

Primary Sources

Andrea Armstrong on Incarcerated People

Eyal Press: From [Public Books](#) and [Type Media](#), this is Primary Sources, the show where writers and intellectuals talk about some of the greatest influences on their work. I'm Eyal Press.

My guest today is Andrea Armstrong, a law professor at Loyola University and one of the leading experts on the conditions of incarceration in the United States. Last August, [I profiled Andrea in *The New Yorker* magazine](#). The article focused on [Incarceration Transparency](#), an online database she has created to document every death that has taken place in the jails and prisons of Louisiana since 2015.

When I invited Andrea to come on the show to talk about an influence on her work, she could have chosen to discuss a fellow scholar. She is a graduate of Yale Law School, and she credits Derrick Bell, Reva Siegel and Kathleen Cleaver—the only Black professor she had at Yale—with shaping her thinking about America's penal system. But Andrea decided to talk about the debt she owes to another, less conventional influence: the human beings caged inside of our jails and prisons. She says nothing has influenced her thinking more than talking to incarcerated people. In fact, incarcerated people have become such an important influence on her work that she regularly pays visits to jails and prisons across the country to survey the conditions and hear from the folks inside.

In our conversation, we talked about how the insights of incarcerated people have shaped Andrea's worldview and professional agenda, and how listening to them has changed her understanding of the nature of punishment.

Also, just so you know: this conversation includes references to sensitive topics, including sexual violence and sexual harassment.

Eyal Press: Andrea, thank you so much for doing this. As you know, this is a podcast about influences. You have said that the largest influence on your work has been listening to people who are incarcerated. When did listening to people who are incarcerated start mattering to you?

Andrea Armstrong: It's hard to pinpoint a moment when it first started mattering. I mean, I think in general, I had been doing human rights work beforehand, and part of that work is listening to testimony and experiences. And so I think it's always been an implicit part of my work but I think it became more explicit when I first joined the academy as a law professor. I was thinking about: What are the things that I'm going to write about? But also: What are those things that will make a difference? And it's hard as an academic to know that your work could have some sort of impact regardless of what it is. And my first law review article that I wrote came out of a conversation that I had with somebody who was incarcerated at Angola at the time, and I couldn't answer his question. And so my first law review article was really a response to the question he asked me.

Eyal Press: And what was that question? I'm so curious.

Andrea Armstrong: So this was Corey Williams, and he, at the time, had just come off death row at Angola, and I wasn't even representing him. I was visiting him as part of an externship I was doing during law school, and he had said he was working in the field, and he was telling me about what that felt like every day—what time he got up and what type of work he was doing—and he just looked at me and said, “Why they get to make me a slave again?” And that just really struck home, and I didn't have an answer for him.

Eyal Press: And Andrea, when you say “the field,” you mean he was working in the field in Angola?

Andrea Armstrong: Yes. So, Angola is actually about 18,000 acres, and it is a former plantation site. One of the jobs that you can be forced to do there, when you're serving your sentence, is to essentially work the row crops, that are like plantation crops, that are still a part of Angola. It's actually one of the largest job assignments that you can get, and it also pays 2 cents an hour.

He's telling me about this, because remember he had been on death row and death row at that time with solitary confinement and they weren't really allowed out of their cells at all. And so he's freed from death row. He's now serving a life sentence, and this was his first encounter with prison work assignments. He's now free, but then also put into this position where he felt like he was a slave.

The purity of the question, it just seemed like such a basic question that I should have had a ready answer to, but I didn't. The more he talked about the conditions and what it was like, I started seeing analogs to the history of Angola. That started me off down the rabbit trail of—What is the history of Angola? Was it really a plantation? Why do we continue to plant cotton on this plantation and force people—primarily Black men—to pick it? And it just brought home being in that space. So I had driven into Angola to see him and the way that you get to that particular camp, you go down this long road and there's these stereotypical trees that are overarching the road as you drive down the straight path. And what you see are men on horseback, with rifles in full uniform, over rows of bent brown backs, and the combination of being in that space and then being asked what is a very basic question that I also did not have an answer to, really struck home for me.

Eyal Press: It's such a vivid image you've just given us of that visit, and it's a visit that, even many people and law professors who write about and study mass incarceration, tend not to make that often. I wonder if that is something that you think about as you do this work and why, from that point on, you've been committed to going to these places, to seeing directly those kinds of scenes.

