States of Confinement

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Representations of Black Feminist Politics*

States of Confinement

Policing, Detention, and Prisons

Edited by Joy James

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INTRODUCTION

States of Confinement: Policing, Detention, and Prisons explores the racial, sexual, and class inequalities tied to “criminal justice” in the United States. It raises such issues as inequities in prosecution and sentencing and exploitation and abuse in policing and imprisonment.

Currently, some 70 percent of the nearly 2 million imprisoned in U.S. jails, prisons, and detention centers are “minorities,” or (poor) “people of color”; approximately 200,000 mentally ill people are incarcerated. The contributors to *States of Confinement*—progressive writers, activists, attorneys, and scholars—offer critiques of the death penalty, racism and the criminal justice system, confinement based on gender and sexuality, police misconduct and brutality, and the state’s punitive responses to political radicalism and resistance. Here, twenty-six chapters explore the limits of a democratic society that has dedicated immense resources to policing and punishment. Nearly half of these chapters stem from papers presented at the March 1998 “Unfinished Liberation: Policing, Detention and Prisons” conference held at the University of Colorado at Boulder.¹

The United States has the highest incarceration rate in the industrialized world. It is also one of the few “developed” countries that continues to deploy the death penalty. To talk about policing, imprisonment, and state executions, historically or in contemporary times, one must speak of race and class. Increasingly, new literature addresses the realities of our racialized, class-biased, and reactionary criminal and legal system.²

A few striking examples illustrate the gross inequality and abuse rampant in the current prison industry and the system of state policing. In March 1999 the Amnesty International Rights for All campaign issued a report, *Not Part of My Sentence: Violations of the Human Rights of Women in Custody*, documenting the abuses of women in U.S. prisons

and jails. By June 1997 there were 138,000 women incarcerated in the United States; triple the number since 1985 and ten times the number of women imprisoned in Spain, England, France, Scotland, Germany, and Italy combined.³ Most of the women incarcerated in the United States are nonviolent offenders convicted of economic crimes or drug-related offenses. Eighty percent are mothers, eighty percent are poor, and the majority are “women of color.” The less common violent offenses are generally connected to domestic abuse. Racial bias in sentencing means that “minority” women charged with both nonviolent and violent crimes will increasingly make up the growing population of incarcerated females. (Sentencing bias is pervasive: African American or Latina women who kill their batterers are four times more likely than white women to be sentenced to prison even if the acts are defined as self-defense.) Serving time, this population of caged women find themselves subject to new forms of physical and sexual abuse. For instance, although the Convention Against Torture that the United States ratified in 1994 defines rape of women in custody by correctional officers as “torture,” the United States government has engaged in virtually no monitoring of the conditions and situations of imprisoned women in respect to human rights violations.⁴

In government, the majority in Congress and the Supreme Court, as well as the president, Bill Clinton, have embraced the punitive rhetoric of punishment at least for the poor and racialized. Most politicians and elected officials support the death penalty, even though the American Bar Association has advocated a moratorium given the rampant and acknowledged racial bias in state executions. Race, of both the defendant and the victim, is the primary factor in capital punishment. Those convicted of killing a white person are four times more likely to receive the death penalty, particularly if they are not white themselves. On the eve of a new millennium, the Supreme Court has found this acceptable and state executions not cruel and unusual punishment in our democracy; even though in 1994 U.S. Supreme Court Justice Harry Blackmun noted: “Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.”⁵ Over sixty-five percent of juvenile offenders sentenced to death since the reinstitution of the death penalty in 1976 have been either

black or latino.⁶ In addition, as one of the few democratic nations to execute minors, the United States has executed more youths than any other country.⁷

The contradictory and repressive nature of “democratic” law itself is striking. The Thirteenth Amendment to the Constitution codifies rather than abolishes slavery: Those duly convicted of a crime can be forced into involuntary servitude or slavery for the duration of their incarceration. A hundred years ago, more African Americans died in the convict prison lease system than they did during slavery, worked to death by a business venture coordinated by both state and private industry that replaced plantation labor with prison labor, a commodity that could always be replenished by sweeps arresting blacks because they were black. Today, according to the Washington, D.C.-based Sentencing Project, if a black person and a white person commit (or are convicted of) a similar offense, the black person is much more likely to be sentenced to prison. As prisoners’ rights advocate Angela Y. Davis has noted, one is more likely to be incarcerated because of race (if he or she is black or brown) than for committing a crime.

