronic unemployment, but that imprisonment is a constituent component of social exclusion, as are poor housing or low life expectancy (Houchin 2005, 18).

Imprisonment is a critical organising factor in social exclusion, marginalisation and deprivation in the larger society. The report does not address the question of crime—violent or non-violent—as conditions for imprisonment.

According to Anthony Bottoms, four categories define the sentencing shifts in modern Western penology: (1) just deserts/human rights; (2) managerialism; (3) the community; (4) populist punitiveness. The first three, Bottoms contends, are predictable. The fourth, however, is unpredictable due to growing less naturally out of long-term social change and being politically attractive (Bottoms 2015, 31).

Bottoms’ four categories establish the claim that punishment exists as means of socio-cultural stratification. Punishment in the US and the UK has stabilised as means of legislative and penal processes of marginalisation for many (Herivel and Wright 2006). For William Stuntz, the United States penal system is broken (Stuntz 2011). This research also argues that poverty, race and structures of economic disparity have served as historical categories influencing the turn to penal punitiveness and the production of mass incarceration.

### Mass Incarceration: A Definition

In this research, I provide a descriptive definition of mass incarceration. I argue that mass incarceration represents the penal production of the conditions of death – both physical and civil as shown in the high rates of ageing, natural in-prison deaths, homicides and suicides for convicts or non-convicts on remand, in jail or imprisoned for violent or non-violent offences in the US and the UK. Considering the above penal developments in the US and the UK penal systems, I argue that mass incarceration is fundamentally a historical and penal production of a series of shifts to penal harshness. It has given rise to an increase in the creation of criminal offences and the normativity of harsher sentencing laws. These laws are responsible for the production of a prison population highly disproportionate to the general population, and are discriminatory concerning the primary target audience: poor Whites, Blacks and Hispanics in the US, and poor Whites, Blacks, Asians, and Minority Ethnic groups (BAME) in the UK. In that light, this thesis argues that mass incarceration, in a less magnified form compared to the United States also exists in the United Kingdom's penal systems.

I use “mass incarceration” (Simon 2012, 7) and “mass imprisonment” (Garland 2001b; 2001c, 5-7) interchangeably while recognising the concept of mass incarceration as a form of “hyper-incarceration” (Wacquant 2001). The goal is to describe the various shifts to penal harshness, their production of the conditions of death and exceptional penal processing of poor Whites, Blacks, Asians, Hispanic in the US and poor Whites, Blacks and other minority ethnic

groups (BAME) in the UK, and their systemic attachment to these penal systems. By describing mass incarceration as such, I also recognize the various expert debates analysing the turn to the penal production of mass imprisonment after 1970 as: political, policy-oriented, penal, both racially and economically influenced (Bottoms 2015; Zimring 2000; Wilson 1975; Stuntz 2001; Becker 1968; Blumstein 1988; Hinton 2016; Wacquant 2009b; Alexander 2010; Western and Beckett 2001; Garland 2015; The Howard League 2009; Chalmers and Leverick 2013; Croall, et. al 2016; Liebling 2006; Stuntz 2011; Prison Reform Trust 2010, 2014, 2015, 2016, 2017; Uggen 2010). However, a significant dissimilarity is how the US and the UK have each arrived at the situation of mass imprisonment.

Richard Sparks and Jonathan Simon note that mass incarceration functions in several ways, but mainly reflects a “Shift from prison as a tool of individualisation to a tool of categoric or class control” (Sparks and Simon 2013, 11). Its victims are defined by economic disparity, race and educational attainment (Garland 2001). The modern penal system and its massiveness elude the concepts of “delivery justice” and “moral dignity” in punishment (Liebling 2014).

For Todd Clear, mass incarceration counteracts itself. It undermines the prevention and reduction of crime. Clear presents three reasons why mass incarceration is counter-productive. Firstly, mass incarceration “creates an ironic ‘replacement effect’ that ‘cancels out the crime-prevention benefits of incapacitation.” Secondly, mass incarceration enhances “the presence of

negative 'social factors' that contribute to 'criminality' in minority communities: broken families, inequalities, poverty, alienation, and social disorder;" and finally, mass incarceration "undercuts the deterrent power of prison" (Clear 2007; Street 2001). Informed by the turn from rehabilitative sentences to "populous punitiveness" (Bottoms 2015) and incapacitation (Simon 2014), mass imprisonment has emerged as the normalisation of penal harshness. According to Petit and Western, mass incarceration implies "The vast scale of the prison and criminal justice systems, as gauged by the population under some form of correctional supervision." It illustrates the disruptive intrusion of the penal systems into "Disadvantaged inner-city minority communities, where a prison experience has become more the norm than the exception" (Raphael 2009, 75). In short, mass incarceration represents four mutually inclusive stages: (1) The intrusion of economic interests; (2) A form of social apathy; (3) A collective penal control; and a condition of death.

*Mass Incarceration Represents the Intrusion of Financial Interests:* Due to their economic and political interests, it is the influential and affluent who define the boundaries of justice. The powerful are groups and individual with private political and economic interests who use the criminal justice system to legitimise their political and economic gains. As an economic and political phenomenon, mass imprisonment in the US became a part of a cultural shift. These developments are in addition to the influence of major socio-economic and "cultural transformation" shown from the 1970s to the present, "the shift to a

more risk-averse criminal justice, the expansion of private security, and the emergence of mass imprisonment were all concomitants of this cultural transformation” (Garland 2015, 343).

For his part, James Kilgore contends that mass incarceration represents the preservation of power, privilege and the denial of many through the criminal justice system. He describes it as inherently structured to create institutionalised forms of sociopolitical and economic marginalisation in the US. Mass incarceration represents a wave of structural alienation: the number of individuals under correctional supervision—i.e. parole, probation, jail, prison and budgetary priority given to prison management rather than education (Kilgore 2015, 12). He writes:

Mass Incarceration is about opportunity—new opportunities or profit and political power for some and the denial of opportunities for others, largely poor people of color. During the past three decades, the urge to punish and incapacitate the most vulnerable sectors of the population has replaced the desire to nurture and develop (Kilgore 2015, 1).

In addition to the intrusion of financial interest, mass incarceration reflects the existence of structural forms of apathy.

*Mass Incarceration Represent a Form of Social Apathy:* The advancement of special economic interests, Foucault contends, often subverts just punishment. He notes that prison systems reflect power domination and population regulation (Foucault 1975). They reflect the drifting of society away from the core principles of human dignity and respect for human lives and

produce apathy. They produce extreme forms of individualism and social disconnection. According to Simon:

Mass imprisonment is usually thought of in terms of scale, but it comes with a distinctive approach to the content or quality of imprisonment, which is characterized by emptiness and a lack of ambition to reform or extract penance from its inmates, turning prisons into mere human warehouses aimed at nothing more than custody. No practice epitomizes this feature more than the supermax-style prison (Simon 2014, 47).

Gabriel Chin argues that, as a means of civil disempowerment, mass incarceration replicates concepts of medieval civil death. It does this:

In the form of a substantial and permanent change in legal status, operationalised by a network of collateral consequences. A person convicted of a crime, whether misdemeanour or felony, may be subject to disenfranchisement (or deportation if a noncitizen), criminal registration and community notification requirements, and the ineligibility to live, work, or be present in a particular location (Chin 2012, 1789-1790).

The collateral implications for criminal convictions or non-convictions associated with imprisonment are both state and federally based. States have the right to increase or decrease them; however, in most cases, they are increased (Alexander 2010). Chin also notes that the worst damage done to prisoners in the new era of mass incarceration include: the loss of critical life-changing rights—civil, political rights, parental and employment. “The magnitude of the problem is greater than ever. The commonly used term “mass incarceration” implies that the most typical tool of the criminal justice system is imprisonment” (Chin 2012, 1789-1790). Not only is mass incarceration a reflection of economic interests and structures of social apathy, but it also reflects a collective control of communities.

*Mass Incarceration Represents a Collective Penal Control:* Michelle Alexander explains that mass incarceration “operates as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race” (Alexander 2010, 13). She defines a trend that disproportionately incarcerates the poor and racially marginalised. Alexander refers to this trend as the development of a *racial caste* system that “denotes a stigmatised racial group locked into an inferior position by law and custom” (Alexander 2010, 12).

Alexander and Kilgore argue that mass incarceration consists of a system of laws, policies, perception and institutions with historical relationships (Wacquant 2009b). Also, Chin intimates that mass incarceration represents the experience of civil death (Chin 2012).

For Nil Christie, mass incarceration is existentially detrimental. As a negative condition of penal harshness, the effects of mass incarceration spread from individuals to family members to communities with long-lasting consequences. Christie argues that mass incarceration demonstrates the process of attaching disadvantaged individuals and communities to the penal system indefinitely. He explains.

Europeans prisons have also darkened. If poverty had colour, they would have darkened even more ... In the USA at that time (1991), 2563 per 100,000 of the black population and 396 per 100,000 of the white were incarcerated. In England and Wales, 667 blacks per 100,000 and 102 per 100,000 of the white are incarcerated. That means in both countries six times as many blacks as whites (Christie 2000, 98).

Mass imprisonment also understood, as a modern experiment of punishment is “painful” and cumulatively “demoralising.” The trajectory in prison management was a direction that adopted “zero tolerance” policies and practices (Liebling 2004, 46).

In this research, I argue that the shifts to penal harshness in the US and the UK have rendered imprisonment unusually painful and dehumanising after 1970. These penal changes, I contend have over the years led to increases in the rates of ageing, death and dying prisoners. This research also demonstrates, by way of illustrations, a macro and micro level criminal justice analyses to draw its conclusions (Bryman 2012).

The theo-criminal justice approach is empirical. As an interdisciplinary approach, it draws on research principles and practices from the social sciences and humanities to derive its conclusions.

## **2.5 Theo-Criminal Justice Comparative Approach as Empirical Theology**

In providing a conceptual and methodological critique of the modern penal systems, the theo-criminal justice comparative approach investigates merits and demerits of the shifts to penal harshness and their production of massive forms of human imprisonment from an empirical perspective.

The theo-criminal justice comparative approach is designed to uncover layers toward truth in prison research. The process is both deductive and inductive as mutually inclusive in engaging the present mode of “penalty”

(Garland 2015) in the US and the UK. The theo-criminal justice comparative approach is also methodologically an investigation into the prison recollection of prisoners, prison chaplains and prison staff<sup>1</sup> (Heimbrock 2005, 273). It involves the process of “critical reflection” oriented to the “utility of knowledge” (Hermans and Schoeman 2015, 9). The question of “utility” is central to the methodological process as a means of investigating and producing knowledge. Utility in context centres around the kind of knowledge produced, the ultimate objective of the research, and its implications. I will now analyse two approaches inherent to the Theo-criminal justice comparative approach.

This section looks at the ‘how’ of the intersection of PT and criminal justice reform. Central to the empirical exploration is the lived experience of PCs.

Practical theologians have formulated scientifically structured theological principles for religious studies influenced by British empiricist, continental empiricists and American pragmatists (Heimbrock, 2011). Furthermore, Hermans and Schoeman contend that PT remains a means of “critical reflection” oriented to the “utility of knowledge” (Hermans and Schoeman 2015, 9). They argue that the question of “utility” should be central to the methodological process. Utility in context centres around the kind of knowledge produced, the ultimate objective of the research, its implications and for interested parties (Hermans and Schoeman 2015, 8).

The hermeneutic of my research begins with a critique of mass incarceration and its conditions of death witnessed by PCs. It reflects on the interpretation of texts, actions, sentencing laws, treatment of prisoners, and how PCs respond to prisoners' needs. The "epistemic community" (Hermans and Schoeman 2015, 13) associated with this research is the prison and its various sub-communities. An epistemic community provides the platform for the development of new knowledge, the ability of that knowledge and the application of that knowledge towards best practice development and theological analysis (Smith *et al.* 2012, 36). Practical theology accomplishes the above goals when it links empirical discovery with internal critique and suggests standards against which to judge the claims to justice, morality and dignity (Heimbrock 2011, 167).

### *Ethnography:*

Liebling is convinced of the fact that prison research "is reform." Prison research "transforms", "informs," and "describes" as a humanistic process (Liebling 2009, 19). She asserts, "Research is reform, or it can be, as we strive to reconceptualise, or articulate, the strange and painful world that is the prison" (Liebling 2014a, 482). Liebling's description of prison research draws on Martin Buber's "I-Thou" dialectic to produce a framework of prison research that is counter to the existing practice of prison research. She argues that prison research is humanistic and ought to embrace a conceptual understanding of "the theology of the person." She argues:

It requires courage and skill and requires I-Thou relations with our participants: that is, an orientation towards an experiencing subject, not an experienced object. This approach stands in methodological and theoretical opposition to existing frameworks. It is humanistic, not 'scientific'; and creative and intimate, not objectifying and distant. It assumes a kind of 'theology of the person' that not only poses risks but also respects the human dignity of the researched (Liebling 2015, 18).

Research that is reform-based transforms in three ways: (1) through direct reflection on practice it allows-challenging assumptions; (2) through direct presentation of evidence to senior managers and policy makers; (3) through direct study on values and practices among senior managers, policy makers etc. (Liebling 2009, 19). Liebling notes that adequate forms of prison research advance "questions of penal and moral philosophy, the roles of management and law, and the legitimacy or otherwise of contemporary penal policy and practice" (Liebling 2009, 19). She further contends that the qualities of good prison research are non-negotiable. "The collective aim of prison scholarship, I believe, is to make the prison world, and the individuals within it, 'intelligible'" (Liebling 2014, 485).

Research demands skills, both analytical and technical - adequately to communicate the felt experience of the research participant as an "honest intellectual inquiry" (Liebling 2015, 20). Liebling explains: "The kind of prison research I do is *sociological*, *systematic*, and *cumulative*... If I had to summarise the findings of this body of research, I would say that its fundamental message is that human beings need certain virtues: justice, reason and love" (Liebling

2015, 20). In this regard, prison research is personalistic engagement. It respects the sacredness of the subject studied—the prisoners as well as the PC.

An aspect of the goals of prison research is to affect public policy. Liebling explains: “my research has been used to introduce changes to policy in many areas: perhaps, especially, in suicide prevention.” Prison researchers she contends “Operate as sociological detectives. There is never a single ‘culprit’ or perspective. Often simply finding a language in which to describe the world we are studying serves to bring it into relief” (Liebling 2015, 23, 29). Consistent with Liebling’s outlook, my research seeks to show how research on PCs and their care for ageing, dying and dead inmates can become intelligible to the outside world. Research as a whole raises questions, and prison research raises questions about the prison culture and climate or what Liebling terms the “moral performance” of the prison. True prison research, Liebling argues, cannot detach itself from “empathy.” It is the “capacity to feel, relate, and become involved” (Liebling 2001, 474).

To the extent that I seek to capture aspects of daily lives and routines, my method shares ethnographic concerns. Liebling asks, “Why ethnography? The term derives from the Greek ‘ethnos’, ‘meaning’ people’, and ‘graphein’, meaning to ‘depict’. It is about human curiosity ... and attentiveness to the lives of others. Its earliest beginnings were in anthropology (Liebling 2001, 474). As a research method, ethnography relies on trust and empathy: the “full use of yourself” (Liebling 2001, 475). Liebling explains:

Ethnography 'grounds' our thinking in the observable world in order to generate intellectual insight. Its approach accepts that world views are 'situated' in meanings constructed by language, symbols and practices; it aims to fill the gap between correlation and explanation, through meaningful understandings. It asks what and why looking beneath official definitions of reality. For this task, considerable skills, training and *involvement* are required (Liebling 2001, 475).

By advocating that researchers look beneath the situation; Liebling's brand of ethnographic research resonates with the task of PT. It is the task of Browning's descriptive theology in which PT uncovers the thick layers of the theological situation. It is also a reflection of Heimbrook's task in which PT interprets the lived experience of prison chaplains and their social reality.

According to Deborah Drake, ethnographic prison research method is based on observing research participants in their daily activities. It is a way of making sense of the world based on "the generation of 'thick' descriptive accounts of the research, though these may vary considerably in 'thickness', depth and texture" (Drake, Earle and Sloan 2015, 3). The ethnographic research method is widely adopted by prison researchers (for example Liebling 2001, 2005, 2009; Crewe 2011, 2012, 2014). According to Liebling, "It can include observation, participation, interviewing and almost any other form of interaction between ourselves, the researchers and the social world" (Liebling 2001, 475). The use of the ethnographic method is to derive insights into the process of meaning development and praxis (Liebling 2005). Schweitzer proposes that in the ethnographic process, the research concept should reflect on the objectivity of the research and the objects of the research. It judges research questions and the kind of research project designed. He notes:

The basis upon which questions of methodology have to be judged, be it in practical theology or in other academic fields, first of all, must be the relationship between research questions on the one hand and the design of research project on the other (Schweitzer 2014, 147).

The project or the object of research should influence the methodology the researcher proposes (Schweitzer 2014, 149; Fuchs 2001, 15).

In the US, Scotland and England and Wales, the rapid and sustained increase in prison populations, and the extreme duration of many sentences have produced a similarly massive rise in the quotient of older, infirmed, incapacitated and dying prisoners, on a level hitherto unprecedented in the modern history of imprisonment. Dirk van Zyl Smit argues that three forms of modern punishment violate human rights: “capital punishment,” “corporal punishment,” which is often contentious, and the third, “whole life imprisonment,” which he contends has become subject to exceptional critique. “A third modern form of punishment that is gradually coming under increasing attack inherently contrary to human rights is life imprisonment from which the offender has no prospect of release” (Van Zyl Smit 2013, 402; Reiter 2017; Crewe 2009). Liebling argues that a whole life sentence is akin to a death sentence. She writes: “The whole life sentence is a form of death—a form of dying without death, until the very end” (Liebling 2017, 26). For Liebling, a whole life sentence is immoral and uncharacteristic of any humane form of punishment. She writes:

To imprison an offender for the remainder of his life is to decide at the point of sentence that there is no prospect of redeemability and no case for forgiveness. Whole life sentences or, in America, life without parole serve no legitimate purpose. It is difficult to see how they contribute to ‘justice’... Some argue that it is ‘worse than the death penalty’, stripping prisoners of all hope and yet forcing them to

endure very long periods in prison without any act of transformation on their part changing the assessment of their 'irredeemability' (Liebling 2017, 27).

I will now briefly explore the adoption of phenomenology as a research method.

### Phenomenology

Phenomenology is used to explore an understanding of the “natural world” of the prison and imprisonment as experienced by PCs. The phenomenological method suggests that one is always experiencing things-be it animate or inanimate objects (Spiegelberg 1969, 653).

Heimbrock argues that PT is *explicitated* as empirical theology from three perspectives: (1) the relation of PT to practice; (2) practical theology's use of scientific methods; and (3) practical theology's praxis beginning from the “bottom-up way” (Heimbrock 2011, 154). He restates the role of understanding human experience in the development of PT's “phronesis” or praxis of thinking as fundamental to religious understanding. According to Browning, human common experience is differentiated into three poles or foci: (1) interpretations of the practices, inner motivations, and socio-cultural history of individual agents; (2) interpretations of relevant institutional patterns and practices; and (3) interpretations of the cultural and religious symbols that give meaning to individual and institutional action” (Browning 1996, 61). For Heimbrock: “To use phenomenological methods within empirical theology invites theological

reflection on essential notions, principles and assumptions that are at stake in empirical sciences, such as reality, praxis, action, objectivity, validity, and life” (Heimbrock 2005, 273).

Beings encounter beings—PCs encounter prisoners as human beings. One cannot absolve oneself from experiencing the other or from one’s experiences. According to Edmund Husserl, we actively engage and are involved with what goes on around us. We are always “perceiving.” This constant activity takes place in the “natural world” where we belong as part of its activities. Thus, we develop a “natural attitude” because we are a part of the “natural world” (Welton 1999, 62). Based on Husserl’s argument, the experience of PCs ministering to ageing, dying and dead inmates in local jails and prisons serve as part of their “natural world” (Welton 1999, 62).

Phenomenology is therefore about an experience in its totality (Eddie 1962, 28). For prison chaplains, jails and prisons involve fitting in with imposed structures of limitations and policies. Phenomenology reflects the conscious and unconscious experiences around them. The phenomenological method begins with faithfulness to the experience studied. According to George Psathas, it begins with the experience as given and not as theorised. The investigative process is initiated by “seeing” and not by “thinking. It requires an open mind to understand experiential possibilities. Possibilities avail themselves to be experienced (Psathas 1973, 15).

Prison chaplains have a lived phenomenological experience of prisoners as both ‘external’ observers (at least in the sense that they occupy a slightly

removed position as neither prisoner nor a direct part of the disciplinary and command structure of the prison) and engaged participants. They exist in the “natural world” of the prison and are directly or indirectly touched and affected by the various expressions of the penal cultures (see Chapters 6 and 7). In that light, their position as chaplains is one of privilege but also of empathy. PCs provide insights into the life implications of harsh sentences and incarceration reflected in the increasing rates of ageing, dying and dead inmates in US and UK prisons. Such experiences are concrete and real. As part of the process of theological conceptualisation lived experience serves as a “conceptual basis.” Heimbrock notes; “This alternative concept of experience draws on other aspects, and the notion of ‘lived experience’ serves as a key concept to this theory” (Heimbrock 2011, 160).

Phenomenological analysis of the structure of limited everyday experience can help us to clarify the structure of the prison experience (Heimbrock 2011, 160). In this research, I adopt phenomenology as a conceptual tool to analyse the experience of PCs. The “world of experience” is the life world of reflection, a relational space out of which the “given” or “pre-giveness” exists as part of the experience. Human experience is grounded in perception as a bodily engagement. It occurs in the space of daily life. The root of bodily experience is fundamental to the foundation of experience (Heimbrock 2011, 162). Experiences are conscious and unconscious, immediate and distant. Understanding the prison experience as a phenomenological experience

for empirical investigation also requires the assimilation of data and its interpretation (Heimbrock 2011, 284).

As phenomenological research, three crucial elements are investigated: the researcher, the researched, and the phenomenon that is researched. The process of phenomenological research begins with a personal reflection on the process. For Heimbrock, the researcher, the researched, and the phenomenon function as a means of emphasising the “ambivalence of perception” (Heimbrock 2005). They make the invisible, the fading and the normalising process visible, abnormal and transparent when confronted with the reality of the prison world. Perceiving the reality of the prison world is both passive and active. Passive perception entails experiences entering the consciousness and sight of the PCs. Active perception entails what, how and when PCs engage in the process of making normal and abnormal the situation of the prison world. Perceiving the reality of the prison and the prisoner for PCs involve an active perceptual understanding of the imposed punishment and confinement. It is to see the concrete.

Similarly, perception is objective and subjective (Heimbrock 2005). Objective perception for the PC is detached perception and detached engagement. These two areas are steep and impossible as being false to oneself, one’s convictions, and one’s beliefs. Subjective perception is *en-tached* engagement (Heimbrock 2005). It is empathy and identification with the contextual and existential experience of the prison and the prisoner. PCs find themselves confronted with the constant recollection of prison experiences.

These experiences informed by the life sketches of prisoners are real and reflect the actual life stories of the chaplains. It is these life stories and perceptions that define the practical aspect of this research (Heimbrock 2005, 286).

In addition to Heimbrock, I have referenced the Interpretive Phenomenological Analysis (IPA) as a research method. IPA explores human experience and how it is defined. IPA wants to know the depth of one's experience and the "essential qualities" of that experience; in that light, the subjective and objective essence of experience. To explore the phenomena, one must get out of their "*natural attitude*" which is the daily experience of life to develop the "phenomenological attitude, which entails redirecting our gaze from external familiar objects of the world to the inward perceptual objects" (Smith et al. 2012, 12).

IPA defines phenomenological research as "qualitative inquiry" focused on the exploration of life experience. Its goal is not to fix experience but to explore experience as it is (Smith et al. 2012, 1). According to Smith et al., "At the most elemental level, we are constantly caught up, unselfconsciously, in the everyday flow of experience. As soon as we become aware of what is happening, we have the beginnings of what can be described as 'an experience' as opposed to just experience" (Smith et al. 2012, 2). IPA methodology is also reflective engagement of experience and hermeneutically interpretative. They write:

It is an interpretative endeavour and is therefore informed by hermeneutics, the theory of interpretation. IPA shares the view that human beings are sense-making creatures, and therefore the

account which participants provide will reflect their attempts to make sense of their experience (Smith et al. 2012, 3).

The process of analysis is to understand the depth of the participant's experience as an "ideographic" process (Smith et al. 2012, 3). Ideography is a case-by-case IPA research-based methodology (Smith et al. 2012, 29).

Methodologically, this research seeks to empirically capture the experiences of PCs in the prison environment. The goal is to describe and understand their lived experiences in their own word thus making their experiences "intelligible" to the outside world. Furthermore, it is also to recognise their prison recollections as uniquely phenomenological as a process in which prison research is a process of reform (Wogaman 2007).

### **Empirical Research:**

My research findings are based on the diverse responses from participants to the questionnaire and interview sessions. In the US, I gathered the data from January to September 2016. I spoke with jail and PCs from four states, three in the northeast of the US: Massachusetts, Rhode Island and New Jersey, and one in the south of the US: Alabama. In Scotland, I collected data primarily from PCs in the Scottish Prison Service from October 2016 to June 2017.

**Privacy:** This research protects the privacy of the participants. The research proposal clearly states in its participants' consent form that participants' identities are strictly anonymous and confidential (See Addendum). It is part of the rule of ethics associated with this empirical aspect as Due to the

smallness of the sample size, care to protect the identities of the participants is absolutely important. As a result, names, locations and specific references will not be made except in individual cases where necessary for the sake of correlation and clarity. I use numbers along with their direct quotations to identify the participants. For example, Prison chaplain 101 (PCS101) to indicate prison chaplain 101 from Scotland or prison chaplain 101 (PCA101) from America.

**Process:** In the research process, I shadowed a few PCs to observe how they provided pastoral care to prisoners. The aim was to understand and explore the distinctions in practical spiritual care provision in prisons based on race, gender, religion and experience. Care and sensitivity regarding PCs' comfort during the process were recognised in line with the research practice already developed. I highly considered key issues of faith, denominational distinctions, and length of time during the questionnaire and interview process. During the familiarisation meeting, I was given a tour of the prisons in Scotland that I visited.

**Practice:** Questionnaire and Interviews: Initially, I distributed some questionnaires by email and some personally at the time of the interview to PCs in the United States and Scotland (UK). With the approval of the Ethics Committee of the School of Divinity, University of Edinburgh, I sought approval from religious denominations and individual chaplains in the United States and the Scottish Prison Service (SPS). A high proportion of the responses from the questionnaires were delivered before the interview sessions. A total of 31

participants responded to the questions.

Each interview took an hour and a specific time-bound familiarisation meeting of one hour with each of the head chaplains of the prison. I conducted the interview sessions in private rather than “public spaces.” In Scotland, we utilised designated spaces of privacy outside of the security areas of the prisons with less noise and interference.

I structured the interview sessions to be conversational, stress-free and the questions were taken from the PCs’ written responses to the questionnaire. Participants were free to withdraw from the interview process at any point without any condition. I emphasised this aspect repeatedly before and during the interviews.

The following four themes represent my immediate categorisation of the participants’ Responses: (1) participants’ self-identification; (2) participants’ perception of prison; (3) participants’ perception of prisoners; (4) participants’ perception of their calling.

The following categories represent the thematic structure of the participants’ responses to the questionnaire and the interviews.

- (1) *Questions of Identity*. This category focuses on the identity of the participants. It also covers their religious backgrounds, the number of prisons and categories of prisoners they have served.

(2) *Existential and phenomenological*: This category also focuses on concepts of PCs' vocation, their interpretation of the prison world as a "world of human darkness," their concepts of dealing with the "normativity of darkness" and their high and immediate exposure to the "dark side of the human condition."

(3) *Theology and religion*: This category focus on participants' theological and doctrinal definitions of the various aspects of prison life. As prison God-talk, it explores areas of doctrinal distinctions and concepts of God, forgiveness, judgement, punishment, human dignity and humane treatment of prisoners about participants' theological interpretations.

(4) *Sentencing and punishment*: This category focuses on participants' interpretation and perspectives on the state of sentencing and punishment from their immediate and lived experience as well as their care for the ageing, dying and dead prisoners in the modern prison cultures of the US and the UK.

## **2.6 Prison Chaplain Participants' Self-Identification: Who Are They?**

The study sought diversity among participants based on race, religion, gender and experience. The sample size was 31 PCs from the United States and Scotland. Data gathered from participants reflected a broad range of historical knowledge, vocational experience, religious and theological knowledge, socio-cultural, political, economic, legal and contemporary understanding of the US and the UK (Scotland, Northern Ireland and England and Wales) penal systems.

### **Questions of Identity:**

This section of the empirical data focuses on what I refer to as the “identity” of the participants. Prison chaplains are not supermen or superwomen. They are human beings who see their work as PCs through the lenses of their religious experience and commitments. Take, for instance, the response of PCS 112, who felt inadequate after doing everything to help stop a prisoner from returning to prison after their release.

*Although not related to age, I've also worked alongside prisoners who had very positive transformation in prison but within a short period of time being back in the community, very quickly deteriorate and return back to prison. I've previously found this very difficult to cope with because I saw it as some kind of personal failing. Because I didn't do enough for them while they were in prison, they are now back in prison, but after opening up to other more experienced chaplaincy colleagues, I saw how this is not true (PCS112).*

It is important to note that most research on prisons, prison staff and prison culture do not often consider PCs as an inherent part of maintaining the day-to-

day order of prisons or members of the staff (Easton and Piper 2008; Bennett, Crewe and Wahidin 2008; Liebling 2005, Sparks 1996; Jewkes and Johnston 2006). The argument is that PCs are not an inherent part of the managerial structure of the prison. This research suggests a different argument based on analyses made from the empirical data. It argues that PCs are vital to the holistic management of the prison. I begin this section on identity with questions centred on gender, race, religious affiliation and number of years as a participant.

*Gender of Prison Chaplain Participants:* This first chart introduces the gender of participants in the US and Scotland. Out of a total of 31 participants, 19% were females, and 80% were males. The disparity in the number can be attributed to a limited level of gender diversity. Gender parity among PCs in the US is difficult to archive due to the three structures of the US penal system: Federal, State and County and their flexible approaches to prison chaplaincy. In the Scottish context, the level of gender diversity in Scotland can be easily determined due to the size and number in its prison population, general population and the number of PCs in the Scottish Prison Service. Furthermore, it also shows how gender diversity in the prison population does not categorically correlate with gender diversity among PCs.

<b>Gender of Jail and Prison Chaplain Participants from the United States and Scotland</b>				
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<b>Gender</b>	<b>United States</b>	<b>Scotland</b>	<b>Total</b>	<b>Per cent</b>
<b>Female</b>	3	3	6	19%
<b>Male</b>	10	15	25	80%
<b>Total</b>	<b>13</b>	<b>18</b>	<b>31</b>	

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Male and female participants said they were conscious of their gender in the prison environment. Levels of trust and relationships had to be developed for their ministry to be accepted. Acceptance was not automatic. It had to be earned in some respect. However, the research did not explore the question of “acceptance” by prisoners based on race or gender differences.

*Prison Chaplains in the Scottish Prison Service (SPS):* To show the distinction between the total number of participants in the research and the Scottish Prison Service, I have decided to include data that show the composition of the PCs in the SPS. The total number of PCs in the Scottish Prison Service was 60 at the time with 52 “recognized” prison chaplains and 8 volunteers. The office of the Head of Chaplaincy provided the information for this chart: The Scottish Prison Service.<sup>2</sup>

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<sup>2</sup> \*Buddhist (8 Chaplains appointed by Faith body, voluntary religious representatives with SPS); There are central groups whom we contact who have recognised representatives they can send in response to a prisoner request for a visit, or to provide a communal service of prayers or worship as required. These include The Sikh Community, The Scottish Council of Jewish Communities (SCOJEC); The Scottish Pagan Federation; The Jehovah’s Witnesses; The Church of Jesus Christ of the Latter-Day Saints; The Spiritualists’ National Union (Scottish Prison Service).

Questions of Inquiries to The Scottish Prison Service (SPS) Total

<b>Questions of Inquiries to the Scottish Prison Service (SPS)</b>	<b>Total</b>
1. How many prison chaplains are there?	52
2. How many male prison chaplains?	43
3. How many female prison chaplains?	9
4. How many full-time prison chaplains?	9
5. How many part-time prison chaplains?	43
6. How many White prison chaplains?	48
7. How many non-White prison chaplains	6
8. How many Christian prison chaplains?	48
9. How many Muslim prison chaplains?	6
10. How many Buddhist prison chaplains?	0 *
11. How many volunteer prison chaplains?	8
<b>Total:</b>	<b>60*</b>

*Race of Prison Chaplain Participants:* Prison chaplain participants were racially diverse. 64% of the participants were White. 26% were Black with 9% Asians. Participants from the US had a higher level of diversity than Scotland, which is reflective of the general, and the prison populations of the US.

<b>Race of Jail and Prison Chaplain Participants in the United States and Scotland</b>				
<b>Race</b>	<b>United States</b>	<b>Scotland</b>	<b>Total</b>	<b>Per cent</b>
<b>White</b>	5	15	20	64%
<b>Black</b>	8	0	8	26%
<b>Asians</b>	0	3	3	9%
<b>Hispanics</b>	<b>0</b>	<b>0</b>	<b>0</b>	

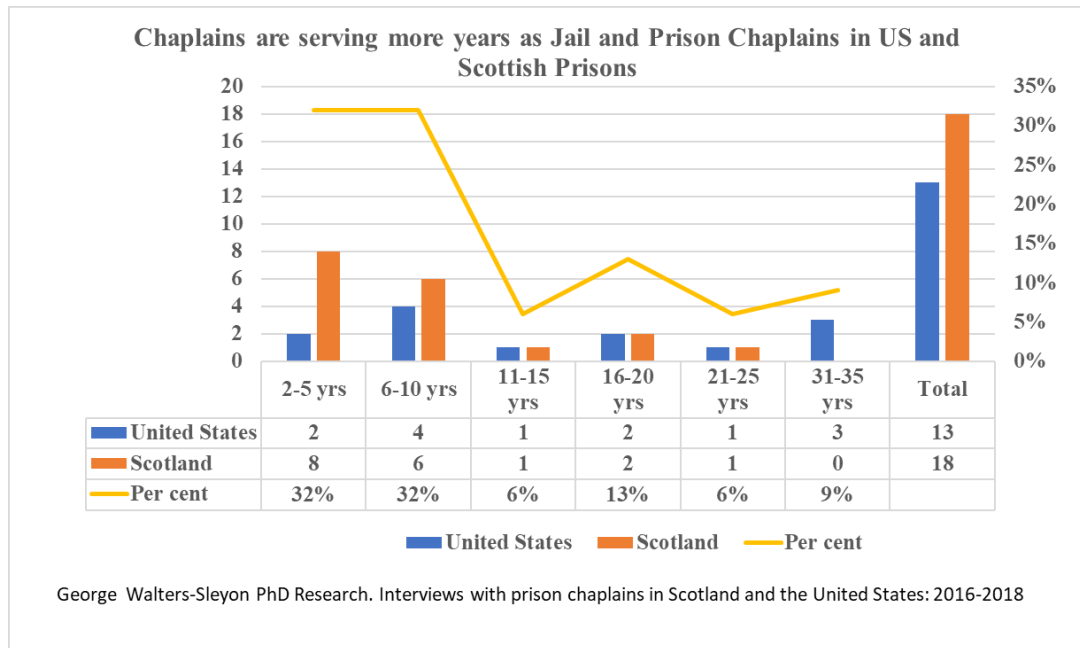
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The participants were racially diverse. A total of 20 reported they were White and a total of 8 participants said they were Black. 3 participants reported Middle Eastern heritage. Most of the White participants were from Scotland in contrast to the US. Similarly, all the Black participants came from the US, and all the Middle Eastern participants were from Scotland.

### *Number of Years as Prison Chaplain*

Prison and jail chaplains are serving longer years in US and Scottish prisons and jails. Based on the responses of the participants, this chart provides the following insights about PCs in the US and UK prisons: (1) the depth of their experience as PCs; (2) their understanding of the impact of the turn to penal harshness and the production of mass incarceration; (3) the depth of their commitment as religious workers in the prison system; (4) the depth of their understanding and description of how normative imprisonment has become as they minister to ageing, dying and dead prisoners; and (5) the credibility of their

responses about the existential impact of imprisonment and their assessments of prison management.



The average years as a jail and prison chaplains for all the participants is 31. 32% of the participants said they have served as jail and prison chaplains for 2-5 years. Similarly, 32% of the participants said they have served as jail and prison chaplains for 6-10 years. Furthermore, 13% of the participants said they have served as jail and prison chaplains for 16-20 years. In addition, 6% of the participants said they have served as a jail and prison chaplains for 11-15 years with 6% also serving as jail and prison chaplains for 21-25 years. The highest number of years participants served as jail and prison chaplains were 31-35 years with 9% of participants. Prison and jail chaplains from the United States were likely to serve more years in the prisons. In Scotland, prison chaplains were likely to serve more years but not as much as their US counterparts.

However, the data shows that jail and prison chaplains in the US and Scotland are serving longer years in the prison system. Participants' penal and theological responses in this research are expressions of their years of service in the US and Scottish prisons. They shared their views on the shifts in punishment and the turns to economically disadvantaged and racially marginalized individuals as characteristics of the prevailing penal culture in addition to the pain of imprisonment.

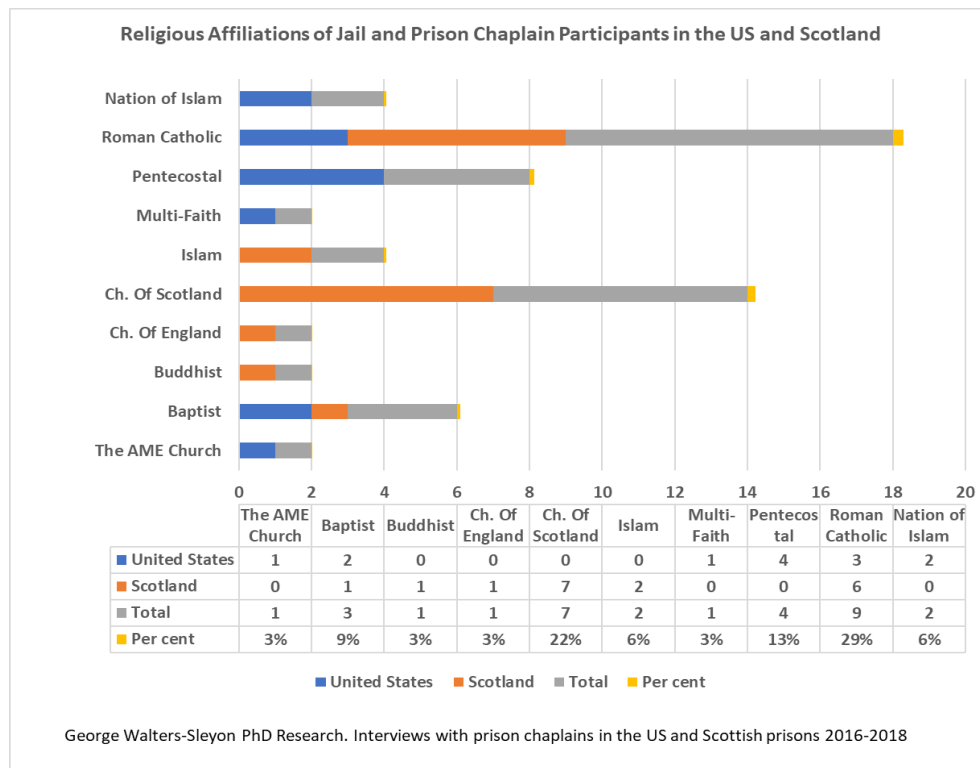
Notwithstanding, when asked how they have managed to serve all of these years as jail and prison chaplains in the midst of the palpable pain of imprisonment evident in the number of ageing and dead prisoners, many of them responded by referencing the following: dependence on their religious communities; dependence on their vocational calling and spirituality; dependence on their family and immediate network for support and dependence on prayer, fasting and vacation. In the complex process of identity formation and pastoral care, participants reported that they rely on their religious backgrounds and affiliations for resources and sustenance to minister to prisoners.

The next chart shows the religious diversity of participants and their religious affiliations.

#### *Prison Chaplain Participants' Religious Background*

Prisons are religiously diverse. This diversity is also reflected among prison within religious groups as well as between religious groups. Religious diversity, religious existence and religious participation are prevalent in the

prisons. This conclusion is also confirmed by reports from the Pew Research Centre in the US, the House of Commons Library and other reports (Pew Research Center 2012; Todd 2013; Beckford 2013; House of Commons Library 2016).



A total of 10 different religious affiliations were represented among the participants: Roman Catholic (29%), Islam (6%), Baptist (9%), Pentecostal (13%), The Nation of Islam (6%), Multi-faith (3%), The African Methodist Episcopal Church (AME) (3%), Church of Scotland (22%, Buddhist (3%) and The Church of England (3%). Participants comprised three religious groups and several intra-religious denominations. Christianity had six denominations. There

were two Islamic groups, Buddhism and one participant of a multi-faith background. The Roman Catholic Christian denomination had the highest representation with 29% followed by the Church of Scotland with 22%.

Chaplains from two Islamic groups participated in this research: The Nation of Islam (NOI) and mainlined Islam. The Nation of Islam originated in Detroit in 1930 because of religious, socio-cultural resistance to the lynching of Blacks, racism and overt socio-political and economic marginalisation in the early part of the 20<sup>th</sup> century in the US (Tsoukalas 2004, 450). Its immediate prominent founder Elijah Poole Muhammad converted to Islam and succeeded Wallace Fard Muhammad, about whom little is known (Talhami 2008). Two other names prominently associated with the NOI are Malcolm Little X and Louis Wolcott Farrakhan. Noteworthy is the fact that Elijah Muhammad, Malcolm X and Farrakhan received their early religious education in the Christian Church and particularly, the fathers of Elijah and Malcolm were lay preachers in the Baptist denomination, thus the eclectically doctrinal and theological development of the Nation of Islam (DeCaro 2007, 362). The NOI has been involved in prison chaplaincy and re-entry efforts since its inception in Detroit and Chicago (Haley 1965). The NOI is represented in almost every prison across the US.

This research is an intersection of theory and practices within the context of practical theology. Browning contends that his correlational approach in PT makes provision for a “relativeness of results” from an interdisciplinary perspective. It starts with “theory” rather than practice and with the correlation between theory and practice. In defining the task of PT, Tim Dakin posits three

stages of PT, “experiential, reflective, and orientational.” These stages are responsible for the development of “practical Christian knowledge” (Dakin 1996, 203). Each level contributes to the formation of *operational*, practical Christian knowledge as evaluating, ordering, localising and organising.” Dakin implies that:

Practical theology takes seriously the ‘thisness’ of this life: the concrete ‘when?’ and ‘where’? Of human experience and reflection which requires a thick description. The ‘why?’ of *this* particular ‘when’? And ‘where’?, is the leveller of all theology and proclamation, but Practical Theology takes this resistance as an opportunity to work with the given of practice in an attempt to offer an apologetic for Christian action (Dakin 1996, 205).

Furthermore, Neil Darragh explains that PT is about human actions and the multiplicity of human experiences. PT is a “process” associated with a hermeneutic circle that results in transformative practice. He writes; “In this sense, it has roots in the methodologies of liberation theology” (Darragh 2007, 1).

For Heimbrock, the task of PT is “reconstructive”. It is about first, reconstructing the lived experiences and secondly, engaging in two kinds of reconstruction: hermeneutical reconstruction and conceptual reconstruction on a case-by-case basis. The product is the “theoretical reconstruction” of an ideal case. “The particular casework will lead to theoretical constructions of an ideal case. But case studies do not proceed inductively in order to produce generalized statement” (Heimbrock 2011, 168). For my research, the issues associated with Heimbrock’s two kinds of reconstructions are (1), sentencing, prison, prisoners, and (2) prison chaplains. Prison chaplains’ practical rationality

of the penal system and its culture is based on their experience —as a custodial and correctional staff of the “thisness” of the penal logic and practices. Practical theology in this context provides the theoretical paradigm for prison chaplains’ as they seek to conceptualize and interpret their experience of the penal culture.

Furthermore, Heimbrock argues for a phenomenological expansion of the horizons of lived experience as part of the theological investigation. “This type of theology follows other intentions in the analysis of experience with particular focus on elements and dimensions of the experiential side of reality” (Heimbrock 2011, 169). It is at the centre of human experience.

## **Conclusion**

This chapter’s goal was to establish a methodological means of interpreting the shifts to penal harshness in the US and the UK penal systems. As an interdisciplinary approach, the theo-criminal justice comparative approach is best suited to study the intersection between PT and criminal justice reform. It has argued that PT, as an interdisciplinary field, should not be isolated from criminal justice reform, particularly considering the conditions of “death” in the US and UK prisons. As a normative discipline of theory and praxis, PT provides an adequate platform for ethical reform in criminal justice that is holistic and humane.

It also provided definitions of punishment and mass incarceration as a background to the prison culture where PCs function. I argue that while crime certainly plays a role in the production of imprisonment, non-criminal factors

have primarily contributed to the turn to penal harshness, its production of mass incarceration and conditions of death.

In the next three chapters, I describe what I refer to as a “Penal Crisis” and backgrounds to the “world” of the modern prison chaplain. The penal crisis in this research denotes the production of the high rates of ageing, natural in-prison deaths, suicides and homicides associated with the US and UK penal systems. This chapter explores the thesis that the shifts to penal harshness post-1970s in the modern penal systems of the US and the UK cannot be isolated from previous “historical dimensions” and events. It reflects the importance of “historical perspectives” towards the development of an ethical and theological critique against the shifts to penal harshness (Gustafson 1972).

**SECTION Two**  
**A Penal Crisis in US and UK Prisons: A Descriptive Task**

### **Chapter 3: US Context: From Lockean Slavery to Lockean Punishment: Phase One of Mass Incarceration**

I argue that these are indisputable and fundamental political, economic, social and penal trajectories in the history of the US that cannot be isolated from the post-1970s shifts to penal harshness and the prison boom. Furthermore, This chapter contends that there are two phases of punishment defined as mass incarceration in the US: Phase One as *Lockean Slavery*, and Phase Two as *Lockean Punishment*. Historically, the target audience of both phases has been poor Whites, Blacks, and Hispanics in the United States.

In 1833, Britain legally abolished slavery in the British Empire with the passing of the Slavery Abolition Act. Slavery in the US legally ended 30 years later in 1863 with the Emancipation Proclamation and the ratification of the Thirteenth Amendment in 1865. However, slavery continued as “punishment” through the penal system for “crime.” With the passing of harsh sentencing laws like the Black Codes” in the South, the Convict Leasing System was born, thus accounting for, I argue, “Phase One” of mass incarceration. Bolstered by the “Slavery as punishment” clause in the Thirteenth Amendment, convict leasing lasted from 1863 to 1900s. About the Convict Leasing System, Douglas

Blackmon notes:

It was nonetheless slavery—a system in which armies of free men, guilty of no crimes and entitled by law to freedom, were compelled to labor without compensation, were repeatedly bought and sold, and

were forced to do the bidding of white masters through the regular application of extraordinary physical coercion (Blackmon 2008, 4).

The birth of the Convict Leasing System and its intersection with the penal system remains a pattern embedded in the American penal system. This is shown in the use of prisoners' bodies associated with the industrialisation of punishment.

### **3.1 Lockean Slavery: John Locke: Once a Slave Always a Slave**

John Locke was a British Enlightenment philosopher working in the British colony of Carolina in the later 17<sup>th</sup> century as secretary. Nonetheless, he was also a slave trader and slave owner. Locke defended the institution of slavery as a perpetual social stratification in civil society. In *the Second Treatise of Government*, Locke argues that:

Slavery is so vile and miserable an estate of man and so directly opposite to the generous temper and courage of our nation, that is hardly to be conceived that an Englishman, much less a Gentleman, should plead for it (Locke 1690, 1:1).

Locke condemns slavery as “vile” and “miserable.” He argues against slavery in any civilised society but with one qualification. Locke was only condemning the enslavement of Englishmen. According to Wayne Glausser:

Every modern scholar who takes him seriously has had to confront an embarrassing fact: John Locke, preeminent theorist of natural liberties and an influential resource for abolitionist thinkers of the eighteenth and nineteenth centuries, actually participated in the slave trade (Glausser 1990, 199).

Locke bought, sold and used Africans as slaves in the transatlantic slave trade. He also owned a partnership in vessels that transported Africans from Africa to

Britain, the West Indies and America (Glausser 1990). I chronicle his involvement in the slave trade in the following section as Secretary to the Lords Proprietors of Carolina (Glausser 1990, 200).

### *Slave Trade and Slaveholder*

Locke's involvement in the slave trade took a new turn in 1671 after the dissolution of the old *Company of Royal Adventurers* ship trading to Africa (Farr 1986). In its place, the *Royal African Company* emerged with a constitution and the full participation of Locke, Ashley and Colleton. These were companies trading in slaves between Africa and the British colonies. In 1672, Locke, by now a "Landgrave of Carolina," joined Ashley's new company of merchant adventurers with the purpose of trading to the Bahamas. According to Farr, "In his portfolio, then, he smartly complimented stock in the *Royal African Company* with stock in a company of merchant adventurers with much investment in the human trade (Farr 1986, 267).

Locke invested his money in these two slave-trading companies. He invested six hundred pounds in the *Royal African Company* (which had a monopoly over the trade in the British Empire) not long after its establishment in 1672 (Cranston 1957). Locke's patron, Lord Ashley, also invested two thousand pounds. *The Royal African Company* traded along the West Coast of Africa and provided slaves for plantations in America and the West Indies. The goal of the new company was to generate profit. Ashley was a ship owner and a nobleman who owned slaves and lands in Barbados and a significant share in the *Rose*,

another slave trading ship. He became the Sub-Governor of the new *Royal African Company* from 1673 until 1677. According to Glausser:

No doubt Locke and Ashley looked carefully both at the company's charter—which granted a monopoly for the trade of 'Gold, Silver, Negroes, Slaves,' and any other minor Guinea goods—and at a report of its first year's activities, which mentions gold, elephants' teeth, and a few other items, but places by far the greatest emphasis on slave shipping and slave factories. The slaves, this report assures 'are sent to all his Majesty's American Plantations, which cannot subsist without them.' *The Royal African Company* fared better than its predecessor (Glausser 1990, 201).

Locke was a partner with Ashley in the Bahamas venture along with five Carolina businessmen serving as custodians of the Bahamas islands in 1672 (Glausser 1990, 201). Furthermore, Locke was one of eleven 'Adventurers to the Bahamas' whose goal was to bring development to the Bahamas through the slave trade. Glausser argues that:

He initially invested one hundred pounds; before long he doubled his share by taking over the one-hundred-pound investment of his friend John Mapletoft ... He was present on the 8<sup>th</sup> of November [1672] at a meeting on board the ship *Bahamas Merchant*, moored in the Thames, and ready for the sailing (Glausser 1990, 202).

Locke participated in the slave trade for economic gain and not for humanitarian purposes (Glausser 1990, 202). Slavery was a profiteering business that brought enormous wealth and economic development.

Also, the death toll of the human trade is beyond speculation. In transit, Africans were dying in large numbers on the rough sea from Africa to Europe. According to Salley and Behm:

Slavery was an international phenomenon which developed ... as one aspect of the expansion of Western European culture into the New World ... The Atlantic slave trade was 'officially declared open'

in 1441 when 'ten Africans from the northern Guinea Coast were shipped to Portugal as a gift to Prince Henry the Navigator' (Salley 1973, 11).

Frank Tannenbaum contends that ten to twenty million Africans died during the Middle Passage. (Salley 1973, 11). He explains:

One-third of the Negroes taken from their homes died on the way to the coast and at embarkation stations, and another one-third died crossing the ocean and in seasoning so that only one-third finally survived to become the labourers and colonizers of the New World (Tannenbaum 1947, 28ff).

Despite the horrific death of Africans, Locke stood as an enlightened defender of the human trade to denote what I refer to as Lockean slavery as antecedent to the modern penal system. He was aware of the horror of slavery. I will briefly highlight Locke's political argument that the slave is inherently the "property" of the slave master and its influence on the development of penal laws and practices following the end of slavery in the US considering the shifts to penal harshness in the US and the UK.

Based on Locke's defence, "Lockean slavery" as the policies and practices under which: (1) Slaves are captives through "just war;" (2) slaves are property and rightless through conquest; (3) slaves are "wild beasts;" (4) slaves are legally dead and only useful to their master (Richards 1981, 150).

Furthermore, Lockean slavery serves as a precursor to "Lockean punishment." According to Judith Richard et al., "Slaves were carefully distinguished from all other men by the loss of those attributes" (Richards 1981, 36-37). The definition above demonstrates the influences of Lockean slavery on post-Civil War penal development in the US after Emancipation in 1863 and the end of the American

Civil War in 1865. In the following analysis, I will explain the influences of Lockean slavery on the development of the US penal culture.

### **3.2 Lockean Slavery and the Thirteenth Amendment**

Locke railed against slavery but with a backhand defended it in his political theory. The question remains; what kind of slavery did Locke condemn and what kind of slavery did he advocate? Locke claimed the “high ground of moral rhetoric” by railing against another Englishman, Sir Robert Filmer. Filmer advocated some form of theoretical slavery for Englishmen because they were subject to the monarchy. Locke vehemently opposed Filmer’s argument. The freedom of the Englishman and his entitlement as a freeborn was non-negotiable (Farr 1986, 270). According to Locke, however, slaves are captives from conquest through “just war.” In the *Second Treatise* on the section dealing with civil society, he writes:

But there is another sort of servant which by a peculiar name we call slaves, who, being captives taken in a just war, are by the right of nature subjected to the absolute dominion and arbitrary power of their masters (Locke 1690, Chapt. 7, Sec. 85).

In the chapter on “war”, Locke argues, “he who makes an attempt to enslave me thereby puts himself into a State of War with me’ (17) and the aggressor-enslaver deserve to be punished or killed” (Glausser 1990, 207). Glausser notes, “However tortured and incomplete this chain of logic, it is not simply an illusion conjured up by imaginative interpreters. Locke, the opponent of slavery, cannot entirely suppress Locke the landgrave, eager to make his mark on the

*tabula rasa* of American wasteland” (Glausser 1990, 209). The unused land was up for grabs in America and Locke wanted to justify owning some of it (Glausser 1990, 210). For Locke, slaves were indeterminate subjects of the state and the Thirteenth Amendment of 1865, far from abolishing slavery, made that legal as a punishment. W.E.B. Du Bois explains: “The slave went free; stood a brief moment in the sun; then moved back again toward slavery” (Du Bois 1935, 30-31).

The Thirteenth Amendment provides a fundamental cornerstone to the American penal system. According to David Oshinsky, the Thirteenth Amendment of the United States Constitution and the ambiguity of its punishment clause reflect the immediate transition from Lockean slavery to Lockean punishment.

*The Thirteenth Amendment:*

*Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.*

For the sake of constitutional clarity, the Thirteenth Amendment is analysed along with the Eighth Amendment of 1791. The Eighth Amendment states that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” (U.S. Constitutional Amendments n.d.).

According to Michael Levy, The Eighth Amendment is an American version of the English *Bill of Rights* of 1689, which states: “Excessive bail ought not to be

required, nor excessive fines imposed, nor cruel and unusual punishments inflicted” (Levy 2016). Kamel Ghali argues that:

The Eighth Amendment's use of punishment is a part of a prohibition. It forbids certain kinds of punishments—cruel and unusual ones. The Thirteenth Amendment's use of punishment is part of an exception to the amendment. The Thirteenth Amendment bans all slavery, but the punishment clause limits the amendment's reach (Ghali 2008, 633-634).

Punishment in the US exists as a form of enslavement (Howe 2009, 983). The Thirteenth Amendment is a constitutional transition point for the shifts to penal harshness and mass incarceration. The US penal system functions on the philosophy of total incapacitation—body, soul, and spirit (Foucault 1975). It is the argument that the “offender,” like the slave, is an inherent criminal.

The United States Constitution “authorises slavery and involuntary servitude as punishment” (Ghali 2008, 608). Congress ratified the present version of the Thirteenth Amendment on December 18, 1865, but the need to address the “punishment clause” was not a priority (Hasani 2013, 285). In 1871, the Virginia Supreme Court still spoke of offenders as “slaves of the States” (Ghali 2008, 608). Conflict after that arose immediately regarding the “punishment clause” and its potential implications. They interpreted it as a legal extension of slavery in several respects. According to Ghali: “Unfortunately, the debates of the drafters of the Thirteenth Amendment say little about the punishment clause” (Ghali 2008, 609). Stowe Howe disagrees with Ghali’s interpretation. Howe argues, “The natural reading of the clause allowed for slavery, and no voices during the promulgation of the amendment in Congress

proclaimed otherwise” (Howe 2009, 988). Re-enslavement as punishment continued up to the 1960s. The law did not challenge it for a long time, neither collectively condemned by the American churches (Woodson 1945).

The Eighth Amendment imposes limitations on three areas of criminal justice execution: limitation on bails involving criminal offences, limitation on fines because of the criminal infraction, and limitation on punishment involving crime. Levy argues that the US Constitution clarifies what constitutes “excessive,” “Cruel and Unusual punishment” but simply leave their determination to the discretion of “reasonableness and proportionality.” He contends:

Because of the subjective nature of what constitutes a cruel or unusual punishment and the clear, direct, and tangible losses of liberty and even life associated with it, challenges to statutes on Eighth Amendment grounds are plentiful, and the ideological complexion of the Supreme Court has influenced what it will or will not permit (Levy 2016).

The Thirteenth and the Eighth Amendments were ratified to regulate the treatment of prisoners. A sense of discretionary power and “deliberate indifference” prevailed (Ghali 2008, 618). According to Ghali, three approaches to the definition of “punishment” in both amendments ought to be considered. (1) *The Intent Approach*, which suggests that “punishment requires intent” to warrant recognition of the prisoner’s right. (2) *The Realist Approach*, which entails that punishment, represents the actual condition of the prisoner. Prisoners are under the “condition of punishment.” (3) *The Formalist Approach*

which proposes that “punishment means only the prison sentence” that the judge imposes (Ghali 2008, 612).

Ghali further contends that the Eighth Amendment is not preventive but encourages conditions of “passivity” (Ghali 2008, 619). The first appearance of the punishment clause to end slavery is found in Thomas Jefferson’s 1784 Northwest Ordinance draft. It served as a template for the present Thirteenth Amendment and its implications. “None of Jefferson’s notes about slavery or the draft, however, reveals precisely what he meant to accomplish with respect to the ‘otherwise than in the punishment of crimes’ language” (Ghali 2008, 626).

Howe rejects Ghali’s purist version of the origin of the punishment clause associated with Jefferson. For Howe, Jefferson rightly called for the end of slavery in the Thirteenth Amendment but subsequently made provision for slavery by defining punishment for crime as a reinstatement of slavery. Jefferson, Howe contends, initially argued, “That, after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said states *otherwise than in the punishment of crimes* whereof the party shall have been duly convicted to have been personally guilty” (Howe 2009, 992).

Immediately after its ratification, judges were punishing Blacks as slaves. According to Congressman John Kasson, judges passed sentences in the name of the Thirteenth Amendment as an amendment of re-enslavement illustrating, “Extract from a paper showing what ha[d] been done near us in the State of Maryland.’ An advertisement contained the following bold caption: ‘NEGROES TO BE SOLD AS A PUNISHMENT FOR CRIME” (Ghali 2008, 627-628).

