

CHAPTER ONE

Introduction

The Prison State and the Lockdown of American Politics

To see what is in front of one's nose needs a constant struggle.

—GEORGE ORWELL

Fifteen years ago, mass imprisonment was largely an invisible issue in the United States. Since then, criticism of the country's extraordinary incarceration rate has become widespread across the political spectrum. The huge prison buildup of the past four decades has few ardent defenders today. But reforms to reduce the number of people in jail and prison have been remarkably modest so far.

Meanwhile, a tenacious carceral state has sprouted in the shadows of mass imprisonment and has been extending its reach far beyond the prison gate. It includes not only the country's vast archipelago of jails and prisons, but also the far-reaching and growing range of penal punishments and controls that lies in the never-never land between the prison gate and full citizenship. As it sunders families and communities and radically reworks conceptions of democracy, rights, and citizenship, the carceral state poses a formidable political and social challenge.

The reach of the carceral state today is truly breathtaking. It extends well beyond the estimated 2.2 million people sitting in jail or prison today in the United States.¹ It encompasses the more than eight million people—or in one in twenty-three adults—who are under some form of state control, including jail, prison, probation, parole, community sanctions, drug courts, immigrant detention, and other forms of government supervision.² It also includes the millions of people who are booked into jail each year—perhaps nearly seven million—and the estimated 7.5 percent of all adults who are felons or ex-felons.³

The carceral state directly shapes, and in some cases deforms, the lives of tens of millions of people who have never served a day in jail or prison or been arrested. An estimated eight million minors—or one in ten children—have had an incarcerated parent. Two million young children currently have a mother or father serving time in state or federal prison.⁴ Millions of people reside in neighborhoods and communities that have been depopulated and upended as so many of their young

men and women have been sent away to prison during what should be the prime of their lives. Hundreds of rural communities have chased after the illusion that constructing a prison or jail will jump-start their ailing economies.

The problem of the carceral state is no longer confined to the prison cell and prison yard and to poor urban communities and minority groups—if it ever was. The U.S. penal system has grown so extensive that it has begun to metastasize. It has altered how key governing institutions and public services and benefits operate—everything from elections to schools to public housing. The carceral state also has begun to distort essential demographic, political, and socioeconomic databases, leading to misleading findings about trends in vital areas such as economic growth, political participation, unemployment, poverty, and public health.

The carceral state has been radically remaking conceptions of citizenship as it creates a large and permanent group of political, economic, and social outcasts. It has been cleaving off wide swaths of people in the United States from the promise of the American Dream or “American Creed”—the faith that everyone has an inalienable right to freedom, justice, and equal opportunities to get ahead, and that everyone stands equal before the law.⁵ The political consequences of this are potentially explosive because the American Dream arguably has been the country’s central ideology, serving as a kind of societal glue holding otherwise disparate groups together.⁶

Millions have been condemned to “civil death,” denied core civil liberties and social benefits because of a criminal conviction. An estimated six million people have been disenfranchised either temporarily or permanently because of a criminal conviction. This is about 2.5 percent of the total U.S. voting age population, or one in forty adults.⁷ Millions of Americans have been denied public benefits like student loans, food stamps, and public housing because of their criminal records. Likewise, owing to a prior run-in with the law, many people are ineligible to receive state licenses for a range of occupations—from hairdressing to palm reading to nursing. Many incarcerated mothers and fathers are at risk of having their parental rights severed, sometimes after they have been behind bars for as little as fifteen months.⁸

For those seeking to dismantle the carceral state, the key challenge is not trying to determine what specific sentencing and other reforms would slash the number of people in jail and prison. The real challenge is figuring out how to create a political environment that is more receptive to such reforms and how to make the far-reaching consequences of the carceral state into a leading political and public policy issue.⁹

This book analyzes why the carceral state, with its growing number of outcasts, remains so tenacious in the United States. It examines the shortcomings of the dominant penal reform strategies and lays out an alternative path to dismantling the carceral state. In doing so, I use the problem of the carceral state as a lens to examine the wider pathologies that have captured American politics today and are preventing the country from solving its most pressing problems.

The Leading Penal Reform Strategies

The ways in which elites, interest groups, the media, and social movements define and frame an issue can powerfully influence not only public opinion but also public policy. Under certain circumstances, framing an issue in a new way can release tremendous new forces that transform the public debate.¹⁰ Over the past decade or so, the growing opposition to mass incarceration has tended to gravitate toward two different poles, both of them inadequate in the face of these challenges.

One pole identifies racial disparities, racial discrimination, and institutional racism as the front lines in the challenge to the carceral state. Michelle Alexander's characterization of mass incarceration as "the new Jim Crow" exemplifies this view.¹¹ Alexander singles out the color-blind racism of the new Jim Crow, especially as manifested in the war on drugs, as the major driver of the carceral state. She contends that the new Jim Crow is in many ways a more challenging political foe than the in-your-face racism of the old Jim Crow.

The other pole seeks to find a winning nonpartisan path out of mass incarceration by downplaying its stark racial causes and racial consequences. The emphasis instead is on how the fiscal burden of the vast penal system is growing untenable. Here the imperative has been to find rational, cost-effective, evidence-based alternatives for some offenders, primarily drug and other nonviolent offenders, without jeopardizing public safety.

This is largely the stance of the Pew Center on the States, the Council of State Governments, and the U.S. Department of Justice. They have joined together to promote reentry programs and justice reinvestment schemes largely aimed at reducing the recidivism rates of ex-offenders. Thanks to their work, the three R's—reentry, justice reinvestment, and recidivism—dominate discussions of penal reform in Washington, DC and in many state capitals. This approach is compatible with the growing push to alter the public conversation about all sorts of social problems by adopting a "practical tone" that avoids discussions of hot-button issues like fairness between groups or the historical legacy of racism.¹²

The new Jim Crow and the fiscal imperative frames have made major contributions to our understanding of the carceral state and have pried open some important political space to challenge it. In particular, the contributions of Alexander's *The New Jim Crow* cannot be underestimated. No other book has been so vital in making the problem of the carceral state starkly visible to the wider public and in rallying members of disadvantaged communities and other groups to take on the project of dismantling it.

But these two frames also have some shortcomings. They have contributed to some public misperceptions about the relationship between crime and punishment and about who is being sent to prison and why. This has fostered some misguided penal reform efforts. Furthermore, these two frames are unlikely to germinate and sustain the broad political movement necessary to dramatically reduce the number of people in jail and prison or ameliorate the many ways in which the carceral state has deformed U.S. society and political institutions.

Race and the Carceral State

Race matters, and it matters profoundly in any discussion of how to dismantle the carceral state. But, as in the case of other major shifts in public policy and American political development, “the racial character of the contemporary system is more than just a legacy of our troubled past.”¹³ Racial and other disquieting disparities do not automatically flow from that troubled past. They are the product of politics—of how key politicians, other public figures, interest groups, the media, and social movements choose to draw from that past, reinvent that past, and discard pieces of the past as they adjust their political strategies to the political, social, and economic realities of the present. In the process, they create new institutional and political arrangements that inscribe the past in new ways onto the present. As Michelle Alexander so persuasively, eloquently, and mournfully demonstrates in *The New Jim Crow*, the emergence of color-blind racism in the post-civil rights era is one such adaptation that poses a major obstacle to dismantling the carceral state. But there are others.

