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Author

Reiter, K

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Domains of Policy: Law & Society Perspectives on Punishment and Social Control

Keramet Reiter

Introduction

A single phenomenon has dominated late twentieth and early twenty-first century punishment and social control research: the exponential increase in U.S. incarceration in the late twentieth century, from a few hundred thousand people in prison in the early 1970s to a peak of 1.6 million people in prison in 2009. According to the Bureau of Justice Statistics, which collects data on the demographics of people under correctional supervision and incarceration trends over time, the U.S. rate of incarceration today hovers around 492 prisoners per 100,000 citizens. This is five-to-ten times greater than the incarceration rate in most European countries. The number of people under any form of correctional supervision – prison, jail, probation, or parole – in the United States is close to 7 million. Only in the last few years have correctional populations begun to stabilize, even decreasing slightly between 2008 and 2012. Since the turn of the twenty-first century, a proliferation of books and articles have sought to explain both the macro-level trends and micro-level mechanisms of mass incarceration, and significant new journals, like *Punishment and Society* (founded in 1999) and *Criminology and Public Policy* (founded in 2001) have established themselves as critical interlocutors in the research conversations. Scholars are also re-examining the birth of mass incarceration in the mid-twentieth century, looking for further historical clues underpinning the phenomenon, and re-examining punitive trends, especially in an international, comparative context.

As more and more Americans have experienced incarceration, and ever larger portions of state and federal budgets have funded the rising costs of imprisoning so people, mass incarceration has become a lens through which to examine a wide range of social problems, from

a variety of disciplinary perspectives. Criminologists conducted many of the foundational studies about crime, sentencing, and punishment, examining the basic causes and implications of mass incarceration. But legal scholars have examined the relationship between mass incarceration and criminal law; economists have examined the relationship between mass incarceration, employment, and general social welfare; sociologists have examined the collateral consequences of mass incarceration; and political scientists have examined the implications of mass incarceration for government-citizen relations and power dynamics, to name just a few examples.

This chapter identifies and analyzes two pivotal evolutions within this growing body of mass incarceration scholarship: one away from macro-level analyses of mass incarceration and a second towards multi-method and multi-disciplinary research approaches. The first part of this chapter explores the visibility of the overall phenomenon of mass incarceration in the United States, but notes that the drastic increases in incarceration rates have masked a number of less visible phenomena, including day-to-day prison operations, the collateral consequences of imprisonment, and the micro-level mechanisms driving mass incarceration. This part focuses on the scholarly effort to examine the mechanisms and consequences of mass incarceration through new modes of inquiry, like tracing interpretations of legal and political concepts over time, paying closer attention to local-level innovation and reform, and stratifying subjects into new and different categories of analysis. The second part of this chapter argues that multi-method, multi-disciplinary work has in fact added to the visibility of the mechanisms and impacts of mass incarceration in the United States. The final section looks toward three emergent topics in punishment and social control – nascent areas of research that are ripe for further investigation.

In/visibility

In 1973, criminologists Alfred Blumstein and Jacqueline Cohen published "A Theory of the Stability of Punishment." The article proposed a sweeping, explanatory theory of punishment as a "homeostatic process," which produces consistent rates of incarceration over decades and across continents (Blumstein & Cohen 1973: 199). Sociologists Emile Durkheim and Kai Erikson had theorized that societies experience consistent rates of criminal behavior, but Blumstein and Cohen argued that criminal behavior is socially constructed and hard to measure over time, so imprisonment rates constitute a better subject of analysis. Blumstein and Cohen tested their theory by evaluating rates of imprisonment in the United States and Norway, over the course of the twentieth century, through 1970. They found a remarkable overall consistency in imprisonment rates in both places. They suggested that this consistency might be explained as resulting from a game of tug-of-war between social forces, "continually in conflict," which "win and lose a series of small battles," ultimately producing stability (Blumstein & Cohen 1973: 206). The article immediately attracted attention; it deployed creative analysis, blending new social theory with empirical data, and it seemed to reveal a previously invisible social phenomenon. As it turned out, however, the phenomenon of the "stability of punishment" was on the verge of extinction.

Criminologist Franklin Zimring later called the Blumstein and Cohen piece "probably the most important and certainly the most ironically timed article on imprisonment" (2010). Blumstein and Cohen published their theory in the very year that incarceration rates in the United States began their four-decades-long, exponential climb. In 1973, U.S. incarceration rates increased for the first time in ten years. By 1980, U.S. incarceration rates were the highest they had ever been; in 2007, they were five times higher than they had been in 1972 (Zimring 2010: 1228). The "stability of punishment" was no more. The trends were obvious – apparent in the

simplest graph of incarceration rates over time, and scholars like Zimring were quick to notice the highly visible growth in the U.S. prison population.

