

What Is Carceral Feminism?

Political Theory

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Abstract

In recent years, critiques of “carceral feminism” have proliferated, objecting to feminist support for punitive policies against sexual and gendered violence that have contributed to mass incarceration. While the convergence of feminist and antiprison efforts is important, this essay argues that critiques of carceral feminism are limited insofar as they present a binary choice between the criminal legal system and informal community justice practices. First, this binary allows critics to overlook rather than engage feminist disagreements about the state and sexual harm. Second, the narrow focus on alternative solutions to harm obscures the plural and contested nature of prison abolition, which may include efforts to seize the state and to problematize carceral logics. Drawing on Michel Foucault, alongside Angela Davis and other contemporary prison abolitionists, I suggest that feminist prison abolition is better served by envisioning a *spectrum of decarceration*.

Keywords

carceral feminism, prison abolition, transformative justice, decarceration, problematization

Adding to established feminist practices such as Take Back the Night marches and survivor speak-outs, the hashtag MeToo has inspired scores of people to share their experiences of sexual harassment and assault, thereby demonstrating through sheer numbers that sexual violence is a pervasive

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social problem. The accounts of individual survivors help render concrete the staggering statistics about the prevalence of sexual harm: one in six women in the United States experience rape—a rate that increases to one in five for women of color and one in three for Native women.¹ Recognizing that “the personal is political,” feminists have long argued, can alleviate isolation and self-blame and motivate collective action for structural change. But feminist prison abolitionists have expressed concern that the #MeToo movement could also have the undesirable effect of increasing support for prisons as “solutions” to sexual violence. Taking sexual violence seriously, they point out, all too often means supporting more or harsher punishments for perpetrators. Some of the most high-profile accusations in the #MeToo era have led to firings, settlements, and hearings, but some have also led to criminal proceedings.² While feminist prison abolitionists generally respect individual survivors’ decision to press criminal charges, they strongly caution the feminist movement against enlisting the state’s criminal legal system.³ Past antiviolence feminists, they warn, have inadvertently contributed to the rise of mass incarceration and the American prison state.⁴ So-called “tough on crime” policies have been passed in the name of protecting women, but rather than diminish gendered and sexual violence, these measures have expanded the hold of the punishment apparatus over racially and economically marginalized people of all genders.⁵ From the perspective of joint concerns about intimate and state violence, calls have emerged for #MeToo to avoid “carceral feminism,” understood as “a reliance on policing, prosecution, and imprisonment to resolve gendered or sexual violence.”⁶

This essay shares the wish of feminist prison abolitionists to address sexual violence as well as their critiques of the criminal legal system and the American prison state as sources of violence and injustice.⁷ To see policing and punishment simply as feminist solutions is an act of bad faith when the injustices of mass incarceration—the confinement of 2.3 million people, predominantly Black and Hispanic men; the brutal conditions of detention; the lasting legal discrimination faced after release, to name but a few—are widely known. At the same time, leaving survivors with no choice but to engage this criminal legal system or forego any chance at accountability or protection is unsatisfying, to say the least. In response to this dilemma, a growing number of feminists are advocating community-based justice mechanisms that do not involve the state. Practices of restorative or transformative justice—in which community members work together to hold offenders accountable, facilitate victim healing, and (especially in case of transformative justice) address the root causes of violence—are presented as superior to carceral approaches. Many examples of community-based justice showcase powerful collective

organizing and creative efforts to change individual behavior as well as the structural forces that help produce and condone it. Yet rather than add to the voices recommending restorative or transformative justice approaches as alternatives to the criminal legal system, this essay pauses to examine this opposition.

Critiques of “carceral feminism” have not only drawn much-needed attention to feminist complicity with the American prison state, they have also implied a *binary choice* between carceral and noncarceral feminism. Oftentimes, engagement with the criminal legal system is marked as carceral, and informal, community-based justice efforts exemplify noncarceral feminism. Chloë Taylor, Victoria Law, and Mimi Kim, for instance, all oppose “carceral feminism” to community-based transformative justice processes.⁸ I ask what opportunities for contesting mass incarceration and sexual violence are foreclosed by such a binary framework, and I suggest that envisioning a *spectrum of decarceration* could ground a more expansive feminist abolitionist politics. Specifically, this essay challenges the carceral/noncarceral feminism binary in two ways. First, I trace the history of the term “carceral feminism” to show that it has a less stable referent than is commonly assumed. For many authors, carceral feminism refers to feminist approaches to sexual or domestic violence that enlist the criminal legal system, but the term originally had a more specific meaning—feminist approaches to commercialized sex that fuel the punitive governance of the neoliberal state. When community-based justice initiatives are posited as the alternative to carceral feminism, feminist disagreements about the role of the state and the nature of sexual harm go unacknowledged and unexplored.

Second, I challenge the carceral/noncarceral feminism binary by asking whether a break from the carceral is best secured by *avoiding* its constituent elements, or whether *engaging* them could also have significant transformative effects. This question is at once tactical and theoretical and concerns both the possibility and the desirability of working entirely outside of the carceral apparatus. Critics of carceral feminism often depict community-based justice efforts as untouched by the carceral state; transformative justice initiatives do not collaborate with state institutions, follow criminal law procedures, or incarcerate people, and many argue that this approach to justice does not involve punishment. Their desire to avoid the state is understandable; not only has the American state become increasingly neoliberal and punitive since the 1970s, writings on carceral feminism are heavily influenced by scholarship on the cooptation of antiviolence feminism by the state.⁹ Yet the focus on justice practices that work outside of the state can obscure that feminist prison abolition may involve not simply an escape from the state but also its capture or transformation. Many feminists and prison abolitionists wish

both to demolish the carceral state *and* build democratic institutions that distribute social, economic, and political power more equitably.¹⁰

Moreover, creating alternative responses to harm may not do as much to disrupt “the perceived inevitability of prison as a solution to sexual crime” as some critics of carceral feminism hope.¹¹ There are strong reasons to think that the perceived need for prisons rests on a complex tangle of beliefs, institutions, and dynamics, ranging from the Christian notion of repentance and racialized stereotypes of criminals as dangerous “others” to political and economic interests in criminalizing marginalized groups.¹² Could there be engagements with the criminal legal system that help further the abolitionist project by unsettling some element of what we might call the carceral common sense? I draw on the work of Michel Foucault to theorize problematization as an abolitionist practice. But ultimately, I suggest that the binary framework obscures important insights from feminist abolitionist thinkers and activists about the plural nature of abolition and the “nonreformist,” even “revolutionary,” potential of reforms.¹³

