BEYOND ALTERNATIVES TO INCARCERATION AND CONFINEMENT

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Society Dependent on Criminalization, Texas Advocates for Justice kNOw MORE 2017 Advocacy Day at the Texas Capitol Installation, Rebecca Sanchez & Beth Link

INTRODUCTION

Over the last four decades, there has been a dramatic shift in the number of individuals imprisoned in the United States, accompanied by a surge in correctional spending. The number of people behind bars has increased by 500 percent in the last forty years[1], and state and local correctional spending has increased 324 percent.[2] The breadth of literature on the topic has shown that the exponential growth of those incarcerated is only one of the many detrimental consequences associated with the phenomenon known as 'mass incarceration.' Emerging in tandem are the disproportionate numbers of people of color imprisoned; shattered family units and communities; and the high number of those experiencing mental distress in prisons and jails. Incarceration on a mass scale disappears whole sections of our social fabric (mostly younger people of color) while rationalizing their capture as necessary and neutral.

In the past decade, as sentencing reform has begun to curb prison population growth and the nation increasingly discusses mental health and substance use disorders, some important changes to the criminal punishment system have taken place. Although some states have seen reductions in prison populations as high as 31 percent, the overall reduction in the U.S. prison population from 2009 to 2014 hovers just under three percent.[3] The U.S. remains the most incarcerated country in the world, with 2.2 million people behind bars and an incarceration rate that exceeds any other nation.[4]

Still, the movement to undo mass incarceration appears to be gaining steam, with both conservatives and liberals acknowledging that building more prisons is not sound policy. However, reform narratives often fail to adequately address the historical and political drivers of the carceral state. Therefore, it is not surprising that so-called alternatives to incarceration in many instances have lead to an *expansion* of supervision and control and have served as justification for an increase to already swollen correctional budgets. In an attempt to highlight the tensions in strategies to create so-called alternatives to incarceration and confinement, this paper connects the prison industrial complex and drivers of mass incarceration to reform efforts. Building on the prison industrial complex analysis, we offer a definition of incarceration that goes beyond prison walls. By examining deinstitutionalization, new forms of confinement in the name of treatment and so-called alternatives to incarceration, the authors suggest that another framework for change is necessary in order to interrupt the forces of confinement.

This paper serves as part of the discussion about how advocacy and organizing strategies can often unintentionally reinforce systems of incarceration and control. At the same time, we hope that the paper contributes to thinking about how campaigns to end mass incarceration can strategically make inroads towards both reducing incarcerated populations in what we think of as traditional prisons while, at the same time, not expanding the net of those under the control of other carceral locations.

MASS IMPRISONMENT AND THE PRISON INDUSTRIAL COMPLEX

The inception of the term Prison Industrial Complex (PIC) helped to contextualize the phenomenon of mass imprisonment within the social, economic, and political structures that uphold it. Critical Resistance, a prison abolition organization, defines the prison industrial complex as "…the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems."[5] Central to this definition is not only the separation of punishment from "crime" but also the acknowledgment of the historical and racial foundations that underpin the phenomenon of mass incarceration in the United States. From the convict lease system and indentured servitude, to the abolition of slavery, reconstruction, and into the thirteenth amendment that sustains the legality of slavery for those convicted of a crime, the PIC exists as a set of institutions whose ideological and legal roots run deep. Consequently, this explains the commitment by many to the idea that this type of institution is one that is timeless. While the history of the PIC serves as a reminder of its fortitude, it also serves as evidence that it is something that was done and can likewise be undone.[6]

Relatedly, the origins of the prison and other sites of incarceration were not only done, but were the result of seemingly benevolent "reform efforts." In general, prisons and other spaces of confinement (such as psychiatric hospitals) were seen as progressive endeavors, which symbolized the move to a more caring nation state in the Jacksonian era. The seeming paradox between the rise of democracy and the rise of incarceration may not look so at odds when taking into account the pride that reformers and officials took in their newly founded prisons, as well as their newly founded democratic society. In fact, wealthy Quakers, who were a major force in advocating for the creation of penitentiaries in the northeast, believed that the poor and indigent were not ready to participate in the new democracy and there was a need to reform them into more industrious workers.[7] Understanding that the origins of many sites of incarceration began as reform efforts helps us to realize not only that they can be undone, but also that more reforms are not always the solution to mass incarceration, but in fact are part of the problem that led us to mass incarceration.

