

# U.S. Prison Seminaries: Structural Charity, Religious Establishment, and Neoliberal Corrections

The Prison Journal  
2019, Vol. 99(2) 150–171  
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DOI: 10.1177/0032885519825490  
journals.sagepub.com/home/tpj



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## Abstract

Using archival and site-based research, this article explores operational practices at six U.S. prison seminary programs regarding concepts of religious establishment. Further highlighted is a shift toward faith-based volunteerism as a “structural charity” in correctional budgeting. While religious programs offer powerfully transformative access to social capital for many inmates, the recent insertion of Christian “seminaries” into U.S. prisons arguably fosters religious establishment in four key areas: a lack of state neutrality toward religion, excessive state entanglement with religious service providers, inadequate solicitation of alternative programming, and a de facto measure of coercion in delivery of services.

## Keywords

prison seminaries, Establishment Clause, religion in prison

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## Introduction: Religious Philanthropy as Structural Charity in U.S. Corrections

At stake in this new configuration of welfare, is something rather different from the simple privatization of welfare threatened by long-standing libertarian critics. What we have witnessed over the last 10 to 15 years is not a return to private charity as it existed before the New Deal, but rather the implementation of a form of *structural charity*—structural in the sense that it is abetted by the state, but charitable in the sense that it retains the discretionary, unpredictable and ad-hoc nature of private philanthropy. (Emphasis in original; Cooper, 2015, p. 65)

Faith-based volunteers have become an important staple of correctional services in the United States, especially among jurisdictions striving to “shrink government” through expanded privatization and direct use of volunteer service organizations (Hallett, 2006; Hannah-Moffat, 2000; Willison, Brazzell, & King, 2010; Ward, 2006). As under-resourced prisons increasingly rely upon faith-based volunteerism for providing services to inmates, research on the constitutionality of faith-based programming has not kept pace with the full range of emerging programs (Kemp, 2007). Due to widespread reliance by corrections officials upon faith-based volunteers for delivering cost-effective services to prisoners and ex-offenders, religious volunteers increasingly find themselves to be the sole resource available for inmates (Erzen, 2017; Hackworth, 2012; Sullivan, 2009). Religious volunteers, long concerned about the deleterious and neglectful state of prisons, find themselves in legal jeopardy for violating “establishment” strictures under both the U.S. Constitution and individual state constitutions (Hallett & Bookstaver, 2017; Sullivan, 2009). Drawing from precedent established in the Charitable Choice provisions enacted under President Clinton, legislation for faith-based correctional programming explicitly identifies the fiscal and human capital resources available from religious volunteer organizations as a proxy resource for effectuating reductions in correctional spending (Boden, 2006; Dagan & Teles, 2012, 2014; Fields, 2005).

While past research has explored the constitutionality of immersive programs such as faith-based dormitories, none has yet systematically evaluated the constitutionality of emergent “prison seminary” programs.<sup>1</sup> In what is fast becoming a nationwide movement, prison seminary programs are now operational or currently being implemented in 17 states. As part of a larger research agenda evaluating the rehabilitative impact of Christian seminaries planted in U.S. prisons, this article offers the first systematic exploration of issues concerning “religious establishment” in multiple U.S. prison seminaries (Duwe, Hallett, Hays, Jang, & Johnson, 2015; Hallett,

Hays, Johnson, Jang, & Duwe, 2016, 2017; Jang, Johnson, Hays, Hallett, & Duwe, 2017). Previous litigation on immersive faith-based correctional programming has resulted in the closure religious programs in U.S. prisons on constitutional grounds, despite robust evidence of their programmatic effectiveness (see Sullivan, 2009).<sup>2</sup>

## **Method**

Using both on-site and archival research exploring operational practices at six U.S. prison seminaries, this article explores concepts of “religious establishment” across four key areas of program delivery: (a) direct state entanglement with religious service providers, (b) a lack of state neutrality toward religion, (c) inadequate solicitation of alternative programming, and (d) a de facto measure of coercion in delivery of services. On-site research was conducted at both Louisiana State Penitentiary and Darrington Unit Correctional Institution in Texas. Four additional prison seminary program practices were evaluated through examination of published operational policies.<sup>3</sup>

## **Neoliberalism and Faith-Based Corrections**

Efforts to reduce taxpayer spending on corrections have featured expanded use of private for-profit corporations as well as increased use of voluntary sector organizations, particularly “faith-based” programming seeking offenders’ self-transformation (Hallett, 2006). In an effort to end the “government monopoly” on delivery of services in criminal justice, a new level of both “structural charity” and “market competition” is an increasingly commonplace feature of correctional budgeting (see Boden, 2006; Hackworth, 2012; Hannah-Moffat, 2000, pp. 45-46). The strategic vesting of charitable resources for delivery of services in American prisons has been used to justify reduced spending (Cooper, 2015, p. 65; Hallett, 2006). However, in what Martha Boden (2006) calls the danger of “compassion inaction,” by expanding reliance upon religious volunteers, governmental support for meeting the needs of prisoners and prisons as a whole becomes weakened.