Building on Alexander’s work, I identify some other underlying political, economic, and social factors that spark and sustain such punitive policies not only for certain blacks, but also for certain whites, Latinos, immigrants, and members of other demographic groups. Bluntly stated, the United States would still have an incarceration crisis even if African Americans were sent to prison and jail at “only” the rate at which whites in the United States are currently locked up, as shown in figure 1.1 and elaborated in chapter 6.

A century ago, the massive disenfranchisement of blacks at the dawn of the Jim Crow era through the poll tax, literacy tests, and violent intimidation overshadowed the vast and simultaneous disenfranchisement of poor whites that undermined the growth of the Populist movement in the South. Likewise, the hyper-incarceration of black men today has overshadowed the growing incarceration rates of poor whites, Latinos, immigrants, and women. Many political and policy debates over the carceral state remain mired in viewing this as primarily a black-white issue. Even “Latino civil rights and advocacy organizations have yet to fully understand the devastating effects of a discriminatory criminal justice system on Latino life,” explains one knowledgeable observer.¹⁴

The carceral state has disproportionately hurt African American men. But it also has been targeting a rising number of people from other historically disadvantaged groups. The United States, with just 5 percent of the world’s population, incarcerates almost one-third of the 625,000 women and girls confined to jails and prisons worldwide.¹⁵ In a major shift, Hispanics now constitute 35 percent of all federal prisoners, making them the largest ethnic or racial group in the federal prison system.¹⁶ This is a consequence of the escalation in immigration raids and prosecutions for immigration violations, as well as the relative drop in federal prosecutions of certain other crimes, including gun trafficking, corruption, organized crime, and white-collar crime (see figure 10.2, p. 225). Since the 1990s, black-white disparities in incarceration have been falling. Some of this decline is

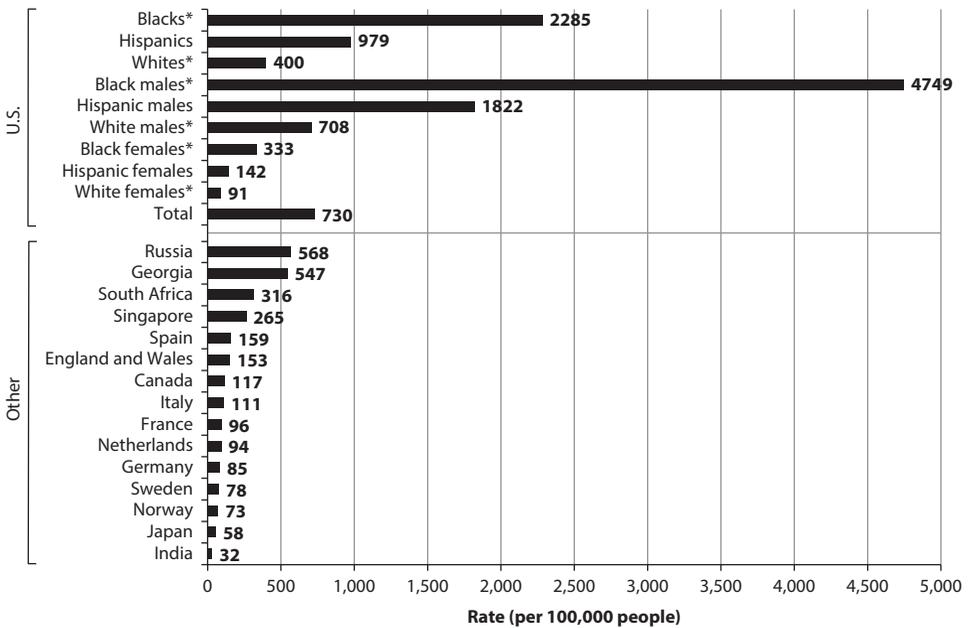


Figure 1.1. Incarceration Rates, Select Countries and Groups

* Excludes people of Hispanic or Latino origin

Sources: See p. 338, n. 16; Roy Walmsley, “World Prison Population List,” 9th ed. (London: King’s College, International Centre for Prison Studies, May 2011), http://www.kcl.ac.uk/depst/law/research/icps/downloads/wppl-8th_41.pdf (retrieved February 11, 2014).

likely the result of changes in the way the U.S. Department of Justice enumerates Hispanic inmates, but some of the decline appears to be real.¹⁷ Poor whites, Hispanics, and women have been a booming growth area for the carceral state, as discussed in chapters 6 and 10. But so far these other groups and their advocates have not been central to the growing debate over penal reform.

Alexander identifies ostensibly color-blind drug laws and law enforcement policies as the main culprit in mass incarceration today. But drug offenders comprise only about 20 percent of offenders in state prisons, or about the same proportion as property offenders. People whose primary offense was a violent one comprise about half of all state inmates. Even if we could release all drug offenders today, without other major changes in U.S. laws and penal policies and practices, the United States would continue to be the world’s warden, and a stint in prison or jail would continue to be a rite of passage for many African Americans. Although ending the war on drugs would not make a major dent in the overall prison population, it could reduce considerably the number of incarcerated women, especially African American women. Women, who have been the fastest growing segment of

the prison population, are much more likely than male inmates to be serving time for a drug offense.¹⁸ An end to the war on drugs would also likely have a major impact on the federal prison population, since drug offenders constitute about half of all federal inmates.¹⁹

As the war on crime has been winding down on some fronts, it has been ratcheting up on new ones. With changes in drug policies in some urban areas, the proportion of blacks swept up in the war on drugs has been declining, as discussed in chapter 6. But a new front in the war on drugs has opened up in rural, predominantly white areas that reportedly are facing the scourge of methamphetamine labs, prescription drug abuse, and heroin. Furthermore, since the 1990s, U.S. politicians and policy makers have been laying the institutional and political groundwork for a large-scale war against sex offenders, as discussed in chapter 9. The wider public has been a willing conscript in this new war, which has eerie parallels with the origins and development of the war on drugs four decades ago. The wave of draconian sex offender laws has struck hardest at older white men.