But making sense of the abrupt uptick in rates of incarceration presented more of a challenge: did crime rates, social policies, governmental structures, economic inequalities, or something else drive the increase in U.S. incarceration rates? At first, in spite of its predictive failures, Blumstein and Cohen's modes of analysis – examining rates of punishment over time, at the macro level – continued to dominate mass incarceration scholarship. Scholarship focused on the most visible aspects of U.S. mass incarceration: its national scale. Scholars identified and analyzed specific factors contributing to this increase in scale, and debates ensued about the relative importance of each factor. For instance, crime rates increased throughout the 1960s, and many scholars suggested that these increases contributed to the incarceration rate increases in the 1970s and 1980s (*see, e.g.,* Garland 2001). However, incarceration rates continued to increase in the 1990s and 2000s, even after crime rates decreased; over time, scholars documented, at best, a weak relationship between incarceration rates and crime rates (*see e.g.,* Zimring 2010).

Economist Steven Levitt found that increasing incarceration rates was only one of four factors (in addition to increased investments in policing, changes in drug use, and legalization of abortion) that explained decreasing crime rates in the 1980s. Criminologist Frank Zimring argued that Levitt's analyses were flawed, involving incomplete and inaccurate models; Zimring found an even more tenuous relationship between prison and crime rates, noting that crime rates fell as much in Canada as in the United States, without comparable increases in uses of imprisonment (Zimring 2010). Just as scholars have debated the effect of crime rates on incarceration rates, they have also debated the magnitude of the effect of the War on Drugs on

incarceration rates (Alexander 2010), and the magnitude of the effect of sentencing policy changes on incarceration rates (Zimring 2010).

The multiplicity of factors identified as drivers of mass incarceration on the national scale, along with the robust debates about the relative importance of each factor, have overshadowed less visible aspects of mass incarceration, such as the existence of local-level factors driving mass incarceration and the collateral consequences of mass incarceration on marginalized groups and individuals. Scholars like Wacquant (2002) have noted specifically that the focus on large-scale, quantitative analyses of mass incarceration obscures the importance of micro-level, qualitative analyses of prisons and communities. But empirical models focused on quantitative analyses of national-level phenomenon (like Blumstein and Cohen's model) are not solely to blame for the dearth (into the early 2000s) of state, city, institution and individual-level analyses of mass incarceration in the United States.

Mass incarceration is a difficult phenomenon to study at any degree of specificity below the national level for a number of structural reasons. While the sheer quantity of prisons built across the United States since 1973 is visible in charts of prison growth, individual prisons are relatively invisible. They are socially invisible in terms of their rural, geographic locations, inaccessible to transportation hubs (like airports and train stations) and universities alike. And they are functionally invisible in that prison administrators discourage access *to* the institutions and restrict the release of data *from* the institutions. For instance, most prisons in the United States allow journalists extremely limited (if any) access, and data about prison operations are collected inconsistently, at best, with little comparability between institutions and across states (Reiter 2012). The United States essentially has 51 separate prison systems: the federal prison system run by the national government and 50 state prison systems, run by local governments.

Limited access for journalists and limited, non-systematic collection of data across jurisdictions makes it hard for researchers to identify important questions about prisons, and to collect data to answer these questions, once they are identified.

And then there is the problem of prison privatization; according ot Bureau of Justice Statistics data, one in every twenty U.S. prisons is privately operated. These institutions are subject to different reporting requirements than public institutions; private prison companies have resisted collecting operations data, and they have argued that they are not subject to Freedom of Information Act Requests (to which public institutions are required to respond) for the data that has been collected.

The subsequent section will address the important role of multi-disciplinary methods in overcoming these structural barriers to gathering and analyzing more fine-grained details about mass incarceration; the remainder of this section, however, focuses on the important categories of recent research that have examined the less visible aspects of mass incarceration, from micro-level experiences of imprisonment to macro-level social consequences of the phenomenon. Specifically, this section considers three categories of new research on mass incarceration: local-level policy changes, collateral consequences, and group-stratified effects.