Caught in a Binary

In recent years, critiques of “carceral feminism” have emerged in both popular and academic writing.¹⁴ An opinion piece published in 2018 on *vox.com* argued that “#MeToo must avoid ‘carceral feminism,’” defined as “a reliance on policing, prosecution, and imprisonment to resolve gendered or sexual violence.”¹⁵ Nearly the same definition was put forth in a 2014 *Jacobin* article, “Against Carceral Feminism,” by writer and antiprison activist Victoria Law.¹⁶ Both authors argue that feminists have enabled punitive policies that harm not just those who commit violence (by exposing them to sexual and other violence in jails and prisons), but also make marginalized women more likely to be arrested, prosecuted, or deported when police respond to domestic violence. Rather than rely on the criminal legal system to punish perpetrators, Law argues, feminists should pursue grassroots responses to violence that do not involve the state. In a recent academic article, feminist philosopher Chloë Taylor agrees that “intersectional feminist anti-violence activism is consistent with, and moreover requires, a prison abolitionist perspective.”¹⁷ Law, Taylor, and others present local restorative or transformative justice initiatives as alternatives to carceral feminism.

The feminist abolitionist critique of carceral feminism has important strengths. It brings together the harms of mass incarceration and sexual violence at a moment when both are seen as urgent, but too often as separate, social justice issues. As a form of internal critique of feminism, it draws attention to political disagreements among feminists and to feminism as a

political project.¹⁸ More substantively, by drawing attention to ways in which feminist antiviolence efforts have become aligned with the neoliberal carceral state, it challenges simplistic understandings of feminism as a self-evidently progressive or oppositional movement, suggesting complex political entanglements instead. And abolitionist critiques of carceral feminism make a strong case for intersectional and antiracist feminist analysis and organizing. As many activists and scholars have pointed out, punitive state policies and the welfare retrenchment that accompanied them have made the most marginalized women less able to leave abusive relationships and more vulnerable to criminalization.¹⁹ The critique of the state as a source of violence against marginalized women is also advanced by indigenous feminists who theorize rape as simultaneously a tool, symptom, and metaphor of colonization.²⁰ Critiques of carceral feminism might therefore help galvanize support for intersectional feminist approaches that are attuned both to the dangers of the (neoliberal) state and to the possibility that feminists not only contest but also reproduce power inequalities.

There are also risks to taking “carceral feminism” as an object of critique, however. Insofar as these critiques imply a *binary choice* between carceral and noncarceral feminism, I suggest that they inadvertently limit the development of abolitionist feminist approaches. Chloë Taylor, for instance, creates such a binary when she rejects all feminist law reform as carceral and endorses only feminist projects that work independently of the law and the state. There is no room for rape law reform in her feminism, which depicts efforts to codify affirmative consent into law or to improve the experience of rape trials for victims simply as carceral efforts to secure more criminal convictions.²¹ In fact, Taylor leaves no room for progressive feminist engagements with the law at all. Attributing to Michel Foucault a psychoanalytic perspective on sexuality, she argues that “prohibition may produce, perpetuate, or accelerate desires for what the law is prohibiting, especially in the case of sexual prohibitions,” and she thinks law reform does not deliver substantive equality.²² She also appears to reject any engagement with the state when she recommends transformative justice, which “is not allied with the criminal punishment system or the state in any way,” over restorative justice, which “has been extensively co-opted by settler colonial states.”²³

Taylor’s approach has the great benefit of clarity; she offers her readers a way out of carceral feminism through transformative justice organizations such as Sista II Sista, Communities Against Rape and Abuse (CARA), and GenerationFIVE, mentioned in many writings on carceral feminism.²⁴ These organizations, Taylor writes, “provide valuable guidelines and examples of transformative justice frameworks for responding to sexual violence in ways that address social as well as individual accountability and transformation,

and that do not reinforce or funnel more resources towards the main perpetrators of sexual, gender, racial, colonial, and class violence—the police and the carceral state.”²⁵ But the clarity of the choice between carceral and noncarceral feminism obscures ongoing debate among both scholars and activists about the definition of carceral feminism, the nature of sexual harm, and the meaning of prison abolition. In so doing, I will suggest, it overlooks opportunities to advance the feminist abolitionist project.

Taylor acknowledges some of that disagreement when she engages feminist legal scholar Lise Gotell’s work. In a 2015 publication, Gotell argues that critiques of carceral feminism misrepresent feminist struggles against sexual violence and rely on simplistic understandings of law and the state.²⁶ Canadian feminists who worked to inscribe an affirmative standard of sexual consent in the law, Gotell says, did not sign on to law-and-order politics but rather pursued law reform while presenting sexual violence as a systemic problem, critiquing the hyper-incarceration of indigenous people and people of color and calling for increased social spending.²⁷ Moreover, like any legal change, the affirmative consent standard has had contradictory effects; while “distinguishing consent from submission [and] challenging a version of normative heterosexuality founded on feminine acquiescence,” it also obscures structural power inequalities that shape the sexual encounter and promotes “new forms of normative sexual subjectivity built upon the anticipation of sexual risk and the necessity of clear sexual communication,” discrediting complainants who are seen to engage in “risky” actions.²⁸ Feminists should seek to exploit such contradictions for feminist ends, Gotell argues, rather than reject law reform as such. The legal standard for affirmative consent, for instance, might be “strategically redeploy[ed] . . . outside law” as “a set of criteria for triggering restorative justice or community justice processes.”²⁹ Decriminalizing sexual assault, in contrast, risks reprivatizing it.

