

Seven

Challenging the Culture of Control?

. . . imprisonment is not any longer, if ever it was, a rational response to high levels of crime. Rather, our mass incarceration policy is an historical inheritance, bequeathed to us by wave after wave of crime-fighting at the state and the federal level over the past 35 years. This policy response . . . has now become counter-productive.

—Loury, 2007, p. 2

Locking up criminals for longer periods of time has proven one of America's most effective anticrime strategies.

—Lehrer, 2000, p. 2

After having passed my entire adult life inside, I am convinced that these places of confinement only condition people to fail.

—Santos, 2006, p. 287

As we near the close of the first decade of the 21st century, opinions on the national character, purpose, and legitimacy of U.S. imprisonment are more divided than ever. On the one hand, prisons, in some form, have become ever more entrenched as tools of border control. Immigration detention centers, Guantánamo Bay, military prisons on U.S. soil, and the secret CIA prisons all fit into this category. On the other hand, however, since 2000, there has been a flurry of state and federal

commissions, debate, and legislation that has sought to reform elements of the domestic prison system. Examples of national-level commissions and legislation include the 2006 Commission on Safety and Abuse in America's Prisons (Gibbons & Katzenbach, 2006), the October 2007 hearings in the Joint Economic Committee (JEC) on the ". . . social, economic and political costs of mass incarceration in the U.S.," the 2003 Prison Rape Elimination Act, and the 2007 Second Chance Act. Others, at the state level, have concentrated on matters from gender-specific issues in the treatment and needs of female prisoners to the enfranchisement of former felons.¹

Even before the economic crisis of 2008, some of those states that had been among the fiercest proponents of mass incarceration started to reconsider the wisdom and feasibility of this practice. In Georgia, which expanded its daily prison population by 357 percent between 1980 and 2007, there have been calls to "rebalance" "public safety" and "prison costs" (Welsh, 2008). As the economic recession deepened in late 2008 and early 2009, a number of states from New York to Kentucky began to consider implementing early release programs to avoid budget shortfalls. These states and others, including Texas, Louisiana, and Kansas, have sought also to reduce their penal populations by diverting parole violators. Finally, a range of commentators in criminal justice research centers and think tanks such as the Sentencing Project (Mauer & King, 2007), as well as the expert witnesses to the Joint Economic Committee (JEC) meeting on imprisonment (Western, 2007; Loury, 2007; Jacobson, 2007) and an increasing number of academics (Clear, 2007; Petersilia, 2003) have begun to worry at the collateral effects of mass incarceration, expressing particular concern about the racial disparities in, and effects of, penal policy at the state and federal levels.

To a large extent, anxieties over security and terrorism have replaced issues of crime and punishment as factors galvanizing public outrage and fear. As a result, most of those conservative think tanks and pundits who were so exercised over crime and punishment in the 1980s and 1990s fell all but silent on such matters after 2001, preferring instead to debate Iraq, Al Qaeda, and immigration, as well as the case for eroding civil liberties (see, for example, MacDonald, 2006; MacDonald, Hanson, & Malanga, 2007; Malkin, 2004). The prison is discussed rarely by such figures, and only then approvingly in relation to the drop in crime, or in terms of prisoner reentry (see, for example, Price, 2006; Muhlhausen, 2007; Goldsmith & Eimicke, 2008; MacDonald, 2008).

To be sure, security and imprisonment, particularly in their intersection with justice and civil rights, are deeply inter-connected (see, for example, Feulner, 2006). It may be, however, that the primacy now accorded to security rather than punishment opens the possibility of some systemic change in domestic prisons—if only by shifting public attention. More likely, however, if the past provides any clues to the longevity and ubiquity of the prison, particularly as a tool of, and an adjunct to, warfare, the focus on terrorism will ensure that any reform will be mild at best. In any case, this chapter and Chapter 8 will address these issues separately. Starting with domestic prisons, this chapter documents the various challenges to the culture of control that have bubbled up since 2000. Chapter 8 will concentrate on the prison's role in safeguarding "homeland security" and in controlling immigration.

Prisons in the 21st Century

The prison population, which had accelerated so dramatically in the 1980s and 1990s, began to level off and, in some places, to decline from 2000. Change, however, was short lived. By 2005, though some states—such as New York, New Jersey, and Illinois—either kept their figures stable or saw them continue to retract, the national rate of incarceration began to rise once again.

According to the most recent statistics (West & Sabol, 2008; Sabol & Couture, 2008), "... after increasing 2.8% during 2006, the growth of the prison population slowed to 1.8% during 2007" (West & Sabol, 2008, p. 1). The prison population increased in 37 jurisdictions, led by the federal prison system and followed by Florida, Kentucky, and Arizona. It also rose slightly in those states where it had previously been stable or had seen a reduction in confined populations, namely New York, New Jersey, Illinois, and Maryland (West & Sabol, 2008; Sabol & Couture, 2008). As it had the previous year as well (Sabol, Minton, & Harrison, 2007), Vermont experienced one of the largest drops in its penal population, which declined by 3.2 percent in 2007.

Even as the growth of the largest penal systems slowed somewhat, most states and the federal system increased their numbers of beds available during 2007, either by contracting out to private companies or by building new facilities. In 2006, California Governor Arnold Schwarzenegger had attempted a more radical solution, announcing plans to ship 8,000 convicts to private prisons in other states. However, the California Supreme Court overruled this decision, citing the deleterious impact of the distance

offenders would be held from their families. The reliance on the private sector was not called into question.

By 2007, 7.4 percent of the total sentenced prison population was held in private facilities, up from 6.5 percent in 2000 (Couture & Sabol, 2008). Even so, most states operated either at the limits of or well above their capacity, led as ever by the federal system, which was overcrowded by 36 percent (West & Sabol, 2008).

Other characteristics of the 21st-century penal population can be gleaned from quantitative accounts produced over this decade. In 2003, for example, a report from researchers at the Federal Bureau of Justice Statistics found that “. . . for women, the chances of going to prison were 6 times greater in 2001 (1.8 percent) than in 1974 (0.3 percent); for men, the chances of going to prison were over 3 times greater in 2001 (11.3 percent) than in 1974 (3.6 percent)” (Bonczar, 2003, p.1). By midyear 2006, women composed 7.2 percent of the total confined population, as compared to 6.1 percent a decade previously. Although men are 14 times more likely than women to be incarcerated, the percentage increase in female prisoners under state or federal jurisdiction has continued to outpace that of men, growing in 2005 and 2006 at a rate that was almost twice as rapid. Similarly, on June 30, 2006, about 1 in 20 Black men were in prison or jail, compared to 1 in 50 Hispanic and fewer than 1 in 100 White men. When attention is turned solely to those within the 25- to 34-year-old age range, the figures for young Black men are particularly grave, with more than 1 in 10 (11 percent) of this group of the Black population in prison or jail.

Such figures depict a prisoner society of considerable racial and gender inequality. Increasingly as well, they suggest that traditional distinctions between inside and out are losing their relevance. If the statistical predictions of Bonczar (2003) come to pass, for example, “. . . about 1 in 3 black males [born in 2001], 1 in 6 Hispanic males, and 1 in 17 white males are expected to go to prison during their lifetime, if current incarceration rates remain unchanged” (Bonczar, 2003, p. 1). The future for minority communities also looks bleak in the forecast of the Pew Charitable Trusts (2007a), according to which, “. . . state and federal prisons will swell by more than 192,000 inmates over the next five years” (Pew Charitable Trusts, 2007a, p. ii). Given that these are merely the figures for imprisonment—and do not include those in jail, nor the far greater number of women and men sentenced to probation or other community-based punishments—it may not be too farfetched to argue that the U.S. is creating its own (racialized) penal archipelago, in ironic parallel with what was once so vociferously condemned in the Soviet Union.