First, recent research has sought to understand the mechanisms of criminalization and incarceration at the increasingly local levels of state, county, and institution. For instance, Mona Lynch examined the development of mass incarceration in the state of Arizona in the 2010 book *Sunbelt Justice*. By focusing on punishment policy in one state, Lynch was able to collect and analyze detailed empirical evidence that complicated and challenged existing, macro-level theories of mass incarceration. For instance, Lynch's research revealed that Arizona had a long and continuous history of implementing tough-on-crime policies, like harsh conditions of

confinement, even before the state began to build more prisons, to keep up with increasing incarceration rates in the 1980s. These findings directly challenged David Garland's theory that a shift in punitive ideologies drove U.S. mass incarceration. Garland theorized that, in the 1970s and 1980s, U.S. attitudes about punishment shifted away from the "rehabilitative ideal" – a belief in the ability of individuals to be treated, reformed, and reintegrated into society – towards a "culture of control" – a more purely punitive attitude that favored more and longer periods of incarceration (2001). Lynch's research suggests that this theory cannot explain Arizona's increased incarceration rates, where a culture of control was pervasive long before the prison build-up began. Instead, Lynch found that individual figures within the Arizona legislature and the state department of corrections played critical roles in driving incarceration increases in both the state and the nation. She demonstrates that decisions in Arizona had national impacts. Arizona legislators not only supported incarceration increases in their own state, but also initiated federal legislation, like the Prison Litigation Reform Act, which limited legal challenges to mass incarceration policies (in many cases facilitating the unchecked growth of incarceration) across the United States.

Lynch's work is just one example of scholars paying close attention to specific locales; the resulting research has produced multiple important substantive and theoretical insights into the important roles of individuals, institution-level decisions, and local-level political contexts in driving mass incarceration and re-shaping the landscape of American punishment. In his book *The Toughest Beat*, published in 2011, Joshua Page detailed the power wielded by the prison guards union, as political lobbyists and public media campaigners, in shaping California's punitive landscape in the 1990s and beyond. Michael Campbell has conducted a number of case studies detailing the role of law enforcement groups and prosecutors in lobbying for legal and

sentencing changes that facilitated mass incarceration in both Texas and California; Campbell's case studies appeared in the leading socio-legal journal, *Law & Society Review,* in 2011 and 2014. Other scholars have detailed the role of class action litigation, resolved in federal courts, in facilitating prison building and increases in rates of incarceration. In particular, Heather Schoenfeld has studied this phenomenon in Florida, and also written about it in a 2010 article in *Law & Society Review*. In her book *The Politics of Imprisonment*, published in 2009, Vanessa Barker compared the different democratic structures of state government in California, Washington, and New York. She found that highly deliberative and de-centralized governments, as in Washington state, tend to be less punitive. Recent articles by Campbell and Schoenfeld, along with the book-length works of Lynch, Page, and Barker represent a growing attention to mass incarceration among socio-legal scholars in particular.

\Quantitative analyses, too, have disaggregated states and counties within national level data, looking for concentrations of incarceration in particular regions and jurisdictions. For instance, Robert Sampson and Charles Loeffler identified what they called incarceration "hot spots": particularly impoverished neighborhoods in Chicago, with incarceration rates eight times higher than less impoverished neighborhoods. They suggested that the differential characteristics of these neighborhood hot spots, including higher rates of "poverty, unemployment, family disruption, and racial isolation," were important to understanding incarceration rates. In fact, Sampson and Loeffler argued, each of these neighborhood factors were better predictors of incarceration rates than crime rates (2010). In sum, by looking in more fine-grained detail at the mechanisms of mass incarceration in defined locales, like states, counties, and neighborhood blocks, punishment scholars have identified a slew of previously invisible factors critical to understanding mass incarceration, from the role of poverty and unemployment to the interest

group politics of one state union (the prison guards union in California) and the outcome of one legal decision in Florida (*Costello v. Wainwright*).

In addition to this growing body of research focusing on state and local-level analyses of mass incarceration, another strand of punishment research has examined the so-called "collateral consequences" of mass incarceration. Legally speaking, collateral consequences are limitations on the civil rights of convicted criminals. For instance, people with felony convictions in the United States are often prohibited from voting; accessing welfare, public housing, and education benefits; carrying firearms; living in certain areas, especially for those with sex offense convictions; and even continuing to live in the United States, for those who were not full citizens at the time of their conviction. Marc Mauer and Meda Chesney-Lind edited one of the first comprehensive analyses of the expanded use of civil penalties, like sex offender registries and deportations, in the era of mass incarceration. Their 2002 anthology, aptly titled *Invisible Punishment*, highlighted how little attention had previously been paid to the after-effects and side-effects of increasing rates of incarceration: punishments extended beyond the criminal sentence, into former offenders' everyday lives, and more and more offenders experienced these punishments as the system expanded.