Given Gotell’s nuanced discussion of rape law reform, her interest in community justice efforts, and her objections to “carceral feminism” as an inaccurate descriptor of feminist efforts, it is surprising that Taylor takes Gotell as a representative of carceral feminism. If it is true that “most mainstream feminist anti-rape scholarship and activism may be described as carceral feminism, insofar as it fails to engage with critiques of the criminal punishment system and endorses law-and-order responses to sexual and gendered violence,” as Taylor claims, it would seem that a better representative of carceral feminism could easily be found.³⁰ It is similarly surprising that Taylor later enlists Catharine MacKinnon to critique Gotell’s approach to rape law because others see MacKinnon as the carceral feminist par excellence.³¹ My point is not that MacKinnon is obviously a carceral feminist while Gotell is not, but rather that claims that most mainstream feminism is carceral obscures

disagreement and uncertainty about what, precisely, carceral feminism is and isn't. The important project of advancing gender justice while calling into question the punitive practices of the prison is better served, I suggest, by engaging such disagreement and uncertainty. In the next section, I discuss the origins and subsequent interpretations of the term "carceral feminism" to complicate the carceral/noncarceral binary. As a negative term with no set empirical referent, "carceral feminism" suggests far greater unity among its critics, and clarity about what distinguishes them from their carceral counterparts, than it ultimately delivers.

A Short History of "Carceral Feminism"

Like many critics of carceral feminism, Taylor invokes the goal of imagining and building a world without prisons. The abolitionist project obviously exists in strong tension with securing more prison sentences for sexual assault, but the wish to develop alternative feminist abolitionist responses to sexual harm—so prevalent in critiques of carceral feminism—has a specific history. Many critics of carceral feminism invoke the powerful joint statement by Critical Resistance (a prison abolitionist organization) and INCITE! Women and Trans People of Color Against Violence (a feminist antiviolence network), which "call[s] on social justice movements to develop strategies and analysis that address both state AND interpersonal violence, particularly violence against women."³² After critiquing the feminist antiviolence movement for relying on the criminal legal system and the antiprison movement for failing to center sexual and domestic violence, it challenges social justice movements to develop "community-based responses to violence that do not rely on the criminal justice system AND which have mechanisms that ensure safety and accountability for survivors of sexual and domestic violence."

Yet the term "carceral feminism" emerged in a different political and theoretical context—feminist debates about commercialized sex. Feminist sociologist Elizabeth Bernstein first used the term in a 2007 article to describe contemporary antitrafficking feminists who seek to abolish prostitution through aggressive law enforcement.³³ Bernstein describes how starting in the late 1990s, secular feminists converged with Evangelical Christians and state agents around a host of "antitrafficking laws that equate all prostitution with the crime of human trafficking and that rhetorically capture both of these activities under the rubric of modern slavery."³⁴ Fueling the antitrafficking coalition, Bernstein argues, is a commitment to "carceral paradigms of social, and in particular gender, justice,"³⁵ which she describes as support for "a law and order agenda and . . . a drift from the welfare state to the carceral state as

the enforcement apparatus for feminist goals.”³⁶ For antitrafficking feminists, the problem is that unsuspecting women are being forced into sexual slavery by nefarious men, a problem for which harsh punishment (of traffickers) and rescue (of women) are the solutions. Missing from this “carceral” approach, Bernstein argues, is a critique of the neoliberal policies that fuel global economic inequality and that make migrants and others who seek to escape poverty so vulnerable to exploitation and abuse. Also missing, she claims, is an appreciation of the injustices of the US criminal legal system, which has used antitrafficking laws primarily to punish poor Black men.

Taylor frames her own work on carceral feminism as an *extension* of Bernstein’s analysis of commercialized sex to the more difficult case of sexual violence. It is easier to critique criminalization and punishment when it comes to prostitution, she says, than when it comes to rape and child molestation.³⁷ Taylor is surely correct in this assessment, but she overlooks that Bernstein’s work also complicates Taylor’s own understanding of carceral feminism. First, unlike Taylor, Bernstein does not align carceral feminism with the state or the law as such. Rather, Bernstein aligns carceral feminism with neoliberalism, feminist alliances with Christian Evangelicals and conservatives, and conservative sex/gender norms that see the nuclear family as “safe” for women and project threatening men and sexuality outside the family. Punitive antitrafficking laws only look like a feminist solution, Bernstein argues, when radical feminist critiques (of heterosexist constructions of gender, sexuality, and the family) and emancipatory projects (of profound social, political, and economic change) have been lost.³⁸ For Bernstein, then, a rejection of carceral feminism does not simply translate into a rejection of prisons or criminal law, though she seems sympathetic to the prison abolition project. Rather, carceral feminism is opposed more broadly to a radical feminist commitment to economic, gender, and racial justice that cannot be delivered through free-market capitalism and the punitive neoliberal state but rather requires their overhaul.

Second, Bernstein reveals that feminist disagreement runs deeper than proposed *solutions* to sexual harm and concerns its very *definition*. The disagreement about solutions is obvious and pits antitrafficking feminists squarely against feminist prison abolitionists. Feminists who seek to abolish sex trafficking, Bernstein observes, appeal to the very state institutions—police and prisons—that feminist prison abolitionists see as the problem. The first camp depicts *commercialized sex* as “modern-day slavery,” while the second accuses the *US prison system* of continuing the racialized domination and exploitation of chattel slavery under the guise of legal punishment.³⁹ But the disagreement about the nature of sexual harm is also significant. Whereas antitrafficking feminists see commercialized sex as inherently oppressive to

women (as Bernstein explains, “trafficking” is often used synonymously with prostitution), feminist prison abolitionists often call for decriminalization of sex work without suggesting that restorative or transformative justice practices are called for in these cases.⁴⁰ A binary understanding of carceral feminism that pits feminists who are willing to engage with the state or the law against feminists who see transformative justice as the only route to justice obscures that feminists *within* each camp (and not just the people they wish to hold accountable) may disagree about what sexual (in)justice looks like. This is especially salient when transformative justice practitioners recommend that everyone be “on the same page with their political analysis of sexual violence.”⁴¹

