

Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History

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As the twentieth century came to a close and the twenty-first began, something occurred in the United States that was without international parallel or historical precedent. Between 1970 and 2010 more people were incarcerated in the United States than were imprisoned in any other country, and at no other point in its past had the nation's economic, social, and political institutions become so bound up with the practice of punishment. By 2006 more than 7.3 million Americans had become entangled in the criminal justice system. The American prison population had by that year increased more rapidly than had the resident population as a whole, and one in every thirty-one U.S. residents was under some form of correctional supervision, such as in prison or jail, or on probation or parole. As importantly, the incarcerated and supervised population of the United States was, overwhelmingly, a population of color. African American men experienced the highest imprisonment rate of all racial groups, male or female. It was 6.5 times the rate of white males and 2.5 times that of Hispanic males. By the middle of 2006 one in fifteen black men over the age of eighteen were behind bars as were one in nine black men aged twenty to thirty-four. The imprisonment rate of African American women looked little better. It was almost double that of Hispanic women and three times the rate of white women.¹

Despite the fact that ten times more Americans were imprisoned in the last decade of the twentieth century than were killed during the Vietnam War (591,298 versus 58,228), and even though a greater number of African Americans had ended up in penal institutions than in institutions of higher learning by the new millennium (188,500 more), historians have largely ignored the mass incarceration of the late twentieth century and have not yet begun to sort out its impact on the social, economic, and political evolution of the postwar period. That one can learn a great deal about a historical moment by more

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¹ "Table 6.1.2006: Adults on Probation, in Jail or Prison, and on Parole," *Sourcebook of Criminal Justice Statistics Online*, <http://www.albany.edu/sourcebook/pdf/t612006.pdf>. "1 in 31: The Long Reach of American Corrections," March 2009, *Pew Center on the States*, http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf; Heather West and William J. Sabol, "Prisoners in 2007," *Bureau of Justice Statistics Bulletin*, (Dec. 2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p07.pdf>; "One in Every 31 U.S. Adults Were in Prison or Jail or on Probation or Parole in 2007," press release, Dec. 11, 2008, *U.S. Department of Justice: Bureau of Justice Statistics*, <http://bjs.ojp.usdoj.gov/content/pub/press/p07ppuspr.cfm>. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, 2010), 195. "One in a Hundred: Behind Bars in America, 2008," Feb. 2008, *Pew Center on the States*, <http://www.pewcenteronthestates.org/uploadedFiles/One%20in%20100.pdf>.

closely examining the politics of crime and punishment is not news to historians of the nineteenth century, many of whom came to understand the post–Civil War South far better after fleshing out its criminal justice system.² Thanks to several pathbreaking studies it became clear that southern whites responded to African American claims on freedom by redefining crime and imprisoning unprecedented numbers of black men. It was also evident that their response revealed as much about the triumphs of capitalism, the failures of Radical Reconstruction, and the successful machinations of the southern Democratic party as it did about actual crime or even punishment in this region.

The way that Americans viewed and addressed crime was no less historically situated and complex after the nineteenth century than it was during. Just as the American justice system changed dramatically in the wake of major historical revolutions such as the abolition of slavery, so too did it metamorphose much later in the twentieth century as the nation was further contested and transformed. This was particularly the case following the 1960s, the decade of social activism and possibility that the historian Manning Marable has aptly termed the “Second Reconstruction.” In the thirty-five years leading up to and including the tumultuous 1960s, the number of Americans incarcerated in federal and state prisons had increased by 52,249 people. In the subsequent thirty-five years that group increased by 1,266,2435. There is little question that such numbers both reflected and shaped the history of postwar America.³

It is not that historians of the twentieth-century United States have overlooked the nation’s criminal justice system entirely.⁴ A number of new works have, for example, fur-

² Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th-Century American South* (New York, 1984); Mary Ellen Curtin, *Black Prisoners and Their World, Alabama, 1865–1900* (Charlottesville, 2000); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York, 1996); David M. Oshinsky, *“Worse Than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice* (New York, 1997); Karin Shapiro, *A New South Rebellion: The Battle against Convict Labor in the Tennessee Coalfields, 1871–1896* (Chapel Hill, 1998); Talitha L. LeFlouria, “Convict Women and Their Quest for Humanity: Examining Patterns of Race, Class, and Gender in Georgia’s Convict Lease and Chain Gang Systems, 1865–1917” (Ph.D. diss., Howard University, 2009).

³ Manning Marable, *Race, Reform, and Rebellion: The Second Reconstruction in Black America* (1991; Jackson, 2003), 3. “Table 6.13.2008.”

⁴ On the shifting ideas regarding crime and criminality in the North between 1900 and 1945, see Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass., 2010); Jeffery Adler, *First in Violence, Deepest in Dirt: Homicide in Chicago, 1875–1920* (Cambridge, Mass., 2006); Kali Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880–1910* (Durham, 2006); Cheryl Hicks, *Talk with You like a Woman: African American Women, Justice, and Reform in New York, 1890–1935* (Chapel Hill, 2010); Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (New York, 2008); and Lawrence M. Friedman, *Crime and Punishment in American History* (New York, 1993). On carceral institutions after 1945, see Donna Murch, *Living for the City: Migration, Education, and the Rise of the Black Panther Party in Oakland, California* (Chapel Hill, 2010); Robert Chase, “Civil Rights on the Cell Block: Race, Reform, and Violence in Texas Prisons and the Nation, 1945–1990” (Ph.D. diss., University of Maryland, 2009); Norwood Henry Andrews III, “Sunbelt Justice: Politics, the Professions, and the History of Sentencing and Corrections in Texas since 1968” (Ph.D. diss., University of Texas, Austin, 2007); Volker Janssen, “Convict Labor, Civic Welfare: Rehabilitation in California’s Prisons, 1941–1971” (Ph.D. diss., University of California, San Diego, 2005); Volker Janssen, “When the ‘Jungle’ Met the Forest: Public Work, Civil Defense, and Prison Camps in Postwar California,” *Journal of American History*, 96 (Dec. 2009), 702–26; Heather McCarty, “From Con-Boss to Gang Lord: The Transformation of Social Relations in California Prisons, 1943–1983” (Ph.D. diss., University of California, Berkeley, 2004); Staughton Lynd, *Lucasville: The Untold Story of a Prison Uprising* (Philadelphia, 2004); and Robert Perkinson, *Texas Tough: The Rise of America’s Prison Empire* (New York, 2010). For works by nonhistorians, see, for example, Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford, 2009); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, 2007); Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (New York, 2000); Marie Gottshaulk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York, 2006); Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York, 2009); Glenn C. Loury, ed., *Race, Incar-*

thered our understanding of crime and criminality and have called needed attention to the fact that ideas about both shifted substantially in the North between 1900 and 1945. Historians have also recently written riveting narrative accounts of the ways carceral institutions operated during the second half of the twentieth century. Overwhelmingly, however, attempts to grapple with the broad impact of the postwar rise of the carceral state have remained the preserve of journalists, legal scholars, criminologists, and other social scientists. It is time for historians to think critically about mass incarceration and begin to consider the reverberations of this never-before-seen phenomenon.⁵ Not only can we revisit myriad archival collections to sort out what the rise of the carceral state really meant for postwar America, but we can also now draw from a wealth of data generated by the many governmental agencies that were connected to the justice system over the last fifty years, as well as by an array of social scientists recently interested in criminal justice issues.⁶ Investigative journalists can similarly provide invaluable information about the ways people and places were affected by the rise of a more punitive and far-reaching criminal justice system. Drawing from such a rich pool of traditional archival as well as nonarchival materials and examining for the first time the broad impact of mass incarceration gives historians an opportunity to reassess much that has been written about the tumultuous evolution of the postwar period.

This essay will suggest, for example, that to understand why so many prosperous American cities became centers of poverty and pessimism during the postwar period—to fully locate the origins of urban crisis—we must reckon with the extent to which postwar urban spaces were compromised by the mass incarceration of the later twentieth century. Likewise, to make sense of why the American labor movement declined so dramatically after the 1970s, we must explore the significant changes to the law and the economy that accompanied mass incarceration—changes that directly and indirectly eroded the bargaining power and economic security of America's free-world work force. And finally, if we hope to sort out why the politics of postwar liberalism waned over this period, we must realize that the nation's rightward shift had more to do with mass incarceration than we have yet appreciated and less to do with rising crime rates and the political savvy of the Republican party than we have long assumed.

ceration, and American Values (Cambridge, Mass., 2008); Mary Louise Frampton, Ian Haney López, and Jonathan Simon, eds., *After the War on Crime: Race, Democracy, and a New Reconstruction* (New York, 2008); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago, 2002); Bruce Western, *Punishment and Inequality in America* (New York, 2007); Todd Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York, 2009); Loïc Wacquant, *Prisons of Poverty* (Minneapolis, 2009); and Vesla Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development*, 21 (Fall 2007), 230–65.

⁵ "Table 6.13.2008: Number and Rate (per 100,000 U.S. Residents) of Persons in State and Federal Prisons and Local Jails," *Sourcebook of Criminal Justice Statistics Online*, <http://www.albany.edu/sourcebook/pdf/t6132008.pdf>; "Vietnam Conflict: Casualty Summary," table, in "American War and Military Operations Casualties," by Anne Leland and Mari-Jana Oboroceanu, Congressional Research Services report, Feb. 26, 2010, *Federation of American Scientists*, <http://www.fas.org/sgp/crs/natsec/RL32492.pdf>, p. 11; "Statistical Information about Casualties of the Vietnam War: Electronic and Special Media Records Services Division Reference Report," RG 330, *National Archives*, <http://www.archives.gov/research/vietnam-war/casualty-statistics.html#branch>; "Table 195: Enrollment Rates of 18- to 24-Year-Olds in Degree-Granting Institutions, by Sex and Race/Ethnicity, 1967 through 2006," *National Center for Education Statistics*, http://nces.ed.gov/programs/digest/d07/tables/dr07_195.asp. "Cellblocks or Classrooms? The Funding of Higher Education and Corrections and Its Impact on African American Men," Sept. 18, 2002, *Justice Policy Institute*, http://www.justicepolicy.org/images/upload/02-09_REP_CellblocksClassrooms_BB-AC.pdf.

⁶ As Khalil Muhammad's recent work on crime in the Progressive Era makes clear, scholars must take care when using social science data related to the justice system and always bear in mind the historical context in which social scientists collected and interpreted their data. See Muhammad, *Condemnation of Blackness*, 283–84.

Mass Incarceration and the Origins of Urban Crisis

Historicizing mass incarceration can provide new perspectives on many of the questions that historians ask about the postwar period. One of the most central of these concerns why America's inner cities came to suffer such crisis toward the end of the twentieth century. Right after World War II cities were, at least in the popular and commercial imagination, the lifeblood of the nation. A mere four decades later, however, few would have subscribed to that view. As the postwar period unfolded not only did numerous urban centers across the country suffer deep racial and political conflicts but these same cities also experienced tremendous distress from substantial economic disinvestment. By the twenty-first century too many urban enclaves had become synonymous with unrelenting and seemingly inescapable poverty. Eulogizing three of America's largest cities, Los Angeles, New York, and Washington, D.C., one scholar wrote, "The future once happened here."⁷

Historians have not just lamented the death of inner-city America, they have also done a great deal of important work on the origins of its demise. Thomas Sugrue's pivotal study of Detroit, for example, highlights the role that deindustrialization and white racial conservatism played in creating a crisis from which the city simply could not escape. Others, such as Matthew Lassiter, have pointed to the ways that mass suburbanization in the middle and later decades of the twentieth century also undermined urban America.⁸ All of these phenomena clearly mattered, but so did the postwar expansion of the carceral state and its eventual byproduct, mass incarceration.

The dramatic postwar rise of the carceral state depended directly on what might well be called the "criminalization of urban space," a process by which increasing numbers of urban dwellers—overwhelmingly men and women of color—became subject to a growing number of laws that not only regulated bodies and communities in thoroughly new ways but also subjected violators to unprecedented time behind bars. In the same way that rural African American spaces were criminalized at the end of the Civil War, resulting in the record imprisonment of black men that undermined African American communities in the Reconstruction and Jim Crow-era South, the criminalization of urban spaces of color, in both the South and North, during and after the 1960s civil rights era fundamentally altered the social and economic landscape of the late twentieth- and early twenty-first-century United States.⁹

⁷ Although the stability of urban centers was actually tenuous in the 1950s, most inner cities were more populous and vibrant than they would be later. On city centers earlier on, see Alison Isenberg, *Downtown America: A History of the Place and the People Who Made It* (Chicago, 2005). Fred Siegel, *The Future Once Happened Here: New York, D.C., L.A., and the Fate of America's Big Cities* (New York, 2000).

⁸ Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton, 1996); Matthew Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, 2005); Arnold Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940–1960* (Chicago, 1998); Wendell Pritchett, *Brownsville, Brooklyn: Blacks, Jews, and the Changing Face of the Ghetto* (Chicago, 2002); Amanda Seligman, *Block by Block: Neighborhoods and Public Policy on Chicago's West Side* (Chicago, 2005); Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton, 2004); Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York, 1987); Jane Jacobs, *The Death and Life of Great American Cities* (1961; New York, 1992); Kevin M. Kruse and Thomas J. Sugrue, eds., *The New Suburban History* (Chicago, 2006); Kevin M. Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton, 2005); David M. P. Freund, *Colored Property: State Policy and White Racial Politics in Suburban America* (Chicago, 2008).

⁹ The term "criminalization of urban space" is my own, but my attention was called to this phenomenon by Clear, *Imprisoning Communities*. Loïc Wacquant, "Racial Stigma in the Making of the Punitive State," in *Race, Incarceration, and American Values*, ed. Loury, 57–70.

