

## Book review

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Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics*, Princeton University Press, Princeton, NJ, 2015; 474 pp. (including index): 9780691164052, \$35.00 (cloth); \$24.95 (pbk)

Most Americans now know that the United States has an enormous prison problem. Over the last 40 years, legislatures passed get tough measures, including sentencing guidelines, mandatory minimum sentences, and three-strikes-and-you're-out laws, which increased both the probability of going to prison and the length of prison terms. Such policies sent the populations behind bars soaring, and today's prisons and jails hold more than 2.2 million inmates—roughly one in every 100 adults (Bureau of Justice Statistics (BJS), 2014a). The United States has the highest incarceration rate of any free nation, holding close to 25 percent of the world's prisoners, even though it accounts for less than 5 percent of the global population (Travis and Western, 2014).

The USA's prison boom has been costly for offenders, families, communities, and taxpayers. The states now invest over \$47 billion annually in corrections, and prison spending has grown at a rate that has outpaced budget increases for nearly all other essential government services (Mitchell and Leachman, 2014). Two-thirds of those imprisoned are African Americans and Hispanics, causing “mass incarceration” that some allege is little more than a new form of racial and social domination (NAACP, 2015).

Today there is growing recognition that our approach to crime is failing. Not only is the price of widespread imprisonment too high, but also the benefits are too few. The National Research Council (Travis and Western, 2014) recently acknowledged that while the US crime rate has been steadily declining for 25 years, our expansion of incarceration over roughly the same period deserves only a modest amount of the credit. The NRC concluded, “[t]he increase in incarceration may have caused a decrease in crime, but the magnitude of the reduction is highly uncertain and the results of most studies suggest it was unlikely to have been large” (Travis and Western, 2014: 4). The Council suggested that other factors, such as more police, declining drug use, and the aging population, probably contributed more to the crime decline than increased incarceration.

Incarceration also fails to rehabilitate most offenders. The Bureau of Justice Statistics (2014b) reports that 77 percent of released prisoners are rearrested for a new crime within five years, and 55 percent are convicted of a new crime. In short, we have a corrections system that does not correct.

Among criminal justice scholars, these statistics are very familiar. Over the past two decades, scathing critiques of the prison state have grown louder. As the late William J. Stuntz (2011: 1) wrote in *The Collapse of American Criminal Justice*, '[r]ule of law has vanished in America's criminal justice system. Prosecutors decide whom to punish; most accused never face a jury; policing is inconsistent; plea bargaining is rampant; and draconian sentencing fills prisons with mostly minority defendants.' Furthermore as Michael Tonry (2014: 503) succinctly put it, "[l]ooking back, it is difficult to believe that anyone, even in their most moralistic, politically motivated, socially fraught moments foresaw or would have chosen the criminal justice systems Americans have in 2015."

Academic conversations have failed to drive prison reform, but there is new hope that an emerging broad-based political consensus may pave the way for significant shifts in crime policy. Prison populations have stabilized and reform-minded politicians have begun to pass legislation to divert drug and property offenders from prisons, make prison sentences shorter, limit mandatory sentencing, increase parole release, and reduce the collateral consequences of a criminal record. Reforms that would have been unthinkable just a few years ago are gaining traction with both political parties and the American public.

The greatest evidence of this trend can be found in the states. Improbably, tough-on-crime Texas was an early leader, scrapping plans to build more prisons in 2007 and instead investing in drug courts, probation, and other incarceration alternatives. Other state legislatures have followed with similar reforms, and voters have had their say as well. In just one example of direct democracy, Californians recently passed ballot initiatives softening the state's three-strikes law and reclassifying most nonviolent property and drug crimes from felonies to misdemeanors.

Current optimism is further bolstered because criminal justice reform seems to have staying power, at least for the immediate future. It has emerged as a major issue in the 2016 presidential election and recent high-profile episodes involving law enforcement, from Ferguson, to Cleveland, to New York City, have pushed the issue to the forefront of the national debate. The Brennan Center (2015) recently published a report featuring essays by many of the major 2016 presidential candidates, who outlined their ideas on criminal justice reform. In contrast to previous election cycles, there was remarkable cross-ideological agreement. In his foreword, former President William J. Clinton writes, "there is one area where we have a genuine chance at bipartisan cooperation: the over-imprisonment of people who did not commit serious crime" (Brennan Center, 2015: 1). Such newfound consensus, coupled with public support for a new direction, may help break legislative gridlock and pave the way for lasting change.

All of this buzz about prison reform has put the nation in a celebratory mood regarding the possibility of downsizing prisons. As the *Huffington Post* (Grim, Stein and Ferner, 2014) opined, "[t]here is one issue that may have enough cross-party appeal to break through the logjams. That issue is criminal justice reform."

