

## CHAPTER 1

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**MASS INCARCERATION:  
FROM SOCIAL POLICY TO  
SOCIAL PROBLEM**

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JONATHAN SIMON<sup>1</sup>**INTRODUCTION: THE BIRTH  
OF A SOCIAL PROBLEM**

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In the winter of 2004–2005, as Arnold Schwarzenegger took over as governor of California following the recall of the previous governor, he pronounced the state’s mammoth, litigation-strapped, and catastrophically overcrowded prison system to be in a state of crisis, denounced its penal philosophy of “warehousing” inmates, and declared the parole system that had long returned the vast majority of its charges to prison “broken.” By the time you read these words, such statements may not seem unusual; indeed, they may be on their way to becoming a new “common sense” of high crime societies (Garland 2001a). But in California, they were words that had not been spoken by anyone in leadership for more than a quarter century. Like other states, California participated in a remarkable expansion of imprisonment by the states and federal government, resulting in current populations on average more than four times the relative portion of the population imprisoned at the end of the 1970s. Sustained by periodic upswings in reported crime, and by non-stop media and political attention to the threat posed by criminals, America became the global leader of what has come to be called (primarily by its critics) “mass incarceration.” By calling the system “broken” and by admitting that warehousing felons could not

create public safety for California communities, Governor Schwarzenegger, in effect, declared the era of “mass incarceration” over.

From the early 1980s, California governors, and most serious aspirants for the office of both parties, uniformly embraced expanding imprisonment to more categories of crimes and for longer sentences. It was an exercise in which the entire political establishment participated with at least eighty “substantive increases in sentencing” since the enactment of the state’s Determinate Sentencing Law in 1976 (Little Hoover 2007, Appendix F, p. 68).<sup>2</sup> While California’s imprisonment rate today places it slightly below the national average, that status belies the significance of the change since 1980 and the role of Southern states with their racially marked and historically high imprisonment rates in setting the national average. Looked at as its own region, California in 1980 was just slightly higher in imprisonment rate than the Northeast, below that of the next most lenient Midwest, and at just 50 percent of the high Southern imprisonment rate. In 2005 California was significantly higher than either than the Northeast or the Midwest and at 84 percent of the Southern norm (Sourcebook of Criminal Justice Statistics Online 2008, Table 6.29.2008). In other words, between 1980 and 2005, at least as a penal state, California went from being a progressive Midwestern state, say Michigan or Minnesota, to being a Southern state.

This transformation was led from the top by California governors. Moreover, these governors embraced incarceration in terms that would come to epitomize the excesses of “mass incarceration,” not as a targeted strategy to rehabilitate or incapacitate individuals, but as deliberate strategy to raise imprisonment rates a quantum level by mandating imprisonment for entire categories of crimes.<sup>3</sup> No one better articulated this philosophy than Governor George Deukmejian (1983–1989). In his concluding State of the State address in 1990, the conservative Republican pointed with pride to his enormous expansion of prisons:

In 1983, California had just 12 state prisons to house dangerous criminals. Since then, we have built 14 new prison facilities. That has enabled us to remove an additional 52,000 convicted felons from neighborhoods to send them to state prison. (Simon 2007, 158)

The intent of mass incarceration as a policy is wonderfully transparent here. The state has “removed” people from “neighborhoods” and sent them to “state prison”—end of story. There is no pretense that this will effectuate change among those imprisoned; it will only provide security through removal and custody in prison.

The logic of mass incarceration also typified the 22 new prisons that California built between 1983 and 2000 (Gilmore 2008). Penal complexes more than prisons, the new prisons typically held more than 1,500 prisoners in a variety of custody levels. All of them were located far from the large cities where most prisoners come from (and where most treatment professionals reside). Most were designed with housing as the major priority, without workshops or much space designed for educational or rehabilitative programming. More shockingly, as recent court cases have

documented, these prisons were designed without providing even minimally adequate space for the delivery of medical care. This shocking record of failing to imagine the prison as anything but a site of punitive segregation has produced an equally alarming projected cost of \$7 billion to bring prison health care facilities up to a minimal constitutional standard (Rothfeld 2008). It is this fiscal pressure that is bringing mass incarceration to a day of reckoning in California.

While California's prisons remain unsustainably overcrowded, and the legal machinery that has kept filling prisons remains largely intact, no California governor after Schwarzenegger will be able to treat building and filling prisons as a generic and promising solution to the ubiquitous social problems facing California communities (from urban blight to teen pregnancy). Instead, in a surprising but now undeniable way, mass incarceration has become itself, like crime a generation ago, a serious social problem.

There are a number of signs indicating that the impending end of the era of mass incarceration is a broader phenomenon, extending well beyond the State of California:

1. After decades of being an issue largely invisible outside criminological circles, mass incarceration and its consequences (especially racial disproportionate incarceration rates) have begun to be identified as a major problem that needs solving by a growing number of foundations (see, e.g., Pew 2008), civil society organizations, and even some members of the United States Congress. In 2009, Senator Jim Webb, a former Republican turned independent minded Democrat, representing Virginia, one of the most punitive states in the nation, started a subcommittee on the disproportionate impact of incarceration (Webb 2007).
2. The Great Recession that began in 2008 has seen state legislatures across the country considering ways to responsibly trim correctional budgets and lessen the impact of future sentencing on state budgets (PEW 2009).
3. After a period of relative neglect, the number of academic and trade books devoted to over-incarceration has soared.
4. State prison populations have begun to decline for the first time since 1972 (PEW 2010).

The closing of the era of mass incarceration does not necessarily suggest a rapid reduction in state or federal prison populations. While the political expectations necessary to continue expanding incarceration seem to be weakening, the forms of identity and routine action that have been framed around the problem of violent crime during the ramping-up period of mass incarceration (1975–1995) are likely to be with us for some time, easily mobilized to check efforts at reform in the name of protecting potential victims. It does, however, provide an appropriate vantage point to begin looking back and taking stock of just what mass incarceration was, what produced it, and what it means to us going forward.

Scholars have debated whether mass incarceration was more of a policy (Blumstein 2000), or more a kind of politics, albeit democratic or pathological (Zimring

2000; Stuntz 2002). The answer is that it was surely both, and perhaps more importantly, it was a “political rationality” (Foucault 1977; Rose, O’Malley, and Valverde 2006), that is, a way of for a whole generation or two of politicians and citizens to imagine the conditions of public safety, and to act strategically on people, institutions, and practices for the purpose of protecting the public from violent crime (Simon 2007).

Was mass incarceration ever a policy, as such? As David Garland (2001b) pointed out, no actual politician ever campaigned on growing the prison population many times over. Fewer still would accept the notion that incarceration as practiced has been indiscriminate.<sup>4</sup> But while no one advocated the level of expansion that we have at present, there were of course both academic and political exponents of expanding imprisonment (more prisons for more people) beginning in the 1970s and reaching broad political support in the 1980s and 1990s (Wilson 1975; Bennett et al. 1996). From the perspective of that period, say 1975 to 1980, U.S. imprisonment rates remained rather modest by historical standards, while violent crime levels remained well above the (possibly inaccurate) norms of the early 1960s.