## **Angola: The Prototype Prison Seminary**

The Establishment Clause of the First Amendment both limits and protects the practice of religion in American prisons (Branham, 2004, 2011). While inmates and ex-offenders under state supervision retain a constitutionally protected right to practice religion, correctional administrators are bound by constitutional restrictions regarding how they both accommodate

inmates' religious preferences and how they deploy religious resources. That is, while prison administrators are required to accommodate diverse religious practices, they must not in the process of that accommodation, say, privilege Christianity over Islam or Judaism, for example, nor in any way be seen to be promoting a religious orthodoxy. In its efforts to accommodate inmates' religious predilections, the state must retain *neutrality* in its relationship to religion itself (see Sullivan, 2009). Successfully balancing the constitutional requirements of religious liberty in penal institutions is, needless to say, challenging for all concerned. The planting of privately sponsored Christian seminaries inside U.S. prisons complicates issues of religious establishment all the more (Bergeron, 2011).

Louisiana State Penitentiary (hereafter "Angola"), located in Angola, Louisiana, is America's largest maximum-security prison, housing over 6,300 inmates in five separate complexes spread over 18,000 acres of a working prison farm. Cellblock and dormitory units are still called "camps" at Angola, a remnant of the traditional assignment of slaves to "work camps" across various locations of the property, a former slave plantation (Carleton, 1971, p. 89). The property first became known as "Angola" because it was this region of Africa that supplied its slaves. The name stuck. Roughly 75% of inmates currently serving time at Angola are serving life sentences (Louisiana Department of Corrections, 2015). A "life sentence" in Louisiana currently means "natural life," expiring only upon the inmate's death (Nellis, 2010, p. 28). The average sentence for "non-lifers" at Angola in 2014, however, was 92.7 years. As of this writing (Spring 2017), roughly 90% of the inmates sentenced to Angola will die there (see Hallett et al., 2016, 2017).

In the aftermath of the federal government's revocation of Pell Grant eligibility for convicted felons in 1994, Angola Warden Burl Cain feared that elimination of this collegiate educational resource was uniquely harmful to his prison. The prison had long been one of the most violent in America and still retains the distinction of being America's toughest prison in terms of longest sentences. Collegiate education programs are among the few incentives for good behavior available to Angola's prisoners. Fearing an increase in violence, Cain reached out to New Orleans Baptist Theological Seminary (NOBTS) administrators to explore the possibility of their offering some minimal collegiate-level coursework as a gift to the prison.

Deeply embedded in its history, religious practice at Angola dates to its earliest days as a slave plantation. Recent interviews of Angola's oldest inmates and staff, a few of whom have spent the majority of their long lives at the prison after first arriving around 1950, explained inmate worship at the prison dates to convict leasing and before. One inmate, who first arrived at

Angola in 1957—and who is still there—described “old timers worshipping and praying when I got here.” Another long-serving warden, himself born and raised on “the farm,” confirmed “religion has always been at Angola” (see Hallett et al., 2016, pp. 60-63).

As NOBTS faculty soon learned, Angola’s informal inmate religious communities were expanded into formal congregations in the aftermath of a 1974 federal consent decree finding conditions at the prison famously “shocked the conscience of any right-thinking person.” After the federal intervention, religious practice was identified as one of the few resources immediately available to inmates, with prisoners thereafter being encouraged to turn what had been described as informal “inmate-led religious clubs” into active “churches.” And so they did, forming Baptist, Pentecostal, Catholic, Methodist, and other Christian worship communities—collectively referred to today as the “Angola Church.” Several inmate-built churches and even two Catholic chapels exist today on the grounds of the prison (Hallett et al., 2016). Inmate-led churches provided opportunities for inmate leadership and autonomy in the aftermath of a period of well-documented prison neglect (Rideau & Sinclair, 1985).

Overcoming initial reservations and after learning about Angola’s inmate churches, NOBTS administrators concluded that providing educational services to the prison could fall within their mission. After first offering a few classes, NOBTS soon planted a fully functioning Christian seminary on the grounds of Angola—recruiting inmate students directly from Angola’s inmate population and graduating trained ministers for its surprisingly autonomous inmate-run churches of various denominations (Hallett et al., 2016). At its own cost, NOBTS has run the program tuition-free for Angola inmates since 1995. Priding themselves on the “direct overlap” between Angola’s seminary program and that offered by NOBTS in the free world, graduates of Angola’s prison seminary go on to lead congregations at the prison just as they do on the outside. With training in grief counseling, conflict management, expository preaching, and Biblical languages, Angola’s Inmate Ministers are deployed throughout the prison—serving as not only as church leaders, but also bi-vocational literacy coaches, grief counselors, hospice orderlies, funeral directors at the prison cemetery, chaplain’s assistants, and seminary tutors. Governed by a personalist ethic of what they call “Relationship Theology,” Angola’s Inmate Ministers strive to serve both staff and their fellow inmates through focused attention to interpersonal relationships.

