
Book Reviews

Kathleen E. Hull, Editor

Prison State: The Challenge of Mass Incarceration. By Bert Useem and Anne Morrison Piehl. New York: Cambridge University Press, 2008. 236 pp. \$25.99 paper.

The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders. By Vanessa Barker. New York: Oxford University Press, 2009. 264 pp. \$35.00 cloth.

Sunbelt Justice: Arizona and the Transformation of American Punishment. By Mona Lynch. Palo Alto: Stanford University Press, 2010. 280 pp. \$24.95 paper.

Reviewed by Ryken Grattet, University of California, Davis

For the last decade, the enormous increase in prison populations in the United States has been the subject of a rich body of scholarship, both theoretical and empirical (Clear 2007; Garland 2001a; Garland 2001b; Gottschalk 2006; Mauer 2006; Western 2006). The study of imprisonment has moved from the margins to the center of law and society research. At this point, the broad contours of the build-up in American prisons, which began in the 1970s and continued through the late 1990s, are well established. Between 1973 and 2005, the rate of imprisonment in the United States jumped from 96 to 491 persons per 100,000. The increase continued even as crime rates dropped in the 1990s, and at present there are 2.1 million Americans in prison. The growth in imprisonment has had particularly pernicious effects on African Americans and their communities, as African Americans are imprisoned at eight times the rate of European Americans.

While the general features of the prison “boom” are well documented, the causes and consequences are a source of vigorous debate. Three recent books add significantly to the debate. Useem and Piehl’s *Prison State: The Challenge of Mass Incarceration* provides a rigorous look at several of the core contentions that have characterized the literature thus far. They consider the causes of the prison build-up as well as its effects—on crime, reentry, in-prison disorder, and the labor market. The strongest sections of the book provide fresh data on longstanding debates. For example, one core debate has centered on whether the increase in imprisonment has

reduced crime. Proponents of the prison build-up argue that it is necessary to reduce crime. Indeed, some research shows that a 10 per cent increase in imprisonment can decrease crime rates by 1.6–5.6 percent. Opponents of the build-up argue that the increases have largely occurred on the backs of “low-level” offenders convicted for drug crimes, and that these individuals’ propensities toward offending actually increase as a result of incarceration. Useem and Piehl show that the proportion of violent offenders in U.S. prisons has indeed dropped, but the decrease is only about 8 percent in a 21 = year period, from 59 percent in 1980 to 51 percent in 2001, and that the fastest growing segment has been drug offenders: from 6 percent in 1980 to 21 percent in 2001. However, they argue that many drug offenders cannot be easily described as “low level” as they frequently have many other more serious offenses or are involved in sale and trafficking activities. Useem and Piehl point to a study by Sevigny and Caulkins (2006) to show that nonviolent, small-quantity, possession-only offenders constitute .2 percent of drug offenders in state and federal prisons and only .06 percent of the prison population overall. In addition, Useem and Piehl show that when the different scales of imprisonment are taken into consideration, the declines in the crime rate associated with increases in imprisonment are probably smaller than reported in prior studies. They find that in times and places where incarceration is relatively low, there is a small negative effect of imprisonment on crime rates. But, in times and places where imprisonment is high, roughly the 90th percentile, the effect of increasing imprisonment actually begins to have a positive or crime-augmentative effect.

The *Prison State* also offers data to counter the view that increases in imprisonment lead to disorder inside prisons (e.g., riots, mutual combat, assaults on staff) and that imprisonment has an impact on labor markets. Aggregate data show that prison disorder has actually declined during the period of the build-up, and a number of case and comparative studies, the best of which have been done by Useem and his colleagues (Goldstone & Useem 1999; Useem & Goldstone 2002), show that prison management, rather than prison population or overcrowding, is the key to understanding variation across prisons in rates of disorder and riots. In another chapter, Useem and Piehl consider and critique work by Western and others (Western & Beckett 1999; Western & Pettit 2005) on the effects of imprisonment on the estimation of unemployment and conclude that this work has overstated the impact of imprisonment on labor markets.

A weaker section of the book considers the causes of the increase in imprisonment. In particular, one chapter focuses on evaluating whether a social movement is responsible for the

increases in imprisonment or whether it resulted from “the system’s need to maintain domination over its population” (p. 18). This section reviews research and theory that will be quite familiar to law and society scholars, including the work of Katherine Beckett, Jonathan Simon, Loïc Wacquant, Tom Tyler, Stuart Scheingold, David Garland, and William Chambliss, but the chapter does not present their ideas clearly and the evidence marshaled fails to culminate in a focused analysis or narrative, as the other parts of the book do. Nevertheless, *Prison State* contains a wide range of important insights and challenges to the existing literature and is a highly effective, even-handed assessment of what we know about mass incarceration.