Yet, according to some, this bleak vision of the future does not have to become a reality. Instead, as Michael Jacobson (2005) and others (Clear, 2007; Cadora, 2006) have recently been at pains to point out, there are a number of practical factors that should militate against the U.S. indefinitely expanding its penal state. Primary among their objections, which run the gamut from a decline in public faith in the effectiveness of prison to a growing concern over the unequal racial composition of the prison population, lies money. States simply may no longer be able to afford their habit of incarceration. Having become hooked on the quick fix of punishment, the U.S. is being forced, finally, to take note of its costs—literally and metaphorically. “This is the time,” Jacobson (2005) urges, “to develop state-based strategies for penal reform” (Jacobson, 2005, p. 216).

The Costs of Imprisonment: An Emerging Critique

Over the course of the 21st century, an increasing number of scholars and activists have argued that imprisonment in the U.S. has reached, or even surpassed, a tipping point. It is time, such people argue, for “reform” and “downsizing,” or even for dismantling the whole system altogether. The U.S. dependency on prison, they assert, is expensive, and worse, ineffective in generating public safety. As the Pew Charitable Trusts (2007a) put it succinctly, “Every additional dollar spent on prisons . . . is one dollar less than can go to preparing for the next Hurricane Katrina, educating young people, providing health care to the elderly, or repairing roads and bridges” (Pew Charitable Trusts, 2007a, p. ii). Or, as Todd Clear (2003) writes more expansively:

Money that might have been spent on higher education has instead been diverted to pay to open new prisons—at the premortgage cost of about \$100,000 per cell. People of color have been the social group hardest hit by prison expansions. About 14 percent of African American males aged 20–45 are locked up on any given day; nearly one-third of African American males born today can expect to serve time in prison on a felony. As many as 2 million people of color are prohibited from voting as a result of felony convictions, a number large enough to have changed the outcome of at least two presidential elections and dozens of congressional elections. (Clear, 2003, p. xiv)

Yet, how new is this critique? The differential impact on minority communities has long been recognized. So too, has the cost of imprisonment.

Neither has significantly undermined the legitimacy of the prison. For example, criminologist Lloyd Ohlin, writing over 30 years ago, noted that:

The economic costs of [the penal] system constitute an increasingly heavy burden on tax dollars. For example, it is now commonplace in Massachusetts to note that the average annual cost per capita for inmates in state prisons could pay for an academic year at Harvard and a summer of travel and study abroad. (Ohlin, 1974, p. 250)

Perversely, the language of “cost-benefit analysis,” which often underpins these critiques, previously justified calls for greater levels of incarceration (Haynes & Larsen, 1984; Gray, Larsen, Haynes, & Olson, 1991; Levitt, 1996). To be sure, the scale of the economic overinvestment in incarceration today is far greater than it was in 1974, as spending has jumped from \$9 billion in 1980 to more than \$60 billion in 2007. Moreover, the amount spent on corrections has become a dramatic anomaly in relation to other public services, since, over this same period, state and federal legislatures have sought to trim, cut, or even abolish government funding of health, welfare, and education. Even in Alabama, one of the poorest states in the nation, which spends the least amount per inmate in the country, prison expenditures surged by 44 percent between 1990 and 2005. In 2004, when Republican Governor Bob Riley increased the prison budget by 7 percent, he paid for it with a 10–20 percent cut in most other state agencies’ budgets (Pew Charitable Trusts, 2007b; Greene & Pranis, 2005).

Until recently, few have been too bothered by these arrangements. States including California and New York long ago decided to spend more of their budgets on corrections than on education, fearing no adverse public reaction. In October 2007, however, the Joint Economic Committee (JEC) held hearings on the “costs” of mass incarceration. Charged with reporting on the current economic condition of the U.S., the JEC is meant to make suggestions for improving the economy. Yet, despite the committee’s primary interest in economic efficiency, the expert witnesses and the senators concentrated especially on the social burdens of mass incarceration for the U.S. as a whole, and for specific minority communities in particular.

In his opening remarks, Democratic Senator Jim Webb of Virginia articulated an unusually stiff critique (for a politician) of U.S. prisons. Referring to the strategy of mass imprisonment as “. . . one of the largest public policy experiments in our history” that had “test[ed] the limits of our democracy and push[ed] the boundaries of our moral identity,” he asked the assembled experts whether there were “. . . ways to spend less

money, enhance public safety, *and* make a fairer prison system.” Evidently concerned with the broader moral, social, and economic implications of the country’s penal policy,² he observed that:

America’s incarceration rate raises several serious questions. These include: the correlation between mass imprisonment and crime rates, the impact of incarceration on minority communities and women, the economic costs of the prison system, criminal justice policy, and transitioning ex-offenders back into their communities and into productive employment. Equally important, the prison system today calls into question the effects on our society more broadly. (Webb, 2007, p. 1)

Those called to advise the committee—three academics and two criminal justice practitioners—followed Webb’s lead with equally stern warnings. Starting with the sheer cost of incarceration, Glenn C. Loury, the Merton P. Stolz Professor of the Social Sciences in the Department of Economics at Brown University, informed the committee that “. . . spending on law enforcement and corrections at all levels of government now totals roughly a fifth of a trillion dollars per year. In constant dollars, this spending has more than quadrupled over the last quarter-century” (Loury, 2007, pp. 1–2). His criticism, however, did not stop with the expenditure involved, but, rather, like Senator Webb’s, addressed the more general social costs of mass incarceration for U.S. society. In particular, along with Bruce Western, Professor of Sociology at Harvard University, Loury condemned the “wide racial gap” in the opportunities and punishment of U.S. citizens.

Western stressed the far-reaching impact, or what he called “collateral consequences” (Western, 2007a, p. 6), of a prison sentence on an individual’s ability to find employment, adequate housing, and education after release. Putting in a plug for the Second Chance Act of 2007 that would address the resettlement needs of former prisoners in the community, Western advocated the creation of “. . . criminal justice social impact panels in local jurisdictions that can evaluate unwarranted disparities in juvenile and adult incarceration.” This strategy, he suggested, could go some way towards eliminating “disproportionate incarceration in poor and minority communities” (Western, 2007a, p. 7). Such ideas were echoed in the testimony of the other witnesses, as each repeated the importance of helping prisoners after release.

Other than Loury’s and Western’s discussion of racial imbalance, the overarching thrust of the JEC’s hearings was concerned with the relationship between state expenditure and effectiveness. As the director of the Vera

Institute of Justice in New York City, Michael Jacobson (2007) bluntly put it: "What do we get for that money?" (Jacobson, 2007, p. 3). In articulating his critique of prisons in such terms, Jacobson reflected a growing tendency in U.S. policy and scholarship to import the language and techniques of cost-benefit analysis to the debate over imprisonment. Such attitudes, apparent not only in the Vera Institute of Justice but also in those promoting "community justice" (Clear, 2007) or "justice reinvestment" (Cadora, 2006), seek quite deliberately to recast the relationship between incarceration and crime. Instead of making the (unpopular) academic argument that crime and punishment are largely unrelated, and steering clear of a grassroots-style "social movement" critique of imprisonment founded on social justice, self-styled "pragmatists" like Jacobson use "evidence-based research" to make their case that prison is expensive and ineffective, and that alternative sanctions are cheaper and better. In this view, the conditions of economic recession can be seized as an opportunity for change, in order to champion penal moderation.

