

Excavating the Supermax Prison: A Comparative Analysis of Wisconsin and California.

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Abstract

There has been a huge increase in the development of super-maximum security prisons – Supermax – within the United States in the last fifteen years, with forty four states currently operating these facilities. The purpose of these institutions is to manage ‘control problem’ prisoners. The thesis examines the development of the supermax prison with reference to the discussions of punishment and penology, articulated by authors such as Rusche, Kirchheimer and Foucault, before focusing on the social, political, cultural and penological circumstances which have resulted in an increase in punitiveness and the establishment of such institutions. The thesis then moves on to examine the creation and development of two such prisons, one in Wisconsin the other in California. It explores how the proposals for these facilities originally came about and leads on to look in detail at the events which have taken place since their completion. The thesis aims to shed light on why different states decide to build supermax prisons. In addition, the thesis aims to reflect back on the theoretical frameworks that have attempted to understand the circumstances under which these facilities have proliferated, and questions whether the use of supermax confinement is an appropriate means of responding to ‘difficult to manage’ prisoners.

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PART ONE

CHAPTER ONE

Introduction

1. Background

Within much of the Western world over the last thirty years there has been a shift away from rehabilitation towards control within the field of criminal justice. Nowhere is this more apparent than in the United States. Since 1973 the US prison population has been growing at an alarming rate, which has resulted in the US currently having the highest incarceration rate in the world (Walmsley 2003). As the prison population has increased, a number of developments have taken place within the sphere of corrections. These have included the growth in prisons as industry, both of the prisons themselves, but also of prison equipment, ranging from lethal electric fences to toothbrushes ‘developed with your security in mind’ (Lynch 2002:314). Prisons have become a commodity, especially in areas where economic stability has been hard to achieve, as prisons guarantee jobs, not only during construction but also upon completion, for prison guards and those who can provide services for the facility. There has been a growth in the use of private prisons, contractors building facilities and renting them back to the state, and the construction of geriatric prisons for those inmates serving exceptionally long or life sentences that are unable, after a certain age, to remain in general population facilities due to, for example, their decreased mobility or frequent medication needs.

Alongside the above, a growing phenomenon within the United States during the last 2 decades has been the development of the super-maximum security prison (hereafter referred to as supermax). These facilities are designed to hold those prisoners labelled by correctional agencies as the ‘worst of the worst’, those deemed to be the most recalcitrant and dangerous, in almost total lock-down conditions often with no clear entry or release criteria and with few opportunities to take part in prison education and treatment programmes. ‘At the end of 1998 some 20,000 prisoners, or 1.8 percent of those serving sentences of a year or more in state and federal prisons’ (King 1999:163) were confined within this type of institution. By 2004 it was estimated that this figure had risen to approximately 25,000 prisoners (Mears 2005:7).

The number of supermax facilities in operation has been the subject of some debate as there appears to be a lack of common definition which was highlighted during a 1997 survey on these institutions carried out by the National Institute of Corrections which defined supermax as

A free-standing facility, or a distinct unit within a facility that provides for the management and secure control of inmates who have been officially designated as exhibiting violent or serious and disruptive behavior while incarcerated. Such inmates have been determined to be a threat to safety and security in traditional high-security facilities, and their behavior can be controlled only by separation, restricted movement, and limited direct access to staff and other inmates. (NIC 1997:1)

Responses from each of the 50 states indicated that what was considered a supermax in one locale was not necessarily considered to be a supermax in another, due to each state's differing needs and organizational procedures (see Chapter Four for further discussion on definitions of supermax). Conditions within these facilities are especially harsh with inmates spending up to 23 hours a day in their cells with little or no programming. All meals are eaten in cells and inmates are only let out for short periods of exercise, to visit the doctor or to receive visits.

In the United States, as in Britain, prisoners are classified according to their security requirements and their programme needs, such as anger management or drug rehabilitation programmes. However, risk of escape plays a much more crucial role in classification in Britain than it does in the United States where the prospect of escapes is limited by the use of lethal force, meaning that if an inmate attempts to escape, guards located in watchtowers around the perimeter fence are permitted to shoot down that prisoner. In the United States, inmates are initially classified to determine which custody level they are to be assigned to and, therefore, to which facility they will be sent. This process involves the evaluation of the prisoners' offence; prior criminal record – whether they have any previous prison sentences; socio-demographic factors, such as education, work history and job skills; and the state of their physical and mental health (National Institute of Corrections 2000:8). Once the inmate has been classified (this is subject to review every six to twelve months), prison officials look at the prisoners' 'institutional

disciplinary record and performance in treatment and work assignments' (National Institute of Corrections 2000:8). However, if an inmate's disciplinary record is seen to be persistently poor, as a result of consistently disruptive and capricious behaviour, an inmate can find him or herself detained within a supermax facility. These facilities 'function as a prison for prisons' as offenders cannot be sentenced to these institutions by the courts. Prisoners must have 'engaged in behaviour considered by prison administrators to be of the most disruptive and violent nature while in prison' (Briggs *et al.* 2003:2).

From a policy perspective, the primary aim of these facilities is to concentrate all of the most 'disruptive' offenders within specific institutions, thus limiting opportunity for, and reducing the level of, 'ill discipline' within the rest of the federal or state prison systems. Writers such as Riveland (1999), Ward and Breed (1984), argue that Alcatraz federal Penitentiary was the first super-maximum security prison, while others such as King (1999) and Fellner and Mariner (1997), suggest that the origins can be connected to the lock-down status of United States Penitentiary, Marion, Illinois after the killing of two prison officers in separate but identical incidents on 22nd October 1983 (see Chapter Four).

It is also believed that these facilities, because of their restrictive and depriving nature, serve to deter inmates in the general prison population from committing 'calculated acts of institutional violence' (Briggs *et al.* 2003:3). However, many Departments of Corrections (DOCs) use broad and unclear criteria for determining who is eligible for supermax confinement and, according to Human Rights Watch, 'fail to exercise appropriate control over placement decisions' (Fellner 2000:2), resulting in many prisoners who do not necessarily fulfil the criterion of 'worst of the worst', being detained in such facilities.

These general observations form the context for the thesis; however, many questions, issues and debates remain when investigating the supermax. These general observations tell us little about the local development of particular supermax prisons. It is at this local

level that the thesis will focus. The empirical research that underpins the thesis was carried out in two case studies of supermax facilities, one in Wisconsin and one in California. The thesis investigates the various political, social and cultural circumstances under which these two institutions have developed.

2. Aims and Objectives

The thesis aims to add an original contribution to the field of supermax prisons by carry out two in-depth local case studies in supermax facilities in differing states within the United States. The first of these two case studies examines Wisconsin Secure Program Facility, Wisconsin, while the second focuses on Pelican Bay State Prison, California. Both of these case studies provide detailed examinations of the initial proposals and construction of these supermax facilities, before moving on to focus on their regular regimes and day to day operating procedures up until the present day. The thesis then aims to compare and contrast the two facilities in order to determine whether these prisons were built for similar or varying political, social, cultural and penological reasons. Once this has been achieved, the thesis endeavours to reflect back on a number of theoretical frameworks that have attempted to understand the circumstances under which these facilities have proliferated in order to determine whether the development of the supermax can be located within these wider frameworks. These aims are listed concisely below:

- (i) To examine and explore the development of supermax at state level in the United States.
- (ii) To examine and compare the various reasons which have led individual state Departments of Correction to choose to construct supermax facilities.
- (iii) To carry out detailed case studies on two supermax facilities from their original proposal until the present day and provide a detailed examination of the various regimes, relations and operating procedures within these facilities.
- (iv) To reflect back on the theoretical frameworks that have attempted to understand the political, social, cultural and penological circumstances under which these facilities have proliferated.

These aims make a fundamental contribution to previous research as few studies have been carried out at the local level and those that have tend to focus upon specific aspects

of supermax, for example, their conditions (Fellner and Mariner 1997, Fellner 1999), their effects on mental health (Haney and Lynch 1997, Haney 2003) or institutional violence (Briggs *et al.* 2003), which are liable, although targeted at specific institutions, to concentrate on supermax at the general level rather than providing new or unique knowledge on this topic. The thesis provides not only two case studies to compare and contrast but also aims to locate the supermax within the various theoretical frameworks suggested for its development. In addition, by carrying out two local studies it will provide an insight into the localized processes which impinge upon, and shape, policy decisions as they are made within different state administrations.

3. Outline

The thesis is divided into two parts. **Part One** provides a background into the history of the supermax and focuses on global and general theories of punishment and penal policy. **Part Two** focuses on the research process itself and the findings of this research. Part Two aims to discover linkages between the case studies which this thesis is based upon and the general theories and concepts identified in Part One.

The next chapter, Chapter Two, surveys the general perspectives of punishment and penology developed by key theoreticians including Foucault (1977), Rusche and Kirchheimer (1939), and Garland (1990, 2001, 2006). The movement away from punishment of the body to that of the mind is considered with reference to neo-Marxist and cultural analyses. The chapter aims to establish the extent to which these theories can be related to the development of the supermax prison. The chapter will then look at debates concerning the 'new penology', which provides a general examination of criminal justice change located within so-called 'risk societies' and actuarialism, including the practice of selective incapacitation, of which supermax is one example.

Chapter Three focuses on the history of imprisonment and the changing nature of penal policy by providing a historical sketch of the origins of prisons within the United States, as primary tools of punishment during the 19th and 20th centuries. The chapter considers the means by which crime has become politicized starting in the 1970s with President

Nixon's 'war on crime'. This chapter also focuses on changing populist conceptualizations of offenders, and the growth of 'crime control as industry' (Christie 1993), which have both led to an increased punitiveness of which the supermax is but one facet.

Chapter Four, focuses on the conception of the supermax from its roots in the federal prison system and the instability within this system during the 1970s and 1980s which ultimately resulted in its development. It will also examine the problems of definition associated with this type of facility, and the conditions generally found within these institutions. Finally, the chapter will provide a literature review and a synopsis of the current research surrounding supermax prisons, whilst also outlining how the thesis adds to the debates encompassing the supermax prison.

Chapter Five begins to shift emphasis from such general theorizing in order to hone the thesis onto its local focus. This chapter will provide a detailed examination of the methodological techniques which were employed in order to carry out detailed case studies on supermax facilities in Wisconsin and California. The chapter focuses upon the application of adaptive theory, which synthesizes hypothetico-deductive and grounded theory approaches, and examines the strengths and weaknesses of utilizing the case study as a research method. It also examines the various techniques used within the research process such as documentary analysis, email questionnaires, and in-depth semi-structured face to face interviews, and assesses the advantages and disadvantages of these methods.

Chapters Six and Seven detail the local focus of the thesis within the case studies in order to present and discuss the findings. Each case study examines the development of the supermax prison chronologically: first in Wisconsin (Chapter Six) and then in California (Chapter Seven). These two chapters examine the conditions and regimes within the two facilities in addition to the controversies surrounding their usage and problems of litigation against them, before moving on to look at their purpose and prospective future within each of their prison systems.

By carrying out case studies it is possible to gain a greater insight into how and why particular state administrations decide to build supermax on an individual local level, and determine what issues are considered to be the most significant when choosing to construct a supermax. Chapter Eight examines these factors, before it moves on to examine the differences and similarities between the two facilities and compares and contrasts their respective rationales. It also aims to establish whether the theoretical models and the political and criminological circumstances discussed and identified in Chapters Two and Three can be used to reflect back on the results gathered within the two case studies, in order to determine whether these theories provide critical insights as to why the supermax prison has developed in the manner it has. The chapter then suggests possible reasons as to why supermax prisons have developed as a well received correctional tool, and voices a number of concerns regarding their usage as a method of dealing with 'difficult to manage' prisoners. The chapter closes by bringing together all of the above to present some overall conclusions on how the thesis has added to the debates surrounding supermax and where this type of institution is located theoretically and historically. It also provides a brief look at supermax in other countries in order to establish its position globally and concludes with some final thoughts on the use of supermax confinement.

The thesis provides a fundamental contribution to the area of supermax prisons by presenting two local studies of supermax from which it is possible to determine why such facilities have proliferated at a state level, in addition, by focusing on the local, it is possible to locate the development of the supermax prison within wider theoretical and historical frameworks which is the intention of the thesis.

The next chapter will provide a discussion on the theories of punishment and the sociology of imprisonment more generally focusing on revisionist theories, and neo-Marxist accounts of punishment, before moving on to look at more contemporary theories such as the 'new penology'. The purpose of the next chapter is to establish in what sense these theories provide tools to understand why contemporary prison systems have

developed in the way that they have, and how the development of the supermax as a modern correctional tool came about.

CHAPTER TWO

Locating Supermax: Developments in Penology

1. Introduction

In order to understand the current criminal justice climate and, indeed, the rationale behind the supermax prison, it is necessary to focus not only on the history of punishment and past trends in criminal justice policy, which are discussed in the next chapter, but also on the different perspectives regarding punishment, and the contrasting social theories which have been produced to explain how punishment has evolved. These perspectives attempt to make sense of current practices and transitions within the criminal justice systems of Western society. Within these various perspectives a number of different models of punishment have evolved. The first modes of punishment which were utilized during the Middle Ages up until the late 18th century (and are discussed at the beginning of the next chapter) focused primarily on physical punishments and retributive measures, it was only towards the end of the 18th century that imprisonment began to be used consistently as a form of punishment, often in an attempt to 'improve' offenders and coerce them into forming industrious habits, although conditions within these institutions were especially harsh. Later models from the progressive era until the mid-20th century tend to focus more on rehabilitation and individuality; criminals were to be treated individually and could be reformed so that they could return to society unlikely to recidivate. More contemporary models are divided between two extremes. On one side there are the 'just desserts' – punishment must be equal to the crime - and security models – warehousing (incapacitating) offenders so they are unable to re-offend whilst at the same time protecting the public from these individuals - and on the other, community based punishments. The type of punishment an offender is set is based on risk profiles which are used to identify which offenders are considered a threat to society (for further discussion see Chapter Three and Contemporary Theories this Chapter).

Therefore, the intention of this chapter is to examine the various stances on punishment and penology developed by key theoreticians such as Foucault (1977), and Rusche and

Kirchheimer (1939), in order to try and locate the development of supermax within these perspectives.

There are a number of different perspectives which have been produced to try and make sense of trends in punishment. Some such as Rothman (1971) provide detailed critiques which examine the well intended but disastrous results of reforms, others such as Rusche and Kirchheimer (1939), and Melossi and Pavarini (1981), argue that capitalism is the driving force behind developments and changes in punishment. Foucault (1977), looks beyond punishment to the development of a carceral archipelago, while more recent studies by authors such as Garland (1990, 2001, 2006), build on these foundations and suggest that other factors such as, cultural conditions play a major role in determining how penalty is to be understood. This chapter will examine each of these key concepts and texts, in addition to a number of other interpretations which have been suggested for the function and rationale of punishment, and discuss whether any aspects of these perspectives can be linked to the prisons of today and, more specifically supermax institutions.

2. Whig Histories

Until the 1970s, most historians studying the development of the prison relied solely on documentary evidence, which often provided only a partial account of 'correctional change in general and of the emergence of the prison and the early nineteenth-century crime control system in particular' (Cohen 1985:15). This was partly due to the fact that written accounts, which make up a good proportion of historical sources, were only produced by those who were literate, and those in positions of power, which generally excluded the lower working classes. This research usually suggests that change was driven by ideas, theories, advancements in knowledge and good intentions, and that 'all change constitutes "reform" all reform is motivated by benevolence, altruism, philanthropy and humanitarianism, and the eventual record of successive reforms must be as an incremental story of progress' (Cohen 1985:18). Thus the origins of the penitentiary, and subsequent changes, are viewed as scientific knowledge overcoming intolerance and irrationality, and humanitarianism prevailing over barbarity. 'Early forms

of punishment based on vengeance and cruelty give way to informed, professional and expert intervention' (Cohen 1985:18). Under this conventional view of the history of punishment, prisons and other institutions do not 'fail' but adapt to changing 'moral sensitivities, scientific knowledge or social circumstances' (Cohen 1985:18). There is a decidedly optimistic view of the reforms undertaken as, even when mistakes are made and abuses occur, over the course of time, and with enough resources, these problems can be overcome.

Failures...are interpreted in terms of sad tales about successive generations of dedicated administrators and reformers being frustrated by a prejudiced public, poor coordination or problems of communication. Good intentions are taken entirely at their face value and are radically separated from their outcomes. It is not the system's professed aims which are at fault but their imperfect realization. (Cohen 1985:18)

This is the prevailing view of the history of punishment until after 1970 when a number of revisionist historians such as Rothman (1971), Foucault (1977), Ignatieff (1978) and Garland (1985), depart from these traditional accounts and scratch beneath the surface to retell the story of reform in the context of economic interests, power relations and the diversification and strengthening of state power.

3. Revisionist Histories

David Rothman's *Discovery of the Asylum* (1971), follows on from this conventional tradition, although his account is a much more complicated and pessimistic view of this history. Written at a time when cynicism and disillusionment were prevalent among liberal reform supporters, Rothman's main argument in both the *Discovery of the Asylum* - which looks at punishment in Jacksonian America, and the social changes which began to emerge at the end of the 18th century, which resulted in the construction and support of institutions for deviant and dependent members of society - and his later book, *Conscience and Convenience* (2002 [1980]) - which follows on from this account and examines these same social institutions during the progressive era, is that although none of the early promise of these institutions was met, the continuing theme was 'legitimation despite failure'. 'The institutions were kept going because of their functionalism and the

enduring power of the rhetoric of benevolence' (Cohen 1985:20). None of the programmes implemented by reformers turned out the way they were supposed to: in practice, regimes bore no resemblance to the original concept. Rothman argues that one of the reasons for this was that, rather than fighting the reforms, prison officials such as wardens, administrators and managers, encouraged the changes but twisted them to fit their own agendas.

The reformers' original doctrines were especially liable to abuse, their emphasis on authority, obedience, and regularity turning all too predictably into a mechanical application of discipline. And by incarcerating the deviant and dependant, and defending the step with hyperbolic rhetoric, they discouraged – really eliminated – the search for other solutions that might have been less susceptible to abuse. (Rothman 1971:295)

Rothman's main conclusion is that, by examining the history of institutions, it is possible to see that the warning from history is that benevolence must be distrusted, 'proposals that promise the most grandiose consequences often legitimate the most unsatisfactory developments' (Rothman 1971:295). The problem is to 'review these events without falling into a deep cynicism. After all, one could argue the more there was change, the more things remained the same; in this case, they may have grown a bit worse' (Rothman 1971:295). However, if the reform venture is to be distrusted it is not to be overlooked, as Rothman points out in his introduction to *Conscience and Convenience*, when contrasting the perspectives of his study with that of Michel Foucault in *Discipline and Punish* (1977), there are no inevitable historical forces to ascertain correctional change, 'choices were made, decisions reached; and to appreciate the dynamic is to be able to recognize the opportunity and affect it' (Rothman 1980:11). Rothman's concluding argument is that things can still be improved. Prisons and asylums were the invention of one generation to solve their society's problems, 'A new type of liberalism unencumbered by the naïve optimism of its historical predecessors still allows room for manoeuvre' (Cohen 1985:21).

4. Marxist, Neo-Marxist and Critical Approaches

Other approaches which have been suggested in order to explain the changes in the use of punishment since the Middle Ages include Marxist and Neo-Marxist theories. These accounts are so labelled primarily because in the construction of these approaches there is a strong correlation between punishment, differing class relations and the labour market.

(i) Rusche and Kirchheimer

One of the best known and earliest works on punishment to be based on the Marxist approach was Georg Rusche and Otto Kirchheimer's *Punishment and Social Structure*, which was first published in 1939. However, it was not until it was reprinted in 1968, during the height in popularity of revisionist histories and radical criminology, that it became a key text within the field of punishment and social control. *Punishment and Social Structure* is, in the main, a history of penal methods dating from the Middle Ages to the mid-20th century. The first 8 chapters of the book written by Rusche examine changes in the punishment structures in use in Europe from the 13th century until the establishment of capitalism, while the remainder, written by Kirchheimer, continues with this history up to the mid-20th century. One of the main arguments put forward by Rusche is that the severity of punishment is related to the value of labour – when labour is scarce, such as in the mercantile period - the state and its penal institutions are more likely to put offenders to work and make the most of the valuable labour which these prisoners represent. When, however, labour is plentiful, punishment becomes more severe, as in the late Middle Ages when corporal and capital punishments were prevalent. The value of penal labour has played a vital role in the establishment of several penal institutions, according to Rusche and Kirchheimer. Examples of these include transportation; galley slavery, and the early workhouses and houses of correction. In short, when demand for labour is high, and thus valuable, exploitation through forced labour is preferable to capital punishment.

With the rise of capitalism, the prison became the main method of punishment. 'The prison regimes that developed during the eighteenth and nineteenth centuries not only provided labour directly but also aimed to increase the labour force by instilling the work

ethic into inmates' (Hudson 2003:116). The modern prison, like the house of correction, was, amongst other things, a way of training new labour reserves. 'By being forced to work within the institution, the prisoners would form industrious habits and would receive a vocational training at the same time' (Rusche and Kirchheimer 2003 [1939]:42). Administrators of the 19th century prison concluded that 'the necessary condition for the prisoners re-entry into society is unconditional submission to authority...if prisoners resign themselves to a quiet, regular, industrious life, punishment would be more tolerable for them' (Rusche and Kirchheimer 2003 [1939]:107). This, it was argued, was not in order to maintain an orderly prison insomuch as 'for the sake of the convict himself, who shall learn to submit willingly to the fate of the lower classes' (Rusche and Kirchheimer 2003 [1939]:107).

Another way in which the labour market affects penal sanctions is via the concept of 'less eligibility'. This principle states that for those without property, and from the lower classes of modern capitalist societies, the rise and fall of the labour market and its resultant demand for their labour determines their quality of life and standard of living. These individuals, therefore, feel no strong connection to the dominant moral order and thus the law, rather their conduct is driven by economic necessity. Within this sector of society, criminality may, therefore, present itself as an option to overcome severe poverty. As a result of this, the criminal law must create sanctions which ensure that, first, it is impossible for individuals to sustain themselves by criminal means and, second, that penal sanctions are harsh enough to deter those individuals who may be tempted to try. For this to be possible, penal institutions must implement regimes which are worse than the worst conditions that offenders may encounter in free society. 'In this way, the labour market can be seen to structure not only the normal conditions of the labouring classes, but also the penal institutions which are used against them when they resort to crime or political resistance' (Garland 1990:94).

The prison and penal institutions, in general then, are seen to have a positive effect in maintaining an industrious workforce as well as a more negative function of 'ensuring that individuals know that honest labour, however, burdensome, is preferable to criminal

alternatives' (Garland 1990:95). These labour market functions also shape the way in which punishment is carried out through the regimes and introduction of factory disciplines inside the prison. In this way 'the penal system of any given society is not an isolated phenomenon subject only to its own special laws. It is an integral part of the whole social system' (Rusche and Kirchheimer 2003 [1939]:207).

However, when it becomes superfluous for the market to use punitive measures to discipline workers, it is impossible to use convict labour in an economically beneficial way, the 'choice of methods used is largely influenced by fiscal interests' (Rusche and Kirchheimer 2003 [1939]:7). This led to the development of the fine in the middle of the 19th century. 'Money had become the measure of all things, and it was only right that the state, which extends privileges in the form of monetary grants, should also introduce the negative privilege of taking wealth away in punishment for delinquency' (Rusche and Kirchheimer 2003 [1939]:168).

In addition to the economic determinants involved in the shaping of penal doctrines, Rusche and Kirchheimer acknowledge that other factors also come into play, such as politics, ideology, religious views, humanitarianism, and bureaucratic tendencies. These factors, however, are secondary to the central focus of the economy and market forces.

Other authors such as Melossi and Parvarini have built on the work of Rusche and Kirchheimer. Their book *The Prison and the Factory* (1981) is developed largely on the foundations of *Punishment and Social Structure* and is an expansion of Rusche and Kirchheimer's theme. Melossi and Pavarini examine the early prisons in Europe and the US to show how these institutions functioned as a 'machine' to transform the criminal into a proletarian. 'The object was...not so much the production of commodities as the production of men' (Melossi and Pavarini 181:144). This was achieved, according to Melossi and Pavarini, by introducing the factory-based virtues of hard work, obedience, and docile behaviour into the prison. Thus the result is the 'production of subjects for an industrial society. In other words, the production of *proletarians* by the enforced training of prisoners in factory discipline' (Melossi and Pavarini 1981:144 emphasis in original)

They argue that the condition of the labour market has a direct influence over the character of internal prison regimes, which are more likely to become rehabilitative when labour is scarce, and become merely 'destructive' when it is not.

There are notable problems with this perspective, 'as might be expected when such a single-minded interpretation is imposed upon a broad historical canvas, historians have been quick to show the many points at which the thesis needs to be qualified in the light of more concrete evidence' (Garland 1990:106). A number of examples of flaws with this argument in relation to the work of Rusche and Kirchheimer are defined by Garland:

Research into the history of transportation from Britain has shown that, at least in its Australian phase, this system was devised as a response to a penological crisis at home rather than for economic advantage abroad, and that the costs of transporting, guarding, and maintaining the early convicts were a considerable burden upon the state. Historians of the house of correction have argued that, although commercial motives played a part in the founding of these institutions, few of them could in fact sustain any financial benefits...[while] the building of penitentiaries and model prisons...was often a massive financial expenditure, undertaken with little prospect of reimbursement. (Garland 1990:106-7)

Other criticisms of Rusche and Kirchheimer's work are related to contemporary evidence which shows that, there is extensive variation in penal procedure between different societies with similar economic conditions. Use of fines, rates of imprisonment, and length of sentence, vary dramatically from one country to another. A good example of this is the United States prison population compared with other Western societies such as France and Britain.

From these points, it is possible to see that there are considerable problems with Rusche and Kirchheimer's thesis. It overemphasizes the role of economic factors in determining penal practice, whilst seriously underestimating the importance of other issues such as ideology; politics; bureaucratic and administrative tendencies. However, while there are problems with their thesis, there are also important points to be taken from it, - 'it presents enough evidence to show that economic and financial considerations have featured predominantly in penal policy decisions, and have strongly influenced specific

practices and institutional features' (Garland 1990:110). It also 'reveals some of the ways in which penal policy is caught up within the divisions of social class and shows convincingly that penal institutions need to be understood as part of much wider social strategies for managing the poor and lower classes' (Garland 1990:110). This is evidenced within today's prison populations where the lower, working classes and ethnic minorities are significantly over represented.

(ii) Melossi and Pavarini

In addition to building their thesis on the work of Rusche and Kirchheimer, Melossi and Pavarini look beyond the prison itself to question why this method of punishment became the main established mode of chastisement. For Rusche and Kirchheimer the answer to this was simple - prison is a good source of labour, and the prison became the dominant method of punishment at a time when industrialization required an enormous demand for labour. Melossi and Pavarini question why then does imprisonment still exist when there is no need to supplement the labour force? They examine the work of Pashukanis to provide an explanation for this. Pashukanis argues that incarceration is a specifically bourgeois invention; using notions of the person and of value which arise from the capitalist means of production and which replicate bourgeois attitudes in the process of punishment.

Deprivation of freedom for a period stipulated by the court sentence, is the specific form in which...bourgeois-capitalist criminal law embodies the principle of equivalent recompense. This form is unconsciously yet deeply linked with the conception of man in the abstract and abstract human labour measurable in time. (Pashukanis 1978:181)

In other words, there is a link between earning a wage by the hour and serving out punishment by 'doing time'. This connection between labour measured in terms of time and imprisonment has been integrated into the majority of Marxist accounts on the development of new forms of punishment in capitalist society. Marxists contend that the fundamental factor behind social interactions in capitalist society is that of 'the exchange of equivalents', which moves beyond the factory into social life. Therefore, the more

serious the offence committed, the more severe the punishment, which is the 'juridical expression of this exchange of equivalents' (Melossi and Paverini 1981:184).

In *The Prison and the Factory*, Melossi and Paverini, in addition to arguing that imprisonment is the primary mode of punishment because of the price-time relationship, also maintain that in order for the prison and the factory to be productive, they are both reliant on discipline. The exchange of equivalents assumes that transactions take place between people who are free and equal - the contract is the ideal expression of this exchange. However, under capitalism, the labour contract is made between those who do not have equal power, which means that the workers have to accept a position of subordination. In the factory this means working the hours the employer sets out for them and doing what the employer wants them to do. This, according to Melossi, comes about because of the needs of the factory, and is reinforced through similar concepts in other institutions such as the prison.

Melossi's account moves away slightly from the reductionist and mechanistic versions of the labour market hypothesis, placing more emphasis on the equivalence of factory production and imprisonment, with discipline linking the two, than with earlier explanations relating to the shift away from physical punishments to imprisonment based on the labour needs of early capitalist society.

(iii) Ignatieff

While the accounts cited above are viewed as specifically Marxist in context, there is another style of analysis influenced by Marxism, although the Marxist influence is more subtle. These studies argue that

Penal policies and institutions are formed not by a monolithic process but instead by a whole range of forces which converge upon the issue in any particular conjuncture. Penalty is thus the over determined resultant of a set of conflicting or connecting forces. (Garland 1990:125)

What makes these studies Marxist is the fact that they maintain that the factors which influence penal policy are located within the broader structures of 'a mode of production and a hierarchical society' (Garland 1990:125). One of the most influential authors of this perspective is Michael Ignatieff, in his book *A Just Measure of Pain* (1978), which focuses on the development of the penitentiary in England during the industrial revolution. Ignatieff argues that the birth of the prison is located in the search for a new form of social order in the early 19th century, following the emergence of capitalist society. 'Ignatieff explicitly rejects "economic determinism" and "left functionalism" and insists on the "complex and autonomous structure of religious and philosophical beliefs" which led reformers to conceive of the penitentiary' (Cohen 1985:23-24). Ignatieff argues that, in addition to the intended reforms, the support for the penitentiary also

rested on a larger social need. It had appeal because the reformers succeeded in presenting it as a response, not merely to crime, but to the whole social crisis of a period, and as part of a larger strategy of political, social and legal reform designed to establish order on a new foundation. (Ignatieff 1978:210)

Thus, Ignatieff places the development of the penitentiary within a new set of class relations and, therefore, a new series of strategies and institutions for overseeing the lower classes. 'The reformers yearned for a return to what they imagined to be a more stable, orderly and coherent social order. They acted out of political self-interest, but also out of religious belief and a sense of guilt – an understanding that the wealthy had some responsibility for crime' (Cohen 1985:24). By the 1840s the prison was viewed as part of a larger vision of order, which commanded 'the reflexive assent of the propertied and the powerful. In elaborating this new strategy of order, the prison reformers convinced their class of the gravity of crime by illustrating its connection to the deeper social and economic transformations of the age' (Ignatieff 1978:210).

In many respects, Ignatieff's account is similar to Rothman's in that both provide a careful examination of stated intentions and acknowledge that things could have turned out differently. However, because of Ignatieff's insistence that society is based around

class divisions, a capitalist mode of production, and a state system which protects the disparity of this social order, his account is considered by many, for example Garland (1990), and Cohen (1985), to correspond with the Marxist model.

The role of the Marxist or Neo-Marxist perspective in understanding the development of penal sanctions is one that cannot be overlooked, and plays a crucial role in explaining trends in punishment and social control, as there can be no doubt that the economy and class divisions have played some part in determining developments within punishment. These developments can still be seen within some contemporary models of punishment, for example, those of authors such as Loic Wacquant in relation to class and race (See Contemporary Theories, this Chapter). However, on its own, the Marxist model has a number of flaws, such as its neglect of other contributing factors including ideology, politics, and bureaucracy. Therefore, the neo-Marxist framework needs to be considered alongside other perspectives on the theories of punishment.

5. Foucault and Discipline

One author who, it is argued, has made a huge contribution to the sociology of punishment is Michel Foucault, particularly in his book *Discipline and Punish* (1977). Foucault's account is less concerned with the origins of the prison per se, and more interested in the internal workings of punishment itself. His work focuses on the principles of discipline and surveillance, which are etched into contemporary penal institutions. 'Although his analyses fasten on to the peculiarities of penal institutions and discourses, they are also concerned to show detailed linkages and homologies which connect penal power with other areas of governance and discipline' (Garland 1990:131). This method of analysis, in addition to whatever else is distinctive about his research, separates Foucault's account from all other traditions in this field, as Foucault takes two particular penal phenomena: the execution of a regicide and the timetabled regime of a 'modern' prison. The first case features the execution of Robert Francois Damiens in a public square in Paris in 1747; Damiens had attempted to murder the king of France, Louis XV. Punishment in this case was carried out through the public display of authorized violence in which the body of the condemned is tortured, dismembered and

finally burned. The second example suggests a completely revolutionized scene, the year is now 1838, and Foucault focuses on the timetabled regime of a Paris reformatory, where the prisoners' lives are strictly regulated, from first drum roll in the morning to last thing at night. In this case, 'gone is the open brutality and uncontrolled infliction of physical pain...instead, there is a carefully developed system of rules regulating life in full and complete detail' (Mathiesen 1997:216).

Foucault by contrasting these two accounts is pointing out the change in the nature of punishment between the classical society of the '*ancien regime*' and the modern capitalist society which has superseded it. The main problem which he sets out to examine is the disappearance of punishment as a public spectacle of torture against the body, and to explain the emergence of the prison as the main method of contemporary punishment. In addition and related to the above, 'is a more structuralist concern to analyse the techniques and forms of power which these punishments involve, and to identify the wider framework of social relations in which they operate' (Garland 1990:136). This is where Foucault's work varies from other works on the sociology of punishment, as other writers tend to produce a theory and then relate it to various institutions: Foucault, on the other hand, looks at the two penal events discussed above and produces a theory for society based upon these.

The change in penal technology, from the scaffold to the prison, is, for Foucault, the result of a much greater change in the nature of justice itself. The main concern in modern society is with the offender, rather than the offence, to understand the criminal and, in turn, to correct his/her behaviour where possible, in other words to rehabilitate the offender. This involves the introduction of a number of professionals such as social workers and psychiatrists into the criminal justice system, resulting in a system which is corrective rather than punitive. On a wider scale, these changes have been used to show how power functions in modern society i.e. the notion now is to 'regulate thoroughly at all times rather than to repress in fits and starts, and by this means to improve troublesome individuals rather than destroy them' (Garland 1990:136). It is this power through punishment analysis which allows Foucault to take on a distinct approach to his

work: punishment is to be understood as a 'political tactic' located within a 'general field of power relations' (Garland 1990:137). The concern with the offender as an individual (his soul) is to be considered as the latest stance in the history of ways in which 'the body' has been dealt with by political policies.

In describing penalty, Foucault makes it clear from the outset that what he is really discussing is 'technologies of power', and how this power is implemented in modern society, in particular the power over and of the body. Under the '*ancien regime*', the powerful had the right to use the bodies of their subjects for serfdom or military service and, when necessary, to execute the bodies of those who were seen as enemies of the state. Under the modern state, the sovereign, or government, no longer has power as of right, but has the elected power of the people. Foucault draws on the Marxist theorists here concurring that modern society is, in theory at least, a society where all citizens have equal rights. Foucault argues that methods of punishment must find a balance between the facts of socio-economic inequality and the fact that all citizens are (supposedly) equal under the law. Thus the power to punish under the modern state retains similarities to the *ancien regime*, but punishment must be implemented in ways that acknowledge the legal equality and system of contract that modern society has established.

The body, according to this penalty, is caught up in a system of constraints and privations, obligations and prohibitions. Physical pain, the pain of the body itself, is no longer the constituent element of the penalty. From being an art of unbearable sensations punishment has become an economy of suspended rights. If it is still necessary for the law to reach and manipulate the body of the convict, it will be at a distance, in the proper way, according to strict rules, and with a much "higher" aim. (Foucault 1977:11)

Foucault also agrees with Marxist theorists such as Rusche and Kirchheimer that the modern capitalist society is interested primarily in citizens for their labour, and that the severity of punishment is related to the demand for labour, thus punishment, like other institutions, is assigned with the transformation of bodies into labour power. Thus

forced labour and the prison factory appear with the development of the mercantile economy. The industrial system requires a free market in labour

and, in the nineteenth century, the role of forced labour in the mechanisms of punishment diminishes accordingly and “corrective” detention takes its place. (Foucault 1977:25)

Using this argument, Foucault suggests that it is possible to accept the

general proposition that, our societies of punishment are to be situated in a certain “political economy” of the body: even if they do not make use of violent or bloody punishment, even when they use “lenient” methods involving confinement or correction, it is always the body that is at issue – the body and its forces, their utility and their docility, their distribution and their submission. (Foucault 1977:25)

Thus, Foucault gives us the reformatory and the 19th century prison as the place for personal change and correction of the body, describing the regimes and architecture of the modern prison - discipline and surveillance being the key factors in the 19th century prison.

For Foucault, the ideal prison was Jeremy Bentham’s panopticon, which combined the idea of permanent surveillance with constructive pursuits. The panopticon was designed as a circular building with a central inspection tower and all the cells located around the perimeter. Those in the central inspection tower are able to see into the cells at any time without the prisoner being able to see them, so that the prisoner never knows if he/she is being watched at any given moment and, therefore, must assume that they are. ‘Visibility is a trap’ (Foucault 1977:200), because the inmate is constantly aware that that he/she may be being observed at any given time, this generates good behaviour on the part of the prisoners. For Foucault, the panopticon is a principle of punitive power. It is the panoptic disciplinary gaze which became imitated in all of ‘society’s major institutions and eventually came to be generalized throughout the entire social body’ (Garland 1990:146). This claim is central to Foucault’s argument that the transfer from corporal punishments to the suspension of rights was not necessarily a switch to more lenient and more humane punishment. The new strategies of punishment were, therefore, according to Foucault, ‘not to punish less, but to punish better; to punish with an attenuated severity perhaps, but

in order to punish with more universality and necessity; to insert power to punish more deeply into the social body' (Foucault 1977:82).

With the establishment of the modern prison came the establishment of specifically marked out subgroups of the population. These groups were labelled 'delinquents' and viewed as different from 'normal' citizens much, suggests Foucault, in the same way as lepers. Thus, one of the key principles of modern punishment is exclusion combined with separation and classification.

The modern prison did not exclude offenders to make them invisible, but used the new developing social sciences to try and understand them, thus they became an object of knowledge. The purpose of punishment was to discipline the offender and change his/her behaviour and, in order for this to be possible, it was necessary to know the offender. This is where Foucault joins the debate over whether the prison is a success or a failure. If the entire purpose of imprisonment is to correct individuals, then its failure to reform offenders has been well documented throughout the history of imprisonment. If, however, as Foucault argues, its main function is the establishment of the 'delinquent' as a social category, and of transforming 'popular illegalities' such as poaching and smuggling - which were deemed to be ordinary acts necessary for the survival of the working classes - into deviances against mainstream values, the prison could be viewed as successful, as it created a deviant subculture, frowned upon by the 'respectable' working classes and whose punishment grew to be considered legitimate.

Therefore, argues Foucault, the purpose of imprisonment is not to reduce crime, but to manage it in a way which strengthens and enhances the legitimacy of power. In other words, 'the prison does not control the criminal so much as control the working class by creating the criminal, and, for Foucault, this is the unspoken rationale for its persistence' (Garland 1990:150). As Foucault writes, 'so successful has the prison been that, after a century and a half of "failures", the prison still exists, producing the same results, and there is the greatest reluctance to dispense with it' (Foucault 1977:277).

Foucault's final point is regarding what he terms the 'carceral', which examines how the ideas and methods of penal justice and those of other social institutions started to become increasingly blurred as similar disciplinary techniques began to take place in all of them, he also notes that these institutions became interconnected, with transfers between the various institutions regularly taking place. This, Foucault termed the 'carceral continuum', which encompasses the whole social body. This continuum is

linked by the pervasive concern to identify deviance, anomalies, and departures from the relevant norms...The idea of the "continuum" is important here, not just to describe the relations between one institution to another, but also to suggest similarities that exist between societies. (Garland 1990:151)

Foucault uses the phrase 'carceral archipelago' in order to describe the chain of institutions which he argues lead out from the prison and has implications for how we regard penalty. The

power to punish is not essentially different from that of curing or educating. It receives from them [the individual], and from their lesser, smaller task, a sanction from below; but one that is no less important for that, since it is the sanction of technique and rationality. The carceral "naturalizes" the legal power to punish, as it "legalizes" the technical power to discipline. (Foucault 1977:303)

This has two fundamental effects. First, legal punishments are considered to be more legitimate and do not need to be justified to the same extent as when previously viewed as forms of coercion or harm. Second,

legal restrictions which once surrounded the power to punish, ...tend to disappear. Penal law in effect becomes a hybrid system combining the principles of legality with the principles of normalization. Its jurisdiction is thus extended so that it now sanctions not just "violations of law" but also "deviations from the norm". (Garland 1990:151)

(i) A Critical Analysis of Foucault

Whilst Foucault's account sets itself apart from other revisionist histories, and is viewed by many as a fundamental text in the sociology of punishment, there are some problems

with his account. These mainly relate to the historical part of his work, such as periodicity and partiality, rather than the wider philosophical arguments he sets out.

The problem relating to periodicity is that events which Foucault claims occurred at specific times did not take place when he said they did. One of the strongest challenges to Foucault's work is made by Spierenburg (1994), who argues that the changes in modes of penalty were, in fact, much more gradual and patchy than Foucault states. Foucault's argument that the prison is the successor to capital punishment is also questioned, as it was not until late in the 20th century that most advanced industrial societies abolished its use. However, the real point which Foucault is trying to make is that there was a shift from 'torture as a public spectacle' to 'punishment of a less immediately physical kind' (Foucault 1977:7-8), behind the prison walls. Criticisms relating to the periodicity of Foucault's work, it has been argued, are due to a misunderstanding or disagreement with his methodology as, rather than trying to give a detailed longitudinal study of how corporal and capital punishment were replaced by the prison, Foucault provides two snapshots of penal events, providing what he terms as a 'genealogical' analysis of punishment.

Another criticism of Foucault's work is that he provides only a partial account. Garland (1990), argues that Foucault exaggerates the instrumental aspects of punishment, yet pays no attention to its expressive aspects. His work does touch on the expressive role of punishment but in basic terms. For example, rather than replacing Marxist views, Foucault's account complements them. In addition to being considered partial because it focuses upon some examples of punishment but not others, it can also be seen to be partial in that it is an account from a specific perspective: that of power, which, argues Garland, Foucault fails to investigate both in terms of its objectives and its agents.

Foucault also tends to make generalizations based on the two case studies provided, as he uses the example of a young offender's reformatory in forming his analytical framework of the disciplinary mode of punishment but also applies this to adults, which is problematic as adult institutions tend to be significantly less correctionalist and more

retributivist in nature. However, it has been noted that protagonists in the ‘debates about the reality and extent of the “dispersal of discipline” quote selectively from adult or juvenile penalties depending upon which side of the argument they are urging’ (Hudson 2003:145). Other overgeneralizations which Foucault makes are geographical, as his account fits that of continental Europe much better than that of England or the United States, where penalty has always retained a commitment to retribution over expert diagnoses.

A further problem with Foucault’s work is political - his use of the panopticon to sum up modern society overstates the subjugation of the individual. When Foucault describes how the panopticon relates to the whole of society as a general principle of social organisation in contemporary civilization with his vision of the carceral archipelago, it has been argued that Foucault ignores the subtle but vital differences between the prison and other social institutions such as factories and schools. As Walzer (1986), argues Foucault is

partly right, that the discipline of a prison...represents a continuation and intensification of what goes on in more ordinary places – and wouldn’t be possible if it didn’t. We all live to a time schedule, get up to an alarm, work to a rigid routine, live in the eye of authority, are periodically subject to examination and inspection. No one is entirely free from these new forms of social control. It has to be added, however, that subjection to these new forms is not the *same thing* as being in prison: Foucault tends systematically to underestimate the difference. (Walzer 1986:58 emphasis in original)

However, what Foucault has to say is important in that it draws attention to the risks of modern society in producing the ‘normalized’ individual. Indeed, the limits of the law are challenged by the social sciences, and this conflict between law and science led to the critiques of rehabilitation which emerged during the 1970s and 1980s. However, to point out a risk is not the ‘same as to claim that the technologies of discipline have penetrated the whole of society, that Bentham’s panopticon...has become the actual strategy and shape of modern penalty’ (Hudson 2003:150).

Foucault has also been criticized for his functionalism, in particular with regard to the success of the prison. Authors such as Garland argue that Foucault mistakes '(unintended) consequences of the prison to be its (intended) *raison d'être* – a form of invalid reasoning which is often associated with functionalist accounts' (Garland 1990:165), which assume that all social institutions which survive must be functional or they would not continue to exist. By taking this functionalist perspective, Foucault reinforces imprisonment's status as a socially useful institution.

Foucault's account of punishment provides

an invaluable phenomenology of the forms of power and knowledge which are activated in the penal sphere...he gives us an account of the micro-physics of penal power and the ways in which penal measures lay hold of individuals and subject them to processes of discipline, normalization and punishment. (Garland 1990:174)

However, it is wrong to move from an examination of how power is structured in the 'penal sphere, to the argument that penalty is nothing but this power. Punishment is more than just a political instrument of control, and it is a reductionist conception which sees penal history purely in terms of power-knowledge and its transformations' (Garland 1990:174). To argue that punishment is a form of power is true, but this also raises a number of questions which go beyond Foucault's critique.

Although some aspects of Foucault's analysis have been criticized, and his theory of punishment is on a macro level, some elements of his thesis can be linked to the development of supermax. For example, his argument regarding the purpose of imprisonment, and social institutions generally, to discipline individuals, to normalize them, can be observed within the rationale of the development of the supermax, as the supermax can be seen as an extreme method of disciplining and normalizing individuals where regular prison regimes fail. Also, links between Bentham's panopticon and the supermax have been drawn, as the majority of supermax facilities are arranged in pods or units with a central observation/control room so that inmates can be observed and supervised at all times, much like in Bentham's design. In addition, within many of the

latest supermax facilities, technologies such as CCTV have been installed in each of the cells, resulting in 24 hour surveillance and monitoring of the prisoners. However, Bentham's panopticon was conceived as a house of correction aimed at disciplining and improving the individual - rehabilitating them in order for them to function appropriately within society, the modern supermax, conversely, is more concerned with segregation, operating as a factory to contain the excluded.

6. Punishment and Culture

Besides the models of punishment discussed above, another concept which has recently been argued to have an effect on penalty and punishment is that of culture. Garland (1990, 2001, 2006), following on from the work of Norbert Elias (1982), and Pieter Spierenberg (1984), examines how cultural meaning has an effect on penal systems and punishment. Garland notes that the traditional perspectives on the sociology of punishment tend to suggest that penal systems are based on some hidden rationality, rather than being purely penological. Attention to sentiments, values and other non-rational forces play a small part in these analyses but these are usually in the background of the general concepts laid out. These accounts are typically functionalist in nature, highlighting how penalty functions to promote class or control, which argues Garland, results in them neglecting problems of meaning. His work then begins to examine how cultural 'sensibilities' and mentalities affect penal systems. Garland argues that culture refers to all 'conceptions and values, categories and distinctions, frameworks of ideas and systems of belief which human beings use to construe their world and render it orderly and meaningful' (Garland 1990:195). Therefore, these cultural patterns also affect the way we see and feel about offenders, and how in turn we choose to punish them.

Cultural forms, it has been suggested, seem to proliferate around differences in the natural and social worlds. Thus, 'all cultures surround the events of birth and death with an elaborate patchwork of myths and meanings which function to domesticate these crucial happenings and allow us to cope with them in terms which appear to make some kind of sense' (Garland 1990:201). Similarly, differences of class, race and gender

find an important place in most cultures, and are elaborated in distinctive ways, so that to be low or high [class], black or white, male or female in a particular culture is to occupy a category which is defined in specific ways and surrounded by certain expectations, capacities, and understandings generated by the culture in question. (Garland 1990:210)

These cultural distinctions also function within penal systems, and have had an effect on the methods used in punishment, which can be seen when we look back on the history of punishment. Thus, to use Garland's example, if we focus on juvenile punishment, in contemporary society there is a distinction between juvenile offenders and adult offenders, this seems an obvious point to make. However, if we were to examine juvenile justice in the 17th and 18th centuries, there was not much difference between the way both groups were punished. It was common for children as young as 12 to be transported, imprisoned or executed. It was only from the mid-19th century that our modern conceptions of childhood began to reform the laws and practices that we take for granted. Using this example, we can see that 'cultural patterns change over time and that these cultural developments tend to exert a direct influence upon patterns of punishment' (Garland 1990:210). Other cultural forms which have had important influences over punishment include religion, humanitarianism, and justice, each of which exert pressure on the penal sphere and lead to changes in punishment over time. Therefore, it is possible to see that 'penal practices exist within a specific penal culture which is itself supported and made meaningful by wider cultural forms, these, in turn, being grounded in society's patterns of material life and social action' (Garland 1990:211).

(i) Cultural Sensibilities

In addition to the cognitive cultural forms stated above, other cultural determinants relating to the psychological dynamics of human beings play a part in the way punishment is formulated. These are referred to as 'sensibilities'; and are

differentially developed by various forms of socialization and social relations, leading us to think of "human nature" not as a universal disposition but instead as an historical result of culture acting upon nature in various ways. All cultures promote certain forms of emotional expression and forbid others, thus

contributing to a characteristic structure of affects and a particular sensibility on the part of their members. (Garland 1990:213)

The way these 'sensibilities' or emotional responses are formed, and how they alter over time, is significant here as it has a direct effect on punishment. For example, methods of punishment will only be considered if they conform to what is considered tolerable. The fact that most penal measures are carried out matter-of-factly is because these measures have already been considered ethical and reasonable. This is an interesting point, especially when considering the use of the supermax prison which, has come under some controversy with regards to the conditions imposed on inmates which, it has been argued, are not ethical and reasonable, resulting in a number of class action lawsuits (see Chapters Six and Seven for examples) and the condemnation of a number of these facilities for the effects these prisons have had on inmates' mental and physical health. This will be discussed further in Chapter Seven.

Norbert Elias' study, *The Civilizing Process* (1982[2000]), examines how long-term processes of change affect the behaviour and sensibilities of Western society from the Middle Ages to the present through the study of how manners have changed over this period. Although his account does not mention how the history of punishment fits into the developments he describes, it contains important themes which help to make sense of historical developments in the penal sphere.

Within his study, Elias found that the 'civilizing process in culture entails a tightening and differentiation of the controls imposed by society upon individuals, a refinement of conduct, and an increased level of psychological inhibition as the standards of proper conduct become ever more demanding' (Garland 1990:217). As this refinement and sensitivity to other individuals developed, Elias found that, over time, this 'civilizing process' was transmitted from one social group to another. Starting with the etiquette of the knightly warrior societies of the Middle Ages, his analysis moves through the deportment of court societies during the 16th century, and ends in the 19th century with the establishment of a set of cultural standards spreading from the aristocratic upper classes to the bourgeois classes, who had already developed a certain level of self-

restraint out of necessity for a disciplined market society. What began as a mark of respect for social superiors, over generations, became the expected way of behaving towards social equals, and even those considered inferior. Other developments noted by Elias include the privatization of certain events: those considered to be the more animalistic traits of human behaviour such as violence, and intimate acts, which have become hidden behind the scenes and seen as distasteful (Elias 1982[2000]).

Spierenberg (1984) builds on the work of Elias in his book *The Spectacle of Suffering*, which links the decline of the public execution to the long-term change of sentiments. Spierenberg argues that both the abolition of the scaffold, and the heightening of emotional responses, are located within a wider framework, which focuses on the establishment of state power and the increasing ability of 'nation states to pacify their subjects and impose a settled form of law and order over their terrain' (Garland 1990:225). Spierenberg compiles a detailed history of how changing sensibilities, especially the revulsion of public displays of physical violence, were the primary motivation for the restructuring of punishment from the Middle Ages until the 20th century. Other historians who have examined violence and cultural traits have broadly supported both Elias' thesis on the civilizing process, and Spierenberg's claim that this process forms part of the explanation for the decline in scaffold punishments.

Referring back to Elias' point regarding privatization, and the concealing of certain behaviours and practices behind the scenes, this concept can also be tied to an important trend in the history of penalty – the removal of punishment from public view, which has resulted in the growth of closed institutions, such as prisons. Even non-institutional punishments such as the fine are essentially conducted away from the view of the public by professional administrators. As Garland puts it,

the business of inflicting pain or deprivation upon offenders has come to seem rather shameful and unpalatable. It is not a sight which is felt to be edifying for the modern public though it is an activity which is deemed to be necessary none the less, so our sensibilities are preserved by removing this painful undertaking to scarcely visible sites on the margins of society and social consciousness. (Garland 1990:235)

It is also possible to see the civilizing process in the refinement of penal language and practice - pain is no longer delivered via corporal punishment, replaced instead with deprivation of liberty or financial punishments. The language of punishment is similarly altered: prison guards become correctional officers, whilst prisoners become inmates. These changes make the processes of punishment more acceptable to the public and to professional sensibilities.

Nevertheless, there is still some conflict between the maintenance of security, retribution and deterrence and these civilizing processes.