While numerous programs around the United States currently bill themselves (after Angola) as “prison seminaries,” Angola currently offers the only authentic “*seminary*” in the sense that it is the only program that graduates credentialed ministers into functioning churches—all with unique polities, constitutions, doctrinal affiliations, and charters. At

present, 17 states have active “prison seminary” programs in operation or development: Alabama, Arkansas, California, Georgia, Mississippi, New Mexico, New York, Ohio, North Carolina, South Carolina, West Virginia, Florida, Illinois, Michigan, Louisiana, Texas, and Wisconsin. Upon graduation, Angola’s inmate ministers are granted prison-issued ID cards featuring the Louisiana state seal and, by possession of such identification, traverse the grounds of Angola to do assigned ministerial work (see Hallett et al., 2016, 2017).

Over the space of the past 20 years, approximately 30 graduates of Angola’s Christian seminary have also been sent to other Louisiana prisons as well, serving as self-described “missionaries” from Angola, leading inmate worship and serving as chaplain’s orderlies. Importantly, the position of “inmate minister” at Angola long predates the NOBTS seminary, wherein it had become commonplace for correctional staff to rely upon the prison’s unique inmate religious culture, “assigning inmate minister by memorandum” on an ad hoc basis as needed for serving particular inmates in distress. As with inmates in the other prison seminary programs examined here, Angola’s seminary graduates often find themselves to be among the most educated individuals in their prisons—with more than 60% of Angola corrections staff having only a high school or GED equivalency (with the majority of inmates themselves having less than that).

While civil libertarians and legal scholars have long questioned the constitutionality of prison-supported “inmate ministry” at Angola, the relative poverty and isolation of the prison left potential outside litigants reluctant to take legal action, deciding that leaving Angola’s religious practices unchallenged would be a lesser evil than to take this resource from the prisoners (see Bergeron, 2011; Childs, 2013). As such, as legal scholar Douglas Roy (2005) posits about correctional reliance upon faith-based programs:

While the state is not paying for these services, it has entangled itself in a dependent relationship with religious groups by providing them the audience and means to carry out their mission in exchange for relief from its duty to provide necessary correctional programming to prisoners. (p. 833).

According to the director of the Louisiana American Civil Liberties Union, the revocation of Pell Grant eligibility in 1994 left Angola structurally dependent upon the religious charity of NOBTS for continued access to higher education resources, leading her organization to ultimately conclude that litigating the constitutionality of Angola’s Christian seminary would be inhumane, rendering its inmates even more destitute than before.

“While the religious character of the education program at Angola troubles some, many see it as better than nothing,” Marjorie Esman, Executive Director of the ACLU in Louisiana, recently stated: “I think that what Burl Cain calls moral rehabilitation is, in his mind, religious doctrine, but a lot of good has come of it.... I think it’s unfortunate that the only college available is a Christian one, but the fact that a college is there at all is important.” (Childs, 2013, as cited in Hallett et al., 2016, p. 28)

## The Complexities of Religious Establishment in U.S. Prisons

The “establishment of religion” clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can it pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can it force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. Not tax in any amount, large or small can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.” (*Justice Hugo Black, Everson v. Board of Education, 1947*)

Within the confines of American prisons, administrators may, under certain circumstances, place limitations upon inmates’ religious practices, specifically those in which it is deemed “legitimate penological interests” are served (i.e., protecting safety). Administrators must still accommodate, however, a diverse range of religious practices including personal intermediaries from the outside, articles of faith such as prayer beads and sacred texts, as well as esoteric requests from practitioners of nonmainstream faiths. Given that resources for accommodating widely divergent religious practices are often limited, and given that a central dimension of religious worship is often *corporate* in nature, however, correctional administrations are frequently accused of having “endorsed” religion over nonreligion, of having “favored” one religion over another, or of having violated the constitutional rights of practitioners of “non-mainstream” faiths by “privileging” access to dominant religions (see Branham, 2008).

U.S. Supreme Court jurisprudence concerning the practice of faith in U.S. prisons offers wide latitude to prison administrators seeking to balance a priority concern for institutional safety with providing meaningful

worship opportunities for inmates—with often seemingly irreconcilable outcomes. While there are compelling governmental interests in prohibiting some practices associated with religious worship the U.S. Constitution sets limits upon how restrictions of faith may be imposed inside prisons. When worship is restricted, a two-pronged test is used to evaluate the religious liberty claims of inmates: the first involves demonstration of a compelling state interest to justify restriction of the religious practice and, second, an assessment of whether these efforts are the least restrictive means available for doing so (see Branham, 2004). Unless a compelling government interest can be demonstrated, prisons must not “unreasonably” interfere with or “substantially burden” an inmate’s right to free exercise of religion, particularly where there are “reasonable” means of accommodating them. In short, prison administrators must not be “arbitrary or irrational” when seeking to balance legitimate penological objectives with inmates’ religious freedom, while being mindful of the impact policies have on staff and other inmates.