Perhaps the most famous and influential policy accounts in favor of more incarceration were Gary Becker’s (1968) article on the economics of crime, and James Q. Wilson’s (1975) book, *Thinking About Crime*. Both made the case that high crime rates proved that the “price” of crime, that is, punishment, was too low, and that better crime prevention was likely to be produced by raising the cost of crime. Both Becker and Wilson argued that raising the costs of crime could be achieved either by raising the punitive price for the crime (the sentence length) or raising the certainty of being caught and convicted (integral to the real “price” of the crime in economists’ terms). For a variety of reasons, Wilson, an expert on police, advocated longer prison sentences as the better way to raise prices.<sup>5</sup>

In the remaining sections of this chapter we examine the journey of mass incarceration from policy to problem through a variety of dimensions:

- First we will consider what might be called the “analytics” of mass incarceration: How should we understand its temporal and spatial dimensions? Temporally speaking, is mass incarceration a singular unitary project that began in the late 1970s (when the familiar chart of American imprisonment rates begins to noticeably rise) and continued through the 1990s (Garland 2001a; Simon 2007; Wacquant 2009)? Or is better seen as a multistage development in which quite different governmental projects launched by quite different elements of government aggregated toward a common end (or high incarceration rates) (Zimring 2000; 2005). When we seek to explain this development (however conceptualized), should our explanations look primarily to the developments of the 1970s and 1980s that occurred proximately to the rise in rates? Or do the origins of mass incarceration lay farther back in history? If in history, should we look back to the 1960s (Simon 2007), or part of a longer running relationship between American governance and crime control that dates back at least the problem of lynching in the late nineteenth century (Gottschalk 2006)?

- The spatial distribution of mass incarceration has also been an important issue. Is mass incarceration to be seen as primarily a U.S. phenomenon, determined by its distinctive national political and social factors? Or, is mass incarceration a global phenomenon emerging from the political economic factors shaping many countries around the world, and some, for example, the United Kingdom and the United States, in particular? In contrast, is even a national story of mass incarceration too macro and abstract, since most prisoners in the United States are subject to state laws and penal policies, so that the vital transformations necessary to a change in the scale of imprisonment must be tracked down at the state or possibly even the county level (Lynch 2009a)?
- A third analytic dimension is institutional. Which specific practices and or organizational factors were critical in producing mass incarceration? Presidents and national politicians and their role in signaling the political productivity of crime have been the focus of many of the first studies (Beckett 1997; Gottschalk 2006). Later accounts often add a focus on the state level, and the role of governors and legislatures, law enforcement agencies, prosecutors, and correctional unions in shaping the legislation that actually authorizes greater numbers of prisoners to be held for longer terms (Simon 2007; Lynch 2009b; Schoenfeld 2010; Page 2011). Other accounts have stressed the importance of local actors, especially county-level prosecutors who have seen an unremitting expansion of their authority over the last several decades (Simon 2007; Weiman and Weiss 2009).
- Having attempted to assess the nature of the phenomenon for which we are seeking an explanation, we will next review macro- and medium-range accounts of mass incarceration that emphasize competing (or possibly complicit) factors, including the cultural sensibilities of high crime, neoliberal economic and political adjustments, the war on drugs, correctional Keynesianism and a correctional industrial complex, a backlash to the victories of the civil rights movement, a response to the increasing sense of moral fragmentation in society, fear of crime, and crisis of legitimacy and trust in government.
- In conclusion, the chapter considers signs of an emerging policy/politics field around the problem of mass incarceration.

## CONCEPT OF MASS INCARCERATION

The phrase “mass imprisonment” was coined by David Garland (2001b) in 2000 to describe the distinctive expansion of imprisonment in the United States between 1975 and the late 1990s. To Garland, mass imprisonment constituted a new regime

of penalty that differed along two dimensions from varying policies of imprisonment in use by modern societies since the end of the eighteenth century. First, U.S. imprisonment rates in the late 1990s marked a substantial departure from historic norms for the scale of imprisonment during the twentieth century by several magnitudes (Zimring and Hawkins 1991). Second, in contrast to a history of using imprisonment against individuals based on crime and criminal history, contemporary mass imprisonment reflected a “systematic imprisonment of whole groups of the population” (Garland 2001b, 2; Feeley and Simon 1992).

The conceptualization of mass imprisonment has been adopted by many other contemporary criminologists (Western 2006; Clear 2008). It has also been criticized on a number of grounds. For some, the term is inherently political rather than scientific, embodying a normative perspective on the social value of contemporary imprisonment. For others, the concept falsely implies that the risk of incarceration is evenly distributed in society, while it is clear that some demographic categories, particularly African American and Latino males, especially those without high school graduation, are incarcerated at dramatically higher rates than similarly situated whites (Wacquant 2009). Loic Wacquant has argued that the term “hyper incarceration” could better capture the dramatic change in the scale of imprisonment without implying a false equality of incarceration risk. However, the term “mass imprisonment” need not be misleading, and it captures an important degree to which incarceration risk has been generalized. While African American and Latino males may be incarcerated at rates many times the level of their white peers, the latter face incarceration rates unprecedented historically or in other countries. Other institutions that have been described as “mass,” including the military or higher education, also have distinctive demographic patterns of stratification.

A more telling criticism might be that mass imprisonment is not as new as criminologists have sometimes described it. The imprisonment of African Americans by Southern states after the Civil War, in what has come to be known as the “convict lease system,” involved historically high rates of imprisonment (for African Americans) along with a concentration of the sanction on a specific group (African Americans) (Ayers 1985; Lichtenstein 1996).

In this chapter, I adopt the term, modified to “mass incarceration.” The distinction between imprisonment and incarceration is that the latter includes pre-trial detainees and shorter-term inmates held in jails (what would be called “remand” prisoners in Europe). In order to facilitate cross-national comparison, I use “incarceration” to indicate the wider expansion of state custody in response to crime (except where I am referring to the experience of U.S. states and have imprisonment specifically in mind).

This new penalty, in addition to its categoric and gigantic scale, has largely abandoned the focus on rehabilitation in favor of punitive segregation intended to achieve deterrence and, more reliably, incapacitative effects. In addition, the form of imprisonment that has become common in many states is far more heavily securitized than ever (Zedner 2009). Prisons, naturally, have always been concerned with security, but the current regime places security not only above but in place of most

other considerations, including rehabilitation but also sanitation, medical hygiene, and mental health (non-trivial inputs to security). In many states, classification, once the central technology of penal modernist hopes for individualized treatment, has become exclusively concerned with security. One distinctive marker of this approach is the “super-max,” or security housing unit, style of prison building and control regime in which inmates are typically subjected to 23-hour-a-day lockdown inside technologically controlled isolation cells (Shalev 2009; Reiter 2010).

## TEMPORALITY

Most of the theoretical discussion of mass incarceration in the United States (Garland 2001a; Gottschalk 2006; Simon 2007; Wacquant 2009) and even some of the more empirical examinations (Western 2006) have tended to treat the rise of incarceration rates from 1975 to the present in the United States as a rather continuous phenomenon, even as they may disagree on the relevant temporal sequence factors giving rise to the growth of imprisonment. Franklin Zimring has been the leading analyst arguing for important discontinuities, not simply between states but in the overall driving factors of penal growth across the states (Zimring 2000; 2005).

