Roundtable on the Future of Justice Policy
Examining Justice Reform and the Social Contract in the United States:
Implications for Justice Policy and Practice

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Poor Justice[1]
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Abstract: The close connection between poverty and the criminal justice system is not directly acknowledged in the formal rules and procedures of police, courts, prisons, and the criminal law. Yet, with few exceptions, people who have grown up poor and come from low-income communities fill the criminal courts, and are incarcerated in prisons and jails. This paper describes the relationship between poverty and the state institutions charged with crime control. The empirical foundation for this description is provided through four case studies of indigenous people: in the Northern Territory of Australia, in the misdemeanor courts of Oklahoma, in New York City's Rikers Island jail, and in the solitary confinement unit of a state prison in Pennsylvania. Each field site reveals a different aspect of the relationship between poverty and the state response to crime.

Courtrooms, police precincts, and prisons project the power of state authority. Penal codes provide crisp definitions of harmful behavior. Sanctions are prescribed. The guilty are shipped to facilities constructed for the deprivation of liberty. It's an antiseptic scaffolding. The system processes the passions and harms that bubble up in society. Everyone determines their own fate. If punishment is painful, the wounds are self-inflicted, the product of criminal decisions.

The daily functioning of the criminal justice system contrasts sharply with its scaffolding. The courts, jails, and prisons are filled almost entirely by people who are poor and come from low-income communities. The poverty that saturates the daily operation of courts and prisons is inseparable from racial inequality. Court dockets mostly call black and brown people in front of the judge for sentencing. It is mostly people of color looking through the small glass windows of the nation's solitary confinement units.

This paper describes the relationship between poverty and the state institutions whose official mission is to respond to crime. The relationship takes many forms at different times and places and has been the subject of a vast academic literature.

I explore the relationship between poverty and criminal justice through four short case studies. The first examines, not the United States, but Australia, where U.S.-levels of incarceration have grown among aboriginal

people in the Northern Territory. The Australian policy environment is less punitive than in the United States, and the case helps identify the social conditions in which pervasive incarceration emerges. The second case study describes a misdemeanor court in Oklahoma City, a politically conservative jurisdiction that offers little healthcare or income support to its poorest residents. The third case study describes patterns of incarceration at Rikers Island jail in New York City, and the elevated risk of jail among black men in poor neighborhoods. Finally, I examine the harsh conditions of a solitary confinement unit in a state prison in Pennsylvania. The case studies show that not only does the footprint of the criminal justice system fall most heavily in poor communities, the greatest pains of imprisonment are focused on the most vulnerable.

Each of the case studies provides a piece of a bigger puzzle that describes how an institution ostensibly designed to punish harm focuses its own capacity for violence on the most impoverished. Criminal justice institutions are not invented in a vacuum. They take root in society, so we begin by examining social context. Criminal justice institutions also emerge in larger policy contexts, alongside state support for housing, healthcare, and income. Understanding the context helps explain the relationship between poverty and criminal justice. Although the criminal justice system processes individuals, its work is spatially organized, criminalizing some neighborhoods much more than others. Finally, at its core, the criminal justice system is a type of state organized violence that inflicts suffering on the most vulnerable. The paper concludes by drawing on the case studies to describe the pressure points that provide openings for the transformation of the system.

Racial and Spatial Poverty: Indigenous Life in the Top End

The incarceration rate in Australia is only 165 per 100,000 (in 2015) compared to 670 per 100,000 (in 2016) in the United States (Australian Bureau of Statistics 2015; Kaeble and Cowhig 2018). The mandatory minimum sentences, three-strikes enhancements, and restrictions on parole release that are common in the United States are largely unknown in Australia. Still, aboriginal people in Australia face rates of incarceration that are similar to those for African Americans. In Australia's Northern Territory, the incarceration rate for indigenous people is 1560 per 100,000, compared to 1900 per 100,000 for African Americans in the United States. For men aged 20 to 34, the indigenous incarceration rate was approximately 8,000 per 100,000 or 8 percent of the population in 2015. This compares with about 11 percent for African American men of the same age in 2008 at the height of the U.S. prison boom (Western and Pettit 2009, p. 11). The social environment of the Northern Territory powerfully propels indigenous people into the criminal courts and prisons. Incarceration is woven into everyday life. Without America's harsh sentencing policy, the Australian setting helps illuminate how social environments of extreme inequality and racial division contribute to pervasive incarceration.