Of course, feminist disagreement about sexual harm is nothing new. The 1980s were a period of especially intense feminist contestation about sexual politics, pitting “antipornography” feminists like Catharine MacKinnon and Andrea Dworkin against “sex-radical” feminists like Gayle Rubin. The legacy of the sex wars is an issue of debate among critics of carceral feminism, and close attention to how the sex wars are invoked in these debates further complicates the carceral feminism/transformative justice binary. Several scholars see antipornography feminism as a precursor of carceral feminism, for instance, but they provide different reasons for this assessment, casting doubt on what precisely makes a feminist (proto-)carceral. Is it MacKinnon’s opposition to commercialized sex? Bernstein and others have noted the powerful resurgence of feminist antiprotection arguments—now recast as “anti-trafficking”—that had been on the losing end in the sex wars. But opposition to commercialized sex does not necessarily mean support for criminalization, and much of MacKinnon’s work cautions against state punishment as a feminist solution to sexual harm. She critiques the “male” liberal state and its laws regarding sexuality, and her proposed antipornography ordinance mobilized *civil*—not criminal—law.⁴² Lorna Bracewell persuasively argues that a translation of radical feminism into a *liberal* idiom helped bring about carceral feminism.⁴³ MacKinnon, Bracewell argues, proposed a radical vision of women’s sexual freedom and unfreedom, a feminist vision that is profoundly impoverished when it is reduced to a law-and-order agenda. Bracewell’s argument adds to other recent work that explores liberalism’s reliance on punishment and its responsibility for mass incarceration.⁴⁴ In a similar vein, Koshka Duff shows how MacKinnon’s work could inform powerful critiques of the carceral state, such as an analysis of strip searching as an institutional practice that systematically inflicts sexual violence.⁴⁵

Still others suggest that MacKinnon’s interest in regulating sexuality through state and nonstate institutions is carceral. Or at least, they suggest that such interest makes MacKinnon a “governance feminist,” which is then

taken to be synonymous with carceral feminism.⁴⁶ Governance feminism is theorized by Janet Halley, who depicts feminism as an approach that seeks to end women's subordination to men but that helps produce the female suffering and sense of powerlessness that it purports to combat.⁴⁷ She argues that feminism is in denial about its significant legal-institutional power to regulate sexuality, regulation that she thinks stifles sexual pleasure in the name of protecting vulnerable women. One can see how contemporary anti-trafficking feminists might fit the picture of both governance and carceral feminism; they have been able to change both foreign and domestic policy in a punitive direction by depicting women who engage in commercialized sex as the paradigmatic victims of trafficking. Perhaps critics of carceral feminism could successfully avoid governance feminism by refusing to engage with law or the state, as Taylor recommends. But would that be enough to avoid what Halley calls a feminist "politics of injury and of traumatized sensibility"?⁴⁸ Or is this where feminist prison abolitionists and Halley part ways, with Halley calling into question feminist abolitionists' depiction of sexual harm as a straightforward, pervasive problem that requires a community response?⁴⁹ To my knowledge, this question has not yet received the attention it deserves, having likely gone unnoticed by shared opposition to carceral feminism. Yet at stake is more than the potential vulnerability of community justice efforts to the politics of *ressentiment* that Halley ascribes to governance feminism. As I discuss in the next section, the most powerful community justice initiatives both affirm the injury of sexual violence and refuse to depict the state as masculine protector. Could a crucial difference between carceral and anticarceral feminist efforts be not *whether* they engage with the state but *how* they do so?

In sum, "carceral feminism" is a complex object of critique. Not only are there no self-described carceral feminists, the term itself points in multiple directions. For some, it entails a wholesale abandonment of the criminal legal system and a rejection of feminist law reform efforts, while others are concerned more narrowly with the punitive governance of the neoliberal state and the feminist approaches to gender and sexuality that fuel rather than resist it. Those who interpret "carceral feminism" to mean what Halley calls "governance feminism" raise concerns not just about feminist support for punitive criminal laws but also about feminist depictions of women as subordinated to men through oppressive male sexuality, whereas abolitionist feminists want to combat "the rampant forms of violence women face in their everyday lives, including street harassment, sexual harassment at work, rape, and intimate partner abuse."⁵⁰ It is important not to reduce the complexity of "carceral feminism" by singling out one "noncarceral" way to do feminism

right. Yet that risks happening, I argue, when community justice mechanisms for sexual violence are presented as the alternative to carceral feminism.

Toward a Spectrum of Decarceration

In addition to feminist disagreements about the state and sexual harm, writings on prison abolition provide further reason to question the binary between carceral feminism and transformative justice. Developing alternative responses to harm is only part of the abolitionist project and one that is, like prison abolition generally, an object of significant debate. Such contestation is already evident in the INCITE! statement, which argues that previous alternatives to incarceration developed by antiprison activists have “generally failed to provide sufficient mechanisms for safety and accountability” for survivors and have often relied on “a romanticized notion of communities.”⁵¹ Recent abolitionist writings tend to oppose restorative justice (RJ) and transformative justice (TJ) approaches. Both aim to hold offenders accountable and include affected parties in a collaborative process that seeks to enable repair and healing. In so doing, both RJ and TJ depart from retribution and deterrence as the goals and justifications for punishment, and both challenge the exclusion of offenders from the community. But RJ is sometimes integrated in the criminal legal system—for example, as a court-sanctioned alternative to imprisonment—whereas TJ rejects such collaboration with the criminal legal system and typically seeks to accomplish farther-reaching social change. While Angela Davis sees “a justice system based on reparation and reconciliation” as a part of prison abolition and concludes *Are Prisons Obsolete?* with an example of forgiveness involving the South African Truth and Reconciliation Commission, Taylor supports TJ rather than RJ in large part because TJ eschews the state.⁵²

The disagreement among proponents of RJ and TJ suggests that understandings of abolition and of the carceral may be less fixed and more contested than critiques of carceral feminism make it seem. While the main goal of abolition is to end cage-based punishment, many abolitionists go further and challenge carceral practices that include but are not limited to confinement, such as ankle monitors, critiqued as “e-carceration” by James Kilgore.⁵³ In any case, Angela Davis argues that prison abolitionists must “let go of the desire to discover one single alternative system of punishment that would occupy the same footprint as the prison system” and instead “imagine a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscapes of our society.”⁵⁴ Davis’s pluralization of prison abolition results in part from her pluralization of “the prison” into the broader and more

dispersed “prison industrial complex” and serves to open up thinking about alternatives. “[A] more complicated framework,” Davis writes, “may yield more options than if we simply attempt to discover a single substitute for the prison system.”⁵⁵

Could this insight also hold for debates about carceral feminism? Put differently, might feminist prison abolition be better served by envisioning a *spectrum of decarceration* rather than a binary choice between carceral feminism and transformative justice? To be clear, most critics of carceral feminism would agree that prison abolition requires more than the development of community justice practices; my point is that the plurality of both feminism and abolition gets obscured in recent debates. In this final section, then, I seek to recover that pluralism by offering different readings of two prison scholars who are often invoked in critiques of carceral feminism, Marie Gottschalk and Michel Foucault. Together, I argue, these authors urge us to consider not whether to engage with the state but how best to do so.

