Incarceration is an issue that touches almost every area of American life, yet often remains invisible. Representations in popular culture, like the Netflix series *Orange Is the New Black* or the podcast *Ear Hustle* (produced at San Quentin State Prison), have shifted the focus away from crime and punishment and instead tried to highlight the perspectives and lives of incarcerated people. At the same time, movements to expand voting rights post-incarceration and organize prisoners are starting to gain traction nationwide. The present essay highlights the work of historians, sociologists, and legal scholars who have studied the historical roots and present structures of incarceration in America. Ryan Huey is a PhD candidate in history at Michigan State University and a freelance scholar who studies twentieth-century American culture, law, and social movements. —Yelena Kalinsky, Book Channel Editor

**An Uprising at Kinross**

The call “ten-nineteen” echoed throughout all eight of the housing units at Kinross Correctional Facility, signaling all correctional officers (COs) to leave their posts and head to the administration building. Inmates at this Northern Michigan prison looked on as COs hurried past them with the unit logbooks, the prison’s primary way of keeping legally binding records of dorm events. An Emergency Response Team (ERT) made up of about one hundred specially trained COs from across the state soon stormed several units. Inmates in Unit G tore apart the common area to barricade the doors and prepare for the inevitable confrontation. The ERT shot “pepper balls” filled with capsicum and CS “tear” gas at inmates from Units D, E, F, G, and H to “keep prisoners from approaching the team.”¹ By the end of the confrontation, the ERT had zip-tied the hands of all of Kinross’s 1,200 or so inmates, effectively quelling the demonstration.²

The ERT arrived at Kinross on September 10, 2016, in response to an inmate work stoppage the day before that coincided with the anniversary of the Attica Prison Uprising. On September 9, 1971, nearly 1,300 prisoners at the Attica Correctional Facility in New York State took hostages and gained control of the prison for four days to demand rights and better conditions. Anyone familiar with the gruesome retaking of Attica by the New York State Police, in which the police shot 128 men, killing twenty-nine prisoners and ten hostages, knew that September 9th was a solemn reminder of the dangerous consequences that can accompany prison organizing.
In her 2017 Pulitzer Prize-winning book, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*, historian Heather Anne Thompson’s account of the massacre at Attica and her meticulous reconstruction of the state’s subsequent effort to cover up the atrocity have solidified Attica as a seismic event in the history of the American carceral state. Thompson’s book appeared amid a flurry of innovative scholarship on the history of criminal justice, mass incarceration, and prison activism. Like *Blood in the Water*, many of these works were written with moral urgency aimed at undoing the uniquely disastrous effects of mass incarceration on American society. Without sacrificing nuance, these scholars have helped unravel the illogic of imprisonment as a crime control mechanism in order to forge a different path forward.

**Theorizing the Carceral State**

French philosopher and activist Michel Foucault referred to “the carceral” as the institutions that monitored, constrained, coerced, and doled out punishments to “delinquents.” In his 1974 book, *Discipline and Punish*, Foucault identified how delinquency became a new and pathologized category of criminality in the nineteenth century. Separate from other illegalities, delinquents were mostly
poor people who had been placed “on the other side of the law” because they refused to conform to the increasingly stringent behavioral standards demanded of workers under industrial capitalism. The ostracism experienced by delinquents drove them to further embrace criminal lifestyles that could include tax evasion, draft dodging, theft, refusal to work, and even violence. Delinquents were incarcerated for such infractions to reform their behavior, but Foucault viewed high rates of recidivism as proof that incarceration actually fueled, rather than reformed, delinquency. The problem of delinquency gave rise to a “carceral system” or “carceral archipelago” of schools, psychiatric hospitals, and prisons that institutionalized “disciplinary careers” specializing in the identification and management of delinquents. This system further entrenched the values of the dominant moral, economic, and political order and made the “power to punish natural and legitimate.” In Foucault’s classic reading, the carceral state normalized modern modes of surveillance and violence to uphold the system and squelch any resistance to it.

Foucault’s sweeping critique of incarceration fundamentally changed the way scholars of multiple disciplines dealt with crime, punishment, and penal institutions. Sociologist David Garland noted in 1986 that within the span of a decade, “the concepts of Discipline and Punish have taken over the language in which social control is characteristically discussed” and served as a launching pad for “dozens of books and articles.” Scholars trying to understand the phenomenon of mass incarceration in the United States during the 1980s, such as Garland, found fault with Foucault’s totalizing portrayal of the carceral state as an all-powerful entity, though they conceded that the American criminal justice system aspired to that level of control.

