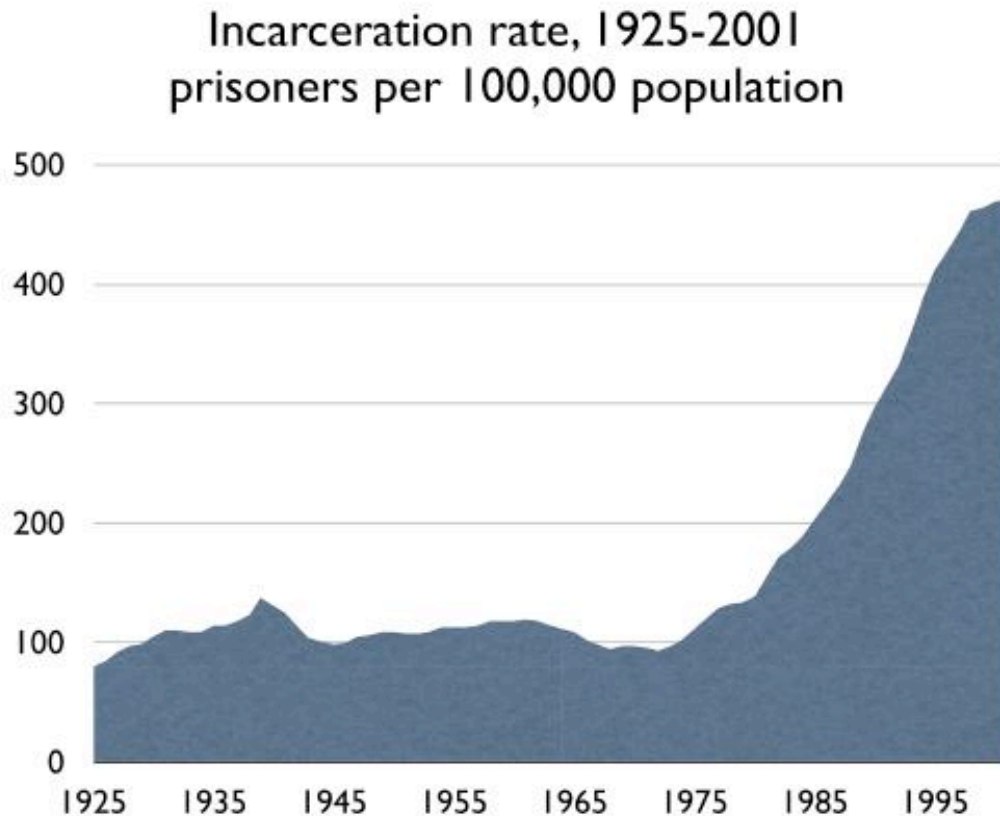


"The goal of state violence is not to inflict pain; it is the social project of creating punishable categories of people" Carol Nabengast

Let's start with some numbers:



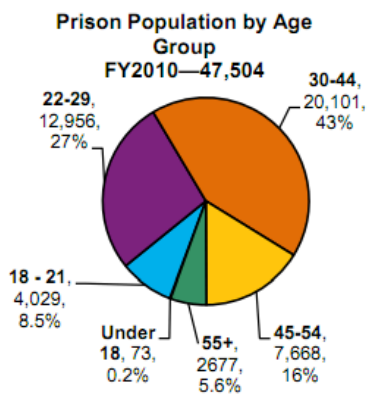
Data from Sourcebook of Criminal Justice Statistics 2001, Table 6.23

The Prison Index

In the last 30 years, the U.S. prison population has grown in heretofore unimaginable numbers. In 1975 there were 380,000 people in prison, the population had declined slowly at about 1% over the decade. Today that number has grown 10 fold, with more than 2,000,000 people languishing in U.S. prisons. In 1980 one of every 800 people in the U.S. was in prison or jail. Today one of every 99 people in the U.S. are in prison or jail (not including the thousands held by U.S. Marshals and ICE). And who is in prison? The U.S. makes up 5% of the world's population but holds 25% of the world's prisoners and more than 1/2 of the world's wealth.

