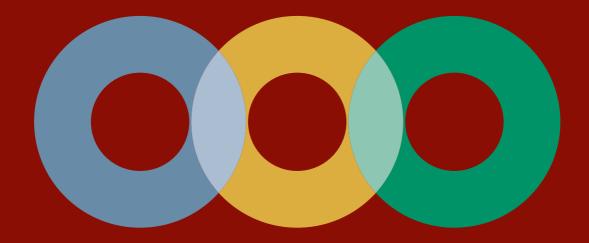# RACE, CRIME, and PUNISHMENT

Breaking the Connection in America

EDITED BY Keith O. Lawrence

ESSAYS BY Michelle Alexander · Eric Cadora · Blake Emerson · Ian Haney López · Marc Mauer · Alan Mobley · Alice O'Connor · Jonathan Simon · Phil Thompson

THE ASPEN INSTITUTE
Roundtable on Community Change

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Overview

KEITH O. LAWRENCE

More than 2.3 million people in America are in jail or prison.[1] **Sixty percent are African American and Latino.** Of all the statistics portraying racial inequity in our country, this is the most alarming: it indicates the failure of so many of our society's institutions; it predicts dire consequences for millions of children and families of color who are already at socioeconomic disadvantage; and it challenges the very definition of our democracy.

As our national story goes, the U.S. criminal justice system ensures fairness and equality to all under the law. In reality, the system fails to deliver on that democratic ideal. Although generations of policy makers, analysts, practitioners, advocates, and ordinary citizens have worked to "fix" the criminal justice process and correct its most egregious injustices, the system continues to produce negative and inequitable outcomes for too many people of color. Why? What should we be doing differently? To paraphrase Albert Einstein, we cannot solve the problems of the criminal justice system with the same thinking that created them; we need to approach the issue from a new perspective. This means that we need to take a step back and reflect on how our criminal justice system reflects, and even perpetuates, inequities that underlie all of our social institutions.

The starting point of this book is that these inequities reflect the fact that the opportunity to succeed or fail in America has always been and continues to be structured differently for whites and people of color. Therefore, we cannot solve the problems in the criminal justice system without bringing in a clear, forceful recognition of the role that race plays in our most basic assumptions about the definition of crime and about who, what, and how we punish. This may seem counterintuitive, knowing how difficult it has been for this nation to confront its racial history and resolve the legacy of inequality that every new generation

of Americans is born into. Trying to make headway on one difficult issue (criminal justice reform) through the entry point of another seemingly intractable issue (race) may seem a fool's errand. Indeed, race itself is hugely complicated by class, gender, and other intersecting social constructs.[2]

With those caveats in mind, we adopt a structural racism approach as an alternative way to organize thinking about an institutional domain in which, today, race is sharply outlined. A structural racism lens focuses on the public policies, institutional practices, cultural representations, and other norms that work in mutually reinforcing ways to perpetuate racial group inequity. It refers to dimensions of this nation's history and culture that have allowed privileges associated with "whiteness" and disadvantages associated with "color" to endure and adapt over time.[3] Applying a structural racism lens to crime and punishment causes us to ask,

> *"If we were not such a racially stratified society, would we have a criminal justice system that operates the way that it does? Would eliminating the dramatic racial inequity in the criminal justice system lead to greater fairness and justice for everyone, regardless of race? What would a criminal justice and social system not structured by race look like?"*

ABOUT THE RACE, CRIME, AND PUNISHMENT PROJECT

In 2006, the Aspen Institute Roundtable on Community Change and the Open Society Foundations' Justice Fund set out together to spark a shift in how Americans understand, discuss, and address crime and punishment in our society. We wanted to give leaders working on criminal justice reform the opportunity to step back and reconsider the guiding values, assumptions, context, and evidence for their work. We invited a diverse group of criminal justice reformers, social scientists, legal scholars, and human rights advocates[4] to imagine another system of justice that starts with the acknowledgment of America's living legacy of racial inequity and recognizes how that legacy constructs present-day justice norms, and then ask how to extricate our dominant justice frame from its grip. We explored philosophical and structural questions in the search for new insights on the practical challenges of sentencing, rehabilitation, community reintegration, and the like. For instance:

> *How have our definitions of* crime *changed over time, and how do they relate to changes in our racial history?*[5]

Why do we punish the social conduct that we do, in the manner that we do, and in the social strata that we do? Indeed, why in the twenty-first century do we still rely so heavily on punishment as the appropriate response to so many categories of behavior deemed inimical to community interests?

What social control goals does our contemporary criminal justice paradigm serve? What social control values might better serve our aspirations for multiracial democracy?

How can we repair the harm caused to individuals, communities, and the nation by a racially structured criminal justice system, and how can we extricate ourselves from it?

What would a criminal justice system not structured by racism—one consistent with a more expansive view of equity and justice—look like, and how can we make such values and ideals operational?

What do these questions and the answers say about the role of the criminal justice system vis-à-vis other civil society institutions, and vice versa?

The Aspen Roundtable on Community Change and the Open Society Foundations held two important convenings, in 2007 and 2009, with more than a hundred leading scholars, policy makers, practitioners, and advocates to explore new, more equitable conceptions of crime and punishment, and the strategic directions suggested by these new frames. We sought clarity about where current criminal justice reform efforts might be reoriented or complemented, where new opportunities for racial justice may exist, and where the two could complement and fortify each other. At the end, we wanted this project to produce and publicize a new vision of criminal justice—the terms to describe it, its social purpose, its institutional sites, and its effective implementation—and to rekindle awareness of opportunities for cross-sectoral collaboration and movement building across the social justice reform community.

ABOUT THIS VOLUME

Nine scholars contributed the papers to ground our discussion, challenge our thinking, and propose new directions and strategies. The papers addressed two core themes: (1) changing public perceptions of race, crime, and punishment; and (2)

alternative visions of justice and strategic opportunities and challenges for reformers to realize them.

This volume is organized around those two themes in an attempt to shed further light on the connections among race, crime, and punishment and to articulate an alternative vision for criminal justice reform—a vision that connects criminal justice to trends and movements in sectors that aim to improve social, economic, and political opportunities for everyone.

The introduction provides a starting point by examining the dominant public perception of the relationship between race, crime, and punishment. I first describe why and how race needs to be considered as a core social and political construct when we dissect our criminal justice system. Then I focus on three aspects of that dynamic—mass incarceration, fear of personal victimization, and racism—and delve into the complicated connections between race, space, crime, and social inclusion with an extended look at white space and the racialization of crime. I conclude with insights and implications inherent in using structural racism analysis as a lens for reframing the U.S. American criminal justice system.

The rest of the volume consists mainly of the contributed papers, which are augmented by summaries of additional comments by their authors during a 2009 Open Society Foundations panel discussion organized by the project. Part I contains four essays that critically examine the historical and current public values discourse around race, crime, and punishment and illustrate ways in which U.S. law continues to connect race, crime, and punishment despite formal legal protections for civil rights:

- **Michelle Alexander** places mass incarceration in historical context, unequivocally asserting that it is tantamount to a "New Jim Crow" in an essay excerpted from her recent book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. America's basic racial order has not changed, she believes, and the criminal justice system now plays the lead role in an old reactionary drama: preservation of a "racial caste system" that traces back to slavery.

- Turning an analytical eye to the interplay of race and the law, **Ian Haney López** offers justice reformers invaluable insight into the contemporary features of American society's race-crime symbiosis. Reminding us of the historical role of our justice system in racial stratification, he highlights five durable processes within structural racism that seem most relevant to crime control.

Haney López outlines the past and present significance of these processes to incarceration patterns and explains how colorblindness—the "moral force of the civil rights movement"—has been hijacked by criminal law practitioners to defend structural racism. Conservative political entrepreneurs work hard to elevate colorblindness ideology to the forefront of the national common sense about race, Haney López points out, and so justice reformers at all levels must understand structural racism and "protest vociferously" against it, even as they work to change discrete policies and practices.

Few of us give much thought to the knowledge and values consensus surrounding our society's justice and punishment machinery. Yet a distinct set of shared beliefs legitimizes public policies and institutional practices that collectively sustain racially inequitable justice outcomes, and two other authors in Part I pick up on this strand:

- **Blake Emerson** looks critically at individual responsibility, one major component of the dominant ideology underpinning prison-centered criminal justice in the United States. Arguing that this approach to social control undermines individual responsibility and actually promotes irresponsibility, Emerson proposes "positive responsibility promotion" as a more rational solution. Positive responsibility promotion is required, he says, because those who are disproportionately affected by mass incarceration have little incentive to adhere to mainstream norms and manners in a society that chronically relegates them to its margins. Like much of the rest of the "American Creed," notions of individual responsibility in the present blithely ignore a living legacy that continues to sort Americans into racialized, unequal opportunities. Why then, Emerson asks, do we rely so heavily on the coercive power of prisons and police to promote socially constructive behavior? Would it not make more sense to give our most marginalized citizens more of a stake in society by removing obvious barriers to substantive equality?

- A critical strategic goal for justice reformers, notes **Alice O'Connor,** must be "changing the conversation" about crime and criminal propensity that has prevailed in the United States since the late nineteenth century. Racial fear and resentment have driven criminal justice politics since the beginning of America's four-decade-old civil rights regime. Yet reformers can pursue a conversation animated by economic and social justice values rather than by fears of "dangerous classes" and "others" with dark skins and different religious faiths. A discourse like this would represent a huge break with the past, she

observes, since our affinity as a nation for a politics of class, race, and culture-based social exclusion runs very deep and has always masked a "desocialized, upwardly redistributive policy agenda" throughout U.S. history.

Part II includes six thought-provoking essays about alternative visions, opportunities, and challenges for justice reform, again followed by additional comments:

- **Alan Mobley** looks to developments in global society as a new moral touchstone for justice transformation. For him, the new conversation about crime and punishment needs to be anchored in the expansive concept of "human security"—the overlapping economic, food, environmental, health, personal, community, and political security needs relevant to those most affected by America's mass incarceration system. This global perspective is recommended, Mobley believes, not only by a structural racism analysis and the promising efforts of other less-developed societies to create "transitional justice" models but also by the rare transformational opportunity presented by America's 2008 election outcome and the subsequent political debates and elections. Mobley wants to break the familiar cycle of "justice reform, compromise, and accommodation" by enlisting the justice system in the larger societal project of harm reduction, unity, and equity.

- **Michelle Alexander** suggests that civil rights advocates need to prioritize criminal justice reform much more highly but stresses that piecemeal rights reforms will not dismantle the racial caste system. For that, Alexander suggests, we need a broad-based and resolute human rights movement. Affirmative action, widely regarded as an important step forward in civil rights, is in her view an example of piecemeal reform that perversely reinforces racial hierarchy. The "diversity" rationale behind affirmative action policies, Alexander argues, allows for the advancement of *some* exceptional Americans of color but obscures and distracts from deeper inequalities like black and brown overincarceration. Affirmative action thus is an insufficient tool for forging the structural reforms essential for preventing the "reiteration of Jim Crow."

- **Jonathan Simon** zeroes in on possible unintended consequences of the current preoccupation with sentencing reform for nonviolent drug crimes. He worries that, although commendable and overdue, this might distract reformers from the elephant in the room: overpunishment for violent crime, especially murder. Knowing that the impetus for longer, determinate sentences is a manufactured public desire to keep larger and larger numbers of violent offenders behind

bars, he argues that "given our current practices of excess punishment for violent crime, a drug reduction strategy may only anchor a sensibility that will lock us into mass imprisonment and distort the way America rebuilds its urban landscape over the coming decades." Simon offers two compelling arguments: excessive punishments for murder encourage sentencing inflation for lesser crimes; and a strong association in the public mind between African Americans and homicide (and drug-related violence) sustains these excesses. Simon suggests that reducing homicide penalties up front can create a "virtuous cycle of effects that will reduce the public's propensity to fall back on long incapacitative sentences as a panacea for unfathomable risks."

- **Eric Cadora** draws attention to the increasingly detrimental interconnection, especially for the poor, between institutions that sustain opportunity and community and those responsible for social control and punishment. Life in communities with high incarceration rates, he observes, is dominated by crime governance. Cadora is pessimistic about justice reform strategies like rehabilitation and reentry initiatives that do not "simultaneously build civil capacities for exerting the kind of informal social control that characterize safe neighborhoods." He believes that an alternative complex of justice responses is needed to "lead high-incarceration communities out of the prison migration quagmire." Citing examples from several states, Cadora proposes expanding the fledgling justice reinvestment movement. This strategy calls for reducing prison populations and budgets and redirecting significant portions of public prison spending to strengthen civil society institutions in communities with disproportionate numbers of residents going in and out of prison—by way of education, job creation, mental health and addiction treatment, and other services to prevent parole and probation revocations and avoid reincarceration. It also recommends investments in helping the families of people returning from prison mobilize kinship and friendship networks as additional resources for preventing homelessness and recidivism.

- **Marc Mauer,** longtime director of the highly respected Sentencing Project, contributes valuable insights about effective advocacy for racial justice reform, drawing from his organization's involvement in efforts to promote crack cocaine sentencing reform, felony disenfranchisement, and racial impact statement legislation. One of his recommendations is to not shy away from talking about racial justice but to do so in a way that does not discount public safety. Another suggestion is that racial justice arguments can be compelling if they are well crafted and delivered by the right messengers. Mauer explains that

the Sentencing Project used several strategic frames to advocate for consistent drug sentencing and the reenfranchisement of people who had served prison sentences. However, their efforts to persuade states to adopt racial impact statements as legislative policy relied most heavily on "explicit argument about racial fairness." Why? The legislative ground in those states was prepared "due to the advocacy efforts of reformers over many years regarding disparity in the justice system." Mauer challenges those who contend that leading explicitly with race is inherently counterproductive, but he advises strategic flexibility based on careful assessment of local contexts.

- **Phil Thompson** expands the focus of racially equitable justice reform with his contention that it should not be considered separately from other contemporary political and social trends and movements. Thompson cites global and domestic environment and labor movements, especially the growing consensus around green urban redevelopment, as perhaps the biggest potential opportunity since the New Deal to bring marginalized people and places into the workforce mainstream. Justice, labor, environmental, and other equity advocates need urgently to build the coalitions that could exploit this fleeting political and historic opportunity, he argues. Thompson outlines "five policy or political issues, or battles, that will dictate the pace and scale of greening in the United States." and suggests that "ex-felon and re-entry issues . . . be interwoven with [these] . . . to build a broad movement that leads to a common vision and collaboration across policy silos."

Part III concludes the volume by summarizing the project's rich discussions about where reformers need to focus their efforts. These discussions coalesced around two themes: (1) the reframing of dominant narratives of crime, security, race, justice, and their interconnections; and (2) the targeting of institutions and movements most connected to people and places victimized by racialized mass incarceration for strategic intervention. The collection ends with a concise proposal to criminal justice policy makers for **A New Deal for Twenty-First Century Criminal Justice.**

ACKNOWLEDGMENTS

This project was the brainchild of Susan Tucker when she was the director of the After Prison Initiative at the Open Society Foundations. She was searching for new insights on the race–criminal justice connection and approached the Aspen Roundtable on Community Change because of our deep expertise on structural racism. Susan, and her colleagues William Johnston, Nicole Keif, Angela Cheng,

Leonard Noisette, and Ann Beeson provided guidance and support throughout this project. Eric Cadora was also a key intellectual partner all along the way. All of the participants in the June 2007 project launch meeting (see appendix) helped to formulate the core questions and strategies for answering them. Then, we were fortunate that nine brilliant scholars took up the challenge of reflecting deeply on the race-crime-punishment connection with us and prepared the papers that are included here. Leila Fiester expertly edited the entire volume. We thank all for your creativity, intelligence, and commitment.

We thank the Open Society Foundations and the Ford Foundation for providing the funding for this project.

The project's broad goal was to identify innovative strategic directions for twenty-first-century justice reformers—directions grounded in concepts of crime and punishment that fully appreciate the historical interplay of race, crime, and public policies governing the allocation of opportunity. A basic premise for this effort was that current justice reform approaches seemed unlikely to alter fundamentally the inequitable trajectory of American justice. An entirely new framework for justice and punishment systems seemed necessary. Our decision to bring together this particular group of thinkers and practitioners yielded dividends that exceeded our expectations, and we hope that this book helps to influence policies and practices that promote greater justice for all.

Notes

1. Bureau of Justice Statistics, *Prison Inmates at Midyear 2008–Statistical Tables* (March 2009, rev. April 2009), http://bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf.

2. K. Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," in *Critical Race Theory: The Key Writings That Formed the Movement,* ed. K. Crenshaw, N. Gotanda, G. Peller, and K. Thomas (New York: New Press, 1995). See also K. Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," in *Critical Race Theory,* ed. K. Crenshaw et al.

3. Aspen Institute Roundtable on Community Change, *Structural Racism and Community Building* (Washington, D.C.: Aspen Institute, 2004).

4. See the appendix for project participants.

5. Most of these questions were posed by Susan Tucker, director of the Open Society Foundations' After Prison Initiative, as we worked together to frame the project.

Introduction

KEITH O. LAWRENCE

Race is a powerful and revealing lens through which to reconsider the relationship between mass incarceration and American democracy. Bringing race to the foreground makes sense for two reasons. First, overwhelming racial disproportionalities exist in every facet of the criminal justice system. Americans of color, particularly poor blacks and Latinos, are disproportionately entangled, monitored, and confined by the system, while whites disproportionately administer its enforcement and punishment machinery. By confronting the racialized nature of the problem head-on we are much more likely to ask new and different questions that might, in turn, open up new and different avenues for reform.

Second, race has often compelled America to confront inconsistencies between its liberal democratic ideals and the patterns of social outcomes that actually occur. As Lani Guinier and Gerald Torres argue in their landmark book *The Miner's Canary*, race has provided a consistent and important litmus test in the course of this nation's struggles over the scope of democracy and the quality of justice.[1] Political demands for racial inclusion and equality continually force Americans to construct new political and social processes, institutions, and standards of right and wrong.

Old paradigms have, on occasion, evolved in response to movements that destabilized a moral consensus on race that once seemed entirely rational and legitimate. Race-based slavery, for example, lasted in the United States for more than two centuries until its dissonance with democratic ideals helped spark the Civil War. That conflict was as much a struggle over the proposition of universal human personhood as it was about political secession and union.

Granted, it took the full force of federal arms to dismantle the "peculiar institution" of slavery. And full African American citizenship had to wait another century

after Appomattox because reactionary southern politicians—with no small complicity from the North—effectively reimposed much of the old racial order during Reconstruction. Virulent antiblack terrorism in the Jim Crow years signaled that slavery had not lost all respectability, even after 1865. It took dogged civil rights activism and resistance, capped by the Warren Court's embrace of equalitarian ideas in 1954 and federal legislation in the 1960s, to finally dismantle the overt public and legal architecture of Jim Crow, including black segregation, intimidation, economic exploitation, and political and social exclusion.

Considering where American democracy stood a hundred years ago, the civil rights movement accomplished a great leap forward. What ensued during the post–civil rights era, however, was an inadequate facsimile of equality: the full *legal* personhood of Americans of color, but not necessarily their equal *social* worth and humanity. Formal equality did not dismantle de facto white privilege, remove the stigma of "blackness," or strip race of its huge material significance as a social resource. As we begin the twenty-first century, outcomes in criminal justice and other social measures starkly remind us that racial stratification has endured.

Racial stratification continues because the racism fueling it has been a perpetual building block of America's social, economic, and political architecture rather than a temporary individual trait. American society's institutions, values, and social arrangements have been forged in a crucible of racial hierarchy—or, more specifically, an environment of "structural racism," in which public policies, institutional practices, cultural representations, and other norms work in mutually reinforcing ways to perpetuate racial group inequity. *Structural racism* refers to dimensions of this nation's history and culture that have allowed privileges associated with "whiteness" and disadvantages associated with "color" to endure and adapt over time.[2]

The racial hierarchy produced by and embedded within structural racism is integral to the commonly accepted understanding of fair and appropriate outcomes in every consequential realm of American society. Most Americans accept white advantage in politics, the economy, and the national culture as the norm, for instance, and most—regardless of their own race—take for granted nonwhite over-representation on the lower rungs of the socioeconomic ladder.

Moreover, in the post–civil rights period of formal, legal equality, a durable public common sense about race has evolved that ascribes socially caused inequities to factors other than racism. An ideology of "colorblindness" has emerged to disguise

the racism that still biases institutions and standards of equity and justice.[3] This increasingly dominant ideology makes today's racism harder to perceive, describe, and thus contest within traditional political frameworks. And yet perhaps a racial lens—applied this time to criminal justice and its interplay with other systems that define opportunity—can again challenge what Americans consider to be rational and justifiable.

Disparities and discontent arising from the modern form of structural racism raise questions about the legitimacy of the values and rationales guiding many contemporary social policies. Decades of failed public and private remedies for chronic disparities and disadvantages in communities of color invite us to reexamine systems and institutions that provide and restrict opportunity in new ways. Prevailing arrangements for obtaining education and accruing wealth, along with the mechanisms that frame and communicate cultural narratives, all deserve scrutiny. Systems and institutions of coercive social control warrant the highest priority of all because they directly determine the degree and quality of liberty that citizens experience. Moreover, it is vital to reconsider not just public policies and institutional practices but also their underlying philosophies and logic.

Functional remedies for failures in education, social welfare, prison, and other flawed opportunity-shaping systems clearly are necessary. But it would be short-sighted to stop there. Tenacious racial inequalities are rooted in institutional governance cultures based on selected social constructions of facts and values. And those beliefs unavoidably draw on dominant racial perceptions. Thus the social outcomes we see—such as mass incarceration, educational achievement gaps, residential segregation, and workforce stratification—tend to reflect racist values that, though publicly disavowed, remain deeply embedded in systems of thought and practice. Indeed, the tendency to concentrate our critical gaze and reform efforts on narrow, tangible aspects of institutions and systems often is a way to avoid uncomfortable reconsiderations of those submerged core values.[4]

Public discourse about crime, along with common practices for law enforcement and punishment, suggests a dominant "frame" that most Americans use to make sense of the interplay between race, crime, and punishment. This popular perspective has many nuances, but three of its features loom especially large. The first, mass incarceration, affects people and families of color and their communities, acutely. The second and third—fear of personal victimization and racism—are difficult to disentangle, but each contributes to the dominant frame in distinct and important ways, and each seems to be at the core of the social psychology that

drives criminal justice politics and governance. It makes sense, therefore, to begin with an analysis of each feature individually and the interplay among them.

FEATURE 1: MASS INCARCERATION

In a nation that incarcerates lawbreakers on an industrial scale, disproportionate numbers come from communities of color. As of 2009, more than 2.3 million individuals were either in jail or in prison, and altogether more than 7.3 million were under some other form of direct criminal justice supervision.[5] African Americans make up about 40 percent of the prison and jail population but just 13 percent of the U.S. population. Latinos comprise 20 percent of those behind bars but only about 15 percent of the population. Black-white differences in incarceration rates are most dramatic: an estimated 4,777 black males were locked up for every 100,000 black males in the free population, compared to about 727 per 100,000 white males. A stunning 11.7 percent of black men in their late twenties were incarcerated.[6] Black men of all ages are five to seven times more likely to be incarcerated than white males of the same age.[7] These racial patterns hold up across gender, criminal offense, and regional categories.

Mass incarceration has devastating consequences for entire communities of color, not just the individuals behind bars. Mass incarceration steadily drains away breadwinners, fathers, and heads of households. Spouses, partners, and children of inmates are captive to prison system routines as they try to maintain family relationships with loved ones who are locked up. To cite just one hardship, urban offenders are often incarcerated in distant rural communities that welcome the jobs prisons bring. Physical distances between family members separated by incarceration can take a huge toll as they make visitation costly, difficult, and, ultimately, infrequent.

Collective victimization also occurs every year when hundreds of thousands of individuals are released back into their communities with meager prospects for productive lives outside prison. Not only is their reentry into the mainstream of stable employment, family formation, responsible parenting, civic participation, and criminal desistance difficult; their already depleted communities are also typically targeted for intense police surveillance and criminal justice supervision.[8] Individuals of color already marked as criminal offenders thus tend to have much smaller margins for error in the conduct of their lives than similar whites.

FEATURE 2: FEAR OF VICTIMIZATION

If we accept the premise that popular media fare merely reflects public demand, Americans are deeply preoccupied with security from random, violent victimization. A good deal of this apparent demand must be attributed to politicians who foster the false impression that citizens could and should be insulated from all such dangers. Nowadays, personal security concerns extend to fear of attacks by foreign terrorists. But homegrown fears of violent crime have long been a core public anxiety, as Americans have always worried a great deal about robbers, murderers, rapists, and, more recently, pedophiles.[9] Belief in the imminence of these dangers combines with convictions about personal responsibility and retributive justice to generate unwavering political demands for tough-on-crime policies.

Our criminal justice regime is firmly anchored in a personal responsibility paradigm. People who commit crimes are taken to be independent, autonomous actors who, through publicly elected prosecutors, can be held personally accountable to victims and society at large. Violent criminals, in particular, are considered willful deviants who choose to prey on the rest of us. Popular narratives and political rhetoric feed a conventional wisdom about a class of predatory, antisocial individuals driven by bad genes or upbringing to make criminal lifestyle choices. Such people, many believe, simply lack the self-restraints required for following social rules.

Most law-abiding citizens, therefore, see nothing wrong with punishing violent offenders by removing and incarcerating them, which prevents them from victimizing others for as long as possible. These seem to be logical and rational solutions. Indeed, there has been a durable political consensus around the value of removal and incarceration; actual and potential victims believe that the pain of lengthy incarceration is much more likely to deter victimizers than rehabilitation or positive community incentives for desistance.

The personal responsibility paradigm largely ignores abstractions like "inequality" and "disadvantage" and emphasizes harsh punishment for those who should "know right from wrong." In this respect, public policies and institutional practices reject the idea that social factors shape individual tendencies toward criminal conduct. As evidenced by the popularity of capital punishment, most Americans strenuously resist contextual, sociological, and other impersonal explanations of criminal behavior, especially violence. The focus almost always has been exclusively on the "wrongdoer" and his or her "dysfunctional" family, although in recent decades this scope has widened somewhat to include the "cultural" characteristics

of inner-city neighborhoods. But generally, when Americans talk about crime and punishment, fundamental structural arrangements—public policies, institutions, social norms and values, and so on—are rarely interrogated and seldom challenged.

FEATURE 3: RACISM

It is impossible to ignore racism's contribution to the construction of individualistic attitudes. Although social science and criminology research has long concluded that criminal and violent behavior appears randomly distributed across classes and groups,[10] violent crime is most personified by the darker-skinned male in this nation's imagination. Opinion surveys and research studies continually reconfirm a widespread psychological association between color and violent crime.[11]

Not surprisingly, therefore, conceptions of serious crime and fitting punishment tend to reflect, in substantial measure, negative stereotypes linked to color. The strong political consensus against parole and for mandatory sentencing, capital punishment, prison construction, and other tough-on-crime measures is powerfully assisted—despite a steady decline in crime over the past decade—by Americans' fear of victimization by nonwhite "superpredators."[12] Indeed, this is not irrational in the strictest sense, since major media sources gravitate toward the imagery of street crime and thus reinforce such so-called knowledge almost daily. Moreover, these are the crimes of poor people and places—and, in America, poor people and places are disproportionately black and brown.

While the stereotype of the dangerous, racialized predator has a long history affecting various immigrant groups, the drug trade—especially crack—that played out violently in America's inner cities in the 1970s and 1980s solidified the racial stereotyping of crime that persists today. The government responded with the War on Drugs, sweeping into the criminal justice net vast numbers of young men of color and guaranteeing daily media images of black and brown "suspects" and "perpetrators."

The lucrative urban drug industry generated a great deal of violence as suppliers and dealers fought to protect and expand their markets. Viewed from afar, this seemingly senseless violence continuously relegitimized assumptions that young men of color everywhere were potential threats to the social fabric.[13] In this atmosphere, simple logic seemed to dictate that (a) since violent crimes demanded harsh deterrent responses, and (b) since African American and Latino males "made the choice" to commit such offenses at higher rates than whites, more of them *should* be behind bars and on death row.

Needless to say, none of this denies that black and brown males commit violent crimes or absolves them of responsibility for their actions. Nor does it minimize the safety concerns of the communities of color that mostly bear the brunt of these behaviors. Rather, our intent is to draw attention to two structural issues that receive little mainstream attention.

First, despite the confinement of black and brown crime largely to those very communities, darker-skinned males collectively have been stigmatized as dangers to society while white male criminality remains individualized. Due to their perceived dangerousness, black and Latino males who have never had contact with the criminal justice system must continually prove their harmlessness and worthiness of full social inclusion—often more than white males with criminal records.[14]

Second, black and brown males are disproportionately exposed and confined to criminogenic environments. Structural racism sorts whites and nonwhites along every important societal dimension, not least of which are class and space. No other groups have been as systematically denied educational and wealth-building opportunities while being told that these are keys to upward mobility and social recognition. But young black and Latino males have great difficulty accepting the fate of permanent socioeconomic marginality within the broader context of wealth and opportunity into which they were born or migrated. Thus it is no surprise that the illegal drug industry, with its attendant violence, has taken such firm root in black and brown inner-city America: it offers unskilled individuals a rare opportunity to get paid more than subsistence wages. Determination to acquire social resources and prestige through the only opportunities available, even when those avenues are illegal, perversely deepens the social demonization of people of color and reinforces structural racism itself.

The almost inevitable overinvolvement of young men of color in gangs and street crime, combined with the decontextualized media coverage of these disturbing events, intensifies a kind of representational apartheid in the public mind. At a very fundamental level, much of white America comes to discount black and brown humanity and cannot imagine their full inclusion in every dimension of mainstream society.

THE INTERSECTION OF FEATURES 1, 2, AND 3: WHITE SPACE AND THE RACIALIZATION OF CRIME

Perhaps the most dramatic evidence of how race plays into whites' victimization fears involves the places and spaces in which people live. Metropolitan residential patterns since the 1970s are characterized mostly by white middle-class mobility driven by a combination of racialized fears: fears of falling property values as blacks took advantage of new fair-housing laws, fears of the integrated public schools that followed desegregation, and fears of predatory black criminals. Collectively, these fears helped shape a housing market rationality that boosted white flight to suburban communities throughout the 1970s and 1980s. As the drug epidemic ebbed in the early 1990s, this outflow subsided. But studies continue to show that all of our large metropolitan regions remain hypersegregated by race, particularly with respect to African Americans.

It should be noted that although the metropolitan population dynamic has been mostly centrifugal for the past two to three decades, we are now seeing a complex new pattern of demographic transition in the urban core. One dimension involves the six hundred thousand men and women who return home from state and federal prisons annually. Criminologists find that this translates into sixteen hundred individuals a day—four times the number who returned from prison twenty years ago[15]—and researchers who map these patterns note that people leaving prison generally return to a small handful of urban zip codes.[16] Moreover, a significant degree of churning occurs within the reentering population. Crime is falling, but continuing political demand for mass incarceration means that urban residents of color still cycle in and out of prison at high rates. Thus high reentry levels are offset by continuing high rearrest rates for drug and street crimes and for "technical violations" of parole.[17]

At the same time, a modest reverse movement of whites has been evident as the gentrification of many inner-city communities accelerates. It remains to be seen how the unabated incarceration trend combined with the apparent rediscovery of urban cores by whites will impact these places' racial balance, civic capacity, and economic viability in the coming years.[18]

Persistent metropolitan hypersegregation by race is propelled by the imprinting of whiteness on every meaningful dimension of society, and for that reason some social scientists find it useful to conceive of America as a "white space."[19] Their proposition is that American society's physical, cultural, legal, economic, and politi-

cal territories are constructed to regulate social group opportunity and individual privilege in ways that preserve white dominance. Each critical domain is intensively surveilled and patrolled to deny or tightly regulate racial opportunity. White space is a realm of fear and insecurity, factors that have remained constant despite centuries of unambiguous white supremacy in every consequential area. (Examples include enduring, racially based white anxieties about physical victimization, economic deprivation, and cultural dominance by individuals and groups of color.)

Prior to the civil rights era, white privilege extended to almost every corner of public life. Southern Jim Crow laws and antiblack terrorism inscribed whiteness into public institutions and norms. White privilege was a palpable reality in northern states, too, although there it relied more on residential, social, and economic shunning than on the blunt legal tools and open, organized violence typical of the South.[20] By the end of the 1960s, the race-space relationship had become more complicated everywhere. Civil rights campaigners managed to enlist the courts in prying open swathes of white public space; many racist laws were dismantled, and overt antiblack violence lost much of its impunity. But these gains in legal equality did little to change the generative logic of racism, which inheres in cognitive structures developed early in our nation's history. These remain deeply rooted in the psychological, relational, commercial, informal, and other private areas of American life.

To conceive of ostensibly diverse twenty-first-century America as white space is to imply that seemingly neutral mechanisms of law enforcement, deterrence, and punishment operate with biases that reinforce the association between whiteness and America's idealized socioeconomic, political, and cultural mainstream. It is an acknowledgment that although individuals of color may inhabit the physical dimensions of white space, they do so as mostly unassimilatable "others," "perpetual foreigners," and "suspects" of one kind or another to be watched, contained, and controlled in a variety of ways.

At its root, racism in the United States derives from the complex interplay of economic structures built on the exploitation of black labor and the cultural beliefs and social psychology that both flows from and reinforces those structures. Out of the latter has come whites' convictions that individuals of color (blacks, especially) are incompatible with their conception of community—that is, social intimacy, proximity, and mutual responsibility based on a sense of shared humanity. Historical accounts of American racism tend to gloss over the depth of white apprehensiveness over the prospect of black social integration, especially in nonslaveholding

states. However, a good deal of the animus toward integration is related to blacks' perceived unfitness, on many levels, for civilized society. Blacks have been seen as morally lax and likely to draw whites into savage, unrestrained behavior; to have criminal tendencies; to be mentally inferior and thus unfit for civic participation; to be incapable of self-improvement; and, most of all, to threaten the purity of whiteness itself through miscegenation.

Since much of this intangible, private aspect of racism has stood beyond the easy reach of the law, it has facilitated the adaptive, exclusionary mutation of those parts of white space legally compelled to accommodate blacks (schools, workplaces, housing, and the like) rather than the genuine liberalization of those important domains. Looking at metropolitan America's race-driven residential patterns, for instance, many suburban public schools are effectively private white spaces.

Indeed, the end of Jim Crow actually led to nationalization of subtler northern techniques for transforming and preserving white space. Prominent among these is the spatial strategy of white abandonment, devaluation, and containment of "darkening" residential enclaves (mostly in urban areas) and creation of new (mostly suburban) homeownership opportunities for whites. A critical component of this strategy has been white dominance of federal, state, and local policy making for homeownership, transportation, income taxation, education, zoning, and law enforcement, which has resulted in the virtual privatization of ostensibly public suburbs, extended white residential space, and limited universal racial access to new communities.[21]

Of course, formal equality today ensures that we have many racially diverse workplaces, legislatures, playing fields, and entertainment media. But, with the notable exception of our armed forces,[22] these public contexts still remain subtly stratified in ways that devalue the roles and spaces occupied by people of color and make it difficult for them to transcend assigned niches in white space.

Racial group transcendence and upward mobility are elusive because white space is policed to preserve white privilege. This is accomplished through privately secured gated communities, the confinement of stigmatized and vulnerable populations to ghettoized neighborhoods—constituting a sort of unwalled imprisonment—and the warehousing of huge segments of the black and brown population in actual prisons. Less obvious is the self-policing that results from internalized racial inferiority and superiority and from political individualism (i.e., the belief that collective social obligations should be subordinate to personal and family interests).