No matter how refined our sensibilities, they will rarely be allowed to undermine what are seen as fundamental social needs. Moreover, any rational basis for public opinion is usually distorted by the tendency of political groupings to represent crime and punishment in ideological terms, harnessing these issues to metaphors of social danger or the need for authority, and misrepresenting the facts for the purpose of political persuasion. (Garland 1990:237)

In addition to this, sensibilities are unlikely to be uniformly developed among the population: there will be a disparity in attitude between social groups. Garland argues that, in addition to the need for deterrence and security, there is another reason why there has been only a limited improvement in punishment. This is because within the civilizing process, as noted by Elias, human beings are taught to repress their natural desires, especially aggression, which is 'confined and tamed by innumerable rules and prohibitions that have become self-constraints...and it is only in dreams or isolated outbursts that we account for as pathological that something of its immediate and unregulated force appears' (Elias 1982[2000]:161-2). Therefore, according to Garland, the repression of these desires or drives leads to internal conflicts within the individual which have an effect on their psychological and social life. 'Civilization thus...ensures that certain issues will often arouse highly charged emotions which are rooted in unconscious conflict, rather than single-minded, rationally considered attitudes' (Garland 1990:238). Therefore, the offences of criminals, especially where the offence 'expresses desires which others have spent much energy and undergone much internal conflict in

order to renounce, can thus provoke a resentful and hostile reaction out of proportion to the real danger which it represents' (Garland 1990:239). Other reactions to crime and criminals could include a measure of gratification for those who have 'submitted to the cultural suppression of their own drives, and for whom the penal system represents a socially sanctioned outlet for unconscious aggression' (Garland 1990:239). If these factors are indeed true, states Garland, then the establishment of heightened self controls and civilized sensibilities could carry with it a counter-tendency towards punitiveness. With this in mind, the civilizing process can only proceed so far as this underlying emotional ambivalence continues to hold back our stance on punishment.

Whilst physical violence and pain have become abhorred within society and punishment, emotional and mental pain is still viewed as acceptable, both by governments and the public as a whole. Long-term incarceration and conditions such as solitary confinement, which are common in facilities such as supermax, have been found to cause acute mental illness and even physical deterioration. However, because these effects are mental rather than intentionally physical (although in some instances this is questionable), occur over a duration rather than instantaneously, and are hidden behind the scenes, they are deemed to be tolerable and accepted. Thus, contemporary punishment is 'institutionally ordered and discursively represented in ways which deny the violence which continues to inhere in its practices' (Garland 1990:243).

From this it can be seen that cultural forces strive to formulate sensibilities among the societies that they address. Similarly, the penal sensibilities of society can be heightened or eroded by governmental forces. Therefore, argues Garland, any study of penal methods or penal history must take issues of sensibility and culture into account, as penal methods are embedded not only within objective social structures but also within cultural frameworks. This can be seen in the following chapter (Chapter Three), which discusses the history of the prison and the various factors (including those relating to culture) which have influenced decision making and thinking, and have led to the development of new methods of punishment in contemporary society, notably the supermax prison.

7. Contemporary Theories

In addition to the theories of punishment mentioned above, in recent years a new set of concepts have come to the fore, many of which are based on, or have branched off from, those discussed previously. While others relate directly to how punishment is carried out, and the policies of criminal justice systems in contemporary society.

(i) Governmentality

One such notion within the sphere of theories on punishment is that of governmentality¹. One of the first authors to focus on this was Foucault in his later work, which examines the problems of governance – ‘how to govern oneself, how to be governed, how to govern others, by whom the people will accept being governed, how to become the best possible governor’ (Foucault 1991:87). This problem of governing, argues Foucault, came about during the 16th century with the collapse of feudalism and the ‘establishment of the great territorial, administrative and colonial states’ (Foucault 1991:88). Whilst much of Foucault’s account focuses on the Middle Ages, and the social and economic changes which were taking place at that time, the governmentality literature also provides an important context for examining how crime is problematized and controlled: it focuses on late-modern society, predominantly on the movement away from welfarism to neo-liberal politics. Foucault’s work on governmentality, which came after his work on punishment and, which was criticized for seeing individuals as ‘docile bodies’, focused on the importance of the *active subject* as the body through which, and by which, power exists. Therefore, governmental power ‘constructs individuals who are capable of choice and action, shapes them as active subjects, and seeks to align their choices with the objectives of governing authorities’ (Garland 1997:175). In other words, it does not seek to suppress the individual’s subjectivity but, instead, steers that subjectivity towards governmental goals.

Foucault, in his study of governmentality, does not focus on any institutional or substantive account of the state but instead examines specific practices of governing, situated in a number of different sites. Foucault argues that from the 16th century

¹ Although governmentality covers much more than punishment and can be linked to all social institutions

onwards, Western societies have become progressively more governmentalized - 'state authorities have increasingly understood their task as a matter of governing individuals and populations, civil society and economic life, in such a way as to increase well-being, security and prosperity' (Garland 1997:178). He compares this with what he argues was the pre-modern notion of rule, where the objective was to secure the sovereign's hold over his terrain. Foucault suggests that this development is linked to the discovery of new social entities, and the formation of new social sciences, which produce knowledge about them. According to Foucault's account, contemporary societies are made up of 'the [Christian] pastoral, the new diplomatic-military techniques and, lastly police: these are the three elements that I [Foucault] believe made possible the production of this fundamental phenomenon in Western history, the governmentalization of the state' (Foucault 1991:104).

A number of other studies have been carried out based on Foucault's concept, such as Donzelot's (1979), study on the policing of the family. However, the governmentality literature does not offer a general framework which can be used to help understand crime control and punishment. It does, nonetheless, provide a number of areas for analysis, and propose certain lines of questioning which may have potential for research. Authors such as O'Malley (1996), have examined how crime prevention and community policing can be highlighted using this framework. O'Malley argues that neo-liberalism (which allows the state only minimal functions such as physical security rather than the wider idea of security from illness or want) is increasingly promoting privatized actuarialism or 'prudentialism'

The rational individual will wish to become responsible for the self, for this will produce the most palatable, pleasurable and effective mode of provision for security against risk. Equally, the responsible individual will take rational steps to avoid and to insure against risk, in order to be independent rather than a burden on others. Guided by actuarial data on risks and on the delivery of relevant services and expertise, the rational individual will take prudent risk-managing measures. Within such prudential strategies, then, calculative self-interest is articulated with actuarialism to generate risk management as an everyday practice of the self. (O'Malley 1996:200)

Thus, the responsabilized individual looks after their own private security which, in turn, leads to a decline in the influence of 'social criminologies'. Only those offenders who persistently recidivate, or whose offences are considered to be extreme, are controlled by the state. This means that exclusion and subjugation of the predatory and dangerous are the key functions of the state in relation to crime, so that the more positive aspects of the penal sphere, such as crime prevention, which is aimed at creating safer communities and reducing fear of crime, are located at local and individual levels. This use of actuarialism and the analysis of risk have led some scholars to suggest that a new era of punishment is occurring in contemporary society which they have labelled the 'new penology'.

(ii) The 'New Penology'

The contemporary shifts identified above have led to the argument that the provision of security in today's society is increasingly underpinned by the identification and management of risk. Penalty is traditionally bound up with risk, but what is new is the approach taken to identify risks. Under this new guise, risk reduction methods are concerned with aggregates rather than individuals, and they focus on risk control rather than management. Management techniques accept risk, but try to make some improvements by reducing the probability of feared incidents via treatment of offenders, or post release supervision, for example. Risk control avoids these incidents altogether by eliminating the risk or excluding the threat. This field of study has been titled 'the new penology' - its most notable authors being Malcolm Feeley and Jonathon Simon (1992). They argue that there has been a 'movement of administrative techniques from the world of insurance, financial management, and even retailing into a field that had long enjoyed considerable isolation from general administrative trends' (Simon and Feeley 2003:79).

Procedures such as profiling and screening were adopted as ways of improving administrative knowledge of, and control over, those within the criminal justice system. However, these techniques have now become 'the substantive program if not the policy' (Simon and Feeley 2003:79).

The new penology is neither about punishing nor rehabilitating individuals. It is about identifying and managing unruly groups. It is concerned with the rationality not of individual behaviour or even community organization, but of managerial processes. Its goal is not to eliminate crime but to make it tolerable through systematic coordination. (Feeley and Simon 1992:455)

Using methods such as profiling, identified above, to manage groups assorted by degrees of dangerousness, the new penology takes crime for granted, deviance is normal.

It is sceptical that liberal interventionist crime control strategies do make a difference. Thus its aim is not to intervene in individuals' lives for the purpose of ascertaining responsibility, making the guilty "pay for their crime" or changing them. Rather it seeks to regulate groups as part of a strategy of managing danger. (Feeley and Simon 1994:173)

By applying actuarial principles to punishment, factors such as type of offence; previous record, and employment history, are used to assess the risk of re-offending. The aim is not, as in previous individuality orientated eras, to discover whether the offender is likely to recidivate, but rather whether the offender is in a high or low risk group. If the individual is found to be of the former, he/she will be isolated and excluded from society in the form of long-term imprisonment (warehousing), leaving only the low-risk to be punished through a short sentence or community penalties.

Where once there was great concern over recidivism rates, which were used to assess success or failure of a penal programme, now, although still important, its significance has changed. For example, high rates of those on parole returning to prison previously indicated that the system was failing, now these high rates are used as confirmation that the parole system works, as a control system – 'perceived as a cost-effective way of imposing long-term management on the dangerous' (Feeley and Simon 1998:369).

By emphasising correctional programs in terms of aggregate control and system management rather than individual success or failure, the new penology lowers one's expectations about the criminal sanction...It also reflects the lowered expectations for the penal system that result from failures to accomplish more ambitious promises of the past. (Feeley and Simon 1998:369)

These 'lowered expectations' can be seen through the development of new technologies, and in more cost-effective modes of control and confinement, which identify and classify risk.

Possibly, the clearest indication of actuarial justice is found in the new theory of *incapacitation*, which has become the predominant model of punishment. Incapacitation promises to reduce the effects of crime in society not by altering either offender or social context, but by rearranging the distribution of offenders in society. If the prison can do nothing else, incapacitation theory holds, it can detain offenders for a time and thus delay their resumption of criminal activity in society. (Feeley and Simon 1994:174 emphasis added)

This can be intensified further through 'selective incapacitation', which puts forward a sentencing scheme whereby length of sentence is determined by risk profiles, not by the nature of the offence, nor by a character assessment of the offender. It aims to detect 'high-risk offenders and maintain long-term control over them, while investing in shorter terms and less intrusive control over lower risk offenders' (Feeley and Simon 1998:370). In other words, it is not amoral and merely technical - but ideological.

Although all societies are concerned with risk, contemporary society, it has been argued, appears to have a heightened awareness of this risk. The reflexivity of modernity signifies that the populations of modern societies are aware of risks unlike pre-modern civilizations. These risks, however, are not accepted as inevitable. There is a belief in modern society that progress, and the ability to master nature, will ensure that risks can be eliminated. Correspondingly, there is an equally characteristic distrust of governments and experts, which means that the same individuals who expect risk control have little conviction that it will be attained. According to Simon and Feeley, the

new penology fails to engage the public because it has abandoned goals that remain central to the whole notion of a public policy, those of reducing crime while controlling those whose crimes pose a serious threat to personal security and property. While pledging allegiance to those goals, the new penology has almost always moved instead into a focus on system performance and rationality that ultimately excludes the public. (Simon and Feeley 2003:107)

In addition to this, the individualism of contemporary society results in a lack of willingness to share risks collectively. Risk-sharing is undertaken by citizens motivated by 'private prudentialism' (O'Malley 1996) rather than social solidarity. The public are willing only to share the costs of risk control with others to whom they can relate - they do not wish to take part in collective problem-solving which puts them together with uncategorized others, especially those who they blame for society's social ills.

'Risk' does not function independently of race, class or gender. This is why there seem to be large numbers of certain types of people within the prison system. The war on drugs, and the ghettoization of black people, have both targeted particular populations – those regarded by society as a whole as the *underclass*, those who need to be regulated as they may pose a risk to the way society operates. This is why we have seen a reversal of the ethnic composition of inmate populations. 'In four short decades, the ethnic composition of the US inmate population has *reversed*, turning over from 70 percent white at the mid-century point to nearly 70 percent black and Latino today, although ethnic patterns of criminal activity have not been fundamentally altered during that period' (Wacquant 2001:96 emphasis in original). This racial disparity can be traced back directly to Reagan's 'war on drugs' which was then built upon by the Bush Sr. and Clinton administrations. 'In 10 of the 38 States in which black-white disparity has grown, African Americans are imprisoned at more than 10 times the rate of their compatriots of European origin' (Wacquant 2001:96). (For further discussion in relation to politicization of crime see Chapter Three). 'Institutions identify risk based largely on their values. They select those risks that allow them to valorise certain people and behavior while mobilizing disdain for other people and behaviors' (Simon 2001:23). 'If risk serves institutions mainly as a vehicle for directing blame in certain directions then the more plausible and visible such risks are the easier they can fulfil this blaming role' (Simon 2001:23). In addition, as Christie (1981), argues, it is much easier to impose pain (or punishment) on those we do not know or with whom we have little in common. 'Thus, the more stratified a society, the easier it becomes for the well-off to advocate greater pain for those less fortunate' (Mauer 2001:15) As a consequence, the prison acts as a means of managing and controlling the underclass - those society finds unruly or disruptive. Thus, according

to contemporary theorists, a system of state funded exclusion of those deemed to be a risk or danger to modern society is the penal system which is demanded for late modern society. This argument is seen clearly within the supermax prison where certain population groups, who are perceived by Department of Correction officials as a risk to prison order, become warehoused within these institutions.

Whilst each of these theories offers considerable valid points, each of these contemporary frameworks leaves a number of questions unanswered, such as why during the 1990s did penal methods change, and why did the influence of criminal justice professionals and academics decline within criminal justice policy? One answer to this has been provided by Bottoms (1995), who suggests that, whilst legal professionals and academics place great weight on the importance of due process and proportionality, politicians and the public expect criminal justice policy to focus on crime, thus the progress of rational criminal justice policy was (and is) undermined by outbreaks of 'penal populism' - policies aimed to appeal to the general public.

However, of the work mentioned so far, none of the accounts discussed provides satisfactory answers to all of the questions of why the penal sphere and punishment have evolved in the way that they have or, rather, none of the perspectives alone provides these answers. Garland in his book, *The Culture of Control* (2001), provides one of the first accounts which draws on all of the frameworks mentioned above to explain penality in the modern age. He then fits them into his own framework, which brings together the concepts of culture and crisis. Within *The Culture of Control*, Garland identifies 3 types of responses to crises and relates these to the high crime rate. The first type he identifies is adaptive, which recognises the impossibility of reducing crime rates whilst, at the same time, acknowledging the unavoidable and insatiable demands on crime control. Adaptive responses include non-recording of crimes, and non-prosecution of crimes, particularly those relating to possession of small amounts of drugs for personal consumption. The second type, denial responses, are those statements made by politicians, police and criminal justice professionals and which are often exaggerated. These incorporate ideas such as zero tolerance and announcements such as 'prison works'. The final response

type is 'acting out', which are usually the responses to moral panics and are often not well thought out. An example of this is Megan's law, which was enacted in the US following the murder of Megan Kanka by a released convicted paedophile. 'Acting out'

measures are designed to be expressive, cathartic actions, undertaken to denounce the crime and reassure the public. Their capacity to control future crime, though always loudly asserted, is often doubtful and...is less important than their immediate ability to enact public sentiment, to provide an instant response, to function as a retaliatory measure that can stand as an achievement in itself. (Garland 2001:133)

Garland questions why criminal justice professionals have not retained their observance of adaptive responses, but have given in to denial and 'acting out' responses. He argues that the reason for this large increase in crime rates means that liberal experts, too, are victims of crime and fear of crime and, therefore, also have feelings of outrage and resentment together with other victims. Adaptive responses need public confidence in government, and also government confidence that their policies will be supported. In the current climate, the lack of trust in the state and its experts, the intolerance of crime, and the risk of crime, result in conditions which are adverse to these adaptive responses. In addition to the distrust of governments, contemporary society is populated by social groups who are also distrustful of one another, and who insist on isolation and protection from one another.

However, criminologists such as Matthews (2002), argue that Garland's account is lacking, as he fails to add to his previous works, and the evidence he uses to support his thesis is shaky. For example, when talking about the UK, 'he relies mainly on the findings of the British Crime Survey and associated accounts' with which, argues Matthews

there is considerable controversy over the ways in which "public opinion" should be conceived, examined and interpreted. Consequently, it is not enough to take research studies such as the British Crime Survey at face value and few would uncritically accept surveys of this kind as a reliable guide to "public opinion". (Matthews 2002:221)

Matthews argues that similar limitations apply to Garland's analysis of social class, and that he places too much emphasis on the New Right politics of the Thatcher and Reagan era. In the United States at least, the developments outlined by Garland had been implemented prior to Reagan's election. Matthews argues that the two main developments in crime control are diversity and decentralization. Matthews suggests that, rather than an increased punitiveness, there is another part to the equation, which is given a much lower profile, and takes the form of a growth in probation and monitoring and surveillance techniques. These techniques, argues Matthews, are 'not driven by punitiveness or vindictiveness but a desire to regulate "problem populations" in cost effective ways...the aim...is not only to punish but to educate, deter, support and 'civilize' citizens' (Matthews 2002:223). The other development, decentralization, focuses on governing crime control 'at a distance' using a 'combination of statutory, private and voluntary agencies' (Matthews 2002:224). Crime and disorder have become increasingly blurred, and viewed as aspects of the same problem, and both have become entangled within the wider structure of community safety, which encompasses issues such as transport, health, housing and the environment. 'In this process crime is in danger of losing its prominence and becomes one of a number of "hazards" which have to be dealt with' (Matthews 2002:224). This restructuring of crime has an effect on, and alters the role played by, criminal justice agencies.

It has also produced a new discourse, new styles of management and, importantly, has shifted concerns from criminal justice to wider issues about distributive justice and the "quality of life"....In short we appear to be witnessing a de-centring of crime control and moving towards the development of mechanisms for the management of the socially excluded and the "underclass" and other problem groups often with reference to notions of "risk" and "dangerousness". (Matthews 2002:224)

These examples, argues Matthews, present a different standpoint from that offered by Garland and suggest that contemporary penal policies may be more 'conflict-ridden, dynamic and open-ended' than they may initially seem.

This can be seen most clearly within the United States, American society appears to have lost its inhibitions about imposing pain on certain subgroups of the population which it defines as dangerous or wicked. Certain risks are illuminated because they allow blame to be placed on particular sections of the population. For example, risk of being robbed in order to buy drugs, or risk of being killed in a drive-by shooting, allows blame to be placed on lower class, black, Americans, who are viewed with hatred and fear by middle-class white Americans, whose only concern is to exclude and incapacitate these groups (see Wacquant (2001)). This has been linked back to older Marxist frameworks of penality which focused on punishment as a way of regulating the working classes and controlling surplus populations. This can be seen clearly in the work of Loic Wacquant (2001), whose work focuses on the relationship between the prison and the ghetto, substituting the factory of the 18th century for the ghetto of the 20th and 21st centuries. His argument is that the current climate of mass imprisonment has been implemented as a method of containing surplus minority populations - those who are unemployed and unable to get work since the decline of manual factory labour. The recovery of the US economy after the recession of the 1980s was an upturn of dividends and profits rather than skilled and unskilled labour. This, argues Wacquant, explains the anomaly in terms of the labour-punishment hypothesis - that of imprisonment rates increasing during an economic revival. Wacquant suggests that as a result of this mass imprisonment of black inmates, prisons will become like ghettos, with prisoners only identifying with their own racial groups, which results in the decline in inmate solidarity. At the same time, on the outside, poor neighbourhoods are suffering from degeneration and a sense of purposelessness, which, in combination with aggressive policing tactics, is resulting in these neighbourhoods, the ghettos, becoming like prisons.

Wacquant builds on the evidence of other criminologists that the 'war on crime' and the 'war on drugs', which have both induced increasingly harsher penalties, have been targeted at the poor, particularly minority poor. A good example of this is that the war on drugs has focused on certain substances more than others, such as crack cocaine, which is the drug of choice for the minority poor. This selectivity suggests that it is more of an

'acting out' response to control hated and economically surplus populations than as a rational adaptive policy aimed at managing the drug problem.

8. Conclusion: Approaching the Supermax in the Thesis

Within this chapter, the traditional theoretical frameworks associated with trends in punishment have been outlined, in order to show how each of these accounts has provided important ideas and a unique perspective on the way in which we think about developments in penal policy and punishment. However, individually, each framework has its limitations as, as with all social realms, punishment and shifts in penalty are usually the result of a number of factors, some of which may be viewed by some as more dominant than others but, nevertheless, the others still remain relevant.

If we look at contemporary theories of penality, we can see that many of these older traditional concepts are still important today, such as the Marxist notion of surplus populations and the control of the lower classes, which can be seen most clearly in the work of Wacquant (2001), relating to the mass imprisonment of poor, minority populations. Again, in the work of Garland, building on that of Elias (1982), explaining how the civilizing process has led to changes in cultural sensibilities and thus punishment. By building on these original themes (and indeed conceiving of new ones) it is possible to try and understand developments and changes which have led to the current climate in penality. These concepts have resulted in work such as Garland's (2001), *The Culture of Control* which, through its main framework of cultural conditions and the continual crisis of high crime rates, encompass contemporary issues such as, risk, governmentality and neo-liberal politics, together with more traditional, sociological and political ideas.

While the literature provides various accounts of the different theories of punishment, the limitations of this literature, for the purposes of the thesis, are that it is far too general in scope, as the accounts mentioned above are designed to examine the whole framework of punishment rather than any specific parts of it. The work of Garland and also, Feeley and Simon (1992), in their different ways, present a very generalized picture of penal change

and development which pays little attention to local conditions and local processes of mediation in relation to how general penal trends become manifest in particular socio-cultural contexts. Therefore, because the thesis focuses on one specific aspect of punishment - the development and operation of the supermax prison in two specific locales of the US - it is important to try and uncover any nuances within these various approaches which can be connected to, or seen within, this development.

By examining all of the above literature, there are a number of key theoretical ideas from the material which seem to correspond with this development. Foucault's argument concerning the disciplining and normalization of individuals through social institutions such as the prison is one such aspect. The supermax prison is the height of this disciplinary process, as this institution is designed for the incapacitation of those prisoners deemed to be 'the worst of the worst' - those who refuse to behave and repeatedly commit infractions while in a general population facility. In order to confine those individuals who refuse to conform to prison regulations until they can prove to the prison administration (usually by completing a disciplinary level system) that they are ready to behave (have become at least partially normalized) and be sent back to a general population facility.

Of the theories of punishment discussed in this chapter, the strongest relationship between these approaches and the development of the supermax prison is with respect to aspects of the neo-Marxist approaches and the 'new penology'. Neo-Marxist critiques, for two reasons. The first is in relation to the control of certain classes and surplus populations, this theory is demonstrated clearly in Wacquant's work, mentioned above, as the majority of inmates who end up in supermax are from poor working class backgrounds and, more often than not, from ethnic minority populations. This is especially the case in states such as California where validated gang members, the majority of which are Hispanic or black, are automatically sent to supermax. The second is with regard to Rusche and Kirchheimer's concept of 'less eligibility'. This is a key concept within the supermax prison - the objective of less eligibility is that the criminal law must create sanctions which make it impossible for individuals to sustain themselves

by criminal means, and also to ensure that penal sanctions are harsh enough to deter those persons tempted to try. Therefore, prisons must implement regimes which are worse than the worst conditions which offenders may encounter on the outside. This has been proven to be an ineffective method of deterring crime within certain sections of society in general - especially as in modern society there is legislation put in place to control the standards of living conditions within most prisons, meaning that in some cases conditions in prison are actually preferable to living on the streets. Within the supermax, although again there is legislation to protect inmates, there has been a number of legal decisions made against the conditions within these facilities (see Chapters Six and Seven for specific examples), as these institutions are, on the whole, much harsher and more restrictive than general population prisons (See Chapter Four for a discussion of conditions within supermax). Inmates are entitled to few personal possessions and are housed alone in their cells for as much as 23 hours a day. The threat of this type of isolation and confinement has been proven to deter some inmates and, in an extreme example, one inmate in a Wisconsin prison hanged himself in order to avoid being sent to the state's supermax as he believed he would not be able to survive under the severe regime in the facility (See Chapter Six). This suggests that the concept of 'less eligibility' - that penal sanctions within supermax are harsh enough to deter those in general population prisons, that DOCs implement regimes in supermax which are worse than the worst conditions which offenders may encounter in a general population facility - within the prison system may deter some inmates from committing infractions which could lead to them being sent to supermax.

Whilst this form of 'less eligibility' may work for some inmates, there are a small number whom administrators believe require harsher measures. This is where the supermax prison fits directly under the 'purview of the new penology, notably with regard to the actuarial aspect of prison management which focuses on identifying and managing unruly groups' (Pizarro *et al.* 2006:10), especially as those who end up in supermax are not those who have committed the worst crimes in society, but those whom correctional staff believe to be a threat to the safety, security, or orderly operation of the facility in which they are incarcerated. 'Correctional administrators assert that placement in a supermax

institution is not a penalty but an administrative decision based on a pattern of dangerousness or unconfirmed but reliable evidence of pending disruption' (Pizarro *et al.* 2006:10). In other words, it is those who are deemed to be a risk and who need to be controlled and managed who are placed in these institutions. Therefore, the supermax prison functions as a management unit: it is a 'prison for prisons' housing those viewed by correctional administrators to be a threat or 'risk' to institutional security, such as political prisoners, or gang members, rather than inmates who committed heinous crimes while in free society. Whilst the 'new penology' concept applies to all supermax institutions to a certain extent, its role varies significantly between different state correctional departments. For example, different DOC's use supermax as a management tool to house those populations which they consider to be the greatest risk to the general prison population, for instance, in California, the majority of those in the SHUs are prison gang members segregated from the general population, whilst other states, such as Wisconsin, use their supermax unit primarily to house violent, disruptive and problematic inmates, who have demonstrated an inability or unwillingness to conform within general population prisons. Therefore, while risk management can be seen within the majority of supermax institutions, it remains sensitive to local socio-cultural conditions; it is not a uniform process.

Based on the above examination of the theories of punishment, and the arguments presented regarding the connections between these theories and the development and purpose of supermax, the thesis will explore whether there is a relationship between these arguments and the research carried out in Chapters Six and Seven with regards to the decisions and policies implemented at each of the two facilities. The thesis also proposes to identify what other factors come into play during the construction and continued usage of these institutions. The next chapter will draw back slightly from these theories of punishment to provide a critical historical account of the development of the prison as the primary method of punishment within western society, in particular the United States, and, from this, try to determine how the supermax prison came to exist within the penal sphere.

CHAPTER THREE

History of Imprisonment and the Changing Nature of Penal Policy in the United States

1. Introduction

This chapter examines the historical, social, and political, development of the penal system in the United States, starting with the sudden change in incarceration rates during the early 1970s, and then moving on to focus on the origins of the prison system. The chapter will then move on to look at the decline of the rehabilitative ideal, focusing on Richard Nixon's 'war on crime', through the Reagan era, and Bush Sr. and Clinton administrations. There will also be an analysis of the 1980s re-emergence of the prison and the move towards privatization of prisons and prison industry. The end of the chapter looks at the changing nature of corrections and, in addition to providing some overall conclusions, aims to locate the development of the supermax prison within this historical context.

The question of why the supermax prison has developed is a very complex and difficult one to answer. Whilst there are no concrete reasons as to why the supermax has become a feature in U.S penal policy, it is possible to outline the political and economic context within the field of corrections, and society in general, which has helped to make this type of punishment so well received as part of the repertoire of US criminal justice policy. In order to do this, it is necessary to look back to the movement away from rehabilitation towards control, which took place during the mid-1970s. It was also at this time that the prison population, which Blumstein and Cohen (1973), described as 'a curve whose relatively gentle oscillations struck them as remarkable evidence that punishment was a self regulating system' (Blumstein and Cohen in Caplow and Simon 1999:64), started to grow at an alarming rate. The prison population increased from 93 per 100,000 in 1972 growing to a record figure of 491 prison inmates per 100,000 U.S residents, or 2,320,359 prisoners held in federal or state prisons or in local jails by year end 2005 (Harrison and

Beck 2006:1), making the United States second only to Russia in its per capita rate of incarceration.

2. The History of Imprisonment

The use of imprisonment as punishment within Western society and, in particular, the United States, is a relatively modern conception and it was not until the late 18th century that its use became popular as a tool for government. Prior to this, most crimes were punished using physical methods such as whipping, branding or the stocks. More serious crimes and recidivism resulted in death in the form of hanging. The 'colonists rationale was clear: anyone impervious to the fine and the whip and who did not mend his ways after an hour with a noose about him, was uncontrollable and, therefore, had to be executed' (Rothman 1971:52). Incarceration was used merely for detention purposes, for those awaiting trial, those awaiting punishment and for those who were unable to pay their debts. The jail was more of a house than a prison albeit with stronger locks and thicker doors, prisoners were not cuffed or made to wear uniforms and, therefore, escapes were commonplace.

Towards the end of the 18th century, the population began to increase, especially in regions such as New York, where the population grew fivefold. The War of Independence, the growth of factories and, the ideas of the enlightenment, which had an impact on the United States in particular, began to spread. Under the influence of these factors, Americans:

perceived that the traditional mechanisms of social control were obsolete. The premises upon which the colonial system had been based were no longer valid. Each change encouraged Americans to question inherited practices and devise new ones inspired by the ideas of the enlightenment, they considered older punishment to be barbaric and traditional assumptions on the origins of deviant behaviour to be misdirected. (Rothman 1971:58)

More generally, the rationale for punishment was no longer being directed at the body, but at the soul (Foucault 1977:16). It is also important to note that the nature of what was considered to be crime also began to alter at this time. During this period, many crimes

which had been considered serious started to decline in importance. Those related to religious authority such as blasphemy no longer held such a high status, and economic activities such as smuggling became less serious. In addition to this, the way punishment and judgement were passed started to change; 'to judge was to establish the truth of crime, it was to determine its author and to apply a legal punishment. Knowledge of the offence, knowledge of the offender, knowledge of the law' (Foucault 1977:19). It was these three requirements which made it possible to ground a judgement in truth. However, it was no longer enough to establish whether a crime had been committed, and whether it was punishable by law, a whole new set of caveats began to emerge. These looked beyond the criminal and the crime towards the causal processes. The development of modern prisons as a whole brought with them 'a whole set of assessing, diagnostic, prognostic, normative judgements concerning the criminal [which became] lodged in the framework of penal judgment' (Foucault 1977:19).

In the United States by the 1820s most States had altered their criminal codes. The death penalty was either being abolished for all offences except murder or restricted to the few most serious crimes. This led to the question of what could replace execution. The answer: incarceration.

The first state to establish a state prison was Pennsylvania which turned the Philadelphia Jail at Walnut Street into the State prison. This was followed closely by New York where, in 1796, funds for Newgate State Prison in Greenwich Village were approved. Other states soon followed suit and, by the early 1800s, New Jersey, Virginia, Kentucky, Massachusetts, New Hampshire, and Maryland, all had their own penitentiaries. The belief at this time, often referred to as the classical school of thought, was that a rational system of punishment would dissuade all but a few offenders from a life of crime: the roots of deviancy were not in the criminal but in the legal system (Rothman 1971:61). Punishment should be equal to the crime committed and would, therefore, act as a deterrent: it should not be lesser than the crime, as this would make potential offenders believe they could gain from committing offences, nor should it be in excess of the degree of offence, as this would put the state in a position of despot. Members of the

classical school were opposed to the idea of capital punishment. Many such as Bentham, believed that the death penalty may cause jurors to 'exercise leniency out of humane motives, therefore subverting the law' (Williams and McShane 1999:19), similarly, witnesses may perjure themselves in the name of humanity causing the justice system to be ineffective. Others, such as Beccaria, believed that as a citizen had no right to take his or her own life, 'citizens could not give this right to the state under the social contract. Moreover, if the state can take a life, where is the profit in allowing the state to govern us. Capital punishment was, as a result not part of the state's base of authority' (Williams and Mc Shane 1999:19). It was this 'repulsion from the gallows rather than any faith in the penitentiary that spurred the late 18th century construction' (Rothman 1971:62). At this time it was the 'fact of imprisonment' rather than its internal regime which was paramount. In other words, the prison was a necessary feature in the reform away from capital punishment - a substitute. 'Prisons matched punishment to crime precisely: the more heinous the offence, the longer the sentence. Juries, fully understanding these advantages, would never hesitate to convict the guilty, so that correction would be certain' (Rothman 1971:62). The advantages of the prison were external, few considered how they should be structured or managed.

By the 1820s, there had been a shift away from the 'fact of imprisonment' towards the penitentiary and the deviant, society located the origins of crime to society itself. The fact that the classical schools ideas had failed to reduce crime meant that crime must go deeper than the certainty of punishment. 'The second generation of Americans confronted new challenges and fresh ideas...The safety and security of their social order seemed to them in far greater danger than that of their fathers yet they hoped to eradicate crime from the new world' (Rothman 1971:62). This led philanthropists and legislators to look for the origins of deviancy in order to find an effective method of punishment. A number of reports were written which looked at the backgrounds of inmates about to be discharged from a number of penitentiaries. It was soon discovered that the origins of deviant behaviour could be traced back to the family and community, especially back to the offenders' childhood - the failure of the family was the cause of the problem and the spread of immoral conduct through the community. In other words, crime was the 'fault

of the environment, not a permanent or inevitable phenomenon' (Rothman 1971:78). This led to the development of the penitentiary regime as a solution to this problem. By focusing on the design, internal arrangement and daily routine, the penitentiary sought to eradicate the influences of crime, and display the fundamentals of appropriate social organization. These facilities became the source of national pride. 'A structure designed to join practicality to humanitarianism, reform the criminal, stabilize American society, and demonstrate how to improve the condition of mankind' (Rothman 1971:79). At this time, two separate systems of incarceration developed – the Auburn System in New York and the Pennsylvania System. The Pennsylvania System was based on a method of solitary confinement - inmates would work, eat, and sleep, alone as this would stop them from mixing with other inmates and give them ample time for reflection. The Auburn System differed slightly from this in that, although inmates slept alone in separate cells, they ate and worked together albeit in silence. The intention of both of these systems was that deviancy was a result of the corruptions within society. Therefore, by placing the offender in the penitentiary under conditions of isolation, removed from all temptations, and made to undergo a regular regime, this would reform them. There was much debate over which scheme was better and many scholars from around the world, especially Europe, came to visit and inspect these institutions for themselves, two of the most notable being 'Gustave de Beaumont and Alexis de Tocqueville, who visited the Philadelphia penitentiary in October 1831' (Melossi and Pavarini 1981:163). Whilst those in the Pennsylvania camp thought that their system was superior due to the fact that there was no contact between prisoners at all and, therefore, no contamination from other inmates, the Auburn supporters argued that their system was more practical and cost effective and it was this system which proved to be the most popular.

Labour was the key to the penitentiary regime – 'idleness was part symptom and part cause of deviant behaviour' (Rothman 1971:103). Labour was viewed by the majority of inmates as a blessing, without work they would face endless time for silent contemplation. Labour provided them with something to fill in much of this time and, for some, upon release, a trade in which to find gainful employment. On the other hand, because inmates saw labour as a positive thing, it also provided the wardens and

overseers with a tool to ensure that prisoners did not misbehave, or work would be revoked. In essence, the prison was much like a factory in that it provided work and discipline for the inmates (see Melossi and Pavarini (1981) *The Prison and the Factory*). Chapter Two provides a more detailed analysis of the work of Melossi and Pavarini.

By the 1850s, disillusionment had set in, the people who filled the penitentiary 'did not fit with the systems designed for them, silence and separation was not planned for the 10 to 20 year convict, therefore, superintendents were content to administer a custodial program' and as 'institutions filled up with hardened and dangerous criminals, officials were satisfied just to prevent escapes and riots' (Rothman 1971:245).

During the 1860s, the grip of the penitentiary on many penologists was broken. Those taking their first glance at the penitentiary system started to express discontent with the Auburn and Pennsylvania Systems - rather than choose between the two designs - the two systems were grouped together. 'Both systems, the new critics argued, were artificial, violating the most basic and valuable precepts of human nature' (Rothman 1971:243). Programmes such as the rule of silence were detrimental to inmates and a 'departure from the laws of nature' (Rothman 1971:143) critics such as Wines and Dwight argued, suggesting instead a more relaxed regime, with the adoption of commutation laws and conditional pardons for early release of well-behaved prisoners, and also the implementation of separate institutions for recidivists and first time offenders. They were unsuccessful in gaining support for their own ideas. The public were not concerned with the decline in penitentiary organization, as prison statistics showed that the majority of prisoners were from the lower classes and not from the state in which they were incarcerated, therefore, 'incarceration offered the community a measure of security and an effective device for putting the offender out of sight out of mind' (Rothman 1971:255). By the 1860s, there was little trace of the ideals and expectations of the early penitentiary, time had exposed not only the failure of institutions to promote individual and social reform, but also the differences between the populations of the 19th century and its predecessors, the most important of these being the ethnic and social composition of the prison population. Although all traces of reform had been removed from the

penitentiary, these institutions still provided a convenient and useful method of punishment for the criminal. 'Incarceration was a certain penalty, not dependant upon the attitude or the experience of the offender' (Rothman 1971:255), it was unconcerned with class or ethnicity, and provided a measure of security for the community which was only just beginning to develop forms of policing. Officials, legislators, and the public in general, were happy to use the penitentiary as a holding operation: the appeal of custody was high.

It was during this time that the prison started to degenerate into a brutal, neglectful, and corrupt place. Prisons which were once orderly, holding one prisoner to each cell, were now understaffed and badly overcrowded: prison labour was contracted out to intrusive private contractors which did nothing to reduce the disorder within the institutions. Under these conditions, prison life became chaotic and 'wardens had regular recourse to amazingly bizarre punishments. From their perspective this was the only way to maintain authority over the convicts. To anyone else, the solutions were unquestionably cruel and unusual' (Rothman 2002:18). These punishments included the 'pulley mechanism', or 'tying up', whereby inmates would be tied at the wrists and hoisted into the air so that they were hanging from their wrists and this could last from two minutes to an hour. There was also the iron cap, which weighed between 6 ½ and 8 pounds, and was placed over the inmate's head and worn around the neck and shoulders. The inmate was then handcuffed behind his back and attached to hooks on the wall about chest high so that he/she had to stand on their toes, causing pain to the arms, legs, shoulders and back (Rothman 2002). Use of the paddle and lash were also common, 'eyewitnesses described how prisoners there [at Sing Sing] had routinely received as many as 315 consecutive lashes with a three-foot-long heavy leather paddle, for relatively minor offences' (Christianson 1998:184) and officials 'acknowledged that some Sing Sing convicts had actually dived off the upper galleries and broken their legs in an effort to escape being paddled' (Christianson 1998:184). In addition, more modern punishments such as solitary confinement were beginning to come to the fore.

The costs of incarceration at this time were low - most prisons during the post-civil war decades offered inmate labour to the highest bidder. This worked for both parties as the state got a guaranteed income, whilst the contractors had a ready supply of cheap labour. For a more detailed analysis of the prison and labour market see Chapter Two, neo-Marxist approaches to punishment.

At this time it was not only 'anti-immigrant sentiments and taxpayers' complacency that kept prisons...alive' (Rothman 2002:28), but also reformers, who feared that conditions would degenerate further if prisons were abolished; that there would be a return to the gallows and whipping posts if the use of the penitentiary were removed. Therefore, the only alternative was to reform the prison. By 1870, reformers such as 'Enoch Wines, Zebulon Brockway and Franklin Sanborn, among others were meeting in a National Congress of Penitentiary and Reformatory Discipline, and the resolutions they enacted became the chief planks in the reform agenda for the next several decades' (Rothman 2002:31). These reforms did not attempt to return to the days of the Pennsylvania and Auburn systems, but came up with a new design. The aim was still 'moral regeneration', but in a different type of prison.

This was set out in Congress's 1870 *Declaration of Principles*, which set out two new ideals for the organization of the prison. First, the 'prisoner's self-respect should be cultivated to the utmost, and every effort made to give him back his manhood' and, second, 'the prisoner's destiny should be placed, measurably in his own hands; he must be...able through his own exertions, to continually better his own condition. A regulated self-interest must be brought into play' (Rothman 2002:32). In addition, reformers wanted to introduce indeterminate sentencing as proof of inmates' reformation. These statements were used by reformers for the next two decades.

One notable model which utilized these beliefs was the Elmira reformatory in New York, which opened in 1877, and was designed to hold first time offenders from the ages of 16 to 30, whom the sentencing judge deemed capable of reformation. 'Judges sentenced offenders to the reformatory for an indeterminate period; Elmira's managers later decided

the actual release date within certain statutory limits' (Christianson 1998:179). The facility had three classifications: inmates entered at the second level and if they behaved well, earned marks to gain promotion to level one. If, however, the inmate was 'uncooperative' he would be demoted to level three. If the inmate behaved for three months at level three he would move back up the levels. The level the inmate occupied also denoted the amount of privileges he was awarded. Those who did not conform to the system were moved to solitary, or moved to a state prison. The facility was declared a success by a number of publishers such as the North American Review and the Journal of the American Social Science Association. 'To post-civil war American reformers, Elmira proved that prisons, if properly designed, could fulfil their original promise' (Rothman 2002:35). However, neither the declaration of principles, nor Elmira, was replicated. Instead Elmira was used to justify that incarceration, if properly designed, should remain at the heart of the criminal justice system.

3. The Progressive Era

The Progressive era marked a period of change in social, governmental, and economic, policies within the United States: this also included a change in attitude and practices toward the criminal. Americans started to examine alternatives to incarceration. They believed the institution was outdated and that new, more informal, flexible policies were needed to deal with the deviant. The Progressives argued that the origins of deviancy could only be established on a case by case basis, through an individual approach. 'Ameliorative action had to be fitted specifically to each individual's special needs, and therefore, required a maximum of flexibility and discretion' (Rothman 2002:50). It was the state's duty to carry out these principles, to act in the interests of both the community and the deviant. There was no set cause as to why citizens committed crime at this time: some believed it was down to psychological elements whilst others argued it was environmental or biological factors. The important aspect was the method used on an individual basis. 'In the diagnosis would be the prescription. To understand the particulars of the case was to solve it' (Rothman 2002:50). The Progressives believed that the power of the state was to do good, to bring the state to the aid of the offender. In

addition, they also believed that it was possible to promote the welfare of both the deviant and society. In other words,

reformers saw no reason to circumscribe narrowly the discretion of the state because there was no opposition between its power to help and its power to police. By attempting to adjust the offender to society, the state was providing the offender with the optimal circumstances for realising his own well-being. (Rothman 2002:61)

Between 1900 and 1920, using these doctrines, the Progressives established parole; probation; the indeterminate sentence, and formed the juvenile court, providing the state with the discretion to achieve the 'individualisation of criminal justice, to bring a new spirit of humanitarianism and a new capacity for rehabilitation to every stage of the post-conviction process' (Rothman 2002:61). Instead of the criminal being taken to court and judged on his/her crimes, the new method was to produce a pre-sentence report, carried out by the court appointed probation officer, which should focus not only on the facts of the case but also the offender's history, education, and family life, and finish with a summary and recommendation. The judge, after reviewing this report, had to choose between probation and imprisonment. In the case of indeterminate sentencing, reformers argued that the old method was retributive, unfair and crude, as it was impossible to apportion blame for an offence uniformly, and fixed sentences could have no rehabilitative value - delinquents should be dealt with on an individual basis, not as a category. Parole was linked to indeterminate sentences to 'heighten the program's attractions' (Rothman 2002:69), and was, in many ways, similar to probation, with the exception that parole also looked at the inmate's behaviour whilst in prison. The arguments for both were similar in that the parole or probation officer would provide supervision and moral guidance to the criminal. No thought was given to the possible dangers of deciding cases on an individual basis: the Progressives believed that the state would act in the best interests for all.

There were also some tougher features of the Progressives' programmes, especially when considering the indeterminate sentence. Whilst some inmates were released quickly, others, the incorrigibles, could be incarcerated for considerably longer periods. The

incurrigibles consisted of the career criminal, the feeble minded, and those whose psychological make-up was perceived to make them incapable of reformation - the only way to deal with these groups was permanent segregation and isolation from society.

There was some opposition to the Progressive reform, most notably from the police, who saw probation as demeaning and demoralizing of their own efforts, and thought parole put criminals back on the streets too quickly. There was also opposition from some hard line judges who believed that the new reforms indulged the criminal. However, these groups did little to quell the enthusiasm for the reforms.

Within the prison itself, there was a reversal of earlier ideals. No longer was the prison a model *for* society, now the prison was to model itself *on* society. The Progressives wanted to eliminate features such as the rule of silence, and the lockstep, and replace them with more relaxed correspondence and visitation rules - contact with the outside world would help the inmate to adjust. They also introduced leisure pursuits such as sport, exercise, and films, into the prison regime.

One such reformer was Thomas Mott Osborne, who conducted a participant observation study in Auburn prison and found the regime to be extreme. Upon his return to society, he remarked on the humanity of the prisoners and rejected that they were a distinct and inferior criminal class. He argued, 'I am no sentimentalist and do not for a moment deny the existence of evil in the natures of the prisoners' but 'it would be foolish to overlook it...what is not understood and what we need to remember is the other side. Unless we appeal to the good that is in the prisoner, how can we utilize the chance we have to reform them?' (Osborne in Christianson 1998:208). Osborne, along with fellow reformers, recommended the closing of Auburn and Sing Sing, and called for sweeping reforms of the whole penal system.

The idea of making the prison a model of the community persisted through the 1920s and 1930s. Psychiatrists, however, were not satisfied with this concept and brought about the model of the prison as a hospital. They argued that deviancy was caused by psychological

factors, rather than environmental ones, and sought to transform prisons into treatment centres. Surprisingly, the two models did blend together. The psychiatric reformers created clearing houses and diagnostic centres for all new inmates, arguing that it was not the judge's duty to set the length of sentence, or to decide in what type of institution the inmate should be treated. This was the role of psychiatrists, psychologists, and social workers, who would interview inmates and assign them to the appropriate location. This method of classification was widely accepted, as it would remove troublemakers from the general prison population and protect the community. Rehabilitation went hand in hand with protection. The psychiatric model was mainly concerned with questions of diagnosis, rather than rehabilitation programmes themselves - their inability to advance beyond diagnosis to treatment moved them closer to the other reformers, leading all reformers to agree upon an ideal prison routine. This stated that classification was paramount, to separate those who can be rehabilitated from the incorrigibles, and that education, vocational training, and a work routine, would rehabilitate those inmates capable of reform. The prisoner who functioned well inside the prison walls would function well outside them.

The prison was the place of last resort - only those who were unlikely to be rehabilitated stayed there long - the majority of inmates were paroled swiftly. The use of probation and parole continued to gain support throughout the 1920s and 1930s and, by the 1950s, played a central role within the criminal justice system. With its 'most vigorous development in the 1950s - 60s penal welfarism was by 1970 the established...framework in...America' (Garland 2001:34), with punishment in the community, and specialist regimes such as youth reformatories; correctional facilities, and training prisons, preferred to the traditional prison.

4. The Decline of the Rehabilitative Ideal

Why, then, was there an unexpected shift away from this rehabilitative ideal towards control? This sudden movement has been attributed to a number of factors. The rise in living standards, and high levels of employment during the 1950s had seen a reduction in the gap between rich and poor, and had given society a feeling of security and acceptance

of progressive policies such as rehabilitation and correctionalism. However, by the early 1970s, economic recession had struck the United States, leading to the collapse of industrial production and the loss of millions of jobs. This was primarily due to the economic recovery of countries such as Germany and Japan who had

recovered from their war-time devastation and had begun supplying their domestic markets as well as aggressively exporting. These new economic competitors had an added edge over the US: their wages were lower, and most of their capital stock was newer and more efficient; their factories were state-of-the-art replacements for old ones that had been bombed to smithereens. (Parenti 1999:30)

When economic recovery eventually came, there had been a shift in the type of employment required. Where once skilled manual labour was sought after, technology and the service sector were now in demand, which meant a change in the kind of workforce wanted – either low paid, part-time, usually female, workers, or highly trained and skilled graduate workers. Where once the gap between rich and poor had started to decline, it was now beginning to grow wider than ever. At the same time, there was also a gradual movement by the white middle classes away from inner city areas towards the suburbs, ‘which meant increased living standards for many American workers’ (Parenti 1999:30). Also, vehicular transport started to become more widespread, making it easier for people to commute to work, leaving the inner city areas to the poor, and those less well off, and unable to relocate – which led to the ‘formation of large urban ghettos’ (Parenti 1999:30). It was in these inner city areas that crime rates started to grow. ‘Beginning in the fifties and accelerating through the sixties, there was also an increased migration from Latin America and the Caribbean, which, coupled with the wider society’s racism translated into more ghettoization’ (Parenti 1999:30). The reasons for the growth of crime rate in these areas can be linked to the increase in policing and criminalization in these communities, because these areas were poor, and occupied by immigrants or ethnic minorities, the white middle classes saw those left behind as different, a threat to social order and cohesion which led to these groups becoming increasingly criminalized.

By the 1960s, there was a huge growth in the number of teenagers due to the post-war baby boom. 'During the first *two* years of the decade of the 1960s, we added more young persons (about 2.6 million) to our population than we had added in any preceding *ten* years since 1930' (Wilson 1985:20 emphasis in original). According to Wilson, the majority of these teenagers followed the acceptable paths into employment, marriage, etc; and a 'small proportion of them did the rebellious things that some young people always do. But this time, it was a small proportion of a very large number' (Wilson 1985:21), which again added to the increased crime rate.²

5. Johnson's 'Great Society'

During the 1960s, Lyndon Johnson's 'Great Society' was taking shape, aimed at reducing poverty; eliminating decaying housing; improving education; providing programmes for delinquent youth, and encouraging neighbourhood organizations - in short, creating a more just society through welfare programmes. Despite these aims, the crime rate continued to soar and, rose faster than at any time 'since the 1930s and in some categories to higher levels than experienced this century' (Wilson 1985:14). According to Wilson, liberals denied that the crime rate was, in fact, climbing. It was only when it became so apparent and undeniable that the blame was shifted on to the lack of funds and co-operation provided for welfare programmes, which was why they were not producing the expected results. Blame was also placed on police departments which were seen as brutal and unresponsive, either out of ignorance or prejudice. In addition to rising crime rates, there were also rises in drug abuse; youth unemployment, and welfare rates. The gulf between rich and poor was growing. Separate studies by Brimmer and Moynihan (Wilson 1985), noted that whilst blacks were improving their income positions, by and large, in the inner city slums, they were becoming worse off. Although there was a marked improvement in education levels generally, 'many inner city schools had literally ceased

² At this time it is important to mention that Wilson and Parenti have opposing standpoints on crime and criminals. Wilson's position is that criminals should pay for their crimes, and recommends a number of policy changes which would increase the cost of crime to offenders and reduce it to society - in essence he has a retributivist perspective. This is in contrast to Parenti, who looks behind the criminal to the marginal groups who end up behind prison walls, and the unfairness of the American penal system, and looks towards ways of limiting incarceration.

to function....the workforce was at an all-time high at the same time as were the welfare rolls' (Wilson 1985:15).

However, neither prison overcrowding nor the inflation of the population behind bars was on the horizon....Indeed, the federal government professed to accelerate this downward carceral drift through the expanded use of probation and parole and the generalization of community sanctions aimed at diverting offenders from confinement. (Wacquant 2005:3)

Over the next few years, Johnson's picture of the great society began to crumble. Society was reluctant to pay the high costs of taxation to provide these welfare programmes. The start of the Vietnam war, which divided the general public, and the protests that went hand in hand with it, brought about the end of the Johnson administration, and along with it, his plans for 'the great society', leaving the population filled with unrest, frustration, anger and resentment. In an attempt to regain public support Johnson began

edging towards a new war at home. In 1967 he took drug enforcement and regulation away from the Treasury and FDA, respectively, and handed both to Attorney General Ramsey Clark at the Justice Department, creating a new agency called the Bureau of Narcotics and Dangerous drugs (BNDD), the precursor of today's Drug Enforcement Agency (DEA). (Parenti 1999:5)

Also, at this time, Johnson called upon Congress to develop a new agency to 'strengthen ties between the federal government and local police. Over the next decade that body, the Law Enforcement Assistance Administration (LEAA), spent billions of dollars in an effort to reshape, retool, and rationalize American Policing' (Parenti 1999:6), laying down the foundations for the combination of 'police power, surveillance, and incarceration that today so dominates domestic politics' (Parenti 1999:6).

