

Introduction

WORLD MAKING AND “CRIMINAL JUSTICE REFORM”

Everywhere I look I see sleepwalkers under the spell of the prison. What counterspell is powerful enough to break the prison’s stranglehold on our imaginations?

—Jackie Wang, *Carceral Capitalism*, 2018

From the beginning, evasions, hedging, deceptive rhetoric, trap doors, backroom reversals, hidden agendas, and slippery “success” indicators have been built into the misleading and false promises of sweeping criminal justice reform. The detritus is scattered, often within the inspiring razzle-dazzle of well-funded promotional campaigns, and most of it is not visible at first glance. But it’s been there all along.

Philanthropic funding consolidated the first public stirrings of the contemporary wave of “bipartisan criminal justice reform,”* just barely visible in the early 2000s, into a “strange bedfellows” crusade amassing increasing political support. By 2010, the institutionalization of a self-perpetuating reform industry was well underway. By

*Throughout this book, the authors use *criminal justice reform* when referring to agendas utilizing this term or quoting individuals, organizations, and publications who use it. We prefer the term *criminal legal system* for our own references to the collective processes of policing, prosecution, and punishment because, as readers will learn, there is little that can be collectively recognized as “justice” to be found within them.

mid-2020, as videos made clear, racist vigilante and police violence blended seamlessly in public view. In response to the police murders of George Floyd, a Black man in Minneapolis, Minnesota, and Breonna Taylor, a Black woman in Louisville, Kentucky, and the vigilante murder of Ahmaud Arbery, a Black man in New Brunswick, Georgia, hundreds of thousands of people in Minneapolis, Louisville, Atlanta, and throughout the United States took to the streets protesting racist structural violence and declaring that #BlackLivesMatter. Police, National Guard units, and other law enforcement agencies predictably responded to the uprising with counterinsurgency tactics originally designed for military suppression of global, anticolonial rebellions.¹ Throughout the nation, many activists and groups took up the call to #DefundThePolice. As noted organizer and abolitionist Mariame Kaba emphasized, they intended to do exactly that, despite the efforts of mainstream reformers to suggest it didn't mean that at all.²

The uprising occurred against a backdrop of well-publicized criminal legal system reforms. The fuse was lit centuries ago by the relentless criminalization—the presumptive and baseless attribution of criminality to entire groups—and routine state and vigilante violence directed against Black people and other marginalized communities. Urban uprisings in response to police abuse and killings are not new, but, as pent-up rage and grief exploded, it became clear that this was a watershed moment.³ And in this moment, powerfully opposing visions of the world “as it should be,” already on a collision course, met in the streets. One vision showcased the violence that upholds white supremacy in service to political and economic elites, while the other sought its dissolution in the name of justice.

In the wake of the 2020 uprisings, many people seek to better understand why contemporary reforms have not produced more justice, especially justice for Black people. This book tells the story of the smoke-and-mirrors nature of those reform agendas and their ongoing failures to dismantle the entwined harms of structural racism and poverty so foundational to the criminal legal system. These

failures are deeply rooted not only in the histories of US prisons and policing, but in the neoliberal world making of its architects. In telling this story, *Carceral Con* also takes note of the decades-long gathering of activist forces, within and without prisons, arrayed to advance different visions of world making that no longer rely on organized violence—policing, prosecution, and prisons—to produce justice, safety, and community well-being.

THE BIPARTISAN CRIMINAL JUSTICE REFORM CONSENSUS

In his State of the Union address to Congress on February 5, 2019, President Donald Trump lifted up passage of the First Step Act, featuring a set of federal sentencing reforms, as a “groundbreaking” achievement in criminal justice reform and bipartisan cooperation across a presumptive Republican-Democratic divide. “Together,” he said, “we can break decades of political stalemate. We can bridge old divisions, heal old wounds, build new coalitions, forge new solutions, and unlock the extraordinary promise of America’s future.” For some people, this stirring call to unified action sounded disingenuous, even ludicrous, coming from a president whose initial campaign for public office was rooted in racist dog-whistling and whose trademark response to disagreement is publicly humiliating, vilifying, and criminalizing opponents and enemies, both real and imagined, often in vulgar, racially coded, and misogynist terms. But not, perhaps, to many others, including two of Trump’s guests for the evening. They were Alice Marie Johnson, who had served twenty-two years in prison before Trump commuted her life sentence for a drug-related offense, and Matthew Charles, sentenced to thirty-five years for selling drugs and related offenses. Charles was the first person released from federal prison under First Step reforms. These people and their stories, Trump said, underscored sentencing disparities that have “wrongly and disproportionately harmed