American individualism also promotes a kind of social atomization that fosters a pervasive sense of personal risk, danger, and fear. Politicians eagerly mine this territory to shape social policy preferences and governance in a range of institutional areas, particularly those bearing on racial equity. We see this most vividly in the public safety domain, where political rhetoric and media frames reinforce apprehensiveness toward people who do not fit the racial, cultural, religious, behavioral, and other default criteria of white space.

Racialized public security logic and discourse extend well beyond crime governance to how we produce and allocate education, health care, welfare, voting access, public housing, immigration, and other social and democratic "goods." Most of the public, including groups of color, take for granted conventional policies and practices steeped in this logic. Prime examples are the increasingly penal approach to urban public school management; the intrusive monitoring of welfare and public housing recipients; hypervigilance against (black) voter fraud; and uncompromising, militaristic immigration management on our southern borders.

At the turn of the new century, just as fears of victimization by street crime began to subside, anxieties about immigration and terrorism surfaced as justifications for protecting white space. New racial and cultural fears are being mobilized to ensure that Latino immigrants and Muslim foreigners are not only marginalized but excluded. (Although African Americans long bore the stigma of the unassimilable other, their complete exclusion from all white space was never seriously attempted—aside from brief periods in past centuries when their voluntary and involuntary return to Africa attracted fleeting interest. Instead, they have been marginalized and contained, often terminally, within designated areas and aspects of white space.)

Latinos and foreign-born Muslims in the United States today are cast as existential threats to white space. Cultural conservatives openly worry that these outsiders are poised to corrupt Judeo-Christian values and culture and push whites into the numerical minority. After the terrorist attacks on New York City and Washington, D.C., on September 11, 2001, by young men from the Middle East, the United States declared war on Muslim fundamentalism, framing the conflict as a civilizational struggle for Western values.[23] Islam and terrorism became firmly linked in the public imagination. Political and media institutions have continued to stoke public fears about every conceivable vulnerability that terrorists might exploit. And so the ordinary wisdom about the War on Terror has been, "We're fighting them over there so we don't have to fight them here at home."

We cannot overlook how communities of color themselves help to preserve white space. Many Americans of color take for granted their social group positions and places as individuals in relation to the white mainstream and so do not mount sustained challenges to their subordinate status. Internalized racial inferiority is reinforced by strong attachment to individualism as a frame of reference. Individualism has taught communities of color to be as fearful of progressive, collective solutions to inequality as whites. As a result, racial minorities remain highly aware of disparities and disadvantages, but their urge to collectively contest exclusion from white space has waned significantly in post–civil rights decades with the disappearance of racism's most visible formal architecture.[24]

STRUCTURAL RACISM AS A REFRAMING LENS

We cannot make sense of our contemporary criminal justice paradigm without appreciating how mass incarceration and spatial regulation of the most disfavored groups serve the nation's racial hierarchy. When all we see is personal victimization, we miss the fact that criminal justice institutions serve, intentionally or not, as active instruments of racial subordination. Whether or not this is a considered goal is beside the point. Mass incarceration steadily undermines and may have already rolled back many hard-won racial equality gains, however minimal or inadequate those may have been, for generations to come. Criminal justice institutions today permanently bar vast numbers of African Americans and Latinos from equal opportunity, despite a public consensus around racial accommodation and integration.

A structural racism analysis allows us to understand how and why extreme racial disproportionality became a defining characteristic of the criminal justice system. Structural racism describes how apparently neutral, objective social and institutional policies, practices, principles, and traditions produce racially inequitable outcomes. For criminal justice, a structural racism approach operates through two main avenues:

- It focuses on the interaction effects across key sectors and highlights how failures in each arena accumulate at the individual and community levels to result in poor socioeconomic outcomes for whole groups of people.

- It points out how racially essentialist beliefs become normalized in the public mind and, by extension, how such beliefs shape the way we understand, interpret, and explain cause and effect in social outcomes. So, for example,

although it is universally and historically true that ghettoized, disadvantaged populations commit higher levels of crime than privileged ones, and that individual criminality generally diminishes with age and upward mobility, Americans still stubbornly equate blackness with criminal propensity—an equation that endures because of the power of racial fears.

Working through both avenues, the structural racism frame offers two important insights for leaders working to change the U.S. criminal justice system.

First, a structural racism analysis locates justice institutions and their racially skewed outcomes within a larger infrastructure of interconnected and racialized institutions, systems, and social outcomes that determine opportunity. Thus, for instance, black and Latino overincarceration isn't simply attributable to how courts and police operate. A structural perspective also spotlights the complementary effects of all institutions that collectively define the life prospects of individuals and their communities.

To illustrate this point, some scholars propose a birdcage metaphor in which institutions crucial to opportunity are likened to the cage's individual bars.[25] No single bar is solely responsible for detaining the birds; they all tightly interconnect to create an imprisoning structure stronger than the sum of its parts. So we can perceive, for example, how an inequitable public school system that pushes children of color out of school, inadequate local job markets that push people of color into the informal (sometimes illicit) economy, and a lack of affordable housing that denies families of color shelter and stability can interact to reinforce racial inequities in criminal justice.

Second, structural racism depends far less today on overt discrimination, laws, and policies than on belief systems that are privately held but publicly reinforced. The general trend since slavery has been less and less reliance on public institutions for racial regulation and greater and greater exploitation of the consensus of private attitudes toward the rightness of that regulation. Implicit racial biases have been more fully mobilized since the advent of civil rights to regulate both public and private spaces. (Paralleling this trend has been a gradual shrinkage of the public sphere as an equalizing sector.) Law enforcement policies and public prisons represent important exceptions to this trend, since their overt control and containment of black and brown bodies and spaces have amplified over the past four decades. The continuing racial skew of our penal system indicates that the era of forceful racial sorting has not quite ended.[26]

Yet, on balance, the institutions, organizations, and rules created to maintain slavery, enforce Jim Crow laws, carry out antiblack terrorism, exclude non-whites from opportunity arenas, and the like have been largely supplanted by complex new structures and arrangements that replicate historical racial sorting in less direct ways. Today, courts do not have to heavy-handedly draw racial boundaries. We rely far more on our intuitive "knowledge" of where people of different races belong, what they're worth, how they're inclined, and what they're capable of.

Media-driven political and popular cultures continually revalidate this "race knowledge." Political and economic institutions and systems embedded in this knowledge environment can generate racially disparate outcomes without necessarily instructing their operatives to do so. And Americans outside those institutions acquiesce in racial sorting by actively or passively legitimizing those institutions and their projects. The public security arena offers good examples of projects—such as the War on Drugs and the War on Terror—that, without doing so explicitly, in fact target disfavored groups here and abroad for expanded surveillance, excessive imprisonment, disenfranchisement, physical exclusion from U.S. soil, and military destruction.

This common-sense racial ideology is almost universally shared. Public awareness of the advantages conferred on whiteness and the disadvantages attached to color is clouded by what philosopher Antonio Gramsci described as "hegemony"—the socialization and legitimization of ideas and beliefs that reinforce prevailing power arrangements in the public mind. Certainly, enough whites *and* people of color internalize the racial ideology for policies, practices, and cultural representations that sustain racial inequities to prevail.

Racial ideology is so potent because it is (a) largely invisible (unlike Jim Crow and overt acts of bigotry) and (b) so well marketed as acceptable cultural difference (via diversity, colorblindness, multiculturalism) that even the people most oppressed by it often embrace and reproduce it unthinkingly. Whites find it easier to deny privilege because all signals suggest that they have earned their status and that "others" who lack their status are culturally handicapped. Oppressed groups miss or minimize white privilege because they, too, view themselves through the seductive but distorted lenses of individualism, meritocracy, and class. These seemingly race-neutral[27] values at the forefront of public consciousness obscure the historical and systemic underpinnings of current justice inequities. Thus the hegemony of common-sense racial ideology continually revalidates structural racism's more tan-

gible manifestations and makes Americans less likely to mobilize around inequities in the structure of opportunities.

Rethinking crime and punishment for the twenty-first century seems to require deliberately engaging the symbiosis between racially biased institutions of justice and opportunity and the beliefs about race, crime, and punishment that surround them. If structural racism is a valid explanatory frame, it suggests this:

> *Racialized mass incarceration is a systemic outcome serving an enduring majority interest in retaining privilege and limiting black social inclusion. Thus piecemeal justice reforms alone may not add up to a new, racially equitable criminal justice regime. Moreover, this profound shift will come about only with displacement of the racial imperative to preserve the integrity of white space that is embedded in the American political economy. Racial ideology, in other words, will have to be a prime target for justice reform.*

Needless to say, the intersection of the institutional and ideological dimensions of the prevailing justice system poses a formidable challenge for reformers. Not surprisingly, reform efforts have focused mostly on tangible inequities of policy and practice in areas such as sentencing, disenfranchisement, police profiling, public education, legal representation, and prison conditions. Political realism has discouraged approaches that probe deeply into the racial attributes behind our national predilection for imprisonment. Justifications for race neutrality, meanwhile, have included the argument that disadvantaged groups stood to benefit disproportionately anyway from almost any justice reform.

However, reformers may not have the option of ignoring the intersection between ideology, policies, and practices if they truly wish to break the race-crime synergy driving mass incarceration. Much more effort may need to go into directly contesting the regressive social and political psychology behind who, what, how, and why we discipline and punish if we are to limit the massive civil rights retrenchment fueled by current justice norms. Historical trends suggest that the prevailing justice system will continually adapt to circumvent piecemeal policy reforms if beliefs and wisdoms that continually relegitimize it do not change.

A practical first step might be to understand the role race plays in how we currently conceive of public and private security, crime, and appropriate punishment. Familiarity with the historical roots of conventional wisdoms about different

groups of color (e.g., those relating to propensities for violence, sexuality, family stability, work, education, and other cultural characteristics) might be a good place to begin. Teasing out the ways in which race-laden beliefs feed into social welfare policies and practices and into the design and delivery of public education, local law enforcement, employment, homeownership, media frames, and other areas that significantly shape the opportunity landscape would also be helpful.

It also seems necessary to explore how institutions linked to the justice sector reinforce inequities within it. Failures in public education, the low-skills job market, public health, affordable housing, and other opportunity sectors obviously explain a lot of the disproportion in minority contact with criminal justice. But, as Jonathan Simon has compellingly explained, those sectors also are linked in another troubling way. To varying degrees, their operational cultures reflect a preoccupation with criminality and security derived from negative assumptions about the propensities of black and brown individuals. "Equalizing" and social welfare institutions have developed governance logics—preoccupations with and approaches to school discipline, public assistance, workplace security, child welfare, domestic relations, and so forth—that directly complement the racial sorting of criminal justice.[28] In disadvantaged communities, a culture of fear, disdain, and resentment—much of it seemingly fueled by racial and nativist preconceptions—shapes the postures of many of these public and private institutions.

Reformers may have to shoulder the unenviable task of simultaneously tackling the visible injustices of the current system and the largely invisible racism behind them. Hard moral and political confrontations may be unavoidable. Indications are that the nation's addiction to race control through overcriminalization and overincarceration will not fade away on its own. If reformers believe that a more racially equitable democracy is possible, this broader and more ambitious agenda is worth exploring. In a variety of ways, this volume reflects a modest effort to take up that formidable challenge.

Notes

1. L. Guinier and G. Torres, *The Miner's Canary: Enlisting Race, Resisting Power, Transforming Democracy* (Cambridge, Mass.: Harvard University Press, 2002).

2. Aspen Institute Roundtable on Community Change, *Structural Racism and Community Building* (Washington, D.C.: Aspen Institute, 2004).

3. E. Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Inequality in the United States* (New York: Rowan & Littlefield, 2003).

4. Institutions and their embedded core values are, of course, mutually constructed over

the long term. However, it is unlikely that such values shift significantly in the short term in response to the kinds of limited technical or programmatic adjustments that we typically see in so many high-stakes areas (e.g., school achievement, workforce development, affordable housing, child welfare, juvenile justice).

5. Bureau of Justice Statistics, *Prison Inmates at Midyear 2008—Statistical Tables* (March 2009, rev. April 2009), http://bjs.ojp.usdoj.gov/content/pub/pdf/pim08st.pdf.

6. See http://www.prisonsucks.com/ (a project of the Prison Policy Initiative in Northampton, Mass.). For a comprehensive recent treatment of the racial features of mass incarceration, see B. Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006).

7. Bureau of Justice Statistics (June 5, 2006), http//www.ojp.gov/bjs/pub/pdf/pjim05.pdf.

8. See Timothy Lynch's essay "We Own the Night: Amadou Diallo's Deadly Encounter with New York City's Street Crimes Unit," in *Cato Institute Briefing Paper No.56* (March 31, 2000).

9. Whites' well-documented fears of victimization go back to slavery and its demographic imbalances, especially in the South. In his 2007 book *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (Oxford: Oxford University Press), Jonathan Simon explains how even rural and small-town Americans feared random assaults by the notorious criminals of the Prohibition and later periods prior to the declaration of the War on Crime in the 1970s. Today, suburban residents of white enclaves manifest heightened fear of young black men.

10. For a brief discussion see the summer 2000 intelligence report of the Southern Poverty Law Center, "Coloring Crime," at http://www.splcenter.org/intel/intelreport/article.jsp?aid=255.

11. Recall the notorious editorial decision to darken O. J. Simpson's image on the cover of *TIME* magazine for the June 27, 1994 issue. UCLA researchers Frank Gilliam Jr. and Shanto Iyengar have conducted several experiments that show how a negative script about blackness forms part of the frame of crime news reporting; see F. D. Gilliam Jr. and S. Iyengar, "Prime Suspects: The Impact of Local Television News on Attitudes about Crime and Race," *American Journal of Political Science* 44, no. 3 (2000): 560–73.

12. Princeton University political science professor John J. DiIulio introduced the word *superpredators* in a 1996 report to warn of the coming of a "new breed" of juvenile delinquents—more "cold-blooded" and "remorseless" than previously seen—as America's youth population soared. This assertion does not overlook our current and growing hysteria over sex offenders, where the popular image is that of a white male. There is a much longer history, however—especially in former slaveholding states—of white perceptions that free black males posed an existential threat. Accounts of the violent white backlashes during Reconstruction reveal that white terrorists justified their actions as necessary preemptive measures aimed at preventing the wholesale slaughter and rape being plotted by newly freed blacks. See N. Lemann, *Redemption: The Last Battle of the Civil War* (New York: Farrar, Straus, and Giroux, 2006).

13. Interestingly, in sharp contrast law enforcement relating to marijuana use weakened over the same period when it became the drug of choice for middle-class whites. See D. Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (New York: New Press, 1999), 152–53.

14. D. Pager, B. Western, and B. Bonikowski, "Discrimination in Low-Wage Labor Markets" (draft paper, October 2006), www.econ.brown.edu/econ/events/pager&western1.pdf.

15. J. Travis, "But They All Come Back: Rethinking Prisoner Reentry," in *Sentencing & Corrections: Papers from the Executive Sessions on Sentencing and Corrections,* no. 7 (U.S. Department of Justice Office of Justice Programs, National Institute of Justice, May 2000).

16. See the work of Eric Cadora, director of the Justice Mapping Center, www.justicemapping.org.

17. Basically, these are noncriminal violations of the conditions of parole as spelled out in a prisoner's release plan. Of the 423,000 men and women whose terms of parole concluded in 1998, 42 percent were sent back to prison. See K. Virella, "Trapped by the System: Parole in America," in *Prison Nation: The Warehousing of America's Poor,* ed. T. Herivel and P. Wright (New York: Routledge, 2003), 101–105.

18. We know that people newly released from prison already face enormous reintegration challenges. Should gentrification trends continue, these challenges might become even more complicated.

19. See especially j. a. powell, "Dreaming of a Self beyond Whiteness and Isolation," *Washington University Journal of Law and Policy* 18 (2005): 45, 29.

20. Alexis de Tocqueville, renowned for his insights on nineteenth-century American society, noted that antiblack racism was greatest in states where slavery had never been known. In *Democracy in America*, he wrote, "In the North the white man no longer clearly sees the barrier that separates him from the degraded race, and he keeps the Negro at a distance all the more carefully because he fears lest one day they may be confounded together." See de Tocqueville, *Democracy in America,* ed. J. P. Mayer (New York: Doubleday, 1969), 343.

21. For more on this spatial perspective of race, see powell, "Dreaming of a Self."

22. Although still not perfect, the racial integration of our post-WWII military was remarkable for its speed and institutional commitment to equal opportunity. Yet this, too, is a complicated "occupation segregation" story. Blacks and Latinos are overrepresented in the lower ranks of combat arms but woefully underrepresented in the officer corps. See R. C. White Jr., "Wasting Time: Black Participation in the Combat Arms Branches" (2009), http://www.stormingmedia.us/38/3829/A382994.html.

23. The Bush administration insistently described this as a "war on terrorism," but the illogic, transparency, and expediency of this branding were obvious. Iraq, described as the central front in that war, was never linked to the September 11 attack or to any other terrorist attack on U.S. allies or interests.

24. Civil rights activism in the United States waned for many complicated reasons, which probably include a diminution in the intensity with which African Americans once asserted their equal humanity and basis for rights. Historian Carol Anderson offered this observation, reflecting on African Americans' impassioned but fruitless efforts in the early twentieth century to establish human rights—not just civil rights—as a universal governing principle.

25. A. Grant-Thomas and j. a. powell, "Toward a Structural Racism Framework," *Poverty and Race* 15, no.6 (November/December 2006): 3–6.

26. As Foucault reminds us in *Discipline and Punish,* while most of the punishment spectacles of the sovereign state have been transformed into internalized, self-policing mechanisms,

for people who live in poor neighborhoods under constant police surveillance the criminal justice and prison systems continue to operate as institutions of coercive control. See M. Foucault, *Discipline and Punish: The Birth of the Prison,* trans. A. Sheridan (New York: Random House, 1977).

27. And gender neutral, for that matter.

28. Simon, *Governing through Crime.*

CHANGING PUBLIC PERCEPTIONS
OF RACE, CRIME, AND PUNISHMENT

The New Jim Crow:
Mass Incarceration in the Age of Colorblindness

MICHELLE ALEXANDER

Jarvious Cotton cannot vote. Like his father, grandfather, great-grandfather, and great-great-grandfather, he has been denied the right to participate in our electoral democracy. Cotton's family tree tells the story of several generations of black men who were born in the United States but denied the most basic freedom that democracy promises—the freedom to vote for those who will make the rules and laws that govern your life. Cotton's great-great-grandfather could not vote as a slave. His great-grandfather was beaten to death by the Ku Klux Klan for attempting to vote. His grandfather was prevented from voting by Klan intimidation; his father was barred from voting by poll taxes and literacy tests. Today, Jarvious Cotton cannot vote because he, like many black men in the United States, has been labeled a felon and is currently on parole.[1]

Cotton's story illustrates, in many respects, the old adage, "The more things change the more they remain the same." Each generation has used new tactics to achieve the same goals—goals shared by the Founding Fathers. Denying African Americans full citizenship was deemed essential to the formation of the original union. Hundreds of years later, America still is not an egalitarian democracy. The arguments and rationalizations trotted out in support of racial exclusion and discrimination in its various forms have changed and evolved, but the outcome has remained largely the same. An extraordinarily large percentage of black men in the United States are legally barred from voting today, just as they have been throughout most of American history. They also are subject to legalized discrimination in employment, housing, education, public benefits, and jury service, just as their parents, grandparents, and great-grandparents once were.

What has changed since the collapse of Jim Crow has less to do with the basic structure of our society than the language we use to justify it. In the era of col-

orblindness, it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don't. Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind.

Today, it is perfectly legal to discriminate against criminals in nearly all the ways it was once legal to discriminate against any African American. Once you're labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—suddenly are legal. As a "criminal" you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow.

The public consensus that America is now colorblind has blinded us to the realities of race in our society and facilitated the emergence of a rigid new racial caste system. Knowing, as I do, the difficulty of seeing what almost everyone insists does not exist, I anticipate this statement will be met with skepticism or something worse. For some people, the characterization of mass incarceration as a racial caste system may seem like a gross exaggeration, if not hyperbole. Yes, we may have "classes" in the United States—vaguely defined upper, middle, and lower classes—and we may even have an "underclass" (a group so estranged from mainstream society that it no longer reaches the mythical ladder of opportunity), but we do not, many will insist, have anything in this country that resembles a "caste."

The aim here is not to debate what does and does not constitute a caste system. I use the term *caste* as it is used in common parlance to denote a stigmatized group locked into an inferior position by law and custom. Jim Crow and slavery were caste systems. So is our current system of mass incarceration.

Ten years ago, I would have argued strenuously against that central claim. Indeed, if Barack Obama had been elected president back then, I would have argued that his election marked the nation's triumph over racial caste—the final nail in the coffin of Jim Crow. My elation would have been tempered by the distance yet to be traveled to reach the promised land of racial justice in America, but my conviction that nothing remotely similar to Jim Crow exists in this country would have been steadfast.

Today, my elation over Obama's election is tempered by a far more sobering awareness. As an African American woman, with three young children who will never

know a world in which a black man could not be president of the United States, I was beyond thrilled on election night. Yet when I walked out of the election night party, full of hope and enthusiasm, I was immediately reminded of the harsh realities of the New Jim Crow. A black man was on his knees in the gutter, handcuffed

> Today, it is perfectly legal to discriminate against criminals in nearly all the ways it was once legal to discriminate against any African American.

behind his back as several police officers stood around him talking, joking, and ignoring his human existence. Crowds poured out of the building; everyone stared for a moment at the black man cowering in the street and then averted their gaze. What did the election of Barack Obama mean for him?

Like many civil rights lawyers, I was inspired to attend law school by the civil rights victories of the 1950s and '60s. Even in the face of growing social and political opposition to remedial policies such as affirmative action, I clung to the notion that the evils of Jim Crow are behind us and that, while we have a long way to go to fulfill the dream of an egalitarian, multiracial democracy, we have made real progress and are now struggling to hold on to the gains of the past. I thought my job as a civil rights lawyer was to join together with the allies of racial progress to resist attacks on affirmative action and to eliminate the vestiges of Jim Crow segregation, including our still separate and unequal system of education. I understood the problems plaguing poor communities of color, including problems associated with crime and rising incarceration rates, to be a function of poverty and lack of access to quality education—the continuing legacy of slavery and Jim Crow. Never did I seriously consider the possibility that a new racial caste system was operating in this country. The new system had been developed and implemented swiftly, and it was largely invisible, even to people like me who spent most of their waking hours fighting for justice.

I first encountered the idea of a new racial caste system nearly a decade ago, when a bright orange poster caught my eye. I was rushing to catch the bus and I noticed a sign, stapled to a telephone pole, that screamed in large bold print: "The Drug War Is the New Jim Crow." I paused a moment to skim the text of the flyer. Some radical group was holding a community meeting about police brutality, the new three strikes law in California, and the expansion of America's prison system. The meeting was being held at a small community church a few blocks away that had seating for no more than fifty people. I sighed and muttered to myself something

like, "Yeah, the criminal justice system is racist in many ways, but it really doesn't help to make such an absurd comparison. People will just think you're crazy." I then crossed the street and hopped on the bus. I was headed to my new job as director of the ACLU's Racial Justice Project in Northern California.

When I began my work at the ACLU, I assumed that the criminal justice system had problems of racial bias in much the same way that all major institutions in our society are plagued by problems associated with conscious and unconscious bias. As a lawyer who had litigated numerous class-action employment discrimination cases, I understood well the many ways in which racial stereotyping can permeate subjective decision-making processes at all levels of an organization, with devastating consequences. I was familiar with the challenges associated with reforming institutions in which racial stratification is thought to be normal—the natural consequence of differences in education, culture, motivation, and, some still believe, innate ability. While at the ACLU, I shifted my focus from employment discrimination to criminal justice reform and dedicated myself to the task of working with others to identify and eliminate racial bias whenever, and wherever, it reared its ugly head in the criminal justice system.

By the time I left the ACLU, I had come to suspect that I was wrong about the criminal justice system. It was not just another institution infected with racial bias but, rather, a different beast entirely. The activists who posted the sign on the telephone pole were not crazy; nor was the smattering of lawyers and advocates around the country who were beginning to connect the dots between our current system of mass incarceration and earlier forms of social control.

Quite belatedly, I came to see that mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow. In my experience, people who have been incarcerated rarely have difficulty identifying the parallels between these systems of social control. Once they are released, they are often denied the right to vote, excluded from juries, and relegated to a racially segregated and subordinated existence. Through a web of laws, regulations, and informal rules, all powerfully reinforced by social stigma, they are confined to the margins of mainstream society and denied access to the mainstream economy. They are legally denied the ability to obtain jobs, housing, and public benefits, much as African Americans were once forced into a segregated, second-class citizenship during the Jim Crow era.

Those of us who have viewed that world from a comfortable distance yet sympathize with the plight of the so-called "underclass" tend to interpret the experience of people caught up in the criminal justice system primarily through the lens of popularized social science. We attribute the staggering increase in incarceration rates in communities of color to the predictable, though unfortunate, consequence of poverty, racial segregation, unequal educational opportunities, and the presumed realities of the drug market, including the mistaken belief that most drug dealers are black or brown. Occasionally, in the course of my work, someone would make a remark suggesting that, perhaps, the War on Drugs is a racist conspiracy to put blacks back in their place. This type of remark was invariably accompanied by nervous laughter, intended to convey the impression that although the idea had crossed their minds, it is not an idea a reasonable person would take seriously.

Many civil rights organizations today do not include issues relating to mass incarceration or racial bias in the criminal justice system as part of their primary agenda. Although one in three young African American men is currently under the control of the criminal justice system today—in prison or jail, or on probation or parole—the mass incarceration of African Americans has been categorized as a "criminal justice issue" as opposed to a racial justice or civil rights issue (or crisis). In fact, when I first joined the ACLU the organization was engaged in important criminal justice reform work, but no one suspected that it would eventually become central to the agenda of the Racial Justice Project. The assumption was that the Project would concentrate its efforts on defending affirmative action. Shortly after leaving the ACLU, I joined the board of directors of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Although that organization included "racial justice" among its core priorities, reform of the criminal justice system was not (and still is not) a major part of its racial justice work.

The Lawyers' Committee is not alone. In January 2008, the Leadership Conference on Civil Rights, an organization composed of leaders from more than 180 civil rights organizations, sent a letter to allies and supporters informing them of a major initiative to document the voting record of members of Congress. The letter explained that its forthcoming report would show "how each representative and senator cast his or her vote on some of the most important civil rights issues of 2007, including voting rights, affirmative action, immigration, nominations, education, hate crimes, employment, health, housing, and poverty." Criminal justice issues did not make the list. That same broad-based coalition organized a major conference in October 2007 titled "Why We Can't Wait: Reversing the Retreat on Civil Rights," which included panels discussing school integration, employment

discrimination, housing and lending discrimination, economic justice, environmental justice, disability rights, age discrimination, and immigrants rights. Not a single panel was devoted to criminal justice reform.

The elected leadership of the African American community has a much broader mandate than civil rights groups, but they, too, frequently overlook criminal justice. In January 2009, for example, the Congressional Black Caucus sent a letter to hundreds of community and organization leaders who have worked with the Caucus over the years, soliciting general information about them and requesting that they identify their priorities. More than thirty-five topics were listed as areas of potential "special interest," including taxes, defense, immigration, agriculture, housing, banking, higher education, multimedia, transportation and infrastructure, women, seniors, nutrition, faith initiatives, civil rights, census, economic security, and emerging leaders. No mention was made of criminal justice. "Reentry" was listed, but a community leader interested in criminal justice reform would have had to check the box labeled "other."

The failure of civil rights advocates and African American leaders to prioritize criminal justice reform (or view it as central to a racial justice agenda) is difficult to justify in view of the extraordinary impact mass incarceration has on communities of color. Over the past thirty years, the U.S. penal population has exploded from around 300,000 to more than two million, with the vast majority of the increase attributable to the imprisonment of people of color for nonviolent and drug-related offenses. The United States now has the highest rate of incarceration in the world, dwarfing the rates of nearly every developed country, even surpassing highly repressive regimes like Russia, China, and Iran. In Germany, ninety-three people are in prison for every 100,000 adults and children. In the United States, the rate[2] is roughly eight times that, or 750 per 100,000.

The racial dimension of mass incarceration is its most striking feature. No other country in the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid. In Washington, D.C., our nation's capitol, it is estimated that three out of four young black men (and nearly all of those in the poorest neighborhoods) can expect to serve time in prison.[3] Similar rates of incarceration can be found in black communities across America.

Contrary to the prevailing "common sense," the dramatic explosion in black imprisonment cannot be explained by crime rates. Nor can it be explained by pover-

ty, bad schools, or racial segregation, all of which have existed in the black community in various forms since slavery but have not resulted in the mass incarceration of people of color. The sobering reality is that during the past three decades rates of imprisonment have moved *independently* of crime and poverty rates. Rates of imprisonment have continued to climb regardless of whether crime rates went up or down. As described more fully in chapters 2 and 3 of this volume, no strong relationship between crime rates and incarceration rates actually exists.

The explosion in our nation's prison population is best explained not by poverty or crime but by a massive federal program known as the War on Drugs. President Richard Nixon was the first to coin the term *war on drugs*, but President Ronald Reagan turned the rhetorical war into a literal one. President Reagan officially declared his drug war in the early 1980s, a pivotal period in our nation's history. It was a time when African American men found themselves suddenly jobless in inner cities, as deindustrialization shut down factories and globalization sent jobs overseas. No longer needed to pick cotton in the fields or toil in factories, African American men found themselves, almost overnight, suddenly unnecessary to the functioning of the U.S. economy.

The precarious status of inner-city African Americans emerged at precisely the moment a fierce backlash against the civil rights movement was brewing, a backlash that culminated in the War on Drugs. Although the war purported to be about "drugs," not race, this rhetorical maneuver was little more than a concession to the new colorblind rules of political discourse. The drug war systematically targeted African Americans trapped in jobless, racially segregated ghettos—the very people left behind by the civil rights movement.

Today, the drug war continues to be waged almost exclusively in poor communities of color, even though studies show that people of all colors *use and sell* illegal drugs at remarkably similar rates.[4] If there are significant differences to be found, in fact, survey data frequently suggest that whites—particularly white youth—are more likely to engage in drug crime than people of color.[5] That is not what one would guess, however, when entering our nation's prisons and jails, which are overflowing with black and brown drug offenders. In some states, black men are admitted to prison on drug charges at rates twenty to fifty times greater than those of white men.[6] And in major cities wracked by the drug war, as many as 80 percent of young African American men now have criminal records and are thus subject to legalized discrimination for the rest of their lives.[7] These young men are part of a growing undercaste, permanently locked up and locked out of mainstream society.

Notwithstanding these stunning figures, mass incarceration has been met with relatively weak resistance, even by civil rights advocates. Their attention has been devoted to other issues, such as affirmative action. During the past twenty years, virtually every progressive, national civil rights organization in the country has mobilized and rallied in defense of affirmative action. The struggle to preserve affirmative action in higher education, and thus maintain diversity in the nation's most elite colleges and universities, has consumed much of the attention and resources of the civil rights community and dominated racial justice discourse in the mainstream media, thus leading the general public to believe that affirmative action is the main battlefront in U.S. race relations—even as our prisons fill with black and brown men.

Still, despite these significant developments, there seems to be a lack of appreciation for the enormity of the crisis at hand. There is no broad-based movement brewing to end mass incarceration and no advocacy effort that approaches in scale the fight to preserve affirmative action. There also remains a persistent tendency in the civil rights community to treat the criminal justice system as just another institution infected with lingering racial bias. The NAACP's website offers one example. As of May 2008, one could find a brief introduction to the organization's criminal justice work in the section titled "legal department." The introduction explains that "despite the civil rights victories of our past, racial prejudice still pervades the criminal justice system." Visitors to the website are urged to join the NAACP in order to "protect the hard-earned civil rights gains of the past three decades." No one visiting the website would learn that the mass incarceration of African Americans had already eviscerated many of the hard-earned gains it urges its members to protect.

Imagine what would—or wouldn't—have happened if civil rights organizations and African American leaders in the 1940s had not placed Jim Crow segregation at the forefront of their racial justice agenda. That seems absurd, given that racial segregation was the primary vehicle of racialized social control in the United States during the period. I argue that mass incarceration is, metaphorically, the New Jim Crow, and that all those who care about social justice should fully commit themselves to dismantling this new racial caste system. Mass incarceration, not attacks on affirmative action or lax civil rights enforcement, is the most damaging manifestation of the backlash against the civil rights movement. The popular narrative that emphasizes the death of slavery and Jim Crow, and celebrates the nation's "triumph over race" with the election of Barack Obama, is dangerously misguided.

And so I believe we have not ended the racial caste system in America; we have merely redesigned it. For me, this is as obvious as my own face in the mirror. Like an optical illusion—one in which the embedded image is impossible to see until its outline is identified—the new caste system lurks invisibly within the

> There is no broad-based movement brewing to end mass incarceration and no advocacy effort that approaches in scale the fight to preserve affirmative action.

maze of rationalizations we have developed for persistent racial inequality. It is possible—quite easy, in fact—never to see the embedded reality. Only after years of working on criminal justice reform did my own focus finally shift, and then the rigid caste system slowly came into view. Eventually it became obvious. Now it seems odd that I could not see it before.

It may be helpful, in attempting to understand the basic nature of the new caste system, to think of the criminal justice system—the entire collection of institutions and practices it comprises—not as an independent system but as a *gateway* into a much larger system of racial stigmatization and permanent marginalization. This larger system, referred to here as *mass incarceration*, is a system that locks people not only behind actual bars in actual prisons but also behind virtual bars and virtual walls—walls that are invisible to the naked eye but function nearly as effectively as Jim Crow laws once did to lock people of color into a permanent second-class citizenship.

The language of *caste* may well seem foreign or unfamiliar; public discussions about racial caste in America are relatively rare. We avoid talking about caste in our society because we are ashamed of our racial history. We also avoid talking about race. We even avoid talking about class, in part because people tend to imagine that one's class reflects on one's character. What is key to America's understanding of class is the persistent belief, despite all evidence to the contrary, that anyone, with the proper discipline and drive, can move from a lower class to a higher class. We recognize that mobility may be difficult, but the key to our collective self-image is the understanding that mobility is always possible, so failure to "move up" reflects on one's character. By extension, the failure of a race, or any ethnic group, to move up reflects very poorly on the group as a whole.

Today's rare public debates about the plight of African Americans completely miss the fact that a huge percentage of them are not free to move up at all. It

isn't just that they lack opportunity, attend poor schools, or are plagued by poverty. they are barred by law from doing so. And the major institutions with which they come into contact are designed to prevent their mobility. To put the matter starkly: the current system of control—mass incarceration—permanently locks a huge percentage of the African American population out of the mainstream society and economy. The system operates through our criminal justice institutions but functions more like a caste system than a system of crime control. Once released, former prisoners enter a hidden underworld of legalized discrimination and permanent social exclusion. They are members of America's new undercaste.

Although this new system of racialized social control purports to be colorblind, it creates and maintains racial hierarchy much like earlier systems of control. Like Jim Crow (and slavery), mass incarceration operates as a tightly networked system of laws, rules, policies, customs, and institutions that control the people labeled as criminals, both in and out of prison, and operate collectively to ensure the subordinate status of a group defined largely by race.

This argument may be particularly hard to swallow given the election of Barack Obama to our nation's highest office. Many people will wonder how a nation that elected its first black president could possibly have a racial caste system. It's a fair question. But there is no inconsistency whatsoever between Obama's election and the existence of a racial caste system in the era of colorblindness. The current system of control depends on black exceptionalism; it is not disproved or undermined by it.

Other people may wonder how a racial caste system could exist when most Americans, of all colors, oppose race discrimination and endorse colorblindness. Yet racial caste systems do not require racial hostility or overt bigotry to thrive. They need only racial indifference, as Martin Luther King Jr. warned more than forty-five years ago.

