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White Supremacy Part 7 Carceral Society and Abolition

November 9, 2023

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The Carceral State and White Supremacy, One and The Same – A Tale of State Sanctioned Violence

Georgetown Journal of Law & Modern Critical Race Perspectives

November 4, 2019 by Chiamaka Echebiri

The murder of Black people, in the hands of law enforcement, is state sanctioned violence. Further, the carceral state does not restore victims and it has systemically relegated Black people to cages. It is a social, civic, and permanent death.

The carceral state originated in the United States from slave patrolling and was designed to criminalize and incapacitate Black people rather than to provide justice. Since its inception, it has been doing its job, so much so that “slave,” “criminal,” and “violence” have become metonyms for Blackness.

The U.S. has adopted different iterations of incapacitating and/or criminalizing Black people, specifically African Americans, through convict leasing, peonage laws, sharecropping, Black codes, chain gangs, and Jim Crow – all of which are relics of slavery. Today, mass incarceration takes the places of the aforementioned institutions in maintaining the U.S. racial caste system and slavery through other means.

Black people, en masse, have been the victims of intergenerational trauma (trauma that affects one family) and historical trauma (trauma that affects a people) created by the carceral state. As a consequence, the carceral state nor the criminal justice system can restore victims of state sanctioned violence, since the carceral state serves to produce intergenerational and historical trauma.

Recently, the carceral state’s and the criminal justice system’s inability to restore victims was colorized in the murder trial of Botham Jean. On October 1, 2019, a police officer who fatally shot Botham Jean, a Black man eating ice cream on the couch of his own home, was found guilty of murder. One day later, the police officer was sentenced to ten years in prison. The semblance of hope elicited by her conviction quickly dissipated when the relatively shortterm sentence was announced. Many Black people were left with anger.

The police officer’s murder trial turned into a counseling appointment. The judge consoled her with a religious consultation and the bailiff caressed her hair. The counseling and cosmetic services she received at trial reflect how the criminal justice system centers white people, and therefore redeems, reinforces, and reproduces white supremacy.

The coddling of Botham Jean’s killer at the expense of a Black man is part and parcel of white supremacy. The criminal justice system knows this too well. There is a historical pattern of coddling white women – from Emmett Till to Scottsboro Boys and from Scottsboro Boys to George Stinney, we see how metonyms of Blackness, white womanhood, and gendered tropes of Black men have justified Black men’s maltreatment and deaths.

Even if Botham Jean's killer was given a longer and more socially palatable sentence, that still would not restore the victims. Incarceration does not magically fix the harms, such as intergenerational and historical trauma, inflicted on victims. It produces it. Incarceration recreates conditions of violence and minimizes humans to units of labor for capital gain. To hold the police accountable is not to legitimize the carceral state's belief that caged people, who are disproportionately Black, symbolize justice. To hold the police accountable is to abolish the police system in its entirety.

The police system is the same system that allowed for the death of Botham Jean. It is also the same system that cannot explain why Ferguson protesters who mobilized and organized against police brutality have mysteriously died since 2014. To cinch the matter, the carceral state reifies Black suffering and produces the intergenerational and historical trauma victims need to restore from. Botham Jean's murder trial colorized this for us once again.

ABOLISH CARCERAL LOGIC

STANFORD JOURNAL OF CIVIL RIGHTS & CIVIL LIBERTIES

by Christy E. Lopez 2022

Carceral logic can be understood as a punishment mindset that views retribution and control, including by physical constraint (e.g. imprisonment), surveillance (e.g. electronic monitoring via ankle bracelet), or violence, as central components of a public safety system."

[...]

Accordingly, the carceral logic responds to those who cause harm with punishment, retribution, and confinement, rather than viewing accountability as a component of rehabilitation, restitution, prevention, and healing for all involved. Carceral logic as a modern organizing principle extends far beyond buildings and physical imprisonment. As Dylan Rodríguez explains, "incarceration as a logic and method of dominance is not reducible to the particular institutional form of jails, prisons, detention centers, and other such brick-and-mortar incarcerating facilities."

"Governing through crime," as scholar Jonathan Simon has framed it, has become the norm in the United States, resulting not only in an irrational fear of and focus on crime in traditional spheres, but also on the introduction of criminal penalties into family relationships and schools. Angela Y. Davis has emphasized how deeply this logic has embedded itself into our psyches, writing how we replicate "the structures of retributive justice" in our interpersonal relationships to the point that "[t]he retributive impulses of the state are inscribed in our very individual emotional responses."

Carceral logic shapes current efforts to promote public safety, including policing, in at least three ways. First, carceral logic actually undermines the effectiveness of public safety. Second, carceral logic perpetuates race disparities in the criminal legal system, with or without the addition of any new introduction of bias. Third, as carceral logic permeates American life far outside the traditional criminal sphere, it brings unnecessary policing and criminal punishment along with it. A central feature of the carceral logic's influence is how it undermines actual public safety. The surveil, control, arrest, incarcerate approach is consistent with the carceral logic of controlling bodies and punishing people, but it is not required by an effective public safety system. Much of it, in fact, conflicts with effective public safety in at least two fundamental respects.

First, carceral logic facilitates and perpetuates a definition of public safety that is overly narrow. In his article, *What is Public Safety?*, Barry Friedman sets out how artificially narrow our concept of public safety is. He notes that we typically assume that public safety means "freedom from injury to one's person, and to one's property in particular from violent crime or events," and thus we tend to describe public safety with reference to "the police, as well as fire departments and emergency medical services." As Friedman goes on to point out, however, "Surely . . . being safe means much more than freedom from sudden, violent, physical harm." For while it is true that people feel neither safe nor secure if they are threatened by violent harm, nor do they feel safe and secure if "they are forced to sleep on the streets, to forage in trash cans for food, or are facing starvation. If they are lacking an education and cannot earn a living or find a job. They do not feel safe if they are confronting grievous illness or face health costs they cannot afford." Friedman advocates for understanding public safety "more capaciously" that we do at present to include these concerns, and to increase the government's obligation to meet these public safety needs.