Most men and women are in prison for nonviolent offenses, often related to the drug trade and addiction. As part of the state’s ongoing “war on drugs,” increased funds for policing (both domestically and internationally) and prisons have flowed generously. The United States is likely the world’s largest nation-state consumer of illicit drugs; it has the most draconian and racialized drug laws among industrialized nations. European Americans are the majority of consumers of both crack (considered an urban drug for black and latino consumers) and powder cocaine (designated as the drug of choice for affluent white suburbanites).⁸ Yet black and latino defendants disproportionately are policed, arrested, and incarcerated for drug use and sale.⁹

Racialized policing has also led the Congressional Black Caucus and progressives to adopt the phrase “DWB”—driving while black or brown—to denote the national prevalence of racial profiling in police harassment and arrests. In addition, human rights activists have noted the similarities between DWB and the Black Codes following the Civil War in which white patrollers could stop and question largely law-abiding African Americans solely because of their race and their ability

or desire to move freely.¹⁰ Similar repressive measures are used against Latinos and Chicanos by immigration police.

Prisons then exist as a central dilemma for a racially constructed and class-stratified democracy. This anthology explores the limits of conventional politics, extending its focus beyond the borders of the “free world” to study contracting democracy and the manifestations of expanding repression across the United States.

States of Confinement is organized into five sections: “Executions”; “Blacks and Criminal Justice”; “Gender, Sexuality, and Confinement”; “Policing”; and “Political Repression and Resistance.” In “Executions,” Part I, Robert Meeropol offers “Testimony” on the death penalty based on his childhood and adult perspectives on the executions of his parents, Ethel and Julius Rosenberg. Lee Bernstein, in “. . . Give Me Death’: Capital Punishment and the Limits of American Citizenship,” presents a historical and theoretical analysis of the death penalty in the United States. Steven Hawkins documents the prevalence among death row inmates of African American and Latino youths, often juvenile offenders who were victims of physical or sexual abuse as young children. “The Ordeal of Mumia Abu-Jamal,” by Daniel R. Williams, discusses the controversial case of the death row inmate-journalist considered by many to be a political prisoner falsely accused of killing a policeman.

Part II, “Blacks and Criminal Justice,” begins with a chapter by Manning Marable that reviews the state of black America, its economic marginalization, and its vulnerability to the prison industrial complex. Angela Y. Davis’s “From the Convict Lease System to the Super-Max Prison” examines the growing industries surrounding prisons and the disproportionate incarceration of blacks and Latinos by linking the emergence of nineteenth-century race-based incarceration to contemporary racism and involuntary servitude in prison. Marc Mauer argues in “Young Black Americans and the Criminal Justice System” against the racial disparities in sentencing that target African American males to such a degree that blacks who are convicted of the same offenses as whites are eight times more likely to be incarcerated. In “The New Black Leadership: Gang-Related?,” Salim Muwakkil examines the policing, contradictions, and contributions of Chicago gangs that finance social services for their impoverished communities through an underground political

economy based primarily on the drug trade. Focusing on black women in cities, Adrien K. Wing provides a critical view of African American women and the criminal justice system, in "Black Women and Gangs."

"Gender, Sexuality, and Confinement," Part III, examines different forms of social, sexual, and racial violence in relation to criminalization and incarceration. Joanne Belknap writes of the restricted access that imprisoned women have to medical attention in "Programming and Health Care Accessibility for Incarcerated Women." Juanita Díaz-Cotto's "Race, Ethnicity, and Gender in Studies of Incarceration" focuses on "women of color" in order to examine bias in social science studies of women's prisons. Luana Ross's "Imprisoned Native Women and the Importance of Native Traditions" discusses the impact of Native American religions on the self-esteem and identity of incarcerated native women in the West. In "Military Prostitution in Asia and the United States," Alexandra Suh writes about Korean women who marry U.S. servicemen only to be forced into the sex industry when they immigrate as "brides." Brenda Rodriguez provides in "HIV, AIDS, and Rape in Texas Prisons" an exposé of the adverse conditions that HIV-positive prisoners and prisoners with AIDS face. AnnJanette Rosga explicates the links between social homophobia and hate crimes in "Ritual Killings: Antigay Violence and Reasonable Justice."

Part IV, "Policing," studies different mechanisms of confining both subordinate and marginalized peoples and the general citizenry. In "All the Brother Wanted Was a Ride: Lynching and Police Powers in Texas," Larvester Gaither examines the historical relationship between extralegal violence, in the case of 1998 lynching victim James T. Byrd, and the resurgence of antiblack vigilantism and police brutality. David Theo Goldberg's "Surplus Value: The Political Economy of Prisons and Policing" critiques the profiteering and the privatization of U.S. prisons. Gabriel Torres and David A. Love outline a national campaign to increase recognition of the victims of police brutality in "The Militarization of the Police in the United States." Eric Tang's "State Violence, Asian Immigrants, and the 'Underclass'" focuses on the New York Police Department's misconduct toward Asian American youths. In "The INS and the Criminalization of Immigrant Workers," Julie A. Su details the criminalization of immigrant workers and the tactics employed by the

Immigration and Naturalization Service against largely Asian and Latina garment workers. Gary T. Marx, in "The New Surveillance," describes recent developments in electronic surveillance and the diminishment of privacy rights in contemporary society.