The recent decisions by some state legislatures, most notably New York's, to repeal or reduce mandatory drug sentencing laws have led some people to believe that the system of racial control is already fading away. Such an assumption, I believe, is a serious mistake. Many states that have reconsidered their harsh sentencing schemes have done so not out of concern for the lives and families they destroyed or the racial dimensions of the drug war but out of concern for busting state budgets in a time of economic recession. In other words, the racial ideology that gave rise to these laws remains largely undisturbed. Shifting economic conditions or

rising crime rates could easily result in a reversal of fortunes for those who commit drug crimes, especially if the drug criminals are perceived to be black and brown. Equally important to understand is this: merely reducing sentence length, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent, second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.

To be sure, there are important differences between mass incarceration, Jim Crow, and slavery—the three major racialized systems of control adopted in the United States to date. Failure to acknowledge the relevant differences and their implications would be a disservice to racial justice discourse. Many of the differences, however, are not as dramatic as they initially appear; others serve to illustrate the ways in which systems of racialized social control have managed to morph, evolve, and adapt to changes in the political, social, and legal context over time. Ultimately, I believe that the similarities between these systems of control overwhelm the differences and that mass incarceration, like its predecessors, has been largely immunized from legal challenge. If this claim is substantially correct, the implications for racial justice advocacy are profound.

With the benefit of hindsight, surely we can see that piecemeal policy reform or litigation alone would have been a futile approach to dismantling Jim Crow segregation. While those strategies certainly had their place, the Civil Rights Act of 1964 and the concomitant cultural shift would never have occurred without the cultivation of a critical political consciousness in the African American community and the widespread strategic activism that flowed from it. Likewise, it seems misguided to believe that the New Jim Crow can ever be dismantled through traditional litigation and policy reform strategies that are wholly disconnected from a major social movement.

Such a movement will be impossible if those who are most committed to abolishing racial hierarchy continue to talk and behave as if a state-sponsored racial caste system no longer exists. If we continue to tell ourselves the popular myths about racial progress—or, worse yet, if we say to ourselves that the problem of mass incarceration is just too big and daunting for us to do anything about, and direct our energies instead to battles that might be more easily won—a human rights nightmare will have occurred on our watch, and history will judge us harshly.

Instead, if we hope to ever abolish the New Jim Crow, we must forge a new social consensus about race and the role of race in defining the basic structure of our society. This new consensus must begin with dialogue—a conversation that fosters a critical consciousness, a key prerequisite to effective social action. This essay is an attempt to ensure that the conversation does not end with nervous laughter.

Additional Comments from the Public Forum

MICHELLE ALEXANDER: This meeting is occurring at a critically important moment in our nation's history. A major symbolic disruption in our nation's racial order has occurred, and it remains to be seen how this moment will be interpreted and understood in the years to come. So, just a few quick points.

The first is that although the temptation to do otherwise may be overwhelming in the era of Obama, we must strenuously resist attempts to frame, critique, and respond to the criminal justice system in a colorblind or race-neutral fashion. Mass incarceration is best understood primarily as a system of racial control, not crime control. The war on drugs, the engine of mass incarceration, was launched as part of a white backlash to the civil rights movement. The drug war was not designed to control and eliminate crime or drug use but instead to control and eliminate certain racialized populations that are associated in the public imagination with crime and drugs. Not only was the drug war designed primarily as a mechanism of racial control, it has functioned that way over the decades and is experienced that way by those who are trapped within the system of control.

Once swept into our criminal justice system through the war on drugs, people are labeled felons. Upon their release, they enter a parallel social universe where they are denied the right to vote, automatically excluded from juries, and then can be legally discriminated against in employment, housing, education, public benefits—many of the same forms of discrimination that were legal against their grandparents in the Jim Crow era.

The second point is that because the system is designed primarily to control certain racialized populations rather than respond more narrowly to crime, fundamental transformational change is impossible if we fail to change the way we think about the black and brown people who are trapped at the bottom of the well. The current system of control rests not so much on flawed policies but, rather, on a fundamentally flawed public consensus that is indifferent, at best, to the experiences of poor people of color. If we fail to build a more compassionate and race-conscious public consensus about those people, our reform efforts will fail in the long run. We may achieve some impressive victories, but America's racial order, our fundamental racial hierarchy in the United States, will remain intact.

The system will adapt, just as convict leasing replaced slavery. A new system of racialized social control will emerge just as Jim Crow followed on the heels of Reconstruction and mass incarceration emerged on the heels of the civil rights movement. Mass incarceration as we know it would not exist but for the racialized image of those who are trapped

within it, and if we fail to grapple with this reality and to build a new, compassionate, race-conscious public consensus that welcomes those at the bottom into our social family, we'll do nothing more than tinker with the system, and we'll fail to build a new model.

Q: *I'm wondering what you think are the strengths and weaknesses of specifically calling mass incarceration the legacy of slavery, Jim and Jane Crow, and corrections laws?*

ALEXANDER: There a lot of strengths, but let me talk a little bit about the weaknesses, because in the era of Obama there will be a tremendous amount of push-back to the idea that the mass incarceration of African Americans and Latinos today really bears any relationship to Jim Crow or slavery. And the embrace of diversity as an ideology has reinforced this notion that anybody can make it if you try. It's easy to identify people who have attended elite institutions or who now have positions of power as a way of justifying the experience of those who are locked at the bottom. It creates the impression that if only those people worked harder, tried harder, they could have the same kind of success as the exceptional black individuals. So there will be a tremendous amount of push-back, and there are significant differences between mass incarceration and Jim Crow and slavery that have to be acknowledged if we're going to be able to make a fair comparison.

But the main reason I'm a firm believer is that it's the truth. You can trace the connection between convict leasing and the use of the criminal justice system as a way of reestablishing slavery in the postbellum era, and you can show how during the Jim Crow era the police also helped maintain the dominant system of control—although in earlier eras, perhaps with the exception of slavery, the criminal justice system was ancillary to the prevailing system of control. Today the criminal justice system is the primary vehicle for maintaining the racial order in the United States. In cities like Washington, D.C., for example, three out of four young black men, according to some studies, can expect to find themselves under the control of the criminal justice system. And in some of the poorest neighborhoods in D.C., Baltimore, and Chicago, every young black man who lives there can expect to serve time. This isn't just another discriminatory institution. Really, the criminal justice system in the United States today is functioning as the primary vehicle of racialized social control, and it has to be understood that way. Getting folks today to accept that that's the reality, and that Barack Obama is the exception not the rule will be a challenge.

Q: *Does the lack or absence of wealthy blacks and Hispanics in prison undermine the racial justice analysis? We're talking about disproportionate numbers of racial minorities who are in prison, but for the most part they're all poor. Of course, wealthy people in general are relatively absent from our nation's prisons and jails. And in states where pretty much everyone is white—the prisoners, the prison administrators, the guards,*

the judges, the prosecutors—the violence, brutality, and injustices in prisons are pretty much the same. In many other jurisdictions, where the prison and jail populations are virtually all black, just about all of the entire local political power structure is also black. The judges are mostly black, the prosecutors are black, the sheriffs are black, the mayors are black, and they're still perpetuating the same system of mass incarceration and mass imprisonment that we see in the white-controlled jurisdictions. So to what extent does this undermine the racism argument? I think that what we're seeing is a criminalization of poverty and mental illness in many places that outweighs race.

Second, how do we deal with the fact that the United States has become addicted to mass incarceration as a means of economic development? Right now, in this time of economic crisis, 900,000 people are employed as prison and jail guards in this country. You're going to throw half a million people out of work if you open up the prison gates and let out half of the prison population. And you'll have another 1.1 million people on the jobless rolls.

ALEXANDER: The fact that wealthy African Americans aren't caught up in the criminal justice system does not in any way undermine the racial critique. Because crime was racialized so heavily dating back to the Law and Order Movement and the attempt to criminalize civil rights protestors, you can trace it to the Get Tough on Crime Movement. It was a highly racialized movement that dove-

tailed with the Southern strategy, and so there is an undeniable racial component to the emergence of the War on Drugs and mass incarceration. It is my belief that but for the racialization of the public image of crime, mass incarceration as we know it today would not exist. We might have higher incarceration rates than we otherwise would, but without the racialized image of the criminal in the public imagination, today's mass incarceration phenomenon would not exist.

The existence of black police chiefs and mayors also does not undermine the possibility of mass incarceration as a form of racial social control. You know, when there were black slave drivers, it did not in any way undermine slavery as a racist institution; even when there were black slave owners and black plantation owners, it didn't undermine the racist nature of slavery. Black police chiefs and black mayors exist within a social and political context in the United States today that has been racially defined. And that is not to say that black police chiefs and black mayors who implement tough-on-crime policies are old-fashioned, old-school racists in the way that we think of Bull Connor. Rather, they are responding to the political incentives that were created within a racialized political context dating back to the Law and Order Movement, the Get Tough on Crime Movement, and the emergence of the War on Drugs. The parameters within which politicians of all colors are free to operate in the United States today have been defined in part by racialized social and political movements.

Notes

This essay appears in Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2011) and is reprinted here with permission of the publisher.

1. Jarvious Cotton was a plaintiff in *Cotton v. Fordice* (Fifth Circuit Court, 1998), holding that Mississippi's felon disenfranchisement provision had lost its racially discriminatory taint. The information regarding Cotton's family tree was obtained by Emily Bolton on March 29, 1999, when she interviewed Cotton at Mississippi State Prison. Javrious Cotton was released on parole in Mississippi, a state that denies voting rights to parolees.

2. PEW Center on the States, *"One in 100: Behind Bars in America 2008"* (February 2008, p. 5), http://www.pewcenteronthestates.org/report_detail.aspx?id=35904.

3. District of Columbia Department of Corrections data for 2000. Cited in D. Braman, *Doing Time on the Outside: Incarceration and Family Life in Urban America* (Ann Arbor: University of Michigan Press, 2004), 3.

4. See Substance Abuse and Mental Health Services Administration, *Results from the 2002 National Survey on Drug Use and Health* (Rockville, Md.: U.S. Department of Health and Human Services, 2005). The data reveal nearly identical rates of illegal drug use among whites and blacks, with only a single percentage point of difference between them. See also Substance Abuse and Mental Health Services Administration, *National Household Survey on Drug Abuse* (Rockville, Md.: U.S. Department of Health and Human Services, 1999); U.S. Department of Justice, Bureau of Justice Statistics, which reports slightly higher rates of illicit drug use by whites than African Americans; and M. Mauer and R. S. King, *A 25-Year Quagmire: The War on Drugs and Its Impact on American Society* (Washington, D.C.: The Sentencing Project, 2007), which cites a study suggesting that African Americans have slightly higher rates of illegal drug use than whites.

5. See H. N. Snyder and M. Sickmund, *Juvenile Offenders and Victims: 2006 National Report* (Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 2006), which reports that white youth are more likely than black youth to engage in illegal drug sales; L. D. Johnston, P. M. O'Malley, J. G. Bachman, and J. E. Schulenberg, *Monitoring the Future: National Survey Results on Drug Use, 1975–2006, Vol. I: Secondary School Students* (Bethesda, Md.: National Institute on Drug Abuse, 2007), which asserts that "African-American 12th graders have consistently shown lower usage rates than White 12th graders for most drugs, both licit and illicit"; and L. Johnston, P. O'Malley, and J. Bachman, *Monitoring the Future: National Results on Adolescent Drug Use. Overview of Key Findings 2002* (NIH Publication No. 03-5374) (Bethesda: Md.: National Institute on Drug Abuse, 2003), which contains data showing that African American adolescents have slightly lower rates of illicit drug use than their white counterparts.

6. Human Rights Watch, "Punishment and Prejudice: Racial Disparities in the War on Drugs," *HRW* 12, no. 2 (May 2000).

7. P. Street, *The Vicious Circle: Race, Prison, Jobs, and Community in Chicago, Illinois and the Nation* (Chicago: Chicago Urban League Department of Research and Planning, 2002), http://www.nici.org/Library/018789.

Structural Racism and Crime Control

IAN HANEY LÓPEZ

The crime control system in the United States produces vast racial disparities at every level, from stops, to arrests, to prosecutions, to sentencing, to rates of incarceration and execution.[1] What should we make of this? For its part, the Supreme Court assures us that these dramatic inequalities are without moment. In *McCleskey v. Kemp* (1987), the Court shrugged off the most sophisticated and exhaustive survey of criminal sentencing thus far undertaken when it rejected the claim that race tainted Georgia's death penalty machinery. Though it accepted as uncontroverted fact that Georgia sentenced to death people who killed whites at eleven times the rate it ordered execution for those who killed blacks and imposed the ultimate penalty on blacks who murdered whites at twenty-two times the rate it ordered death for blacks who killed blacks, the Court nevertheless opined that these statistics proved "at most . . . a discrepancy that appears to correlate with race," ruling that such disparities do not "demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital sentencing process."[2]

How was this conclusion possible? The majority's dismissal of the evidence rested on a narrow conception of racism. For the Court, racism could only take the form of intentional mistreatment by an individual bad actor. Since statistics could produce no culprit caught in the act, the Court treated the stark numbers as if they said nothing about harmful racial distortions in the criminal system.

The majority was correct about one implicit point: to make sense of the tremendous disparities evident in the U.S. crime control system, one needs a theory of racism. Or turning this around, no theory of racism today is worth anything if it cant explain the Georgia numbers the Court so blithely dismissed. A coherent theory is especially important in the penal context, as racial disparities in this area dramatically exceed those in every other social domain. "Black-white disparities

in imprisonment have come to exceed any other racial differential in American society," Douglas Massey warns. "Whereas racial disparities in unemployment and infant mortality stand at roughly 2 to 1, and the disparity in unwed childbearing is 3 to 1, the differential with respect to imprisonment is 8 to 1."[3]

This chapter suggests that we can best understand persistent racial inequalities within the criminal system, as well as more generally in the United States, by moving toward a structural racism approach.

***Structural racism* as a general concept has its roots in the late 1960s, when activists and scholars sought to move away from a focus on individual prejudice** and toward an examination of how racism is built into the organization of society. The term has been resurrected in a renewed effort to break the hegemony of individualist approaches, evident not least in our racial jurisprudence. It represents the latest effort to craft a vocabulary capable of productively reframing how we understand the persistence of racial inequality.[4]

Today, most white Americans believe racism is yesterday's dragon, valiantly slain during the civil rights era—and, by extension, most accept that contemporary racial inequalities follow from nonracist factors, whether private choices aggregated by the market, cultural predilections, or real racial differences that are inescapable facts of life.[5] Fewer minorities accept so cavalierly that race no longer matters, much less that they, their culture, or their innate nature are to blame for the ills that befall them and their communities. Nonetheless, most struggle to explain how race continues to matter in American life. The result is an uneasy, unsupported consensus that racism plays little role in contemporary society. This, in turn, greatly frustrates efforts to mobilize support for policies aimed at combating continuing racial injustice.

Neither the lack of a critical analysis of race nor the lack of political support for racial reform is an accident. Instead, they represent the achievement of a political project aimed at protecting as much as possible the racial status quo, not only through the promotion of Panglossian views on racial progress but through aggressive attacks against critiques of continuing racism.[6] Thus how we understand, analyze, and talk about racism is fundamental to the fight for racial justice, in the criminal system and beyond.

The *racism* in *structural racism* is meant to invoke a sense that past illegitimate practices continue despite obvious improvements in race relations. Although

lynchings and Jim Crow are largely past, Justice William J. Brennan was surely correct when, in his dissent to *McCleskey*, he insisted on the important connections between current dynamics and a history of racism in the Georgia penal system dating back to slavery—and when he remonstrated that the striking statistical disparities were not random but correlated precisely with a continuing racial hierarchy of white over black.

Referring to *racism* vivifies the fundamental injustice of entrenched racial hierarchy and aims to evoke a sense of moral repugnance and social duty. When the *McCleskey* majority balked at recognizing the import of racial disparities because their pervasive scope implied a thoroughly tainted system, Brennan accused them of fearing "too much justice"—and it is exactly justice, in its fullest sense, that is at stake in combating structural racism.

To be sure, *racism* is a controversial term, and many progressives argue that more "universal" approaches that seek to remedy the harms befalling society's most disadvantaged, without a distracting focus on "particular" races, would prove more palatable to political majorities. Keep in mind, however, that the extent to which *racism* is seen as heated and unhelpful reflects in large part not problems inherent with the concept so much as the triumph of racial backlash politics. More important, as a structural racism analysis makes clear, no division between a universal focus on class versus a particular emphasis on race is tenable: race and class in the United States are so deeply intertwined that neither can be engaged without sustained attention to the other.[7]

BENEFITS OF APPLYING A STRUCTURAL RACISM ANALYSIS

To talk of structural racism is, at base, to further elucidate American class stratification. Here it helps to draw on Douglas Massey's insights. In *Categorically Unequal*, he argues that stratification has two principal components: the creation of social categories, and the misallocation of resources between those groupings. Focusing on the misallocation of resources, Massey distinguishes between "exploitation," defined as the expropriation of resources from one group by another, and "hoarding," meaning the exclusion by one stratum of another from access to resources.[8] This chapter builds on Massey's approach by arguing that race in the United States functions as a form of social stratification: racial categories arose and persist in conjunction with efforts to exploit and exclude. Viewing racism this way has distinct advantages.

First, structural racism emphasizes the inseparable connection between race and wealth in the United States. The concept of race in North America developed as part of the colonial project to legitimize extreme forms of exploitation—principally, the expropriation of land from Native Americans and labor from Africans. The barbarity of the exploitative practices, especially when measured against the emergent ideals of the Enlightenment and the Revolutionary era, necessitated justifications that ultimately centered on race.[9]

True, at least initially the misappropriation of wealth preceded the articulation of a thoroughgoing racial ideology, but little should be made of this. In the mid-nineteenth century and since, racial ideology has just as often antedated and then abetted new forms of usurpation—whether in the U.S. war against Mexico; the imperial adventures that led to control of Hawaii, the Philippines, Puerto Rico, and other islands; or the sanctioning of labor extraction from Asian and Latin American immigrants. More important than the sequence of category or control is the recognition that race and exploitation consistently intertwined in the United States, making it impossible to understand core aspects of racism or wealth distribution—of race or class—except in reference to each other.

Second, structural racism directs our attention not only to material wealth but to political power and social status as key resources allocated along racial lines. By tying race to resources, I do not mean to suggest that race is subservient to class—that economic struggle constitutes the most basic form of social engagement and race amounts, ultimately, to a superstructural expression of this deeper conflict. Rather, race is a system of social stratification in the Weberian, not Marxist, sense: in addition to providing the terrain for contests over material wealth, race undergirds struggles to establish power over others wielded through the state, and it referees the prestige or debasement allocated to groups and individuals through culture. Race and class seem like distinct social phenomena, but in the United States the two construct each other—in the marketplace, through the state, and in cultural terms.

It is important to emphasize that the various resources contested in racial terms often align but sometimes diverge. That is, wealth, power, and status usually but not always go together. Many people are perplexed, for example, when working-class whites reject common cause with minority workers or oppose social welfare programs. But such rejection may serve the interests of white subgroups if measured not solely in material terms but in terms of political mobilization and social prestige.

Rather than assuming that race is dysfunctional—dividing natural allies on the basis of irrational beliefs—structural racism cautions that race is instead quite functional, providing substantial economic, political, and cultural rewards (though sometimes not all three together) to those able to claim a higher racial status. Moreover, one need not be white to benefit

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from racial hierarchy; one need only have some relative advantage over others (be that lighter skin, higher income, a more polished accent, or a longer history in the United States). Even as structural racism harms almost everyone, and some much more intensively than others, most people—including many nonwhites—seek to maximize what advantage they can through racial positioning.

Third, structural racism indicts efforts to preserve the advantages accumulated through centuries of racial domination (i.e., "hoarding"). The distinction between exploitation and exclusion is not crisp, of course. For instance, one might say that although slavery was principally a system of extraction it also reserved for whites virtually all social, economic, and political privileges, excluding not only the enslaved but also emancipated blacks. Despite the overlap between exploitation and exclusion, however, distinguishing the two helps advance our understanding of how structural racism has evolved.

If early racial ideologies in the United States principally rationalized exploitation, in the post–civil rights era they now seem mainly concerned with protecting the wealth, power, and prestige already secured through long-standing racism. To be sure, the naked extraction of wealth continues, not just through inertia but also in dynamic new guises, such as the increasing exploitation of undocumented workers—a process Douglas Massey describes as "building a better underclass."[10] But ever since the late-stage civil rights movement set its sights on breaking down entrenched patterns of inequality—in housing, education, the job market, social welfare programs, and the franchise, to name just a few arenas—the majority of whites have set themselves doggedly against such initiatives, mounting a sustained defense of their segregated neighborhoods, schools, and workplaces. A racial stratification approach counts efforts to hoard illegitimate control over wealth, power, and status as itself an illegitimate practice: it is structural racism whether one engages in race-based exploitation or race-based exclusion.

Fourth, a structural racism approach seeks to span the gap between individual and institutional accounts of racism; it looks to actors and institutions as interdependent participants in the larger social structuring of race and power. In the late 1960s, institutional accounts of racism arose as counterpoints to narratives of individual hate. In *Black Power*, for instance, Stokely Carmichael and Charles Hamilton contrasted the "individual racism" of those who bombed a Birmingham church, killing five children, with the "institutional racism" that killed five hundred Birmingham children through lack of adequate food, shelter, and medical care.[11] As they correctly concluded, an exclusive focus on individual dynamics missed the far greater misery imposed through established social patterns, impersonal bureaucratic policies, and the market's indifferent hand.

Yet however much one errs by focusing exclusively on individual maldisposition, it is equally erroneous to emphasize only macro forces. Structural racism points to broad social dynamics not instead of but *in addition to* individual actors. The emotional components of racism, the cognitive dynamics of implicit bias, and the rise and dissemination of racial ideologies are all key to understanding racism as an entrenched social practice. Race as a daily routine, and racism as a set of heuristics and conventions, ultimately undergirds the pervasive structures of racism—just as, in turn, these entrenched racial systems buttress the racial beliefs and behaviors of individuals.

RACE, RESOURCES, AND CRIME CONTROL

The criminal system has long contributed to both the exploitative and exclusionary aspects of racial stratification. Witness the convict lease system that flourished in the postbellum South. Emancipation created an incentive to look to the penal system to reestablish racial domination and economic order, for the Thirteenth Amendment prohibited involuntary servitude *except upon criminal conviction*. In Alabama, blacks went from 2 percent of the prison population in 1850 to 74 percent by 1870,[12] a jump that reflected southern states' drive to expand the criminal code to cover offenses deemed likely to be committed by freedmen (such as vagrancy) while simultaneously increasing the penalty for petty crimes.[13]

Freedmen convicted of trivial offenses were given veritable death sentences when imprisoned and then contracted out to employers, including major northern corporations. These new masters stood to gain in direct proportion to what they could extract from the bodies leased to them while facing no costs—either economic or in the form of social sanction—for destroying those bodies.[14] Eric Foner

describes conditions in the labor camps as "often barbaric, with disease rife and the death rate high. 'One dies, get another' was the motto of the system's architects."[15]

The convict lease system virtually re-created slavery not only in its economic dimensions but also in its symbolic degradation and political devastation of the black community. As Douglas Blackmon writes in a recent exposé of the convict leasing system, *Slavery by Another Name,* "By 1900, the South's judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of whites." It was, Blackmon concludes, "a forced labor system of monstrous proportions."[16] Today, the purely exploitative aspect of the carceral system is much diminished but still present. Though curtailed by New Deal–era restrictions on the interstate sale of goods or services produced by prison labor, these prohibitions are rapidly eroding, and "prison industries" now generate $2 billion annually.[17]

Today's carceral system helps to preserve white dominance through exclusion—in particular, through mass imprisonment—more than through exploitation. *Mass imprisonment* is shorthand for a dramatic, unprecedented expansion in the rate of incarceration in the United States since the 1970s. We now imprison people at the highest rate in the world, and prison has become a common, predictable experience for vulnerable social groups.[18] Between 1970 and 2003, the number of people in state and federal prisons serving at least one year behind bars rose from around 200,000 to 1.4 million. At the end of that period, another 700,000 people were in county jails awaiting trial or serving short sentences, and 4.7 million people were on probation or parole. Putting these numbers together leads to the astounding fact that in 2003 *more than one in every twenty adult males in the United States was under the coercive power of the correctional system.*[19] The American incarceration rate, the highest in the world, exceeds the highest rate in Europe by 500 percent.[20]

This rage to imprison targets primarily poor African Americans and Latinos. For these groups—and for young, poor, uneducated blacks in particular—a year or more in prison is now excruciatingly common. In 2000, black men as a whole were more likely to go to jail than young white male high school dropouts, while among young black men who failed to complete high school 32.4 percent (nearly one in three) were behind bars.[21] Shifting from the rate of incarceration at any given point to the risk of incarceration during adulthood, black men born at the end of the baby boom face a one in five chance of going to prison for at least a year—and for men in that cohort who dropped out of high school, the likelihood of spending a year in prison surges to a staggering 59 percent.[22]

These devastating statistics *understate* the full reach of the criminal system because they do not count the hundreds of thousands of people jailed for less than a year.[23] Within poor minority communities, serious time behind bars is overwhelmingly common. Incarceration thus is not just a destructive right of passage for many young men; it is an omnipresent torsion on families and neighborhoods and an implacable pressure on poor minority communities.

Mass imprisonment was produced not by a crime wave but by politics—racial politics in particular. The rage to punish gathered momentum even as rates of crime were declining, as Bruce Western confirms:

> *Trends in crime and imprisonment are only weakly related over time. Poor and minority men were much less involved in crime in 2000 than 20 years earlier, matching declines in crime in the population as a whole. Although disadvantaged men became much more law-abiding, their chances of going to prison rose to historically high levels.[24]*

Strikingly, Western found that differences in state incarceration rates were better explained not by differing crime levels but by the election of Republican governors.[25] This finding lends weight to a thesis powerfully developed by Katherine Beckett that the politics of racial fear drove mass imprisonment. In her compelling book *Making Crime Pay*, Beckett traces the emergence of sequential wars on crime and drugs, showing how these resulted from politicians' successful efforts to mobilize anxious white electorates through the race-coded language of crime.[26]

The essentially racial character of mass imprisonment prompts Loïc Wacquant to identify it as fundamentally a new form of race control—the fourth stage in a system initiated by slavery and succeeded by Jim Crow and the urban ghetto.[27] No longer aimed principally at the extraction of wealth, the politics of crime seeks to harness the power of white anxiety over declining status, even as the ghetto-prison complex serves to isolate and exclude from social life the poorer segments of the black and Latino populations. Moreover, in a time of declining work opportunities, mass incarceration removes countless minority men and an increasing number of minority women from the labor pool.[28] It thus reduces competition and, perhaps even more important, hides the true extent of continued immiseration among poor minority communities, since the imprisoned population is not counted in most government statistics measuring joblessness and poverty.[29]

In addition, mass incarceration substantially contributes to the political devasta-

tion of minority communities through felony disenfranchisement laws that hark back to efforts to defeat Reconstruction.[30] A recent Brennan Center report warns: "Given current rates of incarceration, three in ten of the next generation of African-American men can expect to lose the right to vote at some point in their lifetime."[31]

Finally, at a symbolic level mass imprisonment protects the unspoken privileges of white identity and further denigrates the character of minorities, portraying "them" as so manifestly different from "us" in their criminal propensities and threatening natures.

Structural racism alone did not fuel mass incarceration; major contributions to this dynamic also came from the evaporation of jobs from urban cores,[32] and from shifts in the locus of control over policing and prosecution away from the local level and to the state and federal governments.[33] But deindustrialization and the shift in power over policing constitute nonracial explanations only if one believes race played little or no role in the shape taken by those dynamics. A theory of structural racism suggests otherwise. It's not that structural racism explains everything or constitutes the most powerful social force in contemporary society; it's that racism is structural exactly in that it works across so many domains, constantly reinforcing from myriad directions the oppressive reality of racial stratification. Were it not for structural racism, the United States would not today imprison almost seven out of every one thousand residents.[34] It is all the more irrefragable that racism is at work when blacks and Latinos account for about two-thirds of the state prison populations, which in turn account for 90 percent of all prisoners.[35]

CRIME CONTROL AND THE MECHANICS OF STRUCTURAL RACISM

In the context of crime control, five underlying processes perpetuate racial stratification: violence, emulation, inertia, cognition, and ideology.

Violence

Racial stratification must be forcibly imposed. No one would agreeably live under the heel of so abominable a system. Criminal law has played a dual role in this regard, as both a direct instrument of violence and an as abettor, through the passive authorization of private atrocities. State criminal codes affirmed slavery, for instance, by specifying much more severe penalties for the enslaved and by prescribing gruesome forms of death for slaves implicated in rebellions against

their owners. In 1729, for example, the Maryland legislature—ostensibly alarmed by "several Petit-Treasons . . . lately committed by Negroes"—condemned slaves convicted of arson or murder "to have the right Hand cut off, to be hang'd in the usual Manner, the Head severed from the Body, the Body divided into Four Quarters, the Head and Quarters set up in the most publick Places of the County where such Fact was committed."[36]

The criminal system may have provided even greater support for slavery by largely disclaiming any power to limit the brutalization, rape, and killing of the enslaved. In the infamous 1830 case *State v. Mann*, the North Carolina Supreme Court eschewed any criminal liability for violence committed against enslaved persons.[37] "We cannot allow the right of the master to be brought into discussion in the courts of justice," the court opined. "The slave, to remain a slave, must be made sensible that there is no appeal from his master; that his power is in no instance usurped." Or in still more chilling language: "The power of the master must be absolute to render the submission of the slave perfect."

The criminal system has a disgraceful history of abetting white dominance by refusing to intercede against private customary violence used to forcibly subordinate nonwhites, not only in the context of slavery but in the lynchings of blacks and Mexicans, the local campaigns of extermination against Native Americans, the pogroms to drive out Chinese miners in the West, or the "race riots" that burned out blacks seeking to move into northern neighborhoods.

Violence does more than enforce social position; it also creates and defines race itself. After the Civil War, the spectacle violence undertaken by states to support slavery—evident, for instance, in the Maryland code discussed above—shifted from public to nominally private hands, emerging as what David Garland terms "public torture lynchings."[38] Between 1893 and 1937, as southern whites overthrew the reforms of Reconstruction and moved to fully institutionalize a new racial regime in the form of Jim Crow, a wave of collective violence generated thousands of lynchings. Of these, four hundred to five hundred had a public, ritualized aspect involving the torture and dismemberment of blacks before holiday crowds of hundreds of whites.[39] These lynchings terrorized the black community and helped reestablish and solidify a position of white supremacy.

Furthermore, public ritualized torture helped define the black and white races. As Dorothy Roberts observes, "It is not only that race produces torture; torture also produces race—by physically forcing black victims into the utmost subservi-

ent posture, inscribing their political position in the racial order."[40] The infliction of barbarous pain on black bodies, followed by their physical annihilation, corporeally dismembered the humanity of blacks—even as by stark comparison it seemed to make the bodies of the white audience sacrosanct, vessels of their intrinsic humanity.

> "It is not only that race produces torture; torture also produces race—by physically forcing black victims into the utmost subservient posture, inscribing their political position in the racial order."
>
> —Dorothy Roberts

We should hesitate to believe that nothing similar occurs today. The pervasive acceptance of police brutality against minorities, the virtual encouragement of violence as part of the punitive regime within prisons, indeed the willingness to blithely force so many millions into shackles and behind bars, at once reflect and encourage social acceptance of the worthlessness of minority lives. In a different context, this seems also to be an aspect of the widespread support for "extraordinary measures" against those classified as terrorists. "The depiction of torture in the Abu Ghraib detention center, particularly those of hooded figures posed with a noose around the neck, mirror the imagery of lynchings. In both instances, violence by whites against men of color produces an abject racialized body," explains Liz Philipose.[41]

Emulation

Successful techniques for imposing or justifying racial stratification spread through emulation.[42] Within the criminal system, examples include the rapid dissemination across the unreconstructed South of formally equal penal codes enforced by all-white juries—a contrivance that nodded toward an end to racial oppression but preserved excessive punishment of blacks.[43] A more contemporary analog can be found in the mechanics of mass incarceration, from the proliferation of draconian drug laws to the multiplication of three-strikes statutes.[44]

The past thirty years have witnessed the emulation of punitive approaches to race across numerous domains of social life. Government agencies that provide services to the poor, especially welfare and schooling, have developed governance models emphasizing not only the constraint and punishment of their clients but also increasingly formal integration into the prison system. We increasingly encounter the substitution of a criminological approach for other public policy tools,

evident in the rejection of public health approaches to substance abuse and the use of fears of crime to organize everything from political campaigns to gated communities, giving rise to a carceral state.[45]

The forces that compel racial stratification work across multiple social domains. John powell identifies this cumulative dynamic as the defining feature of structural racism: "From a structural perspective, causation is understood as cumulative within and across domains. It is a product of reciprocal and mutual interactions within and between institutions."[46]

Consider the interplay of crime control, labor markets, and residential segregation. A criminal record makes finding and keeping a job, and getting a fair wage for it, much more difficult—so much so that black men who have been incarcerated suffer a lifetime income loss that averages $86,000 per individual, a 42 percent reduction in expected lifetime earnings.[47] One study puts the estimated loss in lifetime income of all offenders at a staggering $300 billion.[48] Meanwhile, the criminal system removes and returns inmates in concentrated patterns that hit the poorest minority neighborhoods particularly hard, imposing devastating economic losses on the places least able to bear such loads.[49] Less often recognized but equally important is the intergenerational effects for those *spared* the full brunt of legal violence. For those whites whose antisocial behavior might plausibly have been punished through the criminal law but was not, their well-being and that of their families and neighborhoods at least partially reflect the cumulative benefits of racial privilege.

This interconnectedness cautions against a common approach to studying racial bias in the criminal system. Often, studies seek to isolate and specify the exact quotient of racial discrimination by controlling for different levels of education, income, work experience, and so forth among defendants. This is a grave mistake. That type of methodological individualism, by trying to control for variation at the personal level, misunderstands the very dynamic it seeks to study.[50] Racism cannot be measured as a residual, as the correlation left over once individual variation has been eliminated.

Rather, at issue is exactly the aggregation of differences across racially defined groups, not just in the criminal context but also in the domains of education, work, residential location, and so on. Individual attributes are not an independent, nonracial cause of differential treatment; they are, in aggregate, themselves partly the products and producers of structural racism.

Inertia

Though structural racism is frequently purposefully produced, once it is built into the habits of individual actors and the fabric of social relations, inertia carries it forward. Structural racism becomes cumulative, not only across domains but also time, built into our social architecture. This is the case quite literally in police stations and prisons, already sited and built—the physical incarnations of past racial practices, cast in poured concrete, steel bars, and razor wire. The materiality of past practices ensures their continuation into the present and future, for they form part of the built-up world we inhabit in our daily lives.

In another and more socially powerful sense, racism's concreteness is metaphorical. Past decisions and practices become social institutions, channeling power over social status, resources, public policy, market decisions, and so forth in certain directions while making other options unlikely, even unthinkable. Reconsider our neighborhoods in this light: on one level they are physical spaces, but more profoundly they represent an assemblage of ways of living—patterns of social relations, accretions of power and powerlessness, access points to other social opportunities, or routes to further social ills.[51]

A few prominent scholars have concluded that minority neighborhoods prefer more not less policing, using this to build the case for ordinances allowing the police to aggressively target nominal offenses such as curfew violations and loitering.[52] But isn't it likely that this preference merely reflects the constrained options such neighborhoods confront? Is it really fair to ask residents of crime-blighted communities whether they want more police, or nothing—certainly not a good jobs program, affordable day care, decent schools and after-school programs, markets selling healthy products at fair prices, access to mainstream financial institutions, or efficient transportation links to the broader metropolis, the sorts of things that would surely reduce crime and violence without increased policing and incarceration? And if, confronted with this cruel choice, minority communities answer that they want more policing, have you learned what they really want? Or have you learned principally that, given structural racism's impact on these neighborhoods, their residents have reconciled themselves to the options realistically on the table—a choice between bad and worse? Thus the ossified logic of the past becomes today's logic, too: ghettos and barrios harbor criminal types; social programs would be expensive and probably futile. The police are already there, the prisons are already built. Keep them busy, keep them full. Racism is intractable partly because meaningful reform requires remaking our concrete buildings and our concrete institutions.