The Prohibitionist State

“Few things in my life have frightened me as much as the drug epidemic among our children,” exhorted First Lady Nancy Reagan in an October 2, 1982, radio address. Her husband, President Ronald Reagan, closed the broadcast with the promise that the federal government would “run up the battle flag” to “win the war on drugs.” Reagan’s landslide victory in the 1980 presidential election had already demonstrated that a majority of Americans supported Reagan’s policy of slashing public welfare programs and redistributing the money into the local and state criminal justice systems. The loss of welfare benefits under Reaganism coincided with the advent of “crack” cocaine, the end product of a relatively cheap and easy process to cut cocaine with baking soda and boil it down into smokable “rocks.” Illicit cocaine markets stretched across the entire US, including white suburbs and rural towns, but under the War on Drugs, police focused attention on poor black and Latino neighborhoods in urban centers where crack was prevalent. Aided by federal subsidies for weaponry, training, and surveillance technology previously only available to the military, police had unprecedented license and ability to arrest people for drug possession and sales. Between 1980 and 1987, adult drug arrests nearly doubled from 471,165 to 849,521, and, in the course of Reagan’s two terms in office, the state and federal prison population doubled from 329,821 to 627,402.

Legal scholar Michelle Alexander’s paradigm-shifting 2010 book, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, popularized opposition to the policies that fueled Reagan’s War on Drugs and mass incarceration. Alexander argues that an unbroken chain linked the subjugation of African Americans under Jim Crow segregation in the South to the conditions black communities faced in the age of mass incarceration. The escalation of the War on
Drugs under the Reagan administration funded aggressive policing in black communities and encouraged harsh mandatory minimum sentences, three strikes laws, and widespread disenfranchisement of nonviolent felony drug offenders. Alexander’s insights drew from an already well-established critique of the War on Drugs by prison activists, hardcore rappers, and socialists in the 1980s and 1990s, but *The New Jim Crow* catalyzed a new generation of activists and artists, most notably organizers and supporters of Black Lives Matter. Its effects on the ground may be measured by the fact that the book has been banned outright or otherwise made inaccessible in many prisons.  

While the concept of a "War on Drugs" originated with the Nixon administration in the early 1970s, the US has a much longer history of aggressively enforcing the prohibition of certain drugs. Alexandra Chasin’s *Assassin of Youth: A Kaleidoscope History of Harry J. Anslinger’s War on Drugs* tackles the origins of “narcotics” prohibition in the 1910s-1930s through an innovative biography of Harry J. Anslinger, the first head of the Federal Bureau of Narcotics. Anslinger is today remembered as the driving force behind the now frequently satirized “reefer madness” moral panic, which cast marijuana as a violence-inducing, highly addictive narcotic that caused psychotic episodes in its users. In his time, however, Anslinger was widely considered the world’s leading narcotics expert.
This influence was more “a function of his administrative expertise,” argues Chasin, than his education or life experience. Much like his contemporary J. Edgar Hoover of the Federal Bureau of Investigation, Anslinger operated “with the brain of the corporate octopus,” endowing his views on narcotics with a luster of unquestioned authority. He used this authority to cast narcotics users as delinquents deserving of punishment, setting a criminal justice precedent for decades to come.

Anslinger’s rise to power as an anti-narcotics crusader would not have been possible without the passage of the Eighteenth Amendment prohibiting the manufacture, sale, and transport of alcohol. In The War on Alcohol: Prohibition and the Rise of the American State, historian Lisa McGirr traces how those who fought against illicit alcohol use and trafficking, including Anslinger, viewed the fight against narcotics as an ancillary battle. As a prominent voice in the federal Prohibition Bureau, Anslinger had lobbied legislators to criminalize alcohol purchases with steep fines and incarceration. Unable to persuade Congress to criminalize alcohol use to that degree, Anslinger’s prohibitionist policies gained traction after he was appointed commissioner of the newly created Narcotics Bureau in 1930 and he began advocating harsh criminal penalties for narcotics users. Focusing on Anslinger’s allies, McGirr makes the case that “flagrant violations of the law in response to the war
on alcohol” enabled the American state to take on unprecedented administrative responsibility for crime control and law enforcement. Prohibition empowered police to employ more sophisticated criminal record management systems and it prompted the construction of new prisons, both of which remained after the repeal of the Eighteenth Amendment in 1933 and drove the growth of the carceral state. Subsequent crusades against narcotics further emboldened law enforcement by pitting “respectable” people against marginalized groups, such as Chinese immigrants, African Americans, and Mexican migrant workers.