Risking the State: Another Reading of Gottschalk

Critiques of carceral feminism, I have argued, easily slip from a critique of the state’s penal arm—police, prisons, criminal law—to a condemnation of the state as such, making it seem like prison abolition is inherently antistatist. Several authors who critique carceral feminism for embracing the carceral rather than the welfare state, for instance, make no mention of the latter when discussing anticarceral feminism. Thus, Brady Heiner and Sarah Tyson note that the feminist antiviolence movement was coopted by the state in the period that neoliberal restructuring expanded the state’s punitive arm and shrank its welfare arm, but they praise community efforts that work outside of the state altogether. “[T]he continuum of alternatives to law enforcement and prisons that we . . . discuss . . .,” they write, “have been largely developed by people who have lived and continue to live close to state violence and, thus, do not see the police *or other mechanisms of the state* as potential solutions to the violence in their lives.”⁵⁶

The antistatist thrust of writings on carceral feminism is fueled in part by a selective reading of Marie Gottschalk’s scholarship on the carceral state. In *The Prison and the Gallows*, Gottschalk complicates claims that “tough-on-crime” political elites created the carceral state by analyzing the role played by social movements, including the prisoner rights movement and feminist organizing against rape and domestic violence. Feminists, she argues, helped “facilitate” the carceral state by supporting punitive responses to violence against women (which were embraced by conservative politicians and the victims’ rights movement) without being able to realize the widespread social

change initially envisioned by radical feminists (for which there was little political support).⁵⁷ Thus, feminists successfully changed public perceptions of sexual violence as a serious and pervasive problem and achieved rape law reform, but in the process lent support to conservative law-and-order forces that depict the problem of sexual violence in individualist rather than structural terms. If Gottschalk does not use the term “carceral feminism,” that is perhaps because she emphasizes that valuable elements of feminist antiviolence practice and theory were *lost or distorted* in a highly constrained process of engagement with state institutions. Were feminists too powerful, then, or not powerful enough? Where some critics of carceral feminism depict the 1994 Violence Against Women Act (VAWA) as a direct outcome of feminist efforts,⁵⁸ Gottschalk notes that VAWA was “completely antithetical” to feminist criminology, and she elsewhere describes the current “war on sex offenders” as running counter to feminist analyses of sexual violence.⁵⁹

Some critics of carceral feminism make it seem like feminist collaboration with the state caused mass incarceration, but Gottschalk offers a more complicated narrative. She explicitly states that she does not “blam[e] the women’s movement . . . for the rise of the carceral state” and even cautions that “opponents of the carceral state do not have the luxury of eschewing any involvement with the state.”⁶⁰ Gottschalk’s remarks reveal just how complex the anticarceral feminist project is. On the one hand, it risks placing too much blame on feminists for the ills of the carceral state. (Gotell observes with concern that “critiques of the neoliberal law and order state have become increasingly tied to a repudiation of feminism.”)⁶¹ On the other hand, it risks limiting its challenge to the carceral state by focusing on feminist efforts that work outside of its orbit. Yet many abolitionist writers envision not just a world without prisons but also the construction of democratic institutions that could create substantive equality and extend the conditions for flourishing to all. Some writers on carceral feminism invoke a redistributive welfare state, and others call for “abolition democracy,” which combines “a commitment to transforming criminal legal processes . . . with expanding equitable social-democratic forms of collective governance.”⁶² Either way, anticarceral feminism does not merely require divesting from punitive state practices. A valuable example of abolitionist practice is the call by Black Youth Project 100 (BYP100) to both divest *and* invest—divest from police and prisons and invest in Black communities through reparations, a guaranteed living wage, full access to reproductive healthcare, and other means that often involve the state.⁶³ This call for the creation of public goods shows a powerful abolitionist vision of equal citizenship that counters the individualism and inequality inherent in the neoliberal project.

Some anticarceral feminists go further and seek to enlist elements of the state's punitive arm. Native feminist scholar Sarah Deer, for instance, connects the fight against rampant sexual violence against Native women to the struggle for Native sovereignty. Critical of both the settler-colonial US state with its adversarial legal system and skeptical of tribal restorative justice approaches, she proposes a civil protection order process and tribal "rape courts" combined with activism led by Native women. Filing a protection order with a tribal government, Deer argues, could help protect sexual assault victims from their assailants in the short term. In addition, "[o]ne might envision a tribal 'rape court' in which women elders in the community gather to respond to the report of a sexual assault."⁶⁴ Deer combines these proposals with a vision of long-term social change work through "[c]ommunity activism, speak-outs, and public education."⁶⁵ Feminist abolitionists might reject Deer's proposal for rape courts as overly carceral, but her proposal of civil protection orders could appeal to Native and non-Native abolitionists alike as a way to help create the conditions under which community justice efforts could unfold. In this sense, Deer's proposal aligns with abolitionist projects that critique the criminal legal system and prison sentences but that do not reject state coercion in all situations.⁶⁶ Feminist antiviolence scholar and activist Andrea Smith even reads Deer's proposals as an effort to articulate "revolutionary reforms" for the joint purpose of decolonization and abolition. According to Smith, abolition might involve "hold[ing] the federal government accountable for prosecuting rape cases" while "building tribal infrastructures for accountability that will eventually replace the federal system" and, presumably, its reliance on incarceration.⁶⁷ Considering Deer and Smith together, we see a vision of abolition that strategically enlists civil or criminal legal systems to address immediate concerns while engaging in a longer-term project of transforming communities to decrease both the prevalence of sexual violence and the perceived need for prisons.