Amid the celebration, however, some academics are saying not so fast. Several well-timed books suggest that the political pundits are oversimplifying the scale

and complexity of the problem. Current solutions focus primarily on decreasing prison crowding, but only massive investments in community programs will reduce and sustain decarceration.

It is often said that a crisis is a terrible thing to waste, allowing for progress that might not be accomplished in a saner atmosphere. Mass incarceration is the USA's current crisis, and we should exploit this opportunity to reduce unnecessary imprisonment. But in order to move beyond symbolic sound bites to achieve real and lasting progress, we need more nuanced discussions of the challenges and a thoughtfully planned effort to overcome them.

Fortunately, a new book by University of Pennsylvania political scientist Marie Gottschalk takes us past the broad outlines of debate to explore the sobering complexities inherent in prison reform. She doubts that current progressive narratives will be enough to roll back the penalties of the 1980s and envisions a very different path forward. Most importantly, she reminds us of the enormity of our task.

### **Bipartisan calls for prison reform: Trendy but will it work?**

Marie Gottschalk's *Caught: The Prison State and the Lockdown of American Politics* could hardly be timelier. Gottschalk's book combines history and political analysis to reveal the complexity of factors that have produced the USA's mass incarceration problem. Unfortunately, she is a strident critic of current reform strategies and her conclusions about the prospect for prison reform could hardly be bleaker. She not only questions whether the newfound political consensus around reform is sincere, but also insists that the framing of the problem is misdirected and could result in policies that backfire and hurt the very communities we are trying to help.

Professor Gottschalk argues that growing opposition to mass incarceration has "tended to gravitate toward two different poles, both of them inadequate in the face of current challenges" (p. 3). One focuses on race and imprisonment, and argues that institutional racism is the major driver of increased imprisonment. In this narrative, misguided drug laws, mandatory sentencing rules, and discrimination throughout the justice system have produced profoundly unequal outcomes for racial minorities, particularly African Americans. Statistics show dramatic racial disparities and bolster this narrative: blacks comprise 13 percent of the US population, and use drugs at similar rates to people of other races. However blacks comprise 30 percent of those arrested for drug law violations, and represent nearly 40 percent of those incarcerated in state or federal prison for drug law violations (Drug Policy Alliance, 2015). These extraordinary racial disparities have recently drawn new attention through Michelle Alexander's (2010) framing of mass incarceration as "the new Jim Crow".

Gottschalk writes that the second narrative commonly used to motivate prison downsizing focuses almost exclusively on the need to reduce state spending. Conservatives believe that the growing fiscal burden of the vast penal system has

become untenable. This “fiscal imperative argument” is exemplified well by Grover Norquist (2011), one of the founders of the popular Right on Crime conservative movement that began in Texas but has quickly expanded into a national political force for reform. He writes, “[l]et’s stand for limited government, federal accountability, and reduced spending.” Conservative coalitions, Gottschalk writes, have “embraced framing the problem of the carceral state as primarily a dollars-and-cents issue that begs for a bipartisan solution” (p. 7). The downside of that approach, she warns, is that, “Focusing on the fiscal burden of mass incarceration also creates a huge political opening for the expansion of the private prison industry” and could potentially—especially as the economy recovers—be a “catalyst for another burst of get tough policies” (p. 47).

Gottschalk notes that neither the “fiscal imperative” nor the “racial discrimination” narrative is wrong *per se*—in fact, she finds both credible. But she argues that they are woefully inadequate to sustain the broad political movement “necessary to dramatically reduce the number of people in jail and prison or ameliorate the many ways in which the carceral state has deformed US society and political institutions” (p. 3).

Certainly “race matters profoundly in any discussion of how to dismantle the carceral state”, Gottschalk writes. But it isn’t “primarily a black–white issue” (p. 4). Rather, the underlying economic and social factors that sustain punitive policies for blacks also sustain them for “for certain whites, Latinos, immigrants, and members of other demographic groups” (p. 4). She notes that the USA would still have an incarceration crisis even if African Americans were sent to prison and jail at “only” the rate at which whites in the USA are currently locked up. By framing the overincarceration problem as primarily one of discrimination against young black men caught up in the War on Drugs, we fail to appreciate the complexity of the issue and chart too narrow a policy reform path. The overwhelming majority of people in prison are *not* in prison because of a drug offense.

