

Undocumented Costs: Immigration in the Carceral Era

“Crime is crime is crime. It is not political.”

— Margaret Thatcher

“Capital punishment means those without capital get the punishment.”

— John Spenklink, Executed in Florida, 1979

The neoliberal agenda (or, for our purposes, “neoliberal productivity”) can be characterized by the financial and political insolvency of the State; the accumulation and consolidation of capital among private parties; and discursive or rhetorical strategies to meet these ends. Neoliberalism favors the privatization of gains and the socialization of losses. Net benefits flow to private individuals while losses and negative shocks are diffuse. Our use of the phrase “neoliberal productivity” emphasizes the ways that neoliberalism is both economically and culturally productive, even if it fails to create public revenue. The phrase “neoliberal productivity,” further, is a signifier whose plasticity allows us to not only think about the ways that neoliberalism produces, creates, capital but also creates and reinforces gaps in capital along lines of class, race/ethnicity, and nationality (as well as other forms of identification). The carceral system obliges the complicity of the public at large by demanding state funding and confining large segments of the population in a way that benefits only a handful of individuals: prisons produce a class of captive laborers and rely on the the general public’s circulation of goods to reproduce such a work force; they produce, too, a vocabulary of criminality that requires the circulation and proliferation of myth.

Neoliberal productivity, in other words — seen through the lens of carceral practices — operates based on the mutual dependence of individuals who dwell both inside and outside the

prison walls but who are, in either case, held in a kind of captivity. Under these conditions, the state monopolizes the benefits and costs of prisons — the accumulation and distribution of capital material, cultural, and symbolic — and delegates suffering among all those implicated. Neoliberal productivity is exemplified today by the criminalization of immigration from Latin America and Mexico in particular, the development of draconian laws and policing practices that target minorities and the poor, and racialized discourses of criminality among politicians and pundits.

In 1954 the Immigration and Naturalization Service announced a movement away from the policy of detention that had been formerly justified, during wartime, by the two-fold logic of national security and xenophobia. The revised goal of the INS was fairly straightforward: to find illegal aliens who were seen as preventing the lucrative employment of full citizens, and to deport them — avoiding unnecessary detention while the legal machinery did its work was seen as economical and administrative common sense.

However, by the first decade of the twenty-first century the INS — whose detention arm would come under the management of the Bureau of Immigration and Customs Enforcement (BICE) following the events of 9-11 — was detaining some 23,000 people on any given day and roughly 200,000 annually. The reversal of INS policy — which occurred primarily after 1980 and accelerated exponentially — marks a complex series of interactions between the economic and cultural politics of the neoliberal era. The major policy reversals include the militarization of the southern border under Reagan, the passage of both the Illegal Immigration Reform and Immigrant Responsibility Act and the Anti-terrorism and Effective Death Penalty Act under Clinton, as well as the manifold responses to 9-11, particularly those revolving around race and citizenship as represented in the tragically insecure rhetoric of “homeland”— but these historical touchstones do not entirely account for the fact that in 2011 wartime practices are a stone cold reality of American responses to immigration. Driven by the entrenched ideology of carceral management —

underwritten and enabled by public funding yet profitable exclusively to private investors and corporate boardrooms — the current high-volume detention of immigrants is part and parcel of a series of economic and financial paradoxes intrinsic to the logic of neoliberal productivity, particularly as this logic is enacted within the realm of prison (and detention center) financing and construction.

A new way of approaching carcerality emerged in the US with the coming of the neoliberal era: the “prison-industrial complex.” While various activists and critics had been critiquing the neoliberal redefinitions of criminality and takeover of these newly criminalized bodies, it was Mike Davis, writing in *The Nation* in the mid-1990s, who gets credit for coining the term. The term is inspired by Eisenhower’s critique of the “military-industrial complex.” In his farewell address to the nation, Eisenhower noted,

This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence -- economic, political, even spiritual -- is felt in every city, every State house, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society.

In his case, Eisenhower was decrying the end of an era, of “noble” (in his mind) warfare. Whatever one may think of his critique and the wars of yesteryear that he extols, Eisenhower’s critique has provided a rhetorical base on which to build critiques of the militarization of culture.

