

Introduction: Constructing the Carceral State

Kelly Lytle Hernández, Khalil Gibran Muhammad,
and Heather Ann Thompson

The United States holds the world's largest prison population, caging more humans than any other nation on earth. In a situation that is not only internationally unparalleled but also historically unprecedented, every day more than 2 million people are barred somewhere within this nation's vast archipelago of prisons, jails, and immigrant detention centers. Another 7.2 million are on probation, on parole, or under a deportation order. This is not just any population. The majority of those confined in a U.S. correctional facility are black or brown, and poor. Indeed blacks and Latinos make up 72 percent of the federal prison population and the majority of the state prison populations. By the end of this year, one in three young African American males and one in six young Latino males will be locked away from society. The numbers for women of color versus white women are also stark: 133 of 100,000 African American women and 77 of 100,000 Latinas are locked up as compared with only 47 of 100,000 white women.¹ The racial demographics of immigrant detention are equally dire. More than 80 percent of immigration detainees are Latinos, namely Mexicans or Central Americans.

The policing apparatus that fills the nation's carceral facilities is even more capacious. Having been subject to arrest, an estimated 65 million people in the United States have criminal records.² Scores more have been stopped and interrogated but not arrested. For example, the nation's largest police force, the New York Police Department (NYPD), has conducted nearly 5 million "stop and frisk" investigations from 2003 to 2012. Less than 12 percent of such street interrogations have resulted in arrest, but close to 90 percent of those stopped and frisked in the city are young black and Latino men. Throughout urban

Kelly Lytle Hernández is an associate professor of history at the University of California, Los Angeles. Khalil Gibran Muhammad is the director of the Schomburg Center for Research in Black Culture in New York City. Heather Ann Thompson is a professor of history at the University of Michigan.

The *JAH* thanks Carl Suddler, former editorial assistant and current postdoctoral fellow at the James Weldon Johnson Institute for the Study of Race and Difference at Emory University, for his help in conceiving and producing this special issue.

Readers may contact Hernández at hernandez@history.ucla.edu. Readers may contact Muhammad at schomburgdirector@nypl.org. Readers may contact Thompson at hthompson@umich.edu.

¹ In the federal prison system, blacks and Latinos make up 72% of the total prisoner population. See the continually updated information at "Inmate Race: Statistics Based on Prior Month's Data," *Federal Bureau of Prisons*, http://www.bop.gov/about/statistics/statistics_inmate_race.jsp; and "Inmate Ethnicity: Statistics Based on Prior Month's Data," *ibid.*, http://www.bop.gov/about/statistics/statistics_inmate_ethnicity.jsp. "Racial Disparities," p. 5, "Fact Sheet: Trends in U.S. Corrections," *The Sentencing Project*, http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf.

² "Stop-and-Frisk during the Bloomberg Administration (2002–2013)," Aug. 2014, *New York Civil Liberties Union*, <http://www.nyclu.org/publications/report-stop-and-frisk-during-bloomberg-administration-2002-2013-2014>.

America, the story is much the same: millions of young black and Latino men are stopped and frisked each year.³

The U.S.-Mexico borderlands are another hot spot for policing and confinement. In the borderlands, both the war on drugs and the war on terror have generated constant street-level interrogations and dramatic night raids, but immigration control drives the unique dynamics of policing and confinement in the region. The U.S. Border Patrol is the nation's second largest police force (after the NYPD). Since 2000, border patrol officers have made nearly 12 million apprehensions in the region, with Latinas and Latinos—led by Mexicans, Guatemalans, Hondurans, and El Salvadoreños—accounting for 92 percent of those apprehended.⁴ No U.S. police practice is as racially concentrated as immigration law enforcement in the U.S.-Mexico borderlands, nor is any other sector of policing and confinement growing as rapidly. Immigrant detention—that is, the process of forcibly confining immigrants during deportation proceedings—is now the largest system of human caging operated by the U.S. government.

