# Prison as Administrative Institutions

# Learning Objectives for this Module

## Learn why prisons are administrative institutions, not criminal law institutions.

## Learn why liberty itself is the most important liberty interest.

## Learn why there is a delicate balance between giving prisoners too many rights and only the bare constitutional minimum.

## Learn why prison litigation is both very important and mostly frivolous.

# Reading Assignment

## Chapter 4, 118-120

# Issues to be addressed

## The LA Prison Blues

### [**The Cost of Prisons**](http://biotech.law.lsu.edu/Courses/adlaw/2014s/price-of-prisons-louisiana-fact-sheet.pdf)

### [**LA Prison Stats**](http://nicic.gov/StateStats/?st=LA) **-** [**Murder Rates**](http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state) **–** [**If NO was a Country**](http://www.theatlanticcities.com/politics/2013/01/gun-violence-us-cities-compared-deadliest-nations-world/4412/)

### Why might the murder rates be higher than the general crime rate?

### What do you suspect is the basis for such low per prisoner cost?

### How does the dysfunctional public defender system contribute to the incarnation rate?

### Not getting out is part of the reason for the high incarceration rate.

#### Many are old and no threat to the public, but they cannot be released

#### Costs finally have the governor talking about this.

## Prisons

### Are prisons part of the criminal law system or the administrative law system?

#### What system gets you in?

#### What system governs you once you are inside, except for crimes?

#### What system determines when you get out based on things that happen in the prison.

### Why have prison populations doubled and tripled relative to the population over the past 30 years?

### Learning to think like an economist:

#### Who benefits from tough laws, esp. drug laws?

#### Who benefits from prisons?

#### What is the tradeoff for the increased prison budgets?

## State Prison Litigation: 42 USC 1983

### State prison cases are mostly filed under 42 USC 1983, alleging that the state deprived the prisoners of their civil rights.

#### Due process claims, such as Sandin

#### "Cruel and unusual punishment claims" which generally deal with conditions of confinement or medical care.

#### Cases against Federal prisons are brought under Bivens

### Prison Litigation Reform Act of 1995 requires exhaustion of remedies in prison litigation, even if the administrative system cannot provide the requested remedy, if the system can provide some remedy

## Prisoners as Litigants

### Successful litigation is mostly by NGOs - ACLU, prison rights organizations, AIDS organizations

### Individual prisoners

#### Do prisoners have a lot to do with their time?

#### Do most prisoners have sophisticated legal talents?

#### Do prisoners like to give the prison grief?

#### What is most prisoner litigation going to look like?

## Due Process Claims

### Due process claims require the plaintiff to show that he had a liberty interest in the proceeding.

### Even if the court finds a liberty interest, that just lets the prisoner get a hearing or get into court.

### Courts generally defer to the prison on matters of discipline and security

## Good Time Credits and Parole to Reduce Time Served

### Are these constitutionally required?

#### Why have them?

### The Sentencing Reform Act of 1984 eliminated parole and reduced good time credits in the federal system

#### Combined with the expansion of federal crimes, this has lead to an explosion of federal prisoners

#### Same in many states

## Cases that Affect Time Served

### Why would procedures that affect release dates get the most legal protection?

### Return to prison for a parole violation (Gagnon)

#### Should the prisoner get a hearing?

#### Why - what might be contested?

### Decisions reducing good time credits or affecting parole (Morrissey/Wolff)

#### How do these look like the factors at issue in Goldberg, as compared to Mathews?

## Sandin v Conner, 515 U.S. 472 (1995)

### Prisoner got 30 days in solitary as punishment.

#### Is this cruel and unusual? (remember, it has to be both)

### Is he entitled to a hearing?

#### Only when discipline "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" is due process implicated.

### The Court rejected a claim that punishment of solitary confinement for 30 days was enough to trigger due process requirements.

#### What do many countries think of solitary confinement?

## Wilkinson v. Austin, 125 S.Ct. 2384 (2005)

### The Court concluded that indefinite placement in a "supermax" prison together with a disqualification from parole was enough to trigger due process requirements.

### What does it mean to be in a supermax prison?

#### Why do we put inmates in them?

#### Wonder if the supermax mattered at all, or if it was really about loss of the chance at parole that drove the result?

### Does a hearing before the prison officials really mean much?

## Changes in the nature of the confinement.

### A prisoner is transferred to a mental hospital for mandatory behavioral treatment that was not part of his original sentence.

#### What is the argument for his getting a hearing?

#### Vitek v. Jones, 445 U.S. 480 (1980)

## What rights does a prisoner retain?

### Some freedom to exercise religion

### Some limited right to communicate with the outside

### A little bit of free speech

### Some bodily integrity, at least in the area of medical care

### Freedom from beatings and the like through FTCA/Bivens, 42 USC 1983, and state laws.

## Trade-offs in Prison Regulations

### Assume you have been hired to develop a new set of prison regulations for Angola.

### What are the tradeoffs you must deal with?

### What happens if prisoners have lots of rights?

### What if prisoners have no rights?

### Do more detailed regulations increase or reduce prison discretion?

#### Increase or reduce conflicts over rules?

# Evaluation Questions

## What rights does a prisoner retain and why should we care?

### When does prison disciple trigger a hearing?

### What is the most important consideration in whether the prisoner gets a hearing?

### Assume you have been hired to develop a new set of prison regulations for Angola.

#### What are the tradeoffs you must deal with?

#### What happens if prisoners have lots of rights?

#### What is the risk if prisoners have no rights?

## Do we ever have to let you go?

### After a prisoner is convicted and sentenced, the legislature passes a law that allows the prison to keep the prisoner incarcerated after he serves his sentence if the state determines that he is still a danger to the public.

#### What sort of detention would this be, i.e., what would you analogize to?

#### What sort of process will be necessary under Mathews?