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ARE PRISONS TOLERABLE?

I. THE CONSERVATIVE CASE FOR PRISON REFORM

On October 22, 2015, the *New York Times* ran an editorial titled “Why the Police Want Prison Reform.”¹ The editorial does not actually answer its question: why, indeed, do the police want prison reform? To be sure, the occasion for the editorial was striking: a new group calling itself Law Enforcement Leaders to Reduce Crime and Incarceration (LELRCI), which includes the police chiefs of New York City, Los Angeles, Chicago, Seattle, Philadelphia, and Houston, have called for a reduction in the use of incarceration. But why are they doing it? The editorial tells us what they want, and these seem to be laudable goals: more alternatives to arrest and prosecution, the reduction or elimination of mandatory sentencing laws, and the rebuilding of trust with local communities. However, there is no real explanation of why. Why would William Bratton be a member of this group, when he pioneered the “broken windows” policing strategies that the editorial correctly notes helped to conceive the crisis? Has Bratton simply seen the light, after ruining the lives of two generations of poor people of color? Or, is it something else? Perhaps this tool of racial oppression served its purpose and became outmoded, or, as suggested by the third objective presented in the news conference (rebuilding trust), this is quite simply a necessary response to a legitimacy crisis.² In other words, is this move by law

enforcement an effort to shore up a questionable institution before public confidence is eroded to a point that more radical solutions gain favor?

The bulk of that data on the effectiveness of incarceration as a crime response has been unequivocal since the mid-nineteenth century: if intended to reduce crime or to reform law-breakers, prisons don't work and never have. Foucault is clear, in fact, that the history of the prison is a history of prison reform: "For the prison . . . was denounced at once as a great failure of penal justice" and "the critique of the prison and its methods appeared very early on . . . embodied in a number of formulations which . . . are today repeated almost unchanged."³ He goes on to describe accusations against prisons that are leveled periodically by reformers and to show how each time the response has been to hold that prisons simply have not operated in accord with their "true" principles. Foucault finally concludes:

It should be noted that this monotonous critique of the prison always takes one of two directions: either that the prison was insufficiently corrective . . . or that in attempting to be corrective it lost its power as punishment. . . . The answer to these criticisms was invariably the same: the reintroduction of the invariable principles of penitentiary technique. For a century and a half the prison had always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realization of the corrective project as the only method of overcoming the impossibility of implementing it.⁴

In the US context, one thus sees the 1870 National Congress of Penitentiary and Reformatory Discipline in Cincinnati that led to the introduction of reforms: prison education, "good time" incentives, parole, and variable sentencing. The history of carceral expansion includes mid-twentieth-century reforms (the juvenile court system) and late twentieth-century reforms (mandatory sentencing guidelines). In each case, reformers argue that they will make the system more efficient so as to reduce the unnecessary use of incarceration. However, all of these reforms ultimately exacerbate inequality and widen the net of state supervision. The fundamentally Sisyphean quality of prison reform was so apparent in the late 1970s, *before* the recent racialized carceral buildup, that political philosopher Jeffrey Reiman suggested that prisons' failure was a "Pyrrhic defeat"—one that only appeared to be a failure. Reiman suggests that prisons are actually successful at marginalizing the poor and people of color and identifying a visible segment of the population as the source of danger and insecurity.⁵ The creation by the police-prison apparatus of a substantial, visible criminal class to deflect attention away from the dangers posed by corporations, job insecurity, and wealth inequality should be the standard by which we measure prison's success, he argues. By that standard, it has succeeded remarkably well, up until the present.

That was before Trayvon Martin, before Ferguson, and before #BlackLivesMatter and #SayHerName. The subsequent legitimization crisis is something few could have foreseen, and the representatives of the police-prison apparatus have realized that they must, as spin doctors say, "get out in front of the story." Enter the new law enforcement group, organizations

like Right on Crime, and a supposedly new bipartisan coalition in Washington. At this point, it is useful to observe the facing page of the *New York Times* editorial section on October 22, 2015 and the editorial with the largest headline font: “How to Punish Corporate Fraudsters.”⁶ Here, Eric Havian—a former assistant US attorney general with a distinguished record in private practice representing whistleblowers and complainants against corporate fraud—writes that “criminal remedies will never be a realistic option, except in the most egregious cases.” So, in fact, rather than pursue criminal cases against corporate fraudsters, regulatory agencies should ban those who have violated financial regulations from working in government or in the financial industry. As an alternative to incarceration, exclusion is interesting and not without merit; however, one might reasonably suspect that there is more than coincidence behind the pairing of these editorials.

In the summer of 2014, former Republican Speaker of the United States House of Representatives Newt Gingrich and former Republican California State Assemblyman Pat Nolan coauthored an opinion piece in the *Wall Street Journal* advocating for reductions in the use of prisons for nonviolent (particularly drug-related) offenders.⁷ This position was not a new one for Nolan, who, after serving time in federal prison for racketeering, has headed the prison reform organization Justice Fellowship and is currently director of the Center for Criminal Justice Reform at the American Conservative Union Foundation. His change of heart following early campaigns for “law and order” can be explained by his first-hand experience with the prison system and his subsequent participation in Christian-based restorative justice organizing.⁸ Gingrich, on

the other hand, is the more surprising of the pair. At the same time that Nolan was taking the helm of Justice Fellowship, Gingrich was working in the House to enact the tough-on-crime provisions of his party’s “Contract with America.”⁹ Consequently, much of the extensive buildup of the federal prison system since the mid-1990s resulted directly from Gingrich’s work in Congress as part of an earlier bipartisan consensus on criminal justice.¹⁰ Former president Bill Clinton, another key figure in the 1990s pro-prison consensus, has also recently recanted his position in a timely conjunction with Hillary Clinton’s latest presidential candidacy.¹¹ At such a time as the present moment, it is worth remembering that some critics of the prison, including those who called themselves abolitionists (for example, Angela Davis, Michel Foucault, and Ruth Morris), have advocated massive reductions in incarceration or its wholesale elimination for more than forty years. For those of us who locate ourselves in this abolitionist tradition, it is therefore not enough to return to Clinton era rates of incarceration, or Reagan era rates, or Nixon era rates. Nor is it enough to reduce or even to eliminate racial disparities in incarceration. From an abolitionist perspective, the problem is not that our society makes excessive use of imprisonment but that it makes use of imprisonment at all.

