

## It's Not Just the Drug War by Marie Gottschalk

Progressive narratives about what's driving mass incarceration don't quite add up.

When it comes to uniquely American nightmares, it's hard to beat our carceral state. Living in a country with 5 percent of the world's population and 25 percent of the world's prisoners, many are aware of the human rights catastrophe taking place around them.

But when it comes to what's actually driving this, the explanatory power of standard progressive narratives falls short.

The growing unpopularity of the War on Drugs and the number of bipartisan moves to, supposedly, roll back mass incarceration have led some leftists to believe that, finally, the prison-state is about to be cut down to size.

Yet a new **book** by University of Pennsylvania political scientist Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics*, makes it clear that the problem is far worse than commonly suspected, and that the reforms on the table are unlikely to even make a dent in the forces that keep millions behind bars.

Contrary to what many progressives believe, Gottschalk argues it's not primarily the War on Drugs that's driving this beast. Instead, it's an all-out assault that "extends a brute egalitarianism across the board." *Jacobin* editor Connor Kilpatrick recently got a chance to interview Gottschalk.

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**One of the most shocking stats in your book is that simply rolling back punishments for violent offenses to their 1984 levels in 2004 would have done more to lower the incarceration rate — a cut in state prison rates of 30 percent — than simply ending the drug war.**

The intense focus in criminal justice reform today on the non-serious, non-violent, non-sexual offenders — the so-called non, non, nons — is troubling. Many contend that we should lighten up on the sanctions for the non, non, nons so that we can throw the book at the *really* bad guys. But the fact is that we've been throwing the book at the *really* bad guys for a really long time.

Legislators are making troubling compromises in which they are decreasing penalties in one area — such as drug crimes — in order to *increase* them in another area — such as expanding the use of life sentences. In doing so, they're also fostering the mistaken idea that it is easy to distinguish the non, non, nons from the really bad guys.

But as anyone who has watched *The Wire* knows, such categories can be very fluid and potentially misleading. Furthermore, some people who've done really bad things are no longer major threats to public safety after spending many years in prison and as they age out of the most crime-prone demographic groups.

**You have a lot of praise for Michelle Alexander's [book](#), *The New Jim Crow*, but you're critical about how it frames the carceral state as a "racial caste system." And yet there are an extraordinary number of incarcerated African Americans in this country, and an extraordinarily high incarceration rate compared to whites.**

The African-American incarceration rate of about 2,300 per 100,000 people is clearly off the charts and a shocking figure. The black-white incarceration rate in the United States is about 6 to 1. Focusing so intently on these racial disparities often obscures the fact that the incarceration rates

for other groups in the United States, including whites and Latinos, is also comparatively very high, just not astronomically high as in the case of blacks.

The *white* incarceration rate in the United States is about 400 per 100,000. This is about 2 to 2.5 times the total incarceration rates of the most punitive countries in Western Europe and about 5 to 6 times the rate of the least punitive ones.

Even if you released every African American from US prisons and jails today, we'd still have a mass incarceration crisis in this country. I do not mean to minimize the enormity of the problem of the carceral state for African Americans but rather to make a larger point about how we need to think about racial disparities and criminal justice in a more nuanced way and in a wider context.

**Another of your points of disagreement with many progressives and liberals writing on the build-up of our carceral state is their suggestion that the drug war is the primary driver of this nightmare. You're very critical of that view.**

We are at a promising political moment to think seriously about criminal justice reform. Unfortunately, the issue is getting framed in a way that's too narrowly focused on the War on Drugs. In fact, if we released everyone now serving time in state prisons whose primary charge is a drug offense, we would reduce the state prison population by only 20 percent.

The overwhelming majority of people in prison are not there because of a drug offense. And even many of the people who are serving time primarily for a drug charge have other kinds of offenses on their records. We have created the mistaken idea that prisons are chock-full of people serving time for petty drug possession.

That's not to minimize the cost of the War on Drugs, especially for African Americans, and the need to end this unjust war. Ending the War on Drugs would have an uneven effect on certain demographic groups. It would likely reduce dramatically the incarceration rates for African-American women, many of whom are in prison or jail primarily for a drug offense.

**So, if it's not the drug war, then what's driving this?**

There are proximate causes, and then there are the deeper underlying causes. I am not saying the War on Drugs was insignificant. It was an important proximate cause of the explosion in the prison population.