The carceral state also has expanded its capacity to apprehend, detain, punish, and deport immigrants, as elaborated in chapter 10. It has done so partly by retrofitting the hard-line politics, policies, and tactics that fueled the prison boom of the 1980s and 1990s and by creating new institutions that dissolve the distinction between law enforcement and immigration enforcement. The growing criminalization of immigration enforcement beginning in the 1980s and the rapid expansion of the immigrant detention system are creating a “cimmigration crisis.”²⁰

The historical evidence presented by Alexander and many others is overwhelming that racial animus and the quest to preserve white supremacy have been central factors in American political development, including the development of the U.S. criminal justice system.²¹ But as the racial order continues to invent new ways to target blacks, it has generated punitive policies and practices that migrate to other dispossessed groups in the United States. In the words of James Q. Whitman, the U.S. penal system has a strong tendency to “level down.” The much-heralded “liberal” features of American political culture ironically have helped to render the U.S. penal system harsher, more degrading, and less forgiving as it extends a brute egalitarianism across the board.²²

The United States is exceptional not only because it locks up so many people but also because brutal, dehumanizing practices and conditions are endemic to many U.S. jails and prisons, whether they are predominantly black, predominantly white, or mostly multiracial and multiethnic. The wider public has a history of being largely indifferent to prison conditions “even when the victims were white men.”²³ The massive increase in the number of inmates since the 1970s has overwhelmed the capacity of many correctional authorities “to safely and humanely house and administer them,” as discussed in chapter 2.²⁴ Today we have what one critic calls “mass imprisonment on the cheap.”²⁵ The majority of U.S. prisons and many jails “hold more people than they can deal with safely and effectively, creating a degree of disorder and tension almost certain to erupt in violence,” a national

blue-ribbon commission concluded in 2006.²⁶ Resource constraints alone do not explain why the prison buildup coincided with a new “mean season” in corrections.²⁷ As the “rehabilitative ideal” was cast out in the 1970s, more prisoners were depicted as brutal, hardened criminals who were neither deserving of nor capable of rehabilitation and redemption.²⁸

Right on Crime?

Alexander and many other critics who focus on the racial disparities of the carceral state acknowledge that class, gender, ethnicity, and other factors complicate any discussion of race and mass incarceration but do not develop this point.²⁹ The intense focus on the racial dimension of the carceral state sometimes obscures the importance of other factors in determining who is punished and for what. In particular, it obscures how certain shifts in the wider political economy pose major impediments to the emergence of a successful broad-based political movement to dismantle the carceral state. Key economic factors discussed in this book include deep structural changes in the job market, growing income and other inequalities, the escalating political assault on the public sector and organized labor, and the economic decline of wide swaths of urban and rural America. A central theme is how the deep penetration of neoliberalism into nearly all aspects of U.S. public policy and politics is fostering economic and political inequalities and eroding democratic institutions.

The predominant economic frameworks employed in public discussions of the carceral state tend to fall into one of two other categories. On the one hand—usually the left hand—are believers in the prison-industrial complex. They contend that the carceral state is largely the consequence of vested economic interests that have captured and corrupted penal policy. For some of these critics, denunciation of the awesome power of the prison-industrial complex substitutes for careful analysis of the specific, complex, and shifting political, economic, and institutional factors that sustain the carceral state and that deeply complicate the politics of penal reform.³⁰

On the other hand is the elite bipartisan coalition that has been congealing around the purported fiscal burden of mass imprisonment. The Great Recession has raised many expectations that the United States will begin closing many of its jails and prisons because it can no longer afford to keep so many people locked up. Publications and institutions spanning the political spectrum, from the libertarian *Reason* magazine and Cato Institute to the left-leaning *Nation* and *American Prospect*, have embraced framing the problem of the carceral state as primarily a dollars-and-cents issue that begs for a bipartisan solution.³¹ They contend that the United States can do more to promote public safety and save money by reducing its reliance on prisons and by ending expensive, misguided criminal justice adventures like the war on drugs.

A group of brand-name conservatives, including Newt Gingrich, Grover Norquist, and Edwin Meese III, have joined Right on Crime, a national initiative

led by the Texas Public Policy Foundation, one of the nation's leading state-based conservative think tanks.³² This initiative aims to better align the conservative agenda on criminal justice reform with traditional conservative concerns about limited government, individual liberty, and free enterprise.³³ When it launched a new campaign against mass incarceration in spring 2011, the National Association for the Advancement of Colored People (NAACP), the country's foremost identity-based civil rights organization, prominently featured its alliance with the Right on Crime coalition. This prompted a spate of headlines proclaiming "NAACP Joins with Gingrich in Urging Prison Reform."³⁴

Alliances like these have bolstered a wave of optimism that the country is finally ready to enact major reforms to reduce the incarceration rate. The penal optimists point to the slew of penal reforms enacted over the past decade or so. These include measures to expand the use of alternative sentences and drug courts, loosen restrictions on parole eligibility, reduce revocations of parole and probation for minor infractions, and dial down the war on drugs (most notably, by legalizing or decriminalizing marijuana possession and reducing mandatory minimums for other drug offenses).³⁵ They note that dozens of states have cut their corrections budgets in recent years, and many have closed or considered closing penal facilities to save money.³⁶ They also note that in 2009, the total number of inmates in state prisons dipped for the first time since 1972 and has continued to fall since then.

This optimism that we are at the beginning of the end of the carceral state because the fiscal costs have become too high to sustain is unwarranted for several reasons. Below the surface of the apparent left-right consensus on the fiscal imperative to reduce the number of people in prison or jail are enormous differences over key issues, including juvenile justice reform, indigent defense, executive clemency, the privatization of corrections, and the abuse of civil forfeiture laws, to name just a few.³⁷ Furthermore, while the total number of people in U.S. jails and prisons has largely stabilized since the onset of the Great Recession, no major contraction appears in sight. The U.S. incarceration rate of 730 per 100,000 is still the highest in the world and rivals the estimated rate that citizens of the Soviet Union were being sent to the gulags during the final years of Stalin's rule in the early 1950s (see figure 1.1).³⁸

Between 2009 and 2012, the total inmate population in the United States fell by just 2.5 percent, or 56,500 people.³⁹ California, which has been under enormous political and legal pressure to reduce its prison population thanks to the 2011 *Brown v. Plata* decision, accounts for about 75 percent of this drop.⁴⁰ The number of inmates has continued to grow in about half of the states while declining slightly in the other half.⁴¹ Meanwhile, the federal prison population has continued to gallop along at a brisk pace, as has the number of immigrants detained by the federal government. In 2011, the Department of Justice projected that by 2018 the federal prison population would grow by nearly 12 percent.⁴²

It is unlikely that the fiscal and economic burden will single-handedly unhinge the carceral state, even in the wake of the wrenching economic upheavals and

distress brought on by the 2008 financial crisis and the Great Recession. Indeed, these upheavals could spur yet another round of get-tough policies, as elaborated in chapter 2. Despite the prison-building boom, corrections costs remain a relatively small component of state expenditures. Although corrections has been one of the fastest growing items in state budgets, second only to Medicaid, it still lags far behind what states spend on other sectors. In fiscal 2010, state expenditures on corrections totaled \$48.5 billion, or less than 3 percent of the nearly \$2 trillion in total state expenditures. This is less than half of what states spend on highways.⁴³ Despite substantial increases over the last two decades in the budget for the federal Bureau of Prisons, its nearly \$7 billion budget in fiscal 2013 was truly a drop in the bucket of total federal expenditures.