Needless to say, when a nation chooses to police and cage many millions of people who reside within its borders, the implications for everything else that takes place in that country are vast. Mass incarceration has had a major impact on everything from how urban and suburban spaces have evolved to how electoral maps are drawn to how national borders are defined and maintained to how state and federal resources are distributed to how social movements are made and unmade to how gender roles are bolstered and undermined to how cultural norms and identities are forged and reinforced to how sexuality is profiled and policed. Social scientists often point out that the “collateral consequences” of policing and confinement are infinite. Most notably, policing and punishment and detention and deportation powerfully shape the U.S. economy and American democracy. Consider, for example, that while 3 million children have at least one parent in confinement in either a correctional facility or a detention center—severely impoverished since the incarcerated parent(s) can neither support them nor easily feed them, even after release, because of the stigma of a record or forced deportation—America's vast carceral apparatus also employs millions of men and women who now directly depend upon high rates of imprisonment and detention to support their families.⁵ They populate the virtual army of corrections officers, nurses, doctors, lawyers, suppliers, consultants, and even investors tasked with keeping the lights on, the cases churning, and the cages closed. Generally, though, white, rural, and small-town Americans benefit economically more than others from correction dollars. Black and Latino corrections officers also have a stake in the system. Recent reform efforts that seek to minimize black and Latino guard abuse at

³ Michelle Natividad Rodriguez and Maurice Emsellem, “65 Million ‘Need Not Apply’: The Case for Reforming Criminal Background Checks for Employment,” March 2011, *National Employment Law Project*, http://www.nelp.org/page/-/65_million_need_not_apply.pdf?nocdn=1.

⁴ The total number of illegal immigrant apprehensions reported by the U.S. Border Patrol in the southwestern districts between 2000 and 2013 is 11,748,007. See “Total Illegal Alien Apprehensions for the Southwest Border Sectors by Fiscal Year by Sector: 1960–2013,” *Data.gov*, <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%20Apprehension%20Statistics%201960-2013.pdf>. On Latinas/Latinas as 92% of apprehensions, see John F. Simanski and Lesley M. Sapp, “Immigration Enforcement Actions: 2012,” Dec. 2013, annual report, *Department of Homeland Security*, http://www.dhs.gov/sites/default/files/publications/ois_enforcement_ar_2012_1.pdf.

⁵ Tracey Kyckelhahn, “Table 2. Percent Distribution of Employment and Payrolls for the Justice System by Level of Government, March 2010 (Final),” “Justice Expenditure and Employment Extracts 2010,” July 1, 2014, product no. NCJ 247019, *Bureau of Justice Statistics*, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5049>. Lauren E. Glaze and Laura M. Maruschak, “Parents in Prison and Their Minor Children,” Aug. 2008, product no. NCJ 222984, *ibid.*, <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

Rikers Island in New York City, the largest jail complex in the world, have been stymied by union officials who claim that violence is a necessary tool of penal management. Since the early 1970s U.S. rates of incarceration and deportation have remained high enough to guarantee employment to vast segments of the U.S. population. Criminal justice is now the largest employment sector in the United States.

Mass incarceration and mass deportation also profoundly alter the substance of American democracy. For example, as of 2014, forty-eight states temporarily or permanently disfranchise felons.⁶ Given the consistently and stunningly disproportionate imprisonment rate for African Americans, the political ramifications of disfranchisement fall most heavily upon the African American community. In 2014, 23.3 percent of Florida's black population was disfranchised due to a criminal record. And because the U.S. census counts prisoners where they are imprisoned rather than where they and their families reside, this massive carceral state has not only taken away black votes through disfranchisement but has also robbed the black vote via so-called prison gerrymandering. In short, whereas black prisoners in the faraway facilities of countless correctional institutions cannot vote, the white counties that corral them in those institutions get to use their bodies as political power. Eight house districts in the state of Pennsylvania simply would not exist if disfranchised prisoners were not included in the population numbers. By 2014, African Americans were negatively impacted by the intensive criminalization of urban spaces of color and the draconian sentencing that follows arrest, and they were unable to change such policies by registering their voices at the ballot box. In addition, those who would seek to keep sentences long and to police spaces of color more extensively were given more power than they had possessed since the dawn of the twentieth century.

