

The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad

Marie Gottschalk

- GILMORE, RUTH WILSON. 2007. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press. Pp. xxii + 388. \$50.00 cloth; \$19.95 paper.
- MANZA, JEFF, and CHRISTOPHER UGGEN. 2006. *Locked Out: Felon Disenfranchisement and American Democracy*. New York: Oxford University Press. Pp. viii + 359. \$29.95 cloth; \$18.95 paper.
- SIMON, JONATHAN. 2007. *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. Oxford: Oxford University Press. Pp. viii + 330. \$29.95 cloth.
- TONRY, MICHAEL, ED. 2007. *Crime, Punishment, and Politics in a Comparative Perspective: Crime and Justice: A Review of Research*, vol. 36. Chicago: University of Chicago Press. Pp. ix + 680. \$60.00 cloth; \$39.00 paper.
- WESTERN, BRUCE. 2006. *Punishment and Inequality in America*. New York: Russell Sage Foundation. Pp. xiv + 247. \$29.95 cloth; \$17.95 paper.

This essay reviews five books as they relate to the causes and political consequences of mass imprisonment in the United States and the comparative politics of penal policy: Ruth Wilson Gilmore's Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California (2007); Jeff Manza and Christopher Uggen's Locked Out: Felon Disenfranchisement and American Democracy (2006); Jonathan Simon's Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear (2007); Michael Tonry, ed., Crime,

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Punishment, and Politics in a Comparative Perspective (2007); and *Bruce Western's Punishment and Inequality in America* (2006).

The essay first examines the enormous and growing political repercussions of having a vast penal system embedded in a democratic polity, including the political and electoral consequences of felon disenfranchisement; increasing political, social, and economic inequality for people marked by the penal system; and the phenomenon of "governing through crime." It also analyzes emerging strategies of resistance to US penal policies and mass incarceration, why some countries are more vulnerable to hard-line penal policies than others, and what it will take to reverse the US prison boom.

INTRODUCTION

Throughout American history, politicians and public officials have exploited public anxieties about crime and disorder for political gain. Over the last three decades, these political strategies and public anxieties have come together in the perfect storm. They have radically transformed US penal policies, spurring an unprecedented prison boom. Since the early 1970s, the US prisoner population has increased by more than sixfold (Manza and Uggen 2006, 95). Today the United States is the world's warden, incarcerating a higher proportion of its people than any other country. A staggering seven million people—or one in every thirty-two adults—are either incarcerated, on parole or probation, or under some other form of state supervision (Glaze and Bonczar 2006). These figures understate the enormous and disproportionate impact that this bold and unprecedented social experiment has had on certain groups in US society. If current trends continue, one in three black men and one in six Hispanic men are expected to spend some time in jail or prison during their lives (Bonczar 2003).¹

The rapid and unprecedented growth of the US penal system and the proliferation of harsh and degrading punishments have spurred interest in understanding why some countries are more punitive than others. Fifteen years or so ago, there was next to no comparative literature on crime control and penal policy (Tonry 2007, 4). Since then, scholars have begun to identify certain distinctive cultural, historical, constitutional, institutional, and political factors that make certain countries more likely to adopt get-tough policies.

This essay examines some of the broader consequences of the vast penal system in the United States, including felon disenfranchisement; growing political, social, and economic inequality for people who have served time; and the phenomenon of governing through crime. It also analyzes emerging strategies of political resistance to these developments. It concludes by

1. For an overview of recent scholarship on the origins and development of the carceral state, see Gottschalk (2006).

discussing US penal policies in a comparative context and addresses two key related questions: Is the race to incarcerate primarily a US phenomenon or are other countries going to follow in its tough footsteps? And what do the experiences of other countries tell us about the prospects for reversing the prison boom in the United States?

THE WIDER POLITICAL CONSEQUENCES OF MASS IMPRISONMENT

Mass imprisonment is no longer “just” a problem largely confined to poor urban communities and minority groups—if it ever was. The US penal system has grown so large that it has begun to alter how key governing institutions operate, including elections and the census. Moreover, mass imprisonment is bluntly and subtly remaking conceptions of citizenship. It may also be creating a large and permanent group of political, economic, and social outcasts, which has enormous political implications.

Manza and Uggen’s (2006) *Locked Out* quantifies the profound impact that felon disenfranchisement is having on the electoral process in the United States and situates this development within discussions of democratic theory. The voting irregularities of the 2000 and 2004 presidential elections drew public attention to the plight of the estimated five million Americans who are barred from voting by a maze of state laws that deny people with criminal records the right to vote, sometimes temporarily, sometimes permanently (7). Most established democracies place few, if any, restrictions on the right to vote for people with criminal convictions, including those currently in prison. The United States not only disenfranchises most of its prisoners, but also is the only democracy that routinely disenfranchises large numbers of people on parole or probation, as well as ex-offenders who have completed their sentences (38). At least six states even disenfranchise misdemeanants (9). The political impact of felon disenfranchisement in the United States is so large because the number of people with felony convictions is large—more than sixteen million Americans (9)—and because felon disenfranchisement laws have stark racial consequences (Brown-Dean 2004; Hull 2006; Manza and Uggen 2006; Pettus 2005). More than one in seven black men in the United States is disenfranchised because of his criminal record. In several states it is as high as one in four (Manza and Uggen 2006, 10).

Manza and Uggen demonstrate that the disenfranchisement of prisoners, nonincarcerated felons, and ex-offenders represents more than just “a failure to make good on the promise of universal suffrage” (8). It also has decisively influenced election outcomes. They calculate that if Florida had not banned so many ex-felons from voting in the 2000 election, Al Gore would have carried the state by at least thirty thousand votes, handily winning the White

House (192). Were it not for felon disenfranchisement laws, the Democratic Party might have controlled the Senate for much of the 1990s (196). In making these calculations, Manza and Uggen factor in that people with criminal records are less likely to vote even in the absence of formal legal barriers, because they tend to have demographic characteristics (low income, less educated, African American) that are historically associated with below-average turnout rates. Manza and Uggen's work implicitly challenges conventional accounts of the rising political dominance of the Republican Party in the 1980s and 1990s. The postwar electoral ascendancy of the Republican Party may have been as much a result of locking out wide swaths of the electorate as of crafting a new conservative message that successfully ruptured the remnants of the New Deal coalition.

Manza and Uggen briefly survey some of the main arguments raised against felon disenfranchisement laws. They show how these laws have had enormous negative consequences for minority groups—especially African Americans—even though they are technically race neutral. These laws impede the rehabilitation and reintegration of offenders, but perhaps most importantly, they diminish the quality of the democratic polity. Manza and Uggen quote favorably from the South African Constitutional Court's eloquent decision to restore the right to vote to prisoners: "The vote of each and every citizen is a badge of dignity. Quite literally, it says that everybody counts. . . . that our destinies are intertwined in a single interactive policy" (232). The American public seems to agree. Manza and Uggen's public opinion surveys (215–16) indicate strong support (ranging from 60 to 68 percent) for granting parolees and probationers the right to vote and overwhelming support (80 percent) for permitting ex-felons the right to vote (though support fell to 52 percent for former sex offenders).

Felon disenfranchisement laws persist even though they have few ardent public defenders. Politicians and pundits tend to speak up in their favor only when these restrictions face legal or legislative challenges. Manza and Uggen examine the main political and legal arguments raised in their favor and find them unsubstantiated or unconvincing. Despite claims to the contrary, people with criminal records are not more likely to commit electoral fraud or to use the ballot box to elect pro-offender public officials who will gut criminal laws. Manza and Uggen dismiss the states' rights defense of felon disenfranchisement (14). The Supreme Court employed states' rights arguments—and an imaginative and controversial interpretation of the Fourteenth Amendment's obscure Section 2—to defend felon disenfranchisement in the landmark 1974 *Richardson v. Ramirez* decision. In upholding the restrictions, the Supreme Court argued that the Constitution vests states with a wide berth to decide what criteria to use in determining voter eligibility. But as Manza and Uggen note, states' rights arguments historically have been used to perpetuate racially discriminatory practices, and felon disenfranchisement laws end up suppressing the vote of minority groups, especially African

Americans. Moreover, the states' rights argument elides the question of whether people with a criminal record should be allowed to vote. "To say that the states should decide the question does not justify any particular state's law, and indeed most other state restrictions on the franchise have been abolished since the 1960s," they argue (14).