Kasson's effort proved futile and left indefinitely in the present state and its ambiguity. According to Ghali:

In 1871, six years after the ratification of the Thirteenth Amendment, the Supreme Court of Virginia referred to prisoners as 'slave[s] of the State'... Two years after *Ruffin v. Commonwealth*, however, the U.S. Supreme Court stated that the Thirteenth Amendment targeted not only African slavery but also 'any other kind of slavery, now or hereafter (Ghali 2008, 629).

Punishment as slavery gave rise to the first wave of mass incarceration or mass Blacks incarceration. Here we see a direct shift from Lockean slavery to Lockean punishment made legal by the Thirteenth Amendment and the ensuing penal codes.

### **3.3 Lockean Slavery and the "Black Codes"**

Locke defined slaves as property of their captors and inherently rightless in the civil society. In a civilised society, they have forfeited their natural, civil and economic rights among free men. The slave is a property of his captor and will perpetually be his captor's property. For Locke to logically justify slavery, Africans and American Indians had to be considered "aggressors" in a "just war."

He writes:

These men, having, as I say, forfeited their lives and with it their liberties, and lost their estates, and being in the state of slavery not capable of any property, cannot in the state be considered as any part of civil society, the chief end whereof is the preservation of property (Locke 1690, Chapt. 7, Sec. 85).

According to Locke, to have another Englishman advocate some form of political slavery for Englishmen under the monarchy as Filmer did was an affront to

English dignity. Slavery was also a state of economic disempowerment. The slave had no right and property but was the property of a free person in the civil society. Slavery was demeaning. Locke knew it because he saw it. Slavery, therefore, was not for an Englishman. Locke argues that slaves were politically and legally rightless in civil society; they have no right to acquire property but are the property of their masters in perpetuity. Locke's argument that the slave is a perpetual property of their master and rightless is best reflected in the efforts to declare Black marriages illegal and illegitimate during slavery and immediately after Emancipation. According to Du Bois, under slavery, Blacks had no "legal marriage, no legal family, no legal control over children" (Du Bois 1969, 169). He argues that civil society and its cultural practices enforced the law against Black marriages. Black families were raised as economic units, frequently broken up and sold. Du Bois notes a particular example in the following advertisement:

Fifty dollars reward—Ran away from the subscriber his Negro man Pauladore, commonly called Paul. I understand General R. Y. Hayne has purchased his wife and children from H. L. Pinckney, Esq., and has them now on his plantation at Goose Creek, where, no doubt, the fellow is frequently lurking. 'T. Davis' (Du Bois 1969, 169).

For Locke, slaves have voluntarily given up their rights as captives in a just war, thus the property and possession of their captors. Slaves had no claim to their labour power (Bair 2008, 12). He sees no incompatibility with "unjust aggressors and just conquerors", and so justifies the institution of slavery (Farr 1986, 271). In Lockean slavery, the master owns the entire production of slave labour. According to Blackmon, in the early years of the 1860s and after 1877, Southern

states were enacting penal codes with the goal to criminalise and re-enslave Blacks.

An 1865 Mississippi statute required African Americans workers to enter into labor contracts with white farmers by January 1 of every year or risk arrest. Four other states legislated that African Americans could not legally be hired for work without a discharge from their previous employer—effectively preventing them from leaving the plantation of the white man they worked for (Blackmon 2008, 53).

Conceptually and in practice, Lockean slavery facilitated the socio-economic, political and penal structures that normalised racial and economic marginalisation in the US. As we shall later see, it prepared the ground for the appropriation of Black “labour power” (Bair 2008, 13) after the Civil War in 1865 as through the penal system and its industrialisation.

By the end of the 1880s, at least ten thousand black men were slaving in forced labor mines, fields, and work camps in the former Confederate state. The subjugation of black labor was a lucrative enterprise, and critical to the industrialists and entrepreneurial farmers amassing capital and land (Blackmon 2008, 90).

Before Emancipation, Whites mostly went to courts and prisons. After Emancipation, courts and prisons became the domain for Blacks, as intimated by a freedman: “jails was all built for the white folks. There warn’t never nobody of my color put in not of them. No time ... to stay in jail; they had to work; when they done wrong they was whipped and let go” (Ayers 1985, 46). Overnight in Mississippi, jails and prisons became a “negro preserve” (Perkinson 2010, 86).

After Emancipation, Southern states took immediate action in three ways, passing harsh penal laws targeting Blacks. (1) Laws like the Black Codes and the Pig Laws were passed to re-enslave free Blacks through the penal system.

(2) Southern states began to lease mainly Blacks as convicts of the system to private companies who drained every ounce of labour power out of their bodies. They were worked to death. Howe argues that the "ordinary meaning" of "slavery as punishment" led to gross forms of treatment to "confirm an original public meaning that allowed the imposition of slavery conditions on convicts" (Howe 2009, 988). (3) The abject exploitation and abuse of these so-called prisoners in Southern states transformed from large-scale prison industries, state-run penal plantations and chain-gang systems into the modern industry of punishment. States were given "broad immunity" to interpret the clause (Howe 2009, 988). Blacks were vulnerable and penniless to pay the imposed fines for their so-called crimes. Blackmon notes: "Increasingly, it was a system driven not by any goal of enforcement or public protection against serious offences, but purely to generate fees and claim bounties" (Blackmon 2008, 66). The Pig Laws, along with the Black Codes were akin to the post-1970 mandatory minimum and Three-strike sentences.

### *The Black Codes*

The atrocities against prisoners or free Blacks as prisoners after the ratification of the Thirteenth Amendment point to the maintenance of slavery as punishment. Howe argues that the immediate result of the punishment clause was the rampant disregard for the life of so-called prisoners punished as slaves:

The antebellum evidence supports an original meaning that allowed for extremely harsh treatment of prisoners, including intentionally inflicted corporal pain, such as whipping on the bare skin, leasing to

private parties, forced labor in dangerous environments, and subjugation to unhealthy and miserable living conditions (Howe 2009, 1007).

With the passage of the Black Codes in other states including Texas, Blacks were banned from jury duties, banned from taking public offices on public transportation, banned from voting, banned from public schools and banned from purchasing or owning guns. The goal was to legislate and create conditions of concentrated poverty and servitude for Blacks (Perkinson 2010, 88). African Americans had to reconstitute as slave workers under the law because of these exclusions. They were forced to sign contracts designed to regulate their freedom, movement, lives, and to incarcerate them. Also, Black juveniles were assigned to White families to work them without pay. According to Perkinson:

At the heart of these codes were the vagrancy and enticement laws, designed to drive ex-slaves back to their home plantations. The Vagrancy Act provided that 'all free negroes and mulattoes over the age of eighteen' must have written proof of a job at the beginning of every year. Those found 'with no lawful employment ... shall be deemed vagrants, and on conviction ... fined a sum not exceeding ... fifty dollars' (Perkinson 2010, 21).

In 1865, the Mississippi legislature passed the Black Codes. These were unjust penal laws enacted to re-enslave Blacks through the penal system. Militantly enforced, they arrested many Blacks for flippant charges. Perkinson contends that:

The Black Codes listed specific crimes for the 'free negro' alone: 'mischief,' 'insulting gestures,' 'cruel treatment to animals,' and the 'vending of spirituous or intoxicating liquors ... cohabiting with whites. The penalty for intermarriage, the ultimate taboo, was 'confinement in the State penitentiary for life' (Perkinson 2010, 21).

A large number of Blacks were arrested, incarcerated, and deployed to local businesses. Free Blacks were subject to menial jobs or leased. According to Perkinson, the Black Codes were legal stipulations and enforced by the police.

A vagrancy statute allowed any 'idle person' to be fined, jailed, or forced to labour on public works... Rape became a capital crime; petty theft garnered lengthy sentences. 'What chance do they stand with rebel judges, rebel lawyers, sheriffs, & jury?' asked one Republican. 'No show at all' (Perkinson 2010, 88).

In addition to the Black Codes, in 1876, Mississippi passed the "Pig Law." Explain it in a sentence. Its violation was five years sentence in state prison. The Pig Law was aimed at Blacks. Between 1874 and 1877, the convict population quadrupled from 272 to 1,072. Not long after the Pig Law passed, "An Act" that provided legal authority for the leasing of convicts to private companies was passed targeting Blacks. Freed slaves understood the game that Whites were playing with the legal system.

'It seems like the white people can't git over us being free ... and they do everything to hold us down all the time,' remarked Allen Manning, while another free slave saw the prison system as an industry of punishment: 'I think the old master learned me the wrong trade ... he ought to have made a brickmason out of me, for as sure as Negroes go to prison for stealing they will have to build a prison reaching five miles out on the prairie to hold them all' (Goree 1898, 132).

The influx of Blacks as convicts led to prison overcrowding. An 1866 "convict labour" law provided a paradigm to deal with the issue. They assigned Whites to groups as "first-class" convicts and were required to stay within the walls of the prisons. Also, they did not lease Whites convicts. In contrast, they assigned Blacks to groups as "second-class" convicts and former slaves. According to Perkinson, Black female convicts became sex slaves (Perkinson

2010, 84). Members of the second-class category were leased across the state and assigned to “works of public utility.” “Public utility” was an ambiguous term that implied the hiring of convicts to “company or individuals” for jobs such as railroad construction, mining and iron smelting or irrigation. For example, “In February 1867, the Air Line and Brazos Branch railroad took possession of the first shipment of 250 prisoners. Hundreds more would follow” (Perkinson 2010, 90). Prison managers leased convicts to businesses outside of their prison districts (Oshinsky 1996, 41-42).

By 1870 slavery as punishment had mutated into full-blown penal sanction. An important economic and penal development took place after Emancipation: slaves as property under Lockean slavery mutated into prisoners as property and economic units. According to Walker:

Surrounded night and day by the most vicious comrades and associates, removed from all the softening influences of [civilization], whipped and cursed and abused by brutal slave drivers, the convict serves out his time and returns to society a far more dangerous man than when he fell into the clutches of the state (Walker 1988, 431).

In the South, convict leasing became a coveted domain. Pursued by planters, people in business, political figures, members of the Ku Klux Klan and a former Confederate Commander, convicts worked on railroads, the building of hotels, gas factories, racetracks plus anything imaginable to be built with abused labour power and the economic units of human bodies. Stuntz contends that three kinds of justice prevailed in the Antebellum South: “the justice of the courts, the justice of masters, and the justice of the mobs” (Stuntz 2011, 91). The first was somewhat legal, but “the second and third operated off the books”

(Stuntz 2011, 91). Perkinson reports that convict leasing produced wealthy

Southerners:

As with chattel slavery before it, convict leasing took hold—surviving countless efforts at abolition – principally because it made men rich. Not just any men, but prominent planters and industrialists, the captains of commerce in the New South (Perkinson 2010, 102).

Blacks were treated inhumanely for both low-level and high-level offences. For example, Oshinsky notes that a private contractor, David Hearn in the Yazoo Delta in Mississippi, recorded the following in his book about Henry Gale, a former slave who was sentenced to ninety days for being “a tramp” and fined \$5.00 and \$9.95 in “costs.”

Fine:	\$5.00
Mayor’s Fee:	\$3.90.
Officer’s Fee:	\$3.25
Jail Fee:	\$2.80
<b>Total:</b>	<b>\$14.95.</b>

(Oshinsky 1996, 42)

According to Oshinsky:

Hearn paid the various charges, took control of Henry Gayle, and leased him to a local planter for \$8.00 a month. The judge, mayor, sheriff, and jailer split the \$14.95. Hearn received \$24.00 from the planter, who got himself a field hand for ninety days at a fraction of the normal cost. Only Henry Gayle would suffer the consequences of this deplorable system (Oshinsky 1996, 42).

In the next section, I explore the argument that Lockean slavery gave rise to phase one of mass incarceration in the US through the convict leasing system as far back as the 1840s (Perkinson 2010, 61). It reflects the transition from a slave economy to a convict economy with the emergence of the legalised prison economy. According to Oshinsky:

Like the Ku Klux Klan, the criminal justice system would become a dragnet for the Negro. The local jails and state prisons would grow darker by the year. And a new America gulag, known as convict leasing, would soon disgrace Mississippi, and the larger South, for decades to come” (Oshinsky 1996, 29).

The convict leasing system reflects the development of industrialised slave labour through the penal system. It was industrialised convict labour but specifically industrialised Black labour and the legal injection of the private sector into the penal process (Blackmon 2008).

### **3.4 Lockean Slavery and Vigilante Justice**

Locke compares slaves to “wild beasts” captured in the forest. He argues that they must blame themselves for their captivity and enslavement (sec. 2.85. 24). Commenting on Locke’s assertion, Farr writes that:

The captive slave is wholly to blame because he had ‘quitted reason’ by violating the rights of innocents and so rendered ‘liable to be destroyed by the injured person and; the rest of mankind that will joy [join] with him in the execution of justice, as any other wild beast or noxious brute’ (sec. 2.172) (Farr 1986, 271).

Locke’s views on slavery are inconsistent with natural rights. Locke held to the claim that Africans were “sub-humans” who did not deserve full rights as Whites (Bracken 1973, 81-96). He witnessed the brutalities Africans endured at the hands of their “captors” but never uttered even a “mumbling” condemnation.

According to Blackmon:

Blacks could be excluded from the Enlightenment concept that every man was granted by God individual freedom and a right to the pursuit of happiness because colonial laws codified a less-than full-human status of any person carrying even a trace of black or Indian blood (Blackmon 2008, 40).

Despite its cruelty, the convict leasing system was considered a continuation of state-sanctioned punishment and penal activity (Perkinson 2010, 86). Convict leasing became prominent in Texas, Mississippi, Georgia, Florida, Alabama and Arkansas (Oshinsky 1996, 70). Blacks as “convicts” were subject to laborious and excruciating toil in concentration camps of “slavery and involuntary servitude as a punishment for crime” (Howe 2009, 995). W. Orr explains that:

It is not the shame or the hard labor to which we object; it is the slow torturous death inflicted by the demonic-like contractor who takes us to the Yazoo Delta to ‘wear our lives away.’ It is fearful; it is dreadful, it is damnable. –*W. G. Orr, Okolona, Mississippi, writing to Governor Robert Lowry about the evils of convict leasing, 1884.*

In Mississippi, White vigilante groups emerged emboldened in every region. Members of the Ku Klux Klan perpetrated the worse violence emblematic of several local vigilante groups. The anthem of the KKK reflects its mission and goals.

Niggers ... get out of the way.  
We’re born of the night, and we vanish by day.  
No rations have we, but the flesh of man—  
And love niggers best—the Ku Klux Klan.  
We catch ‘em alive and roast ‘em whole.  
And hand ‘em around with a sharpened pole (Sallis 1967, 155-159).

Mob violence against Blacks went unpunished. The Blacks’ vulnerability was socio-politically and economically obvious.

### **3.5 Lockean Slavery: The Slave is “Dead”**

Locke argues that slaves are legally dead and only useful to their masters. The slave is civilly dead. Here we see an argument for civil death that

is based not on crime but racism. His captor and master have the right to make the most of his body in civil society. In light of the “demands of justice,” enslaving Africans, as beasts were no injustice. According to Locke:

Indeed having, by his fault, forfeited his own life, by some Act that deserves Death; he, to whom he has forfeited it, may (when he has him in his Power) delay to take it, and make use of him to his own service, and he does him no injury by it [2.23] (Farr 1986, 271).

The inconsistency in Locke’s theory of slavery and natural rights is disturbing. The kind of slavery existing at the time was purely consistent with economic gain, not conquest (Farr 1986, 287). Locke refused to render an objective critique of slavery because of its impact on his investments in *The Royal Company* and *The Rose* (Farr 1986, 273). He never addressed the above contradictions in his political theory. In the *Two Treatises*, Locke mentions slavery as a political development of the treatment that slaves should receive when captured in his just war.

According to Howe, a complicated relationship often existed between slaves and their masters. It was one regulated by the master’s discretion, economic interests and the convention of society. “As a result, even by the denigrating standards of slavery in the mid-1800s, a significant number of slaves faced a life of special horror” (Howe 2009, 997). Chained outside to work from dawn until dusk, they brought them back to their cages ridden with blood, excrement, vermin and high rates of mortality (Oshinsky 1996, 46). Oshinsky explains:

In the 1880s, the annual mortality rate for Mississippi’s convict population ranged from 9 to 16 percent. Blacks suffered far more

than whites, who rarely left the penitentiary walls. In 1882, for example, 126 of 735 black state convicts perished, as opposed to 2 of 83 whites (Oshinsky 1996, 46).

Convicts working in the famous Eureka coalmine in Alabama in the 1870s were worked in chains and to death; rebellion was met with brutal whipping and “water punishment” (Howe 2009, 1012). In 1870, over 40 per cent of convicts died in Alabama, reported prison officials. Nevertheless, by 1890, Alabama’s convict leasing system had become a flourishing industry (Oshinsky 1996, 79).

It is important to indicate that many of the convicts were first time offenders. Howe explains that a large number of Blacks died under conditions that were worse than slavery even as a violation of the Thirteenth Amendment. He argues that this explanation “supports an original public meaning for the slavery-as-punishment clause that gave states expansive immunity from claims that their abuse of convicts violated the principal prohibition in the Thirteenth Amendment” (Howe 2009, 1009).

Howe argues that the convict leasing system did not end because of humanitarian or moral reasons. It ended due to competition from “free labor groups,” “political scores” and “Northern states” criticisms. He notes: “The proof that the explanation for abolition was not entirely or even mostly humanitarian finds support in the practices that replaced leasing, which were ‘essentially a reallocation of forced labour from the private to the public sector’” (Howe 2009, 1014).

The convict leasing system ended as the transition to an institutionalized penal and penitentiary system. Southern states “made farming operations on

penal plantations the core of their systems” (Howe 2009, 1014). Industrialized prisons adopted the patterns of “fearful brutalities” characteristic of “antebellum field slaves” (Howe 2009, 1015). In Mississippi, a 20,000 acres penal plantation was built with the full support of the legislature as the “Parchman place.” According to Howe, “By the early 1900s, the state began sending most of its felony convicts, about 90% of whom were black, to Parchman” (Howe 2009, 1015). Industrial penitentiaries and prison plantation used prisoners as economic units thus, the condition of death. Prisoners’ bodies were exploited to drain the utmost ounce of strength out of them until they fell and died only for another convict to take their place and be similarly drained (Howe 2009, 1016).

### **3.6 Prisons as Institutions of Social Stratification**

According to Loic Wacquant, prisons in the US are institutions of race making and economic stratification (Wacquant 2009b). He argues that if one is to understand this development, it must begin with the intricate relationship the US justice system has developed for African Americans. Wacquant defines this relationship as a “deadly symbiosis.” It is the synthesis of Black “ghetto” residential identity and Black criminalisation. The relationship reflects a historical continuation of socio-political and economic control, management of Black bodies and the organic production of “Black subproletariat” through the courts. He explains its function:

It also plays a pivotal role in the remaking of ‘race’, the redefinition of the citizenry via the production of a racialized public culture of vilification of criminals, and the construction of a post-Keynesian state that replaces

the social-welfare treatment of poverty by its penal management (Wacquant 2001, 95).

Prisons are institutions of exclusion and as such, produce structures of marginalisation and their normalisation.

Considering the rise in the incarceration of Blacks as a continuation of Lockean punishment, Wacquant proposes three developments in the US.

1. Blacks' incarceration in 2001 was the highest since 1989, with a reverse from 70 percent White in the American penal system to 70 percent Black and Latino, with no change in the "ethnic pattern of criminal activity" (Wacquant 2001, 96).
2. Blacks' incarceration "has soared to astronomical levels unknown in any other society, not even the Soviet Union at the zenith of the Gulag or South Africa during the acme of the violent struggles over apartheid. As of mid-1999, close to 800,000 black men were in custody... a figure corresponding to *one male out of every twenty-one* (4.6 percent) and one out of every nine ages 20 to 34 (11.3 percent). An additional 68,000 black women were locked up; a number higher than the *total* carceral population of any one major western European country (Wacquant 2001, 96).
3. The widening gap between Blacks and Whites' incarceration is astonishing taking into consideration the number of Blacks in the general population of the US. In analysing these racial developments over the past 50 years, Wacquant argues that it is important to "reckon the extra-penological role of the penal system as an instrument for the management of dispossessed and dishonoured groups" (Wacquant 2001, 97).

Blacks' imprisonment, Wacquant argues, is evidence of the structural existence of "caste division" also facilitated by poverty (Wacquant 2001, 97).

**TABLE 1 The four 'peculiar institutions' and their basis**

PECULIAR INSTITUTION	FORM OF LABOR	CORE OF ECONOMY	DOMINANT SOCIAL TYPE
Slavery (1619–1865)	unfree fixed labor	plantation	slave
Jim Crow (South, 1865–1965)	free fixed labor	agrarian and extractive	sharecropper
Ghetto (North, 1915–1968)	free mobile labor	segmented industrial manufacturing	menial worker
Hyperghetto + Prison (1968–)	fixed surplus labor	polarized postindustrial services	welfare recipient & criminal

What connects these institutions are the objectives of “*labor extraction and social ostracisation of a stigmatised category*” the burden of physical violence, imprisonment, exploitation of Black labour power and Black bodies (Wacquant 2001, 99).

The modern Black Codes are the habitual offenders’ laws: mandatory minimums, determinate and indeterminate sentences and three-strikes laws. Wacquant concludes with a list of triple exclusion that I define as structures of civil death for prisoners: (1) “Prisoners are denied access to valued cultural capital.” (2) “Prisoners are systematically excluded from *social redistribution*. (3) Convicts are banned from political participation via ‘criminal disenfranchisement’ practised on a scale and with a vigour unimagined in any other country” (Wacquant 2001, 119).

In the next section, I provide an analysis of the various shifts to penal harshness in the US and the UK penal cultures after 1970. These shifts are reminiscent of the era of Lockean slavery and the Black Codes.

### **3.7 Lockean Punishment: Mass Incarceration Phase Two: Post-1970s**

Between the end of the convict leasing system in the 1900s and the beginning of phase two of mass incarceration after 1970, a reduction in crime and imprisonment emerged (Hinton 2016). However, racial disparity in both federal and state prisons still prevailed, but unlike during the post-1970s prison boom. According to Zimring, in the US:

Between 1925 and 1973, there was very little fluctuation from a mean level, that averages between 110 and 120 per 100,000 and never varies by more than 30 percent up or down from that. After a low of 93 per 100,000 in 1972, the rate of imprisonment has increased in 26 consecutive years, growing during this time from 93 to 452 per 100,000, or just under fivefold in a quarter century. What has been a non-volatile and cyclical phenomenon becomes very volatile and non-cyclical (Zimring 2001, 161).

By 2008, the US prison population had reached 2.4 million, or 788 per 100,000 persons. “Once marginal, prisons have emerged as pillars of American government, core institutions in the management of an increasingly diverse society” (Perkinson 2010, 370). Imprisonment became an indispensable tool of social control and punishment (Garland 2001)

Phase two of mass incarceration epitomises the post-1970s shifts to harsher penal laws and the prison culture are associated with this research. Like the Black Codes, the punitive turns have led to a normalisation of the penal

population consisting of the poor and racially marginalised. While the Black Codes were specific to the United States, in the rest of this chapter and Chapter two, I argue that the modern turn to penal harshness is international, hidden from the eyes and consciences of the public by “penal legitimacy.”

### *The Shift to “Tough on Crime” and “Fear of Crime” Rhetorics*

Demonstrably, political rhetoric and responses did not reduce the fervour of mass imprisonment before 2001 or beyond. “Tough on crime” rhetoric became a political mantra for both Republicans and Democrats in the American Congress (Mauer 2001, 14). The dependence on mass incarceration in the 70s, 80s and 90s undermined the legitimate need for solution development. Citing *the politicisation of crime*, the strange nature of the *American culture of individualism*, and *growing conservative political climate* (Mauer 2001, 14), political interests undermined the need for a reasoned debate about crime.

In addition, tough on crime rhetoric received the blessings of the media, with dehumanising consequences against affected communities. Minority communities were criminalised with innuendos such as “crack babies” and “welfare queens.” According to Thomas Mathiesen, the media and television facilitated the prison boom by making it attractive and removing the walls of ethical defence. “These defences are of a cultural kind: they are values—civil rights, the rule of law, humanity—emphasizing a restraint in the use of our harshest mass punishment, prison, and consequently restraint in an escalation

of the prison population. Television corrodes these values” (Mathiesen 2001, 39).

Television contributed to mass imprisonment in three ways, Mathiesen argues. (1) The commodification of penal policies: Before the 1970s, penal policies in the US were based on scientific and philosophical investigations. In contrast, penal policies shifted to that which was and is “marketable” and “profitable” for politicians rather than ethical (Mathiesen 2001, 39). (2) Television promotes the lack of “legitimation.” Mathiesen refers to legitimation as principles and values influencing the rule of law and sentencing. “Today, legitimation seems to be almost purely opportunistic: it is grounded in concerns about what ‘goes’ on television and consequently among the voters” (Mathiesen 2001, 39). Moreover, finally, (3) television has led to a decline in intellectual discourse regarding penal policies in favour of what is sensational. For Mathiesen, the present trend towards penal policies depicts the lack of “communicative rationality” in contrast to penal policies that were once derived from public debate in decision-making. He defines Communicative rationality as an “emphasis on truthfulness, relevance and sincerity in argumentation,” in contrast to debates “predominantly characterized by the rationality of the market place” (Mathiesen 2001, 39). The media led the war on drugs with the increased criminalisation of minorities.

For his part, Simon argues that America is “governing through a fear of crime,” which is responsible for mass incarceration. He references the frameworks of Mary Douglas and Aaron Wildavsky on America’s fear of

environmental disasters to make his point by quoting their “three ideal-type institutional frameworks: hierarchical (or bureaucratic), individualist (or market), and sectarian” (Simon 2001, 23). Like America’s fear of pollution, Simon notes that crime is perceived as “invisible,” “involuntary,” and “irreversible,” especially with regards to drugs (Simon 2001, 27). He attributes the turn to mass imprisonment in the US to three intersecting causes: one, changes in the American political culture; two, the war on drugs; and three, the far-reaching effects of criminal justice agencies (Simon 2001, 21).

Simon is convinced that the fear of crime explains the indispensability of mass imprisonment in the US. The association of crime with pollution reflects the need to isolate crime and its perpetrators in prison. Imprisonment is the ultimate means of isolation (Simon 2001, 28). Based on Simon’s analogy, one may argue that it is not only crime nor prisons that are the pollutants. It is the offenders who are the primary pollutants and who must be put away. It explains the high rates of ageing, dying and dead prisoners. The analogy also underscores the justification from rehabilitative sentencing to incapacitation. Analytically, society does not want to bring them back, neither rehabilitate them nor provide resources to rehabilitate them. They are the pollutants of society. Furthermore, the fear of crime does not account for the inconsistencies between the decline in crime and the emphasis on mass imprisonment. Thus, the association of “tough on crime” rhetoric and “fear of crime” rhetoric have only fuelled the shifts to penal harshness and mass incarceration after 1970.

### *The Shift from Indeterminate to Determinate Sentences*

In 1971, President Richard Nixon declared the “war on drugs (ACLU 2011a; Zimring and Hawkins 1995).” The mantra was “get tough on crime.” As a result, the US penal system experienced a dramatic turn from rehabilitative sentences into a prison boom.

For Marc Mauer, mass incarceration in the US is a production of tougher drugs laws. The ‘Rockefeller Drug Laws’ of 1973 and the emergence of US sentencing guidelines facilitated a pivotal sentencing shift. The Rockefeller Drug Laws were the formal introduction of the sentencing disparity between crack and powder cocaine. Mauer reports a “15-year prison term for anyone convicted of selling 2 ounces or possessing 4 ounces of narcotic regardless of the offender’s criminal history” (Mauer 2001, 11). Also, high rates of “discretionary” arrests by law enforcement officers led to 1.6 million individuals incarcerated in 1998 from 300,000 (Mauer 2001, 11). The implication was an unusual emphasis placed on incarceration and the emergence of the prison boom.

Two Federal drug penalties were pivotal to the immediate increase in prison population: The Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988. Violation of these laws and the possession of 5 grams of crack cocaine meant the offender would go to prison for five years (Mauer 2001, 11). By the 1990s several states had immediately adopted mandatory sentencing laws (Mauer 2001, 12). Mauer notes that the argument in favour of high crime rates necessitating mass imprisonment was not justifiable. “From 1984 to 1991,

the number of inmates nationally rose by 79 per cent, while crime rates also increased, by 17 per cent, and violent crime by 41 per cent” (Mauer 2001, 12).

In the new sentencing structure, emphasis on rehabilitation was deprioritised. The shift “from an offender-based to an offence-based system” ensued. It neglected the benefit of analysing the “abuses that arose in the past within the indeterminate sentencing structure,” the primary virtue of which was its “ability to incorporate the individual characteristics and circumstances of the offender into the sentencing process” (Mauer 2001, 17). The move to determinate sentences thus disempowered judges who “once had greater input into individual decision-making” and the power to consider other mitigating factors in deciding and assessing the individuality of a case or the offender. Mauer concludes: “But the practical corollary of this in the policy arena has been that virtually *no* amount of imprisonment for violent offenders is considered to be too long. ‘Three strikes’ laws and ‘truth in sentencing’ statutes exemplify this practice” (Mauer 2001, 17). Not only did the shift to determinate sentences disempower judges and empower prosecutors, but it also continues to produce a category of Americans stigmatised and marginalised from mainstream America as felons and second-class citizens (Alexander 2010). Furthermore, the shift from determinate to indeterminate sentences led to the creation of various forms of life sentences.

### *The Shift to Three Strikes and Total Incapacitation*

According to the American Civil Liberties Union (ACLU), the war on drugs led to the passing of harsh and incapacitating penal laws. Maine and California in the late 1970s eliminated the role of discretionary parole boards. Similarly, felony offences became more severe as longer sentences were imposed requiring harsh forms of imprisonment along with the normalisation of habitual offender laws. According to Steven Raphael and Michael Stoll, states adopted habitual offender laws across the US in “piecemeal fashion” with half of all the US states adopting “two- or three-strikes laws that multiplied mandated prison sentences for repeat offenders” (Raphael and Stoll 2009, 77). Trevor and Newburn argue that the use of three-strikes as a sentencing slogan in the 1980s “first became attached to the notion of mandatory minimum sentences in debates about crime and sentencing in Washington State” (Jones and Newburn 2006, 783).

In 1994, California passed its “three-strikes” sentencing laws with other states following suit (Zimring et al. 2003, 10). Its target was the “worst of the worst.” Zimring explains that “The Three Strikes provisions are silent on issues of principle, and it may be that the only general principle in the statutes is to increase the seriousness of all punishments for those who had been convicted earlier of selected felonies” (Zimring et al. 2003, 10). Unfortunately, California’s prisons grew to include those charged with violent and non-violent crimes as well as convicts and non-convicts. The emphasis on imprisonment turned to “total incapacitation.”

As a penal policy, incapacitation presumes that for many categories of crime, each offence for which a person is convicted 'stands for' many others that they will also have committed and would go on to commit. It argues that it is possible to reduce overall crime rates by incapacitation (because each active criminal incarcerated is taken to forestall numerous offences that would otherwise occur).

According to Simon, there was no substantial link between incapacitation and crime. Actual crimes, in contrast to the non-violent use of drugs, were declining. Prosecutors began to lay the foundation for "total incapacitation" as early as the 1970s in California "by using their broad discretion to bring the most serious of possible charges to obtain longer sentences" (Simon 2014, 24). Subsequent harsher sentences, Simon contends, only increased the existing penal norms of harsher sentencing inconsistently with the downward trends in crime:

It grew again in the late 1980s as the crack-cocaine epidemic hit large cities including Los Angeles and Oakland, reaching a peak in the early 1990s, then began to decline before the adoption of even more virulent laws including 'three strikes and you're out' (Simon 2014, 24).

Incapacitation reflects a practice of objective perpetuity as an antithesis to rehabilitation. It argues that repeat offenders are "damaged people" (Medlicott 2007) and cannot be redeemed. As such, it is in the public interest that they are incarcerated for a long time. Zimring and Hawkins note: "Thus, the attack on rehabilitation encouraged a view of criminal offenders that made incapacitation appear to be a singularly suitable policy goal for prisoners" (Zimring and

Hawkins 1995, 15). In addition to incapacitation in the US penal system, parole became harder to obtain. Incarceration for parole violators, and tougher plea bargains coerced by “prosecutors whose powers have been enhanced by the increased severity of sentencing law” also increased (Garland 2015, 346).

Incapacitation as a penal norm is selective. It reflects the collapse in differentiating between non-violent offenders from violent or hard-core criminals with racial and economic distinctions. The collapse of difference under incapacitation represents a divergence from the traditional practice of incarceration, in which distinctions are made based on crime for the sake of advancing policies of rehabilitation and early release for non-violent offenders (Simon 2014, 40).

By the 1980s, the “impulse to imprison” had spread from California to the rest of the US. For Simon, total incapacitation symbolises the following: (1) Rejection of “less drastic first resorts” such as community supervision and surveillance, shorter sentences, “occupational restriction, reporting requirements, and even pharmacological treatments” (Simon 2014, 41). (2) Security and control rather than “penitence, discipline, labor, education, and later therapy” (Simon 2014, 42). (3) In contrast to selective incarceration, “Total incapacitation is indiscriminate. Whole categories of people are incapacitated regardless of the risk they pose to the community.” Finally, (4) total incapacitation is not redemptive or rehabilitative. It recognises no possibility of transformation (Simon 2014, 42).

In four years, Minnesota legislated policies that seriously considered the offender's criminal records as an additional mitigating factor in the sentencing process, thus undermining the discretionary privilege of judges. Judges are bound to impose only legislated and mandatory sentences. The ACLU defines:

*Mandatory minimum sentencing laws:*

Such laws impose long sentences and prevent judges from exercising discretion to impose more lenient punishments, where appropriate, based on the circumstances of the crime and the defendant's characters.

*Truth in sentencing laws:*

Such laws sharply curtail probation and parole eligibility, requiring inmates to remain in prison long after they have been rehabilitated.

*Three Strikes laws:*

Such laws subject defendants convicted of three crimes to extremely long sentences. In one case heard by the U.S. Supreme Court, a man charged with stealing a golf club received a sentence of 25 years to life under a three strikes law (ACLU 2011a).

Between the 1980s and the 1990s, sentences became "rigid and mechanical," with Truth-in-sentencing impacting discretionary sentencing. It switched from discretionary sentencing to rigid sentencing with more draconian consequences due to the war on drugs. Furthermore, States had to agree to "truth in sentencing" legislation to get money from the federal government to build more prisons (Raphael and Stoll 2009). Raphael and Stoll explain the distinction between crack and powder cocaine:

According to the Department of Health and Human Services, 2.4 million (64.4 percent) of crack users are White, compared to 1 million Blacks (26.6 percent). Yet, in a 1992 study by the U.S. Sentencing Commission, 91.3 percent of those sentenced for federal crack offense were Black, while 3 percent were White. Such stark numbers reveal that African Americans are the flesh that maintains a profitable 'Prison industry' (Raphael and Stoll 2009).

Longer sentences and increased prison time became the norm after that. The US prison population grew from 300,000 in the 1970s to over 2 million in 2001. The passing of mandatory minimums and stringent drugs laws became a national phenomenon with several states following California.

### *The Shift from Ordinariness to Massiveness and Penal Normalization*

According to Zimring, mass imprisonment followed a coherent and unitary pattern in its initial development into a state of “volatility.” He argues that “What has been a non-volatile and cyclical phenomenon becomes very volatile and non-cyclical (Zimring 2001, 161).

With currently over 2.3 million prisoners and over 20 million people under some form of correctional supervision, the growth of mass incarceration has normalised since its initial volatility. Zimring highlights three instances of growth: (1) 1973 to the middle of 1980, shows the incarceration of “marginal felons.” (2) 1985 to 1992 shows the incarceration of offenders associated with drug offences and the development of punitive sentences associated with the war on drugs. (3) More recently, the unstoppable growth of imprisonment referred to as the “politics of punishment” and the stage of normalisation (Zimring 2001, 162). However, the organising factors responsible for the growth of the prison population and its immediate normalisation were due to presidential decisions and administratively pursued.

According to Alexander, mass incarceration and penal normalisation are fueled by the emergence of systemic processes of public policies, which flourished under four presidential administrations, but with the intention of criminalising the poor and racially marginalised.

*President Richard Nixon:* In 1971 the rhetoric of “Law and Order” and “Tough on Crime” became coded words for politicians, law enforcement and the media (Alexander 2010, 46). It led to the declaration of the War on Drugs.

*President Ronald Reagan:* Under President Reagan, *The Anti-Drug Abuse Act of 1986* was passed (Alexander 2010, 86). Similarly, this administration saw the birth of mandatory minimums; sentencing distinctions between crack and powder cocaine, and the passing of a punitive version of the *Anti-Drug Abuse Act* in 1988. The effects were increases in harsh “Civil penalties” for drug offenders which included: (1) eviction from public housing of drug-related offenders; (2) elimination of federal benefits; (3) drug offenders banned from receiving student loans; (4) the death penalty for serious drug-related offenses; (5) new 5-year mandatory minimums for simple possession of cocaine base, with no evident of intent to sell (Alexander 2010, 86).

*President George Bush Sr:* In August 1989, President Bush Sr. announced that drug use was “the most pressing problem facing the nation” (Alexander 2010, 53). The harsh penal policies from previous administrations continued.

*President Bill Clinton:* In 1992, President Clinton flew to Arkansas to oversee the execution of Ricky Ray Rector, a mentally impaired Black man

(Alexander 2010, 55). In 1994, he endorsed the federal 'three-strikes' law.' Under his administration, Clinton took the following steps toward penal harshness: (1) signing the *Personal Responsibility and Work Opportunity Reconciliation Act*, which ended welfare assistance; (2) creating the *Temporary Assistance to Needed Families* (TANF); (3) introducing a Lifetime ban on eligibility for welfare and food stamps for anyone convicted of a felony drug offense; (4) banning anyone with a criminal record from federally-assisted public housing project; (5) calling for a "One Strike and You're Out" Initiative (Alexander 2010).

Under the US Supreme Court, there was a shift to unilateral power for law enforcement officers (Alexander 2010, 61, 63,134,128,116). According to Alexander, these decisions and penal policies led to the militarization of law enforcement, including (1) the use of SWAT (Special Weapons and Tactics) Teams (Alexander 2010, 73); and (2) the forfeiture of assets (Alexander 2010, 77).

The implications were the institution of economic and penal policies that created conditions for the civil death of those with felony records. According to Alexander, they were: (1) barred from public housing by law; (2) discriminated against by private landlords; (3) ineligible for food stamps; (4) forced to "check the box;" (5) denied licenses for a wide range of professions (Alexander 2010, 92). With respect to the Black experience, she argues that three phases of the War on Drugs led to extraordinary numbers of Blacks' penally incapacitated: (1) the "Roundup" phase in which law enforcement raided communities; (2) the

“conviction” phase—the period of formal control; and (3) the period of invisible punishment representing the period of penal normalization (Alexander 2010).

The horrid impact of the turn to mandatory minimums, truth in sentencing and three-strikes sentencing laws included the immediate shift from individual imprisonment to collective imprisonment. Entire communities became victims of these sentencing laws. Mass imprisonment became normative and was reflected in social stratification, increased conditions of poverty, illiteracy and exclusions. Also, it became a lens through which group experiences were defined (Alexander 2010).

Hinton and Alexander’s argument are also corroborated by the arguments of Katherine Beckett and Bruce Western: that non-crime based mitigating factors were and are still central to the normalisation of mass incarceration.

### *The Shift to Fear of the Poor and Criminalization of Poverty*

Beckett and Western contend that the “weak welfare system” of the US is responsible for the emergence of mass incarceration. Harshness in penal policies accompanied the decline in social and welfare programs. Like the war on drugs, another war was waged: the “war on poverty programs” (Beckett and Western 2001, 44). They assert a relationship between penal policies and existing welfare policies, rates of mass imprisonment and race.

Furthermore, they argue that there is a correlation between the rates of imprisonment and crime but do not support the conclusion that crime is solely responsible for mass incarceration. They conclude that exogenous factors

should be taken into consideration like poverty, unemployment and racism as central to the growth of mass imprisonment. From 1980-2000, the number of individuals on parole and probation grew to 3.8 million with the entire correctional population of the US increasing to 6 million in 1998 (Beckett and Western 2001).

In the 1960s, welfare programs came under strong political attacks. The politicisation of welfare programs led to reductions in rehabilitation, increases in sentences, and the closure of the open-ended indeterminate sentencing process. They note: “Since that time, the goals of incapacitation, deterrence and retribution have enjoyed something of a renaissance and the US penal system has expanded dramatically” (Beckett and Western 2001, 46).

Beckett and Western suggest two forms of the regime to reflect the relationship between welfare programs and mass imprisonment: (1) “Inclusive regimes,” which tend to “prioritise the inclusion of the poor and marginalised groups in their welfare programs. As a result, they are characterised by more generous welfare programs and less punitive anti-crime policies.” (2) “Exclusionary regimes” which in contrast tend to be “less generous with their welfare benefits.” They exclude the socially marginalised, stigmatising the poor as deviants and unworthy of benefits. Exclusionary regimes are thus very harsh in their anti-crime policies. They conclude: “On the basis of this information, we hypothesize that governments that provide more generous welfare benefits have lower incarceration rates, controlling for other relevant factors, while governments that spend less on welfare incarcerate a larger share of their

residents” (Beckett and Western 2001, 44). Social policy marginalisation leads to penal marginalisation and concentrated forms of social exclusion. Poverty and social marginalisation thus became the catalysts towards mass imprisonment invariably.

The impact of these development has fallen disproportionately on young African-Americans and Latinos. By 1994, one of every three black males between the ages of 18-34 was under some form of correctional supervision, and the number of Hispanic prisoners has more than quintupled since 1980. These developments are not primarily the consequences of rising crime rates, but rather of the ‘get tough’ policies of the wars on crime and drugs (Beckett and Western 2001, 44).

The criminalisation of poverty and the poor invariably informed the turn from resources to help poor communities to criminalise them. It was not the war on drugs but the war to imprison the poor and racially marginalised (Hinton 2016).

Due to the various shifts in the American penal discourse, the era of habitual offender laws in the 21<sup>st</sup> century was born. Three-strikes sentences, determinate sentences, mandatory minimums, Truth in Sentencing and tough-on-crime rhetoric became the penal order of the day (Zimring 2001, 161-162). However, these developments in the US penal history also culminated in the production of a penal industry. A shift I consider central to the normalisation of mass incarceration in the US is the intrusion of market forces and the industrialisation of punishment.

### *The Shift to Prison Profiteering*

In the US, prisons have blossomed since the 1970s in contrast to the reported decline in crime (Perkinson 2010, 11; 8; HRW 2012, 24). This shift

demonstrates an aspect of the modern utility of prison—how the turn to penal harshness has created a growth industry with lucrative conditions for economic gains, which is an uncomfortable rationale for mass imprisonment in the US (Grapes 1999).

In the US, the penal industry is a complex web of various economic interests seeking to profit from punishment and mass imprisonment. In the process, the idea of just punishment is sacrificed, with prisons as centres of job creation and economic revitalisation. These have become major “prime movers” in penal politics. According to Joel Dyer:

In the end, this market intrusion into the justice system means that politicians can simply divert tax dollars out of existing programs such as education, child welfare, mental-health care, housing, and substance abuse programs to repay the market and its investors for having put up the money to construct the prison facilities. If finagled properly, this diversion of funds does not require voters’ approval (Dyer 2000, 5, 13).

The growth of prisons together with their economic utility “defies recession” and prisons “function without competition” (Grapes 1999, 44).

For Christie, the emphasis on imprisonment reflects the development of the industrialisation of prisons in the modern era as the “crime control industry” (Christie 2000). Characterized by growth and expansion, every industry seeks raw materials to grow. In the case of the penal industry, the raw materials are prisoners. Christie argues that the concept of “crime control” has muffed into an uncontrollable “industry.” Crime is the “raw material” and prisoners are the economic units for the flourishing of the penal industry (Christie 2000, 23). According to Paul Wright, prison is an existing commodity, with a lucrative

marketable culture fulfilling a particular need for consumption. Its driving components are the millions under correctional supervision—probation, parole, former prisoners, with workers, and the machine of penal officers, bureaucrats and police who depend on the carceral population (Herivel and Wright 2006, 100). Supported by sentencing laws, social consciousness, institutions and law enforcement are established to protect and preserve the status quo. Mass incarceration is an indomitable penal development.

In analysing the shift to prison profiteering, I focus on the use of punishment and the economic utility of those punished. The link between longer sentences and incapacitation (Reiman 2012), the increase in prison construction (Herivel and Wright 2006), prison as means of job creation (Boscarato 2014) and profit making (ACLU 2011a) demonstrates the salient reasons for the dependence on imprisonment (Wacquant 2009a). According to Wacquant, “Incarceration thus presents itself as a prosperous industry with rosy prospects, and with it all those whose interests are tied to the great lockup of the poor in America” (Wacquant 2009a, 75-76).

I have decided to focus on two areas: Politics and economics: The former I associate with prison-based gerrymandering in the US, and the latter I associate with prison monetisation and its industrialisation. Both have influenced the prison growth industry (Huling 2002; Skocpol 2017) in the United States after 1970.

### Political profiteering and Prison-based gerrymandering:

In this section, I argue that prison-based profiteering is equated to prison-based gerrymandering. The bodies of prisoners are used as political and economic units in both practices. The goal is to demonstrate the use of prisoners for political gains in the American 'democratic' process. Prison-based gerrymandering is the practice of counting prisoners as residents of their incarcerated districts rather than of their districts or communities of origin in the US census process.

The U.S. Constitution stipulates that election districts be roughly equal in size for equal representation in the election process. Unfortunately, prisoners are counted to inflate the population numbers artificially, thus increasing the political clout of their incarcerated district at the same time as diluting the political power of all other voters. In the process, this undermines the Equal Protection Clause's one-person, a one-vote stipulation of the US constitution (Skocpol 2017; Ho 2011; Huling 2002).

In his 2010 testimony to Congress against prison-based gerrymandering, Peter Wagner testified that the Census Bureau usually contacts correctional facilities before the census to inform them of their procedure. Prisoners' names, gender, race and ethnicities are recorded in continuation of the process since 1790. These data are then used in the redistricting process to inflate the number of residents in districts with prisons, especially in rural and suburban districts where over 60% of prisons across the US are located (Skocpol 2017). The political benefits of counting prisoners as residents of their incarcerated

communities are immediately shown in the political clout of the prison districts over other non-prison districts. For instance, Wagner explains that:

One state legislative district in Maryland is 18% prisoners; a state legislative district in Texas is 12% prisoners, and 15% of one Montana district is incarcerated people imported from other parts of the state. As a result, when states rely on Census Bureau prison counts to draw districts, they inflate the weight of a vote in the prison district at the expense of every person in every district that does not contain a large prison (Wagner 2010).

The problem and the benefit are obvious in rural districts across the US. Take for instance the case of the district of Anamosa in Iowa “Where the state’s largest prison is located and where it constituted 96% of the city’s second ward. In 2005, there were no candidates for election, and the winner won with two write-in votes, one cast by his wife and another by a neighbor” (Wagner 2010).

Consistent with its historic goals, prison-based gerrymandering reflects the shift of political power. The consequence is reflected in the redistricting process. Prisoners cannot vote in these districts, but they are counted as residents. Also, they do not have any historical relationship with the districts except as imprisoned residents. Basically, “Most prisoners are in effect ‘ghost constituents,’ whose interests can be ignored by their representatives with little fear of electoral repercussions” (Skocpol 2017, 1484). Skocpol argues that “Prisoners thus become inert ballast in the redistricting process” (Skocpol 2017), upon which the political clout of the district depends. Prisoners are artificial residents.

Dale Ho notes that urban residents experience the worst socio-political and economic effects of prison-based gerrymandering due to their

disproportionate incarceration. Furthermore, “It enhances the political power of districts that house prisons, prison-based gerrymandering has real-world policy consequences by incentivising opposition to criminal justice reform that would decrease reliance on mass incarceration” (Ho 2011, 356). Prisoners are penally and politically disenfranchised since they are not represented in these legislative districts but treated as “representational fillers” (Skocpol 2017, 1485). According to Ho, prison-based gerrymandering “has specific and identifiable effects, transferring political power from certain types of communities—namely, urban districts and communities of color— to others—generally rural and predominantly white areas” (Ho 2011, 360). Prisoners are politically dead, and they cannot vote as felons, thus their political disenfranchisement (Manza and Uggen 2008). Inherently, prison-based gerrymandering signifies prisoners’ disenfranchisement. It illustrates how punishment is used to stratify society through the penal system. According to Legal Defense and Educational Funds (LDEF):

Prison-based gerrymandering uses a captive and disfranchised population that is comprised disproportionately of people of color to inflate the political strength of the surrounding jurisdiction. It is all-too reminiscent of the infamous ‘three-fifths compromise,’ whereby enslaved and disfranchised African Americans were counted to inflate the number of constituents—and thus, the political influence—of Southern states before the Civil War (NAACP Legal Defense 2010, 2).

LDEF has over the years argued that prison-based gerrymandering is a means of political disempowerment (Skocpol 2017, 1473). The concentration of prisons across the US is found in rural and suburban America. It shows how punishment

is used to enforce a “massive transfer of population from urban America to rural America” (Ho 2011, 361-2).

Caren Short contends that imprisonment prevents others from accessing the ballot box and enforces political disenfranchisement. Short demonstrates through four stages in American history attempts to disenfranchise Blacks through the penal system. (1) *The Klan stage* represented by overt terror and violent threats. (2) *The Dilution stage* represented by subtle political and penal practices to keep Blacks from voting. (3) *The Disenfranchisement stage* characterised by the use of literacy tests, property and poll taxes to disqualify Blacks from voting. (4) *The Lily–white stage* designed to prevent Blacks from holding political appointments (Short 2010, 909). For Short and the LDEF prison-based gerrymandering replicates patterns of historically disenfranchising Blacks through the penal system.

Similarly, Leah Sakala notes that prison-based gerrymandering is akin to the political gains associated with the three-fifths clause. Historically, it was a political compromise at the Constitutional Convention of 1787 that slaves be counted as three-fifths of a person in Article 1, Section 2 of the US Constitution of 1787. However, the use of the three-fifths compromise has historical antecedents that predate the immediate enactment of the compromise proposed by the Southern delegates of slaveholding states at the convention. Sakala explains:

The three-fifths clause had the effect of using slave population numbers to artificially beef up the political power of the Southern, white, property-owning voters who were invested in maintaining and

expanding the slave system. But the problem with the three-fifths clause wasn't that the slaves were counted as only a fraction of a person. After all, since their "political clout" went right into the hands of the very people who exploited them, the political distortion would have been even greater had they been counted as full people (Sakala 2011).

They used slaves to inflate the political clout of their owners at the same time as denying them the right to vote. She further contends that prison-based gerrymandering is a means of "stripping" prisoners of their political rights. The prisoners' "political clout is essentially handed through the bars to the real residents of the community that contains the prison, giving certain people more political say simply by their residential proximity to a large prison" (Sakala 2011). Thus, prison-based gerrymandering manipulates communities and enforces the concepts of civil death in civil society (Skocpol 2017, 1489).

The shift to penal harshness and its production of mass incarceration makes prison-based gerrymandering in the US less likely to change. According to Tracy Huling,

This massive penetration of prisons into rural America portends dramatic consequences for the entire nation as huge numbers of inmates from urban areas become rurally resident for the purposes of Census-based formulas used to allocate government dollars and political representation (Huling 2002, 8).

Huling also argues that mass incarceration has economic benefits, which increase its attractiveness. Penal harshness and mass imprisonment not only render political power to prison districts and politicians, but they are also means of economic advancement and wealth creation for prison districts,

individual workers in the prison industry, prison corporations and service providers.

### **3.8 Economic profiteering: Prisoners' Monetization**

Economic profiteering and prisoners' monetisation refer to the utility of the bodies of prisoners as economic units in the prison industry (Dyer 2000, 17). In other words, prisoners' monetisation describes a situation remarkably sustained by the shifts to penal harshness as a form of Lockean punishment also responsible for the increase in the ageing and death of prisoners (Kilgore 2015).

The prevalence of prisoners' monetisation demonstrates the shifts to penal harshness and how it undermines the claims for just punishment and public safety. The economic value of prisoners is measured by the over 2.2 million persons incarcerated in prisons across the US and over 20 million under some form of correctional supervision. Furthermore, the shifts to harsher sentencing laws sustain and normalise these numbers. Like the interests of political profiteering, economic profiteering and prisoners' monetisation demonstrate the links between imprisonment, financial interests and Lockean punishment.

The penal industry cannot be limited to the boom of prison privatisation (Liebling 2004). While the goal of a private prison is profit, I define the penal industry as an entanglement of other industries including the service, security, food, high tech, communication, clothing and medical industries with other sectors and businesses that find punishment a lucrative platform for profit. This

development in the expansion of the economic utility of prisons and prisoners fuelled by penal harshness demonstrates the continuous “changing nature” of modern penal institutions from rehabilitative models in several ways to economically utilitarian models (Grapes 1999).

In the US, the economically utilitarian model of punishment has normalised with prisoners paying for their time of imprisonment, i.e. the fee system (Herivel and Wright 2006; Schlosser 1998) and enormous profit made from prison telephone calls (Human Rights Defense Center 2013).

Under this section, I will focus on two areas of economic profiteering in the prison industry: prison telephone calls and their charges, and prison privatisation.

### *Private Prisons*

Private prisons operate at the intersection of penal harshness, mass incarceration and the industrialisation of punishment. The shifts to prison privatisation also centre on cost reductions and savings, efficiency and positive management results. According to Liebling:

The reasons for the (re)introduction of privatisation vary slightly between countries but they include: escalating prison costs; escalating prison population; deteriorating regime conditions; growing impatience with powerful unions; some aspiration to improve the quality of prison regimes; and, in the USA, lawsuits (Liebling 2004, 97).

The public believes that punishment is the responsibility and function of the government. Furthermore, it is the government that punishes criminals, not the private sector. According to Elaine Genders, private prisons should be

accountable based on the values of adequate “provision,” “management,” and “administration.” She writes: “Adequate evaluation must adopt a binary approach; one that takes on board normative debates about whether it is legitimate to delegate the task of punishment to private organisations and an empirical investigation into its efficacy” (Genders 2013, 26).

Private prisons are for-profit prisons (Bender 2000). They depend on contracts with governments to provide beds for inmates (Hartney 2012). Two of Americas’ biggest private prison corporations, Correction Corporation of America (CCA) and GEO Group, are worth \$70 billion (Whitehead 2015, 1). Private prisons control over 6 per cent of state prisoners in America and 16 per cent of US federal prisons, but the numbers are rapidly increasing, with private prisons running local jails in Texas, Louisiana and other states (ACLU, 2015). Comparatively, the US and the UK have the highest number of private prisons in the world (McDonald 1994). Anita Mukherjee argues that it is in the interest of private prisons to keep prisoners longer than public prisons. She notes:

Private prisons increase a prisoner’s fraction of sentence served by an average of 4 to 7 percent, which equals 60 to 90 days; this distortion directly erodes the cost savings offered by privatization. Prisoners in private facilities are 15 percent more likely to receive an infraction (conduct violation) over the course of their sentences, revealing a key mechanism by which private prisons delay release (Mukherjee 2015, 1).

The introduction of prison privatisation into the modern penal systems reflects the increasing development of the monetisation of punishment. Modern prisons have become large centres of job creation, economic revitalisation and workforce recruiters (Liebling 2004, 169). According to Wacquant, the US

“added 1 million employees to its payroll between 1980 and 1995 including 400,000 in prisons and jails, to approach a grand total of 2 million” America’s prison system became the “fourth-largest employer” (Wacquant 2009a, 69) in 1995. These numbers have increased over the years, taken into consideration the use of prisons as means of the economic revitalisation of de-industrialised areas. Wacquant notes:

This is why countless local authorities, desperate to stimulate job creation in depressed counties, have vied to offer public and private prison operators alike attractive incentive packages, including government-issued debt securities, property tax abatements, investment tax credits, infrastructural modifications (water, sewer, and utility hook-ups, access roads, etc.), job training grants, and construction help (Wacquant 2009a, 75-76).

Prison profiteering as prison-based gerrymandering and economic profiteering as prisoners’ monetisation signal the need for moral and ethical indicators.

## **Conclusion**

The shifts to penal harshness and its production of mass incarceration in several ways replicate the objectification of the economic motive of Lockean slavery and the convict leasing system in the US. They served as the precursor to the phenomenon of mass incarceration understood as that which treats the convicted as undifferentiated members of a mass rather than as persons.

In this chapter, I have argued that punishment in the 21<sup>st</sup> century cannot be isolated from the practices and ideologies of Lockean slavery. In Locke, we see the argument for the establishment of a racial, social caste system

(Alexander 2010). Lockean slavery advocates slavery *ad infinitum* as defined in the punishment clause of the Thirteenth Amendment, which fundamentally remains a penal continuation of slavery in the 21<sup>st</sup> century. I argue that the transition from Lockean slavery to Lockean punishment provides a cogent foundation for interpreting the ethos and praxis of the US prison culture and its mass incarceration of Blacks, poor Whites, and Hispanics after 1970 as prison chaplains have witnessed these turns over the years.

In the next chapter, I argue that the United Kingdom's penal systems: Scotland, and England and Wales exhibit evidence of mass incarceration considering the punitive turns in their penal systems. While largely contextual, the shifts to penal harshness in the UK are fundamentally similar to the US as we shall in Chapter 4. The cumulative influences on ageing, dying and death of prisoners reflect deep affinities in the US and UK prison cultures. These penal developments are descriptive of the background in which prison chaplains function on a daily basis.

## Chapter 4: UK Context: Scotland, England and Wales

This chapter describes the factors associated with the shifts to penal harshness in the US and the UK considering their production of the increases in prisoner deaths after the 1970s. The United Kingdom's penal systems have produced increases in the prison population relative to the general population. These shifts are characterised by punitive turns from rehabilitative sentences to incapacitation, stabilising growth in the prison population, prison building, and the penal industry informed by social and economic policies of the 1980s and 1990s. The chapter demonstrates how the factors responsible for the increase in the UK prison population are both similar and dissimilar to the US. For Scotland, I have decided to focus on the relationship between poverty, the poor and incarceration. It does not dismiss other areas of penal change. However, by focusing on the disproportionate rates of incarceration of especially poor Scottish men, I also want to demonstrate how the shifts to penal harshness have targeted those economically and racially marginalised. On the one hand, distinctions exist between the penal structures, policies and practices of Scotland, and England and Wales. On the other hand, a lot of similarities exist between the penal systems of Scotland and England and Wales.

According to Cyrus Tata, "there really is no such thing" as "UK criminal justice' or 'UK sentencing" because "Scotland's legal system is independent of the rest of the UK" (Tata 2013, 234). Sheriffs hear criminal cases with legal

training in Scotland with no appeal to the semblance of a federal penal system. Appeals regarding criminal laws and justice are addressed in Scotland. Instead, Tata argues in 2013, “Scottish policy has largely sought to coax, enable, and persuade sentencing judges to choose to adjust their decision-making” as a “voluntary and permissive approach” (Tata 2013, 233). Though Scottish sentencing distinctiveness is highlighted in contrast to England and Wales, Tata acknowledges that shared penal issues exist between the two nations (Tata 2013). For example, the role of the UK Parliament which includes the power to alter the welfare system and the role of the UK as a signatory member of the European Union and Council of Europe. These, Tata notes, “can have profound influences on Scots criminal law, procedure, and justice” (Tata 2013, 234).