Most prison costs are fixed and are not easily cut. The only way to seriously reduce spending on corrections is to shut down penal facilities and lay off correctional staff. Faced with powerful interests that profit politically and economically from mass imprisonment, states (with a few notable exceptions like New York State) have been making largely symbolic cuts that do not significantly reduce the incarcerated population or save much money.⁴⁴ But they do render life in prison and life after prison leaner and meaner, as detailed in chapter 2. Homicides, assaults, and other acts of violence appear to be on the rise in federal penitentiaries and in some state prisons as staff positions go unfilled due to budget cuts.⁴⁵ Thirty-six of forty-four states surveyed in the wake of the Great Recession reported cuts in corrections staffing, and half said that they had eliminated or reduced programs for inmates. Several states reported that they had cut back on health services, and nearly a third reported that they had cut back on food services.⁴⁶

Levying fees for meals, housing, and visits to the doctor on people serving time is becoming more common. Politicians in Des Moines, Iowa even considered charging inmates for toilet paper to save a couple of thousand dollars each year.⁴⁷ Some local jails have stopped providing underwear to inmates, who must now purchase it themselves from the facility's commissary or go without if they are too indigent. As Donald Leach, a former vice president of the American Jail Association, quipped, "Inmates don't have a constitutional right to underwear."⁴⁸ Or to tampons or sanitary napkins, which many female inmates must purchase on their own from the prison commissary or else fashion crude substitutes from toilet paper.

The budget deficit hysteria of the past few years has helped foster what some are calling a new war on the poor with the criminalization of poverty, as discussed in chapter 2.⁴⁹ Budget cuts are compromising the activities of the court system and legal services for the poor today. Justice delayed is increasingly justice denied as judges and courthouses go on furloughs, judgeships remain vacant to save money, and trials are postponed. As the number of people arrested and convicted and the severity of punishments escalated over the past four decades, legal aid budgets did not keep pace and in many cases actually declined. "[I]t is better to be rich and guilty than poor and innocent" in America today, lamented Stephen Bright of the Southern Center for Human Rights in summing up the sorry state of legal services

for the poor.⁵⁰ In February 2012, Attorney General Eric Holder denounced the indigent defense crisis facing the United States.⁵¹ A year later, the fiftieth anniversary of the landmark *Gideon v. Wainwright* decision upholding the right to counsel for indigent defendants was cause not for celebration but for widespread lament. As one observer noted on the anniversary, “[T]here is no meaningful right to counsel for Americans too poor to afford their own attorney.”⁵² The 2013 sequestration and other recent budget cuts have pushed legal services for the poor past the breaking point in many jurisdictions.⁵³

As judicial budgets contract, judges have become exceptionally aggressive about collecting fines and fees. Poor people who cannot pay these off are being sent to jail, a practice of dubious constitutionality. The number of ordinances against the poor for actions such as vagrancy, panhandling, and sleeping on the pavement has been rising over the last decade. At the same time that poverty is being criminalized, states and the federal government have been slashing social services for the poor, which will likely result in more people ending up in prison.

Neoliberalism and the Carceral State

The fiscal imperative argument is inattentive to how the wider U.S. political economy shapes the contours of the carceral state and the political possibilities to dismantle it. Research that situates the U.S. carceral state in a comparative framework suggests that fundamental differences in how the polity and economy are organized explain vast differences in penal policy among industrialized countries. Nicola Lacey and others argue that countries with neoliberal, first-past-the-post electoral systems (notably the United States and Britain) create a reinforcing political and economic environment that fosters more punitive and exclusionary penal policies. Countries that have coordinated market economics and more consensual electoral systems with proportional representation (such as Germany) tend to be less punitive because they are more conducive to inclusionary and welfarist policies.⁵⁴

Such macro-level analyses of political and economic differences to explain cross-national differences in penal policy are extremely revealing. But they come at the cost of more fine-grained understandings of the specific political, economic, and institutional factors that shape penal policy at a specific moment in a specific place. For all their considerable strengths, these bird’s eye views are less helpful in explaining important swings in punishment in a single country over time or important variations in punitiveness and penal policy in a single country at a given moment. This is a problem particularly in the case of the United States, which has a federal system of government in which criminal justice policy is primarily forged at the state and local levels; each state operates its own prison system; and counties, not states, run most of the jails.

The construction of such an expansive and unforgiving carceral state in the United States is a national phenomenon that has left no state untouched. All fifty states have seen their incarceration rates explode since the 1970s. But the state-

level variation in incarceration rates is still enormous, far greater than what exists across Western Europe. Rates range from a high of more than 1,600 per 100,000 people in Louisiana to a low of about 200 per 100,000 in Rhode Island (see figure 1.2). This great variation and the fact that crime control in the United States is primarily a local and state function, not a federal one, suggest that local, state, and perhaps regional factors might help explain U.S. penal policies. Trying to unravel why the carceral state has been more extensive, abusive, and degrading in some states than others is a growing and promising area of research. In order to understand the political possibilities for dismantling the carceral state, we need a more specific understanding of developments on the ground, especially how the neoliberal turn in public policy got filtered through specific electoral, party, and other institutional developments and arrangements at the local and state levels.

African Americans have been and remain central targets of the carceral state and without question have been disproportionately harmed by it. But more members of other groups are finding themselves economically and politically disenfranchised and socially marginalized as a new political and economic order takes hold and the carceral state expands its reach. A defining feature of that new order is the onslaught of neoliberalism since the 1970s, which has widened the gap between the political and economic haves and the political and economic have-nots.

The turn toward neoliberalism has been a growing area of political and scholarly interest. But as Loïc Wacquant notes, “[N]eoliberalism is an elusive and contested notion, a hybrid term awkwardly suspended between the lay idiom of political debate and the technical terminology of social science.”⁵⁵ Neoliberalism is an ideology and package of policies that deify low taxes, macroeconomic stabilization (through low inflation and low public debt), financial and trade deregulation, privatization of public assets and services, and the retrenchment of the welfare state. The neoliberal agenda shuns Keynesianism, a comprehensive state-supported safety net, and strong labor unions. Neoliberalism has long rested on privatizing failure and denigrating the role of government to solve economic and social problems.⁵⁶

Today, the neoliberal agenda rests on a powerful consensus among political elites of the two major political parties that the country’s budget deficits are the preeminent domestic threats to its economic and political future. This unwarranted budget deficit hysteria—or what Nobel laureate Joseph Stiglitz calls “deficit fetishism”—has asphyxiated the political imagination, not just with respect to mass incarceration but also to many other pressing social and economic problems, such as the lack of universal health care and good public schools for all.⁵⁷ These developments have put a premium on pursuing short-term goals couched in budget deficit terms and emphasizing individualized and privatized solutions over government-led ones among the leadership of both parties.⁵⁸

Neoliberalism is a defining global trend. However, it has taken root more quickly in some countries and jurisdictions than others and has captured some social and economic policies faster than others. The specific institutional and political context helps explain why. Wacquant focuses primarily on the imposition of

