MASS INCARCERATION AT THE CROSSROADS

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Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics*, Princeton, NJ: Princeton University Press, 2014, 496 Pages, ISBN 978-0-691-16405-2. $35.00

Jeremy Travis, Bruce Western, and Steve Redburn (Eds.), *The Growth of Mass Incarceration in the United States: Exploring Causes and Consequences*, Committee on Causes and Consequences of High Rates of Incarceration, National Research Council of the National Academies. Washington, DC: National Academies Press, 2014, 464 Pages, ISBN 978-0-309-29801-8. $74.95

At the 2015 annual convention of the NAACP last July, President Barack Obama delivered his first major address critiquing the American criminal justice system. "Mass incarceration makes our country worse off, and we need to do something about it," Obama said.[1] The unprecedented investment in law enforcement and penal programs at all levels of government in recent decades has now reached, as the president declared, "a point of diminishing returns." Obama acknowledged the long history of overcriminalization, overpolicing, and inherent racism that characterize the nation's crime control institutions, issues that "more Americans have opened to" over the past year. Beginning with the killing of the unarmed African American teenager Michael Brown by police in the streets of Ferguson, Missouri in August 2014, increasing coverage of disturbing encounters between citizens and police—that all-too-often end in the loss of Black lives—opened up new conversations about domestic priorities. National news outlets and social media advocates have alerted more Americans to the staggering statistics and the reality that the costs of maintaining the largest prison system on the planet are now too much for the states to bear. As the president noted, "There's momentum building for reform."

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Indeed, for the first time since the advent of the "War on Crime" in 1965, it is politically safe to challenge the prisons, probation, and parole programs at the heart of the American carceral state. Just as a bipartisan coalition of policymakers and organizations supported the policies that created the incarceration crisis, this same coalition is currently seeking to undo the damage that has resulted from the nation's punitive priorities of the last fifty years. Calls for decarceration have, in Obama's words, "created some unlikely bedfellows," from Van Jones and his "Rebuild the Dream" organization that seeks to uplift urban youth through employment programs, to Newt Gingrich and his "Right on Crime" initiative that grounds its appeals for change on the basis of conservative principles such as small government and free enterprise. And with "evidence mounting for why we need reform," scaling back mass incarceration is the sole domestic policy issue that many Democrats and Republicans in Congress can agree on.

Whether or not the president himself has read *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Travis et al., 2014), high officials within his administration and Congressional representatives are familiar with the report's findings. Convened by the National Research Council (NRC) of the National Academies, the twenty-seven-member committee of leading sociologists, political scientists, and historians researched and deliberated the forces that precipitated mass incarceration over a two-year period.[2] Democratic and Republican Senators alike have mentioned the report on the Senate floor to argue for sentencing reform, it is frequently cited by the nation's leading reporters and criminal justice activists, and NRC Committee members have briefed staffers on Capitol Hill.

Beginning from the premise that the nation's current prison problem is the outcome of a set of policy choices that did not necessarily respond to actual crime, *The Growth of Mass Incarceration* legitimizes many previously controversial arguments about the impact of penal practices on American families, communities, and society at large. The report eloquently establishes that prison populations, and the racial disparities within them, must be reduced. It demonstrates that the historic rise of incarceration in the United States has not resulted in tangible benefits with respect to crime control. And it expands the range of acceptable discourse around the issue, making it possible for Obama to claim before the NAACP that incarcerating nonviolent offenders has failed to effectively improve public safety.

The analysis presented in the NRC report centers on four principles that can begin to reverse the troubling penal trends of recent decades: proportional sentencing to encourage prosecutors to seek the "best," rather than the longest, punishment; greater parsimony to ensure that taxpayer dollars are no longer allocated toward excessive and often inhumane punishments; the preservation of the civil status of convicted felons; and the privileging of social justice concerns to foster the general well-being of every citizen. "Prisons should be instruments of justice, and as such their collective effect should be to promote and not undermine society's aspirations for a fair distribution of rights, resources, and opportunities," the committee proposed (Travis et al., 2014, p. 8).

If the *Growth of Mass Incarceration in the United States* demonstrates the nature of the problem and sets a new standard for policy analysis, the University of Pennsylvania political scientist Marie Gottshalk—herself a member of the NRC Committee—provides us with our best existing roadmap out of the carceral crisis in America. *Caught: The Prison State and the Lockdown of American Politics* (2014) should be required reading for policymakers at all levels of government, and particularly for President Obama, Attorney General Loretta Lynch, and their successors. In this follow-up to her award winning, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (2006),

Gottschalk draws from historical examples and political realities to make a persuasive case for why we should be cautiously optimistic about the growing bipartisan coalition of policymakers who have begun to retreat from the carceral state.

