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CALIFORNIA LEGAL STUDIES JOURNAL

BERKELEY LEGAL STUDIES ASSOCIATION

CALIFORNIA LEGAL STUDIES JOURNAL

Submission Information

We are seeking papers pertaining to law and legal studies. However, neither you nor the class for which the paper was written must be in the Legal Studies department. We encourage students from all disciplines to submit papers, as the study of law itself is an interdisciplinary effort.

Restrictions:
We do not publish previously published works. You may submit your unpublished work to multiple journals. However, if your paper is accepted to another publication you must inform us immediately.

What to submit:

- Submissions should be selected from your upper-division courses and seminars, independent studies, honor thesis, or elsewhere.
- Papers must be from 10-20 pages and should follow the MLA style of formatting, with endnotes and a complete bibliography.
- In your email please also include your abstract (minimum 100 words), contact information, advisor name (if applicable), the term when the paper was written, your graduation year, and your program of study.

Please email your paper submissions to berkeleylegals@gmail.com.

Letter from the Editor-in-Chief

Dear Reader:

It is with great enthusiasm that we present our annual California Legal Studies Journal. The Berkeley Legal Studies Association looks forward to showcasing what students from different schools and different majors have to offer for diverse and complex legal issues. In addition to traditional submissions from UC Berkeley students, this year we decided to welcome papers from all UCs to make the journal more representative of California universities.

The Berkeley Legal Studies Association is a student-run academic club that works closely with the Legal Studies department and students to provide various academic and social resources. Our commitment to the Berkeley community to offer students pre-law resources parallels our commitment to showcasing their research on legal issues. This year's publication showcases a diversity of topics and questions and highlights the interdisciplinary nature of the legal studies. We hope that you find the variety of topics refreshing and interesting, while also giving you a critical analysis of a range of contemporary legal issues.

I highly appreciate the efforts of BLSA board members, who, despite the unforeseen and disruptive circumstances, were able to continue to work on constructing the journal and finalize this year's publication. We firmly believe that this student-run journal will be a valuable resource for numerous students and will enrich their academic life.

Good reading,
Tatevik Mkrtchyan

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How Standardized Testing Perpetuates Academic Gatekeeping

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A common misconception that stems throughout the U.S.'s financially elite seems to be the go-getter attitude of pulling oneself up by their bootstraps and working hard to reap substantial profits. This fictional discourse, dating back to the "American Dream" that painted false tales of hope into the minds of soon to be immigrants, is tainted with both structural barriers and a systemically racist framework. Using the theory of dominant ideologies, we can examine the case of widespread standardized testing as a tool for academic gatekeeping, and how it perpetuates structures of economic inequality in the United States. Academic gatekeeping is just one of many methods informally established to cement the elite and proletariat in their places on the societal pyramid. Standardized testing, in particular, is a codified method of selection coated with fallacies of impartiality and equity, that seeks to treat those unable to afford the luxuries of private tutoring and prep courses with the same attitude of those who engineered the social hierarchy. Yet paying a tutor is just the tip of the iceberg, with various historical, social, and economic factors all swirling behind the phenomenon of the ivory tower.

Dominant ideologies seek to preserve the ratio of power

and inequality facing society through various means. From increasingly covert racial discourse to framing naturalization as a justification for how things are, dominant ideologies are built upon white supremacy and still function under said rhetoric (Bonilla-Silva). One aspect of such ideologies, abstract liberalism, is embedded in the dogma of individualism and seeks to express success through meritocracy. By using political liberalism's emphasis on an equal opportunity, dominant ideologies attempt to justify how socio-political inequalities do not contribute to the rising gaps between education attainment and wages between hierarchical groups. They cite affirmative action methods and equitable hiring practices to reaffirm such ideological beliefs. By hiding the structures of powers and inequalities, abstract liberalism plays a role in the way standardized testing emphasizes meritocracy. Due to such a widespread belief that the playing field for success is equal, hard work and dedication are narrowed down as the most important factors in determining an individual's success. For a majority of dominant ideology proponents, the unequal access to basic community resources through redlining and codified selection is out the window. In their place rests the belief that individuals have the autonomy to choose where they want to live and which resources they seek out to utilize. With such actions comes the colorblind notion of naturalization, the belief that the way society is, is because of natural causes. This lens allows the top of the hierarchy to rationalize why redlined, segregated, and low-income communities are the way they are (Bonilla-Silva). Through colorblind logic and cultural racism, dominant ideologies can employ various methods to paint minority groups in the light they deem fit.

Standardized testing and K-12 tracking assessments leave a multitude of students at a disadvantage; for the sake of this paper, however, we will predominantly focus on the Law School Admissions Test (LSAT). Some view the exam as just

another hurdle to jump over before starting their J.D. program, while others see it as a study trek spanning over multiple years. Add in conflicting socioeconomic factors alongside doubtful "diversity" quests that many law schools attempt to fulfill, one is confronted with numerous influences that illustrate how big the gaps of success are between minority and white students. One law professor at UCLA, Richard Sander, found that only five percent of all law school students are from families with socioeconomic status in the bottom half of the national distribution. What is more frightening is when considering the top twenty law schools in the U.S., only 2% of students come from the bottom socioeconomic quarter of the population while over three-quarters of students come from the richest (Sander). Figures like these are important in illustrating how such exclusionary schools continue to perpetuate the fictional trek for "diversity" while actively employing financially straining recruitment criteria for students. In connecting dominant ideologies to the LSAT, we can examine how the financial constraint on a low income, marginalized groups funnel many potential J.D. candidates out of top law schools, into lower-ranked schools, and ultimately to lower-paying jobs.

Dominant ideologies shape the value the LSAT holds over law school admissions through a seemingly financially blind lens. One factor rarely acknowledged by constituents of abstract liberalism are the costs associated with not just applying and attending law school, but preparing for it. The cheapest prep books for the test start at $50, with a majority of them requiring four to five different ones to completely study for the test due to various sections on it. LSAT courses start around $1000 (and range from $750 online courses to $1650 in-person courses) while tutors charge anywhere from $75 to $250 an hour (Sanders). Additionally, the test itself is $200, and a large proportion of people end up taking it anywhere from two to five times before applying.

Without counting the additional fees charged by the Law School Admissions Council (LSAC) coupled with application fees from law schools, when adding these costs up, it is almost crystal clear which group on the hierarchy can and cannot afford to shell out hundreds to prepare. It seems almost laughable that individuals who subscribe to the naturalization argument are unaware that the cost of just a single test can be used for a month of someone's groceries or a quarter of monthly rent.

In diving further into the costs associated with studying, one must also examine various forms of capital for those preparing for the LSAT. Cultivated from social, cultural, economic, and symbolic aspects of one's life, capital can explain the different outcomes in their life (Bourdieu). For this, we can employ a hypothetical scenario to analyze how different backgrounds contribute to success rates on the law school admissions exam. Supposed we had an individual, called X, who was struggling with the cost of her undergraduate degree. Because of how expensive college is, this person is overloading on units in the summer in an attempt to graduate early so they won't have to pay tuition for an extra semester. In addition to summer courses, X is working a part-time job to pay for school, rent, and groceries, while studying for the LSAT. Moving on, we have another individual, Y, whose parents pay for his college. Y is not worried about taking classes over summer and does not work, so Y lives at home and studies every single day for the LSAT with a prep course paid for by his parents. In comparison to X, who is scoring poorly because of the lack of time to prepare, Y is excelling and outperforming many others by scoring in the 99th percentile on practice tests. In this scenario, economic capital is the largest factor in determining the success of these two students. Because Y has more of said capital, he has the freedom to study as much as he wants with little fear of being able to afford such a course or take summer

classes. This example is just one of many realities facing low-income students preparing for such a test today. When factoring in the dominant ideologies of meritocracy, it is easy to see how X's poor performance can be labeled as "lazy" or "not trying hard enough" while Y's achievements as being the product of "pulling oneself up by their bootstraps." Such realities also illustrate how those who possess greater capital can stay at the top of the hierarchy while those who do not struggle to climb up.

With the gaps in poor performance results seen by X and Y comes the notion of naturalization (Bonilla-Silva). In the same way, many white people justify segregated schools by arguing that people of similar backgrounds tend to group, the gap in LSAT scores is similarly rationalized. By adopting a colorblind lens on standardized testing results and admissions criteria, many proponents of dominant ideologies are ignorant of how socioeconomic status and capital severely disadvantage marginalized groups in the law school admissions process. Taking a step back, one needs to acknowledge that law schools in the United States are the least diverse higher education institutions in the country, with 88% of students being white (Robbins). One study conducted by the UCLA Law School found that in the top twenty law schools of the U.S., 75% of the students are in the top 25% of financial brackets, and over 50% are in the top 10% financial bracket (Robbins). By viewing current socio-economic conditions as the by-product of nature, a dehumanizing point of view is produced. Minority groups in higher education are no longer viewed as fellow students or peers, but rather the exceptions institutions set in place to give them a spot through affirmative action. The dominant narrative of meritocracy is just one example of how many whites in America refuse to acknowledge the social and economic factors that displace predominantly low income, minority students.

The imposing ivory tower of American legal education

possesses a multitude of barriers to keep individuals from entering through their gates. Dominant ideologies like abstract liberalism seek to embed a meritocratic method of selection, choosing to hide the powerful structures of race and historical inequalities from their school tours. Under the guise of "equal opportunity" and the invisible hand of economics, colorblind racism pioneers the way for only the best (and most often the whitest), students to gain acceptance letters. Standardized tests like the LSAT are the biggest determinant factor in a person's law school app, but only a small portion of the effects of generations worth of redlining, codified selection, and unequal access to basic resources. In addition to dominant ideologies, various forms of capital limit the assets and means of acquiring the necessary properties to exceed expectations. Cultivated from social networks, schooling, and community worth, the quest to smash the glass ceiling becomes a more distant goal as one discovers exactly how segregated the pyramid is. These factors explain why the higher one climbs up the ladder to success, the steeper and more slippery the slope grows.

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The High Representative as the Face of EU Foreign Policy

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With no formally established European Constitution, the EU functions as a highly decentralized political system which makes decisions through many interconnected actors and institutions. In The Foreign Policy of the European Union, Keukeleire concedes this interconnected relationship between the EU, its member states, and institutions for the EU foreign policy and adopts a multi-faceted, multi-method, and multilevel view. Within the realms of this analysis, EU foreign policy focuses not only on reacting to international crises but also on structuring the behavior and mindset of other actors in international politics through the decisions made in its foreign policy (Keukeleire and Delreux 2014, 1). However, with such a decentralized, complicated foreign policy, the question of "Who to Call" for the EU's foreign policy is one that remains to be answered. In this paper, I will argue that international actors should call the High Representative, currently Federica Mogherini, to discuss matters pertaining to EU foreign policy because of her affiliation in both the European Commission and the Council of Ministers, which are institutions utilizing both the intergovernmental and community methods.

The High Representative of EU Foreign Policy is nominated by the European Council and confirmed by the European Parliament to serve for a term of two and a half

years. Also known as the EU Foreign Minister, the High Representative serves as the Vice President of the European Commission to work closely with the Commission President on matters relating to external action and external dimensions of internal policies within the executive level of EU politics (Keukeleire and Delreux 2008, 80). The High Representative also chairs the Council of Ministers, which operates as the sole decision-making body for the Common Foreign and Security Policy (CFSP) and Common Security and Defense Policy (CSDP) (Keukeleire and Delreux 2008, 70). This responsibility extends to coordinating member states on foreign policy positions to reach a potential consensus for issues requiring unanimity among member states. As further elaborated below, the EU functions on many different institutions, levels, and methods of policy making and consequently requires an individual with a coherent understanding of all aspects of an EU foreign policy opinion. Simply stated, the "voice of the EU" should be an individual like the High Representative who is involved with all dimensions of EU foreign policy. To better understand the High Representative's pertinence to EU foreign policy, it is important to first analyze the High Representative's influence in the multifaceted, multilevel, and multimethod dimensions of EU foreign policy.

When characterizing EU foreign policy as being multifaceted, this is with regards to the four facets of the Common Foreign and Security Policy (CFSP), Common Security and Defence Policy (CSDP), external action, and the external dimensions of internal policy. The center of gravity on which facet is most relevant differs depending on the situation at hand; it is also sometimes the case that multiple facets remain relevant to an issue. While CFSP and CSDP are solidly intergovernmental, meaning states retain their veto and require unanimity for a decision, external action and external dimensions of internal policies are solidly supranational, where

the EU institutions' decisions preside over the states'. The High Representative is interactive with all four facets of EU foreign policy because of her position as the Vice President of the European Commission, which deals with external action and the external dimensions of internal policies, and as a critical actor in the European Council, which deals with issues within the CFSP and CSDP facets. A deeper understanding of what these institutions are and how the High Representative functions within these institutions is critical to understanding how the High Representative functions as the face of EU foreign policies.