6. The 'War on Crime'

As many believed Johnson's 'great society' project would hurt the economy, and society in general, due to over taxation, this was renounced in favour of making sure the wealth of society was created through privatization. The opinion of the middle classes was that those less well-off than themselves, those who remained in the declining inner city areas,

chose to be there. They chose not to strive for gainful employment and greater economic standing and, therefore, their fate lay in their own hands. This led to a great reluctance to provide programmes for the poor, and especially, the deviant. President Nixon and his Government made use of these sentiments and brought about a 'war on crime' - it was time to get tough on offenders. The main issue on the agenda was the 'war on drugs', 'trafficking was targeted as "public enemy number one", while using was cast as the linchpin of rising crime rates because, as Nixon informed the nation, "addicts turn to shoplifting, mugging, burglary, armed robbery, and so on" to feed their habits' (Parenti 1999:9). After six months in office, the President in a congressional speech stated that:

Within the last decade, the abuse of drugs has grown from essentially a local police problem into a serious national threat to the personal health and safety of millions of Americans...A national awareness of the gravity of the situation is needed: a new urgency and concerted national policy are needed at the federal level to begin to cope with this growing menace to the general welfare of the United States. (Nixon 1969, in Parenti 1999:9)

While this was taking place within society as a whole, in the Criminal Justice System, and academic circles, there was also a sudden shift away from rehabilitation. Writers such as Foucault, Ignatieff, and Rothman, who had previously argued that the

correctionalist approach was rooted in the structures of modern Western society. The regulatory state, the structures of discipline and normalisation, the ideology of welfarism, the growth of professionalism and research based social policy, the inclusive politics of mass society - all of these provided supports for correctionalism and underpinned its institutions. (Garland 2001:54)

These arguments were challenged in the 1970s. They had 'painted imprisonment not merely as a stagnant institution but as a practice in irreversible if gradual decline, destined to occupy a secondary place in the diversifying arsenal of contemporary instruments of punishment' (Wacquant 2005:4). Indeed,

Rothman concluded his historiographic account of the concurrent invention of the penitentiary for criminals, the asylum for the insane and almshouse for the poor in the Jacksonian republic by sanguinely asserting that the United States was "gradually escaping from institutional responses" so that "one can foresee

the period when incarceration will be used still more rarely than it is today".
(Rothman 1971:295 in Wacquant 2005:4)

However, by the mid-1970s the majority of policy makers, academics, reformers, and practitioners, had disassociated themselves with the rehabilitative ideal - what had once been the keystone of Criminal Justice was now starting to play only a minor supporting role.

7. The Re-emergence of the Prison

'At the end of the eighteenth century, asylums and prisons were places of the *last* resort; by the mid-nineteenth century they became places of the *first* resort, the preferred solution to problems of deviancy and dependency' (Cohen 1985:32 emphasis in original). However, by the end of the 1960s, the prison once more had started to become a place of the last resort. This policy was labelled decarceration. There were several reasons why decarceration became popular at this time, Cohen identifies four directions that this movement came from:

1. Pragmatic and utilitarian: the old system (the prison) was not working, recidivism rates were high, and the crime rate was continuing to grow.
2. Civil liberty and humanitarian: argued that these institutions were brutal, inhumane, and degrading. 'Their system of individual rights and freedom was unnecessary and unjustifiable. Internal reform was pointless' (Cohen, 1985:117).
3. Social-scientific: 'labelling and stigma theory ...had shown the potent and irreversible effects of isolating and segregating deviants. Institutionalization was the extreme form of labelling, and would inevitably create secondary deviation and the reinforcement of deviant self-imagery' (Cohen, 1985:117).
4. Cost benefit: closed institutions were costly and ineffective, the same outcomes - be they good or bad - could be attained at lower costs in the community.

In short, community measures would be more humane, more effective, less stigmatizing and less expensive. However, in reality, the decarceration movement was destined for failure. It was not long before evaluation studies of treatment showed that it was expensive and ineffective.

Liberals, radicals and civil libertarians could draw on the powerful emerging critique of the therapeutic state to show the dangers of unbridled discretion,

disguised coercion and how social problems get blamed on the individual; conservatives could say what they have always said about do-gooders, and also point gleefully to the “nothing works” literature. (Cohen 1985:140)

By the mid-1970s, the treatment model of corrections was laid to rest, replaced by a return to justice, ‘law and order’, deterrence, and incapacitation.

In the early 1970s, a number of publications were produced, most notably the American Friends Service Committee’s (AFSC) 1971 report entitled *Struggle for Justice*, which criticized the treatment model. The AFSC report argued that the ‘individualised treatment model, the ideal toward which reformers have been urging us for at least a century, is theoretically faulty, systematically discretionary in administration, and inconsistent with some of our most basic concepts of justice’ (AFSC 1971, in Garland 2001:55). The report had a major impact, not just in the United States, but internationally, and set the ball rolling for the debates that ensued. Another noteworthy publication was Robert Martinson’s 1974 publication – *What Works in Prison Reform?*, which analysed 231 studies on rehabilitation and treatment programmes between 1945 and 1967. After examining these studies, he concluded that ‘with few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism’ (Martinson 1974, in Garland 2001:58). This led to the widely accepted, albeit oversimplified, view that ‘Nothing Works’.

The issue which attracted the most support was the matter of indeterminate sentencing, and its discretionary powers. In a number of papers, and in his book, *Criminal Sentences: Law without Order*, Judge Marvin Frankel stated his justification for legal controls on sentencing discretion. This was then taken up by the Committee for the Study of Incarceration and authored by Andrew von Hirsh (1976) in *Doing Justice: The Choice of Punishments*, which argued for the elimination of the indeterminate sentencing laws, and introduction of a penalty scale which provided a set of presumptive sentencing guidelines which would, therefore, reduce disparity and guide judicial decision making and limit the use of incarceration and length of sentence. The committee suggested doing this through the use of warning and release for minor offences, intermittent confinement for

'intermediate-level' offences, and incarceration for serious offences only (von Hirsh 1976:137-40). These views attracted support not only from the radical left but also from the hard right wing conservatives. Within a few years, California had developed a determinate sentencing law, closely followed by Minnesota, which established a sentencing commission. By 1990, 15 States had developed sentencing guidelines, 10 had abolished parole, and 25 had passed parole guidelines (Garland 2001:60). During this time, provision and funding of treatment programmes was also severely cut. Emphasis began to be placed more on the criminal process and less on penal welfarism. However, as Rothman now notes,

apart from a few jurisdictions (most notably Minnesota), sentencing guidelines have increased the time served, had relatively little impact on disparity in sentences, promoted prison overcrowding, and reduced the importance of judges in sentencing by enhancing the discretion of prosecutors. The distaste for rehabilitation has contributed as well to making prisons warehouses. (Rothman 1995:33)

8. *The Reagan Years*

While the Nixon-era build up had been a counterrevolutionary war by way of criminal justice and a technocratic reflex to social chaos, the second, on going wave in the crackdown is not so overtly political....it has been about managing and containing the new surplus populations created by neoliberal economic policies, even when these populations are not in rebellion. (Parenti 1999:45)

These populations, originally identified by Spitzer (1975), have been classified as 'social junk' and 'social dynamite'. 'Social junk' can be defined as those who, from the view of the dominant class, are a 'costly yet relatively harmless burden to society' (Spitzer 1975:645). The threat presented by this group is 'passive growing out of its inability to compete and its withdrawal from the prevailing social order, controls are usually designed to regulate and contain rather than eliminate and suppress the problem' (Spitzer 1975:645). 'Social junk' is managed by agencies of the therapeutic and welfare state and poses no political threat. This group comprises alcoholics, drug addicts, the deinstitutionalized mentally ill, and the homeless. 'Social dynamite', on the other hand, is the reverse of this. This population is seen as a potential or actual political challenge.

'They are the population which threatens to explode: the impoverished low-wage working class and the unemployed youth who have fallen below the statistical radar, but whose spirits are not broken and whose expectations for a decent life and social inclusion are dangerously alive and well' (Parenti 1999:46). Therefore, this group cannot be ignored - in order to control them 'social dynamite is ...processed through the legal system with its capacity for active intervention' (Spitzer 1975:646). It is this population which is contained within the ghetto or the prison system.

During the 1980s, Reagan began to reaffirm the 'war on drugs'. He doubled the FBI's funding, while the Drug Enforcement Agency was given a moderate budget expansion. He also 'launched the massive multi-agency South Florida Task Force, under the leadership of Vice President and former CIA Director, George Bush [Senior]. The program became a template for the later and larger Organized Crime Drug Enforcement Task Force Program. By 1984 the OCDETF had created a series of thirteen regionalized federal operations based in "core" cities'³ (Parenti 1999:47).

These task forces were originally aimed at catching distribution networks and traffickers, but it was soon announced by the Justice Department that these drug agencies were, in fact, targeting 'users'. By 'mid 1983 OCDETF operations had produced 1,150 indictments' (Parenti 1999:47). The early 1980s also saw a change within the judiciary as Reagan filled the federal courts with anti-crime, anti-drug, hard right-wing judges.

Reagan also implemented the 1984 crime bill – the Comprehensive Crime Control Act (CCCA) – which brought into being a number of toughened measures such as federal preventative detention, so that judges could deny bail to defendants; the elimination of federal parole; an increase in the maximum fines for drugs cases, toughened mandatory minimum sentences for use of firearms in the commission of federal crimes, and an increase in the penalties for political hostage taking and other acts of 'terrorism'.

³ These included New York, San Francisco, Detroit, Baltimore, Houston, San Diego, and Los Angeles.

As the 1986 election approached, politicians became focused on the enemy within. As Parenti puts it 'they recycled an old and trusted trope: race spoken through the code of crime and welfare'. Incidentally, at this time, a new drug was making the headlines – crack cocaine, the main users of which were poor, young and black. A new Anti-Drug Abuse Act came into being in 1986, which imposed 29 new mandatory minimum sentences, the most poignant of which 'imposed a five year mandatory minimum for 'offenses involving 100 grams of heroin, 500 grams of cocaine or 5 grams of cocaine freebase known as "crack"' (Parenti 1999:57 emphasis added). According to the Bureau of Justice Statistics in 1980, African Americans made up 12 percent of the population, and over 23 percent of all those arrested for drugs offences. However, 10 years later, whilst African Americans still made up roughly 12 percent of the nation's population, the percentage of those arrested for narcotics use had almost doubled to 40 percent, and over 60 percent of all convictions for drugs use were African Americans (Parenti 1999:57).

9. The Bush Senior and Clinton Administrations

Race and crime also became the crux of the 1988 presidential race, when the then Governor of Massachusetts, Michael Dukakis, was beaten by George Bush Sr. after a convicted murderer, Willie Horton,

kidnapped a couple and brutally raped the woman,... Dukakis defended the policy of furloughing first-degree murderers and refused to meet protesters, including the victim's family, who had come to campaign against the policy. Lee Atwater, George Bush's campaign manager, famously said (and on his deathbed, said he regretted) that he would "turn Willie Horton into [Dukakis'] running mate". (Newburn 2002:177)

Horton was an African American. The Bush campaign ran a series of advertisements condemning the black rapist as a threat to white women and to white society. Dukakis was labelled as soft on crime and 'lost in the thickets of liberal sociology' (Chinlund Boston Globe in Parenti 1999:60). 'The results were enormously powerful. Bush became president and the vanquished Democrats decided that the only way to compete in future was to attempt to occupy the "law and order" territory so clearly staked out by Atwater and Bush' (Newburn 2002:177). Bush continued to focus on crime and proposed

numerous new anti-crime legislation. The war on drugs remained a huge focus and 'final funding brought total federal anti-narcotics spending for fiscal 1990 to \$8.8 billion, up from \$5.7 billion the previous year, and about \$900 million more than Bush had sought' (Congressional Quarterly Weekly Report 1989, in Parenti 1999:63). This legislation, and the budget increases, had a major effect on the number of people convicted and incarcerated. 'Between 1980 and 1987 federal drug convictions jumped by 161 percent, while the number of narcotics offenders sent to prison rose by 177 percent' (Bureau of Justice Statistics in Parenti 1999:63). New inmates in the California Prison system increased by an average of 300 per week between 1980 and 1990 and, whilst \$3.3 billion was spent on prison construction, the prison population by the end of the decade was at 180% capacity (Parenti 1999:63). Many thought that Bush was a certainty for re-election but, with the economy in recession, the presidential vote went to Bill Clinton, who continued to build on the law and order strategy, returning to 'Arkansas during his first presidential campaign in order to oversee the execution of a convicted murderer' (Newburn 2002:177); and providing \$7.9 billion in grants for state prison building and policing grants totalling \$8.8 billion once in office.

By the early 1990s, federal penitentiaries were officially operating at 146 percent of capacity and state prisons at 131 percent, even though the number of establishments had tripled in 30 years and wardens had taken to systematically "double bunking" inmates. In 1992, 40 of 50 states and the District of Columbia were under court order to remedy overpopulation and stem the deterioration of conditions of detention on pain of heavy fines and prohibitions on further incarceration. (Wacquant 2005:6)

In short, the federal and state prison systems were in crisis. The sheer number of offenders entering prison meant that correctional authorities just could not keep pace - while government officials continued to offer prison as a solution.

10. The Politicization of Crime

The seemingly increasing high rates of crime, in addition to the growth in popularity of television crime shows, selective coverage and unrealistic dramas, helped to distort public perceptions and brought about a growth in fear of crime. This was especially so amongst

the middle classes, and showed the limitations of the criminal justice system, leading policy makers to deal with the effects of crime rather than crime itself. Politically, this would be seen as very damaging, and as a result of this, there have been an interesting combination of policy developments in advanced societies in the West.

On the one hand, there has been an attempt to face up to the predicament and develop new strategies that are adapted to it: through institutional reforms aimed at overcoming the limits of the Criminal Justice state, or else through accommodations that recognise these limitations and work within them. Alongside these difficult adaptations to the reality principle there is a recurring attempt to evade its terms altogether, particularly on the part of elected officials who play an increasingly prominent role in Criminal Justice policy making. (Garland 2001:110)

According to Garland, this 'politicized perspective' takes two distinct forms - either it rejects the dilemma and reasserts the myth of the sovereign state and its plenary authority to punish, or it rejects reasoned action in preference of acting out society's anger and outrage that crime provokes (Garland 2001:110). It is this increasingly powerful political response to society's call for just desserts and harsher punishments that has led to the increased use of imprisonment, and the expanded length of sentence that those being processed through the Criminal Justice System can now expect. Politicians, in order to gain public popularity and, therefore, re-election, play on society's calls for retribution and harsher prison terms, which have also led to the revival of chain gangs and policies such as 'three strikes and you're out', taken from the sport of baseball, the principle being if convicted of three offences, the result is life imprisonment.

The development of the supermax prison also fits into this category, as this can be seen as the next step in retributive punishment, taking the issue of control to the extreme. It makes state governments look as though they are taking action against serious and violent offenders, whilst keeping the public happy that these offenders are being held securely and receiving their just desserts. When the public is satisfied that prisoners are receiving what they 'deserve', then they are more likely to vote for the politicians who called for the facility to be built in the first place. In other words, politicians use penalty to 'connect with the fears, insecurities, and prejudices of their intended audience - particularly

voters' (Garland 1990:53). Such political-cultural factors will be examined in detail in the subsequent chapters. Were the decisions to build supermax facilities politically motivated in Wisconsin and California or were there other, more significant, factors which played a significant role in their construction?

The new penal ideal focuses on the public being protected and its feelings and attitudes being voiced. Political and public opinion now play a greater role in deciding penal policy than the views of the professionals. For example, the Secretary of Corrections is often appointed by the elected Governor so, even within the Department of Corrections itself, those with the most high ranking positions are politically motivated, making it easier for state governments to implement whatever changes they deem to be necessary or, indeed, will gain them the most votes in the next election.

However, whilst 'the official doctrine on the matter, diffused conjointly by state managers, elected officials, and the media', is that this great carceral leap 'is a response to the relentless growth of crime, and especially violent crime....supported by a public that has been increasingly and intensely concerned about its safety as crime diffused throughout society', (Wacquant 2005:11) there is a problem: all of the data available has shown that crime rates have not increased, but have actually levelled off, or declined, during the last 30 years. In addition to this, the majority of those serving time behind bars have not been convicted of serious or violent offences but are small-time, non-violent, offenders – most notably, as stated earlier, drug offenders. In short, American prisons and jails are now filled with inmates who, 3 decades ago, would not have been sent to prison, and who 'would not be rotting there if the public were better informed about the realities of the country's penal policy' (Wacquant 2005:15). What has changed, argues Wacquant, is not 'the frequency and character of criminal activity but the *attitude of the society and the responses of the authorities toward street delinquency* and its principle source, urban poverty concentrated in the big cities' (2005:15 emphasis in original). Since the mid 1970s,

the carceral system of the United States serves not only to repress crime: it also has for mission (sic) to bolster the social, racial and economic order via the

punitive regulation of the behaviours of the categories prone to visible and offensive deviance because they are relegated to the bottom of a polarizing class and caste structure. (Wacquant 2005:15)

In other words, the prison has been called upon to contain the disorders generated by working class, minority populations.

11. Private Prisons

In the United States, the growth in the use and attractiveness of prisons has led to a huge expansion in expenditure on these institutions. Very little forethought was given to the impact of incarcerative measures and, with only a small amount of funding, the penal systems of the United States started to collapse, resulting in 60% of all States being held under court order to reduce overcrowding and improve conditions (Bureau of Justice statistics Bulletin in Ryan and Ward (1989:2)). This pressure, at both state and federal level, meant that new methods of financing the construction of new prisons, or expansion of old ones, was needed, leaving officials with the task of 'investigating new and more efficient ways of running public services based on private business practices and, wherever possible, hiving off public functions to the private sector' (Ryan and Ward 1989:1). 'Reagan's Reform 88 initiative was especially designed to bring public management practices more into line with those employed in business, while his task force on private sector initiatives was specifically intended to involve the private sector more directly in the delivery of hitherto public services' (Ryan and Ward 1989:1). This initiative was 'well received by the private sector and entrepreneurs continue to come forward with their own schemes to diminish "big government" and augment their corporate profits' (Ryan and Ward 1989:1). The privatization of prisons was merely the next step in the privatization movement.

During the 1980s, as mentioned above, the majority of the American prison systems were under strain, suffering from major overcrowding, and often under court orders to expand their capacity, or reduce the number of inmates held within their prisons. The cost of carrying out these improvements was huge, using up valuable financial resources. Many state governments, as well as the federal government, decided that privatizing them

would reduce the amount governments would have to spend on prisons. This opened up the market to private organizations, which saw the prison as the next major business opportunity, as they are able to build and run prisons for much less than it is practicable for the government, whilst making a huge profit at the same time. Local jails also fit into this category. At the May, 1994, American Jail Association conference, 'the industry received this invitation as a preparation for the conference:

JAIL EXPO 1994

TAP INTO THE SIXTY-FIVE BILLION DOLLAR LOCAL JAILS MARKET

Jail expo attendees are the decision-makers in local corrections – sheriffs, jail administrators, local elected officials, correctional officers, health care directors, food service directors, trainers, architects, engineers – people from across the nation involved in jail management issues, new trends, services, and products.

There are over *100,000* people who work in the nearly 3,400 local jails in the United States. Last year alone over *\$65 BILLION* was spent in the industry. The local jail market is very lucrative! Jails are **BIG BUSINESS**. (Christie 2000:117 emphasis in original)

Wackenhut and the Corrections Corporation of American (CCA) are two of the largest organizations working in the penal sector.

Although the CCA did not become profitable until 1989, by 1997 it reported a net income of over \$53 million. It now owns and operates 44 prisons and jails and manages a further 35 in the USA. It employs over 14,000 staff and is responsible overall for almost 72,000 beds. Between 1992 and 1997 CCA's shares performed so well that the company was one of the top five on the New York stock exchange. (Newburn 2002:178)

In a Wall Street Journal article, a stockbroker explains:

The beauty of the prison-management business...is that incarceration rates are increasing faster than the prison budgets of many states and municipalities. Though the savings are difficult to measure, analysts contend that Wackenhut typically can slash 15% from the \$50 it takes government to clothe, feed and guard an inmate each day. (Christie 2000:118)

Other advantages of privatization are that it makes it easier for the government to carry out their policies, as they do not have to ask voters for permission to build new institutions due to the fact that these are private ventures. Instead, they can borrow money for construction, or rent out existing prisons from private industry.

12. Prison as Industry

In addition to the prisons themselves, there is now a huge industry in prison technology: journals such as *Corrections Today* are filled with advertisements promoting a wide range of products aimed at the corrections industry. These include items such as telephones which are controlled by prison officials, allowing them to bar inmates from calling certain numbers, restricting the length of calls and monitoring and recording all their phone conversations, to human restraint equipment such as the 'prison band', which is made up of two locking metal snaps, is waterproof and can be written on, to tear gas and non-lethal weapons such as the 'Cap-Stun II' (Christie 2000:113-115). There is also a huge industry in lethal electric fencing; door locking systems; video conferencing - so that inmates can have parole and probation hearings without leaving the facility, and closed circuit television surveillance which, in some supermax prisons, has also been used during prison visits, meaning that friends and relatives do not actually come into contact with inmates during prison visits but talk to each other via closed-circuit video terminals.

In addition to private prisons and the growth of prison technology, there is a large amount of competitiveness in state prison building and providing for prison consumption needs. This area is especially aggressive in regions in economic decline. In the past, no one wanted a prison in their neighbourhood, today there is fierce competition for the construction of a prison in one's district, because, not only do the prisons themselves provide secure employment for the local workforce, but services such as catering and laundry are often contracted out to other companies. These factors have led to the prison becoming a highly lucrative mechanism within American society both from an economic and social standpoint.

Based upon the above factors, governments are happy to use prison as a solution because, on the one hand, it provides a good economic resource, whilst on the other, they can argue that the prison works as a punitive measure in itself - the prison provides an instant solution and is easy to implement.

Because they have few political opponents, comparatively low costs and they accord with common sense ideas about the sources of social disorder and the proper allocation of blame.....They allow controls and condemnation to be focused on low-status outcast groups, leaving the behaviour of markets, corporations and the more affluent social classes relatively free of regulation and censure. (Garland 2001:200)

13. Conclusions

Within the growth of mass imprisonment, there has been the development of the supermax prison. The approach of the state to inmate bad behaviour in the 1950s was to increase the 'therapeutic thrust in prisons' (Rothman 1995:189), 'thirty years later, it is to intensify the drive to "classify, separate, and isolate"' (Irwin 1980 in Wacquant 2001:119), 'to toughen discipline, routinize the use of "lockdown" and to multiply "special housing units" and "supermax" facilities' (Wacquant 2001:119).

Whilst these prisons are similar in design and regime to the 19th century prisons,

the early prisons, however brutal, had as their founding premise the idea that prisoners could be made or re-made into subjects for eventual re-inclusion to society. Contemporary control prisons, in contrast, are profoundly exclusionary, their regimes of isolation softened by only minimal gestures toward reintegration into the general *prison* population. (Rhodes 2002:458, emphasis in original)

In other words, whilst the first, 19th century, prisons were carrying out these regimes for utilitarian reasons, for what they believed was the good of the individual, the modern supermax is not interested in the reformation of the prisoner. They are used merely as a method of controlling and warehousing those prisoners who are perceived to be a risk to prison order, whilst at the same time fulfilling the role of being seen as tough on crime.

The idea of rehabilitation has undergone several transitions to arrive at its current position, from its initial decline in the mid 1970s, when all inmates who passed through the criminal justice system underwent programmes to try and rehabilitate them. There was then an intermediary stage whereby it was the duty of the state not to foist programmes on to inmates who did not want to receive them, but to make sure that those who wanted to 'go straight' had access to such programmes. Now, inmates are penalized for not taking advantage of amenities by removing these facilities altogether, so that if inmates wish to participate in programmes they are required to pay half or all of the fees. Current thinking now is that inmates are responsible for their own rational choices: therefore, it is their fault they are in prison. This is carried over into the supermax. Inmates end up in these facilities because they refuse to accept any of the opportunities provided for them - supermax deals with regime rather than rehabilitation. The neo-classical rhetoric confers that bad behaviour gets you 'in' and good behaviour will get you 'out'. It is a prisoner's choice to misbehave and end up in supermax, he is responsible for his actions and, therefore, it is his choice to behave to get out. However, this is an over simplification and is complicated when applied to groups such as the mentally ill and ethnic minorities.

Although the collapse of the rehabilitative ideal was the precursor to the development of institutions like supermax, there has been a resurgence of different versions of the rehabilitative ideal. Rather than focusing on all prisoners, programmes are targeted at particular types of prisoner. For example, programmes for sexual offenders such as paedophiles; anger management programmes, and drug treatment programmes, have burgeoned. There is rising support for those who think that these kinds of programmes should be introduced for lower security, or lower control problem groups, but not for prisoners housed within supermax, as they are deemed to be the most recalcitrant and capricious and, therefore, no longer deserving of these things. Taken in contrast to cost, the extent that behavioural control programmes should be introduced is subject to cost analysis and who should pay. Educational programmes, especially post secondary education programmes, for which inmates could once apply for grants to help fund their studies, are now paid for by inmates and their families. This is due to the 1994 Crime

Control and Law Enforcement Act, signed by Bill Clinton, which, *inter alia*, prohibited all prisoners from receiving Pell grants – the principal source of funding for post-secondary correctional education, even though it has been found that ‘getting a college degree while in prison has been the only programme (in Massachusetts prisons) that had been 100 percent effective in preventing recidivism over a 25 year period’ (Gilligan 2000 in Page 2004:358).

By eliminating prisoners from the grant program, the politicians *communicated* politically viable and popular messages to key audiences. They showed that they – opposed to their supposedly liberal and insensitive colleagues, and criminal justice experts – respected and shared voters’ disdain for street criminals and desire for exact and punitive sanctions. (Page 2004:373 emphasis in original)

However, politicians also expressed that they, like the general public, thought that prisoners should have some access to limited rehabilitative programming, but that the main purpose of incarceration was punishment, therefore, whilst the government is likely to pay for anger management programmes, it will not pay for purely educational programmes beyond basic literacy and numeracy. Within supermax prisons even these types of programmes are often limited.

The area of corrections in the United States is a very contradictory one. On the one hand, inmates must have their constitutional rights protected, yet on the other it is acceptable to electrocute or gas them to death. While some argue that supermax is a humane form of punishment, those outside the field of corrections, such as academics, human rights organizations, and even some within the field of corrections, argue that these facilities are over used, under researched and could, in fact, provide long term detrimental effects on inmates’ physical, and especially mental, health. Again, what remains even less clear is *why* and *how* they develop in particular socio-political contexts.

The thesis aims to add, expand, and challenge, some of the issues raised in this chapter by examining the next step in this development - the creation and development of the supermax prison. This will be done through the use of case studies on two separate

supermax facilities in differing states, namely Wisconsin, and California, focusing on their initial proposals up until the present day and providing a detailed examination of the various regimes and daily operating procedures within these facilities. Much of the current literature on these institutions focuses on the general, such as regimes and conditions in these institutions as a whole, rather than on specific case studies. Those who argue for a new penology tend to generalize about penological developments without recourse to detailed local studies of specific sites such as supermax correctional facilities. The next chapter focuses on supermax prisons in general, beginning with the origins of the supermax from its roots in the federal prison system and the turmoil within this system during the 1970s and 1980s which resulted in its conception, before moving on to examine the conditions within these institutions. The chapter will also provide a review of the literature concerning supermax prisons.

CHAPTER FOUR

The Beginnings of Supermax

The purpose of this chapter is to give a brief description of how the modern supermax came to evolve as a separate, although connected, entity within the prison system. It will also focus on the problems which are associated with defining what a supermax prison actually is, and give a brief outline of the conditions under which inmates within supermax find themselves before moving on to look at the research that has been carried out on these facilities. The gaps within this research are noted before going on to explain how this thesis will add to the literature in this area.

1. Origins of the Supermax

Alcatraz began to operate as a federal penitentiary in 1934 and was 'intended to establish a new standard for the punishment and incapacitation of the country's most notorious criminals, and the federal prison system's most accomplished escape artists and trouble-makers' (Ward 1987:77). However, after 30 years of operation, and under a cloud of controversy, Alcatraz was closed in March 1963 and the majority of its inmates dispersed between Atlanta and Leavenworth and a number of other federal penitentiaries. Only 10 prisoners were sent to Marion - 'its planned successor' (King 1999:166). This was mainly due to the fact that Alcatraz inmates 'were seen as posing too severe a test for the new facility and during the mid-1960s, Marion housed a population comprised largely of younger prisoners' (Ward and Breed 1984:2). However, by the late 1960s Marion was receiving ex-Alcatraz inmates who had failed to 'fit in' elsewhere. As the population of Marion got older and its inmates more sophisticated, the levels of violence began to escalate, leading the Bureau of Prisons to return to the 'policy of concentrating the most disruptive inmates not in one prison but in a special unit' (Ward and Breed 1984:2), and 'on 26th June 1972, 'H' unit at Marion was designated as a control unit' (King 1999:167). The purpose of this unit was 'to separate those offenders whose behaviour seriously disrupted the orderly operation of an institution from the vast majority of offenders who wish to participate in regular institutional programs' (Bureau of Prisons 1973, in Ward

and Breed 1984:2). In 1978 the Bureau of Prisons began to put into place a new 'inmate classification system which called for a higher security classification level to the levels already in place' (Ward 1987:80) and, in 1979, Marion became the Bureau of Prisons' first level 6 penitentiary - its purpose to provide 'long-term segregation within a highly controlled setting for prisoners from throughout the federal prison system who:

- (i) threatened or injured other inmates or staff
- (ii) possessed deadly weapons or dangerous drugs
- (iii) disrupted the orderly operation of a prison
- (iv) escaped or attempted to escape in those instances in which the escape involved injury, threat of life or use of deadly weapons. (Bureau of Prisons, 1979 in King, 1999:167)

The decision to reassign Marion as a level 6 penitentiary was influenced by a number of incidents which included, a number of gang-related killings at USP Atlanta; the growing power of gangs at other prisons, including the creation of 'assassination squads' (Ward and Breed, 1984:3); an increasing number of assaults on both inmates and staff at level 4 and 5 prisons (Maximum Security); the violent deaths of 3 inmates at Marion during a 1 year period; the stabbing of the Associate Warden and the Food Service Steward in the inmates' dining area at Marion, and a series of escape attempts at Marion involving the use of explosives, weapons and outside assistance (Ward and Breed (1984) and Ward (1987)). A task force established in 1979 by the Federal Bureau 'concluded that the need to reduce violence in the federal prison system superceded (sic) all other considerations' (Ward and Breed 1984:4). By making Marion a completely closed facility with 'strictly controlled movement procedures', other prisons would be able to send their most problematic and disruptive inmates to the facility, allowing other institutions to operate more openly. However, the task force did draw attention to the fact that 'having changed the function of Marion at a time when the Bureau's population of violence-prone offenders was climbing' and as more states were sending their most recalcitrant prisoners to the federal system, 'serious problems might well develop in the future' (Ward and Breed 1984:6). In the event, just as the task force had predicted, Marion did develop serious problems.

Between February 1980 and June 1983 there were 14 escape attempts; 10 group disturbances; 28 assaults on staff; 54 serious inmate on inmate assaults, and 8 inmates killed by other inmates (King 1999:168). After several more months of violent attacks on both inmates and staff; the fatal stabbing of two correctional officers on the same day – 22nd October 1983 – in separate, but identical incidents, the death of an inmate shortly thereafter; and a number of short-term lockdowns and suspensions of activities; on the 28th October 1983 ‘a state of emergency was declared by Warden Harold Miller with all activities, except visits, cancelled for all general population inmates’ (Ward and Breed 1984:10). United States Penitentiary Marion was placed on permanent lock-down status.

A report on the lock-down of Marion (Ward and Breed 1984) recommended with some reluctance that the lock-down should not be lifted in the immediate future. In the long term, it was recommended that the Bureau of Prisons construct a ‘new generation’ level 6 prison similar to the recently constructed Oak Park Heights (OPH) correctional facility in Minnesota (see King 1991, King 1999, and Briggs *et al.* 2003 for further discussion on OPH) to serve as a replacement for Marion, and that control units should be constructed in each of the 5 regions which comprise the Bureau of Prisons. Meanwhile, in the short term, Ward and Breed made a number of recommendations which would, to some degree, improve living conditions for inmates, proposing that the Bureau should provide a level system of positive incentives in terms of opportunities to all inmates, including those in the control unit, and halt the use of forced digital rectal examinations for non-medical reasons and instead use alternatives such as x-rays. In addition, they suggested that the Bureau should consider whether it should accept difficult to manage inmates from other states as well as its own; consider being more open with inmates as to why they were transferred to Marion; consider the establishment of a mental health unit; improve access to legal materials and provide religious groups equal access to inmates.

Marion has since been closed down, replaced by the Administrative Maximum Penitentiary (ADX) in Florence, Colorado: however, it remains a symbol and a metaphor in the development of the supermax prison.

Although lock-down is not the essence of supermax – Marion’s lock-down status is the model which most modern supermax prisons have chosen to imitate.

2. Problems of Definition

There has been some question about how many supermax facilities are currently in operation, with numbers ranging ‘from 32 states having such facilities in 1997 to 42 states operating such facilities during that same year’ (Briggs *et al.* 2003:2). This figure has since increased to 44 states operating supermax facilities as of 2004 (Mears 2005:7). The variation in these figures is due to a lack of common definition, which first became apparent during a 1997 survey carried out by the National Institute of Corrections (NIC) which defined supermax as:

A free-standing facility, or a distinct unit within a facility that provides for the management and secure control of inmates who have been officially designated as exhibiting violent or serious and disruptive behavior while incarcerated. Such inmates have been determined to be a threat to safety and security in traditional high-security facilities, and their behavior can be controlled only by separation, restricted movement, and limited direct access to staff and other inmates. (NIC 1997:1)

Responses were received from 50 states which highlighted plainly that ‘what is “supermax” in one jurisdiction may not be supermax in another’ (NIC 1997:1). This, suggests Riveland, is due to ‘their differing needs, classification criteria and methods, and operational considerations’ (Riveland 1999:3). King (1999) however, identified three critical elements incorporated in the NIC definition:

- (i) Accommodation which is physically separate, or at least separable, from other units or facilities, in which
- (ii) a controlled environment emphasizing safety and security, via separation from staff and other prisoners and restricted movement, is provided for
- (iii) prisoners who have been identified through administrative rather than a disciplinary process as needing such control on grounds of their violent or seriously disruptive behaviour in other high security facilities. (King 1999: 171)

As identified by Riveland (1999) above, one of the main reasons why there is such dispute over the number of supermaxes in operation is because each state has its own unique criminal justice system in addition to the federal system which covers the whole of the United States. Therefore, because each state has its own justice system and, in turn, its own prison system, each locale has its own unique problems and methods of controlling and classifying inmates, resulting in the term 'supermax' often being used as a generic term for a state's most secure prison or solitary confinement unit.

One of the reasons many believe supermax facilities have proliferated in recent years is the fact that crime and punishment have become 'central issues in American politics....and advocating harsh punitive policies for criminal offenders remains a politically popular position' (Fellner 2000:2). Some such as Fellner (2000) believe this is as a result of 'elected officials advancing tough-on-crime policies that have largely promoted supermax prisons for their symbolic message, regardless of actual need'. In addition, many consider that both within the prison system, and within society as a whole, offenders are becoming tougher and more capricious and, therefore, the best way to deal with these 'disruptive' and 'dangerous inmates' is to confine them within separate institutions. This can be linked to debates surrounding the 'new penology' (see Chapter Two) which is concerned with techniques for identifying and managing groups according to the level of dangerousness or risk at which those groups or individuals are perceived to be.

3. Conditions inside Supermax

Although conditions within these institutions vary from facility to facility, there are a number of common characteristics which apply to the majority of supermax prisons. These are that, prisoners are confined to their cells for up to 23 hours a day, with few recreational and educational opportunities. They are allowed out for a limited number of visits and telephone calls, to exercise and, in some institutions, to shower, however, it is becoming increasingly popular for many facilities now to have showers incorporated into the cells. Food, religion and other services such as doctors' visits are typically delivered at the front of prisoners' cells. Inmates are denied contact with other prisoners and staff

and, when it is possible for inmates to communicate with each other, for example, through ventilation shafts, this is seen as a design fault in the physical plant. Movements are highly restricted and, if an inmate needs to be transported from one part of the prison to another, this is done via the use of shackles and cuffs, usually in the presence of 3 or 4 officers.

Within a supermax setting, use of force is often open to misuse and abuse. Within any prison environment there is some level of an 'us versus them' mentality which is accentuated further within the supermax setting due to the very nature of these institutions. There is limited interaction between prison guards and inmates, the majority of these inmates are black, Hispanic or from other ethnic minority groups, and are usually from poor urban inner city neighbourhoods. Owing to the location of these facilities, correctional officers are predominantly from white rural backgrounds with little or no prior experience. All these factors have resulted in prison staff having little empathy or understanding for these inmates. This is compounded further by the fact that these inmates have been labelled the 'worst of the worst' and, therefore, correctional officers expect them to live up to these expectations and treat them accordingly. This has led to incidences whereby officers have applied use of force measures such as stun devices, restraints and other equipment intended to regain control of unruly inmates needlessly and, in some cases, even maliciously (see *Madrid v Gomez* 1995). One practice which has been open to abuse is the cell extraction, whereby the prisoner is forcibly removed from his cell - these are carried out for a number of reasons,

- (i) Ensuring safety. For example, an inmate covers the window to his cell and cannot be observed. Officers enter the cell to ensure that he is safe and not harming himself.
- (ii) Transporting an inmate to the shower, court, and so forth.
- (iii) Removing an extremely disruptive inmate to "time out" outside the cell block to minimize disruption to other inmates. (Atherton 2003:73 in Neal 2003)

This process involves a team of between 4 and 6 officers and a supervisor. One officer will use a video camera to record the extraction and a medical examiner will be present in case of injuries. Each officer is assigned a task. A chemical agent such as OC (Oleoresin

Capsicum) is sprayed through the door hatch into the cell and, while the prisoner is trying to recover from this, officers enter the cell and restrain him. The inmate is then placed on a gurney and taken to the medical centre, where he is showered to remove any chemicals left on his skin and then, in most instances, taken back to his cell, which will have been searched in his absence.

One of the main criticisms levelled against supermax confinement is its effect on inmates' mental health, and, in particular, the housing of inmates with pre-existing mental disorders in these facilities; resulting in litigation against several supermax institutions (see *Jones' El v Berge* 2001 and *Madrid v Gomez* 1995). The consequences of this type of confinement on mental health can be associated with Foucault's (1977) argument regarding the movement of punishment away from the body towards the soul or mind, and also within Garland's (1990) analysis of cultural sensibilities, as he argues that although physical punishment has become less acceptable within contemporary civilization, mental and emotional pain are still accepted within the field of penality by governments and society as a whole (see Chapter Two).

Much attention has also been focused by various human rights organizations such as Human Rights Watch and Amnesty International on the mentally ill being held in supermax confinement. A report by Human Rights Watch on the conditions at Indiana's supermax facility found that 'there is little doubt that prolonged confinement in conditions of social isolation, idleness and reduced stimulation is psychologically destructive' (Fellner and Mariner 1997:33). Research conducted on the effects of solitary and supermax confinement has led experts to conclude that such conditions can produce a number of symptoms such as hypersensitivity to external stimuli, free floating anxiety, perpetual disturbances, difficulty concentrating, memory lapses, paranoia, aggressive fantasies, and impulse control problems (Grassian in Haney and Lynch 1997:521).

For prisoners who have pre-existing mental health problems, the risk of suffering from these conditions is greatly increased. As Dr Stuart Grassian concluded in his evidence against Pelican Bay – California's supermax facility – 'for some, SHU (Secure Housing

Unit) confinement has severely exacerbated a previously existing mental condition' (*Madrid v Gomez*, 1995:164). In an interview with Human Rights Watch, he further added 'individuals whose internal life is chaotic and impulse-ridden, and individuals with central nervous system dysfunction are particularly unable to handle supermax conditions' (Grassian in Fellner and Mariner 1997:35). However, it is precisely these inmates who are prone to committing infractions who find themselves being transferred to supermax in the first place, and once housed there they are unable to progress out of the facility and back to a general population prison precisely because they are unable to comply with the rules. This is especially the case in jurisdictions which impose a level system – whereby inmates must progress through a number of stages based on their good behaviour before they can be transferred back to a general population prison – as these inmates are unable to behave long enough to progress, resulting in them continually oscillating between the first few levels, unable to advance beyond this.

The amount of time an inmate is expected to stay in supermax confinement varies from institution to institution. Some facilities have a fixed amount of time an inmate must serve whilst others have an indeterminate system. In jurisdictions which employ a level system, as mentioned previously, not all inmates manage to complete these levels – as a minor infraction can send inmates back to entry level, much like snakes and ladders – and, on completion of their sentence, they are released back into society without any kind of reconditioning or rehabilitation. This can be especially problematic as these inmates are likely to have spent long periods in isolation and are, at the very least, likely to have some difficulty in coping in the community.

The next section of this chapter focuses on the literature concerning supermax prisons. By examining this literature it is possible to discover what aspects of supermax have been researched, what the general themes of this research are and, identify the gaps in this literature to which the thesis aims to contribute.

4. A Review of Current Research

Finding critical scholarly work on the development of supermax is particularly difficult as this is an area which seems largely to have been neglected within academic research. There is some material on the development of the federal supermax, as can be seen from the above, but, from a state by state point of view, literature is particularly sparse. Indeed, finding literature on the subject of supermax prisons is altogether not an easy task, and this can be linked to several factors. Firstly, the supermax is a very specific type of prison holding only 2% of federal and state prisoners sentenced to a year or more, whilst most literature tends to focus on the prison on a much broader, more general, scale, examining areas which account for a much larger percentage of the prison population. Secondly, the supermax prison is still quite a modern phenomenon, developing predominantly during the 1990s, as it was during this period that its usage began to expand from a small number of states⁴, which built such facilities during the 1980s, further afield to states such as Wisconsin, which completed its supermax in 1999.

For these reasons, literature focusing on the supermax facility is small in quantity and scope. Topics covered within supermax research include: the psychological effects of supermax and solitary confinement - linked within this is the history of solitary confinement and its effects on mental health (Haney and Lynch 1997, Toch 2001, 2003); conditions within supermax prisons (Fellner and Mariner 1997, Fellner 1999); lawsuits regarding unconstitutional treatment in supermax facilities (*Madrid v Gomez* 1995, *Jones'El v Berge* 2001); case studies on regimes in particular institutions (Henningesen *et al.* 1999, Fellner 1999 and Kurki and Morris 2001); and the history of the federal supermax prison (Ward and Breed 1984, King 1999). These will be discussed below. What appears to be missing from this literature is how and why have supermax prisons developed at the local level, in what social, economic and political contexts have they come about.

⁴ Arizona, California, Minnesota and Maryland

(i) History of Solitary Confinement and the Effects of Supermax on Mental Health

The issue of whether the supermax prison and, indeed, solitary confinement in general has a damaging effect on an individual's mental health has increasingly been called into question. Several examinations by prominent psychologists have found that supermax prisons are a cause for concern in relation to prisoners and increased mental illness. One of the first studies to look at the psychological implications of solitary confinement was by Stuart Grassian (1983), who carried out clinical observations on 14 prisoners in Massachusetts as part of a lawsuit against Walpole Correctional Institution. From his research, and from the examination of past studies into solitary confinement, Grassian concluded that prisoners in this type of confinement suffer conditions such as hypersensitivity to external stimuli and problems with impulse control. He named these symptoms "Reduced Environmental Stimulation Syndrome" or RES. Craig Haney has also conducted research on solitary confinement in supermax institutions (1997, 2003). His work focuses on the increased use of solitary confinement within supermax prisons and the long history of criticism amongst mental health professionals regarding its usage. One article, Haney and Lynch (1997), focuses on early laboratory experiments on sensory deprivation, examines the psychological literature on the importance of social contact and support, and looks at data from isolated and segregated prisoners. In their conclusion, Haney and Lynch argue that the recent trend of incarcerating inmates in supermax is dangerously ill-conceived - it ignores the findings of the literature, which argues that prolonged supermax confinement is damaging to inmates mental health, and there is no evidence that such confinement has any lasting positive effects. They argue that criminal justice seems to have come full circle on the issue of solitary confinement, with supermax putting 'a technological spin on an old and long-discredited idea' (Haney and Lynch 1997:569).

Hans Toch (2001) (2003), has written several articles examining the history of the use of solitary confinement methods in American prisons, starting with the Auburn prison system in New York during the 1820s (see Chapter Three). Toch looks at how, even at this stage it was found that inmates were displaying signs of mental distress. He then focuses on the modern supermax suggesting that, at present, 'conditions which are as

experimental and arbitrary as early prison conditions have been prematurely randomised, naturalised and reinforced by massive expenditures in physical plants and equipment and advanced custodial technology' (Toch 2003:226). Boyer (2003) also looks at the history of solitary confinement in much the same way as Toch, focusing on the Auburn and Pennsylvania prison systems. Again, he bases much of his argument on the research carried out by Grassian and Haney.

Other studies have been carried out on the psychological effects of solitary confinement in supermax institutions – Good (2003), Harrington (1997), Walton (1997). However, these provide a brief discussion on the effects on mental health under this type of confinement but rely heavily on the research of Haney (1997, 2003) and Grassian (1983), rather than providing anything new to this area of research. Others again borrow heavily from Haney and Grassian's work and then move on to look at other issues or their own research (Morris (1998); Kurki and Morris (2001)).

Rhodes (2002) takes a slightly different approach focusing on psychopathy in supermax prisons. She conducts an ethnographic study of a small control unit in a medium security prison, carrying out interviews with mental health staff and inmates who are considered by staff to be psychopathic. Within the study, Rhodes argues that when these inmates are labelled psychopathic it is impossible for them to return to the general prison population as, no matter how they behave, they are devious and can pretend to be 'normal', making them even more dangerous, and, therefore, isolation in supermax units becomes inevitable for this type of inmate.

These debates surrounding the effects of supermax on mental health are identified within the case studies of the thesis (see Chapters Six and Seven), as in both Wisconsin and California serious concerns are raised about the housing of mentally ill inmates in these facilities, this has resulted in litigation being filed against these institutions. Furthermore, in California, both Stuart Grassian and Craig Haney gave evidence for the plaintiffs with regard to the effects on prisoners' mental health of the Pelican Bay Secure Housing Units.

(ii) *Prison Conditions in Supermax*

Many articles have focused on conditions within these supermax facilities, the majority of which are argued most visibly by human rights organizations and in legal litigation such as class action lawsuits which has been filed against these facilities. Anderson (1999), Boyer (2003), Harrington (1997), all focus on the *Madrid v Gomez* case (this will be discussed in detail in Chapter Seven) within their articles. Other essays which feature lawsuits are Good (2003), and Henningsen *et al.* (1999), the former examining a lawsuit being filed at Tamms Maximum Security Institution regarding the violation of inmates' 8th Amendment rights, particularly on the behalf of mentally ill inmates being housed at the facility. The latter, focusing on the *Ruiz v Texas* lawsuit in which the federal government declared the state of Texas' Department of Corrections to be unconstitutional. Pettigrew (2002), examines technology and the 8th amendment, focusing on the conditions within supermax and the use of technologies such as CCTV within these institutions, he again looks at the *Madrid v Gomez* and *Jones 'El v Berge* (discussed in Chapter Six) lawsuits and concludes that technological advancements have allowed supermax to achieve a level of isolation unrivalled by any other period in history and that if, unchecked, could lead to 'undesired and unintended consequences' (Pettigrew 2002:215). Lynch (2005), looks at a different aspect of supermax, as many of these facilities have started to house those inmates awaiting the death penalty (see King 1994, below). Lynch focuses on one of Arizona's supermax facilities, the Special Management Unit II (SMU II) at Eyman and the prisoners housed on death row there. She looks at two recent cases (*Comer v Stewart* and *Miller v Stewart*) involving the 9th Circuit Court of Appeals and whether the conditions of confinement in the SMU II are so severe that inmates actually volunteer to die in order to escape death row. She concludes that both the issue of supermax and death row need to be questioned as penal policy.

Human rights organizations have also produced much information regarding conditions within supermax; these include studies carried out by Amnesty International, Human Rights Watch and the American Friends Service Committee. Jamie Fellner has conducted most of the research carried out by Human Rights Watch. Her first study, carried out in 1997 with Mariner, focused on supermax confinement in Indiana, in which they look into

conditions at The Maximum Control Facility (MCF) at Westville, and the Secured Housing Unit at Wabash Valley Correctional Facility in Carlisle. This study mentions the international standards regarding the treatment of prisoners and also provides a set of recommendations to improve conditions at the facilities.

Fellner's other article (1999), focuses on Virginia's supermax, Red Onion State Prison. Fellner focuses on staff and inmate relations at the facility, which can be problematic as the majority of inmates are black and from inner city areas, whilst most correctional officers are white and from rural backgrounds. This leads to conflicts due to preconceptions and a lack of understanding on both sides. The article also provides details of physical abuse at Red Onion such as the use of stun guns on inmates – Virginia is one of the few states which permit the use of firearms within the prison perimeter. In 2000, Fellner also wrote an article which provides an overview of supermax generally. This gives details of the number of prisoners held within supermax confinement, the conditions these inmates are housed in, entry and release criteria, and general regimes within these prisons. She also provides a detailed account of why supermax facilities have arisen, giving reasons such as growth in the prison population, and how being tough on crime is politically popular arguing that there has been little debate over the penological justification for supermax and that many correctional professionals do not see the use of supermax as a wise choice. She concludes that 'principled leadership, careful staff training, and supervision, and effective internal review processes can help to minimize the possibilities of unnecessary supermax confinement as well as abusive conduct by correctional officers' (Fellner 2000:4). She also states, that many DOCs restrict information about their facilities, and that many states do not have independent authorities to inspect their supermax prisons to protect inmates against abuse and mistreatment.

Amnesty International has also examined the abuse of prisoners within supermax confinement. Supermax facilities which have been brought to their attention include Wisconsin's supermax facility, Virginia's supermax facility at Red Onion, and Virginia's other facility at Wallens Ridge State Prison (WRSP).

Oklahoma State Penitentiary has also come under attack from Amnesty International (1994), and King (1994), who visited the facility and gave his opinions and recommendations. These articles provide a background to the events leading up to the development of the high security unit (H Unit) which was opened in 1991. The articles feature the confinement of Death Row inmates in restricted housing units regardless of their behaviour in custody (Secure Housing Units were originally designated to house only those inmates who were disruptive and could not behave in custody rather than inmates who had committed heinous crimes prior to incarceration). The reports provide details of the layout of the facility, and the regime carried out, and medical and psychiatric services within the unit. King concludes that H Unit does not provide a 'proper and reasonable balance between the needs of security and safety on the one hand and considerations of constructive activity, humanity and justice on the other' (King 1994:15). Both articles provide a set of recommendations aimed at improving the conditions on H unit, such as increasing the size of the exercise yard, more programmed activity, installing bells in cells - as the only way inmates were able to get the attention of staff was to kick the doors or shout, which was seen as causing a disturbance; - and rotation of staff who work in the Special Housing Unit.

The American Friends Service Committee (AFSC) (2003) has also written a report on supermax prisons and control units, arguing that these facilities should be abolished. The article provides a short history of supermax and then looks at Upstate Correctional Facility in New York which opened in 1999.

These studies are particularly useful in providing a detailed insight into the conditions and regime within supermax prisons. However, some would argue that human rights organizations are biased towards a reduction in supermax usage, and eventually, to the abolition of such facilities entirely. However, these organizations are not alone - many academics also agree that the supermax has come to be seen as the answer to all problems with discipline within the prison and is massively over used. Kurki and Morris (2001), argue that there is a case for supermax confinement at the federal level but that none of the state supermaxes are necessary. King (1999), goes further to argue that although there

is no question that there are a small number of prisoners for whom supermax could work, the scale of these facilities in relation to the problems faced is certainly disproportionate. He suggests that the reasons for the high incidences of violence in American prisons compared with the rest of the world is more to do with the way prisoners are housed, staffed and managed, than on the qualities of the prisoners themselves, arguing that supermax, rather than improving the situation are more likely to make this situation worse (King,1999:183).

These arguments, concerning the unnecessary level of supermax prisons in operation are discussed within the case studies. For example, in California all validated gang members and affiliates are assigned to supermax facilities regardless of their behaviour in prison, purely because they are seen as a threat to prison order.

(iii) Case Studies on Supermax

There are also a number of articles which focus on the supermax generally and then develop into a case study. These articles tend to cover all aspects of the institution, although loosely, looking at conditions of confinement, effects on prisoners' mental health, physical plant layout, and staff / prisoner relationships. There is some repetition, especially as some of these articles tend to focus upon the same institution, for example, Morris (1998), Kurki and Morris (2001), and Shepperd *et al.* (1996), all focus on Tamms Maximum Security Institution, looking at the layout, conditions and regime within the facility. Shepperd *et al.* have a slightly different perspective as their study was carried out prior to the opening of Tamms and is viewed from a correctional point of view. Meanwhile, Morris (1998), and Kurki and Morris (2001), look at the facility from a more critical perspective focusing on inmate cell extractions, and the complicated formal procedures which visitors must go through in order to visit inmates. They also suggest that prison administrators can do as they choose, as no one is going to stop them from outside the field of corrections, as much that goes on is hidden from public view. Other case studies include Henningsen *et al.* (1999), which looks at a supermax unit near Huntsville, Texas, providing details of the physical plant, the regime implemented at the

facility; visits; cell content and layout, and the privileges that can be acquired as prisoners move upwards through the classification system.

The most comprehensive case study has been carried out by DeMaio (2001), which examines Wisconsin's supermax facility, providing details of the conditions at the facility and the physical layout. He focuses on the cost to build the facility; the number of staff; the annual budget, and the problems of overcrowding within the Wisconsin prison system and, therefore, the pressure to fill the prison. DeMaio mentions that, in Wisconsin's administrative regulations, prisoners can be held at higher levels than necessary if there are problems of overcrowding.