Second, the PIC acknowledges the highly racialized, albeit, gendered, and sexualized nature of confinement. When providing a U.S. centric analysis of incarceration, one cannot disconnect the ties that exist between blackness and anti-black racism from the growth of mass incarceration. In fact, various scholars have highlighted the trajectory from the abolition of slavery and creation of crimes of loitering or unemployment for example, as an attempt to control this newly freed community of black people.[8] Much work has examined not only the various roles that gender played during slavery, but also the ways in which these conceptions specifically around black gendered bodies continue to be inextricably linked to ideas around crime and incarceration. Interestingly, Martha Escobar

Texas Inmate Families Association Justice for Families Rally Austin, TX, 2014

in her piece "No One is Criminal" not only questions the ways in which black and brown bodies "become" criminalized, but also how narratives of innocence utilized by non-black people of color continuously seek to distance themselves from associations with blackness because blackness and criminality remain synonymous in the social imagination.[9]

Angela Davis also reminds us that, "To understand the social meaning of the prison today within the context of a developing prison industrial complex means that punishment has to be conceptually severed from its seemingly indissoluble link with crime…"[10] In fact, researchers acknowledge that the rapid growth of the prison system in the United States contributed little to lowering crime rates, and may have in fact exacerbated underlying social issues.[11] So then one may ask, if mass incarceration is not in actuality about crime than what is it about? Within this question lies the third reason why the PIC provides an important grounding for our work on alternatives.
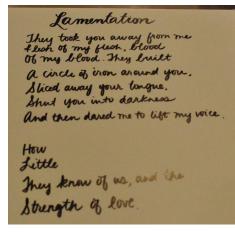
Davis continues by stating that:

> "…The prison therefore functions ideologically as an abstract site into which undesirables are deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers."[12]

In other words, problems that individuals and communities face are real, but prisons do not address them. Furthermore, dislocating individuals from their communities often exacerbates those problems.

Therefore, it is paramount to demonstrate how confinement — in its many shapes and forms — has historically been used to isolate, segregate and control. While the PIC is useful as a starting point, there are increasing examples of the attempts to expand confinement and incarceration, including purportedly benevolent spaces created for healing and care.

THE TREATMENT INDUSTRIAL COMPLEX

Not only has confinement been a means to control masses and segregate and exclude undesirables, but it has also become a very profitable business. In addition, private prison companies have realized that they can now capitalize on the growing impetus toward "alternatives" and have expanded into areas outside of the prison proper, including some concepts previously seen as alternatives to incarceration such as community corrections and treatment. To date, this has included three primary areas: Civil commitment and psychiatric care facilities, subcontracted prison mental and medical care, and community corrections such as parole and probation, including electronic monitoring.[13] The increasing phenomenon, coined the Treatment Industrial Complex, or TIC, exposes the ways in which formalized attempts at confinement are spilling over into "treatment and care," the increasing impacts on vulnerable groups including those with differing

Lamentation to Stolen Time, Texas Advocates for Justice kNOw MORE 2017 Advocacy Day at the Texas Capitol Installation, Jorge Renaud

Texas Advocates for Justice kNOw MORE 2017 Advocacy Day at the Texas Capitol

levels of ability or those labeled with mental illness, and more importantly the increasing difficulty of escaping the oppressive entrapments of corporations and carceral institutions in our day-to-day lives.
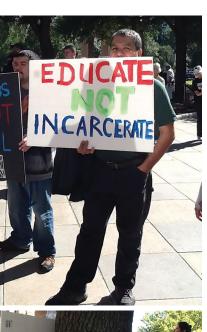
SO WHAT IS INCARCERATION?

For these reasons, we take incarceration to refer to a whole host of segregated and enclosed settings, including medical institutions, jails, detention centers, and even so-called community services such as group homes and day programs that share specific characteristics, philosophies, and goals. Although these sites seem distinct from one another, they all have goals related to incapacitation, separation (from the public) and so-called rehabilitation through the use of constrained freedom, routine, and physical space. Characteristically, the incarcerated person is excluded from any decision-making or knowledge regarding her fate.