Gingrich and Nolan base their call for prison reform on two broad claims. The primary one is fiscal: prison expansion is simply too costly to maintain and there are cheaper alternatives. The second claim, less explicit than the first, is criminological. It holds that crime rates can be kept low and recidivism reduced by diverting nonviolent offenders:

In 2010, South Carolina followed Texas' example, toughening penalties for violent criminals while creating alternatives to incarceration for nonviolent offenders. These included providing community drug treatment and mental health services for lower-level lawbreakers—mostly drug and property offenders—who made up half of the state's prison population. South Carolina also increased funding for more agents to supervise offenders in the community. Three years later, the prison population has decreased by 8% and violent offenders now account for 63% of the inmate population. South Carolina's recidivism rates also are much improved and the state has closed one prison.¹²

This line is more in keeping with Nolan's earlier work on prison reform, where he has emphasized the fact that most prisoners return to society after their sentences and thus that a strategy predicated on removing them from the community without drug treatment or meaningful counseling and subsequently releasing them without any social support poorly prepares them for noncriminal lives and ultimately makes communities less safe.¹³ Accordingly, drug courts that divert low-level drug offenders from imprisonment are an especially touted alternative among conservatives like Nolan, who are versed in recent criminological perspectives.¹⁴ Meanwhile, the fiscal case for criminal justice reform is the banner of Right on Crime, an organization to which both Nolan and Gingrich belong and a project of the libertarian Texas Public Policy Foundation, which identifies itself as "committed to limited government, free markets, individual liberty, and personal

responsibility."¹⁵ Right on Crime thus frames its advocacy for reduced incarceration as part of a small government, minimal spending platform, while selectively drawing from research showing the failures of prison to contribute to lower crime and recidivism rates. As its website noted in 2014, "Under the incarceration-focused solution, societies were safer to the extent that dangerous people were incapacitated, but when offenders emerged from prison—with no job prospects, unresolved drug and mental health problems, and diminished connections to their families and communities—they were prone to return to crime." The two initiatives most visibly highlighted on its website were the reduced use of prison to punish nonviolent drug offenders and changes to parole and probation rules to eliminate reincarceration as a punishment for minor parole and probation violations. While these might both seem to be causes associated with liberal approaches to criminal justice policy, the supporter list for Right on Crime reads like a who's who of conservative heavy hitters and includes many of the men responsible for ramping up a national police-and-prison state in the 1980s and 1990s, including Gingrich, former federal "Drug Czar" William J. Bennett, former Florida Governor Jeb Bush, former US Attorney General Edwin Meese III, former Executive Director of the Christian Coalition Ralph Reed, president of the Family Research Council Tony Perkins, founder of the American Civil Rights Institute Ward Connerly, and a number of former state and federal attorneys general and deputy attorneys general.

The existence of Right on Crime, LELRCI, and the concurrent movement for reduction in the use of incarceration among right-wing and centrist state politicians from Texas and

Oklahoma to South Carolina and Mississippi indicates a changing landscape to which prison abolitionists should pay close attention. Critical prison scholars like Christian Parenti, Michael Tonry, Vesla Weaver, and others have argued that racial conservatives deliberately orchestrated and carefully crafted the move toward increased criminalization and incarceration in direct response to their losses during the Civil Rights Movement.¹⁶ As their work demonstrates, Republican law and order campaigns substituted fear of black criminality for fear of racial integration, mobilizing white voters in an electoral strategy repeated with variations from the late 1960s through to the early twenty-first century. The “Taking Back Our Streets Act” proposed in Gingrich’s 1994 “Contract with America” was an iteration of this strategy. The results of this forty-year buildup of police powers and prison funding have been well documented by critical prison scholars and traditional criminologists alike. They include the world’s largest prison population and a criminal legal system that is overwhelming in its disproportionate effects on African Americans. People of color make up 36 percent of the nation’s population, but 60 percent of those in prison, and one in three African American men and one in six Latino men in the United States will spend time in prison during his lifetime.¹⁷

More recently, Naomi Murakawa has added to this discussion, arguing that the conditions for the buildup of incarceration and the expanded policing of communities of color were created by liberal Democratic initiatives dating back to the early days of the Civil Rights Movement. According to Murakawa, racial liberals beginning in the mid-twentieth century sought to address police violence and extralegal violence against people of

color through appeals to better, more professionalized, more humane, and more colorblind policing. This led to, among other things, increased funding and resources for both local and federal law enforcement under the Johnson administration and impetus for mandatory sentencing guidelines by Democrat-controlled congresses in the 1970s and 1980s. Fundamentally, Democrats almost always sought to improve the use of police power, to make incarceration function more fairly, and to find ways for the courts to try defendants without considering race, rather than reducing the power of the police, the use of incarceration, or pushing courts to consider structural racial inequality as a mitigating factor in sentencing. This pro-police, pro-incarceration, and “color-blind” orientation of liberal ideology and practice from the 1950s through the 2010s has enabled the various bipartisan consensuses that brought us to where we are today.