Moreover, she believes the Jim Crow and the fiscal imperative frames have “contributed to public misperceptions about the relationship between crime and who is being sent to prison and why” (p. 3). She is particularly concerned about women, sex offenders, and illegal immigrants. She writes that incarceration rates have increased much faster for women than for men. The United States now “incarcerates almost one third of the 625,000 women and girls confined to jails and prisons worldwide” (p. 4). Moreover while backing out of the Drug War will help many African American women, it will not do much for women imprisoned for violent offenses and property offenses, commitment crimes that have become much more common among low-income white and Hispanic women in recent years.

### *New targets: Sex offenders and immigrants*

Professor Gottschalk also makes a compelling argument that, “[a]s the war on crime has been winding down on some fronts, it has been ratcheting up on new

ones” (p. 6). She is particularly concerned with the draconian penalties for sex offenders and the criminalization of illegal immigrants. She notes that sex offenders are the most rapidly increasing segment of the US prison population, and yet the topic remains politically toxic. Both the number and severity of sentences for sex offending has skyrocketed over the last 20 years. For instance, “the number of people serving time for possession of sexually explicit materials, typically child pornography, in the federal prison system increased more than sixtyfold between 1996 and 2010, compared to an 80 percent rise in drug offenses over this same period” (p. 199). The wave of draconian sex offender laws has struck hardest on older white men.

Sensible, proportionate penalties have eluded policymakers partly because of a misunderstanding of the specific behaviors encompassed in the “sex offender” category. Current sex offender statutes are too broad, and include everything from urinating in public to consensual underage sex to child pornography to raping and murdering a child. Despite the dramatic range of conduct covered by such statutes, people convicted of any one of these sex offenses are often viewed as moral monsters and often required to register as sex offenders for the rest of their lives.

Similarly, the United States is rapidly expanding its capacity and determination to “apprehend, detain, punish and deport immigrants”. “The amount that the federal government now spends on immigration enforcement exceeds funding for all principal federal law enforcement agencies combined,” Gottschalk notes (p. 6). Moreover that does not seem to be abating any time soon: “like the turn toward mass incarceration, the turn toward the criminalization of immigration enforcement has been remarkably bipartisan” (p. 218). Hispanics now constitute 35 percent of all prisoners, making them the largest ethnic or racial group in federal prison. So, while we may downgrade penalties for marijuana possession and for crack, we are simultaneously fortifying our punishments for other crimes. This is a consequence of the escalation in immigration raids, as well as the relative drop in federal prosecution of certain other offenses, including organized and white-collar crime.

According to Gottschalk, “[p]oor whites, Hispanics, and women have been a booming growth area for the carceral state. But so far these other groups and their advocates have not been central to the growing debate over penal reform” (p. 5). She is right that until we focus on some of these other categories, simply ending the War on Drugs or focusing on the black–white differences in incarceration rates will do little to dismantle the carceral state.

### *Evidence-based programs ineffective, misdirected*

Gottschalk is also highly critical of the current efforts to reduce recidivism through evidence-based reentry and justice reinvestment strategies. Over the last 15 years, researchers have shown that certain programs and approaches to supervision can change some people’s criminal behavior and help them succeed upon release from prison (e.g. the use of risk assessment tools, motivational interviewing and other data-driven techniques) (e.g. Latessa and Lowenkamp, 2006). Encouraged by this

research and some program success, Congress established several grant programs to stimulate “evidence-based” innovation at the state and local level. In fact, Congress continues to invest billions in the flagship Second Chance Act and the Justice Reinvestment Initiative, programs that Gottschalk believes are not only misdirected but ineffective. To Gottschalk, focusing on the three Rs—that is, reentry, justice reinvestment, and reducing the recidivism rate—is a case of good intentions, bad idea. She writes,

The narrow emphasis on evidence-based research related to recidivism fosters the impression that the birth of the carceral state was the result of bad or nonexistent research rather than bad politics or bad policies.

Framing solutions to the problem of the carceral state primarily in “neutral” scientific, and nonpartisan language ends up ceding important political ground, rendering reforms to dismantle the carceral state vulnerable to resurgent law-and-order rhetoric. Moreover, since cost savings and lower reoffending rates are presented as ends in themselves—that they are somehow separate from thornier matters of human rights, morality, or justice, what is to protect against practices that might be extremely harsh, but reduce overheads or recidivism? (p. 97)

She says the ‘three R reforms’ will not reduce mass incarceration because, “[c]riminal justice is fundamentally a political problem, not a crime and punishment or a dollar and cents problem” (p. 22).

So how do we move forward? Gottschalk believes that mass incarceration is basically a *political* problem, and that to fix it we need greater community organizing and a new social movement. She concludes, “[d]ismantling the carceral state will necessitate constructing a political movement from a network of state-level political coalitions that have ties to citizen-based groups spanning many localities” (p. 100). In short, the only way we are going to turn the current bipartisanship into a history-changing moment is to change the narrative, and to change the narrative, we need a major new social movement.