## **Testing Religious Establishment and Free Exercise in American Prisons**

With regard to governance of religious faith in correctional settings, “what has proven to be an arduous struggle for the Court has culminated in the adoption of three different though overlapping Establishment Clause tests: the Lemon Test, the Endorsement Test, and the Coercion Test” (Branham, 2004, 301; also Cates, 2005, pp. 822-824).<sup>4</sup> This article applies criteria from each of these constitutional tests to specific elements of U.S. prison seminary programs, assessing practice in four key areas: a lack of state neutrality toward religion, excessive state entanglement with religious service providers, inadequate solicitation of alternative programming, and a de facto measure of coercion in delivery of services. In the Supreme Court case *Lemon v. Kurtzman*, 403 U.S. 602 (1971), three requirements for assessing religious establishment are frequently articulated as the “Lemon test”:<sup>5</sup>

1. The statute must have a secular legislative purpose (also known as the Purpose Prong)
2. The principal or primary effect of the statute must not advance nor inhibit religious practice (also known as the Effect Prong)
3. The statute must not result in an “excessive government entanglement” with religious affairs (also known as the Entanglement Prong)<sup>6</sup>

## Endorsement Test<sup>7</sup>

While in *Lemon* the Supreme Court established some preliminary boundaries for governmental engagement in religious activity, subsequent jurisprudence placed limitations upon the extent to which governmental authorities could seemingly “endorse” religious activity. In the *Endorsement test*, “actions that would be perceived by the reasonable observer as reflecting governmental endorsement of religion contravene the Establishment Clause” (Branham, 2004, p. 302). In short, according to this test, a government action is invalid if it creates a perception in the mind of a reasonable observer that the government is either endorsing or disapproving of religion. “At the heart of this test is a revulsion for state-created orthodoxy in religious matters,” particularly one that may positively or negatively be “relevant to a person’s standing in the political community” (Branham, 2004, p. 303, citing Justice Sandra Day O’Connor).

## Coercion Test

Finally, a subsequent elaboration of Establishment Clause jurisprudence occurred with the “coercion test.” In the context of litigation over administrator-led prayer in public schools, the coercion test “proscribes governmental compulsion to adhere to or disavow certain religious tenets or to engage in or refrain from engaging in certain religious practices” in what a reasonable observer may conclude is “state-created orthodoxy” of religion or nonreligion (Branham, 2004, p. 302). “Courts employing the coercion test analyze state action to determine whether it subtly or directly coerces individuals to participate in religious activity” (Fields, 2005, p. 558). While some have interpreted the coercion test as redundant to the intention of the Establishment Clause, coerciveness is a widely cited concern of critics of faith-based programs (see Anderson, 2007; Fields, 2005; Sullivan, 2009). Combined with the *Lemon* test and Justice O’Connor’s “endorsement or disapproval” criteria, the coercion test examines the presence of *undue pressure* in specific contexts to either participate or not in religious activity. Importantly, the jurisprudence surrounding “coerciveness” in Establishment Clause cases relies upon a contextual analysis of “all options available to the relevant actors” and actors making a “true private choice” to participate (or not) in religious activities (Cates, 2005, pp. 822-824; Fields, 2005, p. 560). Administrative inducements to openly pray at a school assembly, for example, have been interpreted by the U.S. Supreme Court as unduly coercive. A lack of freely available and equivalent alternative program options for U.S. inmates has also figured prominently in previous litigation (see Sullivan, 2009). In sum,

There are three ways in which faith-based prisons or prison units may unconstitutionally coerce inmates to participate in religious exercise: 1) offering inmates a safer environment; 2) offering participants better opportunity for parole; 3) offering inmates a much higher quality of life than available alternatives provide. If inmates lack a “genuine alternative choice” among relatively adequate substitutes, courts should hold that the faith-based prison unit violates the Establishment Clause. (Fields, 2005, p. 541)

## Religious Establishment and U.S. Prison Seminaries

Given that our previous research demonstrates the “immersive” character of prison seminaries is particularly intense and that such programs often require rigidly structured experiences of religion as a condition of completion, this article explores administrative practices at six U.S. prison seminary programs from the perspective of religious establishment (see Duwe et al., 2015; Hallett et al., 2016, 2017). Specifically, this article focuses on four potential problem areas of Establishment Clause jurisprudence relevant to the operation of Christian seminaries in U.S. prisons: (a) “Excessive entanglement” of state and religious stakeholders; (b) a lack of religious neutrality; (c) inadequate solicitation and development of alternative equivalent educational programs, offering only narrowly religious education opportunities for inmates; and (d) in limited cases, a *sui generis* level of *de facto* coercion resulting from profound differences in the material treatment of Christian seminary inmates versus prisoners in the general population.