Secondly, within the already artificially narrow concept of public safety, in which "protecting public safety" concerns itself largely with preventing precipitous violence, property crimes, and drug offenses, the carceral logic causes us to take a narrow view of how to achieve even those artificially narrow public safety aims. In other words, in addition to investing in education, recreation, employment, and health care to enhance public safety broadly speaking, we should also be investing in those same things much more than we do in order to decrease rates of crime as traditionally defined.

Writer and abolitionist theorist Derecka Purnell describes how this dual failure played out in the St. Louis-area community where she grew up:

We called 911 for almost everything except snitching. Nosebleeds, gunshot wounds, asthma attacks, allergic reactions. Police accompanied the paramedics.

Our neighborhood made us sick. A Praxair industrial gas-storage facility was at one end of my block. A junkyard with exposed military airplane and helicopter parts was at the other. The fish-seasoning plant in our backyard did not smell as bad as the yeast from the

Budweiser factory nearby. Car honks and fumes from Interstate 64 crept through my childhood bedroom window, where, if I stood on my toes, I could see the St. Louis arch.

Environmental toxins degraded our health, and often conspired with other violence that pervaded our neighborhood. Employment opportunities were rare, and my friends and I turned to making money under the table. I was scared of selling drugs, so I gambled. Brown-skinned boys I liked aged out of recreational activities, and, without alternatives, into blue bandanas. Their territorial disputes led to violence and 911 calls. Grown-ups fought too, stressed from working hard yet never having enough bill money or gas money or food money or day-care money. Call 911.

Purnell's description brings home how our public safety system tends to disregard the public safety needs of neighborhoods and families when those needs require investment, support, and corporate accountability, rather than coercion and control of already-marginalized individuals. This approach leaves communities to deal with the fallout of those failures by relying on the one form of "help" generally available—the coercive power of the state, aka, the police, regardless of how inapt this tool is to the task. Another stark example of how carceral logic similarly causes police protecting the right things to do so in the wrong way was highlighted in the Department of Justice's report on the Investigation of the Ferguson Police Department:

In one instance . . . a woman called [the Ferguson Police Department] to report a domestic disturbance. By the time the police arrived, the woman's boyfriend had left. The police looked through the house and saw indications that the boyfriend lived there. When the woman told police that only she and her brother were listed on the home's occupancy permit, the officer placed the woman under arrest for the permit violation and she was jailed. In another instance, after a woman called police to report a domestic disturbance and was given a summons for an occupancy permit violation, she said, according to the officer's report, that she "hated the Ferguson Police Department and will never call again, even if she is being killed."

During the DOJ investigations of police departments that I helped conduct, I heard people express sentiments like the one above many times, not only in Ferguson, but in communities large and small across the country. They were not usually so succinctly captured or vividly conveyed (in a police report no less!), but this consistent expression of frustration that police were responding to real, emergent harm, but in entirely the wrong way, brought home the mismatch between the community need and what the police were providing.

[...]

A second feature of carceral logic is that it not only reflects, but also reinforces, a racially unjust criminal legal system. Carceral logic currently is viewed as especially apt for Black and Latine people. This is hardly surprising given the racialized roots of the logic. As historian Khalil Gibran Muhammad and others have argued, there has long been a dominant narrative that justifies

treating poor white people differently than poor Black people on the premise that poor white people are poor despite their best efforts and need social services to turn away from crime, while Black people are poor because they are less moral or intelligent, and need to be controlled and coerced into lawful behavior. This narrative has resulted in—and perpetuated—a criminal legal system premised on the belief that Black and Latine people respond to different stimuli than white people: where white people can become productive members of society if they are nurtured and supported, Black and Latine people will behave only if they are controlled and coerced.

Carceral logic in its modern manifestation is different in that it usually does not explicitly cite to a perceived need to control Black bodies and lives, specifically, as a driving motivation.⁵² But masking these racialized underpinnings does not keep the carceral logic from creating systems and rules that—always—disproportionally harm BIPOC communities.

Disparities between Black and Latine and similarly-situated (non-Latine) white people exist at every stage of the criminal legal process and tend to be exacerbated at each step. To be clear, this means that different treatment of Black and Latine people by police and the criminal legal system cannot not be fully explained by any factor or combination of factors other than race or ethnicity at any stage of the process.

In other words, race and ethnicity always play a role in aggregate criminal “justice” system outcomes. Police are more likely to stop and search Black people in both pedestrian and vehicle stops, with many of those same studies showing that, at the same time, police are less likely to find contraband in searches of Black people.⁵⁴ Black people comprise approximately 13 percent of the nation’s populace; nevertheless, arrests of Black people increased by 23 percent between 1980 and 2014, eventually comprising approximately 28 percent of all arrests. The most extreme race disparities in arrests occur for low-level offenses. White defendants are more likely to have their most serious charge dismissed in a plea bargain and less likely to be required to accept jail time as part of a plea deal. Black men receive a sentence almost 20 percent longer than a white man committing the same crime. People who kill Black people are rarely sentenced to death, especially if the killer is white. A person who kills is much more likely to get the death penalty if the victim is white. The most reliable predictor of whether someone who kills will be given the death penalty is when a Black man kills a white woman.⁵⁹ Studies show that color matters too—the darker the skin of a Black person, the greater the disparity in arrests, charges, conviction rates and sentencing. One study showed mock jurors the same evidence from a fictional robbery case, but used alternate security camera footage depicting either a light or dark-skinned suspect. Jurors were more likely to find the dark-skinned suspect guilty.