Concerning adopting any sentencing guideline in Scotland, he concludes that “the approach remains relatively weak, limited, and ad hoc” (Tata 2013, 235). In England and Wales, lay magistrates or judges hear cases and the Supreme Court hears appeals (Tata 2010). Similarly, the United States, England and Wales have sentencing guidelines stipulating mandatory minimum sentences. However, unlike in the US, the UK does not have a federal system.

#### **4.1 Shifts to Penal Harshness and Mass Imprisonment**

David Downes criticises mass imprisonment in the US as inherently related to market economies, growth and ultimately to “American exceptionalism.” Capitalism and its global attractions are correlatively

criminogenic as well as highly punitive. He argues that American exceptionalism is first penological and crime-oriented (Downes 2001, 60). It produces conditions of economic inequality and disparity, thus establishing the argument that mass incarceration is catastrophic in the US with far-reaching implications. Downes provides four ways the American penal system distorts the practice of punishment: (1) By promoting a false sense of penal success and economic growth through “stabilisation” and reduction in crime because of mass incarceration. “The fact that the economic growth is despite, not because of, the prison explosion may be swamped in the rush to buy into its apparent success” (Downes 2001, 73) (2). The collateral consequences of imprisonment led to an increase in recidivism and “criminogenic effects” (Downes 2001, 73). (3) The popularity and normalisation of imprisonment. (4) The existence of a “machoness” associated with the American penal system supported by mass incarceration (Downes 2001, 74). Downes concludes with a warning to the rest of Europe. He writes:

Europe has to withstand the American example! It is improbable that it will become like the US in the future. The latter has given them too bad an example of what a failure can look like. One can only hope that this is indeed to be the case. But the burden of this analysis is that the components of a steep rise in imprisonment in Europe, especially in Britain, have been assembled (Downes 2001, 74).

The penal shifts in the UK are not as dramatic as in the US. However, the UK has the largest prison population in Western Europe and in proportion to its general population that is dramatic. (Allen, Audickas and Watson 2017, Allen and Watson 2017).

In 2014, the Council of Europe annual report on penal statistics concluded that the UK's had 95,248 individuals incarcerated. Citing the same report, Home Affairs Editor for *The Guardian* Alan Travis points out that

The appetite for incarceration in Britain is underlined by the number of prisoners per 100,000 population, which stands at 149.7 for England and Wales and 147.6 for Scotland, compared with 118 for France and 81.4 for Germany ... But it does have the highest population of prisoners serving life sentences: 7,468 in England and Wales and 1,010 in Scotland ... The proportion of those prisoners is also higher in Britain at 10% compared with a European average of 3%. This reflects the much-reduced use of indeterminate sentences in the rest of Europe (Travis 2016).

Experts have argued that the prison population of the UK has normalised with the potential to decline.

However, in 2017, it was reported by the *UK Prison Population Statistics* (UK PPS) that the UK prison population continues to increase if jurisdictional reports are considered. It explains:

As of Friday 31st March 2017, the total prison population in England and Wales was just over 85,500. In Scotland, the prison population was just under 7,700 as in the 2015/16 annual report (latest data). For the 2015/16 financial year, the total average daily prison population was just under 1,600 in Northern Ireland. There is a general underlying trend of an increasing number of people held in prison (Allen and Watson 2017, 3).

According to the July 2018 UK PPS report, UK current prison population is approximately 92,500. Demographically, there were 83,430 prisoners in England and Wales by the end of May, 7,595 prisoners in the Scottish Prison Service by the end of June and 1,475 prisoners in Northern Ireland by the end of March (Sturge 2018, 3). The report notes that: "There is a general underlying, increasing trend in the number of people held in prison" (Sturge 2018, 3). About

the general population of each country, the report “calculates the number of prisoners per 100,000 people in the general population.” The most recent result shows:

- 179 prisoners per 100,000 of the population in England and Wales in 2017
- 166 per 100,000 in Scotland (2016/17)
- 98 per 100,000 in Northern Ireland (2016/17) (Sturge 2018, 4).

The above reports indicate fluctuation in the prison population of the UK.

However, what is indisputable is the fact that like the US, the UK is facing a penal crisis considering its prison population. The causes are penal, social, economic and political.

According to Farrall et al., the UK’s rising prison population is primarily due to economic and socio-cultural situations and policies. They argue that Prime Minister Thatcher’s economic and social policies created increased “social disruptions” for economically marginalised families, individuals and communities reflected in high rates of unemployment, economic inequalities as criminogenic factors (Farrall et al. 2017, 220-221). They explain that the rises in crime in the UK in the 1980s and 1990s were due to anomic political and economic policies and their conditions rather than criminogenic behaviours. “We argue, with regards to the UK’s experience during the 1980s, that the lower social strata were most affected by the social and economic changes unleashed by Thatcherite policies” (Farrall et al. 2017, 224). These conditions produced punitive penal climates with the rhetoric of tough on crime. Farrall et al. note: “In this respect, crime ought to be seen alongside other dramatic social

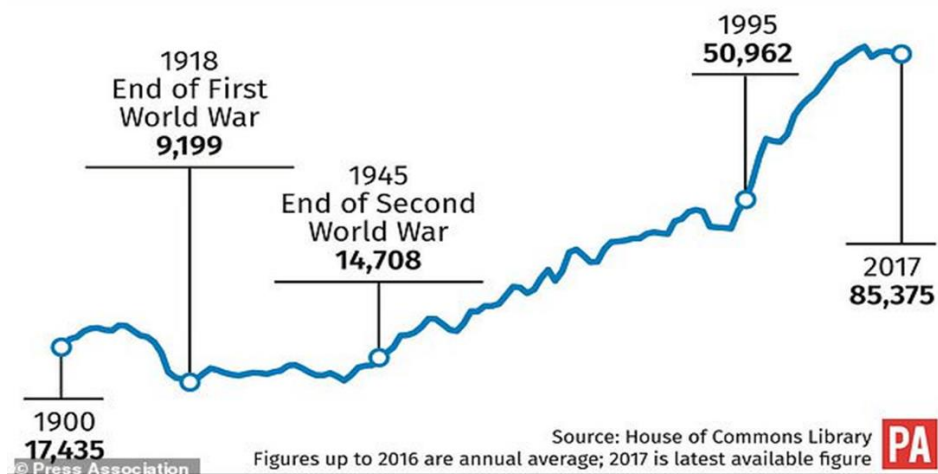
developments, such as rises in the rates of suicide, divorce, drug overdoses, teen pregnancy, and child poverty” (Farrall et al. 2017, 235). These socio-economic and penal developments of the 1980s and the 1990s in the UK established the premise for understanding the shifts to penal harshness and the prison culture for prison chaplains. Furthermore, penal punitiveness produced conditions of penal “crisis” (The Howard League 2009) responsible for the increase in the prison population along with the present conditions of civil and physical death for UK prisoners.

#### **4.2 England and Wales: Shifts to Penal Harshness**

According to the Howard League, disconnect exists between the crime rates and the immediate increase in the prison population in England and Wales. The report emphasises the dramatic increase in the penal population of England and Wales since the 1970s. The conclusions in the Howard League’s investigation are corroborated by subsequent findings from the Prison Reform Trust (PRT) in 2015. The PRT reports that England and Wales have experienced an increase in prison population between 1993 and 2014 of over 40,000 inmates (Prison Reform Trust 2015a, 1). It argues that prisoners in England and Wales are serving longer sentences. The average prison sentence has increased by three months, with a 66% rise in the prison population due to the increased use of longer custodial sentences (Prison Reform Trust 2015a, 2).

According to UK PPS, “Prison sentences were longer in 2018 than in 2010, with 46% being over four years compared with 33% in 2018” (Sturge 2018, 4).

## Prison population in England and Wales



Based on the chart above, the prison population in England and Wales was higher in 1900 (17,435) than the prison population in 1918 (9,199) and 1945 (14,708). Furthermore, in 50 years— between 1945 and 1995 (50,962), the prison population of England and Wales increased by 36, 254 prisoners—an increase of 55%. However, in 22 years, between 1995 and 2017 (85,375), there was an increase of 34,417 prisoners—i25%. This research suggests that the phenomenal increase in the prison population in England and Wales between 1945 and 1995, and particularly between 1995 and 2017 can be attributed to the turn to harsher penal policies and incapacitation in the penal policies of England and Wales after 1970. Among the transformation in the penal culture have been the increased use of imprisonment, the use of prisons as resource centres for

welfare benefits, and healthcare especially for marginalised individuals. The Howard League has referred to the problem as a “crisis of excess.” It explains that the passing of penal legislation without due regard for the socio-economic and existential impacts have caused the growth and normalisation of the prison population.

England and Wales has become a jurisdiction which punishes excessively, harshly and with little attention paid to the relationship between legislation and impact on prison numbers. Prison has become the defining tool of the punishment process, and we now imprison more of our population than almost any other country in Western Europe (The Howard League 2009, 6).

The report describes the extreme use of prison as an “expansionist trajectory” and calls for “restraint” as part of the penal discourse. It is a discourse that ought to be conceptually and philosophically “grounded in first principles and which places the humanity of victims and prisoners at center stage” (The Howard League 2009, 7). It further contends that a concept of “penal moderation” is worth considering as an alternative to the full-scale use of prison as the ultimate means of punishment and the only option. “Its use must even then be administered only in strict proportion to the harm done and with the aim of reducing the likelihood of exacerbating that harm” (The Howard League 2009, 7).

An additional contention of the report is that “prison fails to reform.” Mere imprisonment is counterproductive to just punishment. Considering the evidence gathered internationally, the report argues that as a remedy to social ills, prison is a “perennially failing institution” that “fails to deter, fails to assuage public

concern and fails to make communities safe. Prisons can do great harm to individuals, to communities and to society” (The Howard League 2009, 1.1). The Howard League notes that the pursuit of imprisonment regardless of the present evidence is a hopeless pursuit in criminal justice reform. They based their argument on what they regard as “criminal justice hyperactivity” reflected in the creation of over 3,000 new criminal offences and the passing of 23 criminal justice act since 1997. This enormous increase in criminal offences starkly contrasts with the enactment of 6 criminal justice acts over a period of 60 years from 1925 to 1985. Since crime is not the fundamental reason for the increase in prison population, the situation instead “represents a wholly misleading but powerful declaration that the protection of the public and the prevention of crime are best addressed by greater punishment and more imprisonment” (The Howard League 2009, 1.5). The turn to penal harshness one may argue, precedes the contemporary ideology associated with punishment. While one cannot equate the penal developments in Britain to the US, they nonetheless reflect a shift towards harshness in punishment that prevails in both penal systems.

The report notes that prisons do not reduce reoffending:

Despite all the criminological evidence, which demonstrates the multiple failures of prison as an institution, the government has proceeded with the most extensive prison expansion program in UK history. During the work of this Commission, the spectre of ‘Titan’ prison loomed large. The government was intent on building 20,000 new prison places by 2014 (The Howard League 2009, 13).

In what follows, I trace the social and penal developments in England and Wales towards penal harshness and a disproportionate increase in the prison population since the 1970s.

### *Victorian Incarceration and Mass Incarceration in Britain*

In the early 1600s, Britain adopted the practice of “transporting” convicts to the American colonies. It developed the practice as a way of putting prisoners to use as well as generating income for the British Empire. According to Christopher Harding et al., “Transportation of felons on a voluntary basis was mooted in 1611, and the first convicts were sent to Virginia in 1615” (Harding et al. 1985, 65). The practice of transporting convicts to the American colony established the grounds for the internationalisation of penal practices and policies between the UK and America. It reflected the use of prisoners for cheap labour as well as slave labour.

By 1650, few prisoners were transported, but that changed when Charles II became King. The practice was revived, with approximately 5000 prisoners transported to the Americas (Harding et al. 1985). Garland contends that there was another motive associated with the transportation of convicts: “Pioneered by merchant shippers, those who had committed offences were taken to the American colony at low cost in exchange for the right to auction them off into limited-term slavery to the cotton and tobacco plantations” (Garland 2001b, 28).

Britain overruled resistance from Virginia and other states to the practice. Convict transportation was ruled “legal ... by an act of 1717, which made it the

stated penalty for certain offences,” (Harding et al. 1985, 65). Harding argues that despite the war, the practice continued up to 1785. With its demise, Britain began to sentence convicts to local prisons. Punishment returned to the control of the government (Harding et al. 1985, 111). According to Garland, the shift to punitive sentences in the UK started in the Victorian era.

The main penal sanctions which were legally authorised in the late nineteenth century for the punishment of offenders were (1) death, (2) penal servitude, (3) imprisonment, (4) detention in a reformatory school, (5) corporal punishment (whipping for adults, birching for juveniles), (6) release on recognizances, and (7) payment of a fine. In addition to these, though not strictly classed as a punishment nor restricted to offenders, was (8) detention in an industrial school (Garland 1985, 6).

While imprisonment was one of the modes of punishment, Garland intimates that in several ways, the use of imprisonment became inevitably familiar, especially for adults. With the establishment of the Prison Act of 1877 in Britain, which mandated the centralisation of prisons from local jurisdictions, imprisonment became more critical both politically and penologically (Garland 1985, 10). The notion that criminals were criminogenic contributed to the development of the carceral consciousness (Garland 1985, 10, 13). They defined crimes as “The outcomes of individual choice and volition on the part of human subjects. Criminals differed from non-criminals only in the contingent and non-essential fact of their law-breaking” (Garland 1985, 14).

The prison population of the Victorian era consisted of individuals from the most marginalised sectors of society. “Criminals” were economically

marginalised individuals from poor communities. Class, economics, communities and education stratified prisons and prisoners. Garland notes:

By the 1880s, individuals who wound up in prison tended to be drawn from the same families and neighbourhoods, and to return again and again, while large sectors of the working population displayed the behaviour of well-disciplined moral subjects (Garland 1985, 38).

The incarceration of economically marginalised communities became pivotal to prison overcrowding and eventually mass imprisonment. The practice of “containment and quarantine” of so-called criminals arose in association with the labels of perpetual “criminality” and habitual offender laws (Garland 1985, 39). “Excluded by laws and property, marginalised by the labour market and political forces, this class stood outside respectable Victorian society, devoid of social attachment and the constraint it entails” (Garland 1985, 40). They were described as dangerous and demoralised individuals who only needed to be contained. These descriptions of offenders worked well for institutions and “defined in the ideologies of the ruling bloc” (Garland 1985, 41) led to increases in the incarceration of the poor and racially marginalised.

Dockley and Loader report that the penal system of England and Wales has more recently experienced a “punitive turn.” Three major penal developments since the 1980s responsible for the punitive turn in England and Wales are, he argues: (1) enduring *crisis*; (2) a “regime of permanent revolution;” and (3) the “ongoing expansion” of the prison population and increasing penal control with no reversal in sight (Dockley and Loader 2013, 1).

From 2001 to 2011, there was an increase of 30 per cent in the prison population. The salient factors are changes in sentencing laws and “wider economic, social and cultural transition named ‘late modernity’” (Garland 2001) or as an “integral component of the political project of neo-liberalism” (Wacquant 2009b). Dockley and Loader identify England and Wales as “punitive outliers among western democracies (Dockley and Loader 2013, 3). The following shifts in the penal system of England and Wales reflect patterns associated with shifts in the US penal system, beginning with the poor and the welfare system.

#### *The Shift from Determinate to Indeterminate Sentences*

This analysis begins with an explanation of the concept of discretionary justice in England and Wales. “Sentencing” in England and Wales is complex due to its discretionary nature. “Discretionary” sentencing has inversely contributed to an increasing prison population. According to Padfield, extended sentences like “2 + 5, means that, under the current version of the law, the sentenced person will, like others, come out of prison on licence after one year (at half time) but he or she is liable to recall at any stage” (Padfield 2013, 97). They are at risk of spending their community supervision in custody. Padfield bemoans the fact that England and Wales lack accountability regarding “when to impose consecutive or concurrent sentences; the totality principle; the role of previous convictions” (Padfield 2013, 98).

The US and England and Wales have mandatory minimum sentences. However, unlike in the US, judges in England and Wales have discretionary

power in the sentencing process. It is a significant distinction. Notwithstanding, mandatory minimum sentences in both countries have led to increases in their respective prison populations. Judges in England and Wales have discretionary rights to sentence offenders including to prison, rehabilitation, fines and reparation, risk management or public protection (Padfield 2013, 98; Prison Reform Trust 2014b).

Furthermore, sentencing guidelines constrain the discretionary power of judges in England and Wales. Not, necessarily towards the reduction in the prison population. According to Padfield, sentencing in England and Wales is a complicated matter influenced by complex laws and court sentencing procedures. England and Wales have mandatory sentences for murder but also “repeat Class A drug dealing.” Padfield notes that:

There are many statutory rules (for example, section 143(3) Criminal Justice Act 2003, which provides that it is mandatory to treat commission of an offence on bail as an aggravating factor in assessing the seriousness of that offence, or section 144 Criminal Justice Act 2003, which is the current formulation of the discount for guilty pleas) (Padfield 2013, 94).

This complexity in sentencing is influenced by the “guidance from the Court of Appeal,” Padfield contends. It is in addition to the “guidance from the Sentencing Council,” which the Coroners and Justice Act 2009 established. For example, the “custody threshold” is a “dangerous concept” (Padfield 2013, 96). It leads to a “false sense of security” and rigidity in sentencing by judges (Padfield 2013, 96). Take for instance the wordings for extended sentences:

*Having decided that the risk you present to the public is great even though the actual harm caused on this occasion was relatively low, I*

*shall impose on you an extended sentence, made up in this case of a custodial period of two years, and an extended period of supervision in the community of five years* (Padfield 2013, 97).

In 2009, the Ministry of Justice produced a list of new offences and sentences. Mandatory minimums issued for threats with knives: six months for adults and four months for 16 and 17-year-olds), added to the mandatory minimums designed by the Labour government since 1997. Before then, only one mandatory minimum existed in England and Wales, which was for murder, passed after the 1965 abolition of the death penalty (Bell 2013).

A recent report indicates that prisoners in England and Wales are serving longer sentences. According to the 2018 UK PPS report:

As at the end of March 2018 the most frequent length of sentence being served was a determinate sentence of over 4 years. Around 46% of the sentenced population were serving this length of sentence. About a quarter of prisoners were serving sentences ranging between 1-4 years and around 14% had indeterminate sentences (Sturge 2018, 7).

There has been a reduction in parole. Before the 1990s, inmates could be eligible to apply for parole after serving one-third of their sentence. Today, prisoners can be eligible for parole having served half their sentence but will be “released on license” and placed under special supervision after serving their full-term on parole. It is in contrast to the prior arrangement under which they were automatically released after serving two-thirds of their sentence (Bell 2013).

Furthermore, the penal system of England and Wales has seen a dramatic increase in the number of indeterminate and extended sentences

especially affecting the number of releases for “lifers and those serving IPP even when they are post-tariff” (Padfield 2013, 96). Three-quarters of people serving an Imprisonment for Public Protection (IPP) sentence were, at the time of the writing of the PRT report, in prison, despite having passed their tariff expiry date—the minimum period they must spend in custody. Many have been held years beyond their tariff (Prison Reform Trust 2015a, 2).

Penal developments have increased the prison population in England and Wales. In the next shift, I will look at two major criminal justice decisions in England and Wales that immediately increased the prison population, before they were discontinued, but not retroactively.

#### *The Shift to Tough on Crime and Penal Harshness: ASBO to IPP*

In 1998, the Crime and Disorder Act was passed. Its goal was to target what is considered “anti-social” offences. The immediate effect was an increase in long-term imprisonment with an increased prison population. The act came with new civil penalties: Anti-Social Behavior Orders (ASBOs). One obvious result of ASBOs has been the increasing rate of incarceration of those socio-economically marginalised with “increased surveillance and coercive attempts” (Bell 2013, 59). ASBOs were very problematic and certainly indicative of a shift to severity in the penal climate in England and Wales.

Reductions in social intervention programs led to increased emphasis on incarceration as charges for delinquency increased (Bell 2013). Offenders from

economically disadvantaged communities faced more prison time compared to other groups. According to Andrew Millie:

Between 2000 and 2009, 59 per cent of adults who breached their ASBO were given custody. This represented over 4,000 people entering an already overcrowded prison system ... While 46 per cent of 10-17 years olds received a community sentence as their maximum penalty, 40 per cent received custody for breach of their ASBO. This amounted to over 1,300 young people entering custody (Millie 2013, 71).

ASBOs originated with the Public Order Act of 1986 but without the inclusion of “antisocial behaviour” until 1996, when it emerged in the Housing Act “where it was equated with ‘nuisance or annoyance. For New Labour’s Crime and Disorder Act 1998, antisocial behaviour had become mutated into ‘harassment, alarm or distress” (Millie 2013, 66). Millie puts antisocial behaviour into three categories: (1) “interpersonal or malicious” (such as threats to neighbours or hoax calls); (2) “environmental” (such as graffiti, noise nuisance or fly-tipping); (3) “Restricting access to public spaces” (such as intimidation by groups of young people on the street, aggressive begging, street drinking and open drug use) (Millie 2013, 66). She contends that “Indeed, by the mid-2000s Britain was described as an ‘ASBO Nation”” (Millie 2013, 64, 65).

By 2013, ASBOs were legislated for anyone aged 10 and above, with criminalising implications. ASBOs is a combination of both “civil” and “criminal” disorder. Designed with the intent to stop any antisocial behaviour in the future; certain “restrictions” were imposed on the liberty of violators. They included bans on visiting certain streets, on whom to befriend, on using designated public transportations, and curfew restrictions (Millie 2013, 70). To establish his point,

Millie quotes the European Commissioner for Human Rights analysis of ASBOs, which declares that “Such orders look rather like personalised penal codes, where non-criminal behaviour becomes criminal for individuals who have incurred the wrath of the community” (Millie 2013, 70). Breach of these “personal penal codes” often resulted in 5 years imprisonment for adults and up to 2 years of detention and training centre for anyone under 18 (Millie 2013, 70).

In their original design, ASBOs were established to rehabilitate offenders, especially the younger ones. The Support Order (ISO), developed after the Criminal Justice Act 2003, was to provide such support especially for those between the ages of 10 and 17. Yet Millie explains, “Since 2004, only 11 per cent of ASBOs granted to those aged 10-17 have had an ISO attached” (Millie 2013, 71).

An ASBO is a form of criminalisation that mostly perpetuates itself as “antisocial behaviour.” The lack of distinction between “serious criminality” and simply “antisocial behaviour,” and the criminalisation of every antisocial behaviour, “criminalises the comparatively trivial yet also trivialises the seriously criminal... It trivialises serious crime. Conversely, the response to more frequent but less serious cases of antisocial behaviour may become ever more punitive” (Millie 2013, 72, 73).

Bell argues that “While imprisonment for breach of ASBOs has not been a principal driver of the prison population, it is certainly a small factor: in 2010, 52.5 per cent of all those who breached their ASBO received a custodial sentence, whilst only 1.9 per cent were discharged” (Bell 2013, 63). Like

ASBOs, which contributed to increases in the prison population, IPP faced its form of criticism.

*Imprisonment for Public Protection (IPP)*: Another landmark in the sentencing history of England and Wales was the passing of the Imprisonment for Public Protection (IPP) law. IPP was England and Wales' expression of "tough on crime, tough on the causes of crime" action (Annison 2015) against the assumption that the Labour party was "soft on crime." It was initially introduced to replace a similar mandatory minimum life sentence created under the Crime [Sentence] Act 1997 for those convicted of their second violent or sexual offence and those deemed a risk to public safety. It eventually transformed into being tough on criminals, in contrast to its previous goal of being tough on crime.

IPP ended with the passing of the 2012 Legal Aid Sentencing and Punishment of Offenders Act, but this was not retroactive. It left over 4000 prisoners still in custody serving IPP sentences. According to Bell, "Between 2005 and 2011, just 320 IPP prisoners were released. As of 31 December 2011, there were 6,162 offenders in prison serving an IPP sentence" (Bell 2013, 62).

Although discontinued, Harry Annison explains that its effects "continue to reverberate" (Annison 2015, xi) as an essential penal development in England and Wales:

This is the case both in terms of what it represents (the rise of preventive sentencing and risk-oriented penal policy) and in terms of its effects (including a dramatic rise in the indeterminate prison

population and fundamental changes to the demands on and practices of the Parole Board (Annison 2015, xi).

IPP created crowded prisons, with an increase in IPP offenders, serving time disproportionate to their crime with a decline in access to resources for rehabilitation and desistance while dealing with the stigma of being “dangerous” (Annison 2015). The Legal Aid, Sentencing and Punishment of Offender Act introduced the “two-strikes” mandatory life sentence for those aged over 18 and convicted for a second time of certain scheduled offences as laid out in the Criminal Justice Act 2003, which are deemed severe enough to justify a sentence of ten years or more. IPP established the conditions for the emphasis and continuity of the shift towards penal harshness in England and Wales.

Both ASBOs and IPP targeted juveniles and adults who were poor and racially marginalised. ASBOs and IPP introduced many of them to the penal system for the first time, and they have never left. The prison experience left them attached to the correctional system indefinitely.

### *The Shift to Harsh Economic Policies and Penalty*

According to Farrall, radical economic policies associated with housing inequalities, decline in social benefits and the political rhetoric of “tough on crime” has led to increased emphasis on imprisonment in Britain. Furthermore, negative economic conditions have increased criminogenic activities in communities and individuals confronted with economic challenges (Farrall 2013, 12). In England and Wales, there are more economically disadvantaged

individuals. Radical economic policies of the 1970s and 1980s are responsible. For Farrall, “the current ‘imprisonment binge’ owes much to shifts in the economy rather than any sustained thinking on appropriate responses to crime” (Farrall 2013, 11). Crimes, he argues, are also contextually induced by changes in housing policies, social security provision, economic recession, reductions in welfare provision, and education and school exclusion policies and practices (Farrall 2013, 12).

Furthermore, crime is a result of increased inequality from 1985–1990. Farrall states, “Between 1977 and 1980 unemployment amongst black people in Bristol (the scene of a riot in April 1980) had doubled, whilst it had declined for white people” (Farrall 2013, 14). He contends that Thatcher’s economic radicalism led to increased rates of unemployment and social inequalities. Concerning the housing, it led to the concentration of economically disadvantaged individuals in particular geographical locations with increases in criminal activities. Thatcher’s economic radicalism created conditions of “social inequality”, and “social polarisation.” They were responsible for the radicalisation of penal policies and the stigmatization of the poor (Farrall 2013, 15).

In 2017, Farrall et al. argued in their study that the social and economic changes of the 1980s and 1990s produced shocks “in terms of socio-economic processes” that were “associated with crime at the collective level” (Farrall et al. 2017, 222). These changes not only produced what they refer to as “social storms” but “economic storms” that had both immediate and long-term effects. Methodologically, social storms also provide “integrated analytical frameworks”

by which the long-term effects of social and economic policies on communities can be measured. Farrall et al. note, “The idea of a social or economic ‘storm’ is premised on the sense that key social and economic processes are becoming increasingly unstable and that these ‘storms’ result in a widespread sense of anomie and dislocation” (Farrall et al. 2017, 225). These economic and social changes also produced adverse conditions and “structural-level processes” which “blocked legal opportunities for advancement, so (some) individuals turn to illegal activities to achieve success/status or express their frustration at being blocked through criminal behaviour” (Farrall et al. 2017, 223). They argue that “social distress, harm, dislocation, and the weakening of norms and social ties” help to define social storms (Farrall et al. 2017, 226).

Farrell et al. contend that the indicators of social storms characteristically “provide a distinct signal of social stress and disruption, and changing norms and breakdowns of control, community or family cohesion, that may result from economic change and restructuring, and which may, in turn, impact on deviance” (Farrall et al. 2017, 228). Between 1971 and 2011, economically marginalised families and communities experienced the stress of economic storms in high rates of: unemployment, income inequality, housing repossession, poverty, the decline in earnings, and the decline in benefits (Farrall et al. 2017, 231). Government policies may create social and economic storms, which disrupt societal structures. “Changes in the economic arrangements in England and Wales was the driver of *both* the increases in the crime rate witnessed in the 1980s and the acceleration of the processes of

social change which so concerned New Right thinkers of the time” (Farrall et al. 2017). While social storms could be solely responsible for the crime, economic storms often influence social storms and disruption, leading to crime and an increase in criminal behaviour.

Farrall’s assertion of a link between economic inequality, crime and imprisonment can be interpreted as a British version of Beckett and Western’s conclusion that the increase in crime and imprisonment in the US before 2000 is attributed to a decline in welfare benefits and the stereotyping of welfare recipients. The shifts to radical penal harshness also led to increases in the criminalisation of the poor, the racially marginalised, and forfeiture of necessary economic rights for formerly incarcerated individuals. Hinton argues that these developments are fundamental causal factors in the normalisation of mass imprisonment in the US (Hinton 2016).

### *The Shift to Inherent Criminality and Criminalization of the Poor*

According to the Howard League, the shifts to penal harshness in England and Wales have targeted the poor. It notes:

Our community punishments are extensive, complicated and like our prisons are ‘overcrowded’ and driven by the logic of excess. Those we punish are largely the poor and disadvantaged, those with mental health needs and drug or alcohol addictions. We demonstrate little concern over our widespread use of prison and punishment for children (The Howard League 2009, 11).

The report contends that there is an apparent disconnect between crime rates and the incarceration rate. In 2009, it argued that violent crimes rates have

declined, based on reports from the British Crime Survey (BCS), but that the increasing use of prisons continues. It further contends that what is peculiar about the use of prisons is how “selective” it is.

Prison is demonstrably a highly selective tool for social control. It disproportionately targets blacks and ethnic minorities, the poor, the young, the troubled and the troubling. Prison, for example, is rarely deployed as a punishment for those responsible for state and corporate crimes (The Howard League 2009, 1.17).

Similarly, Farrell contends that the responses to crime took several turns: (1) crime as a political issue precipitated by the gradual increase in crime from 1955, with a 5 per cent per annum average rate such that crime became a central political issue in the 1977 national election; (2) Responses to crime were increasingly punitive, with increased dependence on imprisonment in contrast to non-custodial penalties, longer sentences, and the harshness of prison regimes (Allen et al. 2017). Convicted and incarcerated individuals are denied certain fundamental rights as citizens in England and Wales. Prisoners are, however, “restored” to rightful citizenship after their release from prison. Farrall nonetheless contends that: “More and more, however, such a view is being replaced by an ideology in which the individual being punished becomes a sort of ‘non-citizen or ‘other,’ who is permitted to return to civil society either grudgingly or not at all” (Farrall 2013, 19). Challenges to economic mobility and social advancement because of conviction records often commence immediately. Like in the US, the forfeiture of rights by formerly incarcerated individuals has become a permanent “mark of infamy,” especially for minority men (Alexander 2010). Imprisonment is a form of de-citizenizing offenders. In

the US, former prisoners are denied housing, employment and confronted with both subtle and overt forms of socio-economic and political exclusions (Garland 2015, 342).

In the 1970s, the UK began to shift from an emphasis on rehabilitation, with attacks on the welfare system coupled with a “what works’ agenda.” Farrall refers to this shift as *The redefinition of rehabilitation*. He argues that the shift away from rehabilitation did little to prevent or reduce the “practical obstacles to desistance (e.g. in employment and housing), and place greater emphasis on ‘modifying the dynamic risk factors’ in the criminal profile” (Farrall 2013, 19). (4) Britain’s punitive turn is reflected in the emphasis on public “protection” under the policy of “risk management.” He writes: “These ideas are obviously attractive for politicians mandated to control crime” (Farrall 2013, 20) towards the increase in penal harshness and mass imprisonment thus, the creation of harsher penal laws as shown in the next shift.

### *The Shift from Ordinariness to Massiveness*

In 2015, 117 of England and Wales’ prisons suffered conditions of overcrowding, with 19,383 individuals in overcrowded cells in 2013. “The average number of people doubling up in cells designed for one occupant was 18,515” (Prison Reform Trust 2015a, 10). Long-term incarceration and indeterminate sentences along with tariffs caused overcrowding.

In 2017, the Prison Reform Trust noted:

Overcrowding cripples the prison system's ability to provide a decent and constructive public service. This is not just because 21,000 people still share cells, for up to 23 hours a day, designed for fewer occupants, often eating their meals in the same space as the toilet they share (Prison Reform Trust 2017a, 9).

The population sentenced indeterminately for public protection (IPP) rose from 9% in 1993 to 19% in 2013. Also, individuals with mandatory life sentences for murder rose consecutively from 2001 to 2013. At the end of March 2014, 12,625 prisoners were serving indeterminate sentences.

Within the indeterminate sentenced population, 41% were serving an IPP (5,206) while 59% were serving life sentences (7,419). A total of 3,575 (69%) IPP prisoners had passed their tariff expiry date as at 31 March 2014. On this date, there were 48 prisoners serving a whole life sentence (Prison Reform Trust 2014a, 2). (Prison Reform Trust 2014b, 2).

Nevertheless, there has also been an 83 per cent (Ministry of Justice 2010a) increase in community sentencing. Also, there is an increase in the use of "fines" (Ministry of Justice 2012b, 53) with over 65 per cent of offenders convicted or sentenced with fines.

Breaches of conditions of release of the license have caused increased in recidivism (Ministry of Justice 2009i, 3). Breaches of non-custodial penalties have led to increases in the prison population. From 1995–2009, violations of non-custodial penalties rose by 470 per cent (Ministry of Justice 2009i, 7). England and Wales' prison population has continued to increase, the bulk of whom are poor Whites and BAME people.

According to Bell:

The fact that penal sanctions, notably imprisonment, tend to disproportionately target the poor is certainly not new. The difference is that the police arsenal against the poor has been greatly extended ... The whole penal apparatus in the UK may thus be regarded as being about 'punishing the poor' (Bell 2013, 71).

Hence, continuity is established between determinate and punitive sentencing laws as "habitual offender laws" which also include: three-strikes-you-are-out, mandatory minimum in the US and indeterminate sentences in England and Wales (Garland 2015, 347). Similarly, poverty, race and social class stratification are significant aspects of the prison demographics in the UK.

Like in the US, prisons are economic drains and divert money away from other social concerns in the UK. According to the Howard League:

Between 1997 and 2005 there was a five per cent average annual real terms increase in spending on public order and safety. In 2007-8 the criminal justice system in England and Wales received £22.7 billion, over a third more than it received ten years ago ... This is not a fact of which to be proud; it is a mark of immense public policy failure (The Howard League 2009, 1.18).

Experts have argued that the prison population of the UK has normalised. Prison overcrowding also indicates England and Wales' quest to incarcerate more people does not correlate with the available resources to house them. "Where there was one person to a cell, now there are two, sharing space, staff places on workshops and courses, and a toilet" (Prison Reform Trust 2017a, 10). Prison functions as a "stand-in" for the health and welfare system. Similarly,

with the increase in the general prison populations, came an increase in the number of ethnic minority people incarcerated in England and Wales.

### *Shifts to Racial Penalty in England and Wales*

In 1995, Ryan and Sim predicted that the British prison population would tilt towards the imprisonment of the economically disadvantaged and racially marginalised in the next few years (Ryan 1995).

In 2009, Blacks had one of the highest incarceration percentages with 14.5 per cent in England and Wales. In contrast, their national population percentage across England and Wales was at a stable 3 per cent. According to Bell:

It is estimated that 'not White British' people represent just 16.7 per cent of the total population in England and Wales. Black people represent the largest minority ethnic group in prison—14.5 per cent in 2009 (Ministry of Justice 2011c: 70) – compared to under three of the total population (Bell 2013, 66).

Allen and Watson report that the non-White prison population of England and Wales continues to increase, despite their minority status. In 2015, the PRT noted that 26% of the prison population of England and Wales are of minority ethnic background. Blacks in Britain are 2.8% of the general population but were 10% of the general prison population (Prison Reform Trust 2015a, 5). "For Black Britons, this is significantly higher than the 2.8% of the general population they represent ... There is now greater disproportionality in the number of black people in prisons in the UK than in the United States" (Prison Reform Trust 2015a, 8).

In 2017, the Ministry of Justice reported that White prisoners were close to three-quarters of the prisoners in custody in England and Wales (62,522, or 74%). However, Blacks, Asian or Minority Ethnic (BAME) were 22,432 (26%) of the prison population although comprising only 12.5% of the general population. Blacks or Black British comprised 10,668 (13%) of the total prison population with Asian or Asian British making up 8% (6,945) of the population (Ministry of Justice 2017d, 11). As we shall see, the increase for Blacks in the general population of England and Wales, and Scotland correlates with an increase in their imprisonment. It is an astonishing conclusion regarding the rate of incarceration for Blacks in the UK.

I argue in this research that mass incarceration is sustained by the targeting of poor and racially marginalised individuals in both the US and the UK. While crime has played a fundamental role in this penal trajectory, the passing of punitive sentences for violent and non-violent crimes, socio and economic policies, and the industrialisation of punishment have also influenced the normalisation of penal harshness. The emphasis on penal harshness is responsible for the production of mass incarceration and the high rate of incarceration of the poor and racially marginalised in both the US and UK.

### *Shift to Prison Profiteering and Prisoners' Rights Forfeiture in the UK*

The economic value of prisoners in the UK is measured by the over 92,500 individuals in prisons, on remand and under correctional supervision across the UK-England and Wales, Scotland, and Northern Ireland (Sturge

2018). According to Liebling, “The justification for private sector involvement in the UK was that public-sector efforts were, in practice, useless if not underpinned by administratively efficient and accountable systems” (Liebling 2004, 97).

The contemporary development of private prisons in the UK started when UK policymakers travelled to US private prison facilities in the 1980s to adopt US models (Jones and Newburn 2005). In 1992, the Private Finance Initiative (PFI) included the privatisation of prisons in the program. The first private prison established in the UK (Panchamia 2014) was built in the 1990s (Jones and Newburn 2005; Jones 2005). In the UK, there are several private prison operators including Serco Custodial Services, G4S Justice Services, and Sodexo Justice Services and Premier Custodial Group. According to the PRT, Premier Custodial Group was developed as a joint venture in 1992 between Wackenhut Corrections Corporation in the US and a British facilities management firm, Serco PLC (Prison Reform Trust 2005a):

The company’s turnover for the year ending 1994 was £7.52m. Nearly a decade later, by the end of 2002, Premier’s combined turnover for all prison and correctional services contracts had grown to £127.4m with pre-tax profits of £9.98m. A dividend of more than £2m was paid to shareholders in June 2002 on top of the £4m paid out in 200 (Prison Reform Trust 2005a, 5).

Private prisons exist at the expense of punishment and prisoners to remain in business (Wacquant 2009, 67a). According to PRT, private prisons are increasing in the UK’s along with the increase in the prison population.

England and Wales have a total of 14 private prisons controlled by three companies with a total of 19% of the prison population.

In 2016–17 the overall cost of private prisons was £529.8m—a real terms increase of nearly £10m on the year before. A total of £2.7m was levied from eight private prisons for breach of contract between 2010 and 2015—there were 100 separate instances of breach. Five-year contracts totaling nearly £470m have been awarded to Carillion and Amey to provide works and facilities management services in public prisons (Prison Reform Trust 2017a, 20).

In 2006, Scotland had the highest percentage of prisoners in private prisons (Scottish Consortium on Crime and Criminal Justice 2008, 2). It has 15 prisons including two private prisons (McCallum 2017). Private prisons are also service providers.

Liebling acknowledges some inherent problems as well as some positive outcomes associated with private sector prisons, for example, profiteering and humanising values. She notes “It is fair to say that the primary goal of for-profit organisations is profit and expansion” (Liebling 2004, 123). However, her focus is asserting adherence to values in prison management that do not perpetuate the dehumanisation of prisoners as a more significant concern in prison management.

We are less concerned with the public-private sector competition, or with a managerialist performance-driven agenda, than with the more fundamental question of how to evaluate the quality of a prison. We are especially concerned with what we have come to call the prison’s moral climate, or in the light of the above account, its moral performance” (Liebling 2004, 129).

Her interest is therefore not the “endorsement” of one sector against the other but to assert the need for adherence to humane values in prison

management. This research is similarly concerned about the moral performance of punishment in relation to PCs' experience in ministering to ageing and dying prisoners.

*Prisoners' Right Forfeiture:* The process of prisoners' right forfeiture in the UK as a whole takes a somewhat different approach. The law is found in Section 3 of the *Representation of the People Act 1983*:

A convicted person during the time that he is detained in a penal institution in pursuance of his sentence or unlawfully at large when he would otherwise be so detained is legally incapable of voting at any parliamentary or local government election (UK Legislation 1983).

Serving as shadow Home Secretary in 1993, Tony Blair referenced the *1983 Act* by declaring: "I believe people sentenced by the state to imprisonment should be deprived of their liberty and kept under lock and key by those accountable primarily and solely to the state" (Scottish Consortium on Crime and Criminal Justice 2008, 1). PRT argues, "The UK's ban on sentenced prisoners voting undermines the principles that in a democracy everybody counts. It is an unjustified relic from the past which neither protects safety nor acts as an effective deterrent" (Prison Reform Trust 2010b). According to Liberty (The National Council for Civil Liberties), the disenfranchisement of prisoners in the UK dates to medieval concepts of "civic death." This analysis demonstrates a replication of medieval concepts of civil death on an exceptional scale considering the various forms of shifts to penal harshness in the UK.

Liberty explains:

In the Middle Ages, those found guilty of felony or treason were subject to ‘attainder,’ entailing the loss of all civil rights—in effect, ‘civic death.’ Attainder was an assertion that those guilty of either treason or felony were so ‘tainted’ by their actions that they could not own or transfer property. Property owned by them was forfeit to the Crown and, since the entitlement to vote prior to 1918 derived from property-based qualifications, there was a legal bar upon those convicted of such serious offences voting (Liberty 2016, 9.).

The disenfranchisement of prisoners in the UK violates The European Convention on Human Rights (ECHR). Cormac Behan of the Howard League notes that the ECHR in 2005 “ruled that the UK law banning all convicted prisoners from voting contravene” the ECHR (Behan 2015, 2).

However, across the UK, there has been the push for electoral reform that would allow prisoners to vote. For example, in 2018, The Equalities and Human Rights Committee of the Scottish Parliament notes in its report: “We ask the Scottish Government to provide an estimate of how many prisoners will be entitled to vote in Scotland under the approach taken by the UK government if the UK government approach is followed” (The Scottish Parliament 2018, 6). The report was referencing “The Wales Act 2017” that “gives Welsh Assembly power to legislate on electoral law for local and Welsh Assembly election ... The Welsh Government included prisoner voting in its consultation on electoral reform” (The Scottish Parliament 2018, 6).

Prisoners in the modern penal system are considered civilly dead not only in prison but after they have served their time. According to Chin, civil death has emerged as a systemic process of disenfranchisement.

Chin continues:

For many people convicted of crimes, the most severe and long-lasting effect of conviction is not imprisonment or fine. Rather, it is being subjected to collateral consequences involving the actual or potential loss of civil rights, parental rights, public benefits, and employment opportunities (Chin 2012, 1789-1790).

In the modern penal systems of the US and the UK, the acquisition of convict status subjects one to systemic conditions of marginalization that also amount to the forfeiture of necessary rights as citizens (Uggen 2003; The Scottish Parliament 2018; Mauer 2011; Behan 2015; Liberty 2016) and the loss of public housing (Loury 2002). They further include challenges to employment, ban from government jobs, housing, social stigma and the prospect of living in poverty.

According to Pettit and Western:

Serving time in prison or jail diminishes social and economic opportunities ... these diminished opportunities are found among those already most socioeconomically disadvantaged ... A criminal record was found to reduce callbacks from prospective employers by around 50 per cent, an effect that was larger for African Americans than for whites (Pettit and Western 2010, 12,14).

In the end, conviction and incarceration inhibit one's economic and social advancement. This is especially burdensome for individuals serving time for petty or non-violent offences.

Like the growth of the prison population in the US, the growth of the prison population in England and Wales cannot be separated from the growth in punitive sentences (Zimring et al. 2003). Similarly, in Scotland, the growth in its prison population and the stabilisation of that population cannot be separated from penal and public policies. Scotland does not have a definite sentencing guideline like the US and England and Wales, but that has not prevented

Scotland from maintaining a prison population of over 7000. Regarding its size, penal history and racial homogeneity, Scotland provides a somewhat different penal history. I argue that, for Scotland, the shifts to penal harshness have primarily targeted poor Scottish men.

#### **4.3 Scotland: Shifts to Penal Harshness and The Poor Behind Bars**

According to Mary Munro, the distinctiveness of the Scottish legal system in contrast to England and Wales, and Northern Ireland precedes the union of the United Kingdom. Scotland's legal system, she argues, was

One of the three 'pillars' of Scottish 'civil society,' along with the education system and Presbyterian Church Government, that were protected by the 1707 Act of Union of the Scottish and English Parliaments. The evolution of Scottish justice has, in many senses, been uninterrupted by the existence of the Union (Munro 2010, 3).

The distinctiveness is viewed from three perspectives: (1) the distinct interpretation of crime and criminal justice in Scotland; (2) the influence of devolution on the Scottish legal system; and (3) the interpretation of that distinctiveness in relation to more comprehensive policies and situations of social justice and social welfare (Munro 2010).

Nevertheless, Sparks and Morrison contend that Scottish penal distinctiveness in contrast to England and Wales needs a re-evaluation for "reasons that are quite contingent, and others that are quite mundane, as well as for those that may be more profoundly rooted within the character of Scottish political and intellectual culture" (Sparks and Morrison 2016, 32). They,

therefore, call for caution in making comparisons between the Scottish penal system and that of England and Wales.

*Shift from Penal Distinctiveness to Penal Uniformity*

Scotland does not have clear-cut sentencing guidelines or mandatory sentences except for murder cases (Tata 2010). The goal of this discussion is not to engage in the merits and de-merits of sentencing guidelines in Scotland but to establish how its clear-cut absence or presence could define a particular sentencing trajectory.

In 2006, the Sentencing Commission for Scotland produced a report that highlights the need for comprehensive forms of consistency in sentencing in Scotland. The report addressed problems referred to as: “Plentiful anecdotal evidence and some (rather dated) research indicating that sentencing levels vary a great deal from one sentence to another and from one court to another” (The Sentencing Commission for Scotland 2006, 1.7). Particular areas for review in the report included:

The use of bail and remand, the arrangements for early release from prison and the supervision of short-term prisoners on their release, the basis on which fines are determined, the effectiveness of sentences in reducing re-offending, and the scope to improve consistency of sentencing (The Sentencing Commission for Scotland 2006, 1.3).

The report notes that discussion around the need for sentencing guidelines and consistency in sentencing in Scotland had been ongoing since 1994.

Part of the problem has been what the Scottish legal system refers to as sentencing guidelines and consistency. The Commission defined sentencing guidelines as “stand-alone documents containing guidance on sentencing, and in certain instances guidance as to the ranges of sentences for particular categories of crimes and offences” (The Sentencing Commission for Scotland 2006, 1.11). Central to the commission’s report was the need to provide “guidance to sentencers,” about the “seriousness of offences” (The Sentencing Commission for Scotland 2006, 8). In that light, the Commission defined “consistency” as the rejection of a “one mode fits all” approach that does not regard other mitigating factors in adjudicating cases. It explains:

Sentencing is consistent when offenders committing similar offences are punished with similar penalties but by different sentencers, whether those sentencers sit in the same court or different courts (The Sentencing Commission for Scotland 2006, 3.2).

The goal is to avoid a mechanistic approach to sentencing in Scotland, but one based on allowances for other mitigating factors in the sentencing process. The Commission regarded it as essential that courts and sentencers regard the following as fundamental to the sentencing process: punishment, public safety, deterrence and denunciation/some form of restorative justice (The Sentencing Commission for Scotland 2006, 8.3). The report further explains that sentencing guidelines in Scotland should be: narrative-oriented, focused on the consideration of individual cases, predictable, serve as a benchmark for future sentencing decisions, and not absolute but protect “judicial independence” and “transparency.” It notes: “Guidelines should simply guide, not direct, and should

provide clear and practical advice to sentencers. They should not constrain sentencers in cases where there are good reasons for departing from the range of sentences set out in the guidelines” (The Sentencing Commission for Scotland 2006, 8.33). The discussion, however, on the development of a sentencing guideline for Scotland is a recurrent one. Like the Sentencing Commission’s 2006 report, the Scottish Prison Commission produced another report, *Scotland’s Choice*, in 2008.

For the sake of “consistency” and “effectiveness” in sentencing, *Scotland’s Choice* recommended the need for an independent body akin to National Sentencing Council charged with the responsibility to “develop clear sentencing guidelines that can be applied nationwide.” It further recommended that judges be “provided with a wide range of options through which offenders can pay back in the community, but that, where sentences involving supervision are imposed, there should be one single Community Supervision Sentence (CSS) with a wide range of possible conditions and measures” (Scottish Prison Commission 2008, 3, 4).

The question remains, why has the question of sentencing guidelines become a concern for Scotland? For his part, Tata contends that Scottish penal distinctiveness prevents it from adopting a shift to sentencing guidelines due to the presence of “strongly embedded and distinctive values, which militate against the mechanical and punitive approach of its English neighbours” (Tata 2013, 240). It has “retained a distinctive welfare approach” (Tata 2013, 240). The approach serves as a buffer against the shift to penal populism. Also, Tata

notes, “it is a fairly widespread view north of the border that the penal landscape is less harsh and more humane than that of England and Wales. Not infrequently, this is attributed to a culturally distinct Scottish national identity” (Tata 2013, 240). The argument that the Scottish penal approach is more humane and less punitive than England and Wales and emblematic of Scottish penal distinctiveness is based on: (1) Scotland’s “welfare-based” concept of youth justice; (2) a “welfare-based” approach to probation operated by social workers; and (3) the absence of mandatory minimums except for murder (Tata 2013, 240). Tata acknowledges that if some form of sentencing guideline is going to be adopted in Scotland, it must be done based on the following: “legal equality including consistency, openness, predictability, the promotion of public confidence, and a change in penal direction” (Tata 2013, 252). However, Tata’s emphasis on Scottish penal distinctiveness does not clarify the reasons behind the present prison population of 7,936 according to the Scottish Prison Service website, and the argument that Scottish penal welfarism has been questioned.

With the prison population of 7,827 in 2008, *Scotland’s Choice* touted a future state of punishment in which only the: “most serious offenders and those who present the greatest threat of harm” would be imprisoned. Secondly, the Scottish prison system will be internationally recognized as a “model of safety and security,” that effectiveness and accountability will be the watchwords towards change, and that there will be a transition to community-based sentences, with Scotland’s model of penal reform adopted by other nations (2008, 1). The report acknowledged in 2008 that Scotland had a prison

population that was exceedingly high. Furthermore, it noted its dependence on the use of prisons and the targeting of individuals from economically marginalised communities: “Increased use of prisons is the result of using it for those who are troubled and troubling rather than dangerous. Prison draws its inmates from the least well-off communities” (Scottish Prison Commission 2008, 2). The Commission conclusively recommended that only those criminals who pose serious harm to society should be imprisoned (Scottish Prison Commission 2008, 2).

In 2009, *Scotland's Choice* was hailed as a remarkable initiative in the press. In their response, Sarah Armstrong and Fergus McNeill denounced the emphasis on the use of prison in contrast to looking for alternative ways to punish other than imprisonment. They argued against the prevailing notion that punishment and prison are synonymous and that punishment should not invariably imply imprisonment. “Punishment and prison are not interchangeable, and the purposes and limits of each must be separately considered” (Armstrong and McNeill 2009, 2). They contend that by inverting the use of punishment for imprisonment and imprisonment for punishment, the need to explore alternatives to punishment is disregarded for incapacitation. In promoting the concept of inversion for punishment and prison, they argued that “the evidence that prisons fail to deter, rehabilitate or punish retributively” is not adequately explored (Armstrong and McNeill 2009, 2). Instead, they note, an approach to holistic prison reform in the Scottish legal system would require a distinction between punishment and prison as a strategic penal policy. To perceive the two as one

was inimical to any determined effort to curb the growth of the prison population (The Scottish Government 2015).

The press at the time focused on an aspect of the report that targeted the reduction of “the prison population by as many as 4,000!” along with the use of community sentencing. On the other hand, Armstrong and McNeill argued that the primary objective of the report should be “something bigger, with a potential to change both how penal reform is managed and how the public is engaged” (Armstrong and McNeill 2009, 2). The increase in the Scottish prison population at the time, they argue, can be attributed to penal policies, an increase in the “rates of parole recall” exceeding “900 per cent over less than a decade,” with more non-convicted individuals in 2006-2007 waiting for trial (Armstrong and McNeill 2009, 3).

Unfortunately, in the ten years since the publication of *Scotland's Choice*, there has not been much decline in imprisonment. According to Armstrong and McNeill:

Treating penal policy making as crisis management has led to ineffective reactionary tactics that have increased costs and reoffending, and decreased community safety and confidence in the criminal justice system. Scotland's re-casting of a crisis as an opportunity is a helpful start but carries its own pathologies (Armstrong and McNeill 2009, 4).

The question remains: what did these reports accomplish if the prison population has increased with the incarceration of poor Scottish men in 2018? Were the recommendations implemented and to what extent? Furthermore,

should we accept the argument that imprisonment and increase in the Scottish prison population have become normative?

### *The Shift to Penal Harshness in Scotland*

Scotland has not escaped the shift to penal harshness (McAra 2008). Regardless of the historic “distinctiveness” of its penal system, the size of its general population in contrast to the US, England and Wales, and its resistance to adopting sentencing guidelines, the Scottish penal system has experienced a shift towards penal harshness (Tata 2010). The shift is evident in the emphasis on penal managerialism and the search for efficiency, punishments based on risk management, and a decline in what I refer to as “positive” discretionary sentence (Tata 2010). According to Liebling, managerialism has its limits. She rejects the practice of using managerialism as an excuse for poor penal performance. Furthermore, managerialism cannot be used to replace what is ethically humane in prison management.

She notes:

Managerialism has appeared as a common thread underpinning and facilitating change, but lacking a clear or inherent value base of its own. It has been variously deplored as an end in itself, as a tool for securing justice, and as a tool for securing institutional control. There are mixed views about the extent to which the focus of current performance measures and the decency agenda are compatible (Liebling 2004, 41).

A negative discretionary sentence reflects respect for the presence and exercising of judicial discretion. However, such discretion often gravitates towards penal harshness and increases the prison population. In contrast, while

a positive discretionary sentence respects the presence and use of judicial discretion, it views the case holistically with the goal towards fair, humane, and alternative sentencing that keeps the worst of the worse in prison (Liebling 2004).

In 2010, Tata argued that Scotland was “losing its penal distinctiveness” as part of the Western shift to penal harshness. The Scottish penal distinctiveness in question is one “based on a tradition of humanistic penal values” (Tata 2010, 195). Tata highlights three reasons.

The first is a shift from the “value of protecting the individual from the power of the state to ‘efficiency’” (Tata 2010, 196). It is characterised by a decline in the protection of individuals in the due process model in Scotland. Offenders are sentenced on the efficiency model, which speeds up cases (Tata 2010, 199). The emphasis on the efficiency model has led to increases in plea bargain decision making in the sentencing process. Two forms of plea-bargaining exist in Scotland. (A) “Charge bargaining,” which implies negotiation between the prosecution and defence about which charge to drop for the defendant to plead guilty (Tata 2010, 202). (B) “Plea bargaining,” which is the “implicit sentence bargaining” negotiated for a reduced sentence after a guilty plea from the accused (Tata 2010, 202).

The second is a shift in Scotland “sacrificing its traditional dedication to welfare-based penal values to the altar of ‘actuarial justice’ dominated by probabilistic calculations of the risk of future offending” (Tata 2010, 196). There is an increase in the potential decline of emphasis on considering external

factors about the accused's mental, socio-economic, health, criminal records and other pre-sentencing reports compiled by trained social workers. The role of social workers in compiling these reports to inform the sentencing process contrasts with England and Wales, where employees of the national probation service compose them, and in the US by members of the sentencing court (Tata 2010, 205). Tata argues that the role of social workers is essential for three reasons. Social workers are professionally trained, the government does not directly employ them, and finally, social workers have no binding relationship with the courts (Tata 2010, 205).

Third, a likely shift to the decline in discretionary justice in Scotland's judiciary is due to the "rise of technocratic instruments" (Tata 2010, 196). Also considered a form of impersonal sentencing based on sentencing guidelines, is the influence of "techno-rational instrument" and the emphasis on managerialist penal policies. However, Tata does not believe that there has been a significant shift (Tata 2010, 212).

Also, probation orders do not exceed three years and cannot be under six months. Probation may involve community service or even compensation to the offended, thus constituting the "community-based sanctions available to sentencers in the Scottish courts" (Hutton 1999, 172). Custodial sentences are reserved for those aged 21 and above, while younger offenders are sentenced to detention in Young Offenders Institutions (McCallum 2017, 9). For fewer than 21s, a first attempt does not necessarily result in detentions but the court "may be assisted in making this judgement by the provision of a social enquiry report"

(Hutton 1999, 173, 177). However, Croall et al. argue that if Scotland's discretionary sentencing policy and practice is to be evaluated, it must be defined in relation to the experiences of the poor and imprisoned in the Scottish Prison Service. According to the Scottish Centre for Crime & Justice Research, Scotland has seen an increase or normalisation of its prison population due to the following:

- Increase in the number of convictions and increased sentence length, which has increased the long-term prison population (those serving sentences of four years or more).
- Increase in the number of custodial sentences for those convicted of less severe offences.
- Increase in the number of remand prisoners.
- Increase in recalls from supervision or license (The Scottish Centre for Crime & Justice Research 2015).

### *Shift to Increased Criminalization*

In 2013, Chalmers and Leverick argued that the Scottish Parliament took a turn towards the creation of more criminal offences than in England. They write:

We analyse this difference and demonstrate that over that period Holyrood showed a far greater propensity to create criminal offences than Westminster, with 165 offences being created by Holyrood for Scotland alone over that period as against a mere 10 created by Westminster for England or England and Wales alone (Chalmers and Leverick 2013, 376).

They note that in the absence of adequate ways of quantifying the existing number of criminal offences in the UK, the task of quantifying every criminal offence in the UK would have nonetheless been daunting. Instead, they arrived

at their conclusions by: “Recording the number and characteristics of criminal offences created during a particular period,” and secondly, by conducting “this exercise for two-time periods each of one year. The time periods selected were the first year of the Coalition government (that is, all offences created from 6 May 2010 to 5 May 2011) and the first year of the New Labour government (from 2 May 1997 to 1 May 1998)” (Chalmers and Leverick 2013, 377). The approach included reviewing Acts enacted by the UK Parliament, The Scottish Parliament, and statutory instruments. The goal was to “identify offence-creating provisions.”

Furthermore, “The inclusion of secondary legislation in this exercise was important. Attempts to estimate the number of criminal offences often ignore such instruments, but far more offences are created via secondary legislation than via primary legislation” (Chalmers and Leverick 2013, 377). The process of offence identification followed the investigation as to whether the said offence was an individual offence, or a pregnant offence, i.e. created “multiple offences” (Chalmers and Leverick 2013, 377).

