Mass Incarceration Nation
How the United States Became Addicted to Prisons and Jails and How It Can Recover
By Jeffrey Bellin
Cambridge University Press (2023)
Reviewed by Robert Sanger

Mass incarceration in the United States is, or should be, at the top of the American agenda. Jeffrey Bellin’s book, Mass Incarceration Nation: How the United States Became Addicted to Prisons and Jails and How It Can Recover, is truly impressive. It is written in an engaging narrative style but weaves in meticulous statistical support for its contentions. Ultimately it is a concise analysis of the legal, administrative and procedural flaws in our dysfunctional carceral system, and it delivers specific strategies to recover from mass incarceration.

The United States has an addiction to incarceration. With the possible rivalry of a less transparent China, it appears that more people are incarcerated in the United States per capita than in any other country in the world. The United States incarcerates 629 people per 100,000, while second place Rwanda, incarcerates 580 per 100,000. France, 10th on the list, incarcerates 103 and Japan, 11th, 37 per 100,000. One has to wonder why we are such awful human beings here on the North American continent, that we have to lock up so many people.

Professor Bellin’s book is not long — 225 pages including the helpful endnotes — so, hopefully, the brevity of the book will appeal to the “prolixaphobic.” Yet, in its brevity, the book comprehensively identifies the specific mechanisms that have changed over the last 50 years in the United States and that have led to mass incarceration. The premise is that correcting these mechanisms will lead us away from our addiction. Everyone involved in the criminal law, at all levels, should read Professor Bellin’s carefully researched and well-thought-out work.

If there is a criticism, it is that Professor Bellin does not fully acknowledge the pervasive effect of racism and cognitive bias, implicit and express, as an overwhelming historical, current and future force in the criminal system. Professor Bellin refers to racism as one of the causes of mass incarceration but specifically takes issue with Michelle Alexander who, in The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010), ascribes much of the development of mass incarceration to an extension of slavery, Jim Crow laws and racism. Bellin does not disagree that racial animus and the politics of fear affect the criminal law system but contends that Alexander’s focus on racism distracts from identifying the more specific causes of mass incarceration.

Scholars before and since Alexander have established the unseen power of racism and cognitive bias. (For anyone who seeks a refresher, see Nikole Hannah-Jones (ed.), The 1916 Project (2021).) Professor Bellin’s focus on the mechanistic flaws rather than broader causes of mass incarceration is intentional. Addressing the specific flaws directly provides an immediate basis for action. However, those flaws have to be seen in the light of the pervasive racism and bias in this country. Otherwise, as with so many reforms, new mechanisms will simply be implemented with the same result.

Central to Bellin’s understanding of the mechanistic flaws leading to mass incarceration is the dichotomy between the criminal justice system and the criminal legal system. He recognizes that “criminal justice” has become an unfavored term since there is so much that is done under that name that is not justice. However, he retains the term “criminal justice system” to juxtapose it with “criminal legal system.” He sees the former as dealing with murders, assaults, rapes, and other crimes that society is concerned with as a matter doing justice. He sees the latter, such as drug, gun, and immigration laws, as an attempt to regulate human behavior.

In 1970, the United States incarcerated about the same number of people per capita as most of the rest of the world. In the intervening years, even in the face of decreasing crime levels, the level of incarceration in this country exponentially increased from about 97 to 629 per 100,000 while the rest of the world remained relatively constant. This included not only explosions in state prison populations, but also similar increases in federal prison and county jail populations.

Professor Bellin’s “road to recovery” sets as a benchmark the return to the

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levels of incarceration of 1970. Among the mechanistic flaws that have developed since 1970, he identifies several that can be easily corrected. For instance, he advocates returning to indeterminate sentencing so that a harsh prison sentence can be imposed by a trial judge in the midst of retributive fervor but a rational decision on release might occur when calmer heads prevail down the road. Pretrial detention should be employed only when non-custodial measures are not effective in obtaining attendance at court and methods, such as reminding people of court dates, should be made a part of the process. Prison itself should only be imposed when it is necessary. The criminal legal system should be dismantled so that there is focus on the criminal justice system — this would include doing away with federal criminal prosecution in most areas, eliminating drugs, guns and immigration from the criminal system, encouraging prosecutorial declinations and prosecutorial and judicial dismissals, avoiding incarceration for probation and parole revocations, and capping the maximum prison terms for everything, including murder, at something like 21 years.