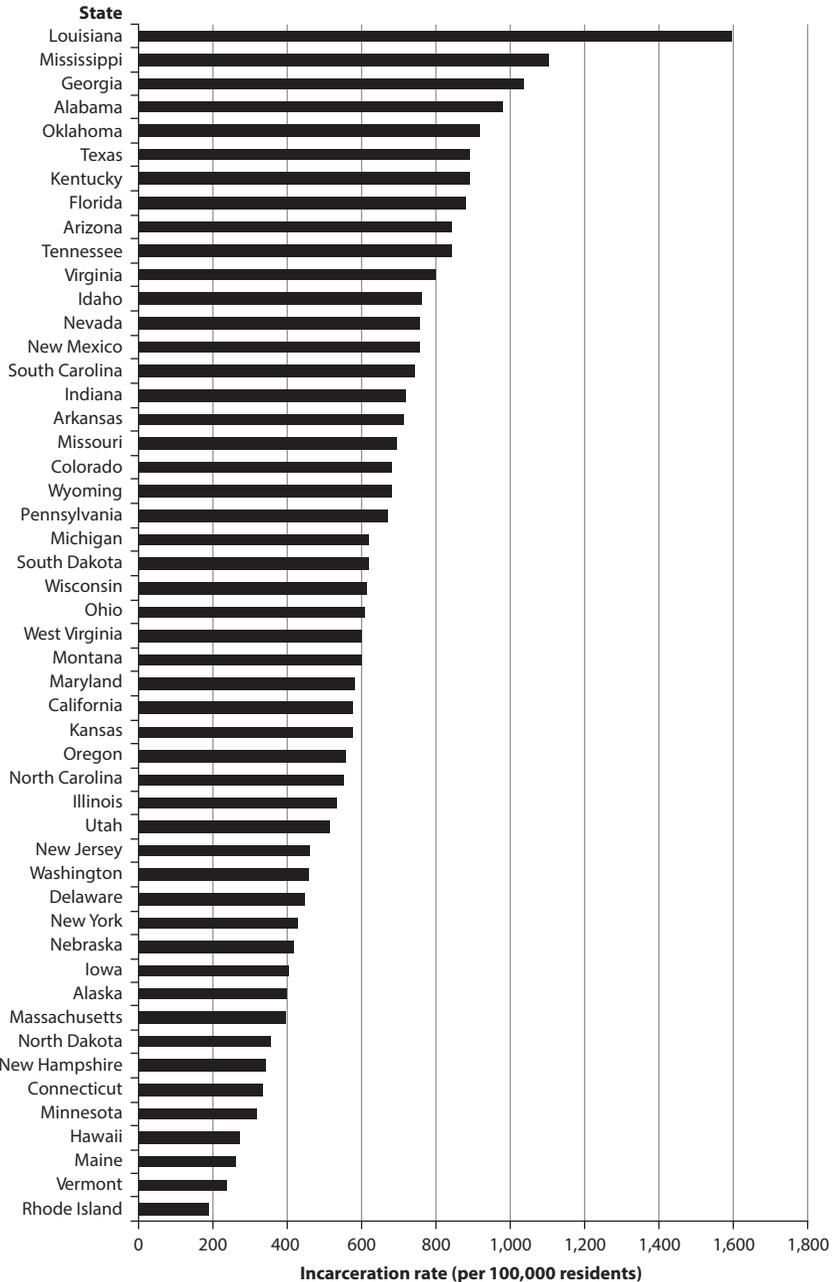


Figure 1.2. State by State Incarceration Rates, 2012

Source: The Sentencing Project, “Interactive Map: Total Corrections Population,” <http://www.sentencingproject.org/map/map.cfm#map> (retrieved March 13, 2014). Includes both jail and prison populations. Data from earlier years used when 2012 data were not available.

neoliberalism at the national and international levels. But neoliberalism operates at multiple levels of government and in multiple political spheres. In short, it is important to understand how neoliberalism operates “in the trenches.”⁵⁹

Wacquant argues that the penal policies that flow from neoliberalism have been “remarkably discriminating” as they have targeted the poor and disadvantaged while leaving the middle and upper classes “largely spared.”⁶⁰ That may have been true in the early decades of the prison buildup, but it is no longer true today. The poor and members of other disadvantaged groups certainly continue to bear the brunt of U.S. penal policies. But the carceral state has grown so expansive that it now deeply penetrates wide swaths of political, economic, and social life in the United States. In their case study of welfare reform, Joe Soss, Richard C. Fording, and Sanford F. Schram show how neoliberalism “de-democratizes the citizenry in far-reaching ways.”⁶¹ This is even truer in the case of neoliberalism and the carceral state, as elaborated in chapter 11 and elsewhere in this book. In short, there are no longer six degrees of separation from the carceral state for many Americans.

Neoliberalism in theory and neoliberalism in practice are fraught with contradictions, as Bernard Harcourt demonstrates in his excavation of the deep philosophical and political origins of neoliberalism stretching back to the eighteenth century.⁶² Neoliberalism’s political vitality has long depended on political sleights of hand that keep those contradictions out of the public eye and out of the public debate. How else could such a massive and costly expansion of the penal system take place at a time when calls for shrinking the government and slashing taxes so dominated the political landscape (as discussed in chapter 3)? In the case of welfare reform, neoliberalism has failed abysmally on its own terms. It ushered in a promiscuous privatization that fostered corruption and fraud without reducing the poverty rate.⁶³

As shown in the coming chapters, neoliberalism in penal policy is also failing on its own terms. The state has not retreated. A higher proportion of the population is under its direct control through prison, jail, probation, parole, and community service than at any time in U.S. history. Furthermore, the government’s penal, welfare, social service, surveillance, governing, economic, and political functions have become deeply entangled in ways that are creating troubling gradations of citizenship and belonging. In addition, these functions are growing more enmeshed with the private sector, which is even less transparent and accountable than the public sector. Taken together, these developments are upending the lives of enormous swaths of people in the United States, most of whom have never spent a day in jail or prison. They mark the emergence of the carceral state and raise troubling questions about the vitality of U.S. democracy and the legitimacy of the new economic and political order.

Developments in penal policy cannot be understood separately from wider developments in economic and social policy. Wacquant contends that mass incarceration was a political response to contain real and perceived fears of urban disorder and unrest as the Fordist model of industrial production disintegrated and neoliberalism took hold.⁶⁴ But, as shown in chapter 7, the neoliberal punitive

turn was not just a response to the economic and political disorders of the 1960s and 1970s. It was deeply conditioned by the political struggles in the 1940s and 1950s over law and order and civil rights. It also was deeply conditioned by the reconfigurations of black politics and the broader political terrain with the demise of the civil rights and Black Power movements.

Much of the work on neoliberalism is not attentive enough to the roles of race, gender, and ethnicity in shaping economic policies.⁶⁵ Likewise, much of the literature on race is inattentive to how the sinews of the political economy shape policy and politics. The U.S. version of neoliberalism is heavily race-inflected, Michael Dawson argues. As neoliberalism restructures the U.S. economy, it “has sharpened already existing class cleavages, further undermining the myth of a ‘monolithic’ black community, and by extension making even more difficult the task of building unified black political movements.”⁶⁶ This helps explain why organized opposition to the carceral state from African Americans has been so muted or ineffective until recently, as elaborated in chapters 6 and 7.

