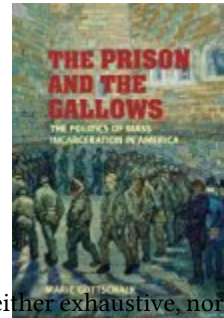


H-Net Reviews

in the Humanities & Social Sciences

Marie Gottschalk. *The Prison and the Gallows: The Politics of Mass Incarceration in America*. Cambridge: Cambridge University Press, 2006. 451 S. \$28.99 (paper), ISBN 978-0-521-68291-6.

Reviewed by Jürgen Martschukat (Department of History, Erfurt University)
Published on H-Law (May, 2007)



If, as Michel Foucault or David Garland have taught us, the infliction of punishment by the state on its citizens can be likened to warfare, then the United States has been fighting a massive war with itself for almost forty years. Marie Gottschalk, associate professor of political science at the University of Pennsylvania, draws this conclusion in the final pages (p. 263) of her book on “the politics of mass incarceration in America,” a highly intriguing study putting today’s U.S. punitive politics in historical and comparative perspectives, with at times surprising interpretive twists and turns.

Today, almost 7 million people are under the supervision of the U.S. correctional system, and roughly 2.2 million Americans live behind bars. In 2001, the United States spent a record \$167 billion on its criminal justice system, which equals 7 percent of all government spending on state and local levels, and is roughly as much as is expended on health care and hospitals. The politics of governing by incarceration has gained specific momentum since the early 1970s, but in tracing the main political and historical forces of these changes, Gottschalk goes back well beyond the 1970s, at times even back to the formation of the United States. In seeking explanations for the “politics of mass incarceration” (as well as its magnitude and, specifically, the comparatively shallow political opposition against it), Gottschalk argues that not only conservative forces, but also various liberal reform movements and their agendas, contributed to its rise and implementation. The reform movements originating in the 1960s and 1970s also provide the organizing principle of the book. She focuses, on the one hand, on the feminist and the civil rights movements as larger trajectories and, on the other hand, on prison reform groups and the opposition against the death penalty as movements clearly directed to the relationship of punishment and the state.

Gottschalk stresses that this list is neither exhaustive, nor is it her intention to make the diverse reform groups responsible for the emergence of the carceral state. Yet she argues that the standard explanations—an escalating crime rate, shifts in public opinion, the war on drugs, the emergence of the prison-industrial complex, changes in American political culture, and exploitation of law-and-order issues for political gain—are, without doubt, significant, but remain insufficient as explanations. Instead, she wants to show how diverse social, cultural, and political forces can interact in a powerful mixture and lead to unexpected outcomes at times.

The analytical part of the book begins with a chapter explaining the historical and institutional past of today’s penal policy, going back to the late eighteenth century. Throughout her study, Gottschalk not only seeks to achieve historical depth, but also geographical, national, and cultural breadth. She not only takes the variances within the United States into account, but also compares the United States to transformations in diverse European countries. In the chapter entitled “Unlocking the Past,” Gottschalk goes back to the American Revolution and the Early Republic, stressing that the birth of the penitentiary was part of a new punitive rationale, emerging to restrain the punishing power of the sovereign and seeking to establish institutions that would lead wrongdoers back to the path of Republican virtue—a fact that sounds ironic today. On the other hand, specifically in the South, slavery continued to exist and crime was strongly associated with notions of race, making it hardly possible to embrace rehabilitative ideals. With the end of slavery, Southern states adopted the convict-lease system which remained in existence until the 1920s and was essential to the political and economic life of the South. According to Gottschalk, different as both developments were,

the ideal of the penitentiary and the ongoing existence of a slave-owning and racially discriminating society both share a common denominator, namely that the United States developed an identity as a convict nation.

With regard to the early twentieth century, Gottschalk cites Prohibition and the emergence of organized crime as major incentives for politicians and reform groups to demand a politics of law and order. She also refers to the frenzy over prostitution, white slave traffic, and the sexual exploitation of females as important. The same is true for the craze concerning juvenile delinquency after World War II and through the 1950s. By referring to these diverse issues, Gottschalk stresses that, time and again, the United States has embarked on reform movements and political campaigns against prostitutes, pornographers, bootleggers, juvenile delinquents, which contributed to the consolidation of a punitive system specifically based on incarceration. What changed from the 1960s onward was not that politicians detected law-and-order as a brand new topic, but how they played on it.

An element of major significance for the consolidation of the carceral state since the 1960s is the call for victims' rights, which complemented the country's liberal rights-based tradition. However, crime victim issues also received increased attention in several European countries in the 1950s and again in the 1980s; although, they were largely considered within the responsibility of the welfare state and its institutions. Contrary to the European situation, in the United States pressure groups proliferated, putting the rights of victims on their agenda and making them a major issue of the penal policy of the state, for instance represented by the Law Enforcement Assistance Administration in the Department of Justice established by Congress in 1968. During the 1970s, the LEAA significantly contributed to evolving research on crime and victimization. Thus, due to the existent state structure in the United States, its comparatively weak welfare state, and the way the victims' rights movement developed, the United States was particularly receptive to calls for harsher penal remedies.