More recent scholarship has examined specific examples of expansions in both the scope and the application of these restrictive civil laws, tracing how these expansions have developed in tandem with mass incarceration. Sex offender registries, and restrictions on where sex offenders might live, provide a good example of expansions in the scope of collateral consequences. In her 2011 book, *Sex Fiends, Perverts, and Pedophiles: Understanding Sex Crime Policy in America,* Chrysanthi Leon traced the proliferation of these policies in the 1990s and argued that, much like mass incarceration generally, sex offender policies have been applied

with insufficiently nuanced attention to the actual risk posed by individual offenders. Whereas Leon maps out the implementation of new policies around sex offenders, other scholars have documented expansions in civil penalties that pre-existed mass incarceration. For instance, the U.S. has long had a policy of deporting non-citizens, but in the 2000s, rates of deportation doubled. Law professor, Daniel Kanstroom, for instance has written two books and multiple articles about this phenomenon, dubbing the United States a *Deportation Nation* in the title of a 2007 book on the subject.

Others have examined the impacts of incarceration not just on categories of criminals (like sex offenders or non-citizens) but on individuals. According to recent scholarship, people with criminal convictions face concrete barriers to successful social reintegration upon release from prison, like relentless discrimination in the workforce (Pager 2009), and exclusion from the political process, especially through felony disenfranchisement (Mauer and Chesney-Lind 2002). This growing body of collateral consequences research looks beyond increasing rates of incarceration to identify the less visible legal and social consequences of living with a criminal conviction in the United States.

Scholars have built on these examinations of the individual, collateral consequences of criminal convictions in order to trace the more collective collateral consequences of mass incarceration on specific communities, as well as civil society writ large. For instance, communities with high incarceration rates also experience high unemployment rates, high rates of infectious disease, and more overall social instability and unrest than communities with lower incarceration rates (Clear 2007). Indeed, the collateral consequences of incarceration, some have argued, extend not just over a lifetime, and within heavily affected communities, but throughout society. Katherine Beckett and Naomi Murakawa recently coined the term "the shadow carceral

state" to describe the process by which expanded civil penalties have led to the incorporation of punitive intentions into civil laws, and the general expansions of state power over individuals (2012). In an extensive body of work on the death penalty and life without parole, including the 2014 book *Gruesome Spectacles*, Austin Sarat has argued that harsh and long sentences actually undermine democracy; he theorizes that the death penalty exaggerates moral divisions and race-based prejudices, and that the ever-increasing use of life without parole sentences replicates and exaggerates the problems of the death penalty. Jonathan Simon describes how fears of crime and inadequate social controls, which supported mass incarceration, now support increasing criminalization of social problems within most major social institutions, including families, schools and workplaces (2007). As scholars have traced the civil and social impacts of mass incarceration on individuals and communities, they have also contributed more nuanced understandings of the causes and consequences of mass incarceration, identifying more precisely who is affected by mass incarceration and how (sex offenders and non-citizens, for instance), and the mechanisms by which punishment can change society, whether by making some neighborhoods less safe, or by undermining principles of democratic inclusion.

Finally, a third strand of punishment and mass incarceration research has examined the stratified effects of punishment on different, often marginalized groups of people. The most obvious group of people affected by mass incarceration policies are African Americans; they make up 13 percent of the U.S. population, but 40 percent of the U.S. prison population. As of 2001, one in every six black men in the United States had been incarcerated. The racial dis-proportionality of U.S. prison policies has inspired countless theories about whether and how the U.S. criminal justice system is racist. As with mass incarceration scholarship more generally, research into the racially disproportionate impacts of mass incarceration has often focused on the

sheer scale of the disproportion, attempting to identify specific factors that produce high rates of African-American incarceration. Increasing minority crime rates have been suggested as explanations for racially disproportionate punishment, just as they have been suggested as explanations for mass incarceration generally. But just as scholars have found a weak relationship between crime rates and incarceration rates generally, so have they found a weak relationship between minority crime rates and minority incarceration rates. Recent work suggests that exogenous factors, especially discretionary law enforcement strategies and legal constructions of certain activities as criminal (such as the possession of crack cocaine), affect both racially disproportionate crime rates and sentencing (*e.g.*, Alexander 2010; Simon 2007).