Because these disparities are built into the logic of the system, no ongoing, affirmative race bias is needed to perpetuate them. To be sure, continuing implicit and explicit race bias at the individual, agency, and societal levels is part of the reason for these disparities.⁶² But even these affirmative biases, particularly the implicit variety, are largely reflective of the pre-

existing structural bias created in no small part by carceral logic. As just one example, individual officer bias is a relatively miniscule part of the explanation for race disparities in police stops and searches. Of far greater impact is the fact that, because of the racialized features of carceral logic, those officers are disproportionately deployed to areas of a city with overwhelmingly Black residents, and, again due to the dictates of carceral logic, we have decided that the best way to keep those neighborhoods safe is for those officers to stop and search as many people as they legally can to find illegal weapons and contraband. Officers who thus may have no explicit, or even implicit, bias are likely to further race disparities in stops every day simply in the course of doing what we tell them to do.

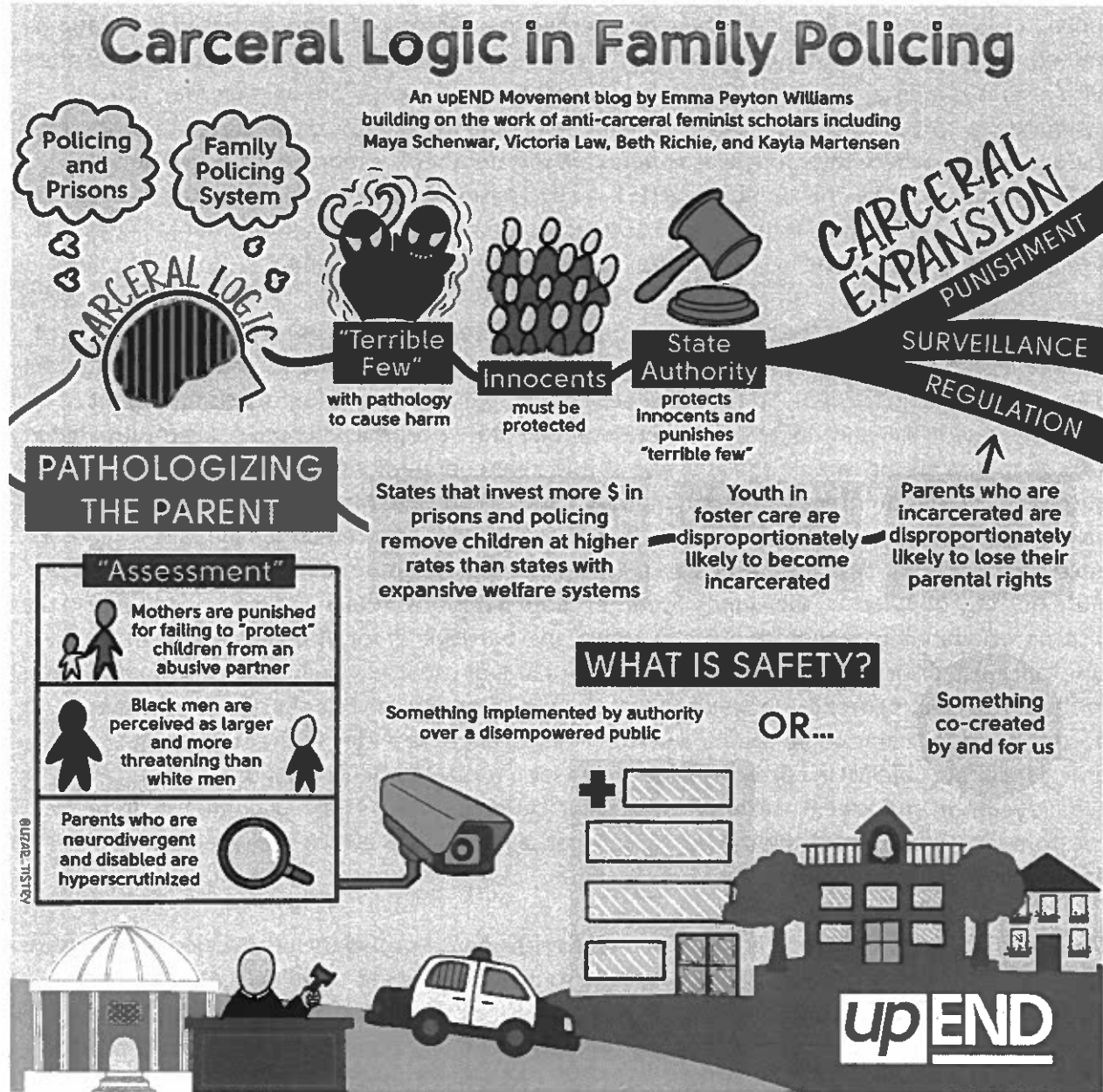
These institutionalized disparities are long-entrenched and pervasive—and they are entirely unsurprising given the system’s animating logic.⁶⁵ As critics of trying to “reform” the system emphasize, the system is not broken.

A third feature of carceral logic is that it has proven remarkably amenable to being co-opted by public officials or special interests to promote objectives only related to crime tangentially, if at all.⁶⁷ There is thus now a now well-trod path for ever more carceral policies and practices to infiltrate broad areas of our lives. As Mariame Kaba writes, starting in the 1970s, carceral logic “crept into nearly every government function, including those seemingly removed from prisons.” She describes some of these functions: “those seeking food stamps are subject to mandatory and/or random drug testing. Immigration and Customs Enforcement has become the largest enforcement agency in the United States. Post-secondary education applications ask about criminal records, and many states bar those with felony convictions from voting.”

Promoting the use of police in schools on the grounds that police make good mentors and role models to students⁷⁰ is a further normalization of carceral logic. It is otherwise a wholly insensible use of public funds to pay police officers, often carrying handcuffs and guns—and always with the power to arrest—to promote students’ healthy emotional and social growth, especially given that this comes at the expense of having trained counselors, mental health professionals, and social workers carry out this critically important work.