Another important factor was how, beginning in the 1970s, police, prosecutors, judges, and parole boards read the political tea leaves and started to exert their enormous discretion in a more punitive way. In the 1980s and 1990s, legislators began piling on tougher sanctions across the board. These included not only stiffer punishments for drug offenses but also the proliferation of mandatory minimums, three-strikes laws, truth-in-sentencing legislation, draconian sex offender measures, mandatory sentencing guidelines, and life sentences.

The United States did not just toughen up drug penalties. It toughened up all kinds of penalties for all kinds of offenses and made sure that more people served most of their sentence before being released or paroled.

## **How about the underlying causes?**

The underlying drivers of the carceral state are more complex. The United States has politicized and racialized issues of crime and punishment in ways that other countries have not. Why? No single factor is to blame. Several factors came together to create the perfect storm.

The enormous social and political unrest of the 1960s took shape amidst a crime shock as the national homicide rate doubled between the mid-1960s and early 1970s. At the same time, violence became far more geographically concentrated in poor urban areas with high concentrations of African Americans.

The lack of a consensus on what caused the alarming increase in violent crime opened up enormous space to redefine the “law-and-order” problem and its solutions. Foes of civil rights increasingly sought to associate concerns about crime with anxieties about racial disorder, the transformation of the racial status quo, and wider political turmoil, including the wave of urban unrest and riots and the huge demonstrations against the Vietnam War that gripped the country in the 1960s and 1970s.

The construction of the carceral state was deeply bipartisan from early on and not merely a case of New Democrats like Bill Clinton belatedly following in the punitive footsteps laid down decades earlier by Barry Goldwater, Richard Nixon, George H.W. Bush, and other leading Republicans.

Since the 1940s, race liberals had been consistently promoting greater investments in law enforcement and neutral procedures as the best way to resolve the law-and-order problem, as Naomi Murakawa explains in *The First Civil Right*, her wonderful new book. Race liberals remained confident that the establishment of a modernized, rationalized, and uniform sentencing structure was the best insurance against fostering a criminal justice system that was excessively punitive and excessively biased against minorities.

In seeking the support of archly conservative Southern Democrats, Sen. Edward Kennedy (D-MA) and many other race liberals ran roughshod over deep concerns expressed by other liberals and some experts on crime and punishment that the quest for more proceduralism untethered to substantive goals in criminal justice would yield a more punitive criminal justice system.

## **But why didn't the two major political parties face more political resistance from African Americans and other groups as they pursued an unprecedented expansion of the law enforcement apparatus?**

As Michelle Alexander pointedly notes, leading black politicians, public figures, and advocacy groups have been largely unwilling until recently to address the issue of mass incarceration. She attributes their silence to the challenges of shoehorning the problem of mass incarceration into the traditional civil rights framework, especially in this era of colorblind racism. But deeper factors are also critical in explaining why they have not been more strident critics of the carceral state.

As I explain in my previous [book](#), *The Prison and the Gallows: The Politics of Mass Incarceration in America*, some key social movements and liberal interest groups, including the victims' rights movement, women's movement, prisoners' rights movement, and the anti-death penalty movement, developed in ways that reinforced the punitive turn in penal policy.

*Caught* focuses more intently on the role of black leaders, politicians, and advocacy groups. Although they were clearly not the main instigators of the punitive turn, their actions contributed to the consolidation of the carceral state, in many cases unwittingly.

**How much do changes in the US political economy dating back to the 1970s help to explain the growth of the carceral state?**

There's a common argument that deindustrialization built the carceral state. That argument cuts one of two ways.

The first is that as people, especially African Americans, lost out in deindustrialization, they turned to crime.

The other is that the unemployed and dispossessed were not actually committing more crime. But with deindustrialization, public fears of a lumpen underclass threatening the majority escalated, partly because politicians stoked these fears for electoral reasons. This fueled the tough-on-crime stance — which became tough on African Americans in particular, thanks to the longstanding history of the racialization of crime in the United States for political purposes.

What I argue in *Caught* is that we had a failure to incorporate African Americans into cities in a meaningful way that *pre-dates* the rise of mass incarceration. African-American men were migrating to Northern urban areas at a moment when Jim Crow was still quite entrenched in the North and the South, and deindustrialization was already under way. So this idea that African Americans moved North, got good factory jobs, had middle-class lives, and then faced deindustrialization gets the timing a bit wrong.

It also obfuscates the fact that one of the most important things that helped to incorporate African Americans during this period was the expansion of the public sector, which created many jobs for them. If we truly want to help people who are coming out of prison or to keep people from going to prison, then we need a public-sector expansion with real jobs that pay a living wage, not the contingent kind that pay a minimum wage.