Another Reading of Foucault

A second thinker who informs the carceral feminism debates is Michel Foucault. There has been a resurgence of interest in Foucault as an abolitionist thinker after earlier scholars powerfully critiqued his failure to consider the racial and gendered dimensions of punishment.⁶⁸ But where other recent scholarship focuses on the Prisons Information Group (GIP), a radical activist collective cofounded by Foucault in the early 1970s, Taylor cites the *History of Sexuality* to reject law reform as a strategy to fight sexual harm and construct the carceral feminism/transformational justice binary.⁶⁹ What approach to feminist abolition might we develop if we started from Foucault's

engagement with the GIP instead? The GIP was a loosely organized collective that brought together “prisoners, activists, family members, lawyers, doctors, nurses, psychiatrists, and thinkers of all ideological stripes, to speak about the conditions of confinement and the problem of incarceration.”⁷⁰ From 1971 to 1973, it used surveys, publications, press conferences, and rallies to circulate prisoners’ speech and activate “intolerance” of the prison. In an early pamphlet, it offered a long list of intolerable things: “The courts, the cops, hospitals and asylums, school, military service, the press, the state, and above all the prisons.”⁷¹ Importantly, the GIP did not suggest that intolerance of these institutions is best developed by working entirely outside of them.

First, the group’s efforts to activate intolerance of the prison (and courts and the state) included calls for rights and reforms. This is acknowledged in some writings on the GIP⁷² but obscured in others, which attribute specific demands only to the activist group that succeeded the GIP, an elision that implicitly aligns the GIP with an abolitionist politics that eschews law and state.⁷³ The GIP called for the abolition of the criminal record, for instance,⁷⁴ and it took up rights discourse when it published the results of the “intolerance survey” (*enquête-intolérance*) it had distributed to incarcerated people in twenty prisons. The survey questions, the group explained, “speak less to the experience or misery of detainees than to their rights. The right to their own defense against the courts. The right to information, visits, and mail. The right to hygiene and nourishment. The right to a decent salary for their work and the right to work after they get out. The right to maintain a family. . . . The questionnaire is a way of declaring these rights and affirming our will to advance them.”⁷⁵ Lisa Guenther sees in this affirmation of rights “the proleptic performance of a status that one has not been granted . . . by dominant forms of power, but which detainees grant to themselves as a self-organizing collective,” a dynamic that others have theorized as a crucial practice of democracy.⁷⁶

On this reading, the example of the GIP invites us to highlight the building of collective power among incarcerated people and other marginalized groups as a crucial part of resisting the carceral state and to consider rights claims as a potential part of such empowerment. This perspective could shift how community justice initiatives are discussed in the carceral feminism debates, placing greater emphasis on their organizing practices and less on their externality to state institutions and the law. Andrea Smith, for instance, highlights the organizing work of INCITE!, CARA, and other transformative justice organizations in an article that considers survivors of sexual violence as potential organizers and that theorizes political organizing and base-building as strategies for ending violence.⁷⁷ She foregrounds “the importance of developing alternative governing structures (both within our

organizations and within the world) that are not based on violence, domination, and coercion.”⁷⁸ Smith’s approach might also help us see possibilities for affirming the profound harm of sexual victimization without falling into the politics of “traumatized sensibility” that Halley attributes to governance feminism. Insofar as carceral feminists depict themselves as powerless and enlist the punitive state as a “masculine protector,” collective organizing against sexual violence could empower feminists to engage the state more ambivalently and strategically.⁷⁹ As Duff writes, “some daylight needs to be inserted, in our political language, between the concepts ‘passive’ and ‘victim.’ We should be suspicious of how easily the two words roll off the tongue together. Why should being a victim—being wronged, oppressed, subject to injustice—imply passivity?”⁸⁰

Foucault provides a second reason to consider engaging law and the state when he retrospectively describes the GIP as “an initiative of ‘problematization,’ an effort to make problematic and doubtful the self-evidences, practices, rules, institutions, and habits that had been sedimenting for decennia and decennia. And to do that with regard to the prison itself, but through the prison, with regard to criminal justice, the law, and more generally still, with regard to punishment.”⁸¹ As I have discussed elsewhere, a Foucauldian problematization approach suggests that challenging the prison relies less on developing approaches that are *uncontaminated* by existing practices of punishment and understandings of justice and more on collective efforts to *make explicit, defamiliarize, and activate intolerance about* those practices and understandings.⁸² Problematization “aims to illuminate the logics that channel our thinking in order to unsettle them. It actively embraces the discomfort, disorientation, and unsettlement that accompany such radical thinking.”⁸³ Rather than judge feminist practices “carceral” or “ant carceral” based on their degree of separation from state institutions and the law, then, we might ask how they enable a rethinking of punishment, justice, and citizenship in their gendered and racialized complexity. Such radical questioning is highlighted by Heiner and Tyson’s discussion of CARA. Where Taylor points to the delivery of justice and Smith emphasizes community-building, Heiner and Tyson highlight the processes through which organizations like CARA “create new possibilities for thought and action by transforming and expanding the shared epistemic resources that constitute our social imaginaries.”⁸⁴ By seeking to depart from criminalizing approaches to violence without claiming to know what lies ahead, groups like CARA create space to reckon with existing epistemologies and “begin to think, imagine, and feel what those future political and epistemological systems might be like.”⁸⁵

As previously discussed, CARA claims to work outside of the state, but the problematization approach might include rights claims and even demands

on the criminal legal system. In the context of extreme heat in jails and prisons, for instance, we might consider prisoners' *right to comfort*. Such a rights claim, I have suggested, could challenge assumptions that prisoners deserve to suffer and that such suffering is wrong only when it threatens their health, assumptions that shore up policies that expose prisoners to extreme temperatures as well as incarceration more generally.⁸⁶ Similarly, demanding *shorter prison sentences for sexual assault* could advance feminist prison abolition by challenging assumptions that harsh state punishment delivers justice and by urging for a downward revision of other sentences. In the 1980s, the British feminist collective Women Against Rape, which worked together with prison abolitionist groups, "explicitly acknowledged that sentencing serves ideological purposes and that sharply reducing the sentences for most offenses would resolve the issue of the relative leniency of rape sentences."⁸⁷ Both examples—the right to comfort and lowered sentences—suggest that engagements with the criminal legal system could advance prison abolition insofar as they unsettle existing ways of thinking.