As for the charge by Republicans that opposition to felon disenfranchisement is nothing more than a blatant attempt by the Democratic Party to grab votes, Manza and Uggen note that making voting distinctions based on how someone is likely to vote has no foundation in modern conceptions of democracy. Moreover, the Democrats have not been brazen champions of restoring the vote to offenders, even though opinion polls suggest that the public generally favors removing some of these electoral barriers. Although felon disenfranchisement siphons off votes from the Democratic Party, adopting a punitive law-and-order stance in recent years was thought to help the party secure votes from other key constituencies. Momentum is building, nonetheless, to restore the voting rights of people with felony convictions. In 2007, Maryland, Florida, and Rhode Island adopted potentially far-reaching measures that could restore the voting rights of hundreds of thousands of people with criminal records (*Sentencing Times* 2007).

MASS IMPRISONMENT AND INEQUALITY

The landmark work on the enduring collateral consequences of imprisonment is Bruce Western's *Punishment and Inequality* (2006). Western soberly concludes that mass imprisonment has erased many of the "gains to African American citizenship hard won by the civil rights movement" (191). Incarceration significantly reduces the wages, employment, and annual income of former inmates. Incarceration also decreases the likelihood that they will get married or stay married and increases the risk of domestic violence for their partners. These negative effects are concentrated among poor, uneducated black men, drawing a sharp demarcation between poor blacks and the rest of society, including middle-class blacks. Western's analysis is based largely on data drawn from the National Longitudinal Survey of Youth (which regularly interviews a sample of young men), the Current Population Survey, and the Bureau of Justice Statistics surveys of inmates.

Western's work raises fundamental questions about race and social inequality. Young men from impoverished backgrounds were much less involved in nonviolent crime in 2000 than two decades earlier, and their rates of serious violence remained reasonably constant. Yet their chances of incarceration increased substantially (40). In 2000, about one-third of black male high school dropouts between twenty and forty years old were in prison or

jail on a typical day (19). By the time they are forty, 60 percent of black male high school dropouts have been incarcerated at least once (27). The 8-to-1 black-white incarceration ratio dwarfs the disparities found in many other major indicators of inequality (16), such as unemployment (2-to-1), infant mortality (2-to-1), and wealth (1-to-5).

Western challenges claims about the achievements of the 1992–2000 economic expansion, hailed as the largest peacetime expansion in US history. Large surveys run by the Census Bureau to determine poverty rates, unemployment rates, and wage levels exclude people who are incarcerated (87). But if the imprisoned population were included in official statistics, the jobless rate for young black males in 2000 would have been 32.4 percent, not the official 23.7 percent (90). The real unemployment rate for young black men who dropped out of high school actually increased from 41 percent to 65 percent between 1980 and 2000, discrediting the widespread claim that the 1990s economic expansion lifted all boats (91).

The portrait in *Punishment and Inequality* of the deteriorating economic position of poor, unskilled blacks is at odds with the conventional view that the US labor market outperforms the labor markets of Western Europe. It undermines the claim that the United States, with its relatively unregulated labor market, weak unions, and more limited welfare benefits, is better at reducing unemployment, especially for low-skilled workers, than “nanny states” like France, Italy, and Germany (104). Western also notes that state regulation of the poor did not recede in the United States in the 1990s; it merely took a new form as the criminal justice system swept up more poor, uneducated men and women in its widening dragnet (105).

The burdens that mass imprisonment confers on the most disadvantaged members of American society have remained largely invisible for many reasons, some political, some analytical, and some a combination of the two. For example, the US Census Bureau considers prisoners to be residents of the towns and counties where they are incarcerated. But most inmates have no personal or civic ties to these communities and almost always return to their home neighborhoods upon release (Manza and Uggen 2006, 201–02; Gottschalk 2007).

The way prisoners currently are counted has enormous and unsettling political consequences. In every state, except Maine and Vermont, imprisoned felons are barred from voting. Yet these disenfranchised prisoners are included in the population tallies used for congressional reapportionment and for redistricting state legislatures, county governments, and city councils. This practice dilutes the votes of urban areas. Nearly 40 percent of the inmates in Pennsylvania’s state prisons come from Philadelphia, which has no state prisons in its city limits. For census and redistricting purposes, these Philadelphia citizens are considered residents of the counties where they are imprisoned. These tend to be predominantly white, rural districts that typically vote Republican.

The evidence of political inequities in redistricting due to how the Census Bureau counts prisoners is “compelling” (National Research Council 2006, 9). A provocative analysis by the Prison Policy Initiative suggests that several Republican Senate seats in New York State would be in jeopardy if prisoners in upstate correctional institutions were counted in their home neighborhoods in New York City (Wagner 2002). In May 2006, a federal appeals court suggested that counting tens of thousands of African American and Latino prisoners from New York City as upstate residents may be illegally diluting the voting rights of people downstate under Section 2 of the Voting Rights Act (Roberts 2006).

The current census practice also makes for misleading conclusions in vital areas like economic growth, migration, and household income. For example, in the 2000 census, fifty-six counties nationwide—or one in fifty—with declining populations were misleadingly reported to be growing, thanks to the inclusion of their incarcerated populations (Heyer and Wagner 2004). Nearly two hundred counties nationwide now have at least 5 percent of their “residents” in prison, and about twenty counties have more than 20 percent of their “residents” incarcerated (Lotke and Wagner 2004; Wagner 2004).²

The country’s criminal justice policies raise other difficult and largely unexplored issues about political participation and citizenship. Mass imprisonment is helping to create and legitimate a whole new understanding of citizenship and belonging. Former felons risk losing not only the right to vote but also are subject to other acts of civil death that push them further to the political, social, and economic margins. Many former felons forfeit their right to serve on a jury and are ineligible to receive pensions, disability benefits, veterans’ benefits, public housing, student loans, or food stamps. States prohibit former offenders from working in scores of professions, including plumbing, palm reading, food catering, and even haircutting, a popular trade in many prisons (Legal Action Center 2004).

Many jurisdictions forbid employers to discriminate against job applicants solely because of their criminal records, unless their offense is directly relevant to the job. But applicants with criminal records are disproportionately denied jobs (Pager 2007), and rejected job seekers have great difficulty

2. Pennsylvania’s Union County, which has an archipelago of federal penitentiaries, is 90 percent white, according to the 2000 census. But without its five thousand prisoners, Union would be 97 percent white (Prisoners of the Census 2006). About a dozen counties in Pennsylvania reportedly doubled or tripled their African American populations between 1990 and 2000 (calculated from Brewer and Suchan 2001, 38). Much of this change is the result of opening new prisons.

In fall 2007, dozens of elected officials from New York, Illinois, and Texas, in a joint letter, requested that the Census Bureau collect the home addresses of all inmates and count those addresses in the next national census—but the bureau has raised numerous objections to counting prisoners in the next census based on where they lived prior to their arrest (US Census Bureau 2006).

getting redress in the courts (Hull 2006). The enormous number of barriers to full civic and political participation in the United States make it that much more difficult for offenders to develop the “coherent, prosocial identity” that Maruna (2001, 7) identifies as a key factor in desisting from a life of crime.

In a remarkable development, elaborate gradations of citizenship are on their way to becoming a new norm in the United States. “Partial citizens” (Manza and Uggen 2006, 9) or “internal exiles” (Simon 2007, 175), be they felons, ex-felons, legal resident aliens, or undocumented immigrants, are now routinely denied a range of rights and access to state resources. Some ex-felons succeed in having their political rights restored, but it often involves elaborate, capricious, intrusive, and daunting procedures that establish a new standard of worthiness for political participation. For example, at a restoration hearing in Florida, Republican Governor Jeb Bush “asked one man about his drinking, another about his temper, and so on” (Goodnough 2004, quoted in Manza and Uggen 2006, 87).