All programs examined here offer tuition-free and privately funded collegiate education programs featuring religious course work, however, only two (Angola and Darrington) have requirements involving explicitly ministerial assignments after graduation. All programs reviewed here, however, also operate with varying degrees of additional administrative support from state departments of correction. Because Angola seminary graduates are placed directly into inmate-run “churches” and serve in explicitly pastoral roles after graduation, Angola’s seminary is the only one requiring a full academic minor in grief counseling and conflict management. New York Theological Seminary’s (NYTS) religious education program offered at Sing Sing Prison and founded in 1982 is the nation’s oldest self-described “prison seminary”—however, this program offers only a graduate “Master of Professional Studies” degree, featuring neither inmate-run churches nor an inmate minister program.<sup>8</sup> While students at Sing Sing and the additional programs may lead prayer in corporate settings, they are authorized to do so only as private individuals rather than as part of their prison-assigned religious duties.

## **“Excessive Entanglement” by State and Religious Stakeholders**

Constitutional law and corrections scholar Lynn Branham (2004) describes the intent of Establishment Clause tests developed in the aftermath of *Lemon* as “overlapping in scope” (p. 301). Taken as a whole, these tests involve concerns about the “primary effect” of governmental programs, the level or degree of “entanglement” between religious and governmental actors, and overt endorsements of religion by government agents that a “reasonable observer may interpret as an endorsement of religion” (Branham, 2004). This section examines levels of what might be construed as “entanglement” between state corrections leaders and religious stakeholders in U.S. prison seminary programs.

### **Primary Effect: “To Change the Culture”**

The “primary effect” sought by prison seminaries is frequently articulated as a desire to “change the culture of the prison,” albeit with no explicit nor standardized definition of what this “culture change” entails (see Hallett et al., 2016, p. 210). With varying degrees of specificity, seminary stakeholders seek individual-level “heart change” among inmates that will indirectly impact both inmates and released prisoners. At both Angola and Darrington Correctional Institution in Texas, respectively, the authors empirically documented lower disciplinary rates among both seminary students and graduates still inside the prisons—but not after release (Duwe et al., 2015; Jang et al., 2017).<sup>9</sup> At each of the remaining seminaries, while attributions of lower recidivism are frequently offered by proponents, this aspect of the impact of seminary programs has yet to be systematically evaluated. Finally, while seminary staff openly aspire to “win hearts for Jesus,” the official goal of prison seminary programs is “secular”; to lower recidivism and achieve more easily managed prisons, not to obtain religious conversion (see especially Duwe et al., 2015). In short, while the assumption is that religious conversion will result in “transformed prisoners” religious transformation achieved by prison seminaries is supplanted by the “secular” goals of lowered prison discipline and offender recidivism. Contrary to the expectations of some observers, finally, sponsors of prison seminaries frequently express hope that their work will help make their prisons less punitive (Erzen, 2017; Sullivan, 2009).<sup>10</sup>

### **Prison Seminary Recruitment and Application Process**

Another element of potential excessive entanglement between Christian seminary stakeholders and prison officials involves the recruitment and

application of inmates into prison seminary programs.<sup>11</sup> As a result of Iowa's *Inner Change Freedom Initiative* run by Prison Fellowship being declared unconstitutional in 2006, all of the prison seminary programs examined for this research nominally use no taxpayer funding for their operation.<sup>12</sup> Indirect prison support for things like transporting inmate missionaries, recruitment of seminary students, and facilitating recruitment of students, however, does take place. In all instances, inmate participation in both seminary programming is voluntary on their part.

Working in tandem with corrections officials, seminary staff, prison chaplains, senior prison leadership in state departments of corrections, and outside program sponsors collaboratively develop a carefully articulated selection process for populating seminary cohorts. Selection criteria involving the security classification of inmates eligible for participation in seminary programs is directed by senior prison staff; however, personal statements and related documents are generally evaluated only by seminary personnel. Recruitment generally takes place in a three-stage process: (a) chaplains and seminary personnel (often including current students) actively recruit new applicants from both the host prison as well as outside prisons; (b) senior corrections administrators cull through these applications to select an eligibility pool based on security considerations; (c) an admissions committee of seminary faculty select final cohort members. Only carefully vetted inmates get selected for enrollment in prison seminaries, surviving detailed interviews, intensive background checks, and after providing strong letters of recommendation. After volunteering for enrollment, obtaining supporting references (typically from a prison chaplain), and meeting the minimum educational requirements (high school diploma or sufficient Test of Basic Education literacy scores), the admissions process can take a year or longer. Prison chaplain's departments are used to disseminate information about seminary programs to potential enrollees as well as individually recruit and recommend applicants.

Inmates express diverse goals for entering prison seminaries, ranging from simply obtaining an education to an explicit personal desire to serve in a religious capacity. Selected inmates are among the best-behaved inmates, having exemplary disciplinary histories and among the highest educational aptitudes—oftentimes having already obtained “trustee” status. While such detailed selection criteria certainly amount to a kind of selection bias, an evaluation of inmate religiosity at the Angola seminary controlling for prior education, race, and criminal history found religious practice at the prison's inmate-run churches was associated with lower inmate misconduct even among nonseminary graduates (Hallett et al., 2016; Jang et al., 2017).

