

CHAPTER 9

Remaking Big Government

Immigration and Crime Control in the United States

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Politicians and pundits frequently attack big government, calling it bloated, coddling, and inefficient. Former President Bill Clinton declared that “the era of big government is dead” and campaigned on “reinventing government,” President George W. Bush suggested that “too much government crowds out initiative,” and presidential candidate John Kerry endorsed “smaller and smarter government.” We argue that big government is still alive, “reinvented” in the form of expensive and interventionist immigration and crime control. Focusing on U.S. social policy from Lyndon Johnson’s Great Society to George W. Bush’s Homeland Security, we trace the growth of immigration and crime control in the context of welfare state retrenchment, paying particular attention to how gender, race, and nationality shape policy changes.

We find three distinct trends in immigration and crime control policy, all showing that government has become neither smaller nor smarter. First, political leaders have defunded welfare agencies while bolstering the Immigration and Naturalization Service (INS), the Bureau of Prisons (BOP), and the Drug Enforcement Agency (DEA).¹ Second, immigration and crime control have become more punitive and more interconnected, with agencies sharing personnel, tactics, and agendas. In this pernicious cross-fertilization, INS agents interdict smuggled drugs, DEA agents monitor citizenship status, and both wield the disciplinary tools of deportation and incarceration against immigrants and criminals alike. Third, punitive immigration and crime agendas colonize other agencies, so that even as social welfare agencies lose resources, they

nonetheless take on additional burdens of identifying, monitoring, and excluding particular immigrant and criminal categories.

Welfare retrenchment and punishment expansion represent opposite trends in state spending, but they rely on the same ideology. This ideology holds that the liberal welfare state corrodes personal responsibility, divorces work from reward, and lets crime go without punishment; consequently, the lenient welfare regime attracts opportunistic immigrants and cultivates criminal values. Women—particularly women of color, immigrant women, and poor women—are central to these alarmist critiques of the liberal welfare regime: Mexicans migrate to have babies, thereby winning citizenship and its benefits; poor women and women of color wantonly reproduce for welfare benefits, and they produce children only capable of the same. By destroying the welfare state and fortifying the disciplinary state, political leaders are indeed reinventing government. In this remaking of big government, however, holding the budgetary bottom line is less important than preserving racial and gender lines that structure the U.S. state.

Fortifying the Disciplinary State

With the electoral success of the Reagan revolution, many Democrats joined Republicans in a politically profitable competition to shrink government. This competition was exemplified by Clinton's end to "welfare as we know it," in which the Democratic Party dramatically abandoned its faith in government to create New Deals and Great Societies.² But politicians have slowed overall government growth only marginally; the major change has been in shifting, not shrinking, budget priorities. This section considers the growth of the disciplinary state, showing that both immigration and crime control have become larger, more punitive, and more racially disproportionate.

Federal spending on the administration of justice—including immigration control, crime control, and drug enforcement—has grown almost every year for the last thirty years, with an average yearly increase of 10 percent. As Figure 9.1 indicates, from 1960 to 2000 the government allocated the federal justice system a growing share of the budget, more than tripling the percentage of resources devoted to justice administration. At the same time, the share of spending on income security, which includes unemployment compensation, housing assistance, and food and nutrition assistance, has decreased steadily since 1975.³ Even though federal employment is at its lowest level since 1960, law enforcement employment is at its highest level ever. Over the last twenty years the biggest increases in federal employment have been within immigration and crime control agencies. By 2002, the number of federal law enforcement workers surpassed the number of service provision workers.⁴

Both immigration and crime policy have become more punitive and less focused on service and rehabilitation. Most of the INS' growth has been in the