In light of what appears to be a new national conservative realignment on crime and imprisonment—exemplified by the organization Right on Crime—several questions worthy of careful consideration emerge:

1. What agendas might the conservative embrace of decarceration mask? Put another way, what interests—other than the interests of those most impacted by racialized mass incarceration—might these initiatives serve?
2. How does the conservative program for criminal justice reform, including decarceration, differ from radical programs for prison abolition? (And what

does it have in common with liberal programs for prison reform?)

3. Are tactical alliances possible across those differences? In other words, how might abolitionists best make strategic use of the apparent conservative (and liberal) turn against what Right on Crime calls "the incarceration-focused solution."
4. Given the bipartisan consensus of the late twentieth century, what risks emerge now under an apparently new bipartisan consensus on criminal justice reform and what dangers does this consensus continue to pose for abolitionism?

These questions suggest that, while abolitionists might be relieved to find liberals and conservatives arguing for the reduced use of prisons for nonviolent crimes and the elimination of prison sentences for minor parole and probation violations, we might also, with geographer Ruth Wilson Gilmore, worry about what new directions the right and center are moving in.¹⁸

At stake in the questions listed above is the very distinction between decarceration—a reformist end goal or abolitionist interim goal of reducing the prison population and society's reliance on incarceration—and excarceration—the abolitionist end goal of a society without prisons and related forms of detention. Within a reformist mindset, even when decarceration is on the agenda, excarceration remains unimaginable precisely because reformism seeks to reform and strengthen an institution that abolitionism seeks to end. By contrast, when abolitionism pursues decarceration as a realizable strategy, it

does so motivated by a vision of excarceration. As a consequence, the primary concern of many abolitionist endeavors has not been reform of the prison, court, and police pipeline but the creation of the conditions within local communities for making all three elements of the pipeline unnecessary. In other words, reformist decarceral practices seek to make the criminal-legal system and its attendant police-prison apparatus work more humanely and more efficiently, while abolitionist practices seek to eliminate it. To argue for abolition, therefore, is not necessarily to insist on a radical litmus test or to only support ideologically "pure" proposals for decarceration. Rather, it is to recognize and underscore the distinction between decarceral proposals that reduce incarceration through the strengthening of the police-prison apparatus and those that reduce incarceration through its weakening.¹⁹ It may very well be that some proposals of an organization like Right on Crime fall into each category and others straddle the two. Alliance with conservative and liberal reformers will vitally depend on knowing which proposals can be used to strengthen abolitionist goals.

To understand the theoretical stakes of Right on Crime and its implications for abolitionist organizing and theorizing, I will consider Right on Crime alongside three other prison-related organizations. The first two were active in France during the 1970s and early 1980s: *Le Groupe d'information sur les prisons* (the Prisons Information Group, the GIP) and its successor, the *Comité d'action des prisonniers* (the Prisoners Action Committee, the CAP). The third is a contemporary of Right on Crime, active in the United States: the Formerly Incarcerated and Convicted Peoples Movement (FICPM).

II. "THIS IS NOT A SOCIOLOGICAL INQUIRY"

The Prisons Information Group emerged in Paris in the early 1970s as a political endeavor seeking, in its own words, to become a "relay station," publicizing conditions in prisons and giving voice to the experiences and opinions of "detainees" and former detainees. Among their first projects was the creation of a questionnaire that they distributed via prison employees and detainees' families in an effort to gain information about prison conditions in the words of prisoners themselves. From the start, they framed this as a political action and met with resistance from the authorities.²⁰ Given the expressly political character of this questionnaire and the risks associated with its completion, the manner in which the GIP went about its work was perhaps as important as the information they sought to publicize. In other words, while it was not illegal to publicize the information the GIP sought to publicize, it was illegal to gather that information in the way it did. In one of its communiqués, the GIP observes that

to join the [visitation] line, enter into conversation, hand out questionnaires, and not talk about oneself—this is not sociological work. The police are there, tightening up the line. . . . Conversely, to accept the questionnaire, to speak loudly of prison, before or after visitation, to participate in meetings—this is not a simple act for the detainee's families. For them, it is to agree to gather together with people who are not close to the prison; it is to agree despite police barricades and threats; it is to agree on a political basis, it is a political act.²¹

The GIP thus locates the politics of its work in these communiqués not only in the content of the questionnaire or of the detainee's speech but also in the act of communicating across the barricades and visiting room tables, across the divisions separating free from unfree. This political act, in turn, is "to give the floor [*donner la parole*] to detainees."²² The GIP emphatically understands itself not to be an academic research organization or a reformist body. It will not propose reforms to the prison or suggest a better kind of prison. Instead, it exists to bear witness to the intolerable, to name it as such, and to defy it.