In contrast to the dystopic views of the sociologists of punishment, who remain pessimistic about the likelihood of positive reforms, the pragmatism of Jacobson has been widely adopted in discussions of prisons and parole. Thus, authors of the Pew Charitable Trusts (2007a) report *Public Safety, Public Spending*, claimed that alternatives to incarceration "... can lead to better public safety outcomes while saving money," a situation that they define as "the dictionary definition of win-win" (Pew Charitable Trusts, 2007a, p. v). Driving home the economic critique, the Justice Mapping Center, headed by Eric Cadora, took statistical information about offenders to draw detailed maps of the local impact of state imprisonment. He used the same technology to reveal the inefficient use of criminal justice practitioners' time, showing the illogical distribution of parole and probation caseloads. Though crime may be dispersed across a city, prisoners tend to concentrate in particular neighborhoods. Just one area of Brooklyn in New York City, for example, known as Brownsville, which has 3.5 percent of Brooklyn's population, accounts for 8.5 percent of the state of New York's prison population. According to research conducted by the Justice Mapping Center in 2003, it cost \$11 million to incarcerate people from just 11 city blocks in 2003 (Cadora, 2006; see also www.justicemapping.org).

Recasting the issue in econometric language, experts such as Cadora, Clear, and Jacobson have sought—with some success—to persuade states and the federal government to spend their money on alternative sanctions. Not only does overcrowding lead to diminishing returns as a crime control mechanism, they argue, but there is growing evidence that,

once imprisonment rates cross a particular threshold, crime rates actually increase (Stemen, 2007; Clear, 2007; Clear, Rose, Waring, & Scully, 2003). It is not only the case that “. . . reforms can occur at the same time that public safety is protected” (Jacobson, 2005, p. 13), but that society will be better protected with fewer people behind bars. Public safety, which is meant to be a “benefit” of incarceration, is actually damaged by the imprisonment binge.

Prison Conditions and Public Safety

In 2006, the Vera Institute of Justice published *Confronting Confinement*, a far-reaching report on conditions in American prisons. Chaired by former U.S. Attorney General Nicholas deBelleville Katzenbach,³ the Commission on Safety and Abuse in America’s Prisons conducted public hearings and prison visits over a 15-month period. Through interviewing current and former correctional staff, as well as some family members of prisoners and academic experts, the commission presented an unusually complex and nuanced vision of life behind bars.

Structuring their analysis around the twin issues of safety and violence, the commission devised a series of recommendations that included: eliminating overcrowding, providing meaningful activity and rehabilitation, improving health care behind bars, limiting the use of segregation, professionalizing the career paths of prison guards, establishing independent oversight, and creating a nationwide data collection service on imprisonment generally. In each case, as in the cost-benefit argument, improving safety behind bars was primarily justified as a means of protecting the law-abiding community outside. “What happens inside jails and prisons,” the authors of the report asserted, “does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each day’s shift. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all” (Gibbons & Katzenbach, 2006, p. 11).

A similar concern for public safety had been articulated three years earlier in the bipartisan support for the 2003 Prison Rape Elimination Act. This law, which for the first time publicly acknowledged the existence and problem of sexual violence behind bars, aimed both to generate information about the extent of prison rape and to encourage penal systems to devise methods of best practice for minimizing such violence. Correctional administrators are required to monitor, record, and address

prison rape. In its emphasis on “data gathering” and its prioritization of costs and benefits, the Prison Rape Elimination Act, 2003 (P.L. 108–79), makes public safety its main concern (s2 (8)), followed by secondary issues such as institutional order (s2 (10)) and the ability of victims of sexual assault to reintegrate successfully into the community upon release (s2 (11)). Economic costs are also stressed in (s 2(14)), which describes the negative impact the level of prison rape has on the “effectiveness and efficiency of the United States Government expenditures through grant programs.” In Section 3 of the Act, which details the purposes of the legislation, protecting “the Eighth Amendment rights of Federal, State, and local prisoners” comes in third last in significance, well behind techniques of data gathering and definition. Somewhat surprisingly, such constitutional safeguards appear only before the goals of “efficiency and effectiveness of Federal expenditures” (s (8)) and the rather opaque desire to “reduce the costs that prison rape imposes on interstate commerce” (s3 (9)).

A desire to diminish the potential victimization of the public and the cost to the government, rather than a concern over the human rights of prison victims or prison offenders, is also apparent in the words of the chairman of the National Prison Rape Elimination Commission, federal judge Hon. Reggie B. Walton. He thought it necessary to link explicitly the financial impact of incarceration with public safety to argue against sexual violence in prison, asserting that:

The high incidence of prison rape undermines the effectiveness and efficiency of United States Government expenditures through grant programs such as those dealing with health care; mental health care; disease prevention; crime prevention, investigation, and prosecution; prison construction, maintenance, and operation; race relations; poverty; unemployment and homelessness. (www.nprec.us/about.html)

Such representation of the impact of sexual assault, as a set of “costs” to the state, has peculiar implications, denying the status of “victim” to the very individuals it is purporting to protect. The real, albeit as yet unrealized, victim is the community, which must, as ever, be protected. The harrowing depictions of victimization published by the prisoner support group Stop Prison Rape (www.spr.org) and others who have been affected by sexual violence are kept out of sight, and any dissonance that might arise from labeling prisoners (offenders) as victims is (narrowly) avoided.

A similar sleight of hand can be found in many of the discussions of the high rates of recidivism, or the failure of ex-prisoners to adjust to the

community, which underpinned bipartisan support for the Second Chance Act 2007 (H.R. 1593). Signed into law by President Bush on April 9, 2008, this act amended the Omnibus Crime Control and Safe Streets Act of 1968 to improve existing reentry programs for adult and juvenile offenders while also developing new ones. It called on correctional systems to create more and better drug treatment services for those in prison and upon release, and to develop mentoring programs to help prevent reoffending. Such reforms will be funded by the usual system of block grants to states at an estimated cost of \$400 million over the proposed 2008–2012 period.

According to Bush (2008b), the act will “. . . give prisoners across America a second chance for a better life” while also supporting “the caring men and women who help America’s prisoners find renewal and hope.” In an unexpected return to his original rhetoric of “compassionate conservatism” that had so swiftly dissipated upon his acquiring office, he spoke approvingly of the “acts of mercy that compassionate Americans are making the nation a more hopeful place.” Oddly, he referred to a particular vision of American exceptionalism that had not been applied to offenders for many a year: “The country was built on the belief that each human being has limitless potential and worth. Everybody matters.” Invoking a Christian metaphor, he articulated a shared vision of human frailty that interpreted offenders more gently than the dangerous animalistic figures popularized by Reagan and perpetuated across the political spectrum ever since. “I tried to remind them that the least shall be first,” he says, in reference to a visit he made to a program for addicts in Baltimore, Maryland. “I also reminded him [sic] I was a product of a faith-based program. I quit drinking—and it wasn’t because of a government program. It required a little more powerful force than a government program in my case” (Bush, 2008b).

The Second Chance Act, according to Bush (2008b), is a “work of redemption”; it “reflects our national interests” in lowering recidivism rates. In a radical articulation of the war metaphor that, throughout his presidency, served to divide Americans from one another, he described those who help former offenders as “members of the armies of compassion.” Then, in what was surely a deliberate echo and inversion of his November 6, 2001, speech about the War on Terror, he characterized the act as an assertion of unity: “We’re standing with you, not against you” (Bush, 2008b).