Cognition and Common Sense

Cognitive psychology powerfully demonstrates that individuals rely on categorical thinking in making judgments, and numerous scholars have documented a heuristic connection between race and criminality. As should be evident (although, too often, this point is undeveloped in the psychological literature), the underlying categories and associations derive from and legitimate settled social patterns. In this sense, structural racism is common sense. It is an accepted, taken-for-granted pattern that operates as an unconscious baseline for judging what is normal, moral, and legitimate in the world.[53]

Though the civil rights movement turned public opinion firmly against open expressions of supremacist beliefs, stark inequalities such as those produced by mass incarceration have largely escaped opprobrium. For most Americans, especially but not exclusively whites, these concrete patterns evoke not a sense of moral outrage but something closer to its opposite, a belief in the basic fairness of the world as currently organized. Settled practices have the force of inertia in their favor, but they also have something more: moral legitimacy.

The notion that minorities are inherently prone to criminality reflects a cumulative historical and architectural legacy linking crime control and racial hierarchy. In turn, these deeply embedded cultural, institutional, and physical structures confirm the very "truth" on which they were first assembled: the criminal danger posed by persons of color. Shocking disparities in incarceration rates prove for most people not the racial injustice of the current situation but the primal fact of minority depravity; abusive policing betrays not the taint of racial degradation but the supposed truth that some people respond only to violence. Structural racism thus becomes common sense—it's not injustice, it's the way the world is, and indeed the way the world ought to be.[54]

Racial common sense legitimates not only the misallocation of resources but the simultaneous construction of racial categories. The criminal system constitutes a race-making enterprise. Steeped in the racial politics of crime control, police generally treat all but the poorest whites with deference and respect but treat minorities of any class with suspicion and abuse. In turn, this pattern confirms and strengthens, rather than simply relies on, racial position: subject to unwarranted hostility and demeaning treatment by the cops, one confronts unalterably one's minority status; accorded civil if not necessarily friendly treatment by officers, one's white status is burnished.

This is no trivial dynamic. During the Mexican American civil rights movement, police violence helped convince community members that they were not, as an earlier generation had insisted, a white ethnicity but were instead members of an oppressed racial minority.[55] Prisons, too, become first-order race-making institutions by dividing prisoners by race, fomenting race-based gang cultures, stoking group hatreds defined in racist terms, and releasing these hate-filled ideologies back into destitute communities searching for ways to understand their plight.[56] Racial stereotypes become self-evident truths; race as constructed becomes common sense.

Ideology and Colorblindness

Learning to live with or, still more, benefit from the systematic degradation, exploitation, and immiseration of others requires hard ideological work. Until recently, white supremacist theories performed much of this labor. Now, the racial ideology of colorblindness largely carries the weight.

Contemporary colorblindness has its roots in the 1970s, when the repudiation of white supremacy made it intellectually treacherous to defend continued white dominance. Proponents of colorblindness responded to this conundrum by rigidly insisting that race can never be considered. This seemed to embrace the civil rights movement's opposition to Jim Crow segregation. In fact, however, by then express segregation lay in the defeated past. When conservatives adopted colorblindness, they used their newfound opposition to race-consciousness to defeat the most promising mechanisms of racial reform.[57] Today, this reactionary version of colorblindness allows those who deploy it to claim that they are stalwart supporters of the civil rights movement because they steadfastly denounce racism—even if they do so most vociferously at the very instant they repudiate affirmative action programs, minority voting districts, and school integration efforts.

The colorblind stance that sees racism only when race is expressly invoked has been used to defend law enforcement practices that produce gross racial disparities in arrests, prosecution, and prison time. Most critiques of colorblindness focus on its role as a weapon against race-conscious remediation. But in the law enforcement context, colorblindness serves as more of a shield than a sword. In defining racism as any use of race, colorblindness simultaneously defines what counts as not-racism: all interaction not expressly predicated on biologically rooted notions of race. *McCleskey*, the death penalty case discussed at the outset of this chapter, exemplifies this. Neither Georgia's dual system of criminal enforcement

stretching back to slavery nor the undeniable correlation between the excessive punishment of blacks and the persistence of a white-black hierarchy mattered to the majority. Ensconced behind colorblindness, the Court insisted that no claim of racial discrimination could succeed absent the identification of a particular bad actor. In effect, the Court demanded the exposure of a state officer sufficiently foolhardy to voice his bigotry on tape. No Mark Fuhrman, no racism, the majority seemed to reason.

To be clear, the actual operation of the criminal law system in this country is not colorblind. On the contrary, crime control is often quite explicitly racialized, as both police and prison guard culture emphasize the irreducible importance of race. Indeed, police and prison routines are in many ways *formally* race-conscious, as suspect descriptions, profiling, and prison segregation demonstrate.[58] This contradiction poses little challenge to colorblindness, for like other ideologies it aims not for coherence but for stasis. (When the Court in 2005 struck down California's express policy of racially segregating incoming prisoners, Justices Antonin Scalia and Clarence Thomas, the Court's two most strident proponents of colorblindness, simply abandoned their prior racial principle to dissent.)[59]

Colorblindness also operates hand in hand with the criminal system on a broader cultural level. The insistence that race plays no role unless openly invoked ultimately underpinned political efforts to mobilize crime control as a proxy language for race. In the wake of the civil rights movement, openly racist appeals to white voters fell from favor, even as white anxiety about rapid social change increased. Fear of crime could emerge as a coded sop to white voters only because colorblindness provided a cover, however thin and transparent, for a racist narrative reaching back to slavery-era hysteria over black brutes, rape, and lawless mayhem. Those who stirred fears of crime denied any suggestion of racism, protesting that they focused on cultural pathologies, not biology. But one can accept that histrionics about superpredators and gang-bangers (and welfare cheats and illegal immigrants) are not about race only by accepting the colorblind claim that race refers to biology and nothing more. This denies history, for racism has always worked by hierarchically ranking groups not just in terms of biology but also temperament, ability, and culture. And it continues to do so today.

Colorblindness is a form of racial jujitsu. Co-opting the moral force of the civil rights movement, it uses that power to attack racial remediation and to defend structural racism, including the racism that infects the criminal law arena.

The basic message of structural racism is powerfully simple: the vast racial disparities that mar our society, and in particular our criminal system, result from continuing patterns of racism, and we have a national moral obligation to respond. True, the labyrinthine dynamics associated with structural racism prove difficult to disentangle and still more difficult to explain to a broad audience. In comparison to the clearly stenciled Whites Only signs of the Jim Crow era, today's racism seems more diffuse, less obvious, harder to separate out from the normal practices of everyday life. In our capacities as scholars, policy workers, and activists, however, it is incumbent on us to work to make clear how racism continues to function in our penal system and in our country.

> Racism has always worked by hierarchically ranking groups not just in terms of biology but also temperament, ability, and culture. And it continues to do so today.

Today's ideology of colorblindness, which insists that racism is all but vanquished, except of course among lefties who continually play the race-card, makes more necessary than ever the need to document not just the continuing salience of race but the mechanics of its reproduction.[60] In doing so, we should insistently lead with a claim of racial injustice and a call for racial redress—not in spite of but because we will encounter hostility and aggressive skepticism. In the 1930s and 1940s, Jim Crow did not strike most Americans as a self-evident outrage but instead persisted as quotidian routine. Indeed, in those decades *racism*—the word, the concept itself—was only just beginning to enter the national vocabulary, and it would not be until the 1950s that it was first applied to the white-black hierarchy.[61] In the decades to come we will look back on *McCleskey* as a stain on the reputation of the Supreme Court, and on racism in the criminal system at the turn of the twenty-first century as a national shame. But we will only get there if, today, we expose and protest vociferously against structural racism.

Additional Comments from the Public Forum

IAN HANEY LÓPEZ: Why are we optimistic about criminal justice reform now? Answer A, economic collapse. Answer B, Obama. Let me explain.

First, economic crisis. The import of economic collapse for the prison industrial complex lies in its cost. It is enormously costly to the state. Faced with severe budget shortfalls, dollars and cents are convincing politicians to rethink mass incarceration, where wasted lives and destroyed communities didn't seem to bother them at all.

Second, Obama. Obama may signal the end of the so-called Southern strategy, an approach to political power that has had dire consequences for mass incarceration as well as welfare. Katherine Beckett has a wonderful book on this called *Making Crime Pay*. Richard Nixon (and Barry Goldwater before him) realized that President Lyndon Johnson created the possibility of a rift among supporters of the Democratic Party by beginning to use the state to benefit rather than oppress minorities. He did so when he supported civil rights legislation and extended the New Deal welfare programs to nonwhites through Great Society programs.

This produced a series of campaigns by Republicans and also by Democrats to appeal to voters disgusted with aid to minorities, especially southern whites. Bill Clinton unfortunately took this route.

He used his own version of the Southern strategy to get elected by appealing to an anxious white electorate through coded terms that no longer referred directly to race and yet were transparently about race. Those terms had to do with crime, welfare, education, and high taxes.

In contrast, Obama got himself elected without nearly splitting the white vote in half, and in particular, without the support of the white South. He was the first president to do so since the 1960s. If he's managed to break that tradition, that may herald a really hopeful moment in terms of crime because it may mean that the War on Crime rhetoric, which for forty years plus has been used to mobilize a nervous white electorate, no longer has the capacity to do so.

To continue in this vein, it's not just that the end of the Southern strategy would mean an end to mass incarceration. It might mean an end to a certain view of the state as a *racial state*.

Michael Omi and Howard Winant use this term to mean a state with a racial project. I'm using it in a different sense. The Republicans have created an image of the state as a government that primarily serves nonwhites. It employs minorities through affirmative action, and it serves them through welfare and education. And this, I think, explains a lot of the right-wing anger toward the state. Timothy McVeigh

blows up a government building that, for him, represents racial minorities—the sorts of minorities you encounter in line at the Department of Motor Vehicles, both as clients and behind the counter.

A libertarian individualist ideology, discredited in the New Deal period, comes back through the Southern strategy. It manages to come back because the language of libertarianism, of individualism, of antistatism, harnessed a white racial backlash. Racial backlash became something that conservatives could harness to an earlier, and defeated, antistatist ideology.

Thus, it may be that because of the end of the Southern strategy and because of economic collapse in which whites now recognize that they need the help of government, we may be at a point of reform—not just in terms of ending the War on Crime but also in terms of reforming a state that has imported punitive models into education, welfare, and health care.

All of that is hopeful, but pessimism is nevertheless warranted. First of all, Obama is clearly exceptional. But is he so exceptional that he has in fact broken the Southern strategy? Or is hostility to a state that also serves nonwhites still so potent that politicians can successfully use appeals to white anxieties to win elections? That is, will the Southern strategy start paying off again?

Even assuming the best case, that the Southern strategy is broken, there is reason to be less than hopeful. First, there is tremendous structural and insti-

tutional inertia. Jonathan Simon referred to "indigestible blocks" of prisoners. Yet it's not just those who are serving life, or even the sheer number of people who are in prison. It is instead the sheer number of prisons and police we have. Once those came on-line, we committed to using them. Here I want to ask: are we starting to fill prisons through a federal criminalization of immigrants? Is that part of the dynamic, now that we have these prisons?

My second point is cumulation. The impact of mass incarceration is cumulative across sectors and time. Incarceration overlaps with other important social sectors, like education, voting, and poverty. Black men born at the end of the baby boom who do not complete high school face a 60 percent lifetime chance of incarceration. African American men over their lifetime face a 30 percent chance of losing their right to vote. A recent study of prison and work said that black men who have been imprisoned face a 42 percent reduction in lifetime earnings. Accumulated across the entire incarcerated population, that's a $300 billion reduction in lifetime earnings.

Cumulation points toward how mass incarceration relies on and deepens the very close linkage between race and class. Mass incarceration builds on the already existing impoverishment of non-white communities. It is also a way of impoverishing minority communities. Here's something else to note when talking about race and class. To the extent that the enforcement of crime is racialized,

it ensures that white communities do not face the same penalties and wealth costs faced by minority communities. That is, the access to discretionary justice ensures that some whites who might face criminal sanctions do not and so do not face the economic repercussions of incarceration. So their immediate families are more well off, and the next generation is also better off. If you understand mass incarceration to be related to race and class, it's not just race and class for minorities. It's race and class for whites as well.

This brings me to my third point: mass incarceration as a race-making institution. The vastly unequal numbers do not mobilize public outrage, because for most people the number of nonwhite prisoners confirms not the injustice of our society but the fact of minority criminality. To the extent that those numbers stay high, mass incarceration is a race-making institution. Moreover, at this point there may be increased social pressure to emphasize or demonstrate minority criminality. During times of crisis people look for a scapegoat. Though the economic downturn has some remedial potential, it also has a potential to make things a lot worse.

My final reason to be pessimistic is that we are losing the ability to talk about race and incarceration. I want to particularly signal the dominant ideology of colorblindness. Colorblindness is a very successful right-wing ideology that says that every use of race is equally immoral. Under this reasoning, affirmative action is no different from Jim Crow, a position Justice Clarence Thomas has forcefully argued. This same logic means that the first person in the room to mention *race* is the racist.

As soon as you raise your hand and say you think race remains a problem, somebody says, "I can't believe that you're trying to racialize this. I've never been so offended in my life." On this, the Left has largely capitulated. The Left has largely abandoned the language of race. But we cannot succeed in our effort to address the drumbeat of race-talk pounded out in terms of crime and welfare unless we can name race directly. That is, the notion that we face a choice to talk about race or not is false. We are surrounded by race-talk, most often spouted by the same folks who claim to be colorblind. It's just that this race-talk takes the form of generalizations about minority culture or behavior, instead of directly impugning nonwhite biology. In this context, we have to talk about the work race continues to do in organizing our society and our politics—and our prisons.

Indeed, we have to talk not just of *race* but of *racism*. Here are three quick reasons why we need this language. One, racism suggests continuity. It helps us establish the link between slavery, convict leasing, Jim Crow, mass incarceration, and our current situation today—including the criminalization of immigration under a sort of national security hysteria.

Second, racism is a moral language. It's a language of moral demand. You can't

say *racism* without also saying that we as a society are obligated to do something about it.

Finally, and perhaps most important, it's a political repudiation of the idea of colorblindness that we best get beyond our racial problems by simply not talking about them.

Q. *What would it take to change current public support for prisons and long sentences? Do we need to show people more of what goes on inside prison? How do we introduce the public to some of what you are talking about?*

HANEY LÓPEZ: I think change is going to come through social mobilization around this issue. I don't think it's going to come from any politician. It's really going to need a lot of public pressure. Where's that likely to come from? Maybe—but only maybe—from traditional civil rights organizations.

Civil rights organizations have long shied away from embracing the cause of the criminal, partly because civil rights organizations often reflect the middle-class aspirations of their members. Too often they have seen their status and dreams as being endangered by association with criminal elements. Michelle Alexander and I were saying before that perhaps it was possible to focus on other egregious examples of racism through the 1960s, and maybe possible through the 1990s to privilege the question of affirmative action. But at a certain point minority communities need to recognize that ra-

cialized mass incarceration is the great civil rights racial justice issue confronting us. People in minority communities who have relatives in the system know that those people are human, and now it's a question of whether, acting collectively, we are willing to publicly own that these are our siblings, our parents, our uncles, our nieces, and our children.

Q: *You talked about the usefulness and utility of keeping hold of the concept of racism because it puts a moral question on the table. And yet in our society we've also got this discourse of blame, which is essentially a religious concept. Can we get away from this?*

HANEY LÓPEZ: We've moved from a system based on the assumption that people who commit crimes can be rehabilitated and reincorporated, to a system that assumes they're superpredators. That is, we moved from a system that emphasized the possibility of reform to one that condemns people forever using the language of moral blame. Criminals are criminals because they are bad, blameworthy people, and for no other reason. This primitive idea has only been possible because we've racialized the language of criminality.

Early in the civil rights movement, racial conservatives like Nixon turned to the language of crime as a way to mobilize white fears. Early civil rights activists in the South were literally—and, most important, symbolically—criminals. They were literally violating Jim Crow laws, but symbolically they were presented as crim-

inals, troublemakers, and disturbers of the public peace. So starting in the early civil rights movement, you see a move to identify black civil rights protesters as criminals. That extends to other minorities, too. (My own work is on the criminalization of Mexican identity in Los Angeles.) By the time you get to the 1970s you've got a very stark identification in the public mind of criminals as minorities, and indeed of minorities as criminals. And "those people": you cannot rehabilitate them. You ought not reintegrate them. They are inherently criminal.

At this juncture, how do we reestablish a language of rehabilitation, of reintegration? Isn't that another way of asking, how do we break the connection between crime and race?

This is where the inertia of the moment is so difficult. We have a system that, with a sort of unspoken, hard-to-access, hard-to-articulate ideology of race, uses criminality as a way of understanding minority identity. If we could break the connection, if the American public no longer saw prisoners and convicts in highly racialized terms, I think it would be much easier to move back to a language of rehabilitation and reintegration. You can hear people say, "Of course we want to bring home our people. It's just them that we don't want coming back." So there's the project: to remake "them" into "our people."

Q: *How does the mental health reform community achieve sustainability when, fundamentally, society doesn't like our folks? Unless and until you change that, even if you have innovative movements and maybe close down prisons, something else will emerge to take the same function. Is there an answer?*

HANEY LÓPEZ: There's a process of demonization associated with incarceration, and a constituent part of that is the violence that we inflict on people in the process of arrest and imprisonment— which, like police brutality, is largely condoned and ignored. The sheer violence of incarceration constitutes a process of dehumanization. When we say we need to start to build connections between members of the community and the incarcerated, we mean we need to publicly recognize our connection to people who are or have been incarcerated. Our approach to the mentally ill needs to follow the same lines. Until you generate a greater sense of shared humanity, there will be a drive to segregate, not just physically, but also in terms of status and in terms of who is fully human and who is not fully human.

HANEY LÓPEZ *(responding to questions about (a) the prevalence of minorities in authority in many criminal justice and local government institutions, and (b) the absence of wealthy blacks and Latinos in prison, undermining a racial justice analysis)*:

What are we to make of minorities engaged in the oppression of other minorities? In my work on Mexicans in Los Angeles, some of the most violent police were the Mexican or Chicano police officers, because they existed in a milieu

in which they had to prove their racial loyalties within a white police structure. Michelle Alexander offers us a more general answer, which is that forms of policing and social control become institutionalized, and they come with a whole set of rewards that are attendant to following those institutional forms—not least of which are rewards in the form of federal grant money for implementing high rates of incarceration. Trying to do something different is very, very difficult politically.

But you asked whether it is the case that if wealthy minorities are not incarcerated this draws into question the race analysis. You seem to be saying that this might be about class: poor people are being incarcerated, and lots of minorities just happen to be poor. So maybe this is about class, not race. What that presupposes is that the race analysis and the class analysis are in some sense quite different.

To do the class-not-race or the race-not-class move is really a tremendous mistake. We have to understand that race

starts in the United States as a way to rationalize the violence necessary for exploitation of labor and land, so that through at least the beginning of the twentieth century we had a severe racial caste systems in which almost all persons of color were poorer, more destitute, more immiserated than almost all whites. Now the racial caste system has broken down, but there is still a very tight connection between race and class. It's not just happenstance that, on average, whites hold ten times as much wealth as blacks; that's the product of racism. I think we would almost do better talking about the creation of a race-class dynamic or a class-race dynamic and not alternately using race or class.

Yes, the absence of wealthy minorities in prison suggests that some of the privileges now attendant to wealth are, for the first time, available to people of color. But that doesn't change the fact that the way in which we treat the great masses of poor nonwhites, including through mass incarceration, is a function of race/class.

Notes

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CRIMINAL JUSTICE
AND THE IDEOLOGY OF
INDIVIDUAL RESPONSIBILITY

BLAKE EMERSON

The concept of individual responsibility is central to the liberal democratic order in the United States. It empowers individuals to govern themselves and to participate as autonomous actors in deliberation and decision on public affairs. At the same time, appeals to individual responsibility justify social inequality that results from free market competition and foment resistance to social supports that would ameliorate such inequality.

In the case of criminal justice policy, this ideology of individual responsibility plays a crucial role in justifying otherwise alarming increases in incarceration rates, as well as severe disparities in incarceration across racial divisions.[1] Concerns about the wisdom and fairness of a criminal justice system that imprisons 1 percent of the entire population—and imprisons African Americans at seven times the rate it imprisons whites—are eclipsed by the core belief that criminals must be held responsible for their actions.[2]

This chapter critiques the ideology of individual responsibility by investigating its role in public discourse as well as its philosophic underpinnings. I argue that this ideology runs contrary to the deterrent logic of criminal justice policy. I then demonstrate that mass incarceration policies actually undermine the bulwarks of responsibility, particularly in poor, minority communities. I conclude by articulating an alternative understanding of responsibility that would situate sound criminal justice policy in a broader framework of socially constructive policies and institutions.

Apologists for high rates of incarceration and racial disparities in incarceration often argue that because individuals are solely responsible for their crimes, causal explanations of crime that point to political, social, or economic inequalities are irrelevant to an evaluation of the fairness of the criminal justice system. As

Manhattan Institute Fellow Heather Mac Donald reports, in rebutting charges of racism in criminal justice, "for all the popularity of the view that the system is to blame, it's not hard to find dissenters who believe that individuals are responsible for the decision to break the law. 'My position is not hard,' says public housing manager Matthew Kennedy. 'You don't have to do that crime.'"[3]

By subtracting consideration of the causes of crime and effects of incarceration from the evaluation of criminal justice policy, the ideology of individual responsibility gives credence to racist ideologies that attribute racial disparities in crime and incarceration to the character traits of African Americans. From the ideological perspective, since crime is the result of the isolated decisions of individuals the racial disparity in crime rates and in incarceration suggests a greater propensity among blacks to commit crime.

Racist ideologies and the ideology of individual responsibility thus enjoy a symbiotic relationship, together forming a worldview in which racial disparity in incarceration is explicable, justifiable, and necessary.[4] The ideology of individual responsibility lends support to racist beliefs insofar as it attributes racial disparities in crime and incarceration to the decisions of individual African Americans. And racist beliefs about inherent black criminality lend plausibility to the thesis that racial disparity in incarceration arises predictably from the aggregate deviant decisions of black individuals.

While the ideology of individual responsibility garners plausibility from widely held racial prejudices, it achieves moral, legal, and political respectability because of a common, if only vaguely articulated, philosophical assumption.[5] The claim that the systemic causes of crime and effects of incarcerations are irrelevant to the evaluation of criminal justice policy rests on the view that individuals are at full liberty to act one way or the other—that people could have made different choices from those they in fact made, or, as the public housing manager put it, "You don't have to do that crime."

If a criminal could always have acted otherwise than she did, then various facts about her social milieu have no bearing on her decision to commit a criminal act. Individual responsibility for crime then serves as sufficient justification for imprisonment, which communicates the criminal's culpability to him, to his victims, and to society at large. While the social effects of mass incarceration may be unfortunate, the necessity of holding the criminal responsible trumps all else in the formulation and appraisal of criminal justice policy.

DETERRENCE, INCARCERATION, AND A DIFFERENT CONCEPTION OF RESPONSIBILITY

The conception of free will on which the ideology of individual responsibility rests contradicts the deterrent logic of our legal system. According to the theory of deterrence, the purpose of incarceration is to discourage criminal behavior with a convincing threat of punishment, the severity of which outweighs the potential gains of the criminal act.[6] This theory of criminal justice hinges on an understanding of human action in which we are sensitive to incentives and disincentives. The ideology of individual responsibility rejects this fundamental rationale of law enforcement. Because it posits that people's decision-making processes are free from external causal influence, the ideology of individual responsibility cannot explain how incarceration could have any regulatory or deterrent effect on the criminal or on society at large. Indeed, when enthusiasts for incarceration insist that criminals be held responsible for their crimes, they can mean it only symbolically. For if individual responsibility cannot be mitigated by external influences, neither can it be upheld by punishment. According to the ideology of individual responsibility, imprisonment only serves to hold the criminal responsible in the retributive sense of exercising vengeance on him.

The deterrent logic of criminal justice suggests an alternative understanding of responsibility that recognizes external influences on human behavior. In this view, responsibility is a sentiment we feel to abide by laws, conventions, promises, and contracts. Within this "sentimental" concept of responsibility, incarceration makes sense as an attempt to invoke a feeling of responsibility in the criminal, by making him experience negative consequences for crime. In addition, incarceration builds the public's sense of responsibility by exhibiting the negative consequences of criminality.

An adequate notion of responsibility must go beyond the fear of punishment, however. We often feel that we must do something, not because we fear punishment or expect reward but because we feel obligated to do it. This aspect of responsibility is not cultivated in the jailhouse or by watching the police arrest a criminal; it arises in families, schools, communities, and economic transactions as individuals learn to keep promises and hold themselves accountable without reprimand.

This deeper sense of responsibility has a mutually reinforcing relationship with "social capital," the "features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit."[7] Re-

sponsible sentiments and behavior enable members of the community to trust each other to engage in collaborative political, social, and economic projects. These projects in turn breed a sense of responsibility among the cooperating partners as they accumulate long-term obligations and expectations and appreciate the value of participating forthrightly in networks of trust and reciprocity.

Thus constructed, the sense of responsibility entails a sense of duty as well as a fear of blame and punishment. In other words, people experience responsibility both as an intuitive sense of what one ought to do and as a regulatory knowledge of the likely consequences of action. The former sense of responsibility I call *positive*, since it is based on self-constraint; the latter sense of responsibility I call *negative*, since it is based on the threat of blame and punishment.[8] Citizens follow the rules because of a mixture of positive and negative senses of responsibility—out of deference to the binding laws of society as well as an expectation of punishment for deviance.

Responsibility also may exist in varying degrees across individuals, depending on their education and experience, and it can be inculcated or eroded by life circumstances. Responsibility, in this view, is not a supernatural capacity immune from causal influence.

UNDERMINING RESPONSIBILITY: THE EFFECTS OF MASS INCARCERATION

When we contemplate the meaning of responsibility as it is experienced, rather than as it is employed to dismiss legitimate concerns about the causes and effects of mass incarceration, we see that the ideology of individual responsibility is in fact inimical to those institutions, relationships, and networks that cultivate responsibility, properly understood. Because the ideology of individual responsibility contends that the faculty of responsibility is free from causal influence, it is blind to the ways in which mass incarceration policies lead to a diminution of responsible attitudes.

The corrosive effect of mass incarceration on responsibility has been most severe in the low-income African American communities where policing is concentrated. As David Cole argues, "The racial divide fostered and furthered by inequality in criminal justice has contributed to a spiral of crime and decay in the inner city, corroding the sense of belonging that encourages compliance with criminal law."[9] The war on drugs, three-strikes laws, and other "get tough" policies have spawned hostility to law enforcement encapsulated in the gangster imperative "Stop snitchin'."

Policing and incarceration in low-income minority communities create an adversarial relationship between those communities and the law, as the system treats them as objects of legal control rather than as subjects who authorize and benefit from legal order. In addition, by removing large numbers of adults from African American communities, mass incarceration has diminished the institutions of family and community that

> "The racial divide fostered and furthered by inequality in criminal justice has contributed to a spiral of crime and decay in the inner city, corroding the sense of belonging that encourages compliance with criminal law."
>
> *—David Cole*

build the social capital that sustains civically responsible attitudes. High levels of incarceration concentrated in low-income minority communities thus undo networks of trust and reciprocity where they are most needed.[10]

Mass incarceration's devastating impact on low-income, African American families has intergenerational consequences. By the age of fourteen, one quarter of black children born since 1990 will have fathers who have been incarcerated.[11] Temporary or long-term single-parent families are not necessarily harmful, in themselves, to the development of responsibility. But when mass incarceration contributes to familial deterioration across entire communities, and poverty severely limits the alternate relationships and institutions that might supplement family life, children are more often left without the role models, authority figures, and supportive relationships on which to found a robust positive sense of responsibility to abide by the laws.[12]

The policy of mass incarceration furnishes itself with ever-increasing justification when it erodes the family and community structures that foster and maintain a positive sense of responsibility among both parents and children. As incarceration rates increase and the positive sense of responsibility is replaced by a negative sense based on fear of imprisonment, ever more police, patrol cars, and prisons are necessary to sustain the pressures of deterrence against crime. Mass incarceration therefore replaces the more fundamental, morally informed sense of responsibility with a weaker, more adversarial, self-interested justification for law-abiding behavior. As a consequence, Bruce Western argues, "the effects of imprisonment may be self-defeating to some degree. By eroding the familial bonds that curb violence, imprisonment undermines the conditions for desistance."[13]

Mass incarceration thus contributes to a social climate that neither fosters nor merits a positive sense of civic responsibility among the ghetto poor. As Tommie Shelby puts it, "the existence of the dark ghetto—with its combination of social stigma, extreme poverty, racial segregation (included poorly funded and segregated schools), and shocking incarceration rates—is simply incompatible with any meaningful form of reciprocity among free and equal citizens."[14]

Understood in terms of reciprocity, civic responsibility is a sense of duty citizens feel toward society that arises when society successfully discharges its duties to those citizens. Mass incarceration undermines the logical basis for reciprocity by contributing to conditions of extreme poverty, alienation, and disenfranchisement. Such conditions negate the equality of opportunity that fair systems of social cooperation must guarantee.[15] Further, the policing and criminalization of poverty may create the impression among low-income minority citizens that society at large is hostile to their interests, perceiving them as a threat to social order rather than as members of the political community whose welfare is a public concern.

BEYOND THE IDEOLOGY OF INDIVIDUAL RESPONSIBILITY: PROMOTING CIVIC AND SOCIAL RESPONSIBILITY

If American society is to take the value of responsibility seriously, it must reject the ideology of individual responsibility and instead create the conditions in which it can reasonably expect civically and legally responsible behavior from low-income minority citizens. In the absence of social, political, and economic policies that enable and foster responsibility, the expectation of civic responsibility is unreasonable. Instead, society ought to focus on rebuilding the social and economic basis for responsibility—in low-income minority communities, especially, because the effects of mass incarceration have been so pronounced there. Public and private funders should promote educational, familial, communal, and economic well-being for these populations in order to create conditions in which society can reasonably expect a sense of responsibility from them and they have reason to feel a sense of responsibility to society.

People who are concerned with reducing overall rates of incarceration or the racial disparity in incarceration need not shy away from the value of responsibility as they describe the causes of crime or the deleterious effects of incarceration. Rather, they can contrast the ideology of individual responsibility, which undermines the psychological motivation and logical basis for responsible behavior, with a project of responsibility promotion.

The project of responsibility promotion understands incarceration as one avenue for maintaining the public sense of responsibility that enables society to function. But it emphasizes that incarceration promotes only the negative sense of responsibility, which is required when people's sense of duty and obligation fails them and a self-interested appraisal of the risks of punishment is the only deterrent against criminal behavior. A positive sense of responsibility is the first bulwark of socially constructive behavior, because it motivates individuals to act responsibly without the threat of coercion. When incarceration rates are high enough to seriously undermine the practices and institutions that inculcate moral self-regulation, then incarceration loses its justification as a deterrent against crime.

Over and above incarceration, society should dedicate its resources to developing those institutions, practices, and economic conditions that make individuals feel responsible without the threat of criminal punishment. Ameliorating conditions of extreme poverty would provide the material conditions in which society can reasonably expect civically responsible behavior from its low-income minority citizens. For example, improving schools and integrating them with community life would provide the institutional context in which social capital could accumulate and engender responsibility. Increasing opportunity for employment would provide the economic stability necessary for meeting financial as well as social and political obligations.

Responsibility promotion would suggest further that the punitive functions of incarceration be supplemented and, in some cases, replaced by restorative justice practices, such as victim-offender mediation, which seek to repair harm and restore relationships of trust in the aftermath of crime.[16]

A program of responsibility promotion thus serves as a compelling alternative to the ideology of individual responsibility for addressing the problems of crime and social deterioration.[17] The ideology of individual responsibility employs a retributive and symbolic understanding of responsibility in order to inure public discourse from a discussion of the cause of crime and the effects of incarceration, thus allowing deep social problems to fester as prison populations continue to soar. A program of responsibility promotion, on the other hand, recognizes sentiments of responsibility and responsible behavior as essential elements of the social fabric that arise from multiple institutional, communal, familial, and interpersonal sources

In taking up the cause of responsibility promotion, criminal justice reformers can wrest the normative value of responsibility from incarceration enthusiasts and

link concerns for fair and effective criminal justice with the wider objectives of socioeconomic and racial equity. In doing so, they can reframe the debate so that the concept of responsibility is an ally of social justice aspirations, rather than a cudgel of reactionary politics.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

BLAKE EMERSON: I want to focus on the role that the idea of individual responsibility plays in the way we talk about criminal justice. When liberal advocates for criminal justice reform point to the social effects of mass incarceration, the response from the Right often is that individuals must be held responsible for their crimes—that in America there is a very high premium on individual responsibility because of the way our market works and our democracy functions. The assumption is that circumstances in which individuals live don't affect their responsibility for their actions—that you're responsible no matter what.

That notion is problematic for two reasons. First, it runs against what we think criminal justice is supposed to do. The purpose of law enforcement and prison is deterrence, to prevent people from acting a certain way; but if you really believe that responsibility has nothing to do with your circumstances, how can you believe that incarceration and crime control actually influence people's behavior?

My second objection is that responsibility, as understood in that ideological way, is just a rebuke—a justification for punishment. It's not taking responsibility very seriously. Thinking of responsibility that way actually undermines the families and institutions in communities that promote responsibility.

So we should think of responsibility in a different way from what we typically do. Instead of thinking of it as kind of a retroactive justification for punishing people, we need to think of responsibility as a social good, something to promote, something that is sensitive to the way our society is organized. Along those lines, I propose that rather than focusing solely on mass incarceration as a method of policing crime, we need to focus on how to promote responsibility in areas that have previously been the focus of crime control.

Q: *"Individual responsibility" is often invoked ritualistically, not just in the criminal justice context but also when talking about problems like the mortgage crisis. What's the alternative? How do we make the conversation about responsibility go in a different direction?*

EMERSON: The mortgage crisis is a good example of how we need to think of responsibility as something that's concrete. It's something that people experience in the world, and it's affected by structural factors. People have different degrees of opportunity to abide by the laws depending on what their circumstances are, and so we aren't taking it seriously when we just use responsibility to blame people for things that they've done . . . which is the way that it often functions.

The alternative is *not* to throw away responsibility and try to talk about something else, which has been the liberal response to conservative attacks. When that happens, conservatives tend to moralize and talk about the importance of individual responsibility and individual initiative, and then liberals respond with a set of policy proposals that they think are more effective.

The better thing to do is to try to reclaim these and other bedrock American values. We need to show how un-American it is to incarcerate 1 percent of the population—that it's undemocratic and socially irresponsible to do so. When your response to crime is to put everybody in a locked room, that's not responsible. And so part of the battle that has to be waged is to marry concrete policy proposals to a new moral rhetoric that tries to show how a responsible, American, democratic society can't behave the way it does toward its most vulnerable people.