Andrea Armstrong: These are spaces that are deliberately designed to both keep the general public out, but also keep certain people in, and to eliminate contact between the two groups. So, part of me just wants to get into any space that has been prohibited for me. I just want to see

what's in there, but I think being in those spaces helps you understand and ask better questions and maybe even different questions.

I'm really struck in certain cases by how loud they are all the time. There's constantly gates that are clanging and there's radios that are buzzing, and there's bells and you can hear the wheels of the different meal carts squeaking down the hallway, and you hear water running, and doors slamming and voices and checkers, and you hear all these things constantly. And that might raise a question about noise pollution, which isn't necessarily a constitutional claim or something that's, even to my knowledge, been litigated extensively, but it would be something that has a daily impact and a cumulative impact on people who were inside, and you would never know that unless you were there. I think the other part though, is, the people who were in those spaces all the time, they can tell you, but you have to know which questions to ask. Being in those spaces is not a substitute for talking to people who were incarcerated and better understanding their day-to-day experience, but I think it helps.

Eyal Press: What you're saying reminds me of something that the attorney Bryan Stevenson has talked about. Specifically, he's talked about the importance of getting proximate, in his words, to people who are experiencing injustice. He said at one point, "We cannot create justice without getting close to places where injustices prevail." I wonder if you relate to that idea, if that's part of what impels you to visit places like Angola and to listen to incarcerated people?

Andrea Armstrong: Absolutely. I want to do my work well. I want my work to have an impact and an influence, hopefully. And it's hard to do that at a distance, because the questions that might be most important to you at a distance are not necessarily the questions that are going to have the most impact as you figure out what those answers are. And so, proximity to me feels very real, but that also does stand in tension. In some cases, it can feel—and this is going to sound really harsh—it can feel like you're visiting people who are caged, and so there's this tourist, voyeuristic element of it that constantly has to be questioned and combatted when you're visiting these facilities as well. It is very easy to just walk the hallways and to view—keep your hands to yourself and just walk through—but that's not the type of experience I think that's really going to teach you anything. It's in conversation that we learn things.

Eyal Press: And how do you have those conversations, Andrea? What you're describing sounds—in some ways—almost insurmountable, at least to someone who ventures in for 45 minutes, gets the tour, walks out of the prison, hears something said, maybe in front of a warden or another security official, but doesn't get the kind of question you mentioned Corey sharing with you. How do you surmount those barriers?

Andrea Armstrong: I think you just connect to people. You actually make eye contact. You recognize their humanity. You ask them how they're doing. There are people around you everywhere, and you acknowledge them as human beings, and if they choose to talk to you, then all the better.

I bring my students into the New Orleans jail. We're learning about constitutional criminal procedure and a lot of the rules that we're learning, those cases take place in jails. An informant

case, for example, and whether that violates your sixth amendment right to counsel. I want them to see the spaces in which some of these cases occur for them to understand how it's almost impossible to have a private conversation in some facilities and how things can be overheard and then used against you in your criminal case. When I take my students there, we go and we visit, and I talk with my students about acknowledging the people who are around them. Not just talking to the guards, but acknowledging that there are human beings everywhere in these spaces. And then we usually end up in a module, which the sheriff usually preselects so that there's not as much of a choice element there by us, but we end up in a module, and I'll always say out loud, "Listen, I've brought my students, these are baby lawyers. We would love to speak with some of you if you were willing, if there's something that you feel like you can teach these young law students, we'd love to have a conversation with you, but if not, we understand that we are entering your space and your home for the moment. And if you don't want to talk with us, that's absolutely fine, too." And people make those choices for themselves. Some will wander off back to their cells. Others will come in and sit with us, and they always have really important things to say. It's usually the most meaningful moment for my students on these visits.

Eyal Press: Do you think there are things that incarcerated people intuitively grasp about the criminal justice system and, for that matter, the law, that maybe some of your classmates at Yale, where you attended law school, or your fellow law professors, perhaps don't grasp?