To many readers, including the author, such objectives sound unrealistic at best and resemble the tired liberal arguments about changing the conditions rather than changing the system that reacts to the conditions. In an ideal world there would be no racism or privilege, but we do not live in that world. Yes, reentry and recidivism reduction programs are “back end” intervention strategies less ideal than preventing those same people from entering the system in the first place. But again, we live in the real world.

Even if we were successful in creating the type of social movement Gottschalk calls for, we still face another major hurdle in rolling back mass incarceration: how to address the ongoing “invisible punishment” that those with a criminal record confront long after sentences have been served. An estimated 65 million Americans—approximately 25 percent of the US adult population — possess some form of recorded criminal history (Jacobs, 2015). Having even a minor

criminal record, such as a misdemeanor or an arrest without a conviction, can create an array of lifelong barriers that inhibit successful reentry. A criminal record can present obstacles to employment, housing, public assistance, education, and more—all of which impact individuals' families and their economic security. Once criminal records have been released and incorporated into online databases it is virtually impossible to put the genie back in the bottle. In our society, a felony stigma sadly becomes the new "Scarlet F" that far too many Americans continue to wear. Without focusing on *that* pervasive problem, long-term reductions in US imprisonment rates—with or without a new social movement—will remain elusive.

### **Conclusion: The bad news—the problems remain; the good news—the conversation has changed**

There is fresh hope that the USA's mass incarceration problem may be coming to an end. Bipartisan enthusiasm for change abounds like never before, improving the odds that we can capitalize on this promising moment in time. States are well on their way down the path of reform, and voices for change from the left and right are now echoing loudly through Congress and on the presidential campaign trail. But as Gottschalk convincingly demonstrates with her scholarship, the magnitude of our nation's problem cannot be overstated. By almost any measure, our reliance on prison as a preferred punishment, and our determination to lengthen sentences and reduce parole through a get-tough era that persisted despite research to the contrary, buried us in a world of hurt.

This gloomy correctional calculus is bad enough, but it does not tell the entire story. A more chilling picture of the scale of the USA's challenge emerges when one combines these high rates of justice involvement with poverty, stagnant economic mobility, and enduring patterns of racial segregation, and when one considers the enduring impacts of incarceration on family structure and future generations, particularly minority youth. The consequences experienced by communities and families are almost incalculable. A study by the Pew Charitable Trusts found that one in 28 children in the United States has a parent in prison, up from one in 125 just a quarter-century ago (Western and Pettit, 2010). These innocent offspring face a multitude of problems as they navigate their way to adulthood. Rates of homelessness are higher among families with a father behind bars, and children of the incarcerated often land in foster care, have trouble in school, and struggle to form attachments with peers. Lacking authority figures and positive role models in their lives, many of these children inevitably engage in delinquency and wind up in the criminal justice system themselves.

Given this set of discouraging circumstances, it is not surprising that Gottschalk believes true change will elude us without a major social movement—something on the scale of the Civil Rights movement. Her assessment of the problem's severity may well be right. However do we really expect Americans to rise up, join forces, and demand revolutionary change on behalf of former prisoners? This seems far-fetched. If the trauma of Sandy Hook and Aurora and Charleston have failed to

produce sufficient momentum and public outrage to bring about even minimal reforms addressing gun violence, it is doubtful that the difficulties experienced by ex-felons, however severe, would produce Gottschalk's movement to dismantle the carceral state.

The author favors more modest but realistic reforms, such as the three Rs—reentry, justice reinvestment, and recidivism reduction—that Gottschalk criticizes. Through the Second Chance Act and an array of other initiatives, Congress and a growing list of blue and red states have begun investing heartily in the type of evidence-based programs and strategies needed to help offenders effectively turn around their lives. By reducing incarceration and diverting the substantial cost savings into such initiatives, we can give millions of offenders the opportunity to succeed. Not all will do so. But one by one, individual by individual, the majority will become a living, breathing library of success, resuming productive lives among the rest of us and gradually but significantly reducing the stigma that now consigns ex-convicts to a near-hopeless second-class existence. In this way, we will help former offenders demonstrate that they can move beyond their criminal pasts to productive citizenship. We will help them exit the shadows of society that once trapped other stigmatized groups, from single parents to gays. While progress will be slow, perhaps these human stories—this positive parade of ex-offenders proving that a past mistake does not define an entire life—will create the broader social movement Gottschalk hopes for.

As Jennifer Gonnerman (2008) has written, “America is expert at turning citizens into convicts, but we’ve forgotten how to transform convicts back into citizens.” With broad-based political will and a healthy dose of US ingenuity, perhaps we can remember.

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