In sum, there are excellent feminist and prison abolitionist reasons to think expansively about anticarceral politics. That includes considering transformative justice initiatives not simply as feminist abolitionist *solutions* to harm but also as efforts of *problematization* that radically question what justice might be. It includes imagining informal practices and state institutions that could advance antiracist, feminist, and abolitionist aims. It is perhaps in order to keep our eye on the spectrum of decarceration that a recent opinion piece by Alex Press, "#MeToo Must Avoid 'Carceral Feminism,'" leaves punishment or accountability measures for individual perpetrators out of the discussion altogether. Where Victoria Law's essay on prison abolition and #MeToo recommends transformative justice, Press does not mention community justice practices. Rather, she suggests that avoiding carceral feminism means reducing structural power inequalities through policies such as economic redistribution, universal healthcare, and stronger unions. "[A]s a movement," Press writes, "we should prioritize demands that can prevent sexual violence before it happens, assist survivors in leaving abusive environments, and remove the many barriers that keep women quiet." Anticarceral feminism may well include transformative justice, but let's hold open what else it might look like.

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Notes

1. Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey* (Washington, DC: National Institute of Justice and the Centers for Disease Control and Prevention, 2006).
2. See Audrey Carlsen, Maya Salam, Claire Cain Miller, Denise Lu, Ash Ngu, Jugal K. Patel, and Zach Wichter, “#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women,” *New York Times*, October 19, 2018, <https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html/>.
3. In this essay, I use the term “criminal legal system” rather than “criminal justice system” in order to unsettle the assumption that this system delivers justice.
4. Marie Gottschalk, *The Prison and the Gallows* (New York: Cambridge University Press, 2006); Kristin Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence* (Durham and London: Duke University Press, 2008); Beth Richie, *Arrested Justice: Black Women and America's Prison Nation* (New York and London: NYU Press, 2012).
5. See, for example, INCITE! Women of Color Against Violence and Critical Resistance, *Statement on Gender Violence and the Prison Industrial Complex* (2001), <https://incite-national.org/incite-critical-resistance-statement/>.
6. Alex Press, “#MeToo must Avoid ‘Carceral Feminism,’” *Vox*, February 1, 2018, <https://www.vox.com/the-big-idea/2018/2/1/16952744/me-too-larry-nassar-judge-aquilina-feminism/>.
7. See, for example, INCITE!
8. Chloë Taylor, “Anti-Carceral Feminism and Sexual Assault—A Defense. A Critique of the Critique of the Critique of Carceral Feminism,” *Social Philosophy Today* 34 (2018): 29–49. doi: 10.5840/socphiltoday201862656; Victoria Law, “How Can We Reconcile Prison Abolition With #MeToo?,” *TruthOut*, October 13, 2018, <https://truthout.org/articles/how-can-we-reconcile-prison-abolition-with->

- metoo/; Mimi Kim, "From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration," *Journal of Ethnic and Cultural Diversity in Social Work* 27, no. 3 (2018): 219–33. <https://doi.org/10.1080/15313204.2018.1474827>. Brady Heiner and Sarah Tyson oppose "carceral humanist" feminist efforts with community accountability efforts in "Feminism and the Carceral State: Gender-Responsive Justice, Community Accountability, and the Epistemology of Antiviolence," *Feminist Philosophy Quarterly* 3, no.1 (2017): 1–36. doi:10.5206/fpq/2016.3.3. As I discuss later, Alex Press's essay on carceral feminism avoids the binary.
9. Especially Gottschalk, *Prison and the Gallows*.
 10. See, for example, Angela Davis, *Abolition Democracy* (New York: Seven Stories, 2005).
 11. Taylor, "Anti-Carceral Feminism," 31.
 12. See Michel Foucault, *Discipline and Punish: the Birth of the Prison* (New York: Vintage, 2012); Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003).
 13. Davis, *Are Prisons Obsolete?*; Andrea Smith, "Decolonizing Anti-Rape Law and Strategizing Accountability in Native American Communities," *Social Justice* 37, no. 4 (2011/2012): 36–43; Ruth Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, London, Los Angeles: University of California Press, 2006).
 14. See also Angela Davis, *Freedom Is a Constant Struggle* (Chicago: Haymarket Books, 2016).
 15. Press, "#MeToo Must Avoid."
 16. Victoria Law, "Against Carceral Feminism," *Jacobin*, October 17, 2014, <https://www.jacobinmag.com/2014/10/against-carceral-feminism/>.
 17. Taylor, "Anti-Carceral Feminism," 45.
 18. bell hooks, "Feminism: A Movement to End Sexist Oppression," in *Feminist Theory: From Margin to Center* (Boston: South End Press, 1984).
 19. For example, Kimberlé Crenshaw, "From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race, and Social Control," *Journal of Scholarly Perspectives* 9, no. 1 (2013).
 20. For example, Sarah Deer, "Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty," *Wicazo Sa Review* 24, no. 2 (2009): 149–167.
 21. Taylor, "Anti-Carceral Feminism," 32.
 22. *Ibid.*, 36.
 23. *Ibid.*, 42.
 24. Law, Kim, and Brady and Heiner reference some of the same organizations.
 25. Taylor, "Anti-Carceral Feminism," 42.
 26. Lise Gotell, "Reassessing the Place of Criminal Law Reform in the Struggle Against Sexual Violence: A Critique of the Critique of Carceral Feminism" in *Rape Justice*, eds. A. Powell, et al. (New York: Palgrave Macmillan, 2015): 53–71.
 27. *Ibid.*, 57–58.