Zimring identifies three distinctive phases. The first, from the late 1970s through the mid-1980s, was driven by local prosecutors who began to use existing sentencing laws and the plentiful prosecutorial discretion already available under existing law to send more and more marginal felons to state prison rather than jail or probation. The second phase, from the late 1980s through the mid-1990s, saw the fulcrum of increasing imprisonment turn to drug offenders, who were the focus of increasing action by Congress (this was the moment of the infamous five-year minimum mandatory sentence for possession of five grams or more of crack cocaine, compared to more than 500 grams of powder cocaine) and state legislatures to give prosecutors yet more discretion to seek longer prison sentences, and stripping courts of the power to exercise leniency by setting mandatory minimums. The third phase, beginning in the late 1990s, driven largely by Congress with acquiescence from state legislatures, consisted of laws locking long sentences in place by eliminating or reducing the scope of early release mechanisms allowing subsequent shortening of prison sentences beyond minor amounts, or permitting very substantial sentence enhancements for offenders with previous felonies (most notoriously California’s “three strikes” law) (Zimring, Hawkins, and Kamen 2003). As Zimring points out, the first two phases were not driven by secularly increasing crime, but at least required the persons to be convicted of new crimes before becoming subject to new, enhanced prison sentences. In the third phase, existing laws were made to bite more punitively against existing crimes and criminal records. As a result, prison populations and imprisonment rates continued to rise throughout the 1990s, despite a nationwide crime decline that was among the most robust in U.S. history (Zimring 2007).

In addition to the temporality of the penal boom itself, scholars of mass incarceration have differed over the temporal sequence of causation. Some approaches focus most intensively on the 1960s and 1970s, as a period in which the place of punishment within the larger political and bureaucratic field was reshaped by the larger crisis of postwar liberalism that played out most visibly in the 1980s (Garland 2001a; Simon 2007; Wacquant 2009). Others have argued that it is myopic to place so much emphasis on the immediate context of the penal turn. They argue that the nineteenth-century past, a time when a politicization of crime and law enforcement became part of American political culture (Gottschalk 2006), laid the groundwork for periodic efforts to govern through crime, of which the current era of mass incarceration is only the most extensive.

## SPATIAL DIMENSIONS

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Initial analyses tended to treat the United States as a singular unit and to speak largely in terms of the growing imprisonment rate of Americans as if the prison system were a unified legal and administrative unit, instead of a compilation of 52 distinctive systems (Zimring and Hawkins 1991). More recently, however, studies of mass incarceration have distinguished between different states, regions, and in some cases have treated mass incarceration more broadly as a spatial phenomenon in which not only the number or size of prisons is interpreted, but where they are, where their inmates come from, and which sorts of spatially specific interests are served by mass incarceration (Gilmore 2007; Lynch 2009a; Schoenfeld 2010; Page 2011).

### State and Regional Variation Within the United States

Research on interstate differences has pointed to a number of factors that may drive that variation (to be discussed below), but more recent work has stressed specific patterns among states and regions. One spatially variable dimension that has been recently studied is political culture. Vanessa Barker (2009) studied the construction of penal policy in three states, California, Washington, and New York, representative of high, low, and medium states in terms of incarceration growth. Barker argued that distinctive forms of political participation in each state was a key factor in determining how much the state participated in building mass incarceration. Barker attributes Washington's relatively low growth in imprisonment rates to the state's traditions of intense public participation in the form of commissions, grand juries, and other local vehicles of self-government. New York, which during the years Barker studied experienced growing incarceration, though not as radically as states like California, has a highly centralized structure of decision making and some tradition of a more insulated and expert-based approach to penal policy (albeit with significant gestures toward punitiveness). California, which Barker profiles as an



example of high imprisonment growth, is a populist regime in which there is little trust in government, but participation is limited to the plebiscite form of ballot initiatives.

Mona Lynch's recent study of Arizona's journey into mass incarceration (2009a) suggests that the "Sunbelt" states from Florida through Arizona and Nevada, which have experienced high levels of internal migration since the 1950s based on climate, lifestyle, and economic growth related to tourism and real estate, share a distinctive path into the punitive turn. Unlike the pattern depicted in David Garland's (2001a) now classic account of the change in which a highly politicized and punitive penal field emerges out of a crisis of confidence in the peno-correctional modernist approach that had dominated penology, Arizona had no lengthy embrace of rehabilitation and not even a correctional administration of any bureaucratic heft. Indeed, the state's brief experiment with rehabilitation in the 1970s, which produced a Department of Corrections, helped to move the state away from a commitment to low-cost, punitive, but parsimonious and cheap penal justice. After a prolonged struggle with the federal courts and prisoners' rights lawyers over conditions inside Arizona prisons, the state's political class committed itself to a rapid expansion of prison space that would transform Arizona into one of the most punitive states in the nation, with one of the highest rates of incarceration.

## Globalization

Although the U.S. imprisonment rate increase between the late 1970s and the 2000s remains the defining example of mass incarceration, there is less agreement on its status as a global policy. In the *Culture of Control*, David Garland (2001a) focused on the United States and the United Kingdom but suggested that the same turn in penal policy might follow in other countries as they experienced the same social and economic conditions of late modernity (especially the loss of state capacity to manage economic risk). Critics of Garland pointed to the huge gulf between U.S. and UK incarceration rates (Zimring 2001), yet most analysts agree that the United Kingdom is closer than any other European nation to mass incarceration and that its incarceration rate has grown markedly since the late 1990s.

Cavadino and Dignan (2006) extend Garland's analysis, suggesting that the United States and the United Kingdom represent a broader pattern of neoliberal governance, which they associate with mass incarceration. Other countries that retain distinctive political economies (when contrasted with the pro-market approach of the English-speaking countries) follow different and distinct patterns—including the "Nordic socialist" path of Sweden and Norway, the "conservative corporatist" path of Germany and France, and the "oriental corporatist" approach of Japan—seem likely to avoid mass incarceration.

Loic Wacquant (2009) suggests that mass incarceration is part of a tool kit of neoliberal governmental techniques for managing populations rendered marginal and superfluous by economic change that is actively marketed around the globe by a class of carceral entrepreneurs who have also pushed policies like "zero tolerance"

policing that complement and feed mass incarceration. Tim Newburn and Trevor Jones (2007) studied the U.S./UK relationship to see if something like “policy transfer” had taken place. Their qualitative analysis of UK policies and decision makers suggested that U.S. models were important, but only in terms of their fit with values that British elites were independently anxious to push—sometimes, as in the case of private prisons, resulting in a very different pattern from that of the United States (where private prisons remain a much smaller portion of overall imprisonment).