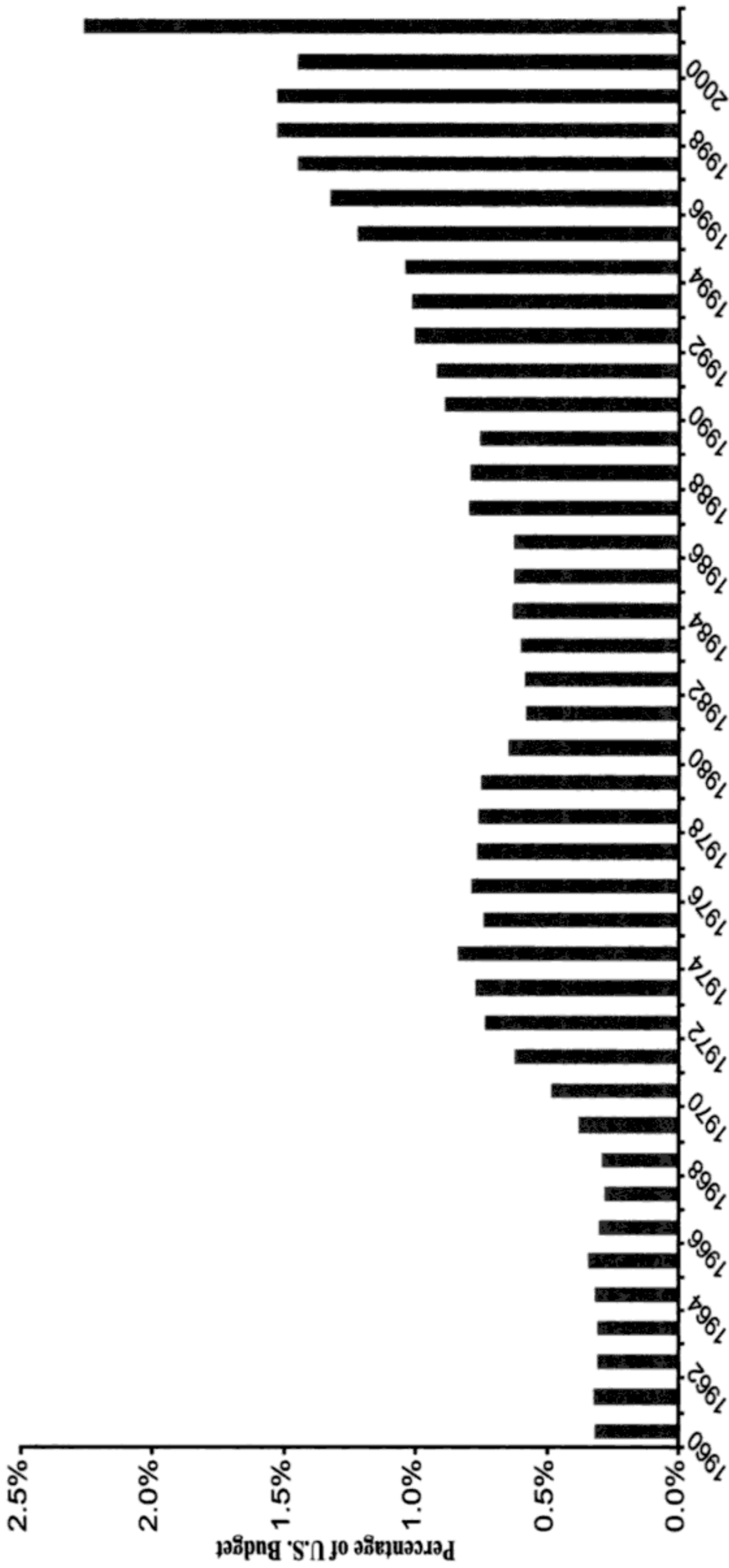


Figure 9.1 Percentage of U.S. Budget Allocated to Administration of Justice, 1960–2000. Source: Data from Baumgartner-Jones, Policy Agendas Project, 2002.

enforcement staff, which has increased by 450 percent since 1975 and now constitutes 75 percent of the total INS staff.⁵ Congress has specifically earmarked funds for enforcement, and as a result service and information programs remain underdeveloped.⁶ The INS has grown from a vastly underfunded administratively disastrous agency to a better-funded, powerful agency that nevertheless remains administratively chaotic.⁷ Just as immigration policy now favors border control over service provision, so too crime control policy now favors incarceration over prevention or rehabilitation. Moving from experiments in rehabilitation to patterns of retribution and simple incapacitation, a penological U-turn in the United States in the last thirty years means that today's prisons are marked by massive overcrowding, less prisoner education, less drug treatment for prisoners, and more prison labor, including the chain gang. Predictably, vast punitive agencies produce vast punished populations. In the last ten years, the number of undocumented immigrants turned back or deported has increased by over 80 percent, and in 2000, there were over 1.6 million arrests at the southwestern border. Similarly, in the last thirty years, the number of incarcerated persons has septupled, and in 2002, with more than 2.1 million persons in prison and jail, the United States incarcerated a greater proportion of its citizens than any nation in the world (Figure 9.2).⁸

Immigration and crime control changes have the harshest consequences for people of color. Heavy patrolling of the southwestern border has a disproportionate effect on Latino immigrants; they compose about 90 percent of all who are deported.⁹ Such heavy enforcement of the southwestern border neither deters immigration nor serves stated national security interests. Major patrol

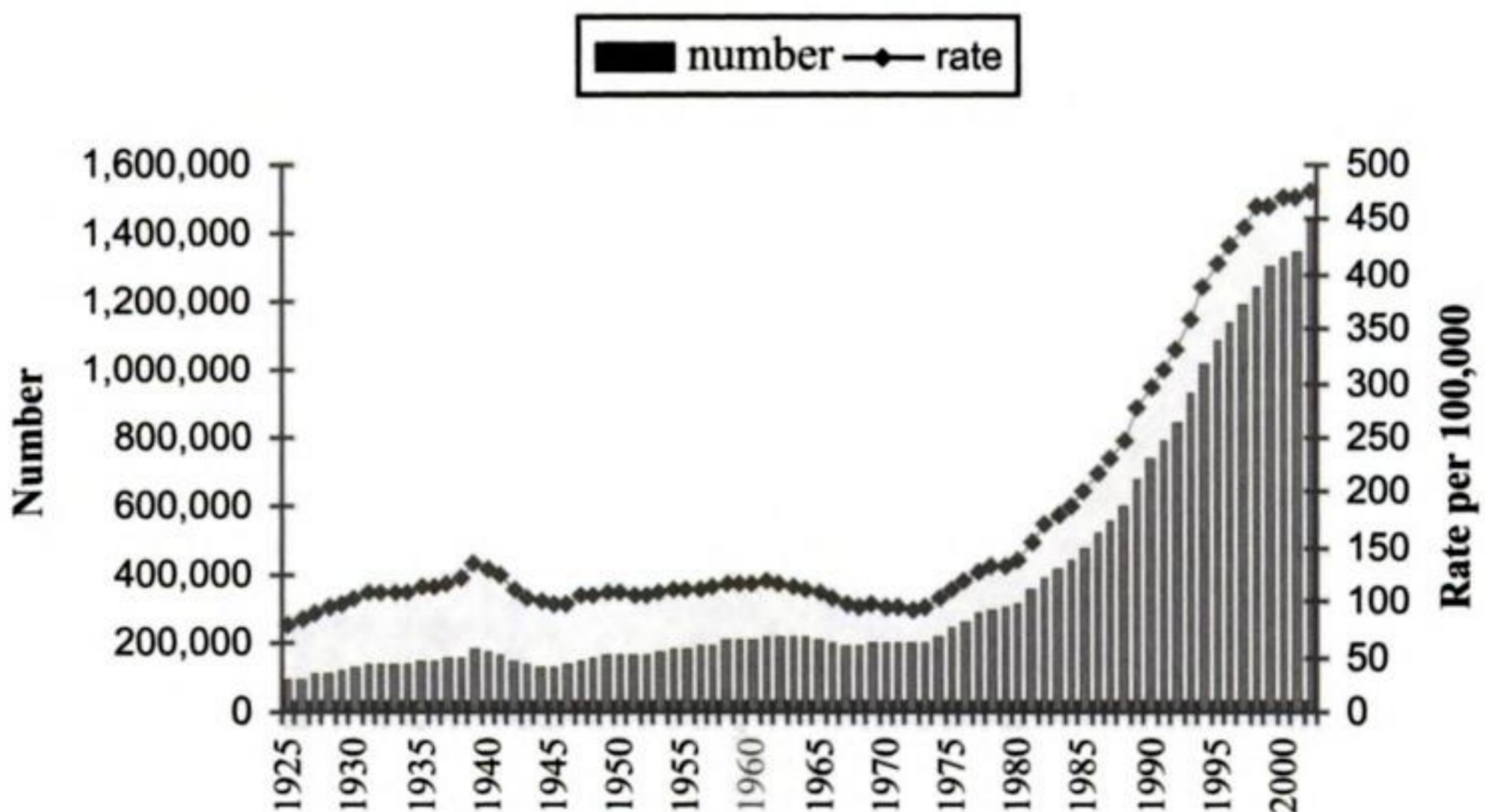


Figure 9.2 Number and Rate of Persons Incarcerated in State and Federal Prisons, 1925–2000.