In Mike Davis’s essay introducing the Prison-Industrial Complex, he not only writes of the appropriation of prison forces into systems of capitalist production, he also rails against the Three Strikes Laws that led to rising incarceration rates in California. Three Strikes Laws, which mandate

lifetime sentences for a third drug-related conviction, came about as part of the “tough on crime” rhetorical strategies of scores of neoliberal American politicians. If a candidate wasn’t against crime, were they then for it? ”Tough on crime” rhetoric provided a way for various political actors to collaborate in the mass incarceration of a new prison population that is disproportionately Black and Latino. Bringing attention to the ways that the penal system reinforces and exploits the preexisting socioeconomic gaps by locking up vast numbers of people of color and low-income citizens, it is essential to resist the vestiges of the tough on crime movement and the strands of it that thrive today. Immigrant carcerality, for the ways in which it foregrounds these exploitations and the fervor it inspires on all sides of the political spectrum, is an essential component of this resistant rhetoric.

Because prisons are profitable only to a select group and have done little to deter violent crime, an array of discursive strategies have become central forces in their maintenance and expansion, in legitimizing an otherwise unsustainable and unprofitable system. Neoliberal penal policies require the circulation of discourses of criminality in popular media and an emphasis, in the rhetoric of the politicians, on tropes of deviance and disorder. These strategies are especially effective when they are linked to dominant racial discourses, pathologizing demographic groups in order to justify their confinement — and, in the case of immigration, their detainment and deportation.

The key concept of dominant discourse over the last two decades, one that uniquely transcends an array of social issues, linking them to a central tenet of neoliberal ideology, is personal responsibility. Right wing politicians in the 1980s and 90s justified the expansion of prisons by announcing the failures of the welfare state; they argue that social realities have been deceptively conflated with economic paradigms and that social services coddle and exculpate criminals. By vilifying the criminal alone, and not the social conditions that produced him, Ronald Reagan’s rhetoric absolved the deterioration of social services from any wrongdoing and leveled against his

political rivals a charge of naiveté: "Society, not the individual, they said, was at fault for criminal wrongdoing. We are to blame." Reagan argued that crime was "provoked by a social philosophy that saw man as primarily a creature of his material environment," a philosophy that "viewed criminals as the unfortunate products of poor socioeconomic conditions or an underprivileged upbringing." His successor expanded this point of view, racializing it by ascribing it to the American majority: writing against the "insidious tendency ... to blame crime on society rather than on the criminals," George H. W. Bush said that "[he], like most Americans, believe that we can start building a safer society by first agreeing that society itself doesn't cause the crime — criminals cause the crime."

Until the mid 1980s, American prisons were primarily built on either pay-as-you-go models, or through *general obligation bonds*, backed by the full faith and credit of the issuer. Approval of a general obligation bond usually requires taxpayer approval in the form of a bond referendum. Tellingly, no state has built a prison with a general obligation bond since the turn of the century. The movement from general obligation bonds to other, less scrutinized sources of financing is one of the ways decisions about prison constructing and financing are pushed beyond the control of voters (as they are in the case of the INS and the Corrections Corporation of America partnership that will be discussed shortly). The logic of modern prison financing compels private prison construction firms, always looking for ways to push the debt of prison construction back onto the public sector, to finance and construct new prisons and, in turn, lease them back to the state. Prisons must be filled in order to secure financial fidelity, but not to the well being of the prison population or the tax paying public. Instead, the financial fidelity is maintained in order to secure a high bond rating—for the purpose of building future, equally uneconomical carceral superstructures.

Given that history, consider the fact that the first two privatized prisons in America were the INS and CCA's Houston Processing Center and Wackenhut's (another private prison firm) processing center near Denver—both immigration detention centers. This symbiotic relationship

between immigration management and carceral expansion in the neoliberal era cannot be overemphasized. According to Mark Dow, author of *American Gulag*, the pairing of INS and private prison corporations beginning in the early 1980s represents an undeniably pernicious turn in the history of American immigration, in which one secretive public institution masks its transgressions by outsourcing to a marketplace dominated by equally secretive, but private institutions. If we acknowledge the *flow* of money and prisoners through the system maintained by the INS-CCA partnership (among other public-private carceral marriages), we see a paradigm of the logic of backdoor prison financing, in which the profitability of prisons—not in terms of industry, rehabilitation, or job production, but financial portfolios and bond ratings—far outweighs the sound administrative logic that in 1954 led to a transition away from the unquestioned detention of undocumented migrants.

It should come as no surprise, therefore, that the flow of detainees (the word “flow” is actually used by CCA in this context), like the flow of money through financial marketplaces, is of the utmost importance to detainment company administrators and executives. The movement of Mexicans and Non-Mexicans (the only two categories afforded to prisoners of the Houston Detention Center) is utilized as a control device (less collusion among inmates), but it also serves another, darker purpose that goes beyond the \$52 hourly fee, per detainee, which is charged to taxpayers. According to Mark Dow, a group of Cuban detainees at the Houston Processing Center—who actually wanted to sign their deportation papers, giving up their legal struggles for asylum or naturalization—cited a “very strong feeling of detention fraud” that actually prevented them from doing so.