The GIP's agenda can be encapsulated in three actions: publicizing the reality of prisons, giving voice to prisoners, and exposing incarceration as "intolerable." Frequently throughout their statements and in interviews with members like Michel Foucault, the GIP emphasizes the continuity among these projects. For example, referring to the first published results of the questionnaire they distributed, one GIP document describes it as "not a sociological inquiry."²³ The document goes on to clarify that it aims instead "to let those who have an experience of prison speak."²⁴ They characterize what is at stake as a two-way dialogue in which the separation between the researcher and the object of research disappears:

We want to break down the double isolation in which detainees are confined: we want to enable them, through our inquiry, to communicate among themselves, to transmit what they know, and to speak from prison to prison, from cell to cell. We want them to address the population and we want the population to speak to them. These experiences, these isolated

revolts must be transformed into common knowledge and coordinated practice.²⁵

The GIP's hope instead is that its work in organizing the questionnaire, distributing the results, and providing means of communication among detainees held at various prisons throughout France might contribute to the detainees' own ability to transform their "isolated revolts" into "common knowledge and coordinated practice."²⁶ One can certainly imagine a "sociological inquiry" about prison conditions very much along the lines of any number of contemporary liberal think tank reports, drawn up—without significant input from prisoners—by academics and policy experts who are outraged by what they find. These reports—such as a recent Brookings Institution proposal advocating the use of GPS and other digital monitoring technologies to move prisoners out of correctional institutions through the use of "flexible sentencing"—are frequently distributed via the Internet or handed out to politicians and other policy makers.²⁷ Often informing these reports is the hope that greater awareness of the reality of prisons and the nation's carceral buildup will result in greater oversight of prisons, changes to sentencing, probation, or parole practices, or other reforms to improve the lives of prisoners or (as in the case of the Brookings Institution proposal) to reduce the use of institutional detention altogether. It is unclear whether the GIP would have objected to such reports, but it is clear that they expressed no interest in producing them. A proposal like the Brookings Institution's recognizes prison as excessive but not necessarily as intolerable. It suggests that fewer people should be in prison and that some shouldn't be there at all, but it does not say that no one should be imprisoned, that imprisonment

is incompatible with human dignity, or that our perceived need for these forms of punishment are indicative of serious problems like income inequality, structural racism, and the devaluation of women and children that are in need of urgent, coordinated attention by society as a whole. It thus shares some reasoning with Right on Crime: reserve prisons for those who truly deserve or require it and prisons will function better. Most crucially, however, the Brookings Institution brief suggests reform through the expansion of carceral logic (in this case GPS monitoring); it doesn't seem to consider the possibility that expanded use of GPS monitoring will result in net-widening, with more people under state supervision because it can be accomplished with greater ease and at less expense.²⁸

The GIP pamphlet's primary purpose is not fulfilled by its existence as an end product but by the process of its construction—a process that folds into the second mission of the GIP: to give voice to prisoners. Giving the floor to prisoners can make sense as a political goal in at least two ways: either by changing the results of the social inquiry at hand due to the different perspective, social location, or standpoint of prisoners, or by merely changing the terms by which one is granted legitimacy as a person with authority on a given topic. The first of these is the rationale informing most versions of standpoint epistemology, ranging from the Hungarian Marxist philosopher Georg Lukács's 1922 treatise *History and Class Consciousness* to second wave feminist theorizations of standpoint such as Nancy Harstock's "The Feminist Standpoint" (first published in 1983 and subsequently reprinted).²⁹ In these, and in later elaborations of standpoint theory in the context of multiple identity categories, such as Patricia Hill

Collins's 1990 book *Black Feminist Thought*, different things can be known depending on the social location of the knower and in particular on their orientation with regard to various forms of exploitation or oppression.³⁰ According to standpoint theories, one should locate the generation of knowledge among the oppressed or powerless—or at least from their perspective—in order to yield better and more accurate knowledge about exploitation and oppression. Variations of this approach have understood the perspectives of the working class, of the colonized, of women, or of women of color to be vital to understanding and dismantling systems of capitalism, colonialism, racism, and patriarchy. Adherents hold that the workings of exploitation and oppression can more accurately be seen from the perspective of those whose labor or suffering enables the profits and privileges of the oppressors. By contrast, from the oppressors' perspective, the social system seems to function well, generating leisure and prosperity for many, if not all.

The GIP, however, does not make the claim that it is necessary for prisoners to speak in order to arrive at better insights about the prison (although its members may certainly have believed this to be true). Instead, it insists that it is not ultimately interested in the project of obtaining better knowledge about prison conditions but rather seeks “to heighten our intolerance and make it an active intolerance.”³¹ It further points out that its concern “is not so much to have objective data,” but rather “to get detainees to speak, to give detainees the right to speak, for the first time.”³² In this sense, the project of the GIP is neither social work nor sociology. Its promotion of the perspectives of detainees is not concerned with the content of their speech but rather with the act of their speaking. To

achieve that will have already been a victory the GIP holds, insofar as prisoners will have asserted their existence as members of society with something to say and as people worthy of being heard. As one GIP commentator observes regarding demands for quotidian comforts (heat, chocolate, newspapers, etc.) by prisoners, “these [demands] are not merely details or rather every detail is essential when one struggles to obtain, against a boundless arbitrariness, a minimum of juridical status; when one struggles to have the right to demand.”³³ This assertion of existence and of one's “right to demand” is absolutely essential to those burdened with the stigma of social death.³⁴ To have one's right to demand affirmed is both a starting point for negotiating real reforms and an enormous victory. That victory, in turn, is one that by definition could never be achieved by the advocacy of others or through even the most critical of sociological inquiries.³⁵

The final goal of the GIP's project is to witness the intolerable, to expose it as such, and to make that intolerance an “active intolerance.” This intolerance is worth dwelling on in contrast to mere dissatisfaction, dislike, or frustration. To tolerate something is to allow it to exist, often in spite of some irritation or trouble. To have intolerance for something is to reject it utterly, to insist that it will not do and that it must cease to exist. What makes incarceration *tolerable* is the belief that prisoners are not full members of the social body. What makes the carceral *intolerable*, by contrast, is thus not any one grievance against a given prison administration or a given policy or practice within the prison but rather the very idea of detention and the accompanying negation of the full humanity of the detained.