As Khalil Muhammad and Donna Murch have both pointed out, the focus of law enforcement on urban African Americans, which became a hallmark of the last third of the twentieth century, was rooted in much earlier decades. As Muhammad shows, northern social scientists throughout the Progressive Era were using census data to try to “prove” that blacks were inherently prone to criminality, and thus needed greater police scrutiny. He notes as well that such associations between blackness and crime only deepened as the twentieth century unfolded. One of the most important privileges that working-class whites gained as a result of being courted by, and included in, the New Deal liberal state, he argues, was a new claim on citizenship that finally rid them of many negative assumptions about their class position and thus tended to inoculate them from association with criminality. African Americans, who had been shut out of the New Deal’s largesse, however, were afforded neither equal citizenship nor the privilege of presumed honesty that came with it. In stark contrast to white working-class Americans, who increasingly claimed the mantle of crime victim over the course of the twentieth century, poor blacks were increasingly blamed for any crime problem America had. As Murch also shows clearly, by the first decades of the postwar period, much of white America had come to see the presence of African Americans, and their concentration in inner cities in particular, as inherently threatening and it advocated policing them accordingly.¹⁰

By the late 1960s, however, with African Americans across the country actively laying claim to equal citizenship, the urban spaces in which they lived were soon criminalized to an unprecedented extent. One of the most important mechanisms by which urban spaces were newly criminalized after the civil rights sixties was a revolution in drug legislation. The state of New York started this revolution by passing a series of new drug laws in 1973. These laws were somewhat ironically named after the then-governor Nelson Rockefeller, who had actually long favored a rehabilitative approach to his state’s drug problem. In 1971, however, Rockefeller faced a major civil rights challenge to this authority—one that fundamentally changed his outlook on those who had committed and led him to embrace more punitive measures for dealing with all lawbreakers, including those who used and sold illegal drugs.¹¹

By the end of the 1960s Rockefeller had already witnessed countless grassroots protests in his state and, when a massive rebellion of over twelve hundred mostly African American inmates began at New York’s Attica State Correctional Facility in the fall of 1971, he decided that the time had come to take a hard line and rethink how he had been handling

¹⁰ Muhammad, *Condemnation of Blackness*, 12–13, 270, 272, 275; Khalil Gibran Muhammad, “Where Did All of the White Criminals Go? The Remapping of Racial Criminalities on the Road to Mass Incarceration,” paper delivered at the “Historians and the Carceral State: Writing Policing and Punishment into Modern U.S. History” symposium, Rutgers University, March 5, 2009 (in Heather Ann Thompson’s possession), 3. Murch, *Living for the City*.

¹¹ Rhonda Y. Williams, “The Dope Wars: Street-Level Hustling and the Culture of Drugs in Post-1940s America,” unpublished manuscript (in Rhonda Y. Williams’s possession). According to Julilly Kohler-Hausmann, although Nelson Rockefeller first “positioned the addict as a victim of disease and allowed criminal offenders to opt for lengthy treatment programs instead of incarceration,” by 1973 he was proposing “that the state make the penalty for sale of hard drugs, regardless of quantity, a lifetime in prison without any option of plea-bargaining, probation, or parole.” Julilly Kohler-Hausmann, “The Attila the Hun Law: New York’s Rockefeller Drug Laws and the Making of the Punitive State,” *Journal of Social History*, 44 (Fall 2010), 76. The sociologist Vanessa Barker has argued that Rockefeller turned to more stringent drug legislation only reluctantly and did so “in frustration rather than as a primary or automatic response to crime.” Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders* (New York, 2009), 149. Others discount the immediate impact of the Rockefeller drug laws—arguing that rising incarceration rates were due less to the law than to later “legislative changes that expanded its scope.” See David F. Weiman and Christopher Weiss, “The Origins of Mass Incarceration in New York State: The Rockefeller Drug Laws and the Local War on Drugs,” in *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom*, ed. Steven Raphael and Michael A. Stoll (New York, 2009), 89.

New York City's "fringe elements"—whether inmates, activists, or addicts. Determined to show conservatives in his party that he was tough on crime, Rockefeller not only chose to put down the Attica rebellion with deadly force but he publicly committed himself to certain "enduring principles" such as society's need for law and order. According to Rockefeller there was a clear "moral responsibility confronting a leader in moments of crisis": to uphold the law and make it clear that those who committed crimes in his state would not be coddled. As the Rockefeller staffer Joe Persico put it in a speech he drafted for the governor mere days after the retaking of Attica, "Once the orderly structure of society is breached, where does it end?"¹²

As a result of the decision in New York to draw a line in the sand vis-à-vis drugs in the mid-1970s, the state's prison population soared. By the 1990s, 32.2 percent of inmates in New York's prisons were locked up for drug offenses, and significantly, the majority of them hailed from the state's most urban enclaves. In fact, New York's urban spaces were so impacted by drug legislation in the last decades of the twentieth century that by the new millennium 66 percent of the prisoners who filled the state's vast prison system had been arrested in, and were from, New York City.¹³

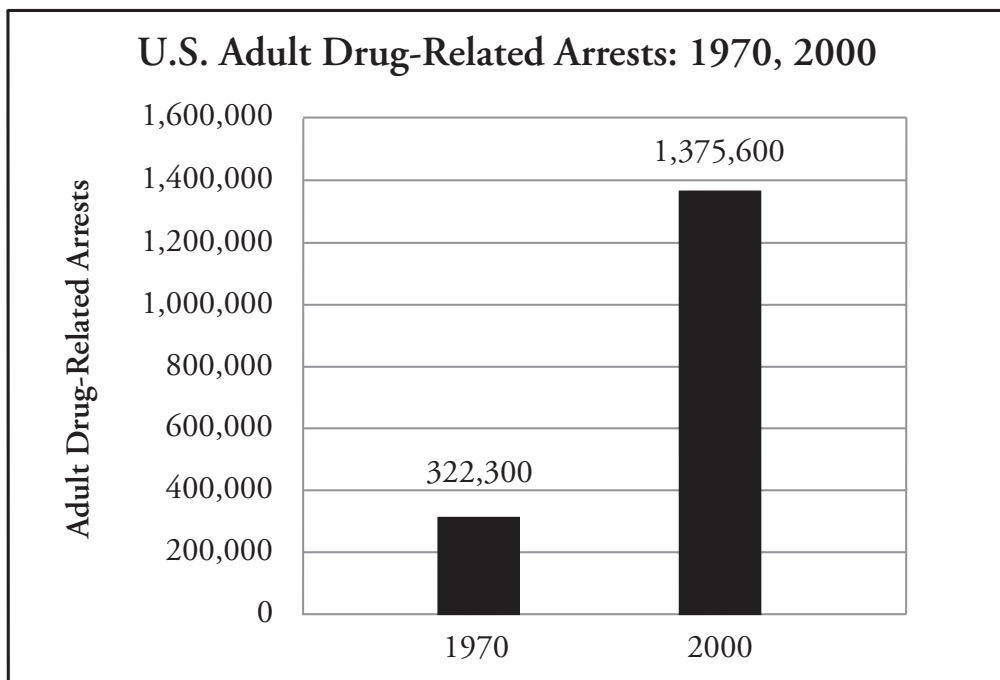
By the close of the twentieth century, New York-style drug laws had been implemented across the nation, and the incarceration rate of inner-city dwellers everywhere escalated dramatically. While in 1970 there had been only 322,300 drug-related arrests in the United States, in 2000 that figure was 1,375,600, and again, the majority of those taken into custody came from inner cities. There were eventually more Detroiters under correctional supervision than there were holding union jobs in the city's auto plants.¹⁴

Law enforcement not only disproportionately targeted cities in its new war on drugs but it also particularly policed the communities of color within them; this, despite extensive and readily available data that these areas were not where most drug trafficking and usage took place. As studies done by the National Institute on Drug Abuse and the National Household Survey on Drug Abuse noted in 2000, not only did "white students use cocaine at seven times the rate of black students, use crack cocaine at eight times the rate of black students, and use heroin at seven times the rate of black students," but whites

¹² Rockefeller believed that the roots of the riot at the Attica State Correctional Facility lay not in legitimate inmate grievances but rather in "the well-organized national effort of revolutionaries." As a result of the forcible retaking of Attica thirty-nine people (both hostages and inmates) were shot to death and hundreds of others were severely wounded. See draft of Nelson Rockefeller speech to be given at the New York State Bar Association, Sept. 24, 1971, folder 3471, box 85, series 33: speeches, record group 15: gubernatorial, Nelson Aldrich Rockefeller Papers (Rockefeller Archive Center, Sleepy Hollow, N.Y.). Joe Persico to the Governor [Nelson Rockefeller], memo on the dedication of new State Bar Association building, Sept. 22, 1971, folder 3466, box 85, series 33: speeches, record group 15: gubernatorial, Rockefeller Papers. For more on the Attica rebellion, see Heather Ann Thompson, "Blinded by a 'Barbaric' South: Prison Horrors, Inmate Abuse, and the Ironic History of American Penal Reform," in *The Myth of Southern Exceptionalism*, ed. Matthew D. Lassiter and Joseph Crespino (New York, 2009), 74–97; and Heather Ann Thompson, "All across the Nation: Urban Black Activism, North and South, 1965–1975," in *African American Urban History since World War II*, ed. Kenneth L. Kusmer and Joe W. Trotter (Chicago, 2009), 181–202. Heather Ann Thompson is also completing a comprehensive history of the Attica uprising and its legacy, under contract with Pantheon Books.

¹³ Aaron D. Wilson, "Rockefeller Drug Laws Information Sheet," *PRDI: Partnership for Responsible Drug Information*, <http://www.prdi.org/rocklawfact.html>. "Before the New York State Legislative Task Force on Demographic Research and Reapportionment: Testimony of Peter Wagner, March 14, 2002," *Prison Policy Initiative*, http://www.prisonpolicy.org/articles/ny_legis031402.pdf.

¹⁴ Tina L. Dorsey and Priscilla Middleton, "Drug and Crime Facts," 2007, *U.S. Department of Justice: Bureau of Justice Statistics*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/DCF.pdf>. By 2010 there were only 14,958 active United Auto Workers members living in Detroit, and in 2007 there were already 24,272 Detroiters under some form of correctional supervision with that number growing each year. Linda Ewing, United Auto Workers Union, telephone conversation with Heather Ann Thompson, July 19, 2010, notes (in Thompson's possession). "1 in 31," 9.



SOURCE: “Drugs and Crime Facts,” Bureau of Justice Statistics Report. NCJ 165148, pp. 61–62. U.S. Department of Justice. Office of Justice Programs. Washington, D.C., <http://bjs.ojp.usdoj.gov/content/pub/pdf/dcf.pdf>.

between the ages of twelve and seventeen were also “more than a third more likely to have sold illegal drugs than African American youth.”¹⁵ In the 1980s alone, however, African Americans’ “share” of drug crimes jumped from 26.9 percent to 46.0 percent, and arrested black juveniles “were 37 percent more likely to be transferred to adult courts, where they faced tougher sanctions.” If convicted, African Americans of every age “were more likely than whites to be committed to prison instead of jail, and they were more likely to receive longer sentences.”¹⁶

As much as criminalizing drugs impacted urban America in general, and poor neighborhoods of color in particular, both spaces were also disproportionately affected after 1970 by an overhaul of state and federal sentencing guidelines related to drug convictions. Notably, the nation’s drug laws were “not passed in isolation”: one of the first major bills calling for mandatory minimum sentences at the federal level was introduced in the U.S. Senate in 1976, followed by similar bills at the state level. Over the next twenty-five years prison terms across the country lengthened substantially. Between the 1980s and the 1990s “the chances of receiving a prison sentence following arrest increased by more than 50 percent” and “the average length of sentences served increas[ed] by nearly 40 percent.”¹⁷

¹⁵ Alexander, *New Jim Crow*, 97; Weiman and Weiss, “Origins of Mass Incarceration in New York State,” 81.

¹⁶ Weiman and Weiss, “Origins of Mass Incarceration in New York State,” 81, 84.

¹⁷ William J. Sabol et al., “The Influences of Truth-in-Sentencing Reforms on Changes in States’ Sentencing Practices and Prison Populations,” April 1, 2002, *Urban Institute*, <http://www.urban.org/publications/410470>

Not only did possession of various illegal drugs eventually guarantee decades behind bars, but so did mere association with people who possessed such contraband. In 1978, for example, Michigan passed a “650 lifer law,” which mandated a life sentence for anyone found guilty of the intent to deliver 650 grams or more of cocaine. By 1999 this law had resulted in two hundred people receiving a life sentence with no chance of parole—some of whom had not had drugs in their possession but were simply in proximity to someone who did. Indicative of how widespread punitive sentencing practices had become during the later twentieth century, by the new millennium “thirty-three states had abolished limited parole (up from seventeen in 1980), twenty-four states had introduced three strikes laws (up from zero), and forty states had introduced truth-in-sentencing laws (up from three).” The cost of implementing mandatory minimum sentences eventually put a serious financial strain on public coffers, and politicians around the country began proposing reforms. In 2009 there were nevertheless more adult Americans serving life sentences (140,610) than at any other time in the country’s history, and nineteen states had recently passed laws that also allowed minors to be sentenced to life without the possibility of parole.¹⁸

Increasingly punitive laws and sentencing affected more than just those accused of committing deeds long agreed to be illegal in America’s cities. By the close of the twentieth century, actions that had earlier not garnered the attention of the nation’s criminal justice apparatus were netting serious sanctions. This played out most clearly in the nation’s urban school districts beginning in the late 1960s. Youth challenges to racial inequality had escalated throughout that decade, targeting numerous civic institutions, including in secondary schools. In response, school district officials across the country not only embraced more punitive policies but also began employing security staffs to enforce them.¹⁹

Throughout the 1960s Baltimore City Schools had experienced a great deal of civil rights activism, and in 1967 district officers decided to bring in a law enforcement presence of twenty-one officers. During the 1970s, and in no small part through resources made available to the city district from the federal Juvenile Justice and Delinquency Prevention Act of 1974, Baltimore City Schools, and other districts like it, dramatically increased the policing of their schools. By 1984 Baltimore had concluded that “security” was an insufficient descriptor for the level of policing it had come to expect of its school officers, so it created the Baltimore School Police Force, which was given additional, unprecedented power in 1991. The Maryland General Assembly determined that year that

.html. Jonathan Erlen and Joseph F. Spillane, eds., *Federal Drug Control: The Evolution of Policy and Practice* (Binghamton, 2004). For the “not passed in isolation” quotation, see Weiman and Weiss, “Origins of Mass Incarceration in New York State,” 86. See Edward M. Kennedy’s introduction, along with Senators John McClellan of Arkansas and Hiram Fong of Hawaii, of Senate Bill 2698, in “Question of Mandatory Prison Sentence to Reduce Crime—Pro and Con,” *Congressional Digest*, 55 (Aug.–Sept. 1976), 204. Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago, 2007), 17.