## INSTITUTIONS

Mass incarceration at its core requires an enormous expansion of prison space and the legal authority and political will to send a far higher proportion of criminal suspects to prison than in the past. When it comes to exploring which institutions are responsible for mass incarceration, for example, legislatures, prosecutors, or crime victims’ advocacy groups, there are two dimensions of causation that should be explored: which institutions carried the flag for expanding incarceration; and which institutions might have been expected to resist mass incarceration, or at least diffuse, delay, and diminish it (Roche 2007). As Franklin Zimring notes about “tough on crime” legislation (a frequent suspect):

[E]ven when legislation providing for large change becomes law, the usual pattern is for the substantial discretion of executive and legislative branch agents to moderate the extent to which mandated changes happen. (Zimring 2005, 328)

Studies of the punitive turn in the United States and a growing body of studies based on Europe point to a wide range of institutional features of legal and political systems that may render it more or less prone (either positively through affirmative efforts, or negatively, through the absence of robust opposition or veto). Michael Tonry’s (2007) metaphor of risk factors is an apt one. The presence of one or two may mean little, and even the concentration of a great number of them may mean little in the absence of significant social factors like rising violent crime rates or high levels of immigration.

### Knowledge and Power in Penal Decision Making

One of the most influential comparative studies of mass incarceration identified the overall degree of institutional insulation of penal decisions (both at the systemic and individual level) from actors subject to political pressure and potential penal populism. Savelsberg’s (1994) “Knowledge, Domination and Criminal Punishment,” compared the United States, the advanced country in the mid-1990s that had experienced the most incarceration growth in the world, with Germany, the advanced country with one of the most stable and low incarceration rates. Savelsberg pointed

to the flow of knowledge and power around penal decisions, identifying Germany as a country where penal decisions were generally highly insulated from public attention and intervention by politically accountable actors. The United States, in contrast, generally permits penal decisions to be made by elected local officials with full exposure to the general public and the media. This insulation allows German penal decision makers to use expert criteria to remain focused on modern correctional objectives like reintegration. Its absence in the United States means that populist concerns tend to infiltrate penal decisions, and the overall objectives of the system have taken on a punitiveness that has a populist rather than rationalistic quality (indeed, it has been usefully described as “populist punitiveness” (Bottoms 1995).

In the United States, this decision maker is almost everywhere a local elected official who represents a territorial community in the exercise of the power to punish. As David Garland and others have argued, the populist character of the U.S. administration of justice is extended by the fact that so many other elected officials can claim to have some role in setting policy on the toughness of punishment, including legislators, governors, attorney generals, as well as mayors, and at the national level, the president, the attorney general of the United States, and all of the members of Congress. This can set up a dynamic of competition between prosecutors and politicians over who is more committed to public safety and punitive justice (Simon 2007).

Savelsberg’s study raises the question of whether these institutional factors matter as much as the presence or absence of a public mobilized around crime, which the United States had in the decades leading up to the 1990s but which Germany lacked, at least at the time of Savelsberg’s study. It is possible that institutional insulation would “burn off” rapidly in the face of “hot” public sentiments around crime (Loader and Sparks 2010). Recent studies of European national experiences with penal policy and politics suggest that most retain a considerable degree of insulation that has, in fact, allowed them to avoid mass incarceration despite the emergence of a stronger level of crime fear politics. In Belgium, for example, a very significant victims’ rights movement developed in the 1990s through public outrage over numerous law enforcement errors showcased in the trials of a serial killer who raped and murdered girls and women while on parole for another violent crime. Despite that movement, imprisonment rates have stayed rather stable because a consensus-oriented government among the mainstream parties has targeted some increases in imprisonment at violent crime and sex offenses, while balancing the population effects through efforts to reduce imprisonment for other crimes (Snacken 2007; Roche 2007).

## Right-wing Party Domination and Party Competition

Another risk factor emphasized by political scientists is partisan competition. This should be distinguished from (both empirically and in theory building) the degree to which “conservative” or “right-wing” parties predominate in a state or nation’s

legislative or executive branches. Where party competition is routinely intense, we would expect that competition over the relative “toughness” of incarceration policy might produce legislation driving mass incarceration (especially when harnessed to ready prosecutors). In contrast, the right-wing theory suggests that where right-wing parties dominate, they will find in crime an effective lever to appeal to voters whose interests would otherwise not find resonance in right-wing platforms. Empirical work on American states finds a significant effect on imprisonment for partisan competition, especially in the context of executive elections (for state governor). Right-wing domination is also positively associated with increased imprisonment (Jacobs and Helms 2001; Smith 2004).

Qualitative work on Europe highlights the degree to which patterns of party competition can modify and mediate the potential for politics to generate populist pressure for punitive expansions of imprisonment. In Belgium (Snacken 2007), centrist parties coalesced around moderate increases in punishment to take the crime issue away from an excluded right-wing party. In the Netherlands (Downes 2007), however, party competition went along with a policy choice to significantly expand imprisonment.

Others have argued that mass incarceration is more of a compromise between right-wing and left-wing parties in the United States (Simon 2007). Right-wing parties may have benefited more conspicuously from the narrative terrain of crime and punishment (or law and order) than left-wing ones, but the crisis of liberalism that coincided with the war on crime in the United States presented enormous opportunities for conservatives to gain the narrative upper hand in American politics, and it is far from clear that crime was the most advantageous of them. Moreover, crime as a social problem can be mobilized by both Right and Left to support their policy preferences. The fact that mass incarceration resulted from the war on crime, rather than, say, a tremendous expansion of police and police powers, is not clearly linked to right-wing ideologies, which often have problems with growing large state institutions (Lynch 2009a).

## Proximity of Government to the Reality of Crime

While the analysis of knowledge and power might predict that national control over penal policy would provide a buffer against populist pressures for penal severity that would be felt more strongly if undertaken at the local level (cities and counties), an important line of empirical work suggests that the contrary may be true (Scheingold 1992; Miller 2008). Political science research on the formation of policy suggests that decision makers are more likely to demonize around crime where they are at a distant remove from the on-the-ground reality of high-crime neighborhoods (Scheingold 1992). In the United States, both federal and state lawmakers tend to hear nearly exclusively from professional law enforcement (and a few professional defense organizations) (Miller 2009). Only at the local city or county level do lawmakers tend to hear from people representing high-crime communities (Miller 2009). This may be related as well to the finding that states with higher levels of participation in their political culture may be less prone to mass incarceration (Barker 2009).

## Prosecutorial Discretion

The United States has historically been distinctive in the power accorded locally elected executives to determine the extent of punishment to which a criminal defendant is exposed, limited primarily by the discretion of juries, judges, and post-sentencing administrative release procedures (parole). Logically we might expect the rise of imprisonment to be linked to increases in the degree of prosecutorial discretion to determine who is likely to go to prison and for how long, or decreases in countervailing institutional checks on that discretion. Both trends have been true in varying degree across U.S. penal systems. Mandatory minimum sentences laws that became popular for drug and other offenses in the 1980s and 1990s removed discretion from judges to set a lower sentence or probation. Other statutes aimed at juveniles charged with violent crimes, mostly adopted in the 1990s, gave prosecutors discretion to file charges in adult court for juveniles charged with certain violent crimes, instead of having to seek a judicial “waiver” (Feld 1999). The plummeting of parole release rates in some states and the abolition of discretionary parole release in others have choked off the capacity of state governments to release prisoners earlier than their maximum sentence (Rhine, chapter 26 of this volume).

Talk of prosecutorial discretion, however, may risk normalizing what has actually been an important shift in the incentive structure of risks and rewards in which penal decisions are made. The rise of the prosecutor has been underwritten by legislators who are able to reap electoral rewards for laws that promise to solve broad social problems by handing more powers to prosecutors (Stuntz 2001). Those laws inadvertently give to county-level elected officials the power to fill state institutions, and spend state dollars for which they are in no way accountable (Zimring and Hawkins 1991).