In the case of immigrants, documented and undocumented, a whole new penal apparatus has been quietly under construction for decades. It operates under the auspices of the US Immigration and Customs Enforcement (formerly the Immigration and Naturalization Service) but has been largely shielded from public and legal scrutiny. Changes in immigration policy over the last twenty-five years or so have become new drivers of the US penal system (Bohrman and Murakawa 2005). Two landmark pieces of legislation in 1996—the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act—dramatically expanded the categories of crimes for which legal residents could be deported and eliminated many opportunities for waivers. A conviction for simple battery or shoplifting with a one-year suspended sentence could trigger mandatory detention and deportation (Dow 2004, 173–74). The number of people held by Immigration and Customs on any given day has increased more than elevenfold since the early 1970s (calculated from Dow 2004; Kolodner 2006), as the immigration service has become a mini-Bureau of Prisons. People who enter the United States illegally are not technically considered criminals, but they have fewer legal protections and rights and often are subjected to more capricious and brutal conditions of confinement than citizens charged with crimes (Dow 2004). People held under suspicion of immigration violations in federal detention centers are not even entitled to have their injuries, illnesses, or deaths in custody reported to family members in a timely fashion (Bernstein 2008).³

3. Congress is currently considering legislation that would require federal detention facilities to report deaths in custody to the attorney general (American Civil Liberties Union 2008).

GOVERNING THROUGH CRIME

In *Governing Through Crime*, Simon (2007) argues that the criminalization of immigration policy is just one example of how the “technologies, discourses, and metaphors of crime and criminal justice” have been migrating to all kinds of institutions and public policies that seem far afield from crime fighting (4). A new civil and political order based on governing through crime has been in the making for decades. According to Simon:

The terror attacks of 9/11 have created a kind of amnesia wherein a quarter century of fearing crime and securing social spaces has been suddenly recognized, but misidentified as a response to an astounding act of terrorism, rather than a generation-long pattern of political and social change. (11)

The war on crime has created imbalances in the political system. The Department of Justice and the office of the attorney general have swollen at the expense of other parts of the federal government. The power of the prosecutor has expanded at the expense of judges, defense attorneys, and other actors in the criminal justice system (34). Perhaps even more significantly, the all-powerful, largely unaccountable prosecutor has become the new model for exercising executive authority in the United States. In word and deed, mayors, governors, and presidents increasingly fashion themselves as “prosecutors-in-chief” (33). They “define their objectives in prosecutorial terms,” frame “political issues in the language shaped by public insecurity and outrage about crime,” and push for vast expansions of executive power (35).⁴ Simon identifies Attorney General Robert F. Kennedy as a key figure in the development of this new mode of executive authority. RFK set a precedent for “prosecutorial zealotry” emulated by his Republican successors, notably John Mitchell, Ed Meese, and John Ashcroft (51). In dedicating the Justice Department’s new headquarters to Kennedy in 2002, Attorney General Ashcroft favorably compared his predecessor’s “extraordinary campaign against organized crime” to today’s “war on terror” (60).

The war on crime has fundamentally recast both governmental and nongovernmental institutions in the United States, according to Simon. In the new regime, criminal analogies are wielded in many diverse settings, from homes to schools to the workplace. Principals, teachers, parents, and employers all gain authority and are viewed as acting legitimately if they can redefine family, education, or workplace issues as criminal matters (4).

4. The reinstatement of capital punishment in the 1970s arguably gave the nation’s governors a strategic advantage in the race for the White House. Demonstrations of their readiness and eagerness to carry out executions helped burnish their law-and-order credentials, disadvantaging US senators who never get to make a public show of signing execution warrants (Simon 2007, 69).

Families are no longer insulated from criminal law. For example, criminal accusations of child abuse or substance abuse are increasingly common during divorce proceedings and hearings on the termination of parental rights (193).

Decades ago “racial inequality was the pivot around which the federal government mandated a vast reworking in the way schools were governed at the state and local levels” (9). Now, Simon contends, it is crime. The federal Safe Schools Act of 1994 and the state-level Safe Schools Acts it spawned singled out crime control as the main vehicle for improving public education. In introducing his No Child Left Behind Act in 2001, President George W. Bush cast educational failure and crime in the schools as parallel problems. As a result of these and other measures, educational policy has been criminalized. Schools have been prisonized with the proliferation of school-based police officers, drug sweeps, uniforms, metal detectors, zero-tolerance rules, and the greater use of sanctions like detention and expulsion (222–26).

Governing through crime has transformed the everyday lives of not just the poor and disadvantaged but also the middle class. Lyons and Drew (2006) describe in chilling detail how paramilitary police and a menacing K-9 unit carry out “lockdowns” and random drug searches at an affluent suburban high school. In their tale of two schools in Ohio—a suburban high school and an inner-city one—they show how politicians and lawmakers strategically cultivate an excessive fear of crime and violence “to divest from any notion of public education as a democratic social good” (4). Students, teachers, and communities internalize the “zero-tolerance culture” foisted on them, making it difficult to resist the “transformation of schools from sites of democratic education to sites of social control and punishment” (90). This helps explain why spending on corrections as a percentage of Ohio’s state budget more than doubled from 1976 to 2001 (3.6 percent to 8.5 percent), while expenditures on education fell from almost 59 percent to about 52 percent (109).

The suburbs and suburban life have been fortified. So has the workplace. With the decline of organized labor and collective bargaining and the retreat of the state in regulating the workplace, employers are increasingly using the crime issue to establish their dominance on the job (Simon 2007, 246). Their tools include the widespread use of drug testing and other forms of intensive surveillance and the dismissal of employees for off-the-job infractions like domestic violence and drug abuse (244).

The decline of unions is just one reason why the avenues to collectively resist these moves by employers have narrowed. Another key factor is the valorization of the crime victim. Lawmakers “have defined the crime victim as an idealized political subject . . . whose circumstances and experiences have come to stand for the general good” (110). Thus, characterizing oneself as a victim is one of the few options remaining to seek redress from the state and employers. When employees “want to contest the decisions of managers in the post-unionized, at-will labor market, they must define themselves as potential victims of crimes by customers, co-workers, or

others, or as victims of immoral behavior,” such as sexual harassment (77). This severely limits their power to challenge workplace conditions individually and collectively.

Simon’s main focus is diagnostic, not prescriptive. He does not propose a detailed blueprint to end governing through crime, but rather suggests some guideposts. Simon contends that we have to stop treating a “zero-risk environment” as a “reasonable expectation, even a right” (16). He also implores us to question fighting the war on terror by using models imported from the disastrous war on crime. The war on terror has “encouraged only deeper entrenchment of this lockdown strategy in the home, schools, and workplace” (272). He contends that we need new social movements and political leaders who are “ready to break the hold of crime on American governance” and who recognize that the war on crime and its evil twin, the war on terror, are deleterious to American democracy (282).

RESISTANCE TO GOVERNING THROUGH CRIME AND MASS IMPRISONMENT

Where might such bold new social movements and political leadership emerge? One possibility, as Manza and Uggen’s (2006) and Western’s (2006) analyses seem to suggest, is to portray the construction of the carceral state as an unprecedented civil rights issue. But African Americans have been slow to enlist in the battle against the carceral state. Historically, black leaders have been uneasy about focusing on criminal justice issues (Curtin 2000; DuBois 1970; Oshinsky 1996). Some of the same factors that prompted leading African Americans to distance themselves from the AIDS crisis in its early years may be pushing them to turn a blind eye to the crisis of blacks and the carceral state.⁵ Their reluctance to embrace and publicize the plight of the disproportionate number of incarcerated African Americans may be rooted in fears that this will reflect unfavorably on blacks as a whole. As such, it will impede their efforts to identify with what they perceive to be the middle-class moral values of the mainstream. Many black legislators and other black leaders initially were enthusiastic recruits in the war on drugs. They even supported the enormous sentencing disparity between crack and powder cocaine, which disproportionately affects African Americans, sending more blacks than whites to prison for possessing small amounts of drugs (Kennedy 1997, 370–72). Elaine R. Jones, as outgoing leader of the Legal Defense Fund of the National Association for the Advancement of Colored People (NAACP), conceded that middle-class blacks were not initially aware of the

5. For a development of these points on the AIDS crisis and African Americans, see Cohen (1999).

huge negative repercussions of measures like the mandatory minimum drug laws (Clemetson 2004).