¹⁸ “The Huge Cost of Harsh Sentences,” editorial, *St. Petersburg Times*, Dec. 22, 2002. “Fight for Justice, One State Group Works Miracles for Many Families,” *Detroit Free Press*, Jan. 4, 1999. “Rethinking the Lifer Law,” *60 Minutes*, <http://www.cbsnews.com/stories/1999/06/04/60II/main49670.shtml>. On how widespread punitive sentencing practices had become in the late twentieth century, see Glenn C. Loury, “Race, Incarceration, and American Values,” in *Race, Incarceration, and American Values*, ed. Loury, 9. Solomon Moore, “Number of Life Terms Hits Record,” *New York Times*, July 22, 2009, <http://www.nytimes.com/2009/07/23/us/23sentence.html>. Stephanie Chen, “Teens Locked Up for Life without a Second Chance,” April 8, 2009, *CNN*, <http://www.cnn.com/2009/CRIME/04/08/teens.life.sentence/index.html>.

¹⁹ Sean Nicholson-Crotty, Zachary Birchmeier, and David Valentine, “Exploring the Impact of School Discipline on Racial Disproportion in the Juvenile Justice Systems,” *Social Science Quarterly*, 90 (Dec. 2009), 1003–18. Some districts, such as Los Angeles, have had a law enforcement presence in the city schools since 1948. On juveniles, race, and the rise of the carceral state, see Murch, *Living for the City*.



A police officer patrolling the halls of El Sereno Middle School in East Los Angeles in 2000. © *Najlah Feanny/Corbis*.

school police officers would be given the same training and be as heavily armed as all other law enforcement personnel in the state.²⁰

The process of criminalizing urban space via urban schools continued into the twenty-first century. The school district of New York City eventually had “the tenth largest police force in the country—larger than the police forces of Washington, D.C., Detroit, Boston, or Las Vegas.” It employed 4,625 school safety agents and stationed two hundred armed police officers in school buildings. As the law-and-order presence grew in city schools across the nation, students were increasingly subject to police scrutiny for infractions ranging from fighting to having food in class, carrying cell phones, skipping classes, and throwing temper tantrums. The subsequent dramatic rise of “arrests for minor noncriminal violations of school rules” in inner-city America not only disrupted urban learning environments but also ensured that the incarcerated population of America’s big cities would become increasingly younger.²¹

²⁰ Dollie Walker, Arthur L. Stinchcombe, and Mary S. McDill, “School Desegregation in Baltimore,” Aug. 1967, report BR-6-1610, *ERIC: Education Resources Information Center*, <http://www.eric.ed.gov/PDFS/ED013168.pdf>. Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 sec. 101 (1974). For the text of this act, especially the “Congressional Statement of Findings,” see *U.S. Department of Justice: Office of Juvenile Justice and Delinquency Prevention*, <http://ojjdp.ncjrs.org/about/ojjjact.txt>. “School Police History,” *Baltimore City Public Schools: School Police*, <http://www.baltimorecityschools.org/21671031716529880/blank/browse.asp?A=383&BMDRN=2000&BCOB=0&C=56274>.

²¹ New York Civil Liberties Union, “Criminalizing the Classroom: The Over-Policing of New York City Schools,” March 2007, http://www.nyclu.org/pdfs/criminalizing_the_classroom_report.pdf. On students subjected to increased police scrutiny, see Bob Herbert, “6-Year-Olds Under Arrest,” *New York Times*, April 9, 2007, http://select.nytimes.com/2007/04/09/opinion/09herbert.html?_r=1. Richard E. Redding, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?,” *Juvenile Justice Bulletin* (Aug. 2008). On the roots of the modern juvenile justice system, see Miroslava Chavez-García, “Defective Delinquents: Youth, Race, and Science in California’s Emerging



A policeman joins a force of nine hundred uniformed officers patrolling New York City subway trains in a new anticrime campaign in 1979. © Bettman/Corbis.

Law enforcement more aggressively targeted adult urbanites who committed petty crimes and violated social norms over the course of the postwar period as well. Acts that had before resulted in misdemeanor citations at worst or, more usually, public scorn, could be considered serious criminal matters by the close of the twentieth century. Whether in the inner cities of southern states or the Midwest, or on the public transportation systems of major northeastern urban hubs, by the close of the twentieth century the list of illegal activities included urinating in public, sleeping outside, begging for food, and consuming food on the train. A 1968 Supreme Court decision, *Terry v. Ohio*, had made it much easier for members of law enforcement to “stop and detain someone when, based on their experience, they have a ‘reasonable suspicion’ that ‘criminal activity may be afoot.’” This legal green light, together with civic governments’ overall new enthusiasm for so-called quality-of-life policing initiatives and zero tolerance policies, escalated the policing of nonviolent urbanite behaviors in the later decades of the twentieth century. In 2006 alone the New York Police Department “stopped and frisked” over half a million men and women.²²

Juvenile Justice System, 1850s to 1940s,” unpublished manuscript (in Miroslava Chavez-Garcia’s possession); and Tony Platt, *The Child Savers: The Invention of Delinquency* (Chicago, 1977).

²² On the ways, for example, sexuality was increasingly criminalized during the postwar period, see Timothy Stewart-Winter, “Raids, Riots, and Rainbow Coalitions: Sexuality and Race in Chicago Politics, 1950–2000” (Ph.D. diss., University of Chicago, 2009). Mark Levin, “Not Just for Criminals: Overcriminalization in the Lone Star State,” April 2005, *Texas Policy Foundation*, <http://www.texaspolicy.com/pdf/2005-04-pp-overcrim.pdf>; “Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities,” July 2009, *National Coalition for the Homeless*; D.C. Code sec. 35-251(b) (2001). See also *Tracey V. Hedgepeth, as the Next Friend to Anshe Hedgepeth v. Washington Metropolitan Area Transit Authority*, No. 03-7149 (D.C. Cir. decided Oct. 26, 2004), <http://www.ll.georgetown.edu/federal/judicial/dc/opinions/03opinions/03-7149a.pdf>. *Terry v. Ohio*, 392 U.S. 1 (1968). On

It is significant that law enforcement bodies of the later postwar period focused their attention overwhelmingly on urban spaces. Although scholars are now well versed in the devastating effect of white flight on postwar inner cities—severely draining them of both census population and income—they have underappreciated the extent to which escalating incarceration rates did this as well. As a Columbia University study of incarceration in the boroughs of New York City found, “Like poverty, incarceration is spatially concentrated; much more than is crime,” indicating clearly that the greater the incarceration rate a given city experienced, the less possibility there was that it could remain socially stable and economically vibrant. By the close of the twentieth century Detroit sent more citizens to prison than any other city in Michigan, and the percentage of Detroit families living below the poverty line was also more than 72 percent higher than the state average. As one local paper put it: “The community los[t] the resources of its young men because so many are jailed.”²³

The criminalization of urban space and the imposition of lengthy prison terms not only rendered an increasing percentage of urbanites unable to contribute to the cities where they grew up, but it also made it difficult for them to provide for the dependents they left behind. According to the Bureau of Justice Statistics, at the close of the twentieth century, “state and federal prisoners were parents to 1,498,800 children under age 18.” By 2002 one in every forty-five minor children had at least one parent in a state or federal prison, and by 2008 “52% of state inmates and 63% of federal inmates reported having an estimated 1,706,600 minor children”—the majority of whom were under the age of ten. That women eventually became the fastest growing population in the nation’s jails and prisons only exacerbated the crisis faced by America’s cities because so many of them were mothers no longer able to care for their young children still at home. One such child particularly haunted Nell Bernstein, a journalist who conducted detailed interviews about the effects of parental incarceration in the 1990s:

I asked him how he had come to be in foster care. He told me that one day the police came to his house and took his mother—he never found out why—and left him at 9-years-old alone with a baby brother. . . . This kid spent two weeks alone, giving his brother a bottle, changing his brother’s diaper. And he remembered that every day, his mother used to take them out for a walk, so every day, he got out the

the effects of *Terry v. Ohio*, see Mary Frances Berry, ed., *Police Practices and Civil Rights in New York City: A Report of the United States Commission on Civil Rights* (Washington, 2000); and Harry G. Levine and Deborah Peterson Small, “Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997–2007,” April 2008, *New York Civil Liberties Union*, http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf, p. 25. Ray Rivera, Al Baker, and Janet Roberts, “A Few Blocks, 4 Years, 52,000 Police Stops,” *New York Times*, July 12, 2010, <http://query.nytimes.com/gst/fullpage.html?res=9E04E5DF173AF931A25754C0A9669D8B63>. Andrew Golub, Bruce D. Johnson, and Eloise Dunlap, “The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City,” *Criminal Public Policy*, 6 (no. 1, 2007), 131–64. On the New York Police Department figures, see Levine and Small, “Marijuana Arrest Crusade,” 6.

²³ “Architecture and Justice,” Sept. 2006, *Columbia University Graduate School of Architecture, Planning, and Preservation: Spatial Information Design Lab*, http://www.spatialinformationdesignlab.org/MEDIA/PDF_04.pdf, p. 9; Clear, *Imprisoning Communities*, 165; Jeffery Fagan, Vivian West, and Jan Holland, “Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods,” *Fordham Urban Law Journal*, 30 (2003), 1551–602. Amy L. Solomon, Gillian L. Thomson, and Sinead Keegan, “Prisoner Reentry in Michigan,” Oct. 1, 2004, *Urban Institute*, http://www.urban.org/uploadedPDF/411172_Prisoner_Reentry_MI.pdf. “State Must Evaluate Its Prison Population, Michigan Spends a Fifth of Its Budget on Corrections,” *Detroit News*, Nov. 21, 2004. Peter Wagner, “Importing Constituents: Prisoners and Political Clout in New York,” April 22, 2002, *Prison Policy Initiative*, <http://www.prisnpolicy.org/importing/>; Jennifer Gonnerman, “Million-Dollar Blocks: The Neighborhood Costs of America’s Prison Boom,” *Village Voice*, Nov. 24, 2004.

stroller and took his brother down the street in the stroller. And finally after two weeks of this, somebody noticed and made a phone call.

The increasing imprisonment of “women who are nonbiological caretakers of dependent children [and] women who are arrested while raising their younger siblings, nieces, and nephews, or children in their extended social network” also adversely impacted inner-city kids.²⁴

Even when inner-city residents got out of prison and returned to their urban communities their status as formerly incarcerated still negatively impacted their children as well as the inner cities in which they lived. When men and women returned to cities such as Detroit or Brooklyn, the first thing they needed was a job to support themselves and their dependents. As a study of several of America’s largest cities revealed in 1996, however, a majority of employers “would not knowingly hire an ex-offender.” Several studies indicate that the formerly incarcerated could have their employment options reduced by as much as 59 percent and, if hired, their annual income reduced by as much as 28 percent, and their hourly wages reduced by as much as 19 percent. The nation’s welfare system failed to mitigate much of this post-incarceration poverty because, after passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, offenders with drug-related felonies were saddled with “a lifetime ban on eligibility for TANF [Temporary Assistance for Needy Families] . . . and food stamps.” Even when the formerly incarcerated still qualified for federal and state aid, there was increasingly less to receive over the course of the later postwar period. Almost a decade before the Clinton administration chose to “end welfare as we know it” in the mid-1990s, expenditures on incarceration had already “surpassed AFDC [Aid to Families with Dependent Children] by 130 percent and food stamps by 70 percent.”²⁵

Mass incarceration also eroded inner-city viability in ways less obvious than reducing urbanites’ incomes and compromising their access to needed welfare resources. The fact that one in ten children in America had one or both parents under correctional supervision by the first decade of the twenty-first century and the reality that such parents heralded so disproportionately from the nation’s urban centers, for example, had vast implications for the educational possibilities of even those city kids who had no connection whatever to the criminal justice system. Such statistics meant that most teachers and

²⁴ Christopher J. Mumola, “Incarcerated Parents and Their Children,” Aug. 2000, *U.S. Department of Justice: Office of Justice Programs*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/iptc.pdf>. “An Estimated 809,800 Inmates in the Nation’s Prisons Were Parents to 1,706,600 Minor Children at Midyear 2007,” press release, Aug. 26, 2008, *U.S. Department of Justice: Bureau of Justice Statistics*, <http://www.ojp.usdoj.gov/newsroom/pressreleases/2008/bjs08101.htm>. “Women in the Criminal Justice System: Briefing Sheets, 2007,” May 2007, *Sentencing Project*, http://www.sentencingproject.org/doc/publications/womenincj_total.pdf; Christina Rathbone, *A World Apart: Women, Prison, and Life behind Bars* (New York, 2006). “Nell Bernstein Asks Us to ‘See’ the Children of Incarcerated Americans,” Jan. 11, 2006, *BuzzFlash*, <http://www.buzzflash.com/interviews/06/01/int06001.html>. Nell Bernstein, *All Alone in the World: Children of the Incarcerated* (New York, 2005). Beth E. Richie, “The Social Impact of Mass Incarceration on Women,” in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, ed. Marc Mauer and Meda Chesney-Lind (New York, 2002), 139.