The Common Foreign and Security Policy (CFSP) serves as the main platform for implementing and developing EU foreign policy with regards to the political and diplomatic dimensions (Keukeleire and Delreux 2014, 12). When the institution was first established under the Treaty of Maastricht in the early 1990s, it was relatively weak until the Lisbon Treaty provided improvements to strengthen the institution (Keukeleire and Delreux 2014, 12). The Lisbon Treaty also created the Common Security and Defense Policy (CSDP) in order to implement the EU's foreign policy and pursue goals laid out in CFSP for various civilian and military crisis management (Keukeleire and Delreux 2014, 12). Today, CSDP works in tandem with CFSP and has been used for various aspects such as crisis management and military endeavors, most effective in the EU neighborhood (Keukeleire and Delreux 2014, Ch. 1). Many actors and institutions are critical within the CFSP and CSDP facets of EU foreign policy, but the High Representative is key because of her role identifying if there is a unanimous position on a policy issue in the European Council, such as strengthening CFSP. Because policy issues regarding CFSP and CSDP are determined through the intergovernmental method, each state retains its veto and a decision requires unanimity. This results in individual states

having a greater influence on the decision reached for the policy issue at hand and consequently a greater role for the High Representative to keep an eye out for a potential decision to be made using the intergovernmental method. In addition to the two facets of CSDP and CFSP, the High Representative is also interactive with the external action and external dimensions of internal policies of EU policy, giving her additional influence in EU foreign policy decisions.

Both the external action and external dimension of internal policies are solidly supranational, meaning the decisions made by an EU institution preside over the member states to create a coherent policy over all member states (Keukeleire and Delreux 2014, 53). The external action component of the EU's foreign policy has evolved since the beginning of the European integration process and has since been expanded under the Maastricht Treaty and the Single European Act (Keukeleire and Delreux 2014, 54). This component includes aspects of trade, development, financial aid, and international agreements that involve the European Union as a whole (Keukeleire and Delreux 2014, Ch. 9). In comparison, the external dimension of internal policies is focused on matters involving energy, immigration, and environmental policies that have international effects (Keukeleire and Delreux 2014, Ch. 10). Both components allow the EU to pursue its foreign policy goals and provide the instruments necessary for the institution to take foreign policy action. Because the European Commission is a key institution for policy making in these two facets, the High Representative's position as the Vice President of the European Commission makes her a key actor. Here, the High Representative's role is even more critical than the President of the European Commission because the High Representative functions both at the executive and legislative level in the European Council. This results in the High Representative

functions both at the executive and legislative level in the European Council. This results in the High Representative being highly influential in all four facets of EU's multifaceted foreign policy, making her the right person to address for a foreign policy issue.

In addition to being multifaceted in nature, the EU foreign policy is multimethod, with two different but symbiotic procedures for reaching decisions within these four facets: the intergovernmental and community method. In the intergovernmental method, states retain their vetoes, maintain control over the development of foreign policy, and require unanimity in decision-making. As mentioned above, foreign policy issues within the CFSP and CSDP policies are predominantly addressed using the intergovernmental method by the key actors of the European Council, President of the European Council, High Representative, Council of Ministers, and the President of the Council of Ministers (Keukeleire and Delreux 2014, 62). Because all member states retain their veto rights, the institutions and actors using this method are very limited when reaching a decision. This makes the High Representative's role to coordinate member state foreign policy positions critical when determining if a decision can and will be reached under the intergovernmental method.

In the community, or supranational, method of policymaking, EU institutions preside over the interests of individual member states to make decisions for the collective EU. States do not retain their veto rights, and decisions made under the community method are enforced on all EU member states. Foreign policy issues within the external actions and external dimensions of internal policies are predominantly decided with the community method, such as deciding on issues regarding the single European market. The key actors and institutions critical for policy making under the community method of policy making are the European Court

Justice (Keukeleire and Delreux 2014, 62). The High Representative serves as the Vice President of the European Commission, where most of the decisions regarding external action and external dimensions of internal policies are reached at the executive level, and often represents the EU on foreign policy issues. Working with the President of the European Commission, the High Representative shapes the agenda for which direction EU foreign policy within the external action and external dimension of internal policies facets should take. The ability to influence the agenda plays an even greater role within the European Commission as decisions reached using the community method apply to all EU member states.

Because the ability to set the agenda in the European Commission is critical, some might argue that the President of the European Commission is the ideal person to address when calling about EU foreign policy. Although the President of the European Commission is a key actor in EU foreign policy, their role is limited to the community method of policy making. Because decisions made using the community method cannot be vetoed by member states, states are somewhat reluctant to delegate decisions to the Commission in fear of a policy that little reflects the individual state's interest. An example of this problem can be seen in the external effects of internal policies like migratory policies. Because all member states must implement the new migratory policy once it is reached under the community method, states are very cautious to use the community method to reach policy changes in this aspect of foreign policy (Keukeleire and Delreux 2014, Ch. 1). Whereas the President of the European Commission would have limited influence in these aspects, the High Representative's involvement in both the European Commission and European Council allows her to have a clear understanding on what each state's positions are in these institutions using both the intergovernmental and community method. Also, while the

President of the European Commission is limited to decisions made primarily within the two facets of external action and the external dimensions of internal policies, the High Representative is additionally involved in the European Council. This allows her to be influential within the other two facets of CSDP and CFSP, which are heavily emphasized within EU foreign policy.

In addition to the multifaceted and multimethod nature, EU foreign policy is also multilevel and consequently embedded in both the international context and the national policies of the member states. Policies are shaped at the supranational, national, and subnational levels involving the EU, member states, and other international institutions such as NATO, IMF, UN, and G7 (Keukeleire and Delreux 2014, 17). An example of the multilevel nature of EU foreign policy can be found in the expectation for member states to support both the general goals of CFSP and CSDP but the absence of any limitations in the Lisbon and Maastricht Treaties preventing member states from conducting their own foreign policy (Keukeleire and Delreux 2014, Ch. 1). Situations such as these, where the national and supranational levels are intertwined, cause conflict and require someone who is aware of both each member state's policy positions and the policy progress made at the supranational level. Because the High Representative is aware of each member state's policy position in the European Council, she is able to analyze the possible conflicts and progress made for each policy issue at both levels, making her the ideal person to address when discussing an EU foreign policy issue involving multiple levels.

As seen above, EU foreign policy is extremely decentralized with many interconnected and interdependent institutions on multiple facets, methods, and levels. When one is deciding who to "call" regarding EU foreign policy,

the most important factor to consider is whether that individual is actively involved and influential in the multiple dimensions of EU foreign policy, as opposed to focusing extensively on one particular aspect. Although there may be more influential actors within certain facets, the High Representative is someone who is involved in all four facets of CSDP, CFSP, external action, and external dimensions of internal policies through her position as the Vice President of the European Commission and as a key actor in the European Council. Her affiliation in both institutions allows her to also be involved in both the intergovernmental and community method of policy making. This gives the High Representative a more general idea of whether a policy decision will pass and be successfully executed through the different institutions that each use one or both of these methods.

The High Representative's crucial role in the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran Nuclear Deal, clearly demonstrates an example of the High Representative's involvement in multiple dimensions of EU foreign policy. In September 2019, High Representative Frederica Mogherini chaired the ministerial meeting of the six states China, France, Germany, the Russian Federation, the United Kingdom, and Iran (Mogherini 2019). In this respect, the Iran Nuclear Deal involved not only the European Union at the supranational level but also individual EU member states, such as France and Germany, and international organizations at the subnational levels, such as the sponsorship of the UN Security Council. The High Representative's involvement at both the supranational and national levels allowed her to be a key actor in this foreign policy issue as both the facilitator and the guarantor of the implementation of the agreement in EU foreign policy (Mogherini 2019). Additionally, the JCPOA resolution involves the two pillars of nuclear commitment and the economic side that is linked to the sanctions lifting

(Mogherini 2019). This involves multiple facets of EU foreign policy of not only CFSP, which involves the political and diplomatic dimensions of EU foreign policy, but also external action involving sanctions and international agreements. To gain knowledge of the EU's foreign policy position regarding the JCPOA resolution, an individual would have to call the High Representative Frederica Mogherini who is involved in both the European Commission and European Council to deal with both facets of CFSP and external action of EU foreign policy.

In this paper, I have discussed how the multifaceted, multimethod, and multilevel dimensions of EU foreign policy makes the High Representative the ideal person to address regarding EU foreign policy issues. In the far future, it is possible for the system to become more centralized on the two facets of external action and external dimensions of internal policies in response to new threats and opportunities from globalization. This could create a situation where the President of the European Commission has an increasingly greater role in EU foreign policy, making him or her the ideal person to call for Europe. However, the current EU political system involves too many different EU institutions, facets, and levels for such a change to be imminent. Present EU foreign policy issues such as the JCPOA call for the "face of EU foreign policy" to have a thorough, comprehensive response for the issue at hand because a policy decision affects not one but many different dimensions of EU foreign policy. Consequently, the High Representative, who is involved in all four facets, both methods of policy making, and different levels within EU foreign policy, is the most ideal person to address regarding EU foreign policy issues today.

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Antitrust Law versus "Big Tech" Companies

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Introduction and Background

The focus on antitrust began with the Sherman Act in 1890, followed by the Federal Trade Commission Act and the Clayton Act in 1914. These pieces of legislation were intended to preserve competition between corporations by outlawing practices deemed to be predatory. Antitrust law has begun to limit the growth of "Big Tech" companies by blocking corrupt business practices intended to eliminate competition. Competition is important to consumerism because it forces companies to keep costs fair and quality high to entice potential customers to choose their product over another similar option. While these laws and regulations have not been perfect in the attempt to limit the exponential growth of wealthy technology corporations, they have set a precedence for control and forced companies to think critically about the legality of their actions.

The Purpose of Antitrust Law

The primary purpose of antitrust law is to safeguard

competition to protect consumers by banning unethical business practices related to groups of businesses, also known as trusts. Antitrust laws prohibit practices that hinder trade such as price-fixing, anti-competition mergers, and actions intended to create or maintain monopolization of a market (United States Department of Justice 2015a). First, price-fixing is a cooperation between competitors to raise, lower, or otherwise alter the price of their goods and/or services (United States Department of Justice 2015b). The practice of price-fixing harms consumers by artificially changing prices from a point they would be in a competitive environment. For example, if two companies are selling the same product, one might lower prices to entice consumers to buy their product over their competitors that are at a higher price. If these two companies agreed to double the price of the product at the same time, consumers would be forced to pay higher prices since there is no product at a more fair and competitive price available. Secondly, anti-competitive mergers and acquisitions (M&As) are transactions that lead to a significant reduction of competition in a market (Philippine Competition Commission). If large corporations bought out every other developing company that might pose competition to them, consumers are left with only one choice in the company to purchase a specific good from. Regulating M&A transactions allow enforcement of the preservation of competition by restricting corporations' abilities to overtake their competition. Finally, monopolization is when a firm or company has substantial, long-lasting power over a market (Federal Trade Commission 2017a). Examples of monopolization include when a firm controls over 51% of the market share for a considerable number of years or when a firm has enough market share to influence the industry as a whole unfairly. These practices undermine competition within an industry and are therefore banned by antitrust laws and regulatory agencies.

Legal Authority and Regulatory Agencies of Antitrust Law

Antitrust law was first shaped by three landmark acts that subsequently led to the creation of various regulatory agencies. The Sherman Antitrust Act of 1890 was the first act passed as part of antitrust efforts. It was deemed "an act to protect trade and commerce against unlawful restraints and monopolies" (Fifty-first Congress of the United States of America, 1890). This act made contracts that restricted trade, created monopolies, and formed trusts unlawful and placed enforcement authority within the jurisdiction of all circuit courts (Fifty-first Congress of the United States of America 1890). Two subsequent acts, the Federal Trade Commission Act and the Clayton Act, specifically created enforcement agencies and methods as well as defined corrupt business practices such as monopolization and price-fixing. The Clayton Act addresses practices not prohibited by the Sherman Act by defining and outlawing anti-competition M&A, executives with conflicts of interests between competing companies, and unethical pricing practices. The act also strengthens enforcement power and deters companies from infringing on these laws by allowing private parties to sue for up to triple the amount in damages after being harmed by actions that oppose either the Sherman Act or the Clayton Act (Federal Trade Commission 2017b). It is less likely for corporations to knowingly break these laws while facing such hefty penalties for doing so.

While the Sherman Act and the Clayton Act set the groundwork for outlawing unethical business practices, the Federal Trade Commission Act created a means of enforcing that groundwork. The most notable result of the Federal Trade Commission Act was the creation of the Federal Trade Commission ("FTC"), a regulatory agency authorized to declare unlawfulness of unfair methods of

competition as well as false and/or deceptive advertisements or product labeling (Congress of the United States 1914). Having an enforcement agency for these antitrust laws is important for ensuring the laws are upheld and discouraging antitrust infractions further. Today, the FTC and Department of Justice (DOJ) both oversee various types of antitrust regulation. Together, the Sherman Act, the Clayton Act, and Federal Trade Commission Act laid the legal groundwork for outlawing predatory anti-competition practices.

Precedent Setting Cases

From the groundwork set by antitrust acts of the late 1800's and early 1900's, cases brought against large technology companies set a precedent for further enforcement of these laws. Cases against Microsoft Corp. and Apple Inc. show that antitrust legislation requires compliance.

United States v. Microsoft Corp.

One of the most significant antitrust cases against a technology company was United States v. Microsoft Corp. in 2001. The lawsuit alleged that Microsoft Corp. ("Microsoft") was bundling its internet browser software in with its computer hardware in order to quash rival browser software, creating a monopoly over the market (Weinstein 2002). The court found Microsoft liable for monopolization and attempted monopolization. The ruling resulted in Microsoft's split into two separate components, one unit to produce hardware and one to develop software (Ingram 2000).