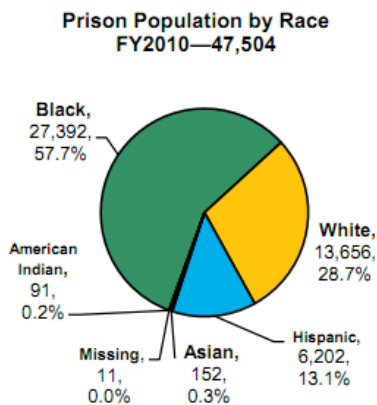
The Demographics:

- An upwards of 70% of people in prison are people of color.
- 10% are women of all races
- 60% of people in prison are illiterate
- In 1991 it was reported that more than half of all state prisoners reported an annual income of less than \$10,000 prior to their arrest.
- 20,00 to 30,000 thousand people in U.S. Prisons are held in solitary confinement.
- Sex offenders are often held, after serving their sentence, with no option of parole.



The end-of-fiscal year 2010 average age was 35.9 years old. The age group comprising the largest percent of the offender population was 30-44 years, followed by 22-29 years.

Age	Number	Percent
Under 18	73	0.2%
18 - 21	4,029	8.5%
22-29	12,956	27.3%
30-44	20,101	42.3%
45-54	7,668	16.1%
55+	2,677	5.6%
Total	47,504	100.0%



IDOC's offender population is largely Black (equating to about 58%), followed by Whites at a little under 29% and Hispanics at 13%.

Race	Number	Percent
Black	27,392	57.7%
White	13,656	28.7%
Hispanic	6,202	13.1%
Asian	152	0.3%
American Indian	91	0.2%
Missing	11	0.0%
Total	47,504	100.0%

In Illinois:

There are between 46-49 thousand people in Illinois Prisons. That number fluctuates daily. We have some 27 prisons, and about 12-15 work camps transitional centers etc. and one detention facility where sex offenders are held after they serve their full sentence. Last year Illinois spent approximately 1.2 Billion on IDOC. That's down from the 1.3 billion we spent in 2009.

These are, of course, just some of the numbers associated with a massive system dedicated to keeping people in cages for part or most of their lives and during their prime working years. To think more about how this happens strategically (i.e. it's not only unfortunate couplings of poverty, displacement, and race), I want to look at just two scholars (and there are others!) who look of incarceration as a necessary component to a neoliberal paradigm. Then I'll focus in on some examples of how incarceration and markets have been and are bound.

Bernard Harcourt:

“Periods of strong belief in free-market ideals have gone hand in hand with the birth and escalation of the prison system.”

"At its core, neoliberalism is the attempt to displace political conflict, contestation, and struggle—i.e. to neutralize the political clash over irreconcilable normative visions of family, society, and nation—by extending an idea of orderliness from the economic realm to other spheres of human existence and practice. The notion of orderliness corresponds to the idea of the ordered market as the model of social interaction—a model of (purportedly) “voluntary and compensated exchange” that “benefits all parties.”

Harcourt, looks at ideas articulated by French economists of the 1750's, named the Physiocrats, who develop an economic theory based on the wealth of nations comes

from land agriculture. They emphasized productive work as a source of national wealth. Another emphasis was on natural order which led to the thinking that any outside interventions such as the regulations of governments (or labor disputes?), was an impurity and needs to be policed. The thinking was that the market needed to be protected from these interferences and that those who transgress the natural order of markets should be dealt with in the form of the penal state. The role of the penal code is to keep people within the orderly law-- and the orderly law is built around the market-- because the model of the market is one that informs social relationships.

Harcourt says, in the U.S., the birth of the penitentiary coincides with the "Market Revolution" in the 18th century. So here is yet another starting point to trace the connections. And again, these ideas show up 200 years later in the work Richard Posner who notes the function of the criminal law-- the penal code-- is to prohibit people from bypassing the efficient market system (the orderly system) in favor of other forms of economics. Another way of saying this is that the role of the punitive system is to keep people in the market system.

Harcourt says that the relationships we have to markets have an effect which reduces our resistance to horrible bills and hyper incarceration (i.e. 3 strikes, mandatory minimums). For instance, this market logic that orders our social relationships creates a reasoning in divestment of neighborhoods and people that are considered to not produce future investments. In a lecture (link below) Harcourt states that a considerable investment of some 47 billion dollars a year is spent on the prison system --an investment that is funneled to other working class people, mostly white officers. Thus, the mode of government is to monitor carefully the investment potential of human capital in unemployed prisoners v/s the investment potential of human capital in prison guards and other services providers.