**Table 1.** Offences created 1997-98 and 2010-11

<b>Geographical extent</b>	<b>1997-1998</b>	<b>2010-2011</b>
UK	1022	409
Britain	213	4
England	None	212
England and Wales	None	9
Wales	None	314
Scotland	3	810
Northern Ireland	52	2
Isle of Man	53	None
Channel Islands	52	None
Total	1395	1760

(Chalmers, J., and Leverick, F. (2013)

Chalmers and Leverick note that what is considered the modern Scottish Parliament was not in existence until recently. However, the Scottish Parliament enacted a far higher number of criminal offences from 2010 to 2011 than Westminster (Chalmers and Leverick 2013, 379). As shown in the chart above, the difference in the creation of criminal offences in the two Parliaments from 2010 to 2011 is astounding.

The significant differences, they argue, are due to the following: First, the implementation of offences associated with European Union legislation or the adoption of consolidation instruments. Secondly, a “propensity” associated with the Scottish Parliament to “create criminal offences.” Thirdly, a speculative difference could be due to the time of the analysis,

Framed around the date of a UK General Election. We have examined a period in which Westminster was able to pass less legislation than Holyrood. That seems correct: over the year, 14 Acts

of Parliament received Royal Assent, compared to 25 Acts of the Scottish Parliament” (Chalmers and Leverick 2013, 380).

However, the 14 Acts passed by Westminster did not create criminal offences. In contrast, 15 of the 25 Acts passed in the Scottish Parliament led to the creation of criminal offences.

In their words, Chalmers and Leverick conclude, “we hope we have demonstrated that Holyrood’s propensity to create criminal offences is a cause for concern” (Chalmers and Leverick 2013, 381). The inclusion of Chalmers and Leverick’s report in this research is not to list the created offences. Instead, I want to point out the shift in the Scottish penal system about the majority of those targeted as offenders in Scottish prisons. Like ASBOs in England and Wales and three-strikes sentences in the US, the shift to penal harshness has categorically affected the poor and racially marginalised in these countries.

#### *Shift to Prisons as Resource Centers*

In 2016, Tata acknowledged that Scotland’s prison population is one of the highest in Western Europe. The reason for this increase is mainly due to the use of longer sentences and imprisonment time rather than imprisonment as the last option, as implied in section 17 of the Criminal Justice and Licensing (S) Act of 2010 (Tata 2016, 24). However, an additional reason for the increase in the prison population in Scotland can be attributed to the fact that prisons in Scotland are better resourced than the communities where the majority of Scottish prisoners reside. Prisoners have better access to resources including

medical facilities, routine, food, reliable accommodation, and heat during the long winter nights in Scotland than on the outside. Tata notes:

Although it is uncomfortable to admit it, many people end up in prison not because their offending is particularly serious, nor because they are a risk of serious harm. They end up in prison because there does not appear to be anywhere else that can address their chronic physical, mental health, addiction, homelessness and other personal needs (Tata 2016, 24).

The use of custodial sentences implies a reduction in the use of non-custodial sentences or community sentences. Similarly, in England and Wales, and in state facilities in the US, it further reflects the “attractiveness of prisons as resource centres for poor individuals and communities. In addition, longer sentences in Scotland have become an inherent problem. Tata acknowledges that:

So, in other words, the real problem is not short-terms of imprisonment per se. Rather, it seems that the Presumption policy is using length of imprisonment as a *proxy* for those cases deemed less serious or posing a lesser risk of serious harm. Yet sentence-length is a very crude proxy for offence seriousness and risk of serious harm (Tata 2016, 23).

Imprisonment has become normative in Scotland because economically disadvantaged individuals and groups use prison as a last resort for accommodation, feeding, medical care, regulation and community.

Tata notes:

While non-custodial sentences and social services are so stretched, imprisonment, on the other hand, appears as the dependable, credible and well-resourced default. Indeed, it is not entirely uncommon for people to say that they would prefer to be in prison because of a lack of help and support in the community. That is, surely, an indictment of our spending priorities (Tata 2016, 24).

The use of imprisonment as a last resort is self-propagating. Its financial sustainability affects other aspects of funding for education, community resources, and rehabilitation programs (Tata 2016, 24).

In 2017, Tata and Fiona Jamieson argued in favour of a “rational” response to criminal justice reform considering some of the current obstacles. Their solution is based on the notion that “justice is a basic and universal *emotional* need” (Tata and Jamieson 2017, 32). They contend that justice is both theoretical and practical. The practical application of justice relates to how offenders are made a part of the sentencing process. The concept is referenced as an “emotionally-intelligent conception of justice policy” that brings together the recognition of “human interaction with emotive and affective dimensions” in sentencing and judging offenders (Tata and Jamieson 2017, 32). The process reflects the pursuit of justice that is efficient, participatory and accommodating. It is the recognition of justice as emotively intelligent that makes room for elements of “effective communication” in the sentencing process. They explain: “If we are to address the problem of compliance with community penalties and the costly cycle of minor offenders returning to prison, we need to know much more about how they perceive and understand the justice process” (Tata and Jamieson 2017, 33). Also, justice as emotionally intelligent is efficient. It reflects the intersection between retributive justice and restorative justice. The goal is justice that is also holistic by recognising the needs of the victim, the offender and the state. Tata and Jamieson write:

'Emotionally-intelligent efficiency' is essential to reversing public cynicism and distrust of the system. Policy cannot afford to dispense with the emotional heart of justice. It is only through emotionally-intelligent efficiency that criminal justice policy has any sustainable chance of moving forward rationally (Tata and Jamieson 2017, 33).

Tata and Jamieson's assertions are attempts to develop ways of strategic intervention in reducing the prison population in Scotland, primarily as it affects the poor.

#### *Shift from Social Welfarism to Penal Welfarism: Incarceration of the Poor*

According to Croall et al., "Scotland is an extremely unequal country" (Croall et al. 2016, 45). Economic inequality is a problem in Scotland, and poor folks make up the general population of Scottish prisons. They contend that economic disparity plays a pivotal role in Scottish sentencing. "About two thirds who received CPOs (Community Payback Orders) were unemployed, and 8 per cent were not economically active. The majority were listed as 'white'" (Croall et al. 2016, 55). They note that economic inequality and exclusion serve as major factors influencing the high rates of incarceration of the poor in Scotland. These factors are especially pronounced when combined with crime, "risk factors," joblessness, and geographical locations (Croall et al. 2016, 51). Economic inequalities generate inequalities in crime, sentencing and incapacitation (Croall et al. 2016).

For Scotland, Houchin contends that there is a higher correlation between deprivation and imprisonment. He reports that "One in nine men from our most deprived communities will spend time in prison while they are 23" (Houchin

2005, 20). Looking at the relationship between poverty and imprisonment, Houchin argues that Scotland incarcerates a higher percentage of its poor and that those gravely affected are poor young men in their 20s and 30s. Furthermore, imprisonment for many of the prisoners is a “shared experience” (Houchin 2005, 20). While the report acknowledges that many of those incarcerated in Scottish prisons are not from deprived backgrounds, implying that “deprivation is neither a necessary nor a sufficient correlate of imprisonment,” it nonetheless states that “for men, the probability of imprisonment is more strongly correlated with the overall level of deprivation of the communities in which they live” in Scotland (Houchin 2005, 21, 2).

Houchin’s report highlights the shift in the Scottish penal system towards the criminalisation and incapacitation of the poor. By criminalising economic inequality and social exclusion as reasons for penal harshness and criminalisation, reflected in “degree and levels of inequality, and deepening inequality” (Croall et al. 2016), Scotland’s welfarism is questioned.

According to John McKendrick et al., “Scotland remains a society that continues to be scarred by poverty” (McKendrick et al. 2014, 4). McKendrick’s statement reflects the level of economic disparity. In their report, *Poverty in Scotland: 2014*, McKendrick et al. point out that:

- 870,000 people in Scotland still live in poverty (17 per cent of the population).
- Poverty in Scotland, and across the UK, is significantly higher than in many other European countries.
- Poverty exists across Scotland (McKendrick et al. 2014, 4).

According to Croall et al., the Scottish criminal justice system has a “welfarist approach to policy making” and “concepts of social justice” (Croall et al. 2016, 7). Croall et al. contend that Scotland operates as a welfare state in contrast to the emphasis on the political and penal concepts of “neoliberalism.” Furthermore, they argue that “The class basis of state power, reflected for instance in state-sponsored neoliberalism, is almost completely absent” (Croall et al. 2016, 8). However, Croall et al. also point out that economic inequality is a problem in Scotland and that the poor in Scotland are the prisoners of the Scottish Prison Service (Croall et al. 2016, 47). They write:

While there is little systematic Scottish research on the progress of different groups through the system, it can be argued on the basis of court and prison statistics that poor young men from deprived areas are far more likely to end up in court and, when they do, to receive custodial sentences, and are characterized by fewer factors such as family or employment support to justify a non-custodial sentence (Croall et al. 2016, 49).

Based on current trends of penal harshness and policies, Scottish “welfarism” has come under scrutiny about its penal system and in contrast to England and Wales.’ According to Sparks and Morrison:

None of these claims is entirely groundless, but they are all difficult to evidence in their strong form; and the contrasting ‘other-than-England’ argument sometimes rests upon a thin and highly selective reading of the English history, closer acquaintance with which sometimes reveals as many direct analogues to the Scottish development as it does sharp divergences ... (Sparks and Morrison 2016, 32).

In Scotland, more men 25 aged and under are entering the court system, with many of them “drawn from similar social groups” (Croall et al. 2016, 49).

Emphasizing Houchin’s conclusion, Croall et al. argue that “one in nine young

men from the most deprived communities will spend time in prison at the age of 23” in Scotland (Croall et al. 2016, 55). This conclusion is astonishing for Scotland. Imprisonment is now a primary social determinant in defining the future of individuals in disadvantaged communities (Western 2014). Poor Scottish men make up the bulk of those incarcerated and under correctional supervision in the Scottish penal system (Silvestri 2013). From 2012-2013 in Scotland:

- Males constituted 91% of all convictions resulting in a custodial sentence and 94% of the prison population.
- Men received 84% of all antisocial behaviour fixed penalty notices (60% aged under 30), with almost half given to men aged under 21.
- Males received two-thirds of all fines, the most common offences involving drugs (Croall et al. 2016, 54).

Due to the high rates of impoverishment, a disproportionate number of poor Scottish men of particular postcodes are incarcerated in the Scottish Prison Service. It shows the increased incarceration of economically marginalised communities. Croall et al. explain by quoting Houchin’s report: “The male imprisonment rate from the 27 most deprived wards amounted to 953 per 100,000 of the population, compared to a national average of 237, with that for 23-year-old men being 3,427” (Croall et al. 2016).

Glasgow has the highest number of prisoners in Scottish prisons. In addition, Glasgow has a higher rate of deprivation. According to Houchin:

The relationship between social deprivation and imprisonment in Scotland is at its most pronounced in Glasgow. Nowhere is that relationship more strongly expressed than in relation to Barlinnie prison. At the time of our research there were 580 people from

Glasgow in Barlinnie ... Whereas in Glasgow 92% of the prisoners come from wards with high concentrations of prisoners, in Edinburgh the comparable figure is 76%" (Houchin 2005, 43).

It is also important to note that Barlinnie prison has the highest rate of prisoner deaths among the Scottish prisons. For Croall et al., "the unemployed cannot avail themselves of the opportunities for making illicit profits provided in employment, just as bankers do not need to break into other people's houses to enhance their illicit income" (Croall et al. 2016, 48). With its high rates of economic disparity, Scotland incarcerates a high number of its poor population especially men. High rates of incarceration of poor Scottish men can be equated to the high rates of marginalised men in the US and England and Wales.

#### *Shift in Racial Penalty in Scotland*

In my assessment, the shift to penal harshness in Scotland mass incarcerates poor Scottish men. This emphasis on the poor in Scotland is not to disregard other penal developments as insignificant but to demonstrate that the shift to penal harshness targets the poor and racially marginalised. In the case where a particular area is racially homogeneous, like Scotland, the disproportionality will affect the poor of the same race and in these cases, poor Scottish men. This contrasts with racially diverse nations like the US, and England and Wales, where disproportionate rates of incarceration of Blacks and other minority groups are immediately evident.

Broad ethnic group	2001	2011
White Scottish	88.1	84.0
White other British	7.4	7.9
Other white	2.5	4.2
Mixed or multiple ethnic groups	0.3	0.4
Asian, Asian Scottish or Asian British	1.4	2.7
African	0.2	0.6
Caribbean or Black		0.1
Other ethnic groups	0.2	0.3

Scotland is racially homogenous and reflected in the prison population (World Population Review 2017). While a recent analysis of Scotland’s national population shows growth and expansion towards diversity, Scotland remains a racially homogenous society. Notwithstanding, a slight racial diversification has occurred in Scotland (Simpson 2014). Between the 2001 census and the 2011 census, Scotland experienced some growth in racial diversity. For example, based on the 2001 census, the Black population was 0.6. It increased to 0.7% in 2011 (National Records of Scotland 2013, 7).

According to Allen and Watson of the House of Commons Library, based on the 2011 census report, the White proportion of the general Scottish population is the same as the proportion of Whites imprisoned in the Scottish Prison Service. On the other hand, the proportion of Blacks incarcerated in the Scottish Prison Service is higher than the proportion of Blacks in the general Scottish population. Allen and Watson explain the disparity:

The Scotland Census 2011 suggests that the proportion of prisoners classified as being from a white ethnicity is the same proportion found among the general population. The proportion of people from Asian or Black ethnicities within the general population differed from the rate of the prison population. 2.5% of the general population was from an Asian ethnicity, whereas 1.7% of the prison population were reported as Asian. People from black ethnicities accounted for 0.6% of the general population and 1.4% of the prison population (Allen and Watson 2017, 22).

Majority of those incarcerated in the Scottish penal system are poor Scottish men. However, in comparing the prison population with the general population in Scotland, Blacks in Scotland are disproportionately incarcerated in contrast to poor Scottish men.

However, comparing the general population statistics for Scottish men to the prison population for imprisoned Scottish men, poor Scottish men have a higher rate of incarceration than any other group (Croall et al. 2016). Furthermore, if one compares the high rates of incarceration of poor Scottish men based on racial homogeneity to the high rates of incarceration of poor White men in the US, and in England and Wales, based on the general population of the US, and England and Wales, imprisoned poor Scottish men will be more numerous. If racial heterogeneity and diversity are considered, comparing imprisoned poor Scottish men to the general prison population of the US, and England and Wales to the imprisoned population of Blacks in the US, and England and Wales, imprisoned poor Scottish men will be in the same penal category as Blacks and Hispanics in the US, and BAME in England and Wales.

According to the Howard League:

The United States of America must act as a stark warning to British penal policy makers. If we continue with our current rate of imprisonment and the penal policies which have driven it; and if we lack the confidence and political will to intervene and impose limits on the penal juggernaut, then America will be our future too (The Howard League 2009, 2.2).

It is not farfetched to argue that the high rate of incarceration of poor Scottish men is analogous to the high rates of incarceration of Blacks in the United States, and England and Wales in need of penal reform (Allen and Watson 2017; The Sentencing Project 2016; Cone 1990). Based on the above analyses, one can conclude that Scotland, England and Wales are experiencing various forms of penal crises.

#### **4.4 A Penal “Crisis”**

The distinction between crisis and organisation is conditioned by the fact that crisis symbolises “disorder” and the “unexpected,” while organisation symbolises “order” and what is “routine” (Sykes 1958, 109). Sykes asserts that organisations are also symbols of the cumulation of crisis and disorder in the prison context. However, an organisation is not granted legitimacy because it is orderly (Sparks et al. 1996). What is orderly is simply a concentrated form of crises (Sykes 1958, 109). Sykes notes, “Organization stands for gradual change after long planning. Yet in some ways, organization is simply a series of crises held within limits, a series of disorders which do not become too disorderly” (Sykes 1958, 109). Based on Sykes’ analogy, is it too far-fetched to infer that

mass incarceration exists as the normalisation of a penal crisis? As religious workers, PCs are aware of the abnormalities associated with the experience of mass imprisonment (Hicks 2010, 2012, 2012; Sundt 1997; Sundt and Cullen 2002; Lane 2012; Masterton 2014) and its climate (Liebling 2004). In 2009, The Howard League reported that:

Crisis now defines the core of the English and Welsh penal system. Despite a 43% decline in the amount of crime reported to the British Crime Survey since 1995, the prison population has soared to an all-time high of almost 84,000 in 2008 and overcrowding has reached record levels (The Howard League 2009, 6).

It argues, there is a disconnect between the increase in the prison population and the decline in crime rates. In addition, it contends that the inconsistency is only justified by the emphasis on indeterminate sentences across the UK. It also points out that “Crime rates in England and Wales have not impacted... the rate of imprisonment” (The Howard League 2009, 1.8), which is quite different from the increase in prison population in the 1930s when Britain experienced “The Depression.” The report notes parallel developments in Scotland: “Precisely the same observation was made in respect of Scottish rates of imprisonment by the Scottish Prison Commission (2008:16; The Howard League 2009, 1.8). According to Croall et al., “Crime rates [in Scotland] have also fallen significantly since the 1990s and there has been a sustained decline in serious crimes. These decreases are consistent with the ‘crime drop’ found elsewhere” (Croall et al. 2016, 52). A central question regards the inconsistency between the rise and normalisation of mass imprisonment and the steady decline in crime rates.

For Liebling, the penal crisis is a moral crisis reflected in the moral performance of prisons. She defines the problem in relation to two questions: First, what counts as a “just institution”? Liebling adopts a Rawlsian approach to what constitute “just-legitimate-institutions.” She argues that just institutions should operate on the premise of “fairness,” especially for the most disadvantaged about justice as the “first principle,” and that justice has a “moral priority over other goods.” Furthermore, while justice can be “consistent with utility,” utility cannot “substitute” justice (Liebling 2004, 118,119). Liebling acknowledges the limitations of Rawls’ concept of justice, since he was concerned about socio-political institutions rather than prisons, and its “inherent deficits,” for example “in-built loss of liberty” (Liebling 2004, 119). Notwithstanding, she argues that Rawls’ “framework” is a valuable one because justice is a necessary component in punishment, and prisoners “should not be treated as aggregates” in the managerialist structures of prison management (Liebling 2004, 119).

The second problem is associated with what kind of values and *mechanisms* can one use to define the concept of just prison institutions. The tension in determining the use of prisons is whether to use private sector values which are “commercially” tailored or public sectors values which are based on democratic and humanitarian principles but often taken for granted and abused (Liebling 2004, 120). About prison management and its utility, the dominance of the “profit motive” leads to several forms of “legitimacy deficit,” with the focus on

“unfettered financial interest or incentive” (Liebling 2004, 125). These are antithetical to principles of just punishment.

Liebling contends “Some notion of liberal values has to be fundamental to any modern society which makes claims to democracy, fairness, decency, and legitimacy, even when (or perhaps especially when) thinking about the prison” (Liebling 2004, 42). The “decency agenda,” she argues, calls into question the modern concept of punishment that facilitates conditions of dehumanisation and death in prison management. When its “moral and symbolic” roles are rejected, the prison is reduced to an institution of oppression and social marginalisation for its occupants (Liebling 2004, 46).

In conclusions drawn from empirical work at HMPs Whitemoor, Wandsworth and Risley, Liebling writes:

The substantive results from the research reported here (and subsequent studies) tell us that prisons differ in their moral performance and that, at best, apparently ‘high performing’ establishments only deliver ‘fairness’, ‘respect’, ‘humanity’, and ‘safety’ to a limited extent. The more troubled prisons score very poorly on these value dimensions ... The implications of our work are that we should seriously reconsider the current uses of the prison (Liebling 2004, 165).

In her analysis of “fairness” as a value dimension in measuring the moral performance of prisons, fairness is defined interchangeably with justice in Rawlsian terms. It connotes respect for the “basic rights and duties” equitably distributed as acts of justice, especially for the “least advantaged member of society” (Liebling 2004, 261). Fairness as justice also considers the accommodation of “impartiality” and “trust” as value dimensions in punishing

offenders and their treatment.

## **Conclusion**

I have argued that the penal systems in the UK (Scotland, and England and Wales) have taken the turn to penal harshness. Based on sentencing policies, the shifts show a turn from rehabilitative sentences to determinate and indeterminate sentences. These penal developments have led to increased rates of incarceration of economically disadvantaged and racially marginalised individuals. Furthermore, they provide the workplace background for the modern prison chaplain.

A more obvious effect has occurred in Scotland, with high rates of incarceration of poor Scottish men from particular postcodes. Scottish 'welfarism' does not translate into even distribution but uneven rates of incarceration for the poor.

Furthermore, the Scottish de-centralised criminal justice model and its discretionary sentencing policies have shifted towards penal harshness, shown in longer and harsher sentences for the poor. Economic inequality in Scotland means that the Scottish Prison Service reflects a socio-economic and class stratification. These developments in the UK penal systems have placed the UK on the map as having the highest prison population in Western Europe (Allen and Watson 2017). Based on the above analyses, the various forms of penal shifts in the UK towards penal punitiveness are no different from that of the US. What is different is how each has arrived at and has sustained the shifts to penal

harshness, the normalisation of mass imprisonment and the production of the conditions of death in their prisons.

The modern ethos of punishment in the US and the UK lacks a “moral” mandate (Liebling 2004; Brightman 1958). This is evident in the use of prisoners as economic units for job creation (Wacquant 2009a), the intrusion of prison industrialisation (Price 2006), and its growing conditions of “death” for the poor and racially marginalised (Liebling 1996). A disturbing pattern in the three penal systems—US, Scotland, and England and Wales— demonstrates how the poor and racially marginalised are used to normalise the existence of the modern penal cultures. The poor and racially marginalised are sentenced harshly for violent and non-violent crimes with long-term imprisonment leading to increases in the high rates of ageing, dying and dead prisoners in US and UK prisons. Similarly, the bodies of poor and racially marginalised prisoners are used in prison-based gerrymandering in the US, and as economic units in the penal industries in both the US and the UK. Thus, it is concluded that the poor and racially marginalized, not crime, are the lifeblood of the modern penal systems. Furthermore, considering the high rates of ageing, dying and death in US and UK prisons, the bulk of those affected are the poor and racially marginalized in the US, Scotland, England and Wales. It is these conditions that form the lived experiences of PCs in the prisons.

The next chapter demonstrates a link between the shifts to penal harshness in the US and the UK, and the increase in the ageing and death of

prisoners: natural in-prison deaths, homicides and suicides in US and UK prisons.

## **Chapter 5: Analysis of Ageing, Dying and Death in US and UK Prisons**

This research argues that the death tolls in the United States and the United Kingdom's prisons after 1970 replicate patterns of Lockean slavery, the death toll of the convict leasing system and the transition to Lockean punishment. The latter two have depended on the US penal system for power and legitimacy. Furthermore, the death tolls of prisoners post 1970 represent the prevailing culture of penalty under which prison chaplains in the US and UK prisons function. This chapter thus provides a descriptive analysis of the modern penal culture in relation to ageing, suicide, homicide and natural in-prison deaths in the US and the UK penal systems.

In chapters 3 and 4, I provided a historical and theoretical analysis of the individual shifts to penal harshness in the US and the UK's penal systems. These sentences I argued have produced massive forms of imprisonments characterized as mass incarceration. In this chapter, I provide a statistical demonstration of the cumulative impacts of the turns to punitive sentences. These turns are existentially reflected in the high rates of ageing, dying and "death" of prisoners categorized as natural in-prison deaths, homicides, and suicides. They are part of the central organizing features of the prison culture.

According to Liebling, the prison “environment” also contributes to the high rates of in-prison deaths. She notes:

While increasing prison population numbers and changing demographics (imported variables) may contribute to these deaths, it is clear that environmental variables (such as safety, the skills and availability of staff, mental health provision, and the kinds of regimes and relationship provided) make a considerable difference to a prison’s survivability (Liebling 2017, 25).

This chapter is both theoretical and empirical. The theoretical aspect explores data on ageing, dying and death in prisons in the US, England and Wales, and Scotland as a result of the shifts to harsher sentences. The empirical aspect focuses on prison chaplain participants’ responses to their care for the ageing, dying and dead prisoners in the US and Scottish prisons as part of the prison entity.

According to Wahidin and Aday: “Although death is a frequent occurrence in many prison settings, little is known about prisoners’ attitude towards death and how they react to imminent mortality” (2016, 314). In this chapter, I also describe the attitudes of prisoners towards death but through their God-talks with prison chaplains. Prison chaplains have for decades served as buffers to counteract the pain of imprisonment for prisoners. This analysis also reflects how they have responded to the existential needs of prisoners serving mandatory, discretionary, determinate and indeterminate sentences for both violent and non-violent offences as central organizing factors to the modern penal cultures (Pollak, 1941). In so doing, it exhibits the various ways prison chaplains function as multi-faceted and unorthodox in the prison culture.

Imprisonment in the US and UK prisons is also associated with ageing, suicide, homicide, and natural in-prison deaths. These developments in the prison environment provide daily opportunities for pastoral care intervention from prison chaplains. The research thus illustrates how indispensable the role of the prison chaplain is to the prison culture.

This chapter is structured as follows: (1) Definition of 'Death': Natural and Un-Natural; (2) Prison chaplains contemplations on the state of ageing prisoners; (3) Theoretical account: ageing, 'natural' in-prison death, homicide and suicide in US and UK prisons; (4) and Empirical account: prison chaplain participant's prisoners-talk about death.

### **5.1 Definition of "Death": Natural and Un-Natural**

There are three kinds of death associated with this research: (1) Civil death; (2) Universal-death (natural); and (3) "In-prison death." This chapter will focus on the latter two.

*Universal-death (natural):* According to Markus Muhling, death is the "opposite of life and dying, the transition from life to death." Death is the cessation of consciousness (Muhling 2015, 173). He argues that death is a biological phenomenon that is also associated with ageing and illnesses (Muhling 2015, 177). Muhling is referring to the universal experience of death that is natural to every human being. He writes:

Aging does not appear to be a biological necessity, but rather a compromise that can, from the standpoint of evolutionary theory,

heighten reproductive success. From the perspective non-eschatic horizons of expectation and interpretation—such as biology and medicine—the question of the why and use of aging, dying and death can indeed be answered, but not the question of the meaning of aging, dying and death (Muhling 2015, 181).

Muhling's definition of death is fundamentally natural. It is inclusive of all forms of death as the end of life.

***In-prison death.*** I define in-prison death as death conditioned by the turns to harsher sentences. It is largely unique to the modern penal systems of the US and the UK. In-prison death, I contend is peculiar to the various expressions and logic of the prison culture: penal, security and painful,

According to the Ministry of Justice, the use of “death” is an inclusive term that describes all forms of death in prison custody. Death is “Any death of a person in prison custody arising from an incident in or, on rare occasions, immediately before prison custody” (Ministry of Justice 2015, 8). For the Ministry of Justice, death in custody also covers the categories of ‘natural’ death, homicide, and suicide (Ministry of Justice 2015, 8) (HM Chief Inspector of Prisons 2014). For a better distinction, I refer to the all-inclusive death as in-prison death and all other forms of deaths including ‘natural’ death, homicide and suicide as “prison-deaths” under the category of in-prison death. However, it is important to note that the various components of in-prison-death also contains sub-categories according to the Ministry of Justice’ distinctions.

*Natural in-Prison death:* As a category of in-prison death, natural in-prison death is “any death of a person as a result of a naturally occurring disease process” which essentially include ageing and terminal illnesses

(Ministry of Justice 2015, 11). Natural in-prison deaths are influenced by the conditions of sentencing, imprisonment and the prison culture. In 2005, Gary Fields published an article in the *Wall Street Journal* about the death of prisoners serving life sentences at the famous Angola prison in Louisiana in the United States. He writes:

At Angola, 'life means life,' says Mr [Warden Burl Cain] ... 'Prison shouldn't be a place for dying old men,' he says. 'It should be a place for predators.

About half of those who die at Angola are buried on the prison's grounds because inmates have lost touch with their families and have no one to collect the remains. 'Even your bones don't get a second chance to get out,' says Mr Dennis, the prison's unofficial historian (Fields 2005, 1).

Fields' article highlights the increasing penal reality of ageing and dying in prison also associated with the state of "loneliness" and isolation in life and in death. In-prison death is associated with particular conditions of regulation and confinement of liberty.

*"Suicide"/self-inflicted death:* As a category of in-prison death, the Ministry of Justice defines self-inflicted death as "Any death of a person who has apparently taken his or her own life irrespective of intent." The Ministry of Justice's definition of suicide is inclusive. It recognizes the role of intentional and non-intentional actions that lead to death. It also notes "This classification is used because it is not always known whether a person intended to commit suicide" (Ministry of Justice 2015, 9).

According to Liebling, suicide in prison is a clear demonstration “between the pain of imprisonment and harm (as self-inflicted injury or suicide)” at the time (Liebling 1995, 183). The causes of prison suicide are not homogenous. They vary with age, gender, experience, lifestyle, socio-economic status and of course with race. The causes also include family breakdown, disengagement, employment, a sense of uselessness, and “difficulties with other prisons and staff,” and irregular contact with outsiders. Liebling writes:

Large groups among the prisoner population share those characteristics associated with increased suicide risk in the community: adverse life events, negative interpersonal relationships, social and economic disadvantage, alcohol and drug addiction, contact with criminal justice agencies, poor educational and employment history, low self-esteem, poor problem-solving ability, and low motivational drive (Liebling 1995, 181).

Those who have survived the prison experience without suicide have been able to overcome their sense of vulnerability and the angst of imprisonment. In that light, the causes of prison suicide are not monolithic. Complex factors influenced by pre-prison experiences and the present prison experience affect the emotional, psychological, and bodily functions of prisoners. These factors are also “situational” and “motivational” (Liebling 1995, 179).

Liebling explains that “prison is not a uniform experience—its effects have been underestimated by research which has taken average populations as its baseline and insensitive measures of pain as its tools” (Liebling 1995, 183). The next example shows the frustration of a prisoner grappling with an in-prison situation to the point of committing suicide.

*It's all sorts of things. I could say things that are still happening from years ago... I know there are other people in here like me, you know, who've been through what I've been through, but like, I've been in care from age six to sixteen, and from sixteen I've been in prison, with the exception of five months. So, like, when I tell them I need to be taught the basic things of life, they turn round and say to me, it should be up to me to go out and learn these things. But how can I when I don't know what the things are to learn? When I go to someone else, they just say the same things in different words. I've just got fed with it (Suicide attempter) (Liebling 1995, 179).*

In 2017, Liebling argued that there are three distinctions of suicides among prisoners: those committed by the (1) “psychiatrically ill;” (2) the “lifers and long-timers;” and (3) the “vulnerable” (Liebling 2017, 21). She explains that mitigating factors that are both internal and external influences these various dimensions of suicides.

Aspects of the prison environment that most significantly affect institutional suicide rate, in general, include safety, relationships, care for the vulnerable, and opportunities to work on one's own personal development. The lower these dimensions are rated, the higher are the levels of distress found among prisoners (Liebling 2017, 21)

Mitigating factors that are associated with pre-prison emotional, social, economic and psychological factors influence prison suicides. These personal situations in the lives of prisoners are also without the influences of the prison culture and its existential impacts. Liebling explains: “We should, therefore, see prison suicides as in considerable part influenced by the nature and quality of the prison environment. Prison suicides are ‘social facts’ (and ‘moral statistics’) whose explanation lies primarily outside the individual” (Liebling 2017, 22).

*Homicide*: Similarly, as a category of in-prison death, homicide is defined as “any death of a person at the hands of another. This includes murder and manslaughter cases” (Ministry of Justice 2015, 12). Homicide rates of among prisoners in England and Wales have increased. Liebling notes:

Numerous prisoners in two recent research projects on the quality of life in high-security prisons pointed to scars on their necks and faces during interviews to illustrate the many and varied pains of living in prison...But the number of murders has gone up. Many of the conditions in which high levels of violence arise are chronic and exacerbated by organizational chaos. Critics argue that a prison murder is ‘an indicator of neglect (Liebling 2017, 24).

However, in the case of homicide, the Ministry of Justice does not take into consideration the element of “intent” (Ministry of Justice 2015, 12).

In contrast to the above distinctions between the categories of universal-death (Muhling) and in-prison-death (the Ministry of Justice), I suggest a distinction between natural death and unnatural death. Based on Muhling’s definition, all-natural deaths are biological; nevertheless, all biological deaths are not natural. This distinction is particularly important considering the implications of the shifts to penal harshness and the high production of the various forms of in-prison death. Hence, one may argue that the consequences of mandatory sentences, emphasis on imprisonment, incapacitation and decline in the possibility for release and parole for both violent and non-violent offenders have produced unnatural conditions of death that negate the conditions and claims of natural death. These categories of death also form the penal background and recollection of PCs.

## 5.2 Prison chaplains' Contemplates the State of Ageing Prisoners

Prison chaplains are also affected in their care for ageing and dying prisoners. This section explores the link between the increase in ageing and dying prisoners as a result of the shifts to penal harshness and the experience of prison chaplains in care for this population. According to R. Shaw et al. "Prison chaplains have close contact with inmates and are familiar with the corrective services system. Consequently, they understand how inmates are ageing and how the system provides for older inmates" (Shaw, Stevens, Paget, & Snoyman 2018, 4)

The shifts to harsher sentences have increased life-threatening conditions in the prison environment as daily opportunities for pastoral care intervention from PCs. Take for instance the experience of OL who is 71 and has been imprisoned for over 28 years in the US.

*In prison, the elderly need more care in terms of both operations and medications than the average younger prisoner. The system doesn't want to spend the money they need to on an older prisoner. So, they'd get third or fourth rate drugs to treat your ailments. They'll put off a surgery you need for years and years. [...] Say a prisoner losses control of their body functions they might be in a hospital unit sitting in their waste because no one wants to change them. Nurses don't want to deal with prisoners that way because they say it's a dirty job. So, they'll have the prison interns do it. If it's overnight, the prisoner will have to sit in it all night until the following day. It's a terrible thing to go to prison but it's worse growing old in prison (American Friends Service Committee 2017, 6).*

As an empirical study, I have structured the prison chaplain participants' responses in such a way as to demonstrate their practical understanding of the prison culture through their care for ageing and dying prisoners. Prison chaplains have gained and continue to acquire theoretical and practical insights into the workings and logic of the penal system in their administrative and correctional roles. In such capacities, I argue that PCs perceive prisoners as "persons" in need of pastoral care and not as individuals they must consistently be on the "look out for" with overwhelming suspicion. (Hicks, 2012; Denney, 2017). The following questions and their responses suggest that prison chaplains possess prison experiences and practical rationality of the prison culture that also impacts them.

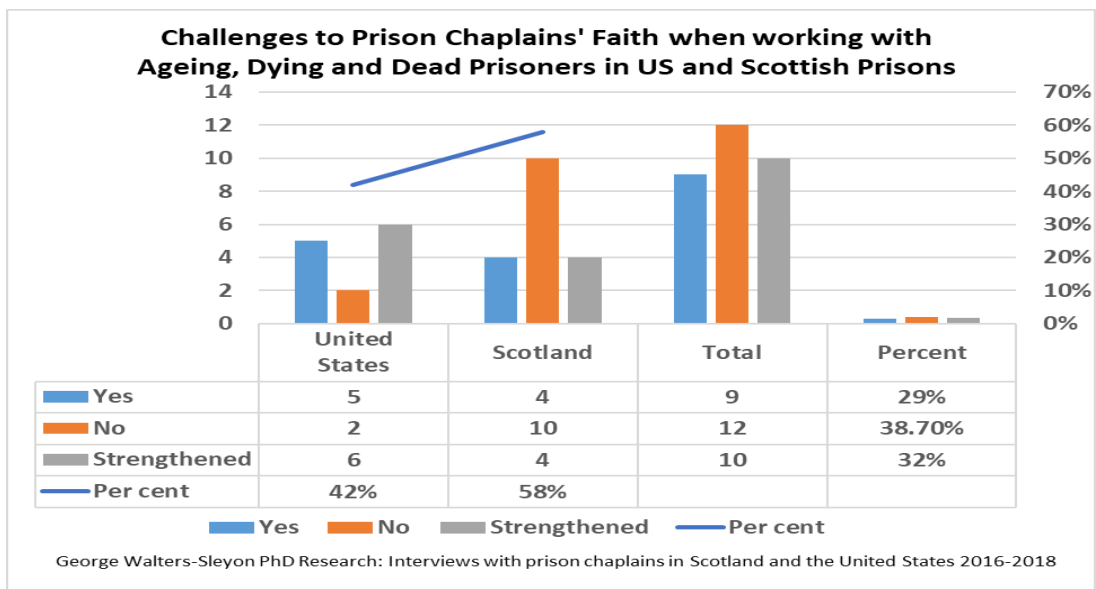
#### *Prison Chaplains' Faiths are challenged in the Prison Culture*

The prison culture affects the faith of prison chaplains — directly or indirectly in US and UK prisons. With particular respect to this research, the ageing and dying of prisoners especially those with whom they have developed long term ministerial relationships affect prison chaplains. From a total of 31 prison chaplains interviewed in this research: 29% said Yes, working with ageing and dying prisoners in US and Scottish prisons affects their faith. While 38.7% of those interviewed said No. Similarly, 32% said their faith has been Strengthened while working with ageing and dying prisoners.

Furthermore, when the responses are analyzed individually between the PCs from the US and Scotland; 16% of those from the US said Yes, working

with ageing and dying prisoners affects their faith in contrast to 13% of PCs from Scotland. In addition, 32% of the participants from Scotland said No, their faith was not affected while working with ageing and dying prisoners in contrast to 6.4% of PC participants from the US. Similarly, 19% of participants from the US said working with ageing and dying prisoners Strengthened their faith. In contrast, only 13% of PCs in Scotland said working with ageing and dying prisoners has strengthened their faith.

In light of the above responses, PCs were also asked about their practice of self-care in dealing with the prison culture. The responses were not homogenous. Many of them said, they rely heavily on their vocation and calling as ministers within their religious traditions. They also indicated that they rely on their religious communities in addition to their personal devotion of prayer, worship and sacrament for their personal self-care.



According to PCA123, working with ageing, dying and dead prisoners is affirming — “It confirms my beliefs.” PC114 rejects the idea of a “challenge,” instead, “it means my faith is flourishing. It has helped me reflect on the temporary nature of life and encouraged me to use my life and my time more wisely.” PCS115 sees prison chaplaincy as analogous to pastoral responsibilities in the church, thus a familiar experience and transfer of pastoral skills but with introspective awareness when confronted with the reality of ageing, dying and death in prison. “I do not feel that it has challenged my faith in any particular way. The general experience of dealing with parishioners in this context certainly can cause one to reflect on one’s own attitude to eternal life” (PCS115). For PCS117, it is a challenge because the experience resembles a violent encounter. “It has challenged my faith in human beings rather than in God” (PCS117).

### *The Fear of Loneliness as Prisoners Age*

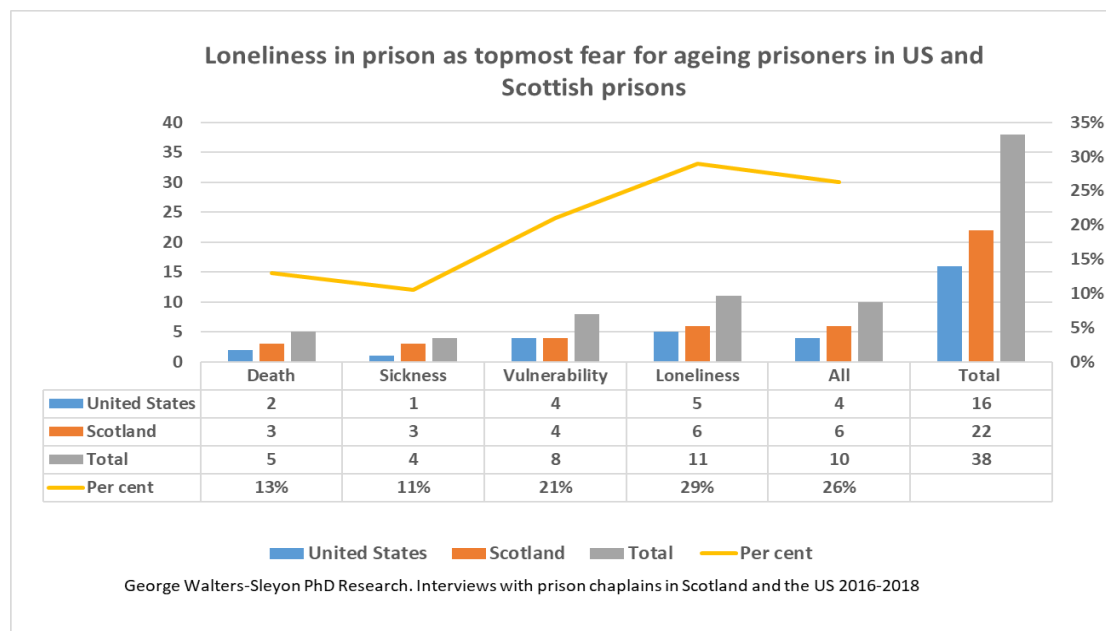
The emotional state of ageing prisoners defines their ability to endure the “pain of imprisonment.” Based on participants’ responses, 29% said what ageing prisoners fear most is loneliness. Loneliness is an abiding fear for older prisoners. According to a 2017 report from HM Inspectorate of Prisons for Scotland. It notes:

Many prisoners told us of the sense of loneliness they felt and their desire for companionship, with boredom and limited out of cell activity adding to their sense of isolation. They also told us many stories of how well they felt they were cared for by individual members of staff who had gone the extra mile to provide support and care (HM Inspectorate of Prisons 2017, 2).

Take for instance the statement from a man of 69 years with 41 years as a prisoner. He reflects on the sense of abandonment and the emotional toll of life imprisonment without parole. As lifers age in their sentences, their contacts with family members diminish. The causes include death and the relocation of close relatives. The experience also represents the prisoners’ personal loss and sense of “disenfranchisement” (Lane 2015). It reflects the “death” of their relatives on the outside as well as their death on the inside. Take for instance this example of a lifer from the American Friends Service Committee.

*As you get older in prison you may no longer have the support of people who were there when you first came to prison. People and family begin to die. You don’t know how to develop resources to sustain yourself so your spirit begins to dwindle. Your physical health begins to dwindle. I’ve seen brothers in lockups who never come out of their cells. They never come out to the yard to exercise. They never do anything that is constructive or productive for their minds, bodies or their spirit (American Friends Service Committee, 2017,10).*

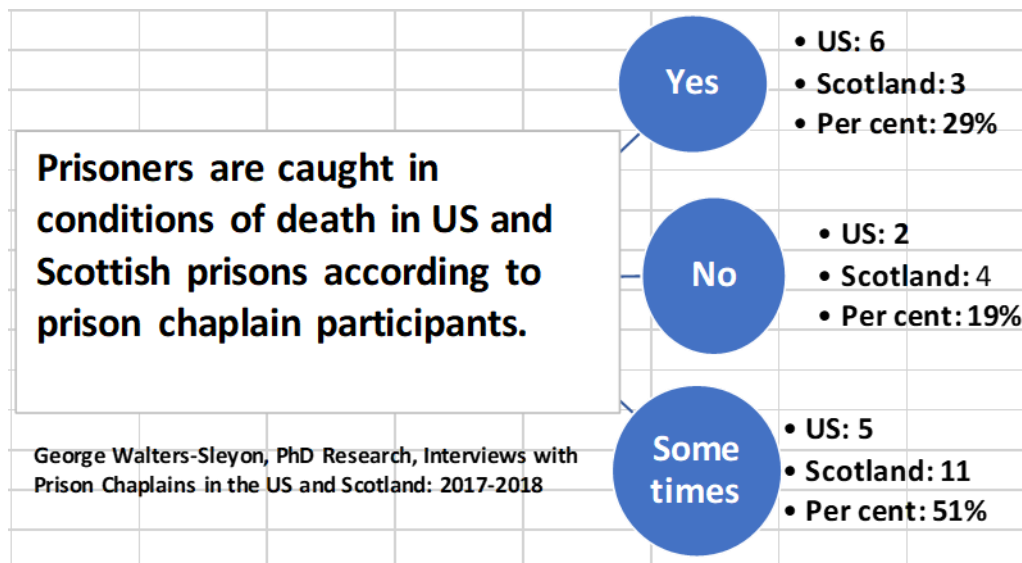
A total of 26% of participants said prisoners fear all of the variables: death 13%, sickness 11%, vulnerability 21% and loneliness 29%. However, the fear of Sickness received the least response. This is important because sickness and old age have been historically associated. In the prison context, what is feared most and what contributes most to ageing is Loneliness. As prisoners age, their fear of loneliness becomes acute especially the fear and potential of dying alone without a family member around.



*Prisoners are Caught in the Condition of Death as they Age*

I did inquire about participants' assessments of the condition and predicament facing prisoners. In their responses, the presentiment of death looms as prisoners age. Death is a pseudo-conclusion of punishment for those who die imprisoned in the US and Scotland, especially for lifers. 51% of the

participants reported that sometimes it looks like prisoners are caught in conditions of death in the prison. 29% said *Yes*; they see prisoners caught in conditions of death as they age. Only 19% of the participants said *No*. For many participants, the shift from an emphasis on rehabilitation and release to incapacitation has dramatically altered the prison climate (Liebling 2004). This alteration has generated increased encounters with ageing, dying and dead prisoners.



As an aspect of the theo-criminal justice comparative approach, Scripture and in this case, the Old Testament provides a concept of punishment that is humanitarian and redemptive. The Old Testament lacks an explicit use of prison because prisons are considered places of “death” (Wright 2004, 310). According to Griffith and Brown, prisons and imprisonment have never been viewed favourably in the entire Bible. The reason is that prisons or imprisonment

replicate the very condition they intend to deter. The lack of prisons is not to curb violence but merely a condemnation of their potential consequences and impact on Israel as a covenant community. They explain:

The Bible identifies the prison with the spirit and power of death ... The problem is that prisons are *identical in spirit* to the violence and murder that they pretend to combat. The biblical discernment of the spirit of the prison demythologizes our pretences. Whenever we cage people, we are in reality fueling and participating in the same spirit we claim to renounce. In the biblical understanding, the spirit of the prison is the spirit of death (Griffith and Brown 1993, 106).

Releasing prisoners from the chains of physical imprisonment is pivotal to the Old Testament's messianic expectations (Isa. 42:6-7; 61:1; Zech. 9:9-12). Its concept of redemption is associated with a sense of sociopolitical and economic deliverance.

Like the Old Testament, long-term confinement in the New Testament is unusual. They were considered the penal policies and institutions of the Romans as colonial masters over Israel. Prisons were filthy, overcrowded and disease-ridden:(Matt. 25:36). Also, they were associated with brutal torture (Matt. 18:34), execution (Mark 6:14-29) and suicide (Philippians 1:19-24). Thus, the apostles were often released from prisons through divine intervention (Acts 5:19, 22-23; 12:6-11; 16:25-26). Prisons are regarded as places of destitution in need of God's redemption. Furthermore, the Bible condemns indeterminate punishment.

In Deuteronomy 25:2-3, God sanctions the beating of a criminal with 40 stripes but no more. Although an offender and publicly punished, the lawbreaker must not be reduced to indignity in the eyes of others. Having paid for their crime, they must be able to regain their dignity and not be subject to perpetual

disgrace. It was also imperative that punishment is administered in the presence of a judge to avoid all forms of arbitrary justice. According to Wright:

If corporal punishment is the verdict of a proper court, then it is to be administered under the supervision of the judge (not out of sight in some secret, sadistic dungeon). Furthermore, the punishment is to be clearly specified in relation to the seriousness of the offence ('the number of lashes his crime deserves') not just a general thrashing. And, most important of all, the punishment has to have a clear maximum limit ('not more than forty lashes'). He is still a brother, albeit a guilty one (Wright 2004, 309).

The Old Testament teaches that fair sentencing and punishment should have a minimum and maximum limit but not be indeterminate. Whipping was a standard form of physical punishment in Israel and very central (Deut. 25:22-12) (Wright 2004, 309). The Old Testament reflects a conception of punishment that is holistic with moral and ethical restrictions. Punishment is based on mercy, compassion and respect for the dignity of the offender. In the Old Testament, the prison culture is also a culture of death (See Wesley's account of mercy in Chapter 6).

The next section provides a contextual penal background within which PCs function in their chaplaincy care for the ageing, dying and dead prisoners. It underscores reasons for the growth in the ageing prison population in the US, England and Wales, and Scotland as a result of the increase in longer sentences. The categories considered "causes" of death in the US penal system (local, state and Federal) are similar to the UK apart from the contextual exceptions.

### 5.3 Theoretical Account: Ageing, Dying and Death in US and UK Prisons

#### The United States: Ageing and Death in US Prisons:

The turn to longer sentences in addition to the emphases on prison expansion in the United States penal system have produced increases in ageing and in-prison deaths across US prisons (Simon 2014, 2001).

#### Ageing:

Aday notes, “With the elderly prisoner population representing the fastest-growing age group in our prison system today, we have reached an important juncture in the fields of gerontology, criminology, and corrections” (Aday 2003, 3). He associates the increase to “The recent shift toward mandatory, sentencing, the war on drugs,” which have caused “the graying of America’s” prisons (Aday 2003, 3). Aday contends that tough on crime policies and actions fuelling the passing of mandatory sentences did not take account of the ageing population that was emerging in the 1990s and has continued since then. “As a result, we were ill prepared for the ‘aging epidemic’ in almost every component of the criminal justice system... (Aday 2003, 9). By 2001, there were 113,358 prisoners above the age of 50 in both state and federal prisons, thus tripling the number of elderly prisoners who rose from 33,499 in 1990 (Aday 2003, 10).

For Aday and other experts, the increase in the ageing prison population is also attributed to a surge in the arrest of elderly offenders, the building of more prisons, shifts towards retributive justice and the decline in parole. With the emphasis on mandatory sentences, he writes:

New laws increased the flow of inmates into the prison system, and simultaneously reduced the number who can leave ... The growth in the older prison population is not due to an elderly crime wave. According to the U.S Department of justice, the trend results more directly from 'three-strikes' and truth-in-sentencing laws (Aday 2003, 10).

Furthermore, truth-in-Sentencing has caused the extension of prison terms for offenders. Prisoners have been required to serve close to 85 per cent of their imprisonment some with little or no possibility of parole by 2000. The declines in parole eligibility and parole granting have been observed in several states with the elimination of release for some violent and non-violent offences (Aday 2003, 11).

Beside the health-care cost and the added difficulties with housing and program development for ageing prisoners, problems associated with elderly prisoners are numerous. They include: mental illness, stroke, incontinence, dementia, arthritis, cancer, hypertension, a decline in sensory operations, cognitive skills, and other chronic health problems including respiratory conditions in addition to emotional and mental situations remain apparent (Moll 2013,11).

Adey defines three groups of elderly prisoners in the American context: "First timers, or new elderly" who are new offenders; second, "career offenders" who are recidivists with multiple offenses; and third, "elder lifers" who are serving life sentences, natural life sentences or life without parole (Aday 2003, 18). For Aday: "Age is considered one of the biggest issues that will continue to affect corrections and correctional health care in the future" (Aday 2003, 18).

According to Nellies and King, in 2008, 41,095 people, or 1 in 36 persons in prison, were serving a sentence of life without parole (LWOP) (Nellis & King 2009, 9). In 2011, 16% of the American prison population was aged 50 or older. With an increase from 113,358 in 2001, 246,600 prisoners were categorised as 50 or older (ACLU, 2012). The US prison population aged 55 and above is predicted to increase by 4,400% from 1981 to 2030. The ACLU notes:

In 1981, there were only 8,853 prisoners age 55 and older. Corrections experts' project that, by 2030, there will be over 400,000 such prisoners, amounting to one-third of the prison population. This astronomical projection does not even include those prisoners ages 50–54 and is, therefore, a lower projection than the actual future elderly prison population (ACLU 2012, V).

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Concerning the elderly prison population, Human Rights Watch reports that “In 2007 there were 16,100; by 2010 there were 26,200, an increase of 63 per cent. Yet during that same time period, the total number of prisoners grew by 0.7 per cent” (HRW 2012, 7).

In May 2015, the Federal Bureau of Prisons (BOP) released its annual report on ageing. It concluded that prisoners were ageing faster, consisting of 19 per cent of the BOP’s general prisons population. The report notes, “Aging inmates commit less misconduct while incarcerated and have a lower rate of re-arrest once released. Ageing inmates, comprising 19 per cent of the BOP’s inmate population in the fiscal year 2013, represented 10 per cent of all the inmate misconduct incidents in that year” (U.S. Department of Justice 2015b, 2).

Total Sentenced Inmate Population by Age

Fiscal Year	Sentenced Inmates	Aging Inmates (50 and older)	Younger Inmates (49 and younger)
2009	159,189	24,857	134,332
2010	159,660	26,221	133,439
2011	165,797	28,239	137,558
2012	164,257	29,332	134,925
2013	164,566	30,962	133,604

BOP population snapshots. (U.S. Department of Justice, 2015, p. 2).

According to the BOP, there was a remarkable increase in the percentage of inmates aged 65 to 69 by 41 per cent; inmates aged 70 to 74 increased by 51 per cent; inmates aged 75 to 79 increased by 43 per cent; and inmates aged 80 and over increased by 76 per cent (U.S. Department of Justice 2015b, 2). The Report attributes the increase in the Federal prison population to the following:

Elimination of parole, use of mandatory minimum sentences, increases in average sentence length over the past 3 decades, and an increase in white-collar offenders and sex offenders, among other things (U.S. Department of Justice 2015b, 3).

In 2017, The Sentencing Project reported that emphasis on a life sentence in the absence of increases in crime has continued in the US. Violent crimes have declined over the past 20 years, with little correlation shown between longer sentences and public safety. It notes: “The lifer population has nearly quintupled since 1984. One in nine people in prison is now serving a life sentence, and nearly a third of lifers have been sentenced to life without parole” (The Sentencing Project 2017, 8). Along with the increase in life sentences came the increase in lifers and ageing prison population. According to Matt McKillop and Alex Boucher:

The graying of state prisons stems from an increase in admissions of older people to prison and the use of longer sentences as a public safety strategy. From 2003 to 2013, admissions of those 55 or older increased by 82 per cent—higher than the overall population growth for that age bracket—even as they declined for the younger group. A majority of these admissions were for new court commitments, which generally carry longer sentences than parole violations (McKillop & Boucher 2018).

The BOP report also confirms the argument that the turn to what is considered “vindictive penology” (Wogaman 2007) has had catastrophic effects on individuals and communities in the United States. With over 2.4 million individuals in jail, prison and under correctional supervision, the United States has the highest number of elderly prisoners in the world with the potential for more prisoner deaths in years to come than any other country in the world (US Department of Justice 2016; Shifflett, Fung, & Scheller 2016).

### 'Natural' in-Prison Deaths

According to Nellis and King, in 2008, 41,095 people, or 1 in 36 persons in prison, were serving a sentence of life without parole (LWOP) (Nellis and King 2009, 9). A prison boom has developed, and prisoners are staying longer to sustain the penal industry.

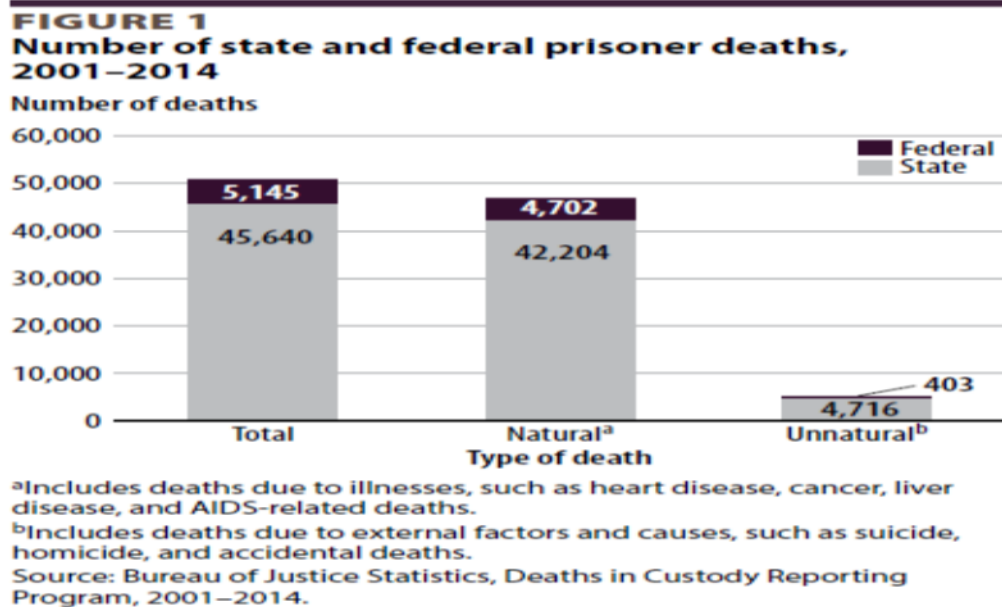
In 2009, the Sentencing Project reported that the number of Americans serving life sentences increased to 140,610 individuals, with one out of every 11 persons (9.5%) in prison serving life. Twenty-nine per cent (41,095) of those serving life sentences are not eligible for parole. At least 1 in 6 persons in Alabama, California, Massachusetts, Nevada and New York are serving life, with California having the highest number of lifers in the United States—20% of the prison population is serving a life sentence, up from 18.1% in 2003 with 10.8% LWOP (Nellis and King 2009). The report concludes that life sentences and life without parole sentences have increased dramatically over the decades in the US as sentences have become more punitive. “In particular, support for the expansion of LWOP sentences grew out of the same mistrust of the judicial process that birthed sentencing guidelines, mandatory minimums, and ‘truth-in-sentencing’ laws to restrict parole eligibility” (Nellis and King 2009, 5). In 2013, the ACLU reported, “About 79 per cent of the 3,278 prisoners serving life without parole were sentenced to die in prison for nonviolent drug crimes” (ACLU 2013b, 2; HRW 2012, 83-84).

The available data on deaths in US prisons indicate consistent increases (ACLU 2013b, 9; The Project on Death in America 1998; Mahon 1999, 213).

According to the US Department of Justice 2016 report:

In 2014, there were 3,927 inmate deaths in the state (3,483) and federal (444) prisons, up slightly from 3,879 in 2013. This is the largest number of inmate deaths reported in state and federal prisons since the Deaths in Custody Reporting Program (DCRP) began collecting data in 2001. Between 2001 and 2014, there were 50,785 inmate deaths in state and federal prisons in the United States (US Department of Justice 2016, 1).

*Death: 2001-2014: State and Federal Prisons*



Furthermore, the Department of Justice 2015 report confirms the death of 4,446 prisoners in 2013 in local jails and state prisons. The total number of deaths increased by 131 from previous years. 967 prisoners died in local jails in 2013, with a 4% decrease in the jail population, but the total death rate increased from 128 per 100,000 in 2012 to 135 per 100,000 in 2013. In state

prisons, prisoners' death rates increased by 4% to 3,479 in 2013, an increase in 122 deaths from 2012 (U.S. Department of Justice 2015b, 1). The statistics on death in individual penal categories reveal a staggering picture.

### Deaths in US State Prisons: 2001-2013

*In state prisons:* According to the US State Department report:

The mortality rate increased 3%, from 265 deaths per 100,000 state prisoners in 2012 to 274 per 100,000 in 2013. Although there were some fluctuations in the rates for unnatural deaths (e.g., accidents increased while suicides declined), the change in the rate for illness (up 4%) accounted for the increase in the overall rate (U.S. Department of Justice 2015b, 3).