More recent scholarship on racial disproportions in incarceration has sought to understand the criminal justice system as an amalgam of historically racist social structures. Legal scholar Michelle Alexander argues that modern racial disproportion in incarceration is rooted in racially discriminatory "Jim Crow" laws, enacted to limit the civil rights of African Americans in the American South in the aftermath of the abolition of slavery (2010). Two other recent books, however, trace modern racial disproportion in incarceration to different eras and different geographic regions. Kahlil Gibran Muhammad's 2010 book, *The Condemnation of Blackness: Race, Crime and the Making of Modern Urban America,* traces modern racial disproportion in incarceration to Progressive-era, elite Northern characterizations of black and white criminality. And Jonathan Metzel's 2011 book *The Protest Psychosis: How Schizophrenia became a Black Disease* traces racial disproportion in diagnosing and treating schizophrenics in a different kind of secure confinement facility: a mental health hospital in Ionia, Michigan.

Metzel is one of a growing body of medical historians contributing to a more nuanced understanding of the relationship not just between race and incarceration, but between mental

illness and incarceration. In the late 1970s and early 1980s, many mental hospitals, like those Metzel described, were de-funded and closed down, in response to a nationwide restructuring of healthcare provision, and widespread critiques of the inhumane conditions in these facilities. However, a number of scholars, including political scientist Barnard Harcourt and psychiatrist James Gilligan have documented how many of these de-institutionalized mental patients were "trans-institutionalized" into jails and prisons across the United States. Today, jails in major U.S. urban areas, like the Los Angeles County Jail and the Cook County Jail in Chicago are often disparagingly referred to as the nation's largest mental health hospitals; research by the Bureau of Justice Statistics and advocacy organizations like the National Alliance on Mental Illness suggest that more than half of the prisoners in U.S. prisons and jails have some kind of mental health problems.

Other scholars have looked not just at the historical underpinnings of racism, but at the micro-level mechanisms of race-based treatment, or mental-health-based treatment, in specific contexts. For instance, Philip Goodman found, through an ethnography of two California prison reception centers, that racial categories were not simply imposed from the top down, but that prisoners and guards constructed racial categories through interaction and dialogue (2008). In sum, scholars from historians to psychiatrists have worked to identify the particular sub-groups of the U.S. population – including specific races, the mentally ill, or non-citizens – who have been subject to mass incarceration.

In addition to better specifying the groups most affected by mass incarceration, scholars have also examined the differential experiences of varied subsets of prison populations, especially along gender lines. And in some cases, examining particular subsets of prison populations has produced new insights about mass incarceration more broadly. For instance,

Rosemary Gartner and Candace Kruttschnitt found, in looking at women's experiences in California prisons over the course of the twentieth century, that those experiences were substantially similar over decades, in spite of the major ideological shift from a focus on rehabilitation to a focus on getting tough on crime (2004). By combining analysis over time (comparing the 1960s and 1990s), with a focus on a particular subset of the prison population (women), Gartner and Kruttschnitt challenged assumptions about the influence of ideological shifts on individual experiences of imprisonment. Even more recently, scholars have looked at the differential experiences of transgender prisoners, finding that their experiences shed light on the dominant gender ideals that shape the lived experiences of prisoners (Jenness & Fenstermaker 2013). In sum, legal, historical, and sociological scholars alike have sought to identify the various mechanisms by which racism, classism, and sexism are produced and reproduced in the U.S. prison system. The very process of identifying particular subsets of imprisoned populations, collecting data to define their prevalence, and documenting their lived experiences in prison, yields important insights about the underpinnings of mass incarceration and its effects on individuals, community, and society.

The advent of mass incarceration took scholars by surprise in 1973, and understanding its mechanisms and impacts has been a multi-disciplinary, decades-long project, which is still very much in process. At first, many aspects of the phenomenon of mass incarceration were invisible – from the new prisons themselves, to the specific details of the phenomenon, like what caused the sharp increase in rates of imprisonment and which people and communities were most affected by the new social policies. This section described three particularly fruitful strands of research growing out of the scholarly effort to understand mass incarceration: tunneling down to local levels of analysis, tracing collateral consequences for individuals and groups, and focusing

on particular sub-sets of prison populations. Each has contributed to an increasingly precise understanding how mass incarceration came about and how prisoners and their communities have experienced it.