The recognition of victims' rights and the call for tougher prison sentencing were also important issues of numerous feminist groups and the anti-rape movement—which were “not the usual suspects” in debates about harsh U.S. prison politics (p. 115), as Gottschalk emphasizes. However, she convincingly argues that the feminist fight against rape and domestic violence found unexpected allies in law-and-order politicians backed by con-

servative interest groups. Thus, the battered-women's movement and the discourse on rape, sexual and domestic violence not only ignited a long overdue sensitization of the public and law enforcement institutions, but also created coalitions with law-and-order conservatives and contributed to a more punitive climate.

At the same time, putting sexual violence center stage alluded (intentionally or not) to racist stereotypes deeply embedded in American culture and law since Reconstruction. Until the African American civil rights movement gained momentum, rape was largely perceived as a black man's crime in U.S. history, culture, and institutions. At the same time, the absolute number and proportion of black men among the prison population had been increasing constantly since the 1920s. In 1989, for the first time in American history, the majority of the U.S. prison population was African American, though the civil rights movement had been constantly and persistently fighting racial discrimination within the legal system for decades. Gottschalk gives her interpretation another thought-provoking turn when she shows how the civil rights movement nurtured the victims' rights discourse by directing attention to the social, cultural, and economic disadvantages experienced by black men in American history, and by thus perceiving them as victims of their environment. This view of the offender-as-victim has been reinforced since the 1960s by both, criminological theory and the prison reform movement with numerous prison writings, specifically by black revolutionaries such as Eldridge Cleaver or George Jackson. Different forces were fighting for the acceptance of their victim status as predominant, which pushed the U.S. crime victims' movement in an even more forceful and conservative direction.

In the two final chapters of her book, Gottschalk discusses the abolition and re-instatement of the death penalty in the United States, an issue hard to ignore when the politics of U.S. punishment is discussed. Gottschalk stresses that the exceptional position of the United States in comparison to Europe regarding the death penalty cannot be easily explained by referring to long-standing traditions in U.S. history, for two reasons. First, over time, several U.S. states mounted strong movements for the abolition of the death penalty and, second, Europe did not turn the death penalty into a human rights issue and adopt an uncompromisingly abolitionist position until the 1980s. Yet, contrary to Europe, the U.S. reform movement of the 1960s and 1970s fought capital punishment primarily on procedural grounds, on a case-by-case basis. Opponents focused on the fairness of trials and the

legal system, and not on the death penalty as a breach of human rights. Furthermore, in two cases, *Furman v. Georgia* (which abolished the death penalty as unconstitutional in 1972) and *Gregg v. Georgia* (which reinstated the death penalty as constitutional in 1976), standards of decency and the popular will regarding death as punishment were considered by the judges as relevant. Without maintaining a clear causal connection between the judgment in *Gregg* and the transformation of capital punishment into the ultimate form of victim recognition during the 1980s, Gottschalk convincingly argues that they both operate within the same discourse and accept the public sentiment as major indicator of a fitting and adequate policy of punishment. As Gottschalk shows, the battle over capital punishment contributed in complex and sometimes indirect ways to the construction of the carceral state. Life in prison without the possibility of parole is acknowledged by many reformers and opponents of capital punishment as a means to end the death penalty, thus bolstering the carceral state. Further-

more, the reinstatement of the death penalty significantly helped to legitimize a zero-sum view of crime and punishment, of victim and offender, a perspective crucial for a highly punitive society.

Marie Gottschalk's multilayered account is thought-provoking and convincingly argued. It unites historical observations with the analysis of current situations, it provides both a big picture and nuanced analysis, and it helps us to understand how institutional and political constellations, familiar in the explanation of the politics of mass incarceration in America, went hand in hand with the work of pressure groups and popular movements usually not associated with today's crime and punishment policy. Even though Gottschalk stresses that her account is anything but exhaustive, it is still surprising that religious forces are not mentioned at all. However, this might be taken as incentive to other scholars to incorporate the relationship of religion and the politics of mass incarceration into the impressive analysis of Marie Gottschalk.

If there is additional discussion of this review, you may access it through the network, at:

<https://networks.h-net.org/h-law>

Citation: Jürgen Martschukat. Review of Gottschalk, Marie, *The Prison and the Gallows: The Politics of Mass Incarceration in America*. H-Law, H-Net Reviews. May, 2007.

URL: <http://www.h-net.org/reviews/showrev.php?id=13167>

Copyright © 2007 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.msu.edu.