We accept uncritically the use of policing to promote these myriad objectives only because, as Jonathan Simon has written, in the modern era crime has become the lens “through which other problems are recognized, defined, and acted upon.”⁷¹ Essentially, once carceral logic was embedded into our psyches and our systems, it was easy to normalize the introduction of coercion and control to educational, employment, and other settings. It has been easier still to double down on police violence and intrusion given the ever-broadening sphere of conduct deemed “criminal.” Further increasing tolerance for an expansion of police powers and their severity is that, as discussed below, carceral logic has fully infiltrated our country’s most foundational—and only national—framework for police conduct: Supreme Court opinions setting out the constitutional parameters for police conduct.⁷²

The above discussion has set out how carceral logic undermines efforts to achieve true public safety, and how this focus on punishment and control has permeated a broad range of our relationships with one another. I have also outlined how this logic both reflects and reinforces the structural racism and economic inequality that are defining features of our country's history.



“I was reaching out for help and they did not help me”: Mental healthcare in the carceral state”

Health and Justice

By: Anna G. Preston, et. al., 2022

Individuals with mental illness are overrepresented in incarcerated and supervised populations. Indeed, as many as 44% of those in prison have a mental health diagnosis (Cohen, 2019). Those with a serious mental illness (SMI), such as schizophrenia or severe bipolar disorder, are estimated at 15% of the incarcerated population, compared to 4–5% of the population at large. In Connecticut, where this study was conducted, this number is estimated to be as much as 20.8% (Connecticut By The Numbers, 2015). A 2010 national survey examining mental illness in state correctional facilities found that in Connecticut, a person with a serious mental illness was almost twice as likely to be in jail or prison as they were to be in a hospital.

This has not always been the case. The second half of the twentieth century saw a major trend in popular and political opinion away from structured, institutional care for individuals with SMI (Lamb & Weinberger, 2005). States tightened restrictions on the involuntary commitment of individuals with SMI and closed the majority of their state hospitals, the mainstay for providing long-term psychiatric care. In the absence of sufficient community services to meet the burgeoning need for intensive outpatient psychiatric treatment, many of these individuals went on to experience mental health crises in the community, which often ended in police encounters, arrests, and incarceration. Furthermore, as deinstitutionalization drove down the state hospital population, the United States entered a period of mass incarceration that saw the disproportionate imprisonment of Black Americans, particularly for offenses related to substance use disorder, which impacts those with SMI at especially high rates. Over time, due to these intersecting trends, many of those who would once have been residents of state hospitals instead came to be confined in the prison system, resulting in the staggering prevalence rates of SMI in correctional facilities seen today. In the context of an overgrown carceral system and a weak social safety net, correctional facilities have become the de-facto “bottom-line” providers of mental health services, a function for which they are neither designed nor well-equipped.

The growth of correctional facilities as mental health service providers has developed alongside an unsettling ideological shift, which has come to be known as the “criminalization of mental illness.” Fisher et al. (2006) define ‘criminalization’ as “a process by which behaviors once considered legal become illegal, rendering their practitioners subject to criminal sanctions for which they were previously not at risk.” As society adopted a criminal legal response to non-normative behavior from individuals with mental illness, the behavior itself came to be conceptualized as criminal too. Fisher et al. (2006) term this a “‘re-labeling’ phenomenon, by which certain forms of deviant behavior came to be defined within a legal, rather than a psychiatric framework,” and by which “agents of social control—police and judges, would impose a criminal, rather than psychiatric definition,” on individual behavior that falls outside social norms.

Today, decades after the emergence of these trends, the prison system has become the largest provider of mental health services in the country. As a result, there has been increasing attention paid to questions of what it means to treat psychiatric disorders within the carceral state and whether certain types of behavior ought to be recognized as manifestations of mental illness or instead as criminal actions requiring punishment.

As the carceral state grows to assume control over the healthcare of millions, discrepancies between its core functions and its capacity for caretaking have become evident. Despite the large proportion of mental healthcare that takes place in prisons, care remains widely varied and often substandard. One survey of state and federal prisons found that only approximately half of individuals receiving medications for a mental health disorder at admission continued to receive medication while incarcerated. Another study reported that only about half of incarcerated individuals meeting criteria for “serious psychological distress” received any treatment at all, whether counseling or medication. In this way, mental health treatment suffers the effects of a poorly-equipped system and significant resource limitations, including a dearth of available clinicians, shrinking budgets, logistical challenges, and inadequate staff training surrounding mental health needs.

Race in the U.S. prison system state

Just as individuals with mental illnesses are overrepresented in U.S. prisons and supervised populations, so are people of color— to an even greater degree. Native people are incarcerated at twice the rate of White Americans and have the highest rate of killings by police of any U.S. racial group. Latinx individuals are incarcerated at 1.4 times the rate of White individuals. Black Americans are five times more likely to be imprisoned than White Americans, and despite comprising only about 13% of the nation’s population, Black individuals make up 38.5% of those incarcerated by the federal government. In the face of such glaring disproportionality, any discussion of the carceral state—including the experience of mental healthcare—will disproportionately affect people of color, particularly Black people, given their overrepresentation within the prison system.

It is also worth examining how patterns of criminalizing and burdening individuals with mental illness diagnoses may disproportionately affect people of color even prior to involvement with the criminal legal system. For instance, a study done in the Los Angeles County jail system – the country’s largest mental health provider – found that Black individuals were significantly overrepresented in the prison’s mental health treatment system relative to their representation in the general prison population.

Such data suggest that Black Americans are not only more likely than White Americans to be incarcerated; they may also be more likely to be incarcerated with – and perhaps for – symptoms of mental illness. A myriad of structural factors in both public health and the prison system are likely at play in creating this pattern, including implicit racial biases of arresting officers, over-policing of Black neighborhoods, the mental health effects of structural racism, and race-based inequities in the quality of mental healthcare access and delivery. In this way,

the disproportionate burden of carceral mental healthcare on Black Americans may both inform and reinforce preexisting race-based inequities in both health and incarceration.