Inter/disciplinarity

The second pivotal evolution within scholarship on punishment and social control is a movement towards multi-method and multi-disciplinary approaches to understanding the causes and consequences of mass incarceration. Much of the research to understand mass incarceration, as discussed in the prior section, has used one methodological approach at a time, such as quantitative analyses of crime trends (e.g. Blumstein & Cohen 1973), experimental analyses of the effects of a criminal record on workforce participation (Pager 2009), historical analyses of characterizations of criminals over time (such as Muhammad's 2010 book *Condemnation of Blackness* and Metzel's 2013 book *Protest Psychosis*), or ethnographic analyses of how punishment is experienced (*e.g.* Goodman 2008; Jenness & Fenstermaker 2014). But recent cutting edge work in punishment and social control has combined multiple methodological approaches in single studies, in order to better understand mass incarceration.

Similarly, many scholars approach studies of mass incarceration from a single disciplinary perspective. For instance, sociologists focus on the role of social relationships, oppression, and discrimination (*e.g.*, Wacquant 2002), while political scientists describe the interplay of interest groups and government institutions (*e.g.*, Gottschalk 2006). Again, cutting edge work in punishment and social control has more recently sought to bridge different disciplinary perspectives, from history and anthropology to law and criminology. Currently, many of the most frequently cited scholars of punishment and social control (including Wacquant and Gottschalk) operate at the intersection of "law and society" and "criminology."

This scholarship suggests that perhaps the American brand of mass incarceration is too vast and too complex to understand with any one approach – either methodological or disciplinary. This section argues that an interdisciplinary dialogue, incorporating multiple methods, drawn from multiple disciplines, is inherent to the study of punishment and social control. In order to better describe the important role of interdisciplinarity in understanding mass incarceration and punishment, this section will highlight two exemplary works, explaining the new insights they have produced by deploying multiple methodologies, at the intersections of multiple disciplines.

First, in *Sunbelt Justice,* Mona Lynch draws on a rich repertoire of methodologies to examine how Arizona punishment policies and practices in the twentieth century contributed to mass incarceration trends not only in the state, but also in the nation. In prior work, Lynch had deployed a variety of methodologies – including a content analysis of advertisements of new correctional technologies and an ethnography of parole agents in California. But in *Sunbelt Justice*, she combined an array of empirical sources from Arizona – including interviews, archives, and judicial opinions – and an array of methods – from content analysis of documents to ethnographic observations of people and institutions. Through this multi-method approach, Lynch was able to do more than assess the relevance of previously identified factors driving increases in incarceration rates. She was also able to identify new factors, including the politics of the Sunbelt region and the micro-level influence of individual wardens and politicians, responsible for driving incarceration increases, inspiring tough-on-crime policies, and shaping punishment outcomes. Moreover, the depth and detail of the empirical evidence Lynch gathered allowed her to contextualize mass incarceration in Arizona in a long historical trajectory. This in turn revealed decades of consistent application of policies often associated only with the mass incarceration era of the 1980s and 1990s. For instance, Lynch identified consistent trends over

decades of: disproportionate minority over-representation in prison, imposition of harsh punishment policies, and application of conservative and frugal political values. In sum, *Sunbelt Justice* represents an important step forward in the study of punishment – for its local-level focus on a particular case study, and in its use of multiple sources of evidence, as well as multiple methods, to bring greater precision and detail to understanding new phenomena in punishment, in context, over time.

Where Mona Lynch draws on a variety of empirical sources, and applies a wide range of methods to analyzing them, Colin Dayan engages in multiple disciplinary dialogues in order to bring new theoretical insights to the study of the law of crime and punishment. In *The Law is a White Dog*, Dayan takes both ethnographic observations (incidentally of Arizona prisons) and legal analysis of judicial opinions as an empirical starting point to build a theoretical critique of the way the law defines and constrains personhood (2011). Dayan was trained in Comparative Literature, but her academic appointments have included departments of English, African-American Studies, and Law. In *The Law is a White Dog*, she draws on each of these disciplines, as well as philosophy and history, incorporating a staggering array of philosophical perspectives, from Ovid to Descartes to Agamben to Foucault. She draws on multiple interpretations of law across multiple contexts in order to document how punitive laws have been de-humanizing and cruel at multiple points in time, throughout the Western world. She describes how the law of civil death in Europe, antebellum slave law in the Unites States, and international policies countenancing cruel, inhuman, and degrading treatment in military prisons, have all produced and re-produced categories of marginalized and abused people, including exiles, slaves, and prisoners of war. While the scope of Dayan's analysis in *The Law is a White Dog* is much broader than the U.S. era of mass incarceration, her starting point is mass incarceration; she

describes “the origin and real impetus” of the work as “the uses of incarceration in the United States to criminalize, exclude, and do … violence” (2010: xiv). By tracing patterns of criminalization, exclusion, and violence across time and space, she is able to identify legal injustices underlying mass incarceration in the United States and to connect these injustices to historical legal constructs, like civil death or slavery, which are now considered to be barbaric, and which legal systems claim to have renounced.