Andrea Armstrong: Absolutely. Absolutely. I mean, it's all about perspective. We can all be in the same building, but if we're on different floors or if some of us have a view to the outside that others don't, we are going to intuitively grasp things about the architecture of that system that we wouldn't otherwise. It's essential, especially when we're thinking about civil rights—the rights of every human being—in combination with the criminal system, which has very clear objectives and purposes. If we really want to do justice, then we need to understand the variety of perspectives and, most importantly, the people who have direct experience.

Eyal Press: One incarcerated person I know has influenced you deeply is John Thompson. Can you tell me his story?

Andrea Armstrong: It's a very long story. I think I'll just kind of summarize the little bits. Basically, he was prosecuted for first degree murder, and he was sentenced to death row. He had seven different execution dates set for him, and the entire time he talked about how he was innocent. It turns out that the prosecution, the New Orleans District Attorney's office, had withheld significant pieces of evidence that would have exonerated him and allowed him to participate more fully in his defense. He eventually was retried with all of the evidence available to both sides. The jury deliberated for an incredibly short amount of time, and after his release, he sued for civil rights violations. He won in the district court with a jury, and the jury awarded him \$14 million dollars—\$1 million for each year that he was wrongfully held on death row. He was in for a total of 18 years, 14 of those years were on death row. I think in one of the more famous Supreme Court cases, the Supreme Court actually reversed that jury verdict, but he is a good friend and after all of this, he stayed in New Orleans and continued to fight for justice and the rights of people who are incarcerated for the rest of his life.

Eyal Press: It's an amazing story and from my understanding, Andrea, JT is not the only person you've gotten to know well who had been wrongly convicted, and who spent time on death row.

Andrea Armstrong: JT is how many of us refer to him; it's his nickname. When JT came back and was free, he spent so much of his time and effort to provide a soft landing place for other exonerees and so he founded "Resurrection After Exoneration." He was really the first stop for a lot of people who were being released due to wrongful convictions, and he was the first home and the primary caretaker for Glenn Ford, who was released after being held wrongfully on death row for 29 years.

Eyal Press: I wonder Andrea, if one of the things that JT and Glenn Ford and other incarcerated people you've gotten to know and spoken to grasp from being inside the system is that the law is not neutral. That it is, as you've put it to me, an expression of power, and I know that's how you see the law, but that's not a given when one meets a law professor. Have some of the ways you think about the law and power functioning in the law been influenced by people like JT and people like Corey?

Andrea Armstrong: Absolutely. For me, it actually is hard to kind of separate out the ways in which they've influenced how I perceive the system. I do think that the law isn't always responsive to certain types of violations. So, for example, JT—this stuck with me—the first time he said it, it just kind of blew me away. He said, "Listen, I was exonerated, you know, and I sued, but what didn't happen—none of the district attorneys who withheld that evidence, none of them were prosecuted for attempted murder, because that's what they tried to do to me."

If we were to have attempted execution on the street, the district attorney would pursue that as a murder charge, and that would be attempted murder, but when it happens in the legal system... He had seven execution dates. That is seven dates, including the last one, which was right before his son's high school graduation. Each of those dates was a moment where he thought his life was ending. If that's not attempted murder, I'm not really sure what is. And that is law as power. There were never any attempted murder charges on any of the prosecutors who withheld evidence in his case, and, in fact, the lack of accountability for the prosecutors in his case, and in other cases, is something that he spent his life until his death pursuing, and unfortunately, he didn't get to see that in his lifetime.

Eyal Press: I can't help but hear that and think about your work and what you now do, and what you have done, in creating a public database to track folks who have died in jails and prisons, often under circumstances where, as in JT's almost case, no one is held accountable.

Andrea Armstrong: The work that I'm doing right now with my students—this is part of a class that I teach with them where we collect the death records from every single jail, prison, and detention center in the state of Louisiana. We are at the very initial stages of where JT would like us to go. We are simply documenting the fact that deaths are, in fact, happening behind bars. We haven't gotten to the question, and we don't have the information that we need in order to be able to tell how many of those deaths are preventable. There's certainly a couple that stand out, but even in those cases, it is rare to see criminal indictment for people who may have played a role in

those preventable deaths, even in those cases where we see a civil rights judgment. The family might be successful—although it is rare—in a civil rights lawsuit for the wrongful death of their family member, but to then also see criminal charges is almost unheard of. We're at the very initial stages of what we do, and it's really focused on transparency, but I think that it would be a larger piece for some of the things that JT really fought for, which was accountability and holding people accountable for the decisions they make.