However, what was most remarkable about United States v. Microsoft Corp. was not the ruling, but the precedent set that gave courts the power to regulate and block predatory actions of internet corporations. Microsoft was a household

name eighteen years ago when the 'internet industry' was relatively new. Therefore, the successful antitrust case against the company added to the groundwork of authority the government currently has in antitrust efforts first set by the Sherman Act, the Federal Trade Commission Act, and the Clayton Act. Microsoft being held liable for its actions caused widespread effects throughout the business sector. It signaled to large corporations and small start-ups alike that the government will intervene to block unethical business practices.

United States v. Apple, Inc.

Another case against a large technology company that maintained enforcement statutes against anti-competition behavior was the 2013 price-fixing case against Apple Inc. ("Apple"). United States v. Apple, Inc. argued that Apple conspired with major book publishing companies to artificially raise the price of eBooks above Amazon's price in order to increase profit generated by their 'iBookstore' that was scheduled to be unveiled alongside their newly developed iPad (UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 2015). The iPad's iBookstore was intended to rival Amazon's Kindle, where most books are sold at a price point of $9.99 since publishers made a significantly less percentage of sale price for any book priced over that amount (Seward 2013). As a part of the alleged conspiracy, Apple agreed to give publishers 70% of sales on all books at the iBookstore if they agreed to not sell their books for a lower price elsewhere (Seward 2013). Apple was found guilty of price-fixing, and in appeals, the second circuit appellate court affirmed the decision, finding that Apple orchestrated a "horizontal conspiracy among the Publisher Defendants to raise eBook prices" forbidden by the Sherman Act and the order for an injunction was "necessary to protect the public from further anticompetitive conduct"

(UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 2015). Profit wise, publishers would make more money selling books at a higher price through Apple than they would be selling for $9.99 on Amazon. Alternatively, they could make more profits by raising their Amazon list prices to match the Apple list prices since Apple gave publishers a smaller percentage of sales than Apple did. Cooperation between publishers would force Amazon to allow them to raise their prices or risk the publishers holding out on selling books through their store altogether. This cooperation organized by Apple would artificially raise the price of ebooks for consumers across both Apple and Amazon, resulting in a reduction in competition between the two sellers and allow Apple to take over a larger percentage of the book-selling market. By blocking the price-fixing actions of Apple, the courts prevented anti-competition efforts against Amazon's book sales, limited further potential growth of Apple, and reaffirmed the authority of the government to rule against anti-competition actions outlawed by prior legislative statutes.

Pending Investigations and Cases

From the Sherman Antitrust Act in 1890 to United States v. Apple, Inc. in 2013, the groundwork has been created to limit the growth of the massive internet technology companies we see today. Google, Amazon, Facebook, and Apple, commonly referred to as the "Big 4" or "Big Tech" companies, have found their way into every part of our daily lives. We check Google Calendar and social media sites such as Facebook and Instagram from our iPhones as Apple Music plays in the background. Amazon delivers so many packages per day that the company has opened 'Amazon Lockers' equipped for package delivery and pickup on college campuses all over the United States. It seems as though one of these

companies is in the news every week for a new development, announcement, or acquisition. This massive growth and control over our daily lives have caught the attention of the federal government and, with the help of precedent from the Sherman Act, Federal Trade Commission Act, the Clayton Act, United States v. Microsoft Corp. and United States v. Apple, Inc., the government has opened investigations into each of these "Big Tech" companies for actions that combat antitrust laws.

The Case Against Amazon

Although the 2013 case against Apple was for actions antagonistic towards Amazon Inc. ("Amazon"), Amazon has had its own violations of antitrust law as well. The two main claims towards Amazon are for predatory pricing and discrimination against rivals, which could then lead to monopolization. Accusations claim that the algorithm Amazon uses to order what products are shown to consumers first in the Amazon Marketplace favors Amazon's own products over the products of competitors. In doing so, Amazon price-fixes by selling products at below cost to eliminate competition (Congressional Research Service 2019). By removing competition, Amazon was then able to acquire competitors through M&A and increase its market share of particular products. For instance, when Amazon cut prices of baby products until competitor Diapers.com sold their company to Amazon, Amazon then raised the price of the same baby products after the acquisition (Congressional Research Service 2019). These allegations against Amazon connect to the practices of price-fixing, anti-competition mergers, and monopolization, all of which are outlawed by antitrust legislation. Although currently there are only just allegations

against Amazon connect to the practices of price-fixing, anti-competition mergers, and monopolization, all of which are outlawed by antitrust legislation. Although currently there are only just allegations and investigations against Amazon, scrutinization of the trillion-dollar company has had a significant impact on the "Big Tech" sector. Threat of potentially millions of dollars in fines are enough to make Amazon reconsider their business practices. Additionally, it signals to other corporations that no company, not even one as large as Amazon, is exempt from antitrust laws. This alone will limit the implementation of predatory business practices, restricting excessive growth made possible by a lack of competition. Should Amazon be found liable for noncompliance with antitrust law, the entire online shopping industry will be impacted as Amazon will be forced to alter its algorithms to allow for increased competition and pay millions of dollars in fines.

The Case Against Facebook

Technology giant Facebook, Inc. ("Facebook") has reportedly been under investigation by the Federal Trade Commission for violation of the Sherman Act due to their acquisition of Instagram and WhatsApp. Social media site Instagram and messaging site WhatsApp were previously competitors of Facebook and Facebook Messenger until Facebook acquired them. In July of 2019, Facebook disclosed that the Federal Trade Commission was investigating the company over monopolization concerns over the acquisitions of both Instagram and WhatsApp (Matyus 2019). Although Instagram does not share the feature of allowing users to post text alone as Facebook does, it is still a largely popular social media networking site. Facebook's ownership of Instagram allows the corporation to maintain control over a huge

percentage of the social media sector. There are no other photo-sharing social media platforms that enable users to have a choice other than Facebook or a Facebook controlled site.

This investigation is still pending, and while we do not know if Facebook will be found guilty of unlawful practices, there have already been severe impacts hitting the company. The stock price of Facebook fell 11% over the six days following the disclosure of the antitrust investigation being conducted by the FTC, and fell another 4% on December 12th, 2019 after a report was published announcing that the FTC was considering issuing an injunction to block Facebook from merging WhatsApp, Instagram, and Facebook Messenger across the three platforms (NASDAQ: FB, n.d.)(Reinicke 2019). Stock prices falling in such large percentages have had negative financial effects on Facebook, but have also been detrimental to their reputation among their investors and stockholders. Should the FTC follow through with issuing the injunction, Facebook would be forced to change the structure of their company entirely. The power of antitrust law established by both prior legislation and previous cases makes it so that mere consideration of investigation on the part of the FTC drastically impacts stock prices of "Big Tech" companies.

The Case Against Google

Google LLC ("Google") has not escaped the antitrust probing amongst "Big Tech" counterparts. The Department of Justice (DOJ) is renewing a previous investigation into Google's business practices done by the FTC. Accusations claim that Google exploits its market power by making it so that Google products and platforms appear in searches ahead of competitors, such as Google Trips before Yelp or Google Maps before MapQuest (Congressional Research Service 2019). The 2011 FTC case against Google was related to tracking users

through internet browsers, and the DOJ investigation would extend past tracking searches to the manipulation of the searches themselves (Statt 2019).

The antitrust case against Google is different from the claims against Facebook or Amazon because it does not specifically involve an attempt to reduce competition through M&A or pricing alterations. Instead, the unrivaled frequency Google is utilized over other competing search engines allows them significant power over consumers and the public in a way that mirrors monopolization. Unlike Facebook, there are search engines that compete with Google, such as Yahoo or Bing, but these alternatives are not used as frequently. Additionally, neither the DOJ or FTC case claimed that Google was eliminating competitors in search results. The antitrust case against Google is based on the fact that their algorithm being manipulated to favor Google platforms has the potential to significantly affect consumer behavior due to Google's stronghold in the market.

The Case Against Apple

Apple has been facing an antitrust investigation similar to the case of United States v. Microsoft Corp. Lawsuits against Apple claim that by designing its iOS operating system as a closed-loop, Apple does not allow users to download applications outside the Apple App Store. Apple utilized the same anti-competition Microsoft did through exclusively bundling their hardware and software (Congressional Research Service 2019). A key point in the argument against Apple is that third party apps have to pay a cut of sales for all purchases made through the App Store only in apps that compete with Apple (Nellis 2019). For example, the music streaming app Spotify directly competes with Apple Music; therefore, all purchases made on Spotify that are processed through the App

Store must give a cut to Apple. Uber, on the other hand, has no competing Apple platform; therefore, it is not required to pay a portion of sales for using the same payment processing through the App Store.

These policies have led to companies who are forced to pay fees to cite Apple for anti-competitive behaviors. This is similar to the case against Microsoft, but while Microsoft made it difficult for other software to be downloaded onto the hardware it developed, Apple makes it impossible for apps to be downloaded outside its App Store. This limits the consumers' choices when downloading apps and forces competing apps to pay fees to use their platform. These practices specifically target Apple's competitors, triggering a DOJ investigation into Apple's App Store and operating systems anti-competition policies similar to the precedent setting case United States v. Microsoft Corp.

Arguments Against Effectiveness of Antitrust Law

Antitrust law, along with nearly all sectors of law, do not perfectly protect against illegal behavior. The primary dilemma with antitrust law, as claimed by some legal experts in the wake of pending investigations into "Big Tech" companies, is that United States law makes it difficult to prove antitrust violations (Wolfe 2019). In order for a company to be found guilty of breaching antitrust law, it must be proved that the company intentionally abused its hold over the market in an attempt to stifle competition and that reduced competition subsequently harmed consumers (Wolfe 2019). This is difficult mainly because they offer access to their services or platforms for free, so it is difficult to argue that their predatory behaviors are harming consumers. Antitrust law was written over a hundred years ago, and the legislation did not foreshadow the

technological abilities we have at our fingertips today. Despite the difficulty in finding technology companies guilty for unethical business practices, it has been done in the past in cases against Apple and Microsoft. Previous successes prove that the government has the power to prove these companies guilty and charge them substantial amounts of fines and penalties after a decision holding them liable is reached. In addition to finding companies guilty, investigations, and threats have the ability to impact technology corporations' activities significantly.

The main unit of "Big Tech" companies that is impacted by ongoing probes into their antitrust practices is the legal departments. Facebook alone has a staff of approximately thirty in-house lawyers that work solely for the corporation (Olson 2019). Assuming that Facebook associates make $190,000 per year, which is on the low end of the spectrum for attorneys working for large corporations and does not include their travel costs, bonuses, or other associated expenses, those thirty attorneys cost Facebook $5.7 million per year. An annual cost reaching millions of dollars is likely enough to force technology companies such as Facebook to consider the legality of their actions. At the same time, Facebook not only faces legal costs of its own attorneys, but also potentially millions of dollars in penalties if it violates antitrust laws and damages to their stock prices for being the target of an investigation. Companies are forced to weigh mounting potential risks with the benefit they receive participating in illegal antitrust practices. Without any antitrust law at all, there would be no limit to the potential growth of "Big Tech" companies and no incentive for them to think critically about the impact of their behavior in a competitive market.

Conclusion

Antitrust law has begun to limit the expansion of "Big Tech" companies by blocking predatory, unethical business practices intended to eliminate their competition. The foundation of antitrust law was set first by the Sherman Act, the Federal Trade Commission Act, and the Clayton Act, and was then enforced by precedent-setting antitrust cases United States v. Microsoft Corp. and United States v. Apple, Inc.. Current investigations into Amazon, Facebook, Google and Apple show that the government has the authority to regulate these companies and is willing to do so. Antitrust law is not perfect; it takes a lot of time and proof to investigate and find companies guilty of violating the law. However, the threat of investigation alone has some impact on the technology industry simply due to the detrimental financial impact it can cause companies, particularly costing "Big Tech" companies millions in legal fees alone to attempt to comply with the law or argue a case. There is no telling what "Big Tech" companies would do or how large they would have already grown without antitrust law in place. Antitrust law has set vital groundwork and precedent in limiting the growth of large technology corporations that make current investigation and regulation a possibility.

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The Underlying Ideologies of Financial Regulation and Deregulation:
From Glass-Steagall to Gramm-Leach-Bliley and the 2007 Crisis

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In 1999, Congress passed the Gramm-Leach-Bliley Act (GLBA) with bipartisan support. The GLBA, inter alia, repealed central provisions of the Glass-Steagall Act of 1933, a piece of New Deal legislation that restricted financial institutions from combining banking, securities, and insurance operations.[1] Nine years later, in the aftermath of the 2007 subprime mortgage crisis, many critics pointed to the GLBA as a monumental act of deregulation that caused the financial crisis. However, the GLBA was not a revolutionary act of financial deregulation. Whereas the New Deal and American politics during the mid-20th century were predominated by pro-regulatory theories of federal governance, anti-regulatory political ideologies prevailed during the latter half of the 20th century. Numerous federal regulations were rolled back during the 1980s and 1990s so that, by 1999, Glass-Steagall had become a shell of what it once was—its repeal was a foregone conclusion. In turn, this

1. The insurance restriction was added later by related legislation, the Bank Holding Company Act of 1956, which further extended the Glass-Steagall proscription of combining depository and investment institutions to financial holding companies, not just their subsidiaries. These provisions of the Bank Holding Act were also repealed by the GLBA.

paper argues that the prevailing anti-regulatory ideology that occasioned the repeal of Glass-Steagall also impeded modernized regulatory adaptations to changing financial conditions, thus anti-regulatory theories of political economy induced the unregulated systemic risks that led to the 2007 financial crisis. In other words, this paper argues that the GLBA was a drop in the deregulatory bucket and that it was the ideological bucket as a whole—not the drop per se—that precipitated the 2007 crisis.