## Sentencing and Parole

Many observers have pointed to changes in law and policy concerning sentencing and release from prison (the latter is often called parole in the United States) as a likely culprit behind mass incarceration (Parenti 2000; Mauer 1999). There are a number of plausible features to this relationship. Sentencing reform was indeed a major topic of legislative discussion and sometimes action in the period proximate to and during the buildup of imprisonment (Feeley 1983). The formal features of some sentencing reforms, including a variety of “determinate sentence” systems, as well as “guidelines” systems, seem to fit the logic of mass incarceration with their shift away from individualized sentencing toward the more categoric application of the law. Likewise, some of the states undergoing sentencing reform explicitly rejected rehabilitation as a dominant objective of prison, either replacing it with “punishment” (as California famously did) or reducing it down to one among a laundry list of penal purposes. In at least one widely publicized example, the reform of the Federal sentencing system, a rehabilitative system based on an administrative

system of release within long sentence ranges based on prospects for rehabilitation was replaced by a system of fixed sentences set through the application of complex guidelines with the intentional result that the federal prison population began a rapid rise. But research on sentencing guidelines in states suggests that there is no necessary relationship here, with some states that utilize guidelines, like North Carolina, Minnesota, and Washington, being among those with the least significant increase in imprisonment during the relevant period (Reitz 1998). The U.S. Sentencing Commission, which drafted the first set of federal guidelines and regularly revises them, expressly acknowledged that the first edition of the guidelines would result in a substantial increase in imprisonment, an outcome the Commission took to be substantively beneficial (Tonry 1993).

California's 1976 Determinate Sentence Law is another good example of how complex the relationship between sentencing and prison population trends can be. The law expressly embraced "punishment" as the purpose of prison, but largely to limit the overreach that rehabilitation seemed to permit the state (Messinger in Zimring and Frase 1980). The initial sentence ranges established were remarkably lenient by contemporary standards. They were intended to maintain rough stability in the length of actual time served in prison while removing the uncertainties unleashed by the indeterminate sentence and its complex game of parole release (Rothman 1980). Prison population in California rose precipitously during the years when sentences remained historically lenient as prosecutors sent marginal felons to prison rather than probation (Zimring 2005). Determinate sentencing, as in California (which lacks a sentencing commission), permits the highly politicized legislature to make all sentence range decisions directly. Over time, new sentences were revised upward as a new legislative politics of penal severity took over, which added to growth of imprisonment, and the inflexible nature of the determinate sentencing system made it impossible for administrative mechanisms to be used to moderate prison population growth (Danksy 2009).

The abolition of parole is often pointed to as a singular cause of growth. In tone and direction, it seems consistent with mass incarceration. However, comparative study across the states has not shown a strong relationship with parole release abolition and prison growth (Sorensen and Stemen 2002). In California, which did abolish parole release for most prisoners (lifers aside) in the Determinate Sentence Law of 1976, mass incarceration did follow, but until recently, when parole policies have had an impact on the prison population through the buildup of long-serving lifers, the most important consequence of the California approach to parole was not the elimination of discretionary release but the fact that parole supervision continued as a requirement for virtually all released prisoners. This policy exposed tens of thousands of former prisoners to the risk of being returned to prison for minor crimes or technical violations of parole (Simon 1993; Petersilia 2003). The California parole approach, combined with a political policy of proactively incapacitating felons, led to the nation's highest recidivism rate and is the primary institutional problem identified by experts and judges in the intense litigation over California's prison overcrowding.

## Criminology

One factor that may cut against the development of mass incarceration as either policy or politics is the existence of a robust community of criminological experts who play a role in establishing penal policy. The latter part of that description seems particularly significant because no contemporary nation has a more developed scientific criminology sector than the United States, and no contemporary nation has pursued mass incarceration with a similar vigor. Yet U.S. criminology has had a largely subordinate role to politically established crime policy (Zimring, Hawkins, and Kamin 2003). In the United Kingdom, the Netherlands, and Germany, criminological influence over penal policy through the central government might appear over the long run to have had a moderating influence on imprisonment.<sup>6</sup> Yet other European nations with relatively stable prison populations have developed criminological expertise late or not at all (e.g., Belgium, France) (Roche 2007; Snacken 2007).

## BROADER EXPLANATIONS

While Tonry's risk factors approach is extremely attractive and offers a good framework for comparative penological work across nations and histories, a variety of more comprehensive efforts have tried to make sense of the emergence of mass incarceration as policy and/or politics, mostly in respect to the United States, in some cases as a more global development. These accounts, especially those that have emerged since 2001, include considerable overlap, but with different emphases. One way to observe these overlaps and differences is to array the various explanations of mass incarceration from explanations grounded primarily in the social or cultural to those grounded primarily in the political. In between are accounts that focus on the emergence of neoliberalism as a political-economic order. These perspectives might also be arrayed in terms of their theoretical axis, with social and cultural explanations drawing explicitly or implicitly on Emile Durkheim's (1997) account of punishment and social solidarity; the political accounts drawing on Michel Foucault's account of punishment as a political technology (1977); and the economic accounts drawing on Marxist theories of punishment and labor markets (Rusche and Kirchheimer 1939). Once again, almost all of these major accounts address culture as well as political economy, and draw on the rich theoretical legacy of social theory on punishment (Garland 1990).

## High Anxiety Societies

The legal scholar Francis Allen (1981) may have been the first to tie the shifting logics of punishment in the United States to a declining level of confidence in social values and solidarity. In his pathbreaking book *The Culture of Control* (2001), David

Garland developed a much broader and more complex picture of transformations in the life world of the middle class from the 1970s on, especially the growing need for two incomes and the suburbanization of the middle class, which broke up traditional familial and community resources for overseeing children. The significant and visible increases in violent crime experienced in the United States, the United Kingdom, and elsewhere around the world during these years helped galvanize and frame a “common sense” of social threat.

Garland does not argue that this anxiety alone, or mixed with real or imagined crime increases, was enough to uproot more than half a century of penal modernism and stable prison populations. Instead, he suggests that the crisis of public confidence associated with the growing anxiety confronted a state increasingly disabled from using its major mid-century tools of welfare and regulation by the demands for deregulation and tax cutting coming from resurgent global capitalism. Meanwhile, Garland shows that the demoralization of liberal elites both in the penal field and in the broader bureaucratic and political fields left the major principles of correctional modernism undefended. It is this combination—public anxiety, a state whose sovereignty can no longer be effectively deployed through social welfare mechanisms, and a demoralized penological community—that made penal welfarism so vulnerable to the rhetoric of “tough on crime” and the reality of more and harsher prison sentences.

Thus, while we have mentioned Garland here as the exemplar of a cultural sensibility-based theory of mass imprisonment, his broad account includes all three perspectives, including the political-economy constraints that neoliberalism places on the post-industrial state, and the role of a new politics built around crime fear, outrage, and demands for tough exclusionary sanctions.