To understand the role of the criminal justice system in aboriginal communities, I conducted fieldwork with a small team in the Top End of the Northern Territory from 2015 to 2017. The Top End is a vast, sparsely populated region that includes the regional capital of Darwin, small towns, and remote aboriginal communities. Over the course of two years, we recruited study subjects from the Northern Territory's main prison, Darwin Correctional Centre, and from a local prisoner reentry program. We conducted screening interviews with 54 indigenous men in the Correctional Centre, and then interviewed 14 of those 54 at greater length after prison release. Six of the 14 respondents were interviewed outside of prison while the remaining eight had been reincarcerated. In addition to the 14 respondents recruited from prison, another 14 joined the study through referrals by caseworkers from a local reentry program. We also conducted interviews with correctional and program staff and community leaders, and made field observations in urban and remote areas.

The communities were poor and racially segregated. Family violence and alcohol abuse were common. Poverty and segregation was most visible in Darwin's town camps. Town camps are small aboriginal communities consisting of clusters of public housing and community buildings. The housing we saw ranged in external appearance from spare cinder block constructions on concrete slabs to new brick houses in good condition, laid out in an orderly way around sealed roads. We travelled the camps by car because dogs roamed freely and could menace and bite strangers. It was difficult to infer housing quality at a distance but caseworkers told us that many homes had little furniture and were often overcrowded. Residents paid a small monthly rent, though payments were often missed, and some were years in debt. Broken down cars dotted the camps. Groups of men and women sat out under the shade of trees talking, and children ran around playing games in the yards and vacant lots.

Beyond the town camps in the urban areas, three respondents were living outside without housing. In the Australian vernacular, this type of homelessness is called "long-grassing" or "living rough," reflecting the semi-urban or bush settings in which people might stay. The men we interviewed who were living rough relied on family meals, soup kitchens, and "bush tucker" (birds, turtles, or fish, for example) caught from surrounding semi-urban areas.

Stable long-term employment was rare among the study respondents. All those in community settings received federal welfare payments of around A$400 (US$315) every two weeks in 2016. Seven respondents received additional income from a government employment program, working 10 to 20 hours each week doing public works in indigenous community areas. Reported incomes for respondents after leaving prison were in the range of what the Australian Bureau of Statistics calls a low-income household, roughly the lower quintile of the income distribution.

The well-being of respondents in the Top End depended closely on their family relationships. Families sometimes offered material and emotional support, providing company, housing, meals, and money. However, family life could also be destabilizing, sometimes erupting into lethal or otherwise serious domestic violence.

We heard many stories of family violence from the indigenous men and women we interviewed. Family violence was reported by 17 of the 22 study participants for whom we had information. Eleven of 22 reported domestic violence with an intimate partner. Astonishing from an American perspective, three of 22 respondents had killed family members.

The unusual vulnerability of women was reflected in their long histories of violent victimization. Indeed, they often seemed exhausted and saddened by their lives. One female respondent we interviewed said she had lived "a horrible life." Another had lived for decades with an abusive partner, whom we were to meet several days later in prison. When asked by a caseworker how she was getting on with her partner, she replied, "Not good. I don't want to be with him." Why not? "He's too rough," she said. Still, she said the caseworker should share her new phone number with him. That way, she could tell him herself that she wanted to end the relationship.