The Glass-Steagall Act of 1933 was part of a flurry of New Deal legislation that established powerful federal agencies to regulate various economic sectors in response to the fallout of the Wall Street Crash of 1929. More specifically, Glass-Steagall refers to sections of the Banking Act of 1933 that imposed separations between commercial and investment banking (§§ 16, 20, 21, 32), sections which were introduced by Senator Carter Glass (D-VA) and Representative Henry Steagall (D-AL).[2] Since the 1933 Banking Act also established the Federal Deposit Insurance Corporation, Glass and Steagall introduced separative measures to prohibit commercial banks from using federally insured deposits to engage in high-risk securities activity.[3] Glass-Steagall also intended to preempt the excessive risk-taking and conflicts of interest that were inherent

2. The distinction between commercial and investment banking: "Commercial banks are chartered by national or state banking authorities to take deposits, which are withdrawable on demand, and to make loans. Investment banks, by contrast, specialize in the business of underwriting and trading in securities of all kinds" (McDonald 2).
The Glass-Steagall Act: Section 16 of the Banking Act prohibited commercial banks from underwriting or dealing in securities on their own account, limited their purchase and sale of securities as agents of customers, and limited what types of "investment securities" banks could hold on their own account. Section 21 prohibited securities firms from taking commercial deposits. Sections 20 and 32 proscribed depository banks from being affiliated with or having interlocking directorships or ownerships with companies that were "principally" or "primarily engaged" in dealing or underwriting securities. This paper will examine how the deregulatory movement reinterpreted the inherent vagueness of being "principally" or "primarily engaged" (Banking Act of 1933, 12 U.S. Code § 227).
3. Senator Glass wrote, "National banks were never intended to undertake

were inherent in the combination of depository banking and securities dealing because excessive leveraging and self-interested double-dealing by combination banks contributed to the 1929 market collapse.[4] Glass-Steagall and the New Deal substantially increased federal regulatory authority within financial markets. Conceptually, Glass-Steagall and the New Deal were undergirded by relatively new notions of political economy that challenged the previously ascendant ideologies of laisssez faire capitalism and classical economics. The government's then-emergent power to intervene in economic affairs was justified on the practical premise that untrammeled market activity does not always maximize social welfare or macroeconomic stability, and it was supported by an ideological contention that free market liberties ought to be subsumed under the greater public interests in maximal social welfare and macroeconomic stability.

The decades of macroeconomic stability that followed Glass-Steagall and the New Deal seemed to validate the Federal Government's increased regulatory authority. Prior to the Crash of 1929, economic depressions had occurred with increasing frequency and severity. However, after Glass-Steagall and the New Deal, there was an unprecedented absence of major financial crises from approximately 1947 to 1973, which is illustrated infra in note 5. Harvard Business Professor David Moss contends that this mid-20th century period of market stability was at least partially a result of the government's newfound regulatory power, which was underpinned by an ideological challenge to classical free market principles.[5] Moss calls this ideological challenge "market failure theory"—its fundamental belief being that unregulated

investment banking on such a large scale" and that the "overdevelopment of security loans, and the dangerous use of the resources of bank depositors for the purpose of making speculative profits and incurring the danger of hazardous losses, has been furnished by perversions of the national banking and State banking laws, and that, as a result, machinery has been created which tends towards danger in several directions" (Glass 8–9).

4. Jackson 2.

5. Moss 37.

private markets sometimes fail to optimize public welfare—and he argues that New Deal regulations like Glass-Steagall proved that the Federal Government can, at least sometimes, effectively modulate the economy in the public interest. But Moss did not invent market failure terminology: following the New Deal, market failure theory enjoyed a period of academic and political orthodoxy lasting until the 1960s, roughly coinciding with the unprecedented dearth of major financial crises.[6] Therefore, Moss concludes that increased scholarly support of market failure theory lent expert credibility to federal exercises of increased regulatory authority, and that the orthodoxy of pro-regulatory ideologies contributed to the economic stability rendered by financial regulations.

However, any ideological orthodoxy is bound to engender dissent in a democratic society. Beginning in the 1960s, American intelligentsia began to militate against market failure theory and federal oversight by arguing that there is "no guarantee that government (and the political system behind it) has the capacity to identify and fix market failures in anything close to an optimal manner".[7] Moss refers to this oppositional ideology as "government failure theory" and, by the 1980s, this anti-regulatory theory of government had regained ascendancy. The rise in power and popularity of the idea that the Federal Government is an inept economic regulator (or just generally incompetent) is epitomized by the 1981 inaugural address of Ronald Reagan, then-Chief Executive of the Federal Government: "Government is not the solution to our problems; government is the problem."[8]

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6. For examples of market failure theory's robust scholarly support, see Francis M. Bator, "The Anatomy of Market Failure," The Quarterly Journal of Economics, vol. 72, no.3, August 1958, pp. 351–379; Arthur Cecil Pigou, The Economics of Welfare, London, Macmillan, 1932; Paul A. Samuelson, "The Pure Theory of Public Expenditure," The Review of Economics and Statistics, vol. 36, no. 4, November 1954, 387–389.
7. Moss 42. See also Milton Friedman, Capitalism and Freedom, University of Chicago Press, 2002.
8. Reagan 2.

As scholarly support of government failure theory eclipsed that of market failure theory in the 1970s and '80s, the future of federal regulations like Glass-Steagall became increasingly uncertain. But dismantling the New Deal regulatory framework supported by market failure theory is not easily accomplished. Consequently, the ensuing decades witnessed piecemeal deregulation in various forms, including statutory reinterpretations and repeals, relaxed regulatory enforcement, and decisive federal court rulings, many of which will be examined below. While the Gramm-Leach-Bliley-Act's repeal of Glass-Steagall in 1999 may initially seem like a major achievement for the deregulatory movement, it was actually more of a formality. In the decades preceding the GLBA, federal banking regulators subjected Glass-Steagall to multiple reinterpretations that decreased the statute's regulatory efficacy, so that by the time Glass-Steagall was up for repeal, it was all but dead. Therefore, in light of the numerous deregulatory undertakings of the late 20th century and the complex economic factors involved, it would be an act of folly to inculpate one or a few discrete acts of deregulation as the source of the unregulated systemic risks that enabled the 2007 subprime mortgage crisis.[9] Accordingly, this essay argues that the broader deregulatory ideology—conceived of as a whole and motivated by government failure theory—contributed to the Great Recession of 2007 not necessarily by repealing and undermining standing regulations, but by impeding new regulatory efforts to address modern financial developments and their attendant risks.

In the early 1980s, the Federal Government pursued financial deregulation to combat inflation and encourage economic growth. In accordance with Glass-Steagall, the Federal Reserve had promulgated Regulation Q to restrict the

9. For a more exhaustive list of deregulatory acts going back to the 1970s and a concise explanation of how the 2007 subprime mortgage crisis arose, refer to Matthew Sherman's paper, "A Short History of Financial Deregulation in the United States."

rates of interest that commercial banks could pay on different types of deposits. While Regulation Q's rates had been prudent when market interest rates remained low, high inflation in the 1970s caused market rates to rise above the limits imposed by Regulation Q. As a result, large depositors sought alternatives to regulated commercial deposits that paid little or no interest, so brokerage firms developed money market mutual funds and various quasi-depository workarounds that paid unrestricted rates of interest and thus left depository institutions at a loss for depositors. In response, President Carter signed into law the Depository Institutions Deregulation and Monetary Control Act (DIDMCA) of 1980 to make depository commercial banks competitive with the new quasi-depository alternatives. The DIDMCA increased federal deposit insurance and phased out all depository interest rate restrictions imposed by Regulation Q (excepting demand deposits, i.e., checking accounts, which cannot earn interest).[10] By removing interest rate regulations, the Act intended to enable commercial banks to compete with new quasi-depository investment vehicles, like money market accounts, by offering higher interest rates.

Additionally, in order to make so-called thrift institutions[11] competitive with quasi-depository innovations and banks offering unrestricted interest rates, Congress passed the Garn-St. Germain Depository Institutions Act of 1982. The Act deregulated thrifts and expanded their powers by authorizing them to engage in commercial loans and to offer depository accounts—it made them more like commercial banks. In conjunction with the DIDMCA, however, the Garn-St. Germain Act was a deregulatory recipe for financial disaster. What followed was an episode of widespread

10. Sherman 6.

11. Thrifts are localized savings and mortgage loan institutions and small credit unions that, prior to the DIDMCA, Regulation Q allowed to pay greater interest rates. Thus, they were shortchanged by the DIDMCA.

insolvency and failure of federally insured depository institutions that lasted into the 1990s. In what is known as the savings and loan crisis (S&L crisis), over 1000 thrifts and commercial banks closed, costing the public billions of dollars.[12]

While some accounts of the S&L crisis chalk it up to bad investments and a stagnant economy, others blame excessively permissive deregulation. In their book Big Money Crime: Fraud and Politics in the Savings and Loan Crisis, Professors Kitty Calavita, Henry Pontell, and Robert Tillman argue that DIDMCA's expanded federal insurance net and Garn-St. Germain's deregulation aimed at encouraging growth in the banking sector actually provided incentives for savings and loan operators to defraud their depositors, embezzle money, and use government insured capital to speculate on high-risk ventures.[13] Deregulatory government acts, they argue, were directly responsible for the S&L crisis by failing to subject the risk characteristics of federally insured bank assets to effective federal regulations.

However, University of Chicago economist Robert E. Lucas Jr. contends that perhaps Glass-Steagall's Regulation Q precipitated the S&L crisis, not deregulation. He argues that if Regulation Q had not prohibited interest payments on demand deposits or restricted interest rates on other types of commercial accounts in the first place, then thrifts and money market accounts would not have emerged to offer interest-earning substitutes for commercial demand deposits. Lucas queries, "Is it possible that without the need to work around Regulation Q all of these new [quasi-depository] securities would simply have been entries on the balance sheets of regulated commercial banks?"[14]

12. Calavita, Pontell, and Tillman.

13. The most sensational example of S&L perpetrators was Charles Keating, whose Lincoln Savings and Loan made campaign contributions to five sitting Senators in exchange for relaxed regulatory oversight (Calavita, Pontell, and Tillman 17).

14. Lucas 43–47.

Although the proliferation of depository substitutes was initially estimated to be a response to inflationary market interest rates that made the opportunity costs of commercial demand deposits untenable, commercial demand deposits continued to decline even after market interest rates decreased in the 1980s because large depositors had found less expensive means of housing liquidity. Therefore, Lucas argues that because of Regulation Q, "These processes of substitution scattered demand deposits out into the world of 'shadow banking' and largely ended the constraints imposed by Glass-Steagall. The Act's actual repeal in 1999 was just a formality."[15]

Validity and veracity aside, Lucas' argument is illustrative of the anti-regulatory tendency to implicate standing regulations as faulty without considering alternative regulatory measures. Although high market interest rates rendered Regulation Q detrimental to commercial banks, it does not necessarily follow that the only solution was to deregulate depository institutions so that they could compete with other unregulated quasi-depository substitutes. Alternatively, federal regulators could have relaxed Regulation Q's commercial deposit restrictions and developed modernized regulations for the new forms of "shadow banking" that had arisen to meet depositors' demands. But instead, the market was deregulated in the interest of unfettered economic activity. This contention epitomizes the conflict between pro-regulatory market failure theory and anti-regulatory government failure theory: when market conditions push large deposits into new and unregulated financial territory, market failure theory supports redress in the form of more updated regulatory measures, whereas government failure theory supports abolishing the problematic regulation without proposing modernized regulations. Thus, commercial demand deposits

15. "Between 1950 and 2000 the ratio of demand deposits in commercial banks to GDP fell from 30 percent to 5 percent" (Lucas 46).

Eventually, Congress resorted to updated regulations to ameliorate the savings and loan crisis,[16] but the overall movement towards deregulation continued unabated. In 1987, the Federal Reserve Board voted 3–2 in support of relaxing the restrictions imposed by Section 20 of Glass-Steagall, which made it a felony for commercial banks to be at all affiliated "with any corporation…or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution…of stocks, bonds, debentures, notes, or other securities [emphasis added]".[17] Since the term "engaged principally" is undefined in Glass-Steagall, the Fed reinterpreted Section 20 and the Federal Court of Appeals for the Second Circuit upheld "that [a bank holding company's] subsidiaries would not be engaged substantially in bank-ineligible activities if not more than five to ten percent of their total gross revenues was derived from such activities over a two year period, and if the activities . . . did not constitute more than five to ten percent of the market for that particular security".[18] In 1989, under the auspices of the new Chairman Alan Greenspan, the Fed again relaxed the revenue limit and expanded the range of bank-ineligible activities that Section 20 subsidiaries could engage in to include, inter alia, the securitization and sale of mortgage-backed securities.[19] Later, in 1996, the Fed further relaxed Section 20 to allow bank holding companies to own investment banking subsidiaries that account for up to 25% of their revenue.[20] This final 1996 reinterpretation of Section 20

16. Part of the underlying cause was that thrift deposits were not insured by the FDIC but instead by the Federal Savings and Loan Insurance Corporation, which was ill equipped to deal with rampant insolvency in that recently expanded sector. Thus, in 1989, Congress passed the Financial Institutions Reform and Recovery Act, which transferred the FSLIC to the FDIC and created the Resolution Trust Corporation to resolve solvent but illiquid thrifts (H.R. 1278, Session of 1989).

