

ward, scholars have demonstrated convincingly that Sutherland wholly misrepresented John Marshall's speech in 1800 that referred to the president as "sole organ of the nation in its external relations." All that Marshall meant was that, after the two elected branches *jointly* formulate foreign policy, it is the president's duty to *implement* it.

Sutherland described the president's powers in foreign affairs as "plenary and exclusive," a claim that is rendered false simply by reading the text of Articles I and II of the Constitution. Nevertheless, the executive branch and the Justice Department continue to cite *Curtiss-Wright* to defend broad and unchecked doctrines of Presidential power. In other sections of the book, Terry recognizes that the President's power in external affairs is not plenary and exclusive. The powers granted to the president, "as broad as they are, are nevertheless circumscribed by equally fulsome and intersecting Congressional authorities." The principal ones identified by Terry "are the withholding or withdrawal of legislative authority, and the limitation on funding for military operations as occurred in Vietnam and Somalia." That remains an important constitutional check for those who counsel that the president possesses unchecked authority to order military initiatives. ☉

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CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS

BY MARIE GOTTSCHALK

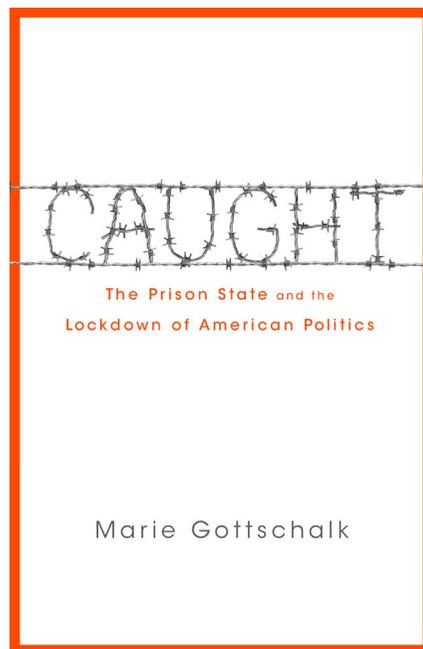
Princeton University Press, Princeton, NJ, 2015.
474 pages, \$35.00.

Reviewed by Elizabeth Kelley

Caught: The Prison State and the Lockdown of American Politics is an important scholarly contribution to the discussion of

mass incarceration and will likely be a controversial one. Written by Marie Gottschalk, a political science professor at the University of Pennsylvania, *Caught* is by no means an easy read, not because of any deficiencies on Gottschalk's part—indeed, she is a clear and colorful writer—but because *Caught* is laden with facts. Accompanying the 284 pages of text are 125 pages of endnotes and a 27-page bibliography. Any of *Caught's* 12 chapters would be a worthy subject for an extended essay or a conference.

Caught's three most important themes are that (1) "small-bore" solutions will not solve the problem of mass incarceration, (2) racism and the "war on drugs" contribute to mass incarceration but are not its sole causes, and (3) the culture of the "carceral state" (a term coined by philosopher Michel Foucault and used throughout the book) is deeply embedded in our politics, and it will



take a wholesale revision of our political system to fix it.

The figures are indisputable. In the United States, 2.2 million people are in jail or prison. Eight million people are under some type of court supervision such as probation or parole, and 7.5 million people are felons or ex-felons. Beyond that, two million children have a parent in jail or prison. Neighborhoods and communities have been decimated by the incarceration of their residents. America's rate of incarceration surpasses that of any other country, and we have become the "world's warden," in Gottschalk's words. Jails and prisons have

become so common that Yelp! reviews many of these facilities. Not only do we incarcerate more people, but we incarcerate them for longer periods of time. And, when prisoners are released, they face a host of collateral consequences that prevent them from reintegrating into society and set them up to fail. Ex-offenders in European countries do not confront such obstacles.

In recent years, in large part because of the Great Recession and shrinking budgets, the federal and state governments have implemented various initiatives to reduce the jail and prison populations. Gottschalk views such initiatives as "small-bore" and as not having a significant long-term impact on reducing the number of people ensnared by the criminal justice system. Rather than releasing a few prisoners early, entire institutions must be shut down or not built in the first place. For the government to focus on what Gottschalk calls "the 3 R's"—"reentry, justice reinvestment, and recidivism"—will not have a lasting impact in large part because the 3 R's focus on the three "nons"—"nonviolent, nonserious, and nonsexual offenders."

In her first chapter, Gottschalk acknowledges the importance of Michelle Alexander's book, *The New Jim Crow* (reviewed in *The Federal Lawyer*, May 2011), and she emphasizes that "[r]ace matters, and it matters profoundly in any discussion of how to dismantle the carceral state." However, she writes:

Building on Alexander's work, I identify some other underlying political, economic, and social factors that spark and sustain such punitive policies not only for certain blacks, but also for certain whites, Latinos, immigrants, and members of other demographic groups. Bluntly stated, the United States would still have an incarceration crisis even if African Americans were sent to prison and jail at "only" the rate at which whites in the United States are currently locked up. ...

Moreover, Gottschalk works to shatter the myth that the "war on drugs" is solely responsible for mass incarceration. She notes that the majority of inmates are sentenced for violent offenses, and that sentences for sex offenders and their subsequent civil commitment have increased the number of prisoners, as have three-strikes initiatives.

As the incarceration rate has quadrupled in recent years, the number of convicts sentenced to life without parole has increased a hundredfold; Gottschalk notes that the anti-death penalty movement has unintentionally contributed to this. The number of inmates held for immigration-related offenses has also skyrocketed.

The rise of the carceral state is the product of politics and money. Many people have benefited from it, which will make dismantling it difficult and will require a huge economic investment, as well as a change of mind on the part of the American public. Gottschalk analogizes the problem to the closing, 50 years ago, of state institutions for the mentally disabled. No politician wants to appear soft on crime. Prosecutors have immense power in making charging decisions. Prisons are touted as tools for

economic development. Local jails benefit from renting out bed space. Private prisons have become a huge industry. In the meantime, the public has turned a blind eye, not just to the sheer number of Americans who are ensnared by the criminal justice system but to the often barbaric treatment of people in our penal institutions—what Gottschalk calls the “devolving standards of decency.”

Caught offers few specific solutions. In fact, Gottschalk criticizes assorted “micro-interventions” as having little impact. But, until such time as we as a country change our mindset, gain the discipline to attack the underlying causes of crime, and choose leaders with long-term, selfless vision, we should continue to pursue whatever steps possible to reduce the size of the incarcerated population. Tell any prisoner

that his or her early release was a “small-bore” solution. That person may not care whether being released made a dent in the overall prison population but will just be happy to be home. ☺

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