Family conflict was often connected to the use of alcohol and other drugs for indigenous men and women coming out of prison. Of the 28 study participants, 22 reported that drinking was a problem for them and another three reported other drug use, including petrol sniffing, and addictions to opioids and methamphetamine.

The social environment of prison release creates formidable challenges to sobriety, criminal desistance, and well-being, yet we also observed social contexts that were orderly and safe, and respondents who had found

life stability and peace after prison. Eighteen of the 28 respondents spoke directly about the importance of family support, and for 11 people, the family member they described as most supportive was an older woman, often a grandmother, mother, aunt, or sister. Housing and emotional encouragement were the most common types of support reported by study participants. Social policy programs also helped stabilize life immediately after incarceration. Welfare programs provided a stable income, work furlough programs provided savings at release, and reentry programs helped make the handoff from prison to family homes.

The poverty we observed in aboriginal communities in the Top End was multidimensional. It included homelessness, food insecurity, and health problems. These deprivations emerged in racially segregated communities that themselves were the products of a long history of white Australian colonialism. Violence, often linked to alcoholism, was also part of the social environment of pervasive incarceration. Instead of seeing punishment as radically disconnected from crime as some scholars insist, we find that crime is just one social problem among many under conditions of poverty and racial exclusion. Violence is a magnet for punishment under these conditions, and non-criminal social problems also become classified as violations which should be punished.

The Threadbare Safety Net: Oklahoma City Misdemeanor Courts

In the Top End of the Northern Territory, young aboriginal men faced high rates of incarceration but some social stability was provided through health policy, public housing, and income support programs. Healthcare coverage was universal, nearly all the housing we observed was publicly provided, and most of the Australian respondents received at least $600 a month from income transfer programs.

Australia's public benefits for justice-involved people are generous compared to those in the United States, particularly in southern and western states. The second case study describes the social policy landscape for defendants in a misdemeanor court in Oklahoma County whom we interviewed for a study of court-ordered fines and fees. During the study field period, from 2016 to 2017, Oklahoma was a red state dominated by a conservative Republican Party that had rejected Medicaid expansion under the Affordable Care Act. An anti-tax movement in the state had shifted the costs of court functions from taxpayers to defendants.

Our research focused on the misdemeanor court in Oklahoma County where defendants faced charges for drug offenses, petty property crimes, and public order offenses. (The misdemeanor court also heard cases for domestic violence and driving under the influence, but they fell outside of the scope of our study.) The defendants who came into the study were represented by the public defender, who took the vast majority of cases in the court. Although the study defendants had passed a rudimentary indigence test, they were charged court fees, prosecution fees, and fees for a private probation vendor. We recruited 607 subjects to the study who were assessed an average of $1,000 in total court fees.

The misdemeanor defendants themselves were mostly poor. Nearly 60 percent were unemployed at the time they were recruited to the study and 31 percent reported that they were homeless. The burden of legal debt on low-level defendants in Oklahoma was unrelieved by social policy support. The sample was generally in poor physical and mental health, with 61 percent reporting problems with drugs or alcohol, and another 40 percent reporting a mental health condition. Still, nearly all the Oklahoma respondents lacked any kind of healthcare coverage. The U.S. public healthcare program for low-income adults is called Medicaid. The Affordable Care Act

provided federal subsidies to states to expand Medicaid eligibility to poor single men living just above the federal poverty line. Medicaid expansion was adopted most readily in the northeast, the midwest, and on the Pacific coast. States in the south and the west, including Oklahoma, declined to expand Medicaid eligibility. As a result, the Oklahoma study subjects had serious healthcare needs but virtually no Medicaid enrollment or public support. They relied instead on emergency room visits and on the doctors and nurses who were involved in charitable programs.

Housing insecurity was also common among the Oklahoma respondents. None of the 607 study subjects were involved in federal housing programs, living neither in public housing or in affordable housing subsidized by a federal voucher. Emergency housing in Oklahoma City was mostly provided through shelters run by private charities. Unhoused respondents who were not staying with friends or family or in the shelters often stayed in one of the county's several encampments.