Conflicting goals

To be sure, prisons have developed increasingly targeted approaches to mental illness in the last several decades, incorporating on-site services and clinicians, building psychiatric blocks, and even establishing entire institutions dedicated to incarcerating and treating individuals with mental illness. Additionally, many institutions have implemented crisis intervention trainings for police or corrections officers to teach appropriate de-escalation during encounters with individuals experiencing mania or psychosis. Recent years have even seen the rise of mental health courts, which mandate a treatment plan rather than a criminal sentence for individuals who have broken the law in the course of an acute mental health episode.

However, as the carceral state grows to encompass more aspects of mental healthcare, care for both incarcerated and supervised individuals remains inconsistent, frequently insufficient, and heavily contingent on the institutional and personal styles of correctional facilities and staff. In Connecticut, this growth is evident in the expanding purview of carceral mental healthcare, from the 50% increase in the percentage of state-incarcerated individuals placed in a mental health prison over the past 5 years, to the growing incorporation of mental health services within carceral supervision for those on parole. Furthermore, even as carceral institutions expand the volume and breadth of their mental health services, a more pervasive and intractable problem emerges when integrating mental healthcare within the criminal legal system. On a fundamental level, the conflicting nature and goals of incarceration and mental health treatment inhibit the delivery of effective mental health services in prison or through the criminal legal system.

Therapeutic means to carceral ends

In the face of high demand for mental healthcare within prisons, correctional institutions have increasingly sought to integrate criminal legal and healthcare functions. For instance, the mission statement of Garner correctional institution, a mental health prison in Connecticut, states that “the staff at the facility, both custody and mental health, operates through an integrated team approach which insures a continuity of custody, care, treatment and control.”. In this way, the mental health goals of care and treatment become intertwined with correctional goals of custody and control.

However, in many cases, it may not be feasible to simultaneously promote punishment and control alongside healing and growth in one individual. Incarceration removes an individual from known structures, relationships, and supports and places them in an environment poorly equipped to meet their mental health needs. Practices like solitary confinement that serve carceral functions of control and incapacitation – and that are in fact shown to be levied more often against individuals with mental illness – exacerbate symptoms of mental illness, obstruct an individual’s path to healing, and can even cause new-onset psychiatric symptoms.

For individuals under community supervision, carceral monitoring and a criminal record limit one's citizenship and self-determination – crucial aspects of mental healing – through restrictions on one's movement, housing opportunities, economic viability, voting and jury rights, and social service eligibility. The power dynamic that is inherent in the carceral system and reinforced through rigorous rules, limitations on autonomy, and constant supervision situates the individual in a position of powerlessness and creates a hostile environment that is inconducive to healing. As Lamb and Weinberger aptly state, “jails and prisons have been established to mete out punishment and to protect society; the corrections milieu is limited in its ability to be therapeutic.”

The tension between carceral and mental health treatment goals grows even starker when understood in the context of the implicit goals of the carceral state, such as economic stratification and the “construction of disposable people in our social worlds.” When considering the role of mass incarceration in producing and maintaining racial capitalism, unemployability, and the creation of a social and economic underclass, it becomes evident that those with mental illnesses – particularly people of color – who already face significant discrimination and accessibility challenges, are particularly targeted by these carceral goals, which operate in direct conflict with therapeutic goals of empowerment and self-sufficiency.

Ultimately, when mental health treatment is incorporated within and made an agent of the prison system, mental health goals become secondary to those of that system or are abandoned entirely. Bringing mental healthcare within the carceral state, an institution oriented toward control and retribution, fundamentally conflicts with the therapeutic ideals of patient empowerment and agency and ontologically transforms the nature and purpose of that care. In the words of Maya Schenwar and Victoria Law in *A Prison by Any Other Name*, this illustrates “how pervasive incarceration has become that even many of the alternatives, which are couched in the language of healing, actually rely on forcible confinement, surveillance, and utter control.”

Beyond Criminal Justice Reform

Real criminal justice reform demands profound social change. The fixation on severe sentences and police brutality masks harder truths.

By Michael Javen Fortner Dissent 2015

We've entered a new age of reform—criminal justice reform, that is. In late April 2015 Hillary Clinton, in one of the first formal addresses of her presidential campaign, declared, "It's time to end the era of mass incarceration." This policy speech on criminal justice reform signaled a personal transformation. In 1994 Clinton applauded as her husband Bill Clinton signed into law the Violent Crime Control and Law Enforcement Act, a critical episode in the expansion of the prison system. Clinton's conversion is not unique; she is one of many.

Like the age of reform profiled by historian Richard Hofstadter, which shaped U.S. politics from the 1890s through the 1930s, this one has enlisted figures in both parties, including previous proponents of punishment. Individuals as ideologically opposed as Eric Holder and Rand Paul have found common ground on overhauling sentencing guidelines. Several states have placed moratoriums on executions. In May 2015 Nebraska's legislature—no bastion of radicalism—overrode a governor's veto to repeal the death penalty, becoming the seventh state since 2007 to do so.

Though propitious, this moment may never fulfill its promise. Unlike other reform eras, such as the Progressive Era, the New Deal, and civil rights and the Great Society, this one is modest in scope: today's reformers are preoccupied with police and penitentiaries, and blind to the painful experiences that gave punitive approaches purpose and urgency. The penal policies and law enforcement practices that doomed many black males to lives behind bars or under police surveillance arose in part at the behest of black populations and their political leaders who sought a reprieve from the violence and disorder precipitated by urban decline. Today's reformers are valiantly attacking the policies punishing people of color. But they have yet to couple this activism with a robust program targeting the social conditions that undermined public safety and prompted working and middle-class African Americans to turn to police and prisons for relief.