In short, his book "The Illusion of Free Markets" draws connections between how ideas of the market and the prison have evolved. He says, "The punitive society we now live in has been made possible by—not caused by, but made possible by—this belief that there is a categorical difference between the free market, where intervention is inappropriate, and the penal sphere, where it is necessary and legitimate. This way of thinking

makes it easier both to resist government intervention in the marketplace, as well as to embrace the criminalization and punishment of any 'disorder.'

Ruth Wilson Gilmore:

Gilmore articulates 2 terms that are important to unpack:

Surplus labor: Gilmore discusses surplus labor in relationship to the economic restructuring of California's economy in the 1970s where 'people experienced job insecurities or were laid off and entire labor sectors were displaced'. She says, "Poverty more than doubled and nationalist and racist confrontations were on the rise. The ferment produced a growing relative surplus population-- workers at the extreme edges or completely outside of restructured labor markets, stranded in urban and rural communities." But even in good economic times, if there is to be a expected or "natural" unemployment rate of about 6% as outlined by the Federal Reserve, then Gilmore explains the 'fatal coupling' of power and difference has created a particular formation---enclaves of people, eligible workers, who developed alternative models of social reproduction-- that constitute child care, making money, creating housing etc. She references ideas described by William Julius Wilson: the "concentration effect" and "social isolation". These are paradigms in which people (mostly poor, brown and black people) get segregated into neighborhoods that are more intensely policed by different state agencies, from child welfare to police. She says, "Changes in public policy with respect to the working poor have contributed to the abandonment of entire segments of labor with the result that the "social safety net has been replaced by a criminal dragnet"

This is context helps frame another term that Gilmore uses:

Anti-State State: "the state that grows on the promise of shrinking." Gilmore urges us to follow the details (not just the money) to see more specifically how the anti-state state has constituted itself and normalized what is not at all normal or natural (i.e. millions of people in prison). Gilmore reminds first reminds us that there has never been a time when capitalism did not benefit from the state in terms of regulations, organizations or its reproductive capacities. She also says that, indeed, capitalists make the state through detailed negotiations and complex organizations that secure their wealth-accumulating capacities. The rhetoric of a shrinking state is a "fable" that obscures

what is actually happening. Gilmore says: "The Anti-State State's fable promising its own demise is a central part of the rhetoric of neoliberalism. As Peter Evan and other have argued, telling and retelling the story is part of the discourse of globalization, a crucial part of the current attempt to normalize market ideology in order to reshape and renew global domination."

So how is the state reshaping under neoliberalism?

The state is reshaping in the form cuts to programs like education, healthcare, services that wealthy people can pay for and cuts to welfare programs that manage the poor.

When the state can't or doesn't need to pay for services for those who can afford it on their own (health care, education, private infrastructure), it provides by delivering protection in the form of borders, walls, detention centers and prison cells. Insightfully Gilmore says: "In other words, the state has created penal solutions for the chaos it has created." But mass incarceration wouldn't work if it was a wonton lock up of just anybody. Instead, Gilmore and many others argue that periods of restructuring are accompanied by a "rejigging the categories of race, poverty and citizenship". For example, popularly we live in a 'colorblind' society where explicitly racist laws (like Jim Crow) have been detached from the state, however we live in an era where more people of color are incarcerated than plantation owners enslaved own slaves in 1850s before the civil war. How does this happen? What social, spatial and juridical categories are created that allows this historic and unprecedented mass incarceration to happen?