17. Banking Act, 12 U.S. Code § 227 (1933). Notably, the Fed's first decision to relax Glass-Steagall's Section 20 restrictions was opposed by then-chairman Paul Volcker (McDonald 11).

18. Securities Industry Association v. Board of Governors, 839 F.2d 51 (1988), citing Federal Reserve Bulletin 73, no. 6, pp. 485–86 (1987).

19. Barth, Brumbaugh, and Wilcox 191–204.

20. Sherman 9.

effectively nullified Glass-Steagall's firewall separating commercial and investment banking because virtually any institution could satisfy the 25% limit.

Furthermore, as the Fed relaxed Section 20 of Glass-Steagall, the banking industry was becoming increasingly consolidated by way of large mergers and acquisitions facilitated by another piece of deregulatory legislation: the Riegle-Neal Act of 1994.[21] In 1998, a high-profile merger formed Citigroup by joining Travelers Insurance Group and Citicorp (the parent company of Citibank), and the machinations behind that merger illustrated the inevitability of Glass-Steagall's repeal. Before announcing the merger, company executives cooperated with Fed Chairman Alan Greenspan, Treasury Secretary Rick Rubin, and President Bill Clinton to structure the merger in a manner that comported with the Fed's reinterpretations of Glass-Steagall, but the outcome was technically illegal according to the letter of the law. Nonetheless, the executives and government regulators were undeterred in letting the merger proceed because they were confident that Congress would repeal Glass-Steagall before the law would force Citigroup to divest itself of its insurance business.[22] As it turns out, they were correct.

Ever since money market mutual funds and other financial workarounds began to blur the distinction between depository institutions and securities brokers, banks had lobbied Congress to loosen Glass-Steagall's restrictions. Two decades of piecemeal deregulation were aimed at keeping commercial banks competitive in an economy of rapidly evolving financial institutions, but the exponential growth of financial institutions outside of the commercial banking sector created new sources of systemic risks that went largely unregulated.[23] Congress finally

21. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 eliminated restrictions on interstate banking and branching, which enabled large, centralized banking institutions to merge with and acquire banks nationwide (H.R. 3841, Session of 1994). From 1990 to 1998, the number of banking institutions nationwide fell by 26.7% as a result of large mergers and acquisitions (Heiney 72).

22. Sherman 10.

23. The total assets of the nation's largest securities dealers and brokers increased from $45 billion in 1980 (1.6% of GDP) to $262 billion in 1990 (4.5% of GDP), to more than $3 trillion in 2007 (22% of GDP) (Federal Reserve Board, "Flow of Funds Accounts of the United States, Historical").

repealed the central provisions of Glass-Steagall in 1999 by passing the Gramm-Leach-Bliley Act, also known as the Financial Services Modernization Act. The GLBA removed all restrictions against financial institutions combining banking, securities, and insurance operations.[24] The Act was signed into law with substantial bipartisan support, but in a floor speech during the GLBA Senate debate, Senator Byron Dorgan (D-ND) warned his colleagues that the results of such deregulation could be disastrous.[25] Dorgan obviously failed to persuade a majority of the Senate that the GLBA and financial deregulation carried substantial risks, but after the 2007 subprime mortgage bubble collapsed and a pronounced economic recession followed, various pundits and political actors blamed the repeal of Glass-Steagall. In a 2012 interview of Senator Elizabeth Warren, she cited the GLBA as a primary cause of the 2007–2009 crisis. However, when the point was pressed, Warren conceded that if Glass-Steagall had remained in place, it most likely would not have prevented the collapse.[26] While she nonetheless insisted that repealing Glass-Steagall exacerbated the severity of the crisis, her concession illustrates that the GLBA was not simply the cause of the subprime mortgage bubble but that there is a curious tendency to say that it was.

In a speech given during his 2008 presidential campaign, then-Senator Barack Obama expressed the point more cogently. He stated that "By the time the Glass-Steagall Act was repealed in 1999, the 300 million-dollar lobbying effort that drove deregulation was more about facilitating mergers than creating an efficient regulatory framework." Instead, he said, "We simply dismantled the old [regulatory framework] . . . encouraging a winner-take-all, anything-goes environment that helped foster devastating dislocations in our economy."[27] In retrospect, Obama appears to have been correct. The repeal of Glass-Steagall

24. The Gramm-Leach-Bliley Act, S. 900, Session of 1999.
25. Dorgan.
26. Sorkin.
27. Obama.

was not the single cause of the recession, but the deregulatory movement behind the GLBA also enabled the consolidation of monolithic megabanks that could devastate the economy if they failed. Moreover, the underlying anti-regulatory ideology impeded modernized attempts to regulate the rapid growth of new financial derivatives. These new forms of derivatives—e.g., mortgage-backed securities, credit default swaps, and synthetic collateralized debt obligations—were dealt by increasingly consolidated megabanks and carried substantial risks, yet there was no effective federal oversight of their risk characteristics. As keystone financial institutions became increasingly consolidated and small in number, their unregulated derivative assets put the economy in increasing jeopardy.

The financial industry saw a proliferation of derivative instruments in the 1990s, and these new forms of finance posed serious problems for regulators. Whereas stocks, bonds, and options have a clearinghouse for trades that provide a transparent record, most new derivatives lacked such a record and thus became sources of dispute and uncertainty that, if traded on a large scale, created unassed systemic risks. In the late 1990s, Chairwoman of the Commodity Futures Trading Commission (CFTC), Brooksley Born, recognized the risks posed by insufficient regulatory oversight in derivatives markets, and she brought her concerns to the attention of Alan Greenspan and Rick Rubin. However, Greenspan, Rubin, and Rubin's successor, Lawrence Summers, vociferously opposed derivative regulations because they saw no reason to interfere with financial innovations.28 Their anti-regulatory ideology epitomizes government failure theory's tendency to oppose new, publicly interested regulations on the grounds that there is no guarantee that such regulations will create optimal economic conditions.

Ultimately, the decision of whether to regulate was made

28. Faiola, Nakashima, and Drew.

by Congress. Senator Phil Gramm (R-TX), one of the GLBA's co-sponsors, pushed for statutory language that strictly limited regulatory oversight of derivatives by the CFTC and SEC. A group of regulators— including Treasury Secretary Lawrence Summers—reached an agreement with Gramm, and Congress quickly moved to pass the Commodity Futures Modernization Act of 2000. The legislation passed without review or debate and it effectively exempted derivatives from regulation.[29] Predictably, derivatives trading expanded quickly in the unregulated market, "increasing from a total outstanding nominal value of $106 trillion in 2001 to a value of $531 trillion in 2008". The legal infrastructure of the industry was overwhelmed by such rapid growth and, as a result, regulators relied on firms to self-regulate in order to avoid potential risks. Accordingly, in 2004, the SEC also allowed investment banks to hold fewer reserves and to take on more debt and allowed brokerage firms to voluntarily submit asset and activity reports to the SEC, thereby outsourcing risk monitoring to firms themselves.[30] The hand-off approach of the Commodity Futures Modernization Act of 2000 provides a concrete example of government failure theory insofar as it leaves risk management to individual economic actors rather than purportedly inept government regulators.

The exponential growth of financial derivatives relied on securitization, the process whereby banks pool illiquid assets (e.g., mortgage loans) and transform them into highly liquid securities that can be sold to investors. As the market became increasingly deregulated and thereby more profitable, the mortgage industry began to aggressively market subprime adjustable rate loans to high-risk borrowers. While the number of agency-conforming loans was twice that of non-conforming (i.e., subprime) loans in 2001, the subprime market had eclipsed the agency-conforming market by 2006.[31] Bubble-

29. The Commodity Futures Modernization Act, H.R. 5660, Session of 2000.
30. Sherman 11.
31. Ashcraft and Schuermann, Federal Reserve Bank of New York, staff report no. 318.

inflated housing prices created a huge opportunity for profit. Thanks to the Federal Government's hands-off regulatory policies, the financial industry found "creative" ways to expand lending, and complex derivative financial instruments were labeled as low-risk by private appraisers despite the shoddiness of their underlying assets. Due to the unassessed systemic risks created by insufficient regulatory oversight, deregulation enabled the financial industry to build a highly exposed economic infrastructure. The result was a devastating systemic collapse with serious ramifications for the entire economy.[32]

Yet, some experts are still skeptical of claims that acts of financial deregulation, such as the GLBA, led to the 2007–2009 crisis. In a 2016 article for the Cato Institute, British academic Oonagh McDonald indicates that the largest failed institutions —Bearn Sterns, Lehman Brothers, Fannie Mae, Freddie Mac, and so on—operated entirely outside of commercial banking and that failed commercial banks like Washington Mutual went under "due to risky bank lending and the abandonment of essential underwriting criteria".[33] While McDonald correctly indicates that the repeal of Glass-Steagall did nothing to enable or change such practices, she overlooks the larger effects of anti-regulatory government failure ideology: had the broader deregulatory movement that wrought the passage of the GLBA not been so vehemently opposed to updating regulations to fit modern financial developments—e.g., tough leverage and liquidity requirements for investment banks, as suggested by CFTC Chairwoman Brooksley Born in the late 1990s—perhaps then the worst of the 2007 crisis could have been avoided.

This essay's central claim—anti-regulatory government failure ideologies inhibited regulations which could have prevented or mitigated the 2007 crisis—is counterfactual. However, the anti-regulatory theory that government does not have the capacity to identify and fix market failures in anything

32. Sherman 12.
33. McDonald 16.

close to an optimal manner is also counterfactual. A survey of U.S. financial trends in the 20th and 21st centuries quite arguably illustrates that economic regulation by the federal government is conducive to a more stable, sustainable macroeconomy. There was insufficient appetite for financial regulation in the American political environments of the 1970s and 1980s, which were pervaded by scholarly theories of government failure and a belief that private actors can effectively manage financial risks without government interference. During the fallout of the financial crisis in 2008, former Federal Reserve Chairman Alan Greenspan testified before the House Committee on Oversight and Government: "Those of us who have looked to the self-interest of lending institutions to protect shareholder's equity (myself especially) are in a state of shocked disbelief."[34] Such shocked disbelief that free market principles failed to render optimal macroeconomic conditions is what David Moss argues gave rise to market failure theory and the pro-regulatory conceptions of federal authority in the first place. Then, as scholars moved away from market failure theory and gravitated towards government failure theory in the 1970s and '80s, public policies followed suit in a deregulatory fashion. The result was the savings and loan crisis. Deregulatory trends continued largely unabated, high-risk derivative markets burgeoned without sufficient oversight, and unregulated derivative markets jeopardized systemic stability. The result was the 2007 subprime mortgage crisis. Although the movement towards deregulation was driven by various factors including deep-seated American skepticism of government authority and special interest lobbying, the underlying importance of the ideological power that scholarly theories gave deregulatory policies cannot be underestimated.As the English economist and New Deal proponent John Maynard Keynes famously remarked, "The ideas of economists and political philosophers, both when they

34. Greenspan Testimony, House Committee on Oversight and Government Reform.

are right and when they are wrong, are more powerful than is commonly understood. Indeed, the world is ruled by little else."[35]

35. Keynes 383.

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Invisible Inmates: How Women Experience Punishment in California State Prisons

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Abstract

Although women are the fastest growing group of criminalized individuals in the United States, their unique experiences while inside the penal system continue to be marginalized. Prison policies that impact women are not being made with women in mind. This project aims to give a voice to incarcerated women by exploring how women in California prisons experience formal and informal types of punishment. In particular, it looks to the aspects of the prison experience female inmates perceive to be the most punishing and how they orient to that punishment.[1] Six matters of particular salience were identified: exclusion from and scarcity of programming; loss of familial contact; power and autonomy; mental health and psychological well being; physical health and care; and trust and privacy. Understanding how incarcerated women experience punishment with respect to these categories necessitates acknowledging their biographies and the multiplicity of abuse the majority have experienced prior to their imprisonment.

1. The term "orient" is borrowed from Lori Sexton's research on penal consciousness, and describes the way in which inmates position themselves in relation to their punishment and how, in doing so, they make meaning of it as well. An example explored in Sexton's study was prisoners viewing punishment as "a separate life that will exist only for a short time" ("Penal Gaze" 95).

The increased incarceration of women is largely viewed to be an outcome of broader forces that have influenced the direction of U.S. criminal policy over the past few decades. These forces include the federal government's war on drugs; government policies that prescribe simplistic, punitive enforcement responses to complex social problems; federal and state mandatory sentencing laws; and the public's ever-present fear of crime despite nearly a decade of declining crime rates in the United States (Crewe et al.; Covington & Bloom; Goldfarb; Hinton; Pfaff; Simon).