**How much of the rise of the carceral state do you attribute to the weakness of our welfare state compared with other countries?**

The states in the US that have experienced a *decrease* in spending per capita on welfare have tended to experience an *increase* in spending on prisons. We know that countries that have weaker welfare states tend to have higher incarceration rates and higher crime rates. Countries that have gaping income inequalities generally have higher violent crime rates and often higher incarceration rates.

**What about the role of private-sector interests in the construction of the carceral state?**

We need to get away from a simple-minded, left-leaning approach to understanding mass incarceration that blames it all on economic interests and the prison-industrial complex. That said, what built the carceral state is not the same thing that sustains it today. The prison-industrial

complex and economic interests were not the primary driving forces behind the construction of the carceral state, but they do much to sustain it today.

The biggest private-sector prison companies, notably The GEO Group and CCA (Corrections Corporation of America), have become very nimble political actors. They have been repositioning themselves to adapt to a new political climate in which calls for criminal justice reform are escalating.

They view the criminalization of immigration enforcement as a new frontier to make money and repurpose excess jail and prison beds. They increasingly talk about the need to invest more in the “corrections lifecycle,” that is, to privatize not just jails and prisons, but also to expand and privatize probation, parole, electronic monitoring, drug testing, etc. They are aggressively pushing to expand the “prison beyond the prison,” that gray area where people are not in prison but are tightly surveilled and not full citizens.

**You mention another big engine of the carceral state build-up is the war on sex offenders. In *Caught*, you note that from 1996 to 2010 the number of people serving time at the federal level for drug convictions went up 80 percent, but those serving time for sexually explicit materials went up *sixtyfold*.**

People charged with sex offenses are the most rapidly increasing segment of the US prison population. Politicians and the general public talk about sex offenders as deviant pathological beasts. They don’t realize that “sex offenses” is a very capacious category, including everything from urinating in public to consensual underage sex to flashing to child pornography to raping and murdering a child. According to the latest statistics on federal prosecutions, we are meting out longer sentences on average to people who *view* child pornography than to people who actually sexually abuse children.

**How do other countries address this?**

Other Western countries have not established extensive civil commitment systems that continue to lock up people convicted of sex offenses long after they have completed their sentences — in some cases for life. They do not impose onerous residential, registration, and community notification requirements. They do not require people convicted of sex offenses to be listed in public databases accessible to anyone with an Internet connection.

The evidence is thin or nonexistent that such measures seriously reduce the incidence of sex offenses. These measures actually may be backfiring by pushing people convicted of sex offenses to the margins of society and thus increasing the likelihood that they will recidivate.

**You mention the uncomfortable fact that states that are less punitive are more likely to have *greater* racial disparities in their inmate populations.**

This is a controversial and tough issue that has to be faced. Many people, including many progressives, have set reducing the racial disparities in prison as a major goal. The aim is to send blacks and whites to prison at more comparable rates. How might that come about?

Let’s look at the South. The South actually has some of the nation’s lowest racial disparities when it comes to black-white imprisonment — much lower than a state like Minnesota.

Blacks in Minnesota are about eleven times more likely to be incarcerated than whites, giving Minnesota the country's highest black-white disparity in imprisonment. But Minnesota also has one of the lowest incarceration rates in the country. So overall, African Americans are less likely to be sent to prison in Minnesota than in the South, which is a more equal opportunity incarcerator.

If we reserve prisons for people who've committed the most serious crimes that pose major threats to public safety, we're probably going to have fewer African Americans overall in prison but *higher* racial disparities in the prison population.

Why? Because, even though the rate of violent crime has been falling for African-Americans while rising for whites, African Americans still disproportionately commit more serious crimes like homicide, robbery, and aggravated assault. The reasons why have to do more with class than race, including structural factors like poverty, joblessness, decaying urban neighborhoods, poor housing stock, and extensive segregation by class and race, which are often difficult to disentangle

**One stat from your book that really shocked me was that, with 5 percent of the world's population and one-quarter of the world's prison population, we have *one-third* of the world's *female* prisoners.**

Incarceration rates have increased much faster for women than for men. The War on Drugs hit women, especially African-American women, disproportionately hard. As the drug war has eased slightly in recent years, their incarceration rates have started to inch downwards. Today the incarceration rate for African-American women is about 330 per 100,000, still well above the overall incarceration rates for other Western countries — even for men in other Western countries.