But the winds are changing. Some black leaders and civil rights groups have made ending the crack/powder-cocaine disparity a top priority. They also have indicted the war on drugs for decimating poor, urban neighborhoods and families. The massive mobilization in 2007 on behalf of the Jena 6 in Louisiana briefly riveted national attention on mass imprisonment and its disproportionate impact on African Americans. The felon disenfranchisement question is beginning to reconfigure the politics of civil rights. Some civil rights groups initially were reluctant to use the federal Voting Rights Act to challenge felon disenfranchisement laws, out of fear that a backlash might jeopardize the rights of privileged African Americans.⁶ But the Legal Defense Fund of the NAACP and some other civil rights organizations have since moved to the forefront in challenging laws that disenfranchise people with criminal records (Manza and Uggen 2006, 124–25). The idea of requiring racial impact statements to alert legislators and the public to what, if any, racial or ethnic disparities would result from a proposed change in sentencing legislation is gaining popularity (Mauer 2007).⁷ Strategies to unhinge the carceral state by highlighting civil rights issues, particularly the stark racial and ethnic disparities that permeate US jails, prisons, and death row are not risk free. There is a risk that penal conservatives will respond with another wave of what Whitman (2003, 155) describes as leveling down in penal policy in the name of liberal egalitarianism. Instead of lessening the punishments for blacks and other minorities, they may attempt to subject more whites to tougher sentences and invoke the death penalty more often for whites. In fall 2007, the Ohio Senate did just that, pushing to raise the sentences for powder-cocaine offenses to make them as harsh as those for crack (Siegel 2007). By contrast, in late 2007, the US Sentencing Commission modestly lowered the federal sentencing guidelines for crack offenses and decided to make the new guidelines retroactive. About twenty thousand inmates sentenced under the old guidelines are eligible to request reduced sentences (Stout 2007).

Penal reformers are enlisting not only civil rights but also international human rights laws and norms to challenge the US penal system. Through their detailed reports on capital punishment, the widespread use of life sentences, supermax prisons, abuse of female prisoners, prison rape, and other disturbing conditions in US prisons, human rights organizations (including Amnesty International and Human Rights Watch) and leading penal reform

6. From an unpublished article by Dorian T. Warren, "The Intersection between Voting Rights and Criminal Justice: The National Black Organizational Response to Felon Disenfranchisement." On file with the author.

7. In April 2008, Iowa became the first state to require such impact statements (Sentencing Project 2008). Connecticut became the second state in June 2008.

groups (like The Sentencing Project) have been drawing increased national and international attention to how US penal practices are way out of line with those of other Western countries.

Mass imprisonment is becoming not only a pressing civil and human rights issue but also a major women's issue. With more than two million people behind bars, the overwhelming majority of them men, millions of women are the mothers, daughters, wives, partners, and sisters of incarcerated men. In addition, since 1977 the number of women in prison has increased at nearly twice the rate of incarcerated men (Talvi 2007). The enormous expansion of the penal system may bring about a day of reckoning for feminists and women's groups on the issue of law enforcement and the state. The campaigns against domestic violence, rape, and pornography beginning in the 1970s and 1980s made exceptional strides in addressing the problem of violence against women. But by focusing so heavily on criminal justice solutions to combat violence against women, feminists and women's groups helped foster a more punitive climate that eased the enactment of a slew of tough sanctions, many of them unrelated to violence against women (Gottschalk 2006; Simon 2007; Bumiller 2008).

Over the last decade or so, the chorus of doubts about relying so heavily on penal solutions to address violence against women has grown louder across a broad range of groups—feminists, crime experts, academics, and social workers. Concerns have been growing about mandatory arrest, presumptive arrest, no-drop policies, and tougher sentencing. These legal remedies do not necessarily reduce violence against women but have contributed to greater state control of women, especially poor women (Coker 2001; Lombardi 2002; Sontag 2002; Zorza and Woods 1994; Bumiller 2008). A report by the Ms. Foundation for Women (2003) denounced this over-reliance on the legal system. It also conceded that the criminalization of social problems like domestic violence has contributed to the mass incarceration of poor men and men of color and has destabilized marginalized communities. The rising number of women behind bars for minor drug violations or for being the unwitting or reluctant accomplices to abusive partners has highlighted the persistent problems with the drug war, as has the growing number of imprisoned mothers with young children (Talvi 2007). Scholars and activists are drawing increased attention to the devastating impact that incarceration is having on the children and communities that offenders leave behind (Golden 2005; Bernstein 2005; Clear 2007; Comfort 2008). Some poor neighborhoods in urban areas have been “hotbeds of mobilization” around criminal justice issues (Miller 2007, 313). Gilmore (2007) chronicles how African American and Hispanic women in California have established important grassroots and statewide organizations to challenge everything from three-strikes laws to the siting of new prisons. She traces how the organization Mothers Reclaiming Our Children (Mothers ROC), founded in California in the early 1990s, evolved from

being a self-help group “into a pair of political organizations trying to build a powerful movement” to change the direction of criminal justice policy (Gilmore 1999, 27). Mothers ROC “critically deploys the ideological power of motherhood to challenge the legitimacy” of the penal system by emphasizing how each prisoner is someone’s child (27).

FOLLOW THE MONEY

The political economy of the prison boom is another key point of attack for opponents of the prison boom. New scholarship is providing a more nuanced understanding of who does and does not benefit economically from the penal system. This work is starting to challenge the narrowly economic view, popular for a long time among many antiprison activists, which primarily attributes the origins of the prison boom to the private interests that profit from building prisons, running prisons, and exploiting prison labor. In *Golden Gulag*, Gilmore (2007) identifies at least three main problems with this explanation: nearly all prisons and jails are publicly owned and operated, private prison companies have not been financially stable, and very few prisoners are employed by outside for-profit companies.

Gilmore develops an alternative political economy argument to explain the rapid expansion of California’s prison system. She focuses on the specific contours of the state’s wrenching economic and political restructuring, beginning in the 1970s, which created surplus finance, surplus land, surplus labor, and surplus state capacity. In the post-Keynesian 1980s and 1990s, Department of Defense, aeronautical, and other government contracts dried up, as did the private investment opportunities that trail on the heels of public contracts. California-based municipal financiers scrambled to solve the problem of long-term public disinvestment and reduced opportunities for private investment by expanding the public market for private capital. The creation of a new kind of bond market to pay for prison construction was a key vehicle to this.

Prison construction helped alleviate two other surplus problems. First, it made use of agricultural land that had become idle due to persistent droughts, excessive debt, and poor planning and development. Second, prisons were a way to absorb and contain a surplus labor force as employment growth failed to keep pace with population growth and other demographic changes. Public disinvestment in education, job training, and other social programs, in conjunction with the bifurcated economy, created by the decades-long reliance on defense-related contracts, ensured a mismatch between available jobs and available workers, especially for African American and Hispanic men (76–77).

In the 1970s, California was burdened with an overcrowded, decaying prison system. A string of losses in federal courts required the state to treat

prisoners more equitably, respect their constitutional rights, and relieve overcrowding. Instead of addressing these problems by ordering greater use of parole and commutations to reduce the prison population, Democratic Governor Jerry Brown chose to modestly expand prison capacity while promising to build state-of-the-art facilities committed to rehabilitation. But in the emerging get-tough environment of the 1970s, the California Department of Corrections (CDC) and legislature embarked on a much more ambitious prison-building scheme, which Brown, by then a lame duck, did not oppose (93). Since 1982, California has built approximately two dozen new state prisons (twice as many as it constructed in the first century after statehood) and added about two dozen smaller penal facilities (7–8). Over the last quarter century, spending on corrections has quadrupled from 2 percent of the general fund to 8 percent (8–10).

Gilmore's analysis unravels a key puzzle: why were the CDC and state legislators so successful in pushing a massive big-ticket prison building agenda? After all, conservative politics were pulling in different directions at the time. Exploiting the fear of crime and calling for tougher sanctions were cornerstones of the new ascendant conservative movement. But California's taxpayer revolt was also ground zero for that burgeoning movement. This revolt culminated in passage of Proposition 13 in 1978, which capped property taxes, deprived municipal governments of key revenues, starved public schools, and spurred a greater reliance on regressive taxes like user fees and higher sales taxes to make up for lost revenues. Where was the money for new prisons, which cost approximately \$280–350 million each, to come from? To answer that question, Gilmore untangles the sinews that connect public institutions, public finance, and private underwriters in California.