Many scholars have charted specific moments of the state reshaping in which incarceration numbers spike. Here I want to draw on some of those histories to look at iterations of law and funding that materializes a massive prison population

#1 Reshaping post-civil war

Douglas Blackmon's "Slavery by Another Name" on the Convict Lease System

Blackmon and others detail north-south corporate and industrial relationships after the Civil War. The federal government and northern corporations had interests in investing

in the south because it has resources (coal, turpentine, lumber, clay for bricks) and did so before the war (ex. a NY industrialist controlled Tennessee Coal, Iron and Railroad Co.) Many of these industries had just been tapped. Before the war slaves were usually the workers. They were pattern-makers, blacksmiths, miners, masons, furnace workers and more. The first recorded industrial death in Alabama was that of a slave in the 1840's who worked in an iron ore pit. Southern railroads also owned slaves-- in fact over 20,000 of them by the time of the civil war. During the civil war many southern industrialist would lease slaves from other plantation owners. Blackmon writes: "John T. Milner an industrialist had a 'vanguard' new theory of industrial forced labor. In 1859 Milner wrote "that black labor marshaled into the regimented productivity of factory settings would be the key to the economic development of Alabama and the South." and that black labor needed to be managed... by a white overseer."

How does this relate to prisons? Blackmon says:

"Many states in the South and the North attempted to place their prisoners in private hands during the eighteenth and early nineteenth centuries. The state of Alabama was long predisposed to the idea, rather than taking on the cost of housing and feeding prisoners itself. It experimented with turning over convicts to private 'wardens' during the 1840s and 1850s but was ultimately unsatisfied with the results. The state saved some expense but gathered no revenue. Moreover, the physical abuse that came to be almost synonymous with privatized incarceration always was eventually unacceptable in an era when virtually every convict was white. The punishment of slaves for misdeeds rested with their owners."

By the end of Reconstruction in 1877 every former Confederate state except Virginia had a convict leasing system in which black prisoners were sold into commercial hands. Thus all functions of incarceration including housing, food, clothing, and punishment, were given to private companies who bought the prisoners. Blackmon writes: "Company guards were empowered to chain prisoners, shoot those attempting to flee, torture any who would submit and whip the disobedient. Over the 8 decades of this practice, there was never any penalties to companies or company guards for the mistreatment or death of leased men. In fact in Alabama companies were fined \$150.00 if prisoners escaped.

1866 Alabama governor leases the state's 374 prisoners for six years for the total sum of \$5

1866 Texas leased 250 prisoners to 2 railroad companies for \$12.50/month

1867 Arkansas contracts with companies for the labor of both state and federal prisoners held in the state

1868 Georgia signs a lease with Georgia and Alabama Railroad Co. for \$2,500 dollar for 100 prisoners

1868 Mississippi leases its 241 prisoners to the state's largest cotton planter, Edmund Richardson, and later to Nathan Bedford Forrest, one of the founding members of the KKK

1869 Florida begins leasing prisoners

1871 Tennessee leased almost 800 prisoners to Thomas O'Conner, founding member of the Tennessee Coal, Iron and Railroad Co.

1872 North Carolina leases prisoners

1877 South Carolina ousts black government leaders and legislature passes a law allowing for the sale of the state's 400 black prisoners and 30 white prisoners

In the first 2 years that Alabama leased prisoners, 20% of them died. In the third year, 35% died. And in the 4th, almost 45% died. "

Companies secured this cheap labor by states enacting ridiculous laws that in effect round up African American men. Imprisoned men were to pay off their debt to the police that picked him up, to the courthouse and judge for their services, to the jail for its services, and so forth. Thus, it was rare that a man could get away without going to the labor camps. It was often considered more brutal than slavery, because companies didn't have a huge financial stake in keeping the prisoners health in good standing or in keeping prisoners alive. Blackmon's book details several instances where prisoners were murdered on the spot for talking back to overseers or owners. The prisoners were cheap; there was a saying, that became the title of Matthew Mancini's book "One dies get another". Companies had to keep logs of death, escape and they kept "whipping reports". This is one way that this history is recorded.

There are also stories of prisoners revolting, escaping and more. The famous book "I Am A Fugitive From a Georgia Chain Gang!" tells the story of WWI veteran Robert E.

Burns who spent several months in a railroad camp. This brought some attention to the plight of white prisoners and eventually reformed the Georgia chain gang system. However, Northerners and southerners alike who owned or bought from southern industries totally accepted this slavery because it was what made them rich. Blackmon says that all the streets in Atlanta are paved by bricks made from slaves in brick mines. Much of the railroads laid in NC were laid by incarcerated, enslaved men.