Bush’s speech seems distant from the demonization of offenders—particularly of drug users—which has dominated public discourse in the U.S. since the 1980s. Yet, in certain key respects his words do not move him far from the traditional approach to offenders. As in the Prison Rape Elimination

Act, 2003, it is the community in his speech that is being protected and that is thus the victim, rather than the offender. By engaging the private sector in service provision, particularly faith-based groups, the act and its surrounding discourse about cost and safety resonates with neoliberal values of the Republicans, according to which individuals, working with compassionate helpers, must help themselves. Those who fail presumably deserve to be punished and further excised from the community.

Even as concerns over public safety and spiraling costs generated change in the operation of some penal systems and thus in the experiences of those incarcerated, they did little to challenge the punitive rhetoric that has characterized penal policy for so long. Instead, under their rubric, many states in this decade expanded their post-sentence measures. California, for example, began to tag all its released sex offenders with Global Positioning System (GPS) devices, while a number of states set up indefinite civil detention orders, permitting them to hold forever those designated as too dangerous for release. More generally, cost-cutting measures continued to chip away at education and training behind bars. Pragmatism, in the absence of a normative argument about (social or legal) justice, can serve many masters. A more robust, principled critique emerged from the courts.

The Courts: An Alternative Source of Critique

After coming to power in January 2001, the Bush administration appointed two new Supreme Court justices, Justice Samuel Alito and Chief Justice John Roberts,⁴ along with numerous federal and district circuit judges. Concerns ran high in a number of quarters over the ideology behind such appointments, and their long-term effect on matters of social justice and cohesion in the U.S. It is perhaps surprising, then, that in regard to the prison at least, the first decade of the 21st century witnessed a considerable amount of court intervention and legislative activity over a whole range of aspects of life there. In particular, across a number of states, class action lawsuits by prisoners have won considerable amelioration of prison health care. With most dramatic effect, in 2005, the entire prison health care system of California was placed under receivership by U.S. District Judge Thelton Henderson of San Francisco, who determined that “. . . the state killed one inmate per week through medical incompetence or neglect” (Human Rights Watch, 2006, p. 508).⁵ The state, which provides health care to around 175,000 prisoners in the 33 state prisons through services that have been contracted out to a range of providers, was accused by the judge of acting with “outright depravity” (Sterngold, 2005, p. A1).

Judge Henderson had originally heard the case against California in 2001 in *Plata v. Schwarzenegger*. At that time the court found that the state was in violation of the Eighth Amendment of the U.S. Constitution, which forbids cruel and unusual punishment. Though the suit was initially settled in 2002, when the state agreed to a range of remedies, by 2005 it had become apparent that insufficient improvements had been made. The administrator of the health care system reports directly to Judge Henderson, who was empowered to make improvements irrespective of the cost to taxpayers. At the end of 2008, the prison health care remained under the governance of the California Prison Health Care Receivership Corporation (www.cprinc.org), despite a number of appeals by the state. The costs of running the system have skyrocketed since long-term unpaid bills have finally been paid and substandard medical care is slowly improved. Following an investigation, California State Controller Steve Westly (2006) estimated the costs of running the health system in the financial year of 2006 at a massive \$1.48 billion. In August 2008, the state was ordered to pay \$8 billion over the next five years. As part of this ongoing case, the District Courts for the Eastern and Northern regions put the state of California under a tentative ruling on February 9, 2009, to reduce its overcrowding in order to facilitate prisoner access to health care; if it is followed through, up to 57,000 people may be disgorged.

The class action suit on behalf of California state prisoners is not the only one of its kind either currently in the courts or recently decided. The Ohio Justice Policy Center, for example, settled *Fussell v. Wilkinson* in October 2005, after two years of litigation. The settlement of this case, which also centered on prisoner health care, required the State of Ohio to hire 300 new, licensed medical staff, including 21 new physicians, to improve “quality control measures, and to revise all medical policies and protocols” (www.ohiojpc.org/main.html). In 2006, the U.S. Department of Justice informed Delaware, too, of its “. . . intent to investigate the adequacy of medical and mental health care services in five facilities operated by the State’s Department of Corrections pursuant to the Civil Rights of Institutional Persons Act (CRIPA), 42, USC § 1997 to determine whether the services violated inmates’ constitutional rights” (Delaware Department of Corrections, 2006, p. 3). On December 29, 2006, the state entered into a memorandum of agreement with the Department of Justice to improve its prison conditions, six months later appointing a monitoring team to ensure compliance. A number of other states, from Michigan to Nevada, have also been under investigation since 2006 for the health care and treatment of their inmates.

Other significant legislative reforms introduced after 2000 also affected the nature of and justification for imprisonment as well as its impact, even though many of them have not actually addressed the prison itself. In 2005, for example, Iowa and Nebraska both adopted measures that enabled former felons to vote, while in 2006 and 2007, Florida, along with Connecticut and Tennessee, reenfranchised many of those with felony convictions. In 2000, California voters passed Proposition 36, which mandated treatment rather than imprisonment for first- and second-time drug offenders. Other states, including Hawaii (SB 1188, 2002); Washington State (SB 2338, 2002); Kansas (HB 2309, 2003); Maryland (SB 194, HB 295, 2004); as well as Washington, D.C. (Proposition 62, 2002) followed suit, with similar legislation for diversion and treatment of drug offenders. Arizona had passed legislation four years earlier, in 1996 (Proposition 200), while, in a series of other states, including Michigan, Ohio, Florida, and Massachusetts, there were unsuccessful attempts at bringing in similar initiatives (Rinaldo & Kelly-Thomas, 2005). Such reforms reflect the growing influence of “therapeutic jurisprudence,” a movement that has also led to the creation of drugs and community courts in most states that divert low-level, nonviolent offenders from jail (Nolan, 2001).

Most dramatically, in the federal system, on May 1, 2007, the U.S. Sentencing Commission proposed an amendment to the U.S. Sentencing Guidelines to reduce the sentencing range of crack cocaine offenses. Passed on November 1, 2007, this amendment applies to about 70 percent of crack cocaine users found guilty in federal courts, and should reduce sentences by an average of 15 months. As of year end 2008, Congress was still considering whether to make the ruling retroactive. On a smaller scale, but also suggesting some shift in public—or at least political—sentiment, in 2005 California legislators introduced a bill permitting condom distribution in state prisons, which passed the Assembly but not the Senate, while prisons in Mississippi and Vermont and jails in New York, Philadelphia, Washington, D.C., San Francisco, and Los Angeles have all permitted some condom distribution (Human Rights Watch, 2006).

Such examples are but some of the interventions that have been occurring in recent years in the penal administration and treatment of (ex-)convicts. When considered in tandem with the growing concerns over public safety and fiscal responsibility, they beg the question of whether these reforms represent a waning faith in prison as a whole, or merely exhibit a periodic readjustment of practice that may be driven by a number of overlapping forces, from overcrowding to good order and management. The sheer

range of reforms that have been introduced since 2000, in addition to the shifting terminology that has dampened down some of the more punitive rhetoric that had previously dominated penal matters, is notable. However, as earlier chapters of this book have demonstrated, penal reforms have yet to dismantle the prison in any era. Instead, they have usually reentrenched it in a new form.