### *Prisoner Deaths in US State Prisons: 2000-2013*

**TABLE 16**

**Number of state prisoner deaths, by cause of death, 2001–2013**

Cause of death	Total	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
All causes	42,157	2,869	2,933	3,152	3,123	3,168	3,233	3,389	3,450	3,417	3,234	3,353	3,357	3,479
Illness	37,374	2,567	2,614	2,830	2,783	2,817	2,830	2,980	3,034	3,028	2,868	2,982	2,959	3,082
Cancer	11,223	691	681	811	733	805	806	772	905	974	927	1,028	1,024	1,066
Heart disease	10,795	743	802	801	842	835	854	840	846	844	831	856	804	897
Liver disease	4,063	307	297	306	283	318	303	316	317	333	286	339	304	354
Respiratory disease	2,558	139	154	194	198	212	193	205	252	196	206	198	218	193
AIDS-related	1,733	275	241	209	147	156	132	120	99	98	73	57	74	52
All other <sup>a</sup>	7,002	412	439	509	580	491	542	727	615	583	545	504	535	520
Suicide	2,577	168	168	199	199	213	219	215	197	202	215	185	205	192
Drug/alcohol intoxication	546	35	37	23	22	37	56	41	58	50	40	58	33	56
Accident	411	22	29	26	34	28	32	28	26	32	32	38	50	34
Homicide <sup>b</sup>	762	39	48	49	49	56	55	57	40	54	70	70	85	90
Other/unknown	293	0	0	25	36	17	41	16	95	16	4	11	14	18
Missing	194	38	37	0	0	0	0	52	0	35	5	9	11	7

Note: Data may have been revised from previously published statistics. Excludes executions; for execution data, see *Capital Punishment, 2013 - Statistical Tables* (NCJ 248448, BJS web, December 2014). See *Methodology* for details on illnesses and homicides.

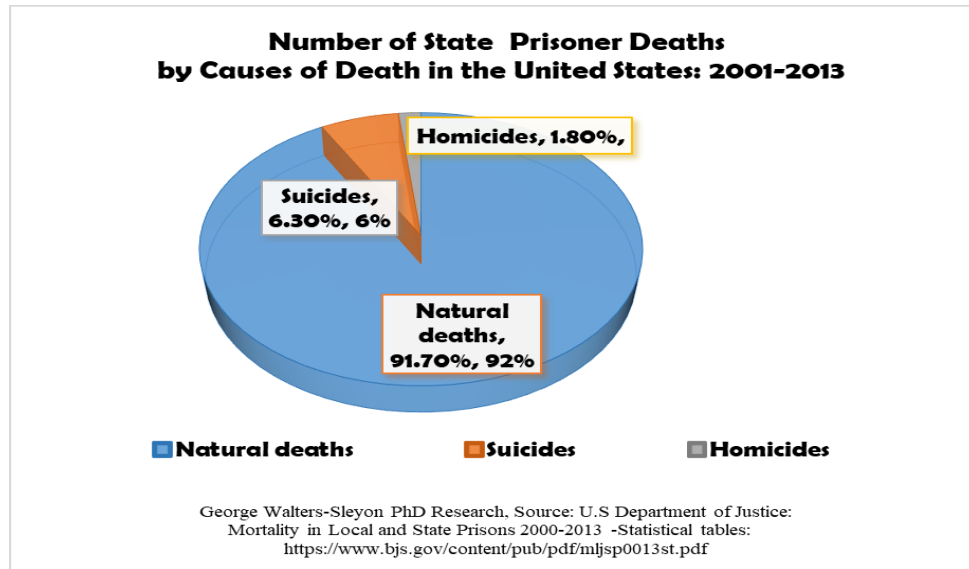
<sup>a</sup>Includes other specified illnesses, such as cerebrovascular disease, influenza, and other nonleading natural causes of death, as well as unspecified illnesses.

<sup>b</sup>Includes homicides committed by other inmates, incidental to the staff use of force, and resulting from assaults sustained prior to incarceration.

Source: Bureau of Justice Statistics, Deaths in Custody Reporting Program, 2001–2013.

The number of prisoner deaths in state prisons exceeds that of local jails. A total of 42,157 prisoners died from 2001–2013 in state prisons across the US. Ages

35-55 experienced the highest rates of death with 18,940 deaths for ages 55 and older. Natural in-prison causes account for 92% of deaths. Similarly, homicides account for 1.8% with 6.3% of prisoner deaths attributed to suicide.



<b>United States: Death of Prisoners in State Prisons by: Gender, Race and Age: 2001-2013</b>		
	<b>Total</b>	<b>Per Cent</b>
<b>Total</b>	42,157	
<b>Male</b>	40,437	96%
<b>Female</b>	1,718	4%
<b>White</b>	21,723	51%
<b>Black/African American</b>	14,960	35%
<b>Hispanic/Latino</b>	4,645	11%
<b>Other</b>	804	10%
<b>17 or Younger</b>	18	0.04
<b>18-24</b>	884	2.09%
<b>25-34</b>	3,014	7%
<b>35-44</b>	6,683	15%
<b>45-54</b>	12,567	29%
<b>55 or Older</b>	18,940	45%
George Walters-Sleyon PhD Research, Source: U.S Department of Justice: Mortality in Local and State Prisons 2000-2013 -Statistical tables: <a href="https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf">https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf</a>		

*Prisoner Deaths in US State and Federal Prisons*

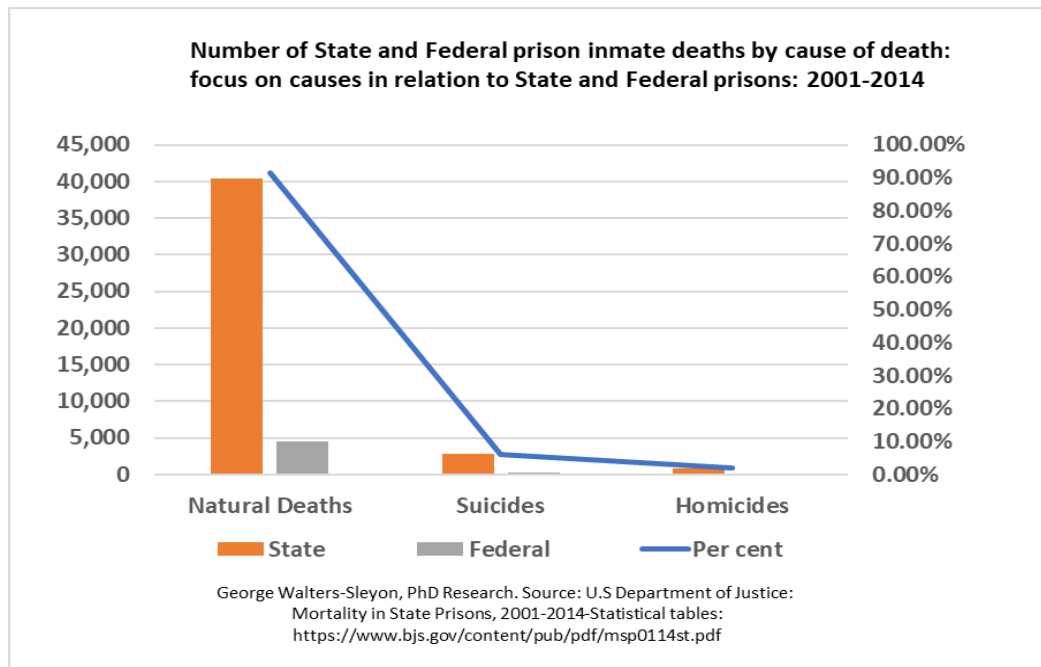
Furthermore, joint data for state and federal prisons from 2001, and 2005 to 2014 show an increase in prisoner death rates. There was a total of 40,560 prisoner deaths over the span of 11 years. A total of 89.8% of prisoners died in state prisons across the US along with 10% of prisoner deaths in federal prisons. Significantly, in 2001 and 2005–2014, a total of 2,260 (5.5%) deaths were attributed to suicide in state and federal prisons, with 699 (1.7%) attributed to homicide.

<b>Number of State and Federal prison inmate deaths by cause of death: focus on causes in relation to State and Federal prisons: 2001-2014</b>				
	<b>State</b>	<b>Federal</b>	<b>Total</b>	<b>Per cent</b>
			48,973	
<b>Natural Deaths</b>	40,407	4,543	44,950	<b>91.70%</b>
<b>Suicides</b>	2,826	222	3,048	<b>6.20%</b>
<b>Homicides</b>	845	130	975	<b>2%</b>
<b>Total</b>	<b>44,078</b>	<b>4,895</b>	<b>48,973</b>	
<b>Per cent</b>	<b>90%</b>	<b>9.90%</b>		

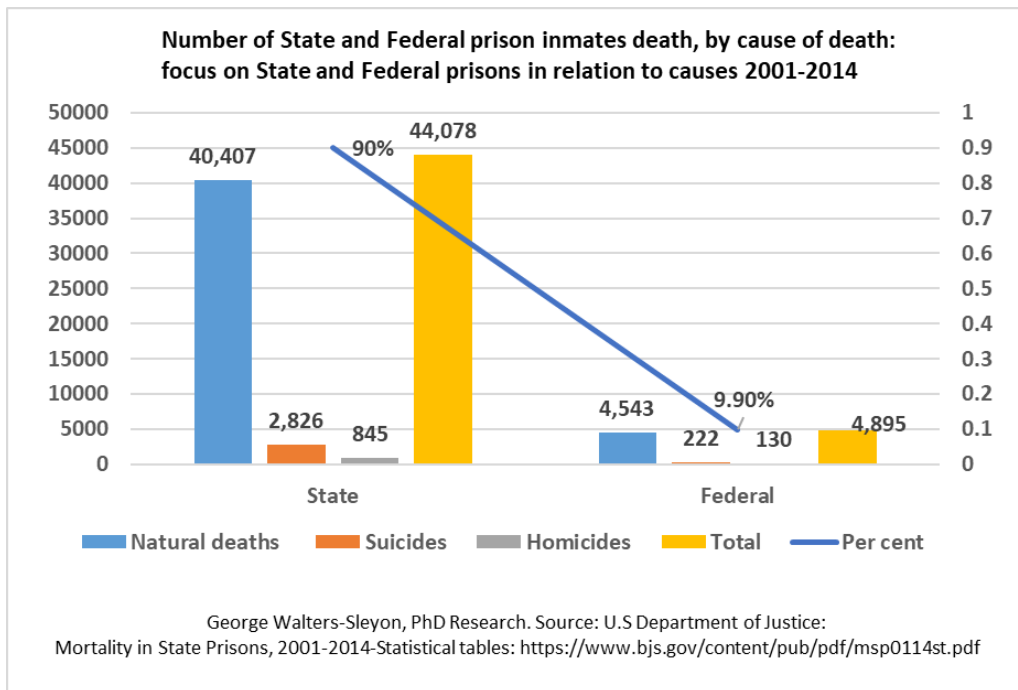
George Walters-Sleyon, PhD Research. Source: U.S Department of Justice: Mortality in State Prisons, 2001-2014-Statistical tables: <https://www.bjs.gov/content/pub/pdf/msp0114st.pdf>

However, the chart above displays a conclusive rise in the death of prisoners in state and federal prisons between 2001-2014 across the United States.

Furthermore, natural in-prison causes accounted for 91.7% of deaths, 6.2% of prisoner deaths were attributed to suicide with 2% of prisoner deaths attributed to homicide. The total number of prisoner deaths in state and federal prisons was 48,973 between 2001 and 2014.



According to the US Department of Justice, suicides in US prisons have increased steeply. The rate since 2000 has been very high, with 34% of deaths in 2013 attributed to suicide. Suicides increased in state and federal prisons increased by 14%, from 40 suicides per 100,000 jail inmates to 46 per 100,000 in 2012. Furthermore, 1,966 prisoners aged 55 or older made up over half (57%) of all deaths in state custody in 2013. The percentage of age 55 or older increased by an average of 8% annually since 2001 in State prisons (U.S. Department of Justice 2015b, 2).



I have decided not to include statistics on the death penalty in the US since it does not exist in the UK. Secondly, I did not interview any PC who had worked with prisoners on death row.

*Natural Prison Death in Local Jails:* The following charts provide a brief analysis of deaths in local jails in the US between 2001-2013 by natural in-prison causes, homicide and suicides. In the charts below, I have only calculated the total as reflected for each category from the original charts on mortality rates in local jails, state and federal prisons (U.S. Department of Justice 2015b). In 13 years, a total of 13,728 inmates died in local jails across the US from 2000-2013. Of the 13,728, 12,092 were males, and 1,630 were females (U.S. Department of Justice 2015b).<sup>3</sup>

<sup>3</sup> It is stated in the above appendix that “detail may not sum to total due to missing data” based on how data were collected and calculated.

**TABLE 1**  
**Number of local jail inmate deaths, by cause of death, 2000–2013**

Cause of death	Total	2000	2001	2002	2003	2004	2005	2006	2007	2008 <sup>a</sup>	2009	2010	2011	2012	2013
All causes	13,728	904	942	970	1,002	1,021	1,045	1,094	1,100	958	960	918	889	958	967
Illness	7,111	516	485	508	512	529	501	604	608	444	491	477	425	529	482
Heart disease	3,176	198	216	221	240	227	202	246	231	186	202	242	234	271	260
AIDS-related	552	57	59	53	55	52	40	54	43	32	27	26	13	21	20
Cancer	498	31	25	39	34	29	37	39	42	25	47	34	32	44	40
Liver disease	393	24	27	25	31	32	32	25	39	35	32	29	14	29	19
Respiratory disease	384	31	18	22	21	35	21	27	48	33	31	18	20	28	31
All other <sup>b</sup>	2,108	175	140	148	131	154	169	213	205	133	152	128	112	136	112
Suicide	4,134	289	313	314	296	299	286	278	284	228	304	305	311	300	327
Drug/alcohol intoxication	925	37	58	54	89	76	83	87	79	44	64	54	73	57	70
Accident	371	25	36	34	28	33	24	33	18	15	26	23	27	18	31
Homicide <sup>c</sup>	302	17	19	18	15	25	22	36	20	16	23	20	21	22	28
Other/unknown	520	17	24	35	52	50	110	52	71	8	24	13	22	24	18
Missing	365	3	7	7	10	9	19	4	20	203	28	26	10	8	11

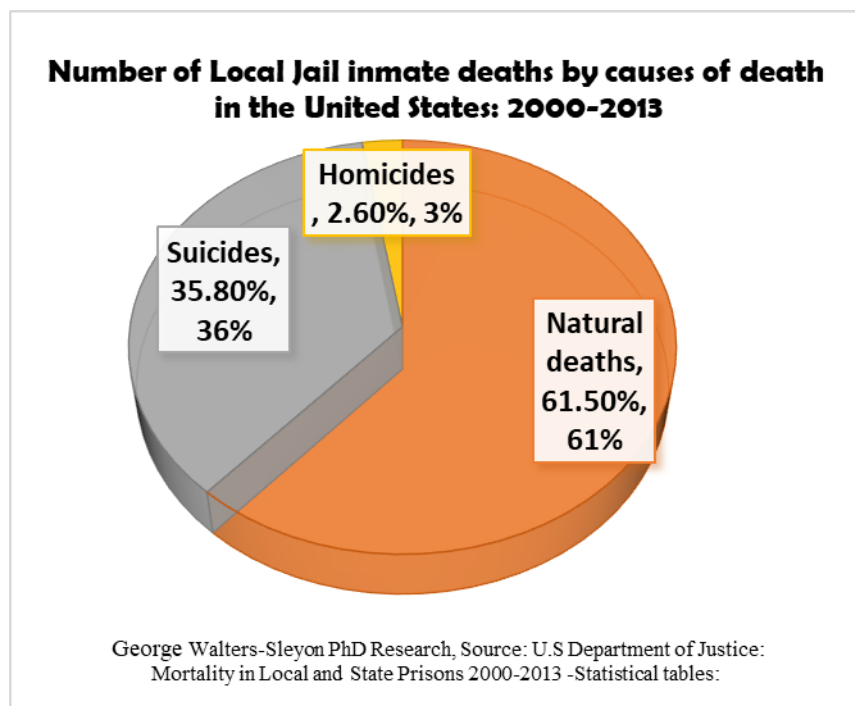
Note: Data may have been revised from previously published statistics. See *Methodology* for details on cause of death, illnesses, and homicides.

<sup>a</sup>In 2008, a high number of illness cases were missing cause-of-death information and were classified as other or unknown.

<sup>b</sup>Includes other specified illnesses, such as cerebrovascular disease, influenza, and other nonleading natural causes of death, as well as unspecified illnesses.

<sup>c</sup>Includes homicides committed by other inmates, incidental to the staff use of force, and resulting from assaults sustained prior to incarceration.

Source: Bureau of Justice Statistics, Deaths in Custody Reporting Program, 2000–2013.



Between 2000-2013, natural in-prison deaths in local jails reveal diverse categories and structures of death. Like the penal cultures of state and federal

prisons, prisoner deaths in jails reflect a particular penal culture in which “death” is associated with “short term” imprisonment mainly for individuals awaiting their sentences. Like the UK, jails are transitional penal holdups until those convicted are sentenced. However, as we shall see, the death statistics of those convicted exceeds those that are convicted. During the period, 61.5% of prisoner deaths were attributed to natural causes. Similarly, suicides accounted for 36% of prisoner deaths, with 2.6% of prisoner deaths categorized as homicides.

<b>United States:</b>		
<b>Death of prisoners in Local Jails: 2000-2013:</b>		
<b>Gender, Race, Age and Penal status.</b>		
	<b>Total</b>	<b>Per cent</b>
<b>2000-2013</b>	<b>13,728</b>	
<b>Male</b>	<b>12,092</b>	<b>88%</b>
<b>Female</b>	<b>1,630</b>	<b>11.80%</b>
<b>White</b>	<b>7,337</b>	<b>53%</b>
<b>Black/African American</b>	<b>4,342</b>	<b>31.60%</b>
<b>Hispanic/Latino</b>	<b>1,625</b>	<b>11.80%</b>
<b>Other</b>	<b>309</b>	<b>2%</b>
<b>17 or Younger</b>	<b>69</b>	<b>0.50%</b>
<b>18-24</b>	<b>1,305</b>	<b>9%</b>
<b>25-34</b>	<b>2,710</b>	<b>19%</b>
<b>35-44</b>	<b>3,644</b>	<b>26%</b>
<b>45-54</b>	<b>3,689</b>	<b>26.80%</b>
<b>55 or Older</b>	<b>2,237</b>	<b>16%</b>
<b>Convicted</b>	<b>3,332</b>	<b>24%</b>
<b>Unconvicted</b>	<b>10,257</b>	<b>74.70%</b>
<b>George Walter-Sleyon PhD Research: Source: U.S Department of Justice:</b>		
<b>Mortality in Local and State Prisons 2000-2013 -Statistical tables:</b>		
<a href="https://www.bjs.gov/content/pub/pdf/mljisp0013st.pdf">https://www.bjs.gov/content/pub/pdf/mljisp0013st.pdf</a>		

As part of the in-prison natural death, the intersection between ageing and death in prison shows those between the ages of 25-34 (19%) and 35-44 (26%) experienced the highest number of deaths in US local jails, with 6,354 deaths between 2000 and 2013. Of the 13,728 deaths in US local jails, 74.7% died as

un-convicted inmates. Therefore, more un-convicted inmates died in US local jails than convicted inmates during the period (U.S. Department of Justice 2015b). The rate of deaths in state prisons exceeds those of local jails. A total of 42,157 prisoners died from 2001–2013 in state prisons across the US. Ages 35-55 experienced 89% of deaths (U.S. Department of Justice 2015b, 3).

### *Suicides in US Local Jails: 2001-2013*

Suicide is a leading cause of death in local jails. According to the US Department of Justice:

Suicides in local jails increased by 9%, from 300 suicides in 2012 to 327 in 2013. Suicide was the leading cause of death in local jails in 2013 (34% of all jail deaths) and has been the leading cause of death in local jails each year since 2000. The suicide rate increased from 40 suicides per 100,000 local jail inmates in 2012 to 46 suicides per 100,000 local jail inmates in 2013. More than half (60%) of all suicides in jails from 2000 to 2013 involved inmates who were age 25 to 44 (U.S. Department of Justice 2015b, 3).

**APPENDIX TABLE 4**  
Suicide mortality rate per 100,000 local jail inmates, by selected decedent characteristics, 2001–2013

Characteristic	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total	49	48	45	42	40	37	36	33	35	41	42	42	43
<b>Sex</b>													
Male	51	50	46	44	42	40	39	35	36	42	44	44	45
Female	32	35	38	33	26	21	20	19	24	33	31	26	30
<b>Race/Hispanic origin<sup>a</sup></b>													
White	96	99	93	80	74	70	69	65	71	85	89	90	77
Black/African American	18	14	13	17	17	17	17	13	12	14	14	16	18
Hispanic/Latino <sup>b</sup>	30	29	28	31	31	25	21	19	18	20	24	21	28
Other <sup>c</sup>	27	24	19	26	22	16	18	19	20	22	14	11	15
<b>Age</b>													
17 or younger	96	84	62!	62!	56!	42!	43!	36!	22!	23!	25!	26!	37!
18–24	36	37	33	32	30	25	24	23	24	24	25	29	26
25–34	49	41	43	43	38	36	32	26	31	41	42	38	42
35–44	52	60	54	48	49	46	47	43	45	51	51	54	54
45–54	57	58	54	47	44	42	47	44	45	56	58	49	47
55 or older	88	73	51	54	63	57	48	58	55	54	60	64	86
<b>Legal status</b>													
Convicted <sup>d</sup>	24	21	20	18	15	15	15	13	17	20	19	19	18
Unconvicted <sup>e</sup>	66	66	61	58	56	50	49	44	45	54	57	56	59

Note: Based on 2-year rolling averages centered on the most recent year. See *Methodology* for details on rates, Hispanic origin, and probation or parole violations.

! Interpret with caution; too few cases to provide a reliable rate.

<sup>a</sup>Excludes persons of Hispanic or Latino origin, unless specified.

<sup>b</sup>In 2013, the survey separated Hispanic origin from race. Comparisons with previous years should not be made.

<sup>c</sup>Includes American Indians or Alaska Natives, Asians, Native Hawaiians, or other Pacific Islanders, and persons identifying two or more races.

<sup>d</sup>Includes inmates who returned on a probation or parole violation.

<sup>e</sup>Includes inmates whose status was marked as other or was unspecified.

Source: Bureau of Justice Statistics, Deaths in Custody Reporting Program, 2000–2013.

<b>United States:</b>		
<b>Prisoners who died from suicide in local jails:</b>		
<b>2001-2013</b>		
	<b>Total</b>	<b>Per cent</b>
<b>Cumulative total of all individual categories below from chart:</b>	<b>7,847</b>	
<b>Sub-total</b>	<b>533</b>	<b>6.70%</b>
<b>Male</b>	<b>558</b>	<b>7.10%</b>
<b>Female</b>	<b>368</b>	<b>4.60%</b>
<b>White</b>	<b>1,058</b>	<b>13.40%</b>
<b>Black/African American</b>	<b>200</b>	<b>2.50%</b>
<b>Hispanic/Latino</b>	<b>325</b>	<b>4.10%</b>
<b>Other</b>	<b>253</b>	<b>3.20%</b>
<b>17 Younger</b>	<b>614</b>	<b>7.80%</b>
<b>18-24</b>	<b>368</b>	<b>4.60%</b>
<b>25-34</b>	<b>502</b>	<b>6.30%</b>
<b>35-44</b>	<b>654</b>	<b>8.30%</b>
<b>45-54</b>	<b>648</b>	<b>8.20%</b>
<b>55 or Older</b>	<b>811</b>	<b>10.30%</b>
<b>Convicted</b>	<b>234</b>	<b>3%</b>
<b>Unconvicted</b>	<b>721</b>	<b>9.10%</b>
George Walters-Sleyon PhD Research: Source: U.S Department of Justice: Mortality in Local and State Prisons 2000-2013 -Statistical tables: <a href="https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf">https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf</a>		

The following charts provide a brief analysis of suicide in local jails in the US between 2001-2013 by age, penal status and race.

<b>United States:Suicides in Local Jails by Age: 2001-2013</b>		
<b>Ages</b>	<b>Total</b>	<b>Per cent</b>
<b>17 Younger</b>	<b>614</b>	<b>7.80%</b>
<b>18-24</b>	<b>368</b>	<b>4.60%</b>
<b>25-34</b>	<b>502</b>	<b>6.30%</b>
<b>35-44</b>	<b>654</b>	<b>8.30%</b>
<b>45-54</b>	<b>648</b>	<b>8.20%</b>
<b>55 or Older</b>	<b>811</b>	<b>10.30%</b>
George Walters-Sleyon PhD Research: Source: U.S Department of Justice: Mortality in Local and State Prisons 2000-2013 - Statistical tables: <a href="https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf">https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf</a>		

Ages 55 and older had the highest percentage of suicide with 10%. Between 2001-2013, 614 inmates aged 17 or younger committed suicide in local jails

across the US. 7.8% of ages 55 and above had the highest number of suicides, with 811 deaths.

<b>United States: Suicide in Local Jails by Penal Status: 2001-2013</b>		
<b>Status</b>	<b>Total</b>	<b>Per cent</b>
<b>Convicted</b>	<b>234</b>	<b>3%</b>
<b>Unconvicted</b>	<b>721</b>	<b>9.10%</b>
George Walters-Sleyon PhD Research: Source: U.S Department of Justice: Mortality in Local and State Prisons 2000-2013 -Statistical tables: <a href="https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf">https://www.bjs.gov/content/pub/pdf/mljsp0013st.pdf</a>		

Strikingly, between 2001-2013, 9.2% of un-convicted inmates in local jails across the US committed suicide. In contrast, 3% of convicted inmates died of suicide. A similar pattern of high rates of suicide by those un-convicted exist among the Scottish: 2005-2017, and England and Wales': 2005-2017 counts of prisoner' deaths

**England and Wales: Ageing and Death in Prisons in England and Wales**

According to the Prison Reform Trust, Scotland, England and Wales have the highest prison populations in Western Europe (Prison Reform Trust 2017a)

*Natural in-Prison Deaths*

England and Wales had one of its highest recorded prisoner deaths in 2016. Of the 354 deaths in 2016, 270 died convicted or sentenced, and 46 died on remand (The Howard League for Penal Reform 2017, 3). The total number of self-inflicted deaths was 831, with 25-recorded homicides in the space of 11

years. Of the 354 deaths in 2016, 76% died convicted or sentenced, and 13% died on remand.

Status	Number of deaths	% of deaths	No. in population (30/12/2016) <sup>12</sup>	% in population (30/12/2016)	Difference
Remand	46	13%	9,251	11%	+2
Sentenced	270	76%	73,588	87%	-11
Recalled <sup>13</sup>	34	10%	6,570	8%	+2
Not stated/ not known	4	*	*	*	
<b>Total</b>			<b>84,307</b>		

Source: (The Howard League for Penal Reform 2017, 3)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016 <sup>2</sup>
<b>Natural Causes</b>	83	89	99	104	126	122	123	131	145	147	204
<b>Self-inflicted</b>	66	91	61	61	58	58	61	76	89	90	120
<b>Homicide</b>	0	1	3	0	1	2	0	4	3	8	3
<b>Other (non-natural or AFI)</b>	4	4	3	4	13	10	8	4	6	12	27
<b>Total deaths</b>	<b>153</b>	<b>185</b>	<b>166</b>	<b>169</b>	<b>198</b>	<b>192</b>	<b>192</b>	<b>215</b>	<b>243</b>	<b>257</b>	<b>354</b>
<b>Average Population</b>	78,127	80,216	82,572	83,560	84,725	86,000	86,737	84,331	84,250	85,753	84,640

Source: (The Howard League for Penal Reform 2017, 1)

The report notes, “Prisoners on remand and prisoners who have been recalled to prison are disproportionately more likely to die in prison” (The Howard League for Penal Reform 2017, 3). The next two charts show the intersection between ageing, natural death, homicide and suicide in the prisons in England and Wales. Between 2005 and 2017 a total of 2,794 male and female prisoners

died in prisons across England and Wales. During this period, 106 (3.7%) female prisoners died with 2,688 (96.2%) male prisoners across England and Wales.

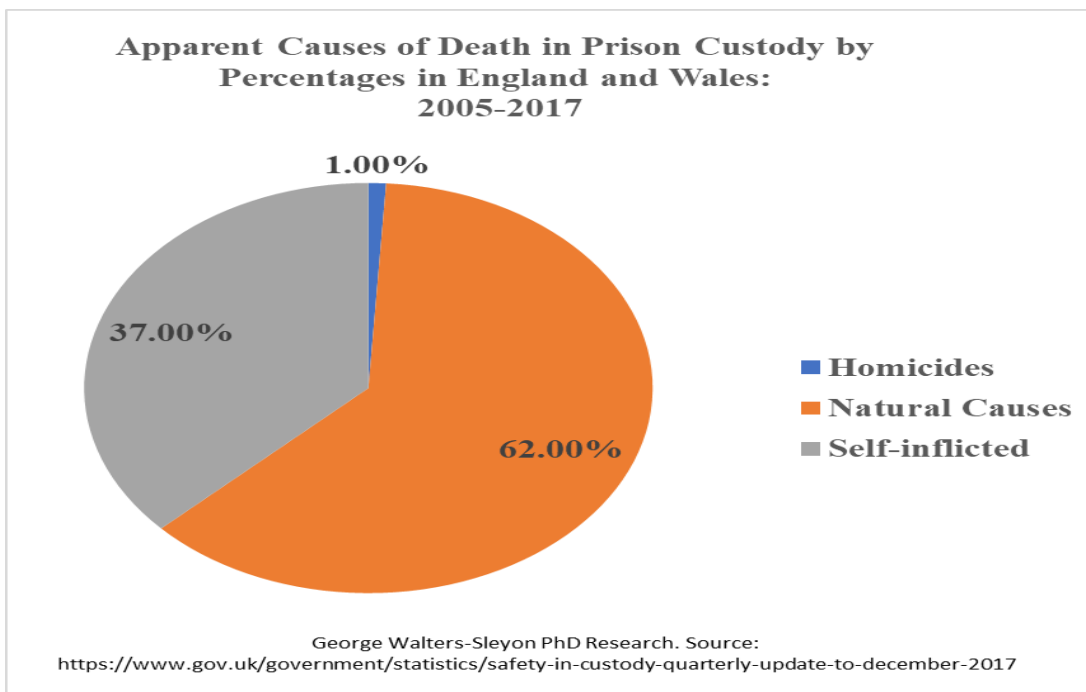
The chart shows the causes of death from 2005 to 2017 in prisons across England and Wales.

<b>Death in Prison Custody in England and Wales by Apparent Causes: Males &amp; Females from 2005-2017</b>															
Years	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Per cent
<b>Total</b>	170	149	181	163	165	185	182	184	211	237	245	329	257	<b>2,658</b>	
<b>Homicides</b>	3	0	1	3	0	1	2	0	4	3	8	3	3	<b>31</b>	1.00%
<b>Natural Causes</b>	89	83	89	99	104	126	122	123	131	145	147	204	184	<b>1,646</b>	62.00%
<b>Self-inflicted</b>	78	66	91	61	61	58	58	61	76	89	90	122	70	<b>981</b>	37%

George Walters-Sleyon PhD Research, Source: <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2017>

Between 2005 and 2017, 62% (1,646) of prisoner deaths were attributed to natural in-prison causes. Homicide accounted for 1% (31) of prisoner deaths.

37% (981) of prisoner deaths were attributed to suicide.



*Ageing and In-prison natural death:*

In England and Wales, a prisoner is considered “older” at the age of 60 in contrast to the US, where the age of an older prisoner is 50 (Howse, 2002, p. 1). The Prison Reform Trust (PRT) divides the ageing population into four categories: (1) repeat prisoners, ageing prisoners who recidivate; (2) prisoners grown old in prison, ageing prisoners serving life sentences; (3) short-term first prisoners; (4) long-term term prisoners. The report notes that prisoners aged 60 and above is growing faster than any other group. “16% of the prison population are aged 50 or over —13,601 people. Of these, 3,251 are in their 60s, and further 1,601 people are 70 or older. The number of over 50s in prison is projected to rise to 14,800 by 2021 — an increase of 11%” (Prison Reform Trust 2017a, 26).

Furthermore, the increase in the number of ageing prisoners is due to the increased use of imprisonment and longer sentences: “Three in 10 people serving an indeterminate sentence are aged 50 or over. 2,326 people were serving life sentences and a further 803 were serving an Indeterminate Sentence for Public Protection” (Prison Reform Trust 2017a, 26). Like the US, ageing in prison is also potentially associated with death in UK prisons.

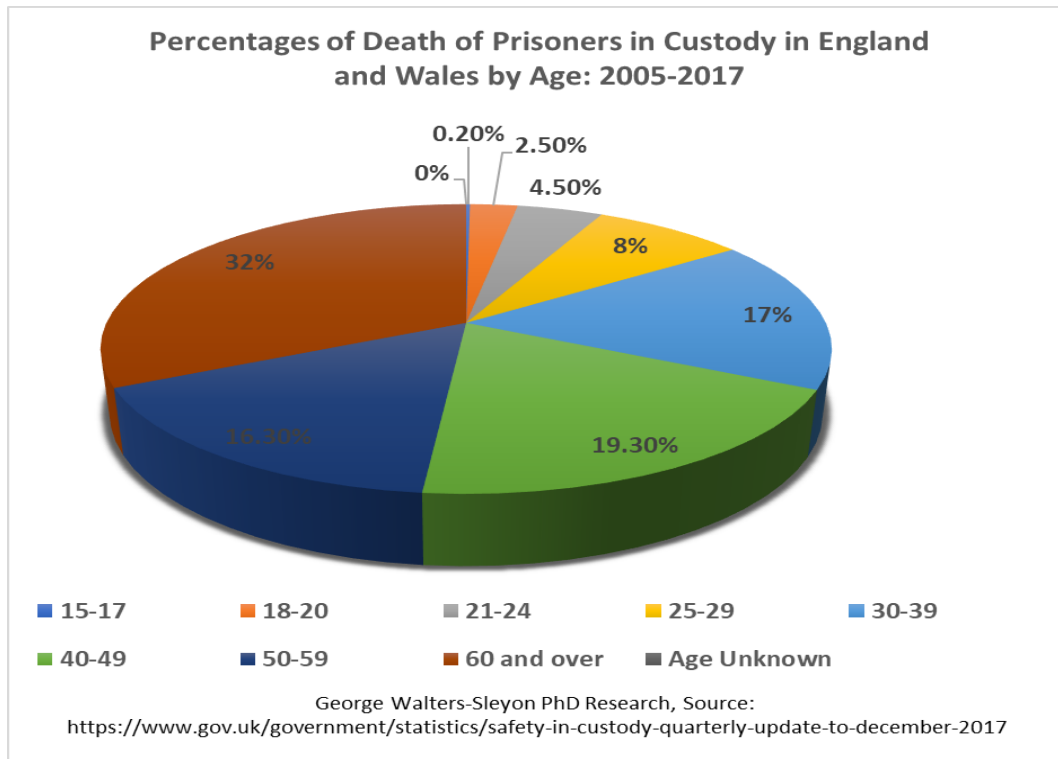
The chart below illustrates the intersection between ageing and natural in-prison deaths in England and Wales. The categorization of the death of prisoners is similar to the three nations in several ways. In 2017, there was a decline in the number of deaths.

Death of Prisoners in Custody in England and Wales by Age: 2005-2017															
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Per cent
<b>MALES AND FEMALES: ALL CAUSES</b>															
Total	175	153	185	166	169	198	192	192	215	243	257	354	295	2,794	
15-17	2	0	1	0	0	0	1	2	0	0	1	0	0	7	0.20%
18-20	11	2	8	5	5	4	7	2	6	6	5	6	3	70	2.50%
21-24	12	4	13	9	13	5	14	7	7	13	13	10	6	126	4.50%
25-29	14	12	20	20	14	11	15	8	19	18	25	33	15	224	8%
30-39	45	43	42	26	22	31	30	27	26	40	30	62	50	474	17%
40-49	31	28	44	33	36	48	40	40	44	46	54	54	44	542	19.30%
50-59	24	27	21	29	31	41	21	37	36	42	39	61	47	456	16.30%
60 and over	36	37	36	44	48	58	64	69	77	78	90	128	130	895	32%
Age Unknown	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0%

George Walters-Sleyon PhD Research, Source: <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2017>

*All Causes:* Ages 60 and above of both male and female prisoners had the highest number of prisoners who died from all causes from 2005 to 2017, with 32% deaths in England and Wales. The least were ages 15–17 with 0.2% deaths. Notwithstanding, ages 21–49 combined have the highest number of prisoners who died from all causes from 2005–2017, with 52.6% deaths across

prisons in England and Wales. A high number of young and middle age men and women are also dying in prisons across England and Wales as found in US prisons.



*Apparent Natural Causes:* Similarly, ages 60 and over had the highest number of prisoners dying from natural causes from 2005–2017 with 32%. It also suggests that England and Wales has a lot of ageing prisoners and individuals serving longer sentences.

*Apparent Self-Inflicted/Suicide:* From 2005 to 2017, there was a total of 37% suicides committed in prisons across England and Wales. 2016 had the highest number of suicides in custody in England and Wales with least from 2008 to 2012. Furthermore, 2007, 2014 and 2015 had the second highest

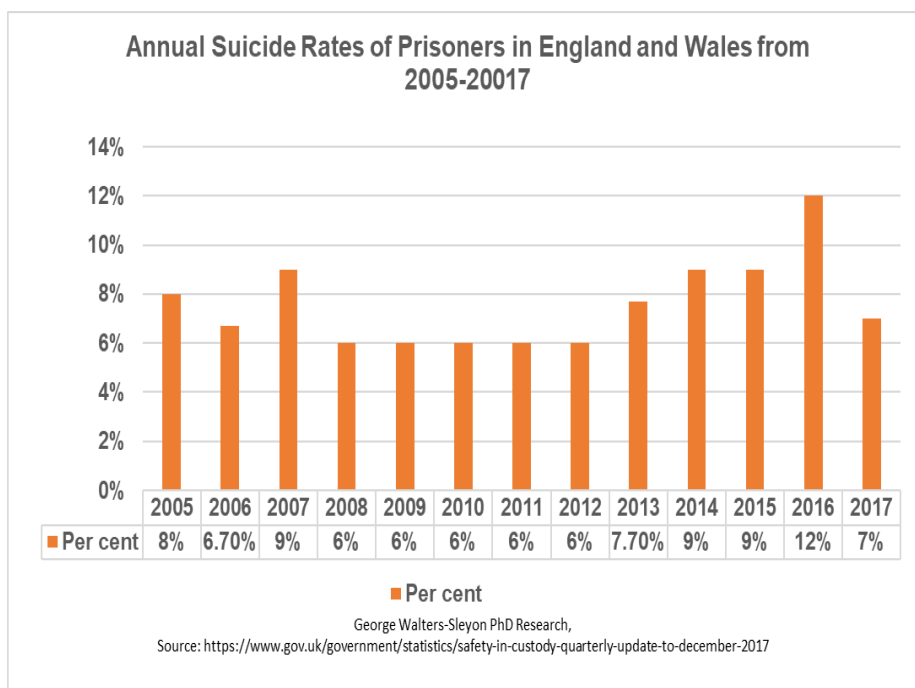
number of suicides in custody in England and Wales with 9% between 2005 and 2017.

<b><i>Annual Suicide Rates of Prisoners in England and Wales from 2005-2017</i></b>		
<b>Years</b>	<b>Deaths</b>	<b>Per cent</b>
<b>2005</b>	<b>78</b>	<b>8%</b>
<b>2006</b>	<b>66</b>	<b>6.70%</b>
<b>2007</b>	<b>91</b>	<b>9%</b>
<b>2008</b>	<b>61</b>	<b>6%</b>
<b>2009</b>	<b>61</b>	<b>6%</b>
<b>2010</b>	<b>58</b>	<b>6%</b>
<b>2011</b>	<b>58</b>	<b>6%</b>
<b>2012</b>	<b>61</b>	<b>6%</b>
<b>2013</b>	<b>76</b>	<b>7.70%</b>
<b>2014</b>	<b>89</b>	<b>9%</b>
<b>2015</b>	<b>90</b>	<b>9%</b>
<b>2016</b>	<b>122</b>	<b>12%</b>
<b>2017</b>	<b>70</b>	<b>7%</b>
<b>Total</b>	<b>981</b>	

Based on the Ministry of Justice 2015 report for England and Wales, Liebling notes:

The rate of mortality in prison is 40% higher than in the general population. Suicides are the most frequent cause of end of life in prison, currently at around 90 to 95 per year in England and Wales. Murders have been relatively infrequent: between one and three each year for the years 2000 to 2014, but eight in 2015, suggesting an increasing in risk. Whole life sentences (life without parole in the UK) are increasing in number (and may be likely to do so further in light of the Criminal Justice and Courts Act 2015, which extends whole life sentences to anyone involved in the murder of a police or prison officer) (Liebling 2017, 21).

The above data also indicate that similar to the United States, natural in-prison deaths, suicides and homicides have become normal experiences of imprisonment in England and Wales. This similarity is despite the contextual penal distinctions, practices and prison populations numbers.



### **Scotland: Ageing and Death in the Scottish Prison Service (SPS).**

#### *In-Prison Deaths in the SPS: 2005-2017:*

The Prison Reform Trust reports that sentences in Scotland are getting increasingly longer with increases in individuals on remand. It explains:

84% of people entering the prison to serve a sentence in 2013–14 were there for non-violent offences. Three-quarters (76%) of tests carried out on people entering prison in 2016–17 were positive for illegal drugs. Nearly one in three men (29%) and over a quarter of women (26%) reported they had been in care as a child (Prison Reform Trust 2017a, 57).

Between 2005 and 2017, there were a total of 289 deaths in the SPS. Considering the national and prison populations in comparison to the United States, and England and Wales, this number reflects a high rate of prisoner deaths. Of the total, 95% of the prisoners who died during this time in the SPS

were male with 4% comprising of female prisoners between 2005 and 2017. The number of male and female deaths differ remarkably. It is not strange since males are the majority of those incarcerated. However, like the US and England and Wales, the number of male prisoner deaths continue to increase with 27 deaths in 2017. Furthermore, the death of female prisoners continues to decline in the SPS. The highest number of female deaths occurred in 2005 and 2016, with 3 in each year. There were several years of no female death or just one death for the year—2010.

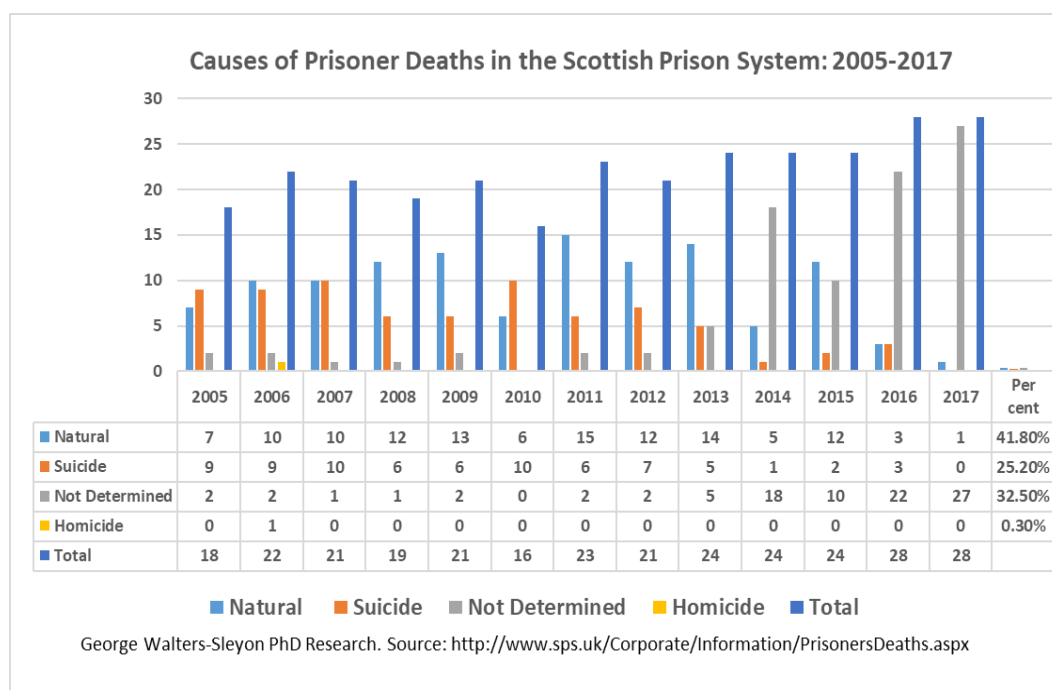
<b>Gender at death of Prisoners in the SPS from 2005-2017</b>															
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Per cent
<b>Male</b>	15	22	21	19	21	15	23	20	24	22	23	25	27	277	96%
<b>Female</b>	3	0	0	0	0	1	0	1	0	2	1	3	1	12	4.10%
<b>Total</b>	18	22	21	19	21	16	23	21	24	24	24	28	28	289	
George Walters-Sleyon for Ph.D Research: <a href="http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx">http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx</a>															

The causes of death in the SPS and those in the US, and England and Wales are generally similar. As previously indicated, the research focuses on three causes: natural in-prison deaths, homicides and suicides.

Causes of Death of Prisoners in the Scottish Prisons System: 2005-2017															
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Per cent
<b>Natural</b>	7	10	10	12	13	6	15	12	14	5	12	3	1	121	41.80%
<b>Suicide</b>	9	9	10	6	6	10	6	7	5	1	2	3	0	73	25.20%
<b>Not Determined</b>	2	2	1	1	2	0	2	2	5	18	10	22	27	94	32.50%
<b>Homicide</b>	0	1	0	0	0	0	0	0	0	0	0	0	0	1	0.30%
<b>Total</b>	18	22	21	19	21	16	23	21	24	24	24	28	28	289	
By George Walters-Sleyon for Ph.D Research: <a href="http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx">http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx</a>															

Of the 289 deaths between 2005 and 2017: deaths by suicide amounted to 25%. Similarly, natural in-prison deaths accounted for 41.8%. In addition, deaths by homicide also accounted for 0.3%. Finally, 32.5% of deaths were considered “not determined.” Consistently, the not determined category had one of the highest numbers of deaths from 2014 to 2017, with 2017 having the highest. It also reflects the length of time taken in Scotland to undertake a Fatal Accident Inquiry (Ministry of Justice 2015).

However, similar to the US and England and Wales, suicide continues to account for a higher number of prisoner deaths in the Scottish Prison Service. It was one of the highest numbers of prisoner deaths next to natural in-prison deaths from 2005 to 2017. The highest number of suicides in SPS occurred in 2007 and 2010 with the first unrecorded suicide in 2017.



*Ageing and Death in the SPS from 2005-2017:*

According to Her Majesty Inspectorate of Prisons for Scotland’s 2017 report, the “faces of Scotland’s prisons are changing” (HM Inspectorate of Prisons 2017, 1). For Scotland, this change is due in large part to older prisoners living longer. Like the US, England and Wales, Scotland’s growing ageing prison population is caused by several factors, which include longer sentences, increased use of custody and the incarceration of more Scottish men (Croall, Mooney, & Munro 2016). The emphasis on longer sentences it seems in the Scottish penal system have also contributed to increases in ageing and dying prisoners.

Ages of Prisoners who died in the SPS from 2005-2017															
<u>Ages At Death</u>	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Percent
17-20	3	0	0	0	0	1	0	3	0	3	0	0	2	12	4.10%
21-35	9	8	11	7	4	7	8	2	5	5	5	9	7	87	30.10%
36-50	2	7	7	8	8	7	5	12	9	7	5	11	8	96	33.20%
51-60	1	3	1	2	5	0	4	1	7	3	7	4	5	43	14.80%
61-86	3	4	2	2	4	1	6	3	3	6	7	4	6	51	17.60%
<b>Total:</b>	<b>18</b>	<b>22</b>	<b>21</b>	<b>19</b>	<b>21</b>	<b>16</b>	<b>23</b>	<b>21</b>	<b>24</b>	<b>24</b>	<b>24</b>	<b>28</b>	<b>28</b>	<b>289</b>	

By George Walters-Sleyon for Ph.D Research: <http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx>

Between 2005 and 2017, the highest amount of prisoner deaths occurred between the ages of 36 and 50 – 33.2% followed by ages 21-35 with 30% in the SPS. The lowest number of prisoner deaths occurred between ages 17-20 with 4% and 51-60 with 14.8%. However, the percentages derived from the number of prisoner deaths from 2005-2017 also indicate that an overwhelming number of younger and middle age prisoners in the SPS are dying from natural in-prison deaths and suicides.

In 2014, Sarah Couper and Andrew Fraser raised questions as to whether Scotland was adequately prepared for the growing number of ageing prisoners in Scottish custody. According to Couper and Fraser “Prisoners are often in poorer health than the general population and so may become ‘elderly’ before their time” (Couper and Fraser 2014, 11).

Conditions have improved since Couper, and Fraser’s report as the Scottish Prison Service (SPS) has taken several steps to improve conditions for

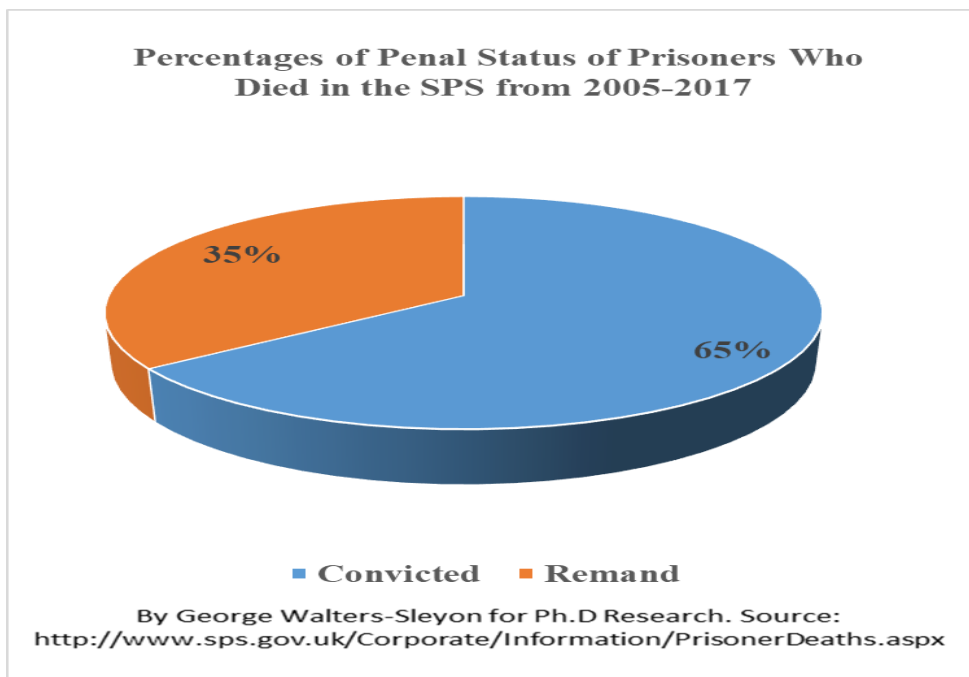
elderly prisoners, according to Her Majesty Inspectorate of Prisons for Scotland's 2017 report: *Who Cares?: The Lived Experience of Older Prisoners in Scotland's Prisons* (HM Inspectorate of Prisons 2017).

*Scotland: Penal Status of Prisoners Who Died in SPS: 2005-2017*

A high rate of death of those not convicted or on remand exists in the Scottish Prison Service. This penal situation is also characteristic of the penal cultures and systems of the US and England and Wales.

<b>Penal status of prisoners who died in the SPS from 2005 to 2017</b>															
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Per cent
<b>Convicted</b>	12	18	11	13	16	10	10	17	20	20	16	9	16	188	65%
<b>Remand</b>	6	4	10	6	5	6	13	4	4	4	8	19	12	101	35.00%
<b>Total</b>	18	22	21	19	21	16	23	21	24	24	24	28	28	289	
George Walters-Sleyon for Ph.D Research: <a href="http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx">http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx</a>															

Between 2005 and 2017, 289 prisoners died in the SPS with 65% of those who died registered as convicted. However, 35% of all prisoners who died in the SPS between 2005 and 2017 were registered as being on Remand or un-convicted.



*Prisoner deaths in individual prisons in the SPS: 2005-2017*

Prisoner deaths in the Scottish Prison Service continue to increase as more prisoners age also as a result of longer sentences. The prescriptive direction would be to look at the particular years between 2005-2017 when the death rate was less. What measures were taken at the time in prison management, as well as the current socio-political, economic and penal decisions that might have influenced the decline? However, the charts below demonstrate the death of prisoners in individual Scottish prisons.

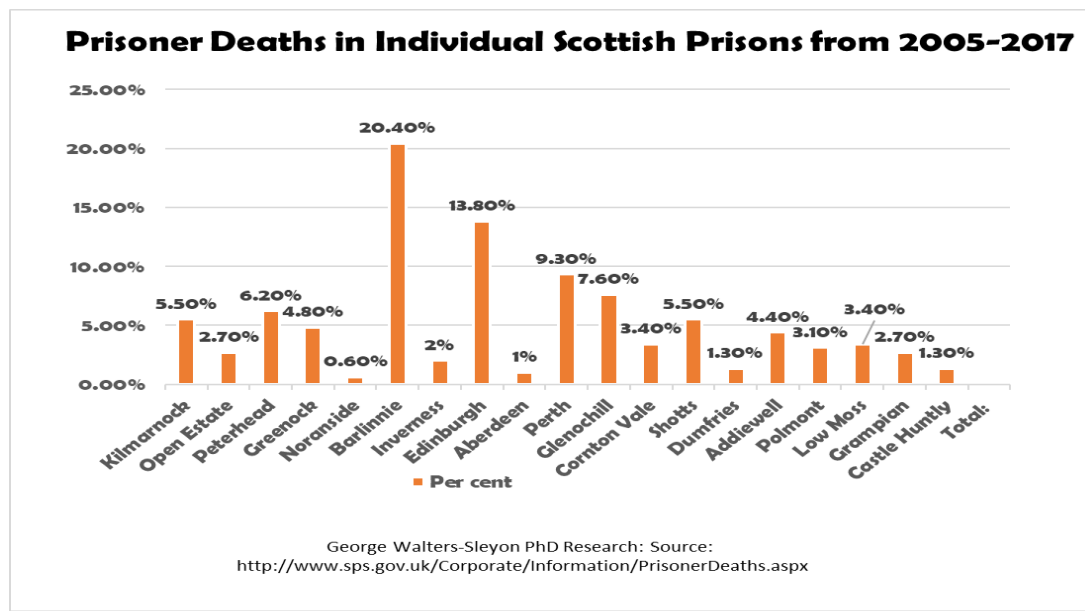
<b>Prisoner Deaths in Individual Prisons in the SPS from 2005-2017</b>		
<b>Prisons</b>	<b>Total</b>	<b>Per cent</b>
<b>Kilmarnock</b>	<b>16</b>	<b>5.50%</b>
<b>Open Estate</b>	<b>8</b>	<b>2.70%</b>
<b>Peterhead</b>	<b>18</b>	<b>6.20%</b>
<b>Greenock</b>	<b>14</b>	<b>4.80%</b>
<b>Noranside</b>	<b>2</b>	<b>0.60%</b>
<b>Barlinnie</b>	<b>59</b>	<b>20.40%</b>
<b>Inverness</b>	<b>6</b>	<b>2%</b>
<b>Edinburgh</b>	<b>40</b>	<b>13.80%</b>
<b>Aberdeen</b>	<b>3</b>	<b>1%</b>
<b>Perth</b>	<b>27</b>	<b>9.30%</b>
<b>Glenochill</b>	<b>22</b>	<b>7.60%</b>
<b>Cornton Vale</b>	<b>10</b>	<b>3.40%</b>
<b>Shotts</b>	<b>16</b>	<b>5.50%</b>
<b>Dumfries</b>	<b>4</b>	<b>1.30%</b>
<b>Addiewell</b>	<b>13</b>	<b>4.40%</b>
<b>Polmont</b>	<b>9</b>	<b>3.10%</b>
<b>Low Moss</b>	<b>10</b>	<b>3.40%</b>
<b>Grampian</b>	<b>8</b>	<b>2.70%</b>
<b>Castle Huntly</b>	<b>4</b>	<b>1.30%</b>
<b>Total:</b>	<b>289</b>	

George Walters-PhD research: Source: <http://www.sps.gov.uk/Corporate/Information/PrisonerDeaths.aspx>

HMP Barlinnie prison had the highest number of prisoner deaths with 20.4% (59) deaths in the SPS from 2005 to 2017. HMP Edinburgh experienced the second highest number of prisoner deaths in the SPS from 2005 to 2017 with 13.8%. HMP Barlinnie experienced an annual increase in its death rates with a slight decline in 2007 and 2014, with two deaths each year and three deaths in 2012. The rest of the years saw a consistent increase in prisoner deaths between four and six deaths each year, and a total of 59 deaths from 2005 to 2017. There wasn't a year in which a prisoner did not die at HMP Barlinnie between 2005 and 2017.

Similarly, HMP Edinburgh experienced the second highest number of deaths from 2005-2017 with a total of 40 deaths. HMP Edinburgh experienced

consistent prisoner deaths between 2014 and 2016, with five deaths in each of the three years. It experienced one of its lowest deaths in 2017 with only two deaths. The following prisons had the lowest death numbers with a maximum of 4 prisoner deaths and a minimum of 2 prisoner deaths: Noranside (0.6%), Aberdeen (1%), Dumfries (1.3%) and Castle Huntly (1.3%).



However, it is important to note that based on the penal trajectory in Scotland, the majority of those who have died in the SPS are poor Scottish men from disadvantaged backgrounds (Croall, Mooney, & Munro 2016). Similarly, the majority of those who have died in US prisons are poor Whites, Blacks, and Hispanics as well as poor Whites, Blacks and Asian Minority Ethnic Group members (BAME).