One cannot read *Caught* and walk away believing that sentencing reform alone, particularly with respect to minor drug charges, will resolve the current inequities in American law enforcement and criminal justice. It is widely assumed that ending the War on Drugs is all that is needed to address many of the nation's domestic problems, but Gottschalk's comprehensive scope reveals narcotics enforcement to be one aspect of a host of punitive policies that have led to the mass incarceration of American citizens. More than merely retreating from the aggressive enforcement of drug laws, Gottschalk urges police, prosecutors, judges, and penal administrators to "buy into the goal of major reductions in prison populations and to coordinate their behavior to that end" (Gottschalk 2014, p. 268). She suggests that, ultimately, "the only way to seriously reduce spending on corrections is to shut down penal facilities and lay off corrections staff," (p. 9) following closely upon calls by various prisoners' rights and social justice groups advocating for the abolition of penal facilities. Beyond prisons themselves, Gottschalk explores the way many Americans with criminal records are subject to forms of "partial citizenship" or "internal exile." From felon disenfranchisement to severely restricted access to employment opportunities and public services, such bans form a "highly distinct political and legal universe" (p. 242) that exclude entire categories of people from participation in civic life and erode American democracy in the process.

Some states have already begun to reduce spending on their respective prison systems, operating under what Gottschalk terms the "fiscal imperatives framework" to advocate for criminal justice reform and decarceration. As articulated by Senator and Republican presidential candidate Rand Paul, imprisoning large numbers of nonviolent drug offenders for long periods of time, "costs the taxpayers money, without making them any safer."[3] By downplaying socioeconomic inequalities and stressing cost effectiveness, Gottshalk argues that the reform agenda favored by Paul, his sympathetic colleagues in Congress, Department of Justice officials, and think tanks, "constricts the political space to challenge penal policies and practices on social justice or human rights grounds" (Gottschalk 2014, p. 17). The punitive rhetoric which has stained the American electoral arena since the 1960s remains, and "creating a safe, healthy, and humane penal system is generally not considered a credible and desirable public policy goal on its own" (Gottschalk 2014, p. 17). As Gottschalk points out, prison disinvestment has largely translated to cutting rehabilitative programs and food services for prisoners. Thus the danger in basing criminal justice reform on saving taxpayer dollars and improving public safety alone leaves open the possibility that policymakers at all levels of government will further entrench mass incarceration by eliding root causes and supporting the continued privatization of previously public functions. Gottschalk instead argues that if we are to reverse the domestic policy trends of recent decades, a complete transformation of penal and juridical institutions is necessary, as well as a new level of investment in social welfare provisions.

Gottschalk is especially weary of recent policies that aim to lessen the draconian sentences that apply to nonviolent, nonserious, and nonsexual offenders (what she calls the "non non nons") and instead concentrate state resources on the "worst offenders." Gottschalk argues that this strategy merely reinforces the existing punitive policy climate and the long-held notion that there is a "dangerous class of people who must be contained at all costs" (Gottschalk 2014, p. 195). For Gottschalk the "Smart on Crime" initiative the Obama administration launched in 2013, and other reforms, could easily lead to another "burst of get-tough policies" (p. 19) behind their rhetoric

of equality and fairness. As Obama put it before the NAACP: "If we're going to deal with this problem, and the inequities involved, then we also have to speak honestly. There are some folks who need to be in jail." By accepting the notion that some groups of citizens are inherently "bad," Gottschalk predicts that policymakers and reformers are doomed to reproduce many of the rationales that sustained the rise of mass incarceration in the first place.

To demonstrate why we must look beyond narcotics enforcement if we are to understand how mass incarceration happened and determine solutions, Gottschalk considers the criminalization process of targeted groups who remain largely absent from *The Growth of Mass Incarceration in the United States* and the other discussions of crime control policies in academic and political circles. In much the same manner as the War on Drugs, the demonization and federalization of sex offenders produced skyrocketing incarceration rates. Today, citizens convicted for sex-related offenses—crimes that can include anything from urinating in public to consensual intercourse between minors—are the fastest growing segment of the nation's prison population. Just as Ronald Reagan launched the War on Drugs during a period in which rates of reported crime had declined, so too the penalties and convictions for sex crimes increased in the mid-1990s, when reported rates of rape and child abuse had dropped. Gottschalk examines the way this targeted group is subject to a distinct civic status long after they have served their sentence, including sex offender registries, residency restrictions, and in some cases, violent forms of therapy that include castration.