28. *Ibid.*, 60, 63–64.
29. *Ibid.*, 68.
30. Victoria Law similarly argues that the “carceral variant of feminism continues to be the predominant form.”
31. Koshka Duff, “Feminism Against Crime Control: On Sexual Subordination and State Apologism,” *Historical Materialism* 26, no. 2 (2018): 123–48.
32. INCITE!
33. Elizabeth Bernstein, “The Sexual Politics of the ‘New Abolitionism,’” *Differences* 18, no. 3 (2007): 128–51.
34. *Ibid.*, 130.
35. *Ibid.*, 147.
36. *Ibid.*, 143.
37. Taylor, “Anti-Carceral Feminism,” 35.
38. Bernstein, “The Sexual Politics”; “Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns,” *Signs* 36, no. 1 (2010): 45–71; “Carceral Politics as Gender Justice? The ‘Traffic in Women’ and Neoliberal Circuits of Crime, Sex, and Rights,” *Theory and Society* 41, no. 3 (May 2012): 233–59.
39. See, for example, Angela Davis, “Racialized Punishment and Prison Abolition,” in *The Angela Y. Davis Reader*, ed. Joy James (Malden, Mass.: Blackwell, 2008).
40. For example, INCITE!
41. Communities Against Rape and Abuse, “Taking Risks: Implementing Grassroots Community Accountability Strategies,” in *Color of Violence*, ed. INCITE! Women of Color Against Violence (Duke University Press, 2016). I thank Meg Mott for this observation.
42. See Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1991); and Catharine MacKinnon and Andrea Dworkin, “Model Antipornography Civil-Rights Ordinance,” in *Pornography and Civil Rights: A New Day for Women’s Equality* (Minneapolis: Organizing Against Pornography, 1988).
43. Lorna Bracewell, “Beyond Barnard: Liberalism, Antipornography Feminism, and the Sex Wars,” *Signs: Journal of Women in Culture and Society* 42, no. 1 (2016): 23–48.
44. Lorna Bracewell, “Sex Wars, SlutWalks, and Carceral Feminism,” *Contemporary Political Theory* online first (April 6, 2019): 1–22. doi: 10.1057/s41296-019-00318-y. See also Andrew Dilts and Naomi Murakawa.
45. Duff, “Feminism Against Crime Control.”
46. Duff uses carceral feminism interchangeably with both “governance feminism” and “feminism-as-crime-control,” and Gotell treats “governance” and “carceral” feminism as interchangeable. Duff, p.125fn5; Gotell, p.55.
47. Janet Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton University Press, 2008).
48. *Ibid.*, 345.
49. For example, INCITE!

50. Ibid.
51. Ibid.
52. Davis, *Are Prisons Obsolete?*, 107. Taylor follows Andrea Smith's depiction of RJ as an extension of the settler-colonial criminal legal system in "Beyond Restorative Justice."
53. See <https://www.challengingcarceration.org/>.
54. Davis, *Are Prisons Obsolete?*, 106, 107 (emphasis added).
55. Ibid., 106.
56. Heiner and Tyson, "Feminism and the Carceral State," 14 (emphasis added). See also Kim, "From Carceral Feminism."
57. Gottschalk, *Prison and the Gallows*.
58. For example, Law writes in "How to Reconcile" that VAWA "was the result of years of lawsuits and organizing by many feminists to force law enforcement to respond to gender-based violence rather than dismissing it as an interpersonal issue."
59. Gottschalk, *Prison and Gallows*, 160; *Caught: The Prison State and the Lockdown of American Politics* (Princeton University Press, 2016), 214. See also Gotell, "Reassessing," 56.
60. Gottschalk, *Prison and the Gallows*, 14, 257.
61. Gotell, "Reassessing," 56.
62. For example, Bernstein; Allegra McLeod, "Envisioning Abolition Democracy," *Harvard Law Review* 132 (2019): 1613–49, 1619.
63. See http://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP_AgendaBlackFutures_booklet_web.pdf.
64. Deer, "Decolonizing Rape Law," p.163.
65. Ibid., p.164.
66. For example, Louk Hulsman, *Peines perdues: le système penal en question* (Paris: Centurion, 1982).
67. Smith, "Decolonizing Anti-Rape Law," p.38.
68. Angela Davis, "Racialized Punishment and Prison Abolition," in *The Angela Y. Davis Reader*, ed. Joy James (Malden: Blackwell, 2008), 96–109. I do not here engage Foucault's writings on sexual violence. See Chloë Taylor, *Foucault, Feminism, and Sex Crimes: An Anti-Carceral Analysis* (New York: Routledge, 2019).
69. For example, Andrew Dilts and Perry Zurn, eds., *Active Intolerance: Michel Foucault, the Prisons Information Group, and the Future of Abolition* (New York: Palgrave, 2015).
70. Dilts and Zurn, *Active Intolerance*, p. 4.
71. "Intolérable 1," pamphlet, cited in *Active Intolerance*, 15fn3.
72. For example, Stephen Dillon in *Active Intolerance*, 271.
73. For example, Dilts and Zurn, *Active Intolerance*, 6.
74. For example, Zurn in *Active Intolerance*, 81.
75. Daniel Defert, "Quand l'information est une lutte," 69, 72, cited in *Active Intolerance*, 231.

76. Lisa Guenther, "Beyond Guilt and Innocence: The Creaturely Politics of Prisoner Resistance Movements," in *Active Intolerance*, p. 232. See also Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton and Oxford: Princeton University Press, 2011).
77. Smith, "Beyond Restorative Justice," p. 266 ff. The article is deeply critical of (feminist engagement with) the state and, unlike her other article on Sarah Deer (published two years later), does not consider revolutionary reforms.
78. Smith, "Beyond Restorative Justice," p. 274.
79. See Iris Marion Young, "The Logic of Masculinist Protection: Reflections on the Current Security State," *Signs* 29, no. 1 (2003): 1–25.
80. Duff, "Feminism Against Crime Control," 135.
81. Michel Foucault, "Interview de Michel Foucault (Juin 1984)," in *Dits & Ecrits II: 1976-1988* (Paris: Gallimard, 2012), 1507–8.
82. Anna Terwiel, "What is the Problem with High Prison Temperatures? From the Threat to Health to the Right to Comfort," *New Political Science* 40, no. 1 (2018): 70–83. See also my "Problematization as an Activist Practice: Reconsidering Foucault," forthcoming in *Theory & Event*.
83. *Ibid.*, 72.
84. Heiner and Tyson, p. 4. These are nuanced differences in emphasis, not mutually exclusive interpretations of CARA.
85. *Ibid.*, 27.
86. Terwiel, "What is the Problem."
87. Gottschalk, *Prison and the Gallows*, 134.

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