Part V, "Political Repression and Resistance," begins with Margaret Ratner and Michael Ratner's description of abuses of the grand jury system and its role in repressing and jailing activists. The selective policing and deportation of radicals is explored in Huessin Ibish's "At the Constitution's Edge: Arab Americans and Civil Liberties." José López's "Political Incarceration" discusses the use of prisons as tools in domestic "counterinsurgency." Donna Willmott speaks of her own experience as a political prisoner incarcerated for her activism with the Puerto Rican independentistas and the need to support U.S. political prisoners. Judi Bari's "Earth First! and the FBI" highlights the misconduct of police agencies in dealing with environmental activists, describing police harassment following her survival of a car bombing.

These are only a select few of the thousands of voices issuing critiques of what has been labeled the "prison industrial complex" and the rising abuse of police powers in the United States. (Some of the most incisive analyses remain those of the imprisoned struggling for humanity.) In this era, in the new century, prisons and policing pose the most visceral and unsettling juxtapositions between freedom and "slavery"; between citizenship and subjugation. This volume does not ignore the reality of social violence in U.S. culture and society. Rather it explicates the ways in which social myths and political demagoguery have joined with dehumanizing and often racist, (hetero)sexist, and classist speech and practices to create the "monster" that must be excoriated and exorcised. By demonizing marginalized social sectors and by obscuring complex social realities, such rhetoric and policies appear to confine all of us who abide in this punitive, national culture.

NOTES

1. Additional essays gathered from the conference were published in a special issue titled "Unfinished Liberation: Policing and Imprisonment" in *Radical Philosophy Review* vol. 3, no. 1 (Fall 1999).

2. See Mumia Abu-Jamal, *Live From Death Row: This is Mumia Abu-Jamal* (New York: Addison-Wesley, 1995); Daniel Burton-Rose, Dan Pens, and Paul Wright, *The Celling of America* (Monroe, ME: Common Courage Press, 1998); Jerome Miller, *Search and Destroy* (Cambridge: Harvard University Press, 1996); Elihu Rosenblatt, ed., *Criminal Injustice* (Boston: South End Press, 1996).
 3. Amnesty International, Rights for All, *Not Part of My Sentence: Violations of the Human Rights of Women in Custody* (New York: Amnesty International, March 1999), 15-16. Amnesty documents that these European countries combined have a population of 150 million women, compared to 120 million women in the United States.
 4. The United States was to submit a report on its compliance with the Convention Against Torture in 1995, but no report to date has been released. In response, a coalition of over sixty non-governmental organizations (NGOs) issued a report in October 1998 titled *Torture in the United States: The Status of Compliance by the U.S. Government with the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. See Morton Sklar, ed., *Torture in the United States* (Washington, D.C., World Organization Against Torture, October 1998).
- The report notes that the major areas of noncompliance in the United States center on: the death penalty; prison conditions and the treatment of refugee detainees; physical and sexual abuse of women in prisons; the return of refugees to situations of torture and persecution; and their long-term detention under abusive conditions. Other violations noted in the report are: the United States's failure to extradite or prosecute torturers who worked with the Central Intelligence Agency or were trained at the School of the Americas; the state's lack of adequate domestic implementation of the 1996 Illegal Immigration and Immigrant Responsibility Act; and arms sales and other assistance by the U.S. government that support torture in foreign countries (such as the sale of electronic stun gun equipment and some 10,000 shock batons to Turkey to be used against the Kurdish minority, the same equipment that Amnesty International has denounced in its use against U.S. prisoners).
5. Quote cited in Morton Sklar, ed., *Racial and Ethnic Discrimination in the United States: The Status of Compliance by the U.S. Government with the International Convention on the Elimination of Racial Discrimination* (Washington, D.C., The Coalition Against Torture and Racial Discrimination, October 1998), 5.
 6. *Ibid.*, 6.
 7. See *ibid.*, 5.
 8. For state complicity in the drug trade see *Inside the Shadow Government*, Declaration of Plaintiffs' Counsel filed by the Christic Institut, U.S. District Court, Miami, Florida, March 31, 1988; and Gary Webb, *Dark Alliance* (New York: Seven Stories Press, 1998). See also: Dan Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (New York: Little, Brown & Company, 1996).
 9. See: Dan Baum, *Smoke and Mirrors*.
 10. See George E. Curry, "Policing Police," and Marcia Davis, "Roadside Racism," in *Emerge*, June 1999.