These studies provide a useful contribution to the supermax literature; however, on the whole they tend to be limited to specific aspects of supermax such as regimes, or conditions. What sets the two case studies of the thesis apart is that, these not only provide an insight into the regimes and conditions within the two facilities examined, but also focus upon the local political, social and cultural debates surrounding their construction and continued usage, which none of the literature identified above has attempted.

(iv) The Proliferation of Supermax

In 1997 the National Institute of Corrections (NIC) conducted a survey over all 50 states, the District of Columbia, New York City, Cook County, Illinois, the Bureau of Prisons and, the Correctional Service of Canada, all of which responded. The survey gave a definition of what the NIC considered supermax to be, however, the responses from the various jurisdictions were so varied that, what is 'supermax' in one jurisdiction is not necessarily supermax in another (NIC 1997:1). The report gave examples of the various types of facility that different states defined as supermax. Within the report there is a table consisting of each jurisdiction; the name of the facility; its location; the number of supermax beds it contains; the year the facility opened, and the percentage capacity each jurisdiction needs for supermax. The document also examines the programming within

supermax; the location of programme delivery - if indeed there is any programming, and what it constitutes.

King (1999), uses the NIC definition of supermax within his study, however, he argues that this definition does not specify any architectural or design criteria. He argues that, according to the NIC data, there is a distinct lack of programming within these facilities. King also concludes that, according to the information regarding the number of supermax beds in each state, western states are 2½ times more likely to use supermax beds than mid-western states. North-eastern states are heavier users of supermax than southern states despite higher incarceration rates in the south. King asserts that it is hard to say whether the decision to build supermax was decided by DOCs of their own accord, or whether gubernatorial or legislative interest persuaded DOCs that it might be easier to gain funds for such facilities than for cheaper run of the mill prisons (King 1999:176). King mentions that Commissioners, Secretaries or Directors of DOCs are typically appointed by elected politicians with whom they are expected to work hand in hand, and that there is anecdotal evidence of at least one Commissioner of Corrections losing his position after trying to 'reign (sic) in the excesses of politicians' (King 1999:176). He suggests that when pressure to build supermax does come from DOCs it is based on the belief that maintaining order will be made easier by removing the most violent and disruptive inmates from the general prison population and that such facilities act as a deterrent to other inmates. He further suggests that many states seem to build larger supermax facilities than is necessary as, he argues, it is cheaper to construct a 500 bed facility than a 100 bed unit and then have to fill it. King mentions that death row inmates are often housed within supermax units even though these inmates are rarely troublesome (see Oklahoma Penitentiary above).

The research undertaken by the NIC is useful as it provides important statistics on the use of supermax on a state by state basis, however, the report provides only factual information, and does not look beyond this to establish why states decide to build these facilities. Within his research, King raises a number of fundamental issues; one of the most important to the thesis being the relationship between Departments of Correction

and politicians. This relationship plays a significant role within the case studies of the thesis as the studies examine the various conditions under which the supermax has developed in Wisconsin and California, where the roles of certain politicians have had a major influence on key decisions relating to these facilities. This is especially true of Wisconsin where the Governor, Tommy Thompson, led the campaign to build the supermax.

(v) Supermax and its Purported Goals

There are a number of articles which have been written in recent years which focus on the aims of supermax, concentrating on deterrence and incapacitation theories, and the effects of these institutions on system wide order. One such article by Mears and Resig (2006), examines previous research carried out on the effects of supermax on violence and mental health, before moving on to look at prison order and the arguments used in support of supermax such as its effects on deterrence and incapacitation. They conclude that there is not enough empirical research to make a judgement on whether supermax fulfils its goals but that it seems very unlikely, although it does constitute an effective form of retribution. The article then goes on to suggest that 'given the possibility that supermax prisons do not effectively improve system-wide order, it may be time to consider potentially cheaper strategies' (Mears and Resig 2006:48).

Pizarro and Stenius (2004), give a detailed account of supermax, its proliferation and history, before moving on to examine the pains of imprisonment and the use of supermax as a deterrent. They conclude that, it is difficult to justify their use for utilitarian purposes such as deterrence and management, but it is possible to justify them on punitive grounds, although more research needs to be carried out to better understand their use and effects. Pizarro *et al.* (2006) look at a number of 'myths and realities of supermax' (Pizarro *et al.* 2006:12), such as the supermax as a new form of punishment which, they argue, is untrue, as the severe isolation used in supermax can be traced back to the early development of the prison under the Philadelphia system (see Chapter Three). The article also looks at the myth of public safety used by prison administrators to justify supermax, which they also argue is unsound, as the majority of those housed in this type of

confinement are not those who pose the greatest threat to the general public. They look at the issue of deterrence as an aim of supermax, and argue that this is flawed, as deterrence theory asserts that it is the certainty of punishment rather than the severity which is likely to deter. In conclusion, they contend that although supermax does not fulfil the goals which it is argued to achieve, it has become a popular instrument within the field of corrections due to changes in society and increased punitiveness over the last 30 years.

Lippke (2004) examines the roles of deterrence and incapacitation with regard to supermax. Lippke focuses on the arguments for supermax and the fundamental problems with these arguments - he argues that it is many offenders' social situation (deprivation) which leads them to crime, as they have no legitimate opportunities to pursue their interests, and it is often those who are young, with low intelligence and mental illness that finish up in prison. Because prisons are overcrowded, and inmates feel 'society scorns them' (Lippke 2004:120), many inmates feel that they have nothing to lose by 'acting out'. This, in combination with racial and cultural tensions, leads to high levels of violence and disorder in prisons, and this is where the supermax prison becomes legitimised argues Lippke. He concludes that the supermax prison has only symbolic significance. In practice, all arguments in support of these institutions are severely flawed - they are used purely as a punitive tool for being tough on crime.

King (2005) looks at the effects of Supermax on inmates, staff, prison systems, and society. He discusses his research interviewing inmates housed in supermax confinement. From these interviews, King argues that, many inmates receive some positive effects from supermax as it gives them time to reflect; whilst a small number said it made them feel bitter and vengeful. He also noted that those housed within Oak Park Heights (OPH) were more likely to give positive feedback than those at other institutions such as Colorado State Penitentiary. This could be attributed to the fact that there is more and better programming at OPH, and that OPH has a system of direct podular supervision, meaning that inmates have some interaction with staff rather than indirect supervision like that at Colorado. King also found that the effects on staff working in supermax prisons was that they found it less stressful than working in a general population prison,

as inmates are generally locked away within these institutions. King argues that this will result in staff lacking the skills necessary to deal with difficult to manage prisoners, both through a lack of practice (those working in supermax) and in the general population as, by placing the more recalcitrant inmates in supermax, staff do not have to deal with them.

A research report by Mears (2006), aimed at evaluating the effectiveness of supermax prisons for correctional officials and policy makers utilizes a number of research methods. These are a document review; site visits to three states' supermax facilities; telephone interviews with officials and practitioners in 8 other states, and a national survey of state prison wardens. From this Mears concludes that there is little research to suggest that the use of supermax effectively achieves any of its goals such as improving system wide order and safety. The study does, nevertheless, provide a range of considerations to increase the chances of making the supermax a more effective management tool.

In Mears and Castro's (2006) national survey of prison wardens they found that, wardens believe that supermax prisons increase system wide order, safety and control, and incapacitate violent and disruptive inmates. That wardens working in overcapacity prisons have more favourable opinions of supermax, and that wardens who work in supermax believe them to be more effective than other wardens. Mears and Castro were also surprised to find that wardens identified a number of alternatives to supermax. These include dispersal of inmates throughout the prison system and increased staff training. Most wardens also believe that prisons were 'built, at least in part, for political expediency and to satisfy punitive public interest in get tough policies' (Mears and Castro 2006:422). Based upon these findings, Mears and Castro argue that scepticism about the use of supermax is warranted, given their costs to operate, potential negative impacts, the lack of research about their effectiveness, and the possibility that cheaper more effective alternatives are available.

As one of the purposes of supermax is to limit the levels of institutional violence within a given prison system, Briggs *et al.* (2003), carried out an impact assessment on the levels

of violence in three supermax facilities Tamms, Illinois; OPH, Minnesota, and Special Management Units I and II in Arizona. The study looks at the impact these prisons have on the levels of institutional violence within these state prison systems. From this research they found that Arizona's SMU I and II may actually have increased the levels of institutional violence within the state prison system. The findings were the same at OPH, and it was unclear whether Tamms had an effect on institutional violence or not. They conclude from their research that there is strong preliminary evidence that supermax do not appear to have their desired effect on institutional violence.

David Ward has also conducted studies on supermax prisons. However, he is one of the only academics to be pro-supermax, although this could be due to his roots in the field of corrections. Ward and Carson (1995), and Ward and Werlich (2003), suggest that supermax does not, in fact, have any detrimental effects on inmates. They argue that Alcatraz and Marion were both successful regimes. In order to prove this, these articles both carry out longitudinal studies to look at the psychological effects and recidivism rates in prisoners who served time at Alcatraz and Marion, finding that both recidivism and long term mental effects were low and, therefore, these regimes were successful. In both articles they argue that the press, human rights groups and the American public are suspicious of the government, and how it exercises its power, concluding that human rights groups are just trying to find fault with something that works, which is in conflict with the widely held 'lock-up and throw away the key' mentality.

The research and debates discussed within the literature above, suggest that on the whole, with few exceptions, supermax prisons do not fulfil the majority, if any, of the objectives which they are professed to accomplish. This, therefore, begs the question, why then have these facilities proliferated in recent years? This leads back to one of the main aims of the thesis: what circumstances have led to the development of supermax prisons at state level? If the initial research on these facilities has found that they are ineffective, and do not meet their purported goals, why have state Departments of Correction continued to build these facilities?

(vi) Research by Those Working in the Field of Corrections

Other articles and reports which have been carried out regarding supermax facilities have been conducted by corrections professionals. The NIC, as well as carrying out its 1997 survey, have also provided an overview and set of general considerations regarding supermax usage (Riveland 1999). Riveland states that these facilities are more expensive to build than traditional facilities due to the implementation of the latest security devices and the need for more correctional officers, than in lower security institutions. He also acknowledges that very little is known about the effects of supermax, especially on psychological grounds, whilst stating that proponents point to the reduction in assaults and other serious incidents through the corrections system since these facilities have been established. The report moves on to look at operational issues including classification; programming; length of stay; medical and health services; property; security; policies and procedures; use of force, and the importance of documentation. He also examines staff issues such as personnel characteristics; recruitment and selection; training, and supervision. The final section examines the designing of supermax facilities, looking at co-located versus separate facilities; site selection and other design issues and construction costs. Riveland concludes with a checklist of considerations which DOCs should take into account when building a supermax facility.

In one of the few books on supermax, Neal (2003), looks at various aspects of these institutions and provides guidance for correctional officials. The first chapter of the book looks at why supermax has evolved, suggesting its political and public attractiveness and that these facilities help to maintain order. It also gives an overview of the types of prisoner suitable for supermax and the regime imposed at these facilities. Chapter two examines the building of supermax from the initial applying for funding through to choosing a site and calculating costs. The chapter also looks at the plant layout and security measures which need to be installed. A further examines the staffing of the facility and the importance of good staff training. It also focuses on the need for a mix between experienced and new staff when recruiting. Also featured within the book are the use of technology within the supermax prison; use of force and how it is important to set a good example; managing violence, and the use of inmate incentive programmes. This

book is useful in that it provides an insight into the thinking that goes on within the field of corrections in building and operating these facilities, but it is very limited as it is more of a guide to correctional staff than a direct look at supermax prisons themselves.

From the above it is possible to see that research on supermax is set around a number of themes, most notably its effects on mental health; the conditions within these facilities - argued against most visibly by human rights organizations and in legal litigation; the purported goals of supermax - although much of the research presents as many questions as it answers; and advice from those involved in the field of corrections. Based upon these findings, and indeed noted by several authors within the literature itself, it is apparent that there are large gaps in the research concerning supermax prisons, most notably its effectiveness as a management tool in providing system wide order and control; its ability to act as a deterrent; its impact on prisoners and staff, and also how and why these facilities have developed.

Within the thesis it would be impossible to answer all of these questions. What the thesis intends to discover is why the supermax has developed within particular social, political and cultural contexts at the local level. This is achieved by comparing two supermax prisons one in Wisconsin, the other in California, to determine the reasons for their construction, and the processes involved in their day to day operation. The thesis will also determine whether these facilities came about for similar or vastly different reasons, and whether they have comparable regimes and operating procedures. In addition, the thesis also utilizes the case studies in an attempt to locate the supermax within the various theoretical frameworks suggested in previous chapters for its development.

The next chapter begins to excavate the key concerns of the thesis in discussing the methodological approach adopted in researching the two case studies.

PART TWO

CHAPTER FIVE

Researching Supermax: Methodological Issues

1. Problems with Researching Supermax

Carrying out research on prisons can be a difficult task to undertake, particularly as these facilities are often regarded as secret places, their operations hidden from public view, making access to such facilities extremely difficult. In Britain there has been a considerable amount of research undertaken by academics behind the prison walls, monographs such as King and Elliott's (1977) detailed account of HMP Albany on the Isle of Wight from its initial period of settling down through its changing status and security upgrades to become known as an 'electronic coffin' (King and Elliott, 1977:281), Genders and Player's 1995 study of Grendon Prison which offers psychological and psychotherapeutic treatment to convicted male offenders, their study provides details of the type of prisoners received at Grendon, the therapeutic regime in the institution, issues of order and control and release back into the general prison population. Other studies undertaken on British prisons include Carlen's 1983 study on Women's Imprisonment in Cornton Vale, Scotland and Sparks *et al*'s 1996 comparative study of Long Lartin and Albany at the end of the 1980s, to name but a few.

In the United States, which was initially the forerunner in prison research, studies such as that of Sykes (1958) who examined New Jersey State Maximum Security Prison, detailing the layout of the prison, its regime and its effect on inmates through the 'pains of imprisonment' (Sykes, 1958:63); Goffman (1961) who focuses on the Asylum and other total institutions and the social situation which mental patients and other inmates find themselves in, and Irwin and Cressey (1962) which focused on prison subcultures, have been in decline in recent years. A significant proportion of prison research is now being carried out by in-house statisticians, and researchers working for individual Departments of Correction, or the federal government. Therefore, access to American prisons has become difficult to acquire and this is especially so for the higher security level institutions such as the supermax. There are a number of reasons why this is so.

First, there is an air of secrecy surrounding what goes on behind the prison gates, especially since a number of supermax facilities have come under fire from human rights organizations, and had federal court orders placed over them, resulting in Departments of Correction becoming overly cautious about anything which could be considered dubious being released into the public sphere. Second, with higher security facilities such as supermax, inmates are escorted around the prison with a team of up to 3 or 4 correctional officers, which would make interviewing inmates a costly and time consuming task for the prison. Third, these inmates are considered 'the worst of the worst' and it would be deemed too risky to allow a female PhD student to be left alone with these offenders. As a consequence, the research for this thesis focused less on the attitudes and outlook of the prisoners themselves and more on the 'why' and 'how': why were these institutions built, how are these institutions run, and what factors influence the development of their regimes?

2. The Application of 'Adaptive Theory'

The thesis uses what Layder (1998) labels as an 'adaptive theory' methodology which utilizes aspects of both hypothetico-deductive theory and grounded theory. The reason for choosing an adaptive approach was because 'hypothetico-deductive theory emphasizes a deductive approach and [the use of] quantitative data' (Bottoms 2000:42), whilst my research is qualitative in nature and draws on the 'selective adoption' of some aspects of existing general social theories of punishment, rather than limited factual observations. This means that this approach did not fit with my research agenda. 'Grounded theory, which emphasizes an inductive approach and qualitative data' (Bottoms 2000:42), emerges directly from the field work and, as I had certain theoretical hypotheses before I carried out my research - such as the possibility that the development of supermax was partially due to an increased politicization of crime (Garland 2001) and that aspects of the 'new penology' in relation to risk groups could be seen within this development - this approach was also unsuitable. Therefore, an adaptive theory which uses aspects of both of these approaches seemed to be the best methodological choice for this research. Layder argues that the 'adaptive theory' is so labelled because

...the term is meant to convey that the theory simultaneously contains two fundamental properties. First, that there is an existing theoretical scaffold which has a relatively durable form since it adapts reflexively rather than automatically in relation to empirical data. Secondly, this scaffold should never be regarded as immutable since it is capable of accommodating new information and interpretations by reconfiguring itself. Thus, although the extant “theoretical elements” are never simple empiricist “reflections” of data, they are intrinsically capable of reformulating (“adapting” or “adjusting”) themselves in response to the discovery of new information and/or interpretations of data which seriously challenge their basic assumptions. Such reformulations may involve only minor modifications ...but they may also require fundamental reorganization, such as either abandoning an existing category, model or explanation, or creating new ones, depending on the circumstances. (Layder 1998:150-1)

In addition to this, the utilization of adaptive theory allows for a multi-method approach to be taken to the subject of investigation so that different pieces of information, gained in different ways, can complement and support each other. This type of research methodology has been identified by Denzin (1988), as a triangulation approach, which allows for a cross checking of data which, in turn, increases the validity of the research findings. The case study method is a good example of the adaptive theory approach.

3. Case Study Method

As the thesis has been funded by the Economic and Social Research Council (ESRC), a proposal for the research had to be submitted prior to the start of the PhD. Within this proposal a probable research design was constructed. It was decided at this early stage that the best way to answer my central research question regarding the reasons for the development of supermax at state level was to carry out detailed case studies on a number of states’ supermax facilities from their original proposal until the present day, and provide a detailed examination of the various regimes, relations and operating procedures within these facilities. The case study has been defined in two parts by Robert Yin as

- (i) An empirical study that:
 - investigates a contemporary phenomenon within its real-life context, especially when
 - the boundaries between phenomenon and context are not clearly evident.
- (ii) The case study enquiry

- copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result
- relies on multiple sources of evidence, with data needing to converge in a triangulating fashion, and as another result
- benefits from the prior development of theoretical propositions to guide data collection and analysis. (Yin 2003:13-14)

One of the main reasons for using this method was that a 'unique strength' of the case study is 'its ability to deal with a full variety of evidence – documents, artefacts, interviews and observations – beyond what might be available in a conventional historical study' (Yin 2003:8). However, whilst the case study method has advantages, and is the best method for carrying out my research, a number of criticisms have been levelled at this approach. The first of these is that case studies can, if the researcher is not careful, become biased, and the standard of research can become inadequate, as the researcher can manipulate the angle of his/her study to express a particular point more effectively, or even twist the results of the research altogether. This can, however, happen with most forms of research, 'but in case study research, this may have been more frequently encountered and less frequently overcome' (Yin 2003:10). What this comes down to, argues Blaikie,

is a prejudice that quantitative researchers have had against qualitative data, a view based on the mistaken belief that only numbers can be used to describe social life validly and reliably. Part of this prejudice is that qualitative research, unlike quantitative research, cannot be replicated because there is too much scope for the researcher to influence the results. (Blaikie 2000:218)

A second concern with case study method is that case studies provide 'little basis for scientific generalization' (Yin 2003:10). However, the aim of the case study is to 'expand and generalize theories (analytic generalization) and not to enumerate frequencies (statistical generalization)' (Yin 2003:10). It is to create theoretical propositions rather than provide concrete facts on all phenomena studied, in that, for example, it would be far too great a task to carry out separate detailed studies on every single supermax facility in operation in the United States. However, within the research, I was able to conduct two case studies which, although still generalized, provide a larger piece of the picture than one single case study. Multiple studies have again been criticized as it can be difficult to

establish comparability. Nevertheless, this is also true for other types of experiment. A third and final caveat about case study research is that they can take too long and produce huge, unmanageable, amounts of data: therefore, it is important to be aware of this and to select materials that are germane to the research topic. However, as Mitchell sums up

Case studies of whatever form are a reliable and respectable procedure of social analysis and...much of the criticism of their reliability and validity has been based on a misconception of the basis upon which the analyst may justifiably extrapolate from an individual case study to the social process in general. (Mitchell 1983:207)

It is important to remember that the purpose of the case study is to develop and generalize themes: it is not necessarily to provide concrete answers to all social phenomena within its particular remit, but rather to suggest reasons for, or why, a certain phenomenon occurs in a given situation. By carrying out case studies, I intend to provide explanations as to why particular supermax facilities have developed, and under what circumstances, in order to offer some suggestions as to why the supermax prison has developed as a fundamental part of many prison systems within the United States. By using specific examples (the two case studies), I aim to reflect back on the general theories of punishment, identified in Chapter Two, in order to establish whether there is a relationship between these theories and the local reality of the construction and operating procedures of the supermax. Therefore, these theories can be substantiated and debated by the research results in this thesis. In other words, do the reasons suggested within the general theories of punishment hold validity within the real world context of the development of supermax? Or do they have little bearing on this reality.

4. Carrying out Comparative Research

The majority of articles which focus on comparative research tend to focus on cross-national or cross-cultural studies (Nelkin, 1994, Howard, 2000). The comparative studies within the thesis are both carried out within the same country albeit in different regional locales within the USA. There are some advantages and disadvantages to this, on the one hand methods of recording data should be similar, there should be less cultural differences than with cross-national studies and terminology should be analogous, for

example definitions of crimes should be almost identical, and operational concepts should be similar, all prison systems use the concentration method as opposed to the dispersal system, have similar procedural operations, for example, use of cell extractions in a supermax setting, and armed watchtowers around the perimeter of all maximum security prisons. However, having said that, because of the size of the United States and the fact that each state has its own laws and criminal justice system, in some ways each state could be said to be like a country in its own right.

There are a variety of reasons given for conducting comparative criminological research; however, the majority of these are again in relation to cross-national research, such as comparing crime rates in various countries or analysing cross-border organized crime. However, whilst the thesis focuses only on one country rather than two or more, there is the possibility that, as the United States is often a forerunner in correctional practices, the policy of building supermax prisons may be considered by other countries in future thus, in addition to its central role in providing insight about the development of supermax in various states, the thesis may be useful in providing this knowledge for others to learn from, as Nelkin, 1994 suggests,

comparative work is indicated when countries seek to “borrow” other states’ penal laws, procedures or initiatives in the course of reforming their own systems. This is likely to become more common as information about other countries’ practices becomes more available and as continuing dissatisfaction with the existing functioning of criminal justice prompts the induction of radical change. (Nelkin, 1994:221)

The use of supermax has already been considered or implemented in some countries, including, England and Wales, Australia and the Netherlands, see Chapter Eight for discussion.

The main reason for carrying out comparative case studies within the thesis was to gain a greater insight as to why different states decide to build and operate supermax prisons than one study alone could provide, as different states have different political persuasions, cultural considerations and demographics which may result in different

reasons for constructing supermax, therefore, two studies would enable me to gain more knowledge about the various reasons why states choose to have supermax facilities within their prison systems. The main problem with carrying out multiple case studies is ensuring that the two studies are based on the same research strategy and utilize the same instruments to ensure as much compatibility as is possible; problems which I encountered with this during the research process are discussed later in this chapter.

5. Selecting States to Study

Once the case study method had been identified as the best technique to carry out the research, the first task was to select states for analysis and comparison. In order to do this, I formulated a small questionnaire to establish which states had supermax type confinement. I determined that the best way to do this was to email or write to - depending on whether an email address was provided on the Department of Corrections' website - each of the 48 mainland states within the USA in order to enquire whether they had some form of supermax confinement (according to the National Institute of Corrections (NIC) 1997, survey definition) and, if so, how many facilities, the number of beds, and the reasons why they had decided to construct the prison/unit (see Appendix I). Responses were received from 36 states, 24 of which stated that they did have either a separate facility, or unit, which could be identified as fitting the NIC definition. The next task was to identify two states for further study and analysis.

Selection of the two states was decided upon based on a number of factors: willingness to reply to the initial survey; regional variation, in other words, selection of states from the different regions, for example, one from the east and one from the west; size of state, preferably a larger state compared with a smaller state demographically; prison population, one state with a relatively large prison population compared with a state with a relatively small prison population; the length of time the supermax institution had been in operation, meaning one which had been constructed within the last five years and an older facility; and the number of supermax beds provided, one state with a large number of supermax beds against one with a much smaller number. Using these criteria, it was decided that Wisconsin and California were to be the states studied, as these two states

are opposites in relation to the variables. This was important as by researching two completely different locales, with different characteristics, the expectation was that the case studies would provide a broader insight into the various factors which have led to the construction of these facilities. In addition, as California has a number of supermax facilities in operation, it was decided to study just one of these, as examining all 4 facilities would be too great a task given the time scale, therefore, Pelican Bay, which has the largest supermax unit, was chosen for the research. Whilst I was aware that these states would not be able to represent all states with supermax prisons, the expectation was that these two states had the potential to throw light on our understanding of the development of supermax in different political, social and cultural environments whilst, at the same time, there was also the anticipation that these case studies would help reflect upon the theoretical considerations regarding the development and purpose of the supermax, and what actually happens in practice within the two selected states.

6. The Research Process

Once these two states had been selected the next stage was to start data collection. In order to do this, as is necessary with any case study research, I employed a number of methodological techniques in order to gain as much information from as many different perspectives as possible. This began with a study of the documentary research.

(i) Documentary Research

Within the field of social science, the use of documentary research is often overlooked or seen as secondary to techniques such as participant observation; questionnaires, and interview methods. However, it has been noted that 'documentary investigation was the main research tool of the classical sociologists: Marx made extensive use of the reports of the factory inspectors, Weber utilised religious tracts and pamphlets, and Durkheim employed official statistics on suicide' (Scott 1990:1), suggesting that the use of documentary research has a long and valued history within the social sciences. There are a number of different types of documentary research, ranging from official government documents and directories to unofficial letters and diaries. Scott (1990) identifies 4 main caveats to remember when utilizing documentary research: *authenticity*, is the document

genuine, is it an original or a copy of an original; *credibility*, how sincere and accurate is the document; *representativeness*, 'in order to survive, documents must be "deposited". This may be through publication in a form which is itself capable of survival, or by way of storage' (Scott 1990:25); and *meaning*, how is the document interpreted, is it to be taken by its literal meaning or, in the case of documents which need to be translated from another language or from ancient manuscripts, is it 'necessary to decipher the script and translate the language into the linguistic forms current in the community of researchers of which the investigator is part' (Scott 1990:28). It is important to establish whether each documentary source complies with these criteria, and to what extent, in other words, to be aware of the limitations of each resource. I attempted to do this as much as possible by being critical of the sources used, and being aware of the constraints of each document.

Within most forms of research, documentary sources play some part and within the thesis, this was one of the primary forms of data collection. Whilst it is important to remain aware of the quality control criteria mentioned above, there are a number of strengths to using documentary research, which include the fact that this type of source is stable, as it can be reviewed repeatedly, and it is unobtrusive, as it is not created as a result of the case study. Documentary sources are exact as they contain exact names, references, and details of events, and they can provide a broad coverage as they are capable of covering 'large spans of time, many events and many settings' (Yin 2003:86). However, at the same time, there are also weaknesses in this form of research, the most obvious being bias, both within selectivity if, for example, a collection is incomplete, which links in with Scott's point regarding representativeness, and also on the part of the author whether, intentional or not. Other weaknesses include retrievability, which can be low, as documents may have been lost or damaged, and access, as some documents may be classified and, therefore, all access to the material may be denied.

With these caveats in mind, the first port of call in the research process was to examine the two states' official Department of Correction websites, from which I was able to ascertain basic information about both facilities such as the dates they opened, the weekly populations within the facilities, and the costs of running each institution. I also examined

a number of press releases from the Departments of Correction websites. Once I had this information, I started to look at newspaper articles from local and state newspapers, going back through the archives to examine articles on the original proposals for each prison to build up a history of each facility. I examined a number of newspapers from each state, which often featured a similar, or the same, story but written by different authors which helped to give some validity to the articles. There were also a number of articles which went into quite a lot of detail about each prison, its layout and its operating procedures. However, it was important to remember that there can be distortion within newspaper articles as 'the major source of insincerity in newspaper...reporting is the influence of owners and controllers acting on the basis of perceived political or financial interests of themselves or external bodies' (Scott 1990:145). What was interesting about most of these articles was that many had a negative view of the prison/s and were pessimistic about numerous aspects. Other criticisms of newspaper reporting are that subtle distortions can occur where 'editors and journalists depend on politicians for their information' (Scott 1990:145). This is especially true in the case of press releases, from which the author of the release 'is most likely to have manufactured the quote with little or no reference to the person who ostensibly "said it"' (Scott 1990:146). Therefore, it was important not to take every comment which was examined at face value and, where possible, to conduct semi or unstructured interviews with those involved in order to validate or reject the information provided within the newspaper reports. This is mentioned in further detail later in the chapter. These newspaper reports also provided leads from which I could look up further information from other, more official, sources such as archives containing transcripts of political discussions and speeches. I was able to do this in a number of instances; a prime example of this was when I searched for Governor Thompson's initial proposal for the supermax in Wisconsin, which he first announced to the public in his 1996 'state of the state' speech. This speech was paraphrased within two of the states' national newspapers, the Wisconsin State Journal and the Capital Times - using these as a base I was able to search the Wisconsin Politics website and find a transcript of the whole speech, from which I was then able to read the whole section concerning the proposed building of the supermax in context and use it in the case study (see Chapter Six).

In addition to newspaper reports, and information gained directly from Department of Correction sources, I also had access to several legal documents, including class action lawsuits which had been filed against both facilities at various times. I was able to gain access to these documents through a variety of methods, some of these I was able to download from various web sites, whilst others were sent to me by those involved with the lawsuits. Using this information, I was able to verify much of the newspaper content, whilst information which differed from the newspaper reports was generally accepted as correct, due to the fact that legal material comes from an official source, and is deemed more reliable than newspaper reports, and also gives a much greater level of description. Both facilities have been placed under federal court order at various times which, again, was another source of official legal documentation. I was able to use these legal documents to provide detailed accounts and descriptions of the daily operations of the prisons, and also to present useful depictions of events which had occurred within the two prisons, such as treatment of juveniles in Wisconsin, and staff on inmate abuse in California.

Other sources of documentation which I examined included newsletters and pamphlets from prisoners' rights groups relating to the two prisons. I also examined websites set up by organizations with an interest in supermax prisons, such as Supermaxed.com, which contains sections on both Wisconsin and California amongst others. Whilst this information was largely opposed to the use of supermax, it was also useful, as it provided an alternative standpoint from that provided by official Department of Correction documents.

The exact sources utilized are listed below in tables 1. and 2. along with the reasons for their selection.

Documents Reviewed: Wisconsin

Source	Purpose of Document
Wisconsin Department of Corrections website	Provides a mission statement for the Department, and details about all adult institutions including WSPF as well as the weekly prison population at each facility. Useful for identifying official facts about the facility such as financial costs.

Supermaxed.com – Supermax website	This website focuses on a number of supermax prisons in the United States. WSPF is one of these within this website there are a number of links to other resources related to WSPF such as Prisoner Handbooks which provide details of the items inmates are entitled to at various stages of their progression through WSPF, such as religious items, canteen allowances and personal property. These are extremely useful as they give some idea of the limitations and restrictive conditions these inmates are constantly housed under.
Newspaper Articles: The Capital Times	One of State newspapers in Wisconsin, useful for providing a chronological account of the processes undertaken and the decisions made by WI's Governor and Department of Administration. In addition also provided information about incidents at the prison after its opening. The majority of these articles have been written by David Callender.
Newspaper Articles: Wisconsin State Journal	Much as the above. By examining two state newspapers I was able to compare the articles within each, as many stories featured were similar or the same but written by different authors which helped to give some validity to the articles.
Newspaper Articles: Milwaukee Journal Sentinel	Same as above. Carried less stories than the two newspapers above but still featured a number of articles regarding WSPF.
Newspaper Articles: Boscobel Dial	Local newspaper based in the city of Boscobel where the prison is located. By examining the local paper it was possible to get an idea of local opinions about the supermax and smaller stories which were not necessarily covered by the larger state newspapers.
Newspaper Articles: The Isthmus Newsletters and Pamphlets from the: Member Forum for Understanding Prisons and the Incarceration Coalition	Weekly newspaper which featured a number of detailed articles about the decision to build the facility and the physical layout of the prison. These provided an unofficial negative perspective on the decisions to build and operate WSPF. Many members are relatives of those housed within the facility or those who regularly visit prisoners.
Legal Documents: <i>Jones' El v Berge</i>	There are a number of legal documents which have been filed against WSPF, which culminated in a class action lawsuit being filed against the facility, the first four of which were filed against the then warden of WSPF, Gerald Berge. These include the initial complaint, the opinion and order certifying class action, the preliminary injunction to remove the mentally ill from the facility and the defendants' brief in opposition to the plaintiffs' motion for the preliminary injunction. All of which were filed between 2000 and early 2001.
<i>Jones' El v Litscher</i>	Later legal documents were filed against the whole Department of Corrections the secretary of which was then Jon Litscher as opposed to just the warden of WSPF. These documents include the declaration by Terry Kupers - a psychiatric expert who toured

	<p>and interviewed a number of inmates and found that a large number of inmates were mentally ill – and the first amended complaint which was filed in June 2001. The settlement of the lawsuit was agreed in 2002 and reports carried out by a court appointed monitor have also been utilized. These and the above documents are very useful as not only do they provide official undisputed evidence they provide detailed accounts of various factors related to WSPF from details about the physical plant to, inmate conditions and prison regimes, they also give some idea of inmate/staff relationships and the attitudes of those working in the Department of Corrections. These documents also provide a unique insight into procedural practices within the prison which would not normally be known by anyone other than prisoners and those working within the Department of Corrections.</p>
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Table 1. Documents reviewed in Wisconsin

California

Source	Purpose of Document
California Department of Corrections and Rehabilitation website	Provides a mission statement for department and facts and figures about the department such as its fiscal budget, number of staff, and total offenders held at Pelican Bay. It also includes ethnic make up of the prison population. Useful for setting the scene and finding factual data on the facility. The website also includes information on California's administrative codes concerning prisoner conduct, items prisoners are allowed and the systems used to identify and validate gang members.
John Irwin's <i>The Warehouse Prison</i> (2005)	Irwin spent some time in California's prison system and, therefore, has an inside knowledge of aspects of the prison system. His book is useful as it provides both a history of supermax and the use of segregation to control gangs and racial groups in California and also provides a detailed examination of Pelican Bay supermax and the conditions there.
Newspaper: <i>The San Francisco Chronicle</i>	Large city newspaper. Useful for providing a chronological account of the processes leading up to the decision to build Pelican Bay State Prison and the events and incidents which have taken place since its construction.
Newspaper: <i>The Sacramento Bee</i>	Large city newspaper. Much the same as above. Provides accounts to compare with the above in order to make data more reliable.
Newspaper: <i>The Daily Triplicate</i>	Local newspaper, located in Crescent city, where Pelican Bay is situated. Useful as provides smaller stories which larger newspapers neglect and also voices attitudes of local community and notes the effects building a large prison in a small community has on the local infrastructure.

<p>Legal Documents: <i>Madrid v Gomez</i></p>	<p>The <i>Madrid v Gomez</i> class action lawsuit was the first of its kind against a supermax prison. It provides a detailed and useful account of the physical plant of the facility, conditions within the two supermax units and details on the relationship between prisoners and staff at the facility. The lawsuit also gives a detailed account of how inmates become validated as gang members and the stipulations required to remove this label. This account is extremely useful as information included in the lawsuit is official but impartial and does not slant in favour of CDCR officials, it also provides a unique insight into procedures at the facility which would not be known except by those working in the CDCR and inmates themselves.</p>
<p>Newsletters and Pamphlets: California Prison Focus</p>	<p>This group produces a quarterly newsletter which focuses on negative aspects (of which there are many) of the various supermax facilities in California. The majority of articles featured tend to focus on Pelican Bay. This group is made up of prison visitors, anti-incarceration supporters and relatives of prisoners. These newsletters provide a unique, unofficial and albeit negatively biased view of conditions in the supermax, however, this is important in order to contrast the official information provided on CDCR websites and press releases.</p>
<p>Montgomery (2006) American Radio Works Transcript</p>	<p>Talks to a number of gang members housed in Pelican Bay supermax. This is useful as it provides a unique account of why inmates feel it is important to be part of a gang and the various methods which they have used to contact gang members on the outside (those discussed have already been discovered by prison authorities) and how they are determined to continue to find new ways around the system as they have nothing else to do with their time.</p>

Table 2. Documents reviewed in California

(ii) Gaining Access to Individual Sources

Once I had examined the above documents, the next stage was to establish correspondence with various sources. I started this process by emailing a number of journalists from state newspapers - David Callender from the Capital Times, who had written most of the articles on the Wisconsin supermax, and also a feature on the confinement of juvenile offenders at the institution; Bill Lueders, who wrote a several-page story on the supermax facility in Wisconsin for the Isthmus, a local weekly newspaper; and the editor, David Krier, of one local paper, the Boscobel Dial in Wisconsin, where the prison is located. I wrote to the Daily TriPLICATE based in Crescent

City, California, home of Pelican Bay prison; The Sacramento Bee, and Susan Sward of the San Francisco Chronicle, all of whom had written articles on the two facilities. I did this in order to gain information which had not necessarily been included in their articles, and to ask if they could provide me with any additional information.

I also wrote to a number of people who were involved with the supermaxes in some way. From this point, a snowball technique came into effect and I was able to add people to my list of contacts based on this method. An example of this was when I contacted Shadd Maruna, who had recently edited *The Effects of Imprisonment* (2005), with Alison Leibling, he suggested that I get in touch with John Irwin, a former prisoner and Professor at San Francisco State University, whose work focused primarily on American Prisons and who had just written a book, *The Warehouse Prison* (2005). Irwin then suggested that certain chapters of his book might be useful, as he had covered Californian supermax facilities within it, and also, that I get in touch with Corey Weinstein, who had been investigating Pelican Bay’s supermax for several years and was associated with California Prison Focus, a prisoners’ rights group particularly concerned with supermax confinement in California. It was through methods such as these that I was able to gain much of my information. However, with the above exception, it was at this point that the research process began to go off course. Whilst contacts within Wisconsin seemed happy to help, and provide useful information, in California, after answering my initial requests for information, particularly from official sources such as the Department of Corrections, there was a distinct lack of response and when replies were received, I was sent the official website information rather than answers to the questions I had asked.

The tables below identify those persons interviewed, their role in relation to the said facilities and the reasons for speaking to them.

Wisconsin

Name	Role	Reason for Speaking to them	Method of Interview
Walter Dickey	Secretary of Wisconsin Department of Corrections (WI DOC) from 1983-1987. Now	Has a good background knowledge of WI DOC and how it operates, also is a monitor for the class	On-line and face-to-face

	Law Professor at the University of Wisconsin.	action lawsuit that took place at WSPF and has insight into the current practices and recent changes that have taken place at the prison.	
Michael Sullivan	Worked within WI DOC for 30 years and was Secretary of Corrections at the time of WSPF's construction	Was in office during the time of the decision to build the prison, was in favour of adding beds to the prison system but considered the 500 bed proposed facility to be too large. Also appeared for the plaintiffs during the class action lawsuit.	On-line and telephone
Tim O'Brian	Assistant in the office of State Representative Mark Pocan.	Mark Pocan against the use of WSPF, considered the facility unnecessary and harsh, especially with regard to the housing of juveniles and the mentally ill.	On-line
Kenneth Streit	Has helped monitor WSPF since the class action lawsuit. Is a faculty member of the Remington Centre of the University of Wisconsin, Madison Law School.	Has an inside knowledge of the current practices and changes that have occurred at the facility, has interviewed inmates, interacted with staff and reviewed files since the settlement of the <i>Jones' El v Litscher</i> lawsuit.	On-line and face-to-face
David Krier	Editor of the Boscobel Dial, the local newspaper in the city where the prison is located.	Has an inside knowledge of the local community in which WSPF is located and has knowledge of the local decisions made before its construction.	On-line
Richard Schreiter	Warden of WSPF	Has a working knowledge of the prison its function and operating procedures.	Face-to-face
Monica Horner	Unit Manager at WSPF	Is in charge of one of the 5 units in the facility, has a working knowledge of the operating procedures and processes at the prison, also has knowledge of the inmates themselves.	Face-to-face
Peggy Swan	Co-ordinator of Member Forum for Understanding Prisons and the Incarceration Coalition.	Regularly visits inmates at WSPF and therefore, has inside knowledge of prisoner conditions and their problems.	On-line and face-to-face

Ruth Krymowsk	Local Pastor, and member of Forum for Understanding Prisons and the Incarceration Coalition	As above.	On-line and face-to-face
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Table 3. Those spoken to in Wisconsin

California

Name	Role	Reason for Speaking to them	Method of Interview
George Sifuentes	Deputy Director of the Facilities Management Division of the California Department of Corrections and Rehabilitation (CDCR)	Has knowledge of the various supermax prisons in California, when they opened, number of beds and purpose of these units.	On-line
John Irwin	Former prisoner within California's prison system, now a professor at San Francisco State University.	Has written a number of books on prisons including his latest (2005) <i>The warehouse Prison</i> was able to give me some information and put me in touch with Corey Weinstein (below).	On-line
Corey Weinstein	A Medical Doctor and member of California Prison Focus, a group which supports inmates and their families particularly those in supermax confinement.	Has been visiting inmates at Pelican Bay Prison for 15 years and, therefore, has inside knowledge of these inmates, their problems and the regimes imposed in Pelican Bay Secure Housing Units.	On-line

Table 4. Those spoken to in California.

As can be seen from the tables above, in Wisconsin, I was able to gain considerably more contacts, and was able to correspond with a number of former Secretaries of Correction, some politicians, and those involved with the class action lawsuit filed against the facility. I also received a response to my letter to the current Secretary of Corrections (Appendix II) who, although unavailable at the time of my visit to Wisconsin, arranged for me to tour the prison and speak to the warden, and a number of correctional officers who worked at the prison. This will be discussed later in the chapter.

Whilst the research was progressing as intended in Wisconsin, in California most of my lines of enquiry seemed to be coming to nothing, as attempts to find out information were

either ignored, or I was given the official party line or, if a response was received, it was usually in the form of a website printout which I could have downloaded myself! This was a problem as I had intended the two case studies to utilize the same research procedures, in order for them to be as similar as possible methodologically, whilst, in reality, my research on California's Pelican Bay became more heavily reliant on documentary sources. However, as this was unavoidable, I endeavoured to continue researching Pelican Bay as comprehensively as was possible using the sources that I had available to me. I did this for a number of reasons, at this stage it was too late for me to start the research again focusing on a different state, and also there would have been no guarantee that the same thing would not have happened with a new locale anyway. Also as I had set out to compare two states to give me a greater insight into the various circumstances behind which different states decide to build supermax I intended to do this to the best of my ability with the resources available.

(iii) Email Questionnaires

The second phase of this process, once initial correspondence had been achieved and those emailed had agreed to answer my questions, was to send, via email, semi-structured questionnaires (Appendix III(A) and (B)), the purpose of which was to fill in some of the gaps left from my documentary research, to find out information which had not necessarily been published, and also to get other parties' opinions on various aspects of the facility. Using this process, I was able to obtain additional information which it would have been impossible to get hold of through documentary research alone. This included information which was still in the planning stages and had not yet been decided upon. One of the most valid reasons for carrying out this type of questionnaire was that it would have been much more difficult and time consuming to carry out postal questionnaires, as those interviewed were busy people, who were more likely to spend 5 minutes answering an email than spend time writing back to me. This method was also better for me as answers to my questions could be received much more quickly than through traditional postal questionnaires. Once initial contact was established the response rate was very good with respondents generally replying within a few days. This method was also more cost effective as there was no need for postage to be paid. Another crucial reason for

choosing this method of questioning was due to geographical constraints, as I was located here in the UK at this point and they, obviously, are located in Wisconsin and California. At this point it is also important to mention that I asked them for permission to name and quote them within the research to which they all agreed especially as many of them, for example Walter Dickey, Michael Sullivan had made many of their views and criticisms of the supermax known during the class action lawsuit and to the press before I started my research.

(iv) Online Asynchronous Interviews

Once the initial email questionnaires had been completed, it was necessary for me to follow up some of these questions, via online asynchronous interviews. This type of interview is similar to semi-structured email questionnaires, the difference being that it 'involves multiple e-mail exchanges between the interviewer and interviewee over an extended period of time' (Meho 2005:1284). It also allows the researcher to conduct several interviews at the same time. However, there are some disadvantages with this technique as nuances in the interviewees' answers may not be picked up, especially when interviewing those from a different country as, although Americans and the British speak the same language, there can be slight differences in meaning and interpretation. However, because interviews were carried out online, I was able to email back to ask about topics of which I was uncertain. Other problems with this type of questionnaire are that it can take respondents a considerable amount of time to reply, depending on whether they regularly check their emails or not. Nevertheless, because I had already negotiated access with these individuals, responses were, on the whole, received fairly swiftly. These included responses from Representative Mark Pocan, former Secretaries of Correction Walter Dickey and Michael Sullivan; members of the University of Wisconsin, Madison Law School, such as Kenneth Strait; and those against the use of the supermax such as Ruth Krymowski and Peggy Swan, who are members of the Incarceration Coalition and Forum for Understanding Prisons, in addition to Corey Weinstein of California Prison Focus mentioned above (see tables 3. and 4. above).

Using this method I was able to gain a considerable amount of information prior to my visit to WSPF such as details about the prison's layout, and problems since the class action lawsuit, and whether progress was being made with regards to the settlement of the lawsuit. I was also able to establish dates for conducting face to face interviews during my visits to the United States.

(v) Face to Face Interviews

As I mentioned earlier, I was able to get a response from the current Secretary of Corrections in Wisconsin, who was happy to arrange access for me to visit the facility being studied, and speak to the Warden of said facility. At this point, I think it is important to note that my first three letters to the Secretary of Corrections were ignored, and it was only on the advice of Walter Dickey who suggested that I mention that I was 'impressed' by the fact that the current Department of Corrections was planning to change part of the facility into a maximum security general population prison (See Appendix II), that I believe that my fourth letter received a response.

Thus we arrive at the role of 'gatekeepers' 'those individuals in an organization or another social institution who have the power to grant or withhold access to people or situations for the purposes of research' (Hughes 2000:239). Within this research project, the primary gatekeepers were those within the Department of Corrections. Whilst I made no progress with these individuals in California, no matter what line of enquiry I tried, in Wisconsin, after coming up against a brick wall - initially I tried writing to wardens of both institutions in Wisconsin and California as well as both Secretaries of Correction - once Walter Dickey gave me some helpful advice, I was able to overcome these boundaries in Wisconsin. I believe this was because I gave a positive opinion on the Secretary's, (Matthew Frank's), planned modifications to the prison. If I had remained neutral, as I had in the first three letters, or been slightly critical of his plans, I contend that I would still be awaiting a response to my enquiries. While this may be viewed as an ethical issue, I contend that this is not so, as although I gave a positive opinion within my letter, I do think, on a personal level, that the planned changes to the facility, identified by Matthew Franks, are a positive move on the part of the DOC, and, therefore, I agree with

Secretary Franks proposals, although I do believe that these changes could be taken further.

The tour of the prison in Wisconsin was more to get a feel for the layout of the prison, and its operating procedures, than to see or converse with inmates; I was kept at a distance from the prisoners except when this was unavoidable. This was not a problem as my intention was never to conduct interviews with prisoners. There are a number of reasons for this, first (as mentioned at the beginning of the chapter), it would be extremely difficult for me to get access to interview prisoners, especially as those within supermax facilities are considered 'the worst of the worst' and, second, the research was concerned with why these facilities have developed, what social, political, cultural and penological circumstances have led to their proliferation at the local level, therefore, speaking to inmates, although interesting, would not be particularly beneficial to the research. During the tour I was able to speak informally to several correctional officers, from which it was possible to glean information such as their opinion of working in the prison, and what they thought about the planned changes to the facility. I then had an interview with the Warden of the prison, Richard Schneider, who was able to tell me all about the proposed changes, the history of the facility, and his hopes for the future of the supermax. Due to prison procedures, I was not able to take any items into the prison with me, so I had to remember all the information attained and, upon leaving the facility, recall and write everything down as soon as possible. The Warden did, however, give me his email address so that if I had any further questions I would be able to contact him directly. In addition to gaining new information, speaking to the warden and correctional officers was useful, as I was able to get an insiders' perspective, albeit an official one, of the institution as well as those gained from outside official sources, and those against the facility. I also carried out face to face semi-structured interviews with Walter Dickey, a former Secretary of Correction, who is now a Professor within the Faculty of Law at the University of Wisconsin, Madison, and who is currently acting as monitor after a class action lawsuit was settled against the prison; Ken Strait, a Professor of the University of Wisconsin, Madison Law School, who has been working with the various monitors since the class action was settled to ensure changes were carried out; Ruth Krymowski and

Peggy Swan, who are both part of local coalitions against the building of the prison, although much of the latter two interviews was speculative and was based on hearsay rather than reliable facts (see tables 3. and 4. for a list of those interviewed and their roles). The information collected from all of the above interviews and email questionnaires can be seen in Chapters Six and Seven within the case studies of the two facilities.

The advantages of carrying out these five face to face interviews was that I was able to ensure that the questions remained targeted at the case study topic as, with online interviews, respondents can choose to ignore questions or deliberately alter the inference of the question, whilst this is much harder to do in a face to face interview. It is also easier to see casual inferences in a face to face interview, which can provide a greater level of insight into interviewees' real opinions on certain topics rather than the 'official party line'. For example, I was able to tell that Warden Schneiter believed that the new proposals for the supermax were a positive thing for Wisconsin's prison system, due to the fact that he became animated and was eager to talk about these changes. Whilst it is important to be aware, with all types of interview, that the questions posed are not biased in any particular direction, as this can lead to response bias or conversely make the respondent become guarded with their answers if they do not agree with the researcher's perspective, in some instances, as with gaining an initial response from the Secretary of Corrections, it is necessary to lean towards a particular standpoint. This was necessary with the Warden as, by showing an interest in these changes it encouraged him to go into greater detail.

7. Reflections on Doing Research and Entering a Supermax Prison

At this point I think it is important to reflect back on the process of carrying out the research, there are a number of reasons for this first, it is important to look back on the methods and techniques used and whether, in future, I would do things differently and what I have learned from the experience, and second, it is also helpful for others who may be considering the best way to undertake their own research to learn from other researchers experiences and reflections.

Carrying out research can be a very tumultuous experience as I found whilst conducting my case studies. One minute everything can be going as planned or even better than envisaged, the next everything can come to a grinding halt. This happened to me on a number of occasions, when the research is going well or better than expected a feeling of euphoria takes hold, however, as soon as serious problems arise this is quickly replaced by a low, and new ways around this obstacle need to be considered. This was the case in California where I struggled with problems of access, and, therefore, became reliant on documentary sources, which fortunately there were plenty of.

However, after undertaking the research for the thesis, if I were to carry out this study again, I would choose a different approach, rather than select two states to study as I did, I would initially choose up to four states which I could then narrow down to two, as this would allow for the fact that if I came across similar problems again I would still have other options available and, therefore, decrease the chances of coming up against a brick wall and becoming overly reliant on documentary sources.

An example of when the research process went better than planned was when I was granted access to Wisconsin's supermax. Whilst, as stated above, I had little success gaining access to Pelican Bay's supermax facility (SHU), in Wisconsin, being granted access to Wisconsin Secure Program Facility (WSPF) was a major accomplishment as very few people are invited to visit these institutions. For example, when Amnesty International asked to tour the facility in 2001 they were denied access, therefore, for a PhD candidate to be invited to tour the facility and interview the warden was some achievement. Although we are said to live in an equal opportunities world, in the field of corrections, positions of power (at least in the two states studied), still seem to be male dominated, from the Secretaries of Correction to the directors of the various divisions such as Adult or Juvenile Corrections to the wardens of each facility, in addition, I was also touring a male prison. Therefore, as a female researcher, it was slightly intimidating entering what was essentially a male orientated world.

On the morning of my visit I drove into a virtually empty car park as the majority of these spaces are for visitors to the prison of which there are few. I then walked into the front of the building, what looked like a reception area in any formal institution until I noticed the large metal detectors located to the left of the main desk. I then gave the officer at the desk my name the time of my appointment and handed over all my possessions including, my phone, car keys and purse I also had to take my passport with me to confirm my identity. At this point I began to feel a little intimidated as the two male officers were large in stature and whilst friendly, I felt like I was somehow amusing to them. I also started to feel like I was out of place and out of my depth, much like on a first day at school. I then had to negotiate the metal detectors which are much like those in any airport only on a higher setting, I had to go through these four or five times holding myself in various different positions before I was allowed any further, as the underwire in my bra kept triggering the alarm! By now I was also a little embarrassed and was relieved when one of the other correctional officers came to meet me and take me through to the main prison building.

Once visitors have undergone the processes described above, they are then normally shown to a number of visitation booths within this building where they can then communicate with the relevant prisoner, after undergoing this process myself I can understand why some visitors would be reluctant to visit as, as well as this, the prison is located some distance away from the major cities where most inmates are from and once they have gone through the rigmarole of getting to the prison and entering the facility, they do not even get to see or speak to their relative or loved one except through a CCTV screen and telephone.