Empowering the Carceral State

In his 2018 book, *The End of Policing*, sociologist Alex S. Vitale identifies the War on Drugs as part of a larger pattern of over-policing in the United States that continues to drive mass incarceration. Vitale goes as far as to call the War on Drugs the single “most damaging and ineffective form of policing,” since it encourages police corruption and Fourth Amendment violations against unreasonable search and seizure. For Vitale, however, the fundamental problem lies less with police and more with elected officials who task the police with “suppressing social movements and tightly
managing the behaviors of poor and nonwhite people." In Vitale’s analysis, the modern police force is an outgrowth of colonial law enforcement, and its function of “managing inequality and maintaining the status quo” has remained essentially the same for centuries. Like a number of books on mass incarceration written for popular audiences, Vitale’s work reads like a manifesto, but it is backed by extensive historical and present-day analysis that brings together the leading critics of modern policing in criminology, journalism, and grassroots activist networks. Vitale’s work is especially useful because each chapter offers pragmatic steps and alternative strategies to address the specific problems associated with over-policing.

Sociologist Heather Schoenfeld delves into how legislators craft the carceral system in her 2018 book, Building the Prison State: Race and the Politics of Mass Incarceration. Schoenfeld highlights how mass incarceration in Florida, as in many other states, was driven by the state’s growing capacity to arrest, process, and imprison large numbers of people as early as the 1950s and at its greatest rate in the early 1990s. Florida was among a handful of states whose overcrowded prisons were singled out for federal oversight for incarcerating African Americans at a disproportionately high rate. Florida leveraged this scrutiny to win generous federal grants from the Law Enforcement
Assistance Administration (LEAA), established by the Omnibus Crime Control and Safe Streets Act of 1968. Between 1969 and 1980, Florida allocated 198.6 million dollars to modernize its criminal justice system and implement innovative initiatives. The state funneled most of the money into local police departments to add personnel, but the grants also helped county courts to clear case backlogs and helped create community-level diversionary programs and increase services to crime victims, including “potential” victims. The grants empowered the state to reorganize inefficient bureaucracies, provide more specialized training for employees, and implement computerized data tracking systems, all of which increased the state’s capacity to process criminals. And process they did.

Florida soon faced lawsuits from civil rights attorneys because of overcrowded prison conditions. A 1976 federal injunction ordered Florida to reduce their prison populations to “normal capacity” either through alternatives to incarceration or by building more prisons. As the War on Drugs ramped up in the mid-1980s, Florida’s prisons struggled to maintain normal capacity. Legislators responded by doubling the state’s prison capacity and adopting what Shoenfeld describes as a bipartisan “carceral ethos” that rationalized this expansion. Those espousing the carceral ethos publicly denigrated the incarcerated in the media, implemented longer sentences, and supported policies that “sacrificed the liberty of a criminal offender” rather than “risk the victimization of just one person.”

Prisoner Rights

Legal sanction to deny prisoners’ civil rights dates to 1871, when the Virginia Supreme Court ruled in *Ruffin v. Commonwealth* that an incarcerated person was a “slave of the state” who forfeited “his liberty” and “all his personal rights.” In the court’s strict reading of the Thirteenth Amendment, which abolished slavery and involuntary servitude “except as a punishment for crime,” prisoners were labeled “*civiliter mortuus,*” or civilly dead. The judiciary interpreted this ruling as evidence that it was beyond their authority to rule on the constitutionality of specific prison management strategies. This left incarcerated persons with virtually no legal recourse to recover the rights denied to them by prison officials.
As historian Julilly Kohler-Hausmann argues in *Getting Tough: Welfare and Imprisonment in 1970s America*, the notion of civil death posited in *Ruffin v. Commonwealth* was never total and complete, as the incarcerated experienced different degrees of “civic degradation” at the hands of politicians who committed to “get tough” on crime. Kohler-Hausmann details how through unions, newspapers, and demonstrations, such as those at San Quentin State Prison in the late 1960s and early 1970s, the imprisoned refused to capitulate to policies designed to limit their rights as citizens and continued to participate in civil society as workers, social beings, and political symbols, both inside and outside of prison walls. Working as activists behind bars, prisoners scoffed at the idea that correctional facilities were “rehabilitative” by nature, pointing to the debilitating effects of laws and prison policies that prevented incarcerated peoples from unionizing or reclaiming the protections of full citizenship.