Finally, inmate applicants to prison seminary programs are not required to be of a particular faith nor to affiliate with a specific religious doctrine as a condition of admittance. While at Angola and Darrington the expectation is that the majority of graduates will undertake religious work for the prison after graduation, “seminary” graduates in the other programs will not be engaged in religious work after completion of their degrees. Only Angola and Darrington prisons currently assign explicitly “ministerial” duties to seminary graduates, thus far.<sup>13</sup>

### **Correctional Deployment of “Missionaries” & “Field Ministers”**

In perhaps the most overt degree of “entanglement” (and endorsement?) from corrections officials and religious stakeholders is the systematic distribution of Christian seminary graduates as “missionaries” and “field ministers” in both Louisiana and Texas prisons. In both of these instances, state-paid staff collaboratively place “teams” of seminary graduates into new prisons after graduation for overtly religious purposes: to counsel fellow inmates through “tier walking,” to lead prayer and other religious education groups, and to assist in prison chaplaincy. In Texas, the placing of seminary graduate “field ministers” is the primary objective of the entire program. An aversion to allowing inmates to run “churches” or do explicitly religious work in each of the other institutions examined, however, has thwarted development of “inmate-led churches” in other prisons.

### **Lack of Religious Neutrality Promoting Religion Over Nonreligion**

Perhaps the most prominent element of potential state endorsement of religion—to *greater or lesser degrees among all the programs examined*—is the frequent use of media coverage by elected officials, dignitaries, senior prison staff, and seminary administrators themselves, for promoting the accomplishments of religious faith as a change agent in their prisons. At graduation events reminiscent of earlier Establishment Clause cases involving prayer at public school assemblies, overt religious testimonials offered by prison staff, elected officials, inmates themselves, and governmental dignitaries from outside the prison, frequently affirm Christianity and its role in correctional rehabilitation. In a joint statement celebrating the inaugural student graduation from the Darrington Unit’s Christian seminary, Texas Lt. Governor Dan Patrick and Texas State Senator John Whitmire stated,

“It is remarkable to me that two state senators from Texas could travel to the Angola Prison in Louisiana and return with a concept of creating a prison seminary in Texas,” stated Chairman John Whitmire. “The 33 inmates graduating on Saturday will soon have the opportunity to literally change people’s lives in prisons across this state. I am honored to have partnered with Lt. Governor Patrick on this effort and look forward to continuing to support such a meaningful program.”<sup>14</sup>

In another recent graduation ceremony at which both Whitmire and Patrick were present, Patrick explicitly endorsed Christianity as the “only” rehabilitative agent that will work: “Maybe the next great revival is starting in our prisons. The only way we can change the hearts of men is through the power of Jesus Christ” (Grissom, 2016). In the absence of equivalent celebrations for secular programs, for graduation from drug treatment programs and the like, such prominent affirmations from state leaders may constitute an endorsement of religion.

## **Inadequate Solicitation and Development of Alternative Equivalent Educational Resources**

One can envision a number of ways in which prison officials might abridge the neutrality requirement. First, if prison officials were to affirmatively counsel prisoners to request placement in a faith-based unit or to refrain from making such a request, their recommendations could potentially represent an abandonment of the requisite position of neutrality on the question of whether prisoners should avail themselves of religious programming in prison. (Branham, 2004, p. 337)

Insofar as prison leaders often find themselves under-staffed, it is not uncommon for wardens and state legislators to advocate for broader use of religious volunteers in prisons. While a growing body of research confirms the effectiveness of faith-based programs for inmates and ex-offenders willing to embrace them, comparison group research documenting the superior performance of faith-based programs is not definitive (Mears, 2007). Borrowing from the working definition of “endorsement” authored by Justice Sandra Day O’Connor above, several facets of the operation, development, funding, and staffing of prison seminary programs could be interpreted by a reasonable observer as state “endorsement” of religion. While at Angola, the seminary director is simultaneously a paid employee of both Louisiana Department of Corrections and the New Orleans Baptist Theological Seminary, at Darrington; the Texas Department of Criminal Justice employs a “Field Minister Coordinator” to assist in placement of

seminary graduates for explicitly ministerial work at multiple Texas prisons.<sup>15</sup> State expenditure for deployment of religiously certified Christian seminary graduates as “missionaries” or “field ministers,” especially in the absence of similar programs for secular counselors, may constitute de facto “endorsement” of religion—especially since the traditional role of “missionaries” is to “plant churches.”