In the above data and charts, I have described the high rates of ageing and prisoner' deaths in the prisons and penal cultures of the US, England and

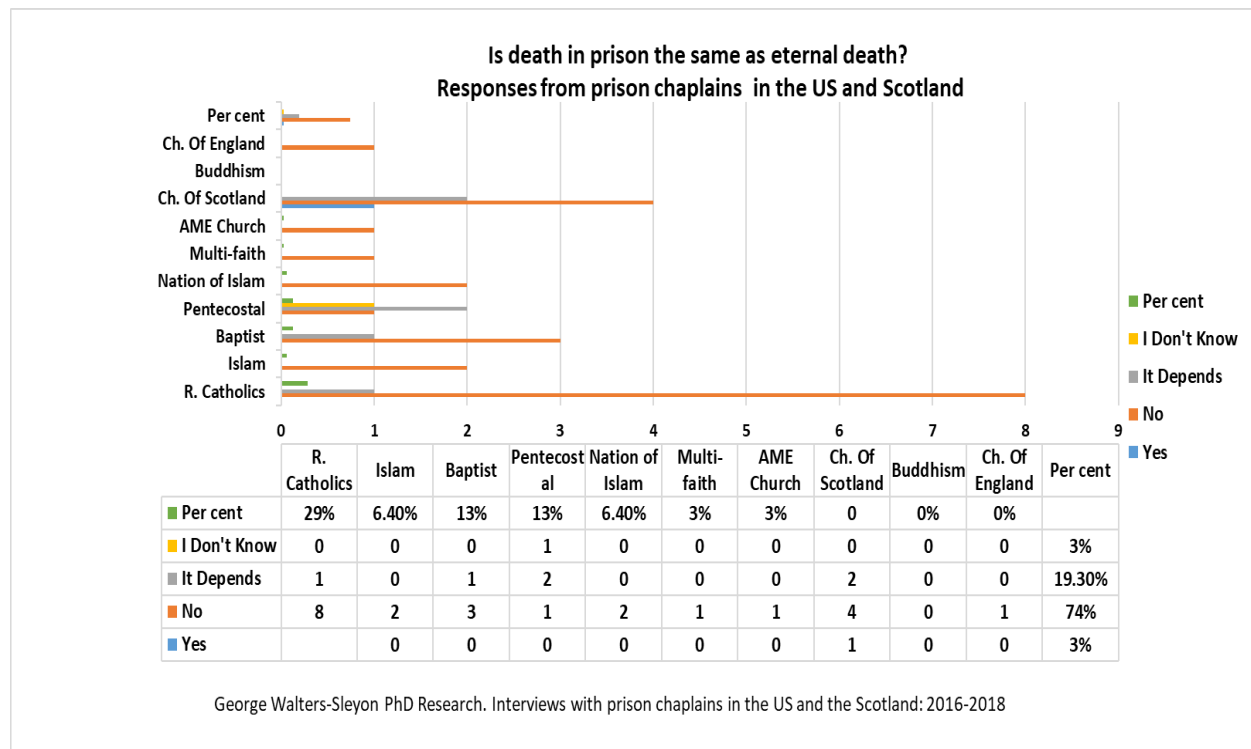
Wales and Scotland. These numbers and data certainly show the linked between the shifts to penal harshness after 1970 in the US, England and Wales and Scotland as reported by penal experts and criminologists. In the next section, I will demonstrate how prison chaplain participants in this research function as “counsellors” to ageing and dying prisoners in the modern penal culture of the United State and the United Kingdom. These responses are not ultimately representative of all prison chaplains, neither are they homogeneous. However, they reflect the diversity of experience and processes of conceptualization as they interact with prisoners.

#### **5.4 Prison Chaplains Counselling the Ageing and the Dying**

In this section, I explore the prison chaplain participants’ understanding of death in prison in their own words. In presenting them, I have thematized their responses into categories, which reflect my analysis of their responses. Based on the ethics requirement associated with this research, I am limited to only analysing the responses of the participants in contrast to emphasise their identities, which are required to anonymous.

Participants were asked if they thought physical death was synonymous top eternal death. In interview sessions and responses to questionnaires related to this research, 74% of the prison chaplain participants said No, death in prison does not imply eternal death. 19% said “It Depends”, death in prison could be

the same as eternal death. 3% Said “I don’t know” if death in prison also implies eternal death. Finally, 3% said Yes, death in prison implies eternal death.



A question was asked as to whether participants thought there were continuities or discontinuities in the penal status of the dead prisoner beyond death or if they believed there was an end to the convict’s identity at death. Prisoners who died in the US and the UK are generally regarded as convicts on the books even after death. Their names are not deleted from the prison record neither are they regarded as “free,” released from prison or as having completed their prison terms. Death in prison does not necessarily freedom from a penal status.

Prison chaplains have developed best practices in counselling prisoners facing the possibility of death for decades. In their counselling sessions, they have grappled with whether death in prison is the same as eternal death, especially from their religious backgrounds. With these diverse responses to prisoner deaths in prison, how then do they counsel prisoners who are confronted with the prospects of in-prison deaths? I have structured their responses into four categories. To reiterate, I provided various themes based on their responses. Unfortunately, based on the code of ethics associated with this research, I have to respect the privacy of the participants. I cannot disclose their identities (See appendix).

*First, a Direct discourse.* Participants with this response define the conversation about death with prisoners as one that needs to be upfront but not abrasive. For instance, PCS102 notes that the conversation needs to be carried out “Honestly and with gentle truthfulness. Don’t skirt the issues.” As the ultimate end of ageing and dying prisoners, including those serving sentences for life or life without parole, PCS102’s response implies the need for a frank conversation regarding the personal state of imprisonment and their psychological well-being. PCS115 refers to a similar approach. The conversation about death is a “Matter of fact. I make it clear I believe death is not the end, however, nor do I take eternal life for granted.” But PCS102 and PCS115 stress the need to be direct. This direct approach, they imply, is also therapeutic. Prisoners are aware of their mortality in the prison environment and the possibility of dying alone without the presence of their loved ones around. For PCS101, the conversation is relevant,

but the context is far more important: “Generally it’s in the context of lost loved ones, and I share my hope in the resurrection. This complicates the situation and I think demands the need to plant the hope of the resurrection” (PCS101). As a survival mechanism for the ageing and dying prisoner or lifer in the US and UK prisons, the “problem of the future” (Moltmann 1975,16) is both a now and then concern in a particular way. It reflects the eschatology of imprisonment for the prisoner as an embodiment of the past, present and future immediately defined as a state of hopelessness in the prison environment. Their present condition of imprisonment contradicts the reality of hope in the future at the same time establishing the need for hope as found in the second discourse.

*Second, a Spiritual discourse.* The conversation may be meditative. It takes an introspective turn in which the prisoner comes to reckon with his or her mortality behind bars. PC114 explains: “I mainly talk about death during collective prayer and religious teaching groups. I talk about it as something we have to prepare for before it happens by doing good actions and righting the wrongs we have done.” Spiritual discourse is a prayerful discourse. It is a contemplative approach in counselling about death and mortality in the prison context that is both active and passive. PCS106 refers to this conversation as “recognition of the unknown. Life and death as a journey, a sense that we are not alone, that living and dying, God is with us.” PCS106’s intimation is very important in the sense that it underscores one of the greatest fears for the ageing and dying prisoner and lifer — that they will die alone and that many have died alone. The sense of loneliness pervades the mind of the prisoner at

every point of their imprisonment as previously shown. It is the absolute experience of abandonment—human, societal and contextually, the prison establishment. For the Christian prisoner, PCS105 notes that the conversation regarding death in prison is “About my faith, their faith and the Word of God and the promises of Jesus.” PCS105’s reference to faith is existential. The spiritual conversation about death in prison hinges on the concept of the faith, hope and certainty about what awaits the prisoner after death.

*Third, a Non-Judgmental Discourse.* The conversation about death may be approached with care, compassion and sensitivity. The reason being that the prison environment intensifies the pathos of death and despair. PCA131 notes: “I take the lead from them—being sensitive to their faith tradition and their emotional stability.” Participants in this category were particular about who raises the topic of death first. As prison chaplains, they were careful not to be the first. PCA119 intimates: “I don’t unless the inmate talks about it. I talk about life and listen.” The practice of listening to the questions and concerns of the inmate about death is fundamental to the practice of chaplaincy. However, it is most appealing when it comes to questions regarding the prisoners’ sense of mortality and the afterlife. PCA125 reiterates this point: “The conversation depends on the belief of the one who is dying. Most prisoners just want someone to listen to them.” The format of the discussion is dialogical. PCA126 writes: “Openly share my own beliefs and listen. Encourage dialogue in group or one on one and provide a safe place for discussion.” The conversation about death is not often univocal. Prisoners are of various backgrounds and

experiences and in the process have had encounters with death entirely different from their prison experience. PCS108 explains this multi-layered process of dialogue:

*Some prisoners have been close to death themselves (e.g. through addiction, during service with the Armed Forces) and will generally talk in terms of being grateful to be alive. Others have had multiple and often complex bereavements. We try to talk about death as one of the seasons of life, as part of the way the world works and try to show that learning to cope with this is part of what we have to learn as we mature (PCS108).*

Furthermore, prisoners see a safe space and a safe person with whom they can share their private experiences in prison as a process of coping with the angst of imprisonment. In that light, when the occasion arises, their conversation about death is introspective and cathartic. According to PCS116:

*In prison, as a chaplain, you can have conversations that easily meander between extremely personal and emotional to the mundane on the other e. g. talking about life and death one minute and talking about the price of cheese the next! It is not difficult for me to enter into quite deep personal discussion with prisoners about death (PCS116).*

*Fourth, a Holistic Discourse:* Proponents of this concept of dialogue about death in the prison context argue that such conversation should embody the life experience of the prisoner—birth, upbringing, crime, sentence, religious introduction, parental background, death and burial in prison. Take for instance the response of PCA120, “I approach it from a holistic approach. From the physical, the mental, and the spiritual.” PCA130 provides the mechanics of such a conversation:

*(1) Determine the faith of parents/family. (2) Determine the faith of the incarcerated. (3) What was his faith experience growing up? (4) Revisit*

*that earlier time in his life. (4) Rebuild on the foundation of the child's faith (PCA130).*

*Holistic dialogue* as a conversational counselling method in the prison encapsulates the total religious, faith and spiritual experience of the prisoner. It recognises what is pertinent to the present moment or experience of incarceration. In that way, PCs tend to recognise the pre-prison life encounters of the prisoners as fundamental to providing spiritual care. PCS109 alludes to this strategy in discussing death with the prisoners: "As honestly and openly as possible. I also deal with practical aspects—e.g. next of kin, wills, wishes after death, funeral service etc." In an interview session, PCS109 further clarifies that some prisoners have "chosen to die here." He refers to the prison because of the comradeship of the prison community and the length of time they have been incarcerated. Prison engenders relationships, bonding, and intimacy with and between prisoners and prison staff. It gives rise to shared experiences and community. They consider the prison their home mainly in the absence of a next of kin, which is further complicated by the way dead prisoners are buried.

According to PCS109:

*Prisoners are buried in 'unmarked grave' with no names with no headstone. It is the old practice of a Pauper's grave. The chaplains often serve as family members with another limited number of relatives (PCS109).*

The how, when, where and policies associated with the internment of prisoners is often unexplored, leaving an entire aspect of the prisoners' life uninvestigated. Death in prison and burial in prison cemeteries imply a pseudo-closure to imprisonment. The prisoner is still within the control of the penal institution as a

convict buried in a prison cemetery. Death in prison is the ultimate embodiment of prisonization. The dead prisoner remains a prisoner on the books, in life and death.

The experience of prison burial is especially true for prisoners serving life sentences whether an Order of Lifelong Restriction (OLR) in Scotland, Life Without Parole (LWOP) in the US, and in England and Wales, mandatory life sentences, Whole life sentences and discretionary life sentences. Prison chaplains view life sentences and life without parole sentences with disdain. They are antithetical to redemption, the concept of a second-chance and respect for human dignity. Take, for instance, PCS110's assessment of the OLR sentence in Scotland.

*There is no mandatory life sentence [no mandatory whole-life tariff] in Scotland. All prisoners will be released. Formerly in practice, many are discretionally sentenced to life. Life sentences have a punishment part, and they are up for release, but it often takes a while. They will not be released to society until there is a guarantee that they will not pose a risk. But it is highly discretionary. No one within the confines of the prison can ever prove that they don't pose a risk. Close to 60% of offenders in Scottish Prison Service have not been released because of risk. For the officers, it is a job and career progressing to the Castle, open stay, because no one wants to sign off on their career and job prospects. The OLR sentence is inherently unjust. Stop treating prisoners as different species. A more humane system would be fine. They are one of us and will always be one of us (PCS110).*

It is a fact that inmates on LWOP will die in prison. However, what is central to the long process of waiting for death within a confined space for the rest of one's physical life and the uncertainty of its appearance for

violent and non-violent crime is the unimaginable anguish of despair.

According to Leigey and Ryder:

In 1992, there were approximately 12,453 LWOP inmates in the United States; by 2008, the number had more than tripled to 41,095 inmates. While England has a whole life sentence, the equivalent of LWOP, it is much less frequently imposed when compared with the United States. At present, there are a total of 45 English inmates serving whole life sentences (Ministry of Justice 2012; Leigey 2015, 729).

The pain of imprisonment, Leigey and Ryder argue, include the permanence of family separation, vulnerability as they age, the indeterminacy of the death experience, and eventual family breakdown. Take for instance the experience of an inmate:

*I was 28 years old on this bit. I'm 63 now. You know, so I've been away from family for quite a few years. I'm not saying that I don't love them or care for them because I do, but it's not that type of command no more (Leigey 2015, 736).*

The separation from loved ones is also conditioned by events, for example, death on the outside, inability to help raise children, divorce in the first few years of imprisonment, reduction and lack of visits, poor health and other impediments (Leigey 2015, 736). PCA125 laments the fact that prisoners are serving life sentences without faith or religion. The angst of life in prison without an expression of hope within is unbearable. In contrast "Many with Christ welcome death, dying is a benefit. 'For me to die is gain' they say. They look forward to it." PCA125 also notes that as a prison chaplain, close contact with prisoners has shown him the humanity of prisoners, even if there is a dark side to every human being and prisoners are no exception.

*There is more to the inmate than what is written in the papers or seen on television. Prison chaplains see the whole individual in prison. There is a humanity or human side to the prisoner, but the human side can also be violent like every human being (PCA125).*

In PCS116's response, we see an explicit identification with the poor.

Mainly, PCS116's concern reflects a definition of God aligned with the plight of the prisoner. "I think of God as 'all-vulnerable' rather than 'Almighty' or 'All-powerful' (I believe he is too), but a vision of the '*all-vulnerable*' God is that he easily aligns with those who are oppressed, poor and in need."

## **Conclusion**

This chapter has argued that ageing, natural in-prison deaths, suicides and homicides are associated with the shifts to penal harshness in the US and UK penal systems. It also contends that these various expressions of prisoner deaths are part of the culture of the modern penal systems in the United States and the United Kingdom. The increasing rates and conditions of human mortality in US and UK prisons cannot be disassociated from the creation of punitive penal cultures defined by the following: mandatory sentences, determinate and indeterminate sentences, longer-term imprisonment for violent and non-violent offences, and a decline in the possibility for parole or release from prison. Similarly, these turns to punitive sentences and extended terms of imprisonment reflect the possibility for consistent increases in the ageing prison populations.

The emphasis on incapacitation correlates with low rates of prisoners' release. It reflects the notion "once a prisoner, always a prisoner," not necessarily because of repeat offending by prisoners, but the introduction and attachment to penal laws and penal cultures that perpetuate civil and physical deaths. It is punishment for the rest of their lives, and the victims are overwhelmingly poor Whites, Blacks and Hispanics in the US and poor Whites and BAME members in the UK.

As illustrated, it is within this penal landscape that prison chaplains function as religious workers and pastoral caregivers. The interviews with 31 prison chaplains in the US and Scotland demonstrate a sample of the collective prison experience of prison chaplains. While it does not reflect the views of all prison chaplains in the US and Scotland or the United Kingdom, it nonetheless provides insights into the penal awareness of prison chaplains that is central to understanding the prison cultures within which they carry out their chaplaincy praxis.

The culture of the modern prison in the US and the UK emphasizes the pain of imprisonment and its process of de-personalization for prisoners incarcerated as convicts, non-convicts and those on remand. However, in contrast to this angst and existential impact of incarceration, prison chaplains' function as counter-penal agents and pastoral caregivers seeking to ameliorate the emotional, psychological and spiritual pangs of imprisonment. As argued, it is within this context that prison chaplains' care for the ageing and dying

prisoners are cathartic and supportive experiences for prisoners. In the midst of this penal malaise, prison chaplains have managed and continue to devise ways of circumventing the death toll associated with the US and the UK penal systems.

**Section Three**  
**A Moral Crisis in the US and UK Prisons: A Normative Task**

## **Chapter 6: Prison Chaplains in the US and UK-Scotland: A Theoretical and Empirical Analysis**

In Chapter One, I provided an introduction in which I defined the particular nature of the prison culture I am referencing in this research within which prison chaplains carry out their chaplaincy praxis. I argued that the prison cultures of the United States and the United Kingdom consist of various expressions that are penal, religious, security-oriented and painful. In Chapter One, I also provided a definition of the roles and identities of prison chaplains with the argument that prison chaplains are multi-prison faceted and neo-orthodox in their chaplaincy. With the introduction of the empirical aspect of this research in Chapter Two, Chapters Three and Four provided a historical description and analysis of the trajectories to penal harshness in the US and the UK penal systems. Chapter 5 thus provides a description of the cumulative consequences of the turns to penal punitiveness mainly reflected in the high rates of human mortality —ageing, dying and death of prisoners classified as natural in-prison deaths, homicides and suicides.

In contrast to Chapter One, this chapter argues that prison chaplains have historically worked within the penal system as normative demand of their religious obligation in the penal systems of the US, England and Wales and Scotland. Prison chaplains also have a particular way of defining who prisoners are and their interpretation of the prison culture. Furthermore, it contends that their roles have been multi-prison-faceted and dynamic with respect to their

individual prison of assignment and prisoners in every era — historical, modern and secular. Similarly, it contends that in the process of their dynamic engagements in the penal system as correctional and custodial staff members, they have been active as reformers, pioneers of prison ministries and agents in the modern penal systems of the US and the UK. I have therefore structured this chapter as such: (1) The historical era; (2) The Modern and State ‘Security’ Era; (3) The Modern Era and Religious Diversity; (4) Prison Chaplains’ Perception of Prisons; and (5) Prison Chaplains’ Perceptions of Prisoners.

### **6.1 The Historical Era**

The historical era reflects on the development of prison chaplaincy in the United States, England and Wales and Scotland prior to 1970. Prison chaplains have existed in the penal systems of the United States, Scotland, and England and Wales since the 18<sup>th</sup> century. Furthermore, between the 18<sup>th</sup> and the late 20<sup>th</sup> centuries, prison chaplaincy has been predominantly influenced and defined by Christian preachers, Christian communities as pioneers of prison ministries, religious instructors in the prison, prison reformers and ultimately the “prison chaplain.” In the development of the modern prison chaplaincy in the US and the UK, the fundamental praxis, logic, ethos, practices and religious ideologies were based on the Judeo-Christian paradigm. Second, a fundamental chaplaincy inspiration and text have been the Judeo-Christian Scripture-the Bible. Third, of particular relevance, were the words of the Old Testament and those of Jesus Christ in the New Testament.

The Spirit of the Lord God is upon me because the Lord has anointed me to bring good news to the poor; he has sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to those who are bound Isaiah 61:1 ESV.

According to Sundt, prison chaplains have historically performed both “secular” and “sacred” responsibilities in the prison. They have been involved with both rehabilitative and custodial functions in prison institutions. She notes:

Based on a national sample of 174 ministers employed in US prisons, it was found that chaplains perform a wide range of secular and sacred tasks. It was also discovered that the chaplains’ role, while primarily supportive and rehabilitative, also includes the performance of activities that are custodial in nature. This research also revealed that chaplains hold complex views about the purpose of prisons (Sundt 1997)

Sundt contends that prison chaplains have experienced two forms of “marginalization”: one from the prison institution and the religiosity of their role, and the other from the academy. These forms of marginalization are influenced by the lack of adequate understanding of the roles of prison chaplains as well as the religiosity of their responsibility (Sundt 1997, 41). She notes:

As potential agents of social support or, alternatively, agents of social control, Chaplains have the ability to shape the prison experience of offenders. Developing an understanding of how these members of the prison work-group view the nature and purpose of their work is thus a valuable enterprise (Sundt 1997, 5).

Sundt notes that the process of marginalization is not limited to the religiosity of the prison chaplains’ role. Despite the significance of religion in the prison and prison chaplains as its facilitators, there is a push towards the

marginalization of religion, which also leads to the marginalization of prison chaplains or the extinction of the religiosity of prison chaplaincy. She attributes the causes to larger societal factors as well as internal factors in the penal system (Sundt 1997, 47).

In the academy, most research on prisons, prison staff and prison culture do not often include prison chaplains as part of the theory and practice of prison management or prison managerial staff (Easton and Piper 2008; Crewe 2009, 2014; Bennett, Crewe and Wahidin 2008; Jewkes and Johnston 2006; Garland 2015; Gottschalk 2013; Liebling 2004; Sparks, Bottoms and Hay 1996; Simon 2014; Western and Pettit 2014; Wacquant 2009b). The claim is that prison chaplains are not an inherent part of the managerial structure of prisons. On the contrary, this research contends that prison chaplains have been inherent to prison management and the various phases of transformation in the US, England and Wales and Scotland from the 18<sup>th</sup> century to the present.

## **The United States**

According to Skotnicki, prison chaplains, religion and prison management have historically intersected in the American penal system. This intersection is particularly obvious if one looks at the Jacksonian era (1824-1840) (Skotnicki 1991) to the present. Skotnicki's argument is historical, theological and social science oriented. He writes:

It will be argued that the development of the penitentiary movement during the Jacksonian era was an expression of the principal theological and ethical presuppositions of the day. In the same way, the shifting penal philosophy that led to progressive era reforms, the construction of the reformatory for young offenders and the modern graded prison (maximum, medium and minimum security) will be presented as a further development of the religious vision for American society (Skotnicki 1991, 4).

Skotnicki contends that penal discipline experienced a kind of evolutionary development from a primitive state of punishment to a recognisable modern institution (Pratt 2013). "The development of the reformatory and the modern penal apparatus is seen as an outgrowth of the concern of religious leaders, particularly the chaplains, to seek causal explanations for the increase in institutional commitments" (Skotnicki 1991).

Prison chaplains were both prison managers and pastoral care providers in the early establishment of the American penitentiaries. Chaplains assumed many roles including educators, spiritual counsellors, prison managers, moral instructors, prison librarians, prison developers, prison reformers, advocates for penal reform and legislative changes in sentencing, statisticians and administrators. According to Skotnicki, PCs understood the needs of the

prisoners better because of their proximity to them and their need for resources that deterred prisoners from crime. He notes: "This is an outstanding legacy of the chaplains to the penal system and, I will argue, it is from this rudimentary social analysis that the progressive movement in penology was born" (Skotnicki 1991, 92, 93).

Skotnicki analyses the development of the penal system of the US by focusing on three states: Massachusetts, Pennsylvania, and New York. In these states, Skotnicki provides a trajectory of the influence of religion on the development of the concepts of punishment, treatment of prisoners, and prison management. He writes; "Religion was not an external force outside the walls simply reacting to events but an integral part of the internal logic by which the prison were governed" (Skotnicki 1991, 3). Religion and morality were integral to the consciousness of American society as lenses through which societal norms and perceptions were defined (Skotnicki 1991, 5). A fundamental influence in the religiosity of prison chaplaincy was the focus on "Christian conversion" as well as "a controlling environment" that " could stimulate the moral life among convicts and serve as a model for the rest of society" (Skotnicki 1991, 4).

What mainly precipitated the influence of religion on the socio-institutional development of the United States were primarily two major phases of the Great Awakening. Phase one started in the 1740s with the Quaker system in Pennsylvania and phase two, which started around the 1830s in Massachusetts and New York as the Calvinist system (Skotnicki 1991, 4). He notes:

New York underwent increasing rationalization due to its insistence on linking the reform of the inmate with fiscal solvency, while Pennsylvania portended progressive themes in its emphasis on individual treatment... (Skotnicki 1991, 5).

Referencing Ernst Troeltsch's study of the intersectional relationship between the church and society, Durkheim's argument for the "coterminous" relationship between religion and society, and Weber's argument on "Protestant asceticism and modern capitalist society" (Skotnicki 1991, 3, 5). Skotnicki contends that prison chaplains and religion have never been periphery to the development of the American penal system (Skotnicki 1991).

Skotnicki explains that the Puritans fled from the "brutality of the English criminal law" to America and developed a reform penal system based on strict Biblical principles of punishment and transformation. Two important systems of penal reform were born during this period: The Auburn penal system and the Pennsylvania penal system.

In Pennsylvania, the Quakers were the main transformers of the penal institution. "The Quakers dominated the thinking behind the formation and implementation of the separate system at the Eastern State Penitentiary outside of Pittsburgh" (Skotnicki 1991, 14). With the emphasis on transformation and prisoners, reform came the development of the concept of "solitary confinement." Regarding the Pennsylvania approach to chaplaincy, Skotnicki explains that it was based on the Cherry Hill Penitentiary model. There were no full time "prison chaplains" but "moral instructors" in contrast to the modern emphasis on prison chaplains. He notes:

The Philadelphia Prison Society was and continued to be, the 'de facto' chaplain. The members conducted thousands of visits each year to every person in the facility...The society was aided by the Prison Association of Women Friends, founded in Philadelphia by Mary Wistar in 1823, which became the first group to recognize that women prisoners have special needs and problems (Skotnicki 1991, 87).

The Philadelphia Society of the Quaker reformers opened the first solitary confinement wing at the Walnut Street Jail in Philadelphia, a former British prison built in 1774.

In Massachusetts and New York, the social and penal transformers were Calvinists. Skotnicki notes: "The American penitentiary, therefore, like American democracy itself, had to be interpreted in light of the original Puritan vision of society, a vision rooted in the theology of John Calvin ... Calvin demanded that his followers participate in transforming both church and state into disciplinary associations conformed to the revelation of Scripture" (Skotnicki 1991, 24, 27). New York's Auburn prison built its "solitary wing" in 1821. The practices of labour, silence and religious instructions became central rehabilitation principles and practices. These practices in the treatment of prisoners and the development of the penitentiary in the United States also influenced the development of British and Scottish penitentiaries (Cameron, 1983, p. 96) According to Skotnicki, "The results were disastrous. Five of the prisoners died in the first year, several by suicide" (Skotnicki 1991, 54). The prison systems of New York and Pennsylvania became famous and attracted national and

international figures including Gustave de Beaumont and Alexis de Tocqueville in 1831 (Skotnicki 1991, 23).

Prison chaplains became pivotal facilitators of penal reform in the United States. One important reformer was the Rev. Louis Dwight of Massachusetts. Dwight was a Yale University graduate and former chemist who founded the Boston Prison Discipline Society in 1825. He promoted the Auburn system and was responsible for its spread across the United States.

The evolution of penology in the Auburn system would be provided mainly by the chaplains whose interest in the welfare and reform of the prisoner would lead them to incorporate more rational forms of social analysis and who would pioneer the development of the progressive movement in the system that dominated the nation's approach to criminal justice (Skotnicki 1991, 75).

Chaplains were educators, spiritual counsellors, prison managers, moral instructors, prison librarians, prison developers, statisticians, administrators prison reformers, advocates for penal reform and legislative changes in sentences, etc. According to Skotnicki,

They became the first prison librarians often dedicated themselves to creating programs for the discharged inmates... This is an outstanding legacy of the chaplains to the penal system and, I will argue, it is from this rudimentary social analysis that the progressive movement in penology was born (Skotnicki 1991, 92, 93).

Based on the potential of religion to reduce recidivism along with prison chaplains as its facilitators and agents in the prison environment, all prisons in the US had prison chaplains appointed to them by the year 1879 (Wines 1968).

## England and Wales

The history of religious intervention in penal policies, imprisonment and reform in England and Wales may perhaps be explored from the history of the prison ministry of the founder of the Methodist Church at Oxford University: John Wesley (1703-1791). Wesley described the prison cultures of England as “nurseries of all manner of wickedness” (Drew 2014, 7). He preceded John Howard (1726-1790) and Elizabeth Fry (1780-1845) and became an important figure in the call for prison reform in the 18<sup>th</sup> century.

Wesley and the members of his Holy Club at Oxford University visited many prisons starting in 1730 at London’s Newgate prison (the present site of the Old Bailey courts of justice). Wesley’s fundamental text of inspiration was:

For I was hungry and you gave me food, I was thirsty and you gave me drink, I was a stranger and you welcomed me, I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me.’ Then the righteous will answer him, saying, ‘Lord, when did we see you hungry and feed you, or thirsty and give you drink? And when did we see you a stranger and welcome you, or naked and clothe you? And when did we see you sick or in prison and visit you?’... Matthew 25:31-46 ESV.

He preached over 65 sermons in jails and penal institutions with ardent criticism of the penal policies and conditions of English prisons. On one or more occasions, Wesley was sanctioned from paying visits to the prisons. It is recorded that Wesley went to Knowle to visit French prisoners imprisoned from the Seven Years War. He wrote:

About 1,100 of them, we are informed, were confined in that little place, without anything to lie on but a little dirty straw, or anything to cover them but a few foul, thin rags, either by day or night..." he said. "I was much affected and preached in the evening on 'Thou shalt not

oppress a stranger; for ye know the heart of a stranger, seeing ye were strangers in the land of Egypt.' (Exodus 23.9) (Singleton, 1999).

For Wesley, a theological intersection of “justice, mercy and truth” fundamentally informs Christian action and his passion for prison ministry. It influenced his concept of religion and religious actions. In his sermon: *Of Former Things*, Wesley explains:

By religion I mean the love of God and man, filling the heart and governing the life. The sure effect of this is the uniform practice of justice, mercy, and truth. This is the very essence of it, the height and depth of religion, detached from this or that opinion, and from all particular modes of worship (Wesley 1986, 448).

Wesley defined justice, mercy and truth as the concrete manifestation of God’s love and holiness. They exist as a means of transformation within and manifestation in one’s action. Wesley’s understanding of justice, mercy and truth became pivotal to his quest for penal reform and social justice. Mercy reflects the embodiment of “compassion” for those in need and suffering. It is “practical action to meet the physical and spiritual needs of others” as the “works of mercy” (Field, 2015, p. 183). Wesley’s pursuit of mercy was also institutional and policy-oriented. The goal of mercy is to also transform society and its ills. Mercy entails the following:

Feeding the hungry, clothing the naked, entertaining the stranger, visiting those that are in prison, or sick, or variously afflicted; such as the endeavoring to instruct the ignorant, to awaken the stupid sinner, to quicken the lukewarm, to confirm the wavering, to comfort the feeble-minded, to succor the tempted, or contribute in any manner to the saving of souls from death (Wesley 1985, 166)

As a prison chaplain, evidence of the influence of mercy and their manifestation to penal reform were central to the kind of prison chaplaincy Wesley advanced.

Furthermore, Wesley perceived truth also as “realistic” and “empirical” (Field 2015, 182). His understanding of the concrete manifestation of justice, mercy and truth not only influenced his criticism of the prison conditions of England at the time but influenced his support for the abolition of slavery and support for the abolitionist William Wilberforce in his sermon: *Thoughts Upon Slavery* (Wesley 1979, 59-79). According to Singleton, Wesley inspired Fry and the focus of her ministry to female prisoners at Newgate prison (Matheuszik, 2013), where Wesley had earlier on started his ministry to the prisoners. As a result of the efforts of Wesley and others that followed, England began to appoint prison chaplains by 1774 (Smith 1997, 9). According to Peter Phillips, the Church of England began assigning prison chaplains to every prison in 1823, with initial statutory assignment legislatively prescribed in 1713 (Phillips 2013, 3). About Howard, Singleton explains: He writes:

The great campaigner for prison reform, John Howard, drew spiritual strength from Wesley, and statues of both men can be seen together in London's St Paul's Cathedral. Howard once told a group of Wesley's preachers about the challenge and lasting inspiration he had derived from a sermon by Wesley on the text, 'Whatever thy hand findeth to do, do it with thy might' (Singleton, 1999).

As the United State, prison chaplaincy in England and Wales began as a religious obligation. Prison chaplaincy developed from the religious mandate to care for those who have broken the law and were in need of God's intervention. Furthermore, prison chaplaincy was informed by the need to provide a humane transformation of the penal culture as an institution. The transformation of

prisoners and the transformation of the penal system were mutually inclusive for the pioneers of prison chaplaincy.

## **Scotland**

The development of prison chaplaincy in Scotland is no different from the United States and England except by contextual distinctions. Prison chaplaincy in the Scottish Prison Service from 1835-1900 was based on the Judeo-Christian paradigm of pastoral care. However, distinctions prevailed in the SPS that are unique to Scotland. According to Hilary Smith:

Until the beginning of the 20th century, the Christian religion was a major influence on the direction of penal policy and its implementation in Scotland. The church regarded itself and was regarded by the state as the guardian of moral order and stability in society and it played an important part in the treatment of offenders (Smith 1997, 1)

As a former prison chaplain, Smith's thesis reflects the history and changing roles of prison chaplains in Scotland. The prison and penal cultures of the Scottish Prison Service of the 19<sup>th</sup> century was one of grave punishment. Joy Cameron explains that:

The wretched frugality of the diet leading...to sickness, often exacerbated by hardship, poverty and neglect before admittance. The dreary work, frequent grim punishments, the harshness of solitary confinement and the extreme youth of the majority of prisoners resulted in many cases of suicide and insanity...Prisoners fell ill, died, and were buried within the prison precincts...Babies were either born dead, died within a week or two, or...survived the year during which they were allowed to stay with their mothers and then were sent outside (Cameron 1983, 103).

For Smith, prison conditions were “unhealthy” and “inhumane” (Smith 1997, 9). However, they indeed describe the penal culture of punishment under which prison chaplains function. Scotland appointed its first prison chaplain in 1842 in the person of the Revd. William Brown at the Perth General Prison from the Church of Scotland (Smith 1997, 9, 10). Notwithstanding, two priests from the Roman Catholic Church and the Episcopal Churches aided Revd. Brown on a part-time basis as “visiting Clergymen”. According to Smith, the two assisting priests were given lower ranks. This practice continued up to 1988.

This was in direct contrast to the status of chaplains in larger English prisons where, by 1878, the Roman Catholic chaplain held the same status as the Church of England chaplain. (Forsythe 1987:107)  
Roman Catholic chaplains were appointed in English prisons from 1864 onwards ... Like their Anglican counterparts, Church of Scotland chaplains were ranked next to the governor, his deputy, and the medical officer (Smith 1997, 10)

The ranks of the PCs also affected their salaries and benefits apportioned. Appointed chaplains were highly paid and regarded in contrast to visiting clergymen. The function of prison chaplains included providing religious instructions and guidance to prisoners towards a reformed life but with ambiguity. Smith explains:

Prison Reports of the time indicate that the chaplain's duties were diverse and wide-ranging ...Chaplains were expected to help prisoners to reform their criminal ways by providing moral and religious teaching and preaching of the Word of God (Smith 1997, 11).

Two kinds of prison chaplaincy models were dominant in the historical era: the “priestly model” and the “prophetic model” (Smith 1997). Under this model, prison chaplains are perceived as God’s representatives in the prison

environment with pastoral orientation (Smith 1997, 12). However, Smith notes that most chaplains appointed defaulted on their responsibilities to be compassionate and sensitive to the needs of prisoners: "It is unclear from their reports, how sensitive and compassionate they were and to what extent they offered spiritual comfort" (Smith 1997, 13). Smith distinguishes between the "priestly model" of prison chaplaincy and the "prophetic model." The former was focused on providing religious instructions, prayer, worship and the celebration of the sacraments. In contrast, the prophetic model of prison chaplaincy reflects a critical engagement with the penal system, policies of punishment, imprisonment and treatment of prisoners. Similarly, the ultimate goal of the prophetic model was total penal transformation. She explains:

Annual reports by chaplains which are available reveal nothing in the way of advocacy on behalf of prisoners. There is no critical comment about prison conditions, inadequate health care, punishments meted out to prisoners or poor diet. This mirrored to a large extent, the non-prophetic role of most of their English counterparts (Smith 1997, 14)

Smith's assessment of the prophetic engagement of prison chaplains in Scotland provides a window into the early development of prison chaplaincy in the Scottish Prison Service and in comparison with prison chaplaincy development in England.

English prison chaplaincy began as a result of the prophetic model of prison ministry. Its major pioneers were Wesley, Howard and Fry. In contrast, prison chaplaincy in Scotland began later than England and was based on the priestly model by appointment from the Scottish Prison authority. While these

two models of prison chaplaincy are mutually inclusive and exclusive, proponents of the prophetic models were usually externally motivated while proponents of the priestly model were often defined by the penal system. Furthermore, as Skotnicki has argued, prison chaplaincy in the United States also began under an intersection of the prophetic and the priestly models. The shift to a strict priestly model of prison ministry and chaplaincy in England and the United States is a departure from the prophetic model and at best, an intersectional model of prophetic and priestly emphases. However, Smith quotes Frank Henderson to highlight the decline of the prophetic model in prison chaplaincy.

Chaplains were not known for speaking fearlessly to the authorities...if he attempts...to win the hearts of prisoners, he finds the whole system of prison discipline arrayed against him. That discipline breeds and encourages the growth of every evil passion in the heart of man, and he, the chaplain, is part of that system; he lives by it, and he is not allowed to interfere with it at all events he never did so. When prisoners complained to him of some injustice or some cruelty, they got for the reply, 'I am here to preach the Gospel and I can do nothing in the matter' (Henderson 1869, 115; Priestly, 1985).

Henderson's assessment of the engagement of the prison chaplains with prisoners and prison authorities as non-prophetic in England by the second half of the 19<sup>th</sup> century was indeed a later development. However, the General Board of Directors of Prison in Scotland decided in 1848 that all county prisons should have chapels built in them (Smith 1997, 19). The reason, it argues:

Because the Inspector of Prisons considers this to be indispensable...in every other prison, in addition to the Chapel, a suitable room should be provided for the Chaplain to confer with the

Teachers, also with the Prisoners, singly; (Report of the General Board of Directors of Prisons in Scotland 1848 Section 2:1)

The building of Chapels in every county prison in Scotland established the central role of religion, Christianity as well as prison chaplains regarding penal policies and practices. Furthermore, Scotland's passed its Prison Act in 1877. The Act reflects a shift towards centralization as well as a bureaucratization of prisons and prison management in Scotland from the county level under the control of a Prison Commission (Smith 1997, 19; Pratt 2013). The Prison Commission's first Annual Report outlined the roles of the prison chaplains and their function. They include the following:

He engages to give punctual attendance for performance of divine worship at the prescribed hour. He is to take the superintendence of the arrangements for the moral training of the prisoners and for communication with the relations and friends of prisoners, and with prisoners themselves after liberation (Prison Commissioners for Scotland 1880 para. 36)

The chaplain shall not converse with prisoners on the subject of the management or discipline of the prison, or listen to any complaints made by prisoners with regard hereto, (para. 38)

If, in any instance, the chaplain should think that the instructions of the Governor are inconsistent with the proper performance of his own duties, or with the observance of any rule laid down for his guidance, it will be his duty to communicate his views in writing to the Commissioners, appraising the Governor of his having done so (Prison Commissioners for Scotland 1880 para. 41).

The prison chaplain was expected to be a 'moral instructor.' He was to avoid meddling in the affairs of prison management, anything with just punishment and humane treatment of prisoners. Furthermore, the PC was

expected to keep silent and if there was any need to voice their concern about the prison and penal cultures, it was to be done in writing.

Despite the 1877 Act, prison experience remained “traumatic.” In 1893, Frederick Hill, the then inspector of prisons for Scotland reported the following observation from his prison visit.

'...The picture that gradually unfolded itself before my eyes was far worse than anything I had anticipated'. The prisoner's head was still cropped, he still had to wear clothes covered in arrows, there was very little recreation, and more than seventeen hours were spent in cells each day. Very poor children were often given prison sentences for the non-payment of fines, even the dying were sent to prison. Sick and poor people were incarcerated and sentenced to hard labour even though they were weak and/or ill. Punishments were still harsh – solitary confinement, loss of privileges and/or remission and bread and water diets. If a prisoner was found to be in possession of a paper or pencil, for example, he was punished with a period in solitary confinement. Many prisoners were also beaten by the infamous cat of nine tails should their misdemeanour be deemed to warrant this punishment (Smith 1997, 21; Hill 1893).

Hill's description of the prison condition reflected the penal landscape under which prison chaplains function on a daily basis in Scotland in the later part of the 19<sup>th</sup> century. Prison chaplains were expected to function under the mandate of the priestly model of Word, morality and Sacrament.

According to Smith:

Chaplains allied themselves with the state and its penal policy to coerce the imprisoned into leading lives on release which were morally acceptable to the dominant ideology ... Prisons continued to hold an ever-growing population as more and more people were sentenced to imprisonment and rates of recidivism increased along with pauperization and demoralization. By the end of the 19<sup>th</sup> century, there was extensive unemployment and a chronic housing

shortage which affected not only the poor but skilled workers too (Smith 1997, 26).

In the latter part of the 20<sup>th</sup> century, the SPS embarked on structural changes with respect to chaplaincy. These changes were to reflect the future mission and penal practices of the SPS (Smith 1997) Furthermore, these changes sought to establish the roles of prison chaplains from whatever ambiguity they felt regarding their roles. It was a push towards a kind of “formal” recognition of the role of prison chaplains within the SPS (HM Chief Inspector of Prisons for Scotland 1986, Para 1-3). By 1986, the Prison Chaplaincies Board had convened a meeting consisting of members of the Episcopal Church, the Church of Scotland, and the Roman Catholic Church. According to Smith, three important questions were posed to the chaplains: “ (1) What do you do as a chaplain? (2) What would you do to develop chaplaincy work? (3) Are you satisfied with the present organization of chaplaincy work?” (Smith 1997, 102). These questions and the final report that ensued reflects formal structuring of prison chaplains in the SPS in terms of their role, position and identity (Church of Scotland 1988, 6, 14). In an important decision, the 1987 Prison Inspectorate report on Chaplaincy recognized that “Chaplains generally have little involvement in the routine happenings of the establishment” as a result of which they are “ unaware of changes and happenings” in the SPS (HM Chief Inspectorate of Prisons Scotland 1987, Para. 4.38). In 1989, a Joint Prison Chaplaincies Board (JPCB) was formulated as a result. The responsibilities of the JPCB included the following:

- A. The oversight, coordination and support of chaplaincy in Scottish prisons
- B. Interviewing and recommending candidates to the Prison Service for appointment as chaplains
- C. Ensuring that all newly appointed chaplains receive induction training
- D. Organising in-service training for chaplains
- E. Visiting all chaplains in their respective establishments
- F. Consulting with the churches on matters relating to prison chaplaincy
- G. Consulting with SPS on matters relating to prison chaplaincy
- H. Providing literature to prison ministry for the use of the church, chaplains, prison staff, prisoners and their families
- I. Developing and promoting national strategies for prison chaplaincy
- J. Stimulating the interest and participation of the churches in prison ministry and general issues
- K. Making an informed contribution to the debate on penal philosophy, penal reform, staff conditions and prisoners' rights
- L. Reporting to the churches and the SPS on the progress of the work of prison chaplaincy (Smith 1997, 111).

It is suggested that the historical era of prison chaplaincy from the 18<sup>th</sup> to the 20<sup>th</sup> centuries was generally associated with an intersectional model of prison chaplaincy in the United States, England and Wales, and Scotland—the priestly and the prophetic models. The historical era established the foundation and logic of prison chaplains fundamental to the latter eras. They also advocated the importance of reform in punishment, prison reform, the development of prison ministry and subsequent emergence of prison chaplaincy. Furthermore, while influenced by Christian theology and Scripture, preachers, prison reformers, pioneers of prison ministry and prison chaplains recognized the role of the state to punish but were critical of any form of punishment and prison condition they felt were inhumane. The goal of punishment was

redemptive and restorative as evident in Wesley's emphasis on the influence of "mercy, justice, and truth."

## **6.2 The Modern and State 'Security' Era**

I suggest that under the modern and state security era, prison chaplains function within a state-religio model of prison chaplaincy largely concerned with national security. Under this structure, prison chaplains function simultaneously between the security needs of the state and the religious, emotional and pastoral needs of prisoners in the penal systems of the US and the UK. This simultaneity with respect to their role is an inescapable reality many prison chaplains have come to take for granted (Sundt & Cullen 1998; Sundt, Dammer, & Cullen 2002; Maness 2015).

In this research, I define the modern era in prison chaplaincy as dating from 1970 in relation to prison management. The following concerns have become conspicuously central to the logic of the modern prison chaplaincy and their influences in prison management in the US and the UK: terrorism, 'religious extremism' and the role of prison chaplains (Pew Research Center 2012).

National security concerns have impacted the role and free expression of religion in prison management. A typical reflection of the state-religio model within which prison chaplain function is shown in the accommodation of the right of religious freedom of the prisoner in the United States. These rights are constitutionally protected. However, within the prison walls, religious rights to worship are "regulated." According to Hicks:

The First Amendment to the U.S. Constitution requires that inmates be provided with certain legal rights concerning the practice of their religious beliefs. However, none of these rights may supersede the security considerations of the prison institution. Thus, the complexities of regulation may include curtailing inmates' religious rights when considered necessary by prison administrators (Hicks 2012, 637).

In light of the institutional regulation of prisoners' right to worship, prison chaplains are often forced to balance the demands of the institution and the rights of the prisoners to worship. Majority of the prisons in the US have full-time or volunteer chaplains appointed to provide pastor and religious care to prisoners (Hicks 2012; Pew Research Center 2012; Sundt & Cullen, 2002).

Another typical example of the right of the state to prioritize its security needs and prison chaplains co-existing within the state-religio model is demonstrated in the penal engagement of the Anglican Church (Beckford & Gilliat, 1996; Beckford 2011, 1999a, 1983). Writing from the perspective of an Anglican chaplain, Phillips notes that in England and Wales, the Anglican Church has assigned PCs to every prison since 1823, with initial statutory assignment legislatively prescribed in 1713. "There is thus a constitutional and a political dimension to Anglican chaplaincy which is different from political issues surrounding other faiths and denominations because of the COE's (Church of England) deep embedding in the state" (Phillips 2013, 3). Describing the prison as a religiously combative space, Phillips notes "Prison chaplaincy provides a lens for examining relations between church and state and the extent to which the state attempts to regulate, more or less overtly, religious practice" (Phillips

2013, 4). In this context, chaplaincy models and best practices in ministering to prisoners vary. He intimates: "Anglican chaplains appear to be more plastic than others—owing partly to tradition and partly to extend legislation" (Phillips 2013, 104-5).

However, the modern state-religio model of prison chaplaincy is not without its tensions. Hicks contends that prison chaplains often experience unanticipated challenges from the prison establishment (prison officers and inmates), with sometimes hostile receptions. Some of the challenges are structural, in ways unexpected. These encounters often challenge the PC's understanding of the demarcation between the custodial roles of the prison officers and the rehabilitative role of the PCs. According to Hicks, "They learned that unsuccessfully negotiating their interaction with officers meant that they could not function (and rehabilitate) effectively" (Hicks 2008, 404). Furthermore, PCs sometimes occupy conflicting roles between custodial and rehabilitation responsibilities. They become "adaptable" and "flexible" in their roles within a neo-orthodox paradigm to better perform their religious obligations to prisoners (Hicks 2008). At the same time, PCs find themselves being "socialised" into the prison culture, thus becoming internal members of the prison rather than external members.

Prison chaplains are not monolithic in the interpretation of their chaplaincy experiences. In the modern era of prison chaplaincy, expressions and application of the priestly or prophetic models of prison chaplaincy are contextual. While it is difficult to argue that they have disappeared from the

modern paradigm of prison chaplaincy, one can suggest that individual prison chaplains contextually practise the adoption of the priestly and prophetic models.

### **6.3 The Modern Era and Religious Diversity in Prison Chaplaincy**

The modern era of prison chaplaincy is religious, secular and diverse. “Ecumenism” became a major part of the chaplaincy model with the demands to respond to wider needs of spirituality and faith groups in the prison. Sundt contends that prison chaplains have been “pushed” towards a multi-faith model. She interprets this development as reinsertion of prison chaplains into prison management. She notes “While the increased religious freedoms placed additional strain on the chaplaincy, it appeared that the chaplains had at last found a niche in the prison; the chaplain was necessary to ensure the inmates’ religious freedom” (Sundt 1997, 51).

Prison chaplains in the US and the UK function as religious agents to prisoners with religious orientations under state control. According to Ben Ryan, the decline of religion in the UK has provided new models of religious engagement. The “shrinking” nature of religion and Christianity in Britain has given rise to a church attendance model he refers to as the shift from “church to chapel.” This development has also impacted the general practice of chaplaincy (Ryan 2015, 6). Ryan writes:

What also emerges is that increasingly these chaplains are representing a new form of faith and belief work in the public square. Not only are they engaging in public spaces, rather than waiting in

their own religious spaces, but a large range of people, a significant majority of whom are not paid a salary or stipend for their work and also tend not to be the traditional form of religious professional (i.e. they do not tend to be ordained) (Ryan 2015, 29).

As a religious culture, the prison serves as a microcosm of the wider society in relation to its religious diversity (see Chapter 1) (Skotnicki 1991; Beckford 2013; 1999).

According to David Ford, chaplaincy in the context of the UK is “complexly both multi-faith and multi-secular” (Ford 2011, 1). He notes the “premodernity” of religious traditions but argues that traditional religions will have to understand the influences of modernity and postmodernity on religiosity in the UK. Ford writes:

If religious communities are not also religiously educated and wisdom-seeking communities, if they are not as intelligent and educated in their faith as in their work and culture, then they risk becoming ghettos disconnected from the rest of modern life. A key aspect of this is the need for academically-mediated faith (Ford 2011, 2).

For Ford, ‘academically-mediated faith’ is a kind of wisdom activism that theoretically and practically understands the prevailing religious dynamism of the modern or postmodern era. Construed as the “need to recognize multiple deepenings” and “breath,” Ford is advancing the claims for a “multi-faith chaplaincy work” that is based on “inter-faith understanding” and “inter-faith collegiality” (Ford 2011, 3-5). He notes that “Multi-faith chaplaincy in our institutions is a privileged place for pioneering this –and indeed can be a model for other countries” that can also be accomplished by an academically-mediated faith of “theology and religious studies” (Ford 2011, 9). This approach, Ford

contends, is vital to the leanings of a secular society. For prison chaplaincy, it reflects the debate between “faith-specific chaplaincy” and “generic chaplaincy” in relation to the contextual ethos of a prison culture (Ford 2011, 7).

Andrew Todd contends that chaplaincy in England and Wales, as well as Scotland, has shifted to a “multi-faith” model with representative faith groups having access to “equal opportunity” (Todd 2013, 144). “Diversity” and “equal opportunity” have led to an ideology of “neutrality” in which PCs operate within the space of perceived “independence” distinct from prison staffs (Todd 2013).

A 2011 report highlights the changing roles of PCs in the UK. Factors such as “socio-cultural, political and economic” dynamics, emphasis on professionalism in chaplaincy, religious extremism, intra-structural dynamics and the attraction to multi-faith and multi-cultural models of chaplaincy are producing changes in prison chaplaincy (Todd and Lee 2011, 3).

A pivotal part of the report is that PCs are not to “convert but rather to provide a service more focused on the prisoner's needs, especially for emotional support” (Todd and Lee 2011, 4). It asserts that the primary role of the PC is to be “pastoral,” “non-judgmental,” and “facilitating prisoners’ religious observance through the provision of opportunities for prayer, worship and religious education and counsel ” (Todd and Lee 2011, 4). The goal is not to be devout or salvation oriented or too particular about ones’ religious tradition in their chaplaincy approach. It is to adopt a “world faiths” approach with the focus on pastoral care provision, consideration of safety, security concerns and the support for collective managerial needs of the prison (Todd and Lee 2011, 5).

The following factors have also been pivotal to the normalisation of the multi-faith approach to prison chaplaincy in the UK. (1) The impact of secularism “in which the place of religion and faith is contested;” (2) The “public significance of religion” influenced by “growth and presence” of Islam “by the perceived threats of terrorism, fundamentalism and extremism.” (3) The focus on ecumenism, which suggests that prison chaplaincy “provides a fascinating lens for exploring the realities of ecumenical and inter-faith working relationships in an institution that, par excellence, represents in microcosm the richness and the failures of UK multiculturalism” (Todd and Lee 2011, 7, 19). In light of the above, the prison chaplain is thus forced to reconsider what sort of chaplaincy model to adopt: (1) a *secular model* with emphasis on meeting the humanitarian needs of prisoners; (2) an indirect attention to the *faith-based model*; (3) a *religious model* of concrete religious identity and institutional affiliation; (4) a *spiritual model* that is merely pastoral rather than religious; (5) a *therapeutic model* that meets the emotive and existential needs of prisoners without religious influences, as expressed by a PC:

*I think the prison chaplain has changed in that we are no longer here to preach or convert but to help them, to make them happier, to help solve their issues (Prison Chaplain 2010).*

Also, as expressed by a prison governor:

*The chaplains of today are not here to judge or convert anyone, or anything like that; they are just here to talk to and give prisoners support (Prison Governor 2010).*

Finally, (6) the *liberationist model* in which the PC serves as a social agent of change that calls prison management to account as well (Todd and Lee 2011, 22-23).

These changes in prison chaplaincy, especially in the UK, define religion and religious practices from a secular perspective. In contrast, this research regards the *penal significance of religion* as primary considering the shifts to penal harshness and their collateral consequences. It shows participants' God-talk with prisoners as they grapple with the existential reality of their fate and their mortality through the lens of religion, faith and spirituality. The models adopted in these God-talks reflect the engagement with the value of religion, faith and spirituality as immanent and transcendent engagements.

Similarly, another report was produced in 2013. It emphasised "neutrality" as the model of prison chaplaincy in the UK, with the goal: (1) to pursue diversity in a multi-faith context; and (2) to prevent extremism and radicalism among prisoners as a security measure (Todd 2013 144). As a multi-faith approach, neutrality is characterised by an emphasis on the "humanitarian" model of prison chaplaincy compatible with the ideals of secularism. Christian prison chaplains are made to refrain from the use of words like "repent," "grace," "mercy," "redemption," "renewal," and "transformation," at the same time creating dichotomies between religion, spirituality and faith. Prison chaplains are categorized as "conservatives," "liberals," "evangelicals," "fundamentalists" or "secular" considering the use of these words and their religious implications (Phillips 2013, 84; Pattison 1994, 202; Forrester 2000, 86; Shaw 1995, 85) The

argument is that these words connote conversion and Christian forms of proselytization under the secular and humanitarian models. According to Phillips, it reflects a striking change from the model of prison chaplaincy in the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries in Scotland, England and Wales that previously “sought life change and social adaptation specifically through faith and the promise of salvation” (Phillips 2013, 85). It was a notion of “social restoration by salvific means to the end of producing compliant members of society” (Phillips 2013, 86).

Nonetheless, a major policy shift in prison chaplaincy in the UK has taken place. The Equality Act 2010 defines what religion in UK prisons should be. It signals a departure from the role of prison chaplains in the historical era.

(i) Religion means any religion and a reference to religion includes a reference to a lack of religion. (ii) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief (Scottish Prison Service 2016).

The definition of religion in the Equality Act 2010 de-emphasizes the value of religion and the God-factor in the prison culture. By so doing, it further legislates the marginalization of religion, the significance of religion in the lives of prisoners as well as the role of prison chaplains in the modern era of prison chaplaincy. These developments reflect what is particularly unique to the modern era of the penal systems of the US and the UK. The modern era of prison chaplaincy, especially in the United Kingdom in contrast to the United States also reflects a major break with the historical era in which prison chaplains emphasized the God-factor as fundamental to the rehabilitation of prisoners and prevention or

reduction in recidivism. Prison chaplains under the historical era were moral instructors, penal reformers as well as correctional and custodial agents (Sundt 1997; Sundt and Cullen 2007; Skotnicki 1991; Smith 1997).

However, based on the participants' responses in this research, a contrary definition of religion and belief exists in the prison culture. As I have defined in Chapter One, the prison culture is also a religious culture. Religion is existential and theistic. Prison religion implies an existential understanding of the imminence and significance of the God-factor. In prison, being religious often implies an encounter with and belief in God. Religion, therefore, connotes belief in a living God for participants and prisoners especially for the ageing and dying prisoners a means of hopeful resistance against the pain of imprisonment.

In 1897, Chaplain J. W. Batt of Concord Prison in Massachusetts raised the question as to whether prison chaplains should engage in the reform model of prison chaplaincy. His argument stems from a deontological duty-bound interpretation of human obligation to humanity. Batt argued that:

Every man to the end of time is his brother's keeper. God has made us so. We shall never escape from that obligation. When the State arrests a human being and throws him into prison helpless, and makes him a prisoner almost body and soul, the State is bound to remember that the State is our brother's keeper. Who is the State? You and I are the State, and God has made us our brother's keeper, and nothing whatever that our brother can do will alter that obligation while he lives. Let us never forget this, that God Himself has written the necessity of the reformatory principle in the very structure of man (Batt 1897, 59)

In this research, the participants' responses imply that the PC is not a *tabula rasa*—a blank slate and passive receptor of both the prison and the

prisoners' experience but an active and engaging receptor in the prison environment. The PC is a companion and facilitator of their religious experience during their time of ageing, terminal illness and death. According to Phillip, "chaplains see themselves as confident (e) or compassionate companions rather than confessors or counsellors" (Phillips 2013, 90). In this research, I argue that PCs are confident; compassionate companions as well as confessors of their faith and counsellors to prisoners, hence the neo-orthodox interpretation of their chaplaincy practice. Based on participants' responses, this interpretation of PC contrasts with the emphasis on the multi-faith, therapeutic and secular models in prison chaplaincy in the UK (Todd 2013). Todd writes:

The strength of this perception that chaplains do not proselytise, and its location within the wider collection of constructions surrounding the 'neutrality' of the chaplain, suggest further that chaplains have played a significant role in this re-contextualization: involving their positive embrace of multi-faith practice; and their commitment to high quality non-judgemental pastoral care, offered in demanding circumstances, and crucially to any who need it, irrespective of their belief (Todd 2013, 151).

Secondly, neutrality is used as a deterrence to prevent radical extremism (Todd 2013). This approach to multi-faith chaplaincy has generated some concerns regarding the impact and objectivity of prison chaplaincy. Not only is identification with a particular religious affiliation discouraged but an emphasis on multi-faith and the prevention of "radical extremism" have led to the use of PCs, especially of the Muslim faith, as informal "informants" (Todd 2013, 154-155).

In 2014, another report was released. It emphasises the shift in the Church of England's approach to prison chaplaincy. The report notes:

Church of England involvement in chaplaincy has, however, changed, as well as persisted. The trend in ecumenical and multi-faith models of chaplaincy has been from Anglican dominance, through models of 'brokerage' (where Anglican influence has enabled the involvement of other faith traditions, while continuing to lead in the management of chaplaincy), to a more equal partnership (in which different faith traditions exercise leadership) (Todd et al. 2014, 5).

While outlining the historical role of the Church of England in prison chaplaincy, the Church has shifted its missional strategy to engage the contemporary world, being in partnership with other religious communities and organisations (Todd et al. 2014, 6). The shift to multi-faith and non-proselytizing approaches in prison chaplaincy in the UK and its implementation has fallen mostly on Christian PCs.

Considering the various shifts in prison chaplaincy in the UK, Christian PCs often find themselves devising a non-Christian-religious approach to chaplaincy. A lot of them do not want to be labelled "fundamentalist," "conservatives" or "proselytisers." In the absence of clear distinctions defining the characteristics of proselytisation, Christian PCs have to adopt secular and indirect methods in their messaging and chaplaincy. The non-proselytizing mandate in prison chaplaincy does not seem to be a problem to other religious groups since their mode of proselytising is supported by the shifts towards religious tolerance, multi-faith, ecumenism, congregational adornments and modes of evangelism distinct to Christianity. Christian prisoners are not distinguished from other prisoners by what they wear. It implies that they cannot

proselytise by what they wear. While the collar identifies Christian PCs, Christian prisoners are not identified as such (Phillips 2013, 84). These developments in prison chaplaincy suggest the need for a realignment of the roles, values, and approaches to prison chaplaincy under the present conditions of penal harshness, the normalisation of mass incarceration, and the high rates of prisoner deaths in the US and UK prisons.