I then left this first building and was led down a path with high fences either side and razor wire on top to the main prison building where I was taken to Warden Schneider's office and carried out an interview with him. Once this was complete I was given a tour of the rest of the prison. Walking around the rest of the prison reminded me of a concrete bunker all the floors and walls were smooth concrete many of which had been left untreated leaving it grey and cold. I was generally kept away from the inmates but some

association was inevitable as prisoners were moved around the prison for various reasons, those I saw were escorted by two officers and were handcuffed and shackled with a chain linking the two. All the doors on to the various units are opened and closed electronically by officers in control booths which house all equipment needed for cell extractions and other disturbances. I was shown the cells the inmates spent most of their time in, the new unit which was soon to be opened (See Chapter Six) and the indoor and outdoor exercise yards. I did notice when walking past inmate cell fronts an unusual amount of interest in me as inmates started banging on their doors and whistling and hollering, Captain Horner who showed me around the facility explained that this was because inmates see very few new faces and any change in the normal routine is a major event. After walking around the facility for an hour I was then shown back out where I collected my belongings from a locker next to the reception desk and left the building, as I walked back outside into the sunshine it felt like a great weight had been lifted from me, inside the facility was so grey and oppressive. After standing inside one of those prison cells where inmates spend up to 23 hours a day, I reflected on the fact that, it was no wonder these facilities have such high levels of mentally ill inmates, I could imagine how hard it must be to stay sane locked away in a concrete box day after day undergoing the same rigid regime with little or no interaction with another human being.

8. General Themes of Questionnaires and Interviews

The interviews and questionnaires carried out centred on a number of themes (see Appendices I to III). These were:

- Reasons why they thought the prison/s had been built.
- The day-to-day running of the facility/ operating procedures.
- The class action lawsuit and its effect on the prison and Department of Corrections as a whole.
- The future of supermax in their state.

9. Analysing the Data

Once data collection, using the various techniques, was complete, the next step was to analyse this information and put together the actual case studies themselves. The best way to do this was to produce a time line of events starting with the initial proposal for

each prison, following this chronologically through to the present day, recording specific themes and issues which occurred within this time frame.

This is where the adaptive theory which I had used as my methodological approach took on aspects of a grounded theory approach, as it was from the information gathered during my research that a number of themes and issues emerged, and it was around these themes that each of the two case studies was constructed. In the following two chapters, these issues will be highlighted within the case studies themselves. The remainder of the thesis will look empirically at the case studies to reflect back on the theoretical models which tend to represent prison, punishment, and penology, in general terms. However, these models are very abstract and, although they are generally concerned with Western society, they are not written for any one specific country. This is in contrast to the research carried out, which is geographically and historically specific, and from which I have identified how supermax facilities have developed in two particular contexts. Therefore, within the final part of the thesis, I will show whether, and how, these theories relate to the findings as well as identifying the limitations of general theories of punishment in relation to specific phenomena.

At this point it is important to reiterate the aims and objectives of the thesis which are:

- To examine and explore the development of supermax at state level throughout the United States.
- To reflect back on the theoretical frameworks that have attempted to understand the political, social and cultural and penological circumstances under which these facilities have proliferated.
- To examine and compare the various reasons which have led individual state Departments of Correction to choose to construct supermax facilities.
- To carry out detailed case studies on two supermax facilities from their original proposal until the present day and provide a detailed examination of the various regimes, relations and operating procedures within these facilities.

Therefore, the first part of the thesis has aimed to establish a number of criteria starting with general themes regarding imprisonment and then moving towards the more specific in relation to supermax. The first of these criteria, to look at the general theories of punishment, and how can they be related to the development of the supermax prison

(Chapter Two). The second, to focus on the history of the prison in the United States from its original inception in the early 18th century until the present day (Chapter Three) and, to examine the political, social and cultural changes which have occurred within the field of criminal justice and penology, in particular in recent decades, which have led to the development of the supermax prison (Chapter Three). The third, to provide a definition of what a supermax facility is, identify any gaps in the research concerning supermax and, examine and explore the development of supermax within the federal prison system in the United States (Chapter Four).

The second part of this thesis moves away from these general themes to focus on the local, it examines the empirical data collected, and compares this information with the initial concepts and ideas identified in Part One. Therefore, Part Two aims to provide comprehensive case studies on the two supermax facilities researched from their original proposal until the present day (see Chapters Six and Seven) and present a detailed examination of the various regimes, relations and operating procedures within these facilities (Chapters Six and Seven). Part two will also examine and compare the differences and similarities between the two supermax facilities and the various reasons which have led individual state Departments of Correction to choose to construct these institutions (Chapter Eight). It will examine the reasons provided for the construction of the supermax in the case studies with the theoretical models identified in Chapters Four and Five (Chapter Eight) and finally, evaluate the strengths and weaknesses of these theoretical models in relation to the specific actuality of the two local case studies - do the theoretical models have any bearing on the reality of the development of the supermax prison (Chapter Eight).

The next chapter presents the first of the two case studies which focus on supermax facilities in specific locales. The first of which examines the development of Wisconsin's supermax prison: Wisconsin Secure Program Facility, from its initial inception up until the present day.

CHAPTER SIX

An Analysis of Wisconsin's Supermax: Wisconsin Secure Program Facility⁵

The purpose of this chapter is to undertake a case study into the development of Wisconsin's supermax prison, looking at why Wisconsin decided to build a supermax; what factors led to its initial proposal and the debates surrounding this; through to its construction and present day running. By carrying out this case study, it will not only provide a detailed account of why one particular state – Wisconsin - decided to build a supermax but will, in turn, offer insight into why different states decide to build these facilities. In addition, the case study will also determine whether there are any connections between the decisions to build a supermax in Wisconsin and the penological theories, and social, political and cultural factors suggested for this development, put forward in Chapters Two and Three.

1. Development of the Supermax

US incarceration rates have been increasing since the mid 1970s and Wisconsin, which prides itself on its reputation for being a progressive state, a pioneer in social legislation, and one of the first states to abolish the death penalty, has become no different from the rest. Between 1991 and 1996 the Wisconsin state prison population grew by 63.7%, the second largest population increase in the United States, whilst one year growth from 1995 to 1996 was 14.8%, the fifth highest in the nation (Mumola and Beck 1997:5). Between 1997 and 1998, the population increased by a further 13.4%, the third highest growth rate in the US (Beck and Mumola 1999: 5), and between 1998 and 1999 it increased by 10.9% (Beck 2000:5), up 2,014 from the previous year (Beck 2000:4), giving Wisconsin the second highest yearly prison population growth in the nation. Part of the reason for this increase in incarceration was the 'truth in sentencing' legislation passed in June 1998,

⁵ The Supermax facility in Wisconsin, now called Wisconsin Secure Program Facility (WSPF), was originally titled Supermax Correctional Institution (SMCI). For the purposes of this historical account in the first part of this chapter it will be referred to by its original title.

which abolished parole and early release from prison, meaning that inmates must serve the whole of their prison sentence set by the judge. Before this law was passed, inmates were considered for parole after serving a quarter of their sentence. 'There was also opportunity for mandatory release after serving two-thirds of the sentence for prisoners who were not given early parole' (League of Women Voters 2002:1). These changes have resulted in the criminal justice system having to deal with a much larger number of prisoners. In order to combat this problem of increasing prison population rates, rather than search for alternative initiatives to incarceration, Wisconsin's answer was to build more prisons. 'Since 1995, thirty six Wisconsin counties joined the prison and jail construction boom by expanding existing institutions or erecting new institutions' (Center on Wisconsin Strategy 2002:4).

In March 1995, within this climate of increased incarceration and 'getting tough on crime', the then Governor, Tommy G. Thompson, began promoting the idea of building a \$75 million super maximum security prison to house 1,200 inmates in Wisconsin, which was endorsed by the State Building Commission. Prior to this, Thompson had attended a Governors' meeting where Governors from other states talked about building supermax facilities, leading Thompson to the decision that Wisconsin needed a supermax too. He then solicited from Corrections their point of view (Dickey, W. 2006, pers. comm., 6 Apr⁶). According to Michael Sullivan, then Secretary of the Department of Corrections, two meetings were held with all of the state's prison Wardens in attendance. All the Wardens were found to be in favour of building *some sort* of facility to house the state's more difficult to manage inmates. Especially keen were those Wardens working at the state's four highest security facilities - Columbia, Waupun, Green Bay, and Dodge, Correctional Institutions (Sullivan, M. 2006, pers. comm., 18 Sept⁷). Jeff Endicott, then Warden of Wisconsin's most secure prison, the Columbia Correctional Institution, agreed with Thompson stating that Wisconsin did indeed need a supermax facility. Endicott had previously been attacked by an inmate, which had changed him from being an educated,

⁶ Walter Dickey was Secretary of Wisconsin's DOC from 1983 -1987 and is now a Law Professor at the University of Wisconsin, Madison.

⁷ Michael Sullivan worked in the field of Corrections for 30 years and was Secretary of Wisconsin's DOC at the time the decision was made to build the supermax.

well reasoned, 'moderate guy', into an extremely security conscious, proponent of the death penalty (Dickey, W. 2006, pers. comm., 6 Apr). Within the DOC, arguments for the facility were that, in the future, inmates were likely to get tougher and, therefore, the behaviour of some inmates would be so bad that this level of security would be required. The facility as proposed was to consist of 500 supermax and 700 maximum and medium security beds 'to alleviate a state prison system that has become increasingly overcrowded' (Wisconsin State Journal 26 May 1995). At year end 2004, Wisconsin's adult prison population stood at 22,966 (Harrison and Beck 2005:3), 'up from 5,736 when Thompson took office in January 1987' (Lueders 15 Aug. 2000). State Senator Moore believes this growth had 'little to do with crime rates, which in Wisconsin have fallen for eight consecutive years. In legislative discussions on prisons she said "We don't even talk about dangerous criminals. We don't even talk about victims. We talk about the number of jobs that are created. We talk about receipts"' (Lueders 15 Aug. 2000). After much speculation about whether the project would go ahead - depending upon whether the state would be able to obtain \$50 million in federal funds for the project - in his 'state of the state' speech on the 30th January, 1996, Governor Thompson declared:

Prisons work. They keep violent people from harming good people. It's that simple.... tonight I am committing to build a SuperMax prison. If we don't get federal funding, we must build it ourselves. And once this plain, stark and austere facility is built, that's where Wisconsin's most vicious criminals will go. The SuperMax will be a criminal's worst nightmare. (Thompson 1996, 'state of state' speech)

However, there was still much speculation about whether the building of the facility would actually go ahead without the support of federal funds, and alternative suggestions were made by Governor Thompson that private sector management of the supermax should be explored, or that the prison could instead be built in pieces with the first instalment forming the 'core' and then attaching more buildings to this as necessary (Mayers 2 Feb. 1996). By the end of March 1996, the proposed 1,200 bed facility was discarded by a legislature committee in favour of a \$40 million, 400 or 500 bed prison or, alternatively, to add 'high-security cells to existing prisons' (The Capital Times 23 Mar.

1996). By June, Thompson had signed a '\$40 million bill into law... for building the facility or adding high security cells at existing institutions, "we must have a tool to protect the people of Wisconsin from vicious prisoners", Thompson said, "the supermax is it"' (Wisconsin State Journal 1 Jun. 1996). 'The legislature voted for the budget that included the funding for the prison with little or no debate over the supermax issue' (O'Brien, T. 2006, pers. comm., 27 Aug⁸). However, the DOC had conducted an informal 'survey of Wardens around the state asking for feedback on the need for segregation cells' (O'Brien, T. 2006, pers. comm., 27 Aug). The DOC determined that the best way to meet the need was to construct '50 more segregation cells at each of the states four adult male maximum security prisons, according to federal court records in Madison. The Wardens' second choice was a separate facility: a 200-bed super-maximum security prison' (Milwaukee Journal Sentinel 30 Oct. 2001). Even this was large in comparison with then secretary of the DOC, Michael Sullivan's, 20 year projection of the number of inmates likely to need the kind of confinement supermax provided, which 'maxed out' at 120 (Dickey, W. 2006, pers. comm., 6 Apr). The 400 - 500 bed facility proposed was, therefore, much larger than the DOC originally requested. However, because Thompson and the Department of Administration decided the facility was going to have either 400 or 500 beds, there was little the DOC could do and Sullivan, because of the shortage of beds throughout state prisons, was 'happy to get any beds added to the system', 'figuring' that he could make do with whatever they gave him, although he did try to have the facility designed so it would be flexible, and could be used for other types of inmate besides the 'difficult to manage' type for which the facility was to be designed. In short, the DOC needed the beds and needed segregation cells but a 500 bed supermax facility was not what we asked for (Sullivan, M. 2006, pers. comm., 18 Sept). As Walter Dickey, a former Secretary of the DOC from 1983 to 1987, stated in an interview for The Capital Times, 'this prison wasn't driven by behavior and it wasn't driven by correctional need... This was Tommy Thompson's decision, and it was driven by the desire to appear tough' (Zaleski 27 Aug. 2001).

⁸ Tim O'Brien is an assistant in the office of State Representative Mark Pocan.

2. Construction of the supermax

The next stage in the process was deciding on a location for the proposed facility. Interested communities were invited to answer a set of questions and submit a proposal to a five member committee appointed by Thompson (Wisconsin State Journal 23 Sept. 1996). There was a great deal of demand to secure the proposed facility, as 'prison and jail building has become the state's newest form of economic development. Many rural and economically depressed communities in Wisconsin have lobbied state lawmakers to erect prison facilities in their communities in order to combat growing unemployment problems.' (Center on Wisconsin Strategy 2002:4). Fifteen communities submitted proposals, which were quickly narrowed down to eight, then four, and then finally down to two, Redgranite, in the central part of the state, and Boscobel, (The Capital Times 24 Sept. 1996 – 30 Nov. 1996), a small city of under 3,000 situated in rural South West Wisconsin. On the 22nd January, 1997, Boscobel was finally endorsed by the State Building Commission as the site for the facility on a 7-1 vote (Pommer 23 Jan. 1997). Prior to this, the city had been selected as part of a political deal with Governor Thompson and a local Republican legislator. The legislator believed that a prison (of any type) would bring a permanent source of employment to his district, which was struggling economically. 'At the time the Governor made the deal to locate a prison in the area, nobody was thinking about supermax. It just happened that this was the next facility the legislature decided to build' (Streit, K. 2006, pers. comm., 10 Sept⁹).

'Public informational meetings were held throughout 1996 and early 1997' (Krier, D. 2006, pers. comm., 15 Aug¹⁰) in Boscobel and, although there were some initial reservations regarding the facility, such as the development of a group called the Concerned Citizens against the Supermax, who filed a lawsuit 'charging Paul Bloyer, Mayor of Boscobel, and other city officials' (Lampert Smith 6 Apr. 1997) of purchasing land illegally in order to persuade the state to build the facility in Boscobel, for the most part, however, the economic benefits of the prison 'apparently overcame' any fears

⁹ Ken Streit has functioned as monitor for purposes of interviewing inmates, interacting with prison staff and reviewing files in the settlement of the *Jones 'El v Litscher* class action lawsuit. He is also a faculty member of the Remington Center of the University of Wisconsin Madison Law School.

¹⁰ David Krier is Editor of the Boscobel Dial – the Local Newspaper in Boscobel.

residents had about the facility (Krier, D. 2006, pers. comm., 15 Aug), such as the creation of numerous jobs and the fact that 'inmates are counted as residents of the community raising its state aid at least \$14,000' (Theimer 5 Apr. 1997). Construction of the prison 'began in August 1997 on a 32-acre site just east of the Boscobel Industrial Park' (Krier, D. 2006, pers. comm., 15 Aug). In November, 1997, Governor Thompson and the State Building Commission agreed that a further 100 beds could be added to the facility, taking the total number of cells up from 400 to 509. This was due to the fact that 'bids for the project came lower than expected, allowing extra money to be plowed back into the prison' (Mayers 26 Nov. 1997). The 509 bed facility was completed 2 years later in August, 1999, at a cost of \$47.5 million, receiving its first 12 inmates on the 10th November, 1999 (WIDOC 10 Nov. 1999).

The state legislature allocated \$10.7 million to run the facility for its first year, and \$12.7 million for the following year, in the 1999 – 2001 budgets (Jones 16 Sept. 1999). The then Secretary of Wisconsin DOC, Jon Litscher, estimated that the cost of imprisoning inmates at the supermax facility is approximately \$31,500 annually, or roughly \$86 a day, compared with \$20,700 a year, or roughly \$56 a day, at other state institutions (Jones 16 Sept. 1999). The total per capita cost per month for the facility for the fiscal year ended June 30th 2001, was \$4,561.75, whilst the net total cost for the whole year was \$17,575,091.06 (WIDOC 2001). This total has now dropped slightly to \$15,827,062 (WIDOC, 2005:4) although there are continuing budget problems at the institution, and throughout the WI Department of Corrections as a whole. The legislature at the time of opening also authorised 245 staff positions at the facility (Jones 16 Sept. 1999). Presently there is a total of 268.5 staff at the facility, 175 security and 93.5 non-security staff (WIDOC 2005:4), employed by the state. In addition to this,

there are also private "vendors" for health services, dental functions and a variety of other services. Unlike other maximum security prisons, there are no "general population" inmates available to do any of the routine jobs such as food services, janitor, grounds-keeping, laundry work or office work. Therefore, the Boscobel facility has to hire many additional workers to do these jobs. (Streit, K. 2006, pers. comm., 10 Sept.)

The number of inmates confined within the institution has increased at a steady pace, and as of October 2006 stood at approximately 360 inmates (WI DOC 20 Oct. 2006).

3. Design of the prison

When designing the supermax prison, the state took advice from the Department of Corrections in Colorado, including touring the federal supermax - the Administrative Maximum Penitentiary (ADX) facility - in Florence and, in addition travelled to Virginia to look at the supermax facilities in place there. From the start, the DOC had little to do with the design of the facility, leaving Sullivan 'bitter'. Sullivan had worked his way up through the system starting out as a parole agent in Milwaukee, his background being in community corrections rather than prisons, whilst the Thompson administration was highly political, meaning that Sullivan and his ideals and opinions had 'nowhere close to the voice of the politicians'. He was shuffled aside and seen as not sufficiently loyal to the Governor (Dickey, W. 2006, pers. comm., 6 Apr). This meant that the design features were left to Thompson and the Department of Administration.

'It is unique in design, as far as a facility in Wisconsin, and as far as I know in the United States', according to Daniel Stephans, 'the state official who supervised the projects design and construction' (Jones 31 Aug. 1999). Its features include motion detectors and surveillance cameras; a biometric system which scans hands to positively identify inmates, staff and visitors; a video visitation system – as no face-to-face visits are carried out – and a central command post which employs computers to control movement through every secure door (Jones 31 Aug. 1999) and 'from which videos/cells are monitored' (Krier, D. 2006, pers. comm., 5 Sept). The main prison building consists of six separate units organised in a 'rectangle three units wide and two units deep' (Streit, K. 2006, pers. comm., 10 Sept) one of which (the front central one) is used for admissions; administration; and food and health services. The remaining 5 are used for housing prisoners. Each of these five units, known as, Alpha, Beta, Charlie, Delta and Foxtrot, comprises 4 ranges or halls, with cells on either side, and at the end of each range are located indoor exercise pens. On some of the ranges, programme rooms are situated. These are the size of 2 cells and are used for inmates in levels 4 and 5 confinement, who

are allowed to congregate in small groups of up to six for treatment programmes. Most ranges also contain 'observation cells' – used for inmates who are considered either a danger to themselves, or others – these have large glass areas enabling prison staff to easily observe the inmate. Each unit also contains an office for the unit manager, who is part of the administrative staff. Linking all of these units is a 'spine' hallway, which travels the length of the facility. The prison perimeter is encircled by a forest of tall pine trees (see Appendix IV A.). Supermax 'inmate Bryce Garrett calls the facility "mistress of the pines"' (Krier, D. 2006, pers. comm., 15 Aug) and is 'surrounded by three fences topped with razor wire' (See Appendix IV B.), one of which is electrified and usually kept in stun mode (Thompson 1999:1). However, if the fence is touched twice (the first time is a warning) sensors switch the voltage to give a lethal charge. Along this fence is the 'gate house' where visitors enter and, after passing through security, go to the main building through a fenced passage. Offenders are brought in via vehicles which are driven into a secure garage. There is a single guard tower from which prison guards watch over vehicle and pedestrian entries through this gate. A patrol truck drives around the prison 24 hours a day.

Within the facility, cell doors are staggered so that it is impossible for inmates to see one another through the small food/restraint slots in the doors (see Appendix IV C.). In fact, inmates cannot even observe what is occurring in areas adjacent to their cells. For inmates in level 1 confinement, 'prisoners' cells do not even open on to a hallway traversed by officers. Instead, pairs of cells are located on a small hallway, once removed from the traversable hallway, and each of the pair of cells is separated from the other by the small side-passage. So that officers do not even walk past the prisoner's cell unless they have a specific reason to do so' (*Jones'El v Litscher* 2001a:12). The facility was designed so that inmates would be unable to communicate with one another; however, it is possible for inmates to shout to their immediate neighbours through the ventilation system, although prison engineers did try to rectify this without success (Lueders 15 Aug. 2000).

4. Regime

According to the Wisconsin DOC, in order to gain entry to the supermax facility, inmates must fulfil one or more of the following criteria:

- (i) Have a history of assaultive, violent or aggressive behaviour
- (ii) Pose a safety or security risk within the institution including gang leadership, predatory behaviour or victimisation of staff
- (iii) Have a high potential for escape
- (iv) Have demonstrated a capacity to incite disturbances. (WI DOC 10 Nov. 1999)

These guidelines are particularly broad and vague, meaning that almost any inmate could end up at supermax for a minor rule infraction. Walter Dickey argues that these criteria lack the 'clarity and specificity' needed to protect against over-use, stating that even when he was head of the Department of Corrections and 'involved in rule-making, there was always pressure to draft rules as vaguely as possible. Then you can do anything you want' (Dickey in Lueders 15 Aug. 2000).

The prison itself uses two main types of solitary confinement to control prisoner behaviour - these are programme segregation and administrative confinement. The administrative confinement system – used for inmates 'whose continued presence in general population poses a serious threat to life, property, self, staff, or other inmates, or to the security of the institution' (WI Administrative Code DOC 308.1) - in SMCI originally involved 5 levels which prisoners had to progress through. Upon arrival, prisoners are automatically assigned to level 1 - Alpha unit -where they receive an initial health screening, which includes a complete review of essential medications. They are then assessed by social service and educational staff and start the process of progression. Until recently, inmates were permitted to stay at level 1 for a minimum of 30 days (SMCI Handbook level 1 2000:5). However, inmates are now not permitted to stay in level 1 for longer than 7 days, although the Warden, 'may permit an extension of the stay in which case the inmate may be housed in level one for no longer than an additional seven days' (*Jones'El v Litscher* 2002:5). In other words, prisoners must not be housed in level 1 for longer than 2 weeks, whilst the normal period of stay for inmates at levels 2 and 3 is 60

days (*Jones'El v Litscher* 2002:5). The last level – level 5 - is the transition level before the prisoner is moved back into a general population facility.

Within the facility, prisoners at levels 1 to 3 were confined to their cells for 23 hours a day, 5 days a week, and 24 hours a day for the remaining 2, while inmates at levels 4 and 5 were given 10 hours out of cell activity (*Jones'El v Litscher* 2002:7). However, until recently, all inmates were spending 23 hours a day in their cells with only 4 hours recreation time a week - correctional officers decide when these hours will be - there is no regular schedule (*Jones'El v Berge* 2001b:7). The recreation area – where 1 inmate at a time is permitted - consists of a room which measures 'approximately 14 feet by 20 feet by 17 feet, has three concrete walls and a cage front. There is an opening along the top of the outside wall that measures approximately two feet. This opening allows the outside air to come in but does not allow any sunlight to enter and does not allow inmates to see out' (*Johnson v O'Donnell* 2001:6). There is 'no exercising apparatus, no pull-up bar, weights, bike, basketball hoop' (*Jones'El v Berge* 2000:2) et cetera, which means that many inmates choose not to take recreation time, preferring instead to stay in their cell. (Callender 15 Feb. 1999). Cells typically measure 6 feet by 12 feet for the first few levels, expanding to 8 feet by 12 feet as inmates move up through the levels, and 'are made of 4 concrete prefabricated walls and one box car door' (*Jones'El v Berge* 2000:1), contain a combined stainless steel sink-and-toilet, an unbreakable mirror, in the adjacent corner a shower, and a concrete bunk with mattress (Jones 31 Aug. 1999) (See Appendix IV D.). Many cells have a camera installed in them so that guards can view inmates' behaviour 24 hours a day: if an inmate covers the camera in his cell for any reason this is likely to result in disciplinary action for the inmate. There is no access to daylight as the 'one 6 inch by 6 inch window at the top of one wall' looks out on 'nothing but a utility corridor and a skylight' (Jones 31 Aug. 1999), which is clouded to obscure any kind of daylight. From its initial opening in 1999 until 2005, there was no outdoor recreation area so prisoners never had any access to sunlight or outdoor conditions whatsoever. Prisoners are subjected to 24 hour illumination, and are not allowed to cover their faces completely, as doing so would result in being woken up and made to move. All meals are delivered to inmates at their cell fronts. Inmates are entitled to shower 3 times a week. There is

limited contact between staff and inmates, therefore, if a prisoner wishes to contact staff for any reason this must be done via the use of an intercom situated in the prisoner's cell - however, this may only be used if the inmate requires immediate assistance.

Visits for inmates 'pursuant to DOC 309.16, are two hours per month for the first 200 days and four hours per month thereafter' (WI DOC 2001:1), and are conducted via closed circuit television. However, 'such visits via video lack any form of personalization', the images are often distorted, and visitors' voices and facial expressions are often out of sequence with their movements (*Jones'El v Berge* 2000:4), making it particularly difficult to carry out a normal conversation. This is exacerbated by the fact that often the inmates' family members, or friends, have travelled long distances to visit in the first place and, upon arrival, must undergo numerous security checks including showing photographic identification, having their hand scanned by the biometric system, and passing through a metal detector, before being led to one of the facility's 13 visiting terminals. It is not surprising then to find that the prison receives an average of 6 visits a week (Lueders 15 Aug. 2000). Visits by lawyers are carried out on a face-to-face, no contact, basis in a 'fully partitioned booth with concrete, steel and Plexiglas from floor to ceiling' (*Jones'El v Berge* 2000:4). This was more recently altered so that inmates at the less restrictive levels were permitted the right to receive face-to-face, non-contact, visits from visitors as well as their attorneys.

Privileges, as expected in a level system, increase as the inmate progresses. The number of telephone calls which inmates are allowed to make increases from one 10 minute call a month at level 1, to two 10 minute calls for level 2 inmates, and three for level 3 prisoners. Inmates at levels 4 and 5 are allowed four and five 15 minute calls a month respectively. Inmates are also allowed more property in their cells as they move up through the levels. At level one, until recently, inmates were not provided with any reading material other than a Bible or other religious text, and no programming of any description was given. This has now been expanded slightly so that inmates are now given a television and additional programme material (*Jones'El v Litscher* 2002:6). Other levels are allowed library books, three books for levels 2 and 3, and four books for levels

4 and 5. Inmates who have progressed to level 2 or above are allowed 12 photographs in their cell, inmates in level 1 do not have this 'privilege'. The amount of personal property inmates are allowed to keep in their cells also increases through the levels. At level 2, inmates are permitted 5 personal books. This increases to 7 at level 3, where they are also allowed 5 greetings cards and two periodicals. Level 4 are permitted 10 personal books, 5 greetings cards, 3 periodicals and a newspaper, whilst prisoners under level 5 segregation are permitted the same as level 4 with the addition of a sketch book (SMCI Handbooks, Levels 1-5 17 Nov. 2000). Inmates in levels 4 and 5 are also permitted some out of cell hobby or programming opportunity, with congregate activity encouraged where possible. 'Educational activities, jobs, and day room activities may also be allowed at the discretion of the Warden' (*Jones'El v Litscher* 2002:7). Education for inmates is provided 'via television, written assignments and cell front instruction' (SMCI Handbook, Level 2 17 Nov. 2000). Correspondence courses are not permitted at supermax. Inmates in the lower levels are placed in restraints whenever they are to be transported around the facility, and are escorted by a minimum of 2 correctional officers. Prisoners at levels 4 and 5 are not generally required to wear restraints, with the exception of inmates recently transferred from level 3 to level 4 who are undergoing a period of transition (*Jones'El v Litscher* 2002:8).

In addition to the 5 level system of administrative confinement at the facility, there is also a separate system for those in disciplinary programme segregation. This is used for inmates who have been found guilty of committing a serious rule violation, and require a higher level of physical control than the regular prison population, and is used for deterrence and punishment (WI Administrative Code DOC 303). This is made up of 3 steps. Many inmates under this system are already part way through their segregation, and are transported to supermax to continue their separation in a facility designed for such. 'By moving long-term segregation inmates to SMCI, segregation facilities at lower security prisons are freed, allowing more flexibility for prison officials; the segregation cells may then be used for short-term administrative and disciplinary measures' (DeMaio 2001:8).

The average amount of time inmates are expected to stay at the facility varies, as there is no predetermined release time, but ideally inmates would be released back into general population prisons after a 24 to 36 month period (DeMaio 2001:21). However, because release back into general population is based on prisoners' behaviour in the institution, if an inmate's behaviour does not improve – for any reason such as obstinacy or mental illness - while in the facility, his stay could be considerably longer than that projected, lasting for many years and leading, in some cases, to inmates being released straight back into society from supermax. Former Supermax Warden, Gerald Berge, argued that it is the DOC's '*intention* not to release anybody from the institution to the streets' (Lueders 15 Aug. 2000, emphasis added), however, he could not guarantee that this would never happen. Being released back into the community could have serious consequences not only for the inmate, who has endured years of segregation and stringent control, but also for society, as these inmates are, at the very least, likely to have severe difficulties in adjusting to independence and freedom.

5. Problems since the Facility was Built: Who goes to Supermax?

Even before the Supermax Correctional Institution was completed it was surrounded by controversy, was it really needed, it was too large and too expensive. Furthermore, once the facility was built who was going to go there? The fact that the Wisconsin state prison system was so overcrowded helped to validate SMCI's existence (DeMaio 2001:7). Before the supermax was built, the average segregation populations were estimated to be between 90% and 120% capacity (DeMaio 2001:8). However, there has been a great deal of contention over whether the inmates sent to SMCI are really 'bad' enough to be sent there.

The way Wisconsin's Administrative Code is set out means that Department of Correction officials are permitted to house inmates either at the level 'at which they are classified or at a more secure level...because of space or program limitations' (Wis. Administrative Code DOC 302.12(2)). In other words, prison officials are legally able to confine inmates at higher security classifications than necessary, if there are problems of overcrowding at other institutions, thus inmates could be sent to SMCI even if they are

not deemed dangerous or disruptive enough for the institution. This can be particularly detrimental to the inmate for a number of reasons. First, by moving a lower security inmate into a higher security institution, this may pose risks to the lower security inmate, and may deprive him of treatment or programming. Second, the inmate may lose valuable opportunities for education, rehabilitative treatment, and work, if sent to such a facility and, finally, the inmate will also carry the stigma of being a 'supermax' inmate (DeMaio 2001:9).

After much speculation regarding this issue, State Representative Scott Walker, a Republican for Wauwatosa, who chairs the Assembly Corrections Committee, and Senator Bob Jauch, a Democrat for Poplar and the Chairman of the Senate Corrections Committee, requested sentencing and disciplinary data on the inmates confined at the supermax facility. This information came in the form of a report, released on the 29th October 2001, which Walker claims confirms that the facility holds only inmates who are a serious threat to security elsewhere (Press Release 29 Oct. 2001). Walker argued that 'preliminary calculations' by his office showed that 88% of inmates at supermax were originally sentenced for violent offences, whilst 78% were transferred there 'in part' for assaultive behaviour whilst confined in prison. Others were sent there for behaviours ranging from gang affiliation to predatory behaviour. This, argues Walker '...clearly dismisses any notion that the Department is actively seeking any available warm body to fill prison beds...we send inmates to supermax because they earn the trip.' (Press Release 29 Oct. 2001).

However, State Representative Mark Pocan, a Democrat for Madison, argued that the figures showed that 'a high proportion of supermax inmates are not the "worst of the worst" of the state's prison population, but are instead serving time for less serious offences such as drug dealing, forgery, and theft' (Callender 30 Oct. 2001). In fact, of the 323 inmates at supermax, when the report was carried out, 103 were convicted of non-violent crimes (Milwaukee Journal Sentinel 17 Nov. 2001). Pocan argued that these 'figures lend weight to his allegation that Corrections' officials use the state's harshest prison to ease overcrowding in the rest of the prison system "we are literally putting

people in there who don't belong there to justify the prison's existence" (Milwaukee Journal Sentinel 17 Nov. 2001). Pocan also argued that the Department's statistical profile raises as many questions as it answers about the use of the prison. Then Corrections' Secretary Jon Litscher argued that this was 'ridiculous' as 'inmates' original crimes are irrelevant' (Milwaukee Journal Sentinel 17 Nov. 2001) - supermax prisons are designed to house inmates whose behaviour within the system is disruptive, and a threat to security. However, one inmate, Alejandro Rivera, a gang leader convicted of murder, who was also accused of hiring two people to firebomb the District Attorney's home during his murder trial, was sent directly to SMCI (Milwaukee Journal Sentinel 17 Nov. 2001). The report indicated, according to The Capital Times, that about 60% of prisoners sent to supermax had previously assaulted staff or inmates in other institutions, whilst approximately 40% were 'non-assaulters' (Callender 30 Oct. 2001). The report also indicated that 22% of inmates confined at the institution were there, not because they are dangerous or disruptive, but because they are in disciplinary segregation (Press Release 29 Oct. 2001).

Prisoners' rights groups have also expressed concerns over whether inmates sent to the institution are indeed 'worst of the worst' and also whether beds at the supermax facility are being filled purely because they are empty. Former Corrections Secretary, Jon Litscher, suggests this is not so. 'It's not our intent to fill up Boscobel because it's there. It's our intent to take out the most disruptive, so that the populations that are left (in other prisons) can function appropriately. I don't want anyone to think of Boscobel as a general population institution or just super safe' (Jones 16 Sept. 1999). However, an informal survey of 71 of SMCI's inmates, carried out by the Wisconsin Coalition to Stop Control Unit Prisons, found that many prisoners did not actually know why they had been sent to the facility, and that 'prisoners are afraid of prison staff, afraid of other prisoners, and afraid of losing their minds' (Callender 10 Oct. 2000). 'Many of those surveyed said they were afraid of being beaten by guards, particularly during cell extractions, when inmates are forcibly removed (from their cells) by a team of guards' (Callender 10 Oct. 2000).

One Wisconsin prisoner, 'David Hatch - who was convicted of two counts of attempted murder stemming from a 1985 incident in which he shot his estranged girlfriend, a police

officer, and himself' (Lueders 15 Aug. 2000) - was so against being sent to Supermax Correctional Institution that he hanged himself in order to prevent his transfer going ahead. He left a suicide note reading, 'I told you I wasn't going to go there' (Lueders 15 Aug. 2000).

6. Gang membership and Race

Gang affiliation or membership is another way inmates can end up at supermax. According to the Wisconsin Administrative Code, an 'inmate gang' is a 'group of inmates which is not sanctioned by the warden' (Wis. Admin. Code DOC 303.02(11) in DeMaio 2001:14). This rather loose definition gives a great deal of leeway as inmates, like members of society in general, gather themselves into groups of people they can most identify with, meaning that it is possible for almost any inmate to be accused of gang membership. 'Constitutionally, an administrative review such as the Program Review Committee (PRC), which is used to assign inmates to SMCI, only needs to find "some evidence" to support a decision' (DeMaio 2001:14) of whether an inmate is a gang member. Therefore, other prisoners can be used to provide testimony, however, because of the very nature of gangs, and the fact that members often swear life long allegiance to a gang, other prisoners' evidence is often confidential and 'could often be based on fear or anger, or be otherwise unreliable' (DeMaio 2001:14) and, because of this, the 'Wisconsin Administrative Code provides measures to bolster the trustworthiness of the testimony' (DeMaio 2001:14). Confidential evidence is, therefore, often backed up with other evidence such as other anonymous statements, or physical evidence. However, this is still often a long way from being 100 percent reliable. State Senator Gwendolynne Moore, a Democrat for Milwaukee, has voiced concerns over the fact that African-American prisoners may be being sent to the supermax facility based on 'loosely defined gang affiliation' (DeMaio 2001:15). Of the first 215 inmates to be sent to SMCI, the majority, 128 (60%) were African-American, only 62 (29%) were white, while the remaining 25 inmates (11%) were made up mostly of Hispanics (Lueders 15 Aug. 2000). This is in contrast to the fact that in 1999 - 2000 only 5% of the total prison population in Wisconsin was African-American and, less than 2% were Hispanic (State of Wis. Blue Book 739 in DeMaio 2001:34).

7. Juveniles

Another area where the supermax has received major criticism is over the housing of juveniles at the facility. On the 29th May, 2001, officials from the human rights organisation, Amnesty International, began a 4 day visit to Wisconsin where they met with then Warden Gerald Berge and other officials from the supermax, (The Capital Times 29 May 2001), but were prohibited from touring the facility. During their visit they found that amongst other things - including 24 hour illumination, and family visits requiring to be conducted via closed circuit television et cetera - several minors were being confined at the institution, in breach of international standards. This led to State Representative Pocan stating that he intended to 'introduce legislation banning the placement of juveniles at supermax' (Press Release 8 Jun. 2001), adding that, 'Taking a youth with a problematic background and placing him with the "worst of the worst" can only have a negative effect. Many of these juveniles have emotional or mental health issues. That's the care they need, not severe isolation and lack of programming' (Press Release 8 Jun. 2001). Two other state lawmakers joined him in this, Representative Scott Walker and Senator Gwen Moore: all 3 drafted a bill preventing minors being sent to the facility. On the 5th July, 2001, 'legislative leaders agreed to make 18 the minimum age for prisoners at the supermax' (Pommer 6 Jul. 2001) This led to then Governor Scott McCallum signing legislation to ensure inmates under the age of 18 do not get sent to the facility. Despite enquiries by politicians and others, the DOC will not say how minors ended up being housed at the supermax, claiming that the youths are protected by juvenile confidentiality laws, even though they were tried and sentenced as adults (Callender 21 Jul. 2001).

Amnesty, in a news release, further condemned the facility, stating that the isolation conditions there 'are harsh and in breach of international standards...and...asking for under 18 inmates to be urgently removed from it' (Amnesty International 26 Jul. 2001). 'Further concern stemmed from the fact that at least two of the juveniles sent to Boscobel prison had histories of mental illness or emotional disturbance' (Amnesty International 26 Jul. 2001). Seven minors, all of whom were tried and convicted as adults, have been sent to the institution. 'All were reportedly transferred to Boscobel for fixed-term disciplinary

offences, which means they cannot participate in in-cell programs which enable other prisoners to earn their way to less restrictive custody and could thus spend their entire time in the most restrictive levels, or even have their term extended for further indiscipline' (Amnesty International 26 Jul. 2001). The inmates whom Amnesty were particularly eager to remove from the supermax were Canyon Thixton, 17, and Anthony Hall, also 17. 'Thixton, who has a long record of juvenile crimes, was convicted as an adult and sentenced to four years for stealing a car in 1999 and leading police on a high-speed chase' (Callender 15 Dec. 2001). He was sent to supermax in April, 2001, following an incident in which 'a riot-suited guard at another prison was hurt while trying to drag him out of his cell during an inmate disturbance' (Callender 15 Dec. 2001). Whilst at the supermax facility, Thixton has 'been beaten by prison guards and gassed,... stripped of his clothes, stripped of his bedding, stripped of his bible and refused toilet paper' (Callender 15 Aug. 2001). He has also attempted suicide a number of times 'by cutting his wrists' (Callender 15 Dec. 2001). A cell extraction involving Thixton brought about a great deal of controversy after Department of Corrections' officials refused to release a video tape of the extraction - in which Thixton was 'allegedly hit, kneed and received puncture wounds from guards during a forced removal from his cell' (Press Release 3 Aug. 2001) - to Representative Pocan. The reasons they gave for this were that:

...if copied and disseminated, the video could be reviewed repeatedly by members of the public or broadcast through the media. The video depicts specific use-of-force tactics employed by the Department's correctional officers when dealing with situations (sic) involving uncooperative or violent inmates who may pose a danger to the security of the institution or the safety of the people therein. These tactics have been carefully thought out, developed, and refined to bring the inmate under control with as little risk or harm as possible to the officers and inmate...If members of the public were allowed to repeatedly review this video or other videos reflecting similar tactics, it would be possible to devise and pass on counter measures which could delay or make more difficult the critical task of regaining control of the cell or the inmate, thereby increasing the risks and likelihood of injury to officers or inmate. The interests in protecting the security of the institution and the safety of its staff and inmates outweighs the public's interest in obtaining a copy of this video. (WI DOC letter to Rep. Pocan 2 Aug. 2001)

Pocan argued that this was 'laughable' stating that 'if the Department has nothing to hide, they should comply with state law' (Press Release 3 Aug. 2001). 'Pocan's request was made through the state's open records law and with the permission of Thixton and his mother' (Press Release 3 Aug. 2001). On the 10th August, Pocan was permitted to view the tape at the DOC's offices. He said that the video revealed nothing about the Department's use of force tactics but did show 'a guard kneeling Thixton at least twice while pleading "I'm not resisting. Why are you hitting me?"' (Lueders 10 Aug. 2001). Thixton has since been released from supermax.

8. The Class action Lawsuit

On 25th September, 2000, less than a year after the opening of the facility, two inmates, Dennis E. Jones'El and Micha'el Johnson, filed a federal lawsuit against supermax correctional institution stating that then Warden, Gerald Berge, and a number of other staff members, were violating a number of their rights under the United States Constitution, including 8th and 14th amendment rights 'by subjecting them to cruel and unusual punishment and/or deliberate indifference' (*Jones'El v Berge* 2000:6). The judge presiding over the case, District Judge Barbara Crabb, granted their request to proceed on a number of claims, which included 'Johnson's 8th amendment conditions of confinement claim and inadequate medical treatment claim and his 4th amendment denial of privacy claim' (*Jones'El v Berge* 2001a:1), and Jones'El's 8th amendment claim that he was subjected to extreme temperatures, and both inmates claim that they were denied certain religious items (*Jones'El v Berge* 2001a:1). She also appointed Madison attorney Ed Garvey to represent the plaintiffs. Garvey was later joined by a team of lawyers consisting of Howard Eisenburg, Dean of the Marquette Law School, and members of the American Civil Liberties Union.

This led to former Governor Tommy Thompson, along with then Warden Gerald Berge and then Secretary Jon Litscher, stating that 'such lawsuits are common among prisoners. The only reason this one is newsworthy ... is because it is being filed against supermax' (Callender 11 Oct. 2000). In an order entered on the 16th February 2001, the plaintiffs' motion for the lawsuit to become a class action was granted, meaning that 'all persons

who are now, or will in the future be, confined in the supermax correctional institution in Boscobel, Wisconsin' (*Jones'El v Berge* 2001a:2) will become part of the class. Within this order, motions for class action as to plaintiffs' 8th amendment conditions of confinement, and 4th amendment privacy claims, were granted. All other claims were denied as it was not clear from the original complaint whether these affected the class as a whole (*Jones'El v Berge* 2001a:2). However, in June 2001, the plaintiffs filed an amended complaint in which they added then Secretary of Corrections, Jon Litscher, and Does-100 (persons who participated in the violations whose identities are unknown to plaintiffs) (*Jones'El v Litscher* 2001b:3) to the list of defendants, and 15 new plaintiffs to the class. The amended complaint also sought to add claims of systematic inadequate medical, mental health, and dental, care; use of excessive force; denial of access to religious items, and violations of due process (*Jones'El v Litscher* 2001b:10-11). In Judge Crabb's order certifying class action, she concluded that the plaintiffs could proceed on all of the above with the exception of the denial of religious items claim, which was denied, and the due process claim, which she dismissed (*Jones'El v Berge* 2001a:2-3). The complaint, therefore, alleged the following: that the conditions within supermax constitute cruel and unusual punishment. These conditions included constant 24 hour illumination, if an inmate covers his head in order to block out the light he is woken up hourly, resulting in 'chronic sleep deprivation that can manifest themselves in physical symptoms, including chronic headaches and eye pain, and psychological symptoms, including confusion and depression' (*Jones'El v Berge* 2001a:6). Extreme temperatures, as ventilation within SMCI reflects the outside temperature resulting in extremely high temperatures and humidity in the summer months and, although all inmates have a shower within their cell, they are still restricted to 3 a week, whilst in winter inmates endure conditions of extreme coldness. Confinement of inmates in their cells 24 hours a day; limited use of telephone; visits via closed circuit television; constant monitoring; limited and inadequate recreational time and facilities (*Jones'El v Berge* 2001a:37), in violation of the 8th amendment of the US constitution. In violation of the 4th amendment, prisoners are subjected to 'searches of their cells, as well as strip searches and body cavity searches on a frequent basis' (*Jones'El v Berge* 2001a:7). Often these were not 'conducted for legitimate security purposes but for the purpose of humiliating and

harassing inmates' (*Jones 'El v Berge* 2001a:7). One of the plaintiffs, Micha'el Johnson, has received at least 22 of these searches, 4 of which were in a single month (*Jones 'El v Berge* 2001a:7).

Other violations included supermax staff shocking inmates with 'electroshock weapons including the "Ultron II" - an electroshock weapon that emits a powerful and painful electric shock, often leaving burn marks on the skin' (*Jones 'El v Berge* 2001a:13) - constituting excessive force in violation of inmates' 8th amendment rights, and 'systematic inadequacies of the provision of medical, dental and mental health care' (*Jones 'El v Berge* 2001a:37). A report conducted in October, 2000, by the National Commission on Correctional Health Care found that the facility had a 'back log of mental health and dental requests'; that the nursing staff turnover was particularly high, and that there was 'no continuous "quality improvement program" for health services at supermax' (*Jones 'El v Berge* 2001a:7). One inmate, De' Ondre Conquest, had been diagnosed with terminal stomach cancer, and required catheterisation with assistance from medical staff in order to urinate. During his time at supermax he lost 56 pounds. On one occasion, no-one came to catheterise him for 24 hours. In addition to this, he was on strong medication to control the pain his illness causes. One of the medications he needed was Oxycodone, which he was ordered to take as needed, up to once every three hours. Staff often failed to deliver this medication as needed resulting in Conquest suffering severe pain (*Jones 'El v Berge* 2001a:8). Another inmate, Robert Sallie, 'has only canines and one back molar and has been directed by his dentist to wear a denture to enable him to eat solid foods' (*Jones 'El v Berge* 2001a:10). Sallie first asked for his denture to be repaired in December, 1999. This was refused. He tried again on 13th July, 2000, and was told that the dentist is only available for a limited number of hours, and his problem was not considered urgent. He was placed on the waiting list. He then complained again on the 29th August, 2000 and was told once more that the dentist works only on an emergency basis (*Jones 'El v Berge* 2001a:10).

(i) *Mentally Ill Inmates*

One area where the facility has encountered a great deal of criticism is in relation to its housing of mentally ill inmates. 'Mentally ill inmates are represented at higher levels in prison than in the general population, and investigations have shown that the percentage is higher still within supermax prisons' (DeMaio 2001:18). Despite the fact that inmates at the supermax correctional institution are screened for mental health problems before they enter the facility, 'Ted Garlewski, the DOC's chief psychologist, says that while some such inmates are screened out, being mentally ill does not preclude supermax confinement "if we think its something they could handle"' (Lueders 15 Aug. 2000). However, many mentally ill prisoners end up on an endless 'merry-go-round' - having got themselves placed in solitary confinement for some relatively minor rule violation - they then get stuck between the highest levels of security, because they are unable to behave, leading them to build up vast numbers of conduct reports and, therefore, remaining in the highest security levels. Former Governor Tommy Thompson has even admitted that 'a couple' of inmates suffering from mental health problems and 'who did not belong in supermax' were, in fact, sent there and had to be transferred back to the Wisconsin Resource Center in Oshkosh, where inmates with serious mental illnesses are usually housed (DeMaio 2001:18).

Between the 26th - 28th July, 2001, Dr. Terry Kupers, a Psychiatric expert, toured the supermax correctional institution with attorneys, as part of the *Jones'El v Litscher* lawsuit. He conducted a number of interviews with inmates and reviewed their clinical files, leading him to the opinion that:

many of the prisoners confined in SMCI currently suffer from serious mental illnesses and are not receiving the mental health treatment their psychiatric condition requires...confinement at SMCI of prisoners suffering from serious mental illnesses, or who are prone to serious mental illness or suicide, is an extreme hazard to their mental health and well being. It causes irreparable emotional damage and psychiatric disability as well as extreme mental anguish and suffering, and in some cases presents a risk of death by suicide. (*Jones'El v Litscher* 2001a:3)

He also identified 7 inmates whom he stated were 'suffering from serious mental illnesses, including various forms of psychosis, Bipolar Disorder, Major Affective Disorder, and suicide crisis' (*Jones'El v Litscher* 2001a:34), and recommended that they should be transferred out of supermax as soon as possible, one of these inmates being Canyon Thixton. In addition, he advocated that all other inmates should undergo psychiatric testing within the next 2 months, and those with any signs of serious mental illness should be re-housed in a 'setting where their psychiatric condition can be adequately evaluated and they can receive competent psychiatric treatment' (*Jones'El v Litscher* 2001a:3). In his conclusion, Kupers argued that considering the psychopathology he found in the 20 inmates he interviewed, he was under no doubt that 'many more prisoners at SMCI ...suffer from mental illness' (*Jones'El v Litscher* 2001a:34). Furthermore, he argued that:

each prisoner is supposed to receive an initial mental health screening upon transfer to SMCI, but I reviewed several of those screening forms and found them to be deficient in major ways. Moreover, there does not seem to be any systematic ongoing assessment of the psychiatric condition of all prisoners at SMCI, to identify prisoners who develop serious mental illness while at SMCI, and transfer them to an appropriate setting. (*Jones'El v Litscher* 2001:34)

The Department of Corrections defended its position, arguing that Kupers 'does not have enough information to reach an accurate or credible expert opinion regarding the services being provided at SMCI' (*Jones'El v Litscher* 2001c:5). Furthermore, they suggested that - referring to one of his inmate interviews:

Dr Kupers seemed to place a lot of trust in the reports of the inmate regarding his past and present condition. At no point in his declaration does he describe the steps, if any, that he took to minimize the possibility of his being manipulated by inmates who are litigants in a lawsuit and therefore have significant motivation to exaggerate their symptoms. He also fails to explain how, if they are mentally ill and disabled as he suggests, they could possibly be trusted to provide (sic) an accurate assessment of their mental condition without some verification. (*Jones'El v Litscher* 2001c:33)

The Department also included extracts from statements by 16 inmates approaching the end of level 5 confinement at the institution. One such extract states:

The supermax has showed me that there are better ways to get my point across, as well as tolerance. The supermax has taught me to get in touch with myself with healthy methods, to properly evaluate myself, to communicate with intellect and understanding, to think before I react and that one cannot stall time. All in all, it was a beneficial experience that will have lasting impressions. Inmate L.M. Davis Aff. Ex I-3 in *Jones'El v Litscher* 2001c:49)

However, Michael Sullivan, former Secretary of the DOC, gave evidence for the plaintiffs during the lawsuit arguing that the supermax facility cannot adequately provide placement for seriously mentally ill inmates since it 'lacks the staffing to care for them and because it has little if any space for programming...adding that, in fact...no amount of programming could compensate for the physical isolation imposed on Alpha Unit' (*Jones'El v Berge* 2001b:11). Moreover, says Sullivan, the DOC already has special facilities for mentally ill inmates and, therefore, there is no need to put inmates with mental health problems into supermax, as this is not what it was intended for (Sullivan, M. 2006, pers. comm., 18 Sept).

(ii) Injunction to Remove the Mentally Ill

On the 10th October, 2001, District Judge Crabb ordered that the defendants must transfer those inmates identified by the plaintiffs as seriously mentally ill. Five of those inmates who Crabb ordered to be removed were sent to the Wisconsin Resource Center in Oshkosh – 'a mental health facility operated by the state Department of Health and Human Services under a contract with the DOC' (Callender 15 Dec. 2001). Canyon Thixton was one of these inmates. Since his transfer to the Resource Center, 'officials have not cited him for any incidents of misconduct...in stark contrast to his record at supermax, where he had more than 30 major misconduct reports – which led to his being placed in total isolation for nearly two months without clothes, bedding and, in one instance, even his Bible' (Callender 15 Dec. 2001). At the Centre, inmates are able to walk around freely, and even exercise outside, and visits are conducted on a face-to-face basis.