To finance the cost of prison seminary programs, seminaries and non-profit organizations must raise their own money, and engage in frequent solicitation of funds. Seminaries heavily utilize journalistic accounts of their activities featuring endorsements from state officials and correctional leadership in their solicitations for securing these resources. With the Obama administration’s recent “symbolic” authorization of a pilot program allowing for 67 collegiate institutions to enroll up to 12,000 inmates (called “Second Chance Pell and endorsed by former President George W. Bush), potential exists for secular higher education programs to become more active in American prisons. Since, Congress failed to fully enact President Obama’s expansion proposal, privately funded prison seminaries remain among the very few tuition-free higher education opportunities available to prison inmates.<sup>16</sup>

## **A Sui Generis Level of De Facto Coercion Resulting From Differences in Material Treatment**

Officials cannot direct that a prisoner be placed in a faith-based unit. Nor can officials pressure prisoners to opt for such a placement. But that rather self-evident point raises a question whose answer is less clear: Does the existence of more favorable conditions in a faith-based unit, such as a lower rate of inmate-on-inmate assaults, place the kind of pressures on an inmate to live in the unit that constitute governmental coercion in the constitutional sense? (Branham, 2004, pp. 323-324).

Since the founding of the Angola prison seminary in 1994, a number of “spin-off” prison seminary programs have developed nationwide (Duwe et al., 2015; Erzen, 2017). Given the relative poverty and isolation of U.S. prisons—and the growing presence of Christian seminary programs lining up to serve them—a near monopoly of Christian institutions for offering higher education in prisons currently exists. In the course of our research, numerous non-Christian, non-religious seminary inmates stated openly that they entered the seminary simply “to get the education,” highlighting the importance of courses in world history, English literature, or psychology as the “most interesting” to them personally (Hallett et al., 2016).

In regard to Establishment Clause concerns, however, how long a prison institution can solicit or accommodate only Christian institutions for offering higher educational opportunities to inmates without pursuing other providers remains an open question. At what point does singular reliance upon Christian seminaries constitute an Establishment Clause violation? Finally, because Christian seminaries provide their education to inmates for free, five out of six programs examined here stick firmly to teaching their own doctrine. While the NYTS religious education program at Sing Sing welcomes exploration of all faiths, as determined by individual students, each of the other programs examined “stick closely to doctrine.” As one program director put it,

Look, we’re not backing off of our doctrine. We’re not here to teach Catholicism or Islam or even Presbyterianism. Students can pursue that on their own time if they want, but it’s not what we offer. This program is voluntary.

In a piece titled “Perks for Prisoners Who Pray,” Richard W. Fields makes the case that disparate conditions among and between better resourced and privately sponsored faith-based immersion programs introduces an element of coercion into the “voluntariness” of inmates requesting entry into prison seminaries. As mentioned above, “voluntariness” in the choice to enter a faith-based program in prison must be the result of a “true private choice” and not the result of either perceived pressure from administrative leaders or fellow inmates—or a lack of equivalent alternatives. The privileging of prison seminaries as a form of structural charity in American prisons arguably fortifies this happenstance. In cases where no alternative program options exist, or in cases where an inmate’s personal safety or well-being may be at stake, voluntariness in the choice to enroll in faith-based programs is called into question (Fields, 2005).

## **Compensating Inmate Ministers and “Cushy Work Assignments”**

Finally, in accordance with long tradition at Angola, inmates are given work assignments at the prison, often being responsible for two or more jobs at once. In exchange for their work, Angola’s inmates are paid between \$.02 cents and \$.20 cents per hour. Among the available jobs at the prison, both Angola’s Christian seminary students and its Inmate Ministers are among the highest-paid “occupations.” While funded entirely through private resources, the prison itself sets the rate of pay for its various occupational assignments. At Angola, seminary students are paid to attend class, in what one inmate

referred to as a “full-time lay-out-and-drop”—meaning a “cushy work assignment with air conditioning.” None of the other inmate seminary programs examined for this research currently pay their students a wage to undertake the degree program.

As above, since Christian prison seminaries are the only higher education programs available, inmates frequently enroll despite having no religious predilections at all.

## **Conclusion: The Cottage Industry in Prison Seminaries**

The NOBTS-sponsored Christian seminary program at Angola discussed above started out as a religious service project designed to serve inmates in an isolated prison. Administrators at the seminary feared the effort would prove too costly. Today, as Christian seminaries aggressively profile their work in prisons for purposes of fundraising and evangelism while utilizing endorsements from state leaders to do so, arguably “the prison seminary business” is changing rapidly. While Warden Burl Cain reached out to NOBTS for help in the aftermath of Pell Grant revocation, numerous seminaries since then have reached out to prisons themselves, offering their services. While NOBTS sponsored its own program, prison seminaries in other states feature autonomous nonprofit organizations raising money in tandem with seminaries to promote their work in prisons. Both seminary officials working in prisons and “Inmate Ministers” differ from state-paid chaplains in that the rules governing their activity remain largely undefined, as do the forms of oversight that might regulate their work. Moreover, *due to the dramatic understaffing of prisons*, religious programming is arguably increasingly privileged by structural charity.

All of that said, corrections officials and seminary personnel are genuinely proud of their collaboration. Operating under conditions of budgetary deprivation, frequent public criticism, and the constant threat of violence, prison administrators express gratitude for the resources provided by Christian seminaries to their inmates and institutions. Angola is proud of its seminary and the fact that Inmate Ministers are, in fact, assigned a “caseload,” being required to make at least 20 “contacts” per week in their ministerial roles (Hallett et al., 2016, see Chapter 2). In this way, they argue, inmates are uniquely assigned responsibility for the care-taking of their peers.

