

position women, even full-time workers, as caretakers of their families, women must interact with the institutions that dispense the social benefits that are often denied to those living in illegality. In these situations, women may experience illegality in particularly acute fashion. On the other hand, in their socially ascribed role of breadwinners, men may experience heightened forms of illegality when they work in jobs that must be performed in public spaces, as their mere presence may elicit suspicion and even trigger an enforcement action.

The category of illegality has multiple meanings and consequences for those who live in it, beyond the denial of social welfare rights and the push to increasingly more marginalized spaces. Often the social, economic, and cultural contributions of illegalized immigrants are devalued, regardless of how much these immigrants' labor contributes to the economy or how their social and cultural practices remake and revitalize communities. But just as often, the category of illegality has been vigorously contested and resisted. Immigrants have mobilized with diverse allies to challenge the ideological underpinnings of illegality and the stereotypes and constructions on which it is based. Examples of these mobilizations include the DREAMers, the National Day Laborer Organizing Network, and the UndocuQueer movement, among others. At a more personal level, in their everyday lives, immigrants who live in this category actively create spaces and practices that give them comfort and hope and through which they confront and produce alternative forms of belonging even as the dominant regime pushes them to the margins. While the immigration regime effectively forecloses paths to membership through expanding the category of illegality, immigrants continue to make a living, support families—here and there—and contribute to reshape the vibrant communities in which they live.

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Incarceration

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Incarceration in the United States is geographically distinctive, historically unprecedented, and racially disproportionate. It is geographically distinctive because the United States incarcerates both more people and a larger percentage of its population than any other country in the world—by far. It has only 5 percent of the world's population, but 25 percent of the world's prisoners, and just under seven million people, or one in thirty-five, in the United States were incarcerated, on parole, or on probation in 2012 (more than the entire population of Chicago and Los Angeles combined). It is historically unprecedented because the U.S. incarceration rate fluctuated only mildly from the late nineteenth century until the 1970s and then increased 500 percent in thirty years. No modern democracy has ever imprisoned so many. It is racially disproportionate because people of color make up 36 percent of the nation's population, but 60 percent of those in prison. One in three African American men and one in six Latino men in the United States will spend time in prison during his lifetime (Hartney 2006; Mauer 2006; Public Safety Performance Project 2008; Wacquant 2009; Hames-García 2011a; Tonry 2011; Sentencing Project 2014).

From the medieval Latin *incarcerare* (literally “to put into confinement”), “incarceration” implies a forced removal from society and a limitation of physical freedom or mobility. There is an important distinction to be made between incarceration and slavery. While

historically either one could result from military defeat, criminal conviction, or unpaid debts, modern slavery in the Americas was characterized by complex and varying social and legal relationships between enslaved people and their masters. One could be born into slavery or fall into it, be emancipated from or purchased out of it, but one was typically not sentenced to it for a set period of time. Furthermore, even when slavery in the Americas was justified by the presumption of biological inferiority, it was by and large not understood as a result of a person's immoral or criminal behavior. Abolitionist movements thus did not need to challenge justifications for slavery that were based on scientific racism in order to make the case that innocent slaves suffered unjustifiably under it. They could instead argue that the institution was unjustifiably cruel. Prison abolitionists, by contrast, are often accused of defending immorality, supporting harmful behaviors, or believing that wrongdoers should not face consequences. While many scholars in critical prison studies advocate the abolition of prisons, this has been a hard position to draw popular support for, even in the wake of a growing consensus that prison populations should be reduced. Immigrants with criminal histories, for example, were excluded from discussions at the national level about the DREAM Act, a proposal to create a pathway to permanent residency for some undocumented immigrants who arrived as minors. In order to pass this proposal, proponents sought to exclude those not of "good moral character," meaning primarily those with felony convictions. Missing from this approach is an understanding of all immigrants, including convicted felons, as deserving of the rights and opportunities available to citizens.

This view of criminals and prisoners as morally unworthy is relatively new, and has evolved in tandem with the racialization of prisons. In much of European history incarceration was used as a form of pretrial

detention rather than a punishment in itself. Punishments were mostly financial or corporal, with the move to measuring retribution in units of time spent in confinement (days, months, years) becoming widespread throughout Western Europe and the Americas only in the wake of the Enlightenment (Morris and Rothman 1998). (An exception was the debtor's prison in which one would be confined until one's debts were paid off, but even here the length of time was not conflated with an inmate's punishment.) The expanded use of incarceration thus coincided roughly with the birth of the United States and the French Republic, and incarceration as punishment for crime further spread throughout the new Latin American republics as a key symbol of "modernization" in the decades following their independence from Spain (Salvatore and Aguirre 1996). In explaining the coincidence of modern democracy and the prison, scholars have argued that in a society in which all citizens are understood to have inalienable rights, including liberty, punishment for crimes against the state or "the people" are most appropriately punished through a proportionate loss of liberty. It is thus unsurprising that imprisonment in the United States was primarily restricted early on to white men. This reflected the absence of full citizenship (and hence, liberty) accorded to women and people of color (Davis 2003). For example, women could suffer corporal punishment or confinement in the home, often at the whim of their husbands, fathers, and brothers. They were typically punished by the state only when their transgressions were public. Public crimes associated with women (for example, infanticide, mariticide [murder of one's husband], prostitution, or theft) were nearly always construed simultaneously as transgressions of the law and violations of the ideals of proper womanhood (Freedman 1981). Despite the relative absence of women from early prisons, women, those regarded as

sexual transgressors, and gender nonconformists have been objects of police and criminal-legal scrutiny since colonial times (Mogul, Ritchie, and Whitlock 2011).