Prison union movements in the wake of the Attica Uprising struggled to gain recognition, mainly because prison labor was legally considered *rehabilitation rather than employment*, so inmates had no legal power to protect themselves from, let alone challenge, exploitative labor practices. Ava Duvernay’s 2016 documentary, *13th*, shows that this arrangement is still in place today, and it
originated in the Thirteenth Amendment to the US Constitution, which abolished slavery and involuntary servitude in 1865, “except as a punishment for crime whereof the party shall be duly convicted.” A part of the Reconstruction Amendments passed after the Civil War, this loophole opened the door for various modes of prison labor exploitation, the most notorious being the convict-lease system in the Jim Crow South. “Black codes” criminalized free blacks in myriad ways after the end of Reconstruction. Mississippi’s stipulated that African Americans could be imprisoned for quitting their job, marrying a white person, owning guns, or being a vagrant. This dragnet swept black people into prisons, and once there, they were forced to perform agricultural and industrial labor for no pay. By the 1970s, prisoners in the North and South increasingly came to see themselves as laborers exploited for profit through an alliance between the state and private business interests.

In their 2018 book, *Rethinking the American Prison Movement*, interdisciplinary historians Dan Berger and Toussaint Losier chronicle twentieth-century prisoner activism, paying particular attention to the post-1968 prison rights movement in which prisoners and outside allies increasingly sought to combat the economic exploitation of prison labor. Prisoners’ unions—such as the California
Prisoners’ Union, the Ohio Prison Laborers Union, the North Carolina Prisoners’ Labor Union, and the largest organization of the 1970s, the New England-based National Prison Reform Association—sought to define prisoners as workers entitled to collective bargaining rights. In Berger and Losier’s reading, these examples of “cellblock democracy” gained traction in the mid-1970s because prison administrators hoped they would act as a safety valve to avoid rebellions. But ultimately, the increasing privatization of prisons in the 1970s consolidated the power of prison administrators. They refused to recognize prison unions and instead implemented grievance councils made up of prisoner representatives who could advocate for institutional reforms through a formal bureaucratic process.

Observing changes at Illinois’s Stateville Penitentiary around 1975, legal scholar James B. Jacobs described the emergence of a “corporate model” of prison management defined by “professional, detached, and cost-conscious” leadership. This “highly rational” approach sought to meet the basic needs and programmatic desires of inmates, handle grievances in-house, and, above all, maintain control through heavy surveillance and a restrictive web of bureaucratic rules imposed on inmates. These institutions, argue Berger and Losier, were about little more than “warehousing people.” Under the logic of mass incarceration, definitions of criminal delinquency broadened and garnered much longer sentences, causing a boom in prison construction in the late 1980 and 1990s, not just in southern states like Florida but all over the US. This brought with it new facilities specifically “designed to limit [their] ability to organize.” The routine use of solitary confinement, sometimes for prolonged stretches of time, reflected the cold rationalism that guided the managerial style of the corporate prison. Like its corporate contemporaries in the age of neoliberalism, American prisons effectively stifled collective worker struggles by criminalizing them. Taking a cue from Thompson’s 2011 call to uncover the “hidden” labor history of prisoners and guards, Berger and Losier’s analysis of the post-1968 prison labor struggles and correction officer unionization maps a fertile ground for future scholars to take up.

**Prison Reform**

When all 240 inmates who worked at Kinross Correctional Facility refused to show up for their jobs on September 9, 2016, it coincided with a national strike of about 24,000 incarcerated people who also refused to work that day. Strike organizers hailed it as the largest prison demonstration in US history and saw it as a step toward ending “prison slavery” and mass incarceration. Two years later, another round of prison strikes occurred in the fall. On December 21, 2018, President Donald Trump signed the FIRST STEP Act (The Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act), a series of long overdue criminal justice reforms meant to improve conditions in federal prisons and reduce recidivism.