The implications of the “flow” of detainees, considered in light of these claims, is not complicated. Empty beds are, first and foremost, a fiscal liability that have to be explained in annual reports, as they undermine the illusion of carceral necessity. The contemporary methods of

immigration detention center construction and management are not responsive to anything like a rise in undocumented migrants who, owing to a contemporary political or judicial reason, need to be detained; just as the contemporary methods of conventional prison financing are not responsive to anything resembling an objective rise in crime. These methods are the product of a pervasive financial and cultural web of justifications. Perversely, there is a feedback loop that exists between lower class communities, racially stigmatized populations, and immigrants on one hand, and prisons on the other; a feedback loop that protects the investments of private stakeholders, while ensuring a deferral of the debt—both economic and psychological—that will always belong to the public and is accruing as a result of massive, unceasing carceral expenditures.

The US-Mexico border itself acts as a barrier of economic and political freedoms as surely as any prison. Indeed, the increased militarization of the border is of a piece with the neoliberal production of prisons and prisoners. According to the Tucson, AZ based advocacy group *Derechos Humanos*, “In the DHS fiscal year 2006-2007, the human remains of 183 men, women and children were recovered on the Arizona-Sonora border. Since the implementation of border policies in the mid-1990s, it is estimated that more than 5,000 migrants have died. Migrants have been driven into the desert as urban crossing points have been closed down, and border communities have suffered from the division and xenophobia that militarization has brought.” The US-Mexico border, shared by both a highly industrialized capitalist nation and a developing nation, acts as a site of articulation between modes of production, a place where neoliberal capitalism both moves production and imports labor, colonizing the spaces that are otherwise given to non productive action.

Arizona has moved toward the increased criminalization of illegal immigration, which neither reduces numbers of undocumented migrants nor addresses the legal issue at its source: the expansion of capital through the exploitation and turnover of labor. What it does is set up a new

population to be processed through the criminal and penal system in order to be exploited for the political and economic benefit of the few.

According to an investigative report by Beau Hodai of *In These Times*, S.B. 1070, the anti-immigrant Support Our Law Enforcement and Safe Neighborhoods Act of 2010, was based on model legislation drafted by the American Legislative Exchange Council (ALEC) which “includes the Corrections Corporation of America (CCA, the nation’s largest private jailer), the Geo Group (the nation’s second largest private jailer), [and] Sodexo Marriott (the nation’s leading food services provider to private correctional institutions)” among others. This law would not only increase sanctions against human traffickers and the employers of undocumented workers, it also makes it a state crime for anyone to fail to carry proper immigration identification papers with a maximum penalty of \$100 and 20 days in jail. We believe that legislation like this born out of desire to intimidate, harass, and marginalize disfavored classes and ethnicities in the interest of a hungry privatized prison system eager for public funds. As Hodai writes, “Looking at the numbers, it is easy to see why the private-prison industry is eager to expand into immigrant detentions. According to ICE Public Affairs Officer Gillian Brigham, in fiscal year 2009, ICE detained 383,524 individuals, with an average daily prisoner population of 32,098 spread across the nation’s 270 immigrant detention centers.”

This legislation exemplifies neoliberal productivity on the border. The negative shock of increased incarceration and deportation that will disrupt and marginalize family, and political activity on the part of immigrant communities, is distributed in order to facilitate the accumulation of capital by a few. Yet these illogical policies remain popular among Arizona’s voters, their success owed to linking discourses of personal responsibility to constitutive oppositions between US citizens and undocumented or illegal immigrants, and between, more generally, white and Latino. Mainstream

media has played a pivotal role in proliferating these discourses and providing a stage for their advocates.

Consider the remarks made by Maricopa County Sheriff Joe Arpaio in a 2010 debate with Rev. Al Sharpton soon after the passage of S.B. 1070: “We have a big problem in this state and across our nation. Something has to be done; the federal government needs help and we’re here to help.” Or recall Jan Brewer’s notorious statement that “law enforcement agencies have found bodies in the desert either buried or just lying out there that have been beheaded,” which employs the imagery of terror and violence and gestures toward the perennial tropes of insecure borders and the savage other. Even though her comments have been discredited and made the subject of public ridicule, their circulation in the media continues to provoke and perturb the public at large.

The Orwellian name of the S.B. 1070, the “Support Our Law Enforcement and Safe Neighborhoods Act,” may serve as the best example how neoliberal productivity operates, inscribing law books with social and political fictions while obscuring a system of inequality, exploitation, and class antagonism that is neither just nor sustainable.