An important unintended consequence of California's involvement in the punitive turn, which sought to target the young, violent, predatory males who dominated the public's imagining of crime at the time, was unprecedented growth in the scope of women's imprisonment. More women became punishable in California in part because of social, economic, and legal changes that raised their chances of coming into conflict with the law. Among these were increasing levels of poverty and homelessness, decreasing access to social services and welfare, and the growing risk of arrest for illegal drug use (Kruttschnitt & Gartner). Another way that women have been caught in the crossfire of the punitive turn has been through heterosexual relationships with men engaged in drug activity. These relationships "put women at considerable risk of severe penalties, including conviction of a drug offense, often as a constructive possessor, an aider and abettor, or a co-conspirator, typically with stiff, mandatory penalties" (Goldfarb 280). Currently, the majority of women offenders have been convicted of crimes involving drugs or property (Crewe et al.; Dodge; Zaitzow & Thomas). Often, their property offenses are economically driven—motivated by poverty and the abuse of alcohol and other drugs (Owen). Women, thus, have been disproportionately impacted by the shift in U.S. criminal policy and predominantly enter prison with far more nonviolent

criminal histories than their male counterparts.

Sexton sets out to identify the degree to which the characteristics of the current retributive penal landscape translate to harshness of punishment overall through a new framework she refers to as penal consciousness ("Penal Gaze"; "Penal Subjectivities"). Penal consciousness identifies the processes through which penality arises by both privileging the subjective consciousness of individual prisoners and locating this consciousness within the context of the larger carceral system. This subjective framework has broader implications for feminist scholarship, as it makes prisoners agents actively involved in the construction of punishment.

Sample of Interest

Table 1. Race, Offense, and Lifer Status of the Study Sample

	Study Sample	
	n	%
Total	7	100
Race		
Black	3	42.86
White	3	42.86
Other	1	14.29
Offense		
Murder	4	57.14
Robbery	1	14.29
Drug Related	2	28.57
Life Sentence		
Yes	4	57.14
No	3	42.86

Table 2. Prisons in Which Study Sample Served Time

	Study Sample	
	n	%
Total	7	100
Prisons		
Valley State Prison for Women (VSPW)	6	85.71
Central California Women's Facility (CCWF)	5	71.43
California Institution for Women (CIW)	3	42.86
California Rehabilitation Center (CRC)	1	14.29
Northern California Women's Facility (NCWF)	1	14.29
Transferred		
Yes	5	71.43
No	2	28.57

Findings

The seven formerly incarcerated women contacted for this study described an array of understandings of and experiences with penality over the course of their interviews. The subsequent sections are divided according to the six aspects of imprisonment that the sample as a whole perceived to be most punishing. There are two additional sections that deal with the individual experiences of the women interviewed, namely how they "did their time" and the social disadvantages that influenced their path to and experience of incarceration.

Power and Autonomy

A sense of powerlessness and a loss of autonomy was the most prevalent theme amongst the formerly incarcerated women's interviews. This category was further broken down into subcategories that included feeling powerless, observing one's experiences and the rules in prison as indeterminate and nonsensical in nature, and losing one's sense of autonomy.

For the women, powerlessness manifested itself in two ways: (1) as a feeling of vulnerability and lack of control and (2) as a reaction to abuse of power on the part of prison officials, particularly correctional officers (COs). With regard to the former, one woman described how powerless she felt as she moved in and out of prison for twenty years as a result of parole violations:

"They always release you on parole. They don't want to just be done with you. Especially in California prisons. They want to make sure they have you while you're in and still have a tail on you while you're out. They're just waiting for you to screw up so they can put their hooks back in you" (**Sarah**).

Another formerly incarcerated woman, Leslie, described a similar sense of powerlessness under the institution's grip, as she was required to subject herself repeatedly to strip searches to gain entry into the visiting spaces:

"Coughing and squatting. I think that's one of the most degrading, dehumanizing, and absolutely, from a woman's standpoint, defeminizing experiences that I had...When you visit a family member or friend in Visiting, you have to strip naked, open up your private areas, and have someone look at you. That was absolutely hands down the worst experience" (**Leslie**).

This sense of vulnerability and powerlessness is, in many instances, linked to the latter form of experiencing powerlessness—as a reaction to abuse of power. Leslie described one such instance of penality, which Jennifer corroborated with a personal anecdote:

"You can't report sexual misconduct in there. Your life would be hell. For some, it already is. They say they have a zero tolerance

policy. Absolutely happens every day multiple times a day. It's the violent undertones that are there. Innuendos. The talking...There's no staff accountability for behavior on the inside, at least not at CCWF" (**Leslie**).

"I was questioned by the ISU [Investigative Services Unit] sergeant in the prison, and when they questioned me, he [the harassing staff member] was sitting right there because they were cool...He [the sergeant] is sitting right there and asking me these questions, and he [the harassing staff member] was sitting there making sure I answer the questions. So clearly I couldn't say anything because fuck if I do say something he [the harassing staff member] could do something to me, to my room, to my roommates. He could plant some shit on me. And why is he even right here when you're questioning me about some sexual harassment stuff?" (**Jennifer**).

For Kim, abuse of power on the part of the COs manifested as regular threats to give write-ups based on nonsensical rules. These write-ups often carried with them the additional cost of extending her prison sentence:

"They sprung rules on you when it was convenient for them. They being COs. 'Oh it's in the handbook.' Oh, you mean the handbook that comes in necessary when you want to find me guilty of a 115?" (Kim).[2]

Kim's experience of having her behavior hyper regulated appears to be commonplace in California women's prisons. An NPR study found that women in prison across the United States are disciplined at higher rates than men, often two to three

2. "A Rules Violation Report (CDCR 115) is a write up for a rules violation. There are 2 types of 115s, Administrative and Serious. Both require a hearing prior to adjudication. Administrative 115s do not add points to the inmates classification score and cannot result in additional time. They result in documentation of the offense and sometimes loss of privileges. Serious 115s add points to the Classification score and can add between 30 days to up to a year's additional time, as well as the loss of privileges. The added time is actually a loss of credits, not an additional sentence" (CDCR, 2019).

times more often, for smaller infractions. The same study found that in California, women get over twice the disciplinary tickets for "disrespect." Between January 2016 and February 2018, women had the equivalent of 1,483 years added to their sentences through good credit revocations, and at a higher rate than for their male counterparts (Shapiro et al.).

The indeterminate and nonsensical nature of prison rules and practices came up as a frequent source of confusion and anxiety in the women's interviews as well. One of the most concrete expressions of this anxiety for the women interviewed was lockdown moments:

"Lockdown moments felt punishing to me. I was like why are we locked down? I wanna get the hell away from ya'll. I need to make a phone call or do something" (**Jennifer**).

"It's definitely done for aggressive punishment. Just to be confined like that, and it's usually for someone else's actions. It's group punishment for one other person's actions" (**Leslie**).

The ever-changing nature of prison rules was also cited as a source of disorientation for the women interviewed. They pointed not only to inconsistency in the rules themselves but also in their application to different prisoners:

"All the rules are weird. It's really hard to pick one. Any little thing that you did that resembled freedom or fun, you were breaking a rule" (**Jennifer**).

"You wouldn't be told or updated on what the rules were, but you were expected to know them and follow them" (**Kate**).

"A lot of the times, there's discretion depending on which

[member of the prison] staff decides they're going to write you up, so a lot of times, folks can do the same thing and one would get written up and one wouldn't" (**Ashley**).

"Those rules just don't make sense to me" (**Taylor**).

This sense of indeterminacy continued to plague the women even following the parole hearings that marked the end of their time in prison, owing largely to the 150 day review period that accompanied the parole board's decision:

"If your board members say yes, it's really an additional drain of money and resources for that 150 days. For that 150 days, you sweat. They can take your date. Or, they can take no action, which means you're released" (**Leslie**).

"The 150 days, I don't really understand that. It doesn't make sense to me. You found me suitable. You hired these people to do a job, so what's the purpose of reviewing it? Let us go" (**Kim**).

Surprisingly, loss of autonomy was the least mentioned of the three subcategories, despite being the highest ranked problem for a similar study focused on female inmates in the United Kingdom (Crewe et al.):

Q: What aspects of your life in prison felt the most punishing?

"Being told what to do" (**Jennifer**).

"They told you when to get up. If you didn't have money, you had to eat what they offered" (**Sarah**).

Though it was the least commonly mentioned of the three, loss

of autonomy was most often directly cited as the most punishing experience. This may be explained by the fact that prisoners' loss of autonomy is by design and assumed to be part of prison practice as compared to the more subtle experiences of powerlessness and indeterminacy that are brought about by additional factors such as staff behavior.

Loss of Familial Contact

Loss of familial contact was an informal punishment that impacted every woman in the study to some capacity. This theme was broken down into subcategories of lack of familial support, loss of contact with children, and dealing with loss and death. For the four women in the study who were mothers, distance from their family members also meant time lost with their children. For three of the seven women, loss of familial contact involved a permanent loss of a family member who either passed away or suffered from a major illness prior to or immediately following their release from prison. In contrast with the women in the Crewe et al. study, this weakening and, in some instances, the severing of ties with family members stemmed not from a choice on the part of the prisoner or the family but rather was a consequence of the location of the female facilities themselves. The women in the Crewe study typically made the decision to cut off family members after realizing that they were toxic or were cut off by family members who could not forgive them for their crimes. The women in this study, however, described family members who had difficulty visiting and keeping in contact because of prison practices as well as distance. With regards to the former, women described issues with phone call and visitation policies:

"It does something to me when I don't have my phone. Like I can't communicate. And I couldn't do that inside. I'm someone

who comes from a close family. For me not to be able to call when I want to and the calls being so expensive at the time, it was bad" (**Jennifer**).

"The phone was my big thing. That was the only communication I had with my kids or my family. So I feel like yeah going two or three months in the Puppy Pound[3] *and not being able to use the phone or anything at all was really hard"* (**Taylor**).

The number of calls each prisoner is allotted is oftentimes limited by corrections policy. The high cost of collect phone calls, reflecting additional charges levied by phone companies or the departments themselves, can make this method of contact extremely costly (Travis et al. 1).

"They took family visiting away [from Lifers] for years. And that kind of put a damper on my relationship with my mom because she didn't like the visiting room very much...She couldn't stand all the people. But when we were in family visiting, she was fine because it was just her and I and a few kids. She loved that. When they took away the family visiting she would come visit me once every three or four years. But with the family visiting, she would come every 45 days" (**Kim**).

The geographical distance of the prisons, which were often far away from the women's families and in "shady area[s] full of crime," exacerbated the emotional distance that imprisonment engendered (Kate).Due to the scarcity of federal prisons for women, women are more likely to be incarcerated at greater distances from their families than are men (Hagan & Coleman 356-7). An average female inmate is more than 160 miles farther from her family than a male counterpart (Coughenour 143). Distance from family was, in some

3. "Puppy Pound" is a colloquial term for the prison Reception Center. Inmates go through the reception and classification process before being placed when they first arrive at the prison which can take up to 120 days (CDCR, 2015).

instances, cited as punishing for both the incarcerated women and their families, some of whom relocated to be closer to the prison and struggled to adjust to such a major life shift:

"I was extradited from Oregon and brought to California. I had one family member that moved from Oregon to California while I was in, so seeing them again was like meeting a stranger that I love...The prison is in the middle of nowhere...so they're not family oriented. At least not for women" (**Leslie**).

"[My mom] relocated all the way from Wisconsin to be closer to me while I did my time. It just wasn't easy for her relocating because she was away from the family that we knew. She was all the way over here" (**Kim**).

For the formerly incarcerated mothers in the study, this distance from family meant missing out on pivotal moments in their children's lives. Nationwide, 54% of mothers in State prison reported never receiving a personal visit from their children (Mumola 1). The women in this study reflected that trend. Despite the fact that their time served ranged from two years to twenty, all of the women reported not seeing their children for the entirety of their prison sentence:

"When I got arrested, my son was two years old, and my parents utilized my being incarcerated as a way of keeping my son from me and not being able to have a relationship. Not being able to grow with my son for those years was most punishing for me. I had no contact with him the entire time I was incarcerated" (**Ashley**).

"Never. I didn't get to see [my kids] one time. That was probably one of the hardest things I've had to go through in my life. It was almost two years that I didn't see my kids" (**Taylor**).

"Keeping in contact with my children was very limited because of the dynamic of my relationship with my ex-husband. So very very limited" (**Leslie).**

While separated, both children and their incarcerated parents may be faced with issues of abandonment, weakened senses of attachment owing to their separation, and the potential for inadequate ongoing care stemming from changes in caregiving arrangements (Travis et al.). In one instance, the children of an interviewee were abused while with their temporary caregivers, provoking a special kind of punishment and sense of powerlessness in both the children and their mother. Consequently, reunification with their children following their release from prison presented its own set of challenges for the women interviewed:

"The relationships with my kids were damaged, and they were abused while I was gone and passed around to different family members" (**Taylor**).

"My son and I are still rebuilding" (**Ashley**).

In addition to losing contact, some women had to deal with the complex emotions that accompanied hearing of the passing of a loved one while they remained behind bars. For one of the women interviewed, this feeling of bereavement arose instead from the loss of a loved one as they knew them prior to their incarceration:

"[My cousin] was the one who called me and told me that my mother had passed. I didn't have grief counselors sit with me after I heard. I didn't share my feelings like that so much...I hadn't lost anything to grieve like that, so when it happened, it was a whole set of new emotions for me. I couldn't deal with it.

The prison didn't help me in any way through that process" (**Kim**).