buildups were placed near urban areas, so border-crossing attempts moved to areas with mountains, deserts, and rivers. Harsh enforcement has relocated rather than reduced border crossings, and with fatal consequences. Between 1997 and 2001, more than one thousand people died while crossing the southwestern border, mostly from extreme heat, cold, or drowning.¹⁰ Unlike the border patrol, internal enforcement is more effective and less racially discriminatory; nonetheless, the ratio of border patrol hours to interior enforcement hours has steadily increased since 1986.¹¹ The Homeland Security Act of 2002 has only increased the disproportionate targeting of Latino immigrants. The legislation ostensibly responds to fears of terrorism, but most of the new INS hires have been located at the Mexican border, which already has twenty-six times as many agents as the Canadian border. If the administration were primarily concerned with thwarting terrorists, it would more evenly allocate resources to the northern border and interior enforcement.¹²

Just as immigration policy hurts Latino border crossers, crime policy hurts African Americans and Latinos. The racial composition of prisons has reversed in the last half century, with prisons turning from 70 percent white in 1950 to 70 percent black and Latino in 2000. In 2002, African Americans were only 13 percent of the general population but nearly half of the prison population; Latinos were 14 percent of the population but 18 percent of the prison population (see Figure 9.3). In 2000, more African American men were in jail and prison (761,600) than were in higher education (603,000).¹³ African American women face similar disparity: African American women have incarceration rates six to seven times those of white women, a ratio roughly equal to the disparity between African American and white men. Moreover, African American women have the fastest-growing incarceration rate. The number of women prisoners has more than doubled in the last decade, jumping from roughly 40,000 women prisoners in 1990 to 85,000 women prisoners in 2000. Despite comparable female populations, the number of women incarcerated in the United States is ten times the total number of women incarcerated in Western European countries. Punitive drug policies have levied a disproportionate toll on women in general and women of color in particular. Among women, drug offenses account for the largest source of total incarceration growth between 1990 and 1999. Of the women convicted of drug felonies in state courts, almost half are convicted solely on “possession” charges. Nationally, black women convicted of drug felonies in state courts are sentenced to prison 41 percent of the time, whereas white women are sentenced to prison only 24 percent of the time. Police officers and DEA agents both acknowledge and defend the use of gendered racial profiling. In sworn testimony, DEA agents have stated that they believe that most drug couriers are black females and that being Hispanic or black was part of the profile they used to identify drug traffickers.¹⁴ Injuries to black and Latino communities extend beyond the imprisoned individual: in

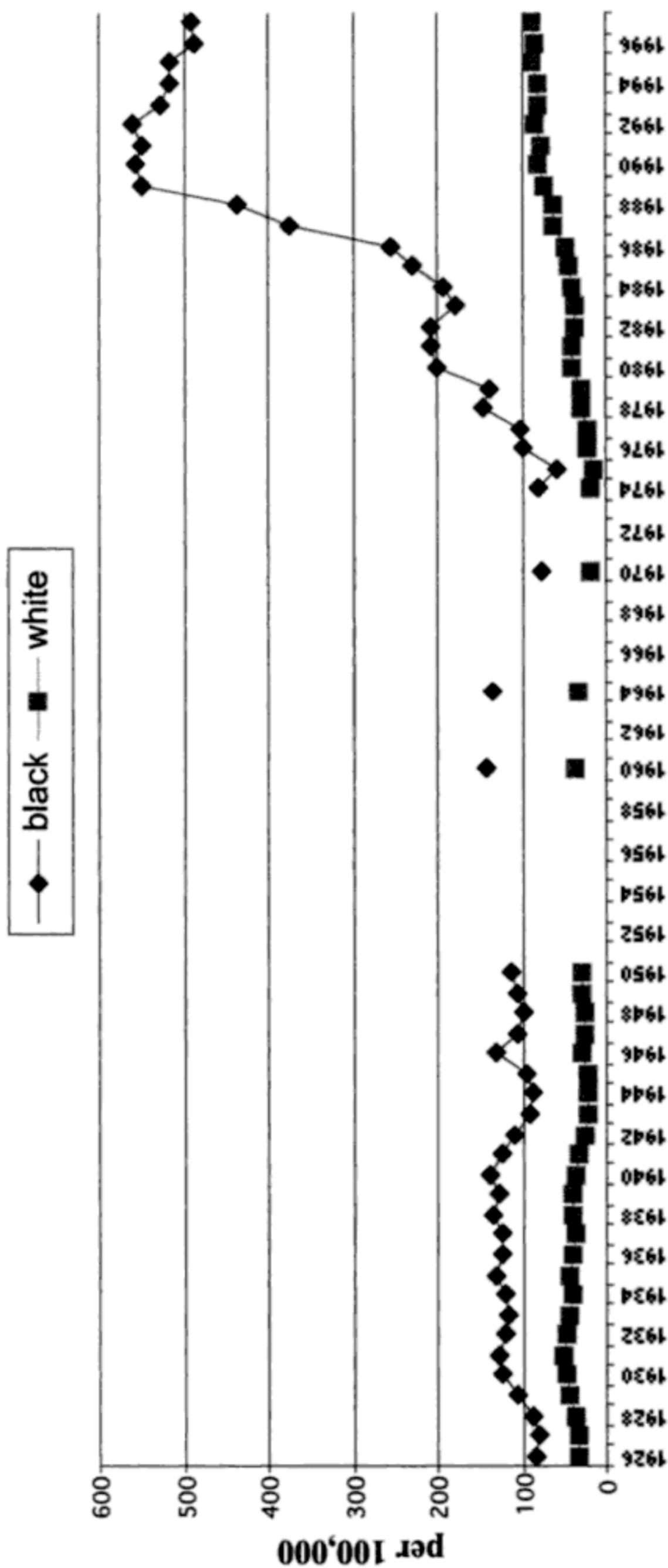


Figure 9.3 Admissions Rate to State and Federal Prisons by Race, 1926–1996.