For deportees—more than 95 percent Mexicans and Central Americans—the process of detention and deportation is a sector of U.S. governance unprotected by the Constitution. Immigration control is legally defined as a subject of plenary power; as such, only the legislative and executive branches of government determine the practices and policies of detention and deportation. Neither the federal judiciary nor the Constitution apply to the project of U.S. immigration regulation. As the U.S. Supreme Court explained in 1889 and has repeatedly affirmed ever since, “the provisions of the Constitution, securing the right of trial by jury and prohibiting unreasonable searches and seizures, and cruel and unusual punishments, have no application” to immigration control.⁷ Therefore, the expansion of deportation has wrought the expansion of a realm of federal governance that is highly racialized but not subject to key features of the Constitution.

A wide range of scholarship has deftly detailed the unprecedented scale and impact of policing and incarceration in the United States. This work makes clear that we are now living in an era when the state's carceral capacity—that is, the state's capacity to police and cage—is broadly substantive and consequential. Even so, the carceral state is also deeply historical. Whereas mass policing and incarceration began their staggering booms during the 1970s, the roots of the carceral state run much deeper in U.S. history.

⁶ “U.S. Felony Disenfranchisement Laws by State,” n.d., *Sentencing Project*, <http://www.sentencingproject.org/template/page.cfm?id=133>.

⁷ *Chae Chan Ping v. United States*, 130 U.S. 581 (1889). See also Gabriel Chin “Chae Chan Ping and Fong Yue Ting: The Origins of Plenary Power,” in *Immigration Stories*, ed. David A. Martin and Peter H. Schuck (New York, 2005), 7–30; Louis Henkin, “The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny,” *Harvard Law Review*, 100 (Feb. 1987), 853–86; and Gerald L. Neuman, “Anamalous Zones,” *Stanford Law Review*, 48 (May 1996), 1197–1234.

From the earliest hours of the nation's formation, prison was conceived as a modern intervention and as an Enlightenment ideal for the expression of liberty by the negation of it. In other words, captivity, as Caleb Smith and Dan Berger argue in their monographs, was fundamental to American freedom from the beginning. Prison and slavery defined the boundaries of citizenship and, in this sense, were two sides of the same coin. Through the antebellum period the color line largely governed the use of prisons, primarily for poor men of European ancestry. Enslaved black and Native American populations remained outside the prison gates, subject to brutal and capricious physical punishments long beyond the timeline of Michel Foucault's accounting in *Discipline and Punish*. By the mid-nineteenth century the end of slavery collapsed the boundaries of citizenship and race. The Thirteenth Amendment's slavery loophole created the legal preconditions for mass imprisonment of the formerly enslaved and of indigenous populations and non-European immigrants on an unprecedented scale. By region and at different rates, prisons gradually became blacker and browner.⁸

This special issue of the *Journal of American History* introduces readers to the rich new historical literature on the carceral state. Although the carceral state has roots that reach back to the early republic and was first consolidated during the early nineteenth century, the essays in this volume focus on its phenomenal expansion during the long twentieth century. But this project also asks historians who do not study the carceral state to think in new ways about how its evolution, trajectory, and scope may well upend the ways other aspects of American history have been understood.

These essays take an expansive approach to the historical drivers of the carceral state. They consider everything from how African American women have been over-incarcerated for protecting themselves against rape and domestic violence to how undocumented Latino immigrants have become the largest population in the federal prison system to U.S. policing abroad. Several essays consider topics in the post-World War II period: from the role of white suburban drug use and the crack epidemic in the racialized war on drugs to how prison building drove the political economy of the sun belt to the impact of prisoner and antipolice brutality activism on gay rights and the Chicano and African American freedom movements.