Furthermore, the penal logic that operates in many discussions of prison reform assumes several nested hierarchies of overlapping moral and scientific authority. At the top of all of the hierarchies are those who have never been incarcerated but have academic or political credentials as authorities on law, crime, and corrections. Their scientific authority derives in part from credentialing institutions that more often than not have a material investment in the perpetuation of the prison: university criminology departments, federal and state departments of corrections, and law enforcement and other government agencies. It also derives from a particular notion of objectivity, understood as neutrality. Researchers, politicians, and other policymakers are assumed to have this neutrality because they are not directly subject to the authority of penal institutions. Since they theoretically do not directly benefit from prison reform (by being released from prison, for example), then one can trust them to be objective. The question is rarely asked whether or not they benefit from the perpetuation of prisons.

Prisoners, by contrast, are always assumed to have a compromised objectivity because what happens to prisons affects them directly. Christophe Soulié observes an analysis along these lines in his book on the CAP: “It is scientific discourse that removes the criminal from his solitude and places him in a collection that will be an object of study and in which he will have no agency.”³⁶ Quoting from Michel Foucault’s preface to Serge Livrozet’s *De la prison à la révolte*, Soulié continues:

Convicts exist in the plural only as the effect of, and by the grace of a “scientific” discourse offered by an official. They form a set because we have regrouped them under general categories; if they must have

words or ideas in common, these are the words by which they are designated and the concepts we apply to them. The analysis or reflection proceeds from the outside; we do not ask them what is theirs; we apply this analysis or this reflection to them with all possible care. The truth illuminates them from above. In this way, we can be assured that they will never form anything but a collection—certainly never a collective movement taking themselves as the object of their own self-reflection.³⁷

Soulié concludes, “caught in the meshes of this discourse, the criminal must not speak. He must be satisfied to answer the questions we have asked him. He is object and not subject [agent?].”³⁸ Prisoners, furthermore, are assumed to be morally compromised insofar as the very thing that qualifies them for incarceration (violation of the law) suggests a lack of trustworthiness. These differences are understood to be essential differences in character between policymakers and prisoners that have been revealed through carceral status—as if one’s status as not incarcerated gives any reliable indication of one’s moral trustworthiness.

For prison abolition, the intertwined legacies of the GIP and the CAP, like many moments in the history of radical mobilization, highlight the importance of a process-centered approach. The existence of the GIP and its work as a “relay station” helped to establish the CAP, which was founded by former detainees and worked throughout the 1970s in France to increase basic freedoms and rights for detainees and formerly incarcerated persons. Both of these organizations contributed to an evolution in the political perception of incarcerated peo-

ple, creating a legacy of their humanity and establishing a basis for their having a continuing political voice (e.g., through the confirmation of detainees' right to receive newspapers). The difference in this voice was palpable almost immediately, and beyond the fact of prisoners speaking for themselves, there was an important element in the content of their speech worth noting. Shortly after its founding in 1971, the CAP issued a manifesto that included a list of the following points as a basis for their struggle:

1. Abolition of criminal records
2. Abolition of banishment
3. Abolition of the death penalty
4. Abolition of life imprisonment
5. Abolition of conditional release and preventative detention
6. Abolition of imprisonment for nonpayment of legal costs
7. Reorganization of prison work . . .
8. Right to free speech and correspondence
9. Right to proper medical and dental care
10. Right to appeal and defense before the prison administration . . .
11. Right to association within prison³⁹

Crucially, these points are not restricted to nonviolent or otherwise sympathetic prisoners but are universal, and each contributes to a limiting of the very bounds of incarceration. In other words, they are fundamentally abolitionist in nature. Although they call for less than incarceration, what they call for entails a weakening of carceral logic and a limiting of its scope.

III. PRISONERS TAKING THE FLOOR

The Formerly Incarcerated and Convicted Peoples Movement (FICPM) was founded in 2010 as a national coalition of organizers who were formerly incarcerated or convicted and are now activists working on issues ranging from birthing rights in prison and reentry assistance to voting rights and public housing access. The work of its founding members is based in New York, Chicago, and Los Angeles, but also Dothan, Alabama and San Antonio, Texas.⁴⁰ Unlike either the GIP or Right on Crime but much like the CAP, FICPM is led and made up almost entirely of those most directly affected by the prison system. As national steering committee member Daryl Atkinson, who works with the Southern Coalition for Social Justice, observes, the composition of the FICPM is its most important distinguishing feature from other prison abolitionist organizations. In the fifth episode of a 2014 radio documentary series produced by Chris Moore-Backman and distributed by Public Radio Exchange, Atkinson explains that

effective movements are led by the people most intimately affected by the oppressive regime, and formerly incarcerated and convicted people—their voices, the voices of their families—have been left out of the policy-making and strategic decisions when it comes to eliminating mass incarceration and the War on Drugs. Very often we have surrogates, service providers, advocacy folks who generally are of goodwill, who act as buffers between us and decision-makers. And many times they're making trade-offs that they don't necessarily have the right or any skin in the game, if

you will, to be able to make . . . So we looked at and studied other movements.