the African-American community.”⁴ Johnson and Charles deserve their good fortune, however long delayed it was in arriving. But the implication of a resonant bipartisan commitment to systemic racial justice inherent in their presence and visibility is highly misleading. Feel-good snapshots of “reform in action” often tell pleasing public relations half-truths while less palatable, more complicating realities of the same story remain in the shadows.

Drawing almost exclusively on prepared talking points promoting the First Step Act, mass media response to its passage, with Trump’s support, was ecstatic. When Trump first announced support for First Step, CNN pundit, putative liberal, and celebrity reformer Van Jones tweeted, “Give the man his due: @realDonaldTrump is on his way to becoming the uniter-in-Chief on an issue that has divided America for generations” (@VanJones68, November 14, 2018). Even as political polarization over such issues as immigration policy, police violence, and climate crisis deepened, Trump and Jones played to the last frayed—but not yet completely destroyed—nerve of hope in the body politic. Whatever their views of Donald Trump, many people wanted to believe that reform could halt the brutalities and injustices bundled under the rubric of mass incarceration. What better proof of progress than the sight of politicians reaching across the aisle to reject—or so people are led to believe—the decades of raced, classed, gendered, and ableist “tough-on-crime” policies that they had jointly produced?

In support of such reforms, civil rights advocates have joined with conservative-Right counterparts who virulently oppose or seek to limit the rights of women, migrants and immigrants, LGBTQ people, people with disabilities, homeless people, and more. Notable First Step supporters included such strange bedfellows as the corporate-Right policy mill ALEC (American Legislative Exchange Council) Action and the American Civil Liberties Union (ACLU); Americans for Tax Reform, a libertarian-Right antitax group, and the National Association for the Advancement of Colored People (NAACP); Right on Crime, a self-proclaimed one-stop source for

conservative-Right reform analysis, and the Leadership Conference on Civil and Human Rights; and the virulently anti-LGBTQ Faith and Freedom Coalition and the Center for American Progress, a Clintonian think tank. Similar state-based unlikely alliances also exist. Their shared agendas and policy templates are identified and often referred to in this book as “the bipartisan consensus.”

Under the celebratory bipartisan surface, the terrain is murky and untrustworthy. Erroneous assumptions about the nature, scope, and impacts of criminal legal reforms abound. For example, while many people assumed all US prisons were covered by the First Step reforms, that legislation applies only to those in federal Bureau of Prisons (BOP) custody, less than 10 percent of all people confined in US prisons and jails. And while First Step reform makes it possible for some federal prisoners to be considered for early release, many others were convicted on charges that make them ineligible for such consideration. Beyond that, First Step mandated the creation and system-wide deployment of a data-based analytics tool utilized to predict and address the risk of recidivism (being arrested for a new offense following release) for every federal prisoner. This and other predictive profiling tools, linchpins of bipartisan reforms, purport to erase racial and other forms of bias in assessing the “dangerousness” of arrested and incarcerated people. Yet so-called “risk assessment” tools have attracted controversy and criticism for years because, as readers will learn, they reinforce rather than erase bias while creating vast new databases. First Step is one example of similar kinds of bipartisan consensus work carried out at state and local levels.