"But on [date redacted], I got the worst call that you can get in prison, especially as a Lifer. You're called to the program office and told by staff that you've had a loss. Mine was really late at night and I was informed [that a family member had committed suicide]" (**Leslie**).

"My grandmother went from driving the car the day I left to prison to complete dementia, so by the time I got out, she didn't even know who I was most of the time. I feel like I triggered her because she raised me most of the time on and off. It changed everything really" (**Taylor**).

In some instances, the capacity of fellow inmates and grief counselors to help the grieving women was hindered by the nonsensical rules discussed in the first section:

"[As a grief counselor] we would go when somebody found out a loved one passed. There's actually rules where we're not supposed to hug. Basically, we're not supposed to touch. And I think that was one of the worst ones because, as women, we nurture, we hug, we care for each other...where's your humanity?" (**Leslie**).

Following their release, the formerly incarcerated women and their families had to process a different form of loss:

"Our families don't even know us anymore when we come home. They have to get to know us again because we're not the same people who went in, and a lot of people's families treat them as if they were that person that went in some years ago. That's not right because they have no idea the work we put in to get out" (**Jennifer**).

Jennifer found comfort in her formerly incarcerated peers following her release because she *"grew up with and went through tough times with [them] that [her] family would never get."*

Interestingly, as prison drew a rift between the inmates and their families back home, it also generated an environment of shared strife that led inmates to create pseudo families on the inside that supported one another throughout their sentences:

"Prison has given me a whole other family. I have a whole other family unit that's not blood that's more healthy than the family I was born into" (**Ashley**).

"[Leaving prison] was a bittersweet moment because I was leaving my family in there" (**Kate**).

"I was leaving people behind that were my sisters" (**Leslie**).

These sorts of familial bonds did not, however, characterize the nature of the formerly incarcerated women's relationships with all the women with whom they were incarcerated.

Trust and Privacy

In spite of the familial bonds that they formed while incarcerated, interviewees reported an overall sense of distrust of many of their fellow inmates. The source of the distrust typically amounted to differences in personalities, identities, and crimes committed. The tensions between the women were likely exacerbated by the power dynamics and uncertainties of life on the inside:

"I had to adjust because those women. I have never been around people like the people in prison. I used to cry all the time...I was like oh my God I'm in here with people that have done all sorts of stuff...I can't trust anybody" (**Jennifer**).

"Regardless of color, creed, orientation, whether you have six months to do, six years, sixty, six hundred, you're housed together. You're put in a room and told to get along, so you're living in a constant state of hyper vigilance and stress" (**Leslie**).

"There's more people than there are jobs. Someone is just waiting for you to screw up so they can get your job. I had to put everything on the backburner to have that prison mentality" (**Sarah**).

More salient than mistrust in fellow inmates was an overall mistrust of the institution itself, which manifested in a general lack of faith in prison staff. The women interviewed described a general lack of care, accountability, and professionalism on the part of prison staff members in nearly all departments and roles:

"They [prison officials] never stepped up and took responsibility for a lot of things that were going on" (**Kim**).

"When I would go visit my psych and I would end up counseling him or her. And they're calling me back next week to tell me how my advice worked out for them. That's when I knew this is a shit show. They just hire anybody to come out here and do this. That's sad. You only need a GED to get up in there" (**Jennifer**).

"I had other women that were telling me 'Oh, you're going to CRC,[4] so don't take any meds. You gotta stop that because they'll send you back.' I didn't really know because it's really hard to get information from anybody outside of other inmates, so I just erred on the side of caution and tried to go with what I heard" (**Taylor**).

In addition to a lack of trust, interviewees detailed living in the overcrowded and unsafe housing. Locked up in rooms that housed nearly double the amount of inmates than their capacity, the women bemoaned the complete lack of privacy and tense relations between the varied personalities that existed in their prison cells:

"Women are still overcrowded. The rooms when they made them were for four people, and they averaged six to eight. So even with six, [they're] still overcrowded" (**Leslie**).

"Having to share a cell with seven other people. Oh God, I hated that. Just constantly having to be around other people. No privacy" (**Jennifer**).

"In Chowchilla, you're in a room with seven other women, and if you don't have a good rapport with your other roommates, it can be total hell" (**Sarah**).

"A lot of times, Lifers end up getting housed with the inmates with the mental issues. Then you have to walk on eggshells because if you get into it with one of them, you're definitely getting a write up, then boom there you go. When you go to [parole] board, they're definitely not understanding that this girl's got mental issues. What am I supposed to do, just stand there and let her beat the crap out of me?" (**Kim**).

4. The California Rehabilitation Center (CRC) is a State prison designated for substance abuse rehabilitation.

Mental Health and Psychological Well-Being

The incarceration of bodies is often used as a solution to displacement caused by failing social programs, particularly mental health services. In 1967, California was one of the first states to deinstitutionalize care for the mentally ill when it passed the Lanterman-Petris-Short Act. One year after the law went into effect, the number of mentally ill individuals in the criminal justice system doubled. Later in 1987, Ronald Reagan passed the Omnibus Budget Reconciliation Act, repealing former President Carter's community health legislation and ending the federal government's role in providing health services to the mentally ill. In the aftermath of the act, federal mental-health spending decreased by 30% (Pan). As of 2016, the Treatment Advocacy Center estimated that 383,000 individuals with severe mental illnesses were incarcerated, although many belonged instead in hospitals (Snook).

As reported in a 2006 Department of Justice study, the comparative prevalence of mental health problems in state prison was 73% for women and 55% for men (James & Glaze). While a number of women in this study disclosed official diagnoses of conditions such as borderline bipolar disorder and depression, it was the women's broader discussions of their mental health, and their experiences of intense distress following incarceration, which pervaded the interviews. These issues were worsened by a failing mental health system within the prison that did not prioritize inmates' needs:

"I didn't utilize the prison's mental health services because there's such a backlog and overcrowding for it. I took a few mental health classes that I was able to...We weren't able to use their services at some point because when the prison population spiked and people weren't getting medical or mental health help,

[the prison] really honed in on well you're not triple CMS,5 so we can't serve you" (Leslie).

"[My biggest needs in prison were] mental health care and physical health care. And I would say emotional health care because there was none of that there. And that need wasn't met" (**Jennifer**).

With respect to medication, the failures of the mental health system coupled with the general distrust of the prison's staff led some interviewees to question the quality and effectiveness of the medication that they were offered. Taylor and Jennifer, for example, both refused to take medication prescribed to them while on the inside. While Jennifer's decision stemmed from observing medication failing to properly treat her fellow inmates, Taylor's choice to avoid medication arose from her attempt to rectify her lack of information from prison officials with what she failed to recognize at the time as misinformation from other inmates.

"Everyone's getting the same stuff [medication] for millions of different reasons, and they're claiming that it's helping, but it's not. So I feel like, for myself, the medication and treatment I was getting was ineffective. It either made something worse or wasn't working at all, so I stopped it altogether. I don't think I got the proper treatment while inside" (**Jennifer**).

"They did send me to a psychiatric person a couple times on a couple different occasions, but I was told going there that if I took any kind of psych meds that I wouldn't be able to be there and do the drug treatment and then get out and get my felonies expunged. So in my mind, even though I had been on meds for years, antidepressants, I refused to take them. I just tried to pretend like I was fine. That coupled with the impact of being

5. Correctional Critical Case Management System (CCCMS) or Triple CMS housing is for inmates displaying borderline mental illness that requires medication and counseling but does not warrant placement in a mental facility or psychiatric services environment (CDCR, 2019).

there was not good for me" (**Taylor**).

Beyond mental health issues, the women interviewed more commonly endured psychological hardship while incarcerated. The issue most often cited by interviewees was a general lack of intimacy and care stemming from the prisons' policies and structure and staff behavior:

"Naturally, we are nurturers. Emotional beings who love to give love and receive love. That's just who we are. And in a prison setting, you don't get that. You don't get it from the correctional officers. You don't get that from staff" (**Jennifer**).

"Yeah [prison was isolating], and I think that's why I cried the whole time. I was so depressed they kept thinking I was gonna commit suicide or something. It was hard" (**Taylor**).

"During visiting we're so absent of touch from our loved ones. If you were lucky enough to have a visit, you're only allowed to hug at the beginning of the visit and after [it's over]. Sometimes you can get staff in visiting that's a little more lenient or tolerant in there. But I think that was not okay at all because your family is coming to see you, and they're being punished" (**Leslie**).

For Leslie, the limitations on physical contact placed on inmates felt as though they were intended to punish her as well as her family. Much like instances of loss of familial contact, deprivations of physical intimacy had negative ramifications for the family members seeking to maintain relationships with their incarcerated loved ones, expanding the punishing reach of the carceral system.

Physical Health and Care

Similar to the mental health care system, the interviewee's found the physical health care system in prison to be untrustworthy. The women's reasons for their lack of trust in the system ranged from long wait times for care to absurd medical treatment recommendations:

"I've had knee issues. I've had knee surgery. I have another knee surgery pending, but it wasn't a priority there. It took almost two years to get a knee surgery when they [prison staff] knew I had a torn meniscus and a torn ACL because it wasn't a priority. My left one is still damaged today" (**Leslie**).

"The dentists sucked. They don't want to fix your teeth, they just want to pull them all out of your head. 'Oh, you got a cavity? Pull it out. Well, your tooth is cracked a little bit. Pull it out.' Like, wait a minute. If I let you take out a tooth every year, I leave with none. I came in with them all, and I'm leaving with them all" (**Kim**).

"They tried to give me a hysterectomy at nineteen. You know they didn't thank God, but if I had been like other folks who didn't have family to call, who would've known what I would've did. Because they said I needed it. This was 2007. Dr. Heinrich. They even had a quote from him saying he was giving women hysterectomies to break the cycle of mothers and daughters coming into institutions" (**Jennifer**).

While instances of mishandling of physical care were not as salient for the interviewees as the prison's failures to provide proper mental health care, the experiences they described were far more severe and, in some cases, life threatening than those in the latter area. At the root of these medical emergencies for the women interviewed was a lack of information exchange on the part of medical staff. Both Taylor and Jennifer, for example,

were suggested or given treatments without receiving any substantive information about them:

"They tried to put me back on them [birth control pills] and he [Dr. Heinrich] told me 'Well I put you on them, but you're going to continue having these issues, so you should just take out your whole uterus because you're gonna continue to have this problem.' And I was like 'What, you're not telling me what the problem is. You're just continuing to say I have one.' So I called my grandma...and prayed to God that nothing big ever happened to me because I just didn't trust those people" (**Jennifer**).[6]

"Well at one point right before I got out, they transferred me to [a hospital], and I was in ICU for a week, and I was handcuffed to this bed in the cardiac unit. They wouldn't tell me what was wrong. So they had a prison guard with me 24/7 right there. I wasn't allowed to notify any of my family" (**Taylor**).

For both Jennifer and Taylor, their families played a role in their experience of maltreatment on the part of prison medical staff. Jennifer's family was instrumental in preventing her from being pushed to undergo a treatment that she did not need. Given the fact that many incarcerated women have strained relationships with their family members, it should come as no surprise that Dr. Heinrich performed many unnecessary and dangerous hysterectomies on female inmates who did not need them before he was removed from the Valley State Prison staff. Taylor, in contrast, was denied the ability to contact her family about what had happened to her due to prison rules regarding confidentiality. Had Taylor died in Intensive Care, her family would never have known what really occurred in that hospital.

As a whole, the interviewees reported a prison medical staff that exhibited a complete lack of care for and prioritization

6. Dr. Heinrich has since been barred form future prison work.

of female inmates' needs. When medical care was provided, it was typically of poor quality or needlessly delayed:

"While I was incarcerated, I ended up having a hysterectomy that went really really bad, and I still have a lot of scarring and things from that because it got infected. They [prison medical staff] didn't do a really good job with the surgery" (**Leslie**).

"The water when it hit me in the shower I just screamed and fell to the ground because my nervous system was so shot that the water hurt my whole body. And they [prison staff] didn't do anything...They were about to take me to medical, and that's where they have all the life-saving things coming in to keep you here. But this could have been prevented when I told them I was sick yesterday. And that's just my stories. I've heard of women experiencing worse" (**Jennifer**).

Prior to being transferred, Kate was told by medical staff that they discovered a tumor in her leg. The prison she was transferring from refused to treat it, as they wanted it to be handled in the prison to which she would be transferred. As a result of this choice, Kate underwent several complications, which nearly led to her death. Kate was eventually treated in the prison she transferred to and ultimately recovered in part because a prison lockdown prevented her from being able to move and gave her time to rest her leg when she otherwise would not have been able.

Leslie, Jennifer, and Kate's lives were all put at risk because prison medical staff did not take their needs and complaints seriously. As inmates at the time, they were not prioritized in the way that they would have been on the outside, an unacceptable discrepancy in treatment on the part of the prisons and their staff.

Exclusion From and Scarcity of Programming

Access to programming was the final source of informal punishment for the women interviewed. For the women serving life, and particularly for the woman serving life without parole, lack of access to programming was often the result of outright exclusion. The women described a mentality on the part of the prison administrators that prioritized women serving shorter sentences for jobs and programs because they were anticipated to take the skills they acquired out into the world. Lifers and LWOPs (Life Without Parole), by contrast, were denied access because they "[didn't] know if [they were] going home" or because they were "going to die in prison." These comments and decisions coming from the prison reflect an attitude that promotes the hierarchical prioritization of human lives—one in which the status of Lifers and LWOPs places them at the very bottom:

"LWOP is denied damn near everything under the sun. They can't work in PIA. They can work IVL, but they only hire so many of them. Only certain ones can take college courses. There's so many things they can't do. Once they're commuted, some of them have the misunderstanding that they can go, but no, when they're commuted they're commuted to 25 to life. Now they have to go through the struggle I went through" (**Kim**).