In recent years, the number of women imprisoned for violent offenses and property offenses has increased substantially, especially for white and Hispanic women. The rising rates of contact with the criminal justice system for low-income white women are likely a consequence of the recent sharp deterioration in their health and social conditions.

This includes a remarkable five-year drop in the life expectancy rates of white women who are high school dropouts. More white women today are dealing with serious health care problems, poverty, and mental health issues. All of these problems render them more vulnerable to being swept up by the penal system.

**You mention in the book that receiving a life sentence in the US used to mean something far less severe.**

Approximately 160,000 people are currently serving life sentences in the US. That's about twice as many people as the *total* prison population of Japan, a country of 120 million people. And the US figure only includes people who were officially given a life sentence. It doesn't include people who were given decades-long sentences that are de facto life sentences.

Life sentences used to be an extremely rare penalty. For those who did receive one, life seldom meant life because of the widespread use of executive clemency. The general practice was if you behaved yourself and kept your head low, and if the warden felt OK about you, you would receive clemency. A "life" sentence typically meant on average spending about 14 or 15 years in prison.

Today, commutations and pardons are rare events. Governors typically use their powers of executive clemency in cases of some widely perceived travesty of justice. For example, when the least culpable person in a crime receives the heaviest sentence or if there is a credible claim of innocence or when an attorney was abysmally inept.

**It seems to me this is the problem with the obsession over the Adnan Syed case at the center of the Serial podcast: we obsess over his potential innocence because it's the only way he won't serve out a life sentence.**

I agree. People think he should be let out because he's possibly innocent or due to possible prosecutor misconduct. No one argues he should be let out even if he's genuinely guilty because life plus thirty years is an excessive sentence for someone who committed homicide as a teenager.

Years ago, governors and presidents used executive clemency to express mercy or to make a broader political statement. President Woodrow Wilson commuted the sentences of hundreds of people convicted of alcohol-related crimes to express his opposition to Prohibition. On Christmas Day in 1912 at the height of Jim Crow, Gov. George Donaghey of Arkansas, a fierce opponent of the brutal convict-leasing system in the South, commuted the sentences of hundreds of state prisoners in a gesture that made national headlines.

**And this Jim Crow governor was running on a white supremacist platform!**

Right. In one of the most notable and controversial acts of mercy and forgiveness, President Jimmy Carter enraged veterans' groups in 1977 by fulfilling a campaign pledge to grant a broad amnesty to the tens of thousands of people who had dodged the draft to avoid military service during the Vietnam War.

**That seems almost unthinkable now.**

It is unthinkable. And look at President Obama. The joke making the rounds is that he has granted more commutations to Thanksgiving Day turkeys than to people convicted of crimes. Until recently, that was actually true.

**I'm guessing you're very pessimistic about these recent bipartisan moves — both among classic Republicans and libertarian intellectuals — to roll back the carceral state.**

I might start believing that people like Grover Norquist, Newt Gingrich, and other leaders on the Right are truly ready to make significant dents in the carceral state the day they begin supporting Medicaid expansion under the Affordable Care Act.

If you care about reentry and about keeping people out of prison in the first place, there's no public policy that you should support more strongly now than Medicaid expansion. Medicaid expansion gives states huge infusions of federal money to expand mental health services, substance abuse treatment, and medical care for many of the people who are most likely to end up in prison. It also allows states and localities to shift a significant portion of their correctional health care costs to the federal tab.

Texas and other states have gone chasing after federal Second Chance and justice reinvestment dollars, which are a relative pittance. Meanwhile they have been eschewing the billions of dollars in Medicaid funding that could provide real second chances to people released from prison, many of whom, truth be told, never had a first chance.

In fiscal 2012, Congress allocated just \$63 million for the **Second Chance Act** — which works out to less than \$100 for each person released from prison and jail that year. Compare that to the estimated \$100 billion Texas will forfeit in federal dollars over the next decade because of its decision to opt out of Medicaid expansion.

Today's left/right kumbaya moment on criminal justice reform rests partly on what I call the pathologies of deficit politics. Hitching the movement against mass incarceration to the purported fiscal burden of the carceral state helps reinforce the premise that eliminating government deficits and government debt should be the top national priority.

**And that doesn't necessarily translate to letting prisoners out.**

Right. Most prison costs are fixed and are not easily cut. The only way to seriously reduce spending on corrections is to shut down penal facilities and lay off the people who work in them or, as in the case of deinstitutionalization of the mentally ill, to provide workers with aid to transition into new jobs.