Q: *Is it not responsible because it doesn't work or for some other reason?*

EMERSON: Well, maybe in the 1990s you might have gotten a little bit of bang for your buck incarcerating more people. But experts agree at this point we're certainly not getting any benefit from it. And beyond that practical assessment there's a moral question. Is the proper response to social ills to use the coercive force of the law to put people in jail for years and years, or is it to try to find a way to change the underlying circumstances, to try to diminish economic inequality, give

people opportunities to create a legal and social and economic circumstance in which criminal behavior is a less viable and less attractive option?

Part of the problem is this weird disconnect between the way our justice system operates and the way our public rhetoric about justice operates. People think about crime in moral and almost religious terms; e.g., "bad people" commit crimes. If you make the choice to commit a crime, that's a choice of your free will and therefore you're accountable for it. And you're going to prison for as long as we see fit. But that's not the way the law sees it. The law doesn't say we should have prisons because we need to enforce a certain morality. The underlying justification is that you're trying to deter crime, to prevent crime from happening. So to make our discourse reflect what the law actually wants to accomplish would be helpful.

Q: *Under the surface all your comments is the sense that there's an essential moral discourse about race and justice. And yet we've also got this discourse of blame, which is essentially a religious concept. Can we agree that we would prefer that sort of a constitutionalist, secular discourse to get away from this?*

EMERSON: There's value in constitutional principles, but we don't want to be too individualistic about it. And I think a good place to go is the idea of popular sovereignty—that in America the people really are the governing power. They're the sovereign authority, and when one in

a hundred people are locked up, and a lot of them can't vote after they leave, that sovereignty is in jeopardy.

As far as the religious question goes, it's important to remember that the civil rights movement was very heavily laden with religious rhetoric and religious sentiment. So it would be a mistake to abandon that. Part of building a moral and political vocabulary in America has to involve religion, just because of how religious this country is. And there's nothing wrong with finding religious principles and people who have religious faith who support a progressive conception of criminal justice. That's worth doing; part of the success of the conservative movement has been embracing the Christian Right while the Christian Left has receded.

Notes

1. I use the term ideology of *individual responsibility* to refer to the belief in categorical individual responsibility that justifies criminal justice policy in the public discourse. The term is not precise, since the belief in individual responsibility is not itself a complete ideology but, rather, an element of larger ideological systems, including liberalism and racism. See T. Shelby, "Ideology, Racism, and Critical Social Theory," *Philosophical Forum* 34, no. 2 (2003): 153–88. The belief in individual responsibility is ideological because, as I attempt to demonstrate, it is a widely shared principle that distorts our perception of reality and serves to justify the social order.

2. B. Western, "Reentry: Reversing Mass Imprisonment," *Boston Review* (July/August 2008), http://bostonreview.net/BR33.4/western.php.

3. H. Mac Donald, "Is the Criminal Justice System Racist? No: The High Percentage of Blacks behind Bars Reflects Crime Rates, Not Bigotry," *City Journal* (Spring 2008), http://www.city-journal.org/2008/18_2_criminal_justice_system.html.

4. "In some social contexts ideological forms of consciousness seem to better perform their function(s) if they mutually support each other by forming a world view," from Shelby, "Ideology, Racism, and Critical Social Theory," 160.

5. J. J. C. Smith's remarks on the practical implications of philosophical concepts are apposite here: "When, in 19th-century England, the rich man brushed aside all consideration for his unsuccessful rivals in the battle for wealth and position, and looked at them as they starved in the gutter, [and] said to himself, 'Well, they had the same opportunities I had. If I took more advantage of them than they did, that is not my fault but theirs,' he was most probably not only callous but (as I shall try to show) metaphysically confused. A man who said, 'Heredity and environment made me what I am and made them what they are' would be less likely to fall prey to this sort of callousness and indifference. Metaphysical views about free will are therefore practically important, and their importance is often in inverse proportion to their clarity." See Smith, "Free Will, Praise, and Blame," *Mind* 70, no. 279 (1961): 291–92.

6. Deterrence is not the only justification for punishment. Other rationales include reform and retribution. See, for example, R. E. Gahringer, "Punishment and Responsibility," *Journal of Philosophy* 66, no. 10 (1969): 293. While these other schemes of justification have merit, they lose much of their force when the deterrent logic is subtracted from them. If, for example,

the purpose of punishment is only retributive—to "right" a moral or legal "wrong"—and *not* deterrent, then punishment is a purely symbolic act, deriving no justification from the potential regulatory effects of incarceration on the behavior of the criminal or others in society. But if we combine the logic of retribution with the logic of deterrence, then punishment can be justified for restoring a moral balance, not only symbolically but in the thinking and behavior of individuals. Without an accompanying logic of deterrence, the other justifications for punishment thus seem implausible for eschewing any interest whatever in the actual prevention of crime. As Oliver Wendell Holmes Jr. put it, "There can be no case in which the law-maker makes certain conduct criminal without his thereby showing a wish and purpose to prevent that conduct. Prevention would accordingly seem to be the chief and only universal purpose of punishment." Holmes, *The Common Law* (New York: Dover Publications, 1991), 46. Originally published in 1881.

7. R. Putnam, "Bowling Alone: America's Declining Social Capital," *Journal of Democracy* 6, no. 1 (1995), 67, http://xroads.virginia.edu/~hyper/DETOC/assoc/bowling.html.

8. Here I draw on H. L. A. Hart's distinction between the "internal" and "external" views of social and legal rules, which I designate "positive" and "negative," respectively: "At any given moment the life of any society which lives by rules, legal or not, is likely to consist in a tension between those who, on the one hand, accept and voluntarily cooperate in maintaining the rules, and so see their own and other persons' behaviour in terms of the rules, and those who, on the other hand, reject the rules and attend to them only from the external point of view as a sign of possible punishment." Hart, *The Concept of Law* (Oxford: Clarendon, 1961), 88. Whereas Hart attributes the external and internal perspectives to different groups of people, I suggest that many people may experience within themselves a tension between external and internal points of view with respect to the law.

9. D. Cole, *No Equal Justice: Race and Class in the American Criminal Justice System* (New York: New Press, 1999), 13.

10. J. Hagan and R. Dinovitzer, "Collateral Consequences of Imprisonment for Children, Communities, and Prisoners," *Crime and Justice* 26 (1999): 132.

11. Western, "Reentry."

12. Research links parent incarceration to children's increased behavioral problems, juvenile delinquency, and incarceration later in life. See, for example, C. Wildeman, *Parental Incarceration and Children's Aggressive Behaviors: Evidence from the Fragile Families and Child Wellbeing Study*, Center for Research on Child Wellbeing (Princeton, N.J.: Princeton University, 2008), http://crcw.princeton.edu/workingpapers/WP08-02-FF.pdf; R. Loeber and M. Stouthamer-Loeber, "Family Factors as Correlates and Predictors of Juvenile Conduct Problems and Delinquency," Crime and Justice 7 (1986): 29–149; and D. C. Rowe and D. P. Farrington, "The Familial Transmission of Criminal Conviction," *Criminology* 35, no. 1 (1997): 177–201.

I suggest that one reason for the increased risk of behavioral problems, delinquency, and incarceration might be that the children of incarcerated parents have difficulty acquiring a strong sense of positive responsibility that would discourage crime and deviance. This claim is not necessarily empirically substantiated, however, and depends on several assumptions: that children learn a sense of responsibility from their parents; that incarceration diminishes parents' ability to impart a sense of responsibility, either because of their absence or their own behavior; and that the absence of a sense of responsibility is causally related to behavioral

problems, juvenile delinquency, and incarceration. My suggestion that poor communities often lack sufficient role models outside of the family to inculcate responsibility in children and youth when parents are incarcerated finds support in the "culture of poverty" literature. See, for example, J. D. Kasarda, "City Jobs and Residents on a Collision Course: The Urban Underclass Dilemma," *Economic Development Quarterly* 4, no. 4 (1990): 313–19; W. J. Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1987); W. J. Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Random House, 1996); and C. Murray, *Losing Ground: American Social Policy 1950–1980* (New York: Basic Books, 1984).

13. B. Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 163.

14. T. Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy & Public Affairs* 35, no. 2 (2007): 150.

15. J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 16–17.

16. L. Kurki, "Restorative and Community Justice in the United States," *Crime and Justice* 27 (2000): 235–303.

17. The notion of *responsibility promotion* is meant as a conceptual cousin to the principle of *dignity promotion*, which President Barack Obama's foreign policy team has championed. As Spencer Ackerman understands their agenda, "They envision a doctrine that first ends the politics of fear and then moves beyond a hollow, sloganeering 'democracy promotion' agenda in favor of 'dignity promotion,' to fix the conditions of misery that breed anti-Americanism and prevent liberty, justice, and prosperity from taking root." See S. Ackerman, "The Obama Doctrine," *American Prospect*, March 24, 2008, http://www.prospect.org/cs/articles?article=the_obama_doctrine. Likewise, in the arena of criminal justice we ought to move beyond political exploitation of fear of crime, and the hollow appeals to "hold criminals responsible," and toward an effort to promote civically responsible sentiments and behavior in at-risk communities through socioeconomic intervention.

CHANGING
THE CONVERSATION

ALICE O'CONNOR

Ever since social reformer Charles Loring Brace coined the phrase in 1872, popular writings about "the dangerous classes" have played an outsized part in public conversation about America's crime problem—its size, sources, actual and perceived victims, and what, if anything, can and should be done about it.[1] For Brace, the problem was New York's unschooled, uncivilized, un- or improperly churched youth, the untethered children of working-class Irish and German immigrants who terrorized the streets, fed the corrupt urban political machine, and even threatened someday to heed the call of Communism then sweeping Europe. The solution was the moral uplift to be found in Christian education, hard work, and a series of enterprises Brace founded, from the westward-bound "orphan trains" of the 1850s–1920s to the still-existing Children's Aid Society of New York.

Brace's journalistic dispatches from the urban dark side were among the more widely circulated of what has become a subgenre in American letters: the street-smart narrative of urban poverty and crime, offered up by generations of mostly middle-class reformers, social scientists, journalists, and novelists promising to unlock the mystery of life among the proverbial "other half." Whether fictionalized or factual, such narratives draw on a familiar stock of literary conventions, including a host of archetypical characters and overused metaphors that convey social meaning well beyond whatever documentary evidence they claim to report.

Familiar and formulaic though they have become, these conventions continue to serve a variety of functions in urban crime reporting, drawing the reader in with a not-always-coherent combination of local color, social alarmism, and the calculated aura of objective detachment that has become ingrained in the documentary form. Meanwhile, urban crime reporting itself has come to serve a variety of sociological functions. On the most basic level, it remains an outlet for expressing

middle-class anxiety about crime, even as it reassures by locating the criminals themselves at a social and cultural distance. There also is a kind of moral reassurance to be found in the distance that crime reporting provides: a means of indicting social neglect while absolving individual readers of direct social responsibility. And, as in Brace's case, the genre has also offered a way of funneling widespread anxieties of the day into a narrative of diagnosis, warning, and reform.[2]

The enduring story of the "dangerous classes" provides occasional snapshots of the otherwise inexplicit running narrative that links race, poverty, place, and deviance of all sorts in the popular American sociological imagination. That story, despite marked continuities over time, has changed in ways that reveal as much about the shifting preoccupations and prejudices of any given historical moment as they do about the actual incidence, patterns, and social impact of crime. Thus, intentionally or not, as part of the American racial narrative the literature of the dangerous classes serves important political and ideological functions.

A recent addition to the annals of frontline crime journalism can be read for the deeper meanings it conveys—on one hand about where things stand with the running narrative of race, place, poverty, and deviance that underlies social perceptions of crime, and on the other about how deeply implicated that narrative is in a set of highly politicized ideological assumptions that have shaped contemporary policy debates about crime and punishment and also about broader questions of social need and responsibility, economic and social insecurity, and ongoing struggles for racial and social justice. The article in question is "American Murder Mystery," written by journalist Hanna Rosin and published in the summer 2008 issue of *The Atlantic*.[3]

Provocative if not downright sensationalistic in its central claims, Rosin's article was instantly scooped up in various news outlets, in the blogosphere, and by social commentators of various ideological persuasions as the centerpiece of a momentarily renewed—though hardly new—conversation about the roots of urban crime. It focused attention especially on the headline-making "discovery" that a housing program it depicted as rooted in a sweepingly idealistic 1960s (read: "liberal") social experiment was to blame. As even the most cursory scrutiny quickly revealed, Rosin's reporting was fundamentally flawed—riddled with causal fallacies, hyperbolic characterizations, unsubstantiated conclusions, and, as I discuss below, basic historical inaccuracies and omissions. On this basis it was widely and easily challenged, prompting rebuttal even from several of the experts quoted in the story.[4]

However, as articles like Rosin's are absorbed into the racial and ideological narrative, they have an impact on the public conversation about crime and punishment. They tap into a deeper vein of images, stereotypes, associations, and logics that are difficult to dislodge, in part because they draw from the historically racialized (and gendered) imagination of the dangerous classes and the undeserving poor. These conventions also are powerful because they resonate with the kind of snide, easy-to-come-by contempt for liberalism and, more broadly, for progressive values and politics that has dominated political culture for more than three decades and has been one of the defining features of modern conservatism. (The escalation of attacks on community organizing and efforts to blame the Community Reinvestment Act for the mortgage meltdown are recent cases in point.)[5]

This attitude of contempt has been at the core of a more far-reaching, ideologically anchored politics of reform that, since the 1970s, has deployed a strategic (if internally inconsistent) combination of free market antistatism, law and order authoritarianism, moral traditionalism, and "colorblind" meritocracy in a sustained and largely successful campaign to undermine the legitimacy of measures including race-based affirmative action, an expansive safety net, redistributive taxation, and preventive and rehabilitative criminal justice policy.

Equally important, and simultaneously, this contempt has been used to dismiss an entire tradition of structural analysis—about crime, poverty, inequality, and all varieties of urban "crisis"—as an artifact of soft-hearted liberalism (or worse).[6] That is why changing the contemporary conversation about crime and punishment goes beyond identifying new ways to frame the issues, or garnering a more powerful combination of social theory and social scientific analysis—important though those projects may be.

Changing the prevailing conversation requires confronting and challenging the underlying racial and ideological narrative, in addition to the politics and political mobilizations that have made that narrative the dominant conventional wisdom in social policy. It also requires a willingness to take advantage of what many continue to think of as a transformational, potentially conversation-changing, moment in contemporary political history—our enduring economic crisis—not least of all because the depth and gravity of this crisis open up long-foreclosed possibilities for progressive reform. Realizing this potential will take sustained organizing to envision and hammer out an agenda that restores democratic values to criminal justice and social policy.

I hope to make a modest contribution to this larger project by using Rosin's analysis of the "dangerous classes" as a reflection of the current, prevailing conversation about crime and punishment and the underlying racial and ideological narrative that informs it. But the contemporary narrative has its origins in an earlier moment of conversation-changing rhetoric and organizing, dating from the early 1970s. That prior period took considerable effort to mobilize and sustain, and it proved successful because it played on a divisive combination of economic insecurity and racial fear and it was linked to a concrete agenda of "tough-on-crime" initiatives in state and local politics. In pointing to the 1970s as an earlier conversation-changing moment I want to underscore two points that bear repeating as we think about the project ahead.

One important point is that, timeless and inevitable though it may sometimes appear, the hardened, heavily racialized, "zero-tolerance" account of crime and punishment that underlies contemporary policies of mass incarceration did not take hold in a historical vacuum or simply of its own accord. Rather, it can be traced to conscious efforts to change a once-dominant (however momentarily and partially) and far more liberal policy conversation—albeit by playing on age-old racial and economic fears.

The second point is that changing the conversation about crime and punishment is a project anchored as much in policy and political work as in narrative strategies. Now, more than ever, changing the conversation involves restoring the links between economic, social, and criminal justice that have animated progressive reform coalitions in the past.

SOCIAL JOURNALISM AND THE NARRATIVE ON RACE

Rosin's article lies within a tradition of social journalism that traces its historical roots to the late nineteenth century. Indeed, the *Atlantic* website encourages the association, with links to well-known landmarks of social reporting from its own archives by Jacob Riis (1899), Nicholas Lemann (1986), and others who trawled the same territory over the course of a century.[7] Featured in middle- and high-brow periodicals (of which the *Atlantic Monthly* is one of the oldest), social journalism was shaped in response to an extended period of social and economic transformation that produced vast and visible extremes of wealth and poverty, labor conflict and exploitation, rampant political corruption, and volatile social relations in the nation's increasingly overcrowded, immigrant-populated industrialized cities. These topics became the focus of an emerging style of investiga-

tive journalism that aimed to distin-
guish itself from the sensationalism
of the popular tabloids by adopting
the tools of a more scientific, empiri-
cally grounded, and documentary
approach to reporting along with the
naturalistic techniques of social real-
ism in narrative.

> Now, more than ever, changing the
> conversation involves restoring the links
> between economic, social, and criminal
> justice that have animated progressive
> reform coalitions in the past.

Often blurring the lines between investigation and advocacy, the new social jour-
nalism offered analysis as well as point of view and even, as in Riis's case, explicit
calls to reform. Riis was a Danish immigrant who started out as a tabloid crime
reporter after several years of itinerant labor and gained greatest renown as a tene-
ment-house reformer and author of the extraordinarily influential *How the Other
Half Lives* (1890).[8] He was also a pioneer in the extensive use of photography to
dramatize the shocking conditions in New York's most deeply impoverished neigh-
borhoods. Anticipating a trend that would become more pronounced in later re-
porting, Riis tempered the vividness of his exposé by drawing on the authority of
independent experts and official statistics to back his claims. Riis's narrative voice,
however, was more colloquial than expert; he made plentiful use of casually rac-
ist stereotypes to demarcate the heavily immigrant, impoverished working classes
of New York, even while pointing to the venality of capital and greedy landlords
as the source of their degraded conditions and slum-bred criminality. Though an
immigrant himself, and no stranger to poverty, he also maintained a kind of con-
versational intimacy with his more established and respectable readership, squarely
positioning himself on their side of the social divide he was writing about.

A great deal has changed in the tradition of social journalism since then. The line
between reporting and reform advocacy is sharper; the unapologetic use of racial,
ethnic, and gender stereotypes suppressed; the array of sociological and crimino-
logical expertise more fully elaborated. But much about it remains intact, includ-
ing the use of the literary and visual devices Riis and subsequent generations relied
on to construct the narrative—and the "otherness"—of the "other half" and to
dramatize the menace to the polity and to "respectable" society that it posed.

As in the past, the contemporary investigative crime story is structured as a kind of
journey to unknown, never-before-seen, dimly fascinating places—a modern-day
version of "slumming" with the intrepid reporter as guide and translator. The pre-
sumably unfiltered gaze of the correspondent is, of course, anything but, refracted

as it is by the unacknowledged hierarchies and prerogatives of class, race, gender, and social privilege that put the reporter in control of "other" people's stories and provide access to the places where they live. Indeed, as readers we are assured that we can trust the accuracy of the story because the reporter is more one of "us" than of "them" and at some level shares the feelings of shock or discomfort at what the story reveals.

To be sure, neighborhood sources are brought in to guide and inform us, but even the most sympathetic tend to reinforce the sense of distance and menace—be it the voice of the amoral delinquent, the hopelessly troubled welfare mother, or the hard-boiled but worried social worker or law enforcement official on the beat. Similarly, recycled metaphors and modifiers such as *jungle, predator, epidemic, infested, viral,* and *bred* or *breeding* tell us that the places and people we are encountering are somehow bestial, pestilent, or otherwise uncivilized. And reporters can rely on a constantly replenished body of expertise that explains the conditions that "breed" crime in such ostensibly neutral yet similarly distancing terms as *social disorganization, isolation, cultural deprivation,* and *underclass*.

"American Murder Mystery" makes use of these devices in a narrative framed as an urban detective story. The story begins with a guided tour of what local law enforcement officials have identified as high-crime neighborhoods, in search of explanations for a recent surge in urban homicides following a sustained period of decline. This time, the mean streets are not in big-city New York, Chicago, Los Angeles, or Philadelphia but in Memphis, which stands with other midsized cities at the dubious leading edge of a looming "epidemic of violence" police experts have dubbed a "gathering storm" in a widely circulated report of that name.[9] Nor is the ostensible crime wave contained in central-city enclaves of heavily racialized, concentrated poverty—the immigrant slums, "dark ghettos," or otherwise "underclass" neighborhoods—that earlier eras of crime statistics and reporting lead us to expect. Instead, the new "hot spots" are in what classic Chicago School urban ecology would have designated the safely residential outer-ring zones of the rising working and middle classes, what Rosin calls the "new urban suburbia" of North Memphis.

Here is the "mystery" of the story's title: not just why crime is rising, but why it appears to be spreading beyond what have long been imagined as designated "zones of deterioration" and creeping closer to middle, or at least suburban, America's backyard.

To solve the mystery, Rosin takes us on a tour of the crime scene, in her words "the same way a cop on a murder case would." Aside from Rosin herself, our guides are for the most part longtime Memphis residents, including a cop on the beat, a well-meaning housing expert and her criminologist husband (who is a consultant for local law enforcement authorities), and residents of the recently constructed Springdale Creek apartment complex in suburbanized, working- and middle-class North Memphis. Springdale Creek, we quickly learn, has in recent years become home to a number of low-income refugees from inner-city projects—and growing incidents of vandalism and crime.

Otherwise, Memphis and, by extension, its crime problem are presented to us without context, as if they exist in a historical and structural vacuum. What we do learn of Memphis's past is filtered through the reminiscences of a now-middle-aged white patrol officer, who at one point likens himself to a zookeeper, protecting people "from all the animals," and is nostalgic for a storied time (the 1960s of his youth) when in his uncorroborated memory white middle-class and black working-class families lived side by side and respected law and order. Rosin conjures a picture of "Elvis's hometown" before it was transformed into the new "South Bronx" (here invoking another overused analogy), leaving readers to fill in the blanks. The irony is that the story of what made Elvis "king" only makes sense within the context of the overt racism and deeply racialized structural disparities of opportunity that held up the color line in early rock 'n' roll—and throughout Memphis's economy and neighborhoods.

Nor does Rosin reveal any awareness that what she glancingly refers to as "the 1968 riots"—and implicitly blames for the city's fall from a storied racial harmony—were part of a long sequence of organized protests, demonstrations, strikes, and rallies sparked by the lethally unequal working conditions endured by the city's African American sanitation workers. That heavily working-class mobilization culminated in the assassination of Rev. Martin Luther King Jr., who had come to Elvis's hometown to join the striking workers and draw national attention to their cause.[10] The dynamics of violence in Memphis have surely changed, but historically violence has been shaped by structural inequities of race, class, and place—factors that Rosin evidently does not care to acknowledge and that would certainly complicate the story line.

What we learn of the city's poverty is similarly selective and decontextualized, reported without reference to the patterns of income and wealth distribution, employment and educational opportunity, racial and gender discrimination, politics

and policy, or any number of readily available real-world factors that might help explain it. Here the chief interlocutors are former residents of the Dixie Homes housing project—Memphis's version of Chicago's warehouse-like Robert Taylor Homes—who moved to lower-poverty, outer-ring neighborhoods after the projects were torn down in 2006. What little we learn about their lives hints at enduring pathology and personal dysfunction reinforced by the darkened, insulated spaces Rosin wanders into, as if at random, with her tape recorder and video camera.

One such scene takes place in a crowded midafternoon apartment, darkened except for the glare of daytime television, where older women from the complex are evidently too riveted by the real-life soap opera they are viewing to pay attention to the deranged mutterings of the grandmotherly neighbor who has wandered in waving a gun. It turns out that her determinedly clean-cut grandson has been victimized by local gangs trying to recruit him as a front man. And, lest her readers have somehow managed to miss the lurking menace, Rosin pulls out a reference to Al Qaeda, which, she tells us, gets its American recruits in much the same way.

More significantly for Rosin's detective story, we also learn of the slender thread—so slender as to be barely detectable—connecting these women to the murder mystery that frames her story (and, by implication, a whole class of low-income, predominantly African American women who, due to the structural dynamics Rosin leaves out, were disproportionately resident in now-disbursed housing projects). As recipients of Section 8 housing vouchers, they are part of a pattern of residential dispersal that, according to the after-hours map-merging conducted by the husband-wife team of criminologist and housing expert (replicated elsewhere by another criminologist Rosin characterizes as being "clueless about the finer points of American racial sensibilities"), correlates directly with the changing geography of crime. Interestingly, the setting for this discovery is an idyll of domesticity compared to what we glimpse of life among the "Section 8 people" in the Springdale Creek apartments. The husband and wife even enjoy some playful jabs about whether the pattern that emerges looks more like a rabbit or a sideways horseshoe (Rosin herself settles for likening the red dots locating Section 8 residences to "bursts of gunfire").

The match brings Rosin to an "obvious conclusion," albeit one that people overburdened by racial sensibilities would evidently prefer to avoid: the "Section 8 people" are bringing the crime with them when they spread out from the inner city to their new neighborhoods in the outer rings. From there, it's an easy leap: Memphis's HOPE VI housing program (which uses Section 8 vouchers to re-

locate residents of public housing projects that are being redeveloped), and the whole tradition of social experimentation and civil rights activism Rosin takes it to represent, is the unwitting cause of the crime wave that is threatening to bring the city down. At the heart of this "grand" civil rights experiment, according to Rosin's streamlined rendition, is Chicago's widely celebrated Gautreaux program, which, starting in 1977, provided vouchers that enabled low-income, predominantly African American and Latino central-city residents to move to suburban neighborhoods.[11]

Rosin's conclusions are "obvious" only in the sense that they are remarkably simplistic. As several critics have pointed out, they confuse correlation with causation—the cardinal sin of the amateur interpreter of statistics, easily avoidable with some standard double-checking—though others have questioned the underlying measures as well.[12] Rosin also fails to take into account other possible explanations for shifting crime patterns or explain how a comparatively miniscule number of Section 8 vouchers, which in Memphis went to a very small number of eligible families, could be responsible for what, by Rosin's account, was such a major and horrendous rise in crime.[13] And Rosin's conclusions are based on a misreading of the historical record, both by confusing Memphis's considerably scaled-down HOPE VI program with earlier, more ambitious redevelopment and relocation efforts, and in characterizing those earlier efforts as the housing experts' "great contribution to the civil rights movement."

In reality, the original and overhyped but still moderately successful Gautreaux housing voucher program, launched after major civil rights litigation in the 1960s, was itself the product of political compromise and considerably scaled-back expectations. The original settlement called on the notoriously corrupt and segregationist Chicago Housing Authority to construct scattered-site public housing outside ghettoized neighborhoods and make it available to nonwhite families who had been lingering on waiting lists for years.[14] After persistent resistance from both local officials and target neighborhoods, the litigants ran into the Nixon administration's 1973 moratorium on further housing construction, which, in combination with its policies of "benign neglect" and what Charles Lamb calls "suburban segregation" with regard to antidiscrimination in housing, severely limited the prospects for fair housing-based antipoverty strategies and led instead to the far more limited voucher-based approach.[15]

HOPE VI, initiated in 1992, similarly is the product of ongoing compromise and conflicting political agendas. Based on a report that recommended demolishing

the "most distressed" public housing (representing a small proportion) combined with redeveloping and replacing "one for one" the units available to low-income families, the project was soon caught up in the politics of privatization and central-city gentrification as well as the "individual responsibility" and anti-"dependency" orientation of 1990s welfare reform.

Among the elements that HOPE VI lost, or never encompassed in the first place due to the whole protracted process, were adequate funding for subsidized housing, the one-for-one replacement mandate, and provisions for safeguarding the interests of low-income residents—or for prosecuting still-rampant discriminatory practices in public and private markets alike. Rather than redeveloping razed housing with active participation from existing residents, local Public Housing Authorities brought private or public/private "partner" developers into "distressed" neighborhoods and left low-income residents to use whatever voucher assistance was available to move out.[16] By 2004, the Bush administration was aggressively targeting the already diminished program (funding dropped from $625 million to $100 million between 1999 and 2008) for elimination, while housing activists and experts argued for expanded employment, educational, and community-based resources to prevent displacement.[17]

Rosin picks up on HOPE VI's many, widely acknowledged problems at various points in the article, but any nuance or context gets swept up in the more damning story she prefers to tell—that of an "'I Have a Dream' social crusade" (her phrase) gone awry. Ultimately, more telling than the flawed logic and distorted history is what Rosin leaves unexplained. What exactly is the connection between those disembodied red Section 8 dots on the map and the incidence of crime? Better yet, what exactly is the connection she is trying to imply—that the "Section 8 people" are committing the crimes themselves? That crime is not "bred" in bad neighborhoods but in . . . what? Bad behavior? Bad upbringing? Bad genes? What was it about those supposedly "grand" antipoverty programs that made them go so wrong? What, indeed, is so "obvious" as to need no precise explication?

Rosin never directly provides answers, but she does drop some leading hints. "You move from one place to another and you bring the element with you," she quotes one Springdale resident as saying. Meantime, we learn that the "obvious conclusion" that leaps out from the maps is one city leaders and well-meaning program administrators have actively resisted, not because it might be flawed or just plain wrong but because they fear it confirms all the racial and class stereotypes

they've worked so hard to overcome. The Section 8 people actually are the dangerous classes people feared they were all along; all those well-meaning plans to help them have only made things worse. This, notably, is the one and only way race or racism enters into the story as an explicit point of analysis—as the deliberate silence of politically correct experts and politicians too timid to face up to what's really bringing their city down.

> This, notably, is the one and only way race or racism enters into the story as an explicit point of analysis—as the deliberate silence of politically correct experts and politicians too timid to face up to what's really bringing their city down.

Rosin's "American Murder Mystery" is not simply the old dangerous classes narrative redux. It is anchored in a larger, late twentieth- and early twenty-first-century (re)construction of a narrative that, since the 1970s, has been an ongoing project of the political and ideological Right. Several things in particular link Rosin's to that broader, now politically dominant narrative (references to Al Qaeda–level terrorist tactics incidental among them). One is the self-conscious postracialism of Rosin's analysis and the evident disdain for racial "sensibilities" that stance entails: institutionalized racial inequality has no place in this story of poverty, place, and crime, except as a holdover from a bygone era of civil rights activism and a figment of overly sensitive liberal imaginations.

Second, and related, is Rosin's dismissal of structural analysis of all kinds. Poverty is a deep-seated personal affliction in this story, a wholly "other" state of being from which only some people, through intensive personal uplift and transformation, are able to escape. As something the Section 8 people carry with them, crime is treated in much the same way; it is deeply ingrained, behavioral, a personal propensity unexplained by social "root causes."

Third is the apparent ease, unburdened by accurate evidence of cause and effect, with which the story moves from the threatened "tidal wave" of crime to a sweeping indictment of liberal social policy—and a distorted version of liberal social policy at that.

The final element is this story's participation in an intellectual project that—while not confined to ideologically conservative intellectuals—has been, in recent decades, an especially potent recurring motif in right-wing circles (all evidence-based

debunking to the contrary). That is, the "scientific" quest to identify the markers of a distinctively criminal element so as to better isolate, incapacitate, and otherwise use all means necessary to keep it from menacing the rest of society.

The most notorious and extreme recent iteration of this undertaking was the truly incendiary "super-predator" theory circulated by criminologist John J. Dilulio in the mid-1990s, notably in a widely disseminated 1995 article for one of the premiere-year issues of the conservative journal *The Weekly Standard.* The article was portentously titled "The Coming of the Super-Predators." Declaring violent youth crime—especially among young black males—to have reached "horrific proportions," Dilulio cited definitive scientific findings to make an even more dire demographic prediction: with the projected rise in the fourteen-to-seventeen-year-old male population, cities across the country could expect to see crime waves unprecedented in size, violence, and sheer ruthlessness by 2005, so much so that local district attorneys, police, and even hardened prison inmates were scared.

Key to Dilulio's confident prediction was a statistic frequently invoked in conservative crime discourse as a formula for demographic disaster. Studies showing that "6 percent [of a cohort of young males] do 50 percent [of the crime]" meant that more criminals were in the making. More worrisome, though, was the rising proportion of these youth who were growing up in "moral poverty" and with other "developmental defects" that made them more vicious than ever before. The most "homicidal" youths already traveled in "wolf packs," Dilulio reported; more were on the way.[18]

Dilulio was infamously wrong in his analysis and predictions, which he later repudiated.[19] But he was hardly the first or only criminologist to embrace some version of the superpredator theory. The drumbeat for the idea had been sounded much earlier in the work of political scientist James Q. Wilson, among others. As a conservative scholar and publicist of conservative ideas, Wilson wielded considerable influence in policy circles. After starting to write seriously about crime in the mid-1960s, Wilson fixated on what he considered the most menacing dimension of the crime problem: the relatively small but capaciously defined group of "street predators," chronic offenders, and youthful delinquents whose very presence threatened the sense of civic order well beyond the actual number of people victimized.

The "hard-core" delinquent, in particular—the "6 percent do 50 percent" demographic—figured prominently in Wilson's best-known criminological writings, published in academic outlets and reaching broader audiences in the pages of

Commentary, *Fortune*, *The Public Interest*, and, on occasion, the *Atlantic Monthly*. These writings established Wilson as a leading critic of socially preventive and rehabilitative approaches to crime. Instead, he became an ardent proponent of stepped-up deterrence through swifter and more certain prison sentences and crackdowns on petty vandalism and quality-of-life violations. This latter, aggressively preemptive strategy came to be widely known as "fixing broken windows" after Wilson and criminologist George Kelling published an article by that title in the *Atlantic* in the early 1980s.[20] But its real boost came from the still-emergent idea factories of the neoconservative Right. The Manhattan Institute, among the most prominent and influential among them, would later pride itself on having introduced the idea to mayoral candidate Rudy Giuliani.[21]

Wilson's criminological writings announced to the world that his underlying project was not a transformation in crime per se but in "Thinking about Crime"—the title of his first major book on the subject, published in 1975. In a section of that book devoted specifically to debunking the prevailing "conventional wisdom," Wilson argued that the search for the socioeconomic "root causes" of crime was futile and ideologically motivated, as were liberal efforts at rehabilitation and reform. Wilson reserved special scorn for what he called the "doctrine" of white racism embraced by the presidentially appointed National Advisory Commission on Civil Disorders (the Kerner Commission) in its widely anticipated 1968 report on ghetto violence. "During the 1960s we were becoming two societies—one affluent and worried, the other pathological and predatory," he wrote[22] in a not-so-subtle dig at the Kerner Commission's famous warning that "our nation is moving toward two societies, one black, one white—separate and unequal."[23]

Such disdain for the 1960s, for so-called "root causes" analysis, and for the concepts of institutionalized racial privilege and disadvantage had become a staple of conservative thought by then, routinely echoed by Midge Decter, Edward Banfield, and other leading lights of the conservative intelligentsia. Conservatives also dismissed explanations that held unemployment, poor education, and otherwise blocked opportunities to blame. Crime was rooted in bad behavior, bad character, bad upbringing, and the cultural dissipation of old-fashioned bourgeois values— including law and order—that allowed these pathologies to flourish.

Nor did Wilson mince words about where and when the inexorable downward spiral had started: the indulgent liberal policies of the 1960s. "It all began in about 1963," he wrote, looking back from a decade later to a year that, for many, was a turning point in the modern-day civil rights movement, as symbolized by the

March on Washington for Jobs and Freedom. For Wilson, 1963 was more notable for the spiral of crime, drugs, welfare, and black unemployment it allegedly launched.