Eyal Press: I'd love to push you a little more, Andrea, on specific ways that listening to incarcerated people has shaped the content of your work. One example that comes to mind for me, is this report you co-authored, I think in 2018, called "Dying in East Baton Rouge Parish Prison," which documented, I believe it was 25 deaths, at that prison. And what I'm thinking of, in particular, is the way that report began. Can you talk about that—how it opened?

Andrea Armstrong: That report was following some other work that we had done led by the Promise of Justice Initiative, which is a local nonprofit advocacy organization here in New Orleans. That work had been following the murder of Alton Sterling and the arrests and detention of protestors. Hearing folks as they're exiting the jail, talking about what the conditions are like, I had this feeling that, "We are leaving so many people behind. We are getting out because we are the protestors, but we were doing a couple of days with people who had been in there for much longer and under pretty horrendous conditions." We started looking at deaths and collecting information about the obscene number of deaths that occur in that jail: 25 deaths between 2012 and 2016. But, since 2012, we're now at, I want to say 48 deaths in that jail.

Eyal Press: In one jail?

Andrea Armstrong: In one jail. We felt like we had these themes that we were seeing among the various deaths, but people, and the experiences of people, and who we have lost, was almost invisible in the report that we had drafted together. And, so, the very first page is an in memoriam page where we simply say their names and how old they were. For those deaths where we knew the family, or had a relationship with the family, we asked them to reflect on who they have lost. What were the things that their child liked to do? What were their talents and what were the things about those people who died beyond their charges? So that we could really understand the impact of these deaths. The data's important and the legal arguments are important, but no one pays attention to your legal arguments or the data, unless they understand why it's important, and we really wanted to try and convey that in the opening. So we included pictures of the people who had died, along with a couple of quotations from their family members about their lives separate from the criminal charges.

Eyal Press: It's a bracing report for so many reasons, not least the facts you mentioned—the shocking number of deaths, and the fact that so many of them were pre-trial detainees, who were actually still waiting for their day in court—but to me, the emotional impact of that report was conveyed in that opening page and in those photographs and in the biographies that you included. Because in a way, I think, speaking honestly, it's not what one expects. You open a report and you expect the data and you expect the argument and the summary, and this was very different. Was that deliberate?

Andrea Armstrong: Absolutely. This is the influence of people like Glenn and Corey and and JT and Fox and Rob Rich and Kiana and Serita and all of these people who are part of our communities now, on the free side. It is important to highlight what we lose; there's these stereotypes around who was actually incarcerated, and it turns out that all of the people who were incarcerated belong to somebody. They're somebody's husband or uncle or brother or child, and that gets lost when even the newspaper reporting on a death behind bars, which can be infrequent if it's covered at all, will often just show their mugshot and summarize their criminal charges. That's all we learn about what we, as a society, in effect, did to another person.

Every single one of my articles has come from a question or a situation or a conversation, with somebody who was either currently incarcerated or had been incarcerated. One of the most interesting things that stretched me beyond my usual boundaries was a conversation with Glenn Ford. Glenn had come off of 29 years of a wrongful incarceration on death row, and JT and I—and there was a whole group of people; we called ourselves “Team Glenn” and there were about seven of us. Within a month of his release, he had a terminal cancer diagnosis, and, so we spent a lot of time talking with him about his death and his illness and what caused it, and also trying to make the most of the amount of freedom that he did have for such a short amount of time. Ultimately, he was convinced that death row had still killed him, even if he wasn't physically there, and that being on death row related to the healthcare that he was able to receive, which he had some choice words for. Those are the things that made him sick, and that is the reason why cancer wasn't caught before his release.

Eyal Press: And what you mean by that, if I'm understanding correctly Andrea, is not just that he didn't get proper healthcare—he didn't get an early diagnosis that might've led to treatment, that might have enabled him to live much longer—but that, being in Angola, being on death row, was actually a toxic experience that may have contributed to the cancer itself. Is that right?