1999, 767,000 black children and 302,000 Latino children had a parent in prison, with black children nine times and Latino children three times more likely than white children to have an incarcerated parent.¹⁵

In the midst of welfare state retrenchment, both immigration and crime policy have become more expensive, more punitive, and more racially targeted. Despite calls to make government smaller, cheaper, and decentralized, punitive systems have grown more expansive, more expensive, and more centralized. But there is a unifying logic behind both social welfare *divestment* and border patrol and penal system *investment*. Congressional leaders, complaining that undocumented immigrants cross the border to enjoy welfare benefits, passed the restrictive Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). In a televised debate the day before the bill's enactment, then Senate Majority Leader Trent Lott said: "In America we have a tremendous problem with illegal immigrants. And they are coming in and they are getting into our welfare systems and our food stamp systems, and they are staying there forever."¹⁶ In the debates over the proposed Personal Responsibility Act in 1995 and 1996, House Republicans cited black criminality as one of the harms of welfare-induced single motherhood. The act states that "the likelihood that a young black man will engage in criminal activities doubles if he is raised without a father and triples if he lives in a neighborhood with a high concentration of single parent families."¹⁷ Congressional leaders justified these two pivotal laws with arguments that social welfare attracts "lazy" immigrants and encourages crime in those who receive assistance. Female welfare seekers and recipients are at the center of this ideological project, which relies on representations of women of color as promiscuous and immoral.

It is ironic, argue many observers, that a conservative Republican president responded to the events of September 11 by constructing an enormous federal bureaucracy, the new Department of Homeland Security. Most of the new spending—hiring air marshals, immigration inspectors, and baggage screeners—is aimed at policing citizens and immigrants. As we have documented, these are the very areas that government was already expanding. Homeland Security-related growth is not, as the *New York Times* and others have suggested, "a sudden shift in the political terrain" but rather an acceleration of the trend toward enlarging the systems of immigrant and criminal control.¹⁸

Interlocking the Disciplinary State: Convergences Between Immigration and Crime Control

Immigration and crime control have not only grown in parallel fashion, they have also become more interlocking. This section shows that immigration and crime control converge in two notable ways. First, agencies increasingly combine personnel, information, and tactics; that is, Congress cross-deputizes

agents, deports for crime control, and imprisons for immigration control. Second, lawmakers approach immigration and crime as inextricably linked problems, placing crime provisions in immigration legislation and immigration provisions in crime legislation.

Combining Personnel, Information, and Tactics

Immigration and crime control agencies increasingly share personnel and information, privileging control over the needs and rights of immigrants and suspects. In 1990, Congress empowered the INS to enforce contraband and narcotics laws, and it required state courts to report information on convicted aliens to the INS. The border patrol has over 9,526 agents that have been cross-designated with Title 21 drug authority by the Drug Enforcement Administration for the purpose of conducting drug search and seizures along the border. In addition, the Office of National Drug Control Policy has teamed up with state and local law enforcement to devise the Comprehensive Interior Enforcement Strategy, which allows federal, state, and local law enforcement agencies complete access to INS information on criminal aliens.¹⁹

Increasingly, each agency uses the other's punitive tactics. In the IIRIRA, Congress required noncitizens to be deported if they committed a crime with a sentence of one or more years. Compounded by mandatory minimums and the difficulty of applying for asylum, this law vastly expanded the number of potential deportations. Similarly, prisons hold increasing numbers of noncitizens. Between 1984 and 2001, the number of noncitizens in federal prisons jumped from 4,088 to 35,629, and almost 70 percent are Latino. Generally, noncitizens are incarcerated for nonviolent, low-level crimes. Only 1.5 percent of noncitizen federal prisoners are violent offenders, compared with 16 percent of citizen prisoners. Drug offenses and violations of immigration law drive this increase in noncitizen incarceration. In 1984, 1,204 noncitizens in federal prison were charged with a drug offense; by 1999, this figure had increased fifteen-fold to 18,594. Furthermore, noncitizens convicted of a drug offense were more likely than citizens to have played a minor, low-level role in the transaction.²⁰

Merging Policy: Immigration Laws as Crime Control and Crime Laws as Immigration Control

In addition to the cross-deputization of personnel and the sharing of tactics, lawmakers increasingly link immigration and crime policy. We see a new trend in which major immigration laws include crime provisions, and major crime laws include immigration provisions. Issues of employment, public spending, and crime have always been linked to the debate over immigration, but Congress has emphasized this linkage more in recent years, as one analyst

writes, giving “deportation policy an almost exclusive emphasis on crime.”²¹ Over the last ten years, almost all major immigration and crime legislation—including the IIRIRA, the Violent Crime Control and Law Enforcement Act of 1994, and the 1996 Anti-Terrorism Law—has justified immigration restrictions in criminological terms and criminal penalties in anti-immigration terms.

The IIRIRA of 1996 focuses both on the speedy deportation of immigrants with any criminal record and on criminalizing more acts. Whereas before 1996, undocumented immigrants who committed crimes were released at the end of their sentence, this legislation requires them to serve their sentences and then remain in prison until they are deported. It also authorized \$5 million for a database to track criminal aliens and required that it be used to help local governments in identifying criminals that they could deport. Also, it authorized judges to issue deportation orders as part of a probation or plea agreement, further enmeshing immigration with the criminal justice system. Congress imposed harsher sanctions on undocumented immigrants as well as “streamlining the deportation process,” making it much harder to appeal decisions. IIRIRA required noncitizens to be deported if they committed a crime with a sentence of one or more years (rather than the previous benchmark of five or more years); given the severity of mandatory minimums, even the most minor offenses can provoke deportation.

During 1993 and 1994, Congress hotly debated controlling “illegal immigration,” but the only immigration provisions it passed were in the Violent Crime Control and Law Enforcement Act of 1994. The tone of the debate is exemplified by Senator Orrin Hatch, who argued for expedited deportation of criminal immigrants “so they do not mess up our country anymore.”²² The legislation contained major immigration provisions, including \$1.2 billion to strengthen border control, faster deportation of those denied asylum, and \$1.8 billion to help states pay for incarcerating undocumented immigrants convicted of felonies. Some of the Violent Crime Act provisions are laughably tangential to crime, and even the provisions that do relate to crime are based on criminological misperceptions. Immigrants are no more likely to be criminals than native-born citizens once demographic variables are controlled.²³ In the debates over the legislation, members of Congress often cited the statistic that 25 percent of prisoners are undocumented immigrants; although this does hold true for the federal prison system, the percentage of immigrants in the much larger state prison population is far lower (9.6 percent). More significantly, immigrants are one of the fastest-growing groups of prisoners because the 1996 IIRIRA expanded the number of crimes that would incur federal prison time, in particular, the crime of entering the country without proper documents.