²⁵ Jennifer Fahey, Cheryl Roberts, and Len Engel, “Employment of Ex-offenders: Employer Perspectives,” Oct. 31, 2006, *Crime and Justice Institute*, http://www.cjinitiative.org/files/ex_offenders_employers_12-15-06.pdf. On the employment options and wages of ex-offenders, see Bruce Western, “The Penal System and the Labor Market,” in *Barriers to Reentry? The Labor Market for Released Prisoners in Post-industrial America*, ed. Shawn Bushway, Michael A. Stoll, and David F. Weiman (New York, 2007), 342, table 11.1; and Bruce Western and Katherine Beckett, “How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution,” *American Journal of Sociology*, 104 (Jan. 1999), 1031. Gwen Rubenstein and Debbie Mukamal, “Welfare and Housing—Denial of Benefits to Drug Offenders,” in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 41. On expenditures for incarceration, see Wacquant, *Prisons of Poverty*, 140, table 9.

students in America's urban classrooms would have to contend to some degree with the social and economic fallout of mass incarceration. As one expert put it, "children of prisoners often suffer from anxiety and attention disorders, or from post-traumatic stress," and the negative behavioral and learning consequences that came from so many kids just having lost "their homes, their safety, their public status and private self-image, their primary source of comfort and affection" affected everyone.²⁶

Similarly, urbanites who had never served time behind bars also had to deal with the negative public health consequences of mass incarceration. According to research scientists, by the close of the twentieth century human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS) was "up to five times more prevalent in American prisons than in the general population," and given that the majority of inmates were eventually released to urban centers, numerous city residents were eventually at a higher risk for contracting the virus. With prison overcrowding leading to major outbreaks of tuberculosis in penal facilities across the country, inner-city dwellers were also at an increased risk of exposure to a disease that only decades earlier had been virtually eliminated. According to one scholar, "Several of the worst outbreaks of tuberculosis documented in the United States" (such as a 1989 "epidemic of drug-resistant tuberculosis in New York City" that took "more than a billion dollars" to bring to an end) had "their roots in overcrowded prisons and jails."²⁷

For America's inner cities, then, the rise of a massive carceral state in the later postwar period had devastating short-term and long-term consequences. Because of mass incarceration, for example, entire urban neighborhoods had atrophied to the point of collapse by the close of the twentieth century. Of all the prisoners released to Wayne County, Michigan, in the year 2000, a full 41 percent returned to only eight particularly devastated zip codes in the city of Detroit. Entire blocks in the New York City borough of Brooklyn were similarly ravaged by mass incarceration, and they too had become, by the new millennium, little more than boarded up wastelands. Soon such urban spaces had a name: "million-dollar blocks," a reference to what it cost taxpayers to house the former inhabitants of these inner-city areas in the nation's penitentiaries.²⁸

²⁶ On educational possibilities, see Rosa Minhyo Cho, "Impact of Maternal Imprisonment on Children's Probability of Grade Retention," *Journal of Urban Economics*, 65 (Jan. 2009), 11–23. One national study "found that almost 70 percent of children who were present at a parent's arrest watched their parent being handcuffed, and nearly 30 percent were confronted with drawn weapons," and many "who had witnessed their mothers' arrests," "suffered classic symptoms of post-traumatic stress syndrome—they couldn't sleep or concentrate, and they had flashbacks to the moment of arrest." See Bernstein, *All Alone in the World*, 3, 4. See also "Incarceration," *Grief Speaks*, <http://www.griefspeaks.com/id68.html>; and Rucker C. Johnson, "Ever-Increasing Levels of Parental Incarceration and the Consequences for Children," in *Do Prisons Make Us Safer?*, ed. Raphael and Stoll, 199.

²⁷ Wil S. Hylton, "Sick on the Inside: Correctional HMOs and the Coming Prison Plague," in *Prison Profiteers: Who Makes Money from Mass Incarceration*, ed. Tara Herivel and Paul Wright (New York, 2008), 179–203. "Study Highlights HIV/AIDS Challenge in American Prison System," *Science Daily*, Sept. 30, 2009, <http://www.sciencedaily.com/releases/2009/09/090929133246.htm>; Ronald Braithwaite, Theodore M. Hammett, Robert M. Mayberry, eds., *Prisons and AIDS: A Public Health Challenge* (San Francisco, 1996); Rucker C. Johnson and Steven Raphael, "The Effects of Male Incarceration Dynamics on Acquired Immune Deficiency Syndrome Infection Rates among African American Women and Men," *Journal of Law and Economics*, 52 (May 2009), 251–93. On tuberculosis risk and outbreaks, see *Plata v. Schwarzenegger*, No. 3:01-cv-01351-THE (N.D. Cal. filed April 5, 2001); *Coleman v. Schwarzenegger*, No. 2:90-cv-00520-LKK-JFM (E.D. Cal. filed April 23, 1990); Sarah Valway, Robert Greifinger, and Mark Papania, "Multidrug-Resistant Tuberculosis in the New York Prison System, 1990–1991," *Journal of Infectious Diseases*, 170 (July 1994); and Robert Greifinger, *Public Health Behind Bars: From Prisons to Communities* (New York, 2009). On "several of the worst outbreaks of tuberculosis" starting in prisons and jails, see Paul Farmer, "The House of the Dead: Tuberculosis and Incarceration," in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 239.

²⁸ Solomon, Thomson, and Keegan, "Prisoner Reentry in Michigan." Gonnerman, "Million-Dollar Blocks."

As the postwar period wore on, America's urban centers were increasingly trapped in a vicious cycle of imprisonment and want, one that both undergirded and ensured civic distress: mass incarceration increased poverty, increased urban poverty led to even more urban incarceration, and so on. According to analysts, as many as 70 percent of the children whose parents were imprisoned at the close of the twentieth century would end up behind bars themselves, and African American children were more than eight times more likely to have a parent in prison than were white children in major cities such as Chicago. Therefore, to understand the origins of urban crisis in the postwar United States (in its myriad manifestations ranging from population loss to escalating poverty to a compromised educational system to poor public health to the ever-widening racial divide) historians must look much more closely at how the American justice system evolved after the 1960s, in general, and at the implications of mass incarceration for urbanites, in particular. Mass incarceration was not simply, as the sociologist Loïc Wacquant suggests, "a political response to the collapse of the ghetto."²⁹ It was a historical phenomenon that—like deindustrialization and white flight—*itself* caused crisis and collapse in America's inner cities.

Mass Incarceration and the Decline of the American Labor Movement

Just as historians have overlooked key connections between the dramatic post-1960s rise in the American prison population and the crisis that subsequently befell U.S. inner cities, so too have we been slow to recognize the ways this turn to mass incarceration adversely impacted the American labor movement and the workers it sought to represent in the later postwar period. Just as the South's economy was transformed, and its workers directly affected, when the leaders of that region embraced a more punitive labor system and locked up unprecedented numbers of African Americans right after the Civil War, so did the national economy, and the American working class as a whole, feel the reverberations of the post-civil rights sixties turn to mass incarceration. In both periods there were important links between the criminalization of space—specifically spaces of color—and calls by the government and private business for unfettered access to a prison labor force. In both eras, when private and public employers managed to secure, and then began to regularly exploit, an unfree labor force, the American labor movement was undermined, the economic security of the free-world working class was compromised, and income as well as racial inequality was actively exacerbated.

The American labor movement's rise to a position of power and prominence remains a central event of the twentieth century. From the earliest days of industrialization, working people struggled to improve the conditions under which they labored as well as to increase their share of the profits extracted from their toil. Although workers made slow progress in this effort during the first couple of decades of the twentieth century, by the 1930s they had forged a powerful labor movement. By the early postwar period that movement had dramatically improved the standard of living and the nature of work

²⁹ Fagan, West, and Holland, "Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods." Mumola, "Incarcerated Parents and Their Children." For Loïc Wacquant's remarks, see Loury, ed., *Race, Incarceration, and American Values*, 63. Other scholars also argue that deindustrialization eroded labor markets, which then led to incarceration. See Western, "Penal System and the Labor Market," 337.

across the United States. Toward the end of the century, however, such labor gains were in serious jeopardy. Whereas union density was at an all-time high soon after World War II, with 35 percent of the nation's work force in a labor union in 1954, by the early 1980s only 20.1 percent were unionized, by 2001 that figure was only 13.5 percent, and by 2008, it was only 8 percent.³⁰

That the American labor movement declined dramatically in the latter third of the twentieth century is well known, and thanks to historians such as Nelson Lichtenstein, Judith Stein, Jefferson Cowie, and others we already know a great deal about why this vital postwar institution lost so much power so precipitously.³¹ Ill-fated bargains with management, union infighting, deindustrialization, and globalization all substantially undermined the postwar labor movement. The dramatic post-1960s rise of the carceral state, however, and, more specifically, the elimination of key restrictions on the use of prison labor as prison populations soared, also figure into this story.

As scholars of convict leasing in the nineteenth-century South have made clear, prisons have long been some of the most exploitative workplaces in America, and thus, the fate of American workers and the history of the American justice system are inexorably linked. Although most people associate convict labor with the nineteenth century and with the South, it bears mention that throughout American history northern penal institutions were also sites of serious convict labor exploitation. As the historian Rebecca McLennan points out, "by the end of the Civil War almost all Northern and Western state prisons were . . . contracting or leasing out the labor of the majority of their prisoners to private interests, and prison contractors were commonly enjoying annual profit margins of upwards of twice their costs." Until the mid-twentieth century, free-world employers had ready access to convict labor, and that cheap labor was so important to the American economy that politicians from both the South and North went to extraordinary lengths to ensure that penal institutions met the needs of private companies.³²

Free-world workers paid dearly for the ability of private companies and states to so easily use prison labor and sell prison-made goods. As the American Federation of Labor put it in 1928, "The manufacture and sale of commodities produced by convict labor in competition with free labor is a menace to working men and women." Eventually, however, such unfair competition "began to rouse those free workers directly affected to act." That activism, particularly during the Great Depression and early New Deal, successfully pressured government officials to institute meaningful restrictions on private employers' use of prison labor as well as on the ability of state and federal prison industries to sell prison-made goods across state lines or in the free-world marketplace.³³

³⁰ U.S. Census Bureau, "Historical Statistics of the United States, Colonial Times to 1970," *U.S. Census Bureau: Statistical Abstracts*, <http://www.census.gov/prod/www/abs/statab.html>; Bureau of Labor Statistics, *Handbook of Labor Statistics, Bulletin 2070* (Washington, 1980). See various January issues for the years 1983–2002 of Bureau of Labor Statistics, *Employment and Earnings*. See also "Change to Win's Agenda for Restoring the American Dream," *Change to Win*, <http://www.changetowin.org/issues.html>.

³¹ Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton, 2002); Judith Stein, *Running Steel, Running America: Race, Economic Policy, and the Decline of Liberalism* (Chapel Hill, 1998); Jefferson Cowie and Joseph Heathcott, eds., *Beyond the Ruins: The Meanings of Deindustrialization* (Ithaca, 2003); Jefferson Cowie, *Capital Moves: RCA's Seventy-Year Quest for Cheap Labor* (Ithaca, 1999).

³² "Table 1: Convicts in Prison, and at Work—By States," in *Statistics of Convict Labor. Advanced Chapters from the Fourth Biennial Report of the Bureau of Labor Statistics of the State of Illinois* (Springfield, Ill., 1886), 44. McLennan, *Crisis of Imprisonment*, 84. Thompson, "Blinded by a 'Barbaric' South."

³³ "Labor Advances Platform Points," *New York Times*, June 11, 1928. Glen A. Gildemeister, *Prison Labor and Convict Competition with Free Workers in Industrializing America, 1840–1890* (New York, 1987), 128. Hawes-Cooper Act, c. 79, 1, 2, 45 Stat. 1084, title 49 U.S.C. 60 (1929); Walsh-Healey Public Contracts Act, as amended,

Laws such as the Hawes-Cooper Act of 1929, the Ashurst-Sumners Act of 1935, and the Walsh-Healey Act of 1936 went a long way toward protecting the American labor movement and allowing it to flourish during and after World War II. This body of legislation did not eradicate prison labor altogether, however. To an important extent the New Deal actually formalized and legitimated the practice of prison labor with the creation of the Federal Prison Industries (FPI) in 1934. Thanks to the FPI, state and federal prisons forever after were in the business of manufacturing clothing, furniture, and other items, albeit only for sale to fellow state and federal government agencies. While New Deal regulations had largely barred private employers from using inmate labor and had blocked the sale of prison-made goods to private interests and across state lines, the federal government and the states in the postwar period were still able to force inmates to work for little or no pay, often under terrible conditions.³⁴

The continued use of prison labor during and after the New Deal did not go unchecked, however. Although free-world workers took little interest in what went on behind prison walls once they managed to secure solid restrictions on the private employer use of convict labor, inmates regularly mobilized to resist their own exploitation. According to the *New York Times*, such prisoner resistance to poor working and living conditions made 1952 “the most explosive year in American prison history.” The riots and strikes of that year only continued, making 1953 equally volatile, with inmates in even the nation’s smallest jails launching sit-downs. In the history of strikes in postwar America this is definitely a missing chapter. Between the 1940s and the early 1970s American prisoners time and again resisted justice officials’ efforts to have their way with a captive work force.³⁵

Although the inmate strikes of the postwar period rarely netted tangible gains (largely because such protests were met with massive force), this activism was nevertheless threatening to corrections officials. Particularly by the late 1960s, as African American demands for better working conditions were growing louder in the workplaces of the nation’s cities as well as its prisons, state and local authorities began clamping down on dissent in both arenas with increased determination.³⁶

Just as the federal government and numerous state legislatures were interested in overhauling criminal laws after the 1960s to strengthen law enforcement’s hand in the wake

41 U.S.C. sec. 35–45 (1936); Ashurst-Sumner Act, 1935, Pub. L. No. 74–215.

³⁴ On prison labor continuing through World War II, see Douglas A. Blackmon, *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York, 2008). On the Federal Prison Industries, see Records of Federal Prison Industries, Inc., 1930–43, Records of the Bureau of Prisons, RG 129.4 (National Archives, College Park, Md.); and “Factories with Fences: 75 Years of Changing Lives,” 2009, *UNICOR*, http://www.unicor.gov/information/publications/pdfs/corporate/CATMC1101_C.pdf.