In a key development in 1982, the legislature reorganized the statutory relationship between itself and the CDC by forming the Joint Legislative Committee on Prison Construction and Operations (JLCPCO). This reorganization made the CDC distinct from other state agencies in at least two important ways. First, its bidding and budget practices would not have to adhere to long-established competitive bidding and other procedures for state construction projects managed by the Office of General Services (94). Second, creation of the JLCPCO ensured that elected officials vulnerable to the powerful sway of law-and-order politics would be closely and publicly monitoring the CDC's activities. Expansion of the prison system would remain in the public eye because the JLCPCO was required to hold public hearings prior to other departments and agencies disbursing funds and implementing CDC plans. The JLCPCO thus provided the CDC with a highly visible platform to promulgate dire projections about an imminent prison overcrowding crisis and to promote a vast expansion in the state's penal system. A dramatic increase in the CDC's planning capacity (from a staff of 3 to 118) allowed the agency, beginning in 1984, to produce

alarmist “five-year master plans that combined technical number crunching skills with a flair for emphasizing the drama inherent in the ‘crisis’” (96).

These predictions, however dire, would not be enough to neutralize rising public reluctance to pay for more state services, especially prisons. In 1982, voters did approve a \$495 million general obligation bond to build more prisons. But with the shadow of Proposition 13 still looming over them, legislators and other elected officials were doubtful about getting taxpayers to back another prison bond package. They became increasingly unwilling and unable to persuade voters to support any kind of long-term debt, even for popular items like parks (62).

These developments posed a potential crisis for firms that specialize in public finance. With the help of one of the most imaginative and politically well-connected underwriting firms in California, legislators and the CDC landed on a creative scheme to finance new prison construction. This scheme skirted the state’s balanced budget rule and the requirement that voters must ratify new government bond projects. The underwriters convinced a powerful bipartisan bloc ranging across the political spectrum from the liberal to the archly conservative to endorse the use of lease revenue bonds (LRBs) for prison construction. Issued by California’s Public Works Board (PWB), LRBs had typically been used in California to finance items like mortgages for veterans and farmers and construction loans for hospitals, colleges, and universities. They were originally designed to provide financing for projects that could generate enough revenue over time to pay for themselves. LRBs do not require public approval because the PWB does not put the state’s full faith and credit behind them. But the PWB does imply a moral obligation to cover defaults. In a creative sleight of public financing, the so-called revenue that the CDC would use to pay back the LRBs consisted of general fund appropriations authorized by the legislature to the CDC’s annual operating budget.

Revenue bonds became a popular backdoor way to finance new prison construction in California beginning in the mid-1980s. Prior to that, new prisons had to be funded either on a pay-as-you-go basis out of general revenue funds or by borrowing money through the sale of government bonds sanctioned by taxpayers through bond referendums (Pranis 2007, 37). The particularly close relationship between municipal underwriting firms and state officials that Gilmore discusses made California exceptional in some ways. But the turn toward creative financing arrangements to keep prison construction costs shielded from public scrutiny has been a national phenomenon. By 1996, more than half of all new prison debt was in the form of LRBs, which tend to be more expensive than straightforward state bond sales (Pranis 2007, 38).

The new-fangled LRBs allowed the huge costs of the prison build-up and the budgetary trade-offs they necessitated (notably the conspicuous drop in

public funding for higher education) to stay out of public view. And LRBs could be quickly organized and issued. In less than a decade, California's state debt for prison construction expanded from about \$763 million to nearly \$5 billion, or a proportional increase from about 4 percent to over 16 percent of the state's total debt for all purposes (Gilmore 2007, 101).

This capital windfall allowed the CDC to make a dramatic shift. Gone was the earlier focus on keeping nonviolent offenders in their communities and providing extensive alcohol and drug treatment programs. Now the CDC sought simply to build as many prison cells as possible. Other related developments hastened this shift away from rehabilitation. In 1977, California legislators enacted the Uniform Determinate Sentencing Act, which ended indeterminate sentencing in the state and formally renounced any responsibility to rehabilitate prisoners (89). The push for tougher sentencing was a deeply bipartisan project. In the early 1980s, legislators, with the encouragement of Republican Governor George Deukmejian, who campaigned on a law-and-order platform, changed the classification of certain offenses (notably residential burglary and domestic assault) to felonies requiring prison terms and imposed tough new drug laws modeled after New York's Rockefeller laws (95–96). Parole officers also were instructed to be more liberal in revoking parole. The yardstick for evaluating the CDC's performance was no longer rehabilitation or justice, but rather how swiftly and cost effectively the CDC could build more prisons to head off the dire projected shortfalls in cells (114).

Gilmore attributes the prison expansion project to broad changes in California's political economy. But she also credits the CDC for its political savvy. For example, in 1983 the CDC established the Prison Siting Office, which was extremely effective at persuading economically distressed communities that a new prison in their midst would bring them an economic windfall. The office strategically targeted rural communities, figuring they would be an easier sell after the CDC became embroiled in a nasty fight with community and religious groups, which opposed building a new lockup in an East Los Angeles neighborhood.

THE POLITICAL ECONOMY OF PENAL REFORM

Public bond dealers, prison guards' unions, private prison companies, and the suppliers of everything from telephone services to Taser stun guns compose a "motley group of perversely motivated interests" that has coalesced "to sustain and profit from mass imprisonment" (Herivel 2007, ix). Major budget savings will only come about by sending fewer people to prison and closing correctional facilities. But many states run up against powerful interests that profit politically and economically from mass imprisonment.

Antiprison activists are developing fresh economic arguments and strategies to challenge these vested interests. They have begun to educate the public about how lease revenue bonds for prison and jail construction actually operate, so as to spur “a public debate over what was previously an invisible issue” (Pranis 2007, 51). Antiprison activists have highlighted how these financial schemes are “overpriced, fiscally unsound, and undemocratic” (51). They also threaten the long-term fiscal health of state and local governments. Every dollar spent on state prison construction requires, on average, an additional sixteen dollars for operating costs (50). Also, doubt is growing that prisons necessarily bring economic development to rural communities (Mosher, Hooks, and Wood 2007; Gilmore 2007, 149).⁸

In other ways, opponents of mass incarceration are pinpointing the real costs of the penal system. The identification of nearly three dozen “million-dollar blocks” in Brooklyn, where so many residents have been sent to prison that the total annual cost of incarcerating them exceeds \$1 million per block, helped build support for prison reform in New York State (Gonnerman 2004, 28). Coded maps showing how much Connecticut and Texas spend on prison, probation, and parole for people living in certain urban neighborhoods were powerful visual aids that helped build momentum for major penal reforms in these states (Jacobson 2005, 198). Connecticut, which had one of the fastest growing prison populations, experienced one of the steepest declines (JFA Institute 2007; Jacobson 2005, 198–204).⁹

Recent public opinion research indicates that Americans have a much more nuanced view of spending on criminal justice than the popular media or public policy debates suggest. The public overwhelmingly favors spending more on policing, crime prevention programs for young people, and drug treatment for nonviolent offenders. But it strongly opposes additional funding for prisons (Cohen, Rust, and Steen 2006).¹⁰

8. In a surprising shift, California’s correctional guards’ union denounced the state’s most recent multibillion prison expansion plan. Union spokesman Ryan Sherman said, “We shouldn’t be spending so much locking up more and more people. Other things impact our members, not just in prison but in the community. Better schools. Better roads. A lot of things are important” (Abramsky 2007b, 24). However, the union was a strident opponent of Proposition 5, a California ballot initiative to provide alternatives to incarceration for substance abusers, which was defeated in the November 2008 election. It also opposed a budget-saving proposal in early 2009 to release thousands of nonviolent offenders and dramatically reduce the number of parolees (Furillo 2009).

9. Two horrendous crimes in Connecticut in 2007 may reverse this trend. In their wake, the state tightened parole eligibility and considered new get-tough measures, including three-strikes legislation (*New York Times* 2008).