Jessica Van Denend in the US contends that a spiritual and religious fluidity exists in prisons. This fluidity develops because of prisoners' incarcerated experiences and their pursuit of spirituality. Denend defines prison as a "spiritual hot-house" (Denend 2007, 396). Her experience is unique in the sense that she is both a prisoner and a trained PC with a Clinical Pastoral Education (CPE) at Bedford Hills Correctional Facility (Denend 2007). She writes:

We caught a glimpse of the spirituality in which ... we could be Buddhists when we were with Buddhists, Christians when we were with Christians, Jews when we were with Jews, etc. ... We touched upon religion as more than an identity or a coping mechanism or an occupation. We touched upon religion as a way of life. The essence of religion, it seems to us, is finding yourself and being comfortable with who you are (Denend 2007, 397) (Heller, et al. 2016).

With a slightly different argument, Stephen Hall supports a multi-faith approach but one that is theologically grounded. He prefers a "multi-faith" approach that provides a coherent response to the "theological concerns" of prisoners. It is one that responds to their "faith issues," and that recognises the prisoners' dignity as persons and their "inherent worth... as God's creation" (Hall 2004, 170). Hall is also suggesting the development of a "working theology" for prison chaplains

that reflects the following: “hope” as an eschatological guarantee for the prisoner in the midst of their sense of hopelessness, a “ministry of presence” that reflects the PC’s skills in providing adequate forms of pastoral care, “forgiveness” as a means of experiencing grace, empowerment as a means of self-motivation, and “inclusivity” based on both individual and religious differences in the prisons (Hall 2004, 178). For Hall, “hope” is an important eschatological concept based on the resurrection of Jesus Christ. Hope serves as a coping mechanism for the prisoners especially in the face of “alienation,” and the prospects of penal death (Hall 2004, 171-172).

PCs function as supporters of prisoners and their rehabilitation. While PCs often find themselves caught in the influence of custodial responsibilities and “the model of prisonization,” they are influenced by their religious convictions and overwhelming pursuit of the “rehabilitation model” of correction (Sundt and Cullen 2002, 369). In general, Sundt and Cullen conclude that PCs as workers are committed to the religious and rehabilitative needs of prisoners.

#### **6.4 Prison Chaplains’ Perceptions of Prisons**

Prison chaplains are ministering to prisoners from their religious backgrounds in the modern prison cultures of penal harshness and incapacitation of the US and the UK. In this section, I provide direct statements from the participants that describe the prison culture from the PCs’ perspectives. Participants’ accounts of the prison culture are both homogenous and

heterogeneous. PCS108 notes that the prison is a complex environment but a “shared” space for prisoners and prison staff.

*Prison is a very intense community. During the working days, we are all behind bars. We are all stuck here. Our lives are in prison when we are working. As a worker, we are sharing part of that incarceration (PCS108).*

Similarly, PCS111 notes that a prison is a place of human darkness, the exposure of unmasked human nature and one of sadness.

*Such an enormous accumulation of sadness. What goes on inside the prison is not normal. The darkness in human life is more pronounced in prison than the light in human life. Prison is characterised by the same cloth, food, highly restricted movement, normative violence, health and mental health issues. Nothing normal. You (the prison chaplain) can create a sense of normativity, but it is not normal. Prisoners do not wear a mask. The realities of human life are overt and sharpened in prison but in a way mirroring the outside world with its mask. Much of life is heavily sad. The happiness agenda is a mask. The nonsense that happens is the norm (PCS111).*

Furthermore, prisons have become living options for the poor: PCS111’s response reveals the emergence of prisons as resource centres, depicting the shifts of welfare resources from the community to the prisons. This shift removes resources from outside in the communities towards the prisons. As a result, the poor are finding better resources in prison, which promotes the pseudo-attraction of prisons and imprisonment. The prison is an embodiment of unethical “practices.”

*Prison raises questions of morality, ethics, and justice. For instance, a person incarcerated for a crime for which the injury to the victims is absolutely insignificant or non-existent. Prison is thus becoming a preferable place for the poor and addicts—outside in the summer, inside in the winter. Mental health care provision in prison is better. Prisons are characterised by multiple deprivations, routine, food,*

*warmth, clean clothing, poverty, no family structure, heat, deterioration, no proper amenities, so prison becomes a preferable place. Prison becomes an attractive proposition (PCS111).*

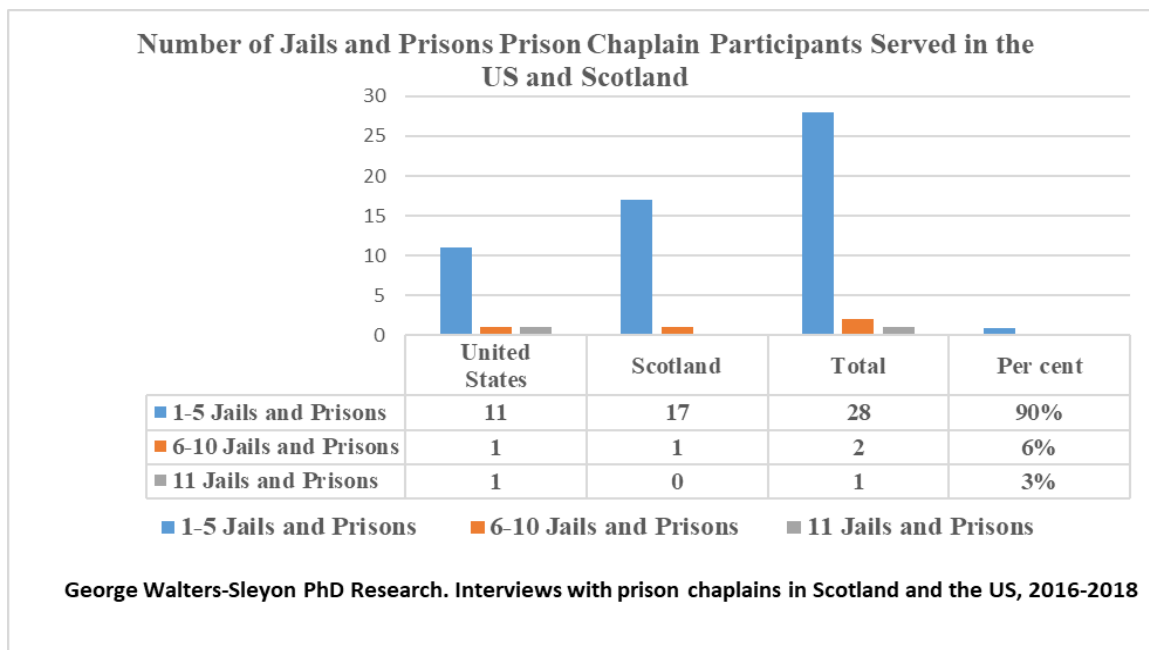
PCS108 intimates that prison generates conditions of inherent helplessness even for prison chaplains:

*We can't do anything else for them other than the program. In practical terms, we can't do for them what we do for people on the outside. We can't give them money. We can't clothe them. We can't feed them. We can't heal them or take the pain away. All we can do is talk to them. And sometimes during induction, they will say, 'so you can't do anything. All you can do is just talk to us.' We are amateurs. It is painful for us. But we also know, that talking to them is appreciated as you get to know people. We are the ones when all the professionals are gone; we are the ones left to talk to them. The words of the prison chaplains are the only tools they've got to work within this context. You do feel frustrated at times you can't do the practical things that pastors can do for folks outside...we are frustrated by that (PCS108).*

#### *Prison Chaplains are Serving More Jails and Prisons*

In addition to serving more years in the penal systems, prison and jail chaplains are serving multiple prisons, thus the diversity and depth of their understanding of the penal culture. Prison chaplains participants have served more than one prisons and jails. It illustrates how indispensable they and their role in the modern prison.

90% of the participants responded that they had served 1-5 jails and prisons. Similarly, 6% of participants said they have served 6-10 jails and prisons and 3% of participant responding that they have served 11 jails and prisons for the duration of their prison chaplaincy.



This chart shows that participants have a broad exposure to the prison culture. Prison and jail chaplains serve different categories of prisons and are multi-prison oriented in their chaplaincy practice. This chart also establishes the premise for providing a prison-chaplain-based understanding of the prison culture that is criminal justice oriented, theological and sociological. The next three questions are focused on demonstrating the participants’ connection with their audience—the prisoners.

### **6.5 Prison Chaplains’ Perceptions of Prisoners**

#### *Prison Chaplains see Prisoners as Human Beings*

Jail and prison chaplains are person-centred in their perception of prisoners. In describing the characteristics of the prison culture, Liebling contends that: “Prisons are special moral environments in which *how people feel*

*treated* (i.e. how prisoners and staff feel treated) has serious consequences, first, for what happens in them, and secondly, for the claims that can be made about them” (Liebling 2004, 461). Prisons also imply domination, “de-personalisation” with the potential for “tension.” Prisoners are both recipients and participants in this environment of “moral dangers” where “respect is continually under threat” but largely “shaped by relationships” in which PCs play crucial and life-supporting roles (Liebling 2004, 463). The prison culture and its experiences provide the contextual background that also influences the jail and prison chaplains’ perception of prisoners. Their responses are diverse. They reflect their various religious, social and educational backgrounds as well as their experiences in the penal system.

93% of the participants of all religious groups responded that they perceive prisoners as “human beings.” 6% of the participants, one from Islam and the other of the Catholic denomination responded that they considered inmates as “human beings who are criminals.” It demonstrates participants’ process of best practice development in ministering to prisoners. There was no prison chaplain who regarded the prisoners “as criminals” or “as criminals who are human beings.” This research argues that prison chaplains have a “person-centred” approach to ministering to prisoners. It recognizes the humanity of the prisoner and thus an adequate place of departure in responding to the needs of prisoners.

<b>How prison chaplain participants perceive prisoners as jail and prison chaplains in the US and Scotland</b>				
	<b>United States</b>	<b>Scotland</b>	<b>Total</b>	<b>Per cent</b>
<b>As human beings</b>	<b>13</b>	<b>16</b>	<b>29</b>	<b>93%</b>
<b>As criminals</b>	0	0	0	0
<b>As human beings who are criminals</b>	0	2	2	6%
<b>As criminals who are human beings</b>	0	0	0	0
<b>George Walters-Sleyon PhD research. Interviews with prison chaplains in the US and Scotland: 2016-2018</b>				

How PCs perceive prisoners determines the level of congeniality and empathy expressed towards them. I asked the above question to determine the level of participants' care and sensitivity towards the prisoners. To perceive the prisoner as a human being implies the recognition of their sense of personhood as sacred worth in the prison environment. It underscores Liebling's call for a "theology of the person" based on the virtue of respect (Liebling 2014b, 267).

To perceive the prisoners as criminals, emphasise their present condition of imprisonment and criminal status. It determines how the PC treats the prisoner and thus compounds the prisoners' emotional state as an offender and lawbreaker. Such a perception tends to subject the prisoner's humanity to their criminal status, at the same enforcing the criminalisation of their humanity. Furthermore, a PC's perception that sees the prisoner only through the lens of a criminal normalises their present condition of confinement and criminal status, thus making it difficult to holistically minister to the spiritual and rehabilitative needs of the prisoner.

Moreover, to perceive the prisoner as a human being who is a criminal tends to see the criminal act as secondary to the prisoner's humanity. While it

may seem an acceptable perception, it nonetheless fosters an identity of criminality. In such a case, if the prisoner is unsupported with genuine human empathy and expressions of care, the fragile humanity of the prisoner stands to succumb to crime and self-consciousness, especially as enforced in the prison environment. Finally, to perceive the prisoner primarily as a criminal who is a human being subjects their humanity to their criminal activities. It is problematic in several ways for the prisoners in the prison environment since it refuses to recognise their humanity but only sees them through their criminal activities.

Speaking from the perspective of the SPS, Masterton provides another perspective regarding the personality of prisoners. She explains:

Prisoners are vulnerable people ... they have suffered severe loss prior to imprisonment ...the Scottish prison population is dominated by men in their early thirties. It is characterised by social deprivation and exclusion with high levels of mental ill health, substance use and childhood abuses (Masterton 2014, 4).

Masterton categorises the prisoner's life in three ways: (1) as associated with past losses equivalent to the pre-prison accumulation of negative social capital; (2) as present losses defined regarding their current state of imprisonment; (3) as post-prison losses associated with their conviction backgrounds.

Prisoners show signs of weakness and vulnerability upon which other prisoners often capitalise (Lane 2015). Masterton explains: "Unable to be the truth of their experience, prisoners cannot confront the reality of their loss and process and integrate their grief. It remains a confined encounter, a secret sorrow. To escape their imprisoned grief, they turn against themselves. Drugs, self-harm and attempted suicides become their release" (Masterton 2014, 5).

Masterton’s account provides a window into the nature of the work cut out for PCs in prisons across the US and the UK. Sundt and Cullen explain that PCs are:

Responsible for providing inmates with a variety of services including counseling, facilitating adjustment to prison, visiting prisoners in isolation, helping inmates make plans for their release, counseling and helping inmates’ families, providing religious and general education, and, of course, conducting religious services (Sundt and Cullen 2002, 370).

An essential aspect of the PC’s ministry to prisoners is dependent upon how these perceptions encourage them to be sensitive to the needs of prisoners generally.

*The Need for Gender Diversity in Prison Chaplaincy*

Jail and prison chaplains serve both male and female prisons and jails. They are not limited to the prison populations of their gender. An aggregate cannot be easily derived from this number. 84% of the participants said they served predominantly male facilities. 14% of the participants said they have only served in female facilities with 22% of the participants having served in male and female facilities concurrently.

<b>Gender of prisoners prison chaplain participants served as jail and prison chaplains</b>				
	United States	Scotland	Total	Per cent
Male	9	17	26	84%
Female	2	2	4	13%
Mixed Population	4	3	7	22%
<b>George Walters-Sleyon PhD research. Interviews with prison chaplains in the US and Scotland: 2016-2018</b>				

This chart confirms that prisons are male-dominated. While the female incarcerated population has been far smaller than the male population, in both the US and the UK, the female incarceration rate has increased (U.S. Department of Justice 2018; The Scottish Centre for Crime & Justice Research 2015; Prison Reform Trust 2017b).

### *Prison Chaplains are Serving Racially Diverse Prisoners*

Jail and prison chaplains serve racially diverse prison populations. They serve prisoners of all races. The statistics on race in the general population in both nations differ remarkably. In the United States, the race of the prisoners overtly and covertly influences the service they receive. Scotland does not have the same problems with race because its prison population, as well as its general population, are racially homogeneous. 42% of the participants said they have served Black prisoners. 71% of the participants said they have served White prisoners with 38% says highlighting that they serve predominantly White prisoners. 22% of the participants said they have served Hispanics prisoners with 32% serving Asian. These responses indicate that prison chaplains are serving multiple races in the prison space.

<b>Race of prisoners prison chaplain participants served as prison chaplains in US and Scottish prisons.</b>				
	<b>United States</b>	<b>Scotland</b>	<b>Total</b>	<b>Per cent</b>
<b>Blacks</b>	5	8	13	42%
<b>Whites</b>	5	17	22	71%
<b>Hispanics</b>	4	3	7	22%
<b>Asians</b>	2	8	10	32%
<b>Other</b>	4	0	4	13%
<b>All</b>	7	0	7	22%
<b>Predominantly White</b>	0	12	12	38%
<b>George Walters-Sleyon PhD research. Interviews with prison chaplains in the US and Scotland: 2016-2018</b>				

For the US participants, the cumulative responses were 27, based on the racial categories of prisoners that participants served rather than the number of the Participants. Chaplains of the Nation of Islam indicated that they regularly served Black, Hispanic/Latino and other inmates in prison but not a lot of White and Asian inmates. Racial stratification was highly evident in prisons across the US, with every racial group fractionally identified. As a microcosm of the larger society, prisons in the US are also stratified along racial and economic lines. In the US, the responses demonstrated that race also plays a role in prison chaplaincy.

Based on the responses from the PCs in Scotland, a different problem of stratification emerges among the prison population. It is based on economics rather than race. It implies that most of the inmates imprisoned in the SPS are poor White men, women and juveniles.

PCS115 and PCA119 accurately capture this dialectical experience.

*It is an appointment within a vocation. I enjoy the prison. It breaks up the week's activities for me. Varieties of vocation to look up to. You are a chaplain to the prison, not only to the prisoners but to the guards as well. The people you meet in the parish are sometimes the relatives of the prisoners. It is an extension of the parish as far as I am concerned. Quite often, families in the parish talk to me about their relatives behind bars. I have never seen a huge break between the parish and the prison. We are providing care. A guy is getting released; they tell him to go and see your parish priest. Prison chaplains are connecting inmates with their communities, church and pastors (PC115).*

For PCA119:

*While in there you come across people you know from the outside. For example grandson and fathers of your friends and someone, you know personally. Most of the young men are high school dropouts. They have got limited knowledge about the (penal) system. A lot of them just often throw in the towel. They are not persistent in the pursuit of education (PCA119).*

PCS115's and PCA119's comments also highlight a salient aspect of the participants' identity formation, that of a *community liaison*. It is the intersection of providing pastoral care for the members of the Church or Mosque on the outside and the Church or Mosque in prison. Furthermore, it presents the Church as a *welfare centre*: a form of pastoral care and pastoral responsibilities in the modern era of mass incarceration in the US and the UK.

About the focus of this research, a peculiar responsibility of PCs becomes obvious. It is that of the *carrier of death news* associated with the responsibility of *community liaison*. Take for instance the experience of PCA119. A prisoner he was working with got a visit from his mother on Sunday. The visit went well. However, on Monday, the mother committed suicide. On Tuesday, PCA119 had

to notify the prisoner. The prisoner could not believe it, but he eventually did.

PCA119 knew the mother and the son because they were members of his community (Lane 2015).

Similarly, for PCA125, it is not only serving as a *community liaison* and a *carrier of death news* but as a *grief counsellor*. After notifying a prisoner of the death of their relative on the outside, PCA125 notices their loss of control, as an overwhelming sense of guilt descends on them. They begin to blame themselves for the death of their relatives due to their behaviour, primarily if the dead relative was very close, e.g. a mother, father or child (Masterton 2014; Lane 2015). Recounting their exasperation, PCS115 notes: "They bear the frustration. They died of a heart attack; it is my fault. If I had been living better, they would not have died as such" (PCA125). These three existential pastoral responsibilities in prison chaplaincy depict the intricate roles of the PCs in the modern penal system:

- (1) *Community liaison*: serving as a connector between the prisoners, the prison and the larger outside community.
- (2) *Carrier of death news*: serving as one who informs the prisoner about the death of his or her relative and reversely, who could also be the one to inform the prisoner's family of their death in prison.
- (3) *Grief counsellor*: serving as the one who consoles prisoners as well as their families in times of grief. The PC is connected to the prisoners as a guarantor of hope.

An adequate exercise of these three responsibilities nonetheless require an understanding of the position of the PC and religion within the larger structure of the penal system also as both penal and social communities.

## **Conclusion**

This chapter presented a brief historical analysis of the development of the modern prison chaplaincy in the United States, Scotland and England Wales. Its fundamental argument is that prison chaplains have been an indispensable entity of prison management. While their status has changed over the years from prison reformers, prison ministry leaders to established identities of prison chaplains, they have been inherent to the development and management of prisons. However, an essential aspect of my analysis is that prison chaplains have over the centuries devised ways of responding to the needs of prisoners. I argue that the prevailing paradigm has been theistically personalistic— the consistent perception of prisoners as persons with inherent dignity in need of religious intervention. With this perception, PCs have functions under the various expressions of the prison culture while developing and implementing concepts of practical rationality to navigate the angst and ethos of the prison culture. Furthermore, it demonstrated an image of the intersecting and multifaceted roles of PCs. Prison chaplains are not monolithic in their practices neither are their roles binary but described as fundamentally vocational. This chapter also showed that prison chaplains are an inherent part of the structural management of prisons serving in various capacities and simultaneously working between two or three prisons.

In the next chapter, I explore PCs' (concepts) of theological conceptualisation based on participants' perspectives and recollection of their experiences in ministering to ageing and dying prisoners.

## **Chapter 7. Prison Chaplains on the Beat in the Era of Mass Incarceration**

The modern prison cultures and their expressions of penality in the United States and the United Kingdom's penal systems are complex institutions of perilous experiences and angst for those who are caught in them. These various expressions of the prison cultures serve as the embodiment of the shifts to penal harshness and their production of the conditions of death—reflected in the high rates of ageing, natural in-prison deaths, homicides and suicides. They define the working environment of prison chaplains. To reduce the life-saving obligations of PCs as described in this research in the modern penal systems to mere religious examination is to simplify the cathartic importance of their multi-prison faceted and neo-orthodox duties to millions of prisoners.

As a theo-criminal justice comparative approach, this chapter provides the participants' reflections with prisoners as a process of theologically conceptualizing the penal experiences of ageing and dying in the prison culture. It demonstrates how PCs engage in the process of theological conceptualisation with prisoners as God-talks. While the analyses and thematizations of their responses are mine, the responses as quoted reflect the prison chaplains' own words; it shows how PCs formulate their God talk with ageing and dying prisoners. In addition, the chapter establishes a theo-existential understanding of the complex roles of PCs. The answers are theological but descriptive of the penal reality in which prisoners are constantly reminded of their own mortality. In

the light of their diverse responses, I suggest the following: the prison culture is also a theological culture; the prison experience is a theological experience, and prison chaplaincy is dialogical engagement with prisoners' religious traditions. It is beyond the scope of this research to delve into the religious particularity of each religion represented among the prison chaplains as well as divulging the particular identities of the respondents. Instead, it demarcates and extrapolates from the prison chaplain participant's to discuss a thematized analysis of their claims. While the participants are Muslims, majority Christians with one Buddhist (as indicated, the Buddhist participant did not respond to all the questions), in obedience to the ethics requirements, I have kept the identities of the participants anonymous (please see the appendix with the Consent Form).

### **7.1 Religious Hope in Prison Against Penal Hopelessness**

Ageing, dying and death in prison are experiences associated with despair, loneliness, and shame. They represent experiences of hopelessness. Religious hope, in contrast, is a form of resistance against "death" and the pain of imprisonment. I define "hope" in this context as a form of resistance against ageing, dying and death conditioned by harsh sentencing policies. Hope in prison is not any hope, but cathartic hope also generated by prisoners through their encounters with PCs in the US and the UK prisons (Girling and Seal 2016). Religious hope function in three ways in the prison context: one, as an epitome of resistance against the penal production of death; two, as "freedom" in the

present and afterlife for the dead in prison; three, as a fundamental conviction and ground for prisoners serving Whole Life sentences, life without parole or Order for Life-Long Restriction (OLR: Scotland) with little or no hope of physical release (Liebling 2017).

In this respect, religion is pivotal. It is a coping mechanism against the despair of dying as a convict, alone, infirmed and the angst of penal loneliness. In the process of terminal decline, the role of the prison chaplain becomes absolutely important as the nearest “relative.” It is shown in the establishment of a bond between the PC and the prisoner as a bond of hope. It is this dynamic of mutual religious understanding and identity that serves as the starting point of hopeful resistance against death in prison. Prison chaplains’ care for ageing and the dying prisoner is thus person-centred and restorative as they identify with the mutual experience of human mortality (Allard and Allard 2009).

## **7.2 Religion, Faith and Spirituality in Prison Chaplaincy**

A climate of transcendent engagement exists in the prison, and it is reflected in the categories of religion, faith and spirituality. Up till now, I have only spoken of religion. In the following, I will provide an analysis of religion, faith and spirituality. Further clarification in this chapter is how participants function as agents of these religious experiences. As a deductive investigation of PCs’ experiences, the definition of religion, faith and spirituality are derived from the

participants' responses rather than theoretical abstractions. Their thematizations are mine.

*Religion as Dialogical Engagement and the "End of Life" in prison*

In the prison environment, religion implies the explicit or implicit reference to God. Religion is present in prison as an expression of the prison culture. It exists as a coping mechanism as well as an ethical frame of reference in the rehabilitative process. PCA130 has served as a PC for over 13 years. Speaking from his religious background, he suggests that a fundamental role of the PC is one as a moral instructor with restorative obligations that helps the prisoner to emotionally transition in during his or her post-prison experiences.

*It is my belief that the Chaplaincy Department's first duty is to provide religious services according to the teaching of the faith that the chaplain represents. The second duty of a chaplain is to contribute his/her time and resources to the rehabilitation of the incarcerated, so they may increase their chances of a successful transition back into society and be productive, law-abiding citizens. This second duty is equally important because it is a combination of religious belief and the formation of good habits that apply to all religions universally (PCA130).*

In this research, participants spoke from their individual religious traditions. However, I am restrained from divulging their particular religious identities in relation to their responses. The focus is not their identities per se in contrast to their religious experiences, processes of conceptualization and how their religious backgrounds function in their care for prisoners including ageing and dying prisoners in the various prison cultures. Take, for instance, few

participants' reports of prisoners' use of the Ouija Board and how they handled the situation.

*I have used holy water in cases where the inmates have come complaining that they are hearing voices in their rooms and things are moving. This is due to the increasing use of the Ouija board by inmates in the prisons. It leads to sleep discomfort and fear. I exorcise with Holy water in the name of Jesus Christ, by claiming responsibility in the spiritual realm. Inmates are always using the Ouija board to contact dead relatives in the prisons. I claim the power of Jesus and sprinkle Holy Water all around in the room (PCS101).*

PCS101's use of holy water and prayer is an attempt to respond to whatever effects the use of the Ouija Board generated. The claim is that prisoners use whatever means available to contact their dead relatives. However, it also reflects the use of the Ouija Board in the prisons culture and PCs might be applying their religious backgrounds to deal with the effects. PCS101's action is an attempt to respond in the best possible from his religious background. For PCS110, religion is an existential reality in the prison culture. It is shown in his dialogue with prisoners, their questions about religion and their use of the Ouija Board as a means of religious engagement. In contrast to PCS101, PCS110 notes that prisoners should not be forced into the generic model of religion and religious practice in the prison culture.

*There is an understanding of faith foundation with the prisoners. They ask very religious questions and faith-based questions. They are often contemporary in their reading of the Scriptures. In spite of the push for a generic religious subscription, prisoners are highly religious and often desire particular religious and faith-based responses to their religious questions. Religion has become existential for the prisoners. They are looking for some sort of religious or supernatural experience of God. Some of them have used the Ouija board (PCS110).*

Phillip confirms a similar experience. In his ethnographic work as a PC in England, Phillip interviewed another PC, pseudo-named Esther, who narrated the following:

*I think they like the chapel because it's not a particular prison chapel, you know. It doesn't say this is a prison and I think they appreciate that. Years ago, we had a girl in who was down as a Satanist and had obviously got mental health problems; I don't think the two were related though they might well have been. And I was doing the (detoxer) service on a Sunday afternoon and came back to the chapel to discover all mayhem going on. She'd got into the chapel because we didn't leave it locked at that point (Phillips 2013, 78).*

The “detoxer” service Esther is referencing implies the same as PCS101’s use of Holy Water and prayer in contrast to PCS110’s experience. However, these experiences suggest that as religious workers, PCs are aware of the religious steps to take to ameliorate the effects of using the Ouija Board or situations that demand particular religious rituals.

Similarly, prison chaplains have learned to navigate the realms of the secular and the religious in the modern era of religious diversity and secularism. Take for instance PCS108’s reflection on faith, death, religion and secularism. PCS108 provides insights as to how PCs can respond to the concerns of prisoners with no religious identity—either as a secularist or an atheist.

*Working with men who are dying in prison has meant, in one case, accompanying someone who had been trying to reconnect with a faith he had he lost as a young man and in another working alongside a man who was an adamant atheist. In both cases, the challenge has been to connect with these men without using religious language and to find ways, along with them, of making sense of their situation without recourse to traditional religious concepts. This is, of course, challenging but it is a challenge the whole Western church faces at the present time, to find—in*

*Bonhoeffer's words some form of 'religionless Christianity' that makes sense in the world today. In both of these cases, the chaplain ended up conducting the funeral service. For the atheist, three chaplains conducted the service, and we respected his wishes and conducted a non-religious service which nonetheless focused on values we as believers believe in (PCS108).*

PCS108 highlights conditions of religion with and without God. In this case, most likely, the Christian prison chaplain is called upon to design and conduct the funeral.

A third component to PCS108's challenge regards the rituals of death and end of life in the prison context. Liebling explains, "the ending of life in custody should be controversial. Deaths in prison raise issues of accountability, legitimacy, and quality of life as well as questions about the quality of death"—natural in-prison death, homicide or suicide. She notes that concerns regarding the quality of death should not be limited to "those who die of natural causes in prison as a result of their age or sentence" (Liebling 2017, 20). Instead, Liebling focuses on exploring three dimensions of death in the prison: suicide, murder (homicide) and "whole life sentence" ("life without parole" in the UK), which she defines as "dying without death" (Liebling 2017, 20). While suicide and homicide "share many of the qualities of the worst kind of death," Liebling characteristically describes suicide, homicide and whole life sentences as "undignified deaths". They demonstrate a certain form of "completeness of the exclusion so often experienced by offenders" (Liebling 2017, 21).

Furthermore, suicide, homicide and whole life sentences share mutual inclusivity considering the question of "euthanasia." Liebling supports euthanasia

but under certain conditions. She notes that euthanasia is available to prisoners serving whole life sentences, for example in Belgium, Switzerland and other countries. She explains:

I have long supported the principle of euthanasia, under certain circumstances, on the grounds of dignity and freedom: of being the author of one's own life. Autonomy and self-determination are central to dignity. But in prison, this is double-edged. There are also questions of capability, resources, and environmental effects. Suicide, murder, and whole life sentences sweep away these principles of self-determination: Can one really be said, except in exceptional circumstances, to *choose* suicide in a prison environment? (Liebling 2017, 21).

For Liebling, the "end of life" in prison should be an avoidable starter. However, where the possibility outweighs the impossibility, euthanasia and the end of life in prison "should be approached with dignity, choice, and relationship in mind" (Liebling 2017, 21)

However, PCS108 reflects on the intersections between religion, secularism, dying in prisons and the role of the prison chaplain in relation to the end of life question in prison. He broadly associates the rise of atheism combined with secularism in Europe and yet the abiding need for PCs to provide pastoral and spiritual care to prisoners. The prison culture is thus a microcosm of the larger society to which PCs are also responding. For PCS107, secularism poses a unique challenge to religion:

*Society is drifting towards a mean secular model. The secular model is liberal but also secular and conservative with respect to judgement and sentencing. Let's give people a chance, liberal thing. But if certain people cross a certain line, we say that person needs to be locked up and locked up for a long time. (This place) ... is changing in relationship to spiritual matters with secular world views. Liberal secularism says people are basically*

*good. But how do you deal with people who do some really bad things or persistently bad things? Change, greater emphasis on restorative justice. It is my developed capacity for reconciliation and restoration. Secularism can also be conservative in spite of its liberalism. If people behave outside of the norms, secularism does not know how to deal with them. Especially within the context of grace and mercy. A general liberal view is everything is okay, but if you cross a certain line, there is no coming back (PCS107).*

PCS 107's contention is that Secularism is penologically conservative and makes little or no provision for granting offenders a second chance. It reflects the "complexity" associated with chaplaincy in the modern or postmodern era (Ford 2011). PCS107's concerns underscore the influence of social consciousness on the prison culture. For PCS107, sociopolitical and economic liberalism have penal implications. PCS107's concern is that the shifts towards the various secular models of chaplaincy in the US and the UK do not facilitate consistent rehabilitation. The challenge to the religious responsibilities of PCs, as PCS107 contends, is the absence of a cogent rehabilitative agenda based on the secular model of prison chaplaincy.

On another note, PC114 is concerned about prisoners' use of religion to promote ideological and violent extremism. PC114's account also shows how PCs are privy to specific conversations, ideological positions and experiences not known to the general public or prison administration.

*I have dealt with prisoners with very violent natures who make clear their intentions of committing violent acts in the name of Islam. The difficulties of this are two-fold: Firstly, challenging the prisoner's ideology in a supportive and constructive manner, and secondly, working with the prison staff to manage the prisoner risk both while in custody and on their release (PC114).*

PC114's experience is genuine. Religious extremism and violent religious extremism are present in prisons in the US and the UK. It is not the focus of this research to delve into the technicalities of these terms. However, PC114's concern reflects the claims of national security and state concerns central to the policies and practices of post-1970 prison management. It also reflects the claim that the prison culture is also a security-oriented culture.

The Pew Research Center (Pew) 2012 50 states survey of PCs across the US provides an empirical example. In the wake of 9/11, it associates religious extremism in the prisons with religious terrorism and thus violent religious extremism. In response to the question 'How common is religious extremism in prisons?' The Pew notes:

A majority (58%) of state prison chaplains surveyed say that religious extremism is either not too common (42%) or not at all common (16%) in the facilities where they work while 12% say that it is very common and 29% say it is somewhat common. At the same time, about three-quarters of the chaplains say that religious extremism poses a threat to the security of the facility either 'not too often' (26%) or 'rarely or almost never' (50%) (Pew Research Center 2012, 15).

Prison chaplains' assessment of religious extremism in the Pew research were influenced by their experience, racial background, and religious backgrounds. The report notes, White evangelical chaplains are more likely than White Protestant chaplains to report religious extremism in the prisons, with most of the extremist behaviours taking place in maximum and minimum-security prisons. The Pew notes, "Those who are Muslim appear less likely than other chaplains to perceive a lot of religious extremism among inmates. Just 23

per cent of the Muslim chaplains say religious extremism is either very common or somewhat common in the prisons where they work” (Pew Research Center 2012, 16).

What is considered “religious extremism” is a bit ambiguous. The study defines religious extremism as including “Intolerance of specific racial or social groups, racial separatism/supremacists, religious exclusivity/inflexibility of faith, specific requests for accommodation, and racism disguised as religious dogma.” Other words used to describe religious extremism in religious groups include “strangeness,” “gang” activities and “espousing views that promote violence or rape and creating new religions” (Pew Research Center 2012, 18, 19). The above definitions of religious extremism also contain social and cultural factors that are not religious but classified as social extremism or religious exuberance.

### *Faith as Dialogical Engagement*

Participants defined faith in three ways: first, as an expression of their commitment to God based on their belief systems; secondly, as a coping mechanism in prison; and thirdly, as relational and functionally existential, the “courage to be” in surviving the stress of imprisonment.

Prison chaplains’ understanding of faith is varied. PCA125’s response reflects an ongoing process of faith development that is contextual and situational. “Working with this population has taught me that faith in God can be acquired in many ways” (PCA125). It embodies both secular and non-secular experiences peculiarly associated with the prison environment.

*Prison Chaplains Are Sharing their Faith With Experience with Prisoners*

While the approaches are different in every prison context and with every prisoner, PC are sharing their faith backgrounds with prisoners in ministering to ageing and dying prisoners in the US and UK prison cultures. This question asked had three options: *Yes*, *No*, and *Indirectly*.

Out of the total of 31 respondents, 100% of the participants said they have shared their faith experience with prisoners. However, 35% of the Scottish participants also said they had shared their faith indirectly with prisoners. The implication is that PCs in the Scottish Prison have devised ways of sharing their faith directly and indirectly with prisoners.

**Prison chaplain participants share faith experience with prisoners in US and Scottish prisons**

<b>Prison Chaplains</b>	<b>United States</b>	<b>Scotland</b>	<b>Total</b>	<b>Per cent</b>
Yes	13	18	31	100%
No	0	0	0	0%
Indirectly	0	11	11	35%

George Walters-Sleyon PhD research. Interviews with prison chaplains in the US and Scotland: 2016-2018

*Spirituality as Dialogical Engagement*

As part of the three structures of religiosity in prisons, spirituality is the least dogmatic, whether discussed as infused reverential practice, action, ritual

or persona. However, the problem with “religionless” spirituality is the lack of the God-factor. Religion supplies the transcendent content of spirituality. Spirituality without the God-factor as a holistic experience often does not meet the spiritual needs of prisoners, at least, from the perspectives of the participants.

I derive my definition of spirituality in this chapter from the responses of the participants. The goal is to establish the basis for a spirituality that emerges from the religiosity inherent in the prison culture and environment. In that light, I have thematically structured four concepts of spirituality reflecting on participants’ understanding: (1) *spirituality as a vocational identity*; (2) *spirituality as a virtue*; (3) *spirituality as a means of empowerment*; (4) *spirituality as a functional experience*. These four themes provide a limited glimpse into understanding the meaning of spirituality associated with the prison culture in US and UK prisons based on the participants’ responses. The responses are diverse with participants’ speaking from their individual religious traditions.

*Prison Chaplains are Integrating Spirituality in their Chaplaincy Praxis*

*Spirituality as a vocational identity* refers to the recognition of an existential identity. PCA129 asserts an identity-based definition of spirituality: “spirituality is what my full existence in ministry is all about.” In contrast, PCS102 contends that spirituality “begins and ends with the Divine Office *Benedictine Opus Dei* plus liturgy throughout which focuses on those committed to my care plus disciplined prayer and devotional life. This feeds all my pastoral activities/personal expression of faith and morality and Christian living.”

According to PCS112, spirituality has a natural influence: “Spirituality is integral to who I am so it just permeates my work naturally.” PCS117 finds it difficult to capture the loftiness of spirituality in words because it is personal: “As it is integrated into my whole life I would be unsure how to answer this.” In contrast, PCS116, spirituality is action oriented.

*I see my work as spiritual in and of itself—I am not always successful at it, but I do try to see each prisoner I meet as a representation of Jesus as though I am ministering to Jesus. I run various spiritual courses .... E.g. 12 step spirituality, Christian meditation. I would say most of my work is spiritual (PCS116).*

PCA119 sees a non-binary relationship between the supernatural and natural, the sacred and the profane, regarding what spirituality is in prison: “Really, it’s quite easy because they understand who I am and what I represent. I don’t see a dichotomy between spirituality and life.” Finally, PCA124 argues that spirituality is contagious. It touches the lives of those around you, but it is futuristic. “It is my work. I address this with the men all the time ... belief in the afterlife in the traditional way. We teach that you live through your work and that affects people.” Spirituality as a vocational identity resonates with prison chaplaincy as a personalistic calling. The latter reflects a concrete and contextual expression of spirituality as identity formation. The former reflects a formal calling and appointment as a PC.

*Spirituality as a virtue.* Embedded in the spirituality of PCs is the suggestion that to be spiritual is to be virtuous in the eyes of the prisoners. PCS102 intimates that prisons are filled with “distrust.” It is required that a PC establish a sense of integrity for themselves as they work in the prison

environment. However, integrity is conferred and confirmed. In a place of distrust, spirituality and integrity can be mutually inclusive or exclusive based on one's actions, comportment and respect for others. According to PCS113, being a PC is being "person-centred" (Bowne1908; Brightman 1958; Muelder 1943)

*To be effective, a chaplain has to be a people person. They have to be able to connect and get alongside people. They have to be approachable and reliable, trustworthy and have integrity. For me, chaplaincy is all about relationships with prisoners, with staff and with management (PCS113).*

It is not merely spirituality but virtuous spirituality. For PCS102, spirituality is earned:, "Everything is earned. You have to be a man amongst men just being with the prisoners." PCs' engagement with the prisoners is also a process of character formation—being influenced by the prison environment at the same time influencing the prison environment. PCA119 refers to it as the development of "faith, hope, love and courage." However, PCS109 notes that spirituality is within and outside of the prison. The PC must be aware of maintaining a sense of spirituality within and outside of the prison culture.

*I personally seek to be disciplined in maintaining my own spiritual health. In the widest sense I try to emphasise personal worth, dignity and hope to all prisoners, and through pastoral support seek to support them through troubled times into a greater sense of peace, joy, contentment, forgiveness and hope for the future. In terms of religious spirituality, I do this through church services and groups that we put on; and will pray with prisoners individually when requested or when appropriate. I may also share something of a Scripture when and if appropriate too (PCS109).*

PCS108 further argues that spirituality as a virtue also implies the concept of hospitality:

*I would see it as important that chaplains have a kind of ‘spirituality of hospitality’ in the sense of being open to accept and respect the views, opinions and beliefs of everyone we work with. This respect for others is central to any kind of mature faith and if we define spirituality as ‘that which most deeply motivates us,’ this means we can relate to others with an integrity and with a faith that is confident enough to be challenged and unafraid of growth and development (PCS108).*

*Spirituality as Emotional Empowerment.* Spirituality in the prison culture is also defined as a form of advocacy. Prison chaplaincy in the era of mass incarceration is emotionally demanding. For PCS111, spirituality is experiencing and overcoming the angst of the prison culture and the processes of prisonization.

*The fairly relentless pushing of you. The security problem. It is the locking of doors behind you etc. It is there in the background. However, this may not be the reality of all prison chaplains. There will be, and there are individuals simply for whom these experiences are not possible. These are not a hypothesis but real, and the potential is there. Therefore, doing prison chaplaincy full time one must be conscious of these dilemmas. There is the process of switching off and switching back on. It is a quest for self-preservation because of the normality of the prison: murder, rape, incest, violence, etc. You need a very specific ‘holiness’ to deal with these experiences (PCS111).*

In relation to the historical era of prison chaplaincy, the modern prison culture is largely influenced by the penal emphases on incapacitation in the US and the UK. Similarly, as a result of its emphasis on penal punitiveness, the modern prison culture reflects an unusual concentration of human abnormalities—a massive gathering of human frailties, imperfections, weaknesses, limitations and sinfulness made visible in designated living spaces. In the modern prison cultures, PCs are not only moral instructors but psychological and emotional

healers. Prison chaplains are constantly working with fragile, broken, hurt and wounded emotions in need of repair, healing and restoration (R. Lane 2012), (Masterton 2014). Working with prisoners, as emotional healers require spiritual gifts. The source of empowerment is spiritual. PCA125 notes, “As a chaplain, I draw on my religious, spiritual experiences in the groups that I teach.” The integration of spirituality in prison chaplaincy is fulfilling, however delicate its demands might be. As PCS111 explains, integrating spirituality in prison chaplaincy requires “Iconic witness, religious services and approaches to life’s issues” (PCS111).

*Spirituality as a Functional Experience.* Respondents intimate that integrating spirituality in prison chaplaincy is essential. Take for instance the response of PCA131, a PC for 30 years at the time of the interview. Integrating spirituality in prison chaplaincy “mirrors the workings of the Holy Spirit in the lives of those who are imprisoned.” It emphasises the need to “listen, be present, and provide a safe and welcoming place” for the prisoners (PCA131). PCA122 defines the functional role of spirituality as reflected in “teaching, counselling and preaching.” These three aspects of prison chaplaincy are vital to developing a program for the restoration of the prisoner. From an Islamic perspective, PC123 achieves the integration of spirituality and prison chaplaincy “via classes and Friday *Jumjah* services, sermons and leading prayers.” Also, PC114 describes how to navigate the prison culture with a religious understanding.

*Through collective prayer and religious teaching groups. On a 1:1 basis by listening to the stories and experiences of the prisoners and then offering advice based on spiritual principles such as patience, gratitude, forgiveness, compassion, mercy, etc. (PC114).*

Other participants listed “testimony”, reading of the Bible, “individual prayer with prisoners,” “personal dialogue,” “solidarity with humanity,” and creating a “spiritual context.”

I have analysed the three structures of religiosity in the prison: religion, faith and spirituality. I suggest a notion of religion as holistic engagement. Holistic religion is immediate in its existential function and cathartic in the prison culture in contrast to its absence or marginalization. I argue that the compartmentalisation of religion, faith, and spirituality is an individualistic understanding of religion.

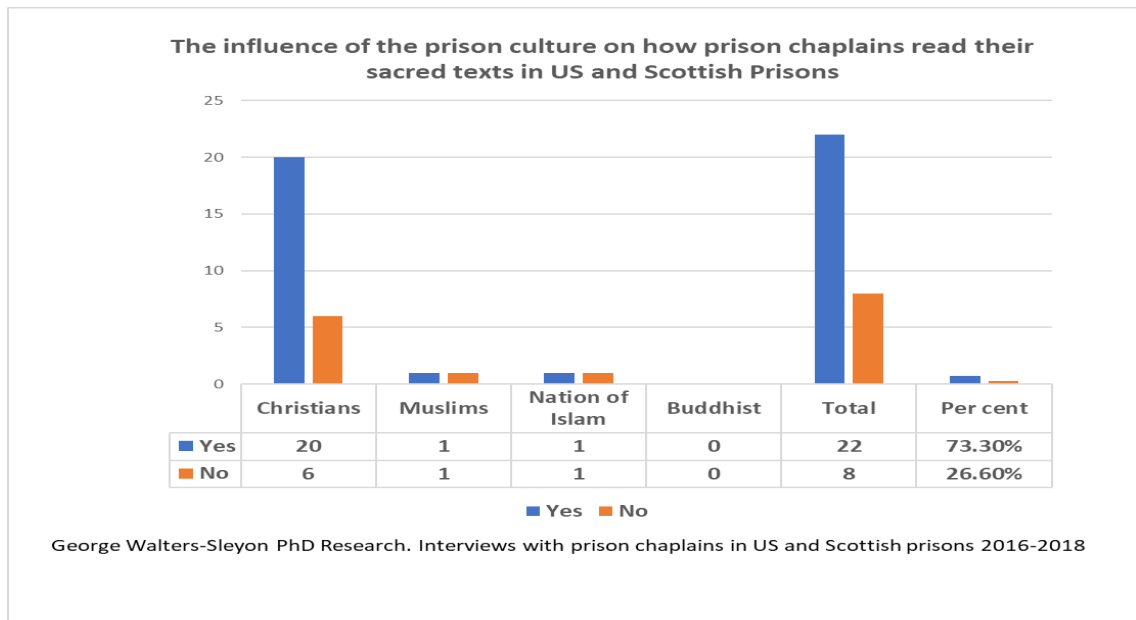
### **7.3 Prison Chaplaincy as Theological Praxis**

In this section, I will analyse the role of theological doctrines in the participants’ chaplaincy practices. The Buddhist did not respond to the theological questions. On the one hand, few of the 4 participants of mainstream Islam and The Nation of Islam responded. On the other hand, Christian participants overwhelmingly responded to the questions. The following themes were derived: Scripture, God, punishment, judgement, forgiveness, the definition of death, and the concept of life after death.

## Scripture

### *Prison Cultures Influence on Prison Chaplains' Reading of Scripture*

The prison and its culture tend to influence the way jail and prison chaplains interpret their sacred texts in contrast to their pre-prison chaplaincy understanding.



The role of Scripture for the participants is not monolithic or generic. The use, understanding and interpretation of Scripture along with its impact are heterogeneous, altering the prison climate, the prisoners' life and that of the PC. 73% of the participants said Yes, the prison culture tend to influence the way they read and interpret their sacred texts from their religious backgrounds. Similarly, 26.6% affirmed that the prison and its culture does not influence the

interpretation of their sacred texts. I have developed the following themes based on their responses to the questionnaires and the interview sessions.

*The reading of Scripture in prison is Introspective:* They experience a more profound appreciation on a personal level that they have not had before their chaplaincy in prison. PCS101 states that it “has broadened my understanding of God’s love.” In addition, PCA120 declares that prison chaplaincy and Scripture “makes you value aspects of life others take for granted.” PCA125 does not hesitate to state: “It has challenged my understanding of faith.”

*The reading of the Scriptures in prison is Contextual:* PCS109 articulates a contextual interpretation of reading Scripture but from the prisoners’ interpretation of their penal experience and reality. The focus should also accommodate the prisoners’ voice and their existential experience of the angst of the modern penal system. Reading Scripture as such is cathartic and hopeful. It is a healing process of restoration and rehabilitation.

*Reading Scripture is affected by where it is read—and feels very different reading in prison than within the safety of a church building. I have learned to read Scripture from the viewpoint of the prisoner and the marginalised and excluded, rather than from the vantage point of power or righteousness (PCS109).*

PCS112 references a similar contextual concern, referencing a Biblical analogy to identify with the prisoners and their crimes.

*Yes, one reason might just be that explaining the Bible passage to a wholly unchurched person involves translating it into plainer and more jargon-free English than might be usable in a church setting*

*which brings it alive. But also you notice things differently. For instance, that Moses was on the run for murder when God called him, or that Ruth was someone (like many of our prisoners) who didn't have a cultural background of faith in God but decided to take a chance on it based on someone's else' faith (as prisoners may do based on our faith that we've shared). My favourite verse always was Galatians 5:22 and is even more so now; prison life with its rules and darkness contrasts with this beautiful list of promises of goodness and blessings (PCS112).*

The contextual reading and interpretation of Scripture in the prison “resonates” with prisoners, as PCS107 intimates. PCS113 is emphatic about the contextualization of scriptural understanding. “It has to be contextual. I suppose that for many of the years of my ministry I have always asked of a passage ‘so what’? But in the prison setting, this has become vital. Bob Ekblad, *Reading the Bible with the Damned* is a book that I have found very helpful” (PCS113).

*The Reading of Scripture in Prison is Instructive:* However, it is in PCS108 that you find a concise warning about the interpretation of Scripture and how it impacts prisoners. He refers to the prisoners as religiously and scripturally vulnerable and argues that care should be taken in explaining any sacred text to them, whether Christians or Muslim.

*Many prisoners, having not been given clear boundaries in their younger years, tend to be attracted to fundamentalist, literal readings of Scripture that, for them, seem to provide easy answers to often complex questions. I have become more convinced than ever, in prison as also in the churches that we need to show people how to see, not what to see, that we need to teach people how to think not what to think. Otherwise we run the risk of almost indoctrinating people, of simply passing on our views and beliefs as if we hold the sole and absolute truth—and prisoners are especially vulnerable to this. I also more clearly see the Bible as a record of the development of a people's growing understanding of*

*God. Parts of the Hebrew and Christian Scriptures have been, and still can be, used to encourage intolerance and extremism as easily as parts of the Qu'ran, and it takes discernment (and the help of God's own spirit) to identify and learn from the Bible's best and most mature teaching (PCS108).*

PCS108 highlights the need for scriptural interpretation in the prison to be sensitive to the peculiar spiritual and mental conditions of the prisoners. In that light, PCS108's comment is a direct rebuke to PCs who are not mindful of how vulnerable prisoners are and only see the prison context as a platform for ministry. On the other hand, PCS108 is fully aware of the need for spiritual guidance and pastoral care for the prisoners but is emphatic about preparation. PCS108's is asserting the need for PCs to be trained and mentored before entering the world of the modern prison in the US and the UK.

*The reading of Scriptures in the prisons is for the poor:* A striking aspect of scriptural interpretation participants alluded to is the emphasis on "reading the Gospel from the bottom up," as PCA131 argues. Not only is the contextual state of the prisoners regarded in interpreting the Scriptures but both their spiritual and socio-economic conditions. PCS110 notes that reading the Scripture in the prisons is "No different to working with human beings outside except to say that God has a gentle concern for the marginalised." While PCS108 emphasises sensitivity to the spiritual and emotional conditions of the prisoners, PCA131 and PCS110 emphasise the socio-economic plights of the prisoners as conditions for their incarceration. This raises the question about the PC having a multi-prison

faceted responsibility—one to the prison administration and the other to humanity.

### Forgiveness

#### *Prison Chaplains Think Prisoners Can be Forgiven*

Participants' sense of empathy and objectivity are reflected in their dialogue with prisoners.

Several participants associate scriptural knowledge with eliciting an understanding of forgiveness in the prisoners. The above question supports this role of Scripture. The options to answer the question were: *Yes, No, it depends, I don't know*. All of the participants categorically said *Yes* except one who responded: *I don't know*. PC114's response is emphatic:

*I have a deeper understanding of the concepts of repentance and forgiveness from God. The reasons behind the prohibition of all alcohol and drugs, striking a balance between being compassionate but also firm; the innate goodness in every person. I no longer believe there are 'evil' people, simply good people who have made a mistake, albeit sometimes very serious ones (PC114).*

PC114's transformation is pivotal. What is important is that it took place during his chaplaincy duties. Further elaborations on the question of forgiveness provide a clearer understanding of PC114's background. The response is lengthy and worth unpacking. It is important to state that PC114 is Islamic. Areas highlighted in his response from his faith tradition are the process of forgiveness, the intersection between repentance and forgiveness and the

aspect of self-forgiveness. The process of forgiveness articulated by PC114 is as follows.

*From the perspective of my faith, everyone can be forgiven, regardless of whatever crime or sin they have committed, but very clear conditions have been laid down for repentance to be accepted:*

- A. *Acknowledging one's guilt*
  - B. *Feeling regret and remorse*
  - C. *Making a firm and determined intention never to repeat that sin/crime*
  - D. *Asking God for forgiveness sincerely*
  - E. *Atonement for sin/crime (for example, if I've stolen something, return the stolen article; if I've harmed someone, asking them for forgiveness too, etc. The atonement will vary depending on the sin/crime)*
  - F. *Never lose hope in the infinite Mercy of God.*
- If a person repents with these things in mind, then they will be forgiven regardless of what they have done. Repentance can be done at any point in life – youth or old age, immediately after the sin or even many years later. This is especially important when dealing with ageing inmates, as they may have done a lot of wrong many years before, and feel it is too late to be forgiven, but this is not the case (PC114).*

PC114's analysis of forgiveness highlights the following elements. First, personal responsibility is necessary for wrongs committed, which implies that forgiveness is not possible without taking control of wrongs committed. Second, repentance requires restitution, and if forgiven, one is reminded of the immeasurability of God's mercy. Thirdly, the processes of repentance and forgiveness are "ageless" and can be engaged at any point in one's life. The importance of this assertion points to the mental and spiritual stability of ageing prisoners for whom the memories of past deeds have inhibited their ability to forgive themselves.

Furthermore, it highlights a peculiar divine plan of restoration for prisoners serving long-term sentences for both violent and non-violent offences,

life without parole and death sentences. While PC114's analysis may resonate with Christian theology and chaplaincy with respect to mercy and forgiveness as evident in Wesley's pioneering prison chaplaincy in England. However, a point of demarcation is that PC114's concept of interpretation differs from Christianity if one considers the statement. "*The atonement will vary depending on the sin/crime.*" It seems to imply a conditional form of atonement in contrast to the Christian doctrine of the atonement, which is unconditional.

PC114 further asserts a responsibility for forgiveness:

*Another aspect of forgiveness is one person forgiving another – This has been strongly encouraged. The basic principle is to treat others as we want to be treated. This principle is applied here to mean if we forgive others for their mistakes and wrongs, God will forgive us on the day of Judgement for whatever wrongs we have done (PC114).*

It signals the importance of human mutuality and co-existence in a world of uncertainties, failures and imperfections. For PCS115, the prisoner can be forgiven as a fundamental claim of Christianity: "It makes Christ's teaching on forgiveness and redemption very real and pertinent, not just theory." PCS102 notes: Scripture is "*Lectio Divina!* The living word of God is speaking to us today. The forgiveness of the Scriptures." It leads to an analysis of the participants' concept of God. As varied as their concepts of God might be, the God-factor is integral to their chaplaincy practice. As stated by PC114, "Yes, I now have a deeper appreciation of the forgiveness and compassion of God."

## God

### *Prison Cultures Influence Prison Chaplains' Concepts of God*

This section looks at the participants' concept of God in the prison environment. Participants' concepts of God are both multi-faceted and existential. They reflect a living relationship that informs their chaplaincy. Furthermore, their concept of God informs their daily activities as they navigate the world of the prison environment.

30 participants responded to this question. There were two options: Yes, and No. These were not binary but complementary. 43% of the participants indicated that the prison cultures have not affected their concepts of God. Take for instance the response from PCA121: "No, because God don't change." PCS105 intimates: "No, I try to get across to the prisoners that God is a loving God to all." PCS108 also explains: "No, but the language which I use to express my belief in a very incarnational God has become increasingly incarnational."

Similarly, 56% of the participants said: Yes, the prison cultures of the US and the UK have affected their concepts of God. Their concepts of God have changed but not negatively, rather in ways compatible with the compassionate attributes of God. For PCS112 the concept of God is both existential and instrumental:

*I have to become more trusting of Him. The need I see around would overwhelm me if I had to carry the burden on myself. I have had to learn to trust that God is in control. He may ask me to help out here and there sometimes; it is NOT the other way round! (PCS112).*

In addition, PCS102's concept of God is defined in relation to the concept of forgiveness and hope in prison. I have "Certainly become more aware of his eternal and forgiving love and the call to offer this hope to those who for whatever reason have fallen by the wayside." God's identification with the prisoners is particularly important to the participants. It underscores how their need for religious reinforcement in prison is inherent to their identity as persons of sacred worth. In this context, religion serves as a means of identity formation for enduring the perils of imprisonment. PCS108's response is Christocentric.

*Yes, my understanding has broadened and deepened as a result of working with people (chaplains and prisoners) of other faiths and denominations. I still, as a Christian, take my whole image of God from the person of Christ, and while I still see Jesus Christ as 'the Way,' I do not see Christ standing 'in the way' of those who, as a result of their own culture or religion, have come to the same image of a good, compassionate, loving and forgiving God by another route (PCS108).*

PCS108's concept of God is informed by the prison condition and its lived experience. The concept is contextual. It considers the existential conditions of the prison and imprisonment as central to the development of a multi-faceted understanding of God. Included in this conceptual development is the participants' understanding of punishment as a macro framework situating the prison, prisoners, and imprisonment.

## Punishment and Judgment

### *Prison Cultures' Influence on Prison Chaplains' Concepts of Punishment and Judgement: The Call for Mercy*

Prison chaplains have a diverse reaction when they become aware of the crime of the prisoner they are dealing with. The following responses resonate with concerns associated with the moral and penal crises previously discussed.

Participants were not ambivalent about the *reason for the prisoners'* incarceration. However, what is central to their responses are the diverse reflections on the intersection between punishment and judgement; and the need for mercy, justice and truth from their individual religious and theological backgrounds. Prisoners are imprisoned because they are being punished for crimes committed. The participants are rather concerned about the interpretation of the state of punishment, the concrete manifestation of punishment in prison, giving rise to conditions of death and theological implications for prisoners as human beings. Punishment and judgement are analysed together under this category with individual responses and results. 80% of the participants indicated that the prison cultures of the US and the UK have affected their concepts of punishment. However, 20% of the participants said No, the US and the UK prison cultures have not affected their concepts of punishment.

Similarly, 76% of the participants indicated that the prison cultures of the US and the UK have affected their concepts of judgement with 23% of the participants reporting *No*. The *Yes* and *No* options and responses are not

binary. What follows is an analysis of how both concepts are viewed as inclusively and exclusively. Prison chaplain participants are not monolithic in their concepts of punishment and judgement in the prison culture. While there were participants whose concepts of punishment and judgement were not affected at all, the rest of the participants reported a reorientation of their views considering the collateral consequences of the prison culture in the US and the UK penal systems.

PCS127 notes a transformation in the dominant concept of punishment: “Very deeply because it gets hard for me to see an inmate punished because I believe God is forgiving.” Concerning judgement, PCS127 is personal: “My concept of judgement has helped me to understand forgiveness, mercy and grace.” Similarly, PCS102 intimates that

*Punishment is understood in the context of that paid by the Lord out of and in love for us. We reflect this attitude seeing punishment as a loving action, tempered by God’s grace and mercy, appropriate to the situation, which brings about God’s healing love, forgiveness and reconciliation (PCS102).*

Like PCS127, PCS102’s concept of judgment is defined in relation to the grace, mercy, love, forgiveness, holiness and love of God. “Judgement is about engaging with holiness, love and mercy of God, a very different attitude from that in the world in which we live” (PCS102).

Participants’ emphases on the theological themes of love and mercy should not be interpreted as being soft on crime and punishment. Instead, they reflect their immediate identification with the plight of the prisoner and their religious backgrounds as fundamental influences on their chaplaincy praxis.