Crabb also ordered that all inmates who had been prescribed psychotropic medications; had spent longer than 30 days at level 1; had been hospitalised in a psychiatric institution

at any time; had been placed in the observation unit on suicide watch, and those who had spent longer than 90 days at supermax without progressing past level 2, should be evaluated immediately by mental health professionals not employed by the DOC. If these professionals were to find that any inmates were suffering from serious mental illness, these inmates were to be removed from SMCI. She gave the Department until the 15th November, 2001, to carry out the evaluations (*Jones'El v Berge* 2001b:67). Only 1 inmate was identified as seriously mentally ill at this time (Streit, K. 2006, pers. comm., 10 Sept). However, on 29th March, 2002, attorneys for the inmates argued that seriously mentally ill prisoners were still being housed at the supermax facility because the definition of serious mental illness adopted by the DOC was too restrictive. On the 15th April, 2002, Judge Crabb resolved this issue by defining seriously mentally ill inmates as 'those who have been diagnosed with specific mental disorders or any other serious mental illness that would be worsened by confinement at the supermax prison in Boscobel' (Milwaukee Journal Sentinel 15 Apr. 2002). Crabb also ordered that all inmates must be re-evaluated by 10th June in order to determine their mental status according to the new definition. (Milwaukee Journal Sentinel 15 Apr. 2002). Judge Crabb, in her ruling, stated that:

Persons with serious mental illness should not be subjected to conditions that cause them psychotic breakdowns; not only is such a breakdown a cause of great suffering and trauma for the inmate, but it increases the likelihood that the temporary psychotic state will become a permanent one. (Milwaukee Journal Sentinel 15 Apr. 2002)

This re-evaluation of inmates at supermax led to a further 39 inmates being diagnosed as seriously mentally ill (Callender 13 Jun. 2002). It was agreed that supermax could and should initially transfer these men to the Wisconsin Resource Center. The first 2 or 3 of these inmates went through the Wisconsin Resource Center, but most were quickly found to be able to go to a normal general population prison. As the Resource Center was only able to receive 1 or 2 men per week, this process took a considerable amount of time, and as a result, priorities had to be determined. 'For the remaining men, many were sent directly to maximum security prisons and did not first go through the Resource Center' (Streit, K. 2006, pers. comm., 10 Sept).

(iii) Settlement of the Lawsuit

The remainder of the lawsuit was finally settled on the 8th March, 2002. Prior to this, there was a great deal of controversy over whether Governor Scott McCallum, would and should sign the settlement. Two Republican legislators, Representatives Mark Gundrum and Scott Walker, both denounced the proposed settlement (Walters 4 Jan. 2002). Walker, the Chair of the Assembly Corrections Committee, argued 'some of the new settlement items serve no better purpose than to coddle hardcore criminals who simply refuse to behave themselves' (Press Release 4 Jan. 2002). He also called 'negotiations a politically correct fiasco that would hit taxpayers in the pocketbook and fail to help rehabilitate offenders' (Press Release 4 Jan. 2002). Walker also stated that he planned to schedule a committee meeting to 'review the details of the settlement before the agreement becomes final' (Press Release 4 Jan. 2002). Governor McCallum, who had originally supported the settlement, then decided on the 18th January to reject the agreement, stating his reason as being that the inmates' attorneys had made new demands (Jones and Hansen 18 Jan. 2002). Representative Mark Pocan argued that 'the Governor's action on the agreed upon supermax settlement is fiscal ineptitude at its worst', urging 'the Governor to reassess his action' (Press Release 18 Jan. 2002). However, by the 24th January, 2002, the Governor had announced that he would sign the proposed settlement after attorneys for the inmates agreed to 'remove several provisions that were unexpectedly added' (Press Release 24 Jan. 2002). Ed Garvey, who led the team of attorneys for the inmates, stated he 'was baffled by the Governor's opposition to the original deal' (Milwaukee Journal Sentinel 24 Jan. 2002). 'I didn't know then and I don't know now what he was talking about. But whatever it is he's now satisfied with it' (Milwaukee Journal Sentinel 24 Jan. 2002). Judge Crabb set a 8th March hearing to review the settlement, where it was finally approved.

The agreed conditions of the settlement included that a monitor, Stephen Hurley, would be appointed by the court for a 2 year period, with a possible 2 year extension, and act as an 'intermediary between the DOC and the plaintiffs, review complaints from inmates, visit the prison and have access to [prison] records' (*Jones'El v Litscher* 2002:3). Hurley has since been replaced by Walter Dickey, who was appointed monitor on 1st October,

2004 (*Jones'El v Litscher* 2005:4). The prison should no longer be known 'in any future literature of the DOC as a so-called "supermax" prison' (*Jones'El v Litscher* 2002:4), nor was the Department to refer to inmates as 'worst of the worst' and, as of 1st October, 2002, the facility was to be known as the Wisconsin Secure Program Facility (WSPF) (Krier 12 Sept. 2002). Inmates were no longer permitted to stay in level 1 confinement for more than 7 days unless the Warden permits an extension and under no circumstances, are inmates to stay in level 1 longer than 14 days. Out of cell educational programming was to be expanded for inmates at levels 4 and 5 confinement. Level 1 inmates were given additional reading material, and video programmes, all inmates were to receive not less than 5 hours recreational out of cell time per week, whilst for inmates on levels 4 and 5, this was 10 hours a week. Wattage in cell lights at night was to be reduced by at least 60% replacing 7 watt bulbs with 5 watt or less. Inmates in the lowest security levels were no longer required to wear restraints. Calendar clocks were to be installed in all cells, and no additional video cameras were to be installed. An outdoor recreation yard was to be constructed by April, 2002, for inmates in levels 3, 4 and 5 confinement and, finally, the 'goal' for cell temperatures should range between 68 and 72 degrees Fahrenheit during winter, spring and autumn. 'Inmates requesting additional warmth will be given extra blankets and a long-sleeve underwear top' (*Jones'El v Litscher* 2002:10). In summer the 'goal' temperature should be between 80 and 84 degrees Fahrenheit (*Jones'El v Litscher* 2002:10). On the 3rd July, 2002, attorneys for inmates asked Judge Crabb to 'review the issue of cell temperatures at supermax because of high temperatures in Wisconsin over the past 10 days...Crabb ordered the then Warden, Gerald Berge, to submit an affidavit affirming that all inmates have access to cold water in cells at all times and provide the court with the water temperature' (27 News Headlines 5 Jul. 2002). She also stated that cell temperatures must be monitored, and that inmates must be removed from cells in which the temperature reaches 94 degrees Fahrenheit or higher.

The 1st April, 2002, deadline for completion of the outdoor exercise area was, from the time of signing the agreement, totally unrealistic. On 19th March, 2003, the state Building Commission approved spending \$3.4 million to build recreational facilities at

the prison (Associated Press 20 Mar. 2003). Construction of outdoor exercise areas began in 2004 and was completed in 2005. 'While the inmates cannot directly contact each other, they are able to see and talk to one another' (*Jones'El v Litscher* 2005:16) in the new exercise areas. It has also been noted by the current monitor in his latest report that 'in comparison to the indoor exercise participation rates, participation jumped dramatically when the outdoor exercise opportunities became available' (*Jones'El v Litscher* 2005:16). With regards to maintaining cell temperatures between 68 and 72 degrees Fahrenheit in winter, WSPF has endeavoured, since the agreement, to monitor the temperatures in random cells to establish their actual temperature, and air circulation is constantly monitored and adjusted. There have been occasional complaints about the temperature being too low during cold winter days, which have been investigated. Cell temperatures in summer began being monitored in summer, 2002, and 'the monitor received regular reports from the Building Engineer and the temperatures would be taken multiple times daily and correlated with outdoor temperatures' (*Jones'El v Litscher* 2005:23). Throughout the summers of 2002-2004, the Boscobel area regularly had temperatures which exceeded 85 degrees Fahrenheit during the day. 'Because of building mass, temperatures in cells would not heat or cool as quickly as outdoor temperatures' (*Jones'El v Litscher* 2005:23), resulting in cell temperatures exceeding those specified in the settlement. 'WSPF attempted to respond to cell heat by providing frozen cups of ice for the inmates, cooler water temperature in showers, additional shower opportunities, and shorts to be worn instead of long pants' (*Jones'El v Litscher* 2005:23). The facility also looked into a range of other means of cooling down cell temperatures, including the use of fans and dehumidifiers, both of which had little effect on reducing cell temperatures. 'In 2003, Plaintiffs counsel filed a motion to find DOC in non-compliance with the provisions for summer temperatures. DOC admitted that the temperatures exceeded the settlement goals and after reviewing the above stated efforts, admitted that air conditioning would be the only remaining method to comply with the agreement' (*Jones'El v Litscher* 2005:23). Previously the DOC has stated that it would not permit air conditioning units to be installed within the facility - the Department of Administration came up with a preliminary cost of \$70,000 to air condition the ranges housing prisoners (Krier 16 Jul. 2002). 'Judge Crabb ordered the DOC to provide air conditioning and this

order was affirmed by the Seventh Circuit' (*Jones'El v Litscher* 2005:23). Construction for the air conditioning units began in 2004 and, by summer 2005, they were in operation.

At this point it is important to note that the actual lawsuit itself was based on very weak legal grounds, with the exception of the placing of seriously mentally ill inmates at the facility, which Ed Garvey, the lead attorney for the plaintiffs, knew (Dickey, W. 2006, pers. comm., 6 Apr), leading to the inevitable question of why then did the DOC decide to settle. There are a number of reasons which could be given for this. Walter Dickey suggests that a key factor was embarrassment for the DOC. Ken Streit, agrees with this suggesting that, although there were 'a number of issues that the DOC could have defended on a legal basis, there were a number of other aspects (perhaps not yet known to the plaintiffs, but probably discoverable) which neither the DOC nor the Governor were eager to have broadcast in the media' (Streit, K. 2006, pers. comm., 10 Sept). Streit also suggests that the 'lack of objective standards and/or due process regarding [level] demotions and promotions' may not have been viewed as acceptable by Judge Crabb, if it had been discovered by the plaintiffs, as the administrative confinement law – under which the majority of inmates at supermax are housed - is supposedly non-punitive, and there were a number of features which could be perceived as punitive and would be difficult to explain coherently to a judge.

Streit has also observed that the 'population mix' at supermax has altered since the beginning of the lawsuit. Originally Boscobel's 'mission' was to deal with those inmates perceived as the 'worst of the worst' to 'the extent that some of these also had mental health problems' (Streit, K. 2006, pers. comm., 12 Sept) resisting, for the most part, being used as an 'overflow' for regular disciplinary segregation prisoners. However, as of September, 2002, says Streit, the number of inmates serving disciplinary segregation at the facility is increasing. Whilst inmates in disciplinary segregation are entitled to fewer privileges than those under the administrative confinement level system, their future is much clearer. Due to pressure applied by the monitors overseeing the settlement, the Boscobel facility has now introduced the 'half time' system implemented in all other maximum security institutions in the state for those serving disciplinary segregation. The

idea of 'half time' is that if an inmate does not receive any additional conduct reports, whilst in segregation, his time in segregation will be halved meaning, for example, that instead of having to serve 360 days this would be reduced to 180. 'As a result, instead of the units all being filled with "level guys", the facility now has multiple missions' (Streit, K. 2006, pers. comm., 12 Sept) - altering the role of the facility.

9. The Future for Supermax – In Wisconsin?

Since the settlement of the lawsuit, the controversy surrounding the supermax facility in Boscobel has continued. Suggestions have been made about whether the facility should be remodelled. The legislature's Joint Finance Committee told the state prison administrators to submit a plan to remodel the Boscobel facility on a 15-1 vote. Representative Dean Kaufert suggested that the facility could be 'reworked with 300 two-inmate cells, potentially adding 600 more inmates' (Walters 5 Mar. 2002). However, the study still needed to be approved by the full legislature. This did not happen, the re-election for Governor was in November, 2002, when Republican Governor Scott McCallum was replaced by Jim Doyle, the first Democrat to be appointed Governor for 16 years. This led to many changes within Wisconsin politics, including a number of changes within the DOC. One of the first alterations was the appointment of a new Secretary of Corrections, Mr. Matthew Frank, to replace Jon Litscher.

On the 28th November 2002, Doyle commented that 'he would consider bringing the state's Supermax prison "more in line" with other maximum-security prisons around the state' (Callender 28 Nov. 2002). He also added that it would be 'more easily said than done in the way of the physical structure of that building' (Callender 28 Nov. 2002).

WSPF Warden Gerald Berge retired suddenly in September, 2004, and was replaced in March, 2005, by Richard "Sam" Schneider who, at that time, was also appointed Warden of Prairie du Chien Correctional Institution – a medium security prison in the same county. Schneider was previously Security Chief for the Division of Adult Institutions. Jeff Endicott, Warden at Columbia Correctional Institution, Wisconsin's second most high security prison, served as an interim Warden. (WI DOC 24 Feb. 2005). These

changes within the facility's administration, and the appointment of Dickey - who had always been critical of the facility - as Federal Court Monitor, signalled that something was underway. In a preview of his report to Judge Crabb, Dickey stated that, with few exceptions, the facility was in compliance with the court order. However, he went on to criticize the level system in operation at the prison suggesting that, for some, this system of gaining privileges as they progress through the levels just does not work, as some inmates never graduate from the bottom stages. He recommended instead that the system should be kept for 'the 100 or so inmates ... motivated to move out of the prison but acknowledging many others will never graduate. They should be allowed to keep their things but know that they'll never be released' (Brinkman 12 May 2005). Dickey also added that 'the state would be better served by converting it [WSPF] to a standard prison with the addition of a school and a workhouse' (Brinkman 12 May 2005).

In September, 2005, the DOC released a press statement declaring that the Department was exploring converting part of the prison into a standard maximum-security prison. The Secretary, Matthew Frank, stated that there are 100 beds that are routinely empty and, with tight state budgets and prison overcrowding elsewhere, 'that's something that really demands you take a look at it and see if you can make more effective use of it' (Brinkman 24 Sept 2005). He also said that this could be accomplished without adding staff or new construction. Frank stated that 'Warden Sam Schneiter will be asking staff for suggestions, which ... will help determine how, and when the changeover occurs' (Brinkman 24 Sept 2005). He also declared that he wanted the staff to review the prisons level system. 'Frank said he has not set a deadline for the review, which will outline "what really makes sense from the standpoint of solid correctional practices"' (Callender 24 Sept 2005). Although there had been suggestions in the past for changing part of the facility, these had been rejected due to the design constraints of the prison. Frank stated that now that the court ordered changes had taken place this created areas where training and educational classes could be offered to groups, instead of the current method of in cell programming.

Since then, there has been a good deal of progress with these proposals. By October, 2005, a committee had been established to review current practices, and consider expanding the purpose of WSPF to include general population inmates. This committee is comprised of WSPF staff, and Wardens from other prisons within the DOC. The committee submitted two main proposals, first, to improve the controversial level system currently in place and, second, to transform one of the units – Charlie Unit - into general population. ‘The level system has now been changed to a three phase system known as the High Risk Offender Program (HROP). This program consists of 3 colour phases, Red, Yellow and Green, Red being the most restrictive phase and Green being the least’ (Schneiter, R. 2006, pers. comm., 5th Apr)¹¹. The new programme is not to be based on incentives like the old programme; ‘instead all inmates will receive the same property regardless of their status. The primary difference between stages is the amount of out of cell time given, and the level of restraints placed on inmates when out of cell’. (Schneiter, R. 2006, pers. comm., 5th Apr).

It was also argued at this time that a ‘well-functioning Phase Program would only require a portion of the 500 cells existing at WSPF. Even with other cells used for inmates serving program segregation terms or in regular (non-phase) Administrative Confinement, there would still be at least 100 cells that would be empty’ (Dickey 2006:2). Under the settlement agreement, the ‘DOC could fill those beds with program segregation inmates from other institutions but this is not ideal as it is preferable for inmates to serve their segregation time at a prison that has already become familiar with them, rather than “palming them off” to another institution’ (Dickey, W. 2006, pers. Comm., 6th Apr). Therefore, it was suggested that these 100 beds could be used for general population inmates. This could be done in two ways, first, those inmates who are ready to be transferred out of WSPF and back into general population prisons could be moved into Charlie unit, as it would give them chance to adjust to the transition more slowly but, they would still get the same programmes and privileges as other general population institutions, only in a smaller setting. The second method would be to transfer inmates from other general population facilities to WSPF ‘for the purposes of receiving

¹¹ Richard Schneiter is currently Warden of WSPF.

programs or participating in institutional work assignments that they would not otherwise have if they remained at another maximum prison' (Dickey 2006:2). In fact 'some inmates close to release from Prairie du Chien Correctional Institution, a medium security facility, have volunteered to be transferred to WSPF's general population unit to work as they can earn up to \$1 an hour - which is a considerable amount for inmate wages – in order to save some money for their release back into society' (Homer, M. 2006, pers. comm., 5th Apr)¹².

Dickey also argues that a major limitation of the initial programme design of supermax was that staff at Boscobel would never have the opportunity to interact with general population inmates, but were only confined to working with a very narrow spectrum of offender, which would be not only stressful for staff, but also offenders, therefore, by housing a wider spectrum of offenders it would dilute the intensity and stress at the institution (Dickey, W. 2006, pers. comm., 6th Apr). The colour phase system is now in effect at WSPF, but as of April 2006 there were not any general population inmates as plaintiffs for the lawsuit argued that this was not covered by the settlement and, therefore, proceedings were postponed until 5th May, 2006. A Federal court agreement was finally made on 9th February 2007 resulting in a number of restrictions on the prison's operations being lifted, including the ability for the DOC to send general population inmates to the facility (Callender 10 Feb. 2007). "This is a major step forward", said Corrections Secretary Matt Frank, who added that up to 100 "pilot" inmates could be transferred to the prison within the next few weeks' (Callender 10 Feb. 2007). This 'pilot' project was deemed a success and, as of 14th February 2007, Charlie Unit, which was originally designated as the transition unit for level five prisoners in order to prepare them for transfer back to a general population facility, became a permanent general population unit designed to detain 111 general population inmates (WI DOC 2007:6). Thus changing the original role of WSPF forever.

This chapter has provided an in-depth analysis of Wisconsin's supermax from its original proposal until the present day. The chapter provides a unique insight into the

¹² Captain Monica Horner is a Unit Manager at WSPF.

development of one specific supermax, in order to analyse this in relation to the more general frameworks identified in part one of the thesis. In addition, the case study adds a greater level of understanding to the localized processes which take place, and shape, policy decisions as they are made within Wisconsin's state administration. The next chapter presents the second case study and examines the development of Pelican Bay State Prison in Crescent City, California, again exploring the circumstances and political-cultural context surrounding its construction and usage.

CHAPTER SEVEN

The Development of Pelican Bay State Prison's Secure Housing Units

1. Introduction

The aim of this chapter much like the previous, is to provide a detailed account of why California has built a number of supermax facilities, focusing principally on the development of one such facility, Pelican Bay State Prison. It examines the prison culture in California, and the established use of special units for difficult to manage inmates, before going on to explore why California decided to build Pelican Bay, investigating the reasons for its initial proposal through to its present day running. By carrying out this second case study, it is hoped that, in conjunction with Chapter Six, it will be possible to compare and contrast why different states decide to build supermax type confinement.

Much like Wisconsin, and, indeed, the rest of the United States, by the mid 1970s California was starting to experience a major increase in its prison population. Within the United States as a whole, the prison population soared from 319,598 in 1980, to a massive 1,512,823 at mid-year 2005, of prisoners serving a year or more within federal or state prisons (Bureau of Justice Statistics 2006). Within California alone, the prison population grew from 19,623 at year end 1977, (Hill and Harrison 2005), to a huge 166,532 at mid-year 2005 (Harrison and Beck 2006:3), of those serving a year or more in federal or state prisons. Indeed Zimring and Hawkins claimed that never had 'a prison system grown so much in so short a time' (Zimring and Hawkins 1994:83) as it had in California in the 1980s. The change in the number of sentenced prisoners in California between 1990 and 1999 was 70.5 percent or 66,395 inmates (Beck 2000:3 and 4). According to the annual prison statistics carried out by the Bureau of Justice Statistics, California has the highest incarceration rate in the United States (Harrison and Beck 2006:1).

California also has the highest recidivism rate of all the states, 'of the approximately 115,000 inmates annually released, about 70% of them are back behind bars within 24 months - nearly twice the national average. Worse yet, about 10% of these prisoners will repeatedly return - six or more times over a seven-year period' (Petersilia and Weisburg 23 Apr. 2006). This is due, argue Petersilia and Weisburg to 'three main reasons... ill conceived sentencing laws, rigid parole practices and an inexcusable neglect of programs to help prisoners adapt to life on the outside'. Since indeterminate sentencing was brought in during the 1970s, all prisoners know the length of the sentence they will serve and that there is no time off for good behaviour, which results in many inmates lacking the incentive to take part in rehabilitation programmes. Also, nearly all inmates serve the same amount of parole time regardless of their risk to society, which sets the scene for the state's high recidivism rate. For example:

California routinely orders near-universal drug testing for parolees. Because two-thirds of them have substance abuse histories, and because few receive any treatment while in prison, parolees invariably fail the tests and return to prison. In all, nearly two-thirds of parolees are sent back to prison because of similar technical violations, not because they were convicted of a new crime. (Petersilia and Weisburg 23 April 2006)

Another of the main factors which may have contributed to this high incarceration rate was the introduction of the three strikes law, which was introduced in California in March, 1994. In 1994, California's prison population stood at 125,605 (Beck and Gilliard 1995:1). However, by 1999, this figure had grown to 163,067. The term three strikes was taken from Baseball, where a batter has three strikes before striking out. The rationale of the three strikes law is that, if an individual commits 2 or more felonies, it is justified to sentence him or her to an automatic and lengthy imprisonment (usually 25 years to life) on the presumption that recidivists are incorrigible, and chronically criminal, and, therefore, must be imprisoned as a matter of public safety. Although, as of 2004, 26 states and the federal government had laws which satisfy the general criteria for designation as 'three strikes' statutes, California's three strikes law has been labelled as the harshest sentencing law in the nation. Whilst most states require all 3 felonies to be

for serious or violent crimes in order for the mandatory sentence to be put into effect, California's three strikes states that

although the first two "strikes" accrue for serious felonies, the crime that triggers the life sentence can be any felony. Furthermore, the law doubles sentences for a second strike, requires that these extended sentences be served in prison (rather than in jail or on probation), and limits "good time" earned during prison to 20 percent of the sentence given (rather than 50 percent, as under the previous law). (RAND 2005)

This has resulted in several controversial verdicts. In one such case, 'Leandro Andrade was given not one but two sentences of 25 years-to-life for stealing nine children's videotapes, including "Snow White," "Cinderella" and "Free Willie 2." The tapes were worth \$153.54, under his sentence, Andrade will be 87 before being eligible for parole' (CBS 9 Jul. 2002). Another case is that of Jerry DeWayne Williams, known to most as 'the pizza thief'. He was convicted in March, 1995, for stealing a slice of pepperoni pizza from a group of children. Williams became eligible for the third strike sentence because of his lengthy criminal history. His original sentence of 25 years to life prompted political activists to push for a wholesale revision of the law. He 'later had his sentence reduced to six years. Citing his nonviolent criminal history, lack of weapon use, and relatively minor third strike offense, the sentencing judge agreed to strike a prior conviction in order to promote the interest of justice' (Walsh 3 Nov. 2002). However, as it stands, California's three strikes law remains one of the most punitive in the United States. Add together all of the above factors, and it is possible to see why California has one of the largest prison systems in the world.

2. Prisons in California

California is well known for its prisons, most notably through film depictions such as *The Birdman of Alcatraz* (1962), *Murder in the First* (1995), and *Animal Factory* (2000), and even through music, such as Johnny Cash's *Folsom Blues* (1956), - although Alcatraz, which has been the subject of the majority of prison films, was actually a federal prison - most individuals have heard of its state prisons such as San Quentin, Folsom and Soledad. However, it was during the 1980s, mainly under the administration of former Governor George Deukmejian, that California undertook the largest single construction

programme in history: growing from 12 existing facilities in 1982, the CDC (California Department of Corrections) grew to a significantly larger 33 facilities by 2005. (Sifuentes, G. 2005, pers. comm., 19th Jan¹³).

In addition to the prisons themselves, California also has several SHUs, better known as Security Housing Units or Supermax Units. Unlike Wisconsin, which has one separate lone standing facility, California Department of Corrections prefers to build its supermax units – from hereafter referred to as Security Housing Units or SHUs - as part of existing facilities.

3. History of the SHU in California

During the first half of the 20th century, many prisons set aside segregation cells for ‘individuals whom the administration believed could not be allowed to circulate freely within the prison. This included open homosexuals and prisoners who persistently broke the rules or needed protection from other prisoners’ (Irwin 2005:116). By 1970, California had three high security ‘adjustment centers’ based at, Folsom State Prison, San Quentin State Prison, and California Institution for Men at Soledad (Sifuentes, G. 2005, pers. comm., 19th Jan). ‘Prisoners were assigned to administrative segregation for their perceived status, such as being a persistent threat to prison stability, staff, and other prisoners’ (Irwin 2005:116) these inmates were not necessarily charged with any particular rule violation, but there were procedures in place regulating the transfer of prisoners to such units. However,

these procedures were often not followed or the assignments were based on subjective criteria. Administrators exercised virtually unrestricted discretion in assigning prisoners to lockup units. The lack of due process and the arbitrary way in which prisoners were assigned to segregation was not viewed as a problem because, officially, segregation was not intended as a form of punishment. (Irwin 2005:117)

¹³ George Sifuentes is Deputy Director of the Facilities Management Division of the California Department of Corrections and Rehabilitation.

In reality, however, this was not the case. These adjustment centres were extremely punitive. Prisoners were typically confined to their cells for almost 24 hours a day. 'The official procedures called for them to be released for one or two hours twice a week to a small exercise yard adjacent to their unit, which had limited recreational equipment. In actual practice, prisoners were frequently denied these periods' (Irwin 2005:117). These inmates also lost access to programming activities such as schooling, vocational training and library facilities.

Prisoners in administrative segregation were often ineligible to receive good-time credits because of disciplinary violations or because they could not participate in the programs that rewarded prisoners with such credits. Because of good-time credits, most general population prisoners served about 50 percent of their sentences. However, being placed in administrative segregation greatly extended many prisoners' prison sentences. (Irwin 2005:118)

Whilst inmates in administrative segregation were protected from assaults and violence in the general prison population, 'their sacrifice for this increased safety, however, was tremendous. Moreover, hostility and violence eventually became more intense in lockup units than in the general population' (Irwin 2005:118). During the 1970s and early 1980s, these segregation units became increasingly violent places. This was principally as a result of housing the most 'uncontrollable' and 'disruptive' prisoners together in relatively stark deprivation.

Since the 1960s, California prison administrators have locked up suspected members of any organization believed to be a threat to prison order. 'Suspected leaders of the Black Muslims were the first to be segregated, followed by other leaders of black religious and political organizations, such as the Black Panther Party' (Irwin 2005:118). When, new gangs and organizations emerged, these were also assigned to segregation. As the use of segregation increased, more and more prisoners believed they had been unfairly placed in these units.

Placement in segregation was an administrative decision made by a "classification committee". This decision involved the minimal due process and, at best, a pro forma appearance by the prisoner at the classification

hearing...Frequently, the classification committee based its decision on hearsay information. Much information was supplied by informers, sometimes anonymously, or appeared in staff memos after staff persons had witnessed a prisoner interacting with known gang members. (Irwin 2005:119)

Hostility between racial groups was especially high within these units. This was due to the fact that the majority of inmates in these units were members of prison gangs such as the Aryan Brotherhood, Black Guerrilla Family, Mexican Mafia, and La Nuestra Familia. These gangs were - and continue to be - fiercely hostile towards one another and, whenever the opportunity arose for rival groups to fight, stab and kill one another they would do so. In the 'San Quentin adjustment center, prisoners frequently rioted and broke up their cell furnishings, the beds, cabinets, and toilets...To regain order, staff shot tear gas into the units and used stun guns or Tasers to subdue prisoners' (Irwin 2005:120). This further angered prisoners who took to taunting the guards and, in some cases, assaulting or throwing faeces at them. This, in turn, led to the guards becoming increasingly hostile towards the inmate population, leading some guards to carry out their own taunts and beatings and, in some cases, setting up one group of prisoners against another.

In the 1970 fight and killings in the Soledad adjustment center yard, in which three black prisoners were shot to death, a Salinas, California, jury found that eight Soledad staff members had wilfully and unjustifiably conspired to kill prisoners. The staff had intentionally released prisoners into the yard who were expected to begin fighting. The gun tower guard, who some prisoners reported was leaning out of his tower aiming at the prisoners when the fight began, fired five shots, hitting each of the three black prisoners in the middle of their torsos. After the shootings, the guards took more than 30 minutes to carry one mortally wounded prisoner to the hospital even though it was adjacent to the adjustment center. (Irwin 2005:121)

As the conditions worsened in the adjustment centres, the administration gradually reduced privileges until these centres resembled the former punitive solitary confinement cells. Whilst the purpose of the adjustment centres had been to control and pacify the more recalcitrant inmates away from the general population, these units instead became the most dangerous places for both prisoners and staff within the prison system. In 1986,

a CDC task force was set up to evaluate the effectiveness of measures to control gang violence in California SHUs, finding that:

A closer look at two of the three institutions with the highest rates of assault incidents in 1984 (San Quentin State Prison and Folsom State Prison) demonstrates that the institutional rate is strongly impacted by high rates of violence in special housing (lockup) units. Folsom State Prison, for example, had an institutional rate in 1984 of 7.26 assault incidents, this being the adjusted rate of its mainline units (5.8) and lockup units (17.5). In that year, the rate of assaults in Folsom's lockup units [was] almost three times greater than in its mainline units. Similarly, rates of assaults were much higher in San Quentin's lockup units (18.7) than in its mainline units (10.0). (CDC 1986:5 in Irwin 2005:122)

4. The New Generation SHU

These adjustment centres were the precursor to the modern day supermax and, even though these centres appeared to be unsuccessful in achieving their aims, namely to pacify troublesome inmates by concentrating them within permanent administrative segregation units, and restore order within the rest of the prison system, Corrections officials remained undeterred and, during the mid to late 1980s, California decided to go one step further, systematically closing the 3 older units and replacing them with 4 newer, and much larger, Security Housing Units. In short, California became 'the leader in the construction of supermax prisons' (Irwin 2005:126).

The first was added at California Correctional Institution, Tehachapi. The main prison was activated in 1933, whilst the SHU was activated in 1985, and was originally constructed as a 1000 bed level IV (Maximum Security) addition to the original institution. Part of this 1000 bed addition was converted for use as a SHU (Sifuentes, G. 2005, pers. Comm., 5th Jan). The second, California State Prison, Corcoran, was activated in 1988 and has two SHU units, which were constructed as part of the original prison and house 1204 SHU inmates. The third facility is Pelican Bay State Prison, which was activated in 1989 and is the most notorious of the SHUs. This facility also has two SHU units, housing 576 inmates, and 480 inmates, respectively. The fourth facility is different from the others as this SHU is for women, located at Valley State Prison for Women. It

was activated in 1995 and the SHU was not part of the original prison design. The SHU is part of one housing unit, which was converted when the SHU function was moved from its adjacent sister facility, Central California Women's Facility, and this facility has 44 SHU beds.

Although there are 4 supermax or SHU facilities in California, it would be very difficult to examine them all at length; therefore, this chapter is going to focus on only one of these institutions, namely Pelican Bay State Prison. At this point it must be noted that, unlike Wisconsin, where much controversy surrounded its proposal and construction, 'Pelican Bay was just the next control unit built by the Department of Corrections' (Weinstein, C. 2006, pers. comm., 6th Oct¹⁴), albeit the most secure of the SHUs.

5. Construction of Pelican Bay State Prison

The county of Del Norte, is the North-western most county in California and is located on the Pacific coast, just south of the Oregon border, 350 miles north of San Francisco. Initially, miners made up the majority of the population, but mining activity in the area declined and was replaced by logging and fishing industries in the early 20th century.

On March 27th, 1964, the area was hit by a massive tsunami triggered by an earthquake in the Gulf of Alaska, the largest earthquake ever recorded in North America. Eleven people lost their lives, and 35 blocks of the city's business district were devastated resulting in \$7,414,000 (1964) dollars' worth of damage (Pararas-Carayannis 2000). Although the city eventually started to recover, its economy remained limited to tourism, fishing and lumber. During the summer, many tourists visit the area but, as winter approaches, the number of tourists slowly decline. The fishing industry has also suffered due to government regulation and seasonal variations. The timber industry started to decline during the 1970s, 'in 1971, 18 lumber mills had prospered. By 1979, that number had shrunk to eight; by 1983, there were three' (Fullen 11 Jun. 1989).

¹⁴ Corey Weinstein is a Medical Doctor and member of California Prison Focus a group which supports inmates and their families particularly those housed in California's SHUs. He has been visiting inmates at Pelican Bay for 15 years.

Throughout the county the effects of this decline were becoming more and more evident. Unemployment, sometimes as high as 26 percent, was no longer confined to the winter months. Welfare cases had nearly doubled...Put it all together: a county with only one-quarter of its land on the tax rolls and a waterlogged economy. A bleak picture. (Fullen 11 Jun. 1989)

Owing to this economic slump, officials were desperate to attract some form of enterprise to the region. At this time any industry would have been welcome so, in late 1983, when it became known that the state was looking for possible sites to build 10 new prisons, county officials, led by Sheriff Tom Hopper, approached the Department of Corrections with the proposal of enlarging an already existing low-security conservation camp, Alder Conservation Camp at Klamath, 20 miles south of Crescent City (Wiley 14 Jul. 1986). In March, 1984, Department of Corrections officials paid a visit to the Camp, and were enthusiastic about the possibility of increasing it to a medium security facility. However, this idea was soon overturned by the CDC's engineering report, which found that there was not enough flat land offered at the site in order for it to be considered for expansion. They did, nevertheless, enquire as to whether there was anywhere else nearby available for them to consider constructing a prison - local officials were happy to suggest a number of alternative locations, one being Crescent City.

Yet another setback occurred in 1984, when the then 'Governor George Deukmejian vetoed state Senator Barry Keene's bill to undertake a feasibility study of the new prison project' (Fullen 11 Jun 1989). However, the veto was due to the result of some language in the bill and, on the 26th July, 1985, Deukmejian signed a second rephrased bill, SB95, directing the state DOC 'to begin studying the feasibility of constructing a prison ...at Crescent City' (Sacramento Bee 27 Jul. 1985).

The enactment of SB95 secured lease/purchase option rights and, more importantly, exempted the project from the usual environmental impact reporting procedures. As of September 1985, Del Norte County was married to the Department of Corrections, for better or for worse. (Fullen 11 Jun. 1989)

However, the county had originally agreed to a medium security prison, located near to Klamath but, when DOC officials, after meeting steady opposition at other sites to build a

maximum security prison, asked whether Del Norte would accept a maximum security facility, the county agreed, fearing the loss of the proposed prison, and the employment which would come with it. According to Del Norte County Assessor, and chairman of the committee to bring a prison to town, Gerald Cochran, there were other compelling reasons for accepting a maximum security facility. These included that, statistically, maximum security facilities were found to be safer – ‘there were many more escapes from medium-security prisons than from maximum’ (Fullen 11 Jun. 1989). Also, economically, there were substantial benefits to maximum over medium, for example, ‘600 more employees, bringing the total prison employment to 1,500, providing an annual payroll of \$50 million, a 50 percent in the counties (sic) annual income’ (Fullen 11 Jun. 1989).

Although there was much opposition to the building of a prison in the county, mainly from older retirees who had moved away from urban city areas such as San Francisco and Los Angeles to enjoy the peace and quiet of the countryside, all but 2 county officials, backed the building of the prison, resulting in the board of supervisors accepting the proposals put to them by the DOC. County Assessor, Gerald Cochran, said of the prison ‘we’re desperate it can’t come Too (sic) soon...we’ve had a gain in population since 1977, but our work force then was 7,800; today we have 5,800 in the work force. We’re just hanging on...Other areas say they don’t want a prison. We say we’ll take whatever we can get’ (Wiley 14 Jul 1986).

The DOC, after originally choosing 15 possible sites, decided that the ‘prison was to be built on 260 acres of a logged-out redwood grove along Highway 101, seven miles north of Crescent city’ (Taylor 26 Dec. 1986).

Construction of the prison started in 1987 and, whilst referred to in the singular, actually consists of 3 separate facilities, the first being the general population facility, which houses maximum security level IV inmates’, the second is the SHU, which is located in an entirely separate complex inside the security perimeter, and the third is a small minimum security level I facility.

The decision to name the prison was made on the 21st October, 1987. As local citizens did not want the prison to be called Del Norte Prison or even Northern California Prison, the region's state legislators, Senator Barry Keene and Assemblyman Dan Hauser, along with the California Correctional Peace Officers Association (CCPOA), put up a \$1,000 prize for the best name - the winner was Pelican Bay State Prison (Associated Press 22 Oct. 1987). This is a little ironic as the word 'Alcatraz', referring to the infamous former federal penitentiary, means 'pelican' when translated into English in the United States.

The prison was originally scheduled for activation on the 1st April, 1990, but a bill put forward by Senator Barry Keene, asking to appropriate \$19.7 million to open the prison on 1st October, 1989, was put forward. 'According to Keene, with critical prison overcrowding it's false economy and unwise to let the newest state prison sit empty for six months' (Payton 17 May. 1989). After much internal debate regarding the budget for the prison, Pelican Bay State Prison was opened on 1st December, 1989, at a cost of \$232 million. The prison was dedicated on the 14th June, 1990, by the then Governor George Deukmejian, who stated that 'California now possesses a state-of-the-art prison that will serve as a model for the rest of the nation...Pelican Bay symbolizes our philosophy that the best way to reduce crime is to put convicted criminals behind bars' (Lucas 15 Jun. 1990). The prison has an annual operating budget of \$115 million, and employs 950 custody staff, and 455 support services staff, as of fiscal year 2002/2003 (CDCR 2006a).

6. Design of the Prison

As stated earlier, the prison, which has been constructed within dense redwood forest, consists of 3 distinct units. The general population prison, which is built to house approximately 1,000 level IV maximum security inmates, is made up of 2 parts, namely Facility A and Facility B, and is shaped like a slightly distorted figure of eight. Each facility has an exercise yard within its circumference and inmates can circulate and socialize freely within these yards, which are equipped with barbells and basketballs. The SHU, which is divided into 2 separate, but almost identical units, is designed to hold 1,000 to 1,500 inmates, and the minimum security level I facility is designed to hold 200 inmates. In total the prison is designed to hold 2,550 inmates (CDCR 2006a).

Prior to building the SHU, 'Corrections officials visited seven prisons in five states before they found one in Arizona that approached California's needs' (Payton 17 May. 1989). This facility was Special Management Unit I at the Arizona State Prison Complex, Eyman in Florence (King 1999:172). At the time of opening, Pelican Bay State Prison was the largest SHU or supermax facility in the country. The SHU is a 'low-level grey structure that roughly resembles a large "x" in shape' (*Madrid v Gomez* 1995:197) (see Appendix V A). The SHU, as specified earlier, consists of two units: these units C and D, although separate, are physically connected, these sections are then divided into cell blocks, 'each of which consists of eight "pods" containing eight cells each. Each pod is divided into two short tiers, with four cells opening onto an upper tier and four cells opening onto a lower tier' (*Madrid v Gomez* 1995: 197) (see Appendix V B). The cells themselves, are 80 square feet in size, and windowless, each containing 2 concrete bunks and a stainless steel toilet-sink unit. Located adjacent to this, each cell has its own concrete moulded exercise area measuring 10 feet by 20 feet (see Appendix V C). The walls of these exercise pens are 20 feet high, preventing any view of the outside world. Each pen is also covered partially by a screen, and partially by a plastic rain cover, providing some fresh air. 'Given their cell-like design and physical attachment to the pod itself, the pens are more suggestive of satellite cells than areas for exercise or recreation' (*Madrid v Gomez* 1995:197). Each of the cell doors is made of 'heavy gauge perforated metal; this design prevents objects from being thrown through the door but also significantly blocks vision and light' (*Madrid v Gomez* 1995:197) (See Appendix V D). They are also staggered so it is impossible for an inmate to see anything except the white concrete wall opposite his cell. These cell doors are controlled by remote control pneumatics, and guards use 'audio speakers to direct the inmates in and out, having little direct contact with the inmates' (Howard 14 Jun. 1990). There is a skylight in each pod which allows some 'natural light to enter the tier area adjacent to the cells; however, cells are primarily lit with a fluorescent light that can be operated by the inmate' (*Madrid v Gomez* 1995:197). However, even when this light is switched off, there is some light in the cells in order for guards to be able to see inmates at all times. Each pod is monitored and controlled by a separate observation station, which is operated by armed correctional officers and 'separated from the pods by an electronically controlled metal gate' (*Madrid*

v Gomez 1995:197). Above the pod corridors, 'a heavy mesh screen allows guards to walk overhead, and the upper ceiling is laced with pipes that can spew water or tear gas in an emergency' (Howard 14 Jun. 1990).

Outside the prison, in the earth between the cell blocks and the fence, 'are special sensor cables which, crisscross the prison grounds, and will trigger an alarm if more than 40 pounds of pressure is applied' (Howard 14 Jun. 1990). Beyond this are 3 fences, 2 chain link fences topped with razor wire - the innermost fence sounds an alarm at the slightest touch, whilst the centre fence carries a lethal electric current. Beneath these fences are two feet of solid concrete. In addition, there are also 11 dark blue watchtowers located at 700 foot intervals around the perimeter and, each tower is staffed by guards armed with semi automatic weapons (Lucas 15 Jun. 1990).

7. Regime

In order to end up in Pelican Bay SHU, or indeed any of the SHUs in California, an inmate must have been found guilty of one or more of the following:

- (i) Homicide: Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate or non-inmate
- (ii) Violence against Persons: Assault on an inmate, non-inmate, with a weapon or physical force capable of causing mortal or serious injury
OR assault on an inmate, non-inmate, with physical force insufficient to cause serious injury OR Throwing a caustic substance on a non-inmate
- (iii) Threat to Kill or Assault persons: Use of a non-inmate as a hostage OR threat to a non-inmate OR threat to an inmate
- (iv) Possession of a weapon, such as a firearm or explosive device OR a weapon that has been manufactured or modified so as to have the obvious intent or capability of inflicting traumatic injury
- (v) Trafficking drugs
- (vi) Escape with force, or attempted escape with force
- (vii) Participating or leading a disturbance, riot or strike
- (viii) Harassment of another person, group or entity either directly or indirectly through the use of mail or other means
- (ix) Arson, theft, or destruction of state property where the loss or potential loss exceeds \$10,000 or threatens the safety of others
- (x) Extortion or bribery of a non-inmate. (CDCR Dec. 2004:126)

There are two types of sentence which can be given to those entering the SHU, an indeterminate sentence, which must be reviewed every 180 days by a classification committee, and a determinate sentence, whereby inmates are allotted a certain number of months or years to serve in the SHU - this varies considerably depending on the rule violation. Many inmates given an indeterminate sentence are validated gang members, who may spend countless years in the SHU and could possibly stay there until they complete their sentence; debrief; or until their death, whichever comes first. However, most inmates who end up in the SHU, and who are not thought to be gang members, receive a sentence which lasts from 6 months to a few years (Weinstein, C. 2006 pers. comm., 6th Oct).

Within California SHUs, many inmates are double celled. This is unusual for supermax type confinement but, due to California's grossly overcrowded prison system, is inevitable. All inmates are confined to their cells for 22 ½ hours a day - for the other 90 minutes they are let out to exercise in a small pen adjacent to their cell. This pen contains no recreational equipment, and the inmate is observed at all times by a camera located at the top of the wall. All single celled inmates exercise alone, whilst double celled inmates exercise together unless one inmate chooses not to exercise, in which case they then also exercise alone. If an inmate refuses exercise then he will remain in his cell for 24 hours a day. Prisoners are permitted 3 showers per week.

All meals are delivered to inmates' cells on a specially designed food tray, which is then passed through a narrow food slot in the cell door. Once the inmate has finished eating, the food tray must be returned to a correctional officer as otherwise, this is seen as a disciplinary offence.

Interaction with correctional staff is kept to an absolute minimum....For example, when an inmate leaves his cell to go to the exercise pen, the door is opened automatically by the control booth officer. Once in the tier area, the inmate must strip naked in front of the control booth; the door to the exercise pen is also controlled electronically. (*Madrid v Gomez* 1995:199)

When an inmate does come into direct contact with a correctional officer, the inmate is always in handcuffs and waist and ankle chains. Besides exercise time, inmates are also allowed out of their cells to go to the law library; speak to their attorneys, or receive visitors. However, when attending the law library, they are assigned to an individual library cell and, therefore, have little interaction with other inmates or library staff. All visits are carried out by telephone through a thick Plexiglas window. However, due to the location of Pelican Bay, on the Oregon border, very few inmates get visitors as it is 761 miles from Pelican Bay State Prison to Los Angeles, where most inmates come from, which would take an average of 14 hours to travel for a 2 hour non-contact visit. All visits are by appointment only which must be organized 24 hours previously. Inmates may also leave their cells for classification committee meetings and, if they are sufficiently ill, may be taken to the medical unit for treatment or diagnosis. Inmates are not permitted to take part in any prison activities such as prison jobs; recreational, or educational, programmes. If an inmate wishes to receive counselling, or religious instruction, this is usually received at the cell front.

Unlike WSPF, inmates at Pelican Bay do not pass through a level system. Instead, all inmates 'have the same complete lockdown conditions. What determines privilege is money. If a prisoner has some, he can buy books, college courses, TV, radio etc, but if he is poor...nothing' (Weinstein, C. 2006, pers. comm., 6th Oct). All television sets must have a clear plastic case so that nothing can be hidden within it. Inmates are permitted to send and receive mail, but are not allowed to make or receive phone calls. They are also permitted to have 10 books, or magazines, from which all staples are removed, and participate in a bible correspondence class. However, some inmates are illiterate and unable to take advantage of these opportunities. Prisoners are also allowed to keep certain personal property in their cells, and are entitled to receive one personal property package a year, which cannot exceed 30 pounds in weight. They are also permitted to purchase some items from the prison canteen (*Madrid v Gomez* 1995:202).

8. Problems since the Facility was Built

Since its opening, there have been a number of serious problems which have occurred at Pelican Bay. Within the SHU, two thirds of the inmates are double celled. This has proven to be problematic for a number of reasons,

the combination of being in extremely close proximity with one other person, while other avenues for normal social interaction are virtually precluded, often makes any long-term, normal relationship with a cell mate impossible. Instead, two persons housed together in this type of forced, constant intimacy have an “enormously high risk of becoming paranoid, hostile, and potentially violent towards each other”. (Grassian in *Madrid v Gomez* 1995:201)

Cell assignment decisions are made by correctional sergeants. ‘Neither Pelican Bay nor the CDC have promulgated a written policy that sets forth criteria to be used in making cell-assignment decisions for either the general population of Pelican Bay or the SHU’ (*Madrid v Gomez* 1995:222). However, the California Department of Corrections does ascertain that a prisoner can be given single cell status if he/she cannot be housed safely in a double cell, but this does not ‘specify any criteria or factors that should be used in making such a decision’ (*Madrid v Gomez* 1995:222). Therefore, correctional sergeants use factors such as age; ethnicity; length of stay, and gang affiliation, to determine whether two potential inmates would be compatible. Sergeants do not usually check whether inmates have a prior history of assaulting their cell mates, or being victims of such assaults. Inmates can request single status; however, unless an inmate has killed a previous inmate, or is likely to be mortally injured if celled with another inmate, this request is usually denied (*Madrid v Gomez* 1995:224). Part of the reason for this is the fact that the prison system is so overcrowded.

According to prison records, ‘there were 1,158 reported cell fights at Pelican Bay during a span of slightly over three years, from the opening of the prison in December 1989 to January 1993’ (*Madrid v Gomez* 1995:224). Of these, 683 cell fights were in the SHU. Whilst most inmates who were involved in fights at Pelican Bay were only involved in one or two cell fights, a number of inmates were involved in frequent cell fights, ‘52 inmates were involved in three cell fights; 15 inmates were involved in four cell fights;

14 inmates were involved in five cell fights; 4 inmates were involved in six to eight cell fights, and 2 inmates were involved in nine cell fights' (*Madrid v Gomez* 1995:224). These cell fights have led to serious injuries in many cases such as fractured ribs (Julio Vasquez); coma, paralysis and loss of eye (Miguel Barraza); large facial wound (Jamie Pena), and brain damage and disability (Allyn Hopkins) (*Madrid v Gomez* 1995:225).

Between 1996 and 1998, the issue of double celling came to a head, when a number of double celled prisoners murdered their cellmates. The first incident occurred on the 7th February, 1996, when Arthur Ruffo, a validated member of the prison system's Aryan Brotherhood gang, was strangled by his cellmate. The second murder took place on 28th February, and the third just 10 days later on the 10th March. In all instances inmates had recently been moved from Corcoran State Prison and had requested to be housed together (Furillo 18 Mar. 1997). By November, 1997, 5 inmates had been strangled by their cellmates but there was no evidence of the murders being related, although all inmates involved were White (Furillo 8 Dec. 1997). However, by 19th December, there had been a sixth strangulation, this time by an Hispanic inmate on another Hispanic cellmate, leaving prison authorities with no links between any of the instances (Furillo 21 Jan. 1998). This figure reached 8 by the 23rd February, 1998, when another inmate was strangled by his cellmate (Furillo 24 Feb. 1998). These cellmate murders led prison demonstrators to call for a halt in the use of double-celling within Pelican Bay SHU. However, after testimony at the trial of the first cellmate strangulation of Arthur Ruffo, it was found that 6 of the 8 murders were linked to the Aryan Brotherhood – a White Supremacist prison gang (Furillo 24 Feb. 1998).

9. Gang Membership and Race

One thing the Californian State Prison system is notorious for is its prison gangs which, argues the DOC, is the main reason why such high levels of SHU confinement are required. Prison gangs first started to develop during the 1960s, when the racial balance changed from a white prisoner majority to a black prisoner majority. 'African American prisoners were transformed by the civil rights movement. Many affiliated with radical religious and political organizations, such as the Black Muslims and the Black Panther

Party' (Irwin 2005:45). This resulted in prisoners dividing along racial lines. 'Groups of white and black prisoners in Soledad, San Quentin, and Folsom increasingly engaged in planned or spontaneous assaults against each other' (Irwin 1995:45).

This was just the beginning, as adult prisons began to receive mounting numbers of 'youth prison graduates and criminally unskilled, more openly aggressive young urban "thugs"' (Irwin 2005:47). These youths joined the growing racial conflict and started to attack, and steal from, other prisoners. This took place in a number of states. In California, this take over began in San Quentin in 1967 when a number of Chicanos, who had known one another from street gangs in Los Angeles, began to steal drugs forcibly from other inmates. This faction of inmates became known as the "Mexican Mafia".

Many other young Chicano inmates wanted to join this clique but there were also a number of independent Chicanos who wanted to eliminate the gang and, after a planned day of fighting in which a number of prisoners were seriously injured, many of those against the Mexican Mafia formed a counter group – La Nuestra Familia. During the next few years, the conflict ensued and spread to other prisons, and even to the outside, where the gangs tried to penetrate drug trafficking. After frequent attacks and counter attacks, prison administrators tried to separate the gangs, sending Mafia members to San Quentin or Folsom, and Nuestra Familia members to Soledad and Tracy. These Chicano gangs also 'consolidated and expanded black and white lowrider groups' (Irwin 2005:48) The Aryan Brotherhood and the Black Guerilla Family increased in prominence, eventually leading to the alliance of the Mexican Mafia and the Aryan Brotherhood and, similarly, the Nuestra Familia and the Black Guerilla Family.

By 1974, the aggressive black and Latino gangs had precipitated counterorganizations among white prisoners, who, in their reduced numbers, had been extremely vulnerable to assault, robbery, rape, and murder by other gangs. (Irwin 2005:49)

This led many prisoners to the conclusion that they either needed to protect themselves, or stay out of the way. 'Those who chose to continue to circulate in public, with few

exceptions, formed or joined a clique or gang for their own protection' (Irwin 2005:49). By the end of the 1980s, most of the large male prisons stood in a state of precarious and tentative order. Administrators continued to attempt to segregate and divide the masses and to crush the more unyielding prisoners. Within the California Department of Corrections, this meant carrying out searches for 'gang leaders and other troublemakers, transferring those who were so labeled to the maximum-security prisons, and segregating them in special units' (Irwin 2005:51). The growing numbers of prisoners segregated in these units became more dangerous and uncontrollable, leading to the development of Security Housing Units such as those at Pelican Bay. In order to get transferred to the SHU, prisoners must be a validated gang member - a gang is defined by the California DOC as:

any ongoing formal or informal organization, association or group of three (3) or more persons, which has a common name or identifying sign or symbol whose members and/or associates engage or have engaged, on behalf of that organization, association or group, in two or more activities which include planning, organizing, threatening, financing, soliciting, or committing unlawful acts or acts of misconduct classified as serious... (CDCR DOM §52070.16 2005:4)

In addition to the prison gangs previously mentioned, there are also a number of disruptive groups which originate outside of prison such as street gangs; White supremacist groups, and motorcycle gangs. However, it is the prison gangs which are considered to be the greater threat to security. As mentioned earlier, many prisoners join prison gangs for the protection which gang affiliation offers, whilst others join for increased status within the prison population, and yet others because of pressure from other inmates. All new members, nevertheless, 'must pledge allegiance to the gang for life' (*Madrid v Gomez* 1995:231).