³⁵ Murray Illson, “Unrest Seething in Many Prisons,” *New York Times*, Feb. 12, 1953. On prisoner resistance, see “17 Convicts Slash Arms: Repeat Act of August to Avoid Work,” *ibid.*, Nov. 15, 1953; George Cable Wright, “Strike by 300 Jersey Prisoners Halts Making of Auto Plates,” *ibid.*, Jan. 31, 1959; and “Virginia Prison Strike Ends,” *ibid.*, July 19, 1968. On the labor history of inmates, see Heather Ann Thompson, “Rethinking Working Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards,” *Labor: Studies in Working-Class History of the Americas* (forthcoming); and Susan Blankenship, “Revisiting the Democratic Possibilities of Prisoners’ Labor Unions,” *Studies in Law, Politics, and Society: Crime and Punishment, Perspectives from the Humanities*, 37 (Dec. 2005), 241–69.

³⁶ On workplace civil rights activism in America’s inner cities in the 1960s and early 1970s, see Matthew J. Countryman, *Up South: Civil Rights and Black Power in Philadelphia* (Philadelphia, 2005); and Heather Ann Thompson, *Whose Detroit? Politics, Labor, and Race in a Modern American City* (Ithaca, 2001). On the strike at Folsom State Prison, see McCarty, “From Con-Boss to Gang Lord.” On a metal shop strike at Attica, see *Attica: The Official Report of the New York State Special Commission on Attica* (New York, 1972), 128. Thompson, “Rethinking Working Class Struggle through the Lens of the Carceral State.” *Jones v. North Carolina Prisoners’ Union*, 433 U.S. 119 (1977). For other materials related to the North Carolina Prisoners’ Labor Union, see boxes 1 and 2, T. J. Reddy Papers, 1967–1985 (Special Collections, J. Murrey Atkins Library, University of North Carolina at Charlotte).



Prisoners protesting their working and living conditions at the Attica State Correctional Facility in New York in 1971. © *Bettman*.

of much civil rights agitation on city streets, so were they also interested in ridding the books of laws that regulated prison labor to strengthen the economic position of both government and business after inmate activism increasingly rocked penal workplaces. At the federal level this meant passing a series of laws in 1979 that dramatically weakened New Deal-era restrictions on the sale of prison-made goods and the use of prison labor.³⁷

³⁷ For the act that undid prohibitions against prison labor and, via its Prison Enhancement Programs, allowed outside business to contract with penal institutions for workers and to sell such prison-made goods across state lines, see Justice System Improvement Act of 1979, Pub. L. No. 96-157, 18 U.S.C. 1761(c) and 41 U.S.C. 35. Gwen Smith Ingle, "Inmate Labor: Yesterday, Today, and Tomorrow," *Corrections Today*, 58 (Feb. 1996), 28, 30, 77; Rob-

This legislative shift had been realized thanks to a mobilization of conservatives desiring greater “privatization of government services” in the early 1970s, as well as to the forging of new partnerships between federal entities such as the National Institute of Justice and the National Institute of Corrections in the same decade. Groups of businessmen had also begun agitating at the state level to gain access to penal work forces. In Oregon, for example, a “consortium, representing businesses in the saw mill, real estate, hospital-ity, and medical supply industries” came together to change state laws that regulated their access to prison labor. Notably, this group had already “backed virtually all of the most aggressively antilabor proposals of the past decade.” Thanks to such employer activism, in the last five years of the twentieth century thirty-six states granted private companies complete access to prison labor.³⁸

As long-standing regulations on prison labor were substantially amended or eliminated in the latter third of the twentieth century, the American economy was also transformed. Not only were scores of new alliances created between prisons and private employers at the federal level, but the work already being done by prisoners in state facilities increased dramatically, both because the government began asking them to produce an ever greater number of products for sale to the private sector and because there had been an explosion of new contracts between private companies and state prisons that allowed for the leasing out of these convicts to perform jobs previously done by free-world workers. By the close of the twentieth century Supreme Court justice Warren Burger’s 1985 wish to transform prisons into “factories with fences” had been fulfilled, with over 80,000 inmates holding “traditional jobs, working for government or private companies and earning 25 cents to \$7 an hour.”³⁹

Many policy analysts and other social scientists of the later twentieth century resisted the notion that employers’ re-embrace of unfree labor negatively affected the free-world

ert D. Atkinson, “Prison Labor: It’s More Than Just Breaking Rocks,” May 2002, *Progressive Policy Institute*, http://www.ppionline.org/documents/prison_labor_502.pdf.

³⁸ For the “push for privatization of government services” quotation, see Judith A. Greene, “Entrepreneurial Corrections: Incarceration as a Business Opportunity,” in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 96. On the new partnership between the National Institute of Justice and the National Institute of Corrections, see the National Institute of Justice report, George E. Sexton, “Work in American Prisons: Joint Ventures with the Private Sector,” July 26, 2004, *National Criminal Justice Reference Service*, <http://www.ncjrs.gov/pdffiles/workampr.pdf>, p. 5. On the Oregon example, see Gordon Lafer, “Captive Labor: America’s Prisoners as Corporate Workforce,” *American Prospect*, Sept. 1, 1999, http://www.prospect.org/cs/articles?article=captive_labor. David Leonhardt, “As Prison Labor Grows, So Does the Debate,” *New York Times*, March 19, 2000, <http://www.nytimes.com/2000/03/19/business/as-prison-labor-grows-so-does-the-debate.html>.

³⁹ In 1977 the federal prison industry branded itself with the name UNICOR and began to advertise to, and seek alliances with, the private sector. Soon almost every state prison had similarly marketed its industrial capacity. See, for example: Kentucky Correctional Industries—“Kentucky’s best kept secret” and New Jersey DEPTCOR—“And you thought we only made license plates.” Private companies that leased convict labor include: Anderson Harwood Floors, Starbucks, Microsoft, Walmart, MicroJet, Nike, Lockhart Technologies, United Vision Group, Chatleff Controls, TWA, Dell Computers, Eddie Bauer, Planet Hollywood, Redwood Outdoors, Wilson Sporting Goods, Union Bay, Elliot Bay, A&I Manufacturing, Washington Marketing Group, Omega Pacific, J. C. Penney, Victoria’s Secret, Best Western Hotels, Honda, K-Mart, Target, Kwalu, Inc., McDonald’s, Hawaiian Tropic, Burger King, “Prison Blues” jeans line, New York, New York Hotel and Casino, Imperial Palace Hotel and Casino, Crisp Country Solid Waste Management Authority, No Fear clothing line, C.M.T. Blues, Konica, Allstate, Merrill Lynch, Shearson Lehman, Louisiana Pacific, Parke-Davis, and Upjohn. Pamela LiCalzi O’Connell, “New Economy: For Consumer Goods Producers, It Is Not So Bad to Be Behind Bars,” *New York Times*, May 14, 2001, <http://www.nytimes.com/2001/05/14/business/new-economy-for-consumer-goods-producers-it-is-not-so-bad-to-be-behind-bars.html>; Sexton, “Work in American Prisons”; Lafer, “Captive Labor.” Warren Burger, “Prison Industries: Turning Warehouses into Factories with Fences,” *Public Administration Review*, 45 (Nov. 1985), 754–57; Leonhardt, “As Prison Labor Grows, So Does the Debate.”



An inmate and Vietnam War veteran making shirts in a Virginia correctional facility in 1985. © *Bettman/Corbis*.

working class. One prominent group of economists, for example, decided that the utilization of prison labor had had a “minimal impact” primarily because prison labor “could never make a significant impact on the Gross Domestic Product.” Significantly, this exact argument had been made in the nineteenth century. As one article stated in 1879, “A good deal is being made . . . of what is called ‘the ruinous competition of convict labor with honest industry’ [but] the actual competition is not very great,” both because the Bureau of Labor Statistics “estimates the value of their production at less than one per cent of the total production of the country” and because “prison labor is by far less efficient than free labor.” There was, however, abundant evidence in both eras to suggest that those who assessed the impact of prison labor may well have defined economic “harm” too narrowly. As the Industrial Commission on Labor admitted in 1900, “While the products of prison labor are not sufficient to sensibly affect the general markets of the country, there is no doubt that in particular localities these products do come into injurious competition with those of outside labor.” A report issued by the Illinois Bureau of Labor Statistics concurred: “The plea is advanced by the apologists for existing systems that the percentage of prison products compared with the entire country is so small as to not be injurious. This idea is completely erroneous . . . Illinois . . . sustained the complete loss of one industry in consequence of the ruinous competition of prison labor.”⁴⁰

⁴⁰ Robert P. Weiss, “‘Repatriating’ Low-Wage Work: The Political Economy of Prison Labor Reprivatization in the Postindustrial United States,” *Criminology*, 39 (May 2001), 266; Frederick W. Derrick, Charles E. Scott, and Thomas Hutson, “Prison Labor Effects on the Unskilled Labor Market,” *American Economist*, 48 (Fall 2004), 74–81. “The Competition of Free Labor,” *New York Times*, Oct. 1, 1879. *The 12th Biennial Report of the Bureau of Labor Statistics of Illinois* (Springfield, Ill., 1902).

There was clear evidence that free-world wages had been cut and jobs had been eliminated as a result of prison labor in the later postwar period as well. Free-world workers who made circuit boards at Lockhart Technologies in Austin, Texas, for example, found themselves unemployed in the mid-1990s because their company figured out that it was more cost-effective to reopen in a private prison thirty miles away. The prison had designed a facility to the company's specifications and charged it rent of only \$1.00 per year. In that same decade a major hospital in Eugene, Oregon, "canceled its contract with a unionized linen service to redirect the work to a prison laundry," while a recycling plant in Georgia laid off its free-world employees so that it could replace "them with prison laborers from a nearby women's prison." Konica Corporation was also drawn to prison labor and eventually gave its copier repair jobs to workers behind bars, because it could pay them between 35 and 47 cents an hour. As the Ohio Civil Service Employees Association, which represented laid-off workers whose jobs had gone to prisoners in that state, put it, "These aren't phantom jobs—these are real jobs, real people."⁴¹

Prison labor was attractive to American employers for more reasons than lower wages; they also did not have to deal with sick days, unemployment insurance, or workman's compensation claims, and they had few liability worries when it came to toxins or accidents in prison workplaces. Conditions were soon so bad in some prison workplaces that the health of guards and inmates alike suffered. Indeed, when complaints finally led to an investigation of a computer recycling operation within several federal prisons, Occupational Safety and Health Administration inspectors found "no evidence that actions were taken to prevent exposure to lead at the outset in the chip recovery process" and further that "no medical exams (including physical examinations) are done on inmates." That employers could dodge safety regulations in prison shops undermined the free-world working class as significantly as did wage competition. In short, because prisoners were unable to demand decent working conditions, and employers saved a substantial amount of money on health and safety protections when they hired them, workers in the free world also found it increasingly difficult to insist upon a safe workplace for fear of losing their jobs.⁴²

Crime clearly paid, at least for some actors in the American economy. Regaining access to prison labor in the later decades of the twentieth century was not the only way that

⁴¹ On the evidence that prison labor had caused wage and job cuts in the free world, see Charles C. Cox and Roger E. Meiners, "Private Employment of Prison Labor," *Journal of Private Enterprise*, 17 (Fall 2001), 18–63. On the move by Lockhart Technologies, see "Prison Labor, Prison Blues," *AFL-CIO Label Letter*, Dec. 16, 1995. On the arrangement between Lockhart Technologies and the private prison, see Dan Pens, "Microsoft 'Outcells' Competition," in *The Ceiling of America: An Inside Look at the U.S. Prison Industry*, ed. Daniel Burton Rose, Dan Pens, and Paul Wright (Monroe, 1998), 118. For the hospital example, see Lafer, "Captive Labor." For the Konica example, see Danny Cahill, "The Global Economy behind Ohio Prison Walls," in *Ceiling of America*, ed. Rose, Pens, and Wright, 110. "Ohio: Ire over Inmate Labor Plan," *New York Times*, April 17, 2009.

⁴² Pat Beall and Chad Terhune, "Job Program at Prison Draws Fire," *Wall Street Journal*, Jan. 15, 1997. Anne-Marie Cusac, "Toxic Prison Labor," *Progressive*, 73 (March 2009), 26–31; Elizabeth Grossman, "Toxic Recycling," *Nation*, Nov. 21, 2005, pp. 20, 22, 24. S. Randall Humm, investigative counsel, U.S. Department of Justice Inspector General, to Bruce Bernard, chief medical officer, Centers for Disease Control and Prevention/National Institute for Occupational Safety and Health, Nov. 27, 2007, *ABC News*, <http://abcnews.go.com/images/Blotter/OIGLetter.pdf>; National Institute for Occupational Safety and Health preliminary report on work conditions at Federal Correctional Institution Elkton, July 16, 2008, *Public Employees for Environmental Responsibility*, http://www.peer.org/docs/doj/08_28_7_elkton_prison_niosh_report.pdf; Elena H. Page and David Sylvain, "Exposure to Hazardous Metals during Electronics Recycling at Four UNICOR Facilities," Dec. 2009, *Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health*, <http://www.cdc.gov/niosh/hhe/reports/pdfs/2008-0055-3098.pdf>. "Federal Prisons, Inc., Annual Report, 2009," *UNICOR*, http://www.unicor.gov/information/publications/pdfs/corporate/catar2009_C.pdf.

business interests profited from the expansion of the carceral state. They also struck gold when it came to building and managing prisons. Indicative of how lucrative the expansion of the carceral state could be, by 2007 Colorado was paying out “almost 95 million dollars a year in taxpayer money to corporate jailers,” and one of the nation’s eighteen private-sector, for-profit, prison-building and management companies, Corrections Corporation of America, posted “revenues of over \$1.4 billion” that year. Crime, and more precisely mass incarceration, also meant major profits for companies that could provide prison goods and services—items ranging from telephones to tampons and tasers. During the later postwar period, annual meetings of the American Correctional Association became little more than trade shows where for-profit firms hawked their goods and services. Whether a business sold bricks and mortar, or barbed wire, or uniforms, or beds, or sophisticated architectural plans for more secure penal facilities, the carceral state was a boon. As Irving Lingo, the chief financial officer for Corrections Corporation of America put it in 2006, “Our core business touches so many things—security, medicine, education, food service, maintenance, technology—that it presents a unique opportunity for any number of vendors to do business with us.”⁴³