Andrea Armstrong: Exactly. We were doing lots of videotaping at that time. We knew that he was going to die, so we were recording so many things—conversations and his time with us. JT was interviewing Glen about the conditions on death row, and I'm listening to it, and I'm hearing things around environmental justice—air pollution, water pollution, rust, lead, the ways that they would clean the sewage pipes so that sewage would literally run down the death row tier. I had never done environmental law. I did prison conditions. I did constitutional law and criminal law. But the way that he described conditions, it sounded like it was an environmental lawsuit, and so I started trying to categorize it, thinking about the different categories of things that he told me about, and then trying to fit them into environmental law. And I started to think about, “Do the environmental regulations that we have in the free world, do they even apply behind bars, and are they enforced?” Simply him talking about this and the connection that he made between the toxic environment that he lived in and his terminal cancer diagnosis, really opened my eyes to thinking about these things differently. That, yes, it might be an eighth amendment, cruel and unusual punishment type of civil rights lawsuit, but it could also be something else. It could also involve other areas of law.

In lots of different ways, prisons and jails are exempt from some of the rules that would govern the same type of activity if it was conducted outside of the facility. And so really, he opened my

eyes to thinking about conditions in a completely different way. I wrote a piece about that: trying to understand Glenn's claims and his experience through an environmental justice lens. And we're doing that even now. I'm thinking about climate change. When we talk about climate change, we think about—especially here in New Orleans—we think about hurricanes. We think about the loss of barrier reefs. We don't necessarily think about how climate change is impacting populations who are structurally prohibited from adapting and responding to certain climate changes in the same ways that we are actually encouraged, in the free world, to adapt and respond. They become uniquely vulnerable, when you look through an environmental justice lens, in a way that they are not necessarily when you're having a standard climate change conversation.

Eyal Press: How do you think the study of mass incarceration or, more broadly, the criminal justice system, might alter if more scholars had the kinds of direct encounters with people in confinement that you've described?

Andrea Armstrong: I think we would see a different prioritization around rights and obligations. I think, in the abstract, as lawyers, when certain substantive doors are closed, we turn to procedure and we say, "Okay, well, even if they substantively are allowed to do that thing, then they're at least certain procedural steps that they have to go through before they're allowed to substantively do that thing." I'm not sure that, if we were in more robust conversation, and if, in fact, people who are or have been incarcerated, were setting the agenda, whether we would be so quick to abandon some of the substantive claims. There are some things that just should not be done to a person regardless of the procedure.

Eyal Press: I wonder if you feel those encounters would also inevitably lead to a different conversation or maybe simply, a broader conversation, about conditions? There are prison abolitionists who shy away from a focus on conditions, in some cases out of fear that if you focus on that, the state will mobilize to simply pour more resources into jails and prisons, and that's the last thing we want. And yet, as you've documented, there are more than 2 million people behind bars in this country, and the brutal and inhumane conditions in too many facilities don't just raise constitutional issues, but can cost lives. I wonder if you feel that that conversation might shift?

Andrea Armstrong: I don't know so much around the abolition front. It's really interesting. My students and I recently hosted a guest speaker—also someone who was wrongly convicted, because those are the people who are most available to come and speak to my class. (It's not a preference of who is innocent versus those who actually did the thing that they were accused of.) And the students were really shocked that he was not an abolitionist. He was like, "Listen, I did time in there. There are some people who deserve to be locked up." That was a really interesting perspective for them.

But I do think that having people who've been incarcerated talk about the punishment that is inherent in their incarceration is really illuminating. There are politicians who have said, "Oh no, they should not have access to air conditioning" down here in south Louisiana where the heat index can reach 120 degrees. They'll say, "Well, the punishment is, they don't get to live a

comfortable lifestyle.” Or there’s another case, a seventh circuit case where a judge says, “Well, nobody’s entitled to maid service while they’re incarcerated. It’s supposed to be a punishment.” But that’s a very narrow conception of the punishment that is wrought by incarceration. The punishment—when I talk to people who have been incarcerated—is they couldn’t attend the funeral of their sister who died, and they could never say their last goodbyes, even though she was in the hospital for three months before she died. They were denied that chance to say goodbye, and that is a lasting consequence. They will never be able to make that up, even if they’re released within five years. It’s the inability to see their child graduate from high school; pride in being a parent and the disruption to that relationship. It is the inability to provide financially for their children and their loved ones or help take care of their parents as they age. Those are very real punishments, and yet we don’t talk about those punishments. Instead, we say, “Oh, well, the type of food—we should be able to produce that cheaply and they should be required to work for us. They shouldn’t have an expectation of full health care, because, if they wanted to avoid those punishments, they shouldn’t have done the crime.” It’s just a very narrow idea of the types of punishments that incarceration really imposes. And so I think those conditions—they matter and they’re important, and it’s important whether people have access to any sort of cooling mechanism in a 100+ degree temperatures—but I think we also need to think about all of the other punishments that are inherent in incarceration and maybe think about whether those, in fact, are enough.