Once the Department of Corrections determines that an inmate is a member or associate of a prison gang, the inmate is transferred to administrative segregation within the SHU. These inmates are then given an indeterminate sentence, meaning that they will stay in the SHU until they complete their prison sentence, are deemed to have severed all contact

with the gang for 6 years, or have 'debriefed' from the prison gang. In order to debrief, the inmate must admit to being a gang member, name other 'gang affiliates, and reveal everything he knows about the gang's activities and organizational structure' (*Madrid v Gomez* 1995:233). For inmates it is a hard choice to decide whether to debrief as, once they have debriefed, there is a high risk of being attacked, or killed, by other inmates. Also, upon return to society, inmates and their families are also at risk from gang retribution.

Within each DOC facility there is an Institutional Gang Investigator (IGI), who is 'responsible for tracking gang activities and investigating those suspected of gang membership' (*Madrid v Gomez* 1995:233). If an investigator receives evidence that an inmate has associated with gang members, it is recorded in the prisoners file. 'If the evidence is tangible, such as a membership list, gang constitution, letter, or photographs, the gang investigator will store the object itself in the file' (*Madrid v Gomez* 1995:233). If, however, the evidence is weak, such as another inmate's account, visits from individuals with known gang affiliations, a staff observation, or a verbal confession, the gang investigator prepares the 'appropriate paperwork memorializing the evidence and places it in the inmate's file' (*Madrid v Gomez* 1995:234). The most common form of evidence is a statement from another inmate. However, this alone is not enough to get an inmate validated as a gang member, unless other evidence supports the inmate's statement. In order for an inmate to be validated as a full gang member, the IGIs must have at least 3 'original, independent source items of documentation indicative of actual membership' (CDCR DOM §52070.19.2 2005:5). To become a validated gang associate, again, the gang investigator must provide 3 source items to prove association with validated gang members.

Once the IGI believe that they have enough documented evidence to validate a prisoner, a 'validation package' is prepared, which is then submitted to the Special Services Unit (SSU) in Sacramento, California. 'This package includes photocopies of each source document relied upon, a written itemization of the evidence, and a description of the inmate's distinctive markings and tattoos, if any' (*Madrid v Gomez* 1995:235). Once this

package is completed, the prisoner is brought to the IGI office whereupon he is informed that he is under suspicion of gang affiliation and given a form outlining the evidence against him. The inmate is then given the opportunity to challenge the evidence presented against him. If, after meeting with the inmate, the IGI decide to carry out the validation, the package is then sent to the SSU. The SSU then reviews the evidence presented, which is a largely superficial process, as the SSU assumes that the evidence presented is accurate unless there is an obvious error. If all the documentation appears to be acceptable, the SSU will then officially validate the inmate as a gang member, or associate, of a prison gang. 'Of over 300 packages submitted from Pelican Bay over a three-year period, only two were rejected' (*Madrid v Gomez* 1995:237).

Once an inmate has been validated as a gang member, or as an associate, of a prison gang by the SSU, an Institutional Classification Committee (ICC) meeting is held. The ICC is made up of an Associate Warden, a Programme Administrator, a Correctional Counsellor I and a Correctional Counsellor II (*Madrid v Gomez* 1995:238). The purpose of this meeting is to establish whether the inmate should be held in the SHU for an indeterminate period, based upon his gang affiliation. These meetings, however, are just a formality as inmates invariably end up being re-housed in the SHU for an indeterminate term. The inmate does get an opportunity to address the committee before a final decision is made, and the decision must be endorsed by a classification staff representative. However, in cases involving removal to the SHU for gang affiliation this is routine (*Madrid v Gomez* 1995:239). Inmates with indeterminate terms confined for gang affiliation within the SHU are entitled to 2 periodic reviews: the first is carried out by the Unit Classification Committee (UCC) which reviews the inmates' status every 120 days, the other is carried out by the ICC every 12 months. The inmate is entitled to sit in at these reviews. The UCC has less authority than the ICC and is not permitted to reconsider an inmate's validated status, or order his release from the SHU, although it can recommend a change of status. Before the ICC's annual review, the IGI reviews an inmate's file and compiles any new evidence, examines the old evidence, and decides 'whether there is still a sufficient evidentiary basis for satisfying current CDOC validation requirements' (*Madrid v Gomez* 1995:240). Even if there is no new evidence to suggest gang activity, as

long as the initial evidence meets DOC requirements, the inmate will remain in the SHU as a validated gang associate.

The purpose of housing all prison gang members, or gang associates, in segregation is to try and stop the proliferation and illicit activities of the prison gangs. However, it was found that, even by housing these inmates in Pelican Bay's SHUs, these gang members were still managing to carry out gang activities, and give orders to other gang members or associates, from their isolated cells. This was first uncovered in 2001 when it was discovered that members of the Nuestra Familia prison gang were sending instructions out of Pelican Bay SHU to other gang members on the outside. These instructions included 'orders to kill errant gang members who betray their trust, directives on how to collect "taxes" from drug dealers operating within gang-controlled neighbourhoods, and demands for retribution against rival gangs' (Geniella 33 Apr. 2001). In order to get their instructions out of the SHU, gang members orchestrated a number of methods. As no telephone use is possible at Pelican Bay, inmates instead write and receive hundreds of letters, which are monitored by 3 prison gang investigators and, due to this limited number of staff, it is impossible for investigators to monitor all mail effectively. It was found that inmates were, therefore, exploiting this system through a variety of techniques. One method used is known as 'ghost writing' where the inmate lightly embosses his orders on to the inside of an envelope, with a sharp object, the envelope is then glued back together and 'mailed with other documents to an outside contact, who rubs pencil lightly over the markings so the message can be read' (Geniella 22 Apr. 2001). Another method used is to write directives in urine on the back of a letter or drawing, which is then mailed to someone on the outside, and when this letter is held to a heat source, the writing becomes visible. Other methods include a 3 way mailing system in which a gang leader sends a coded message to an outside mail box address, which has been set up by a gang affiliate, who then redirects the mail to a second inmate housed in another unit or prison. Gang members use a number of ancient languages to communicate with each other which include Swahili, Celtic Runic, and Nahuatl. In order to try and combat the sending out of these messages, prison authorities have banned anything written in any of these languages but, as Lieutenant Robert Marquez, Pelican Bay's chief gang

investigator, states, 'every time we tighten the screws, so to speak, they're [inmates] going to find a way around it' (Montgomery 2006). Former Pelican Bay Warden Joseph McGrath argues that it is almost impossible to stop inmates from sending these messages, due to the lack of staff within the prison gang investigation unit, and also because prison gang members have little to fear,

they're at no risk....many of them are serving life terms. They don't have to worry about being stabbed or challenged by other inmates because of their secure environment. Yet they can send an order out, and because their structure is so sophisticated they know that if somebody doesn't carry out their orders, someone else will take care of that person. (Geniella 22 Apr. 2002)

There is also little the prison authorities can do to punish them, as they are already serving life sentences, and housed in the SHU, and there is nowhere left to go.

However, a breakthrough took place in 2001 when a federal indictment was filed against members of the Nuestra Familia stating that the gang was responsible for 5 killings and 10 murder conspiracies, inside and outside state prisons. 'In addition, Nuestra Familia members and associates allegedly sold cocaine, heroin and methamphetamine in communities controlled by the gang' (Sward *et al.* 24 Apr 2001). All those named in the indictment were housed within Pelican Bay's SHU. These inmates were all then transferred to federal custody in different states.

As mentioned previously, in order for gang members or associates to get out of the SHU, they must wait until they are paroled; debrief; sever all contact with the gang for 6 years, or remain in the SHU until they die. In practice, it is almost impossible to prove whether the inmate has had no gang contact for 6 years so, in reality, there are only 3 options left. In order to debrief, the inmate must 'divulge everything he knows about the gang and even agree to testify against other members' (Montgomery 2006). In other words, he must become a 'snitch'. Once an inmate has debriefed to the Special Services Unit, he is transferred from the SHU into the Transitional Housing Unit, which is segregated from the general prison population so that inmates cannot be assaulted, or killed, for betraying their gangs. Once in the Transitional Housing Unit, inmates can mix freely with other

inmates, and take part in classes. After 14 weeks of intensive classes and training, the inmates are transferred to other prisons with special facilities for gang defectors. Many human rights groups are against the debriefing process California Prison Focus (CPF) is one such group. In a recent interview for CBS, Charles Carbone, an attorney for CPF argued that,

The debriefing process puts inmates in harm's way. And it needlessly puts inmates in harm's way because it says to them, "The only real way out of a gang is to snitch on your friends, to snitch on people who are immediately around you, and people who have proven to be very violent and very capable of violent behavior". So it's a sure way for the prisoner to make a lot of enemies. (Carbone in Montgomery, 2006)

CPF also argues that California should emulate states such as Connecticut where prisoners are permitted to drop out of gangs and leave supermax without becoming informants, as many inmates in Pelican Bay refuse to debrief for fear of losing their lives. CPF also has documented cases of inmates who have chosen to 'debrief only to remain locked in the SHU, without explanation' (Parenti 1999:208).

10. The Class Action Lawsuit

In 1991, a federal class action lawsuit was filed against Pelican Bay State Prison, which included 'many of the 250 individual complaints sent by prisoners to federal court since Pelican Bay opened' (San Jose Mercury News 30 Oct 1991). 'The Judge Thelton Henderson combined these cases into a class action case and recruited the law firms to carry out the litigation' (Weinstein, C. 2006. pers. comm., 6th Oct). One of these was the Prison Law Office, located in San Quentin, a non-profit organization, which provides free legal services to California state prisoners. The *Madrid versus Gomez* class action was the first major suit filed against a supermax prison. The plaintiffs argued that Pelican Bay violated a number of their constitutional rights, which included, First, Eighth, and Fourteenth, amendment rights, under the United States Constitution. Plaintiffs alleged that Department of Corrections officials, including the then secretary of the DOC, James Gomez, and then Warden of Pelican Bay, Charles Marshall, condoned a pattern and practice of using excessive force against inmates; failed to provide inmates with adequate

medical and mental health care; imposed inhumane conditions in the SHU; utilized cell-assignment procedures which exposed inmates to an unreasonable risk of assault from other inmates; failed to provide adequate procedural safeguards when segregating prison gang affiliates in the SHU and, finally, failed to provide inmates with adequate access to the courts (*Madrid v Gomez* 1995:4). The trial lasted 3 months, from the 14th September, 1993, until the 1st December of the same year, and consisted of 'testimony from 57 lay witnesses, numerous expert witnesses, and the presentation of more than 6,000 exhibits' (Shaw 2005:42), which included, documents, photographs and tape recordings. During that time, it was found that there was a code of silence at Pelican Bay, whereby employees were encouraged to remain silent about any improper behaviour conducted by other employees and, if prison staff broke this code they were liable to meet with harassment or retaliation. For example, after one member of staff, Sergeant Cox,

testified that he witnessed an inmate being hit on the head with the butt of a 38 millimeter gas gun, he was recalled as a witness. He testified that, after his appearance at trial, he had been told by various senior staff...that he had been a snitch and that he should "watch his back" and that "the administration wasn't very happy with me". (*Madrid v Gomez* 1995:7)

(i) Use of Excessive Force

After reviewing all the documentary and testimonial evidence, Judge Thelton Henderson reported the court's findings of fact, and conclusions of law, on the 10th January, 1995. In his findings, he found that staff at Pelican Bay had, indeed, violated inmates' Eighth amendment rights through the use of a pattern of excessive force. It was found that excessive force was used on a number of occasions and was not limited to a specific area of prison life. Use of excessive force ranged from staff assaults to punitive cagings. Below are two examples of staff assaults on inmates:

Inmate Vaughn Dortch

Dortch was a mentally ill inmate who received second and third degree burns to one third of his body when he was given a bath in scalding water by correctional staff in Pelican Bay infirmary. A week prior to this, Dortch had bitten an officer and, at the time of the incident, had smeared himself and his cell with his own excrement. Although there was a

shower located near to Dortch's cell which would have been a more effective way of cleaning him, officers chose to give him a bath in the SHU infirmary, which was in another part of the facility. A nurse usually runs the water for an inmate's bath but instead it was run by correctional officers. Nurse Kuroda, the nurse who was on duty at the time, noted that the inmate was placed in the 'bathtub with his hands still cuffed behind his back, with an officer pushing down on his shoulder and holding his arms in place' (*Madrid v Gomez* 1995:34). Another officer then came into the nurses' station to make a telephone call, during which the nurse overheard the officer commenting that Dortch, who is African American, 'looks like we're gonna have a white boy before this is through, that his skin is so dirty and rotten, its all fallen off' (*Madrid v Gomez* 1995:35). The nurse then walked over to the bath, where Dortch was standing with his back to her and, in court, testified that, 'from the buttocks down, his skin had peeled off and was hanging in clumps around his legs, which had turned white with some redness' (*Madrid v Gomez* 1995:35). The officers then appeared to be dressing Dortch to return him to his cell. At this point, Nurse Kuroda intervened, but one of the officers, Officer Williams, then commented that Dortch 'had been living in his own faeces and urine for three months, and if he was going to get infected, he would have already'. He also added 'that if Kuroda wanted to admit him, she could do the paperwork' (*Madrid v Gomez* 1995:35). Dortch then fell to the floor at which point he was sent to the emergency room, from which he was taken to a Burns Unit.

Inmate Brown

'Was taken from his cell in full restraints when a staff member observed, and later reported to internal investigators, that Brown was kicked in the face by another officer in the presence of a Lieutenant, Sergeant, and acting Program Administrator' (*Madrid v Gomez* 1995:37). The inmate was not resisting at the time and in an interview with investigators, Brown stated that he had been kicked in the head 3 or 4 times whilst being escorted in restraints. This led the court to determine that 'the fact that Brown was kicked in the face for no apparent reason, while he was fully restrained, leads us to conclude that this force was applied maliciously for the purpose of causing harm rather than to restore or maintain security' (*Madrid v Gomez* 1995:37).

(ii) Foetal Restraints

In addition to staff assaults, numerous other types of physical abuse took place at Pelican Bay, including the use of foetal restraints, which involves cuffing the inmate's hands at the front of his body, placing him in leg irons and then connecting the hands and legs using a chain until only a few inches separate the hands and feet. However, at least one officer handcuffed inmates behind their backs and their ankles up around the handcuffs. Defence expert Daniel McCarthy, who incidentally served as Secretary of Corrections for 4 years, stated in his evidence that he had never used, or seen anyone in, foetal restraints, in his 40 years working for the California Department of Corrections. Inmates at Pelican Bay were often placed in these restraints as punishment for kicking their cell doors. Inmates had been known to be placed in these restraints for up to *twenty four* hours. However, plaintiffs' expert, Steve Martin, who has more than 20 years' experience in prison management and policy, emphasized from a custody standpoint that the best method to prevent an inmate from kicking a cell door was to use 4 or 5 point restraints, which involve strapping an inmate to a bed by his wrists and ankles and, in the case of 5 point, an additional strap is fastened across the inmate's chest, which does not result in discomfort or pain for the inmate. Also, whilst an inmate is in foetal restraints, he is still able to kick a cell door. The Judge, therefore, concluded that 'there was a practice of using fetal restraints at Pelican Bay for solely punitive rather than good faith security purposes' (*Madrid v Gomez* 1995:46).

(iii) Inmate Cagings

In addition to foetal restraints, correctional officers at Pelican Bay also resorted to placing inmates in outdoor holding cages, with little or no clothing during inclement weather. 'These cages, approximately the size of a telephone booth, and constructed of weave mesh metal, are designed to provide a temporary holding place for an inmate, and are positioned at various locations around the prison' (*Madrid v Gomez* 1995:46). A former educational programme supervisor at the prison, Violet Baker, testified in court about one such incident which occurred in late January or early February, when she was walking from her office to another facility. It was very cold and raining hard, so she was wearing gloves and a jacket. She observed two African American inmates being held naked in two

cages and, when she passed by an hour later one of the inmates was still there. The inmate asked her to request a pair of shorts and a t-shirt as he was freezing. She then noticed an officer coming in their direction and when she looked at him, he looked back and shrugged, saying that the lieutenant had ordered it. On discovering that the said lieutenant was Lieutenant Slayton she let the matter drop, as Slayton had a reputation for causing problems if thwarted, and she did not want her educational programme, or other teachers, to suffer due to her interference (*Madrid v Gomez* 1995:47). Judge Henderson in his summing up remarked that:

Leaving inmates in outdoor cages for any significant period...offends even the most elementary notions of common decency and dignity. It also fails to serve any legitimate penological purpose in any kind of weather, much less cold and rainy weather. The fact that it occurred at all exhibits a callous and malicious intent to inflict gratuitous humiliation and punishment. (*Madrid v Gomez* 1995:49)

(iv) Cell Extractions

Cell extractions are a fundamental part of security maintenance in any prison. They involve the forcible removal of an inmate from his cell. At Pelican Bay this procedure takes place as follows. Firstly, a supervising officer must approve the cell extraction and, a team of 4 correctional officers wearing protective clothing is then assembled. A Medical Technical Assistant must also be present in case of injuries. The supervising sergeant then fires a combination of the following into the inmate's cell: a 38 millimetre gas gun, which fires rubber pellets, mace spray, or a taser. The team of 4 officers then enters the cell. The shield man enters first and rushes the inmate, forcing him up against the wall and if the inmate tries to resist, the second team member, armed with a baton, provides protective coverage by 'rapidly and repetitiously' striking the inmate's shoulder with the baton (*Madrid v Gomez* 1995:54). The third and fourth team members then enter the cell and apply handcuff and leg restraints to the inmate, who is then removed from the cell.

This seems to be an undeniably large amount of force considering the inmate is almost always defenceless and already behind cell doors. For example, between 1991 and May,

1993, of all the 231 cell extractions which took place at Pelican Bay, only 6 inmates had a weapon. One was a razor and the other 5 were soap wrapped in a shirt or sock. In the majority of cases inmates were sitting at the back of their cells in a non-aggressive manner. Many of the cell extractions took place for minor infringements which had no threat to institutional security. Examples of reasons for cell extractions include not giving up food trays, a jumpsuit, or a skull cap promptly enough. The use of full scale cell extractions for failure to return food trays was stopped sometime after February, 1992, after it was noted that, of the 70 inmates extracted for meal trays, not one of the incident reports indicated that inmates had broken or tried to fashion a weapon from the tray. Also, in a large number of cases, extractions were carried out even when the tray was accessible at the front of the cell and the inmate was at the back (*Madrid v Gomez* 1995:52). Under current policy, inmates are allowed to keep the trays unless it appears that they are trying to make a weapon out of it. If the tray has not been returned by night watch then a cell extraction will be carried out. This policy has resulted in far fewer extractions, as inmates generally withheld the tray if they had a problem and wanted staff to speak to them.

The combined use of tasers, gas guns, and the short baton, have also come under criticism. Between July, 1990, and July, 1992, tasers were used in roughly 70 percent of extractions. The taser ejects two thin wires with darts which pierce the inmate's skin and transmit an electrical current of 40,000 to 50,000 volts, which temporarily paralyzes the body's large muscles. Although California DOC training suggests that maintaining the voltage for 2-3 seconds is sufficient, many inmates received discharges of 5-7 seconds, double the required length. Use of the taser has since been abolished with no adverse effects to either safety or security of the prison. Use of the gas gun, which ejects large rubber pellets measuring one and a half inches across at high speed, is also questionable as, during cell extractions, these are usually fired through the food port in the cell door and, given the small space inside the cell, these bullets typically ricochet several times around the cell and, if they hit an inmate, will cause serious pain or injury. Indeed, several correctional officers testified that if an inmate gets hit by a direct shot or a ricochet this could cause serious injury or possibly death. The use of the short baton,

which is supposedly used for striking an inmates' shoulders if he is putting up a struggle during the cell extraction, is also used for other purposes. Correctional officers admitted to using the baton to strike inmate's feet and ankles, and medical reports identify baton welts on inmates' backs and other parts of their bodies. During the trial it was also noted that there was a practice of including, 'as a member of the extraction team, the officer who had been either previously injured by the inmate or involved in whatever incident precipitated the cell extraction' (*Madrid v Gomez* 1995:62). In summing up, the judge stated that:

while cell extractions are an essential part of effective prison management...what the record does reveal, is the disturbing pattern...of routinely using the same extremely high level of force, no matter the level of threat posed or the particularities of the situation. Not surprisingly, it is a pattern that has caused the substantial infliction of pain and left behind a string of injuries – injuries that are too often left unexplained and unjustified in official reports.

Viewed separately, the high level of force deployed as a routine practice, the string of significant injuries, and the unnecessarily high number of cell extractions, could each raise a legitimate concern. Combined, however, they are potent evidence that cell extractions at Pelican Bay have too often been considered, not as tools to be used sparingly in response to threats to prison security, but as opportunities to punish, and inflict pain upon, the inmate population for what were often minor rules violations. The evasive and cursory nature of the incident reports...further reinforces this conclusion. (*Madrid v Gomez* 1995:63)

Indeed, all of the above abuses of force led the court to believe that the defendants 'implicitly sanctioned the misuse of force and acted with knowing willingness that harm occur', further stating that all of the evidence above 'paints a picture of a prison that all too often uses force, not only in good faith efforts to restore and maintain order, but also for the very purpose of inflicting punishment and pain' (*Madrid v Gomez* 1995:119).

(v) *Medical Health Care*

Much like WSPF, Pelican Bay came under intense criticism during the class action lawsuit for its lack of medical health care, which was found not to meet minimum constitutional standards. A prison, like society in general, houses inmates with all of the

usual health complaints such as asthma; diabetes; 'flu symptoms; fractures, and abdominal pains, to name but a few. However, in prison, inmates experience higher levels of illness than in the outside world. This is due to a number of factors such as the large number of people being housed within a small environment, and a lack of fresh air and exercise. In addition to this, many serious health ailments are overrepresented in the prison population, and this is particularly so in the SHU. However, from the outset, there was a severe shortage of medical staff at Pelican Bay. This resulted in significant delays in medical treatment and tragic oversights, such as medical staff failing to diagnose an inmate's ruptured appendix. Medical training at Pelican Bay was also found to be lacking, resulting in one of the plaintiffs' experts, Dr Armond Start, an associate professor at the University of Wisconsin Medical School, and former Director of Health Care services for the Oklahoma and Texas prison systems, testifying that:

The fact that a new prison with contemporary medical facilities nevertheless could be so shockingly deficient in its provision of health care is...a terrible indictment of the defendants, and compellingly illustrates what...is their stunning indifference to the health care needs of the prisoners at Pelican Bay. (Start in *Madrid v Gomez* 1995:159)

(vi) *Mental Illness*

When Pelican Bay first opened there were no psychiatrists on staff. This has since been rectified but plaintiffs still argue that the system for providing mental health care at the prison is 'grossly inadequate'. Stuart Grassian, a faculty member at Harvard Medical School since 1974, a board certified psychiatrist and author of numerous articles on the effects of solitary confinement, stated in his testimony for the plaintiffs that services for mental health at Pelican Bay are 'grossly inadequate', 'manifestly deficient' and 'fail to meet the most minimal standards for adequate psychiatric care' (Grassian in *Madrid v Gomez* 1995:161). Even defence expert, Joel Dvoskin, could not justify the mental health system at Pelican Bay, testifying that 'as of the time he visited Pelican Bay, he could not represent to the court that the mental health care delivery system was "adequate" or indeed met constitutional standards' (*Madrid v Gomez* 1995:161). The need for reasonable mental health care is amplified by the existence of the SHU, in which conditions have been known to lead to serious psychological damage in some inmates. As

mentioned in previous chapters, literature surrounding the effects of supermax and solitary confinement has found that these types of confinement have an effect on inmates' mental health. Research conducted on supermax and solitary confinement has led experts to conclude that such conditions can produce symptoms such as perceptual disturbances; massive free-floating anxiety; difficulties with concentration and memory lapses; acute confusional states; delusional ideas and violent or destructive outbursts; hypersensitivity to external stimuli; overt paranoia, and panic attacks. (Grassian in Haney and Lynch 1997:521). As Grassian stated during his testimony, 'for some, SHU confinement has severely exacerbated a previously existing mental condition, while other inmates developed mental illness symptoms not apparent before confinement in the SHU' (*Madrid v Gomez* 1995:164). Craig Haney, an expert for the plaintiffs, also noted that of all the segregation units he had visited, inmates at Pelican Bay were more isolated than at any other unit he had seen.

In order to find out whether the Pelican Bay SHU was having a detrimental effect on inmates' mental health, Grassian conducted 50 interviews with inmates over a 2 week period - at this time their medical records were also reviewed. These inmates were not chosen at random, but were selected due to a belief that they could be undergoing some psychological problems. Of these 50 inmates, it was found that the SHU had either severely exacerbated existing mental health problems, or had given rise to psychological problems associated with solitary confinement in 40 of them. In his findings, Grassian noted that

of these 40 inmates, 17 were actively psychotic and/or acutely suicidal and in urgent need of inpatient hospital treatment. The other 23 suffered serious psychopathological reactions to the SHU...28 suffered from perceptual disturbances, 35 had problems with concentration, 22 experienced intrusive obsessional thoughts, 29 suffered from paranoia, 28 had impulse dyscontrol, 25 had anxiety/panic disorder, and 24 suffered from overt psychotic disorganization. Ten of the 50 inmates did not appear to be experiencing any significant psychiatric deterioration attributable to the SHU. (*Madrid v Gomez* 1995:207)

An example of one such inmate is as follows, the inmate, who had a history of psychiatric illness as a teenager, was placed in the SHU in November, 1990. By April, 1992, the inmate was suffering from a 'paranoid hallucinatory psychosis' - convinced that his food was being poisoned, he was refusing to eat, and drinking from his toilet. The inmate 'reported having auditory and visual hallucinations, claimed that a microphone had been placed in his cell, and was experiencing extreme anxiety' (*Madrid v Gomez* 1995:208). Staff at Pelican Bay initially claimed he was malingering, but prescribed him antipsychotic medicine anyway. A visiting psychiatrist asserted that the inmate was suffering from symptoms of paranoid schizophrenia and, on 28th August, 1992, he was placed on suicide watch in Pelican Bay infirmary. At this time, a staff psychiatrist diagnosed the inmate as suffering from 'chronic undifferentiated schizophrenia and recommended that he be transferred to CMF – Vacaville for evaluation and treatment' (*Madrid v Gomez* 1995:208). On 17th September, when Grassian interviewed the inmate, he was still being housed in the SHU, where he was 'actively psychotic and delusionally fearful of being killed' (*Madrid v Gomez* 1995:208). The inmate was eventually transferred to CMF – Vacaville in November where his condition improved dramatically. Staff at Vacaville concluded that he was 'an immature, needy emotionally underdeveloped young man who simply cannot cope psychologically with the situation that he has made for himself and which he probably never anticipated...He is genuinely afraid, even panicked, by the Pelican Bay SHU, which seems to have crushed him' (*Madrid v Gomez* 1995:209). On account of his condition improving whilst at Vacaville, he was transferred back to Pelican Bay SHU in March 1993. When interviewed by Grassian a second time, in May, the inmate 'had again degenerated into a psychotic state; he was agitated, terrified, and hallucinatory' (*Madrid v Gomez* 1995:209).

A separate study was also carried out by Haney in which 100 inmates were asked to fill in a highly structured questionnaire based on existing literature relating to symptoms experienced in solitary confinement, such as psychological distress, and effects of prolonged isolation. The study found that a 'sizable minority' of inmates were suffering from some symptoms associated with long term segregation. From these two studies the judge concluded, 'that many, if not most, inmates in the SHU experience some degree of

psychological trauma reaction to their extreme social isolation and the severely restricted environmental stimulation in the SHU' (*Madrid v Gomez* 1995:215). However, although the SHU is likely to have some affect on most inmates, for a small minority these effects may be beneficial, whilst for others they may be minor or moderate. But for some 'the Pelican Bay SHU will likely lead to serious mental illness or a massive exacerbation of existing mental illness' (*Madrid v Gomez* 1995:216). All experts agreed, however, that inmates with existing psychiatric disorders should not be housed in the SHU.

Prior to the opening of Pelican Bay, a study was carried out by the DOC's Mental Health Services Branch, to find out the psychological effects which Pelican Bay's SHU would have on inmates' mental health. This study was composed of surveys on 2 SHUs already in operation, Marion, in Illinois, and Florence, Arizona (the model for Pelican Bay). The study found that Marion, which excluded mentally ill inmates (before its closure in 1994), and those suspected of being at risk of mental health problems, did not encounter a significant level of psychological disorders as a result of reduced environmental stimulation. Yet Florence, which does not exclude mentally ill inmates, had experienced high levels of psychiatric disorders and behavioural problems. However, this study was effectively disregarded by Department officials once Pelican Bay opened. In his summing up, Judge Henderson stated that:

defendants cross the constitutional line when they force certain subgroups of the prison population, including the mentally ill, to endure the conditions in the SHU, despite knowing that the likely consequence for such inmates is serious injury to their mental health, and despite the fact that certain conditions in the SHU have a relationship to legitimate security interests that is tangible at best....defendants have subjected plaintiffs to unnecessary and wanton infliction of pain in violation of the Eighth Amendment of the United States Constitution. (*Madrid v Gomez* 1995:334)

The treatment of prisoners at Pelican Bay, and other super-maximum security units, was even mentioned in the UN's Report on the Commission of Human Rights in January, 1996, which described the conditions for inmates in these facilities as inhumane and

degrading. When referring to Pelican Bay, Nigel Rodley¹⁵ noted that ‘a substantial number of prisoners in SHU were said to be suffering from mental illness, which had been caused or exacerbated by their confinement in the unit’ (Rodley 1996:39), and that, ‘in recent litigation, the federal district court concluded that conditions there “may press the outer bounds of what most humans can psychologically tolerate”. A large number of prisoners were said to be assigned to the unit indefinitely’ (Rodley 1996:39).

In concluding his findings, Judge Henderson stated that the Department of Corrections had ‘unmistakably crossed the constitutional line with respect to some of the claims raised by this action’. He noted that this was particularly the case with regards to provision of mental and medical health care, and that defendants had condoned a pattern of using excessive force, ‘all in conscious disregard of the serious harm that these practices inflict’ (*Madrid v Gomez* 1995:334). The judge also rejected challenges from the plaintiffs with respect to gang members being confined to the SHU for indeterminate terms, and appointed a Special Master to ensure that both parties came to an agreement regarding issues brought up at trial, and that the DOC improve conditions at Pelican Bay.

11. Conclusion: Way Forward for the SHU?

The verdict was heralded as a triumph by the plaintiffs, one of whom was Donald Specter, of the Prison Law Office, a non-profit group which represents inmates, who stated for the San Francisco Chronicle that, ‘without an injunction, there is no doubt that the brutality and lack of proper treatment would continue indefinitely’ (Rosenfeld 11 Jan. 1995). However, James Gomez, the then director of the California DOC, claimed that the ruling was a significant victory for the state, as the judge did not close down the SHUs and allowed gang members to remain there. The judge also ordered that the DOC must ‘come up with a plan for eliminating the prison’s problems within 120 days. If the problems aren’t solved, Gomez should resign or be fired’ (The San Francisco Chronicle 13 Jan. 1995). By November 1995, very little had changed, and the Special Master appointed by Judge Henderson, Thomas Lonergan, stated in his review that the prison

¹⁵ Nigel Rodley is a member of the UN Human Rights Committee and acted as UN Special Rapporteur on Torture from 1993-2001.

system had failed to correct medical and mental health problems at Pelican Bay, and recommended that the court, not state authorities, oversee the improvements. He stated that 'there was no evidence of improvement in the delivery of medical or mental health services since the trial' and further added that the shortage of psychiatrists at the facility 'has actually worsened' and that the prison's suicide policy 'does not reflect what level of observation is immediately required for an inmate in crisis' (Lonergan in Sward and Wallace 15 Nov. 1995). Lonergan recommended that the court order the Pelican Bay administration to 'hire additional medical and psychiatric staff members, ensure accurate health records for inmates, create a plan for improving identification and treatment of suicidal prisoners, and implement programs for the chronically ill' (Sward and Wallace 15 Nov. 1995).

In response, the California DOC stated that it was planning to spend \$13 million to improve its mental health services, and promised to open a new psychiatric department at the institution within the next 2 weeks (Cooper 17 Nov 1995). Inmates' lawyers, however, argued that the DOC had shown unwillingness or inability to shape up, and urged Judge Henderson to order the sickest inmates to be removed from the SHU within 7 days (Cooper 17 Nov 1995). On the 1st December, 1995, the prison opened a new psychiatric services unit (PSU) for seriously mentally ill inmates. On the 15th December, 1995, Judge Henderson ordered officials to release 100 mentally ill inmates from the SHU, setting a 1st January deadline for the facility to transfer inmates suffering from 'schizophrenia, psychotic disorders and severe mental retardation, as well as those who are actively suicidal' (Cooper 16 Dec 1995). In addition to this, he also ordered mental health screening and continuous monitoring of all inmates housed in the SHUs, with those found to be suffering from mental illness to be removed. Tip Kindel, then spokesman for the DOC, argued that 'the department has worked very hard to please the court over the last nine months' and that 'the court did not recognize the hard work involved in implementing the many improvements that have been made up to this point...or the difficulty in obtaining all the approvals for the \$8.5 million that will be needed to pay for these changes over the next 18 months'. He also stated that the DOC 'feel there are too many categorical exclusions from the Security Housing Unit, and it is

likely that the department will appeal the judge's court order' (Sward and Wallace 20 Dec. 1995). In February 1996, Judge Henderson declared to prison officials that they were 'still far short of complying with his year-old decision requiring major improvements in medical and psychiatric care at Pelican Bay State Prison' (Sward 6 Feb. 1996). He did acknowledge that there had been significant progress in the last 3 months, including 'approval for 101 new positions at Pelican Bay'...of which... 'Over 90 percent are now filled' and where recruitment efforts lagged, have been contracted with private service providers to meet the psychiatric needs of Pelican Bay inmates' (Press Release 5 Feb 1996).

Since the settlement, 'most of the guard violence has stopped, medical care has improved and the seriously mentally ill are diverted into the PSU, but the basic conditions of isolation, lockdown and no programs remain' (Weinstein, C. 2006, pers. comm., 6th Oct.). The PSU, or Psychiatric Services Unit, is only for those mentally ill inmates who commit a serious violation and would otherwise be housed within the SHU. Within the PSU, inmates 'receive individual and group therapy, indoor leisure activities, outdoor recreation, regular access to psychiatrists and counselors and routine mental health monitoring' (Correctional Association, 2006) for at least 20 hours per week.

In 2005, numerous changes took place within the California Department of Corrections as a whole: this was due to several factors which included the then Secretary of Corrections, Edward Alameda, being accused of thwarting an investigation into prison guard misconduct, and the California Correctional Peace Officers Association (CCPOA) protecting prison guards and providing cover-ups. The CCPOA is one of the most powerful unions in California, having provided financial backing to numerous Governors' campaigns including Pete Wilson's 1990 governorship, and Gray Davis' campaign in 1998. Arnold Schwarzenegger, one of the few governors in recent times not to have received funds from the CCPOA, told legislators in January, 2004, that he wanted to clean up the prison system, and appointed new officials into the top management positions (Martin 21 Jan 2004). Schwarzenegger also appointed former governor, George Deukmejian to lead a review on 'reforming corrections policies and recommending

prison closures' (Martin 6 Mar. 2004). The report found that 'The agreement between the state and the California Correctional Peace Officers Association ... clearly has resulted in an unfair and unworkable tilt toward union influence' (Walters 16 Jul. 2004). The report further stated that the contract between the DOC and the CCPOA 'contains numerous provisions that seriously undermine the ability of management to direct and control the activities of existing correctional departments' (Walters 16 Jul. 2004). After much negotiation, including the threat of a court appointed receiver to bring the DOC back into full compliance with the court's orders (Furillo 21 Jul 2004), Schwarzenegger managed to retain control of the DOC and, in November, 2004, appointed 5 new wardens, including a new Warden at Pelican Bay, Richard Kirkland. In July, 2005, the DOC changed its name to California Department of Corrections and Rehabilitation (CDCR), and established a new set of goals and values to be implemented from the above date until December, 2012, (CDCR Strategic Plan 2006). However, since these new plans were unveiled, which included major parole reforms to reduce California's enormous prison population, the prison population has continued to rise, resulting in the Governor asking the Legislature to:

create prison capacity through facility construction and public/private contracts in an effort to provide additional rehabilitation opportunities. These measures will accommodate existing population projections and reduce the reliance on nontraditional beds such as gymnasiums, dayrooms and triple-bunks in dormitories. (CDCR 2006b)

This involved the possibility of extending 10 existing state prisons and, in the long-term, building 2 new prisons within the grounds of existing facilities (CDCR 2006c). Pelican Bay is one of the 10 state prisons which may be extended, adding an additional 550 beds to the facility, and 150 of these would be added to the SHUs (Wilkinson 25 Aug. 2006).

This chapter has focused on the development of supermax confinement in California and more predominantly, on Pelican Bay State Prison, from its initial proposal to the present day. This case study, along with the previous, provides insight into the development of specific supermax facilities in order to determine the underlying factors which have led to their construction. The next chapter will examine the similarities and differences between

the two supermax facilities examined within this and the previous chapter, focusing on the different political, social, and cultural environments, which have had an impact on correctional policies in Wisconsin and California. It will also determine whether there are links between the decisions to build the 2 facilities discussed, and locate the supermax within the penological theories and debates suggested for its development and use.

CHAPTER EIGHT

Critically Interpreting Supermax in Wisconsin and California

1. Introduction

The purpose of this, the final chapter, is to pull together some of the main strands of argument in the thesis, and to provide a more considered discussion as to how and why supermax prisons have developed in relation to the research findings and the theoretical concepts discussed in Chapter Two. The chapter, along with Chapters Six and Seven, will try to consolidate some of the arguments made so far, in particular, to question some of the global prescriptions found in the theoretical literature. This is particularly the case with some of the assumptions found in the new penology and the culture of crime control theses. In part, this chapter, by providing a more considered comparative framework in terms of the case studies selected, is an attempt to highlight the local specifics relating to the development of particular supermax facilities.

Prior to this, the chapter will also compare and contrast the data and findings from the two case studies on WSPF and Pelican Bay. The purpose of this is to identify whether the same factors played a part in the building of both facilities or, whether these institutions were built for very different reasons. I have summarized the factors in Table 5, which attempts to organise the main thematic issues and discussion points to arise from the research. The thesis will briefly recapitulate with reference to the table and themes before moving on to look at the theoretical concepts suggested in Chapter Two for the development of the supermax and determine whether, based on the findings, these theories of punishment - or aspects of them - can be seen within the development of the supermax, or whether these theories are much too general to be able to provide answers to specific phenomena at a local level.

At this point it is also important to reiterate the original aims and objectives of the thesis. At the outset the thesis intended to accomplish a number of objectives, these were, to examine and explore the development of supermax at state level in the United States, to

examine and compare the various reasons which have led individual state Departments of Correction to choose to construct supermax facilities. To carry out detailed case studies on two supermax facilities from their initial proposal until the present day and provide a detailed examination of the various regimes, relations and operating procedures within these facilities. And, finally, to reflect back on theoretical frameworks that have attempted to understand the political, social, cultural and penological circumstances under which these facilities have proliferated. I believe that the thesis has achieved these aims and provides a number of unique contributions to the literature. The thesis has successfully examined the development of supermax at state level in the United States and has successfully undertaken two detailed chronological case studies on supermax facilities (Chapters Six and Seven). It provides an analysis of the various reasons why these two different states decided to construct supermax facilities (see below) and has attempted to connect these case studies to the theoretical debates surrounding supermax, which can be seen in Section Three of this chapter.

2. A Comparison of the Two States

The table below identifies the main factors which have emerged during data collection, and which have been identified within previous chapters when determining whether to construct and operate a supermax prison. The next two columns outline the key points with regard to each state. This table then provides the basis for the discussion which follows. The purpose of comparing the two states is to provide a more in depth analysis than one case study could achieve. By examining two states which are dissimilar geographically and demographically, which have greatly differing prison populations, and which have had supermax in operation for very different lengths of time, it is possible to determine whether any of the same factors came into play in the decision to build supermax, or whether each state had its own unique reasons for constructing such a facility.

Contextual Variables in tracing the local development of Supermax	Wisconsin	California
Political Organization: Formal state infrastructure	Institution originally built under administration of Republican Governor, Tommy Thompson. Now under Democrat Jim Doyle, who took office in 2003, 1 st democratic Governor in sixteen years. Secretary of Corrections is appointed by Governor. Since change of Governor and Secretary of Corrections, changes to programming and purpose of prison started to take place.	Pelican Bay built under administration of Republican Governor George Deukmejian. Still under Rep. Governor Schwarzenegger, Secretary of Corrections is appointed by Governor. Currently proposals to add to existing facility.
Local Politics: Struggles, tensions, formal and informal	Prison was bid for by several areas. Boscobel won. Some debate over whether mayor had made deal with officials for next prison to be built to be located here. Great deal of controversy about whether prison should be built.	Plans to build prison in area suggested a number of times, local officials offered area next prison to be built, turned out to be Pelican Bay, which local officials accepted, as needed infrastructure which comes with building of prison. Very little debate over building of facility. Businesses and other town's people happy to have facility. Little or no debate by Department of Administration and DOC
Economic	Local economy in economic decline. Prison viewed as a way of improving economy and adding jobs and infrastructure to rural area. Prison cost \$44.5million. Operating budget \$17.2million per annum. Is economically cheaper on a cell by cell basis to build larger prison facilities than smaller ones.	Local economy in economic decline. Prison viewed as a way of improving economy and adding jobs and infrastructure to rural area. Cost of construction \$232million. Operating budget in excess of \$180 million a year.
Individual Variables, Micro/Staff, type of Governor etc	General prison system suffering from overcrowding although WSPF continually has empty beds. Plans to reduce usage and change units in facility into general population units. Class Action Lawsuit resulted in major changes to regime and conditions within facility. Has been argued case against DOC for the class action was weak.	Prison system suffering from major overcrowding, including SHU cells. 1 st Class Action Lawsuit against a supermax facility resulted in removal of mentally ill from supermax, and awareness of brutality of guards against inmates.
Cultural Sensibilities	Generally seen as a progressive state with democratic principles. One of first states to abolish death penalty. Population break up mainly White, with small minority of Blacks and Hispanics. Total population 5.4 million. Building of supermax by state considered out of character by	California still has death penalty and is often the leader in crime and disorder policies. Has diverse ethnic break up consisting mainly of Whites and Hispanics, with small number of Blacks and Asians. Total population 33.9 million. Because of demographic

	many, as projected need for supermax type confinement considerably lower than number of beds built.	make up, more mixed prison population. California infamous for prison gangs. One of main reasons for building SHUs - method of controlling high risk and problem populations. One of only states to double bunk inmates in supermax. Has highest recidivism rate of all states.
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Table 5. Contextual Variables which have led to supermax development in Wisconsin and California

From an examination of the above table, it is possible to see that there are a number of similarities, but also a number of differences, between the two states. I intend to discuss each of these briefly in the same order as identified within the table. However, the main purpose of the table is to provide a grid upon which to discuss each factor, therefore, there may be some overlap between some of these contextual variables.

(i) Political Organization: Formal State Infrastructure

The first factor to be considered concerns the political organization of the state on a formal macro level. It is interesting to note that both WSPF and Pelican Bay State Prison were proposed and built under Republican leadership. In Wisconsin, Governor Tommy Thompson actively pursued the development of a supermax this was despite the fact that the decision was unpopular with the majority of DOC officials, who would have preferred a much smaller facility, or separate units at each of the four maximum security state prisons. However, because Thompson and the Department of Administration wanted the facility to show their tough on crime stance and, because it is often more cost effective to build larger institutions and the state had (indeed still has) a problem of prison overcrowding, a larger facility was constructed. In California, there was much less controversy concerning the development of Pelican Bay which was one of many facilities built during the largest ever prison construction boom in history. The prison was built with little resistance - the state needed another prison to house its growing inmate population, which was made up of an increasing number of gang members, and, therefore, it was built. The Pelican Bay SHU was one of the first facilities to be designed and built for the purpose of supermax confinement and has been visited often by officials from other states intending to build this type of institution. Until the Pelican Bay security

housing units were built, all SHU type confinement had been retrofitted¹⁶ into existing prisons - the Pelican Bay SHUs were designed from the ground up as a separate facility.

Although both states have had several Governors since the construction of the two prisons, in California, the Governor has remained Republican with the exception of a four year gap when Democratic Governor Gray Davis was elected. This ended in disaster for Davis, who was the first Governor in Californian history, and the second in the whole of the United States, to be recalled by voters. He was replaced in 2003 by current Governor Arnold Schwarzenegger, who stated, in 2006, that due to the increasing problem of prison overcrowding, he intended to build two new prisons and extend a number of existing institutions including Pelican Bay (see Chapter Seven).

In Wisconsin, Governor Tommy Thompson took office in 1987 and remained there until 2001, when he was asked to serve as Secretary of Health and Human Services within George W. Bush's presidential administration. His successor was Scott McCallum, also a Republican, who had served as Thompson's lieutenant. Despite the controversy surrounding the supermax, and the federal class action lawsuit against the facility, few changes, except those determined by the lawsuit, were made during McCallum's governorship. It was only after the appointment of current Governor, Jim Doyle, a Democrat, in 2003, that significant changes started to take place (see Individual Variables below).

(ii) Local Politics: Struggles, Tensions, Formal and Informal and Economic Factors

In addition to the formal, macro, political organization of each state, there are also smaller, local, tensions and struggles, some of which are formal, others more informal, in nature. As stated above, some of the conceptual variables mentioned may have some overlap, and, although in many respects local politics and economics can be seen as isolated, are in this case, deeply intertwined, much to do with local politics is economically driven and the prison is a prime example of this. Within both Wisconsin

¹⁶ The term 'retrofitted' in relation to SHU confinement in prisons, means to update or add new technology to an existing part or unit of a prison in order to make it more secure or suitable for higher security level inmates.

and California, prisons are now viewed not only as an essential tool for managing offenders, but also as a commodity, which is bid for by economically depressed areas (this is true of most states and includes all security level of prisons). In both states, a prison was highly sought after and competition to land a prison was fierce. In Wisconsin, the state building commission endorsed the site for the prison. However, prior to this, the city had been selected as part of a political deal with Governor Thompson and a local Republican legislator, who believed that a prison would bring economic stability to his district. At the time the deal was made there were no plans to build a supermax - that just happened to be the next prison to be built. Much the same story is true of California, where Pelican Bay is situated, the area, Crescent City, was suffering from an economic depression since the decline of fishing and mining industries and was looking for a way to revive the local economy. When it became known that the California DOC was looking for sites to build 10 new prisons, county officials approached the DOC and suggested a number of locations including Crescent City. Indeed, it cannot be disputed that both facilities have had a positive impact on their individual local economies by providing numerous jobs, albeit not necessarily in the way originally envisaged, and improving local infrastructure (see Section Three, this Chapter, for further discussion).

However, from a DOC outlook these institutions are the most expensive to operate, not only because staffing levels are higher due to security concerns, but also in relation to menial jobs. Within a general population prison, inmates are given work in the kitchens or laundries in order to reduce costs, in a supermax setting this does not take place as inmates are considered too violent and disruptive to be allowed out of their cells alone, therefore, the idea of being given extra responsibilities is not even contemplated. In addition to more staff, extra security measures are built into these institutions such as CCTV and remote door locking systems in order to maintain as little staff and inmate contact as possible, which all add to the considerable construction and operating budget of such facilities.

(iii) *Individual Variables: Micro/Staff, Type of Warden*

Although there are some similarities between the two facilities, each institution has had its own unique problems and issues since its construction. In Wisconsin, one of the most significant events to affect the supermax was the class action lawsuit *Jones'El v Berge*, which found that medical health care was unconstitutional and that mental health care screening was unsatisfactory after prisoners were found to be suffering from severe psychological disorders as a result of being housed in supermax. The Judge, Barbara Crabb, ordered that those prisoners identified as seriously mentally ill should be removed immediately. Conditions of confinement were also identified as an area of great concern (see Chapter Six).

Another significant factor which affected the operation of WSPF was the change of Governor in 2003. Governor Jim Doyle appointed a new Secretary of Corrections, Matthew Frank, and reshuffled a number of jobs within the DOC, including bringing in a new Warden at WSPF. In addition, a new federal court monitor was appointed, Walter Dickey, who has been openly critical of the facility since its initial proposal. In September 2005, a press release was distributed stating that plans were being considered to change one of the 5 units into a general population unit. This was due to the fact that since its construction there had consistently been over 100 empty beds within the prison, which is ironic considering that the rest of the prison system in Wisconsin is suffering from severe overcrowding. It also shows that the criticisms levelled at the size of the facility in relation to the type of inmate requiring this level of confinement were well founded.

In California, the Governor has had little impact on the operation of Pelican Bay. The most significant changes at Pelican Bay were due again to a class action lawsuit. The *Madrid v Gomez* lawsuit was the first of its kind and was the first lawsuit to be taken out against a supermax prison. The *Madrid v Gomez* class action was filed in 1991 and the case was brought pursuant to civil rights statute 42 § 1983 which asserts that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes

to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. (42 U.S.C §1983)

Defendants challenged that the prison was violating their right to freedom of religion and expression, that they were being subjected to cruel and unusual punishment, and that their citizenship rights were being violated. As in Wisconsin, medical care was deemed unconstitutional and, when the facility first opened, there was a significant lack of medical professionals. Mental health care was also heavily criticised and all inmates suffering from mental illness were to be removed from the SHUs. Excessive force was an area of great concern at Pelican Bay when it was found that inmates were placed in cages and foetal restraints (See Chapter Seven) on an almost regular basis in one of the two SHU units. Cell extractions were also found to be a common occurrence, often taking place for no legitimate purpose other than to disrupt inmates, and a number of inmates suffered severe injuries as a result of this procedure.

Electro-shock weapons were also found to be used frequently at Pelican Bay, where a variety of weapons were used excessively, including tasers and gas guns. California is one of the few states which allow the use of firearms within the prison walls; most states only permit firearms in the perimeter watchtowers. The Judge presiding over the case, Thelton Henderson, was heavily critical of the methods used to control prisoners and the regularity of cell extractions at the facility. The levels of abuse by guards against inmates have now decreased, but conditions within the prison remain much the same.

(iv) Cultural Sensibilities

Although each prison has its own unique issues and problems, which have been discussed above, each state also has its own cultural sensibilities, some of which are shared with other states, and some of which are unique and specific to that particular jurisdiction. California is a much bigger state than Wisconsin with a total population of 33.9 million

(Census 2000) compared with 5.4 million (Census 2000) and, as such, has a much larger prison population which stands at 166,973 as of 22nd November, 2006 (CDCRd 2006), compared with Wisconsin's total prison population of 22,408 as of 24th November, 2006 (WI DOC 2006). In addition to being considerably larger, both from a demographic and incarcerative standpoint, the population mixes also vary considerably between the two states. In Wisconsin, the population is predominantly white, 87.28 percent, with 5.6 percent black, and 3.6 percent Hispanic, and other, accounting for the rest (Census 2000). In California, race is much more varied with whites accounting for 46.7 percent, Hispanics 32.38 percent, blacks 6.44 percent and Asians 10.77 percent, again with other making up the remainder (Census 2000). In Wisconsin, there is significant racial disparity between the population make up in prison and the general population, as the majority of those incarcerated are black, 45 percent, while whites account for 43.6 percent of the prison population, and Hispanics 7.5 percent (WI DOC 2005:3). In California, there is again some serious disparity, with whites accounting for 28 percent of the inmate population, blacks comprising 29 percent, and the majority, Hispanics, accounting for 37 percent of the total prison population (CDCRe 2006:2). From this it is possible to see that there is serious racial disproportion between both states' ethnic composition and their prison population make up, with blacks being drastically over represented in both states, suggesting that certain groups of the population are more likely to be incarcerated than others, this will be discussed in detail in Section Three of this Chapter.

Based on the statistics presented above, it is clear that California has a much larger total population and, therefore, is undoubtedly going to have a significantly larger prison population. Consequently, it is also likely to have a larger number of supermax beds, which is consistent with the data. However, not all states operate supermax prisons. Some states have never built these institutions, arguing that they have no need for such highly controlled facilities; whilst others, such as Virginia's infamous Wallen's Ridge State Prison, have been downgraded to level five, maximum security (Virginia already has one other supermax prison, Red Onion State Prison). In many cases this is due to pressure from human rights groups, sections of the media, and the constant threat of legal action.

regarding the conditions in these facilities which, in a number of institutions, have been argued to violate UN regulations.

Meanwhile, upon examination, the statistics presented within the NIC survey (1997) and King (1999) on the percentage of supermax beds in each state, found that both Wisconsin and California, according to the NIC, have 5 percent of the total number of prison beds allocated to supermax. King's (1999) statistics vary slightly from this as he found that Wisconsin allocated 3.4 percent of beds to supermax confinement, whilst in California 1.9 percent of beds were in supermax, which suggests that, although California has more supermax beds in total, Wisconsin, due to the size of its prison population, has a greater usage of supermax confinement. However, under the current plan of altering some units into general population, there is likely to be little difference in the percentage of supermax usage in both states.