Carceral Clawback

The construction of the carceral state was the result of a complex set of historical, institutional, and political developments. No single factor explains its rise, and no single factor will bring about its demise. Mounting fiscal pressures will not be enough on their own to spur communities, states, and the federal government to make deep and lasting cuts in their prison and jail populations. It was mistakenly assumed four decades ago that shared disillusionment on the right and the left with indeterminate sentences and prison rehabilitation programs would shrink the inmate population. Instead, it exploded. The “race to incarcerate” began in the 1970s at a time when states faced dire financial straits. It persisted over the next four decades despite wide fluctuations in the crime rate, public opinion, and the economy.⁶⁷

Several factors help explain why “carceral clawback” is so tenacious.⁶⁸ Prisons are incredibly “resilient, flexible, and enabling institutions that can resist, incorporate, redefine, and absorb critical discourse.”⁶⁹ Moreover, as the carceral state has grown, so has the political clout and political acumen of groups, institutions, and organizations with vested economic interests in maintaining the world’s largest penal system. They include prison guards’ unions, state departments of corrections, law enforcement groups, the private corrections industry, and the financial firms that devise bonds and other mechanisms to fund the carceral state. These vested interests were not necessarily the main catalysts for the emergence of the carceral state, but they represent major impediments to reducing the prison population today and reining in the carceral state, as elaborated in chapter 3.

Furthermore, opponents of the carceral state have been poorly positioned to challenge these vested interests. It is not just a question of gross disparities in political resources that disadvantages them. With their single-minded focus on mobilizing around a particular criminal justice issue, such as opposition to the death

penalty, some advocacy groups have failed to see how their actions impinge on the broader politics of penal reform.⁷⁰ Another political challenge is that the development of the carceral state coincided with new patterns of racial inequality that have important implications for the politics of crime and punishment. Notably, these developments have greatly enhanced the public policing power of African American elites and partly explain their relative silence on the question of mass incarceration and the growth of the carceral state until recently. They also help explain why some leading identity-based civil rights and other organizations have been slow to mobilize against the carceral state, as discussed in chapters 6 and 7.

Many of the harshest critics of mass incarceration talk about the need to forge a broader social or political movement to bring down the carceral state. However, they generally have not inserted their analyses of the pathologies of the carceral state into a wider and more nuanced understanding of the main economic, political, and social currents shaping the United States today and thus the possibilities for penal reform. In short, “many progressives have failed to update their reform concerns and advocacy in light of twenty-first century realities.”⁷¹ One of those key realities is the tenacity of neoliberalism in American politics.

The broader political and economic environment helps determine whether politicians, other public figures, interest groups, and organizations lean more toward individual or structural explanations and solutions for major public problems. Individual explanations that stress personal responsibility have continued to trump structural ones in discussions of crime, punishment, and penal reform, thus reinforcing the neoliberal slant in penal policy. Several factors elaborated in this book help explain why. They include the emergence of color-blind racism in the wake of the civil rights movement, as Alexander argues; widening class, educational, and residential differences among blacks; important shifts in the electorate and in the political parties; and the organizational impediments to securing meaningful representation for the most disadvantaged groups in advocacy organizations dedicated to economic and social justice.

The obsessive pursuit of short-term goals in penal policy in service to budget deficit concerns has crowded out more ambitious goals. As politicians and policy makers pursue reentry and justice reinvestment schemes, they have left off the table any serious discussion of ameliorating the structural causes of high concentrations of crime and poverty in certain communities. Reducing the imprisonment rate in state and federal prisons to its historical norm of 120 to 130 inmates per 100,000 people—which would be about one-quarter of the current imprisonment rate—is off the table (see figure 1.3). So is a relatively more modest goal like cutting the incarceration rate for jails and prisons in half, to about 350 per 100,000. This would still be an extraordinarily high rate compared to the rates of other Western countries (see figure 1.1). But there is an even larger problem with this strategy, as discussed in chapters 4 and 5. The dogged pursuit of the three R’s—that is, reentry, justice reinvestment, and reducing the recidivism rate—may actually be coming at the cost of fortifying both the carceral state and the sharp right turn in American politics over the long term. This is a sadly familiar historical pattern.

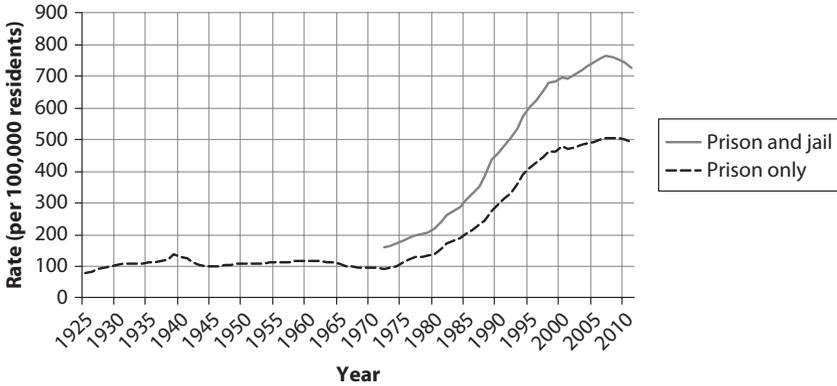


Figure 1.3. U.S. Imprisonment and Incarceration Rates, 1925–2011

Source: Courtesy of Bruce Western, analyses for Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 35, fig. 2.1 and 421–22, appendix B.

Many previous bursts of penal reform optimism ended up shifting penal policies in a more punitive direction.

Stumbling on the Road to Reform

Major shifts in public policy often have unintended negative consequences, and penal policy is no exception. The road to a just criminal justice system is littered with bursts of optimism that ended up yielding a sharp right turn in penal policy. More than half a century of political agitation finally brought about bans on the convict-leasing system throughout much of the South by the 1920s.⁷² But the state-run chain gangs and penal farms that replaced the brutal and corrupt practice of leasing out convicts to the highest bidder, who often worked them to death's door to turn a profit, became enduring symbols of “southern backwardness, brutality, and racism.”⁷³ As Robert Perkinson wryly observes, “Strange as it seems, the chain gang, in which thousands of prisoners, most of them black, were loaded onto cattle trucks and carted around the state to pound rocks and shovel dirt, was celebrated as a humanitarian advance.”⁷⁴

Moments of apparent left-right convergence on penal policy are fraught with possibility and peril. Growing disillusionment on the left and right with rehabilitation and judicial discretion in the 1970s provided a huge political opening for conservatives to move penal policy in a more punitive direction, partly because this disillusionment coincided with a spike in crime rates.⁷⁵ Indeterminate sentences and parole boards were cast out at the federal level and in many states. Tough

mandatory and advisory sentencing guidelines, and harsh mandatory minimum, habitual offender, and determinate sentencing statutes replaced them. At the federal level, a highly politicized sentencing commission was established that leaned toward prosecutors and increasingly favored mandatory over advisory sentencing guidelines. Federal judges, who initially overwhelmingly opposed the guidelines, ended up slavishly following them in many cases.⁷⁶

Like earlier bursts of penal reform, the three-R approach might actually entrench the carceral state even further over the long run. Discussions of justice reinvestment, recidivism, and reentry exemplify how the language and techniques of cost-benefit analysis have come to dominate mainstream conceptions of penal reform.⁷⁷ This is politically perilous for several reasons.