Vanessa Barker’s and Mona Lynch’s books are similar to each other in that both are premised on the idea that the existing story of mass incarceration in the literature has not appreciated the varied ways it has been experienced in different locations. Barker’s historical-comparative study, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders*, offers a broad theory of penal regimes, arguing that how imprisonment plays out in different subnational polities is a function of state political structures and forms of collective action. The key dimensions for Barker are the degree of decentralization and the extent of civic engagement in governing. Three states anchor her analysis: California, Washington, and New York. All of these states confronted rising crime rates in the 1960s and 1970s and yet each responded differently.

California, with its proposition-driven lawmaking and its contentious racial and ethnic divisions, developed a politics of punishment that leans toward retribution. The victim’s rights movement, funded largely by the powerful correctional officers union in the state, emerged armed with a strongly moralistic discourse about offenders. As a result, California’s imprisonment rates are consistently above the national average and its parole system creates a “revolving door” by reincarcerating parole violators at the highest rate in the nation. Barker describes the political structures and processes that underlie these patterns as “polarized populism” and the form of penal regime that has emerged since the 1970s as “retributive.”

Washington State also has a strong tradition of civic engagement, although, it takes a quite different form from that in California. Washington incorporates citizen involvement not through a “winner take all” proposition process, but through councils and commissions. Punishment policies are created through a more deliberative process that roots the response to offenders in “the principle of parsimony”—the idea that the appropriate punishment is that which is the least restrictive possible to maintain public

safety. Even in the 1980s and 1990s, when the victim's rights movement emerged as a powerful voice in the debate, its effect was counterbalanced by experts and other citizen groups that constructed crime as more of a social welfare issue than an issue of morality. Barker refers to the political structures and processes in Washington as "deliberative democracy" and the penal regime that has emerged as rooted in "de-escalation."

In contrast to Washington and California, New York's politics are more centralized and more driven by experts and elites. Being insulated from citizen input has resulted in a pragmatic politics about controlling crime and a managerial orientation to minimizing costs and maximizing public safety. For example, New York created a "differentiated parole supervision" system, which focuses resources on "high risk" parolees and which has resulted in some of the lowest return to prison rates in the nation. Even when penal politics turned punitive under George Pataki's governorship, more punitive initiatives were accompanied by reforms that reduced sentences and aimed to control costs. By 2000, the New York prison population actually began to decline. Barker describes the New York experience as characterized by "elite pragmatism" and, echoing Feeley and Simon's work on the "new penology" (Feeley & Simon 1992), a "managerial" penal regime.

As Barker acknowledges, there remain other pathways beyond the three cases considered in her book and a brief section in the conclusion provides some preliminary observations on several other states. Barker's theoretical constructs should become the starting point for subsequent studies of how punishment and social control systems develop differently in different social and political contexts.

One penal regime not considered by Barker is the "Sunbelt justice" form, which arose in Arizona and is the subject of the Mona Lynch's *Sunbelt Justice: Arizona and the Transformation of American Punishment*. Lynch's careful historical study examines how Arizona reflected, but more often bucked trends occurring in other states. Where Barker focuses on civic engagement and how citizen input is felt in penal politics, Lynch focuses more "inside the state" (à la Calavita [1992]) by recounting the administrative and political history of Arizona corrections and its relationships to governors and the legislature as well as how the correctional system responded to the courts. Prior to the prison build-up, Arizona imprisonment rates were roughly equal to the national average. However, when "get tough" crime politics arrived in Arizona, the state's imprisonment rate rose faster than elsewhere. The central concern for Lynch is why this happened and what it can tell us about how local circumstances shaped the transformation in American punishment in the last four decades.

Although she discusses territorial prisons and the penal system during the first decades of statehood, Lynch focuses much of her attention in the early portion of the book on the tenure of Frank Eyman, a county sheriff and (minor) celebrity lawman, renowned for his involvement in the capture of John Dillinger. Eyman held his position as head of the Arizona State Prison from 1955 to 1972. Pictured in the book sporting a bolo tie and cowboy hat and riding atop a finely decorated horse, Eyman's personality and philosophy of corrections both expressed and solidified Arizona's approach to punishment. Eyman championed a disciplinary orientation to the operation of the prison system. Prisoners were given military haircuts, harsh punishments were doled out for rule violations, and inmate labor, including construction and expansion of the prison facilities, was emphasized. He eschewed rehabilitation, favoring "recreational therapy," which included sport leagues and a marching band. While many other states were implementing therapeutic programs, Eyman went the other way, putting into place a rigid militaristic system of authority.