10. Developments in Texas in fall 2007 bear this out. Voters in Harris County, Texas, the death penalty capital of the United States, narrowly rejected a bond proposal to build a new \$245 million jail in downtown Houston. Harris voters turned down the measure despite the sheriff’s strong support and the absence of any organized opposition to a new jail. In Smith County, Texas, traditionally a hard-line county, a spirited antijail coalition helped defeat a local jail bond for the second year in a row. Texas voters did approve a statewide bond measure that

Does public dismay over the crushing economic burden of incarcerating and monitoring so many people herald the beginning of the end of the prison boom, as some suggest (Bennett and Kuttner 2003, 36)? Severe budget deficits in the wake of the 2001 recession forced some states to close prisons and lay off guards. Since then, dozens of states have experimented with new sentencing formulas, mostly directed at nonviolent offenders (Justice Policy Institute 2001; King 2008). Fiscally conservative Republicans previously known for being penal hard-liners have championed some of these recent relaxations in penal policy. This has fueled speculation that law-and-order Republicans, troubled by mounting costs, are well poised to roll back the penal system, much as Richard Nixon was ideally situated to breach the great political wall with China. But mounting fiscal pressures will not necessarily spur communities, states, and the federal government to empty their jails and prisons. It was mistakenly assumed three 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 despite wide fluctuations in the crime rate, public opinion, and the economy over the next thirty years. Recent developments in California are a sober reminder of that. Faced with a state of emergency in its severely overcrowded prisons, California has been attempting to build itself out of its penal crisis.¹¹

The recent spurt of sentencing and drug law reforms has yet to make any real dent in the total number of people incarcerated in the United States. Although some states have relaxed their drug laws, the penalties remain very stiff. Many states recently toughened up their sanctions for sex crimes, which will likely result in an explosion in the number of incarcerated sexual offenders over the next two decades (JFA Institute 2007, 12). A 2007 report commissioned by the Pew Charitable Trusts predicts that the growth rate of the state and federal prison population will markedly accelerate over the next five years unless legislators enact major policy changes (9).

included about \$260 million for three new prisons and a new juvenile lock-up. But this prison construction plan was strategically packaged as part of a \$1 billion bond measure that included money for state parks and homes for the mentally handicapped (Grits for Breakfast 2007).

11. In spring 2007, the California legislature approved an unprecedented \$8 billion for new penal facilities, to be paid for largely by LRBs (*Orange County Register* 2007). California plans to add 53,000 beds to the state's penal system, which already warehouses 250,000 people—or about 1 out of every 150 Californians. Thirty-five years ago, California's entire penal population was only 50,000 or so. This planned expansion is equal to adding a prison system equivalent to France's—a country with roughly twice as many people as California. In late 2007, Governor Arnold Schwarzenegger floated the idea of early release for approximately 20,000 low-risk offenders to help relieve the state's giant budget deficit, but his plan faced stiff opposition and died months later. In early 2009, the governor again proposed to release thousands of nonviolent offenders and to cut the number of parolees by more than half in an effort to save an estimated \$1 billion (Furillo 2009).

Most prison costs are fixed and are not easily cut. Thus, public officials are making largely symbolic cuts that do not significantly reduce the incarcerated population—or save much money—but do render life in prison and life after prison leaner and meaner. For example, budget cutters have eliminated some weekend meals for prisoners. They also have targeted so-called nonessential prison services like educational, substance abuse, and vocational programs that help reduce recidivism. The number of educators employed in state prisons actually fell slightly between the late 1970s and the mid-1990s despite a threefold increase in the number of prisoners and correctional officers (Western 2006, 175).

The cutbacks can be understood as part of a “profound qualitative transformation” in penal policy over the last two to three decades (McLennan 2001, 408). This transformation is marked by the growing exploitation of prison labor by private corporations; the spread of private prisons; the privatization of food, medical, and other prison services; the elimination of the ideal of rehabilitation from official penal discourse as prisons are increasingly viewed as little more than sites to warehouse criminals; the widespread use of paramilitary technologies and techniques in penal and police operations; and the proliferation of supermax cells and other degrading and inhumane conditions of confinement (Abramsky 2007a; Gómez 2006; McLennan 2001; Rhodes 2004; Sudbury 2005; Kraska 2001). The structural characteristics and sources of legitimization of the emerging penal system appear to be of a different order from the bureaucratic-rehabilitative model that took hold in the twentieth century and the penal models that prevailed in the nineteenth century (McLennan 2001, 2008).

US PENAL POLICIES IN A COMPARATIVE CONTEXT

Mass imprisonment within a democratic polity and the hyperincarceration (Wacquant 2008a) of certain groups are unprecedented developments. The consolidation of this new model in the United States raises two critical questions: What makes this country more vulnerable than others to get-tough policies? And will other countries emulate the United States?

Deep-seated cultural differences have been a consistent theme in recent scholarship on US exceptionalism in criminal justice policy. Cultural factors singled out include an abiding mistrust of the government (Whitman 2003; Zimring 2003; Zimring, Hawkins, and Kamin 2001), a history of vigilantism (Zimring 2003), an enduring attachment to liberal egalitarianism (Whitman 2003), and the impact of centuries of white supremacy on American political development (Kaplan 2006). Some scholars have focused on more recent cultural and social changes to explain American exceptionalism, most notably the arrival of late modernity in the postwar era and the onset of a new “culture of control” (Garland 2001). Institutional and political factors are not

incidental to these accounts of American exceptionalism in penal policy, but they do not predominate.

Interest in American exceptionalism has spurred greater interest in comparative work on crime control and penal policy and in how exceptional institutional and political factors create exceptional penal policies. In the introduction to his edited volume, *Crime, Punishment, and Politics in a Comparative Perspective*, which surveys penal developments in several developed countries, Tonry (2007) concedes a role—though a circumscribed one—for specific national characteristics in explaining variations in punitiveness. But he resists the contention that transnational forces associated with globalization and with the economic and social dislocations of late modernity, including rising existential angst, individualism, and alienation, are the main engines behind the drive for more punitive policies. In doing so, Tonry acknowledges David Garland's (2001) seminal contribution in identifying a culture of control rooted in late-modern angst to explain why the United States and England are so punitive, but he laments how some other scholars have clumsily applied Garland's insights. He faults them for ignoring Garland's caveat that similar late-modern stressors do not necessarily produce the same results in different countries.

Most of the contributors to the Tonry volume agree that crime patterns generally explain little about why some countries are more punitive than others. From the 1960s to the early to mid-1990s, crime rates generally increased in the United States and most other industrialized countries (with some fluctuations over this period). But only the United States, the Netherlands, England, and New Zealand experienced sharp increases in their incarceration rates (Tonry 2007, 2–3), though the US incarceration rate remains in a league all its own. Tonry and many of his contributors single out a combination of institutional, political, socioeconomic, and cultural factors to explain such wide variations in punitiveness.

Several institutional factors are pivotal. "Conflict" political systems based on two dominant parties, first-past-the-post electoral systems and single-member electoral districts, are more likely to enact harsher measures than consensual, multiparty systems with proportional representation, coalition governments, and greater policy continuity. Another important institutional factor is sharp differences in the organization and selection of judges and prosecutors. The United States is the only major Western country where judges and prosecutors are routinely elected or selected according to partisan criteria, making these officials highly susceptible to public opinion and emotions (34–35). In most civil law countries, judges and prosecutors are career civil servants "who have spent a professional lifetime absorbing norms of professionalism, political nonpartisanship, and impartiality" (35), which helps insulate them from "public emotion and vigilantism" (32) in individual cases. A search of Finnish Supreme Court records from 1980 to 2004 did not find a single case in which the words "public opinion" or "general sense of

justice” were mentioned in a decision (Lappi-Seppälä 2007, 272). Even in European countries like Belgium and Switzerland that do not follow the professional civil service model, conventions of political neutrality and professional impartiality are still strong (Tonry 2007, 35). Training in criminology and criminal justice are a standard part of the legal curriculum in many European law schools, unlike in the United States (Lappi-Seppälä 2007, 243). Some law students in Europe are even exposed to the insights of critical criminology, which has a strong academic perch in some European countries.

As in most other European countries, judges and prosecutors in England are selected in a generally nonpartisan manner. But England is still exceptionally punitive. Tonry argues that parliamentary supremacy and judicial subordination help explain why. England has a highly centralized political system in the absence of a constitutional doctrine of separation of powers, judicial review, or a written Bill of Rights. As a consequence, “if the government of the day chooses to act illiberally and to politicize criminal justice policy, there are no competing governmental power centers to stop it” (Tonry 2007, 26).

Another critical institutional factor is the organization of the media. All countries experience sensationalistic crimes. But the mark that headline-grabbing crimes leave on penal policy varies enormously. In a fascinating essay, Green (2007) compares the infamous case of Jamie Bulger, the toddler abducted and killed in 1993 by two ten-year-old boys outside Liverpool, with the 1994 death of five-year-old Silje Marie Redergard, who was attacked by three six-year-olds in a suburb of Trondheim, Norway. Bulger’s death propelled English politicians on a law-and-order campaign that pushed England in a sharply punitive direction, while Redergard’s homicide left no lasting mark on Norwegian penal policy. In England, “the highly adversarial, zero-sum-game-style political culture” interacted with “a highly competitive and sensationalistic media culture to create incentives for politicians and journalists to politicize events such as the Bulger homicide to score political points and sell newspapers” (593). Norway’s news market is far less competitive and sensationalistic and far more deferential to elite expertise, in part because most Norwegian newspapers are local or regional and sold by subscription. This reduces incentives and pressures to engage in tabloid journalism to pump up newsstand sales. Norway’s two main dailies are tabloids, but they, too, depend primarily on subscription sales and are far more politically independent than British tabloids.