This neglect is not accidental. It is a logical implication of dominant theories of mass incarceration. Michelle Alexander's best-selling book *The New Jim Crow*, which should be credited for propelling this latest reform movement, insists that modern crime policies were enacted to restore a racial status quo upended by civil rights victories rather than to meet legitimate concerns. Others have claimed that Republican political elites employed "law and order" rhetoric to manipulate working-class white voters and dislodge them from the New Deal coalition. Some have updated this analysis, implicating Democrats and liberals in mass imprisonment. According to this striking account, liberal state-building supplied the foundation for the carceral state, and left-of-center politicians raced to ensnare blacks within its tentacles to win favor with resentful whites departing the Democratic fold.

While these bold narratives have incited energetic activism and have stimulated needed policy change, they have also obscured much. They have unnecessarily downplayed the effects of crime. They have disregarded the agency, voice, and suffering of many black people. As Yale Law School professor James Forman, Jr. has cautioned, “The Jim Crow analogy encourages us to understand mass incarceration as another policy enacted by whites and helplessly suffered by blacks. But today, blacks are much more than subjects; they are actors in determining the policies that sustain mass incarceration in ways simply unimaginable to past generations.”

Black civic leaders and city residents—caught in the despairing nexus of deindustrialization, residential segregation, white flight, and social disorder—aggressively mobilized on behalf of punitive approaches from the late 1960s until the late 1980s. The New York City story is instructive. Starting in the 1960s, Harlem and other black neighborhoods suffered the tragic consequences of a heroin epidemic. Not only did addiction take the lives of users, but related crimes, such as muggings and burglaries by addicts seeking to finance their next fix, made residents prisoners within their own homes and curtailed church life and commerce. Desperate for calm in their communal spaces, civil rights leaders, clergy, community activists, and residents turned to law enforcement. Repurposing strategies perfected in the struggle for civil rights, they marched, held rallies, circulated petitions, and testified at hearings to publicize their grievances and compel local and state authorities to increase the police presence in their neighborhoods and impose harsher penalties for drug crimes. In 1973, Governor Nelson Rockefeller exploited these fears to pass his draconian drug laws, which mandated hefty sentences for narcotics offenses. In 1976, at the urging of African American politicians, New York City mayor Abraham Beame assigned a 170-man police task force to increase arrests in Harlem. After the crack epidemic hit the streets almost a decade later, local black leaders held vigils and rallies to demand government action. Charles Rangel, U.S. Representative from Harlem, and other black representatives brought the desire of black residents for greater public safety in their neighborhoods to the attention of their white peers, and white Democrats and Republicans wanting to appear tough on crime obliged, passing the Anti-Drug Abuse Act of 1986—the policy keystone of Ronald Reagan’s war on drugs.

Recent horrors speak to these complexities. In New York, the spot in Staten Island where a police chokehold killed Eric Garner was the subject of 646 calls to 911 and nine complaints to 311 from people who lived in the neighborhood. One caller complained “after physically fighting with the men on the block who sold drugs,” and noted that the cigarette sellers “provided cover for more illicit activities.”

In Baltimore, Maryland, State’s Attorney Marilyn Mosby heroically filed charges against the police officers who detained and transported Freddie Gray, who died in their custody. Mosby, who is African American and whose husband City Councilman Nick Mosby represents the district where this tragedy began, had also asked the chief of her Crime Strategies Unit to look into “community concerns regarding drug dealing” and to give “enhanced” prosecutorial and police attention to the area in which cops encountered Gray. Deploying fewer police officers or cutting the number of arrests won’t fix the larger structural challenges—concentrated poverty, chronic joblessness, and the absence of a vigorous and sustained federal response to these

problems—that engender violence and upbraid public safety. When they feel threatened or endangered, the only option for people who live in impoverished areas is to call armed agents of the state, who are trained to use force.

Real criminal justice reform demands profound social change. The fixation on severe sentences and police brutality masks a hard, uncomfortable truth: our modern criminal justice system was produced by a cynical white elite, with the support of a large swath of the black population. The fear mongering used by the former is bound up in the genuine grievances and fears of the latter. Harsh statutes can be amended, and law enforcement can be retrained, monitored, and denied military-style weapons and equipment. But violence and disorder will persist. And they will continue to devastate communities subject to the worst effects of unbridled capitalism, the conservative assault on redistributive schemes, and frequent progressive quiescence in the face of the two.

While the residents of poor and working minority neighborhoods should not have to endure discourteous, harassing, and reckless policing, neither should they have to brave the perpetual disquiet of urban decline. Disadvantaged citizens deserve equality and security, civil liberty, and public safety. Curbing excessive patrolling of low-income areas and taming extreme punishments for minor offenses will partly resolve our new American dilemma. But true reform requires policies that will also guarantee public safety for all the families of color that are forced to endure the daily terror of urban crime.

Raze the Carceral State

We need to resist the belief that the only way to end mass incarceration is to tackle the root causes of crime.

By Maire Gottschalk Dissent 2015

We need to resist the belief that the only way to raze the carceral state is to tackle the root causes of crime—massive unemployment, massive poverty, and high levels of social, political, and economic inequality. The U.S. penal system is the result of policies that can be dismantled in several years even if these structural determinants of crime persist. As a panel of experts from the National Academy of Sciences recently concluded, changes in public policies, not rising crimes rates, were the main engines of the decades-long spike in the incarceration rate.

An overemphasis on the structural causes of crime overshadows the fact that about half of the people in state prisons are serving time today for nonviolent offenses, many of them property or drug offenses that would not warrant a sentence in many other countries. Many others are serving savagely long sentences for violent offenses even though they no longer pose serious threats to public safety.

Comprehensive changes in penal policy, not an assault on structural problems and the root causes of crime, have been the main drivers of successful decarcerations elsewhere, including

Finland in the 1960s and '70s, Germany in the 1980s, and California under Governor Ronald Reagan. Support for reentry is an important and noble cause. But the focus of reform needs to expand way beyond the people who are being released. Reducing the number of people who are sent to jail or prison in the first place and slashing sentence lengths and time served for future and current prisoners must be top priorities. Criminal justice reform should be guided by the principle that lengthy sentences should be reserved for people who continue to pose major threats to public safety.