But is every enclosed space a prison or carceral space? Are all spaces of confinement segregated or enclosed? Self Advocates Becoming Empowered (SABE), a disability rights coalition led by those labeled as intellectually disabled, define a carceral institution as "any place, facility, or program where people don't have control over their lives."[14] Enabling those who have been confined to define what incarceration entails leads us beyond the traditional prison surrounded by barbed wire. Similarly, we attempt to question the divide between treatment in the community (which is often coercive and questionable by those receiving it) to "treatment" in traditional sites of incarceration, such as psychiatric wards in jails or rehabilitation facilities. By these measures, we can say that incarceration or institutionalization is not so much a place but a mindset.[15]

DEINSTITUTIONALIZATION AND RE-INSTITUTIONALIZATION

The deinstitutionalization of mental health facilities in recent decades can be perceived as the most successful alternative to incarceration ever attempted in the U.S. on a mass scale. Deinstitutionalization can be defined as the movement of people with psychiatric and intellectual or developmental disabilities from state institutions and hospitals into community living, as well as the closure of large (mostly state sponsored/funded) institutions and hospitals for people with intellectual and psychiatric disabilities. In relation to people with intellectual disabilities, the populations within large public institutions (serving over 16 people) peaked at 194,650 in 1967. In 2009, the number had declined to 33,732.[16] By 2011, eleven states had closed all of their state-operated institutions for people with intellectual/ developmental disabilities. In relation to the field of mental health, in 1955, the state mental health population was 559,000, nearly as large on a per capita basis as the prison population today. By 2000, it had fallen to below 100,000.[17]

Texas Inmate Families Association Justice for Families Rally Austin, TX, 2014

Deinstitutionalization created a need, and later a market, for the placement of disabled people in settings outside the walls of institutions and hospitals as "alternatives to incarceration." Many scholars, activists, and journalists blame the high ratio of mentally/psychiatrically disabled people in prisons and jails on deinstitutionalization. As discussed elsewhere[18], although there are variations to this narrative, the prevailing story is that deinstitutionalization led to "dumping people in the streets," or to "mentally ill" people living in the streets or in jail via being homeless. But deinstitutionalization of those deemed as mentally ill occurred mostly in the mid-1950s and 1960s and the major waves had waned at the beginning of the 1970s, the beginning the era of mass imprisonment. Therefore, from the mid-1980s on, most people labeled mentally ill have never been institutionalized.[19] Although deinstitutionalization has often been perceived as a driver of home loss, increasing rates of people seeking public shelter did not appear en-masse until the early 1980s, decades after the major wave of deinstitutionalization. Furthermore, the major population affected by home loss was families with small children, usually not the same populations affected by deinstitutionalization.[20]

This pervasive narrative of the backlash of deinstitutionalization reduces a much more complex process and puts the blame on an easy target, deinstitutionalization, and away from discussions of neoliberal policies that led simultaneously to the growth of the prison system and to the lack of financial support for people with disabilities to live in the community. In the early 1980s, the Reagan administration introduced a fundamental change in public housing, which was a significant shift from the policy the U.S. had from the 1930s, and included a $30 billion cut in housing assistance.[21] At a time when workers' wages were eroding, Reagan tightened eligibility requirements for federal assistance programs, including unemployment benefits.[22] To add to these policy shifts, local changes in housing markets work to displace many populations. Such changes include gentrification of urban neighborhoods, inflated rents (coupled with decreasing welfare benefits), and "urban renewal" projects or evictions.[23]

In addition, as demonstrated by critical race theorists and activists, at its root, housing insecurity and deprivation are distributed not simply in terms of economic resources, but along racialized and gendered lines. If we look at the population of those in psychiatric facilities over the course of the latter half of the twentieth century, it tended to be white and older; by contrast, during the same time period, the U.S. prison population tended to be younger, with many more men than women and with people of color stunningly overrepresented.[24] Furthermore, the notion that psychiatrically/mentally disabled individuals entered prison with mental health issues already in place must be balanced against the reality that prisons damage people's psyches as well as their bodies.[25] In other words, even if one enters prison without a disability, they will likely gain one while incarcerated due to the conditions and nature of confinement.

THIS PERVASIVE NARRATIVE REDUCES A MUCH MORE COMPLEX PROCESS AND PUTS THE BLAME ON AN EASY TARGET, DEINSTITUTIONALIZATION, AND AWAY FROM DISCUSSIONS OF NEOLIBERAL POLICIES THAT LED SIMULTANEOUSLY TO THE GROWTH OF THE PRISON SYSTEM AND TO THE LACK OF FINANCIAL SUPPORT FOR PEOPLE WITH DISABILITIES TO LIVE IN THE COMMUNITY.