The practice of selling prisoners went on until the 1940s when some of the last cases were tried. Before then many African Americans sent letters to the Dept. of Justice and other federal authorities asking for help for an incarcerated family member. Finally in 1941, Attorney General Francis Biddle issues a directive to all federal prosecutors acknowledging that decades of these complaints had gone unheard. Biddle wrote "It is the purpose of these instructions to direct the attention to the United States Attorneys to the possibilities of successful prosecution stemming from alleged peonage complaints which have heretofore been considered inadequate to invoke federal prosecution." He lays out statutes prosecutors can use to prosecute slavery.

#2

Reshaping the 1950's- 1970's

The context will be familiar as it is what Sarah Lewison discussed at the last seminar: student movements, civil rights, feminism, poor people's movements, black liberation. We can see distinct moments of a reshaping of the state in the Warren Court:

1963 *Wainwright v/s Gideon* (poor people get representation)

1964 *Escobar v/s Illinois* (right to have a lawyer present during interrogation)

1966 *Miranda v/s Arizona* (right to be informed of legal rights during arrest)

Even though there were hard won advances for African Americans in 1950s and early sixties, we see a "rejjigging of the categories"-- racial and class categories but this time with new language. Civil rights made it more impossible for politicians to utter explicit racist remarks, instead their fear and white supremacy was wrapped up in a language of law and order. Michelle Alexander (author of "The New Jim Crow") says segregationists

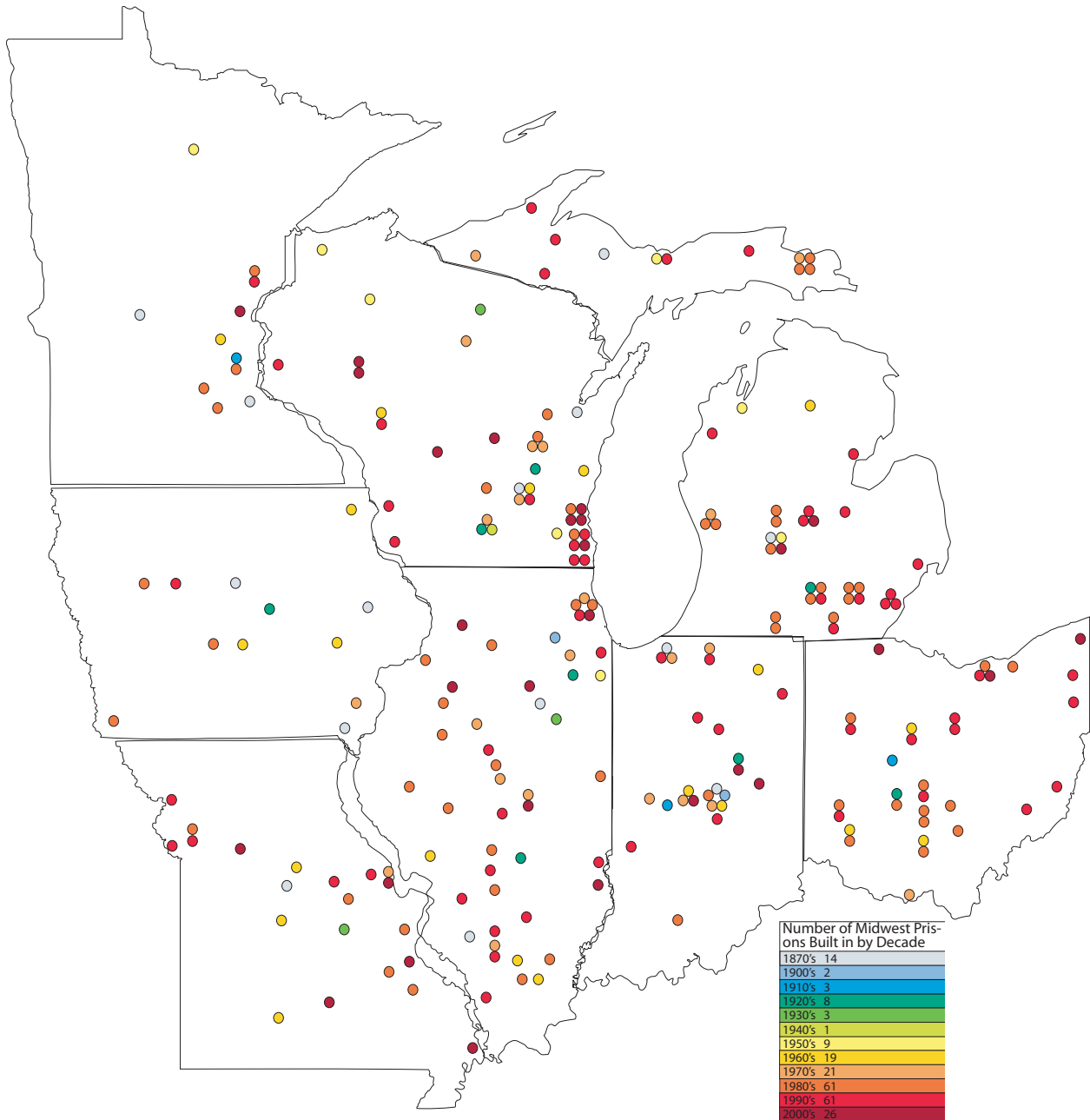
adopted a 'racially sanitized language' of "cracking down on crime." Alexander quotes Vesla Weaver saying "Votes cast in opposition to open housing, busing, the Civil Rights Act, and other measures time and again show the same divisions as votes for amendments to crime bills....Members of Congress who voted against civil rights measure proactively designed crime legislation and actively fought for their proposals."