Decter captured the mood of intellectual backlash, and its increasingly venomous tenor, in an enormously controversial 1977 *Commentary* essay written in the wake of that summer's looting in blackout-darkened New York City:

> *If the looting was not an explosion of despair and rage, a cumulative response to joblessness and hopelessness, and the feeling of being abandoned, how are we to account for it?*
>
> *The answer is that all those young men went on their spree of looting because they had been given permission to do so. They had been given permission to do so by all the papers and magazines, movies, and documentaries—all the outlets for the purveying of enlightened liberal attitude and progressive liberal policy—which had for years and years been proclaiming that race and poverty were sufficient excuses for lawlessness. They had been given permission to do so by all the politicians and government officials who had for years and years, through their policies, been expressing their belief that there was no other way to "tame" ghetto youth except through bribery and no other way to move them ahead in life except by special arrangement. And they had been given permission to do so by all the self-appointed foundation- or government-funded militant spokesmen for the interests of the black and Hispanic communities, whose threats of "long hot summers" had been the key to their exercise of power with the political establishment. The previous blackout, it is important to remember, had taken place before all these various embodiments of liberal enlightenment on race had offered their blessings to the riots in Watts and Detroit or heaped encomiums on the likes of Huey Newton and H. Rap Brown.*[24]

In 1985, Wilson published *Crime and Human Nature* with coauthor Richard Herrnstein, laying the deeper scholarly edifice for what eventually would crystallize in the form of the superpredator idea. Herrnstein had gained notoriety for his work on the genetic basis of intelligence and achievement (and would again, as coauthor with Charles Murray of *The Bell Curve* in 1994).[25] Billed as the "definitive study of the causes of crime," *Crime and Human Nature* argued that, for a predictable subsection of the population—male, low intelligence, muscular but stocky physique—there was a "constitutional" propensity to crime that was at least partially

genetic and therefore hereditable and that, in combination with bad parenting, bad temperaments, bad behavior, and, equally important, a broader social and cultural tolerance for such behavior, was a reliable predictor of who would end up in a life of crime.[26]

By the early 1990s, bolstered by an expansive literature on the rise of an urban "underclass" and the specter of civil disorder in the wake of the Rodney King verdicts, Wilson's warnings had reached a fevered pitch: "We are terrified by the prospect of innocent people being gunned down at random, without warning and almost without motive, by youngsters who afterward show us the bland, unremorseful faces of seemingly feral, pre-social beings," he wrote in a 1994 *Commentary* essay on what crime policy should be—and why the recently passed federal crime bill had not gone far enough to promote what, for two decades, had been core conservative objectives. These included swift and certain punishment; civil-liberties-bending preemption; and what Wilson offered up as the one truly preventive measure for dealing with the notorious "six percent"—not education, job training, or any of the other interventions he had long-since dismissed as liberal nostrums, but ending illegitimate births.[27] "Get ready," was how Wilson concluded his 1994 *Commentary* article, having just written with statistical certainty that projections of half a million more young males would translate into "30,000 more muggers, killers, and thieves than we have now."

What gave the superpredator concept and like ideas their conversation-changing potential, however, was not the force of frenzied rhetoric alone. It was also their deployment within a more extensive and extended political mobilization against liberal social policy and governance, in which conservative and neoconservative intellectuals, journals, foundations, and think tanks played a central role. Thinking of themselves as a revolutionary "counter-intelligentsia" to an otherwise entrenched liberal establishment, activists such as Charles Murray, William Bennett, Irving and William Kristol, and Stephen and Abigail Thernstrom—among many others—organized tremendous political support by holding out the prospect of an unimaginably transformed domestic and foreign policy landscape and then using their own version of statecraft and civil society to bring it about.

Important to their success was the ability to frame all sorts of issues as a never-ending series of moral and cultural crises, as challenges to "traditional" values that, to them, increasingly came to include "free market" capitalism and property ownership as well as Victorian virtue.[28] Equally important was their ability to tap into a toxic mix not only of racial, gender, and sexual anxiety but also economic and

social insecurity—insecurities of the sort that working- and middle-class African Americans, Latinos, and women had experienced for decades and, by the 1970s, were beginning to reach their white counterparts. Crime and punishment, these conservatives understood, was not the only or even the central issue at stake in changing the conversation about crime. At stake was the legitimacy of any threat to the prevailing social order, be it from readily conjured black superpredators or from progressively redistributive "big government" social and economic policies.

Few people who read "American Murder Mystery" will know about the super-predator theory or the work of James Q. Wilson and John J. Dilulio. But they hardly need to know in order to follow the social and ideological logic that Rosin's narrative of the new dangerous classes—and their voucher-prompted infiltration of once-respectable neighborhoods—invites. By now, that ideological logic has become the basis of a successfully transformed conventional wisdom about the origins of crime in irremediable personal behavior and temperament. It has equally transformed policy, bringing a host of measures such as intensified neighborhood surveillance, recriminalized petty offenses, reinstated death penalties, and "three-strikes-and-you're-out" legislation to municipalities and states nationwide.[29]

Alongside, and as an integral part of, that transformation has been the massive disinvestment in particular social welfare policies—flawed, partial, and inequitable as they admittedly were—and in the very idea of a public, collective social commitment to providing equal rights, opportunities, and protections against economic risk in particular (thereby attending far more to the needs of deregulated capital than to those of the fearful working classes). What remains, in a policy environment defined by maximized retribution and minimized social investment, is aptly captured by the lead article in a recent edition of the Manhattan Institute's *City Journal*, which in the two decades since its first issue in 1990 has been a voice for radical privatization, cultural traditionalism, and get-tough criminal justice reform. "Uplifting the 'Dangerous Classes,'" reads the headline. The story is devoted to reviving the resolutely private, moral, and individualized preventatives of Charles Loring Brace.[30]

CHANGING THE CONVERSATION

What conclusions can we draw from this history for changing the conversation about crime and punishment, and its role in a strategy of reform?

One conclusion is that changing the conversation means abandoning the discourse of the dangerous classes and avoiding even the temptation to reclaim it for progressive purposes. At the risk of belaboring the point, it is worth reminding ourselves that narratives of social threat have historically been deployed as justification for more liberal and rehabilitative

> Narratives of social threat have historically been deployed as justification for more liberal and rehabilitative purposes as well as conservative and punitive ones, with much the same effect.

purposes as well as conservative and punitive ones, with much the same effect. They simply remind us that we are fearful (and tell us that we should be) of an imaginary "them"; they undermine the politics of social citizenship in favor of the politics of social division and individual remediation; and, above all, they criminalize poverty, disadvantages based on race, gender, and other status, and many forms of social "deviance" and dissent.

In addition to writing more accurate, historically contextualized narratives of structural inequality, race, and place, we should (a) refocus the conversation on the broader structure and incidence of crime in the United States; (b) shift the parameters of what gets categorized as criminal behavior, in public consciousness as well as policy; and (c) make justice, rather than retribution, the defining feature of crime and punishment in a democratic polity.

A second conclusion is that changing the conversation about crime and punishment is not about crime and punishment alone; it requires reckoning with the broader context of public ideology and social policy/political-economic commitments that shape existing policies and practices. In addition to laying bare the violations of "simple justice" and democracy involved in current policies of mass incarceration, a changed conversation would also recognize the degree to which they have been aligned with a radically desocialized, upwardly redistributive policy agenda—and, in turn, articulate alternative ideas about the nature of need, obligations, protection, the rights of citizenship, and the role of government in social provision as the basis of reformed criminal justice policy.

Third, changing the conversation is both a long-term and fundamentally political project that does not begin and end with rethinking and reframing alone. As a strategy of reform, changing the conversation involves building a constituency for a concrete policy reform agenda that puts new ways of thinking into action;

organizing within and across issue networks; and making the case that reforming the criminal justice system belongs on the agenda of progressive reform movement politics, despite—indeed, because of—the stigma associated with crime.

Finally, changing the conversation means defusing the politics of racial fear and resentment that have been fueling the harsh "law-and-order" agenda for more than four decades. It also means taking on the combination of ideology and political interest that has joined deregulated capital to vastly expand the carceral state. Here I return to my earlier point about recognizing the potential within the current political moment. If the 2008 presidential election represented a substantial rejection of the politics of racial fear and resentment, it also signaled the literal and figurative bankruptcy of the ideas and ideology that have formed the intellectual edifice of the conservative crime policy reform movement—as well as that of the broader conservative movement that helped animate it.

With the end of ("free-market") capitalism as we've known it, and the prospect of genuine economic reform on the table, it is worth asking what it would mean to make economic justice the starting point for a different kind of conversation about crime and punishment and criminal justice reform. This is not simply a matter of political pragmatism. Economic justice has been at the heart of the most profoundly transformational progressive movements in our history, from the ongoing struggles for labor and immigrant rights to those for racial and gender equality. As a starting point for rethinking crime and punishment, it refocuses the conversation from what frightens "us" about "them" to creating conditions under which criminal justice can work fairly and equally.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

ALICE O'CONNOR: I wanted to draw attention to the fact that this whole discourse and logic of the old-fashioned "dangerous classes," which can be traced back to a nineteenth-century discourse that started with Charles Loring Brace, is still very much with us. It absolutely continues to play an exaggerated role in the public and the policy discourse about crime. And . . . implicit in the discourses we create when we talk about crime is the image of a culturally and racially inclined dangerous class of criminals that is predatory, hyperviolent, and genetically programmed that way.

I also want to emphasize that the discourse is still with us now not because of some kind of natural inclination or cultural penchant to focus on the people we fear the most but because it's been very deliberately and aggressively mobilized by a forty-year radical, conservative reform movement to change criminal justice policy. As a product of this movement, the discourse of the dangerous classes now traffics in ostensibly race-neutral, colorblind, and scientific racism. It also employs a politics of blame that paradoxically criminalizes poor people as well as the liberal policies that presumably coddled them.

So individuals are responsible but society also is responsible because it passed all of these generous public policies to help them out. This conservative

movement also trafficked in a strategy of invoking and redefining traditional values in order to undermine more deeply rooted principles of democracy and republican governance. Mass incarceration policies exemplify this strategy.

To the degree that the dangerous classes discourse has been absorbed into mainstream public policy and journalism, it has to be understood as part of a deeply radical reform movement whose central goal was to accomplish what was politically unthinkable in the 1960s. I want to underscore that point because we're now in another moment of trying to do the politically unthinkable. What got us here started out as a movement to eviscerate the values of rehabilitation, reintegration, and protection of the rights of the accused and incarcerated—all on the premise that the central and only legitimate function of criminal justice policy is to identify, preempt, and punish the dangerous classes.

A starting point should be to make it understood that where we are today is, in fact, a profoundly radical departure from the principles of democracy and republican governance—and I mean small *r republican*, in every possible meaning of that term.

Another thing to note is that the radical reform agenda was not just a discursive strategy. It wasn't just about reframing

the debate. Its success was due to its linkage to a very concrete public policy agenda that was used to mobilize and build constituencies. That's a large part of the success of putting the dangerous classes back at the front edge of our public policy and our discourse.

Also, changing the conversation means abandoning the discourse of the dangerous classes altogether. We must not try to use it as a way of justifying progressive legislation—that is, if we pass preventive measures, we won't have the dangerous classes. We need to get out of that altogether.

The reframing process should focus on reintegrating the problem of crime and democracy within the policy discourse of social policy, racial, and economic justice—especially economic justice, because that's the social policy area right now where all sorts of unthinkable things seem to be happening.

Part of my point in historicizing this is that the notion of incarceration as a form of deterrence is a relatively recent invention. There was a whole period of our history, starting with the New Deal, when there was at least some glance at notions of rehabilitation and reintegration—at the idea that criminal justice policy can be consistent with democracy. One very effective aspect of the mobilization against it was a critique of the very idea that rehabilitation was possible. So now our system is based essentially on the notion that rehabilitation is impossible and not particularly desirable anyway.

There also was a critique of the notion that investments in creating an opportunity society would prevent crime. I think people now don't believe that it might be better to create social and economic conditions within which crime is not so rampant. This is because they fundamentally believe that crime comes from within and from a bad element—from personality disorders, cultural affinities, racial affinities, and genetic affinities. So part of our big challenge is figuring out how to reintroduce the problem of opportunity into the discussion.

ALICE O'CONNOR *(responding to a suggestion that we do more to humanize people behind bars)*:

You know, focusing on trying to change the way people think about individual criminals or criminals as a class might not be the best starting point for an effort to reframe the issues. I think that's almost invariably a losing proposition. We need to think about different starting points. Rather than trying to humanize, start by focusing on the individuals we need to deal with and think about ways of framing crime and punishment as deep-seated structural issues in a way that is compelling enough that people will be willing to do something about it.

Notes

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3. H. Rosin, "American Murder Mystery," *The Atlantic*, July/August 2008, http://www.theatlantic.com/doc/200807/memphis-crime.

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10. M. K. Honey, *Going Down Jericho Road: The Memphis Strike, Martin Luther King's Last Campaign* (New York: Norton, 2007).

11. See, for example, L. S. Rubinowitz and J. E. Rosenbaum, *Crossing the Class and Color Lines: From Public Housing to White Suburbia* (Chicago: University of Chicago Press, 2000).

12. P. Bharadwaj and M. Boozer, Comment posted on Econpolice blog, June 17, 2008, http://econpolice.blogspot.com/2008/06/american-murder-mystery-comment-on.html.

13. Anrig and Pollack, "False Accusation."

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17. B. Sard and L. Straub, *House Bill Makes Significant Improvements in 'HOPE VI' Housing Revitalization Program* (Washington, D.C.: Center on Budget and Policy Priorities, 2008).

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ALTERNATIVE VISIONS, OPPORTUNITIES, AND CHALLENGES FOR JUSTICE REFORMERS

ALAN MOBLEY

Resuscitating Justice through the Human Security Framework: Are We Ready to Listen?

CHAPTER 5

We are living on the knife's edge of one of those rare and momentous turning points in human history. Livable lives for our grandchildren, their children, and their children's children hang in the balance.

The Industrial-Age, hierarchical, command-and-control institutions that over the past 400 years have grown to dominate our commercial, political, and social lives are increasingly irrelevant in the face of the exploding diversity and complexity of society worldwide. They are failing, not only in the sense of collapse but in the more common and pernicious form— organizations increasingly unable to achieve the purpose for which they were created, yet continuing to expand as they devour resources, decimate the earth, and demean humanity. The very nature of these organizations alienates and disheartens the people caught up in them. Behind their endless promises of a peaceful, constructive societal order, which they never deliver, they are increasingly unable to manage even their own affairs while society, commerce, and the biosphere slide increasingly into disarray.

We are experiencing a global epidemic of institutional failure that knows no bounds. We must seriously question the concepts underlying the current structures of organization and whether they are suitable to the management of accelerating societal and environmental problems—and, even beyond that, we must seriously consider whether they are the primary cause of those problems.[1]

— Dee Hock, Founder and CEO, Visa

Dee Hock's challenge, issued in 1999, still has traction today. The meltdown of the U.S. financial system is only the most visible of many, many current insti-

tutional restructurings. Dramatic attempts at remedy are under way, and I wish them good luck. But the fact that Hock's words were not widely taken up at the time of their issuance suggests disagreement with either his assessment or his reasoning. How much disagreement remains?

Whether or not we agree with Hock's analysis has consequences. Those who believe that our present institutional crises are the result of mismanagement simply call for new managers. Those who fault policies and procedures look toward a period of reform. What Hock points to as problematic, however, is not so prosaic. He claims that the very nature of our organizations has doomed them to failure. He seems to fault capitalistic and bureaucratic tendencies toward growth, certainly; but his principal critique is levied at the way we *see*, and thereby treat, the environment and each other: as expendable resources.

I start with the words and wisdom of Dee Hock because I want buy-in. If my critique is limited to criminal justice—or structural racism, for that matter—I will lose the majority of readers, and I can't bear that. You see, the topic of reinventing justice is near and dear to my heart. Not because I'm so invested in the justice process (although I am) but because I find it an incredibly useful lens to better see the ironies and contradictions of America.

And that's what I'm after: societal revolution. I, like Hock, believe we are killing ourselves and our children, and I can't abide the thought. How better to enter into a conversation on whole systems change than through the prism of criminal justice? Everyone loves criminal justice (just look at all those popular television shows!) but few like to listen. If we listened more, then reinvention wouldn't be necessary; the changes already would be made.

Dee Hock invented Visa, the credit card company, and I can think of no entity more in and of this world than Visa. I don't want this to be an exclusive conversation, and Visa is inclusive. Credit, particularly consumer credit, is at the heart of the American Way of Life (aka the thing that's killing us). Visa facilitates the processes of consumption that comprise the lion's share of our economy. In this role, Visa certainly is in this world in a big way. The curious thing is that it is not *of* it. In his book, Hock details the creation of Visa and the philosophy, principles, and values behind the organization. It's a must-read—an incredible tale of cooperation, breaking down hierarchy, and shared ownership (among banks!). So let the story of Visa, the quintessential American product, be our first irony. There are two more, and I find them all hopeful.

The second irony that I would like to introduce is the possibility that the American criminal justice system is a harm-production machine. That's right: not harm reduction, but harm production. Alas, there is much experience to support this idea,[2] and virtually no responsible commentators (that I know of, at least) would deny that today's criminal justice process produces too many victims—victims both of crime and of the crime-fighting process.[3]

This information comes to us most convincingly from the victims themselves. Personal stories and social science research on the places where most victims live show and tell us in vivid detail the day-to-day failure of criminal justice,[4] from the victims who go unheard, to the offenders whose problems and maladies go untreated, to the stigma that attaches to all. It's a mess, and we are in debt, I think, to those who are willing to share their experiences so that we might all deepen our understanding of the realities of criminal justice.[5] If we are to undertake any more justice "reforms," we ought to get up under the skin of the system and know it as closely as possible. Therefore, guides are essential.

The third irony is that the key insight (or at least one of them) for keeping it real and reforming not just our justice system but our way of life comes from the experience of developing countries. That's right: the Third World. Why them? Why there? Because, like the case of crime victims and victims of the justice process, residents of the Developing World (unlike our world, which is thought to have arrived at its evolutionary destination) have the necessary experience. They have tried and failed and know that they have failed, while we see ourselves as a success. Again, as with crime victims, their experience gives them insights that we simply do not possess.

One thing going on in developing countries that is so interesting is this notion of human security and how it relates to crime and justice. Victims of crime and the justice process talk about their experience in holistic terms. And that's because in life everything that we experience is connected to everything else, right? So the crime and justice experience bleeds into everything—things like employment, health, advancement, feelings of safety, relationships. You get the idea.

Human security is a concept that comes out of the experiences of civil war, ethnic cleansing, genocide. It takes interconnection and interdependence as its starting point and works from there. Human security breaks down silos and attends to the whole person, the whole community, and doesn't permit the pursuit of a higher

community quality of life to be bushwhacked by bureaucratic domains or waylaid by adherence to self-serving legalities.

Therefore, I introduce human security—and its catalyst, transitional justice—as a justice framework that we ought to consider for ourselves. I realize, however, that before we undertake the wrenching experience of wall-to-wall justice reform we first need to agree that a problem exists for which, within the present system, there is no solution. To establish this, I point to certain problematic aspects of contemporary justice practice—especially what some call structural racism—with prisoner reentry getting pride of place as the case study. Finally, because everything is connected to everything else, and no real justice can be achieved unless the justice process is integrated into everything else, I offer my bit of Dee Hock and his insight into institutional failure and whole systems collapse.

I'd like to acknowledge that, by now, it is a common understanding (spurred by globalization, and Al Gore's film on global warming) that interdependence is the rule in this world. That we ultimately breathe the same air and drink the same water now strikes most of us as obvious. That our problems of governance stem from the same dysfunctions, however, may not be so clear. So I will ask that you suspend your belief in the reality of fundamental differences (superiority?) between The West and The Rest. Then we can more easily take an honest look at ourselves and at disparaged others and how they are trying to respond to the highly visible and immense threats to their immediate well-being and to the lives of their children, and their children's children.

Since the attacks of September 11, law enforcement and civic priorities have shifted away from the bogeyman of "crime" to that of "security." Although not often invoked here in the West in a holistic sense, the moniker of security is now usefully applied to issues involving the "homeland," the economy, energy, housing, and food, among others. Security strikes me as an encouraging concept, because it is something we hold in a generally positive light and something we strive to build up.

The human security framework has developed in part to respond to predicaments plaguing people who reside in "failed states."[6] Human security can be usefully seen as a set of sustainability guidelines or a mandate resulting from transitional justice processes. Transitional justice is an emerging justice paradigm that seeks to offer restorative justice practices to jurisdictions experiencing transitions in legal structures. Together, transitional justice and human secu-

rity offer both diagnosis and cure to Hock's laments. They also align well with transformational strategies intended to ameliorate problems that appear endemic to many contemporary communities.[7]

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The proactive and empowering character of security is utterly missing from discourses on crime. As a phenomenon, crime is seen as a pressing social problem, something entirely negative that we try mightily to hold down.

But if we were to adjust our intentions away from "crime control" and toward a fairly holistic notion of "security," the accompanying social changes could be profoundly multifaceted. For starters, we would need to explore the connections between crime and poverty, racism, underperforming schools, public health issues such as substance use and abuse, and gender relations. Such a wide-ranging conversation could prove transformative in its effects.

THE FAILED CULTURE OF REFORM

It has been argued that much of the work of the past generation has been to promote change "in spite of" our systems.[8] We have been exhorted to take control of our lives, be an army of one, work from anywhere, just do it, and lead our own purpose-driven lives. This bent toward change from within is evident in everything from dieting ("lose weight without changing your lifestyle or giving up the foods you love"), to conservation ("put a little more air in your tires to stretch your gas mileage, and take it easy on the accelerator"), to education reform ("test them more, teach them less, enact zero-tolerance policies on campus—and make sure they take their meds"). The results of these campaigns have been dismal: an obesity epidemic, global climate change, astounding dropout rates.

The enormously popular world of pop psychology—led by such luminaries as Deepak Chopra, Wayne Dyer, and Oprah—has shown us the way to "change your attitude and change your life" in spite of external circumstances. In response, support groups and mutual-aid societies have sprung up like poppies, all promising to help us manage our drinking, eating, sex, relationships, consumer spending, and many other problems, as long as we "keep coming back."

The internal reform mentality is no less tenacious in Dee Hock's world of business.

Management gurus exhort their clients to embrace change by following numerous "rules" and "secrets" to reach "tipping points," "leverage points," and ultimate success. Within systems models, the notion of leverage points to facilitate change is especially robust. The notion is that certain points within a system provide more than just access to it; they have potential, when properly levered, to bring about change in the whole system.[9]

Criminal justice reform has been aimed at specific programs, policies, and procedures within the overall system, while preserving the whole. Each use of deadly force, for example, is assiduously investigated while force itself remains unchallenged as a defining characteristic of criminal justice. Change from within has meant promoting "corrections" within the brutality of imprisonment, "truth" in the often biased and arbitrary process of sentencing, and "community" and "problem solving" in the business of policing—which, in many poor, high-minority neighborhoods, is often little more than paramilitary occupation.

In criminal justice, sentencing certainly is a leverage point within the overall system. When sentences are lengthened, the entire system shifts: more prisons are built, more parole officers are hired, more probation and parole violations occur, more partnerships grow between corrections and other agencies such as police (think skid row sweeps, the housing of parole violators in county jails, outsourcing custodial functions to private prison companies, using the entrée of parole agents to abet police investigations, etc.).[10] So where are the leverage points that can bring the holistic increases in quality of life we all seek? Do they even exist? And what are the costs of taking time to look for them?

WHAT DO WE WANT A JUSTICE SYSTEM TO DO?

> *Few sets of institutional arrangements created in the West since the Industrial Revolution have been as large a failure as the criminal justice system. In theory, it administers just, proportionate corrections that deter. In practice, it fails to correct or deter, just as often making things worse as better. It is a criminal injustice system that systematically turns a blind eye to crimes of the powerful while imprisonment remains the best-funded labour market program for the unemployed and indigenous peoples.*[11]

> —John Braithwaite

The task of the criminal justice system is, essentially, to protect human beings and their belongings. A complaint often levied against the criminal justice system in the United States is that its pursuit of this mission is selective. The title of one enduring criminology text sums up this view: "The Rich Get Richer and the Poor Get Prison."[12] As Braithwaite suggests, some people are much more vulnerable to harm and loss than others. These same less-protected people and the places they frequent are also much more likely to bear the weight of justice system activity and the sting of criminal justice sanctions.[13] They absorb much of the harm brought about by justice processes, even as they receive few of the benefits.[14]

Some critics speculate that this is intentional, that the security of some is earned at the expense of others.[15] These critics strongly suggest that we put our energies into tearing down the façade of justice through piercing critique and interdisciplinary critical analysis capable of exposing the true nature of this vicious cycle. Others, such as the proponents of the popular "Broken Windows" theory of crime fighting, propose that we focus on extending to everyone the relative security enjoyed by some.[16] This second set of voices, often positioned as nonpartisan, appears in the public realm as "moderate." They claim that playing "the blame game" leads nowhere, serves to harden divisions and, perhaps inadvertently, maintains the status quo.[17] This stance, recently heard on the political campaign trail, seems to be in ascendance today.

I seek to honor both orientations, the critical and the mainstream, even as I press for the reinvention of justice in the United States. My stance is animated by two inclinations. One is to acknowledge and address the harms visited on so many by the lack of physical security in the United States. Absurdly, this high level of dangerousness has not come from a dearth of criminal justice system activity but from its opposite. Justice agencies have been especially active in relatively poor minority communities. It is these communities, however, that have experienced most directly the pains of criminal justice processes. The harms have been documented by many,[18] and they point to a racialized state of affairs that is at times as ironic as it is unsupportable.

The second inclination is toward the aspirations of unity so eloquently expressed by the current U.S. president and, for that matter, his predecessor. The spirit of the day seems to suggest that if we are to achieve the promises of America we must come together in our efforts toward sound public policy, accentuate our commonalities, and ease off our differences.

How can criminal justice help to reduce harm and increase unity in public affairs? How can the justice system be aligned, indisputably, with broader societal goals like equality, proportionality, and fairness? Can the criminal justice system reasonably be expected to make a meaningful and lasting contribution to change?

Scholarship by Loïc Wacquant is especially pessimistic in this regard as it traces the oddly macabre progression of America's most "peculiar institution."[19] From slavery, to Jim Crow, to the hyperghetto and mass incarceration, this analysis strongly suggests that race- and even class-based bias within the law is simply too profoundly embedded to change. Race-based "reforms" enacted by the U.S. political system have been profound and, for their day, "game changers." They brought about the end of slavery, the demise of Jim Crow, and the enactment of the Civil Rights Act. Presently, we may be seeing the beginnings of a legislative movement away from mass incarceration.

Still, a pattern of reform, compromise, and accommodation leaves much to be desired. As remarkable as the abolition of slavery was, Jim Crow remained; and the end of Jim Crow, brought about by passage of the Civil Rights Act, was accompanied by the rise of the prison-industrial complex. What might the end of mass imprisonment bring? I do not know, but America's history—especially when viewed from below—does not inspire much hope.[20]

PRISONER REENTRY: A CASE STUDY FOR SYSTEM REFORM

Prisoner reentry can be seen as a noble attempt to change a dysfunctional system from within. (Incidentally, prisoner reentry also serves quite well as a metaphor for those of us who have felt politically marginalized, if not excluded, for much of the past generation. Now, it seems, is the time of our reentry. What will we make of this "second chance"?)

Prisoner reentry emerged as a field with great potential to serve as a leverage point for change. Many of us who are troubled by our complicity in the near-genocidal era of mass incarceration have invested hope and energy in this burgeoning field. As many scholars have pointed out, if justice systems were to prioritize successful reentry, then the individual welfare of each prisoner would have to be acknowledged and taken into consideration.[21] Each stage of the justice process would have to be evaluated in terms of its effects on successful reentry. Such a principled re-evaluation process could reduce our outrageous levels of punitiveness, decrease debilitating stigma, improve access to helpful programs and vital treatment, and alter

conditions of confinement and parole supervision. In other words, it could revolutionize the justice process.

Reentry asks the question, if a prisoner is to leave confinement functionally literate, healthy, and with a justifiably positive attitude about life, when would their preparation begin? Would anything be gained by delaying it past initial induction into the prison system? And what of a released prisoner's reception back into the community? Currently, our society thinks it reasonable to distrust and stigmatize former prisoners—to restrict their employment options, mobility, and civil rights and to punish their future infractions much more harshly than similar misdeeds committed by nonfelons. If we consider the possibility that this rather cool reception undoes much of any real good accomplished in prison, at great expense, might we work to alter it?

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The human beings who constitute our "prisoner class" may have experienced some positive changes and lowered levels of punitiveness due to the prisoner reentry movement. Its focus on individuals and neighborhoods and its commitment to taking a more holistic look at successful postrelease living have provoked new thinking, some pilot projects, and some real changes. But this nascent reform project may be short lived.

The incredibly daunting problem that we face today is that reentry planning took place in an era of economic expansion and relative (if selective) prosperity, when state coffers were filling and labor was in demand. Governments were willing to spend a little more on prisoners' well-being, and employers were beginning to give them a look. Now, just when reentry plans are being piloted across the country and perhaps are on their way to wider implementation, the condition of the economy has shifted abruptly. Prosperity is replaced with fiscal caution, economic expansion with contraction, and an overall sense of security with general insecurity.

What will this mean for the six hundred thousand or so people who leave prison each year and return to hard-pressed communities? Our pattern of public and private policies suggests that they will be left to their own devices. Government claims of lower revenue accompany the reduced profits of private firms and lower property

values. After paying for the war and the bailout, and after shoring up the middle class through an economic stimulus package, precious little will be left for the struggling classes.

We should expect no letdown in the area of public spending on safety and security, however, because generalized fear and insecurity always seek a scapegoat. The recession of 1981 saw members of Congress smashing Japanese-made televisions with sledgehammers right on the Capitol steps. The intervening years have seen the rise of a new "enemy": the criminal. This negative archetype pushed aside the "foreign devil" just as globalization made the world a much smaller and interconnected place. The criminal, rather than threatening us from the outside, lurks amongst us. As scholars such as Christian Parenti[22] and Jonathan Simon[23] note, setting up and promising to knock down the criminal has been a favored political trope since Nixon. The present financial calamity and global recession may make us vulnerable once again to the allure of a touchstone of purity, a safe space where we can feel protected and know that things will be all right.

The combination of impoverished welfare and heightened insecurity means that at precisely the time when our six hundred thousand former incarcerates will be looking to "go with what they know" to make ends meet, the security state will be most geared up to apprehend them. It doesn't take much in the way of prescience to see that reentry as a corrections initiative may well be replaced by a new round of warehousing. If the prison-industrial complex has indeed become too big to fail in economic terms, the prospects are strong for a reverse engineered reentry in which jobs are saved, the public is protected, and the polity is made pure.

So much for the promise of reentry. And according to my understanding of reform—in which our tinkering, evaluating, and "growing" (net-widening) of reentry does little to help and probably worsens the problems it was meant to address—good riddance. In fact, along with promising much and delivering little, prisoner reentry has largely kept society's focus on law enforcement solutions to problems of recidivism and crime and neglected other ameliorative efforts directed at the communities that prisoners come from and return to. Therefore, with reentry as our case study of a potential leverage point, it seems fair to ask whether leverage points really are advantageous for change or are merely another delay, another aspect of accommodation, as we deepen our complicity in failure.

WHY "SECURITY"?

The field of security studies remains largely neglected by criminal justice scholars,[24] probably because security studies traditionally focus on national-level threats emanating from outside the nation-state, while criminal justice is tasked with maintaining public order within far narrower territorial boundaries. This dichotomy is changing, especially with the formation of the U.S. Department of Homeland Security and its enormous funding mechanisms and emphasis on interagency collaboration. But thus far the meeting places for criminal justice and security studies have been around topics such as offender profiling (who is a terrorist? a criminal?) and defensible space (how to harden borders and other high-value targets). I believe that the conceptual space holding the greatest potential impact remains largely unexplored, however, and that is the area known as "human security."

Human security comes to us from the fields of foreign affairs and international development, where it was developed to provide some meaningful carrots to accompany (and perhaps ultimately replace) the world's military sticks. Definitions of human security revolve around "safety from chronic threats such as hunger, disease, and repression" and "protection from sudden and hurtful disruptions in the patterns of daily life—whether in jobs, in homes, or in communities."[25] The inquiry into human security came into sharper focus with the emergence of the United Nations Millennium Development Goals program and its mission of ending extreme poverty.[26] This emphasis became a global mandate to reduce the vulnerability of the most disadvantaged to calamity, natural disasters, violence, and radicalism. Indicators of disadvantage, of course, have long been of high interest to students of criminal justice.

Interestingly, the human security philosophy was exemplified by the words of former President George W. Bush when, after launching the War on Terror, he traveled to Malaysia and Indonesia to tell their leaders that they must attend to the social and economic needs of their people if they were to undercut the appeal of so-called radical Islamic schools, madrasas, and other supposed pipelines for terrorists.[27] This acknowledgment that vulnerable people and places can be made less dangerous simply by lifting their quality of life later came to define the U.S. approach in Iraq (at least its public face), led by General David Petraeus.[28]

We observers of criminal justice here in the United States, appalled by years of reductions in the number and variety of crime-fighting carrots and the proliferation of increasingly militaristic sticks, began to wonder why what was good enough to

fight the allure of gangs in Baghdad, Jakarta, and Kuala Lumpur could not be tried in Queens, Detroit, or South-Central Los Angeles.

The definition of *human security* in the United Nations Development Program's 1994 Human Development Report argues that the scope of our security concerns should be expanded to include threats in seven areas.[29] As we go through these areas in turn, think about the places and people in the United States that are most involved with the criminal justice system and consider whether these threat areas are relevant to their lives and life chances:

- **Economic security**—Economic security requires an assured basic income for individuals, usually from productive and remunerative work or, as a last resort, from a publicly financed safety net. In this sense, only about a quarter of the world's people are presently economically secure. While the economic security problem may be more serious in developing countries, concern also arises in developed countries. Unemployment problems are an important factor underlying political tensions and ethnic violence.

- **Food security**—Food security requires that all people at all times have both physical and economic access to basic food. According to the United Nations, the overall availability of food is not a problem; rather, the problem often is the poor distribution of food and a lack of purchasing power. The United Nations believes that the solution lies in tackling problems of access to assets, work, and assured income (related to economic security).

- **Health security**—Health security aims to guarantee a minimum protection from diseases and unhealthy lifestyles. In developing countries, the major causes of death are infectious and parasitic diseases, which kill 17 million people annually. In industrialized countries, the major killers are diseases of the circulatory system, which kill 5.5 million every year. According to the United Nations, in both developing and industrial countries threats to health security are usually greater for poor people in rural areas, particularly children. This is mainly due to malnutrition and insufficient supply of medicine, clean water, or other necessities of health care.

- **Environmental security**—Environmental security aims to protect people from the short- and long-term ravages of nature, man-made threats in nature, and deterioration of the natural environment. In developing countries, lack of access to clean water is one of the greatest environmental threats. In industrial

countries, one of the major threats is air pollution. Global climate change, caused by the emission of greenhouse gases, is another environmental security issue.

- **Personal security**—Personal security aims to protect people from physical violence, whether from the state or external states, from violent individuals and substate actors, from domestic abuse, or from predatory adults. For many people, the greatest source of anxiety is crime, especially violent crime.

- **Community security**—Community security aims to protect people from the loss of traditional relationships and values and from sectarian and ethnic violence. Traditional communities, especially minority ethnic groups, are often threatened. About half of the world's states have experienced some interethnic strife. The United Nations declared 1993 the Year of Indigenous People to highlight the continuing vulnerability of 300 million aboriginal people in seventy countries as they face a widening spiral of violence.