Although their primary emphasis is on institutional factors, Tonry and his contributors concede some considerable ground to cultural explanations for variations in punitiveness. Norway’s consensual political culture, in which professional expertise in criminal justice is highly valued, helps to explain why Redergard’s homicide did not become a politically charged issue the way Bulger’s did (628–30, 635–36). Not so surprisingly, conflict-style political systems (like those in the United States and England) tend to produce conflict-style political cultures with lower levels of public trust and lower

levels of government legitimacy—two important contributors to law-and-order politics. Tonry argues that it is not clear what it is about Anglo Saxon culture that makes it more punitive, but there is no question that it is (Tonry 2007, 30). Francophone culture appears better able to resist the siren call to get tough on lawbreakers. The Walloons in Belgium are less punitive than the Flemish-speaking Dutch (Snacken 2007, 192–93). In France, “policy makers remain fundamentally skeptical about the value or desirability of imprisonment” (Roché 2007, 471). Periodic mass amnesties, which would be unthinkable in many countries, are an integral feature of the French legal system and a key policy tool to reduce prison overcrowding (Lévy 2007, 551).

Canada presents a remarkable case. Over the last four decades or so, Canada has experienced a crime culture strikingly similar to the United States and England and has been subject to many of the same late-modern pressures. Its homicide rate, though consistently about one-third the US rate, has gyrated in a pattern nearly identical to the United States. Yet its incarceration rate has barely budged (Webster and Doob 2007). Canada has faced many of the same pressures as the United States and Britain to toughen up, but it also possesses significant countervailing cultural and institutional forces. On the cultural side, Canada’s Quebecois have been an important counterweight to periodic attempts in Ottawa to enact get-tough measures. Indeed, Quebec’s Tories provided the deciding votes against the reinstatement of capital punishment in 1987, at a time when 70 percent of the Canadian public favored bringing it back (Brodeur 2007, 69). Canada has never been committed to a single sentencing purpose and is comfortable with a variety of goals (denunciation, deterrence, rehabilitation, and incapacitation). Thus, unlike the United States, it has never experienced a crisis in the principle of sentencing (Webster and Doob 2007, 325). Other protective factors include Canada’s robust tradition of multiculturalism and minority empowerment and the strong consensus shared by the public and state officials to avoid “the punitive excess of its American neighbor” (Brodeur 2007, 49). As a Conservative-dominated House of Commons Standing Committee noted in 1993, “if locking up those who violate the law contributed to safer societies, then the United States should be the safest country in the world. In fact, the United States affords a glaring example of the limited impact that criminal justice responses may have on crime” (quoted in Webster and Doob 2007, 350).

Up until at least 2005, Canada’s two main political parties followed a policy of restraint rather than increasing punitiveness and actively sought to inculcate a culture of restraint in the general population (Webster and Doob 2007, 327–28). In a remarkable 1982 policy statement, the government of Canada affirmed “it is now generally agreed that the [criminal justice] system cannot realistically be expected to eliminate or even significantly reduce crime” (quoted in Webster and Doob 2007, 348). A couple of years ago, the Web site for the ministry responsible for the federal penitentiaries highlighted a report that most Canadians felt safe in their communities and that stressed

the need to counterbalance inaccurate media portrayals of crime as an endemic problem (Webster and Doob 2007, 328). Contrast this with an article by Tony Blair, published in a tabloid as he sought to become England's prime minister:

We can debate the crime rate statistics until the cows come home. The Home Office says crime is falling. Others say it isn't. I say crime, like economic recovery, is something politicians can't persuade people about one way or the another. People know because they experience it. They don't need to be told. And they know crime is rising. (quoted in Green 2007, 613)

Institutional factors also tend to thwart law-and-order politics in Canada. Legislative power over sentencing is the exclusive domain of Canada's federal government. Provincial governments, which are more susceptible to populist pressures to get tough, have no real legislative authority regarding crime. Local, grassroots citizens' groups lack viable structural mechanisms (such as referendums) to directly push punitive measures like three-strikes laws, and the Canadian government has sharply limited their influence in public bodies dealing with crime policy (Webster and Doob 2007, 338). The majority of bills passed by Parliament originate with the government, not with individual legislators. This tends to make the government more sensitive to the broader financial, and other, ramifications of criminal justice legislation. It also permits a wide range of government departments to weigh in on proposed legislation. Criminal justice policy has remained largely the domain of nonpartisan career civil servants who soldier on despite shifts in which party heads the government. Divided responsibilities between the federal government, which handles all criminal justice legislation, and the provinces, which administer the justice system, ensure that any change in criminal law "requires extensive consultation between the two 'partners'" (340). This is a time-consuming process that reduces the likelihood of the knee-jerk style of criminal justice policy making that vexes the United States. Furthermore, judges are selected in a nonpartisan process, which insulates the judiciary from public pressures and political interference. The Canadian judiciary has served as an important safety valve, minimizing the impact of especially punitive legislation enacted for blatantly political reasons (346; Brodeur 2007, 75).

An underlying theme of several of the contributors to the Tonry volume is that stable incarceration rates and penal policies cannot be taken for granted. Even countries like Canada, with its persistent "penal blandness," are "extremely vulnerable to a burst for the worst" (Brodeur 2007, 84). The country's decades-old stance of punitive restraint may be in jeopardy due to a series of political scandals that robbed the federal government of its moral authority; a succession of unstable minority governments; and a dramatic spike in gun-related homicides in Toronto, the country's media capital. These

developments provided an opening for politicians across the board to adopt “get tough” platforms for electoral gain beginning around 2005. Confidence in nonpartisan expert opinion is eroding, and personal attacks on civil servants are on the rise (Webster and Doob 2007, 358–59). Canada could go the way of the Netherlands and Japan, where several somewhat independent events rapidly eroded the protective factors that had made them two of the most lenient countries in the world (356; Downes 2007).

In three decades, the Dutch imprisonment rate has quintupled as the “culture of tolerance” that characterized Dutch penal policy in the immediate decades after World War II eroded (Downes 2007, 98). The Dutch now have their own version of “three strikes and you’re out.” And Blokland, Bijleveld, and Nieuwbeerta (quoted in Downes 2007, 119) contend that this policy has the potential to raise the Dutch prison population to the US level of seven hundred per one hundred thousand. The Netherlands has lifted its prohibition on double-celling, opening up the opportunity to greatly increase capacity without a massive prison-building spree. The Dutch also have moved away from their universal guarantee of education and other programming for all prisoners, limiting those services to offenders “deemed suitable” (Downes 2007, 119). Dutch prisons “have been recast from their role in a civilizing mission to being a bulwark against social collapse” (105). The Netherlands also created super-maximum security facilities that were censured by the Council of Europe (119).

Japan appears poised to follow the Netherlands down a more punitive path—only much more quickly. Over the last decade or so, Japan’s penal policies have become markedly more severe and less focused on rehabilitation (Johnson 2007, 413–14). Sentences are substantially tougher. The imprisonment rate has accelerated. The courts are handing down more death sentences. Crackdowns on foreign residents have intensified. Policing powers are growing, as is the size of the national police force, for the first time in many years (393). A sophisticated web of surveillance is ensnaring more public and private space in a remarkable example of governing through crime (313–14, 398). For the first time in decades, Japan’s Justice Ministry is calling for more prisons and wardens. In a pattern reminiscent of the United States, economically depressed rural regions are now competing for prisons, seeing them as a growth industry (407). In another parallel with the United States, a victims’ rights movement that frames the interests of victims and offenders in zero-sum terms is burgeoning and is pressing policy makers to get tough (400).