As historically contested sites of religiosity, prisons must remain accessible to the full range of both secular and religious stakeholders for the broadest successful impact upon inmates. Overreliance upon structural charity, at least

in the area of providing access to higher educational opportunities for inmates, has thus far uniquely privileged Christian educational institutions in ways that may violate the constitution. Revocation of Pell Grant eligibility for convicted felons in 1994 is still the most frequent rationale used by prisons to justify development of prison seminaries. More importantly, given that the vast majority of inmates in U.S. prisons lack access to meaningful higher education opportunities, overreliance upon Christian seminaries perpetuates the under serving of the vast majority of inmates. While litigation on the constitutionality of Christian seminaries operating in U.S. prisons has yet to occur, given that past challenges to immersive religious programming in U.S. prisons highlighted the unconstitutionality of providing exclusive benefits and privileged access involving overtly religious practices, a future challenge seems likely (Sullivan, 2009).

### **Declaration of Conflicting Interests**

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### **Funding**

The author(s) received no financial support for the research, authorship, and/or publication of this article.

### **Notes**

1. While numerous explorations of the constitutionality of faith-based correctional programs have been published, only one investigation into the constitutionality of a *prison seminary*—that operating at Louisiana State Penitentiary at Angola—has ever been published (see Bergeron, 2011).
2. See *Americans United for Separation of Church & State v. Prison Fellowship Ministries*, 432 F. Supp. 2d 862 (S.D. Iowa 2006).
3. Portions of this research that involved human subjects were approved by Institutional Review Boards at the University of North Florida and Baylor University, IRB Project # 49,899. The six programs examined were Angola (Louisiana State Penitentiary), Parchman (Mississippi), Darrington Unit (Texas), Hardee Correctional Institution (Florida), Sing Sing (New York), and Handlon (Michigan).
4. Branham (2004, pp. 291, 316).
5. [https://en.wikipedia.org/wiki/Lemon\\_v.\\_Kurtzman](https://en.wikipedia.org/wiki/Lemon_v._Kurtzman)
6. In *Agostini v. Felton*, 521 U.S. 203, 232-33 (1997), the Court condensed the Lemon test into a two-part test, subsuming “entanglement” criteria with overall evaluation of the “primary effect” test. “As is intuitively obvious, the altered Lemon-Agostini test absorbs the traditional entanglement prong into the effects

- portion of the test, obviating the need for a separate entanglement analysis and reducing the likelihood that a case will pass the effects portion only to be overturned on the separate entanglement inquiry” (Robertson, 2008, p. 541).
7. [https://en.wikipedia.org/wiki/Endorsement\\_test](https://en.wikipedia.org/wiki/Endorsement_test)
  8. Program description found June 2017: <http://www.nyts.edu/prospective-students/academic-programs/master-of-professional-studies/>
  9. At Angola, researchers also found positive independent effects on misconduct as a result of church membership and creation of a self-described “conversion narrative” (see Hallett et al., 2016, p. 128; also Maruna, Wilson, & Curran, 2006).
  10. See Calvin’s mission statement: <https://calvin.edu/prison-initiative/#>. For another demonstration of the aspiration of “culture change,” see The Heart of Texas Foundation’s (co-sponsor of the Darrington Unit seminary): <http://heartoftexasfoundation.org/featured/1195/#respond>
  11. For example, due to understaffing, Angola’s head chaplain also currently directs the NOBTS seminary program. In Texas, a TDCJ employee directs and facilitates the placement of the Darrington Unit’s Christian seminary graduates into other prisons, where they serve as “field ministers” (openly modeled after Angola’s “missionaries”). See <http://heartoftexasfoundation.org/field-ministers/>
  12. *Americans United for Separation of Church & State v. Prison Fellowship Ministries*, 432 F. Supp. 2d 862 (S.D. Iowa 2006). See Sullivan (2009).
  13. A frequent source of frustration cited by seminary students in Texas involves TDCJ’s reluctance to allow for inmate-led congregations, “like they have at Angola.” Statutory prohibition of prison policies that allow for one inmate having any sort of power over another, however, have prevented the establishment of inmate-led churches in Texas (see Duwe et al., 2015).
  14. <https://www.lt.gov.state.tx.us/2015/05/07/lt-governor-dan-patrick-and-senator-john-whitmire-celebrate-inaugural-prison-seminary-graduation/>
  15. <https://swbts.edu/news/southwestern-news/darrington-field-minister-brings-gospel-witness-huntsville-prison/>
  16. Both Darrington and Louisiana State Penitentiary have been authorized as “Second Chance Pell” institutions, so it will be interesting to see how this impacts enrollment in each prison seminary. <https://www2.ed.gov/documents/press-releases/second-chance-pell-institutions.pdf>. See also Wexler (2016).

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