At the outset of these notes I stated a partial statistic by Loic Wacquant who says, "During the 1960s the US prison population was shrinking, so much so that by 1975 it had fallen to 380,000, having declined slowly but consistently (by about 1% a year over a ten year period). But both Goldwater and later Nixon run on law and order platforms. By 1968 Nixon had helped craft a crime bill that allowed for "preventive detention" giving judges ability to deny bail to federal defendants and issue "no knock" warrants. These were targeted at drug crimes, which included not just large scale distributors but users and low-end dealers. In 1970 the Comprehensive Drug Abuse Prevention and Control Act offered \$189 million to drug treatment and \$220 million to law enforcement, changing the balance from services to detention and punishment. Also under Nixon the DEA (Drug Enforcement Agency) was created, as was RICO (Racketeer Influenced and Corrupt Organization Act), which went after not only crime cartels but members of the new Left. Nixon was reported to say that "...you have to face the facts that the whole problem is really the blacks."

During this time there are increased ties between policing and management that materialize in surveillance tools and managing of systems for local police departments. In 1968 only 10 states had state-level criminal justice information systems. By 1972 and a \$90 million later, 40 states had computerized databases connected to the FBI. Also at this time SWAT teams are created, though not many cities had them or used them. Cities with large populations got hammy downs from the military such as helicopters and more advanced weapons (this is a common practice today and used as an incentive for drug arrests both large and small). While Nixon's Watergate put an end to this era of mass accumulation of tools for incarceration, a frameworks was in place for the upcoming decades.

We can see that this era begins with social movements like Civil Rights and administrative programs like Johnson's War on Poverty, but by the 1970's another kind of war was getting started. This war comes to fruition with what we might call Reagan's own war on poverty (or the War on Drugs), which used federal dollars for the poor in the form of hyper-policing and new punitive legislation. We all know the destruction that Reagan caused, but if we think about it with the frame of "re-jigging of categories" we can see how the 1980's War on Drugs criminalized specific class and race categories. Reagan famously uses terms like the "welfare queen" and the "human predator" to mark these categories.

By 1986 the legislature passed a \$2 billion anti-drug crusade which required the participation of the military in drug control efforts, allowed the death penalty for some drug-related crimes and authorized the admission of illegally obtained evidence in drug trials. And by 1988 new policies allowed not just criminal, but civil penalties for drug offenders; authorized public housing authorities to evict tenants who allowed drug related activities to happen on or near public housing grounds, and eliminated public benefits including student loans for anyone convicted of a drug offense. Waquant says "Between 1979 and 1990, the states increased their spending on prisons by 325% on operational costs and 612% on buildings - that is to say three times more rapidly than national military spending..." In this era one could go on and on with the changes in public policy related to social welfare and criminal law. Books like "Lockdown Nation" and "Punishing the Poor" details these rapid changes.