Other social theorists have also emphasized the role of the new anxieties associated with the last quarter of the twentieth century and the experience broadly of globalization and postmodernity (Young 1999; Bauman 2000). In the face of profound disturbances in societal consensus values, mass incarceration may serve as a way to symbolically manage risks that can no longer really be managed by the modern infrastructure of governance. Others have argued that the cultural change is more of a cyclical swing between control and freedom (Tonry 2004)

## Racialized Threat and Animus

Many observers have noted the proximity between the apparent triumph of the civil rights movement in the late 1960s and the rise of “law and order” politics and rhetoric. The disproportionate incarceration of minorities has in many respects nullified the legal equalities achieved by federal legislation in areas like voting and equal employment opportunity (Uggen and Manza 2002; Pager 2009). In 1968, for example, the Civil Rights movement reached its modern peak with the adoption of the Civil Rights Act of 1968, the last of the great federal civil rights statutes adopted in the 1960s, but also enactment of the Omnibus Crime Control and Safe Streets Act of 1968, which kicked off the modern war on crime (Simon 2007). Was the national



mobilization around crime some kind of backlash or at least a response to the profound changes in social order and values marked by the legislative triumph of civil rights? Has the sustained commitment to expanding imprisonment since the 1970s reflected an ongoing unease by white residents (and voters) with the absence of visible markers of racial subordination in law or social custom, an unease exacerbated in many respects with the rise of non-white immigration to the United States since the 1970s (De Giorgi 2006; Tyler and Boeckmann 1997)?

As we will discuss below, there is also a political analysis of how civil rights and crime reconfigured the political order, but the backlash/response account emphasized here is distinctly Durkheimian insofar as it views punishment as a response to the perception that the social order is being challenged, not simply by crime, but by the absence of barriers to racial equality or to immigration. This reaction to racial change may reflect two distinct but related dynamics, both of which have found support in somewhat different literatures. One well-known account that has received strong empirical support is the “racial threat” (Jacobs and Helms 2001; Crawford, Chiricos, and Kleck 1998) or the “racial animus” (Unnever and Cullen 2010), which holds that the majority (which still means white everywhere but perhaps California), as well as criminal justice decision makers responding to voters, support policies that are identified with their group racial interests, or oppose policies that are seen as favorable to others (regardless of their personal self-interest). This theory suggests that policies are useful ways to signal government protection of majority (white) interests vis-à-vis minorities. From this perspective, tough punishment, especially directed against minority members, is a signal to whites and is demanded in some proportion to the “threat” of racial equality. This yields the prediction that mass imprisonment (a result of tough and categorical penal sanctions) ought to be greatest in those states where the minority population(s) are largest and thus pose the greatest presumptive threat to achieve political power. This prediction has received substantial support in empirical studies, even when controlling for factors associated with other potential triggers of demand for imprisonment (Unnever and Cullen 2010; Smith 2004; Greenberg and West 2001), although the quantitative evidence seems to suggest that the relationship is significant only where the target minority is African American (Greenberg and West 2001).<sup>7</sup>

While it is easy to associate the penal salience of race with racial animus, it leads to some paradoxical implications. The racial threat or animus hypothesis is generally studied either spatially (looking at the association between minority population and incarceration rate) or in terms of public opinion (Do people who hold racially intolerant views also tend to support more punitive sanctions?). While this association may hold up in snapshot form, it seems peculiar when considered historically. While most evidence suggests that racial animus has declined over the last 40 years (Omi and Winant 1994, 157), incarceration has increased markedly. It is possible that racial animus/threat helped to determine which states would initiate the legislative policies necessary for mass incarceration during the 1980s, and that those policies have carried on through political inertia in the 1990s and 2000s, despite some improvement in the climate of racial tolerance.

## Neoliberalism

The rise of mass incarceration took place during a long decline in Marxist analyses of penalty.<sup>8</sup> The emergence of mass incarceration as a social problem, however, has fortuitously corresponded with the renewal of this vital tradition of penal theory. Recent work in the tradition of Rusche and Kirchheimer suggests that the rise of mass incarceration was a response by the state to new conditions for the organization of labor and the investment of capital, both in the United States (Parenti 2000; Gilmore 2007) and in the United Kingdom. In Europe, relatively modest growth of incarceration, compared to the United States, has been paralleled by increases in the detention and deportation of immigrants, including asylum seekers (De Giorgi 2006; Calavita 2005).

The most economically deterministic versions of this account view the threat and reality of harsh prison sentences as powerful tools to discipline labor during a period when intense global competition has made wage growth and other concessions to labor unaffordable (Parenti 2000). This disciplinary side of mass incarceration is coupled to a more positive economic function, which has been variably described as “carceral Keynesianism” (Davis 1990) and the “prison industrial complex” (Gilmore 2007). On this account, building and filling prisons provides a stream of revenue for certain providers of state goods and services and, just as importantly, a form of public investment into which private capital can safely be poured at a time when the forms of spending and investment stimulated by the social welfare and military dimensions of the state were waning (Gilmore 2007).

The same economic conditions that have crippled the ability of the state to manage economic risk for the population also make the forms of corporate and public welfare formerly used to manage the conditions of the working poor less sustainable. Punishment becomes one of the few available tools for the state to assist capital in making labor docile and useful (De Giorgi 2006; Wacquant 2009). Mass incarceration, on this account, might be called the “penal state,” and represents a new form of political-economic government (rather than a simple tool of market regulation), one that has significantly replaced the welfare state as the major framework for governing the poor (Beckett and Western 2001; Wacquant 2009). This framework offers several “advantages” for both state and some segments of capital, providing a narrative of social fortune consistent with the uplifting promise of success for those with discipline and the infamy of prison punishment for those who engage in wrongdoing (Melossi 2009).

Most of these accounts share the view that mass incarceration is part of a broader realignment of the state in line with the reliberalization of capitalism. From the end of World War II through the 1960s, tight labor markets in both Europe and the United States, and surging state revenues (and commitments) went along with strong unions and electoral power by the working classes, creating a climate of historic affluence. Despite the fact that crime began to grow in both Europe and the United States during the 1960s, incarceration rates in general remained stable or trended down. In this era, often described as “Fordism” (De Giorgi 2006) or social

welfarism, the prison was a minor tool of government, and one best managed in line with the larger welfarist strategy of governance, with its tool kit of clinical methods, normalizing objectives, and individualized judgments. Since the 1970s, the post-Fordist or neoliberal era in the United States and at least some parts of Europe, prison and other tools of law enforcement and immigration control have become central to the strategy of government, with a tool kit oriented toward punishment, exclusion, and categorical judgments. While the United States is taken as the extreme example of this neoliberal logic, other states, particularly in Europe, are also headed in the same directions, with variation in terms of how much they have abandoned social welfarist tools of governance in adherence to liberal political economic principles. Mass incarceration, along with harsh immigration enforcement (De Giorgi 2006), zero tolerance policing (Wacquant 2009) and other manifestations of a war-like approach to crime control, are expected to migrate along with the spread of neoliberal government.

The neoliberal thesis appears to fit relatively well the timing and distribution of incarceration growth internationally. U.S. imprisonment rates began to grow visibly in the 1980s as the national political agenda was being recast by President Ronald Reagan, and imprisonment rates continued to grow throughout the 1990s as Bill Clinton gave a bipartisan stamp to policies of reduced welfare and heightened deregulation. In the United Kingdom, Margaret Thatcher's parallel movement of public policy toward economic liberalism, however, did not go along with any significant departure in penal trends (Newburn 2007).