Besides the prison statistics of the two states, which in many ways are more similar than expected, the two states are regarded generally as very different. Wisconsin is located in the Mid-west and is known for being a progressive state with progressive ideals. It was one of the first states to abolish the death penalty in 1853, second only to Michigan, and is considered to be one of the more humanitarian states, which is why the decision to build a supermax here brought about such controversy, not only with human rights groups but also with members of the DOC.

California, on the other hand, is situated on the West coast and has a long history of being tough on crime. It currently has more inmates on death row than any other state, and has the highest recidivism rate of all the states. Within the United States, California has often been a forerunner in establishing new correctional practices. California is also well known for its prison gangs. Unlike Wisconsin, which has always had problems filling WSPF, California's SHUs are regularly overcrowded, with the majority of inmates sharing a cell, which is unusual for such a high level of security confinement. One of the reasons for this is prison gangs, as Parenti (1999) has stated 'the high-tech hell of the SHU is justified by invoking the threat of gangs and psychotic rebels' (Parenti

1999:209)¹⁷. In fact, the CDCR actually has a policy of segregating prisoners into racial categories for the first sixty days of their confinement or if they are transferred to a new facility. The purpose of this according to the CDCR is to determine whether they are a risk to other inmates and, once this initial period is over, inmates are usually able to choose their cellmates although, it has been found that in the majority of cases inmates choose cellmates of the same ethnic group as themselves.

California is one of the only states to carry out this policy, even the federal system does not rely on this process. This policy came under direct fire in *Johnson versus California* in which the court found the decision to racially segregate even temporarily as unconstitutional.

In 2005, Senator Gloria Romero, Chair of the Senate Select Committee on the California Correctional System, noted that, according to official DOC data, less than 2 percent of the inmate population were validated gang members or associates. However, according to the CDCR, this was just scratching the surface as, in 2005, according to a CDCR spokesman, there were 3,400 validated gang members or associates and 4,400 validated members or associates of street gangs or disruptive groups. In addition, there were approximately 2,150 dropouts or inactive members of prison gangs and 100 from disruptive groups. This suggests that there are about 10,000 officially identified gang members currently serving time in prison, about 6 percent of all prisoners (Petersilia 2006:35).

However, these figures are approximate as it is impossible to find out exact numbers due to methods of identification and definition. It is these validated members who finish up in California's SHUs. However, this validating system is ambiguous and open to abuse. A number of inmates have been defined as gang members and sent to SHUs when they were innocent of belonging to a gang, in at least one instance because of mistaken identity (see Tachiki 1995). For these inmates it is almost impossible to get out of the

¹⁷ It is important to note that Parenti does not justify the use of supermax because of perceived gang problems, he is pointing out that politicians and lawmakers, amongst others, justify its usage in this way. Parenti disagrees with the whole penal agenda in California, and indeed the United States.

SHU as they cannot opt to debrief as they have no knowledge of gang activity. Other flaws with the validation process are that inmates may lie about other inmates, 'because a gang member who debriefs has no incentive to tell the truth, the debriefer chooses...an inmate despised by other inmates' (Tachiki 1995:1128) for example, a sex offender. By doing this, the inmate protects his gang (if he has one) and does not rouse the anger of rival gangs. Research has also shown that prison gangs attract inmates with higher levels of programming need (Krienert and Fleisher 2001, in Griffin and Hepburn 2006:443). 'Davis and Flannery (2001) noted that gang members "often are admitted with histories of physical and sexual abuse, substance abuse, psychiatric disturbances, post-traumatic stress disorder, cognitive deficits, poor self-esteem and other problems"' (Davis and Flannery 2001:37 in Griffin and Hepburn 2006:443). However, because of the normative organization of gangs, these inmates are less likely to participate in rehabilitative programming.

However, it is not just gang members who end up in Pelican Bay SHU. In addition there are also a number of inmates who finish up being housed in supermax because they are seen as a nuisance by correction officials. These include jail house lawyers and political and proto-political inmates and activists. One such inmate is Steve Castillo, a famous jail house lawyer in California who, even before being placed in the SHU at Pelican Bay, was filing high calibre lawsuits against the CDCR. Being housed in the SHU has not deterred him from filing cases against the Department - one of the most recent and successful was carried out against former secretary of the CDCR, Edward Alameida, and focused on the Department's gang policies (see *Castillo v Alameida* 2005). Inmates such as these are often placed in the SHU based on weak evidence because they are seen by Corrections administrators as an irritation especially when they are helping other inmates file litigation against the Department. Few, with the exception of prisoner rights groups and inmates' relatives, are concerned about the use of SHUs in California. Politicians, Corrections staff, and the public in general believe that if an inmate ends up in the SHU it is because they deserve to be there.

Before moving on to examine the theoretical aspects of the thesis in relation to the research, it is necessary to revert back to the initial question of what contextual variables are most likely to lead to the development of supermax, I would argue that formal state political organization is the most fundamental factor in bringing about the construction of supermax prisons. In both states it was Governmental decisions which led to their construction, especially in Wisconsin, where it was Governor Thompson and the Department of Administration who pushed for the prison despite concerns from the DOC. In California, Pelican Bay was one of many prisons built as part of the major prison construction boom, endorsed by Governor Deukmejian and followed up by DOC officials. Although all of the other variables have had important influences on the decisions of where to construct supermax, and how to operate them, it was (and is) ultimately the decision of the Governor to endorse whether a state prison is to be constructed and where.

3. Theories of Imprisonment and Supermax

As mentioned previously, this part of the chapter will aim to unite some of the arguments made so far, with reference in particular to the global assumptions found in the culture of crime control, neo-Marxist approaches and within the New Penology. This section of the chapter, by providing a more measured comparative framework in terms of the case studies selected, will attempt to draw attention to the local specifics relating to the development of WSPF and Pelican Bay's SHUs.

Many would argue that the trend towards supermax confinement can be traced back to the international movement away from rehabilitation towards control, which started to take place during the 1970s within most Western societies: see Feeley and Simon (1992), Garland (2001) Chapter Two. However, some authors such as Haney and Lynch 1997, and Toch 2001, 2003, argue that supermax type confinement can be traced back much further than this to the earliest experiments with penal reform during the 1820s under the Pennsylvania and Auburn systems, at Pittsburgh penitentiary and Auburn prison in New York State. Indeed, according to Toch 2003, the warden of Auburn prison, 'Gershom Powers, wrote in 1826 that the legislature had passed a law (on April 2, 1821) directing

him “to select a class of convicts to be composed of the oldest and most heinous offenders, and to confine them constantly to solitary cells” (Toch 2003:221). These early experiments were soon abandoned after it was found that they severely damaged the mental health of inmates. This raises serious questions as to how and why then did penology come full circle and return to this type of confinement, after it was found in the 19th century to be inhumane. A notable difference between the 19th century use of solitary confinement and the use of solitary confinement within the supermax setting is that, in the 19th century, the purpose of this confinement was to try to *reform* and *rehabilitate* the prisoner, in contemporary society it is merely used to *contain* and *control*. This brings us back to the late 1960s, early 1970s, a time of major change within society as a whole and the starting point of the enormous upward spiral in incarceration rates (see Chapter Three).

Chapter Three provided a history of punishment, which addressed issues such as changes in employment, which altered the composition of the workforce and left many without work, and the maturing of the ‘baby boom’ generation. Crime became a political tool, used successfully to secure votes: President Nixon’s ‘war on crime’, and drugs in particular, was the first major campaign of its kind, which has been used consistently by presidential candidates to this day. The exploitation of fear of crime - which is often caused by media representations of crime - is part of this, politicians using people’s fears to gain support for their tough on crime policies. At the same time, there was also a change in the way prisoners were sentenced – the establishment of determinate sentencing, initially designed to make prison sentences less arbitrary and fairer (although in reality this has not been the case). All of these factors have led to changes in the way crime and the penal system are viewed today.

(i) Race and Supermax

However, there is a fundamental problem with this increase in punitiveness and awareness of crime. Data on crime rates shows that crime has actually levelled off or declined in the United States during the last 30 years, resulting in most of those serving time in the nation’s prisons and jails being sent there for non-violent offences such as

drug use. Many, including Wacquant (2005), who takes a neo-Marxist perspective, argue that it is not the frequency or type of crime which has resulted in these changes, but the attitudes of society, led by the media and politicians, especially towards poor, working class, ethnic, minorities. In other words, the penal systems of the United States not only try and control crime, but they are also used to manage the social, economic and racial order through the utilization of 'punitive regulation of the behaviours of the categories prone to visible offensive deviance because they are regulated to the bottom of a polarizing class and caste structure' (Wacquant 2005:15). In sum, the prison is used to contain the disorders generated by those seen as the underclass, those seen as distasteful by the white middle-class American and, therefore, dangerous. Davis (2003) argues that this goes back, especially in southern states, to the abolition of slavery. 'After the abolition of slavery, former slave states passed new legislation revising the Slave Codes in order to regulate the behaviour of free blacks in ways similar to those that had existed during slavery' (Davis 2003:28). These black codes cited a number of offences such as vagrancy, breach of job contracts, possession of firearms, and insulting acts or gestures, which were only criminalized if the offender was black. 'In the aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves' (Davis 2003:29). This led to the development of the convict lease system. Today, argues Davis,

the racial composition of the incarcerated population is approaching the proportion of black prisoners to white during the era of the southern convict lease and country chain gang systems. Whether this human raw material is used for purposes of labour or for the consumption of commodities provided by a rising number of corporations directly implicated in the prison industrial complex, it is clear that black bodies are considered dispensable within the "free world" but as a major source of profit in the prison world. (Davis 2003:95)

As identified in Section Two, Cultural Sensibilities, above, within both Wisconsin and California there is severe racial disparity between the percentage of Hispanics and blacks in 'free society' and those in the prison population. This is even more evident within supermax prisons and control units where 'African-Americans and Latinos are vastly overrepresented' (Davis 2003:49). Whilst I do not have access to any statistics from the

two facilities studied to back up this statement, during my tour of WSPF of the twelve or so prisoners I witnessed, only two of these were white, which suggests that there is likely to be a disproportionate number of blacks housed in WSPF. Therefore, it would seem that there is not only an over representation of ethnic minorities in the general prison population, but also within supermax facilities.

(ii) The 'New Penology', Neo-Marxism, Politicization and Supermax

This over representation of certain population groups can be seen in what Feeley and Simon (1992, 1994, 1998), have termed the 'new penology': this concept focuses on the methods used to identify, classify and manage, groups assorted by levels of dangerousness. Crime and deviance are an inevitable feature of society - the 'new penology' is not interested in retribution or just desserts. Instead, it seeks to regulate groups as part of a strategy of managing danger. The theory of incapacitation provides the clearest example of this - by rearranging the distribution of offenders in society, this will reduce the effects of crime in society. In other words, if nothing else the prison can hold offenders for a time and delay their return to criminal activity. This can be strengthened via the use of 'selective incapacitation', whereby length of sentence is determined by risk profiles rather than by type of offence, or character assessments, of the offender. The purpose of this is to target high-risk offenders and maintain long-term control over them, whilst handing out shorter sentences for lower risk offenders. However, because risk is no longer determined by offence, or an offender's perceived character, this has resulted in certain groups of the population being seen as higher risk even when this is not necessarily the case. For example, being a black, working class, youth who gets caught smoking marijuana, will often result in a much harsher sentence than being a white, middle-class, youth committing the same offence, who is more likely to receive a caution or warning.

The supermax prison epitomizes this argument as it is within these institutions that those prisoners alleged to be the highest risk, or the 'worst of the worst', those who are seen as the most capricious, and recalcitrant, are housed and it is within these facilities that one can see the largest levels of racial and class disparity within the United States' criminal

justice systems (see Davis (2003), or for the Australian experience Carlton (2007)). This is especially important when considering that those who end up in supermax are not those who have committed the worst crimes in society, but those whom correctional officials believe to be a threat to safety, security, or the orderly operation of the facility in which they are housed. Under the 'new penology' it would be perfectly legitimate for someone convicted of supplying or using drugs, and who becomes a member of a prison gang in order to protect themselves, to end up in supermax.

As stated earlier in the chapter, the majority of inmates in Pelican Bay are either gang members or those who are viewed as a nuisance by correction officials, such as jailhouse lawyers and political prisoners. Based on the type of prisoners being housed within the Pelican Bay SHUs, it is possible to see the actuarial aspect of prison management defined in the new penology, the containment of those perceived to be risk groups. By housing gang members in the SHU, the SHU functions as a warehouse, keeping these inmates separated from the general population, so that, in theory at least, they cannot be a risk to the normal operation of the system's general population prisons by inciting racial division. Similarly, housing jailhouse lawyers and political prisoners within the SHU is a way the DOC can legally hinder the number of complaints filed against them, and stop perceived political debate and potential uprisings. Based on the type of inmate housed in these institutions, it would seem that the 'new penology' theory holds considerable weight with regards to supermax.

Similarly, the neo-Marxist concepts outlined most clearly by Wacquant suggest that there are indeed certain subgroups of the population who are seen as a risk to the middle-class white American and, therefore, singled out by lawmakers and penal policies aimed at removing these groups from the streets and, in some instances, even from general population prisons in order to warehouse and manage them.

It could also be argued that the main dynamic in the trend towards supermax is the increased politicization of crime identified within the 'new penology', and in the culture of crime control thesis. This is further supported by media depictions of crime seen on

fictional television programmes, and within news reports, which add to public misconceptions about crime and criminals and lead to increased levels of fear of crime especially among the elderly, and middle-class Americans. Since Nixon's 'war on crime' and, in particular, drugs, there has steadily been an increase in the use of crime as a platform for political advantage. To reiterate from Chapter Three, a prime example of this was George Bush Senior's presidential election win over Democratic candidate Michael Dukakis. Bush used the Horton case (see Chapter Three for details) against Dukakis during his 1988 presidential campaign, along with Dukakis' opposition to capital punishment, which resulted in him, and the Democratic Party as a whole, being labelled as 'soft on crime'. Bush went on to win the election and become the forty first President of the USA. This political trend towards being tough on crime has continued throughout the 1990s and up to the present. A prime instance of this is the case of Wisconsin, where Governor Tommy Thompson pushed for the construction of the supermax despite reservations by many within the DOC. The fact that these institutions are made up mainly of ethnic minorities suggests that the whole of the criminal justice system is regulated towards the control of certain subgroups of the population, most notably blacks and Hispanics which, Davis (2003), argues goes back to the abolition of slavery and which, Wacquant (2005), argues is designed by the white middle-classes to control and manage poor, ethnic minorities. Linked with this is the change in the way prison administration is carried out, which has led to the development of actuarial principles like those outlined within the new penology, which again results in certain sub-groups of the population being singled out and managed by criminal justice policies.

(iii) Less Eligibility, Deterrence and Lesser Less Eligibility

Another aspect of neo-Marxism argued by Rusche and Kirchheimer is the concept of 'less eligibility' which states that for those from the lower classes, the criminal law must create sanctions which ensure that, it is impossible for individuals to sustain themselves by criminal means and that penal punishments are harsh enough to deter those individuals that are tempted to try. Therefore, penal institutions must implement regimes which are worse than the worst conditions offenders may encounter in free society. This is particularly true of supermax, which operate the toughest regimes of all penal institutions,

while general population facilities have a number of regulations regarding prison conditions which they must adhere to, in the main, supermax prisons have managed to evade many of these rules under the pretext that these facilities are necessarily harsh to house the most incorrigible and difficult prisoners. DOC officials have concurred with this argument stating that supermax prisons do have a deterrent effect on inmates, as prisoners do not want to end up in supermax type confinement. In Wisconsin, this proved to be the case for one inmate who took his own life in order to avoid being sent to WSPF (Lueders 15 Aug. 2000). However, this is not true of all prisoners, one gang member stated that it was an honour to end up in Pelican Bay SHU (Montgomery 2006) as, of all the people they respect, most have gone to prison. A number of authors argue that the deterrent effect of supermax is void, as it is the certainty of punishment rather than the severity of it that is likely to deter, and placement in supermax is relatively rare, based on administrative decisions using risk factors over which the inmate has little control (Riveland 1999, Toch 2003, Pizarro *et al.* 2006). In California, being a member of a prison gang and making it known that you belong to one will almost certainly result in transfer to a SHU, which could undermine the argument against deterrence. Although the number of gang members within the California prison system is considered much higher than the number of SHU beds available to house these inmates (Tachiki 1995:1140), making it impossible for the CDCR to contain all gang members within the SHU. In addition, if many inmates agree with those cited in Montgomery (2006), then ending up in the SHU is a mark of distinction, something to be respected, resulting in an outcome opposite from that of deterrence.

In addition, while Rusche and Kirchheimer's argument suggesting that severity of punishment is related to the value of labour is no longer valid in Western society, economic factors still play a vital role in penal policy. Rather than having an impact on the conditions inflicted on the prisoner population as in the past, economic factors now affect the decisions on where to build new prisons. This I have termed 'lesser less eligibility' and can be seen clearly in both the case studies. Both WSPF and Pelican Bay were built in areas suffering from severe economic decline, where the building of a prison would boost both the local economy and infrastructure, by providing new jobs

both within the prison and during its construction and creating new or developing existing amenities for both the existing local and arrival of new employees. This illustrates that economic factors are still fundamental within penal policy albeit in a different form to that envisaged by Rusche and Kirchheimer.

(iv) Discipline and Normalization in Supermax

Foucault's argument regarding the use of imprisonment as a form of disciplining and normalizing individuals also plays a part in the role of the supermax, as the supermax seeks to normalize disruptive general population prisoners by placing them under strict regimes in order to discipline them. 'Primarily high-security or control units were developed on principles of sensory deprivation, solitary confinement and constant surveillance in conjunction with various behavioural adjustment and incentive schemes to exact prisoner control' (Carlton 2007:68). These methods of disciplinary control are neutralized by officials as painless psychological methods used to control prisoner behaviour. They are diffused by 'professional terminology and discourses associated with security, punishment and incarceration' (Carlton 2007:68). However, Lucas (1976), in Carlton (2007), argues, whatever the methods used 'the intent is to apply stress to the individual in such a way that normal psychological functioning and defence mechanisms break down and the victim becomes amenable to behaviour manipulation' (Lucas 1976:56 in Carlton 2007:69). In other words, the harsh regimes within these institutions are designed to limit inmates' independent thinking and 'break or remould difficult prisoners into a state of conformity and compliance' (Carlton 2007:69).

The concept of 'breaking' or 'remoulding' difficult prisoners has been found by many to lead to serious psychological distress and mental illness (See Haney 2003, Haney and Lynch 1997, and Grassian 1983; Chapter Four) and has led to legislation against supermax institutions (See Chapters Six and Seven).

(v) Cultural Sensibilities and Punishment

Garland's work regarding cultural sensibilities can also be seen here. Whilst inmates suffering from mental illness were to be removed from supermax under the *Madrid*

versus Gomez lawsuit, and issues such as excessive force were abhorred, Judge Henderson in his summing up of the trial stated that

Conditions in the SHU may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extended periods of time. They do not, however, violate exacting Eighth Amendment standards, except for specific population subgroups identified in this opinion. (*Madrid v Gomez* 1995:335)

This suggests that, in contemporary society, whilst physical abuse is not to be tolerated, and is in fact despised, mental abuse, as long as it is not against someone *already* suffering from mental illness, is to be accepted, regardless of whether or not this type of confinement is likely to *cause* an inmate to become mentally ill. This suggests that, to a certain extent, Garland's argument is valid in relation to punishment, that the establishment of heightened self controls and civilized sensibilities carry with it a counter-tendency towards punitiveness (see Chapter Two). Although this does not hold equally with all sections of society, the argument surrounding the popularity of being tough on crime and offenders suggests that the civilizing process can only advance so far as this underlying emotional ambivalence continues to sustain the mainstream position on punishment.

4. Discussion

The development of supermax prisons in Wisconsin and California were, based on the research within this thesis, mainly due to state political decisions. The fact that Wisconsin now has a different political party in leadership may have had some influence over the decision to convert part of the prison into a general population unit. Alternatively, it may be simply that since its initial operation the ongoing criticisms against the facility and, the fact that a significant number of beds are continually empty - in direct contrast to the rest of the prison system which suffers from severe overcrowding - that the Governor, in conjunction with the DOC, decided to convert one of the units. Whatever the reasons, there can be no doubt that Wisconsin simply did not need the number of supermax beds which were initially constructed, and the decision to convert some of the facility into general population will be seen by many as a step in the right direction.

In California, which has a much bigger prisoner population and prison system, the decision to build the prison was again a political one, as Pelican Bay was built as part of the largest prison construction boom in the world. The decision by Governor Schwarzenegger to build two new prisons, and increase capacity at others, including the SHUs at Pelican Bay, in order to combat the increasing prison population is rather short sighted as, until major changes take place in the way the criminal justice system and, in turn, the prison system, is managed, there will continue to be a growing prison population, made up predominantly of ethnic minorities, resulting in the prison system continually trying to play 'catch up' with the number of offenders it has decided to incarcerate and is true of most states not just California. This will have a knock on effect on the number of inmates deemed suitable for supermax type confinement, which is also liable to increase. The question then is, where to draw the line, the United States currently houses over 2 million prisoners, where will this figure stop?

In addition to the political reasons for the construction of supermax, other smaller but significant factors have played a part. Not only do these facilities allow politicians to appear tough on crime, they allow society to believe that their safety is assured, as the most 'violent' and 'dangerous' inmates are locked away in these institutions. They allow society to believe that the 'worst of the worst' are getting what they deserve. They deter other inmates in general population prisons from committing acts of institutional violence and, they allow correctional officials to manage risk societies in order to maintain stability within the prison system in which they are situated. In actuality, many of these arguments are flawed, it is frequently not the most recalcitrant and disruptive inmates who are housed within these institutions but vulnerable groups such as the mentally ill (Haney and Lynch 1997, Haney 2003, Toch 2001). Research has shown that these facilities do not actually reduce levels of institutional violence (Briggs *et al.* 2003), and arguments for the deterrent effect of supermax have been found to be unsound (Pizarro *et al.* 2006).

The development of supermax, then, has been justified by the fact that these institutions are a means of looking tough on crime for politicians and policy makers, whilst at the

same time, it is assumed, appeasing society's need for retribution against offenders, and as a means, not yet proven to be effective, for correctional agencies to incapacitate and warehouse those seen as problematic prisoner groups in order to maintain system wide safety, order, and control. However, these justifications are global in scope based on larger theories of punishment which focus on the whole of the criminal justice system rather than specific aspects of it.

Based on the findings of the two case studies, there is definitely some truth in the macro theories for the development of the supermax. From the very beginning, the decision to build a supermax prison in Wisconsin was an entirely political one – one that Governor Tommy Thompson thought would show he could get tough on crime. When Thompson first proposed the idea of building such a facility in Wisconsin, which prides itself on its reputation as a progressive state, a pioneer in social legislation, and having a 'long commitment to running its prisons consistent with the principles of democratic society' – fairly not arbitrarily (Dickey 11 Sept. 2001), his decision was then, for those with knowledge in the field of corrections, for the most part, not a popular one, 'for supermax is a most extreme departure from democratic principles and from the bedrock principles of order management in a prison' (Dickey 11 Sept. 2001).

The supermax prison, not only in Wisconsin, but throughout the United States, has become a politically motivated correctional tool for dealing with those inmates perceived to be the 'worst of the worst'. Although most would agree that there is a small number of prisoners who are extremely violent, dangerous and unpredictable, and who require some sort of strategic measure in order to maximize control and protect these inmates both from themselves and staff, 'it is hard to resist the conclusion that the use of supermax custody has become at best a pre-emptive strategy that is almost certainly disproportionate in scale to the problems faced and at worst a routine and cynical perversion of penological principles' (King 1999:182). This is reflected perfectly in Wisconsin, where the number of prisoners ever likely to need this type of confinement is extremely unlikely to get anywhere close to the region of 509 – the number of cells provided for this type of confinement in Boscobel – now or in the foreseeable future. The

majority of those experienced in the field of corrections at the time of the proposal knew this – a much more sensible decision would have been to add cells at existing institutions or to build a much smaller facility for those few whom the DOC deemed to require such confinement. The decision to transform one of the units into a general population wing has now been put into practice, altering the role of the institution and bringing it more in line with other general population prisons within the state.

In California, the SHUs at Pelican Bay, although unique in design, were part of an ongoing policy of segregating prisoners dating back to the 1960s. The decision to build the SHUs was never a highly contested one within administrative and correctional circles. More supermax type confinement was needed so they built another 2 units as part of Pelican Bay. However, the decision to build the SHUs at Pelican Bay, although a political one, is also centred on the control of problem populations, identified by Feeley and Simon (1992), within the new penology, and Wacquant (2005), in his neo-Marxist critique. These problem populations in California are predominantly prison gangs and jailhouse lawyers. The CDCR seeks to manage these groups by segregating them and warehousing them within the SHUs where they, are given indeterminate sentences and are (supposedly) less able to communicate, are incapacitated until they debrief (in the case of gang members); are paroled or die. Other inmates who end up in the SHUs for rule infractions such as violent behaviour are given a determinate sentence to serve in the SHU, unless they repeatedly violate correctional policies, suggesting that gang membership and frequent filing of litigation against the DOC is more of a risk to prison order than lone prisoners deciding to lash out in anger against the system.

Based on these findings it would seem that there is some linkage between the global theories of punishment - highlighted in Garland's (2001), 'Culture of Control', and the politicization of crime, Feeley and Simon's (1992), 'new penology', and the controlling and warehousing of risk populations, and Wacquant and Davis's assertions that certain sections of society, especially poor minority sections, seem to be marginalized and criminalized to a much higher degree than other groups - and the development of the supermax prison, at least in relation to Wisconsin and California.

Whilst the amount that these factors played a part in the construction of the supermax varies within each state, and that Wisconsin and California had their own individual and specific reasons for building supermax facilities, there is no denying that connections can be made between the development of supermax and the theories of punishment discussed above. However, whilst these global theories of punishment can be seen in the development and operation of both supermaxes, the actual decisions on how to build and run these institutions were mediated at the local level: this can be seen particularly well in the case of Wisconsin, where different politicians have made very different decisions on the purpose and operations of WSPF. In reality, while the various macro theories of punishment such as the new penology, can be seen within the development of both supermax facilities, it is at the local level that every decision is mediated and acted out.

Whilst the various politicians which pass through office bring in their own new ideas, policies and choice of officials (as mentioned previously in most states, including Wisconsin and California, the Governor appoints his/her choice of Secretary of Corrections) it is at the local level that these policies have to be adopted and applied, it is at the local level that these continuing changes have to be implemented while at the same time maintaining a functioning system. An example of this was, when it had been decided by the Governor and Secretary of Corrections to convert Charlie Unit into a general population unit at WSPF, it was the Warden, prison administrators and correctional officers who had to identify which cells were suitable for inmates and then relocate those prisoners already housed in Charlie unit to these other cells, whilst at the same time, operating the prison effectively while modifications were being made to the unit in order for it to be adequate for general population prisoners.

5. Conclusion: Exploring the Supermax, Assessment and Further Questions

The last three chapters have examined and discussed the two case studies which focus on the development of Wisconsin Secure Program Facility and Pelican Bay's Secure Housing Units in California. As such the thesis makes an original contribution to the supermax literature. As discussed in this chapter, the thesis not only provides two case studies to compare and contrast but also attempts to locate the supermax historically and

within the various theoretical frameworks suggested for its development. Moreover, by undertaking two local studies the thesis provides insight into the localized processes which impinge upon, and shape, policy decisions as they are made within different state administrations. This section will draw the thesis to a close by focusing on the purpose and purported goals of supermax in general and examining the use of supermax in other countries before providing some final thoughts on the use and future of these facilities.

However, although the thesis provides a number of unique contributions to the literature, there are also limitations to the research, one of the most fundamental being the problem of obtaining access to research subjects and research sites. For example, in California where gaining access with those in the Department of Corrections was not possible, this resulted in the Californian case study being based primarily on documentary sources. Nevertheless, whilst the research process did not go well in California, in Wisconsin the process went much more smoothly, and access was gained to a number of key persons both within the DOC and externally, which allowed for a greater insight into the internal workings of the Department of Corrections and the state administration. However, although the case studies were not identical in research terms, which was the original intention, the documentary sources available on Pelican Bay were enough to put together a valid and detailed study.

Although the findings of the thesis may not apply uniformly to all states, they undoubtedly contribute to the debates surrounding the development of supermax. The authorities in Wisconsin and California both built these facilities primarily for differing reasons, which point to differing socio-cultural, political and historical processes; Wisconsin to appear tough on crime and offenders, and California, principally to control the alleged problem of prison gang membership which has comprised a core policy driver within the California Department of Corrections and Rehabilitation since the 1960s.

The thesis has aimed to connect the case studies with the theoretical debates surrounding supermax. The increasing popularity of these institutions is related to the burgeoning politicization of crime, which – some have argued - has led to greater punitiveness within

criminal justice systems (Fellner 2000). In addition, the fact that crime is now seen as 'normal', a part of everyday life and, therefore, to be controlled through the use of various management techniques, has led to the development of theories such as the 'new penology' (Feeley and Simon 1992, 1994, 1998). The 'new penology' examines the management of risk within society, and selective incapacitation - the supermax being the ultimate example - its aim to manage those offenders defined by correctional officials to be a risk to prison order. However, how penological developments play out in different locales has been a concern of the thesis.

Based upon the discussions within the thesis, it is possible to see that the development of the supermax prison can be linked to various general theories of punishment and penal policy. However, it is at the local level that the limits and extent of general theories are exposed. In other words key decisions and processes are invariably mediated at the level of the locale. It is here that the various factors for the development of the supermax can be seen.

Furthermore, the shift towards punitive incapacitation and the ascendance of 'risk' in local governance may have a logic that lies outside of criminal justice discourse and is driven instead by political expediency. Put simply, there is the possibility that states built supermax prisons because others jurisdictions already had them. For example, once a few states pursued supermax as a specific policy, other states may have followed by example, as organizations often do, even when no compelling need exist, to enhance their perceived legitimacy. Indeed, in their study of prison wardens, Mears and Castro (2006) identified three main factors which influenced wardens' perceptions of effectiveness. These were, serving as a supermax warden, working in a prison in the south, and having a deterrence philosophy of punishment, leading them to the hypothesis that:

supermaxes obtained a foothold in the south because of marked prison growth and get tough attitudes, that officials from other states may have visited southern supermax wardens and obtained especially favourable impressions of supermaxes, and that they then returned to political and social contexts highly supportive of taking more aggressive stances towards prisoners. (Mears and Castro 2006:421)

This appears to apply in California, where although it has a history of segregating prison gang members in separate units, Pelican Bay was built after officials and policy makers had toured Arizona's Special Management Unit I at the Arizona State Prison Complex, Eyman in Florence, Arizona (King 1999:172). This implies that, if a different approach had been pursued in the south, and if other states had taken notice, then a substantially different outcome may have arisen.

6. Interpreting Supermax

Clearly it is not possible to rely just on theory to interpret the development of supermax; theory is important but it tends to apply at a level of generality. This is true of interpretations of criminal justice systems which either suggest a 'new' penology (Feeley and Simon 1992) or a 'culture of control' (Garland 2001), both of which overlook the significances of locale as a mediating force.

(i) The purpose of Supermax and Its Purported Goals

Whilst the use of supermax prisons continues to be seen as a useful correctional tool for some, for others, it is an issue of great concern. Its practical effectiveness draws a number of criticisms and its use as a deterrent to other inmates has been found to be flawed (Mears and Resig 2006, Lipke 2004, and Pizarro *et al.* 2006). Research conducted so far, albeit limited, has established that supermax facilities have little or no positive impact on prison control; safety; order, and institutional violence (Briggs *et al.* 2003, Mears 2006) and in some instances, may even increase the likelihood of institutional violence (Briggs *et al.* 2003). The type of inmate detained within these facilities is rarely the 'worst of the worst' but is often likely to be those who suffer from mental health problems (Haney 2003, Haney and Lynch 1997). This has been identified within the case studies in both the *Jones 'El v Litscher* lawsuit in Wisconsin, where the judge ordered that all mentally ill inmates be removed from the facility immediately and, also, within the *Madrid v Gomez* lawsuit, where again the judge ordered immediate removal of a number of prisoners found to be suffering from mental illness within Pelican Bay's SHUs. Other prisoners likely to find themselves within supermax are those groups which have been singled out as a threat to prison order by corrections officials, often based on weak evidence. Once a

prisoner has been placed in supermax, especially if labelled as a gang member, it is almost impossible for them to get out until they have completed their sentence - this can be seen clearly within the Pelican Bay SHUs where all gang members are given indeterminate sentences - in which case, after suffering the restrictive conditions of supermax custody, when an inmate does complete their sentence they are likely to find returning to the freedoms of society an extremely difficult experience. As Stuart Grassian describes it, 'imagine taking a dog that has bitten someone, and kicking and beating and abusing it in a cage for a year. Then you take that cage and you put it in the middle of a city, open it and hightail it out of there. That's what you're doing' (Human Rights Watch interview 19 June, 1997 in Fellner and Mariner 1997:43). According to Grassian and Haney, they have both 'been contacted by a half-dozen inmates who were released from Pelican Bay SHU only to commit murder or other serious felonies' (Harrington 1997:17). Clearly this is the extreme end of the scale but, for many others who are released into society straight from supermax, the harsh restrictions and strict regime of these institutions is likely to have a profound effect on these individuals' abilities to revert back to a normal existence in the free world.

(ii) Negative Impacts of Supermax

Whilst there can be no dispute that federal and state prison systems have to deal with some of the most difficult and disruptive prisoners, it is important to consider whether putting these prisoners into supermax institutions can, in fact, do anything to solve these problems, and that, by transporting these inmates from other general population facilities into supermax, the problems posed by these inmates are only transferred elsewhere for others to manage. By locking these prisoners away in the harsh restrictive conditions of supermax, where they have little to lose, these prisoners are likely to become more frustrated, angry and aggressive, instead of taking into account the:

possibility that worsening prison conditions themselves may constitute the source of behavioural problems, a "new breed" of convict is christened periodically to account for punitive increases in prison violence. Thus, the claim that a unique or special type of criminal has arrived on the prison scene who cannot be controlled through existing measures is accompanied by an

escalation in the level of prison punishment that includes the creation of special conditions of confinement. (Haney and Lynch 1997:493)

The supermax is but the latest example of this development.

Hence, it is a distinct possibility that the reasons for such high levels of violence within American prison systems have as much to do with the way 'prisons have been managed and staffed on the cheap, and the fairness and dignity with which prisoners are treated as it has with the qualities that criminals bring with them to the prison' (King 1999:183). As one commentator put it

We should be concerned that the prison systems are spewing out such damaged human material. Most will probably disappear into our social trash heap, politely labelled the homeless or the underclass. A few will violently lash out, perhaps murdering and raping someone, and then be taken back to the dungeon. (Irwin 2005:145)

Although there is little doubt that American prisons are more violent than their European and British counterparts (King 1999), which is how the use of supermax is often justified, especially in states such as California, where prison violence between gangs is said to be rife, questions as to why this is so need to be raised. 'The way in which people behave in prisons is known to be a product of many factors: their length of sentence, their likelihood of getting out, their ties to the community, the nature of incentives to good behaviour and disincentives to bad behaviour, and whether or not they are treated fairly by staff and by "the system"' (King 1999:183). Fortunately, some states' administrators such as those in Wisconsin - where many believed the supermax was to be unnecessary in the first place - are able to see that the use of supermax confinement is not required for the vast majority of inmates and are attempting to solve this problem by lessening the severity of conditions of confinement, and converting cells back to general population status. Regrettably, others such as California are continuing with a tendency towards draconian punishment.

Although based on two case studies in the United States, the thesis raises a range of implications for supermax in other countries. The United States are often recognized as a 'forerunner' in correctional practices which are frequently implemented or modified later by other countries. An example of this is the three strikes law in the United States which has been adapted and put into practice in England and Wales. Because of this tendency for other nations to utilize American criminal justice policies it is important to determine whether other countries have built or considered constructing supermax type confinement and their reasons for doing so.

7. Supermax in other Countries

Examples of countries that have considered building supermax prisons are the Netherlands (which opened a supermax prison in 1996), Britain (which has opted to forgo the construction of a supermax in favour of several Closed Supervision Centres) and Australia, who have also utilized supermax type confinement. Bree Carlton in her (2007) book, *Imprisoning Resistance*, examines the events at Jika Jika, High Security Unit, in Pentridge Prison, Victoria, Australia which was closed after a number of serious incidents took place including a major prison protest which resulted in inmates setting fire to one of the units, resulting in the death of 5 prisoners due to asphyxiation. However, since its closure, a new supermax unit has been built, Barwon Acacia High-Security Unit, which aims to 'cater for prisoners convicted for terrorist-related or gangland offences' (Carlton 2007:256).

The decision to construct the Dutch supermax, Vught, was ostensibly due to a high number of escapes from maximum security prisons over a ten year period, which resulted in sustained media and public outcry for something to be done, leading the Ministry of Justice to announce the building of two supermax prisons. Only one such facility has been built, however, and the regime although criticized and condemned by the European Commission for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) is not nearly as harsh as the regime within most American supermaxes.

In Britain the first mention of building a supermax prison came about as a consequence of the Learmont Report which was published in 1995. The report recommended, *inter alia* the development of two new prisons, a 200 bed high security prison for the most dangerous escape risks and a 200 bed control prison, to control the most disruptive prisoners including the mentally ill (King 1999:179). A taskforce was established to determine whether this was feasible and visits to a number of American supermax facilities took place¹⁸. The taskforce recommended that it would be practicable to build one 400 bed facility to detain in separate units, escape risks on one unit and control problems on another. The prison would also contain a mental health unit. It was felt that by building a supermax prison this would make security levels clearer in the dispersal prisons and would take the process of concentration one step further. However, this would only be practical if it was possible to take one or more of the dispersal prisons out of high security, the facility would contain a 'programme rich environment' (King 1999:180) rather than be a lockdown institution.

However, whilst this study was being carried out security measures at the existing dispersal prisons had been improved and the Northern Ireland peace process was underway, resulting in a large number of 'terrorists' being released. The report was submitted to the Home Secretary of the outgoing Conservative government and it was not until the New Labour government was in power that the report was finally considered. By this point, however, the ongoing peace process and the lack of turmoil in the prison system made the idea of building a supermax irrelevant and the proposal was abandoned. The existing special units for difficult to manage prisoners were reorganised into a 'more integrated system of close supervision centres' (King 1999:180). There are approximately 65,000 prisoners serving sentences in England and Wales, of this number around 60 are held in special secure units.

At this point it is important to note that there are major differences between penal methods used in the United States and Europe which point to different political systems

¹⁸ These included the Federal ADX at Florence, Colorado; Pelican Bay, California and Oak Park Heights in Minnesota.

and penal philosophies and practices. In the US, the risk of prisoner escapes has largely been removed by factors such as armed guards situated in watchtowers around the perimeter of prisons, patrol cars constantly circling these perimeters, and the use of lethal electric fences. The growth of high security in the United States is, therefore, driven by the fear of assaults, riots and predatory behaviour inside the prison, resulting in correctional staff being separated from inmates, and surveillance being carried out through indirect podular supervision. In England and Wales, and in Europe, the fact that lethal force is not an option and that chemical agents are utilized only on comparatively rare occasions, result in high security custody being driven largely by fear of escapes. However, unlike the US, in England, Wales and Europe, prison officers control inmate behaviour through close supervision using large numbers of staff rather than with weapons and removed surveillance.

From the above it is possible to see that there are considerable differences between prison policy in Europe and the United States. Although the Netherlands has developed a supermax prison, the processes that led to this institution are removed from those taken by American correctional organizations. Whilst there has been a shift in the levels of punitiveness (Garland 2001) and more emphasis put on crime and offenders in both Europe and the United States, within Europe this shift has been less draconian than its American counterparts. Institutions such as Wisconsin Secure Program Facility, as has been demonstrated, were built not because they were needed, but simply as a way to make the state administration, and in particular the governor, look 'tough on crime'. The use of super-maximum security confinement in England and Wales and in the Netherlands is used less freely than in the United States and is seen in most cases as a last resort, inmates still receive some educational or treatment programming and opportunities to take part in sports and other recreational activities. In Wisconsin, and more perceptibly in California, many of these opportunities are removed, resulting in supermax facilities being used purely to warehouse inmates.

8. Epilogue

The use of supermax custody in the United States seems to be undergoing a period of change. Throughout the 1990s supermax prisons were seen as the latest trend in corrections, with most states constructing new facilities or retrofitting existing institutions to include supermax units, in order to increase their perceived stance on crime and offenders. In more recent years, there appears to have been a shift in the desire to build these facilities within some Departments of Corrections. Increasing pressure from human rights groups, some politicians, various factions of the media, criticism from many academics and increased courtroom litigation have resulted in the supermax becoming less popular with some correctional departments. Many DOCs have changed the names of these facilities to make them sound less severe, and have altered certain aspects of their regimes to allow more out of cell time and activities for inmates. However, there are still a large number of supermax prisons in operation, many DOCs argue that they do not have a 'supermax' but have 'control units' for difficult prisoners which have similar regimes to those within supermax prisons, suggesting that these facilities are exactly the same albeit differently labelled.

Based on the two case studies here, it would seem that whilst in some jurisdictions the use of supermax is in decline, resulting in smaller numbers being detained in this type of confinement, in others, where segregating specific groups is a policy which has been in place for many decades, the use of supermax confinement is likely to continue and expand. In states like California, there appears to be a desire for the prison system to continually segregate and separate prison groups, which involves constantly searching for more efficient ways of categorizing and, therefore, separating and controlling inmates.

The thesis has attempted to illuminate the continuities and discontinuities between the locations in which supermax prisons are located. Both Wisconsin and California have troublesome prisoners, both supermaxes were built under Republican leadership and, both prisons were built in economically depressed areas. However, the number of prisoners in California far exceeds those in Wisconsin. California has a history of segregating inmates, not just on categories of offence but also in relation to race,

Wisconsin now has Democratic leadership which has resulted in changes (discussed previously in this Chapter and in Chapter Six) to Wisconsin Secure Program Facility. Based on these similarities and differences it is possible to see that control is used in both systems with different trajectories of effects depending on local cultures and politics. Supermaxes need to be located within the broader political, economic, and cultural shifts within which they are located, developed or not developed. Since the thesis has only focused on Wisconsin and California there is a great deal of scope for further study in this area, not only within the various states of the US, but also globally, are supermaxes in other countries built for similar reasons as those in Wisconsin and California? Can comparisons between these various institutions be made?

It is possible to argue that the supermax can be seen as a metaphor for punishment in late modern society. In much the same way that Foucault in *Discipline and Punish* (1977) viewed the early modern prison as a model of all social institutions which he termed 'the carceral continuum' - all social institutions were intended to discipline and normalize individuals so that they would behave accordingly within society.

The use of supermax as a model of punishment in contemporary society has a different purpose, the aims of the supermax prison being to maximize control over and warehouse certain subgroups of the prison population, those viewed by officials within Departments of Correction as a threat to prison security and order. This it can be argued is indicative of modern society itself, those in positions of power seeking to control certain population groups, particularly poor, working class, ethnic minorities, whom they see as a threat to social cohesion and middle class, white values and who they can manage and control, through social policy initiatives and processes within the criminal justice system based on risk indicators which they themselves produce and manipulate to suit their own ends.

There can be no question that the supermax facility is an especially punitive way of dealing with problematic prisoners. It is difficult to see how confining inmates for more than 20 hours a day, with no opportunities for taking part in educational or treatment programmes or for integration with other prisoners or staff, is likely to make inmates

more liable to behave. In fact, it is much more likely that supermaxes, in the main, have a detrimental effect both on the prison system in which they are situated, and also on the prisoners who are housed within them. Whilst the development of these institutions seems to have diminished in some jurisdictions, in others, this ill-conceived trend looks set to continue well into the future.

Appendix I

Dear Sir/Madam

I am a student at the University of Liverpool, UK and am currently undertaking my PhD on the subject of the supermax prison, examining why different states chose to construct such facilities. I, therefore, would be extremely grateful if you could answer a few short questions to help me with this.

The definition of supermax for my study is the one provided by the NIC in its 1997 survey:

Supermax housing is defined as a free-standing facility, or a distinct unit within a facility that provides for the management and secure control of inmates who have been officially designated as exhibiting violent or serious and disruptive behaviour while incarcerated. Such inmates have been determined to be a threat to safety and security in traditional high-security facilities, and their behaviour can be controlled only by separation, restricted movement, and limited access to staff and other inmates.

1. a) Does this state have a supermax or Secure Housing Unit according to the above definition?
b) If so how many?
c) If, no is the DOC planning to construct one?
2. Is this facility a separate unit or part of a pre-existing facility?
3. In what year was the facility/ies opened?
4. How many beds does the facility/ies have?
5. What were the main reasons for constructing the facility?

Thank you very much for your time,

Yours sincerely,

Abby Massey

Appendix II

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Cheadle
Cheshire
SK8 7JW
Email: abster_m@hotmail.com
Tel: +44 0161 4869813

12th Jan 2006

Dear Mr Frank,

I am a student at the University of Liverpool, UK and am currently studying for my PhD on the development of Supermax prisons, from a political, sociological and criminological perspective.

For my PhD I am hoping to carry out a case study on the development of Wisconsin's supermax facility from its initial proposal through to its present day running, examining the how, when and why it was built, under what circumstances, and how it developed to build up a case history on the facility.

I am aware that there are plans to change part of the facility into a maximum security general population unit and must admit that I am impressed with this initiative as from what knowledge I have gained so far, the facility appeared to be too large for the number of inmates requiring this type of confinement.

I appreciate that you are extremely busy, but I would be extremely grateful if you could spare a little of your time to speak to me as I am planning on visiting Wisconsin in March. However, if this is not possible I would be very grateful if you would be able to help me by providing me with any background information or putting me in touch with anyone you think may be able to help me with this.

Yours Sincerely,

Abby Massey

Appendix III(A)

Wisconsin Questionnaire

I would be extremely grateful if you could answer the following questions:

1. Was any research conducted which identified a need for a supermax in Wisconsin?
2. What arguments were provided to suggest there was a need for such a facility?
3. What arguments were made against the building of the facility?
4. Considering the decision to build a supermax was made by the WI Department of Administration rather than the DOC, what was the DOC's opinion on the building of the facility?
5. What was the Department of Administration's thinking behind the building of the supermax?
6. Did the DOC have a good relationship with the Thompson Administration and the legislature regarding the building of the facility?
- 7.a) When designing the prison did the state take advice?
 - b) If so from whom?
8. Did they visit other prisons - including other supermax - when designing the facility?
9. Did they have regard to National Institute of Corrections, or Commission on Accreditation for corrections advice?
10. Did they have any regard to United Nations Standard Minimum rules?
11. What are the costs - capital and revenue - of building and running Boscobel?
12. a) Have they any plans to evaluate its impact?
 - b) If so what would constitute success?
13. How has the class action lawsuit affected perceptions of the supermax?
14. On the whole, how effective has the class action lawsuit been in bringing about change?

15. After suggestions about re-modelling the facility into a combined supermax and maximum-security facility in 2002, why has it taken so long for the department to implement these changes and why now?

16. Why, since the re-modelling of the prison has been complete for almost a year now, are there not yet any general population inmates at the facility?

17. Why did the department of corrections decide to change the stage system within the facility?

Thank you very much for your time.

Would it be possible for me to contact you again at a later date if I have any further questions?

Thank you once again,

Yours sincerely,

Abby Massey

Appendix III(B)

California Questionnaire

I would be extremely grateful if you could answer the following questions:

1. Who originally proposed the building of Pelican Bay, was it the Department of Corrections or the Administration?
2. Was any research conducted which identified a need for a supermax in California?
3. What reasons were given to suggest there was a need for so much SHU confinement?
4. How popular was the decision to build Pelican Bay?
5. What arguments were made against the building of the facility?
- 6.a) When designing the prison did the state take advice?
 - b) If so from whom?
7. Did they visit other prisons - including other supermax - when designing the facility?
8. Did they have regard to National Institute of Corrections, or Commission on Accreditation for corrections advice?
9. Did they have any regard to United Nations Standard Minimum rules?
10. What are the costs - capital and revenue - of building and running the SHUs at Pelican Bay?
11. a) Have they any plans to evaluate its impact?
 - b) If so what would constitute success?
12. How did the Madrid v Gomez case come about?
13. How has the class action lawsuit affected perceptions of the supermax?
14. On the whole, how effective has the class action lawsuit been in bringing about change?
15. Is there a level system in Pelican Bay SHU which inmates must progress through? or are most inmates given a determinate sentence, with the exception of gang members?
16. How long is the average sentence served within the SHU?

17. Do you think that California will ever reduce the use of supermax or SHU confinement? Or do you think that California will continue to use prison gangs to justify this type of confinement?

Thank you very much for your time.

Would it be possible for me to contact you again at a later date if I have any further questions?

Thank you once again,

Yours sincerely,

Abby Massey.

Appendix IV



A. Photograph of WSPF.*



B. Photograph of the perimeter of the supermax facility – two fences with razor wire and sensors between the fences.*



C. Photograph of the WSPF's hallway.*



D. Photograph of a typical cell within WSPF.*

*All photographs available from: www.prisoncentral.org/Prisoncentral/Supermax.htm

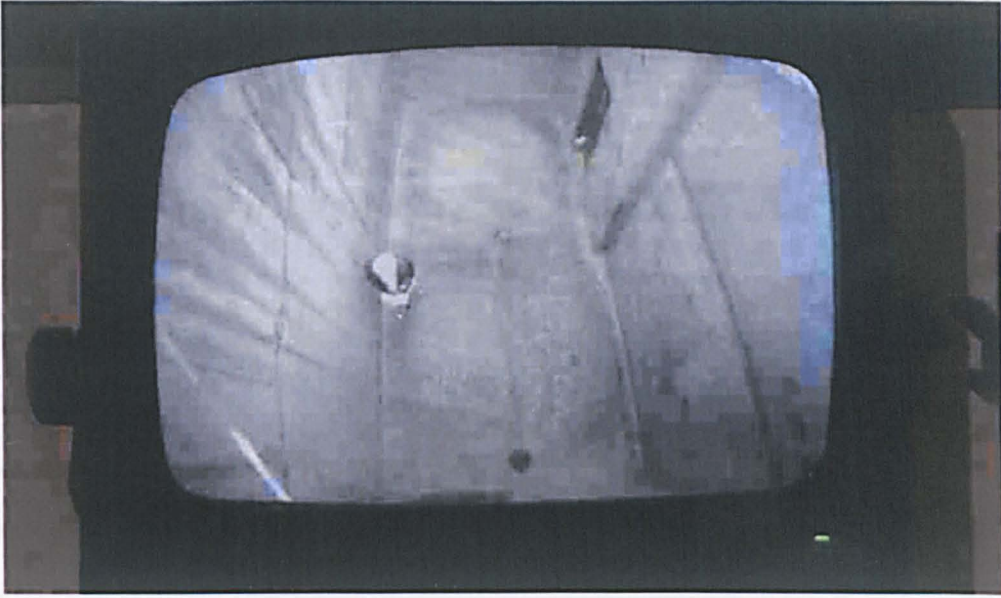
Appendix V.



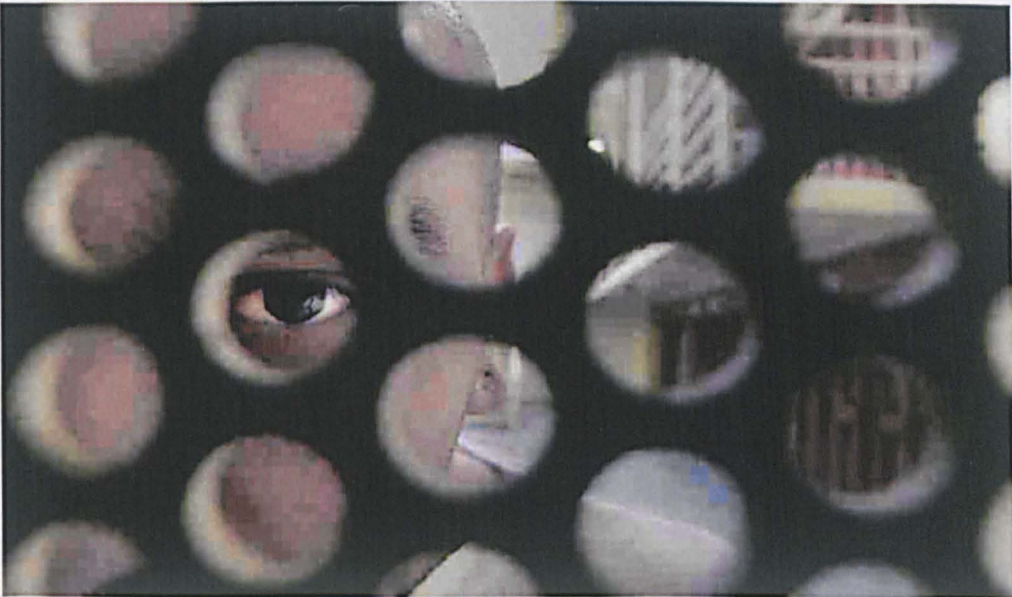
A. Aerial view of Pelican Bay state Prison.**



B. A control Unit inside one of the pods.**



C. CCTV view of an SHU exercise yard.**



D. A Cell door in the SHU.**

** All photographs are available from: <http://www.sfbappa.org/Awards/picturestory/picstory28.ex2.html>.

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