The scarcity of social policy support, the preponderance of charitable relief, and a predatory system of court fees offered in a single state a pattern that has been observed comparatively and within the United States. Oklahoma, with one of the highest incarceration rates in the country, spent far more on punishment than anti-poverty support. Comparatively too, nations with the most generous welfare state have the lowest rates of incarceration. Within the United States, states with the largest prison systems have the lowest and most restrictive welfare benefits. In each of these cases, punitive policy regimes are not just punishing in general, but are instead harmful to the poor specifically.

Mass Criminalization: Rikers Island, New York City

Research on mass incarceration has focused overwhelmingly on imprisonment (Mauer 2006; Western 2006; Pager 2007; Pettit 2012; Raphael and Stoll 2013; Wakefield and Wildeman 2013; Travis, Western, and Redburn 2014), yet the number who are admitted to local jails each year greatly exceeds the number admitted to prison. Unlike the prison, which incarcerates people convicted of felony crimes, jails detain many people who are awaiting court action for low-level offenses. In 2017, U.S. prisons admitted about 600,000 people, but 10.6 million were sent to jail (Zeng 2019; Bronson and Carson 2019).

Perhaps even more than imprisonment, jail detention is closely linked to socioeconomic disadvantage. Those living in poor and minority neighborhoods face high risks of misdemeanor arrest. A system of cash bail and a perfunctory court process for low-level offenses makes jail incarceration likely for poor people who have few resources for legal defense (Goldfarb 1975; Irwin 1985; Kohler-Hausmann 2018; Natapoff 2018). John Irwin's (1985) classic study described the jail as managing the "the rabble."

New York City is a strategically important site for studying the contours of rabble management and mass criminalization. The city pioneered broken windows policing and the experience of jail incarceration was unusually harsh because of violent conditions at Rikers Island. Figure 1 compares the scale of jail incarceration with incarceration rates in 25 large urban counties in 2008 and 2015. Urban jail populations have widely been declining in this period. Although New York's jail system was historically the largest in the country, the jail incarceration rate by 2015 was the fourth lowest. The decline in the jail population has not been systematically explained, but commentators point to the large decline in crime rates in New York and the corresponding decline in felony

arrests (Austin and Jacobson 2013; Greene and Schiraldi 2018). Still, with one of the lowest jail incarceration rates in the country, New York offers a conservative test of the extent of mass criminalization through the jail system.

Figure 1. Jail incarceration rates in the 25 largest U.S. counties, 2008 and 2015. New York, NY includes all five boroughs that make up New York City. Incarceration rates are the proportion of the jail population of the county population aged 15 to 64. *Source:* Incarceration Trends Dataset, Vera Institute of Justice (2020).

Analyzing a ten-year administrative data file that records all jail admissions, we try to quantify the footprint of the jail by estimating the likelihood that anyone has been to jail by age 38. These figures are calculated for what demographers call a "synthetic cohort" that averages over all the birth cohorts represented in the data.

Estimates of the cumulative risks of jail incarceration are reported in Table 1. Among all male New Yorkers, over 13 percent are estimated to have been to jail by age 38. Consistent with the mass criminalization hypothesis, jail incarceration is extensive for minority men. Estimates indicate 16 percent of Latino men and 27 percent of black men have been jailed at least one time by age 38. Only 3.4 percent of white men in New York have been jailed by age 38. New York's rate of jail incarceration is low by national standards and much lower than the national imprisonment rate. However, because of the high rate of jail admission, the cumulative risks of jail incarceration are similar to those reported for imprisonment at the national level (cf., Western and Pettit 2010, p.

11). Results for women show less incarceration but similar racial disparity. About 5 percent of black women in New York have been jailed compared to 2 percent of Latino women and fewer than 1 percent of white women.