During the 1960s, however, Eyman's approach collided with the national movement toward professionalizing and bureaucratizing corrections. Influential in this effort was a report criticizing Arizona correctional practices by the National Probation and Parole Association (predecessor to the National Council on Crime and Delinquency). Bureaucratization in Arizona was motivated by a perceived need to modernize the system and as a pragmatic solution to problems of coordination and redundancy. As part of the reform, Allen Cook, a retired corrections official from California, which, at the time, was the most progressive correctional system in the nation, was appointed first as an advisor and later as director of the new Arizona Department of Corrections. Predictably, Cook clashed with Eyman and with other forces internal to the state. His proposals to expand facilities were costly and he failed to win support from the legislature. A prison riot, emerging civil rights concerns, and criticism in the press spelled the end for Cook and meant that "progressive penology" never really took root in Arizona.

When the "truth in sentencing" reforms emerged and a new era of "get tough" politics swept into Arizona in the late 1970s and early 1980s, it resonated with the existing tradition expressed during Eyman's reign. Even with a Democratic governor (Bruce Babbitt) and a corrections director who openly embraced rehabilitative ideals in the early 1980s, new facilities were built, harsher sentencing policies were enacted, and prison populations surged. By the 1990s, Arizona was the "postrehabilitative prototype," leading the way nationally in terms of correctional spending, the harshness of its prison environment, and its opposition to prisoner litigation and the interventions of federal courts.

In terms of Barker's typology, Arizona's "Sunbelt" penal regime comes closest to California's retributive form, but Arizona embraced punitive policies for different reasons. Like California's, Arizona's correctional politics were framed by racial and ethnic tensions, but citizen engagement was less. Propositions played a smaller role in Arizona's penal history and the victim's rights movement was substantially weaker. Arizona's penal regime was driven more by "top-down" than "bottom up" political processes. Moreover, rehabilitative ideals never found a place in Arizona's correctional "tool kit," as they did in California. Arizona's trajectory appears more linked to its traditional view of prisons as best when they are "cheap and mean."

Despite the well-documented general features of the surge in incarceration in the United States, these three books develop the more subtle complexities of mass incarceration. In their own way, each serves to sharpen debate about what brought about mass incarceration, how it has played out differently across locations, and what its impacts have been. We can look forward to further work in the same vein as a handful of other books on the politics of incarceration in different states have recently been published (Page 2011; Perkinson 2010; Schoenfeld 2009). Taken together, this work attests to the vibrancy of punishment research in contemporary law and society scholarship.

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The Beauty Bias: The Injustice of Appearance in Life and Law. By Deborah L. Rhode. New York: Oxford University Press, 2010. 252 pp. \$24.95 cloth.

Reviewed by Anna Kirkland, University of Michigan

Deborah Rhode's new book on appearance discrimination is a well-documented, thoughtful, and much-needed contribution to the discussion of potential injustice. *The Beauty Bias* addresses a broad audience, and Rhode clearly saw that the first challenge was to change the minds of those who think appearance is not a very important axis of injustice. The first three-quarters of the book present the empirical case for the injustice of judgment made on the basis of appearance, drawn from a broad range of sources from economics, history, psychology, evolutionary biology, and sociology. A significant strength of this book is its review of the empirical proof of appearance discrimination. Rhode argues persuasively that discrimination on the basis of appearance not only exists, but also that it organizes our life chances across nearly every sphere from the bedroom to the workplace, that it connects and supports more-recognized forms of prejudice on the basis of race, age, gender, and disability, and that it is produced and sustained by a wide range of institutional forms and personal practices. Appropriately given our historical moment, a significant focus is the relationship between body fatness and appearance discrimination, particularly for women. Rhode also includes both cross-national and historical contexts for the legal regulation and nonregulation of appearance, which are enriching for the primary argument although not themselves the focus.

The Beauty Bias consists of a normative legal argument backed by legal research and secondary sources. The final quarter of the book is the legal analysis, the most original and interesting contribution. Rhode explains why the rather limited array of