To this end, we need to repeal mandatory minimums, habitual offender laws (including three-strikes statutes), and truth-in-sentencing statutes (which require people to serve most of their sentence before being considered for release). We also need to end the war on people convicted of sex offenses, a capacious category that can encompass anything from public urination, to "Romeo-and-Juliet" laws that penalize underage sex, to the rape of a child. The expansive and counterproductive system of registration, notification, and civil commitment laws that has turned people convicted of sex offenses into lifelong outcasts needs to be dramatically scaled back. We also need to overhaul and depoliticize the parole process to insure that every incarcerated person is entitled to a meaningful parole review, including everyone serving a life sentence.

The limited sentencing reforms enacted so far have been directed almost exclusively at the non, non, nons—that is, the non-serious, nonviolent, non-sex-related offenders. Many government officials and policy makers have fiercely resisted applying these modest reforms retroactively to people already serving time. Furthermore, stiffening the penalties for other offenses has been a popular quid pro quo for modest reductions in the penalties for the non, non, nons.

Comprehensive sentencing reform will not singlehandedly rectify the enormous harm caused by the carceral state. The degrading and abusive conditions that prevail in too many U.S. detention centers, jails, and prisons must be alleviated. The criminalization of immigration policy as a consequence of the creeping merger of law enforcement and immigration enforcement systems needs to be reversed. The widespread practice of condemning people with criminal records to civil death must cease so that successful reentry is truly possible. A criminal conviction should no longer be an obstacle to voting, jury service, or accessing public benefits, such as food stamps, public housing, and student loans. The expansive employment and licensing restrictions that deny those with criminal convictions jobs and occupational licenses should be much more narrowly tailored and reserved for specific and compelling public safety concerns.

The polarized political atmosphere in Washington and in many state capitals is a convenient foil to excuse why so little progress has been made in criminal justice reform. It justifies the pursuit of a narrow penal agenda premised on the three Rs—reentry, justice reinvestment, and reducing recidivism—that prevails among elite policy makers today.

Claims of legislative gridlock direct attention away from many non-legislative means available to begin razing the carceral state. For all the talk of how mandatory minimums and mandatory guidelines built the carceral state, individuals serving on the frontlines of the criminal justice

system retain considerable discretion to choose a less punitive path. President Obama and state governors have enormous powers to grant executive clemency that they have been largely unwilling to wield. Federal judges have broad discretion to depart from the sentencing guidelines. The federal Bureau of Prisons could “eliminate thousands of years of unnecessary incarceration through full implementation of existing ameliorative statutes,” according to a 2008 report by the American Bar Association. By changing their approach to charging and sentencing, prosecutors could substantially reduce incarceration rates even without any statutory changes.

The specific changes needed in penal policy to slash the incarceration rate are no mystery. The greatest challenge is to create a durable political movement to undo the massive injustices of the carceral state and not just nibble around its edges.

Framing the problem of the carceral state as a largely dollars-and-cents issue—as Newt Gingrich, Grover Norquist, and other leading conservatives identified with the Right on Crime coalition have done in concert with some leading liberals—will not sustain the political momentum needed over the long haul to slash the prison population and overhaul the criminal justice system. It slights the compelling civil and human rights arguments that the carceral state raises as it removes wide swaths of blacks, Latinos, the poor, immigrants, and other historically disadvantaged groups from their neighborhoods.

Binding the movement against mass incarceration to the purported fiscal burden of the carceral state helps reinforce the claim that eliminating government deficits and government debt should be the country’s top priority. It obscures the fact that successful decarceration will cost money. The people reentering society after prison need significant educational, vocational, housing, medical, and economic support to ensure that the communities they are returning to are not further destabilized by waves of former prisoners.

All the focus on the three Rs and the Right on Crime coalition has overshadowed the growing political ferment at the grassroots level for a much more ambitious reform agenda to raze the carceral state. The recent wave of high-profile police killings and deaths in custody of people of color—Michael Brown in Ferguson, Eric Garner on Staten Island, Walter Scott in North Charleston, Freddie Gray in Baltimore, Sandra Bland in Waller County, and the list goes on—has stoked that ferment.

With comprehensive changes in penal policy and the culture of law enforcement, dramatic cuts in the incarceration rate are achievable over the next few years. But high levels of violent and serious crime in poor communities will continue to be a major social problem. Alleviating the poverty and income inequality that are at the root of extraordinarily high levels of violent crime in certain communities will take some time. In the meantime, no compelling public safety concern justifies keeping so many people from these communities locked up or otherwise ensnared in the carceral state.

Cut the Carceral System Now

Jack Norton, New York Review of Books 2022

Jails and prisons are not natural features of the rural American landscape. Mass incarceration was built state by state, county by county. Today, carceral responses—policing, jail, and state supervision—are proposed as ostensible solutions to almost every social and economic problem in the United States.

Since the killing of George Floyd by police a little over a week ago, people across the country have been rising up against police brutality, and highlighting the relationships between policing, systemic racism, poverty, and mass criminalization. As people from Louisville, Kentucky, to Duluth, Minnesota, and from Los Angeles to New York City protest police violence, they have been met with escalating police violence. And as people advocate defunding the police and prisons, in favor of reallocating funds to communities, they have been faced with heavily resourced and militarized police forces.

Even before this past week, carceral institutions have been in the news as the prison and jail boom of the past forty years has intensified the damage of the Covid-19 pandemic. Mass incarceration has a devastating effect on public health. For the past two decades, as counties across the country have built new jails, the rural US experienced a wave of hospital and mental health facility closures. In rural Washington County, New York, where I am writing from, there are two state prisons. An abandoned hospital looms on the hill above town—closed in 2003, the same year the county built a new, larger jail.