There are other factors, too, that make it hard to be optimistic. Not only are prison numbers rising once again, but there has been very little principled or normative public debate over the legitimacy of prisons *per se*, outside the more radical abolitionist movement (Davis, 2005). Thus far, most reforms merely tinker with the machinery of imprisonment, rather than questioning its purpose *per se*. The limitations of this approach were demonstrated most vividly when Hurricane Katrina devastated New Orleans in 2005, and city authorities abandoned the residents of the local jail to the rising floodwaters. So, too, the highly racialized, and inaccurate, accounts of a breakdown in law and order more generally suggested an ongoing groundswell of hostility toward the poor and disenfranchised.

Hurricane Katrina

On August 29, 2005, the Category 4 Hurricane Katrina hit the Gulf Coast area, passing close to New Orleans and, even though its arrival had been anticipated for some days, caused severe loss of life and property damage. A week after the hurricane had passed, the New Orleans levee system failed, and much of the city was flooded. The storm also devastated large swaths of Mississippi and Alabama. The results were soon obvious, when thousands of predominantly poor African Americans were left behind in New Orleans while their wealthier neighbors escaped. Despite claims in the media that “. . . tens of thousands of people *chose* to remain in the city” (Treaster & Kleinfeld, August 30, 2005, p. 1), many were unable to leave in advance of the storm, because they lacked access to transportation. The more fortunate among those who did stay behind congregated at the New Orleans Convention Center (the Superdome) hoping for promised assistance. Others were left inside their houses or on the roofs of their dwellings, awaiting rescue. Some drowned.⁶

While commentators on the left decried the social inequalities and institutionalized racism unearthed by the differential impact of Hurricane Katrina, scholars and pundits on the right crafted familiar and deeply racialized accounts of lawlessness and violence among those who stayed behind. For

Anthony D. Romero, the Executive Director of the American Civil Liberties Union, Hurricane Katrina "... thrust a national spotlight on the persistence of racism in the context of American poverty and American Privilege" (Romero, 2007, p. 4). In contrast, Nicole Gelinas (2005), writing in The Manhattan Institute's publication, *The City Journal*, described the "... looters, rapists, and murderers who have terrorized New Orleans" (Gelinas, 2005, p. 1) as part of the city's preexisting "black criminal class" (Gelinas, 2005, p. 3). Rebecca Hagelin, a senior communications fellow at the Heritage Foundation and luminary in the conservative evangelical movement, suggested that nobody should have been surprised that the underclass became vicious: "In a culture where many people dress like gangstas, talk like gangstas, and strut like gangstas, should we be shocked and horrified that they start engaging in gangsta crime when given the opportunity?" (Hagelin, 2005a, p. 1).⁷

Almost from the beginning of the flooding, sensational newspaper reports depicted spiraling crime and disorder. Staff reporters from *The New York Times*, for example, referred to "opportunistic thieves," citing the city's director of homeland security Colonel Terry Ebert, who claimed that "these are not individuals looting . . . they are large groups of armed individuals" (Treaster & Kleinfield, August 30, 2005, p. 1).⁸ Soon the reports became shriller, with comments from reporters and state officials, including the New Orleans mayor, stating that civil order had broken down and that violence was resulting, particularly at the Superdome. The city and those covering the disaster, it was claimed in a familiar evocation, must as a result stand on "war footing" (Carter, 2005). Charles Murray (2005), in an editorial in *The Wall Street Journal*, took such accounts to their logical conclusion, asserting that the hurricane revealed the growing numbers of the underclass and the (unspecified) dangers they pose to the rest of society. Differentiating between the deserving and undeserving poor in a rhetoric that was scarcely new, he characterized the latter as "the looters and thugs, and . . . the inert women doing nothing to help themselves or their children. They are the underclass." As the subtitle to his analysis proclaimed: "The poverty Katrina underscored is primarily moral, not material" (Murray, 2005, p. 11).

In fact, it seems that the reports of violence were groundless, and much of the "looting" appears to have been aimed at finding food and water rather than stealing material goods. As the authors of the American Civil Liberties Union (ACLU) report put it, "hungry white victims 'found' the food they needed to survive, while blacks doing the exact same thing were said to have 'looted' it" (ACLU, 2007, p. 11). The scale and impact of the misinformation, which has never fully or effectively been rebutted,

was such, Jonathan Simon (2007b) observes, that “one of the major cultural memories and civic lessons that Americans seem to have taken from the story of New Orleans after Katrina is that law and order must be enforced at all costs as a chief priority of government at all levels” (Simon, 2007b, p. 1). And indeed, in an article published one year after the hurricane struck, Nicole Gelinas, a Manhattan Institute scholar and contributing editor to *The City Journal*, commented: “It’s an enduring mystery why Bush hasn’t used the Katrina disaster to show the world that America can rebuild a major city using a bedrock conservative principle: law and order first” (Gelinas, 2007, p. 3). Faced with an extreme example of state incompetence and insouciance, the media and the public turned instead to a more familiar, and, despite the fear it spawned, therefore, perhaps more reassuring narrative about crime, risk, and the urban (and minority) poor. Nowhere did this response have a more adverse effect than on the population of the city jail whom the authorities abandoned to the rising floodwaters.

Louisiana, like most Southern states, has a large penal population. Notwithstanding a recent dip in its overall rate of imprisonment, it had long been a leader in the area, locking up 1 in 100 of its residents at the end of 2005, well before the national tally rose to that level. Whereas, in terms of its prisons, Angola Penitentiary is probably the best known, boasting the state execution chamber, the annual rodeo, and *The Angolite*, Angola was, for once, not the penal institution that revealed most starkly the harshness of punitive sentiment in the state. Instead, that was left to a much more banal institution: the city jail.

At the time of the hurricane, this place—known as the Orleans Parish Prison (OPP)—held around 6,500 men, women, and children, of whom 2,000 were state prisoners and 200 were federal prisoners (Roman, Irazola, & Osborne, 2007; see also ACLU, 2006). The rest were local offenders awaiting trial or sentence. Like other jails, much of its population were illiterate, suffering from mental health problems, and coming off drugs. A certain proportion would also have been found innocent.

As the waters rose, most of the guards of the Orleans Parish Prison simply left, abandoning their charges to the deluge. After the flood, both the ACLU via the National Prison Project and Human Rights Watch interviewed numerous detainees (National Prison Project, 2006a). Their accounts chime with that of “Inmate #1,” who

... says her dorm quickly filled with chest high water. She states she was next moved to a smoke-filled dorm where she was housed with male prisoners. She says that the deputies locked her and the other prisoners inside the

dorm. . . . She says she was not fed or given water for three days. Inmate #1 says she was next moved into a room filled with water and made to stay there for 24 hours prior to being moved onto the Interstate 10 overpass. On the overpass, she states she was ordered not to move on threat of being shot by the guards. While on the overpass, she states that fellow prisoners were losing consciousness from hunger and dehydration; she herself was pepper-sprayed. (National Prison Project 2006b, p. 1)

Another described being made “. . . to wait in line in water up to his/her neck,” while struggling toward the overpass for collection. When on the overpass, such detainees were prevented from walking around. Upon finally boarding a bus to be taken to Angola, they were “pushed and verbally abused by Angola deputies” (National Prison Project, 2006b, p. 1).