In a comparison of imprisonment rates among advanced post-industrial economies (Europe, Australia, Japan, Canada, South Africa, and the U.S.) countries categorized as neoliberal (U.S., UK, Australia, and South Africa) have higher incarceration rates than other categories, with those countries with the most welfarist governance approaches (the Nordic countries) having the lowest incarceration rates (Cavadino and Dignan 2006). But this association has not been tested using more control variables. It is not clear how coherent these categories really are. The United States appears to many to be the most "neoliberal" country. But if that is supposed to indicate a swing away from social welfarism and a reassertion of liberalism, the U.S. experience is far from extreme, since American public policy has never veered far from orthodox liberalism. Moreover, the U.S. incarceration rate is so much higher than those of the other "neoliberal" countries that the difference is greater than the difference between all the categories themselves. The United Kingdom leads Europe in incarceration today, but it did so as well in the 1960s, when social welfarism was at its height.

Nor is it clear that growth in incarceration always means "mass incarceration." Most of the countries of Europe have grown their prison population and capacity beyond population growth between the 1970s and the 1990s. In some cases, such as the Netherlands, the shift in scale matches that of the United States (and the Netherlands has been one of the European countries trending toward liberalism in political economy), but from a remarkably low starting point (Downes 2007). But nowhere in Europe is there strong evidence of the full combination of (1) a dramatic change in

scale of incarceration, (2) a shift toward categorical utilization of incarceration, and (3) the emergence of warehouse imprisonment aimed at nothing but custody and security.

Perhaps the greatest challenge facing the neoliberalism thesis is the degree to which any cause at that level of abstraction must under-determine the specificities observed. Thus, proponents of the neoliberalism thesis tend to treat mass incarceration as just one of a whole family of exclusionary policies toward the poor that span both the penal and the welfare state (Wacquant 2009), though in the United States it has predominated far beyond other policies. Thus, zero tolerance practices in schools and in policing have received a fair amount of publicity in the United States (partially because they do ensnare middle-class people as well), but with relatively little actual implementation. While public spending on prisons went up more than 400 percent between 1970 and 2000, public spending on police went up only 20 percent (McCrary 2010). What explains the importance of prisons over police? Indeed, why did the same states decimate their mental health systems, also largely coercive and custodial institutions for society's marginal members, and which once held tens of thousands of "patients" in the same period (Harcourt 2005).

Focused on specific national and regional economies, such as Italy (De Giorgi 2006) and California (Gilmore 2007), the political economy approach helps integrate social and political precursors to mass incarceration. In California, for example, a vibrant home owner-based anti-tax movement long gave the state the appearance of being a vanguard of neoliberalism, even though its economy was highly tied to public spending, and remained so during the growth years of incarceration. While Reagan was rhetorically associated with shrinking government, he aggressively grew the military aspect of government spending, much of it in California. Thus, the growth of incarceration in California took place in the 1980s amidst an expansion of military industrial jobs, and continued in the 1990s as that expansion was reversed. Throughout this period, however, downward trends in the use of rural land, urban populations, and state (as opposed to federal) public borrowing made building prisons a consistently successful policy for absorbing surpluses in all these sectors (Gilmore 2007).

What remains clear is that the Marxist tool kit for analyzing punishment in its relationship to labor markets and to the construction of an exclusionary normative order is more vital than ever (or at least in the more than three-quarters of a century since the end of the last period of relatively unfettered global capitalism in the 1930s.

## The Politics of Crime Control

In an undeniable sense, mass incarceration is a product of politics. A quantum leap in prison populations in the United States (and to the degree that it has been partially replicated in certain European countries) required changes in the administration and legislation of punishment. In a democracy, that process can be accelerated, challenged, or checked by popular politics. As we have seen, both the cultural and the economic accounts take this seriously and describe a "culture of control" and a

penalization of the political field in which the possibilities of governing are reshaped around the determinate constraints of either a new common sense of “high crime societies” (Garland 2001a, 11), or the place of the urban poor under neoliberalism (Wacquant 2009). What has distinguished the political school from Scheingold (1992) or (Zimring, Hawkins, and Kamin 2001; Gottschalk 2006; Simon 2007) is viewing the political field itself—as well as the political formations, factions, and actors making it up—as the primary location of the shifts determining mass incarceration. Crime policy, in this analysis, is determined less by its fit with cultural values (Durkheim), or by the political-economy of labor, than by its value in constituting politically useful “publics” behind a politics of “tough on crime.”

Mass incarceration and capital punishment (Gottschalk 2006; Sarat 2002) have been the most distinctive tools of this kind of public built around the (often very selective) image of the crime victim as an idealized citizen-subject or everyman-woman (Simon 2007; Gottschalk 2006; Garland 2001a).

The salience of crime as a kind of “trickster medium” that can convert political capital in the U.S. experience has been explained in two primary ways. One focuses on the civil rights movement, and the importance of crime control as a policy field into which retreating defenders of the old white supremacist politics in the U.S. South could take up a strong and righteous stand while still signaling their racial animus (Weaver 2007; Western 2006). The policy shift allowed politicians laden with potentially toxic policy positions to convert themselves into strong advocates of a popular position in which their primary former adversaries (African Americans and their leaders) were on the defensive (Weaver 2008). The other approach emphasizes race as just one, albeit a central and constitutive one, of several historical legacies driving this politicization of crime. Crime as a field of potential contestation between state and federal governments made it a politically charged area from the start of the Republic, and race, the driving force of political change for most of the nineteenth century (if not the twentieth) was often the explicit focus of the controversy, for example over proposed federal anti-lynching legislation (Gottschalk 2006).

As noted above, the racial animus hypothesis has been found one of the strongest predictors of support of harsh punishments in national opinion survey analyses. Likewise, racial threat seems to be a potent driver of policies, including “tough on crime” policies, that are racially identified and are served up to reassure majority white voters in states (and potentially, national units in Europe, with the primary example being tough immigration measures). The racial politics analysis of mass incarceration is a bit different, placing the central emphasis on either the strategies of political elites (Southern white Democrats, Nixon’s “Southern” strategy) as they attempted to pivot from losing battles over segregation and national employment discrimination to new terrains on which they would have advantages to defend their traditional interests and flout those of the triumphant civil rights movement (Beckett 1997; Weaver 2007).

Weaver usefully distinguishes crime as a policy “frontlash,” from a more traditional “backlash” in which conservative voters push back on the civil rights front

directly. A frontlash shifts grounds to a new policy field. Crime allowed segregationists to recast their fears of black integration and to demand slowdowns in housing and school desegregation. But it also means that as the crime policy issue creates its own policy feedback and generates new possibilities for political identity in crime victim status, it can play out in new ways fundamentally unconnected from the conservative racial agenda that helped initially fuel its takeoff. Thus feminists could find in crime victim status and “tough on crime” policies a new front for contestation and collaboration with state and federal authorities (Gottschalk 2006), and even African American politicians can present “tough on crime” policies as a benefit to the community without fear of being read as appealing to racists (including Barak Obama, who refused to be outdone by John McCain in support for tough crime policies during the 2008 election cycle).