- **Political security**—Political security is concerned with whether people live in a society that honors their basic human rights. According to a survey conducted by Amnesty International, political repression, systematic torture, ill treatment, or disappearance was still practiced in 110 countries. Human rights violations are most frequent during periods of political unrest. Along with repressing individuals and groups, governments may try to exercise control over ideas and information.[30]

As a policy paradigm, then, human security is something we have prescribed for others. And when one thinks of Roosevelt's New Deal and Johnson's Great Society, echoes sound of the same prescriptions. What of the Obama era? Might a heightened concern for the security of individual human beings and the communities they live in rise again to the fore?

Lest you think this approach radical and unrealistic, bear in mind that justice makeovers have been plentiful during the past generation or two. On one hand, we have as an example the case of mass incarceration and its unprecedented, epoch-making growth. On the other hand—and there is another hand—we should not lose sight of the fact that many police agencies have renamed themselves pub-

lic safety organizations, along the way altering their guiding philosophies (e.g., community policing, problem-oriented policing) and color schemes (in terms of vehicle and personnel adornment as well as sworn officers' ethnic backgrounds); many courts have discarded robes and elevated benches and relocated themselves into their communities; and most of our prison systems have doggedly sought to reorient themselves as correctional agencies.[31] Even though these makeovers remain incompletely realized and can be a source of cynicism,[32] they give evidence of a collective progressive desire.

In discussing the future, it is especially important to remember the past and to acknowledge the harms and pains of people hurt by justice. Today, in poor minority communities in the United States, it is not uncommon to hear residents speak of criminal justice as genocide. Whether or not you agree with this characterization, it is impossible to deny the devastating effects of crime and society's response to crime in these places. Looking forward with hopeful empowerment is impossible without a deep recognition of the past and its casualties and survivors.

Globally, examples of justice reformation have included, as integral elements, public hearings known as truth and reconciliation processes, where expressions of trauma and victimization have been offered both as cathartic recrimination and as necessary to reconciliation.[33] Criminologists have come to categorize the work of truth and reconciliation commissions as a valuable tool of transitional justice, a scheme most commonly applied to nation-states seeking to recover from political revolution and civil war. Truth-telling commissions have appeared in other contexts, too, including here in the United States.[34] It is in this spirit that I suggest that our justice reinvention efforts follow the lead of people in more extreme circumstances and that we apply their hard-earned lessons and valued principles to our pressing, if less severe, justice-related problems.

Is the United States a candidate for transitional justice? Many commentators recognize a need for systemic reform in American justice. For example, the emergent paradigms of restorative justice and community justice each resonate with pleas for radical justice reform and highlight awareness of the needs of individuals and communities.[35] Restorative justice proposes to move justice away from a hard and fast focus on determinations of guilt and punishment, and toward reconciliation. As detailed by Todd Clear and David Karp, community justice entails a holistic approach to public safety and security. It seeks empowerment for residents as they take responsibility for their communities and make claims for resources, both public and private, in doing so. Community justice depends on local knowledge,

is measured according to local standards, and is constituted programmatically for the long term. Individuals, families, and communities are treated as interrelated and interdependent, and solutions for one do not become problems for another.[36]

As reform initiatives, restorative justice and community justice each go some way in taking us toward the human security paradigm. Each also, by its very success, holds us back from going further. It is my hope that the current age will see us with the strength and the courage to join with those whose ideas are worthy of our support, no matter their origin or whether we consider their ideas viable candidates for implementation at the present time. In this day, who can withhold support from a dark-horse candidate, whether person or idea, simply because of *real politic*? As we have seen in the 2008 U.S. elections, anything is possible.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

ALAN MOBLEY: I think maybe my primary fear, and maybe the sentiment from which my comments derive, is that the *prison-industrial complex*, which I no longer consider a controversial term, is too big to fail. This notion of too big to fail has now quite significantly entered our culture, and there is this path now in dealing with institutions in crisis.

When thinking about the criminal justice system, I fear we are dealing with a surplus population. Our current society does not know what to do with them other than to commodify and incapacitate them. Progressives, I think, need to take a hard line and stop accommodating destructive policies in the name of small victories and incremental change.

We all hope that this moment in time is a reentry of sorts to reality-based policies. Ours is a society in transition from a sort of despotism where many of us were mocked, criminalized, threatened. You remember, "You're either with us or against us." Using 9/11 as an example, I think it fair to say that we were traumatized by that crime and by society's response to it. And whether we know it or not, we're like returning prisoners, like returning soldiers—we are in a post-traumatic state. Therefore, we need a homecoming, truth-and-reconciliation, truth-telling moment, even while we simultaneously attend to our futures. For the justice part of our society, our building blocks for a sustain-

able future are already here—namely, the restorative justice and community justice perspectives.

I talk about the fundamentally decent guiding principles that have been developed to respond to situations just like our own—the human security framework. I offer a case study of reentry and what I think may be a likely scenario, which is the evaporation of the reentry sensibility in the face of general insecurity and the search for scapegoats. Our fear will push us into this just as our financial too-big-to-fail conflicted interest with the prison-industrial complex will pull us in the same direction.

What if government decides not to sustain mass incarceration? What will become of the millions who count on the criminal justice system as a constant in their lives? If they are cut adrift, not due to kindness and concern but because of yet another bout of institutional failure in their lives, what will they do? The end of such an enduring relationship will throw many off balance. Where will they land? Are their pasts sufficient preludes to predict their futures? I'm not suggesting, of course, that we keep them locked up—only that a complete withdrawal from their lives in terms of sustenance and support will be destabilizing.

We need to change the relationship between government and poor people, and

primarily poor people of color—to change the relationship, not end it. The human security framework offers guidance on just how to do this.

Notes

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Affirmative Action:
A Barrier to
Racially Equitable Justice?

MICHELLE ALEXANDER

This chapter is not about the effectiveness of affirmative action in promoting diversity; nor does it address the extent to which affirmative action has been an effective means of remedying the wrongs of the past. Instead, this chapter explores the troubling relationship between affirmative action and mass incarceration.

A discussion of affirmative action may seem tangential here—what does affirmative action have to do with mass incarceration?—but it would be a mistake to brush it aside. During the past twenty years, virtually every progressive, national civil rights organization in the country has mobilized and rallied in defense of affirmative action. It has been *the* issue of the civil rights community, and it has dominated racial justice discourse in the mainstream media and the minds of the general public for the past few decades, even as millions of poor people of color have been rounded up, locked in cages, and released into a permanent, second-class status. Because of this, civil rights advocates, especially, should consider whether affirmative action—as it has been framed and defended—has functioned more like a racial bribe than a tool of racial justice.

We should ask ourselves whether efforts to achieve "cosmetic" racial diversity— that is, policies and practices that make institutions look good on the surface without needed structural changes—have actually helped to facilitate the emergence of a new caste system and interfered with the development of a more compassionate race consciousness. As part I, chapter 1 of this volume suggests, mass incarceration in the United States is better understood as a caste system than as a system of crime control. This system locks people not only behind actual bars but also behind the invisible wall of permanent, second-class citizenship. Millions of poor people of color have been ushered into our criminal justice system through the War on Drugs and the "get-tough" movement and then released into a parallel

social universe in which they are denied many of the rights supposedly won in the civil rights movement. They become members of America's undercaste—a stigmatized group locked into an inferior position by law and custom.

Could it be that affirmative action has actually aided and abetted this phenomenon? Could affirmative action be functioning like a racial bribe today?

Throughout our nation's history, poor and working-class whites have been bought off by racial bribes. The question posed here is whether affirmative action has functioned similarly, offering relatively meager material advantages to racially defined groups but significant psychological benefits, in exchange for abandoning a more radical movement that promised to alter the nation's economic and social structure.

If we are to move forward, we must take stock of where we are, and how we got here. It may well be that affirmative action has become part of the problem, not the solution to racial apartheid.

To be clear, this chapter was not written to support the popular arguments against affirmative action. I strongly support race-conscious approaches to addressing racial inequality and find most arguments against affirmative action unpersuasive. Affirmative action policies do not conflict with Martin Luther King Jr.'s dream that we might one day be "judged by the content of our character, not the color of our skin." King himself would almost certainly have endorsed affirmative action as a remedy, at least under some circumstances. In fact, King specifically stated on numerous occasions that he believed special—even preferential—treatment for African Americans may be warranted in light of their unique circumstances.[1]

Affirmative action has made a difference in the lives of poor and working-class African Americans—contrary to the claims of some. Fire departments, police departments, and other public agencies have been transformed, at least in part, by affirmative action.[2]

Moreover, affirmative action should not be reconsidered because of the argument that it is "unfair" to white men as a group. The empirical evidence strongly supports the conclusion that declining wages, downsizing, globalization, and cutbacks in government services represent much greater threats to the position of white men than so-called "reverse discrimination."[3] A review of more than three hundred

thousand complaints filed with the Equal Employment Opportunity Commission found that white plaintiffs represented only 7 percent of all race-discrimination claims. The overwhelming majority of people who suffer race discrimination in this country continue, as always, to be people of color.[4]

The claim made here is a less familiar one. It is not widely debated in the mainstream media or, for that matter, in civil rights organizations. I argue that, in view of what has transpired during the past thirty years, civil rights advocates should reconsider the traditional approach to affirmative action because (1) it has helped to render the new caste system of mass incarceration largely invisible; (2) it has helped perpetuate the myth that anyone can "make it" if they try; (3) it has encouraged the embrace of a "trickle-down theory of racial justice"; (4) it has greatly facilitated the divide-and-conquer tactics that gave rise to mass incarceration; and (5) it has inspired such polarization and media attention that the general public now wrongly assumes that affirmative action is the main battlefront in U.S. race relations.

Affirmative action, especially when justified on the grounds of diversity rather than equity (or remedy), masks the severity of racial inequality in America, leading to greatly exaggerated claims of racial progress and overly optimistic assessments of the future for African Americans. Seeing black people graduate from Harvard and Yale and become CEOs or corporate lawyers—not to mention president of the United States—causes us all to marvel at what a long way we have come. As recent data show, however, much of black progress is a myth. Although some African Americans are doing very well—enrolling in universities and graduate schools at record rates, thanks to affirmative action—as a group, African Americans are doing no better than they were when Martin Luther King Jr. was assassinated and riots swept through inner cities across America. Nearly one in four African Americans lives below the poverty line today, approximately the same proportion as in 1968. The child poverty rate is actually higher today than it was then.[5] Unemployment rates in black communities rival third world countries—and that is with affirmative action!

When we pull back the curtain and look at what our so-called colorblind society creates without affirmative action, we see a familiar social, political, and economic structure: the structure of racial caste, the caste of mass incarceration. America's institutions continue to create nearly as much racial inequality as existed during Jim Crow, when those behind bars are taken into account.[6] Our elite universities, which now look a lot like America, would whiten overnight if affirmative action

suddenly disappeared. One recent study indicates that the elimination of race-based admissions policies would lead to a 63 percent decline in black matriculants at all law schools and a 90 percent decline at elite law schools.[7]

Sociologist Stephen Steinberg describes the bleak reality this way: "Insofar as this black middle class is an artifact of affirmative action policy, it cannot be said to be the result of autonomous workings of market forces. In other words, the black middle class does not reflect a lowering of racist barriers in occupations so much as the opposite: Racism is so entrenched that without government intervention there would be little 'progress' to boast about."[8]

In view of all this, we must ask: to what extent has affirmative action helped us remain blind to, and in denial about, the existence of a racial undercaste? And to what extent have the battles over affirmative action distracted us and diverted crucial resources and energy from the task of dismantling the structures of racial inequality?

The predictable response is that civil rights advocates are equally committed to challenging structural racism and preserving affirmative action. But where is the evidence? Civil rights activists have created a national movement to save affirmative action, complete with the marches, organizing, and media campaigns, as well as incessant strategy meetings, conferences, and litigation. Where is the movement to end mass incarceration? Or, for that matter, where is the movement for educational equity?

Part of the answer is that it is far easier to create a movement when there is a sense of being under attack. It is also easier when a single policy is at issue, rather than something as enormous (and seemingly intractable) as educational inequity or mass incarceration. Those are decent explanations, but they are no excuse. In fact, there is a fundamental disconnect today between the world of civil rights advocacy and the reality facing those trapped in the new racial undercaste. Try telling a sixteen-year-old black youth in Louisiana who is facing a decade in adult prison and a lifetime of social, political, and economic exclusion that your civil rights organization is not doing much to end the War on Drugs, but would he like to hear about all the great things that are being done to save affirmative action?

There is another, more sinister, consequence of affirmative action: the carefully engineered appearance of great racial progress strengthens the "colorblind" public consensus that personal and cultural traits, not structural arrangements, are

largely responsible for the fact that the majority of young black men in urban areas across the United States are currently under the control of the criminal justice system or branded as felons for life. In other words, affirmative action helps to make the emergence of a new racial caste system seem implausible. It creates an environment in which it is reasonable to ask, how can something akin to a racial caste system exist when people like Oprah Winfrey and Barack Obama are capable of rising from next to nothing to the pinnacles of wealth and power? How could a caste system exist, in view of the black middle class?

> What is key to America's understanding of class is the persistent belief—despite all evidence to the contrary—that anyone with the proper discipline and drive can move from a lower class to a higher class.

There are answers to these questions, but they are difficult to swallow when millions of Americans have displayed a willingness to elect a black man president of the United States. What is key to America's understanding of class is the persistent belief—despite all evidence to the contrary—that anyone with the proper discipline and drive can move from a lower class to a higher class. We recognize that mobility may be difficult, but the key to our collective self-image is the understanding that mobility is always possible, so failure to "move up" reflects on one's character. By extension, the failure of a race, or any ethnic group, to move up reflects very poorly on the group as a whole.

The truth, however, is this: far from undermining the current system of control, the new caste system depends in no small part on black exceptionalism. The colorblind public consensus that supports the new caste system insists that race no longer matters. Now that America has officially embraced Martin Luther King's dream (by reducing it to the platitude "that we should be judged by the content of our character, not the color of our skin"), the mass incarceration of people of color can be justified only to the extent that the plight of those locked up and locked out is understood to be their choice, not their birthright.

In short, mass incarceration is predicated on the notion that an extraordinary number of African Americans (but not all) have freely chosen a life of crime and thus belong behind bars. A belief that all blacks belong in jail would be incompatible with the social consensus that we have "moved beyond" race and that race is no longer relevant. But a widespread belief that a majority of black and brown

men unfortunately belong in jail is compatible with the new American creed, provided their imprisonment can be interpreted as their own fault. If the prison label imposed on them can be blamed on their culture, poor work ethic, or even their families, then society is absolved of responsibility to do anything about their condition.

This is where black exceptionalism comes in. Highly visible examples of black success are critical to the maintenance of a racial caste system in the era of color-blindness. Black success stories lend credence to the notion that anyone, no matter how poor or how black they may be, can make it to the top if only they try hard enough. These stories "prove" that race is no longer relevant. Whereas black success stories undermined the logic of Jim Crow, they actually reinforce the system of mass incarceration. Mass incarceration depends, for its legitimacy, on the widespread belief that all those who appear trapped at the bottom actually chose their fate.

Viewed from this perspective, affirmative action no longer appears entirely progressive; in fact, it is potentially conservative. As long as some readily identifiable African Americans are doing well, the system is largely immunized from racial critique. People like Barack Obama and Oprah Winfrey, who are truly exceptional by any standards, along with others who have been granted exceptional opportunities, legitimate a system that remains fraught with racial bias—especially when they fail to challenge or even acknowledge the prevailing racial order. In the current era, white Americans are often eager to embrace the token or exceptional African American, especially when that person goes out of his or her way to not talk about race or racial inequality.

Affirmative action may be counterproductive in yet another sense: it lends credence to a trickle-down theory of racial justice. The notion that giving a relatively small number of people of color access to key positions or institutions will inevitably redound to the benefit of the larger group is belied by the evidence. It also seems to disregard Martin Luther King's stern warnings that racial justice requires the complete transformation of social institutions and a dramatic restructuring of our economy, not superficial changes that can be purchased on the cheap. King argued in 1968: "The changes [that have occurred to date] are basically in the social and political areas; the problems we now face—providing jobs, better housing, and better education for the poor throughout the country—will require money for their solution, a fact that makes those solutions all the more difficult."[9]

King emphasized that "most of the gains of the past decade were obtained at bargain prices," since the desegregation of public facilities and the election and appointment of a few black officials cost close to nothing. "White America must recognize that justice for black people cannot be achieved without radical changes in the structure of our society. The comfortable, the entrenched, the privileged cannot continue to tremble at the prospect of change in the status quo."[10]

Against this backdrop, diversity-driven affirmative action programs seem to be the epitome of racial justice purchased on the cheap. They create the appearance of racial equity without the reality and do so at no great cost, without fundamentally altering any of the structures that create racial inequality in the first place. Perhaps the best illustration of this is that, thanks in part to affirmative action, police departments and law enforcement agencies nationwide have come to look more like America than ever, precisely at the same moment that they have waged a war on the ghetto poor and played a leading role in the systematic mass incarceration of people of color. The color of police chiefs across the country has changed but has the role of the police in our society?

Profound racial injustice occurs when minority police officers follow the rules. It is a scandal when the public learns they have broken the rules, but no rules need be broken for the systematic mass incarceration of people of color to proceed unabated. This uncomfortable fact creates strong incentives for minority officers to deny, to rationalize, or to be willingly blind to the role of law enforcement in creating a racial undercaste. Reports that minority officers may engage in nearly as much racial profiling as white officers have been met with some amazement, but the real surprise is that some minority police officers have been willing to speak out against the practice, given the ferocity of the drug war.

A war has been declared against poor communities of color, and the police are expected to wage it. Do we expect minority officers, whose livelihood depends on the very departments charged with waging the war, to play the role of peacenik? That expectation seems unreasonable, yet the dilemma for racial justice advocates is a real one. The quiet complicity of minority officers in the War on Drugs serves to legitimate the system and insulate it from critique. In a nation still stuck in an old Jim Crow mind-set—a mind-set that equates racism with white bigotry and views racial diversity as proof the problem has been solved—a racially diverse police department invites questions like, "How can you say the Oakland Police Department's drug raids are racist? There's a black police chief and most of the officers involved in the drug raids are black."

When meaningful change fails to materialize following the achievement of superficial diversity, those who remain locked out can become extremely discouraged and demoralized, resulting in cynicism and resignation. Perhaps more troublesome, though, is the fact that inclusion of people of color in power structures, particularly at the top, can paralyze reform efforts. People of color, because of the history of racial subjugation and exclusion, often experience success and failure vicariously through the few who achieve positions of power, fame, and fortune. People of color are often reluctant to challenge institutions led by people who look like them, as they feel a personal stake in the success of those individuals. After centuries of being denied access to leadership positions in key social institutions, people of color quite understandably are hesitant to create circumstances that could trigger the downfall of "one of their own." An incident of police brutality that would be understood as undeniably racist if the officers involved were white may be given a more charitable spin if the officers are black. Similarly, black community residents who might have been inspired to challenge aggressive stop-and-frisk policies of a largely white police department may worry about "hurting" a black police chief. Consequently, cosmetic diversity, which focuses on providing opportunities to individual members of underrepresented groups, both diminishes the possibility that unfair rules will be challenged and legitimates the entire system.

For these reasons, racial justice advocates should reconsider the role of affirmative action in advancing equality. Insofar as diversity-driven affirmative action affirms colorblind thinking, obscures deeper inequalities, and reinforces racial divisions and existing power dynamics, it acts at cross purposes with efforts to expose and uproot the sources of the caste system. Efforts to build a new, more compassionate public consensus around criminal justice must reach beyond questions of sentencing policy, policing, and incarceration and seek to reframe race-conscious policies and remedies in terms that do not promote or endorse superficial diversity in the absence of structural reform. Activists must eschew "diversity" as a rationale for affirmative action and show how criminal justice reform, compassionate race-consciousness in policy making, and initiatives for such issues as educational and health care equity are part and parcel of a coherent effort to halt the reiteration of Jim Crow and establish the social and material grounds for racial equality.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

MICHELLE ALEXANDER: I firmly believe that those of us in the civil rights community should consider, with a degree of candor that has not yet been evident, whether and to what extent we have been part of the problem rather than part of the solution. In the two short decades from 1982 to 2002, people of color in the United States were systematically rounded up, locked up, and then released into a permanent second-class status eerily reminiscent of Jim Crow. But during that same time period, civil rights advocates and the civil rights community as a whole were nearly obsessed with persuading the public at large that affirmative action is the main battlefront in U.S. race relations. And those very diversity initiatives that have been the holy grail for civil rights advocates in recent years have helped America to look good on the surface, even as enormous structural racial inequity has persisted and worsened. The diversity movement, in my view, has helped create a false picture of America's racial realities that has sapped political will to engage in the kind of major structural reform that's necessary. And it has also endorsed what I view as kind of a trickle-down theory of racial justice, one I think is evident in much of the public conversation about Obama's election as well.

So, unwittingly, we in the civil rights community may have disregarded Martin Luther King's stern warning that racial justice cannot be purchased on the cheap and that without a complete restructuring of our society—something he called for after the Civil Rights Acts were passed—our nation's racial order will remain undisturbed.

Q: *Can the civil rights community "own" criminal justice publicly?*

ALEXANDER: Yes. One of the challenges for civil rights organizations is that, traditionally, racial justice victories have been achieved by telling the stories of exemplary black people who epitomize moral virtue. Rosa Parks is the paradigmatic example. Rosa Parks was regarded as the perfect symbol for the Montgomery bus boycott because she was well regarded in the community among both blacks and whites as someone of outstanding character and moral virtue. For her to be denied a seat on the bus really represented what the struggle was all about. That tradition of using the exceptional blacks, those who defy the worst racial stereotypes held by the majority of whites, as the justification for major racial reform dates back to slavery.

The problem we're faced with today, of course, is that to meaningfully address the problem of mass incarceration we have to figure out a way to get people to care about the least of those among a despised pariah class who actually conform to the worst racial stereotypes. And how

do we make that shift? I think that's a difficult and important question, but when I was at the ACLU in Northern California directing the racial justice project there, I was helping to launch a big campaign against racial profiling. Our strategy was to identify doctors, lawyers, schoolteachers who were stopped by the police and had their bags torn apart in searches for drugs. The goal was to highlight the insanity of the drug war and show how the racial targeting was not narrowly confined to actual drug criminals but affected everyone who shared a particular skin color. But, you know, as the campaign wore on I heard more and more complaints from people in communities horribly affected by mass incarceration. "What about me? I have six convictions, but I get harassed by the police all the time. Why aren't you telling my story?"

And so I think we need to begin to tell stories in a compelling way about people who are caught up in the criminal justice system, because we can't just talk about structural racism. We can't go on CNN and say there's structural racism in America. No, we have to figure out a way to tell stories. People understand their experience through narratives and through stories. So the critical question is, how do we begin to tell stories about the people caught up in the criminal justice system in a way that inspires a compassionate, race-conscious response?

Q: *When we have these conversations about race. we generally don't talk about the class division within the black community and the degree to which the civil* *rights community, which primarily is middle class, has interests that are separate and apart from the poor. That they're purporting to represent them on policy issues guarantees that these kinds of questions are going to be left to the side, because it's not in middle-class interests to have them addressed in any significant way.*

ALEXANDER: This point about the civil rights community and class divisions is enormously important and underexplored, and it's not new. This has been a persistent problem in racial justice struggles. W. E. B. Du Bois talked about these dimensions. You can go back and see there has been a constant struggle to try to find a way to ensure that the spokespeople and advocates for the black community truly are accountable and in touch with the experiences of those who are most directly harmed by the prevailing system of racial control. It's something that needs to be discussed and debated much more within civil rights organizations nationwide, and we need to find a way to give people who are most burdened by the criminal justice system—people who are caught up in it, poor people of color—a voice within those organizations. To date, it's rare if not nonexistent.

Q: *What are the democratic principles that would lead to a criminal justice system that either mutes or eliminates structural racism? Where in the U.S. Constitution would I find these principles?*

ALEXANDER: We need to look beyond the Constitution. Increasingly, I have become persuaded that the language and discourse of human rights provide far greater potential and hope for truly transformative movement building and work around race and social justice than anything we might find in the four corners of the U.S. Constitution. So I'm hoping that in the years to come we begin to look more toward a human rights kind of framework for our race and criminal justice work than we've seen to date.

You know, at the end of their lives both Martin Luther King and Malcolm X had reached a point of agreement at least about one thing, which was that we need to shift away from a civil rights model of responding to poor people and people of color and move toward a human rights model, which places at its center a kind of respect, appreciation, and compassion for each human being—respecting the dignity of each human being. The signs that the striking Memphis sanitation workers wore in 1968, "I am a man," were meant to establish that connection to basic humanity. To some extent, we've remained stuck in kind of a constitutionalist, civil rights model of thinking about the problems of poor, disadvantaged people rather than figuring out how to inspire a national conversation that focuses on respect for the dignity of every human being. I think that approach is necessary for addressing the full range of problems facing those who find themselves locked up and locked out today.

Notes

This essay appears in Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2011) and is reprinted here with permission of the publisher.

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Drugs Are Not the (Only) Problem: Structural Racism, Mass Imprisonment, and the Overpunishment of Violent Crime

JONATHAN SIMON

The huge scale and racial disproportionality of America's prison population seem an increasing problem for the nation, an embarrassment in the eyes of a world quite interested in our penal practices generally. Indeed, for perhaps the first time in our history, our penal system is clearly a good deal more racist than the society it purports to represent. Events like the grotesque murder of James Byrd some years back tell us more about the racial climate in Texas prisons (where both Byrd and his white attackers had spent time) than in Jasper, Texas, where the murder occurred—just as the outrageous overprosecution of the six black teenagers convicted of beating a white student in Jena, Louisiana, is a story more about the prosecution complex in America than about traditional southern racial conflict.

State legislatures seem to be getting it. New York managed to repeal the Rockefeller drug laws (a name that linked the great pro–civil rights Republican of his generation to the harshest penal laws of its time, telling us a lot about the complexity of race and this issue). California voters even rejected an artfully worded crime initiative that promised community safety through long prison terms for gang members and larger police budgets.

Much of the progress in recent years has come from a strategy aimed at delegitimizing the incarceration approach to drug crime, especially for drug possession and use. The "drugs-first" approach has a lot of appeal. Harsh punishment for drug crime runs into several powerful critiques that are gaining traction with many Americans:

- Prison for drug crime is distinctively associated with racial disparity. The whole selection of drugs deemed illegal in the United States is deeply racialized from the start. Drug enforcement policy and the harshest prison sentenc-

es seem focused on the drugs most associated with minorities and especially African Americans (e.g., crack cocaine).

- For many drug users, treatment seems a more humane and effective approach, while other drugs, particularly marijuana, could well be handled through a muscular civil regulatory approach.

- When people consider drug crime on its own terms, they do not consider it an inherently serious crime. Fear of drug crime is mostly associated with violence generated either by the drug trade or by the actions of drug-addicted users.

But this progress on rolling back some use of prison for drug crimes will not, by itself, end mass incarceration in America. Instead, we need to turn to a topic that has lot less appeal than criticizing the war on drugs: the overpunishment of violent crime.

I have come to believe that our approach to punishing violent crime is the hardened back of mass imprisonment (to use an unusual metaphoric contrast to the soft underbelly) in America. We cannot extricate ourselves from mass imprisonment with a strategy exclusively based on moving drug offenders out of prison. As Marie Gottschalk argues in her very fine book on mass imprisonment and the death penalty:

> *While the drug and sentencing ballot initiatives vary greatly, they share some common features. They risk reinforcing a disturbing distinction between deserving and undeserving offenders. Many of these initiatives sanction throwing the book at drug dealers, recidivists, and violent offenders, thus reinforcing powerful stereotypes about crime and criminals that may help bolster the fundamental legitimacy of the carceral state.*[1]

At its best, the drugs-first strategy will produce an incarceration rate in America that is 25 to 45 percent lower than it is now but that remains two or three times the norm for the twentieth century. This prison population will be just as concentrated with people of color[2] and from neighborhoods (now often rural as well as urban) of multiple disadvantages.

At worst, given our current practice of excessively punishing violent crime, a drugs-first strategy may only anchor a sensibility that will lock us into mass imprisonment and distort the way America rebuilds its urban landscape over the

coming decades. "Violence" is a fuzzy category—for example, Is emotional abuse violence? Does threat of violence constitute violence?—and one highly prone to racial stereotyping.[3] Through four decades of a war on crime, we have lost the capacity to judge appropriate punishment, and we must confront our fears rather than avoid them. Only by confronting our fear of violent crime can we hope to frame a sustainable scale of punishment that ceases to exacerbate structural racism in America.

In the remainder of this chapter, I consider one category of violent crime that is relatively free from classification problems and racialized stereotypes: murder. I suggest that the political expediency of focusing justice reform on drug users and other, less-frightening prisoners will ultimately fail, and that we need instead to find a politically viable way to question the overpunishment of violent crime, beginning with murder.

MURDER BY DEGREES

The law of murder is one of the great innovations in American jurisprudence. English common law considered all criminal homicides, except for a few narrow categories treated as manslaughter, to be murder, and they carried a mandatory death sentence. In the United States, beginning in Pennsylvania in 1794, murder was early on divided into two levels: first and second degree. Capital punishment was available only for first-degree murder, and then only at the discretion of the jury. This became the near-universal rule in the United States, until it was complicated by the U.S. Supreme Court's death-penalty decisions in the 1970s.[4] (England did not follow this path until the Homicide Act of 1957 created a category of less serious homicide, for which a life sentence in prison was the normal punishment.)

Americans also innovated in manslaughter jurisprudence. While common law only permitted the mitigation of murder down to manslaughter in a narrow set of categories (the most famous being "sight of adultery"), American judges began to broaden these categories. In the twentieth century, following the Model Penal Code, most states made manslaughter open to any killing done under circumstances likely to create an extreme emotional disturbance in ordinary people.[5]

Ever a magnet for public attention, homicides in the nineteenth century became a major topic that helped sell the first mass-market newspapers. This helped murder to emerge as the dominant crime in the public imagination around the middle of the nineteenth century.[6] A wave of efforts to abolish the death penalty in the early

nineteenth century left murder practically the only crime punishable by death on a regular basis.[7]

In the twentieth century, murders similarly preoccupied radio, television, and the Internet. Mass-media coverage of homicide helps to inform the public understanding of serious crime and drives campaigns for harsher punishment. The structure of modern homicide law was well adapted to addressing the media's demand for harsh punishment. The death penalty was available (and widely used in the first half of the twentieth century) to address those killings that most alarmed the public. The vast majority of other people convicted of murder received either a very long term of years in prison or, often, a life sentence. Few served such long times, because the parole process—largely invisible to the public—favored an eventual release date for all life-sentenced prisoners who avoided trouble and actively sought rehabilitative programming.

Criminology, which has always enjoyed a popular as well as elite following in America, also played a role in elevating murder in the public imagination. Criminology has long viewed murder as the ultimate expression of a criminality that shows its early presence in delinquency and minor criminality.[8] Burglary, robbery, or rape may constitute serious violations of the victims' rights, but they are also feared because they could result in a murder (which is why the latter two remained capital crimes even in the twentieth century).

The modern law of murder and manslaughter can be considered, in some respects, a triumph of progress. For much of the twentieth century, the law of murder as it existed in the larger industrialized states played an important role in containing demand for severe punishment and in regulating the overall scale of punishment. (This is a theoretical assertion on my part, but the logic of this claim can be outlined.) The law limited the field of convicted killers exposed to the death penalty and gave juries discretion to decide imprisonment for life, even in aggravated cases. The length of punishment for those people not sentenced to death for murder was largely transferred to administrative agencies often known as "parole boards," which had authority to decide when imprisoned killers could be released (usually after a minimum term of years).[9]

It is difficult to assess empirically how effective this legal and administrative structure was at dissipating populist demands for severe punishment. While homicide is not one of the most frequent reasons for committing a person to prison, homicide sentences wield a disproportionate impact on prison popula-

tions because of the relatively long sentences. The parole board was generally an excellent administrative solution to extend the punishment-limiting capacity of laws for murder and manslaughter, because it moved a decisive portion of the punishment decision to a point in time quite dis-

> In the United States, punishments of three or more decades for even the least aggravated murders are becoming common.

tant from the crime or even the trial and set it apart from the public eye, in the inner workings of a (supposedly) expert-based administrative agency.[10] However, the war on crime and the politicization of parole decisions that it produced have fundamentally transformed this modern structure into a monolithic edifice of extreme punishment.

Prison sentences for murder have escalated dramatically in the United States since the 1970s, and they are markedly and more generally harsher than punishment for homicide almost anywhere else in the world.[11] Even where capital punishment is practiced, few of those people who are not executed are subjected to more than a decade or two in prison. In the United States, however, punishments of three or more decades for even the least aggravated murders are becoming common (and may reflect the minimum punishment, as many murder convicts seem likely to die in prison).

WHY DEGREES OF MURDER MATTER: THE CALIFORNIA EXAMPLE

In California, someone guilty of criminal homicide of another person faces—in theory—very different punishments depending on what grade of murder or manslaughter he or she is convicted of.[12] At the top of the punishment scale is the death penalty, or life in prison without possibility of parole for first-degree murder with special circumstances. *First degree* generally means that the killing was either planned or took place during one of a list of dangerous felonies.[13] Special circumstances include killing a police officer, multiple victims, and so on.

Next down is first-degree murder without special circumstances. The penalty for this is twenty-five years to life, meaning that parole eligibility begins after twenty-five years. California considers a killing that was not planned (but also not mitigated by some extreme emotional provocation) or was carried out in the course of another felony (but not the listed ones in the first-degree statute) to be second-degree murder, which carries a term of fifteen years to life. Finally, if the judge or

jury finds that the defendant killed in the "heat of passion" (extreme emotional disturbance), the offender will face a determinate sentence of three, six, or eleven years.

As every first-year law student learns, the concepts that separate first- and second-degree murder (premeditation and deliberation) or murder and manslaughter (heat of passion) are notoriously ambiguous and dependent on cultural logics. With so much at stake, the law can seem inherently arbitrary and capricious—or, even worse, predictably disfavorable to minorities and the poor. However, few courses in criminal law dwell on the fact that only the bottom line between murder and manslaughter really matters today.

In California, the death penalty is rarely carried out and, due to the politicization of parole, very few paroles are ever granted. Tough-on-crime governors have appointed to the parole board (known as the Board of Prison Terms) mostly former law enforcement officials or crime victims, who are unlikely to be sympathetic to life prisoners. Few lifers who have served their minimum sentence, and thus are eligible to have a parole release date set by the board, actually get such a date.

Moreover, since 1988 California law has required the governor to review each parole release granted and either approve or disapprove it. Recent governors have rejected more than 98 percent of parole releases approved by the board. Thus, a mere fraction of 1 percent of the thousands of eligible lifers gets an approved release date in a typical year. In other words, while more than one thousand new life prisoners arrive in California prisons every year, and more than ten thousand are eligible for parole each year, only an average of about twenty-three actually get released.[14] There are now more than thirty-seven thousand life prisoners in California.[15]

This situation creates a monolith of extreme punishment that constitutes an increasingly large and indigestible block of prisoners in California prisons. At the top end of the spectrum, legal challenges and lack of sufficient lawyers to represent the prisoners sentenced to death mean that executions are extremely rare. While nearly seven hundred prisoners are on death row, only thirteen executions have occurred since they resumed in the early 1990s.[16] Thus the complex legal distinctions that separate special circumstances, first-degree murder, and second-degree murder have come to mean relatively little in terms of the quantity of punishment faced (although the *quality* of punishment is probably more severe for death row inmates, due to a security regime that keeps most of them locked in a cell twenty-three hours a day). For all practical purposes, anyone sent to prison in California for murder is likely to die there—and not at the hands of the state.[17]

Punishment for murder has become the remainder of the prisoners' natural life, which is extreme compared to past policies and to most of the rest of the world. In the 1970s, for example, a first-degree murderer in California who played the rehabilitation game behind bars and avoided serious disciplinary problems could expect to be paroled in as little as ten or fifteen years (five less for second degree). In most of the rest of the world, murderers serve fewer than twenty years. (In Finland, most life prisoners are released after ten years.) Yet today, California prisons are full of men and women who have spent twenty-five, thirty, or thirty-five years constructing meticulous rehabilitation records with virtually no chance of getting out of prison before they die. This situation is not only unjust—at least in the minimalist sense that it renders meaningless the distinctions that the law explicitly draws—it also plays a significant role in anchoring the larger structure of overpunishment and mass imprisonment in America.