As discussed in chapters 4 and 5, evaluating each penal reform primarily by putting it on the evidence-based, cost-benefit scales to determine whether it reduces crime while saving public money reinforces the tight linkage in the public mind between punishment and crime. It is at odds with some of the most compelling research findings of the last decade or so about the relationship between punishment and crime. We have long known that crime rates move up and down quite independently of punishment practices. More recent research has helped pinpoint the precise relationship between incarceration rates and crime rates.⁷⁸ A 2014 National Research Council study concluded that the “increase in incarceration may have caused a decrease in crime, but the magnitude is highly uncertain and the results of most studies suggest it was unlikely to have been large.”⁷⁹

Recasting the problem of mass incarceration in econometric or cost-benefit language is problematic in many ways. It does little to challenge the excessively punitive rhetoric that has left such a pernicious mark on penal policy over the last half century. It also is no match for the considerable economic interests that are now deeply invested in the perpetuation of the carceral state. Furthermore, it constricts the political space to challenge penal policies and practices on social justice or human rights grounds. Among elite policy makers and the wider public, creating a safe, healthy, and humane penal system is generally not considered a credible and desirable public policy goal on its own. This goal has to be linked somehow to enhancing public safety and saving public money.

Encased in a shell of evidence-based research, the three-R approach is broadly seen as a way to wring politics out of penal reform. The aim is to devise penal reforms that attract overwhelming bipartisan consensus. But this goal comes at a high cost. It leaves largely unchallenged and unquestioned the political calculations and interests that built the carceral state in the first place. The narrow emphasis on evidence-based research related to recidivism fosters the impression that the birth of the carceral state was the result of bad or nonexistent research rather than bad politics or bad policy.

No wonder then that ending this vast public policy experiment with mass incarceration is not considered a worthy goal in and of itself. Calls to slash the U.S. incarceration rate to bring it more in line with its historic levels and with the incarceration rates of other Western countries are viewed as wildly utopian or dangerously

radical. This is so despite the pile of evidence-based research that the relationship between punishment practices and public safety is a loose one at best.

Alarmed by the noxious consequences of the hyper-politicization of criminal justice policy-making since the 1970s, experts on crime and punishment generally have recoiled from paying serious attention to the ways in which the political context influences all aspects of crime and punishment.⁸⁰ But as David Bazelon, the chief judge of the U.S. Court of Appeals in Washington, DC, warned more than three decades ago, “[P]olitics is at the heart of American criminology.”⁸¹ Many experts in this area have sought refuge in producing state-of-the-art, ostensibly apolitical, evidence-based research centered largely on how to help government agencies or other groups reduce crime. Such a “narrowly instrumental focus appears to forget that in a liberal democracy it matters not only that crime is prevented and detected, but also *how* that happens.”⁸² Ian Loader and Richard Sparks rightfully beseech these experts to recognize that all aspects of crime and punishment are inherently political, for they are central to how we think about what constitutes a good and fair society.⁸³ In short, crime control strategies are profoundly political because they both reflect and direct the distribution of power in society.⁸⁴

Framing solutions to the problem of the carceral state primarily in “neutral,” scientific, and nonpartisan language ends up ceding important political ground, rendering reforms to dismantle the carceral state vulnerable to resurgent law-and-order rhetoric. Moreover, since “cost savings and lower reoffending rates are presented as ends in themselves—that are somehow separate from thornier matters of human rights, morality, or justice—what is to protect against practices that might be extremely harsh, but reduce overheads or recidivism?”⁸⁵

The three-R approach to limited penal reform has been unfolding alongside a growing push to banish certain people, in some cases permanently, including lifers, immigrants, and people convicted of violent or sexual offenses, as discussed in chapters 8, 9, and 10. These simultaneous and seemingly contradictory gestures are really two sides of the same coin. Both approaches are manifestations of what some sociologists characterize as the “death of the social” with the rise of neoliberalism and globalization and the devolution of the government.⁸⁶ With the “death of the social,” problems like crime, poverty, mass unemployment, and mass incarceration are no longer seen as having fundamental structural causes that can be ameliorated by policies and resources mobilized by the state. Rather, these problems are regarded “as either the product of chance or individual action.”⁸⁷ State actors and state agencies are considered part of the problem rather than part of the solution. As such, any quest to develop visionary state-led social and economic policies that seek to address the growing inequalities in the United States is considered politically impolitic.

Instead, the focus is on devising micro-interventions at the local and community levels to change the behavior of individuals. The delegated engineers for these micro-interventions are private-sector, nonprofit, or state actors who are specialists in a very particular area—like substance abuse or anger management or résumé writing.⁸⁸ In short, we live in an oxymoronic age of DIY—that is, do-it-yourself—

social policies. Those individuals deemed unable or unwilling to change must be banished—either to the prison or to the prison beyond the prison. Why? Because even though local communities have been valorized as the primary sites of political, social, and economic sustenance, they also are regarded as fragile bulwarks in the face of all the turmoil and anxiety wrought by neoliberalism, globalization, and the coming of the white minority in U.S. politics.⁸⁹

The current economic crisis certainly presents an opportunity to redirect U.S. penal policy that opponents of the prison boom should certainly exploit. But the recidivism-reinvestment-reentry model of penal reform is not likely to result in a major retrenchment of the carceral state. Since the pernicious politics that gave birth to the carceral state remain fundamentally unchallenged, another burst of punitive law-and-order policy-making remains an imminent threat. The country's current economic malaise does not provide much of a firewall against that. Indeed, for a variety of reasons, the economic plight of the United States today could actually be the catalyst for another burst of get-tough policies, as elaborated in chapter 2. Furthermore, staking the future of penal reform primarily on a dollars-and-cents logic is rendering life in U.S. prisons and jails even leaner and meaner as government officials and policy makers slash corrections budgets.

Framing the problem of mass imprisonment as largely a fiscal problem (i.e., we just cannot afford it anymore) will not sustain the political momentum needed over the long haul to slash the prison population and dismantle the carceral state. But the problems with the single-minded focus on the fiscal burden of mass imprisonment run deeper than that. The fiscal imperative argument is providing a huge political opening for the expansion of the private prison industry and for a possible return to one of the most ignominious chapters in U.S. penal history—the unbridled exploitation of penal labor for profit, as discussed in chapter 3. It has helped to bolster the conservative, neoliberal, austerity-first view of what is possible in American politics today. Furthermore, the fiscal approach to penal reform is wholly inadequate to tackle the wide range of problems associated with the emergence of a tenacious carceral state that is altering how key social and political institutions operate and perverting what it means to be a citizen in the United States, as discussed in chapter 11. It slights the compelling civil and human rights concerns that the carceral state raises as it removes wide swaths of historically disadvantaged groups from their neighborhoods, leaving behind devastated families and communities and troubling questions about the fairness and legitimacy of U.S. political institutions and the broader social order.