Following Reconstruction, the nature of incarceration in the United States changed dramatically in the South. Southern prisons went from almost exclusively white to almost entirely black, and incarcerated blacks were put to work, often on the very plantations on which they and their ancestors had been enslaved (Davis 2003). In the wake of the civil rights era, a political realignment of conservative Republicans and southern Democrats forged the post-Goldwater Republican Party, successfully campaigning for "law and order" and greatly expanding the role of incarceration during the Nixon and Reagan-Bush eras. Most scholars understand this expansion—which escalated under Clinton, continued under the second Bush, and began to taper only slightly under Obama—as a use of formally color-blind, but racially coded policies to mobilize white voters while writing off poor black communities. What the late twentieth century thus saw was a spread of the post-Reconstruction Southern practice of racialized mass incarceration into a national practice implemented without direct reference to race but in such a way as to overwhelmingly target blacks (Weaver 2007; Parenti 2008; Tonry 2011).

According to the dominant explanation of late twentieth-century incarceration in the United States, the disproportionate effect of incarceration on Native Americans, Latinas/os, Native Hawaiians, and Southeast Asians is merely collateral damage in an undeclared war on urban African American communities (Tonry 2011; Alexander 2012). The explanation is strengthened by the fact that all of these populations have considerably lower rates of incarceration than African Americans, although much higher rates than whites. While understandable, the explanation of racialized mass

incarceration as being primarily a strategy for African American subordination misses the specificities of other forms of racism, genocide, colonialism, and xenophobia that target Native peoples, Asians, and Latinas/os in specific ways (Grobsmith 1994; Rumbaut et al. 2006). Chicana/o and Puerto Rican communities have dealt with high rates of incarceration for most of the twentieth century, as the police and criminal legal system regularly served as a means to curb social unrest and political activism in these communities (Mirandé 1987). This historical relationship to policing and incarceration, in turn, has resulted in the prison being an important space of intellectual and cultural production as well as politicization for many Latinas/os (Díaz-Cotto 1996; Hames-García 2004; Olguín 2010). Notably, the incarceration of Latinas/os in the United States expanded the most dramatically not under the Reagan-era unrolling of disproportionate sentencing guidelines for crack and powder cocaine (when African American incarceration spiked dramatically), but rather under the one-two punch of Clinton's Violent Crime Control and Law Enforcement Act of 1994 and Illegal Immigration Reform and Immigration Responsibility Act of 1996. Further combined with the Personal Responsibility and Work Opportunity Act of 1996, this set of policies formed part of a concerted scapegoating of immigrants, both "legal" and "illegal" (read: "criminal") and resulted in rapidly accelerating rates of incarceration for Mexicans, Central Americans, Caribbean people, and Southeast Asians. These acts had devastating effects on poor and immigrant communities: reducing government assistance to the poor; restricting the ability of people convicted of drug and immigration crimes to receive assistance; reducing work and educational opportunities for undocumented immigrants, prisoners, and former prisoners; creating fifty new kinds of federal crimes (including new and enhanced penalties for crimes committed by

"gang" members and crimes related to immigration); and establishing mandatory life sentences without possibility of parole for many repeat offenders, including drug traffickers.

This generalized assault, along with contemporaneous three-strikes and mandatory minimum sentencing provisions in states like California, should not be separated from the larger anti-immigrant fervor that swept the country in the 1990s, as exemplified by California's Proposition 187, which would have denied health care, education, and social services to undocumented immigrants in the state had it not been declared unconstitutional. Throughout the 1990s, the war on drugs combined with heightened xenophobia and helped to shift the focus of racialized mass incarceration toward Latina/o and immigrant communities (Díaz-Cotto 2006). The result has been a ballooning Latina/o presence in state and federal prisons. Due to the increased criminalization of undocumented immigration and the trafficking of people and illegal substances across the border, the federal prison system (including Immigration and Customs Enforcement [ICE] detention centers) has seen substantial increases in Latina/o prisoners. In 2012, Latinas/os accounted for nearly half of all federal felony convictions (Light, López, and González-Barrera 2014).

The Latina/o experience with incarceration in the United States allows us to see that the story of gradual transformation of prisons from places of pretrial detention to places of racialized mass incarceration following the end of segregation is insufficient and incomplete. In the 150 years since the Civil War, the Enlightenment prison concept has been adapted to a colonial prison concept, with subordinate racialized populations targeted and imprisoned at hugely disproportionate rates. Under this new form of population management, racialized groups understood as both undesirable

and unreformable are disproportionately targeted and imprisoned with increasing blatancy, as incarceration becomes the accepted and expected method for dealing with every social problem from unemployment and homelessness to drug addiction and domestic violence. Not only does the story of incarceration as simply the new slavery or the new "Jim Crow" fail to account for the specificities of Latina/o incarceration; it masks them, making them that much more difficult to see, understand, and explain.