Eyal Press: I imagine the lack of contact and encounters and input from people behind bars is something that strikes you, not just when it comes to people who study the legal system and legal scholars, but also judges and politicians. Is that something that comes to mind, given how your work tries to draw us closer and draw us in?

Andrea Armstrong: I was able to clerk for a federal judge right after law school, and one of the things she did, even as a judge, is go and visit facilities. In some cases, it was former clients who were incarcerated, but I think that they are our public institutions, and anybody—whether you’re a legislator or a judge or you work at an auto repair shop or a library—those are our institutions and we should be able to go in them. And we should be able to see what is being done, essentially in our name. And I think that is potentially transformative for how we think about justice and what counts for justice in our US system.

Eyal Press: When you go into a jail or prison, is it the thinking that is altered or is there also a set of emotions that come up? Obviously, emotions and thoughts are connected, but is the emotional experience of being there part of what you think is so important and valuable and powerful?

Andrea Armstrong: I certainly think it’s part of it. We are full human beings at all times and so when I go into a facility, I may be going there with a particular task or project. Maybe I’m going in as an auditor under the Prison Rape Elimination Act, maybe I’m going in as a legal visit, maybe I’m going in as a friend visit. Maybe I’m just going in as a—I cold-called the sheriff and say, “This is the stuff I study, and I want to learn what you’re doing in your jail to address these particular problems, so I can think about how those might be applied in other places.” I go in for lots of different tasks, but the emotions are often the same. They are difficult places to be, and it

gives me an enormous amount of empathy for the people who work in those facilities day in and day out. It's so interesting, because correctional staff and incarcerated people share the same space for eight to twelve-hour shifts, and we should want more humane working conditions for those employees of the city or the state just as much as we want more humane conditions for the people who remain involuntarily in those conditions for 24 hours a day. For me, it always takes a certain moment to ... I guess, "detox" is the best word, when I leave those facilities. It takes me a beat to readjust, to get rid of the sounds and the smells and all of those things which are so omnipresent when you're behind bars.

Eyal Press: I'm really struck by what you said in part because, in thinking about the carceral state... I've just written a book, *Dirty Work*, that is partly about the work of caging and confining so many people, and of course the role that too many jails and prisons play as *de facto* mental health treatment centers. But, I wonder if being there and going into these facilities, do you feel like it's ... if the folks who are incarcerated are being mistreated and de-humanized, it's likely to happen as well to the people who work there, even though they have a lot more power and a lot more freedom?

Andrea Armstrong: I think that's right. I think one of the most difficult things to change when we're trying to improve conditions—and when I say “improve conditions,” we're, basically just trying to improve safety and security and to ensure that jails abide by their obligation for the safe and secure and humane custody of another human being—when we think about those things and the impact that it can have on a person's daily life, a lot of those things are related to the culture of the facility, and changing jail culture is one of the hardest things to do. It pervades everything. It's not just how custodial staff treat incarcerated people, but it's also how they treat one another. What we know around the Prison Rape Elimination Act, and the kind of statistics that have been able to be gathered through these audits, is that where we see high levels of sexual harassment, we also expect to find high levels of sexual assault. And that may be between incarcerated people, but it's also between custodial staff and incarcerated people. And when you talk to other custodial staff, who are not involved in a particular incident, there are often red flags that they are seeing every day about how people act that they already know who, within their staff, is perhaps more predatory than others. It's really telling when we do these audits—the ways in which they talk about each other, but also talk about interactions with incarcerated people.

Eyal Press: Andrea, thank you so much for joining this podcast. It's been such a pleasure to speak with you.

Andrea Armstrong: It's been an honor, Eyal. Thank you for having me.

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