This legislation could be a significant force in decreasing the US prison population, but its scope is very limited. Only about twelve percent of the US’s roughly 1,471,200 prisoners are held at the federal level, so the reforms have no direct impact on the 1,291,200 inmates held at the state level. Nor does it address most of the problems at the heart of prison demonstrations like the one at Kinross. Kinross inmates were driven to protest by a web of institutional shortcomings, restrictive bureaucratic policies, and day-to-day indignities. They demanded changes in prohibitive visitation policies, exorbitant phone rates, poor food, a lack of practical reentry programs, and crowded, unsanitary, and unjust living conditions. Many of these problems were the same ones facing Attica...
inmates in 1971, but the management of prisons and methods of dealing with unrest differed tremendously. Nevertheless, the avenues of redress failed to respond to legitimate prisoner grievances. Inmates demonstrated to assert their entitlement to a certain level of recognition and respect as human beings.

Unlike Attica, the situation at Kinross ended without bloodshed, but the fallout at Kinross is a chilling reminder of how prison bureaucracies have become adept at stifling inmates’ First Amendment rights to freedom of assembly and to petition. The logic of modern prison management requires the severe curtailment of these specific civil rights to exert control over prisoners. “You can’t allow a scenario for prisoners to move as one and act as one voice,” said Chris Gautz, the public information officer of the Michigan Department of Corrections (MDOC). But these policies are the direct cause of unrest and are becoming very costly to the state. MDOC spent 741,000 dollars to pay for the services of the ERT and 94,000 dollars to transport prisoners to other facilities during the Kinross Uprising. Situations like this will surely continue to transpire if the political discourse around prisoners does not shift to protect their rights as citizens, workers, and human beings.

The era of mass incarceration sketched by scholars over the past thirty years is in retreat thanks to a number of developments spearheaded by an alliance between activists, scholars, and the incarcerated and formerly incarcerated. The worst aspects of the War on Drugs have been rolled back, community policing initiatives are being implemented nationwide, and people with felony convictions have a clearer path to regain their voting rights. But correctional institutions are still managed based on the premise that prisoners need to be denied certain civil and human rights for reasons of efficiency and safety. As long as that logic remains at the heart of the American prison system, as Thompson writes in Blood in the Water, incarcerated citizens “will never stop fighting to be treated as human beings,” and scholars will continue to document these struggles in the interest of social justice.

Notes


[4] Ibid., 300.

[5] Ibid., 301.


[10] “Narcotic” was a legal term that encompassed a range of pharmacologically dissimilar chemicals deemed dangerous to society by legislators.


[12] Ibid., 257.


[14] Ibid., xxi.


[17] Ibid., 34.

[18] Ibid., 15.


[20] Ibid., 79.


[31] Ibid.


[36] Kinross had strict rules forbidding work stoppages or strikes of any kind. It is considered a serious Class I violation on par with assault or escape. Any Class I or II violations go before a “hearings officer” for a disciplinary review. Prisoners have described this as a “kangaroo judicial system” that works in favor of the institution and makes it difficult for prisoners to have their cases brought to an actual court of law. The Prison Litigation Reform Act of 1996 required prisoners to exhaust all “administrative remedies” before any court would hear lawsuits regarding prison conditions. Kinross’s block representatives had been urging the administration to address prisoner grievances for quite some time, but they were met with tepid responses.
After the September 9th strike, 147 Kinross inmates identified as “instigators” were shuffled out to the yard by the ERT and left in the rain for several hours. The next day, 103 additional individuals labeled as “leaders” were handed “incite to riot or strike” tickets and immediately transferred to Marquette Branch Prison. Their security risk levels were raised and they were placed in solitary confinement. The Michigan State Police launched an investigation and brought charges on numerous prisoners, but only six cases had strong enough evidence to go to court. Each person was charged with inciting a riot and malicious destruction of property, both of which carry a possible ten-year prison sentence. Since then, one protestor had the charges dropped completely, two pled guilty to inciting a riot, two others pled guilty to unlawful assembly, and one trial ended in a hung jury. See Paul Egan, “Did Michigan Have Its First Prison Riot in 35 Years? Michigan Officials Can’t Decide,” Detroit Free Press, October 4, 2016.


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**Recommended Readings**