Faced with powerful interests that profit politically and economically from mass imprisonment, many states have been making largely symbolic cuts that do not significantly reduce the incarcerated population or save much money.

But they do render life in prison and life after prison leaner and meaner. Homicides, assaults, and other acts of violence appear to be on the rise in federal penitentiaries and in some state prisons as staff positions go unfilled due to budget cuts. In the wake of the Great Recession, many states have eliminated or reduced programs for prisoners, cut back on correctional health care, and even slashed food services.

Casting the problem of the carceral state as largely a budget deficit issue helps to legitimize a race to the bottom in penal conditions. For years now the United States has been distinct not only because it holds so many people under lock and key but also because the conditions in many of its prisons and jails are so degrading and dehumanizing compared to many other Western countries.

Furthermore, the drag of corrections on government budgets is overstated. Corrections consumes on average only about 2 to 3 percent of state budgets. States spend on average twice as much on highways as they spend on prisons.

**So you're saying that even with our massive carceral state we have a lot more room budgetary-wise to lock up a lot more people.**

We do. Framing the carceral state primarily as an economic issue may yield some short-term benefits. But in the absence of more compelling arguments against the prison build-up, it becomes



that much easier to revert to funding a vast carceral state, no questions asked, once the economy picks up.

**With so many Americans either locked up now or earlier, how has this shaped the failure of a mass political movement of the poor and working class to take off?**

The people most directly affected by the carceral state today have been politically disenfranchised. Many of them are not permitted to vote, even after they have completed their sentences. Probation and parole conditions often forbid associating with ex-felons, traveling outside the immediate area, and, in some cases, even carrying a cellphone.

These restrictions are major impediments to political action. If arrested at a protest or demonstration, people serving probation or parole risk being sent back to prison to complete the rest of their sentence. Even though serving time is a commonplace event in certain communities, research data suggests that a huge stigma persists for those who have been sent to prison and their families. This helps explain some of their political quiescence.

**There seems to be this idea right now that things are looking better on this front — that we're slowly winding down the carceral state. Are fewer people going to jail right now? And if so, is this a reason for optimism?**

The total number of people in US jails and prisons has largely stabilized since the onset of the Great Recession, but no major contraction appears in sight. The US incarceration rate of about 700 per 100,000 is still the highest in the world and rivals the estimated rate for the Soviet Union at the height of the gulags in the 1950s.

Marc Mauer of [The Sentencing Project](#) calculated that if declines in the prison population continue at a rate of about 1.8 percent a year — the biggest year-to-year drop registered since the boom began — it will take until 2101 for the prison population to return to its 1980 level. In November, the Pew Foundation released a [report](#) projecting that state prison populations are expected to grow by about 3 percent by 2018.

**Let's talk about solutions: what policies could an effective political movement implement that could roll this back substantially?**

Let's aim at minimum to reduce the incarceration rate to about 150 to 175 per 100,000, which is where it was on the eve of the prison boom and is somewhat comparable to other developed countries. That would mean cutting the rate by about 75 to 80 percent. Some people have begun to talk about cutting it in half over the next 10 years — and this has been dismissed as a radical idea.

We need comprehensive sentencing reform, and not just for drug crimes. We have to look at the hard cases like child pornography. We also need to roll back these very punitive sentences for people who've committed some pretty serious crimes — like homicide.

We should abolish life in prison without the possibility of parole. This is a nearly unheard-of sentence in Europe. Everyone serving time should be entitled to a meaningful parole review. We've lost the distinction between somebody who's done something horrible and somebody who is a horrible person.

Public opinion surveys show that Americans in many ways are not more punitive than people in other countries. Public officials and politicians in the United States misread public sentiment on this issue. They're excessively fearful of public opinion, and they've been unwilling to lead public opinion to dismantle the carceral state, not just trim it around the edges.

The mainstream narrative on criminal justice reform today is that since everything is so polarized in Washington and state capitols, the best we can hope for is small-bore legislative fixes aimed at the non, non, nons. Comprehensive sentencing reform is considered a nonstarter.

But it is important to remember that the carceral state was not built by legislation alone. In its formative years, a growing number of prosecutors, police, judges, and corrections officials made a major shift and decided to exert their enormous discretion in a more punitive direction. Now they can choose to do the opposite.

And if you look around today, you will find a handful of maverick prosecutors, judges, police chiefs, and corrections officials who have become disenchanted with the carceral state. They are displaying some rare examples of political courage as they wield their enormous discretion to pursue less punitive policies and practices.