In sum, the work of both Lynch and Dayan represent exemplary cases of multi-method (Lynch), multi-disciplinary (Dayan) scholarship, each of which reveals important insights about how the law functions in practice and how punitive cultures develop. Operating at these intersections of methods and disciplines, the works provide more precise detail about punishment in particular places at specific points in time, and also suggest new theoretical understandings and additional areas of inquiry – such as similar case studies in other jurisdictions (Lynch) or different comparative analyses of legal developments (Dayan).

This chapter itself serves as a reminder of the vital importance of interdisciplinary dialogue to understanding punishment generally and mass incarceration specifically. The works cited come from nearly every discipline in the social sciences and humanities, including philosophy, history, anthropology, sociology, political science, and economics. Additionally, many scholars cited in this chapter are working at the intersection of two traditionally interdisciplinary fields, “law and society” and “criminology,” from within departments or research centers that explicitly combine the two fields, like the University of California, Irvine’s Department of Criminology, Law & Society or the University of Toronto’s Centre of Criminology and Sociolegal Studies. And the mass incarceration and punishment themed articles described here have appeared in a variety of journals, including traditional disciplinary journals,

like the *American Sociological Review*; journals explicitly concerned with Criminology, like the *British Journal of Criminology* and *Theoretical Criminology*; journals focused on socio-legal studies, like the *Law & Society Review*, the flagship journal of the Law and Society Association; and journals at the intersection of the two fields, like *Punishment & Society*. These institutional structures – in the form of both academic departments and journals – facilitate multi-method approaches and interdisciplinary dialogues that can lead to the kind of creative insights found in works like those of Lynch and Dayan.

Emergent Topics Increasing Visibility and Interdisciplinarity

The dramatic story of American mass incarceration has, over the last 40 years, both inspired and constrained research about punishment and social control. As discussed in the prior two sections, recent work on punishment and mass incarceration has involved new methods and techniques both for looking beyond national level trends and macro-explanations and for bridging disciplinary boundaries. This section examines three extensions of these evolutions – emergent topics in the study of punishment and social control. First, punishment scholars are re-focusing on the qualitative details of individual experiences within prison (building on the bodies of work that looks at post-prison experiences, and group-based experiences, as discussed in the "in/visibility" section). Second, punishment scholars are re-examining mass incarceration within a broader historical context. And finally, punishment scholars are increasingly looking beyond national borders, to incorporate a greater breadth of comparative perspectives in explorations of punishment.

In the early 2000s, punishment scholars from a variety of disciplines, including socio-legal scholar Jonathan Simon, sociologist Loic Wacquant, and anthropologist Lorna Rhodes, noted and debated the absence, in the late twentieth century, of qualitative research focused on

experiences of imprisonment (*see especially* Wacquant 2002). This absence represents yet another invisibility within mass incarceration scholarship; not only did mass incarceration scholarship at first overlook the role of local-level policy and innovation in increasing rates of imprisonment, but it also overlooked the experiences of individuals caught up in the ever-expanding prison system. A special issue of the journal *Punishment & Society* (in 2011) and a special issue of the journal *Qualitative Inquiry* (in 2014) have recently highlighted the potential insights (along with the significant challenges) of doing qualitative research within prison. As suggested in the section on "in/visibility," this research must overcome a number of geographic, structural and bureaucratic barriers, especially in the United States, where prisons are rural and often resistant to research inquiries. But recent qualitative research within prison has produced critical new insights about the uniquely modern pains of imprisonment, like the total absence of physical human contact as a result of modern technologies of isolation, or the use of prisoners as laborers without rights (Fleury-Steiner and Longazel 2014).

Perhaps not surprisingly, given the specific challenges identified in the United States, scholars outside of the United States have spearheaded this renewed attention to individual, qualitative experiences of incarceration. For instance, British criminologist Alison Liebling has conducted in-depth qualitative research in British prisons, interviewing and observing individual prisoners and documenting the different experiences of imprisonment and legitimacy in different institutional contexts (2004). The research Simon, Wacquant and Rhodes called for in the early 2000s, and which British scholars like Liebling are conducting in the United Kingdom, represents an important new subset of micro-level analyses of punishment and incarceration. The focus on individual experiences of incarceration brings new, previously silent voices into the dialogue about the effects of incarceration, and takes another step away from the problems of

invisibility identified in the first section of this chapter. Moreover, this new work provides important insights about how mass incarceration affects not just communities and societies, but also individuals.