	All New York	Poor Zipcodes	Nonpoor Zipcodes	Poor/Nonpoor Ratio
Men				
All men	.134	.200	.102	1.964
White	.034	.035	.034	1.029
Black	.268	.330	.223	1.484
Latino	.162	.191	.137	1.393
Other	.057	.084	.052	1.617
Women				
All women	.022	.034	.016	2.165
White	.007	.011	.006	1.728
Black	.049	.062	.040	1.561
Latino	.023	.027	.018	1.489
Other	.006	.010	.005	1.945

Table 1. Cumulative risk of jail incarceration by age 38, by race/ethnicity, sex, and neighbohood poverty, New York City, 2008–2017.

The racial disparity in jail incarceration is so large that black women are at greater risk of being jailed than white men. Racial disparities in cumulative risks of imprisonment for nearby birth cohorts, born 1975 to 1979, are smaller than disparities in the cumulative risks of jail in New York. Whereas the black-white ratio for men's imprisonment is less than 5 to 1 (Western and Pettit 2010, p. 11), the men's black-white ratio for jail exceeds 8 to 1.

Table 1 also reports cumulative risks for those living in poor and non-poor neighborhoods. Poor neighborhoods are defined as those zip codes in the top third of poverty rates across New York. Cumulative risks of jail incarceration for minority New Yorkers vary substantially by neighborhood poverty status. For black men living in poor zip codes, we estimate that 33 percent have been jailed at least once by age 38, compared to 22 percent of those living in non-poor neighborhoods. Among Latino men living in poor neighborhoods, the cumulative risk of jail is 19 percent. For white men, the risk of jail admission does not vary by neighborhood poverty status. Results for women are similar. Risks of jail incarceration are highest in poor neighborhoods and variation in incarceration across neighborhoods is greater for black women than Latino women. We obtained similar results when calculating cumulative risks for high-crime and low-crime zip codes.

Institutional Harm: Solitary Confinement, Pennsylvania

The discussion so far has described the multidimensional poverty in which high rates of incarceration accumulate, the threadbare safety net that lies beneath people who are entangled in the criminal justice system, and the ubiquitous criminal justice contact among black men in poor neighborhoods.

The most severe experiences of incarceration are at the center of the concentric circles of criminal justice involvement, that extend from prison to jail, to fines and fees, to extensive policing. Solitary confinement in U.S. prisons is a striking indicator of harsh conditions of incarceration. Solitary confinement typically involves being

locked in a cell for 23 hours a day, with an hour out for sick calls, showers, or recreation. Around 20 percent of those incarcerated in U.S. prisons are held in solitary confinement in the course of a year, with about half in solitary confinement for 30 days or more (Beck 2015). Legal scholars view solitary confinement in the United States as uncommonly restrictive, possibly violating international standards for human rights (Miller 1995; Vasiliades 2005–2006; Shalev 2015; Haney 2018, p. 291).

We studied solitary confinement in Pennsylvania prisons both through an analysis of administrative data and through interviews with men incarcerated in a solitary confinement unit in a maximum security prison. Three main findings emerged from this work.

First, there are disparities in the use of solitary confinement by both race and mental health status. We calculated the expected days in solitary confinement for black, white, and Hispanic men, at four levels of classified mental health status. Pennsylvania conducts a mental health screening for all new admissions to the state prison system. The A roster includes those with no mental health problems. The B roster includes those with prior diagnoses but no active mental health problems. The C roster includes those requiring mental health treatment, while D roster includes those with serious mental illness.