They also reveal an empathetic identification with the burden of the imprisoned that is both theologically and vocationally inspired. Take, for instance, the response of PC114: "I still believe punishment is necessary. However, I now also realise that everyone deserves another chance." PC114 does not denounce punishing the offender but is concerned about the need for a second chance for prisoners in the penal culture. A personal reflection on judgement should clarify PC114's response to punishment.

*Before I was very quick to judge others. But after speaking to many prisoners who have made mistakes and hearing their stories, I realise they themselves have been victims of many traumatic events: broken homes, no strong parental figures, childhood sexual abuses, etc. This has made me realise I have no right to judge anyone for their crimes, as I will never truly understand the experiences which led to that crime. I can still challenge their behaviour, but can never look down on them (PC114).*

PCS109 echoes the sentiments of PC114's reflections. The existential impacts of penal harshness are brought to the fore in the personal analysis of the participants. Being privy to the immediate experience of mass incarceration and its debilitating conditions, PCs find themselves in the unusual position of mending lives broken by conditions of penal harshness and its production of mass incarceration. PCS109 explains:

*A lot of punishment seems to be unjust in itself and in its practical implications. The way that it is operated by the state often seems to lack a rationale or purpose. As a prison chaplain, I wish to emphasise mercy and forgiveness a lot more—and think that the concept of restorative justice is one that is needed to be emphasized and considered more. Punishment should be restorative for all involved and not just destructive (PCS109).*

PCS109's response is analytical. It points to the emphasis on retributive justice in contrast to restorative justice. Not rejecting personal responsibilities for wrong committed, PCS109's statement points to the absence of humanness and "fairness" in punishment. On judgment, PCS109 highlights the distinction between God-centred punishment and state-centred punishment. "I don't think we are judged by what we have done or failed to do—but judged based on what we have done about God's offer of love, grace and acceptance. I am not sure that God grades bad acts in the way that we do." The reference to religious and theological virtues dominates the participants' perceptions of punishment and judgment. Like the previous participants, PCS109 views punishment and judgement through the prism of love, grace, mercy and forgiveness. Participants interpret the absence of these themes as a deficit in the penal systems of the US and the UK.

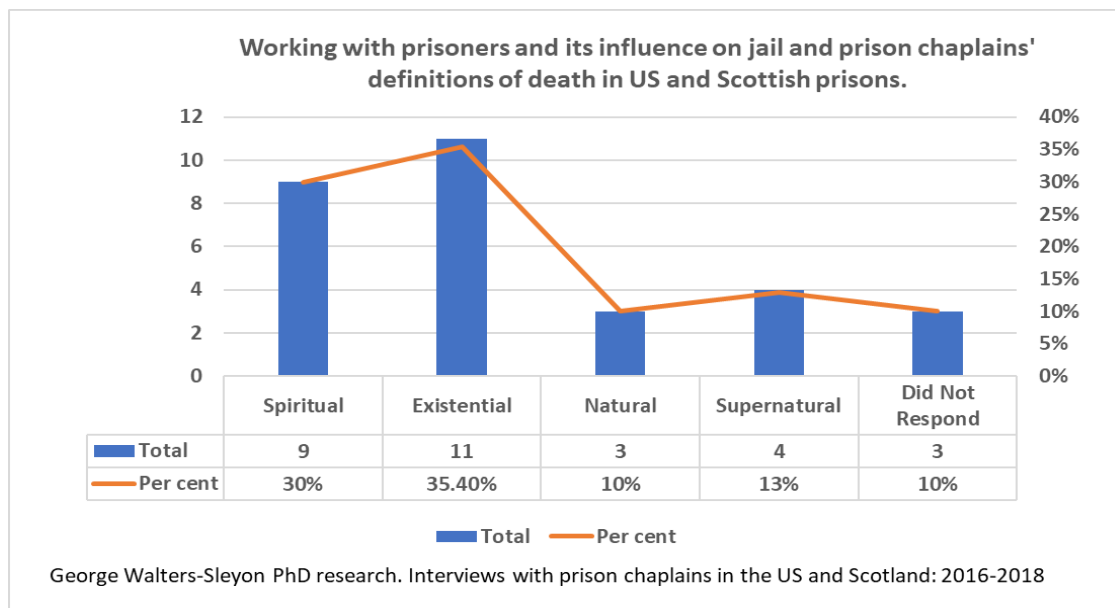
Through the prism of his faith, PC114 provides a distinction between the person as the offender and their criminal action.

*From the perspective of my faith, judgement is of two types— the judgement of an action which is permissible, and the judgement of a person, which is not permissible—only God can judge a person. For example, if a person commits murder, we can judge that action and say what he did was wrong, but we can't then say because he committed murder, he is a bad person—God alone knows if he is a good or bad person. Based on this principle, punishment will be given for a person's crimes and then left in the past, and they will be given a second chance. Once punishment has been given, justice has been done, and the person cannot thereafter be judged to be a good or bad person based on those previous actions (PC114).*

While distinctions exist between the previous participants' emphasis on love, grace, mercy, forgiveness and other expressions of Christian theological virtues, PC114 emphasises the human action. Through the participants, a theological and existential understanding of punishment and judgement in the US and UK penal systems emerge that reflect their distinct religious traditions. However, the process reflects an attempt to define the implications of a cumulative deficit in punishing offenders and humanness that create conditions of death in the US and UK penal systems. For PCA131, "Prison is punishment–Correction without compassion is useless."

## Death

### *Prison Cultures Influence on Prison Chaplains' Concepts of Death in Prison*



Participants were asked two preliminary questions about death. Only 30 participants responded. One participant did not respond to this question. Prison

and jail chaplains are not monolithic in their prison experiences. They responded from their diverse religious, social, educational background and penal experiences. In this context, the responses also establish how participants conceptualised death from their God-talk with prisoners. 35.4% of the participants defined death from an existential perspective. In addition, 30% of the participants defined death from a spiritual perspective. Similarly, 13% defined death as a supernatural experience. 10% said death in prison was a natural event. Furthermore, 10% of the participants did not respond. I have categorised the responses from both questions into four categories: death in prison as (1) *Spiritual*; (2) *Existential*; (3) *Natural*; and (4) *Natural/Supernatural*.

(1) 9 participants defined death as *spiritual*. PCA130 notes that death occurs “when the soul leaves the body.” It is a “passage into eternal life” as PCA129 contends. For PCS115, “death is a gateway to eternal life.” The idea that death as a “door” is emphatic. PCA127 explains: “I define death as a doorway from this life into eternity.” Similarly, PCA119 defines death as “Transition to another place prepared especially for God’s people.” That death is a point of transition especially for “God’s people” is echoed by PCA125:

*For those who are believers, death is defined as the release from this world and a preparation for reward. For those who do not believe, death is explained as eternal separation from a Holy God (PCA125).*

Death and its association with reward are present in every religion. PC114 explains:

*From the perspective of my faith, death is not the end of life but the beginning of eternal life after death. Death is merely the point of moving from one life to the next. Based on this, death is not*

*viewed as a negative event (although it is still difficult for us to lose someone), but as a positive event when a righteous person will be rewarded for their good actions. This is why death has been described as a gift for the believer. I define death as the end of the test from God and the beginning of eternal life after death where we receive the result of our actions done here (PC114).*

The metaphors used to describe spiritual death include the door, gateway, and a period of testing for actions (good or bad), reward and the righteous life.

(2) 12 participants defined death as *existential*. PCA123 opines, “Death is a part of life. It is an inevitable event we all will have to face. None can escape it.

The Angel of death can meet us wherever we may be.” An existential understanding of death implies the association of death with natural life.

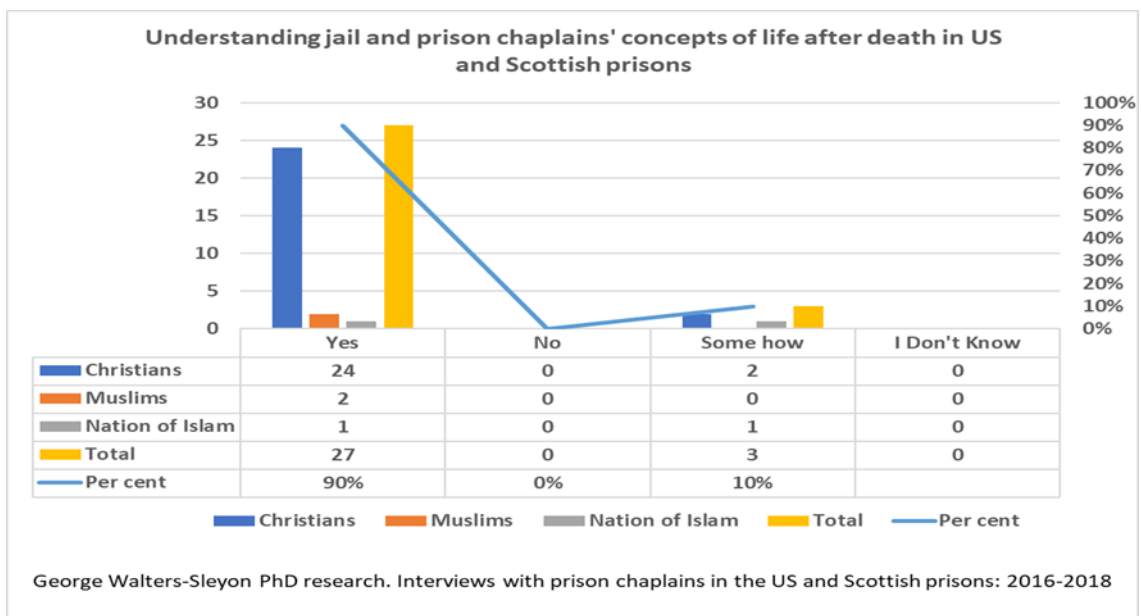
PCA124 notes: “Death is a part of life, and we must work hard while we have life. You escape death by connecting your life with the everlasting source of life.”

The fact that death is associated with life is not fatalistic. PCS101 explains: “I see death as an integral part of our life experience and I think it must be read in the context of hope.” The contention that death is not a hopeless experience is contextually important as it seeks to negate the prevailing climate of hopelessness, loss and despair in prison. The hopelessness leads to another kind of death—suicide. PCS112 notes:

*Death is horrible. It is horrible when it is expected. Arguably it is even more horrible when it is unexpected. And arguably it is most horrible of all when it is by suicide. All of these are made harder when the prison has meant separation from family in the final moment. When ‘Jesus wept,’ he didn’t just artistically let one gentle tear roll down his cheek. He raged against death. I find in this a great comfort and find in it permission to mourn. I feel for atheists who believe that death is the end as this must be very bleak indeed (PCS112).*

PCS112's response contends that death occurs in prison and it is an inevitable part of human life. However, it becomes particularly unnatural and painful when death is experienced alone, in confinement, in shackles and furthermore as a suicide. Suicide reflects the epitome of human despair and dejection. PCS106 describes suicidal death as a tragedy that affects the entire prison and staff. "Death appears as a result of a tragedy in the prison. It is mostly associated with suicide." For PCS105 death is "An end of their earthly journey." The question remains, should such an end be contrived? Sadly, PCS117 intimates: "With those with whom I work, it is often seen as the ultimate freedom." In that light, the pain of imprisonment as a result of a violent or non-violent crime and the magnitude of the sentence and other causes are seen as the impetus towards suicide.

*Prison Chaplains' Concepts of Life After Death in the Prison Culture*



Prison and jail chaplains have diverse concepts of life after death in prison based on their religion and practical experience of the prison culture. To some extent, participants' belief or non-belief in life after death determines how they responded to questions about mortality posed by the prisoners. 24 Christian participants said *Yes* with two saying *Somehow*. Of the 4 Muslim participants, three said *Yes*, with one responding *Somehow*. But none of the participants said *No* or *I don't know*. It also indicates that PCs do not abandon their religious beliefs in the prisons, especially when ministering to ageing, terminally ill and dying prisoners. In addition, 90% of all the participants said *Yes*, they believe in life after death. 10% of all participants said *Some How* they believe in life after death. There was 0% for the variable *No* and *I Don't Know*.

(3) Participants defined death as a *natural* experience. PCS104 notes that death is a "Natural process but in prison might be associated with loneliness." The inclusion of loneliness as a condition generating death highlights the angst of imprisonment. It is natural but unnatural, as influenced by the prison environment. PC103 sees it as part of "natural evolution." The question about context remains. To what extent do imprisonment and the prison climate facilitate the experience of death and suicide in prisons?

(4) Participants defined death as *natural/supernatural*. PCS107 argues, "Death is the hinge between this world and the world to come. With death, we are all ushered into the presence of God either to enjoy everlasting bliss or everlasting separation and punishment." In reference to the physical body, PCS108 explains: "The extinction of this mortal body and the return of what

remains, that part of us that is eternal (essentially defined by Paul as 'love') to the source of all life, which I describe as God." While PCS107's definition establishes the dialectical state of death as transitory, PCS108 describes a process of death. But for PCA120, death in prison is a holistic experience of physical dehumanisation and spiritual hopelessness. "Everything about being confined is death. From the stripping of your name to a number, to the disregard of your humanity." For the prisoner, death is holistic. It is a felt existential experience in the prison cells, a mental debilitation of unrest, shaming of the prisoners' body to inflict and spiritual anarchy within the soul.

Participants' religious and theological dialogues with prisoners, especially about death, demonstrate the cogent existence of religion and its influences on the prisoners and participants. Religion, faith, and spirituality are paradigms through which prisoners serve their time and PCs are facilitators in the process.

## **Conclusion**

The goal of this chapter was to capture the participants' diverse concepts of theological conceptualisation influenced by their prison experiences and religious traditions. Defined as God-talk from their prison-talks with prisoners, it demonstrates their theological analyses of the angst of imprisonment, considering their own engagement with the prison cultures and the prisoners. In relation to the message of the historical era, participants' experiences and perceptions of the prison cultures and their various expressions fundamentally suggest the need for mercy, justice, forgiveness and second chance for offenders in the US and the UK penal systems. Furthermore, they argue that religion; faith and spirituality exist in the prison cultures as theological, ethical and coping experiences considering the existential impacts of the shifts to penal harshness. In that light, participants were quick to point out the magnitude of despair and depth of hopelessness associated with imprisonment in the US and the UK as points of departure in their theological analyses.

**Section Four**  
**An Ethical Crisis in the US and UK Penal Systems:  
A Pragmatic Task**

## **Chapter 8: The Ethics of Punishment in the Era of Mass Incarceration**

This chapter defines the present state of sentencing and punishment in the United States and the United Kingdom as an ethical crisis. In the preceding chapters, I have argued that the shifts to penal harshness, their production of mass imprisonment and the high rates of death in the US and UK prisons have become normative. This normativity I contend is reflected in the increasing number of ageing, homicide, suicides and natural in-prison deaths of convicted and non-convicted prisoners for violent and non-violent offences. It is this experience in the prison cultures of the US and the UK that have become normative to prison chaplains.

I have also argued that the modern penal systems in the US especially, and in the UK, continue the economic concepts of Lockean slavery and its transition to Lockean punishment after 1970 in the use of prisoners as undifferentiated masses and economic units. In the US, to be precise, the impact of the punishment clause associated with the Thirteenth Amendment since 1865 continues.

As a penal mandate, the punishment clause has initially been a means of recouping lost slave labour and economic gain with the passing of the Black Codes and the birth of the convict leasing system (Ghali 2008, 627; Howe 2009, 1017). Convict leasing was at the expense of an alarming death rate, murder, broken bodies and inhumane treatments (Perkinson 2010, 101). In 1881,

George Washington Cable concluded that the prison industry, in its adaptation of the strategies of slavery, had become destructive. Aghast at the level of maltreatments convicts suffered, Cable embarked upon a social criticism. He explained that the condition “would bring the blush to the cheek of a murderer” “The abuses he discovered,” Perkinson explains, “stemmed not just from neglect, he concluded, but from the unholy union of imprisonment, profit, and white supremacy” (Perkinson 2010, 103, 106). Supported by policies, penal laws and law enforcement, convict leasing replicated the most gruesome form of Lockean slavery. Precisely, convict leasing was built and sustained on a system of mass incarceration. From Lockean slavery to the penal shifts of Lockean punishment, an alignment exists in the present use and industrialisation of imprisonment. It points to patterns of continuity as the Lockean slogan underscores: once a slave, always a slave, to once a prisoner, always a prisoner unto death in the modern penal systems of the US and the UK.

According to Farr, Locke criticised Filmer’s proposal for the monarch to have the power to enslave English men, but Locke “Unfortunately does nothing to lessen the principal contradiction between his theory and his age’s practice” (Farr 1986, 264). Locke was a slave trader at the same time writing about human rights. His engagement in the slave trade casts an embarrassing light on his political and economic theories. Farr notes:

In the case of John Locke’s theory of slavery we find an embarrassment of riches, a tale of intimate and informed involvement with all manner of slavery. Indeed, so well and thoroughly informed was Locke that, when once we grasp his theory of slavery, we come to wonder what it was designed to explain at all (Farr 1986, 265).

It is the modern form of this embarrassment that this research describes as an ethical crisis. The death toll from slavery, and subsequently, the convict leasing system, was beyond comprehension. Similarly, the death toll as described in the modern penal systems of the US and the UK because of the shifts to penal harshness and their production of mass imprisonment is beyond rational comprehension. It is this penal reality that defines the working environment of PCs. Take, for instance, the Rev. Rosalind Lane's process of theological conceptualisation. She has served for several years as a PC in England and Wales.

### **8.1 Prison Chaplains as “Liberationists” in Prison Management**

According to Lane, PCs operate from a “liberationist perspective” in response to the psychological needs and “imprisoned loss” of prisoners. It represents the loss of liberty, the loss of identity and the loss of human dignity.

As a PC and researcher working with men at HMP Kirkham and HMP Whitemoor, Lane argues for a model of prison chaplaincy called “theology-in-action” (Lane 2012, 6). It reflects her search for a “theological grounding” that defines “specific types of ministry available to prisoners and their families in the face of grief and loss” while imprisoned (Lane 2015, 16). The development of this process of theological conceptualisation is acquired from her years of prison chaplaincy. Her approach is liberation centred and promotes “active living” with

the prisoners. It is counter-cultural to the traditional prison culture of loss and despair. She writes:

Prison chaplaincy more generally, and this approach in particular, can be helpfully interpreted using the paradigm of the liberationist approach to theology, where there is a concern for social change amongst the disadvantaged in the pursuit of freedom and human liberation” (Lane 2012, 6).

Lane focuses her research on areas of loss—death, grieving and traumatic experiences in the lives of prisoners. With that understanding, Lane defines the role of PCs as pivotal and indispensable. She explains that PCs’ distinctive role has a “structural and symbolic place within the prison in which it's theological roots ... can inform, facilitate, and create a spirituality of loss which is counter-cultural in a forensic setting.” The goal is to “Enfranchise and liberate imprisoned grief” (Lane 2012, 2). The importance of the PC in the life of the prisoner, she argues, is reflected in their “life-giving role” working with individuals on the margin.

Prisoners are always in a state of “shock,” civilly dead and constantly facing the prospect of physical death from ageing and terminal illness. She considers it a state of disenfranchisement in which prisoners exist with “grief bottled up or only share it in the privacy of a one-to-one pastoral encounter with the chaplain for fear of how this might look to others” (Lane 2012, 4). Here the role of the PC is pivotal. Lane’s methodology is to “integrate theological theory with ordinary experience.” At the same time, it is to recognise that the PC’s role is one of empowering the prisoner to cope with their imprisonment. “The chaplain’s ministry can facilitate the movement from disenfranchised grief to

imprisoned grief and ultimately help enable liberation and enfranchisement from this experience” (Lane 2012, 5).

Lane provides three crucial conceptual frameworks: (1) Grief is a hidden experience for prisoners. She likens this practice to Christ’s disciples after his death huddled in the Upper Room to grieve the loss of their master. Prisoners’ grief is an unexplored area because prisoners refrain from grieving or showing any sign of vulnerability so as not to be taken advantage of in the prison setting. Grief “remains hidden” (Lane 2012, 7). (2). Prison chaplains stand in solidarity with prisoners as prisoners live with their losses. In that way, the PCs function in “counter-hegemonic” roles to help prisoners tackle their issues. Lane compares prisoners’ grief to a “bomb slowly ticking away inside” that can be only defused by the role of the PC (Lane 2012, 8). The role of the PCs is to create normality in a culture of abnormality. (3) Finally, the role of the PCs is to offer, “hope,” specifically theological hope as existential hope necessary in a restricted and “counter-culture” environment (Lane 2012, 14). For Lane, the PC is also a liberator, a transformer and a social change agent. She articulates three areas of grief affecting prisoners necessary for extended investigation: (1) “disenfranchised grief,” (2) “self-disenfranchised grief,” and (3) “imprisoned grief” (Lane 2015, 7). She writes:

‘Disenfranchised grief’ is a condition which people feel when unable to access support from family [etc.] ... It is exhibited by prisoners where the acute loss of family, relationships, home, employment, finance, education and ability to parent come together. Issues of loss and bereavement accumulate when a parent or other family members becomes terminally ill or dies during their imprisonment. ‘Self-disenfranchised grief’ is a self-initiated form of disenfranchised

grief where the self will not allow grieving to take place (Lane 2015, 7).

However, these two forms of grief do not adequately convey what she has experienced in prison. For the prisoners, “disenfranchised grief is a social phenomenon.” (Lane 2015, 23). Lane instead defines her encounter with prisoners as “imprisoned grief.” She writes:

Imprisoned grief is distinctive because it manifests itself due to the loss of freedom brought about by imprisonment; during anticipatory grieving whilst in prison; following bereavement in prison and loss acts as a factor in criminal behaviour which includes loss due to homicide (Lane 2015, 7).

Lane argues that when PCs engage in any practice of understanding and provide solutions to imprisoned grief, they are “unlocking imprisoned grief.” The process she argues is theological, spiritual, practical, and liberating for prisoners and their families. It is a holistic process that counters disenfranchisement towards “enfranchisement” (Lane 2015, 7).

This aspect of Lane’s experience and role as a PC is not individually peculiar. Participants in this research in both the United States and Scotland have commented on the unique experience of informing prisoners and prisoners’ relatives about the death of their relatives in and out of prisons. I refer to this function as *carriers of the news of death*.

Lane’s methodology is theological but practical theology. It seeks to provide understanding about prisoners’ experience of “disenfranchised and self-disenfranchised grief,” and secondly, to provide a theological reflection and praxis of intervention for prisoners (Lane 2015, 17). “A practical wisdom which

gives explicit attention to facilitating a deeper awareness of God's activity in this imprisoned world" is facilitated by "open dialogue between the prisoner narrative of 'imprisoned grief'" (Lane 2015, 22). The role of the PC in the US and the UK is defined as rehabilitative, religious and pastoral. However, she argues for an image of the PC functioning in a far more complex role than is ideally perceived. The PC is a liberationist, a social agent and a prison ethicist functioning in a neo-orthodox and undogmatic capacity (Lane 2015, 58).

The above establishes an ethical basis to analyse and respond to the shifts to penal harshness in US and UK penal systems. Furthermore, we are provided with ethical lenses through which adequate ways of defining just and unjust punishment, human suffering and oppression through penal harshness can be investigated.

## **8.2 An Ethical Paradigm in Prison Management**

According to Gustafson, the search for coherence in ethically analysing any social situation, and in this case a penal situation, borders on the intersection of theory and practice with historical perspectives and dimensions as essential points of departure. By refusing to remain static in traditional consciousness and by grasping the intersection of both immediate and past influences, new forms of ethical and theological changes are produced. Gustafson contends that three aspects of historical understanding are relevant in the process of ethical analysis:

- (1) The importance of knowing the historical context in which religious, ethical ideas were formulated in order to properly to understand them; (2) the importance of, and difficulties in, using historical analogies in formulating constructive ethical positions; and (3) the freedom to be historically situated and aware of the press of historical circumstances on one's own ethical judgment (Gustafson 1972, 51).

In addition, Henry David Aiken proposes three levels of ethical reflection potentially useful in analysing the shifts to penal harshness: "(1) The expressive or unreflective, (2) moral rules, or 'what ought I to do?' (Ethical principles, or reflections on how rules can be justified, and (3) the post-ethical, which faces the question of why one should be moral?" (Deats 1972b, 35). Gustafson's and Aiken's ethical concerns reflect a transition from the realm of "pre-ethical reflection" of emotive reactions to human sufferings to ethical analysis that is critical and reform-based. According to Deats:

The problem, if ethics is to do more than justify given positions, is for ethics to achieve a more universal, critical, self-corrective, and thus reconciling spirit ... It involves a moral criticism and appeals to the social conscience of the majority as well. It is not an attempt to simply translate individual ethics into collective terms, but to wrestle with the corporate dimensions of ethical responsibility (Deats 1972b, 35, 40).

The result of the ethical analysis is to facilitate conditions for reform. The goal in this context is to adequately respond to the shifts in punishment in which multitudes of individuals, both convicts and non-convicts, are destined to age and die behind bars for both violent and non-violent offences. According to Liebling and Arnold, prisons have become meaner.

The role of the prison has changed, in some ways dramatically, over the last two decades. The prison population has grown, and its composition has altered. There has been an increase in the depth

and weight of imprisonment and a hardening of its emotional tone (Liebling and Arnold 2006, 422).

Liebling argues that the emotional tone of prisons has been altered concerning the administration of justice, fairness; values of morality and respect for human dignity (Liebling 2004). She further argues, "Prisons seems to be primarily about extreme and varying uses of power and authority, as well as about complex social organization" (Liebling 2013, 22). The absence of these values in prisons across the US and the UK has contributed to the worsening of humanitarian conditions. These include suicide, longer sentences, high rates of recidivism but under the new professionalised management of control, and the intrusion of the market in the arena of punishment (Liebling and Arnold 2006, 423).

Liebling and Arnold argued that prison performance presupposes that there are good and bad prisons. The following indicators determine the quality of good prison performance: "respect, humanity, relationships, trust, fairness, order, well-being and decency" (Liebling and Arnold 2002, 1). They argue that, when justice is abandoned, prison often takes a punitive turn with prisoners yearning for "fairness, respect, trust, humanity and safety" (Liebling and Arnold 2006, 424, 425). The penal policies adopted influence the emotional tone of the prison. They write:

When the emotional climate of criminal justice policy hardens, the moral and emotional climate inside the prison deteriorates. Despite optimistic claims made for the prison, and much improved management, what we find inside them is extreme distress and little preparation for life outside (Liebling and Arnold 2006, 426).

A positive prison climate leads to a decline in suicide and avoidable deaths. Liebling explains: “We have found that prisons with more legitimate climates tends to lead to lower levels of distress and fewer suicides, fewer threats to order, better prospects on release, and better orientations towards faith” (Liebling 2015, 21). Prisons are environments of unhealed wounds and pains. Variations in individual prison culture impact the lives of prisoners. These variations, according to Michael Ross et al., include: (1) the physical fabric of the institution; (2) the harshness of the regime; (3) the prison management; (4) the ideology of the prison. They explain, “It is reasonable to assume that variation in prison climate (or perception of prison climate) may have an impact on offending and re-arrest rates, and type of offence, after release. It may also influence the impact of imprisonment on self-harm, violent behaviour, or drug use among other variables, during incarceration” (Ross et al. 2007, 448). Prison climate also influence the attitudes of the prison staff (Ross et al. 2007, 449). Legitimacy, justice and morality serve as determiners of good prison climate. Healthy prison climate affects prisoners and staff’s perceptions and their intra-prison working relationships.

A major criterion for passing the good prison test is the recognition of “respect” as an operational and conceptual virtue of prison management.

According to Ross et al.:

Respect shown towards prisoners; humanity of regime; quality of staff-prisoner relationships; degree of support for prisoners; level of trusts; perceived fairness; degree of order; safety; level of well-being; opportunities for personal development; amount of family contact;

use or abuse of power; meaning attached to the penal experience; and decency shown to prisoners (Ross et al. 2007, 452).

A validated prison is a prison environment that promotes “respect” for human dignity and personhood as central to its operational ethos and practice. Ross et al. suggest that: “prison climate” or “prison environment” is “the social, emotional, organisational and physical characteristics of a correctional institution as perceived by inmates and staff.” It determines “what happens in prison and what may happen on release” (Ross et al. 2007, 447). Also, it denotes a “form of positive consideration or recognition, it acknowledges the autonomy of the other and places limits on what others might do in their ‘interests’” (Hulley 2011, 4).

For Liebling and Arnold: “treating a person fairly expresses the fact that they are of value” (Liebling and Arnold 2006, 425). In the absence of respect for prisoners, they distrust staff and the prison establishment. Susie Hulley et al. note that “Some prisons are characterised by prisoner degradation and casual cruelty” (Hulley 2011, 4). Disrespect, manipulation and dehumanising treatments for prisoners are the norm in some prisons.

In one of her research projects at Whitemoor Prison in England, Liebling notes that the concept of “personhood” in association with “privacy, dignity and respect” was fundamental to the development of a healthy prison culture (Liebling 2014, 482). In prisons where the above conditions are met, prison staff relationship and the prison cultures are healthy, with potential for a reduction in recidivism. She explains: “The prison population fell, regimes improved, and a new emphasis was placed on the respectful and legitimate treatment of

prisoners, in the interest of fairness, order, and future reintegration” (Liebling 2008, 27). She also notes “prisoners complained often that love, meaning, and identity were nowhere to be found, and yet constituted deep and pressing needs” (Liebling 2014a, 482).

Liebling discovered in one of her empirical research projects that prisoners on long-term sentences in high-security prisons experience the constant need for “hope and personhood,” “meaning and humanity,” and “possibilities for personal development and or human flourishing” (Liebling 2014, 267). To transform any prison climate towards a more uplifting and trustful environment, respect for human dignity should be central. She proposes a conceptual framework called a “theology of the person.” Liebling writes:

We suggested the use of a more ‘theological’ (or moral) language and imagination, more inter-faith dialogue, and closer relationships between prisoners and staff... As a chaplain at Whitemoor said to us, ‘it’s our theology of the person’ that enables us to stay in dialogue with prisoners. That theology—or conception of the person, incorporating generosity, forgiveness, spirituality and courage—was present in the deliberation that established our modern high-security prisons. With or without faith, it requires reinserting in contemporary ideology and practice (Liebling 2014b, 267, 269).

Her emphasis on the theology of the person as a conceptual model in prison management resonates with the theistic personalism of Boston Personalism. It argues that every human being is created in the image of God and they possess a sense of sacred worth and inherent dignity (Brightman 1950). For Liebling, prison should be judged by its moral performance.

Those aspects of a prisoner’s mainly *interpersonal* and material treatment that render a term of imprisonment more or less

dehumanising and/or painful. Prisons should perform well because it is important to treat human beings well (Liebling 2004, 473).

The need to “treat human beings well” is an ethical and theological mandate. It is a critique of the normalisation of prisons as the only way to punish offenders or non-offenders. Furthermore, to treat human beings well was the ethical conviction of John Howard, who advocated for reform in the British penal system.

#### **8.4 The Gospel of Freedom and Proactive Justice**

I am in Birmingham because injustice is here. Just as the eighth century prophets left their little villages and carried their ‘thus saith the Lord’ far beyond the boundaries of their home towns; and just as the Apostle Paul left his little village of Tarsus and carried the gospel of Jesus Christ to practically every hamlet and city of the Greco-Roman world, I too am compelled to carry the gospel of freedom beyond my particular home town. Like Paul, I must constantly respond to the Macedonian call for aid (King 1963, 2).

In this research, I reference King for three reasons. Firstly, his 1963 *Letter from Birmingham’s Jail* provides a theological critique of racial injustice and tolerance of it even by the American Church. Secondly, King provides a succinct historical context regarding the continuity of America’s racial consciousness through its legal system and a blueprint for tackling injustice. Finally, he provides an existential context for understanding the consciousness of mass incarceration in the US and the UK as the production of unjust penal laws and oppression.

As a personalist, King acknowledged his indebtedness to Boston Personalism and its respect for human dignity. Boston Personalism, he

acknowledged, “strengthened me in two convictions: it gave me metaphysical and philosophical grounding for the idea of a personal God, and it gave me a metaphysical basis for the dignity and worth of all human personality” (Burrow 1999, 291).

In April 1963, King was jailed in Birmingham, Alabama. His crime: demonstrating without a permit. On 16<sup>th</sup> April, he wrote a letter to seven clergymen who interpreted his action as “unwise and untimely.” King saw his visit to Birmingham as a moral mandate grounded in biblical and humanitarian principles of justice.

King’s letter deconstructs the socio-political and legal argument for race-based law enforcement and penal repercussions. King’s antagonists were the sociopolitical and religious establishments, and surprisingly, White moderates who called for King and his colleagues to obey “Law and order” and “wait” for the right time (King 1963, 11A).

King’s mission in Birmingham was to pursue justice against injustice. The goal of the Gospel of Freedom is the pursuit of justice that is humane, and conceptually redemptive. “I cannot sit idly by,” King declares, “in Atlanta and not be concerned about what happens in Birmingham” (King 1963, 2). The Gospel of Freedom recognises and identifies with the oppressed and those suffering the pain and anguish of injustice.

Injustice anywhere is a threat to justice everywhere. We are caught in the inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. Never again can we afford with the narrow, provincial ‘outside agitator’ (King 1963, 2).

The Gospel of Freedom is Biblical. It is a “Macedonian call for aid.” The Macedonians called on Paul to preach to them the Gospel of Jesus Christ. King was on a similar mission to preach *justice* in Birmingham. In this context, King is appealing to a notion of justice that is universal. He defines injustice as a universal human experience based on the claim that the cord of divine destiny connects humanity. The particularity of injustice demands the universality of justice. Justice is no longer particular because human experience is the subjective experience of mutual inescapability and identification. Every injustice is a universal injustice, and every universal justice is, therefore, particular justice.

King’s Gospel of Freedom consists of four creative expressions: (1) Creative Extremism; (2) Creative Protest; (3) Creative Tension; and (4) Creative Resistance.

### *Creative Extremism*

Creative extremism reflects King’s reason for being in Birmingham. He and his demonstrators were called “extremists.” King expressed two major disappointments: (1) being called an “extremist;” (2) with the “Church.” He refers to extremism as a Biblical expression of righteous indignation against injustice in Birmingham. He denounces violent direct action, opting instead for non-violent direct action.

The Negro has many pent-up resentments and latent frustrations ... I have tried to say that this normal and healthy discontent can be channelized through the creative outlet of nonviolent direct action.

Now, this approach is being dismissed as extremist. I must admit, that I was initially disappointed in being so categorized (King 1963, 12).

King and the demonstrators were primarily accused of demonstrating without a valid permit. He rejects the criminalisation of the demonstrators. King condemns blaming the victims of injustice for standing against injustice. For King, his accusers were the guilty ones. They have chosen to merely look at the “effects” of the demonstrators’ action and not address the causes. “I would say in more emphatic terms that it is even more unfortunate that the white power structure of this city left the Negro community with no other alternative” (King 1963, 2). For King, the accusers were “superficial social analysts” engaged in practices of selective cognitive dissonance and judgment in refusing to recognise the consequences of Lockean slavery, its transition to Lockean punishment and its modern replication in the shifts to penal harshness.

Like so many experiences of the past we were confronted with blasted hopes, and the dark shadow of a deep disappointment settled upon us. So, we had no alternative except that of preparing for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and national community (King 1963, 3).

Injustice, he contends, leaves the oppressed with no alternative but to pursue universal justice. King goes on to name his fellow extremists: the prophet Amos, who cried: “Let justice roll down like waters and righteousness like a mighty stream” (Amos 5:24) and Martin Luther, who said: “here I stand, I can do none other so help me God.” (King 1963, 13). What sort of extremist will we be? He asked: for love or hate, justice or injustice? “Jesus Christ,” he argues “was an

extremist for love, truth, and goodness, and thereby rose above his environment. So, after all, maybe the South, the nation, and the world are in dire need of creative extremists” (King 1963, 12). Extremism for King is theological, humanitarian and a moral mandate that negates the status quo.

Will we be extremists for hate or will we be extremists for love? Will we be extremists for the preservation of justice or will we be extremists for the cause of justice? In that dramatic scene on Calvary’s hill, three men were crucified. We must not forget that all three were crucified for the same crime. The crime of extremism. Two were extremists for immorality, and thusly fell below their environment. The other, Jesus Christ, was an extremist for love, truth, and goodness, and thereby rose above his environment. So, after all, maybe the South, the nation, and the world are in dire need of creative extremists (King 1963, 13).

As a personalist and liberationist, King interprets the Bible as issuing mandates to speak out for the poor and the oppressed. God’s justice for those exploited in the modern penal systems of the US and the UK is apparent. Psalm 33:5 states: “The Lord loves justice; the earth is full of his unfailing love.” Isaiah 58:6 reads: “Is not this the kind of fasting I have chosen: to lose the chains of injustice and untie the cords of the yoke, to set the oppressed free and break every yoke?” (King 1963, 16). He is consoled by the fact that “They have gone with the faith that right defeated is stronger than evil triumphant” (King 1963, 17).

King’s methodology was non-violent direct action to counter racial injustice and police brutalities. However, King was also referencing another approach that was the culmination of his personalist background: derived firstly from the Black church tradition, and secondly, from his theo-philosophical training.

King refers to three significant interlocutors to convey his point. One, St. Augustine whose notion of “just and unjust law” King quotes in making his case for demonstrating against unjust laws as just action. He argues that “there are two types of laws: just and unjust laws. King agrees with St. Augustine that ‘An unjust law is no law at all’ (Augustine, *On Free Choice of the Will*, Book 1, § 5.) (King 1963, 7). To further explain his argument, King introduces another interlocutor: the Italian Dominican Friar of the 13th century, St. Thomas Aquinas. King’s juxtaposition of just and unjust law is significant in establishing his case against racial segregation: What is the law when the law is oppressive? What value is the penal law when it produces unimaginable conditions of death and fundamentally negates the right to rehabilitation and restoration for offenders?

A just law is a humanly made code that conforms to the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. From Aquinas’ perspective, an unjust law is a human law that is not rooted in eternal and natural law. A law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregationist statutes are unjust because segregation distorts the soul and damages the personality (King 1963, 7).

For King, unjust laws fundamentally distort humanity. Laws that degrade one race and upgrade another race are unjust. Penal laws that discriminate based on zip codes; economic status and race are unjust. King provides two examples of unjust laws. In example one, the majority group is lawmakers who enact and impose unjust laws on the minority to control them: “An unjust law is a

code that a majority inflicts on a minority that is not binding on itself. This is the difference made legal. On the other hand, just law is a code that a majority compels a minority to follow that it is willing to follow itself” (King 1963, 8). In the second example, King defines the role of the minority group. They are not lawmakers but targets and victims of the law of the majority. He argues:

An unjust law is a code inflicted upon a minority, which that minority had no part in enacting or creating because they did not have the unhampered right to vote ... Throughout the state of Alabama, all types of conniving methods are used to prevent Negroes from becoming registered voters and there are some counties without a single Negro registered to vote despite the fact that the Negroes constitute a majority of the population. Can any law set up in such a state be considered democratically structured? (King 1963, 8).

For King, one must be willing to endure the consequences of breaking an unjust law. He was jailed because the State of Alabama accused him of demonstrating without a permit. He goes on to analyze the legality and intention of the law. He does not have any problem with getting a permit to conduct a demonstration, but he argues that:

When the ordinance is used to preserve segregation and to deny citizens the First Amendment privilege of peaceful assembly and peaceful protest, then it becomes unjust ... I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is, in reality, expressing the very highest respect for law (King 1963, 8).

Punishment for any crime is perfectly legal. Notwithstanding, when punishment is cruel, racially and economically selective, and profit-oriented, produces: (1) cumulative conditions of death—both physical and civil; and (2) the moral destruction of the body politic and humanity. “We can never forget that

everything Hitler did in Germany was 'legal' and everything the Hungarian freedom fighters did in Hungary was 'illegal' (King 1963, 9). For King, they must be resisted.

### *Creative Resistance*

Creative Resistance is Socratic. It embodies King's principle of non-violence. Socrates is King's third interlocutor. A non-violent direct action is an option against any form of violent demonstration, which could result in a bloodbath. It confronts injustice with interior and personal practice of self-control. King describes its salient characteristic as going "through a process of self-purification." For King, the non-violent direct action is used against a system that refuses to recognise the value of others' lives simply because of the color of their skin or their economic status. It is this constant attempt to devalue one's humanity that necessitates King's demonstration.

Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myth and half-truths to the unfettered realm of creative analysis and objective appraisal, we must see the need of having non-violent gadflies to create the kind of tension in society that will help men to rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood (King 1963, 4).

In this letter, Socratic creative resistance reflects King's deconstructive approach. Socrates is accused of poisoning the minds of the youth of Athens with philosophical interrogations and defence. He is sentenced to death and given hemlock to drink. His students, including Plato, passed on his philosophical insights and method of analysis. With this background, King

reflects on other forms of creative strategies to respond to America's racial consciousness, in this case, the prevailing penal consciousness. Socrates, he argues, was involved in the form of intellectual disobedience to arouse the conscience of Athens to the truth. King's antagonists were also White moderates he described as "paternalistic." They pretend to understand the angst of White racism against Blacks, segregation, and the Black dilemma in America but they do not. They instead prefer "negative peace:" the absence of tension in pursuit of justice and negate "positive peace," the presence of tension in pursuit of justice. He describes their action as the "appalling silence of the good people" who refuse to be "co-workers with God" (King 1963, 11).

### *Creative Tension*

Creative tension ... seeks to dramatize the issue that it can no longer be ignored. I just referred to the creation of tension as a part of the work of the nonviolent resister. This may sound rather shocking. But I must confess that I am not afraid of the word tension. I have earnestly worked and preached against violent tension, but there is a type of constructive nonviolent tension that is necessary for growth (King 1963, 4).

Creative tension is "crisis packed." It is tension that eventually pierces the veil of selective amnesia. The United States, King argues, cannot for long remain in a soliloquy of a racial monologue. It must conform to the demands of humane dialogue about the collateral consequences of racism and its consequences. The struggle for human progress is a struggle of dialogue, not a monologue. King disagrees with his critics who judged his action as ill-timed and suggested he wait.

Time is a chronicler of human endeavours, not the creator of human endeavours. The “myth of time,” King argues, promotes a “tragic misconception” because human progress “never rolls in on wheels of inevitability” (King 1963, 11A). Time is “neutral” and “can be used either destructively or constructively” (King 1963, 11A). There is never a “good time” or a “bad time” because “time” is always *now*. Change is birthed through conscious engagement:

History is the long and tragic story of the fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture, but as Reinhold Niebuhr has reminded us, groups are more immoral than individuals. We know through painful experience that freedom is never voluntarily given by the oppressor, it must be demanded by the oppressed ... ‘Justice too long delayed is justice denied’ (King 1963, 5).

The focus of this research defines creative tension as the ability to make the shifts to penal harshness and its penal production of the conditions of death visible and intelligible to the world. In the modern penal systems of the US and the UK, penal harshness denotes individual and collective forms of human devaluation that perpetuating socio-cultural and economic marginalisation. For King, the moral responsibility is also to bring the toll of penal harshness that is hidden behind the prison walls to the front of human consciousness and imagination as a responsibility of prison research. King intimates:

We merely bring to the surface the hidden tension that is already alive. We bring it out in the open where it can be seen and dealt with. Like a boil that can never be cured as long as it is covered up but must be opened with all its pus-flowing ugliness to the natural medicines of air and light, injustice must likewise be exposed, with all of the tension its exposing creates, to the light of human conscience and the air of national opinion before it can be cured (King 1963, 10).

It is essential to expose and seek the transformation of unjust sentencing practices and laws to achieve penal change. Based on King's approach, the process is to fundamentally highlight penal laws that are responsible for the production of death, the systemic targeting of poor and racially marginalised groups, and the practices of prison management that promote de-humanising tendencies without respect for the moral performance of prisons.

### *Creative Protest*

I had hoped that the White moderate would understand that law and order exist for the purpose of establishing justice and that when they fail to do this they become the dangerously structured dams that block the flow of social progress (King 1963, 10).

King describes Birmingham as "probably the most thoroughly segregated city in the United States" (King 1963, 3). Blacks in Birmingham were targets of overt "police brutalities," the "notorious reality" of "unjust treatment of Negroes in the courts... More unsolved bombings of Negroe homes and churches in Birmingham than any city" in the United States (King 1963, 3) For King, these facts are irrefutable. Blacks were targets of failed negotiations and failed promises to remove "Racial signs in the stores." Two forces, he argues, have emerged in the Black community due to America's structural racism: "complacency" and "bitterness and hatred" among Blacks (King 1963, 11B).

King questions the tenacity and integrity of the Church as an organised religion. Its conformity to the sociopolitical and economic status quo, he argues,

is undermining its influence to effect change on behalf of the poor and racially marginalised. The Church was once a “thermometer... not merely a thermometer that recorded the ideas of and principles of popular opinions. It was a thermostat that transformed the mores of society” (King, 1963). According to King, “Now is the time to make real the promise of democracy and transform our pending national elegy into a creative psalm of brotherhood. Now is the time to lift our national policy from the quicksand of racial injustice to the solid rock of human dignity (King 1963).”

Nonetheless, King is also optimistic. If the Church refuses to take up the mantle of freedom, he will not be discouraged. He is confident that “the goal of freedom” will be reached because “the goal of America is freedom” (King, 1963). However, before concluding his letter, King criticises the naivety of his critics as they praise the Birmingham police for keeping “order” and “preventing violence” but condemn the action of the marchers. He argues against his critics:

I don't believe you would have so warmly commended the police force if you had seen its angry violent dogs literally biting six unarmed, nonviolent Negroes. I don't believe you would have so quickly commended the police if you would observe their ugly and inhuman treatment of Negroes here in the city jail, if you would watch them push and curse old Negro women and young Negro girls, if you would see them slap and kick old Negro men and young boys, if you will observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I'm sorry that I can't join you in your praise for the police department (King 1963, 18).

Police brutalities against Blacks are always designed “to preserve the evil system of segregation” (King 1963, 18). King describes a situation of penalising

the poor and racially marginalised through the penal system and law enforcement while the Church and White moderates sit in “silence.”

The creative protest will undoubtedly be victorious in the end, King asserts. The Gospel of Freedom resonates with all ages, all races, all creeds, and humanity as a universal idea of brotherhood and mutuality. For King, these are the heroes against human suffering and oppression. “If the inexpressible cruelties of slavery could not stop us, the opposition we now face will surely fail.” (King 1963).

In summary, King’s four creative actions: *creative extremism*, *creative resistance*, *creative tension* and *creative protest* speak for themselves. They are vehicles for collective action against the shifts to penal harshness in the US and the UK penal systems, and their collateral consequences. It is in this context that justice and just punishment intersect against the normalisation of unjust punishment.

### **8.5 Ethical Principles on Punishment and the Future of Prison Chaplaincy: A Prescriptive Task**

I conclude with two forms of analytical recommendations in line with the theo-criminal justice comparative approach adopted in this research: (1) *Ethical Principles on Sentencing and Punishment* and (2) *The Future of Prison Chaplaincy in the Era of Mass Incarceration*.

## **1. Ethical Principles on Sentencing and Punishment**

### **1. The Principle of De-Punitive Punishment**

Punishment is inherently punitive. Harsher punishment is increasingly imposed on convicts and non-convicts for violent and non-violent crimes in the US and the UK penal systems. This law condemns the shifts toward penal harshness in the US and the UK penal systems as excessively discretionary, unrestricted, and often capricious in their power to easily disenfranchise especially the poor and racially marginalised thus the prison boom. It further condemns the emphasis on indefinite imprisonment and incapacitation of offenders as a means of attraction for the industrialisation of punishment.

### **2. The Principle of Fair Sentencing**

Fair sentencing is the right of all lawbreakers. Sentencing ought to be impartial and free for all. The law of fair sentencing calls for counter legislation that checks the free reign of imposing mandatory minimum sentences, concepts of “risk management” sentences, and “negative” discretionary sentences in contrast to “positive” discretionary sentences.

### **3. The Principle of De-criminalized Humanity**

Every human being has a sense of dignity and sacred worth that crime cannot delete. This law emphasises recognition of the inherent worth of the offender as the starting point for any holistic

and long-lasting process of deterrence, desistance and restoration.

It argues that the offender is not “damaged” but a human being also with the potential to change. The individual is intrinsically valuable.

#### **4. The Principle of De-racialized Justice**

Justice is inherently non-racist. Justice in these penal systems ought to be “crime-based” not “race-based.” This law condemns the execution of justice based on the social construction of justice influenced by race, racism and the criminalisation of difference. It further condemns the historical use of penal laws to enforce the racialization of justice as shown in the US and UK’s penal systems.

#### **5. The Principle of Holistic Prison Reform and Prison Mortality**

Imprisonment should support life, not death. This law condemns the high and increasing rates of ageing, in-prison deaths, suicides, and homicides of prisoners in US and UK prisons. argues that prison management and imprisonment ought to function on principles of humane policies and praxis, and not on conditions of death. It calls for a reevaluation of penal situations where the intersection between prison management and sentencing policies perpetuate high rates of ageing, dying and death of convicts and non-convicts on remand, in jail, and imprisoned for violent and non-violent offences toward holistic prison reform. It calls for the

consistent annual reporting of the death of prisoners, inmates and those on remand in the US and the UK also based on gender, age, ethnicity, location and prison. It further calls for these reports to be made public and available to the public to access.

**6. The Principle of Adequate Structural Rehabilitation**

Every prisoner or inmate has the right to be rehabilitated.

Prisoners should not be attached to the penal system for the rest of their lives. This law asserts the need for concepts of holistic rehabilitation and reduction in recidivism. It advocates for a focus on education and skills development towards economic mobility, and holistic forms of counselling as fundamental to the reintegration process of offenders. It also calls for an exploration of the intersection between religion, reduction in recidivism and the role of prison chaplains. Every prisoner or inmate deserves to be rehabilitated.

**7. The Principle of De-normalization of Mass Incarceration**

Mass incarceration is a penal abnormality. It embodies the production of the shifts to penal harshness, the use of prisoners as economic units in the industrialisation of punishment, and the use of prisons as the absolute means of punishment. Mass incarceration reflects the indiscriminate incapacitation of convicts and non-convicts, violent and non-violent offenders with

destabilising effects. The Law of de-normalization condemns the normalisation of mass incarceration as penally dystopic. It reflects the cumulative effects of “illegal” penal policies and practices. Thus, the law of de-normalisation asserts the need for “legal” forms of penal sentences and punishment that do not perpetuate death—physical and civil as the result of punishment in the United States and United Kingdom’s penal systems.

## **2. The Future of Prison Chaplaincy in the Era of Mass Incarceration**

In this research, I have referred to PCs as functioning in a neo-orthodox capacity, that is, as undogmatic in their approach and vocation. It reflects an attempt to describe PCs as persons functioning in multi-faceted roles and several prison locations in the penal systems of the US and the UK. Nonetheless, it raises questions about the future of prison chaplaincy in the United States and the United Kingdom under the conditions and terms of penal harshness and incapacitation.

I have argued that PCs function in a penal era that emphasises longer sentences and the use of prisons and imprisonment as an absolute means of punishment. The existential effects are shown in the high rates of ageing, death and dying prisoners. I have also discussed in this research that as religious workers, PCs are on the frontline in providing emotional, religious and pastoral

care to prisoners enduring the adverse conditions of penal harshness in US and UK prisons. Take, for instance, the response from PCS112:

*I am not against prison as a punishment, but there are too many broken people in prison. If they had been helped at an earlier stage, they would probably never have become offenders. There are too many poor people in prison for things that rich and powerful politicians etc. would go unpunished for. This is an injustice. I also believe in restorative justice and would like to see that growing as a practice in this country. Many prisoners are very remorseful but not allowed to approach their victims. Victims likewise don't get to meet their offenders and express their distress. This disenfranchisement is not good for their healing (PCS112).*

Furthermore, PCs function under new modes of prison management after 1970.

They are confronted by constraining situations resulting from the managerial ethos of penal harshness and the normalisation of mass incarceration.

According to PCA125, prison provides security, but it is a false sense of security:

*People who depend upon the routine of the prison and the outside world become dependent upon the prison. They see the prison as a safe space and the outside world as an unsafe space. Upon release, they are filled with fear of the outside world. The longer they stay in prison, the more the outside world becomes dangerous. Prison provides a false sense of stability, routine, institutionalization, anxiety with respect to freedom. (PCS107).*

I previously raised the question about the future of prison chaplaincy against the background of the shifts to penal harshness. I want to conclude by suggesting the following recommendations derived from the participants' responses and the theoretical analysis.

### **1. A realignment of prison management with prison chaplains**

Prison chaplains have been side-stepped as occupying a “non-vital” role in prison management. This non-inclusion of PCs is also

evident in academic prison research. In light of the multi-prison-faceted roles of PCs under the penal conditions of penal harshness and mass imprisonment, PCs are an indispensable part of prison management and they should be included in prison management and prison research.

**2. A realignment of the models of prison chaplaincy**

In the modern prisons of in the US and the UK, religion remains a vital means of overcoming the pain and angst of imprisonment. I suggest the recognition of holistic programs—religion, faith, and spirituality, provided by PCs based on the quality and transformative capacity of the program.

**3. A re-evaluation of the mandate against “conversion” and “proselytization”**

Based on participants’ responses in this research, prisoners’ quests for religious assurance and spiritual encounters in US and UK prisons under the policies of penal harshness and mass imprisonment have not diminished. Religious transformation continues to occur, and prison chaplains find themselves in the available position of being the facilitators.

**4. A re-evaluation of training for PCs in the era of penal harshness**

In the era of the normalisation of mass imprisonment and the industrialisation of punishment, new models of training are required for PCs. This need is also necessitated by the increasing

demand to minister to ageing, suicidal, dying and dead prisoners across prisons in the US and the UK. In these capacities, PCs find themselves also dealing with the personal, the prisoners' needs as well as managerial regulations.

**5. A re-evaluation of counselling strategies in the era of mass incarceration**

The penal characteristics of the modern penal systems in the US and the UK necessitate innovative approaches to counselling prisoners. While PCs have depended on their religious backgrounds as immediate sources for counselling, the present penal conditions of incapacitation, indeterminate sentencing for both violent and non-violent offences demand holistic approaches to counselling that are emotional, psychological, religious and materially oriented.

**6. A re-evaluation of prison chaplains' role as "Community liaison"**

This suggestion highlights the need to see PCs as valuable external agents in the process of rehabilitation. Prison chaplains can serve as liaisons between the community and the prisons in their religious capacities as priests, pastors, Imams, Rabbis and other forms of religious leadership. The goal is to see them as extending the prison relationship of counselling, that is, as religious rehabilitation and resource agents available to the prisoners when

they are released. The immediate value of this program is the reduction in recidivism and the availability of a “known” counsellor when the newly released prisoner is going through their post-prison blues.

According to PCS108:

*It is difficult to draw a line. This is my life. That is not how our ministry works. Our ministry becomes our lives. You feel it. It hurts more and maybe for others who are dealing with death and dying. This is a community behind bars. There is still a sense here; when you leave, you can't leave it behind. There is nothing you can do once you walk away. I do find that the quality of time off working in prison is greater than the quality of time off working in the church. But you are never really off unless you are somewhere far away. Increasingly, I am not totally off when I am on vacation or off for the week. The more I work here, the more I leave part of myself here (PCS108).*

## **Conclusion**

This research has attempted to analyse the shifts to penal harshness in the United States and the United Kingdom's penal systems after 1970. It has argued that these shifts in penal laws replicate penal and economic practices and ideologies associated with Lockean slavery era including the penal developments after the Emancipation Proclamation in 1863 primarily in the US.

In the US, the next developments after Emancipation were the ratification of the Thirteenth Amendment, the passing of penal codes including the Black Codes, and a race-based law enforcement body, which facilitated the emergence and normalisation of the Convict Leasing System. Convicts, especially Blacks, were leased to businesses and used as economic units to advance job and wealth creation, build infrastructures, as well as work in mines and on plantation fields. The death toll suffered by these workers defined as convicts and non-convicts for violent and non-violent crimes have been recorded as unimaginable. I refer to this period as phase one of mass incarceration.

Phase two of mass incarceration, I have argued consist of the shifts to penal harshness in the US and the UK after 1970. While the time, location, sociopolitical and economic conditions are different, the death toll of prisoners defined as convicts and non-convicts jailed and incarcerated for non-violent and violent crimes across the US and the UK prisons share historical affinities with the era of the Black Codes and the Convict Leasing System. Described in this research as Lockean punishment, the shifts to penal harshness embodies the

production and normalisation of mass imprisonment, the industrialisation of punishment and the production of the conditions of death and sustained by the penal systems of the US and the UK.

The cumulative consequences are the high rates of incarceration of poor Whites and Blacks, Asian and Minority Ethnic (BAME) members in the UK, and poor Whites, Blacks, Hispanics and other minority groups in the US. This penal development is also associated with the high rates of ageing, in-prison deaths, suicides and homicides in US and UK prisons. It is these conditions of penalty and the modern prison culture, I have argued, that provides the background to the multi-prison-faceted roles of PCs.

In the modern penal systems of the United States and the United Kingdom, prison chaplains, I argue are immeasurably indispensable. Their presence in the prisons and availability to respond to the religious, emotional and psychological needs of prisoners provide several forms of counter-narrative to the pain of penal harshness in the US and UK prisons. They serve as a catharsis to de-normalise the abnormality of penal deaths reflected in the high rates of ageing, dead and dying convicts and non-convicts imprisoned or jailed for violent or non-violent offences. Prison chaplains are the hope of humanity in an environment that embodies systematic forms of physical and civil death in the United States and the United Kingdom's penal systems. It is in this respect that I provide the above-listed recommendations to argue for an ethical and theo-criminal justice comparative approach to sentencing, punishment and incarceration in the penal systems of the United States and the United Kingdom.

## Appendix

### Consent Form

Thank you for agreeing to participate in this research, the details of which are:

Research Project name:	<b>Prison Chaplains' Experiences in Ministering to Prisoners in Ageing, Dying and Death.</b>
Name of the researcher:	George Walters-Sleyon: PhD student: University of Edinburgh School of Divinity
Researcher's Contact details:	Email: <a href="mailto:gwalt436@gmail.com">gwalt436@gmail.com</a> Tel: UK 079-085-24693 US: 857-275-7059
The scope of the project:	Prison chaplains have a lived experience of the problems of ageing, dying and death in prisons in the United States and the United Kingdom. Their roles within the context of the prison/penal environment one way or another are impacted by mass incarceration. I am seeking to gather data from them based on their autonomous roles simply as ministers of religion in the prisons. They are living the effects of incarceration with the inmates and are observing what is going on as well. In that light, their position as prison chaplains is a privileged point as they particularly work with inmates. Prison chaplains provide particular insights into the existential consequences and implications of long term sentencing and incarceration as reflected in the ageing, dying and death of inmates.
Confidentiality and Anonymity <i>(The researcher will indicate how confidentiality and anonymity will be preserved)</i>	Analysis of data gathered from this research will be strictly confidential and anonymous. The researcher has pledged and promises to protect the integrity of the interviewees in this research process and as such, plans to keep the names and identities of the interviewee private and anonymous.

**Please complete the following:**

I consent to participate in this research project and understand that I may withdraw at any time. YES  NO

I consent to my personal data, as outlined below, being held for use in the research project detailed above YES  NO

*Researcher to specify personal data to be used for research*

Signature:	
Date:	

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