End Operation Streamline, Federal Courthouse, Austin, TX, 2015

MODERN "ALTERNATIVES" TO PRISON THAT MAINTAIN THE STATUS QUO

In the 21st century, as criticisms of the United States' system of mass incarceration have begun to curb prison populations, alternatives to incarceration have garnered increasing support from policy makers and, to a lesser extent, the public. Painted as less expensive and less punitive options, modern alternatives to incarceration come in many forms, including specialty courts for individuals with mental health or substance use disorders, crisis stabilization centers, and even new jail facilities built for individuals labeled mentally ill. As was the case in previous reform efforts, although many of these attempts at offering alternatives have been touted as successful, outcomes associated with success remain unclear.[26] In fact, many so-called diversion programs serve to reinforce racial disparities, increase the scope of the criminal justice system on people's lives and expand the carceral system by creating new forms of confinement.[27] In addition, such reforms offer new profit opportunities for private prison companies to expand into new markets.[28] Rooted in the belief that low income, communities of color and individuals living with disabilities cannot (or should not) live free lives, mainstream alternatives to incarceration do not interrupt the prison industrial complex, but rather create new forms of state confinement and surveillance, resulting in increase profit revenue and an expansion of state control.

At the same time, primarily due to the high costs associated with incarcerating individuals with mental health needs compounded by prison overcrowding and mass incarceration, criminal justice leaders have driven diversion strategies. Consequently, diversion is seen through the correctional lens, rather than focusing on community prevention or imagining new ways to understand and address mental health needs, safety and harm.

NEW FORMS OF CONFINEMENT IN THE NAME OF TREATMENT

Under the auspices of alternatives to incarceration, new forms of incarceration have taken shape in the name of treatment. Though conceptualized as more humane settings better able to meet the needs of the individuals confined there, these facilities are, in fact, often no different than the jails and prisons they were created as an alternative to. As James Kilgore writes, carceral humanism is a "re-packaging of incarceration," or "incarceration lite." In a nutshell, carceral humanism argues that law enforcement and corrections can be more compassionate and humane, as long as they are funded properly. Most problematic is the fact that, "The new jails are about institutionalizing the funding of mental health and other services behind the walls, further diverting money from the already bare bones social services in communities."[29]

A clear attempt at carceral humanism emerged in California, where Los Angeles County planned to build a $2.3 billion mental health jail. A local coalition of opponents organized a campaign against the jail, explaining, "By claiming new jails can improve treatment of incarcerated people, particularly those with mental illness, law enforcement is not only reinforcing reliance on incarceration, but is also garnering funds that could otherwise be invested in community-based services and programs."[30] Rather than fund new jails, opponents pointed out that, "With $2 billion, L.A. could construct 2,152 single-parent family apartments, 1,792 transitional apartments for the homeless, 280 youth centers, 60 vocational centers, or 240 assisted living facilities for the mentally ill."[31] Despite community opposition, the L.A. County Board of Supervisors approved a compromise plan to build the new downtown facility, which will house almost 4,000 individuals charged with low-level offenses and have mental health and/or substance use disorders.

Similar in nature, the number of individuals committed to state hospitals after being found incompetent to stand trial has steadily increased over the last decade. As mentioned above, this trend is not due to closures of psychiatric hospitals in the 1950s and 1960s, but tied to political agendas resulting in, among other things, a serious lack of access to high quality community-based and preventative care. Instead of addressing and investing in the root causes, the surge in forensic mental health populations has been used to justify an increase in funding for more inpatient beds. In Texas, the state has shifted to contract with private hospitals for non-criminal justice commitments and increasingly plans to use the state hospitals exclusively for the forensic population.[32] As private prison companies rebrand and take over the state hospitals as part of the Treatment Industrial Complex, it becomes even clearer that these so-called treatment facilities are only prisons by another name.
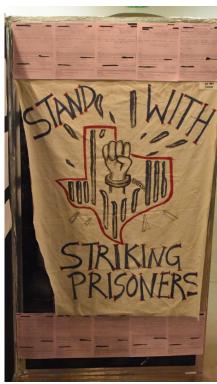
Another alarming trend is the emergence of nursing home prison facilities for individuals eligible for parole, but who are instead held in a separate facility, ostensibly to be cared for until the end of their life. Both Georgia and Kentucky have approved plans to open nursing home prisons. In Floyd County, Kentucky, local officials unanimously agreed to reopen a private prison owned by Corrections Corporation of America.[33]

CO-OPTED ALTERNATIVES

Ankle monitoring has become an increasingly common method of community supervision, used in probation, parole and immigrant detention. GEO Group is one of the largest private prison companies in the U.S. and operates 15 federal migrant detention centers, one of which detains children and families. In a new kind of federal surveillance, families are being released from these facilities, but are required to wear tracking devices and remain closely monitored. GEO Care, a subsidiary of GEO Group, received a $56 million contract to provide ankle monitoring services for 10,000 migrants and telephone check-ins for