#3

Reshaping: The neoliberal era

Michelle Alexander and the New Jim Crow

By the time Clinton is in office, he signs a historic 1994 Crime Bill Act that created new federal and state crimes, mandated life sentences for 3-time offenders, granted more than \$16 billion for state prison grants and expansion of state prisons. More people

were incarcerated during the Clinton administration than any other time in American history. At the same time he created the "Personal Responsibility and Work Opportunity Reconciliation Act" that reshaped welfare into Block grants to states and placed a 5 year limit on welfare, and a life time ban on welfare and food stamps for anyone convicted of a felony drug offense. Clinton also did several other acts that made it easy to exclude people with records from public housing or other state services.

Just to give reiterate how the War on Drugs was really a war, Michelle Alexander, just in one small section of her book looks at the rise of SWAT teams. She says,

"The rate of increase in the use of SWAT teams has been astonishing. In 1972 there were just a few hundred paramilitary drug raids per year in the U.S. By the early 1980s there were three thousand annual SWAT deployments, by 1996 there were thirty thousands, and by 2001 there were 40,000. The escalation of military force was quite dramatic in cities throughout the US. In the city of Minneapolis, for example its SWAT team was deployed on no-knock warrants thirty five times in 1986, but in 1996 the same team was deployed for drug raids more than 700 times."

And this war was played out not just in the form of raids but largely in the courts. The beauty of Alexander's book is she details specific cases around search and seizure, capital punishment, sentencing and parole in which outcomes of the cases continued to seal the fate of thousands of people--mostly black and latino males-- who would spend the prime years of their working lives in cages. She places her focus first on the War on Drugs, then on the broad role of the prosecutor (Angela J. Davis has written a great book on) and finally on the stigma of incarceration that creates extreme long-term damage for people coming out of prison. The New Jim Crow, is in part, the fact that once free, people leaving prison are banned either by law or socially, from finding and keeping jobs, housing, reconnecting with family and more. For me this is a very important point when thinking about the role of the market and incarceration. Both in and outside the prison walls a huge group of able men and women are being removed from the work force, and from economic activity of their neighborhoods. If you look back at the graph of people in Illinois prisons in 2010 a full 69% are between the ages of 22-44 (core years of one's working life!).

Alexander clearly constructs Ruth Wilson Gilmore's argument of "re-jigging categories" by looking at the making of laws to confirm those categories, which provides important distinctions in a changing, neoliberal state. Here is a sampling of cases Alexander details:

1987 *McCleskey v. Kemp* = racial bias in sentencing, even if shown through credible statistical evidence, could not be challenged under the 14th amendment in the absence of clear evidence of conscious discriminatory intent (i.e. cop has to be screaming the N* word to be conscious discriminatory...)