Kali Nicole Gross's "African American Women, Mass Incarceration, and the Politics of Protection" explores how intraracial gender violence has shaped the experiences of black women in the making of the carceral state. Relative to white women, black women have been and are far more likely to experience contact with the criminal justice system, including incarceration. Their long history outside of the legal protections of personhood—first as enslaved women and then as legal claimants to self-defense as battered women—have made them particularly vulnerable to the racialization of criminality and disproportionate imprisonment.

Jeffrey S. Adler's "Less Crime, More Punishment: Violence, Race, and Criminal Justice in Early Twentieth-Century America" explores major shifts in crime-control policies across the nation during the interwar period. At precisely the moment when crime rates were high in the 1920s, incarceration rates were low. As crime rates fell, incarceration

⁸ Caleb Smith, *The Prison and the American Imagination* (New Haven, 2009); Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill, 2014). Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, 1977).

rates increased, and the clients of the system shifted largely from white to black. Adler's examination of this earlier period presages what comes later and offers historians much greater complexity for weighing in on the much-debated question of whether or how much crime rates drove mass incarceration of the past half century.

Miroslava Chávez-García's "Youth of Color and California's Carceral State: The Fred C. Nelles Youth Correctional Facility" shows how the history of race science is firmly anchored to the broader history of the carceral state. At the intersection of expert knowledge, rehabilitative policies, and eugenic practices, Mexican American and African American youths were subjected to a continuum of criminalization and confinement in one of the nation's most influential juvenile facilities. Chávez-García reveals the thinness of the line between the early use of scientific theories of "racial types" to advance innovation in punishment and late twentieth-century risk-assessment tools and sentencing guidelines.

Timothy Stewart-Winter argues in "Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States" that not only were the lives of African Americans regularly criminalized but so too were the lives of gay and transgender people. Indeed, in ways that historians have failed to appreciate, the movement for gay rights was linked to the early antipolice activism of the civil rights and black power movements. Gay rights activists also, however, ended up legitimizing the rise of the more punitive criminal justice system that arose in the 1980s and 1990s.

In "We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners' Rights Movement," Robert T. Chase explains that historians of the U.S. carceral state should shift their focus from politicians and national political debates to regional histories of prisoners. As he notes, in fact, the prisoners' rights movement both anticipated and responded to the worsening conditions that would become mass incarceration, and we must examine the myriad struggles closely. As important, southern prisoners were at the heart of this movement. They understood how southern prisons explicitly replicated the legal, racial, social, and labor-oriented elements of slavery, and they resisted this particular form of penal control mightily and successfully.

As Julilly Kohler-Hausmann makes clear in her essay, "Guns and Butter: The Welfare State, the Carceral State, and the Politics of Exclusion in the Postwar United States," historians have tended to write about the American welfare state and the carceral state as either totally separate or sequential policy enterprises. They assumed that the carceral state supplanted the welfare state when these systems were, in fact, deeply intertwined and governed by similar logics about the causes and appropriate remedies for social inequality. Managing the racialized visions of urban disorder and political insurgency at home, Kohler-Hausmann argues that the politics of the War on Poverty, the War on Crime, and the war on drugs were overlapping and yet shot through with disagreement over the appropriate balance of social welfare spending, punishment, and policing.

Elizabeth Hinton's "A War within Our Own Boundaries": Lyndon B. Johnson's Great Society and the Rise of the Carceral State" reflects further on how War on Poverty initiatives were often part and parcel of earlier efforts in the War on Crime. Liberals initiated more aggressive urban policing well before Richard M. Nixon took office, part of the federal response to contain and criminalize urban black youth involved in northern civil rights rebellions. Hinton emphasizes that policy makers militarized urban police forces in the early 1960s before crime rates rose. After 1964 these early War on Crime initiatives were embedded in and paid for by the War on Poverty.