Chapter Summary

Chapter 2 analyzes why the financial meltdown and the Great Recession are not likely to be catalysts for the beginning of the end of mass incarceration in the United States. It also analyzes why some of the current political and economic strains in the United States could trigger another round of get-tough policies. Chapter 3 shows how the new political economy of the carceral state is an impediment to

reversing the prison boom. It examines financing gimmicks that have kept the true costs of the prison buildup concealed. It also analyzes important changes in the use of penal labor and in the privatization of corrections and criminal justice. Chapters 4 and 5 critique the three-R approach to penal reform with its emphasis on justice reinvestment, reentry, and reducing recidivism. Chapters 6 and 7 analyze the strengths and weaknesses of framing the problem of the carceral state as primarily a problem of racial disparities and of color-blind racism. Chapters 8, 9, and 10 analyze how the carceral state is continuing to extend its reach with the war on sex offenders, the war on immigrants, and the war on the “worst of the worst,” including people serving life and other lengthy sentences. Chapter 11 scrutinizes how the carceral state is deforming key political and governing institutions at great cost to the vitality of democracy in the United States. The final chapter sketches out an alternative political and public policy path to begin razing the carceral state.

The Carceral State and American Politics

There really is no such thing as a politics of penal policy per se. The carceral state must be understood within the larger political, economic, and institutional context in which it is so deeply embedded. It is critical to examine not just the actions and preferences of critical political actors and policy makers with respect to penal policy, but also the objectives these actors pursue simultaneously in other key realms of politics and economics. It also is important to situate the problem of the carceral state within the main political and economic currents that shape American politics and the U.S. political economy today. Using such a broad lens brings penal policy into better focus. It reveals the competing and contradictory views and impulses of key political actors and policy makers that stand in the way of dismantling the carceral state. It also reveals the enormous obstacles to forging a powerful political movement that fundamentally challenges the carceral state and other gaping political and economic inequalities in the United States today.

The U.S. carceral state may be exceptional in its size and tenacity. But many of the political, economic, and social forces that sustain the carceral state and stand in the way of genuine penal reform are not. The tale of the carceral state is really one chapter in a longer story about the huge disconnect between the breathtaking problems that grip the United States and the unwillingness or inability of the political system to remedy them. Many of the pathologies that run through the carceral state also run through American politics today. They include the unwarranted reverence for nonpartisanship at all costs, the uncritical acceptance of neoliberalism in all aspects of public policy, the stranglehold that economic and financial interests exert on politics and policy-making, the growing political and economic disenfranchisement of wide swaths of the population, and the gross limitations of oppositional strategies formed primarily around identity-based politics.

Framing the problem of mass incarceration in highly economic language has political ramifications that extend far beyond penal policy. Hitching the movement against mass incarceration to the purported fiscal burden of the carceral state helps reinforce the premise that eliminating government deficits and government debt should be the top national priority. Politicians and policy makers across the board have treated shrinking government budgets as a political given rather than as political terrain to be contested.⁹⁰ This has emboldened claims that excessive spending on social programs like Medicaid, Medicare, and Social Security is the primary source of the country's red ink, rather than the tax cuts for the wealthy enacted under President George W. Bush, the crushing costs of the "war on terror" and the wars in Iraq and Afghanistan, and the economic contraction sparked by the 2008 financial meltdown.⁹¹

The fiscal frame also obscures the deeper structural problems that vex the U.S. economy, including promiscuous globalization, excessive financialization and deregulation, and alarming economic inequalities that are hollowing out the U.S. economy and standard of living. What was once the conservative stance on what ails the U.S. economy has become the mainstream bipartisan position, as evidenced most pointedly by President Barack Obama's wholesale embrace of deficit politics in 2010 despite projections from the Congressional Budget Office (CBO) at the time that the annual deficit would fall to manageable levels once the economy revived.⁹²

We've been down this road before. In the early 1980s, David Stockman, President Ronald Reagan's first budget director, admitted that the White House strategically wielded the budget deficit hysteria to slash and burn social programs, shrink the government's role in social welfare and other services, and further the cause of privatization.⁹³ Grover Norquist, one of the leaders of the Right on Crime initiative, is the nation's foremost anti-tax crusader and is widely known for bluntly stating that he aims to shrink government "down to the size where we can drown it in the bathtub."⁹⁴ Norquist's organization, Americans for Tax Reform (ATF), was behind the controversial Taxpayer Protection Pledge, which more than 95 percent of the Republicans in Congress had signed as of early 2013.⁹⁵

ATF is a member of the American Legislative Exchange Council (ALEC), which has been a leading force for decades in pushing prison construction, privatization of the penal system, and punitive measures like "truth in sentencing" and "three strikes-and-you're-out" statutes, as elaborated in chapter 3. Recently, ALEC has been at the forefront of the assault on public-sector unions and public schools through the expansion of vouchers, charter schools, and online "virtual schools."⁹⁶ It also was the leading incubator of a spate of punitive legislation directed at immigrants, as elaborated in chapter 10. It has championed the controversial Stand Your Ground gun laws, which were at the center of the national firestorm over the February 2012 shooting death of seventeen-year-old Trayvon Martin in Florida.⁹⁷ ALEC was forced to disband its Public Safety and Election Task Force shortly after Martin's death, thanks to pressure from a boycott organized by the Occupy Wall Street movement and the Center for Media and Democracy that targeted its major corporate funders.⁹⁸

Today the pillars of the U.S. social welfare state, including Medicare, Medicaid, Social Security, a vibrant labor movement, and adequately funded public schools, are vulnerable to direct assaults from the right and to kinder, gentler jabs from President Obama and some other leading Democrats.⁹⁹ In such a political environment, it is hard to imagine that calls for justice reinvestment couched in economic and ostensibly nonpartisan language will actually result in reallocating the tens of billions spent annually on corrections to social and economic programs that reduce crime and improve the lives of people residing in high-crime communities.

Framing the carceral state primarily as an economic issue may yield some short-term benefits. But in the absence of more compelling arguments against the prison buildup, it becomes that much easier to revert to funding a vast carceral state, no questions asked, once the economy picks up.

A durable reform movement to weather the backlash that efforts to substantially reduce the incarceration rate will inevitably spark has yet to coalesce. The budgetary and other economic problems brought on by the financial meltdown and Great Recession do not spell the beginning of the end of mass incarceration and the carceral state in the United States. To borrow from Winston Churchill, “It is not even the beginning of the end. But it is, perhaps, the end of the beginning.”¹⁰⁰

Criminal justice is fundamentally a political problem, not a crime and punishment or a dollars-and-cents problem. A huge penal system is well on its way to becoming the new normal and a key governing institution in the United States. Like the vast military-industrial complex that quickly insinuated itself into the political and economic fabric in the postwar decades, the carceral state has become integral to the U.S. polity, economy, and society in ways that we have yet to fully acknowledge.