No More Prisons, No More Deportations, Texas Advocates for Justice kNOw MORE 2017 Advocacy Day at the Texas Capitol Installation, Rebecca Sanchez & Beth Link

Local prison abolition collective shows solidarity with the September 9th prisoner strike

20,000 migrants. In addition, in September 2015 ICE awarded GEO Care an $11 million contract to provide case management services to migrants who have been released.[34]

Immigration and Customs Enforcement clarified why GEO Care was selected to run the program instead of a social service entity usually responsible for case management. "We really aim to ensure that there's a wide variety of different tools that we can use for compliance," says ICE assistant director Lorenzen-Strait. Disturbingly, the manager for GEO Care's new Family Case Management Program is a former top official in ICE's Office of Enforcement and Removal Operations. Although alternatives to detention offer opportunities for families to be released, this "freedom" comes with continued surveillance and control, and private prison companies continue to make millions.

> *"As long as I wear this shackle, I'm not happy. I feel like I'm still a prisoner."*
> *– Fresvinda Ponce from Camayagua, Honduras* [35]

The problem with such so-called alternatives is that they only increase the scope of incarceration and become an addition to traditional forms of incarceration, instead of an alternative. Even though electronic monitoring was supposed to be a tool of decarceration, it became an accompanying tool of incarceration, in addition to prisons and jails, and has not been shown to decrease prison or detention populations in any significant way. GPS monitoring systems and home surveillance would also not be construed as very useful by some prisoners and anti-prison activists, as these are only alternatives to prisons, and do not provide alternatives to incarceration in a meaningful way. Such so-called alternatives then do not comprise a decline of segregation, but its intensification through other means.

EVEN THOUGH ELECTRONIC MONITORING WAS SUPPOSED TO BE A TOOL OF DECARCERATION, IT BECAME AN ACCOMPANYING TOOL OF INCARCERATION, IN ADDITION TO PRISONS AND JAILS, AND HAS NOT BEEN SHOWN TO DECREASE PRISON OR DETENTION POPULATIONS IN ANY SIGNIFICANT WAY.

Amos Walker, Texas Advocates for Justice Houston member, spent 39 years in Texas prisons. Rest in power.

CONCLUSION

Because new forms of confinement in the name of treatment and expanded state control as a so-called alternative to incarceration only reinforce the carceral state, we must break free of the framework these reform efforts embrace. They will continue to reproduce the very things they claim to be an alternative from, because using the criminal punishment system lens to imagine "alternatives" will always fall short of transforming the system in a meaningful way. Instead, another way forward is conceptual frameworks that put forward solutions not reliant on new forms of custody, confinement, or surveillance.

> *"What if abolition isn't a shattering thing, not a crashing thing, not a wrecking ball event...What if abolition is something that grows..."*
> *– Alexis Pauline Gumbs*

This paper attempts to push advocates and academics involved in reform efforts to be critical of so-called alternatives to incarceration and confinement that simply repackage the status quo. As we have seen thus far, reform efforts

that do not challenge the racist, sexist, abelist, and oppressive underpinnings that serve as the foundation and justifications of confinement will not work and may serve to actually increase the net of social control. It isn't a question of whether there will be reform, but what that reform will be. It is this understanding and this framework — often called abolition — moves us towards a complete restructuring.

Many often question how we would replace certain institutions. What would replace the prisons? What would replace the mental health and psychiatric facilities? However, long before imprisonment became naturalized, there were myriad ways to deal with harm that need not necessitate or even imagine segregation and confinement.

If we begin with the understanding that these social "problems" were in many ways constructed, then it begs to question whether we would have ever needed many of these institutions to begin with. Instead, we must invoke a radical imagination that seeks to answer the question how we envision our lives? How do we envision just, loving, and equitable care? How do we envision healthy communities and safety for our loved ones? It is in this place that we can begin to move towards true alternatives that do not rely on systems of control.

GEO Shareholder Meeting, Boca Raton, FL, 2015

We hope this paper continues a dialogue regarding a true shift away from our criminal punishment and confinement system. In no way do these pages contain every nuance or analysis worth sharing; through further discussion, research, organizing and disruption, we believe we can develop a transformative way forward and truly render mass incarceration a thing of the past.

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BEYOND ALTERNATIVES TO INCARCERATION AND CONFINEMENT

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