The benefits of mass incarceration were also obvious to employers who saw prison expansion as an antidote to the shrinking migrant labor pool of the later postwar period. From Maryland’s crab industry to farms in states such as Colorado, employers flocked to prisoner-workers when their access to cheap immigrant labor began to dry up. Indeed, prisons and the labor they could provide were touted as more lucrative than moving operations to *maquiladoras* or sweatshops. As one study for the National Institute of Justice put it, “inmates represent a readily available and dependable source of entry-level labor that is a cost-effective alternative to work forces found in Mexico, the Caribbean Basin, Southeast Asia, and the Pacific Rim countries.” Such marketing did not escape the notice of the American Federation of State, County, and Municipal Employees, which grimly summed up the situation in 1992: “Convict labor is thus used to directly compete with organized labor and drive down wages.” Even in federal prisons where private companies were required to pay “wages at a rate which is not less than that paid for work of a similar nature in the locality,” unions quickly realized that “employers often do not comply with the prevailing wage requirement of the law.”⁴⁴

⁴³ On the privatization of building and managing prisons, see “Prisons for Profit,” transcript, May 2008, *NOW*, PBS program, <http://www.pbs.org/now/shows/419/transcript.html>; Parenti, *Lockdown America*, 219; Byron Eugene Price, *Merchandizing Prisoners: Who Really Pays for Prison Privatization?* (Westport, 2006); Curtis Blakely, *America’s Prisons: The Movement toward Profit and Privatization* (Boca Raton, 2005); and David Shichor, *Punishment for Profit: Private Prisons/Public Concerns* (Thousand Oaks, 1995). Florida became the first state to contract its entire state prison industry to a private corporation: Prison Rehabilitative Industries and Diversified Enterprises (PRIDE). Dana Joel, “A Guide to Prison Privatization,” May 24, 1988, *Heritage Foundation*, <http://www.heritage.org/research/reports/1988/05/bg650-a-guide-to-prison-privatization>; Wacquant, *Prisons of Poverty*, 74. In the 1990s the Koss Corporation became “a leading supplier of ‘listening accessories’ to the prison market,” and Zenith Electronics, now owned by LG, became one of the leading suppliers of prison televisions housed in a “clear polystyrene cabinet.” Li-Calzi O’Connell, “New Economy.” For the Irving Lingo quotation, see Michael Myser, “The Hard Sell,” *Business 2.0 Magazine*, March 15, 2007, http://money.cnn.com/magazines/business2/business2_archive/2006/12/01/8394995/index.htm.

⁴⁴ Hilary Dick, “Making Mexicans Illegal in Small Town USA,” *Journal of Linguistic Anthropology* (forthcoming, Winter 2011); Stephanie Desmon, “Shortage of Pickers Has Crab Houses Pondering Hiring State Prisoners,” *Baltimore Sun*, April 16, 2009, http://articles.baltimoresun.com/2009-04-16/news/0904150157_1_crab-foreign-workers-prisoners; “Prison Labor,” *State Legislatures*, 33 (June 2007), 14. Sexton, “Work in American Prisons,” 3; Jennifer Grzeskowiak, “Inmate Labor Pays Off for Business, Counties,” *American City and County*, June 1, 2005, pp. 12–14, http://americancityandcounty.com/mag/government_inmate_labor_pays/. Weiss, “‘Repatriating’ Low-Wage Work,” 275. “AFSCME Resolution No. 10: Prison Labor Programs,” June 1992, *American Federation of State, County, and Municipal Employees*, <http://www.afscme.org/resolutions/1992/r30-010.htm>.

While mass incarceration undercut the postwar gains of the American labor movement by dampening the wages of all free-world workers, it particularly eroded the economic standing of African Americans. Even though many thought that “the wage gap between black and white young men” had narrowed substantially over the postwar period, the disproportionate incarceration of African Americans not only hid black unemployment and thus masked real income inequality but it also ensured that such inequality would deepen over time since blacks faced a more severe “wage penalty” than whites when they were finally freed.⁴⁵ Not only did black men find less work than white men when they tried to reenter the free-world labor force, but when they did secure employment their hourly wages were at least “10 percent lower after prison than before.”⁴⁶

Mass incarceration also widened the income gap between white and black Americans because the infrastructure of the carceral state was located disproportionately in all-white rural communities. The Adirondack district of upstate New York only had two prisons in the early 1970s, but by the late 1990s it had eighteen correctional facilities and another under construction. Republican state senator Ronald Stafford had worked hard to secure these many new penal institutions because his district—formally a vibrant mining, logging, dairy farming, and manufacturing area—endured a per capita income “40 percent lower than the state’s average.” Seeking similar economic relief, the small midwestern town of Ionia, Michigan, eventually housed six state prisons, and the state of California, which had built only twelve prisons between 1852 and 1964, built twenty-three more after 1984.⁴⁷

Whenever a prison came to a rural white community it certainly created jobs, and given that a corrections officer’s salary could be 50 percent higher than that paid to most other unskilled workers, this expansion of the carceral state had the potential to benefit key segments of America’s white working class. By 2006 the department of corrections had become California’s “largest state agency,” employing 54,000 people; across the nation as a whole, state, federal, and private penal facilities were employing more people than any Fortune 500 company. Not only did whites enjoy new employment options with the boom in prison growth but areas that received new penal facilities also reaped other less obvious benefits simply because prisoners inflated the region’s population. In 1990, when the presence of a large prison artificially boosted the census population of Coxsackie, New York, by 27.5 percent, its recorded median income dropped substantially from what it had been in the previous census year. As a result, the overwhelmingly white resident population became “eligible to receive more funding from the federal Department of Housing and Urban Development,” such as that which came from Community Development Block Grants.⁴⁸

⁴⁵ Bruce Western, Becky Pettit, and Josh Guetzkow, “Black Economic Progress in the Era of Mass Imprisonment,” in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 175, 178; David F. Weiman, Michael A. Stoll, and Shawn Bushway, “The Regime of Mass Incarceration: A Labor-Market Perspective,” in *Barriers to Reentry?*, ed. Bushway, Stoll, and Weiman, 42.

⁴⁶ Becky Pettit and Christopher J. Lyons, “Status and the Stigma of Incarceration: the Labor-Market Effects of Incarceration, by Race, Class, and Criminal Involvement,” in *Barriers to Reentry?*, ed. Bushway, Stoll, and Weiman, 221. Loury, “Race, Incarceration, and American Values,” 20.

⁴⁷ On the growth of prisons in upstate New York, see Eric Schlosser, “The Prison-Industrial Complex,” *Atlantic Monthly*, 282 (Dec. 1998), <http://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/4669/>. Tracy Huling, “Building a Prison Economy in Rural America,” in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 207; Gilmore, *Golden Gulag*, 7.

⁴⁸ Gilmore, *Golden Gulag*, 10; Leonhardt, “As Prison Labor Grows, So Does the Debate.” Huling, “Building a Prison Economy in Rural America,” 211.

While there is no question that whites benefited disproportionately from the rise in income that the expansion of the carceral state had produced, these gains did not offset the broad and deep economic losses that their communities had in fact experienced as a result of mass incarceration. Although corrections-commissioned studies sold the idea that rural outposts and small towns had much to gain from expanding the carceral state, those locales benefitted far less than they had hoped. In Corcoran, California, for example, corrections officials had promised local residents that their town would prosper and “gain more than 950 people in 353 households” if they built a prison. Ultimately, however, “fewer than 10 percent of the jobs at the prison were filled by Corcoran residents,” and the city’s housing vacancy rate, which, at the height of a major economic depression in 1977, had been 3.31 percent, rose to 7.5 percent by 1989.⁴⁹

Not only were there fewer jobs for “low-wage workers in struggling rural areas” than had been promised, but the meager gains in employment they did secure were often undercut by the fact that the other local employers with jobs that did need filling were, ironically, turning to prison labor rather than to the resident white labor pool. In short, when cities such as Coxsackie wanted community centers painted, blacktop sealed, or other projects done “for local government, churches, hospitals, [and] libraries,” the many white residents who needed those jobs simply could not compete with area inmates who could be paid “an industrial rate which amounts to 42 cents an hour.” As one study of rural prison towns by the policy analyst Tracy Huling concludes, “local governments and other organizations save money on work they would otherwise have had to contract out to workers at a prevailing wage, prison labor may result in displacement of workers in these communities and can deepen local poverty.”⁵⁰

Ultimately, then, although white workers were able to benefit from the expansion of the carceral state in ways that black workers could not, prison employment never came close to replacing the living wages and decent benefits that U.S. workers had enjoyed before the turn to mass incarceration. When workers in the coal mining region of southern Appalachia, for example, lined up for the jobs that the nine state and three federal prisons in their region might provide, none could expect anywhere near the wages they had enjoyed as miners and members of the United Mineworkers Union of America.⁵¹ The carceral state had given even those workers who enjoyed the privilege of whiteness, those workers whose race had afforded them at least a small slice of the carceral pie, far less than they had before, either as union members or as mere beneficiaries of organized labor’s ability to set higher wage standards across the nation.

Although scholars still await the sufficiently complex data that will allow them to ascertain the exact toll that the later twentieth-century re-embrace of prison labor had on the American working class, the history of the American justice system and the history of the American economy are clearly intertwined in ways worthy of historians’ attention. Why did unions such as the United Auto Workers lose so many members in the latter decades of the twentieth century? Why did so many service-sector workers become unemployed in this same period? These questions simply cannot be answered without reckoning with the fact that federal prisons were, by the 1990s, “making \$150 million in automobile parts” and were also newly allowed to sell services “to the private commercial sector.”⁵² To

⁴⁹ Gilmore, *Golden Gulag*, 152, 159.

⁵⁰ Huling, “Building a Prison Economy in Rural America,” 203, 204, 204, 211.

⁵¹ *Ibid.*, 199.

⁵² Federal Prison Industries, Inc., “Hoover’s Company Records—In-depth Records,” April 2, 2010, available

be sure, organized labor found it almost impossible to withstand the deleterious effects of deindustrialization and globalization in the postwar period, but mass incarceration also mattered to the fate of the American labor movement in this era.⁵³

Mass Incarceration and the Rise of the Right in Postwar America

As the historian Lawrence Friedman reminds us, “the history of criminal justice is not only the history of the forms of rewards and punishment,” it is also “a history of power.”⁵⁴ Thus, from a more careful examination of postwar justice, policy historians can not only learn more about why cities and workers lost significant power during the later twentieth century but we also can gain needed new perspective on why political power shifted the way that it did in that same period. More specifically, we are given an opportunity to think in completely new ways about why the politics of postwar liberalism—the political ethos that had dominated the nation since the 1930s—became so overshadowed by the politics of conservatism as the twentieth century came to a close.

Although there is widespread agreement among historians of the period that postwar liberals and the Democratic party lost significant ideological and policy ground to the Right during the latter part of the twentieth century, there is little consensus regarding why this happened. One influential argument, however, is that Americans moved rightward in response to rising crime rates and an increasing feeling among the nation’s working-class and middle-class taxpayers that the Democratic party simply did not take this threat seriously. The writers Thomas Edsall and Mary Edsall made this case forcefully in their 1992 study of American politics, *Chain Reaction*. According to the Edsalls, a clearly identifiable “chain of events” in the 1960s led “a substantial segment of the American electorate to the right,” and a critical link in this chain was the “abrupt rise in rates of black crime.” Writing in 2007, the historian Michael Flamm also emphasized the pivotal role played by white working-class and middle-class concern “over street crime, urban riots, and political demonstrations” in the transformation of postwar politics. Their anxiety, he argued, was “at fever pitch” in the 1960s, and thus “the liberal defeat was virtually inevitable.”⁵⁵

There are elements of this argument that are valuable. This scholarship has, for example, deftly captured the deep-seated fears of many Americans in this period, and without question, perception was important to the evolution of postwar political ideology and party practice. But perception was not necessarily reality, and historians must more care-

at LexisNexus.

⁵³ AFL-CIO Executive Council, “The Exploitation of Prison Labor,” May 7, 1997, *Southern Automotive Wholesalers*, <http://www.southernautomotive.com/fpi/afciopf1.htm>.

⁵⁴ Friedman, *Crime and Punishment in American History*, 10.

⁵⁵ The book that first focused historians’ attention on this moment of political transformation was Steve Frasier and Gary Gerstle, eds., *The Rise and Fall of the New Deal Order, 1930–1980* (Princeton, 1990). For works that connect rising crime rates and the fall of liberalism, albeit in very different ways, see Jonathan Rieder, *Canarsie: The Jews and Italians of Brooklyn against Liberalism* (Cambridge, Mass., 2005); Allen J. Matusow, *The Unraveling of America: A History of Liberalism in the 1960s* (New York, 1987); Thomas Byrne Edsall and Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York, 1992); Tamar Jacoby, *Someone Else’s House: America’s Unfinished Struggle for Integration* (New York, 2001); Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York, 2007); Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York, 2008); Jonathan M. Schoenwald, *A Time for Choosing: The Rise of Modern American Conservatism* (New York, 2001); and Maurice Isserman and Michael Kazin, *America Divided: The Civil War of the 1960s* (New York, 2007). Edsall and Edsall, *Chain Reaction*, 48. Flamm, *Law and Order*, 168.

fully examine how the politics of crime and punishment played out in the postwar period to determine that reality.⁵⁶ A closer look at the politics of crime and punishment in the latter third of the twentieth century reveals that, somewhat ironically, historians have failed to historicize “crime” sufficiently and, as a result, they have missed the extent to which mass incarceration, rather than crime, undergirded the Right’s rise to power in the later postwar period.