The Antiterrorism and Effective Death Penalty Act of 1996 was ostensibly in response to the Oklahoma City bombing, a domestic terrorist attack, but key

provisions of the act were aimed at immigrants. Congress rejected measures that might have had some impact on domestic terrorism, such as marking explosives with chemical identifiers; however, Congress passed a ban on “foreign” groups with terrorist connections and a provision allowing the border patrol to more easily turn away immigrants. In particular, they established a procedure of “summary exclusion,” making it easier to turn away those without proper documentation, disregarding the possibility that a refugee fleeing persecution might need to rely on false papers. Conservative Republicans pushed a small government response to terrorism, in part because of a Waco and Ruby Ridge–inspired “fear of our own government.”²⁴ In fact, they sought measures effectively protecting domestic militia groups, but they bolstered federal punishments for immigrants and criminals.

Interlocking immigration with crime control extends the reach of the disciplinary state, jeopardizes privacy, and engenders fear about obtaining basic services. In the convergence of immigration and crime control policy, lawmakers see immigrants as criminals and criminals as subcitizens.

Colonizing the Welfare State: The Long Arm of Immigration and Crime Control

As the disciplinary state has grown larger and more intertwined, it has crept into social welfare agencies. This section shows that recent legislation in the areas of income support, health care, education, and public housing places new exclusions on persons with particular immigrant and criminal status. Even as agencies confront dwindling resources, they bear additional responsibilities of policing, identifying, and excluding categories of immigrants and criminals.

New exclusions reinforce “immigrant” and “criminal” as identities of no return. Lawmakers have cut federal income support and in ways that especially harm immigrant families and people with drug felony convictions. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 replaced federal income support with a federal block grant program called Temporary Assistance to Needy Families (TANF) that allows states to create their own welfare programs. New provisions in the law single out two groups for permanent exclusion: immigrants (with some exceptions) and people with drug felony convictions.

Cutting benefits for immigrants, both undocumented and legal, was at the heart of welfare reform. In the 1996 IIRIRA, Congress restricted benefits for undocumented immigrants: the law not only made undocumented immigrants ineligible for food stamps, it also imposed a penalty of up to five years in prison for knowingly helping an undocumented immigrant apply for aid. The Personal Responsibility Act excluded legal immigrants from most public assistance, which was expected to save over \$25 billion over five years. The new law prevented legal immigrants from obtaining many benefits such as supple-

mental security income (SSI) and food stamps.²⁵ Congress also permitted states to bar legal immigrants from receiving benefits from Title XX block grants for child care, assistance for the disabled, and support services for abused children, as well as allowing states to exclude legal immigrants from any state-funded benefit programs. Both legal and undocumented immigrants (with minor exceptions) were barred from receiving Medicaid and all forms of nonemergency medical assistance, requiring hospitals to determine immigration status before treating patients in nonemergency situations.

The Personal Responsibility Act turned aid agencies into investigators. The law required local agencies that administer welfare block grants, SSI, and housing assistance to provide quarterly reports with the names and addresses of people unlawfully in the United States. According to the National Conference of State Legislatures, welfare agencies will pay an additional \$700 million to determine clients' immigration status, draining funds from already strapped programs.

There is little evidence that government assistance is actually, as legislators have argued, a "magnet drawing people across the border."²⁶ Less than 1 percent of surveyed immigrants move to the United States primarily for social services. Legislation that threatens those who use public aid with deportation makes immigrants reluctant to apply for services. Between 1995 and 1999, the receipt of TANF, food stamps, and Medicaid by lawful permanent residents has plummeted. Even though some food stamp cuts were restored in 1998, immigrants as well as state agencies remain confused about eligibility, and some state agencies have mistakenly turned away eligible immigrants.²⁷ Fear of deportation inhibited parents from applying for food stamps for their eligible children, which produced a dramatic fall in participation rates among eligible immigrant families.²⁸

The Personal Responsibility Act also excludes persons convicted of drug felonies from ever receiving TANF or food stamps. The drug felon exclusion, an amendment sponsored by Senator Phil Gramm, passed after two minutes of debate. The only voice of protest came from Senator Edward Kennedy, who underscored criminological inconsistencies, arguing that "under this amendment, if you are a murderer, a rapist, or a robber, you can get Federal funds; but if you are convicted even for possession of marijuana, you cannot."²⁹

Given the high rate of drug felony convictions, the Gramm amendment permanently denies eligibility for an enormous population. Of the 347,774 felony drug convictions in state courts in 1996, roughly 40 percent (135,270) were convictions for possession. With recidivism rates for drug conviction at roughly one in three, it is possible that as many as 246,000 people could be denied welfare eligibility every year. Because drug felon exclusion is permanent, the cumulative number of persons denied welfare grows every year. By earmarking drug felons as subject to special punishment, these laws magnify the harm of one of the most racially selective areas of the criminal justice system. Although African

Americans constitute only 13 percent of the U.S. population and 13 percent of all drug users, they account for 35 percent of all drug arrestees, 55 percent of all drug convictions, and 71 percent of all drug sentences.³⁰

Immigrant and drug felon provisions disproportionately exclude women. Legal and especially undocumented women workers earn less, are usually found in occupations with few opportunities for upward mobility, and are therefore more likely to require income assistance. Incarcerated women are more likely than incarcerated men to have a drug felony conviction, and roughly 80 percent of incarcerated women are mothers.³¹ Legislative debate attacks immigrant women for reproducing in order to obtain citizenship and welfare payments. In a 1993 debate over border patrol spending, Representative Dan Burton complained of “a virtual tidal wave of illegal aliens coming across the Mexican-American border.” Citing the high number of births in Los Angeles County, he pressed for more border patrol spending because “each one of those children, when they are born, is eligible for AFDC payments.”³²

Education is another area in which immigrants and criminals are facing possible exclusion. No federal law currently bars immigrants from public schools, although there is growing support for this restriction. The U.S. House of Representatives and the California electorate both passed measures restricting children of undocumented immigrants from public schools. Although the House measure did not become law and Proposition 187 was fought in court, their consideration suggests that many people now see education as a special privilege.

Although immigrant exclusions from public education have failed so far, exclusions based on criminal status have, unfortunately, succeeded. The Higher Education Act was passed in 1965 to establish financial aid programs such as Perkins loans, Pell grants, and work-study programs. In the 1998 reauthorization of the Higher Education Act, Congress expanded federal assistance to college students and reduced interest rates. Against this expansion of opportunity, the 1998 reauthorization included a new provision that denies loan eligibility to persons with drug felony convictions.³³ The exclusion passed by voice vote with little debate.