New York State is typical of the country's larger trend, in which prisons have in the last few decades become synonymous with economic development in many rural communities. State governments built prisons in rural areas that were often experiencing deindustrialization or agricultural restructuring with the promise of new jobs. Between 1982 and 2000, thirty-nine new prisons were erected, all of them in rural upstate counties, changing the meaning of economic development in the state. Like much of the country, upstate New York faces the pandemic and Depression-level unemployment with, simultaneously, an underfunded social infrastructure and a massive investment in keeping thousands of people locked up.

Before the pandemic, there were more than two million people in prisons, jails, and immigrant detention centers across the country. And for decades before the onset of the pandemic, counties, states, and the federal government built a vast and sprawling carceral infrastructure. As we focus on flattening the curve of the Covid-19 pandemic and struggle over the shape of the new normal, mass incarceration—which leaves the US, and rural areas in particular, uniquely vulnerable to the pandemic—is at the center of America's inadequate response.

Today in the United States, there are nearly 2,000 state and federal prisons, over 2,970 local jails, and 218 immigrant detention centers. There can be no meaningful social distancing in prisons and jails, which have become the sites of ten of the top fifteen Covid-19 clusters in the country, as tracked by the *New York Times* in their effort to understand the concentrated spread of disease in factories, churches, and institutions. The biggest hotspot is the Marion Correctional Institution, a state prison in rural Ohio where 80 percent of the incarcerated population—more than 2,400 people—have tested positive for Covid-19. Ohio’s state prison population is almost 50,000 and yet the state made almost no effort to release people; the population declined by only eleven people by March 31.

No prison system in the US, in fact, has moved to decarcerate in any way commensurate to the lethal dangers that prisons create for the people who spend time in them, or for surrounding communities, many of them rural and lacking health-care infrastructure after decades of state investment in prisons and jails. Prisons are, in effect, dense cities locked behind razor wire, but they are not isolated. In the time of Covid-19, prison guards and staff, also unable to socially distance at work, risk being vectors both in prisons and in communities where the prisons are often the biggest employer.

In May, the Vera Institute of Justice, where I am a researcher, released a report showing that the number of people incarcerated in state and federal prisons decreased 2.2 percent between December 2018 and 2019, a continuation of a decline that’s been ongoing since the peak prison population in 2009. Over the past decade, the number of people incarcerated in state and federal prisons has declined 11 percent in the US. While most states have fewer people in prison, some states—such as Alabama and Idaho—have more. The incarceration curve in many states has flattened or declined relatively slightly compared to the exponential increases of the 1980s and 1990s. But these decreases in overall state prison populations conceal the fact that an increasing number of people locked up are women, and that in many states, county jails are being used to incarcerate state prisoners and immigrant detainees, a sort of shell game which results in, among other things, increased investment in local jails.

In the US, however, high rates of incarceration have become the norm, even with fewer people in prison, and while some counties have let people out of their jails since the onset of the pandemic, the responses from state and federal prison systems range on a spectrum from inadequate to nonexistent. In an internal document obtained by the independent news site AL.com in April, the Alabama Department of Corrections planned to respond to the anticipated infections and deaths in its growing prison system not by releasing people, but by ordering body bags and calling in the National Guard as additional staff.

As the virus continues to spread throughout the country, state and federal prison populations have declined only 1.6 percent through the end of March, which means that around 22,000 people have been released from a system of more than 1.4 million. Public health experts recommend that the only way to slow the spread of the virus in prisons is to release people,

and governors and other officials have the power to quickly and significantly reduce incarceration through clemency or parole. Yet, according to [recent surveys](#), state and federal prison incarceration rates have hardly moved at all during the mounting Covid-19 crisis. The Federal Bureau of Prisons, for example, [reduced](#) its prison population by just 300 people in the first three months of the pandemic, a decline of a mere 0.2 percent.

When jurisdictions do release people, the focus has been on pre-trial detainees and those with nonviolent offenses, a calculation that excludes over fifty-five percent of people incarcerated in state prisons. Kentucky is among the states that have released the most people from its state prison system, about 10 percent by early May. In contrast, Kentucky reduced the number of people held pretrial or serving jail sentences in county jails by 52 percent between January 2 and April 30, from 11,600 to 5,600 people, a decrease that a few months ago might have been considered unthinkable but that demonstrates the power that state and local governments have to free people. In the context of general state inaction, community bail funds like the Louisville Community Bail Fund and the New York Immigration Freedom Fund, have stepped in to organize to get people out of jail and detention.

Prison abolitionists have been pointing out for decades that the US's prison system is not broken, but is in fact accomplishing what it was designed to do, which is to incapacitate and make disposable large segments of the population—in particular, poor people and people of color—as a way of managing growing inequality. The current pandemic has been clarifying in this regard. A [recent ACLU study](#), modeling the future effects of Covid-19, predicts that the US may have up to 100,000 additional deaths in this pandemic thanks to high jail incarceration rates in the US. (This study did not estimate the impact of such rates specifically in rural areas, although rural America has the highest burden of incarceration and the fewest public health resources. The ACLU study also did not estimate the effect of the 1,800 state and federal prisons' holding 1.4 million people across the country.)

Prisons and jails are harmful and oppressive to so many, and people across the US are rising up against police brutality, mass incarceration, poverty, and disparities in health care and outcomes. Decades of high incarceration rates suggest that much of the country has become habituated to widespread poverty and early death, even before Covid-19. Indeed, many people and businesses have tied their economic and political fortunes to rising incarceration rates. At the same time, forty years of building prisons and jails has left much of rural America without the infrastructure needed to address a pandemic.

Today, state leaders across the country have within their power the ability to save lives and reorganize public resources by letting people out of jails and prisons, and defunding police forces across the country. Urgent measures to release people from incarceration, address immediate public health risks, and answer the demands of tens of thousands of protesters in the streets, must be the first steps toward liberation on a much broader scale.