Johnson convincingly argues that Japan’s new punitive turn has its roots in the late-modern angst Garland identified. Rapid changes in economic, social, and family life and growing income inequality have fostered intense public insecurities and anxieties in Japan. Getting tough on foreigners, youths, and lawbreakers has become an outlet for these anxieties. A series of police scandals and notorious crimes has eroded public confidence in the capacity of the police and other professional experts to control crime, feeding

into public angst and politicians' willingness to engage in law-and-order politics. Japanese officials are no longer insulated from the "fear, fury, and wishful thinking that often drive crime policy in the United States" (410). The political and policing scandals are to blame, as are "broader shifts in the balance of power in Japan between politicians, bureaucrats, and civil society" (410).

This punitive turn is all the more remarkable because Japan's homicide, theft, and robbery rates, already among the lowest in the world, have generally been plummeting (371). "Japanese conversations about crime and punishment actually have become increasingly shrill and divorced from reality" (376). The Japanese case affirms Garland's culture of control thesis—but with a twist. Apparently late-modern angst can spur get-tough strategies even when high crime rates have not become a "normal social fact" (Garland 2001, 106).

US-style punitiveness has made its greatest inroads in Britain. Political pressure to talk—and act—tough on crime and punishment continue largely unabated in England and Wales, despite drops in their crime rates. In June 2006, the British government introduced sex offender notification laws modeled after Megan's Law in the United States. Increasingly, crime-control policy in Britain is being framed as a zero-sum game between victims and offenders (Newburn 2007, 459), in stark contrast to the extraordinary effort in the past to recognize the needs of victims without permitting a retributive victims' rights movement to emerge in England (Gottschalk 2006). In the 2005 election, the Conservative opposition signaled its readiness to hike the incarceration rates of England and Wales to two hundred per one hundred thousand—or about double the average for Western Europe. This proposal "passed without comment" in a "sign of how far such rhetorical pledges have become normalized" in England and Wales (Downes 2007, 103).

The future of penal policy in Britain appears mixed. Britain is likely to remain one of Europe's most punitive countries (Newburn 2007, 464–65). At the same time, Britain is not likely to develop a carceral state comparable in size and punitiveness to that of the United States, because Britain still has some considerable protective factors (463–64). A full-fledged politicized victims' movement has yet to emerge. The judiciary remains relatively insulated from electoral and other political pressures. Although blacks and foreigners are disproportionately imprisoned in Britain, race is much less a factor in penal policy and social policy than it has been in the United States.

Differences in country-specific institutional, socioeconomic, and cultural factors are the prime explanations for variations in punitiveness, according to Tonry and his contributors. But transnational factors are not incidental. As Downes (2007, 118) pithily remarks, "the prison system may be an archipelago, but it is not an island." Transnational factors are exerting contradictory pulls on penal policy. On the one hand, the United States has

become “an aggressive exporter of its penal ideas and management systems” as “American correctional industries trawl the world for markets, finding ready buyers in England for a twentieth-century version of the prison hulks” (118). On the other, the accelerated political and economic integration of Europe over the last couple of decades has increased pressure on European countries to be more aware of how their penal policies and prison conditions stack up against those of their neighbors. This has helped neutralize some of the growing internal political pressures to be more punitive in Britain. Prodded by the European Convention on Human Rights, the European Court of Human Rights, the European Committee for the Prevention of Torture, and other trans-European institutions, Western European countries have been strengthening their procedural protections for criminal defendants (Tonry 2007, 12) and addressing charges of prison overcrowding and inhumane and degrading treatment (Snacken 2007, 155, 206). Landmark decisions by the European Court of Human Rights have undercut harsh national laws and court decisions, most notably in Britain. The incorporation into law of the European Convention on Human Rights via the Human Rights Act 1998 is perhaps one of the “most significant changes to sentencing policy and practice in the United Kingdom in recent years” (Newburn 2007, 441). For example, British courts have ruled that the automatic life sentence provision of Britain’s Crime (Sentences) Act 1997 appears to violate the European Convention on Human Rights (441).

European integration may be a mixed blessing for penal policy over the long term. It may force get-tough countries like England and Wales to lighten up. But it also may push the more lenient ones to toughen up and match some evolving European mean of punitiveness. In 2004, Nicola Padfield remained quite critical of attempts to harmonize criminal law, fearing this would result in stiffer sentences “without any real debate as to the efficacy and justice of such sentences” (quoted in Lappi-Seppälä 2007, 286, note 36). Political efforts to harmonize criminal law, especially around issues related to drugs, sex, and violence, have “damaged the quality of law-drafting processes and increased the extent of penal repression” (Lappi-Seppälä 2007, 286). These efforts leave little room for the reasoned, often time-consuming deliberations that have been the hallmark of Europe’s more lenient countries, notably in Scandinavia. As a consequence, political arguments and symbolic messages trump arguments based on principles and professional expertise (282).

Tonry and his contributors have little to say about some other potentially important transnational forces looming on the penal horizon. Most of the essays sleight how new immigration policies and fears of immigrants are reshaping criminal justice policy in Europe and elsewhere. One notable exception is Johnson’s chapter on Japan, in which he convincingly shows how growing public anxieties about immigrants and foreigners are fueling the emergence of a culture of control. The potential impact on penal policy of

mounting pressures to adopt more neoliberal economic and social policies and to jettison the Fordist-Keynesian welfare state (which is a major theme of Wacquant's (2008b) recent work) are also largely unaddressed in the Tonry volume.

Despite some indications of growing punitiveness in Europe, the United States remains in a league all its own. As Franklin Zimring once remarked, comparing increases in incarceration rates over the last three decades in Europe to those in the United States is like comparing a haircut to a beheading (quoted in Downes 2007, 103). But the new punitiveness in Europe does raise the question, "Is a haircut the prelude to a beheading?" (103).

CONCLUSION

The experience of other industrialized countries may shed some light on how to mitigate the carceral state in the United States. Almost in passing, Brodeur (2007) makes a profound and underappreciated observation about penal reform, suggesting that the "root causes" approach to progressive penal reform, however well intentioned, may be shortsighted (77). This approach seeks to solve the crime and punishment dilemma by focusing on ameliorating structural problems like widespread poverty, high unemployment, dysfunctional schools, an ineffective health-care system, and outcomes dramatically stratified by race.

Fifteen or so years ago, the focus on the structural roots of crime and punishment was critical to help neutralize the culture of poverty and the moral poverty arguments that supported the development of the carceral state. Attention to structural causes—and how they create cultural pathologies—at a time of rising (and then falling) crime rates and media hysteria over crime also helped mitigate somewhat the demonization of people living in high crime, inner-city communities. But if the aim today is to shrink the country's extraordinary incarceration rate over the next few years—not the next few decades—perhaps the focus on structural causes and solutions is misplaced.

By giving structural problems primacy in efforts to end mass incarceration, we are essentially accepting that the extensive US penal system is here to stay for a very long time to come. After all, structural problems call for comprehensive, often expensive, long-term solutions and commitments. Long-term fixes are problematic not just because they take a long time. As Brodeur notes, they are nettlesome because they are harder to sustain from one change of administration to the next. In the case of the United States, the absence of a respected, expert, nonpartisan civil service that maintains policy continuity, despite political shifts, compounds the problem. The focus on structural problems overshadows the fact that about two-thirds of the

people in prison are serving time for nonviolent offenses, many of them property or petty drug offenses that would not warrant a sentence in many other countries. It also deflects attention away from the fact that prisons exacerbate many social ills that contribute to crime and poverty and are unlikely to significantly rehabilitate anyone. Other countries that once had exceptionally high incarceration rates, notably Finland, successfully brought down their rates by focusing on changes in penal policy rather than by mounting a sustained attack on structural problems and the root causes of crime (Lappi-Seppälä 2007, 234; Brodeur 2007, 75).

Four decades ago, the United States had many of the same structural problems it has today, but it did not have such an expansive penal system. Since then, the United States has embarked on a war on drugs and a broader war on crime characterized by penal policies and penal conditions unprecedented in modern US history and unheard of or disdained in other developed countries. A deeper commitment to lifting many more people out of poverty is an admirable goal. But by making that the centerpiece of any penal reform agenda, opponents of the carceral state risk losing a sense of urgency.

Criminal justice is fundamentally a political problem, not a crime and punishment problem. The real challenge is how to create the political will and political pressure to pursue and implement these policies. The central question is: “when in all other respects we defend policies based on social equality, full citizenship, solidarity, and respect for reason and humanity, why should we choose to adopt criminal justice policies that show so little appreciation of these very values and principles?” (Lappi-Seppälä 2007, 290).

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