A second emergent trend in punishment scholarship has taken a longer view of mass incarceration, examining not just increased incarceration rates themselves, but the historical underpinnings of mass incarceration, in slavery in the American South and in social tension and unrest in the late 1960s and early 1970s, for instance. Historian Robert Perkinson examined the development of mass incarceration in *Texas Tough*, arguing that the racism and inhumanity that characterized slavery and punishment in the American antebellum south still dominate Texas prisons in the twenty-first century; indeed, Perkinson argues that these same characteristics of racism and abuse have spread out from southern prisons into prisons across the United States (2010). Historian Heather Ann Thompson has emphasized the need for scholars of mass incarceration to situate their research historically, and for historians themselves to study mass incarceration, in order to better understand late twentieth century social and economic policy (2010). Thompson is researching the history of the 1971 protest at New York's Attica State Prison; more than 1,000 prisoners took over Attica for five days in 1971. The protest ended in 43 deaths, after the National Guard entered the prison, shooting tear gas and bullets indiscriminately into the crowds of prisoners that had taken over the institution and were holding staff hostages. Thompson has described the National Guard response to the riot at Attica as overreaction and noted that this overreaction occurred in 1971, just two years before the steep rise in incarceration rates that marked the beginning of the era of mass incarceration, constitutes an important starting point for understanding subsequent criminal justice policy decisions.

Thompson's and Perkinson's works represent a new body of scholarship that examines not one punishment decision at one point in time, but the trajectory of decisions over time. In a sense, this work comes full circle, back to Blumstein and Cohen's 1973 paper theorizing the stability of punishment; Blumstein and Cohen also sought to discern trends in punishment over time. Perkinson and Thompson, however, bring a rich, qualitative approach to these questions, looking not just at numeric trends, but at ideological trends over time, analyzing both quantities of people incarcerated, and the qualitative nature of those experiences of incarceration. Their work appears at a particularly apt moment in time, as U.S. incarceration rates fell slightly each year between 2009 and 2013, representing the first period of re-stabilization, if not "stability," in punishment since Blumstein and Cohen's 1973 paper. If indeed mass incarceration is a waning trend, historians like Thompson and Perkinson will be critical interlocutors in future analyses of which events bound the era of mass incarceration, which people have been influential within the period, and how the era relates to what came before and what will follow.

Finally, a third, emergent trend in punishment scholarship is the re-examination and re-conceptualization of punishment in comparative perspectives. Mass incarceration policies have earned the United States the label of "most punitive" nation in the world; after all, the U.S. incarceration rate is the highest in the world. But scholars have recently asked whether, and by what rubric, the United States is the most punitive nation. David T. Johnson has asked these questions, and sought to answer them carefully and systematically in various Asian contexts, from the application of the death penalty in China to the structure of the prosecutorial system in Japan. For instance, in his 2010 work about Japanese prosecutors, Johnson finds that Japan's prosecutor-dominated justice system produces both individualized and consistent outcomes. This finding has important implications for how the American criminal justice system is understood,

as the growing power of prosecutors, often characterized as de-individualized but inconsistent in application, is one factor scholars have identified as a contributing force in mass incarceration. Other scholars have examined comparative factors contributing to Europe punishment policies, which appear to be less punitive than American policies, especially in the Scandinavian countries. Scholars have characterized Scandinavian punishment policies as exceptionally non-punitive, with some of the shortest sentences and lowest rates of incarceration in the world. Peter Scharff Smith has argued that the prevalence of relatively mild punishments conceals the mistreatment of vulnerable populations, such as prisoners held for long terms in pre-trial solitary confinement (2011). This renewed attention to what constitutes harsh punishment, and to who is most vulnerable to being punished, not just in the United States but around the world, has the potential to re-shape basic understandings of how punishment is produced and re-produced.

In sum, each of the trends discussed in this final section – examining individual-level experiences of incarceration, re-assessing the historical underpinnings of mass incarceration, and looking beyond U.S. borders to understand punishment and mass incarceration in global context – represents both an interdisciplinary dialogue and a refinement in the visibility of mass incarceration.

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Biographical Note: Keramet Reiter is an Assistant Professor in the Department of Criminology, Law & Society and at the School of Law at the University of California, Irvine. She studies prisons, prisoners' rights, and the impact of prison and punishment policies on individuals, communities, and legal systems.

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