The rhetoric and public relations campaigns used to market bipartisan reforms are often misleading. For example, promises to end “overcriminalization” litter bipartisan talking points. But that’s a word as deceptive as quicksand. The bipartisan consensus intentionally sidesteps the matter of explosive growth in immigrant detention. Even though being in the United States without the required authorization is considered a civil, not a criminal, infraction, various major coalition members and funders disagree on the issue, and a

decades-long fusion of immigration policy with processes of criminalization and aggressive policing—“cimmigration”—has been an expansive bipartisan project. Symbiotic relationships among US jails, prisons, and immigrant detention centers define the terrain. The bipartisan silence surrounding that symbiosis is unconscionable, particularly in a time of intensified policing of migrants and immigrants, closing doors for refugees, workplace raids, and ever more draconian detention and deportation policies primarily targeting Latinx peoples and Black immigrants. *Carceral Con* also takes note of the increasing criminalization of protest; political dissent; and efforts to document industrial practices that are cruel, exploitative, and harmful to the public, another issue that elicits only silence from the bipartisan consensus.

The bipartisan consensus also provides some degree of cover for criminalizing sleights of hand. While many reform coalitions officially endorse reinstatement of the right to vote for formerly incarcerated people under various conditions, some of the same conservative-Right actors active in those coalitions utilize the lens of criminalization to legitimize suppression of voting rights more broadly. In 2018, Florida voters overwhelmingly approved Amendment 4 to the state constitution, reinstating voting rights for as many as 1.5 million persons with felony convictions—disproportionately Black—who were released from prison. Florida’s Republican-dominated state legislature then acted swiftly to roll back the full reach of the amendment by adding definitions of the crime convictions that would disqualify a person from re-enfranchisement. In a move that evoked the earlier use of poll taxes to suppress the votes of Black people, they also instituted a requirement that formerly incarcerated people pay any remaining court costs, fines, or fees before reinstatement.⁵ A flurry of legal challenges and appeals ensued; weeks before the November 2020 election, the Eleventh Circuit Court of Appeals ruled that fines and fees must be paid before people with former felony convictions could vote. A combination of advocacy, organizing, and charity determined the matter for thousands of those people as the Florida

Rights Restoration Coalition, with the help of high-profile athletes, celebrities, and philanthropist Michael Bloomberg, raised \$25 million to cover as many fines and fees as possible.⁶ But charity is not justice, and many thousands more continue to face exclusions based on offense convictions as well as financial and procedural hurdles to re-enfranchisement.

Despite such hypocrisies, contradictions, and omissions, the public is encouraged to believe that any reform packaged and sold as bipartisan serves the public good. Yet bipartisanship is a mixed, inconsistent, and unreliable quality at best, often harnessed toward oppressive ends. It produced legal racial segregation and opposed efforts to end school segregation long after *Brown v. Board of Education*. It launched and escalated devastating wars in Vietnam and Iraq. It produces massive—and racialized—financial hardship through the deregulation of financial institutions engaged in predatory practices that target lower-income—predominantly Black—households. Over the course of four decades, it built the machinery of mass incarceration and technological control, expanding the reach and capacity of an already violent and unjust carceral system. Under the guise of reform, it decimates social welfare programs even as it undermines public school systems and labor unions through privatization. Such material impacts only reinforce structural racism, economic exploitation, and poverty.

We may well ask whether the affluent producers of nightmare are best equipped to preside over hopes of substantive change for the better. Especially for the hardest hit, most vulnerable communities, who are simultaneously subject to the violence of criminalization, vigilante assault, policing, punishment, and militarization. But abandoning the myth that bipartisanship is inherently virtuous is difficult for many people who want to believe that even flawed agreements are better than nothing, that we must never ask for more than what entrenched political and economic elites can be persuaded to approve. Some of the reformers themselves exhort anyone who questions their agendas to “not let the perfect be the enemy of the

good.” Those who do raise substantive concerns and objections to new reform proposals are often scolded as “unrealistic” or “extreme,” and admonished to not be “spoilers.” Characterizing dissenters as irresponsible and outside the presumptive “stable, reasonable center” is a tactic commonly used to discredit legitimate critiques and discourage critical analysis. It’s useful, then, to take a closer look at the larger context that frames this critique.

KEY CONCEPTS AND TERMS

Several concepts and terms are utilized throughout the book to help describe the purported “stable, reasonable, center” and the results of its actions. *Carceral Con* argues that it is not possible to fully grasp the implications of various reforms without inquiring more deeply into multiple forms of *structural inequality and violence* that are foundational to the United States and its systems of policing and carceral control. That is to say, racial, gendered, economic, and ableist hierarchies and discrimination are structured into the everyday workings of political, legal, and economic systems. Their impacts are destabilizing, severe, and far-reaching. Indeed, *Carceral Con* also regards policies and practices that have produced environmental devastation and destruction of the biodiversity so essential to the earth’s well-being as forms of structural inequality and violence.