Figure 2 shows both the expected duration of solitary confinement for men, by race and mental health status, and the relative numbers of people classified to each mental health roster. All three race groups show a steep mental health gradient in solitary confinement incarceration. African American men in the C and D classifications average 27 to 32 days in solitary confinement each year, compared to 18 to 21 days for whites of the same mental health classifications.
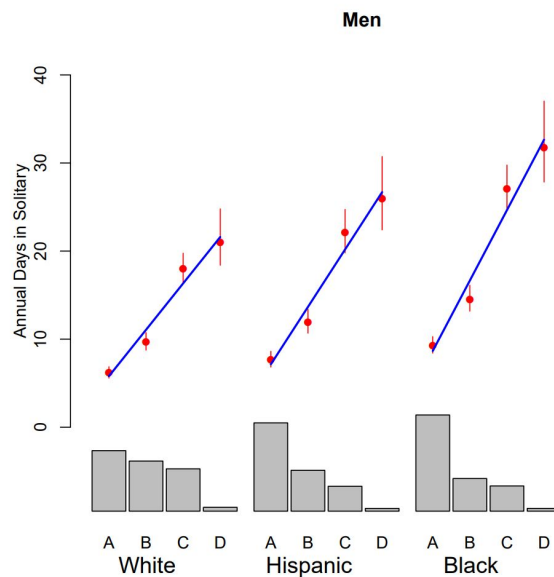

Figure 2. The lower panel of the figure shows the distribution of the male prison population by mental health classification. The top panel shows the estimated annual rate of admission to solitary confinement for incarcerated men with fixed covariate characteristics, by race/ethnicity and mental health classification.

Figure 3 reports results for women. Women in the Pennsylvania prison system are assessed at a much higher rate of mental illness than men. For all three race-ethnicity groups, women are classified most frequently to the C level of severity of mental illness. The poor mental health status of women tends to be a powerful mechanism for solitary confinement, even controlling for prison misconduct severity and assessed risk.
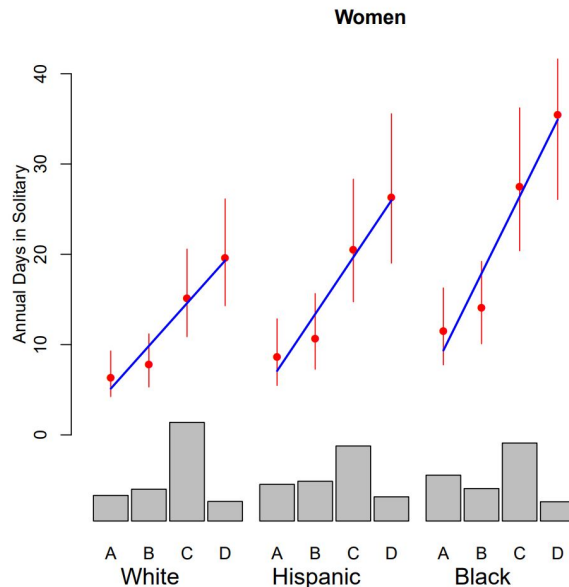

Figure 3. The lower panel of the figure shows the distribution of the female prison population by mental health classification. The top panel shows the estimated annual rate of admission to solitary confinement for incarcerated women with fixed covariate characteristics, by race/ethnicity and mental health classification.

Second, qualitative interviews show how solitary confinement was subjectively experienced. Many in the sample affirmed their status as "human beings" in a setting they felt denied their humanity. A total of 49 out of 99 respondents we interviewed either asserted their humanity ("I'm human like everybody else") or likened their treatment to animals ("I feel like I'm a dog in a motherfucking cell"). Material deprivation and social isolation were stressful in part because they were experienced as humiliating.

Respondents most commonly spoke of being dehumanized or treated like animals when going to the small wire cages used for recreation. One respondent described how degrading treatment began with the movement of prisoners from their cells to the recreation area:

You'll see guys—but they're in kennels! And I ain't no fuckin' dog. I ain't no animal, and then—you know—they handcuff guys with the little leashes on them, and they walk them out to the kennels, and lock them in the kennels, and they come down, and come on, man! You know, being here is humiliating enough. But to be further humiliated—I'm not going to go through it.