The ill treatment continued once OPP inmates were shipped to other institutions. Not only were these other facilities often inadequate, but they were also violent. Four hundred were sent to the former prison facility at Jena, which was hastily reopened.⁹ Here, many allege, they were kicked, beaten, and taunted with racial and sexual slurs (Human Rights Watch, 2005 p. 511; ACLU, 2006). At least 500 were held well beyond the duration of their original sentences. Contact with family members was difficult to establish, and many who were interviewed by Human Rights Watch (HRW) and the National Prison Project of the ACLU spoke of their anxiety about what had happened to their relatives during the storm.

The failure to evacuate the city jail, as well as the difficulty in rendering aid to those sheltering in the Superdome or in their homes revealed a fragile (federal, state, and local) government that, on the one hand, was unwilling to govern, and on the other, unable to do so properly. Under such circumstances, the hurricane did more than simply expose the “deep racial divisions that have long existed in New Orleans” (ACLU, 2006, p. 17),¹⁰ it drew into question the political state’s very purpose and legitimacy. In a state like Louisiana where social and racial control have been so deeply intertwined for so long, the racialization of fears about the breakdown in law and order should come as no surprise. So, too, apocalyptic visions of “no-go areas” and “war zones” were inevitable in a city without a fully functioning criminal justice system. Unable to govern, what else could it do but declare war on itself?

Governing Through Crime

In a major theoretical contribution to the debate over punishment that was published immediately after Hurricane Katrina, Jonathan Simon (2007a) asserted that mass imprisonment should not be viewed as “. . . a social

strategy to reconfigure the domination of African Americans or discipline the margins of the labor force to support the increasing demands for exploitation of the neoliberal economic order, although it may well have these effects, but as a policy solution to the political dilemma of governing through crime" (Simon, 2007a, p. 159). According to Simon, the war on crime, which has been ongoing since Nixon, has altered "... the way political authority of all sorts and at all levels has been exercised" (Simon, 2007a, p. 261). Crime control has leached into many unrelated areas, and has, in the process, transformed the relationship between citizens and their government. Paradoxically, state power has been simultaneously strengthened and dispersed, as individuals have been constantly enjoined and/or forced to police themselves to avoid (seemingly inevitable) victimization.

By recasting crime policy as a means of "governance," rather than as a straightforward mechanism of social control, or as a mere statistical phenomenon, Simon directed criminological attention to the politically constitutive nature of criminal justice strategies and rhetoric. Along with a series of other authors in this decade, Simon also reminded us to think about the role of the state and federal governments in any analysis of imprisonment (see also Gilmore, 2007; Miller, 2008). Crime control, in this view, has undermined democracy itself, on the one hand, by enabling the fierce expansion of government intervention strategies and, on the other, by a parallel and concomitant retraction of state responsibility for safeguarding its own citizens. "Mass imprisonment," Simon (2007a) wrote, "... and the girding of public and private space against crime reflect an ongoing struggle by Americans and their public and private organizations to manage the relationship between security and liberty" (Simon, 2007a, p. 16). Those who are arrested or appear before the courts are not the only ones being "governed" in other words, but rather, as in Garland's (1996, 2001a) depiction of "responsibilization strategies," all citizens are expected to govern themselves to avoid victimization.

Although Simon spends relatively little time examining the prison itself, penal institutions have become central to "governing through crime." The prison, in this analysis, is "... a space of pure custody, a human warehouse or even a kind of social waste management facility, where adults and some juveniles distinctive only for their dangerousness by society are concentrated for the purposes of protecting the wider community." It "... promises no transformation of the prisoner through penitence, discipline, intimidation, or therapy" (Simon, 2007a, p. 142), but draws its legitimacy from the threat that it poses to lawbreakers and the security that it promises to victims. "Prisons provide a public good," he argues, "that is directly aimed

at insecurity, the form of public need that crime legislation has made both visible and compelling" (Simon, 2007a, p. 157). As a result, the ". . . prison has become even more central to political order than it was to earlier styles of rule" (Simon, 2007a, p. 154).

Somewhat tempering Simon's bleak view of the prison as warehouse, most penal systems continue to pay lip service to rehabilitation. Thus, even as most prisoners remain idle due to cuts in services and overcrowding, penal administrators urge inmates to learn from their confinement to beat their addictions, eschew crime, and act responsibly (Bosworth, 2007a). They must, in other words, govern themselves.

A quick glance at the Web sites of a selection of state departments of correction reveals how the language of responsibility dovetails with concerns over efficiency and public safety in a familiar managerialist rhetoric. The "mission" of the Utah Department of Corrections, for instance, is to ensure public safety

. . . by effectively managing offenders while maintaining close collaboration with partner agencies and the community. Our team is devoted to providing maximum opportunities for offenders to make lasting changes through accountability, treatment, education and positive reinforcement within a safe environment. (www.cr.ex.state.ut.us/)

Meanwhile, prisoners in Alaska ". . . will be treated in a safe and humane manner, and will be expected to enhance their ability to reform every day," while those in Mississippi are urged to ". . . be smart, choose freedom," and reject offending altogether (www.correct.state.ak.us/; www.mdocr.state.ms.us/).

Despite being, second to the death penalty, the most extreme articulation of the state's power to punish, prisons have also become a strategy of "governing at a distance." In so doing, they too "govern through crime," reflecting the contours and nature of the state and its sovereign power, while, in their calls for inmate responsibility, denying the extent of their control. Such paradoxical display and denial of power is facilitated by the ongoing absence of actual prisoners in most accounts of U.S. prisons. In addition to such administrative tools as mission statements, much academic and policy literature fails to include the experiences of the convicts. As a consequence, prisons have become a kind of dystopic "imagined community" (Anderson, 1984), just as mythologized as the idealized victims of criminal legislation so well identified by Jonathan Simon. Prisoners become demonized as the "worst of the worst," or romanticized as "political prisoners" and "intellectuals" (James, 2003; Rodríguez, 2006). Such polarized views not only

grossly overstate the nature of the vast majority of rather ordinary people behind bars, but also maintain a strict binary between victims, or law-abiding citizens, and offenders that, in turn, inextricably requires the law-abiding citizens of the polity to reject and distance themselves from those behind bars. Inclusion, in other words, depends on exclusion.

Opening the Prison: Convict Voices

In fact, despite their absence in the mass media and in theoretical analysis, since 2000, there has been a resurgence of firsthand accounts of prison life in the U.S. (see, for example, Baca, 2002; Rodríguez, 2006; Johnson, 2003; James, 2003; Santos, 2006), prison teaching (Tannenbaum, 2000; Moller, 2003; Trounstone, 2001) and, despite various declarations of their “curious eclipse” (Wacquant, 2002), prison ethnography as well (Rhodes, 2004; McCorkel, 2003; Conover, 2001; Dermody Leonard, 2003). Such depictions appear in a number of formats, some more academic than others. Increasingly, for example, current and former prisoners are utilizing the Internet to publicize their views and experiences. Others are publishing firsthand accounts of life behind bars. Finally, and relatedly, the 21st century has seen a consolidation of a field known as “convict criminology” written by (predominantly male) former prisoners who now work in universities (Ross & Richards, 2003).