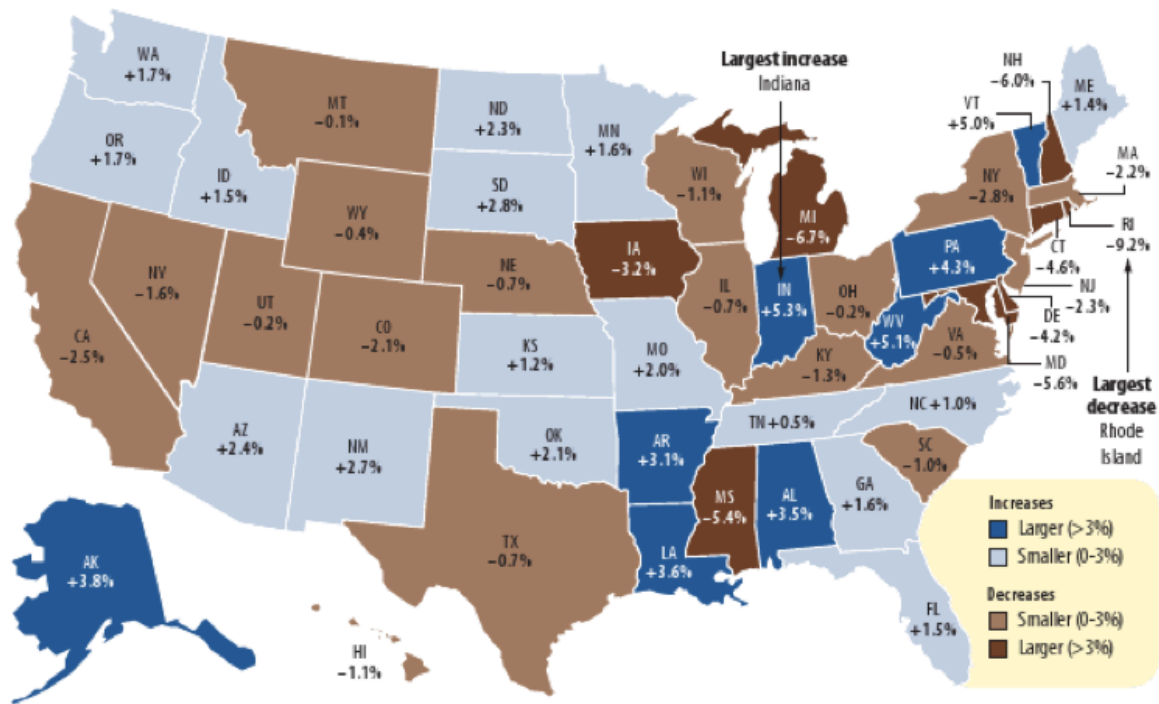
1995 *Purkett v. Elm*: case challenging race-biased strikes from jury. Supreme Court rules that when a pattern of race biased strikes has been identified by the defense, the prosecutor need not proceed "an explanation that is persuasive or even plausible" once the reason is offered a trial judge may choose to believe or disbelieve any "silly or superstitious" reason offered by prosecutors to explain a pattern of strikes that appear to be based on race.

1996 *U.S. v. Armstrong*: case in which defendant says that other races do not get prosecuted on the same charges, Rehnquist writes majority opinion saying that it is incumbent upon defendant to demonstrate that people of other races have not been similarly prosecuted.

Not only do these and other cases articulate a clear racism of the co. Finally I'll wrap up with these graphs.

STATES MOVE IN DIFFERENT DIRECTIONS

Percent change in state prison populations, 2008–2009.



NOTE: Percent change is from December 31, 2008 to January 1, 2010 unless otherwise noted in the jurisdictional notes.

SOURCE: Pew Center on the States, Public Safety Performance Project

What is happening is that there is a decrease in prison populations. With numbers like "1 in 99" (people in prison), I believe there is a more critical attention to incarceration. However, I also think that other numbers, like the billions that states spend on incarceration, has raised the brow of people during this economic crash. We know that some states have recently closed (or tried to) close prisons, but without changes in sentencing or class offenses, closing prisons might (and has) lead to overcrowding. We also know that while state prison populations are falling, Federal prison populations continue to rise and the numbers of people held by ICE and Homeland Security is unclear to me at this time. So I'd like to end with these questions and a quote:

Can we really trust in this economic crisis to decrease incarceration? and is a decrease all we really want?

Who are the new categories of punishable people? are they the same as the old ones?

If the OWS movement is successful at helping to restructure the state, how can we prevent or abolish the "re-jigging of categories" that continues the legacies of slavery and other forms of oppression?

"Prison and jails are central indefensible spaces: politically, socially, economically, morally and ideologically they are what the growing neoliberal state is made of. They're big. They're horrible. They're tentacular. And they're not inevitable." RWG

Resources:

Michelle Alexander: The New Jim Crow: Mass Incarceration in the Age of Colorblindness

Robert E. Burns: I Am a Fugitive from a Georgia Chain Gang!

Douglas Blackmon: Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II

Angela J. Davis: Arbitrary justice: the power of the American prosecutor

Ruth Wilson Gilmore: Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California

Ruth Wilson Gilmore: "Restating the Obvious" in Indefensible Space ed. Michael Sorkin

Bernard Harcourt: The Illusion of Free Markets: Punishment and the Myth of Natural Order

Bernard Harcourt: "The Punitive Order: Free Markets, Neoliberalism, and Mass Incarceration in the United States" audio, can be found on www.bernardharcourt.com

Alex Lichtenstein: Twice the Work of Free Labor

Matthew Mancini: One Dies, Get Another

Christian Parenti: Lockdown Nation

Loic Waquant: Punishing the Poor: The Neoliberal Government of Social Insecurity