From one perspective Americans might have had good reason to fear for their safety as the 1960s unfolded. Whereas the national homicide rate was 5.5 per 100,000 in 1965, by 1968 it had risen to 7.3 per 100,000. What is more, this increase followed decades of remarkably stable crime rates overall. The nation’s citizenry was not, however, experiencing a crime wave, and even this sort of jump in the murder rate cannot explain Americans’ turn away from the Democratic party and their embrace of law and order. Certainly, the 1968 murder rate of 7.3 per 100,000 was significant, but in 1921 it had been 8.1 per 100,000 and in 1933 it had been 9.7 per 100,000. Furthermore, in major cities such as Detroit, substantially fewer murders were committed in 1965 than a decade earlier. In fact, if one looks at the entire twentieth century, it is clear that Americans of the mid-1960s—the years when the crime issue first took center stage in national political discourse—were experiencing the lowest homicide rate since 1910.⁵⁷

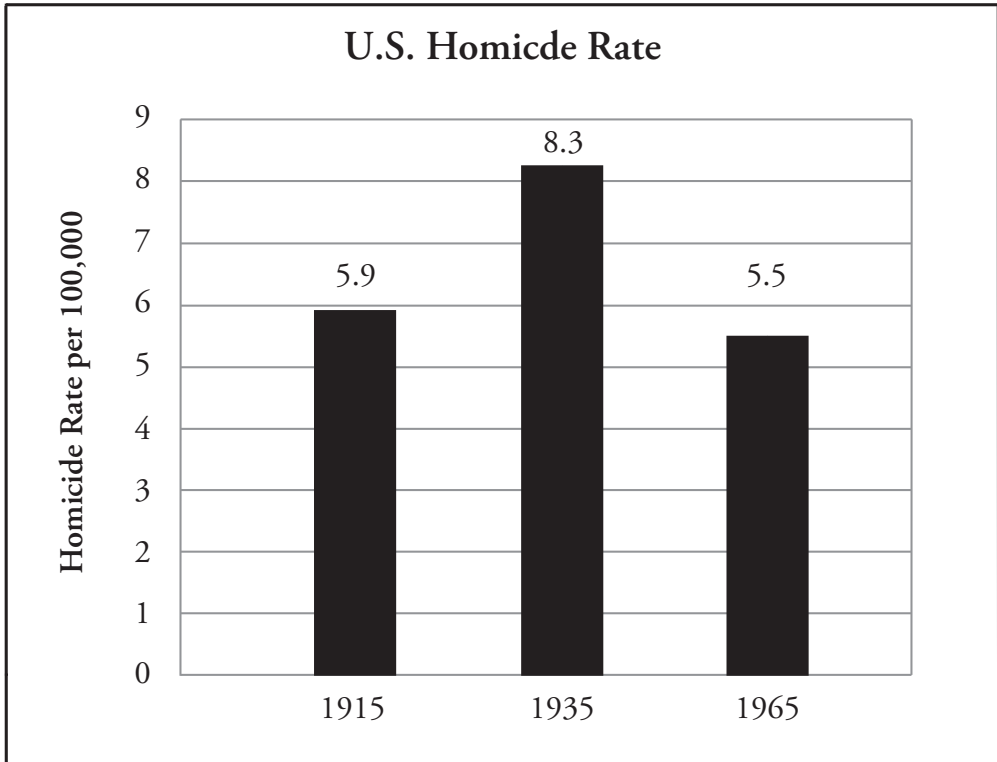
Still, crime rates did begin a steady upward rise in the latter years of the 1960s. It is important, however, to take a much closer look at the crime statistics of America’s largest cities for those years because the way that cities counted crime changed dramatically in the second half of the 1960s. After 1965, thanks to a new federal commitment to fighting crime, local law enforcement could net substantial infusions of money and equipment by demonstrating that crime was on the rise in their area. Significantly, when crime rates began to inch up in Detroit in the later 1960s, even the city’s mayor admitted that “new methods of counting crime” had played an important role in “distorting the size of the increase.”⁵⁸

Not only were Americans less likely to be murdered in the 1960s than they had been in earlier decades, but they were more likely to be murdered *after* the nation began funding a more punitive law-and-order state. By creating urban crises and by undercutting gains made by the American working class, mass incarceration had created a greater crime problem in America. Prisons not only impoverished people, leading them to commit more

⁵⁶ The political scientist Vesla Weaver strongly cautions against “the simplistic assumption that increases in crime” were behind the vast changes that postwar political historians seek to explain. Such a focus on crime, she notes, “ignores the politicization of the issue.” The criminologists Dennis Loo and Ruth-Ellen Grimes also note the importance of the “media, public officials, and pollsters in shaping the prevailing view about crime during the 1960s.” Weaver, “Frontlash,” 230–65; Dennis D. Loo and Ruth-Ellen M. Grimes, “Polls, Politics, and Crime: The ‘Law and Order’ Issue of the 1960s,” *Western Criminology Review*, 5 (no. 1, 2004), 50–67.

⁵⁷ “Key Facts at a Glance: Homicide Rate Trends,” *U.S. Department of Justice: Bureau of Justice Statistics*, <http://bjs.ojp.usdoj.gov/content/glance/tables/hmrrtab.cfm>. “Major Crimes by Precinct,” in *Annual Report for 1955*, by Detroit Police Department (1955) (Detroit Police Department Museums and Archives Unit, Detroit, Mich.); “Total Crime and Prosecution Arrests—Twenty-five Year Comparison,” *ibid.*

⁵⁸ On the specific resources that became available to local law enforcement from the Law Enforcement Assistance Administration, see Records of the Office of Law Enforcement Assistance, 1965–1968, Records of the Office of Administration, 1965–1976, Records of the Office of the Administrator, 1967–1977, RG 423.2, 423.3, 423.4 (National Archives, Washington, D.C.). “Detroit’s Mayor Assails Critics,” *New York Times*, May 18, 1967, p. 33. For more on the manipulation of crime in the 1960s, see Heather Ann Thompson, “Rethinking the Politics of White Flight in the Postwar City: Detroit, 1945–1980,” *Journal of Urban History*, 25 (Jan. 1999), 163–98; and Gebhard Long et al., “Detroit Police Department—A Research Report on Previous Studies; Criminal Statistics; and Police Technology, Productivity, and Competence,” May 1970, box 37, Kenneth Cockrel/Sheila Murphy Cockrell Collection (Walter Reuther Library of Labor and Urban Affairs, Detroit).

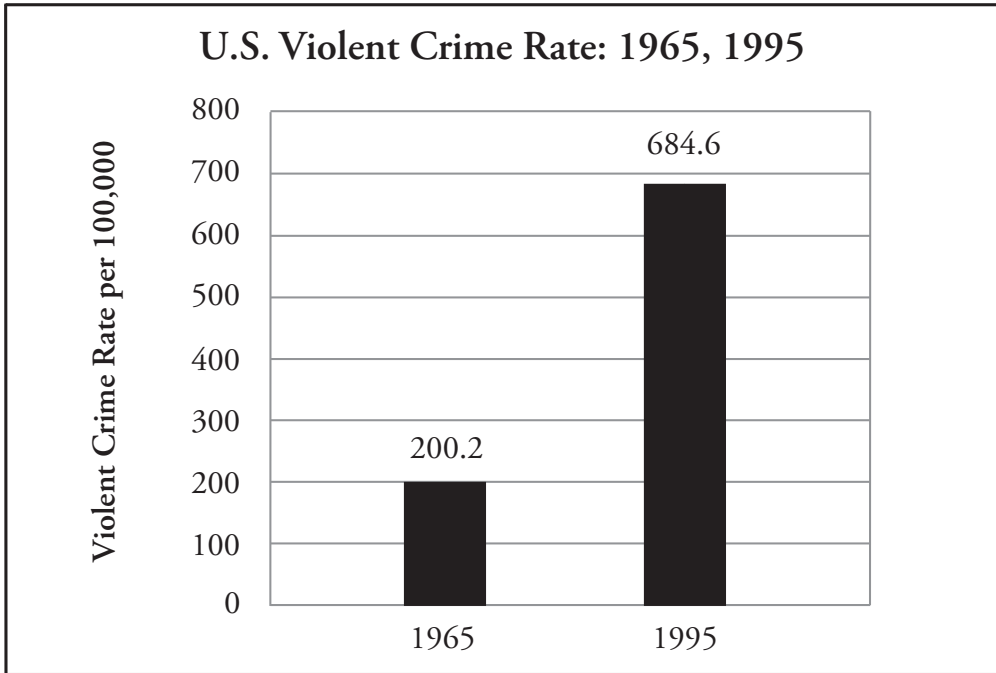


SOURCE: "Homicide Rate Trends, 1900–1926," Bureau of Justice Statistics, <http://bjs.ojp.usdoj.gov/content/glance/tables/hmrrtab.cfm>.

crimes of necessity, but they also made people more violent and antisocial. Not surprisingly then, the homicide rate jumped from 6.8 per 100,000 in 1967, when Lyndon B. Johnson was heading into his last year in office, to 10.5 per 100,000 in 1991, after more than a decade of solidly conservative rule, a thorough retreat from the liberal welfare state, and the unprecedented buildup of the carceral state. Moreover, while the violent crime rate in 1965 was 200.2 per 100,000, it grew to 556.6 in 1985 and to 684.6 in 1995.⁵⁹

Even if crime did not become a serious problem in America until much later in the twentieth century, and even if voters in the sixties were, as the sociologist David Garland suggests, actually reacting more to media hype and their own racial paranoia than to real threats to their safety, crime was nevertheless much on their minds. Contrary to scholarly claims that the Democratic party failed to "forthrightly acknowledge" Americans'

⁵⁹ Amy E. Lerman, "The People Prisons Make: Effects of Incarceration on Criminal Psychology," in *Do Prisons Make Us Safer?*, ed. Raphael and Stoll, 168. On trends in the national murder rate, see "Key Facts at a Glance." Data at the state level is also revealing. The homicide rate in New York was 5.4 per 100,000 in 1967; in 1987 it was 11.3. In Michigan the homicide rate was 6.5 in 1967; in 1987 it was a record 12.2. See "Crime—State Level: Trends in One Variable," *U.S. Department of Justice: Bureau of Justice Statistics*, <http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/TrendsInOneVar.cfm>. On the rates of violent crime over time, see "Crimes Known to the Police by Type and Area: 1965," in *Statistical Abstract of the United States: 1967*, by U.S. Department of Commerce, Bureau of the Census (Washington, 1967), 149, table 209; "Crimes and Crime Rates by Type of Offenses: 1985–1995," in *Statistical Abstract of the United States: 1997*, by U.S. Department of Commerce, Bureau of the Census (Washington, 1997), 201, table 313; and "United States Crime Rates, 1960–2009," *Disaster Center*, <http://www.disastercenter.com/crime/uscrime.htm>.



SOURCE: "United States Crime Index Rates per 100,000 Inhabitants, 1960–2009," Data: Federal Bureau of Investigation, *Uniform Crime Reports*, <http://www.disastercenter.com/crimeluscrime.html>.

concern with crime, however, liberal leaders did not bury their heads in the sand on this issue.⁶⁰ Despite the fact that the crime rate was rather unremarkable compared with that of previous decades, Democratic politicians at the local and national levels focused substantial attention on the issue; they not only took great pains to speak to constituent fears about safety but they also fueled them.

President Johnson tackled the issue of crime head on when he spoke to Congress and the nation in March 1965, insisting that "streets must be safe" and that "homes and places of business must be secure." As important, he assured the public that he saw "the preservation of law and order" as "one of the most legitimate functions of government." A year later he again faced the nation, passionately acknowledging that "the fear of crime marks the life of every American" and that such fear made law-abiding citizens "afraid to walk city streets by night or public parks by day." Liberal governors and mayors also took pains to empathize with the public's fear of crime and to assure their constituents that they too were deeply concerned that the nation had entered "a new era" of criminality. Notably, such leaders did much more than simply recognize citizen concern that the country was becoming less safe. As early as 1965, Michigan's Democratic party was endorsing important crime-fighting measures, and it helped pass a major state law that was crafted specifically "to provide for additional costs in criminal cases; to provide for the establishment of

⁶⁰ As David Garland points out, the public was making decisions not based on "crime itself, or even to the officially recorded rates," but rather on the ways "crime [was] typically represented [in the media] and the collective representations that these media establish[ed] over time." Garland, *Culture of Control*, 158. Edsall and Edsall, *Chain Reaction*, 55.

the law enforcement officers training fund; and to provide for disbursement of allocations from the law enforcement officers training fund to local agencies of government participating in a police training program.”⁶¹ With such legislation the party made it clear that that it was committed to providing cities with the resources they needed to combat crime effectively.

The commitment to fighting criminality with specific laws and meaningful infusions of capital existed at the federal level as well. President Johnson did not merely speak of the need for a safer society and for tougher measures to achieve it; he also made it clear that he would earmark substantial resources for beating back the lawlessness that inflicted so much “death, injury, suffering and anguish” in the United States. Crime, he indicated in actions as well as words, was something that “a truly free people cannot tolerate.” In fact, the Johnson administration created the largest crime-fighting bureaucracy the nation had ever seen. Soon after taking office, Johnson oversaw passage of the Law Enforcement Assistant Act (LEAA) and created a national crime commission staffed by a blue-ribbon panel that was committed to probing “fully and deeply into the problems of crime in our nation.” In 1967 he endorsed the sweeping District of Columbia Crime Bill and issued a voluminous report on crime, “The Challenge of Crime in a Free Society,” which recommended, among other things, that the federal government provide more financial assistance to state and local governments for law enforcement. In 1968 the Johnson administration passed the Omnibus Crime Control and Safe Streets Act of 1968. Even though Johnson had grown increasingly ambivalent about this piece of legislation as its more rehabilitative components were watered down in committee, when the time came to sign it he did so most willingly. In his words, “I signed the bill because it responds to one of the most urgent problems in America today—the problem of fighting crime in the local neighborhood and on the city street.” Only four senators and seventeen representatives in a Congress that was overwhelmingly Democratic voted against this sweeping legislation.⁶²

This was not simply, as some have argued, “the Democratic leap upon the law and order bandwagon.” There is little question that “law and order” became the platform on which many conservative politicians sought elected office from the mid-1960s onward, but postwar liberals were some of the first to flesh out that platform and give it substance on the ground.⁶³ The Democratic party of the 1960s had its own clearly ar-

⁶¹ Lyndon Baines Johnson, “Special Message to the Congress on Law Enforcement and the Administration of Justice,” March 8, 1965, Papers of Lyndon Baines Johnson, Presidential Documents Archive, American Presidency Project, <http://www.presidency.ucsb.edu/ws/index.php?pid=26800>. Lyndon Baines Johnson, “Special Message to the Congress on Crime and Law Enforcement,” March 9, 1966, *ibid.*, <http://www.presidency.ucsb.edu/ws/index.php?pid=27478>. “Detroit’s Mayor Assails Critics,” 33. Commission on Law Enforcement Standards Act, 1965 Mich. Pub. Acts 203, <http://www.legislature.mi.gov/%28onvoykyj1nezgnxf4ywgly2%29/documents/mcl/pdf/mcl-Act-203-of-1965.pdf>.