The drug felon exclusion has a significant impact on students. During the 2000–2001 school year, about 9,000 applicants lost their federal aid after checking “yes” in the drug conviction box on the Federal Application for Financial Aid. During the same year, more than 836,000 applicants left the question blank. Under the Clinton Administration, these nonresponsive applicants were not denied eligibility, partially because of claims of ambiguous question wording. Under the Bush Administration, the magnitude of drug felon exclusions will increase. Rod Paige, the education secretary under Bush, declared that the question phrasing is now clear enough so that failure to answer it will mean denial of aid. As of April 8, 2001, more than 26,000 of 3.9 million applicants have

been declared ineligible, 15,000 by admitting to drug convictions and 11,000 by leaving the question blank.³⁴

The Department of Housing and Urban Development (HUD) is another component of the welfare state responsible for identifying, and sometimes reporting and excluding, undocumented immigrants and people with drug addictions. HUD is required to report all undocumented tenants, and undocumented immigrants are not eligible for public housing. The Quality Housing and Work Responsibility Act of 1998 requires local housing authorities to screen applicants, and those who were once evicted because of drug-related crimes are prohibited from public housing for three years. This legislation built upon the Anti-Drug Abuse Act of 1988, which provided that public housing tenants could be evicted for engaging in criminal or drug-related criminal activity on or near the premises. The Quality Housing Act also enables local housing authorities to investigate whether the applicant uses illegal drugs or abuses alcohol. Investigation includes questioning the applicant and inquiring at drug treatment centers. The Quality Housing Act punishes people with drug-related crimes and people who are possibly abusing alcohol and drugs, so the potential impact of this provision is enormous.

Without actually reducing immigration or crime, policies subject immigrants and people of color to struggle, suffering, and indignity, entrenching existing racial, national, and gender hierarchies. The policy justification for “drug-felon” exclusions from higher education loans is that drug users cannot recover and will not change. The policy consequence is that these barriers to education make opportunities for legal employment even scarcer. Similarly, the policy justification for health care exclusions is that immigrant women and criminal women are sexually loose and maternally negligent. The policy consequence of inadequate health care is inadequate access to information and services concerning birth control, prenatal care, and child health care. In both cases, the policy’s consequences reinforce the policy’s justification.

As this section shows, immigrants and criminals face exclusions and restrictions from basic welfare services such as income support, health care, public housing, and education. It is tempting to cast these shifts in governance in sweeping terms of state reconstruction: from doctrines of assimilation to doctrines of exclusion, from doctrines of rehabilitation to doctrines of retribution, from social provision to social lockdown, from welfare state to police state. Thinking specifically about women of color, however, these shifts are not nearly so stark. Historically, notions of assimilation and rehabilitation have set invisible benchmarks of a white middle-class norm; eligibility requirements for social services have had explicit exclusions in national and racial terms and repressive stipulations for women in terms specific to sexuality, reproduction, and motherhood.³⁵ The remaking of big government is not a shift from beneficent welfare state to nefarious police state; then and now, women of color

were subject to exclusions and regulations, with minimal influence in formulating the policies affecting them so profoundly. From our perspective, the police state is far worse than the welfare state, however lacking. The welfare state needs to be made more robust, more inclusive, and more of an actual safety net, not replaced with the disciplinary state.

Conclusion

This chapter describes the remaking of big government for immigration and crime control, accounting for three trends in the punitive escalation and convergence of immigration and crime control. First, there has been a shift in resource allocation between government agencies; the Immigration and Naturalization Service, the Bureau of Prisons, and the Drug Enforcement Agency have absorbed more resources relative to other agencies, particularly agencies of social welfare. Second, the disciplinary state has become more interlocking, with immigration and crime control sharing personnel, tactics, and policy agendas. Third, punitive immigration and crime agendas colonize other agencies, so even as the welfare state loses resources, it takes on additional burdens of identifying, monitoring, and excluding those of particular immigrant and criminal statuses.

The surveillance of suspect categories—“immigrants,” “criminals,” and now “terrorists”—has deep antecedents in the policies of the last thirty years. As this book is going to press, U.S. suspicion, surveillance, and lockdown are spreading in deeply frightening ways. Policy and conventional wisdom identify more people as threats and potential threats, expanding the categories “immigrant,” “criminal,” and “terrorist” and blending these categories into each other. With post-September 11 intensified security checks at the Mexico–U.S. border, INS agents are looking for “terrorists,” but they are finding drugs and incarcerating more drug carriers. One INS agent, cross-deputized as a DEA agent, described increased drug seizures as “dividends of the war on terrorism.” With the forced registration of men from twenty-one countries, national origin alone makes people subject to possible detention, deportation, and brutality, not to mention the humiliation, fear, and inconvenience of registering with an incompetent and backlogged bureaucracy. When asked about interning Arab Americans, the chair of the new Subcommittee on Crime, Terrorism, and Homeland Security responded that Japanese American internment was a legitimate way to contain those who want to harm the United States.³⁶

In the new state, both immigration and crime policy impose and patrol borders. National boundaries and prisons define discrete physical spaces, maintain illusions of safety, and wall out and bar in groups of people, usually along lines of identity that are themselves borders with quasi-physical and illusion-maintaining dimensions. The modal tactics of modern immigration and crime

control—deportation and incarceration—entail physical removal from the body politic. Deportation and incarceration are tactics that aim to solve the nation's problems by expelling unwanted elements from the body politic, as if evil and violence come from some outside—outside respectable America, from Mexico or prisons or urban ghettos.

What does it mean to have so many convergences between immigration and crime policy? Immigrants' rights activists have commented that immigrants are treated like criminals, and prison abolition activists have commented that the incarcerated are treated like noncitizens. They are both right, but ultimately we should be calling into question whether immigrants should be treated like immigrants and criminals should be treated like criminals. Instead, a broader coalition should be built around the shared concerns of fighting the growing disciplinary state.