Professor Bellin’s approaches to recovery from mass incarceration addiction are compelling. Stating his conclusions without reiterating the substantial support provided in the book risks doing a disservice. These are real mechanistic measures that can be taken to reduce mass incarceration in the United States while maintaining a criminal justice system that functions effectively to control serious crime. Implementation of such measures is cheaper and would allow allocation of more resources to deal with underlying problems. Professor Bellin makes a valiant argument that we could “recover” from our carceral addiction and return to 1970s-era incarceration rates.

Of course, we have to remember that his metaphorical return to a better time is just that, metaphorical. Such a better time was never that good for some members of society. For instance, we welcomed indeterminate sentences in the 1970s in California where people who were serving indeterminate sentences at the pleasure of the Adult Authority (parole board) spent seven times longer in prison if they were Black. But when determinate sentences that appeared sane were no sooner enacted than mandatory minimums and enhancements were added, the originally sane prison sentences quickly became insane. To make a return to indeterminate sentences work, it will require a significant commitment to releasing people in a reasonable time based on rational criteria. This and other well-reasoned steps to recovery will require not only changes in the mechanisms but significant revamping of the infrastructure to make them effective.

However, a “recovery” will need more than correcting flaws and an infrastructure for new laws. As demonstrated by Alexander and others, the result of decades of this carceral system is a society today that has been so badly damaged that any recovery will take decades of restorative and reparative justice. Recovery must acknowledge and deal with the multigenerational harm that has been inflicted on large segments of the population by a racist-infused carceral system. Cynicism and despair over mass incarceration are facts of life in families and entire communities throughout the country. This has also led to the proliferation of prison gangs which, in turn, have spread the prison culture to neighborhoods throughout this country (and elsewhere). These tragic and pervasive results will not go away by only fixing the mechanistic flaws.

Nevertheless, Bellin’s hard work identifies specific flaws that need to be fixed that will start to move the system away from mass incarceration. His book sets forth an agenda that, on the level of legislative, administrative and procedural reform, can lead to significant progress. Read the book and let’s get going.

Prisoner of Politics
Breaking the Cycle of Mass Incarceration

By Rachel Elise Barkow
Bellknap Press (2019)
Reviewed by Sonya Pfeiffer

If Rachel Elise Barkow’s Prisoner of Politics is not cited in every sentencing memorandum you draft, you may very well be missing the mark. This critical and sweeping review of the sprawling carceral state of America is not only essential reading, but it is also essential advocacy. Although the criminal justice landscape has shifted somewhat since the book was published in 2019, Prisoner of Politics is relevant, thoughtful, and brimming with useful data that underlines the belief that long sentences make communities safer.

Barkow brings unique gravitas to bear on the national conversation around criminal justice policy: she was a member of the U.S. Sentencing Commission for five years, she served on the Manhattan District Attorney’s Office Conviction Integrity Policy Advisory Panel, and she clerked for Justice Antonin Scalia. Barkow is currently the Charles Seligson Professor of Law and the Faculty Director of the Zimroth Center on the Administration of Criminal Law at NYU. Her scholarship — and her voice — are indispensable in the criminal justice reform arena.

About the Reviewer
Sonya Pfeiffer, of Pfeiffer Rudolf in Charlotte, North Carolina, and Brauti Thorning LLP in Toronto, Ontario, litigates civil rights and high profile criminal cases, as well as complex family law matters. She also provides media strategy and consultation to lawyers involved in high profile and high conflict cases.