In addition to the "war on sex offenders," Gottschalk reveals how a rising number of documented and undocumented immigrants have been subject to confinement in prisons, jails, and detention centers—many of them operated by the Corrections Corporation of America and other private firms. Gottschalk expands our view of immigration detention by showing the way immigration reform functions, in practice, as a crime control program. This "crimmigration," as she terms it, has led to an eleven fold increase in populations confined in Immigration and Customs Enforcement (formerly INS) facilities since the 1970s, when policymakers and officials began to enlarge the immigration enforcement system with a constant influx of Border Patrol agents, police, prosecutors, courts, jails, prisons, and detention centers. During the Obama administration in particular, after the president pledged to go after immigrants who are "criminals" and "gang bangers" (quoted in Gottschalk 2014, p. 216), a record number of people have been deported. Gottschalk points out that two-thirds of these deportations have resulted from traffic violations and other minor infractions, and are often applied to immigrants who lack any previous criminal record. Moreover, as Latinos and Chicanos have reached majorities in the federal prison system and in states like California, the perception is reinforced by Donald Trump and other public figures that immigrants are somehow responsible for a disproportionate share of violent crime. Gottschalk reminds us that in reality, immigrant communities tend to have *lower* rates of violence and crime. Yet military-style raids and policing practices that parallel the heavy-handed strategies of the War on Drugs have proliferated under President Obama's watch.

Underlying Gottshalk's powerful discussion of the criminalization of sex offenders and immigrants is an attempt to move the terms of debate beyond the "New Jim Crow" criminal justice reform agenda, a framework that treats anti-Black racism as a causal factor in triggering mass incarceration. Most prominently articulated by civil rights advocate and Ohio State law professor Michelle Alexander (2010), this view essentially considers the War on Drugs as a veiled "war on Black people," and presents White prisoners as merely the "collateral damage" (p. 205) wrought by crime control policies and juridical standards built on a set of racist assumptions about Black

Americans and crime. In her forceful critique of this outlook, and much of the existing literature on urban criminalization and mass incarceration by extension, Gottschalk argues that focusing on the impact of crime control policies in African American communities "diverts intellectual energy and resources from critical issues that need to be addressed if we are to dismantle the carceral state" (2014, p. 138). As Gottschalk points out, even if Black Americans were sentenced to prison or jail time at the same rate as their White counterparts, the United States would still be a mass incarceration society with more citizens behind bars than anywhere else in the world.

Caught's corrective to the "New Jim Crow" argument that exclusively focuses on the criminalization of Black and Latino Americans shows how the remarkable growth of the carceral state in recent decades has compromised life prospects for immigrants, women, LGBTQ communities, and low-income citizens in general. But the inherent racial dimensions of policing, sentencing, and incarceration practices in targeted neighborhoods are undeniable. A growing body of research on the justice system's deep racial dimensions—shaped in no small part by Gottschalk and her fellow members of the NRC Committee—means that policymakers and the public can no longer dismiss as "barbershop talk" the fact that, as Obama pointed out in his NAACP address, "Black boys and Black men, Latino boys and Latino men experience being treated differently under the law." Among the many examples in *Caught* that support the president's assertion, Gottschalk emphasizes that the United States currently locks up more Black men than did South Africa on the eve of the end of apartheid, that African American high school dropouts currently suffer from rates of confinement that are fifty times the national average, that prison or jail time has served as a "rite of passage" for many Black citizens, and that, perhaps most indicatively: "Defendants with darker skin are more likely to be punished more severely, as are defendants with more stereotypically African American facial features" (Gottschalk 2014, p. 125). Even as Gottschalk finds the racial disparities framing "too narrow" on one page, she nevertheless admits these same disparities "remain breathtaking" on the next (2014, pp. 120, 121).

Gottschalk's treatment of justice advocacy that privileges the unique consequences of punitive programs in Black American communities reflects what is perhaps the central tension that exists in the movement towards decarceration. Can policymakers adequately address the unique impact of mass incarceration on Black and Latino Americans without directly confronting historical racism within the criminal justice system? Racial injustice and crime and punishment in America are so deeply intertwined that future reforms must address both issues simultaneously in order to be meaningful, rather than adhere to an either/or, zero sum game.