References

1. The Homeland Security Act of 2002 abolished the INS, replacing it with the Bureau of Citizenship and Immigration Services and the Bureau of Immigration and Customs Enforcement. The transition to this new immigration administration structure is still under way, so we continue to call it the INS.
2. For an overview of this transformation of the Democratic Party, particularly the relationship between shrinking big government and race, see Paul Frymer, *Uneasy Alliances: Race and Party Competition in America* (Princeton, NJ: Princeton University Press, 1999); Philip A. Klinkner and Rogers M. Smith, *The Unsteady March: The Rise and Decline of Racial Equality in America* (Chicago: University of Chicago Press, 1999); Adolph Reed Jr. ed., *Without Justice for All* (Boulder, CO: Westview Press, 1999).
3. The budget data used here were originally collected by Frank R. Baumgartner and Bryan D. Jones, for the *Policy Agendas Project*, with the support of National Science Foundation grant number SBR 9320922 and were distributed through the Center for American Politics and Public Policy at the University of Washington and/or the Department of Political Science at Penn State University. Neither NSF nor the original collectors of the data bear any responsibility for the analysis reported here. We look only at discretionary spending; the only programs that have grown as consistently as immigration and control programs are Medicare and Social Security, programs that are universal entitlements.
4. Professor Donald F. Kettle testimony before the U.S. House Committee on Rules. *Has Government Been 'Reinvented'?* 106th Cong., 2d Sess., May 4, 2000; author analysis of data from U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2004* (Washington, DC: Government Printing Office, 2003), table 17.3. We combined Justice Department employees with those from the newly created Department of Homeland Security. Service provision agencies include the Education Department, Department of Health and Human Services, and the Social Security Administration.
5. Data from Transactional Records Access Clearinghouse (TRAC).
6. U.S. Department of Justice, *FY 2002 Budget Summary* (Washington, DC: U.S. Department of Justice, 2001). Available: <http://www.usdoj.gov/jmd/2002summary/>. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required that "additional border patrol agents shall be deployed among Immigration and Naturalization Service sectors along the border in proportion to the level of illegal crossing of the borders of the United States," from U.S. Public Law 104-208, Sec. 101, 104th Cong., 2d Sess. September 30, 1996.
7. Milton Morris, *Immigration—The Beleaguered Bureaucracy*, (Washington DC: The Brookings Institution, 1985); Sharon A. Barrios, "Is the Immigration and Naturalization Service Unreformable? Past Experience and Future Prospects," *Administration and Society* 34 (2002): 370–388. For an overview of the INS's long-standing administrative problems,

see U.S. General Accounting Office, *Immigration and Naturalization Service: Overview of Recurring Management Challenges* (Washington, DC: Government Printing Office, October 2001).

8. Immigration data are from Transactional Records Access Clearinghouse (TRAC), *National Profile and Enforcement Trends Over Time* [database online] (Syracuse, NY: Syracuse University, 2002). Available: <http://trac.syr.edu/tracins/findings/national/index.html>. For more detailed information on INS budget increases, see U.S. Department of Justice, *Budget Trend Data from 1975 Through the President's 2003 Request to the Congress* (Washington, DC: Justice Management Division, 2002). Available: http://www.usdoj.gov/jmd/budgetsummary/btd/1975_2002/2002/pdf/BudgetTrend.pdf.
Incarceration data are from Bureau of Justice Assistance, *Prisoners in 2002* (Washington, DC: U.S. Department of Justice, 2003); Roy Walmsley, *World Prison Population List* (London: Research, Development and Statistics Director, 2003); U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics 2001* (Washington, DC: Bureau of Justice Statistics, 2002), p. 494.
9. Kevin R. Johnson, "The Case Against Race Profiling in Immigration Enforcement," *Washington University Law Quarterly* 78 (2000): 676–736. See also U.S. Office of Immigration Statistics, Department of Homeland Security, *2002 Yearbook of Immigration Statistics* (Washington, DC: Department of Justice, Available: <http://uscis.gov/graphics/shared/aboutus/statistics/ENF2002list.htm>). INS data show that whereas 92 percent of aliens removed in 2000 were from Mexico, Mexican undocumented immigrants represented 67 percent of the total undocumented immigrant population. However, estimates of the size and composition of the undocumented immigrant population are varying and subject to great uncertainty.
10. U.S. General Accounting Office, *Southwest Border Strategy: Resource and Impact Issues Remain after Seven Years. Report to the Congress* (Washington, DC: Government Printing Office, August 2001); Belinda I. Reyes, Hans P. Johnson, and Richard Van Swearingen, *Holding the Line?: The Effect of The Recent Border Build-Up on Unauthorized Immigration* (San Francisco: Public Policy Institute of California, 2002); Mary Jordan, "Smuggling People Is Now Big Business in Mexico," *Washington Post*, May 17, 2001.
11. Alberto Davila, Jose A. Pagan, and Montserrat Viladrich Grau, "Immigration Reform, the INS, and the Distribution of Interior and Border Enforcement Resources," *Public Choice* 99 (1999): 327–345; Thomas J. Espenshade, "Does the Threat of Border Apprehension Deter Undocumented United-States Immigration?" *Population and Development Review* 20 (1994): 871–892; U.S. Government Accounting Office, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*. Report to the Congress (Washington, DC: Government Printing Office, 1999).
12. Data on allocation of border patrol from the United States Office of Public Management, cited by TRAC Available: <http://trac.syr.edu/tracins/findings/aboutINS/newFindings.html>.
13. Bureau of Justice Assistance, *Prisoners in 2002*, table 13; Loic Wacquant, "Deadly Symbiosis," *Boston Review* 27, no. 2 (2002): 23–31; Justice Policy Institute, *Cellblocks or Classrooms? The Funding of Higher Education and Corrections and Its Impact on African American Men* (Washington, DC: Justice Policy Institute, 2000).
14. Bureau of Justice Assistance, *Prisoners in 2002*, tables 13 and 14; U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics* (Washington, DC: Bureau of Justice Statistics, 2001), p. 494; Amnesty International, "Not Part of My Sentence: Violations of the Human Rights of Women in Custody" (New York: Amnesty International, 1999); Lawrence A. Greenfeld and Tracy L. Snell, *Women Offenders* (Washington, DC: Bureau of Justice Statistics, 1999); Jodi M. Brown and Patrick A. Langan, *State Court Sentencing of Convicted Felons 1994* (Washington, DC: Bureau of Justice Statistics, 1998); National Council of La Raza, *The Mainstreaming of Hate: A Report of Latinos and Harassment, Hate Violence, and Law Enforcement Abuse in the 90's* (Washington, DC: National Council of La Raza, 1999). Gender and racial disparities arise not simply from the discriminatory behavior of law enforcement agents, prosecutors, and judges; they are inscribed into the structure of "gender- and race-neutral" sentencing guidelines. Women often play minor roles in drug dealing and therefore lack information to plea bargain down to more lenient sentences. In addition, sentencing neither accounts for possible coercion from an abusive male partner who deals nor does it consider as mitigating circumstances the role of single mothers in caring for children. See Myrna Raeder, "Gender and Sentencing: Single Mom, Battered Women, and Other Sex-

- Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines,” *Pepperdine Law Review* 20, no. 3 (1993).
15. Christopher J. Mumola, *Incarcerated Parents and Their Children* (Washington, DC: Bureau of Justice Statistics, 2000).
 16. Federal News Service, *PBS Debate Night with the Congressional Leadership*, Moderated by Jim Lehrer, Williamsburg, VA, September 29, 1996.
 17. Personal Responsibility Act, H.R. 4, sec. 100, cited in Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Pantheon Books 1997), 215.
 18. Robin Toner, “The Nation: Now, Government Is the Solution, Not the Problem,” *New York Times*, September 30, 2001.
 19. U.S. Public Law 101-649. 101st Cong., 2nd Sess., November 29, 1990; Office of National Drug Control Policy, *Summary: FY 2002 National Drug Control Budget*, September 20, 2001. Available: http://www.whitehousedrugpolicy.gov/publications/policy/budget02/partiv_ins.html; INS, *Interior Enforcement*, July 26, 2001. Available: <http://www.ins.usdoj.gov/graphics/lawenfor/interiorenf/index.htm>
 20. John Scalia, *Noncitizens in the Federal Criminal Justice System, 1984–94* (Washington, DC: Bureau of Justice Statistics, 1996); Jan Chaiken, *Compendium of Federal Justice Statistics, 1999* (Washington, DC: Bureau of Justice Statistics, 2001); John Scalia and Marika F.X. Litras, *Immigration Offenders in the Federal Criminal Justice System, 2000* (Washington, DC: Bureau of Justice Statistics, 2002).
 21. William M. McDonald, “Crime and Illegal Immigration: Emerging Local, State, and Federal Partnerships,” *National Institute of Justice Journal* (1997): 232.
 22. *Congressional Record*, 103rd Cong., 2nd Sess., 1994, 140: S 12496.
 23. Kristen E. Butcher and Anne Morrison Piehl, “Cross-City Evidence on the Relationship Between Immigration and Crime,” *Journal of Policy Analysis and Management* 17 (1998): 457–493.
 24. Alison Mitchell and Todd S. Purdum, “The Lawmakers: Ashcroft, Seeking Broad Powers, Says Congress Must Act Quickly,” *New York Times* October 1, 2001.
 25. An exception was made for legal immigrants who have worked in the United States for at least ten years. The Farm Security and Rural Investment Act of 2002 softened food stamp restrictions, restoring benefits to children, the disabled, and immigrants who have lived in the United States for more than five years.
 26. U.S. Congress, Congressman David Dreier, 103rd Congress, 1st session. *Congressional Record* (1 July 1993), vol. 139, H 4412.
 27. Marc L. Berk, Claudia L. Schur, Leo R. Chavez, and Martin Frankel, “Health Care Use Among Undocumented Latino Immigrants,” *Health Affairs* 19 (2000): 51–64; Michael Fix and Ron Haskins, *Welfare Benefits for Non-Citizens* (Washington, DC: The Brookings Institution, February 2002); Rachel L. Swarns, “State Officials Add to U.S. Criticism of New York City’s Food Stamp Program,” *New York Times* January 21, 1999.
 28. U.S. Department of Agriculture, *The Decline in Food Stamp Participation* (Washington, DC: Government Printing Office, July 2001). The same laws that have denied federal assistance to immigrants have also made employment discrimination more likely. The General Accounting Office found a “serious pattern of discrimination,” in which surveyed employers began discriminating specifically due to Immigration Reform and Control Act. Of the 4.6 million employers covered by the survey, 10 percent admitted discriminating against people on the basis of national origin, and another 9 percent discriminated against noncitizens. The survey estimates that 227,000 employers instituted a practice of not hiring those with a foreign accent or appearance. See U.S. General Accounting Office, *Immigration Reform: Employer Sanctions and the Question of Discrimination* (Washington, DC: Government Printing Office, March 1990).
 29. *Congressional Record*, 104th Cong., 2nd Sess., 142, daily ed. July 23, 1996: S8498. The provision allows states to opt out of the drug felony provision. Only eight states opted out of the provision. Ten states modified the provision, and thirty-two states adopted the provision wholesale. The eight states that opted out completely are Connecticut, Hawaii, New Hampshire, New York, Oklahoma, Oregon, Utah, and Vermont. Of the ten states that modified the provision, five excluded those convicted of drug possession but not drug sales (Arkansas, Florida, Illinois, North Carolina, and Rhode Island). The other five states that modified allowed eligibility for those who are in or have completed drug treatment

- (Colorado, Illinois, Iowa, North Carolina, and Washington). In Illinois and North Carolina, recipients have to meet both the drug possession and drug treatment criteria to retain eligibility. See Rukaiyah Adams, David Onek, and Alissa Riker, *Double Jeopardy: An Assessment of the Felony Drug Provision of the Welfare Reform Act* (San Francisco: The Justice Policy Institute, 1998).
30. See Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995); Jerome G. Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (Cambridge: Cambridge University Press, 1996).
 31. Mary G. Powers, William Seltzer, and Jing Shi, "Gender Differences in the Occupational Status of Undocumented Immigrants in the United States: Experience Before and After Legalization," *International Migration Review* 32 (1998): 1015–1046; Mumola 2000. State policies sometimes compound women's disadvantage by discriminating against parents. For example, California allows childless drug felons to receive state general assistance, whereas drug felons who are parents cannot. See Adams, Onek, and Riker, *Double Jeopardy*, 1998.
 32. *Congressional Record*, 103rd Cong., 1st Sess., 139: 4412.
 33. A person is ineligible if convicted under federal or state law for possession or sale of a controlled substance. The drug felon amendment provides a "rehabilitation" exemption stating that a student may resume eligibility upon completion of a drug rehabilitation program and successfully clearing two unannounced drug tests.
 34. Daniel Golden, "Tougher Bush Stance on Obscure Law Hits Students Seeking Financial Aid," *Wall Street Journal*, April 25, 2001.
 35. Historically, maternalist welfare policy is born of privileged women's advocacy during the Progressive Era, when women reformers presented single motherhood as a social problem in need of government intervention. Viewing urban immigrants as a threat, these reformers used welfare as a vehicle for both charity and disciplinary supervision. Using convoluted, "gender- and race-neutral" categorizations, nonwhites have been excluded from SSI benefits through exclusion of domestics and agricultural workers; welfare benefits enforced "man-in-the house" rules race-selectively; and World War II veteran housing benefits were effectively for whites only. See Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare 1890–1935* (Cambridge, MA: Harvard University Press, 1994); Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998).
 36. Michael Janofsky, "Border Agents Looking for Terrorists Are Finding Drugs" *New York Times*, March 6, 2002; Associated Press, "Coble Says Internment of Japanese-Americans Was Appropriate," February 5, 2003.