Whether you're talking about, you know, the traditional civil rights movement, whether you're talking about the current LGBTQ movement, whether you're talking about the Dreamers and the movement towards immigrant rights. . . . They were led by the people who were affected by the oppression . . . these were the folks who were leading and devising the strategy on how to eliminate those oppressive regimes. And we in the Formerly Incarcerated and Convicted People's Movement feel that we should do the same, and this is our attempt to develop a cohesive national campaign to do just that.⁴¹

Although Atkinson doesn't describe what tradeoffs surrogates and advocates for incarcerated and formerly incarcerated people might make, one can imagine that they could include the frequent privileging of "nonviolent drug offenders" or "nonviolent offenders" generally in discussions of decarceration. Prison reforms advocated by criminologists, politicians, and others will often focus their efforts on nonviolent offenders to gain support from "the public" or from politicians who can be more predisposed to those who seem to be the most deserving of mercy among the prison population. However, a growing body of scholarship shows that even when noncarceral alternatives are available for nonviolent offenders or for drug possession, blacks are still disproportionately sentenced to prison.⁴² These disparities have been linked by some, furthermore, precisely to perceptions of blacks as "dangerous"—a bias with significance at multiple points in the criminal justice pipeline,

from police and prosecutorial decisions to the opinions of juries and judges.⁴³ The persistence of such disparities—as well as the high rates of incarceration for violent and sexual offenders in comparison to other high-income countries and the ways that sentences for these crimes contribute to high incarceration rates in the United States—have led many critical prison scholars to reject strategies that focus exclusively on reducing incarceration for nonviolent or drug offenders.⁴⁴

It is instructive to contrast some of the proposals of Right on Crime with the platform of FICPM in this regard. Right on Crime's website highlights a number of policy recommendations ranging from drug courts and diversion programs for juveniles to more lenient responses to parole violations. They almost always restrict these proposals to nonviolent offenders, however, and a frequent sound bite throughout Right on Crime's materials is the phrase "prison is for the people we're scared of, not the people we're mad at."⁴⁵ The problem with this perspective is that there is ample scholarly evidence that white people in the United States are scared of poor people and people of color, so those to be spared incarceration as a result of such a strategy may easily be predominantly nonviolent offending middle-class whites like Pat Nolan.⁴⁶ Right on Crime's website makes this more or less explicit in the sixth principle of its "Statement of Principles": "Criminal law should be reserved for conduct that is either blameworthy or threatens public safety, not wielded to grow government and undermine economic freedom." That principle undergirds a significant part of its platform. The organization's first "priority issue" is to reduce "overcriminalization," by which it mostly means the criminalization of white-collar crime.⁴⁷ They thus advocate that

the government “stop creating new criminal offenses as a method of regulating business activities,” because “regulation is better handled through fines and market forces, not the heavy stigma of criminal sanctions.” Here one sees the natural extension of neoliberalism-as-prison-reform.

By contrast, the platform for FICPM extends broadly beyond any narrowly defined concept of prison reform in a series of demands explained on their website and elsewhere:

1. We Demand an End to Mass Incarceration
2. We Demand Equality and Opportunity for All People
3. We Demand the Right to Vote
4. We Demand Respect and Dignity for Our Children
5. We Demand Community Development, Not Prison Profit
6. End Immigration Detention and Deportation
7. End Racial Profiling Inside Prisons and in Our Communities
8. End Extortion and Slavery in Prisons
9. End Sexual Harassment of People in Prison
10. Human Contact is a Human Right
11. End Cruel and Unusual Punishment
12. We Demand Proper Medical Treatment
13. End Incarceration of Children
14. Free Our Political Prisoners⁴⁸

These demands, most crucially, are *demands* rather than policy recommendations. In line with Atkinson’s description of civil rights movements for racial or sexual equality, these are not couched in the language of “experts” who have studied the issues and come to the best conclusions for improving the

effectiveness of the criminal justice system. These are demands asserted by members of an oppressed group, voiced in terms of rights that cannot legitimately be compromised, regardless of the latest studies on “best practices.” Their very existence as demands asserts the oppressed group’s “right to demand.” Furthermore, the FICPM—like a number of other abolitionist organizations including Critical Resistance, the Sylvia Rivera Law Project, and Justice Now—consistently refrains from distinguishing between those prisoners who “deserve” to be in prison and those who do not. As formerly incarcerated individuals, they seek to defend the humanity of all prisoners, not only those who would make the most appealing poster cases for politicians or middle-class whites in the suburbs. Voting rights, human contact, and proper medical treatment, this platform asserts, should be available to all people, whether convicted of marijuana trafficking, murder, or rape. Any compromise negates either the status of these rights as human rights to which all people are entitled or the status of some prisoners as human. In either case, the compromise would undermine the very ground of the FICPM: *its moral belief that convicted and incarcerated people constitute an oppressed minority.*

That commitment to self-representation, human rights, and moral conviction also lies at the heart of the FICPM’s cautious attitude toward advocacy organizations not led by incarcerated or formerly incarcerated people as well as to academic researchers and progressive politicians who seek criminal justice reform. As another member of the steering committee and founder of the Alabama-based organization The Ordinary People Society (TOPS) Kenneth Glasgow explains,

one of the things that we have been trying to do is get formerly incarcerated people to the table. Not just to sit at the table and be a poster child, but to sit at the table and be decision-makers on who's really doing the work, who's doing work that's programmatic, who's doing work that's sustainable, who's doing work that is really, really helping others and not just looking good on paper. . . . Because if we're fighting oppression that's in a criminal justice system, and yet we have organizations that go by the same top-down systematic principles then that oppression still exists.