Another productive way of framing the relationship between race and mass incarceration is to view heavy imprisonment as the new axis of racial ordering for a post-civil rights era America in which the traditional urban ghetto has been rendered unnecessary by deindustrialization and less viable due to greater housing opportunity for middle-class African Americans (Wacquant 2001). From this perspective, the criminal justice system itself need not be racially discriminatory in either the motives of its agents or its managers. Its goal is to replace the no longer acceptable rule of Jim Crow and ghetto norms with a new formally egalitarian and race-blind court system.

The power of the race politics interpretation of “tough on crime” policies in the 1960s, 1970s, and 1980s is formidable. Less clear is how well this interpretation can explain the continuing productivity of crime policy as a central platform for governing during the 1990s and 2000s, when mass incarceration grew and then consolidated its hold on an American political landscape increasingly transformed by globalization, immigration, and internal migration to the Sunbelt (of all races).

An alternative is to view U.S. race conflict as only one, albeit a very central one, of the features of U.S. history conditioning mass incarceration as a preferred policy for American politicians in the period 1980–2000. From this perspective, it is features of U.S. constitutional structure (especially federalism and strong state powers over criminal justice), many of them rooted in slavery, that made crime an effective pathway for governance at various times in American history, especially those times of fear and mistrust of government (Gottschalk 2006; Simon 2007; Miller 2008).

The specific conjunctural features of the 1960s that led to a far greater expansion in scope and scale of crime as a defining problem for government and mass incarceration as a central public policy may not lend themselves to a sweeping cause like racial backlash or neoliberalism, but involve those and other factors. Many of them are highly contingent and not predictable elements of a particular racial or economic order. One of these was the remarkable battle over capital punishment, which put the state’s power to punish on the political agenda at a moment of very high homicide rates and national alarm about law and order (Gottschalk 2006). You can look at this as an outgrowth of the civil rights movement, but hardly the kind of strategic response assumed by backlash theories. Likewise, a litigation

battle over prisoners' rights, coming out of the same civil rights movement, put prison construction on the table at a time when populist punitive politics were taking root in states like Florida, Arizona, and California (Lynch 2009a; Schoenfeld 2010). Another factor that receives little attention from those who see mass incarceration as a strategy of racial control or neoliberalism is the role of second wave feminism in constituting the crime victim (gendered female for certain purposes) as an idealized citizen (Gottschalk 2006). Thus, while racial conflict over civil rights—and the political realignments to which it led—may be the most important singular “cause” in pushing the United States toward mass incarceration, these other factors help explain why it could become a sustainable citizenship project with broad support from all segments of American society. Indeed, the specific form of mass incarceration (of all the ways that a “war on crime” may have played out) may be best understood as a kind of unintended compromise or strategic balance between the forces of racial backlash and realignment, and the civil rights movement itself (or at least its legal extension).

The political accounts of mass incarceration are, somewhat more than the cultural and economic accounts, rooted in the specificities of U.S. history and are not easily generalized to other countries. On the other hand, as thick descriptions of how many of the “risk factors” discussed above have played out in the country with the most distinctive experience with mass incarceration, this account can be a resource for similarly grounded accounts of nations outside the United States and of sub-state units.

## CONCLUSION

Beginning in the 1970s, the United States began a precipitous increase in prison populations that 30 years later saw an increase of more than 400 percent in the rate of imprisonment. With considerable variation from state to state, a profile has emerged of American incarceration that includes: (1) a quantum shift in the scale of imprisonment; (2) a categorical approach to using prison on entire categories of offenders in place of prison as an individual option; and (3) the reshaping of the practice of imprisonment around a model of punitive segregation with little emphasis on education, labor, or rehabilitation. At the end of the twentieth century, this mass incarceration system had moved prisons from the margins of the modern state to near the center, as toward an overarching hegemony over the lives of urban poor.

The era of mass incarceration as a public policy is over; its history as a social problem has begun. This does not mean that prison populations will return to historic norms or practices to traditional logics. We may be at the beginning of a long new equilibrium in which prisons remain a central site of control for a large portion of the urban poor already marked by its touch through the generations. However, mass incarceration is clearly over as a public policy, and the era has begun in which

policy discussion seems likely to focus on managing the pathological processes unleashed by mass incarceration.

Some broader theories of mass incarceration suggest that mass incarceration should be on the rise in other nations undergoing neoliberal transformation (Cavadino and Dignan 2006; Wacquant 2009). Once we look beyond the United States, it is hard to find substantial evidence that mass incarceration is becoming anything like a global norm. Western Europe has experienced significant growth in the rate of imprisonment since the 1970s (with considerable variation), but even in the nations with the most rapid growth and the most decisive policy election of imprisonment, for example, the United Kingdom (Newburn 2007), and the Netherlands (Downes 2007), where one can find elements of securitization as well, it is hard to find the categoric approach to imprisonment that has become the U.S. style. In the developing world, there is little if any evidence that states are turning to mass incarceration with its extraordinarily high direct and indirect costs. What one can find is the politics of crime fear almost everywhere, but in most cases, specific institutional factors, such as centralized control over penal decision making or the force of regional human rights norms, have produced substantial resistance to full-fledged mass incarceration.

Historians and social scientists will continue to argue over the precise causes of U.S. mass incarceration, a debate that stands imminently to be enriched by new studies of subnational and non-U.S. national experiences (see Lynch 2010; Schoenfeld 2010; Kilcommins et al. 2004). But much of the research agenda is rightly shifting to documenting the extraordinary social, economic, and political consequences of this 30-year effort in areas like the voter disenfranchisement (Uggen and Manza 2002), inequality (Western 2006; 2006; Wakefield and Uggen 2010), families and children (Hagan and Dinovitzer 1999; Comfort 2009), and public safety (Clear 2008).

## NOTES

1. The Adrian Kragen Professor of Law, UC Berkeley.
2. According to the researchers who prepared this appendix, their search represented only a fraction of laws that may have enhanced the length of prison sentences in California since the 1970s (Little Hoover 2007, 68).
3. Mass incarceration is defined by sociologists as a penal regime, that is, the policies and practices behind raising incarceration rates a quantum scale and applying it to entire categories of people (rather than individually) (Garland 2001b, 1–2; Western 2006, 12).
4. For example, when the Arizona legislature held hearings recently on the costs of incarceration, the state's association of prosecuting attorneys filed a descriptive statistical report on Arizona prisoners, showing that the vast majority were either guilty of a serious, violent, or repeat offense (Arizona House of Representatives 2010).
5. Research in the 1970s was largely unable to document effective crime-reduction results from improved policy deployment strategies. The empirical record appears quite different today (Zimring 2007)



6. This is difficult to assess, since in the case of the UK and the Netherlands, prison populations have been growing rapidly as politicians seem to have taken more direct control over penal policy (Downes 2007; Newburn 2007).

7. This may reflect difficulties in measuring Latinos. Qualitative work on Arizona suggests that state's very significant leap in incarceration after the 1970s paralleled growing Anglo concern about growing Mexican immigration; see Lynch 2009a and 2009b.

8. Ironically, the Marxist studies of penality crested just as the U.S. incarceration rate was reaching its nadir, leading to expectations of decarceration (Scull 1979).

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