⁶² Johnson, “Special Message to the Congress on Crime and Law Enforcement.” Johnson, “Special Message to the Congress on Law Enforcement and the Administration of Justice.” Law Enforcement Assistant Act, of 1965, Pub. L. No. 89-197, 79 Stat. 2135 (1965). On Lyndon B. Johnson’s national Commission on Law Enforcement and Administration of Justice, created in 1965, see the commission’s final report, President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, 1967). District of Columbia Omnibus Crime Bill, Pub. L. No. 90-226, 81 Stat. 734 (1967). President’s Commission Report, *The Challenge of Crime in a Free Society* (Honolulu, 2005). Omnibus Crime Control and Safe Streets Act, Pub. L. No. 90-351, 82 Stat. 197 (1968). Simon, *Governing through Crime*, 54.

⁶³ Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York, 1997), 38. Most interpretations suggest that Barry Goldwater ushered in the nation’s law-and-order moment with his acceptance speech on July 16, 1964, at the Republican National Convention in San Francisco. See Flamm, *Law and Order*, 36; and Gary Donaldson, *Liberalism’s Last Hurrah: The Presidential Campaign of 1964* (Armonk, 2003), 252. Elaine Tyler May, “Gimme Shelter: Do-It-Yourself Defense and the Politics of Fear,” in *The Cultural Turn in U.S. History: Past, Present, and Future*, ed. James W. Cook, Lawrence B. Glickman, and Mi-



President Lyndon B. Johnson submits a twenty-three-point anticrime program to Congress in 1968. © Bettman/Corbis.

articulated anxieties about social disorder and its own discomfort with African Americans' new determination to achieve meaningful social and economic equality by any means necessary—concerns that hardening laws and strengthening law enforcement directly addressed. By 1968 twenty-one states had received sophisticated new equipment to quiet civil disturbances, as well as new funding to train more police officers in riot control and more “correctional officers in prison, probation, and probation work” because the Johnson administration itself believed that the country needed more law and order. Indeed, thanks to the Democratic Party’s creation of the LEAA the federal government was able to spend approximately \$7.5 billion to beef up the nation’s law-and-order apparatus in little more than a decade.⁶⁴ Ultimately, postwar liberals had been high-ranking generals in the nation’s new war on crime, not its unhappy conscripts.⁶⁵

In ways deeply ironic, however, the very law-and-order era that the Democratic party of the 1960s had actively, and even proactively, ushered in when it had created entities such as the LEAA, would be the party’s undoing. Democratic politicians had failed to predict the extent to which fueling fears of crime would eventually undermine the politics of postwar liberalism in ways structural. In short, mass incarceration, the ultimate and

chael O’Malley (Chicago, 2008), 226.

⁶⁴ “Annual Report to the President and the Congress on Activities under the Law Enforcement Assistance Act of 1965 (3rd).”

⁶⁵ Edward Kennedy was one of the strongest advocates of mandatory sentencing. See “Question of Mandatory Prison Sentence to Reduce Crime,” 204. Abstract of “Annual Report to the President and the Congress on Activities under the Law Enforcement Assistance Act of 1965,” April 1968, available for order at *U.S. Department of Justice: National Criminal Justice Reference Service*, <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=368>.

most devastating legacy of the nation's new war on crime, eventually weakened the liberal (and particularly the black liberal) vote in America, while simultaneously strengthening the conservative (and particularly white conservative) vote, to an extent that historians have yet to appreciate.

The most direct and obvious mechanism by which the phenomenon of mass incarceration undermined African American voting power was legislation that barred those with criminal records from the ballot. As historians of the nineteenth century have shown, the most significant expansion of legal barriers to the franchise came right after the Civil War. By criminalizing African American spaces in the wake of the Civil War, white southerners had not only ensured themselves a large work force to tend fields and rebuild their war-torn region but they had also severely circumscribed the potential threat of black suffrage. Between 1865 and 1900, the same period that southern prisons became filled with African Americans, "19 states adopted or amended laws restricting the voting rights of criminal offenders."⁶⁶

Just as laws disfranchising convicts proliferated in the wake of the Civil War, so too did they multiply almost a century later in the wake of the civil rights movement. The most significant disfranchisement decision of the post-World War II era was handed down by the U.S. Supreme Court in 1974 in *Richardson v. Ramirez*. Writing the majority opinion for the Court, Justice William Rehnquist "declared that disfranchisement statutes are exempt from the stringent standards of scrutiny ordinarily applied to voting restrictions" because section 2 of the Fourteenth Amendment stipulates that a citizen's right to vote could not be revoked, "except for participation in rebellion, or other crime." The irony that this language was written into the Fourteenth Amendment to protect African American voting rights after the Civil War seemed to have escaped the Court. Following *Richardson v. Ramirez*, states across the country began passing laws that disproportionately disfranchised African Americans. By the year 2000, 1.8 million African Americans had been barred from the polls because of felon disfranchisement laws and, as one legal scholar pointed out, "the potential black electorate" had been "decimated."⁶⁷

The proliferation of such laws was not the only reason African American votes were diluted in the age of mass incarceration. The way that the U.S. Census Bureau calculates population came to undermine black political power as well. The census has always counted prisoners as residents of the counties where they are incarcerated, even though these prisoners could not vote. This rule mattered little in the earliest decades of the twentieth century, when few citizens lived behind bars. By the later postwar period, however, it had come to matter a great deal. Just as inner city vitality was sapped when increasing percentages of urbanites were sent to prisons in rural counties—in turn giving those all-white areas claims on government aid that had formerly been theirs—so too did urban spaces of color lose political power when they, in effect, were forced to give the votes of the incarcerated to those who confined them.⁶⁸

⁶⁶ Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York, 2006), 55.

⁶⁷ Pippa Holloway, "Disfranchised for Crime: Voting Rights and Criminal Convictions in the South, 1865–1920" (unpublished manuscript) (in Pippa Holloway's possession). *Richardson v. Ramirez*, 418 U.S. 24 (1974). On William Rehnquist's opinion, see Elizabeth A. Hull, *The Disenfranchisement of Ex-felons* (Philadelphia, 2006), 99. U.S. Const. amend. XIV, sec. 2. Pamela S. Karlan, remarks in forum, in Loury, *Race, Incarceration, and American Values*, 48.

⁶⁸ Gary Hunter and Peter Wagner, "Prisons, Politics, and the Census," in *Prison Profiteers*, ed. Herivel and Wright, 80–89. Todd Clear, "The Problem with 'Addition by Subtraction': The Prison-Crime Relationship in Low

By the year 2000 African American voting power had been purloined by numerous all-white counties in the United States—dozens of which eventually owed more than 21 percent of their population to prisoners. Thirty-five percent of the population of Crowley County, Colorado, were in fact disfranchised prisoners, while in Concho County, Texas, the figure was 33 percent, and in Union County, Florida, it was 30 percent. Whereas overwhelmingly white areas of the United States such as Lassen County, California (where prisoners made up 25.49 percent of the census population in 2000), came to enjoy greater political clout, people of color in Oakland and Los Angeles (whose neighborhoods had lost census population in the wake of mass incarceration) saw their power weaken. In ways quantifiable, the mass incarceration of the later twentieth century had given whites an amount of political power that had not been so disproportionate since before the Civil War, when they had been able to count each African American body as three-fifths of a white person for the purposes of political representation. Ultimately, the rise of the carceral state had undercut one of the most important victories of the American civil rights movement, the Voting Rights Act of 1965.^{69 70}

The fact that 98 percent of some states' prison cells were by 2003 located not just in all-white counties but specifically in Republican state senate districts also had very real implications for the Democratic party. Indeed, one could argue that distorted population counts, had, over time, empowered the Republican party to a degree that no single redistricting effort could have. By 2008 a full seven rural state senate districts in upstate New York, overwhelmingly Republican areas, "would not meet the U.S. Supreme Court's minimum population requirements without counting the prison population as local residents." Significantly, for the criminalization of urban space in cities far away from these Republican enclaves, "four of those prison-district senators [sat] on the powerful Codes Committee and oppose[d] reforming the state's draconian Rockefeller drug laws" because these laws filled their districts' penal institutions. One New York state senator, Republican Dale Volker, admitted publicly that he was glad "that the almost 9,000 people confined in his district cannot vote because 'they would never vote for me.'"⁷¹

Felon disfranchisement laws and the rules governing census population eventually undermined the Democratic Party well beyond the state level. According to research by Christopher Uggen and Jeff Manza, disfranchisement policies "affected the outcome of seven U.S. Senate races from 1970 to 1998 . . . [and] in each case the Democratic candidate would have won rather than the Republican victor." The distorted outcomes of these

Income Communities," in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 181–93; Jonathan Tilove, "Minority Prison Inmates Skew Local Populations as States Redistrict," March 12, 2002, *Prison Policy Initiative*, <http://www.prisonpolicy.org/news/newshousenews031202.html>; Eric Lotke and Peter Wagner, "Prisoners of the Census: Electoral and Financial Consequences of Counting Prisoners Where They Go, Not Where They Come From," *Pace Law Review*, 24 (Spring 2004), 587–607.

⁶⁹ Lauren Handelsman, "Giving the Barking Dog a Bite: Challenging Felon Disenfranchisement under the Voting Rights Act of 1965," *Fordham Law Review*, 73 (March 2005), 1875–1940.

⁷⁰ Peter Wagner, "Twenty-one Counties Have Twenty-one Percent of Their Population in Prisons and Jails," April 19, 2004, Prisoners of the Census, <http://www.prisonersofthecensus.org/news/2004/04/19/twenty-one/>. Andrew Marantz, "The Five-Fifths Clause: How We Count, and Use, Our Prisoners," *Slate*, Nov. 6, 2006, <http://www.slate.com/id/2152994/>. Ryan S. King and Marc Mauer, "The Vanishing Black Electorate: Felony Disenfranchisement in Atlanta, Georgia," Sept. 2004, Sentencing Project, http://www.sentencingproject.org/doc/publications/fd_vanishingblackelectorate.pdf.

⁷¹ Peter Wagner, "Temporary Populations Change the Political Face of New York," Aug. 30, 2004, *Prisoners of the Census*, <http://www.prisonersofthecensus.org/news/2004/08/30/temporary-populations/>. Peter Wagner, "Locked Up, but Still Counted: How Prison Populations Distort Democracy," Sept. 5, 2008, *ibid.*, <http://www.prisonersofthecensus.org/news/2008/09/05/stillcounted/>.

elections, in turn, “prevented Democratic control of the Senate from 1986 to 2000.” Disfranchisement legislation also benefitted Republicans over Democrats in major contests such as the presidential elections of 2000 and 2004 because a full ten states “had African American disenfranchisement rates above 15%” by those years. Excluding Americans with criminal records from the democratic process seems to have provided “a small but clear advantage to Republican candidates in every presidential and senatorial election from 1972 to 2000.”⁷²

By 2006 forty-eight states had passed laws that took away prisoners’ voting rights, and with more than 47 million Americans (one-fourth of the adult population) having a criminal record by that year, there is little doubt that the nation’s political process had been fundamentally altered.⁷³ Historians, therefore, need to reckon with the myriad consequences of mass incarceration, including its less obvious political fallout. There is little question that the rise of the carceral state over the last forty years eroded the political power of the Democratic party and fueled the rise of the Right, in ways structural, and thus, changes in American justice policy did not just reflect the nation’s move rightward after 1968; they actually fueled it to an extent that liberal leaders at the time never predicted and scholars today have yet to appreciate.

Mass Incarceration and the Rewriting of Postwar American History

Focusing new historical attention on how the American criminal justice system evolved after World War II, and specifically on the advent of mass incarceration after the 1960s, helps us understand some of the most dramatic political, economic, and social transformations of the postwar period. By the close of the twentieth century almost 5.6 million U.S. adults had served time in a state or federal prison, and the lives of all Americans had been shaped in fundamental ways by mass incarceration.⁷⁴

There were, of course, many forces undermining the vitality of America’s inner cities in the latter part of the twentieth century; the American labor movement also had numerous forces eroding its power, and the new political order that came to dominate by the 1980s was multidimensional and was rooted in everything from the sexual revolution to stagflation to battles over religion to the way gender politics played out in the postwar period. It is important, therefore, not to place too much causative weight on any single event, process, or phenomenon. No one historical episode—no matter how epic it may have been—would have, on its own, caused changes as drastic and sweeping as those that took place in this period. Clearly, though, mass incarceration mattered a great deal to the way that the postwar United States evolved; it must then also matter when we write the history of that period.

⁷² On the statistics for 2006, see Hull, *Disenfranchisement of Ex-felons*, 1.

⁷³ On Christopher Uggen and Jeff Manza’s research, see Marc Mauer, “Mass Imprisonment and the Disappearing Voters,” in *Invisible Punishment*, ed. Mauer and Chesney-Lind, 53. On the 2000 and 2004 presidential elections, see Hull, *Disenfranchisement of Ex-felons*, 1, 11; Mauer, “Mass Imprisonment and the Disappearing Voters,” 50–58; and “Felon Disenfranchisement by State,” March 11, 2008, *FairPlan 2020: Precision Mapping for Community-Based Redistricting and GOTV*, <http://www.fairvote2020.org/2008/03/felon-disenfranchisement-by-state.html>. “Criminal Disenfranchisement Laws across the United States,” *Brennan Center for Justice*, http://www.brennancenter.org/page/-/d/download_file_48642.pdf. Manza and Uggen, *Locked Out*, 191.

⁷⁴ Thomas P. Bonczar, “Prevalence of Imprisonment in the U.S Population: 1974–2001,” Aug. 2003, *U.S. Department of Justice: Bureau of Justice Statistics*, <http://bjs.ojp.usdoj.gov/content/pub/pdf/piusp01.pdf>.