In “Flocatex and the Fiscal Limits of Mass Incarceration: Toward a New Political Economy of the Postwar Carceral State” Alex Lichtenstein argues that historians must ground the emergence and impact of the modern carceral state in the changing political economy of the post-1965 period. Rather than locating the origin of mass incarceration in the racially divided cities of the urban North, or seeing it as an inevitable outgrowth of southern slavery, Lichtenstein looks closely at where the nation’s post-1965 prison boom was actually centered—the sun belt that he dubs Flocatex. As he argues, the historically unprecedented growth in American imprisonment in this period tended to be concentrated most in states—Florida, California, and Texas—that saw themselves as centers of economic growth and not in states suffering postindustrial decline.

Matthew D. Lassiter’s “Impossible Criminals: The Suburban Imperatives of America’s War on Drugs” suggests that key aspects of the war on drugs cannot be explained by locating it solely within a history of how minority populations were controlled within cities, or by seeing it as foundational for a new Jim Crow moment of mass incarceration. There were deeply important suburban manifestations of America’s long war on drugs, including the positioning of white middle-class youth as innocent victims who must be shielded from the illegal drug markets and the criminal drug laws, and the mobilization of the carceral state to protect middle-class communities’ recreational drug use. Indeed, he argues, the cultural and political construction of white innocence in suburban spaces and the criminalization of drug sellers in urban spaces were central to the expansion of America’s carceral state in the postwar period.

As of 2010 immigrant detention had become the largest system of human confinement operated by the federal government, and immigration offenders were the majority of prisoners in the federal penal system. Torrie Hester argues in “Deportability and the Carceral State” that immigration control is a cornerstone of the carceral state. Taking a long look at the history of deportation, Hester examines the shifting intersections of incarceration and immigration control between the era of Chinese exclusion and the war on terror. The story details when, why, and how the expansion of deportation fueled the rise of mass incarceration, encouraging historians to probe further the expanding overlap between deportation from the United States and incarceration within it.

In “Objects of Police History,” Micol Seigel pushes historians to consider the full breadth of U.S. police practice. Challenging the idea that U.S. police work is wholly defined by the beat police officer—that is, local, public, and civilian—Seigel tracks the activities and impacts of the Office of Public Safety (OPS), which dispatched U.S. police officials across national borders to shape the development of police forces abroad. In their work, OPS officials encouraged foreign police forces to blend civilian and martial tactics and to link police innovations to private investment. Seigel makes clear that historical analyses of U.S. policing and its impacts call for examinations of its transnational, corporate, and martial dimensions.

In “Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs” Donna Murch provides the first historical analysis of the “crack crisis” at the epicenter of the war on drugs in the 1980s. She examines how diverse communities in Los Angeles came to define drugs as a transformative social crisis that demanded an unyielding carceral response. In particular, she notes the seemingly contradictory politics of African American community leaders who stoked the carceral turn on one side, while, on the other, civil rights and black power movement veterans

quickly assessed and opposed the mounting collateral consequences of investing in policing and punishment as the solution to drug addiction. Murch's work illuminates how the carceral state is a key site for examining the complexities of African American politics and the long civil rights movement at the end of the twentieth century.

Edward J. Escobar's "The Unintended Consequences of the Carceral State: Chicana/o Political Mobilization in Post-World War II America" chronicles how the expansion of the carceral state in post-World War II America triggered unintended but powerful and enduring political mobilizations. Indeed, as he details, the dialectic between Mexican American organizers and repressive police violence transformed Chicana/o organizing from a fringe insurgency to a widely supported political, social, and cultural movement within the Mexican American community. As a result, the carceral state fueled the rise of the Chicana/o movement. Escobar's story makes clear that carceral frameworks can enrich our understanding of established histories and reminds historians delving into the carceral state to grapple with its many consequences, including both repressive tactics and emancipatory demands.

The essays in this volume provide only a brief sketch of new work by historians mapping the terrains of a burgeoning field. It is worth emphasizing that we editors have no illusion that the themes included here are the only ones worthy of additional research. Much work remains, and we hope that others will build from the foundation poured by the contributors here.