Although Gottschalk believes that emphasizing racial disparities will only "thwart" the development of a broad political and social movement to end mass incarceration "and other gross injustices in the United States today" (2014, p. 120), social movements have successfully mobilized and built powerful coalitions premised on issues of racial inequality in the past, providing us with models for future action. The history of the abolitionist movement, Reconstruction, and the Civil Rights revolution proves that it would not be completely unfeasible to take into account the full dimensions of the nation's policing and prison problems while still placing the disproportionate impact of law enforcement policies within Black and Latino communities front and center.

One of Gottschalk's core recommendations calls for state-level actors and community-based groups to join together in a criminal justice reform movement, and she recognizes expanding the sources of acceptable knowledge about the contours of crime and punishment in America will be vital to this movement's success. Gottschalk argues that the voices of incarcerated and formerly incarcerated Americans must be

made more visible in order to galvanize policymakers and the public—just as the circulation of slave narratives generated critical support for Emancipation. In the absence of firsthand accounts, as well as qualitative examinations, we are left with an "extraordinarily conservative" portrait of American crime and criminal justice. The quantitative studies and controlled experiments conducted by the Bureau of Justice Statistics are sole measures that "count" as evidence (Gottschalk 2014, p. 261), and by privileging statistical data, policymakers are left with a narrow paradigm through which they can imagine reform.

The most important takeaway from *The Growth of Mass Incarceration in the United States* and *Caught* is that domestic policies need to be based on social justice, rather than punitive, priorities. Despite some of the shortcomings of the Obama administration's crime control reforms that Gottschalk has illuminated, this goal has not been lost on the president, who evokes much of the same language that can be found in both texts. "Justice is not only the absence of oppression, it is the presence of opportunity," Obama told his audience at the NAACP convention in July, noting that a Black man born in 1990 has a fifty percent chance of being employed today, fueled in no small part by mass incarceration. "Justice is making sure every young person knows they are special and they are important and that their lives matter—not because they heard it in a hashtag, but because of the love they feel every single day. Not just love from their parents, not just love from their neighborhood, but love from police, love from politicians." If Obama wants to rethink the logic of a crime control apparatus that treats "entire neighborhoods as little more than danger zones where we just surround them," then a major infusion of resources, policies, and programs that would address the socioeconomic causes of crime offers real—and perhaps the only—long-term solution. Choosing to invest in law enforcement at the direct expense of other resources such as early education and youth employment, Obama said, is, "not just a police problem; that's a societal problem." As the president himself suggested, the $80 billion a year the nation spends on incarcerating citizens could be reallocated to provide universal preschool education to all American children. Rethinking justice principles along the egalitarian lines suggested by Gottschalk, the NRC Committee, and President Obama has the potential to confront finally the law enforcement and penal policies that have functioned as the engine of inequality in the half-century since the Civil Rights Movement. The question remains whether or not policymakers and the public will also commit to addressing historical racism, which will be necessary if we are to successfully end mass incarceration and improve the social health of the nation.

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NOTES

1. Unless otherwise noted, all quotations attributed to President Obama are from "Remarks by the President at the NAACP Conference" (July 14, 2015).
2. Members of the National Research Council's Committee on Causes and Consequences of High Rates of Incarceration included Criminal Justice Officials Jeffrey A. Beard and Tony Fabelo; Criminologists Jeremy Travis (*Chair*), Craig W. Haney, Daneil S. Nagin, Josiah D. Rich, and Avelardo Valdez; Sociologists Bruce Western (*Vice Chair*), Robert D. Crutchfield, Sara S. McLanahan, Devah Pager, and Robert Sampson; Political Scientists Marie Gottschalk and Lawrence W. Mead; Economists Glenn C. Loury and Anne Morrison Piehl; and Historians Khalil Gibran Muhammad and Heather Ann Thompson. In addition to Travis, Loury, Nagin, and Piehl, Ruth D. Peterson, Carl C. Bell, John J. Donohue, III., Mindy Fullilove,

Mark A.R. Kleiman, Gary LaFree, Janet L. Lauritsen, James P. Lynch, Charles F. Manski, Daniel B. Prieto, Susan B. Sorenson, David Weisburd, Cathy Spatz Widom, and Paul K. Wormeli served on the Committee on Law and Justice, which met from 2013-2014.

3. Barack Obama, quoting Rand Paul in his NAACP address.

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