

(prison reformers) could not make their connections stick. Dominant players were much more effective in realizing their own agenda and setting the agenda for other players, shaping what was even “thinkable” in the penal field (chap. 1).

By linking the penal field to politics, *The Toughest Beat* joins an emerging literature on the politics of punishing, a set of studies that emphasizes the role of actors, alliances, and institutions in bringing about penal policies—policies rooted in particular political contexts rather than broad social trends (e.g., Marie Gottschalk, *The Prison and the Gallows* [Cambridge University Press, 2006]). Page advances this literature by developing a mechanism to trace the interaction effects of key relationships on penal outcomes. It will certainly influence the direction of future research as scholars try to apply this concept to other times and spaces.

That said, more could be done to develop the links between the penal field and the broader cultural context. Although Page defines the penal field as semiautonomous, readers could get the impression it was the “specter” of the CCPOA alone that produced the prison crisis. It would have been a useful exercise to present a counterfactual—What would have happened if the CCPOA did not participate? Would California penal policy have reached the same outcome? What other social forces, racial politics, or cultural factors could have produced the same outcome? How can we disentangle the specific impact of the CCPOA from other populist pressures moving in the same direction? Similarly, is the penal field necessarily a site of fierce competition, of dominance and subordination? Or is this indicative of California’s weak state? How would the cultural context of Vermont or Alabama shape the penal field? In the European context, a place like Sweden—with its strong cultural expectations of consensus, corporatist governance, and proportional representation—fierce competition is organized out of politics, depolitizing the penal field. These critical concerns are raised not to undermine the central claims of the book, but rather as evidence of the book’s ability to stimulate further debate and investigation.

The Illusion of Free Markets: Punishment and the Myth of Natural Order.
By Bernard E. Harcourt. Cambridge, Mass.: Harvard University Press,
2011. Pp. x+328. \$29.95.

Richard Rosenfeld
University of Missouri, St. Louis

How is it that the United States has the highest incarceration rate in the world? The answer, according to Bernard Harcourt, lies in the triumph of the illusion of free markets. Harcourt’s argument in *The Illusion of Free Markets*, a provocative intellectual history of the doctrine of laissez-faire and the ascendance of the carceral state, contains two empirical

propositions. First, that free markets are an illusion: they have not existed anywhere at any time. Real markets are constituted by “layer upon layer of ‘discipline’” (p. 190). Second, that historically, the doctrine of *laissez-faire* and the rise of the carceral state have gone hand in hand. Harcourt makes a convincing, if not wholly original, case for the first proposition. The second proposition stands on shakier logical and factual ground.

All markets are suffused with regulation, says Harcourt. Indeed, whatever freedom exists in market relations is made possible only by systematic and effective regulation of the means and ends of economic exchange. Regulation may arise internally or it may be imposed externally, but even “self-regulating” markets are undergirded by the enforcement powers of the state. If *laissez-faire* does not describe the actual operation of markets, it does legitimate the unequal outcomes of capitalist economic exchange by masking them as the natural and inevitable products of the free interplay of self-interested human action. The myth of *laissez-faire* thereby shields the distributional outcomes of market forces from normative and political critique.

So far, so good. But how do we get from the illusion of free markets to the reality of mass incarceration? The link is forged, according to Harcourt, by another myth, the myth of natural order. Market relations are orderly, today we would say “efficient,” because they map on to and express human nature itself. This is the genius of Adam Smith’s “invisible hand,” at least according to an influential reading of Smith’s work. The unimpeded exchanges of self-interested economic actors produce efficient, if not equitable, market outcomes. But market efficiency born of natural order is maximized only when external interference is kept to a minimum. The state, specifically the criminal law, should stay out of the market. Nonetheless, positive law has an important protective role to play by punishing those thieves and miscreants who violate the natural order by “bypassing” the market, in Richard Posner’s terms (“An Economic Theory of the Criminal Law,” *Columbia Law Review* 85 [1985]: 1193–1231). In this way, Harcourt argues, the myth of natural order both condemns state interference in market relations and mandates punishment for market bypassers.

Harcourt insists that his argument linking the illusion of free markets to the carceral state is not causal (p. 43). Rather, *laissez-faire* “facilitates” or “made possible” the expansion of the carceral state (pp. 41, 202). If this is not causal language, then what is it? The connection between the illusion of free markets and the carceral state becomes even murkier at the end of the book, where Harcourt addresses challenges to his argument. It turns out that *laissez-faire* is neither a necessary nor sufficient condition for punishment, much less mass incarceration. It is not necessary because nonmarket societies often are heavily punitive. It is not sufficient because other market-oriented societies do not practice mass incarceration. At the least, however, the illusion of free markets does not prevent the devel-

opment of punitive state policy directed at those who would breach market discipline.

Harcourt's argument better explains the infrequent or ineffectual application of criminal law to market relations than the illusive connection between free-market ideology and the punishment of market bypassers in the form of street criminals. The doctrine of *laissez-faire* does offer ideological cover for state policy that is soft on white-collar crime. Still, the basic argument is not without merit. Harcourt points out that the two periods in American history in which penal policy and practice underwent significant transformation—the birth of the modern prison during the Jacksonian era and the rise of mass incarceration since the 1970s—were also epochs of free-market triumphalism. President Andrew Jackson fought governmentally administered financial markets by opposing the establishment of a central bank, and the Reagan revolution countered the postwar Keynesian economic orthodoxy with free-market rhetoric and deregulation. Further, countries with large and robust welfare states, with few exceptions, have comparatively low imprisonment rates. Curiously, Harcourt does not pursue the latter point but it should be high on the research agendas of scholars interested in evaluating the connection between free markets and penal policy.

Harcourt's argument raises a final question: Could it have been otherwise? That is, are there theoretical grounds for imagining a different, more seamless, relationship between market administration and penal policy? Harcourt says there are and traces the intellectual road not taken to one of the founders of modern economics and criminology, Cesare Beccaria. According to Harcourt, in Beccaria's recently translated early economic writings, the Italian author rejected the illusion of free markets, arguing that market relations must be administered by the state, even to the point of setting prices, to guarantee both efficient and just outcomes—the greatest good for the greatest number. For Beccaria, the state's role in market relations does not differ qualitatively from its general law-enforcement functions. In fact, the first place to look for market “bypassers” is in the market itself. The enlightened state carefully calibrates the criminal law—sets the price for crime—to minimize both crime and the costs of law enforcement. In Beccaria, Harcourt finds a powerful rationale for simultaneously abandoning the myth of free markets and reducing penal repression.

A brief review cannot do justice to this far-ranging and stimulating intellectual history of free-market ideology and penal policy. If Harcourt overreaches in linking mass incarceration to *laissez-faire*, he has established a fertile research agenda for probing the historical relationship between state policies toward market relations and the theory and practice of criminal justice. Whether he has extended his argument beyond the breaking point remains to be seen.