Even though serving prisoners remain, for the most part, unable to access the Internet themselves (although some prisons, like FCC Victorville, have recently introduced an e-mail system by which certain prisoners can send and receive e-mails from specific, approved individuals), the Internet, nonetheless, has become an important site of debate over the effectiveness and aims of incarceration. Web sites include personal ones, maintained by family friends in the community (see, for example, www.fredebicampbell.com, and www.michaelsantos.net), and those that promote “networking,” and dating, between prisoners and those outside (www.prisonerlife.com). Most prison reform or activist groups operate Web sites (such as www.criticalresistance.org; www.famm.org; www.thefortunesociety.org), and there are a small number of blogs that address prison issues (see, for example, www.texasprisonbidness.org and gritsforbreakfast.blogspot.com).¹¹

If the 1990s was characterized by a growth in right-wing think tanks and their accompanying publications, the first decade of the 21st century has witnessed a more general explosion of political and social commentary online. As the state with one of the largest prison systems, it is fitting that

California is also home to many of the most vocal critics of incarceration, both online and elsewhere. Umbrella organizations like the Prison Activist Resource Center (PARC) (www.prisonactivist.org) and Critical Resistance (www.criticalresistance.org), which organize grassroots groups around the country and provide educational resources and an outlet for prisoners' voices, publish much of their work online. California even has its own prison moratorium project, which, among other issues, provides explicit guidance in the form of a handbook for *How to Stop a Prison in Your Town* (California Prison Moratorium Project, 2008). Of course, the impact on policymakers of such testimonies is unclear, and, when emanating from former or serving prisoners, is unlikely to be great. Nonetheless, the sheer volume of such literature, whether published in more traditional areas or online, reveals a vibrant counterculture of penal critique that challenges many of the justifications of imprisonment.

Firsthand accounts usually resonate more with earlier sociological writings on the deprivations of imprisonment than with the recent theoretical literature on punishment. They also cast some doubt on the commitment of the state to facilitate personal growth or transformation behind bars. Michael Santos, for example, who is serving a 45-year federal sentence for his involvement in the distribution of cocaine, has written extensively on the everyday difficulties facing men in prison.¹² Much of his work calls into question the institutional commitment to helping prisoners reform:

As soon as gates lock a man inside, the prisoner learns that the goal of the corrections system is to store his body until his sentence expires. There is no mechanism within the system to recognize efforts a prison may make to redeem himself. Consequently, few commit to such a path. Prisoners learn to live inside and forget, or willfully suppress, the characteristics of life in normal society. In so doing, they simultaneously condition themselves further to fail upon their release. (Santos, 2006, p. 280)

Despite the hopes of those who crafted the Second Chance Act, for instance, Santos suggests that the failures of former prisoners are written into the penal institutions themselves as prisoners and prison staff exist in uneasy conflict:

Despite what corrections professionals may publish or profess, those of us who live in prison are convinced that administrators implement few programs with the interest of preparing offenders for law-abiding lives upon

release. There is no authentic interest in motivating or encouraging prisoners to distinguish themselves with excellence. Programs exist purely for inmate accountability. They are tools administrators use to maintain security. To believe otherwise is akin to believing that the tobacco companies have an interest in helping people to stop smoking. (Santos, 2006, p. 283)

In any case, according to Santos, the inability of prisoners to control the basic elements of their daily lives—from their work details to their cell-mates and the prisons in which they are held—makes it difficult to do anything much. “Minutes after I finished the draft of this manuscript,” Santos writes:

... an officer announced an order over the loudspeaker at the federal prison camp. He wanted me to report to the control center. Expecting bad news of some kind, I addressed and stamped an envelope. Then I sealed my manuscript pages inside and dropped the package into the outgoing mailbox before reporting. It was a good move, because soon after I presented myself, officers locked me in steel cuffs for placement in solitary confinement . . . At the following morning . . . officers unlocked the cell door and ordered me into chains. They marched me onto a bus that drove me to an airport in a neighboring community. In small steps because of the chains binding my ankles, I boarded an airplane full of convicts. We began a long flight that would keep me in transit for six weeks. (Santos, 2006, pp. xxv–xxvii)

Such modes of internal governance, whereby prisoners can be moved without warning, unavoidably (and perhaps deliberately) disrupt families, education, and training. In the federal system, they can result in individuals being moved thousands of miles.

In addition to accounts by prisoner authors like Santos, two other kinds of academic literature have sprung up this decade, which also stress the importance of individualized, highly personalized experiences of incarceration. Both, though located within academia, present themselves in (partial) opposition to it. The first body of literature, known as “convict criminology,” describes how prisoners seek to defy or at least mitigate the culture of control under which they reside (www.convictcriminology.org). It seeks “. . . to create realistic criminology that impacts the reader in ways typical academic research and writing fails to do.” Professing to be “. . . shocked by the number of criminologists who although they claim to be experts have little or no firsthand experience with how human beings experience the criminal justice system,” the founders of Convict Criminology,

Jeffrey Ross and Stephen Richards (2003), maintain that such unconvicted authors “. . . simply do not comprehend the profound impact that imprisonment has on many individuals” (Ross & Richards, 2003, p. 349). “Adequate instruction in criminology, criminal justice, and corrections,” they state, “requires field experiences to supplement what is learned in university classrooms” (Ross & Richards, 2003, p. 503).

Despite professing to be a new contribution to debates about imprisonment, on at least one axis, convict criminology remains remarkably familiar to more traditional studies of the prison, specifically in its failure to engage critically with race and gender. Even though some women contribute book chapters or articles to convict criminology publications, none, at the time of writing, are former prisoners. Likewise, the male contributors rarely address issues of either race or gender.

The second body of prisoner accounts makes up for these absences in convict criminology, focusing directly on matters of race, and to a lesser extent on gender as well (Stanford, 2004). This body of radical scholarship corresponds to a looser body of scholars, few of whom self-identify as criminologists, who are for the most part located in ethnic studies departments (Rodríguez, 2006; James, 2003; Johnson, 2004). These writers refer to prisoners as “political,” “intellectuals,” and “activists,” constructing an histor(iography) of radicalism behind bars, from George Jackson to the present. Within this body of literature, there is considerable debate over “who ‘qualifies’ as a U.S. political prisoner.” Spelling out the debate, Joy James (2003) rejects an “overly inclusive and simplistic” definition that would include “any incarcerated individual who self-defines [as a political prisoner]; anyone the state labels as a ‘criminal’ or ‘terrorist’; and anyone the state politically discriminates against through differential enforcement of laws, racially and economically driven sentencing regimes, and prison treatment” (James, 2003, p. xi). In contrast, Dylan Rodríguez argues for a broader remit that would include “‘commonly’ imprisoned people,” who are “overwhelmingly poor, black, and brown . . .” (Rodríguez, 2006, p. 5).

Reflecting institutional arrangements and intellectual allegiances, as well as methodological and political beliefs, these authors work closely with abolitionist reform groups, particularly with Critical Resistance. Like the “convict criminologists,” they reject the possibility of a “neutral” standpoint on matters of incarceration. The prison, for them, embodies state brutality, and, in the disproportionate numbers of African Americans behind bars, can be linked directly to the institution of slavery. Despite addressing prison conditions and the justification of incarceration,

prison activist literature rarely draws on mainstream or theoretical criminological literature, preferring instead an alignment with literary or ethnic studies to one with criminal justice. So, too, criminologists and policymakers fail to engage with such accounts, cordoning off “race studies” and gender into a specialized—and overlooked—body of work.

CONCLUSION: GOVERNING THROUGH IMPRISONMENT?