Another respondent similarly described the difficulties of being a loving person during incarceration as an affront to his moral worth. When asked what it was like to be incarcerated at the baseline prison, he said:

It's tough. It's tough—it's rough. There's no sympathy, no compassion. It's just, you know, for somebody who comes from any type of a loving background or something like that—you almost have to lose your sense of humanity. Because there is none. Not none that, you know, demonstrated publicly or anything like that.

Conclusion

Research in the social sciences often describes the relationship between poverty and the criminal justice system as a cycle. People in low-income communities face high risks of incarceration, and the negative effects of incarceration on employment, health, and family life prevent upward mobility and diminish the opportunities of their children. Enduring poverty that results from incarceration sows the seeds for more incarceration. In this picture, the criminal justice system is not a crime control institution, but a poverty trap.

The four case studies of this paper flesh out the steps in this sequence. First, poverty. The example of the Northern Territory suggests that poverty in communities saturated with the criminal justice system is closely connected to histories of racial exclusion, and takes a multidimensional form that includes homelessness, untreated drug problems, and violence. Violence and other social problems in racially segregated public spaces is a magnet for criminal justice intervention.

Second, punitive criminal justice policy accompanies a weak social policy regime in which basic needs for healthcare and housing go unanswered. The Oklahoma case study suggests we should understand the patterns of community poverty in which incarceration thrives to be partly a product of a policy environment that provides little social support.

Third, the reach of the criminal justice system extends far beyond state and federal prisons. In New York City, where jail incarceration rates were among the lowest in the country, a third of all black men living in high-poverty neighborhoods have been to jail. New York in many ways provides a best case scenario, and yet even there incarceration is commonplace among black men who live in low-income neighborhoods. Just as poverty is spatially organized, incarceration too is highly spatially concentrated, creating local ecologies where criminal justice involvement becomes part of the social environment.

Finally, the case of solitary confinement in Pennsylvania shows that not only does criminal justice contact follow the contours of social inequality,he harshest experience of criminal justice contact is also focused on the most vulnerable.

Each of the case studies also reveals points of disruption to the cycle of poverty and incarceration. In the Northern Territory, there are off-ramps and signs of community resilience. A welfare system that provided healthcare and income support significantly improved living standards for justice-involved indigenous people. Older women in aboriginal communities were a source of resilience, providing safety and community connection as well as material support for men and women just out of prison.

In Oklahoma, social policy had largely abandoned low-income communities, but charitable relief filled some of the gap. Charitable organizations that provided shelters, clinics, and food pantries were also strong voices for criminal justice reform.

In New York City, a public narrative of successful crime reduction provided a backdrop for ambitious advocacy to close Rikers Island jail. The low-crime environment, and its mythologizing by elected officials, set the stage for grassroots organizing that contributed to significant reductions in the jail population.

Finally, in Pennsylvania, we saw an indefatigable human agency that refused to yield to the 23-hour lockdown of solitary confinement. Despite the great disempowerment of extreme isolation, we spoke to people who asserted their power, creativity, and stubborn hold on their own humanity.

The resilience of older women, the restorative power of social policy, the organized altruism of community organizations, the power of grassroots mobilization in tandem with visibly low crime rates, and the sheer brilliance of human agency; by themselves, all of these things do not add up to a political program. But they suggest the ground from which a political program might spring.

In times and in communities in which incarceration has become pervasive, relations between local residents and state officials can be contentious, and state institutions lack legitimacy. The institutions lack legitimacy because their stated objectives of order and safety are belied by the disorder and violence they bring to community life. Institutions that lack legitimacy are brittle, much weaker than they appear. In case studies, communities reveal points of resilience, the policy process is not inexorably punitive, and human agency can rise in the face of daunting obstacles. The great test for reimagining justice is not so much envisioning what the alternative might be. The test is whether the many points of resistance be gathered together to bring down the brittle scaffolding of blame and state violence that perpetuate America's cycle of poverty and incarceration.

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