The terms *carceral state* and *carceral systems* are frequently used throughout this book. As historian Dan Berger notes, these terms are often used as shorthand for prisons and policing or interchangeably with *mass incarceration*, and *prison-industrial complex*.⁷ But while the carceral state indeed includes the workings of the formal criminal legal system in the United States, it is also far more expansive. There is no single definition that all scholars and organizers agree upon; moreover, systems of control evolve and expand over time. For the purposes of this book, then, discussions of the carceral state, carceral systems of control, and carceral power refer to repressive,

punishing means of social and economic control and surveillance within the formal criminal legal system and its many public/private institutional proxies.

All of this unfolds within the structures of *racial capitalism*, an analytical concept advanced by political theorist Cedric Robinson in his groundbreaking book *Black Marxism: The Making of the Black Radical Tradition*. Robinson argues that capitalism is a global system that evolved from and requires racialized hierarchy, inequality, exploitation, and violence. Racism is not a by-product of capitalism; it is intrinsic to it.⁸ Throughout *Carceral Con*, readers will find myriad examples of ways in which the co-constructive nature of racial and class hierarchies shapes criminal legal reforms.

In the United States, whiteness stands at the apex of racial hierarchy, or at least the institutionalized political construct and cultural mythos of whiteness. Here, racial capitalism is buttressed by a particularly virulent current of *anti-Blackness*. This refers to the structural refusal of US society to fully recognize the humanity of Black people while conflating their collective existence with the active presence of social disorder, danger, and criminality.⁹

Another key concept informing this book is *intersectionality*. Race, class, gender, sexuality, disability, age, and other characteristics cut across and through people's lives in overlapping and co-constructive ways that affect how they see themselves and how they fare within a society's legal, political, and economic systems. In 1989, legal scholar Kimberlé Crenshaw introduced the concept of intersectionality as a way of recognizing the dynamic complexity of these interrelationships and their structural impacts. In the United States, severe inequalities historically have been and continue to be visited primarily upon groups of people who live at the intersections of race (not white or not white enough), class (working class, low-income, and impoverished), gender and sexuality (cisgender women, transgender women or men, gender non-conforming or nonbinary, queer, intersex), and disability. Age, too, complicates the picture, for both children and elders. These groups experience

a systemic, lifetime disadvantage in terms of health, economic well-being, and vulnerability to a myriad of harms. The geographer Ruth Wilson Gilmore, whose work analyzes the political economy that produces, sustains, and expands systems of carceral control, defines racism as “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”¹⁰ By paying attention to these vulnerabilities and harms—experienced collectively as well as individually—*Carceral Con* shifts discussion away from the popular but erroneous notion that the massive harms and injustices of the criminal legal system can be reformed as a standalone project.

This book looks at some of the ordinary workings of racial capitalism through the prism of carceral control and bipartisan consensus reforms. The strategic choices and “unlikely allies” nature of the bipartisan consensus are explained by the bipartisan turn globally and in the United States toward *neoliberalism*. Rooted in a long and complex theoretical history, and in response to the waning of industrial capitalism, neoliberalism began to emerge as a dominant force in the 1970s and 1980s, gaining momentum since that time. In brief, neoliberalism can be understood as a particular set of economic and social practices and relationships between the political state and late racial capitalism marked by the aggressive elevation of private property rights, free markets, and free trade. These go hand in hand with the pursuit of “entrepreneurial freedoms” (deregulation, privatizing, union-busting, and the rise of the gig jobs economy). Within the neoliberal context, says economic geographer David Harvey, the role of the state, “is to create and preserve an institutional framework appropriate to such practices,” including establishing “those military, defence, police, and legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of markets.”¹¹ In the United States, neoliberalism has created a redistributive framework for weakening and dismantling programs that return state revenues directly to working people in the form of basic, stabilizing supports. These