An optimistic reading of the various publications on prison suggests that there is a growing dissatisfaction with the institution. Some states are waking up to its economic and social costs. The flurry of commissions, court intervention, and legislative activity, and the marked decline in histrionic media verbiage about “super-predators” and the like, along with diversion initiatives such as Proposition 36 in California, and even the growing nationwide dissent over mandatory minimum sentences, seem to indicate a potential for a shift away from an overreliance on incarceration. However, for all that potential for reform, actual decarceration has been minimal, and there has been little movement to close prisons. New York City, for example, has kept its average daily jail population more or less stable, since 2001, at around 14,000 men, women, and children behind bars at any one time, down from 23,000 in 1993. So too, it has 9,000 fewer state prison inmates than it did 10 years ago, representing a drop of 12 percent. Yet, despite assurances from then Governor Eliot Spitzer that the state would close four of its upstate prisons, at a savings of \$70 million, in April 2008, Spitzer’s successor, Governor David Paterson, abandoned this plan. It may well be that economic surplus enabled mass incarceration, but thus far economic deficit has been slow to change that.

Indeed, though economic and, to a lesser extent, safety arguments seem to be effective in generating a national, if muted, critique of current incarceration policies, the failure of such strategies to engage in any depth with more complicated normative or rights-based arguments about incarceration made elsewhere suggests that penal moderates remain cautious about their likelihood of success (see, for example, Lazarus, 2004). Presenting their findings as “neutral,” scientific, and “un-partisan” (see, *inter alia*, Austin et al., 2007; Cadora, 2007; Pew Charitable Trusts, 2007b), many authors cede the fiery rhetorical territory to their opponents,

who, as Hurricane Katrina demonstrated, remain ready to pounce on the undeserving poor (Murray, 2005; Gelin, 2005).

It may seem strange to quibble over the motivation for and language of penal reform, when, in the case of prison rape, for example, shamefully little had been done until it was presented as a financial and public safety issue that could be resolved, in large part, through objective data gathering. Nonetheless, arguments couched in this terminology can only with difficulty provide a means of critical reflection on the longevity of the prison, let alone establish a basis for developing a tougher analysis of its practices and beliefs. It cannot explain why, when recidivism rates have been high for a long time, concern over public safety has only recently been articulated. Likewise, unless their attitude hinges on a question of degree, why now should the public balk at paying for its prisons? Since cost savings and lower reoffending rates are presented as ends in themselves—that are somehow separate from thornier matters of human rights, morality, or justice—what is to protect against practices that might be extremely harsh, but reduce overheads or recidivism?

The weaknesses, or at least the limitations, of this approach were rendered most obvious, as they so often are in criminal justice matters, in the State of California. California operates one of the most overcrowded and most rapidly growing prison systems in the country, currently holding more than 175,000 prisoners in a system designed for about half that number. It is also a state where the lobbying power of the correctional officers union has been (and remains) notoriously influential (Gilmore, 2007). In this environment, fiscal and public safety arguments have been either overridden or transformed into a hardly recognizable form. Thus, faced with the possibility of a federal takeover of the state prison system, Governor Schwarzenegger signed the “bipartisan” Assembly Bill 900 or Public Safety and Offender Rehabilitation Services Act of 2007, committing \$7.7 billion to add 53,000 prison and jail beds, while expanding drug treatment programs and developing secure “reentry” facilities. These practices, which could expand the prison system by one-third, were presented both as penal “reform,” and as targeted at reducing reoffending and thus improving public safety.

Without an emphatic commitment to decarceration as a principled measure in itself, or indeed, to placing offenders into community penalties instead of prison, the economic- and public-safety-based arguments provide ineffective challenges to the legitimacy of imprisonment. They may even provide ballast for a radical expansion. In short, despite the reformist intentions of many authors, their reports, commissions, and legislation

fail to break sufficiently with the punitive sentiments of the 1990s, which greatly reduced prison programs.

In any case, as Chapter 8 will detail, just as some popular opinion was starting to grow in opposition to the reliance on incarceration for drug offenders, another group of people were judged to be appropriate subjects for confinement: noncitizens. Much of the federal government's response post-9/11 reaffirmed the vitality of imprisonment, at the precise moment it was being called into question. Not only have scores of noncitizens been held in immigration service detention centers and federal prisons, but the U.S. has exported its high-security, no-frills imprisonment in the War on Terror. Under the two Bush administrations, military prisons and detention centers were presented as fundamental to U.S. national security. While there are some signs that policy may shift on these matters under President Obama, it is, as yet, too early to predict. The prison is dead. Long live the prison.

NOTES

1. See, for example, the October 2005 report from the Commonwealth of Massachusetts's Department of Correction Advisory Council, the 2005 commentary from the Vermont Agency of Human Services, and the 2004 findings of the Oklahoma Special Task Force for Women Incarcerated in Oklahoma.

2. In this, Webb (2007) cited Winston Churchill's famous statement of 1910, that "... the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unflinching tests of the civilization of any country."

3. Previously U.S. Attorney General under President Lyndon Johnson.

4. Samuel Alito replaced Sandra Day O'Connor, and John Roberts replaced Chief Justice William Rehnquist.

5. After the prison health care system was under receivership for more than a year, prisoners in California in 2006 were still dying from common and treatable medical conditions such as asthma. Prison doctors were also continuing to fail to identify or treat preventable conditions that included perforated ulcers and hernias. One prisoner even died of hypothermia (Imai, 2007).

6. Strangely, the number killed remains unclear. Unlike those victims of 9/11, about whom the state sought to be as precise as possible, the figures of those killed by Katrina are hotly contested. According to the Web site of the Louisiana Department of Health and Hospitals, which stopped recording figures on August 1, 2006, 1,464 people died and 135 remain missing.

7. Hagelin is better known for her commentary and publications on the alleged demise of heterosexual family values. She has been a regular commentator on FOX News and along with her colleagues from right-wing think tanks like the Heritage Foundation publishes with conservative, Evangelical presses like Thomas Nelson and Regnery Publications (see, for example, Hagelin, 2005b).

8. The same quote was cited in a different article the following day as well (Treasler, August 31, 2005).

9. Jena itself became the subject of national attention in 2007 when a group of six Black teenagers were arrested and charged with attempted murder for their assault on a White teenager, Justin Barker, that landed him in the emergency room of the local hospital for three hours. The violence followed an earlier racially charged incident, in which three White students hung nooses from a tree at the local high school after a Black student asked if he could sit under it. The only member of the six youths to be tried, Mychal Bell, was convicted of aggravated battery and conspiracy. Though his convictions were overturned on appeal on the grounds that he should have been tried as a juvenile rather than as an adult, he was incarcerated for almost 10 months and was kept incarcerated while awaiting a retrial in December 2007 (*The New York Times*, September 27, 2007).

10. Such divisions continue to hamper reconstruction efforts, as the failure of the government to protect the most vulnerable New Orleans residents prior to the hurricane or in its immediate aftermath has been matched by a patchy response in the longer term. Certainly, sections of the city have been rebuilt, and tourism is clawing its way back. Yet, more than four years later at the time of writing, significant problems remain. Large swaths of the city have been left to molder, with their (Black) residents still in Federal Emergency Management Agency (FEMA) housing or out of state. The city has rushed to rebuild OPP, yet has succeeded in opening only one quarter of the original bed space, so it is more overcrowded than ever, with detainees routinely sleeping on the floor. Medical and mental health care have been stretched well beyond the institution's capacity (ACLU, 2008).

11. In contrast, those political blogs from both sides of the political spectrum (which became so influential in the 2008 presidential election) rarely discussed imprisonment or criminal justice matters, choosing instead to focus on the wars in Iraq and Afghanistan, and on other matters of U.S. politics.

12. His work can be found online and in print, where his books appear with academic and more popular trade presses (Santos, 2001, 2006; www.michaelsantos.net).