. . . when you have these national groups that overshadow or capitalize off work that we have done as grassroots, the funding goes to them. It never makes it to the hard-down person that just got out of prison, that can't get a job, can't get a house, can't get a business license, and [is] out there struggling and passing out fliers, and looking for a stipend, but we can't give him a stipend because the grant money done went somewhere else.⁴⁹

Writing elsewhere, steering committee member, member of Direct Action for Rights & Equality, and blogger for Unprison.com, Bruce Reilly pulls fewer punches on this matter:

We are whom the professionals study. *We* are the primary stakeholders in every program. . . . Without us there would be no reentry program, juvenile diversion, or book about solitary confinement. In the same way we are "commodities" for prisons to buy and sell (with our tax dollars attached), we are also commodi-

ties for everyone working in academia and the non-profit realm. Our numbers and our stories are used to pad grant and fellowship reports, with the "special thanks" generally reserved for an academic or a funder who helped get the report printed and disseminated. Many of those same institutions' non-discrimination hiring statements do not include us, and some have never considered hiring someone with a criminal record. Although we often provide the analysis, or referrals through our networks, we are rarely acknowledged, and sometimes given less respect than primatologists give to their subjects.⁵⁰

For a critical prison scholar, these words should cause some earnest soul-searching at the very least. Indeed, many in the field have begun to draw attention to the complicity of criminology and prison studies in the expansion of incarceration, including a recent devastating assessment of the field by Judah Schept, Tyler Wall, and Avi Brisman.⁵¹ Even those of us who have advocated for arguments along these lines and who welcome Reilly's words in print might also find ourselves putting more than a little effort into keeping our egos in check, but this is what a movement of formerly incarcerated people looks like. Just as the GIP found it necessary to step aside in favor of the CAP—and just as white abolitionists like William Lloyd Garrison and Harriet Beecher Stowe were no doubt at times encouraged to do—we may also find ourselves faced with the need to move into supporting roles or else justify our continued occupation of the podium.

Ultimately, a movement led by people who have direct experience of incarceration means that an abolitionist agenda

must also be set by those people. At least in the case of FICPM, what such an agenda looks like is complicated, ranging from urgent “reforms” like an end to shackling imprisoned women while they are in childbirth to a broad vision that sets its sights far beyond the limit of prisons per se. As Atkinson observes, “we want to eliminate mass incarceration, but mass incarceration is really just a tool for the larger social control and the structural oppression and structural racism that we really want to get at. . . . The current tool that’s being used by white supremacy to maintain its power—mass incarceration/mass criminalization—we can end that and then we’re gonna be fighting 40 years from now trying to dismantle something else. But the crux of it will still be the same.”⁵² This returns us to the fundamental strategic difference between decarceration and excarceration. The latter of necessity cannot limit its scope to the criminal justice system. Its focus expands to the conditions of society that give rise to the apparent need for prisons. If those of whom we are afraid are truly dangerous to our well-being, an abolitionist vision asks us to consider how they have been created. For example, are the 747,408 registered sex offenders in the United States aberrant monsters in a society with positive views of sex, gender, and sexuality, or are they a sign that something deeply structural is wrong with our society and structural ways that it deals with gender, race, and sexuality. Indeed, some of the best abolitionist scholarship has been recent feminist work on sexual and gendered violence, including Beth Richie’s *Arrested Justice: Black Women, Violence, and America’s Prison Nation* and Emily Thuma’s “Lessons in Self Defense: Gender Violence, Racial Criminalization, and Anticarceral Feminism.”⁵³

If, as abolitionists who have not been incarcerated, we embrace conservatives from the Right on Crime movement as our allies in passing legislation aimed at reducing incarceration and promoting alternatives, we must be keenly aware of the consequences of this compromise. Do we seek coalition with representatives from Right on Crime because our goal is to improve the functioning of the criminal justice system (i.e., to promote solutions that reduce recidivism)? Do we do so because we support any course of action that reduces the number of people in prison in the United States, and we have reconciled ourselves to a strategy that prioritizes white-collar and nonviolent drug offenders? Or do we do so because the solutions offered by Right on Crime are compatible with our abolitionist values and with the direction formerly incarcerated people want to take their movement? In other words, do we as outside advocates for the incarcerated even have the authority to make this “compromise”?

The agenda of Right on Crime seems designed to be achieved at the expense of people of color and the poor. If incarceration levels are lowered through the decriminalization of white-collar crimes and the excarceration of nonviolent drug offenders, the result will likely be an even more racially disproportionate prison landscape than we currently have. (I make this argument while acknowledging the limited usefulness of the language of disproportionality from an abolitionist perspective.) Imprisonment should not be a solution to drug use, abuse, or addiction of any sort, or for sale, distribution, or trafficking of drugs, regardless of location, number of prior offenses, or possession of firearms. Furthermore, an account of danger and safety that scapegoats the armed robber or serial

rapist while dismantling state programs that contribute to the well-being of poor women and children and looking the other way at the unfettered greed of Wall Street barons is not an account intended to improve the life chances of society's most vulnerable. Protection of communities from economic exploitation, gentrification, environmental degradation, colonialism, genocide, and heteropatriarchy should go hand-in-hand with the decarceration of society (that is, the protection of communities from mass incarceration). And finally, if we truly find prisons to be intolerable, if we believe that they are inherently destructive to humanity, then we should commit ourselves to doing what we can above all to support and to sustain a movement led for and by the incarcerated and formerly incarcerated people most harshly affected by the carceral state.

NOTES

- 1 "Why the Police Want Prison Reform," Editorial, *New York Times*, October 22, 2015, A30.
- 2 Jürgen Habermas famously theorized the concept of a legitimation crisis as a point when an economic system is no longer capable of sustaining the authority that gives it legitimacy and allows for the consent of the people living under it. I am here extending this concept to apply it to a single set of institutions (police, criminal courts, and prisons) that require legitimacy and consent within a representative democracy. See Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston: Beacon Press, 1974).
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- 4 Foucault, *Discipline and Punish*, 268.