"Sometimes as a Lifer, you're excluded from various programs because they're like 'Oh you don't know if you're going home,' so I think the reentry component [is important]" (**Leslie**).

"It's not that you're deprived of it [as a non-Lifer]. It's that it's hard to get into. I managed to get into the college program, but because I got the program I had to do it independently...They limit the amount of Lifers. You have certain jobs Lifers cannot

because in their [the prison officials'] mind, you're never getting out, and you're taking up space from somebody who can come in there and get that skill and go home with it...Half of the women, they don't take the skill home with them. They're there for the money" (**Kim**).

Kate described losing her job because of an update in the prison practices that led to the exclusion of LWOPs. In addition to losing her job, Kate was denied access to college courses because of her status. She was told that she did not deserve to take a seat from a woman serving a shorter sentence because, as an LWOP, she would die in prison. College courses, she was told, were meant for women who could use them outside of prison. At the time, Kate had already acquired four associates' degrees and showed her commitment to getting an education. A commitment to and interest in education, however, did not appear to be the standard the prison had set for approving its applicants.

For the Lifers and women serving shorter sentences, access to programming was not much better than for LWOPs, owing to a scarcity of programs and high demand from inmates. Interviewees described long wait times and, in some instances, a complete lack of programming. When there were gaps in available programming, it was not the prison staff but rather the female inmates who developed the resources and curriculum needed to make new programs available. The women supported one another because they were not getting support from the prison:

"I had to wait two years to get into college courses. When it came to groups it was either we had to get together to write to other organizations out in the community asking for curriculum" (**Ashley**).

"They don't offer domestic violence classes or self-improvement workshops. It's actually the prisoners who organize and search for curriculum in order to teach and better understand what they're going through" (**Ashley**).

"We had reentry classes, and for some reason, they cut the budget" (**Leslie**).

"When it comes to programming, the women's programs look nothing like the men. I haven't really found out why is that. Why is it that women aren't given that much attention?" (**Ashley**).

For the women serving long sentences, budget cuts to reentry programming were especially harmful. The general prison attitude of treating Lifers as though they are never leaving the prison left many unprepared for the life that awaited them on the outside upon their release. Leslie, for example, entered prison before the rise of the Internet and was released years later into a world that was dependent on technology. She felt like "a ghost in the machine." She essentially had not existed during the years that she was incarcerated. She struggled with preparing for job interviews, explaining the employment gaps, navigating technology, managing her finances, building credit, and understanding how language had evolved (Leslie). Leslie's struggles reflect a failure on the part of the prisons to give the proper amount of attention to the inmates that it is purporting to rehabilitate.

"Doing Time"

Examining the way in which the women interviewed "did their time" while incarcerated is key to understanding how they oriented to their punishment. At the core of all the women's approach to doing their time were attempts to avoid

being noticed, keep up with and follow the rules, and survive life on the inside. It should be noted that a common experience for the women interviewed was being transferred to a different prison during the course of their sentence. While it is not uncommon for men to be transferred as well, the circumstances of the women's transfers were unique, as they were brought about by a change in the status of the facilities in which they were residing. Specifically, five out of the seven women reported having to transfer from a prison because it was being shut down to female inmates and opened up instead to men, and in one instance, juveniles. These shut downs were symptomatic of the larger issue of male inmates gaining space at the expense of their female counterparts. As more women are housed farther away from their families in appallingly cramped cells in the dwindling amount of women's prisons, the number of men's facilities increases. With each transfer, the women were forced to adjust to new prison rules and practices and quickly familiarize themselves with the behaviors of the prison staff if they wished to survive while doing their time.

"I changed completely in prison. What I changed is, well, I was in a cell for months, so I had a Holy Bible, and I would sound out words and eventually, I could string several together. Before you knew it, I could read. I had taught myself to read in jail and prison. From there, I asked for GED classes, and I passed them somehow, and I graduated. That, just educating myself and being clean from drugs and knowing that I wanted to change and that that was my one opportunity to do so, I think I just embraced it and I changed everything" (**Taylor**).[7]

"It was weird because when you first get there [prison], time doesn't settle into you until you start watching people leave, and you realize I'm here for life. I'm not going to see this person

7. It should be noted that Taylor attributed her transformation not to actions on the part of the prison but rather to her personal drive and conviction to change in the face of her incarceration.

again. You try not to have a hopeless perspective on the situation. You pray. You read your Bible" (**Kim**).

"You have to avoid just as much trouble in there as you do out here, if not more."

"I basically immersed myself in self-help groups and college. I remember there was a group of us, and we would just [think] in our minds, we're really in college, and we're away at school. Just trying to look at it through a different lens than what it really was. That helped me" (**Ashley**).

"For me, prison was a form of distortion. It kind of tricked your mind into thinking things were okay, and they weren't...Or maybe I do deserve this because of what happened. It teaches you that you're nothing, and I always had to hold on to the fact that I am somebody. My grandmother didn't raise a nobody. I just made a mistake, and a lot of us make mistakes every day" (**Jennifer**).

"[To survive, you needed] the right mind frame, and it seemed like as soon as I got there, that mindset came on. Like a little wind up doll, as long as I'm here, just gotta get up and go on with my day because I'd rather stay in my changed mind" (**Sarah**).

"I think in my growing up and looking for acceptance, fitting in, I found a way to blend in. I came to a crossroads in my life of ok, I'm going to be here. What can I do to address some of the things I've never addressed in my life? How can I be a better, healed woman when I get the opportunity to walk out of this place? So in some ways, prison saved me, but it wasn't because I had to. I made the choice to work on myself" (**Leslie**).

Social Disadvantages

Incarcerated women are some of the most disadvantaged Americans with respect to race, class, and gender (Bradley & Davino; Covington & Bloom; Ellis; Owen; Rowe). Female prisoners are disproportionately women of color in their early to mid-30s; they tend to be poor; they come from fragmented families that include other family members involved in the criminal justice system; and they tend to be survivors of physical and/or sexual abuse as children and adults. Typically, female prisoners in the United States are individuals with significant substance abuse problems; individuals with multiple physical and mental health problems; and individuals with a high school diploma or GED but limited vocational training and sporadic work histories. They also tend to be unmarried mothers of minor children (Kruttschnitt & Gartner; Owen; Rowe; Zaitzow & Thomas). These differences in identification have been found to result in female offenders differing from their male counterparts regarding personal histories and pathways to crime. This study sought to identify this connection between the interviewees' social disadvantages and their paths to prison. The key social disadvantages focused on in this study were family issues, surviving sexual or physical abuse, substance abuse problems, physical health problems, mental health problems, and motherhood. The first three disadvantages will be examined individually followed by a note about intersectionality.

Table 3. Social Disadvantages of Study Sample

	Study Sample	
	n	%
Total	7	100
Social Disadvantage		
Family Issues	6	85.71
Survivor	4	57.14
Substance Abuse	2	28.57
Physical Health Problem	3	42.86
Mental Health Problem	5	71.43
Mother	4	57.14

Family Issues

"Family issues," for the purposes of this study, refers to women coming from fragmented families or families that include family members involved in the criminal justice system. Several women connected the crimes for which they were convicted to toxic and unstable home environments, which were often rife with crime. "We weren't raised in a home, we were raised in a house" (Sarah). This distinction appeared to connect with a number of the interviewees, as they described houses filled with violence, drugs, and turmoil:

"I grew up in a violent household, and my basic instinct was to protect my brothers because my birth mother was very abusive...There was violence in every way a person could endure violence in that home. I think it laid the foundation for codependency, future toxic relationships, [and] not having self-worth...That pattern of violence, even though it felt wrong, sometimes as I started to date, some attention was better than no attention, so I accepted violence in my life...I ended up married. Have two children. It was a very violent relationship" (**Leslie**).

"I was a drug dealer. I tried to have a conscience, but I didn't. I survived off of other people...I gave them what they needed to get what I needed without thinking about how that affected the next human being in front of me or behind me, so that's a parasite. It's an organism that lives off of and feeds off of something else for survival, and that's what I did. But you have to understand that that's all I knew since I was 11 years old...That was because there was some issues between me and my mother, and I had to survive on the streets. We were homeless for close to three years. It wasn't her fault. There were a lot of things going on with her that I wasn't aware of as a child" (**Kim**).

"My mother had guardianship of my son, and I was trying to get visitation to see him. There was already an existing tension with my family and the sentence became the tool to get what they wanted" (**Ashley**).

"I grew up in foster care. My parents were addicts. My mom was murdered [when I was] 21. When she was murdered I really went off the deep end. I started injecting meth. I had learned crime very young from my parents, so that's all I knew...I didn't know how to read or write, and I never went to a day of high school. I went in and out of jail, and then finally at 28 was my last arrest, the arrest that sent me to prison" (**Taylor**).

"Well, the main reason why I'd do drugs was because I didn't have a loving childhood, but at the time and the place I was able to just put that in the back burner and do my time. I didn't let anything intercept with my frame of mind that you have to have when you're locked up" (**Sarah**).

Kate had the unique experience of serving time in the same prison as her mother, who had exposed Kate to prison culture during their family visits. However, the relationship between the two grew strained, and by the time Kate entered the same prison as her mother, she had been shut out by her. Kate's mother, like many of the women interviewed, coped with her sentence by isolating herself. In this instance, this meant that while Kate and her mother served time together, they did not spend time together on the inside.

58% of mothers in prison reported having a family member who had also been incarcerated, outnumbering the 49% of reported fathers (Glaze & Maruschak 7).

Survivor

Approximately six in ten women in State prisons report having experienced physical or sexual abuse in the past (Greenfeld & Snell 1). Some of the women interviewed reported enduring domestic violence from violent husbands and abuse from their parents as children. These women directly connected their histories of abuse to their ultimate prison sentence. Three of the women interviewed were incarcerated for crimes committed by the men in their lives:

"I came to serve time in prison basically for surviving domestic violence. I was married to a very abusive man, and I did not want to be in that relationship anymore, but I didn't have the tools or support to leave that relationship" (**Ashley**).

Kate's husband at the time of her sentencing had had a long history of being verbally abusive to her, but lacking the proper resources, Kate had a difficult time leaving the violent household. When her husband at the time learned of her plans to leave him, he turned physically abusive. In an attempt to harm Kate further, her husband murdered one of Kate's loved ones and attempted to take her life as well. Both he and Kate were arrested and sentenced following the incident. It was a conflict between two of the violent men in Leslie's life that ultimately resulted in her and one of those men being charged and sentenced.

Substance Abuse

Approximately half of female offenders incarcerated in State prisons had been using alcohol, drugs, or both at the time of the crime for which they were sentenced. Among these female offenders, drug use at the time of the offense was more frequently reported than alcohol use, a different pattern from that of male offenders in State prisons (Greenfeld & Snell 8).

Two of the women interviewed were incarcerated as a result of their substance abuse. Both women linked their addiction to toxic childhood environments. During their interviews, they described the dangers and intensity of their addictions at the time of their arrests:

"I was an addict, and until I got the tools and I turned my mindset to not needing that drug, nothing could rehabilitate me because I had that drug wall up. That's all my focus was. It wasn't until I surrendered and I dealt with my inner, core issues that kept me messing up that I stopped. I faced all that baggage I carried that I didn't want to let go of. Fear and shame and all that shit...Supporting my drug habit [was what got me sentenced to prison]. I don't believe I would have done any time if it wasn't for it" (**Sarah**).

"I would inject meth, and I would cry 'Please God don't let me die,' but I just couldn't stop" (**Taylor)**.

"I fought [in court] saying that I wouldn't have been doing crime if I weren't a drug addict, so I got civil addict commit[8] *and I got a narcotic number"* (**Taylor**).

Discussion

"Punishment is not something that is done—it is something that is done to people and experienced by people" (Sexton, "Penal Gaze" 2). To understand properly how to address and reduce the harms inflicted on women during their incarceration, it is critical to speak to the women themselves. Many formerly incarcerated women, including those I was fortunate enough to interview, are leading reform

8. The Civil Addict Program is a two-phase program made up of an institutional phase and an outpatient phase. Those committed under the program serve their time in the California Rehabilitation Center during the first phase. When participants are released to outpatient status or civil addict parole, the program requires strict supervision and mandatory drug testing. If an individual is found to have reverted to using narcotics, they are returned to inpatient treatment (CDCR).

efforts that are rooted in their carceral experiences.

If the prison truly seeks to rehabilitate the women that enter its doors rather than furthering the trauma that many have endured on their path to incarceration, then it must empower women to make conscious choices about their rehabilitation and support them in pursuing their transformative goals both inside and outside the prison walls.

Beyond this study, it is important to ask broader questions about what the female prison system in California is intended to accomplish. Can the goals of punishment be achieved without the modern prison? Are the unintended pains of incarceration too great to justify the efficacy of the total institution for women? Can their rehabilitation better occur outside prison walls? The answers to these questions, while not within the scope of this study, merit further inquiry if true, enduring reform is to be achieved.

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