- 5 Jeffrey H. Reiman, *The Rich Get Richer and the Poor Get Prison: Ideology, Class, and Criminal Justice* (New York: Wiley, 1979).
- 6 Eric R. Havian, "How to Punish Corporate Fraudsters," *New York Times*, October 22, 2015, A31.
- 7 Newt Gingrich and Pat Nolan, "An Opening for Bipartisanship on Prison Reform," *Wall Street Journal*, July 14, 2014.
- 8 Jenifer Warren, "He Found a Calling in Prison," *Los Angeles Times*, July 5, 2007; Mark Gladstone, "Paroled Lawmaker to Push Prison Reform," *Los Angeles Times*, February 24, 1998; Pat Nolan and Chuck DeVore, "Prison Reform the Conservative Way," *Los Angeles Times*, July 26, 2013.
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- 13 Gladstone, "Paroled Lawmaker."
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- 15 Right on Crime, www.rightoncrime/about/.

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- 16 Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis*, 3rd ed. (London: Verso, 2008); Michael Tonry, *Punishing Race: A Continuing American Dilemma* (Oxford: Oxford University Press, 2011); Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21 (Fall 2007): 230–65.
- 17 Michael Hames-García, *Identity Complex: Making the Case for Multiplicity* (Minneapolis: University of Minnesota Press, 2011); Christopher Hartney, *U.S. Rates of Incarceration: A Global Perspective* (National Council on Crime and Delinquency, 2006); Marc Maurer, *Race to Incarcerate*, revised ed. (New York: New Press, 2006); Pew Center on the States, *One in 100: Behind Bars in America 2008* (New York: Pew Charitable Trusts, 2008); The Sentencing Project (www.sentencingproject.org); Michael Tonry, *Punishing Race*; Loïc Wacquant, *Prisons of Poverty* (Minneapolis: University of Minnesota Press, 2009).
- 18 Ruth Wilson Gilmore, "The Worrying State of the Anti-Prison Movement," *Social Justice: A Journal of Crime, Conflict, & World Order* (February 23, 2015), <http://www.socialjusticejournal.org/?p=2888>.
- 19 See Liat Ben-Moshe for a nuanced, extended discussion of abolition, reform, and abolitionist reform. "The Tension between Abolition and Reform," in *The End of Prisons: Reflections from the Decarceration Movement*, edited by Mechthild Nagel and Anthony J. Nocella II (Amsterdam: Rodopi Press, 2013), 83–92.
- 20 Daniel Defert, "Quand l'information est une lutte," *Le Groupe d'information sur les prisons: Archives d'une lutte, 1970–1972*, eds. Philippe Artières, Laurent Quérou, and Michelle Zancarini-Fournel (Paris: Éditions de l'IMEC, 2003) 69. Translation by Perry Zurn. Hereafter cited as *Archives d'une lutte*.
- 21 Ibid., 72.
- 22 Michel Foucault, "Je perçois l'intolérable," *Dits et Ecrits I* (Paris: Gallimard, 2001), no. 94, 1072.
- 23 Michel Foucault, "Le GIP vient de lancer sa première enquête," *Archives d'une lutte*, 52.
- 24 Ibid.
- 25 Ibid.
- 26 Ibid.
- 27 Darrell M. West, "How Digital Technology Can Reduce Prison Incarceration Rates," <http://www.brookings.edu/blogs/techtank/posts/2015/03/31-digital-technology-prison-problem-west>.
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- 31 Foucault, "Le GIP vient de lancer sa première enquête," 52.
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- 33 Michel Foucault, "Pour échapper à leur prison..." *Archives d'une lutte*, 153.

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- 38 Ibid.
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- 47 See also, Robert Nichols's critique of the language of "disproportionality" in his article "The Colonialism of Incarceration," *Radical Philosophy Review* 17, no. 2 (2014): 435-56.
- 48 FICPM National Platform, <https://ficpmovement.wordpress.com/about/ficpm-national-platform/>.
- 49 Moore-Backman, *The Formerly Incarcerated and Convicted People's Movement*.
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- 51 Judah Schept, Tyler Wall, and Avi Brisman, "Building, Staffing, and Insulating: An Architecture of Criminological Complicity in the School-to-Prison Pipeline," *Social Justice* 41, no. 4 (2015): 96-115.
- 52 Moore-Backman, *The Formerly Incarcerated and Convicted People's Movement*.
- 53 Beth E. Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York: New York University Press, 2012); Emily Thuma, "Lessons in Self-Defense: Gender Violence, Racial Criminalization, and Anticarceral Feminism," *WSQ: Women's Studies Quarterly* 43, no. 3-4 (Fall/Winter 2015): 52-71.

PROBLEMATIZATION AND THE PRODUCTION OF NEW STATEMENTS: FOUCAULT AND DELEUZE ON LE GROUPE D'INFORMATION SUR LES PRISONS

From its inception, *Le Groupe d'information sur les prisons* (the Prisons Information Group, the GIP) sought to embody a fundamentally new kind of social and political resistance. The group demanded no ideological unity and provided no political guidance. They were neither a party, a reform movement, nor an affinity group. There was no central organizing committee or symbolic figure, no charter, no statutes, no members even, just activists drawn from various social strata: prisoners, lawyers, family members, judges, theorists, et cetera. The GIP was nothing less but nothing more than a meeting place or, in their own favored terms, a "relay," a "line of attack." The group's activities, albeit brief, were notable for their diversity: from the creation and publication of information pamphlets (the Intolerable Series), and the organization of advocacy networks and publication of grievances to facilitate and support the prison revolts that occurred throughout France in the winter of 1971-1972, to street theater, the writing and performance of a play ("Le procès de la mutinerie de Nancy," 1972), and the filming of a documentary (*Les prisons aussi*, 1972). The GIP's work was an array of struggles, of diffusion and rupture, of dissemination and critique. But was there a coherent model(s) of resistance operative throughout these disparate projects? Were they pur-