Many of us who want to wean America from its addiction to prisons have focused on drug users and other minor and nonviolent offenders. Indeed, this approach often contrasts nonthreatening offenders with dangerous and violent offenders who belong in prison for long terms. Wasting prison space on "druggies" and minor offenders, the argument goes, makes it harder to keep violent offenders in prison.

I believe that we need to combine this reform with a serious effort to question and reverse the overpunishment of violent crime, especially murder. I am deeply sympathetic to the view that drug users, low-level drug sellers, and minor violators of property and public order do not belong in prison. However, a strategy that focuses only on minor criminality is limited in how far it can reverse the level of imprisonment (e.g., we might end up with only three times, rather than six times, the prison population of the 1970s). Indeed, an emphasis only on the shallow end of the punishment spectrum may counterproductively reinforce the tendency to overpunish—so that, in the long run, any reductions gained through alternatives to incarceration for the shallow end may be modest.

HOMICIDE AS A REGULATOR OF PUNISHMENT

If murder anchors one end of a continuum, with delinquency and minor crime at the other end, two interrelated implications arise: (1) Murderers are the ultimate criminals who are capable of and likely to engage in crime of all sorts; and (2) minor offenders may seem relatively harmless now, but they may be on their way up the continuum toward murder.

American criminology and criminal law have long positioned homicide as the principal crime against the modern legal subject, one that reveals the threat to life that is intrinsic in all crime.[18] The focus on minor delinquency as a starting point for intervention has been the primary lesson of criminology as public policy since the turn of the past century. The notion is that the juvenile delinquent who skips school and commits acts of vandalism is manifesting underlying criminalizing tendencies that, left unchecked, could escalate up the chain of crime all the way to murder.

Against this background, we can see that the overpunishment of murder may have effects all the way down the range of crimes. Three kinds of effects stand out in particular: prospect theory, loss aversion, or reference effects; the net-widening effects of "dangerousness"; and the racialization of punishment.

Prospect theory, loss aversion, or reference effects

A well-known result in behavioral economics is that when consumers assess the reasonableness of an item's price, they are influenced by the price of another item that serves as the reference point or price. The so-called reference price establishes a level below which consumers feel that they are getting a good deal, and above which they feel they are experiencing a loss. So, for example, the high price tag on a $40 surf-and-turf special probably makes it more likely a diner will spend $29 on a steak or $19 on a pasta dish without complaining about the cost.

Similarly, natural life sentences for even nonaggravated murder set a reference price for crime that makes extreme but less-severe punishments for other crimes seem appropriate. Decades in prison for crimes like robbery, burglary, and drug dealing may not seem disproportionate when compared to the severity of execution or life in prison without parole.[19]

Net-widening effects of dangerousness

Severe punishment reinforces the view that murderers are permanently dangerous. This perception can extend to include minor criminality, given the common view that there is a continuum of criminality to which both murderers and minor criminals belong. In practice, this means that reductions in the use of imprisonment for drug users, public order violators, minor property crime offenders, and other less-serious offenders may easily be reversed if a more serious crime is committed by someone on parole or probation for a less serious crime—something likely to occur,

given the large number of people on parole or probation nationwide.

Racialization of punishment

Criminologists and many policy makers recognize that the War on Drugs has contributed to the enormous racial disproportionality of the American penal population. Drug use is distributed quite evenly across major demographic groups, while punishment for drug crimes is radically skewed toward African Americans and Latinos.[20] But the racialization of the drug war is intertwined with the racial coding of violence in America. High levels of violence in the African American community have been a criminological topic since the nineteenth century. While the causes of this are many, rooted in poverty and discrimination, the strong association between African Americans and homicide that has developed since the 1960s (with a pattern emerging then of approximately half of all homicide victims and perpetrators being African American) contributes mightily to racial disproportionality in the punishment of drug crimes. The well-documented police focus on young black men is driven by ecological presumptions about the presence of guns, the potential for violence, and the pressure to drive down homicide rates, but the immediate result of such policing tactics generally is more drug arrests and convictions.[21]

These effects suggest that a strategy of reducing the level of punishment at the high end for murderers is an essential component of any approach to substantially reducing our use of imprisonment. If we attack the mass-imprisonment problem by reducing the punishment of murderers, we can create a cascade of positive effects leading to more reductions in punishment.

Consider, for instance, what could happen if we reset the "reference price" for non-homicide sentences. If murder were punished at twenty years (the global norm), there would be no property offenders serving life terms, as there are now under California's three-strikes law. Indeed, the entire hierarchy of punishments would require dramatic reduction in order to avoid violating strong popular beliefs that some crimes are more deserving of punishment than others and that murder is the most deserving.[22]

Reducing the length of murder sentences would help diminish public belief in the permanent dangerousness of murderers, because the low rate of recidivism

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among released prisoners would become more widely known.[23] Criminologists have long documented the fact that prisoners who are released after serving time for homicide crimes have among the lowest recidivism rates, both for other homicides and crimes generally.[24] Such a demonstration of redemption will reduce the temptation to incapacitate minor criminals out of fear they are on a trajectory toward murder. (There may be risk factors that can help predict when a pattern of lawless behavior is likely to become violent, such as mental illness combined with a history of previous violence, or an escalating pattern of domestic violence, but they do not apply to the vast majority of people convicted of minor drug, public order, or property crimes. The public's legitimate desire to prevent homicide can be more effectively served through interventions targeted at these well-defined cases, including a more assertive civil commitment system for the mentally ill.)

The up-front political costs of reducing homicide penalties are likely to be large, but once the changes are made the virtuous circle of positive effects will reduce the public's propensity to fall back on long, incapacitative sentencing as a panacea for unfathomable risks. In contrast, the politically expeditious path we are on now—trying to separate low-end crimes from those involving violence, especially homicide—has tremendous risk of collapsing; indeed, quieter efforts have regularly done so in recent years.

If we continue to attack mass imprisonment by focusing on removing drug users and low-level offenders, we may achieve some reduction in the prison population—but unless we do it very carefully, we may create a cascade of negative effects. The most consequential one will be to reinforce the message that we need to rededicate prisons to incapacitating people convicted of murder and other violent crimes. At present, we already do so, and the argument that we need more prison space for this purpose implies that current levels of punishment for violent crimes are too low.

By failing to diminish public fear of violence linked to the category of crime, this strategy leaves its own modest reforms vulnerable to sudden reversals if, as is inevitable, a person on parole who is kept out of prison for a minor crime goes on to commit a violent crime. After such an event, the media and politicians will focus on the fact that under previous policies the minor offender would have been in prison at the time of the violent crime and thus safely incapacitated (ignoring, of course, the fact that the offender would have been released at some point). When that happens, demand will build to reverse policies of limited decarceration, even for nonviolent offenders.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

JONATHAN SIMON: I attack what I think has become a sacred cow for those of us in the anti-incarceration movement: an agenda or a strategy that I will call "drugs first." The essence of this strategy is to say to the public that too many druggies are in the prison system. So let's pass a law mandating treatment, not jail, and move some of those people out into the community.

Much of the "drugs-first" strategy has had the perverse consequence of actually reinforcing the public's belief that there's an enormous problem with violent crime in America, and that only mass incarceration can solve it. So a tag line that is becoming typical is, "Let's get the druggies out of prisons so we'll have more room to punish violent criminals."

Now, first of all, the sentences for violent crime, and murder especially—although this runs the gamut—have gone up. Nationwide, something like around 40 percent of the overall growth in incarceration since the 1970s is represented by this violent crime problem. So if all we're doing is chipping away the druggies first and leaving that violent block in there, we'd still be left with a disproportionately large prison system.

But the problem becomes worse because the focus on drugs falls prey to two things I want to highlight. One is the enormous popularity of criminology in

American culture, which from the nineteenth century on has viewed murder as the only ultimate outcome of a criminal career that begins with minor crime and delinquency. That is sort of the story of criminology. Criminology wants to show you that this wayward youth, who could be intervened on now, could become a murderer if allowed to continue on this path. Probably the most famous example is Lee Harvey Oswald who, when he was arrested for truancy as a fourteen-year-old, had a probation officer predict on paper that "someday he'll murder someone if we don't do something about this."

Now, many Americans have come to accept the premise that minor crime is important because it's on a path that leads to violent crime, which means that a strategy of decriminalizing violent behavior has a natural backlash tendency to it. As soon as something happens—like the home invasion in Connecticut a couple of summers ago, where a couple of minor criminals took over a home, raped and murdered the kids, and set fire to it—that's seen as a poster child for the death penalty. It also reinforces the idea that it's worth keeping relatively minor criminals in prison for a long, long time.

The other feature that I think is particularly important is the racialization of violence. From the nineteenth century on, homicide actually has been a disproportionately black crime in America. There

are a lot of good explanations for it, but the bottom line is when we overpunish violent crime, we are by nature selectively picking out a population of color to punish harshly.

Second, because our laws have gotten so extreme (and California may be the extreme case) we have created an "indigestible block" of prisoners. In California, anything from first-degree murder with special circumstances down to second-degree murder—which is basically spousal killing, impulsive killing that's not mitigated down to manslaughter, a lot of road rage cases, etc.—basically, all of those folks are going to serve natural life in prison. Even if you're sentenced to death, you are almost certain not to be executed in California. Currently, there are about thirty thousand prisoners in the California prison system in that life status. California law requires the governor to personally approve every parole of a lifer, which means that none happened under Gray Davis, none happened under Pete Wilson. A handful have happened under Arnold Schwarzenegger. Approximately a thousand lifers come to California prisons every year; approximately five leave. So you can see how the math works.

Right now, it's very hard for me to imagine how to start the sound-bite campaign that says, "Let's be nicer to murderers." It's a really hard political sell, but consider the benefits of it.

Q: *What is the way to introduce this issue of overpunishment of violent crime?*

Also, who is supposed to bring that message? It's not going to be any elected official, and the public isn't going to listen to academics. Is it ministers? Is it philosophers? Is it some sort of expert? Do we medicalize the question and have somebody wearing a white coat and a stethoscope say, "We've done lots of public health studies, and it turns out that breaking a window when you're fourteen does not indicate that you're going to become a murderer"?

SIMON: I'm dubious, because criminologists have known for years that essentially once you cross forty your chances of ever committing a crime of any sort again, let alone a violent crime, go down astronomically. Yet we keep people decades past that birthday. And I don't know that repeating that will make any difference.

If television networks like MSNBC are going to devote so much broadcast time to prisons, maybe they could do life histories in the nineteenth-century way where you actually tell stories about people in prisons, because they're often very sympathetic folks. Now, obviously there is a murder victim family out there somewhere whose pain is unending. We also have to understand the importance of violence in our society as a driver of this. A lot of us who oppose mass incarceration have been in denial about the role that high violent crime rates in the '60s and '80s played in driving home the message that this is an appropriate kind of governmental response. So since we have a gift in the recent crime decline—and you

in New York City may have the greatest opportunity of all, because your crime decline was roughly twice what the rest of the country experienced—that creates an opportunity to begin to individualize these cases and to tell stories about people's lives.

A lot of Americans believe that a black version of Hannibal Lector is most of what is locked up in the murder wards of our prisons. Again, this feeds into this criminological cultural heritage we have. One of our strategies has to be to become "anticriminologists" in this sense. Murder and most violent crimes should not be seen as the developmental outcome of some kind of criminality track, in the way a polyp becomes a cancer. It's much more like an accident. People commit violent acts through a lot of combinations of circumstance, through situational factors. Background obviously can play a role, but the idea that the person who commits a murder is therefore the sort of supercriminal who can commit any crime if you let them out is widely believed by Americans. But when you meet people in San Quentin who killed their partner or got in a road rage incident on the highway and are now twenty years older than that event, they're not really frightening people. And by and large they've done a lot of good work on themselves.

The current pessimism about the fiscal crisis might offer another opportunity to communicate this—although as long as people believe that violent crime is what's being contained by mass incarceration, the price point at which it becomes too expensive is very high. I don't know how high it has to get before people will be open to reversing things.

Q: *This proposal clashes somewhat with a lot of people's ideas about individual responsibility. How do we change that popular understanding?*

SIMON: I teach criminal law, and our modern, contemporary criminal law is already shockingly indifferent to individual responsibility in a lot of ways. Accomplice liability has been enormously expanded to sweep up all kinds of people for violent and drug crimes. The proliferation of crimes that are essentially systemic—such as being a felon in possession of a weapon, regardless of why you were in possession of that weapon—has moved us away from this nineteenth-century notion of individual responsibility.

Now, there may be a lot of twenty-first-century reasons to not be stuck on individual responsibility, but it seems to me that some return to a serious discussion about whether our criminal justice system actually does honor individual responsibility would be in keeping. And, in fact, when you meet some of the lifers that I have in San Quentin, what strikes you is that these people have taken responsibility for their crimes. They've spent decades working on themselves, trying to seek redemption to whatever extent they can from their victims, to get educations. They are really impressive stories, and yet they're being told by the system, "You'll never get out because we think even an eighty-nine-year-old man might,

you know, hit somebody over the head with their crutch or something, there may be some risk involved." That's all about risk and very nonfocused on individual responsibility.

Q: *I've got a fact question for you, Jonathan. You said that since the nineteenth century murder has been mostly a black affair and that there are reasons for that. The thing that came to my mind was the drug trade, but are there other factors involved you want to tell us about?*

SIMON: Since the nineteenth century, criminologists have been aware of the disproportionately high rate of blacks both as victims of murder and perpetrators of it. As we know, homicide is overwhelmingly an intraracial experience in America. I think it's really been exacerbated since the '60s. Approximately half of all homicide victims in America are black, and we assume that about half of the perpetrators are black as well.

As for explanations, criminologists in the '80s looking at the crack epidemic pointed to proliferation of guns among young people. The increase in gun ownership by a certain number of young people made other young people feel that they had to have those guns in order to play peer roles. And once guns are introduced into an essentially adolescent society, you are going to have a lot of homicides. That's one of the reasons why this developmental model of crime that views the murderer as the sort of superpredator is so wrong. Any fourteen- or fifteen-year-old will do unbelievably horrible things, given the right circumstances and the right equipment, but that doesn't mean that for the rest of their lives they need to be in a cage.

Notes

1. M. Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2001), 258.

2. For instance, in 2004, non-Hispanic blacks constituted 41 percent of all state prisoners serving time for murder, compared to 33 percent of all state prisoners serving time for burglary and 45 percent of all state prisoners serving time for drug offenses. See Sourcebook of Criminal Justice Statistics Online, http://www.albany.edu/sourcebook, table 6.001.2004.

3. Several cognitive science experiments available online provide tests of implicit bias in the assignment of dangerousness based on race. See https://implicit.harvard.edu for a test associating weapons with African American and white faces.

4. *Furman v. Georgia,* 408 U.S. 238 (1972); *Gregg v. Georgia,* 428 U.S. 153 (1976); F. Zimring and G. Hawkins, *Capital Punishment and the American Agenda* (Cambridge: Cambridge University Press, 1989).

5. C. Lee and A. Harris, *Criminal Law: Cases and Materials*, 2nd ed. (St. Paul, Minn.: Thomson/West, 2009).

6. K. Halttunen, *Murder Most Foul: The Killer and the America Gothic Imagination* (Cambridge, Mass.: Harvard University Press, 1998).

7. S. Banner, *The Death Penalty: An American History* (Cambridge, Mass.: Harvard University Press, 2002).

8. Lots of criminological research has suggested that murder is frequently a highly contingent event that reflects not an escalating degree of criminality but the intersection of multiple factors.

9. D. Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in the Progressive Era* (Boston: Little, Brown, 1980).

10. S. L. Messinger et al., "The Foundations of Parole in California," *Law & Society Review* 19 (1985): 69.

11. The most recent estimate of the length of prison sentences for murder comes from an analysis of felony sentences in the seventy-five largest counties in the United States between 1990 and 2002, published in 2006. According to this analysis, the median sentence for murder is now 20 years (240 months) and the mean sentence is 25.6 years (308 months). See B. A. Reaves, *Violent Felons in Large Urban Counties*, Bureau of Justice Statistics Special Report (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, 2006), 8.

12. California Penal Code §187 (a): Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

13. California Penal Code §189: All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

14. J. Irwin, *Lifers: Seeking Redemption in Prison* (New York: Routledge, 2009), 2.

15. A. Nellis and R. S. King, *No Exit: The Expanding Use of Life Sentences in America* (Washington, D.C.: Sentencing Project, 2009), 7.

16. See http://www.deathpenaltyinfo.org/executions.

17. This sets a huge premium on getting murder down to manslaughter because it guarantees a release at the end of a fixed sentence. The legal doctrine of *heat of passion*, which distinguishes manslaughter from murder, is probably the most culturally determined of all, but I'll leave that problem for another time.

18. H. Wechsler and J. Michael, "A Rationale of the Law of Homicide, Part I," *Columbia Law Review* 37 (1937): 729.

19. David Garland raises the question of whether it is not escalation in the punishment of these serious-but-not-homicide crimes that drives increases in the severity of punishment for murder. It is true that some of the first extreme sentences arose in antinarcotics crimes. For example, the infamous Rockefeller drug law of 1973 made sale of two ounces or more of a controlled substance (including marijuana) punishable by fifteen years to life in prison. The Rockefeller laws permitted parole. Even more severe antidrug laws have been adopted in Michigan, many other states, and under the federal sentencing guidelines, resulting in decades

of imprisonment for sufficiently large quantities of drugs. The sequencing of homicide penalties and drug laws in the various states should be carefully examined. As a whole, drugs (at least "hard" drugs) came to be linked to the possibility or even likelihood of death during the 1970s and 1980s; selling large quantities of drugs in this respect might be seen as a kind of murder. Indeed, the Rockefeller laws explicitly linked the penalties for drugs to the penalties for second-degree murder.

20. M. Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995).

21. Recent empirical research provides some support for the theory that racialized policing of drugs in Seattle is driven by a police emphasis on crack cocaine. More than any other recent drug, crack and its distribution have been associated with gun violence and homicide. See K. Beckett et al., "Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle," *Social Problems* 52 (2005): 419–41.

22. A. Ristroph, "Desert, Democracy, and Sentencing Reform," *Criminal Law & Criminology* 96 (2006): 1293.

23. This reflects several factors. Many second-degree murder convictions involve the killing of a close personal friend, intimate, or business associate. The circumstances that led to the killing may have built up over years and involved unique associations unlikely to repeat themselves. Also, where parole from a life sentence is involved, prisoners have powerful incentives to engage in therapy, education, and other practices held out as essential to a positive parole file. (For examples of many such transformations, see Irwin, *Lifers*.) With years to spend in prison under the best of circumstances, many people convicted of murder genuinely seek opportunities for repentance and self-knowledge, and they work to heal the world around them.

24. A. Roberts, K. Zgoba, and S. M. Shahidullah, "Recidivism among Four Types of Homicide Offenders: An Exploratory Analysis of 336 Homicide Offenders in New Jersey," *Aggression & Violent Behavior* 12 (2007): 493–507.

Resisting Justice:
Opportunities to Build a New Public Safety Agenda Founded in Civil Society

ERIC CADORA

A new debate over the meaning of *community* has risen to some prominence in the United States, coming from an unexpected quarter of American society: the criminal justice system. The discussion has sparked new experiments in the devolution of authority; cross-sector collaborations; and a broader leveraging, re-organization, and reinvestment of justice resources in states around the country. Today, the discussion has moved beyond its origins in the prisoner reentry movement to implicate policies and practices across the spectrum of the criminal justice system, and beyond it to other social service protocols. These experiments, still in their infancy, reveal the limitations of traditional reform efforts and dramatize the costs and trade-offs involved in building a post–"War on Crime" civil society infrastructure that has capacity to resist what is still a deeply embedded dependence on governing through crime.

Even as these first-generation experiments are reawakening a public discussion of collective obligation within the American social policy lexicon, a new wave of initiatives is redefining the way we think about those obligations. They arise in an environment marked by the criminal reconstruction of race and the limitations of previous reform efforts, and we explore them here.

THE CRIMINAL RECONSTRUCTION OF RACE

During the War on Poverty, federal policy championed the social and economic welfare of inner-city neighborhoods of color through major initiatives to house, educate, and employ the urban poor (e.g., creation of the Department of Housing and Urban Development, Office of Economic Opportunity, Job Corps, and the Head Start program). With the advent of the War on Drugs in the 1970s, federal attitudes toward the inner-city neighborhood changed. The new attitude was

based on the perception that by taking collective responsibility for the social and economic welfare of these communities, we were breeding overdependence and perpetuating detachment from the mainstream. Instead, it was thought, we should encourage personal responsibility and individual accountability. The community, as such, faded from the scene and gave way to the individual.

Criminal accountability (e.g., truth in sentencing, mandatory minimums, and three-strikes laws) and economic self-reliance (culminating in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) became touchstones of the new approach. The federal shift away from antipoverty strategies ushered in a twenty-five-year commitment to addressing the urban poor through martial (read: criminal justice) tactics.

The brunt of this newly restructured "public safety" system is borne disproportionately by a few neighborhoods of color in the major cities of each state. In New York City, for example, neighborhoods that are home to only 17 percent of the city's adult population account for more than 50 percent of residents sent to prison each year.[1] In Houston, while seven of the city's eighty-eight neighborhoods are home to only 5 percent of the city's adult population, they grapple with more than a quarter of its returning prisoners each year.[2] And in Wichita, where parole revocations account for nearly one-third of the city's admissions to prison each year, half of all people on parole live in less than 3 percent of the city's neighborhoods.[3] At no time in American history have incarceration and criminal justice oversight been so intensively applied to so many people within such strictly circumscribed places.

Because it affected primarily low-income communities of color, the new era brought historical changes to the way in which contemporary racism is perceived, lived, and governed. Prevailing structures of racism during slavery and Jim Crow eras gave way to new structures of racism through residential segregation, educational isolation, and community economic divestment. Structural disadvantage and bias were sustained by a new historical ethos, ghettoization.

The cultural stereotypes and the social, economic, and political constraints imposed by the structural "site" of racism, the ghetto, were themselves transformed by the emergence of a new structural order: the predominance of criminal justice governance. Accommodated by the construction of a vast new criminal justice exostructure—institutions *of* the community but not *in* it; namely, prisons and jails—the mass removal and resettlement mainly of men of parenting age have

become the predominant govern-
ment activity in a few neighborhoods
of color in most major cities in the
country.

**Today, the ethos of the ghetto has
been supplanted by a new site—or,
more properly, an exchange between two sites, neighborhoods and prisons—**that
is predominantly urban and disproportionately populated by people of color. The
criminal reconstruction of race is no longer located in a place per se but, rather,
in a new set of processes between places, whereby people's primary experience
with government is the criminal justice system. These communities experience the
effects of constant displacement on such a large scale that they suffer from what
could be termed an internal refugee crisis.

And when criminal justice institutions become the predominant form of gover-
nance in a community, public safety is eclipsed. In a democratic and open society,
public safety depends first on the social norms inculcated through civil society
institutions—family, work, school, and civic participation. When those institu-
tions are superseded by the criminal justice system, family ties, influence over
youth, an employable workforce, public health, stable housing, formal political
representation, and access to public benefits are all threatened—not just for indi-
viduals but, more critically, for entire communities. Prison migration and popula-
tion displacement, when thoroughly concentrated in a few neighborhoods, reach
a tipping point after which they no longer protect but, in fact, further undermine
the already tenuous opportunities available to community residents.

LIMITATIONS OF REFORM

The criminal reconstruction of race has come at a huge financial cost. Between
2000 and 2005, most U.S. states experienced tremendous budget pressures as a
result of flagging economic performance, rising costs, and falling tax revenue. The
drop in crime rates in the 1990s did not provide the expected relief in reduced
prison costs. Prison expenditures remained among the fastest-rising state govern-
ment expenses, growing from $9 billion to $41 billion in twenty years.[4]

At the same time, the reentry crisis has exposed the limitations of using criminal
justice as the primary solution to public safety problems. By 2004, more than
670,000 people were being released from prison annually. Instead of regaining a

> When criminal justice institutions
> become the predominant form of
> governance in a community, public
> safety is eclipsed.

secure place in their old communities, more than half were back in prison within three years.[5] The double whammy of ineffective resettlement and no drop-in-crime dividend led many elected officials to question the return on continued investment in prison expansion.

It's hard to remember that only eight or nine years ago, few public officials were paying attention to the mass of people returning from prison to their communities each year. Today, however, reentry is among the top concerns of American justice officials, rating prominent mention in former President Bush's 2004 State of the Union Address. Now there are reentry task forces in most statehouses in the country; counties and municipalities are scrambling to chart reentry schemes; trade associations and think tanks are fine-tuning technical assistance strategies; and hundreds of nonprofit organizations in communities across the country count prisoner resettlement on par with supportive housing, child and family welfare, and jobs as core components of their neighborhood mission. Moreover, the new attention being paid to reentry, and the conversation it has stimulated, has breathed new life into mandatory sentencing, felony disenfranchisement, and a host of other criminal justice reform movements.

Even in the face of such crucial policy reforms, however, the strong hold of crime governance limits the impact of successes. Not only is it proving difficult to extract ourselves from the decades-long investment made in the criminal justice exostructure, the zero-tolerance policies increasingly adopted by schools, public housing, and other public-sector services have inculcated the crime governance ethos. Their limitations are increasingly evident. In fact, reforms across government service agencies in housing, health care, child welfare, and parole/probation operations can themselves contribute to the marginalization of resident populations that do not conform to agencies' mission requirements and internal specialization. As one researcher has insightfully pointed out, policy isolationism—the tendency of each social service agency to enact strict internal service objectives, goals, and mission without regard to similarly strict performance requirements of other agencies—neglects the role that each service plays, causing services to work against each other.[6] The net result is an increasing number of community residents in high-incarceration and high-reentry neighborhoods being pushed out of institutions and services whose conditions they either violate or whose categories they no longer fit.

The fragmentation between policies governing criminal justice and social service agencies dramatizes the difficulty of maintaining a balance between criminal and

civil institutions. Crises in affordable housing trigger homelessness. Inadequate community mental health treatment, chronic unemployment, and substance abuse leave many people on the street. Aggressive arrest policies sweep homeless and street people into the justice system. Criminal histories disqualify many people from affordable housing and bar them from wide swaths of the labor force. Every (separate) policy connected with every (separate) social service has a ripple effect across the entire so-called safety net, yet all holes in the net lead back to prison.

Without effective investment in civil infrastructure, reforms in sentencing, felon reenfranchisement, reentry support, and graduated sanctions for probationers and parolees, even when successful, will be limited in their ability to extract high-incarceration communities from protracted poverty and institutionalization. To take full advantage of these growing successes, a parallel system that transitions support to civil institutions will have to be developed to compete with the prevailing infrastructure of crime governance.

The challenge facing reformers in the coming decades is one of transition: how to create an alternative complex of justice responses that simultaneously builds civil capacities and exerts the kind of informal social controls that characterize safe neighborhoods. The tendency to want to build social rehabilitation into criminal justice is unlikely to lead high-incarceration communities out of the prison migration quagmire. After all, the nation's largest jails already constitute the largest mental health, substance abuse treatment, and employment training centers.

JUSTICE REINVESTMENT: REBALANCING CRIMINAL AND CIVIL INSTITUTIONS

New experiments in justice reform have emerged in response to this challenge. One that explicitly seeks to address the imbalance between criminal and civil institutions is the national and international justice reinvestment movement. Justice reinvestment brings together technical assistance providers with state system leaders to link prison population reduction with reinvestment in high-incarceration communities. These experiments are still in their infancy, but in states from Connecticut to Texas they are expanding the justice system's involvement with government social service agencies and other nongovernmental civil institutions.

Drawing on model programs that used financial incentives to lower juvenile incarceration rates in Oregon, Ohio, and Michigan in the late 1990s, some states are experimenting with policies that cut costs by reducing the adult prison population

and reinvesting the savings in high-resettlement communities. The first state to take on the issue for the adult population was Connecticut.

In 2002, Connecticut was experiencing prison population pressures and severe state budget strains. States facing similar situations have often opted to build more prisons—getting further into debt—or to begin releasing prisoners. But Connecticut officials chose to experiment with a justice reinvestment model that reduced the prison population substantially over two years, while crime rates continued to decline.

The problem Connecticut confronted was serious. Despite having built prisons for a decade, at a cost of more than $1 billion, the state faced a shortfall of five hundred prison beds by the year 1999. Connecticut contracted for extra prison space in Virginia, but by 2003 officials again faced a shortfall and began looking to other states to provide two thousand more beds, at an additional cost of millions of dollars annually.[7]

By this time, state officials realized that continuing to build prisons would be futile. Something had to be done to interrupt the cycle before it threatened the fiscal foundations of other important agencies and public services. A flood of newspaper editorials published between June 2003 and April 2004 argued for policy makers to consider alternatives to incarceration instead of continued prison construction. A justice reinvestment initiative provided technical support from a network of national experts, who analyzed data on prison growth and the places where people in prison came from and to which they returned.

The research confirmed national trends. The failures of people on probation and parole were pushing prison populations up; inmates were staying in prison longer; and there were myriad delays in prisoners' release. The experts also found that half the prison population came from a few neighborhoods in three cities, including New Haven—where a single neighborhood was costing the state $20 million a year, $6 million of which was for probation violators alone.[8] By examining not only criminal justice data but also mining social services data, the study found that people returning from prison also lived in neighborhoods that had a disproportionate number of people receiving unemployment insurance and Temporary Assistance for Needy Families.

Based on these findings, a growing political consensus formed around the researchers' recommendations for reducing pressure on the prison population and

reinvesting the anticipated savings. In 2004, Connecticut's state legislature passed the Act Concerning Prison Overcrowding, which included measures that reduced probation revocations and created comprehensive community plans to accommodate people returning from prison. The state cancelled the practice of housing two thousand Connecticut inmates in Virginia prisons, reduced the corrections budget by $30 million, and reinvested $13 million in neighborhood-targeted strategies. The reinvestment funds supported community planning processes, new probation programs focusing on the transition from prison to home, and community-based responses to technical violators; increased the Department of Mental Health and Addiction Services' capacity to provide community outreach and treatment; and added nearly a hundred new probation officers to reduce caseload sizes.[9]

Kansas's justice reinvestment initiative began with a similar analysis of factors driving the prison population, the geographic distribution of populations and resources for criminal justice and health and human services, and community reinvestment opportunities. In May 2007, prompted by a study commissioned by the state, Kansas lawmakers reinvested $7 million in treatment programs and community-based supervision models that would have been spent on prison construction. One unique dimension of this initiative involved reversing incentives for community supervision officials to overuse prison as a response to conditional violations. The state created a block grant program that awarded investment dollars to community supervision agencies based on their ability to safely reduce their rate of revocations to prison by 20 percent. This reinvestment strategy is expected to save Kansas $80.2 million over four years by avoiding construction and operating costs that would have been associated with adding 1,292 additional prison beds over the next ten years.[10]

The projected savings spurred Kansas policy makers to launch the New Communities Initiative, a public safety and community reinvestment project that targets selected high-incarceration, high-poverty neighborhoods of the First City Council District in Wichita. Spearheaded by state, county, city, and community leaders, the project supports new public safety measures with investments in workforce development, supportive housing, and integrated family support services.

Reinvestment initiatives continue to grow around the country, including in Arizona, Texas, Nevada, Michigan, and Wisconsin, but despite their achievements these initiatives have encountered obstacles. Foremost has been the inadequacy of community planning. Local planning committees' primary approach to reinvestment has been to fund isolated programs that target very small numbers of

people returning from prison instead of a more widespread community initiative. Another problem has been the weakness of local intermediaries in planning and coordinating community-wide initiatives.

Initiatives like the national Justice Reinvestment Project are taking criminal justice reform in the right direction by linking a reduction in the overuse of incarceration to broader public investment in high-incarceration communities. However, this approach to reform is moving very slowly to rebuild civil capacity in these hardest-hit neighborhoods. To be more successful, justice reinvestment initiatives in the United States will have to organize more effective community coalitions that can understand research, overcome interagency competition, and develop integrated approaches that leverage more community and non–criminal justice resources. The challenge is to strengthen community capacity to take ownership of reinvest-ment initiatives and sustain demand for their continuation.

SOCIAL NETWORKS IN CIVIL SOCIETY

A second generation of reforms is even more focused on building the kind of civil capacity expressed through informal networks in safe neighborhoods. Across multiple sectors—parole and probation retraining; health and housing services; and, most provocatively, child welfare services—these second-generation models are mobilizing around the competitive advantages of local knowledge to invest in the capacity that familial and social networks have to sustain a protracted transi-tion from crime governance. In doing so, these initiatives eschew the traditional model of advocating for more services—an approach vulnerable to the vicissitudes of changing political administrations, government agency mission shifts, and rep-lication of the welfare line's culture of overdependence and humiliation.

In Chicago and New York, initiatives have focused on retraining parole and proba-tion officers and public housing administrators to work with the families of people returning from prison, helping them to mobilize the broad connections they have with extended family and friends.[11] These initiatives teach community groups and other participants how to identify social connections and help residents use them to solve problems, avoid homelessness, and stay out of prison.

New and more challenging experiments in strengthening the familial and social networks of people involved with child welfare agencies have also been launched, with initial successes found in California, Iowa, and Washington, D.C.. What makes these approaches special is their deep, simultaneous involvement with

both community coalition building and the large, risk-averse, state and municipal child welfare agencies. California's initiative, now operating in twenty-five counties, helps child welfare officials work with families to improve child protection and foster care. In Iowa, the initiative helps child welfare and human services workers collaborate on neighborhood-based family support projects. An initiative in Washington, D.C., created seven neighborhood collaboratives, which partner with the city's social services to address challenges faced by residents of the highest-poverty neighborhoods who are falling through the safety net.

> California's initiative, now operating in twenty-five counties, helps child welfare officials work with families to improve child protection and foster care.

All of these initiatives are strengthening networks that have been weakened by long-term divestment, the broad effects of crime governance, and the "internal refugee crisis" generated by concentrated, continuous prison migration. These initiatives also are notable for their affordability and sustainability over the long haul. They produce the type of community structure that can maintain a long-term transition to community life no longer dominated by criminal justice governance.

The experiments described in this chapter are still in their infancy, but indications are good that they will help to deconstruct the immense criminal exostructure erected during the War on Drugs and rebuild the mainstream civil infrastructure. The War on Drugs era separated the individual from the community, both symbolically (through the ethos of personal accountability) and physically (through the mass displacement and imprisonment of young, parenting-age, minority men). Today, these new initiatives are struggling to sew the torn relationship back together. Along the way, they are providing a safe place to experiment with new solutions to the challenge of persistent poverty and the structural legacy of racism.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

ERIC CADORA: I've been focusing on the place-based nature of this overincarceration and mass incarceration phenomenon—looking at how disproportionately concentrated the impact of incarceration and supervision has been on particular places. The remarkable numbers that the Sentencing Project published years ago really brought a lot of attention to this issue nationally. But when we start looking at neighborhoods and the rates of incarceration by neighborhood, we find even more shocking numbers. In some cases we're looking at neighborhoods where one in five people are under supervision or going into prison or jail every year. I tried to write about the deeper implications of that, particularly the way in which these places have become sites of oppression, and the displacement effect of all of this. What we're really doing is fostering a huge population displacement, migration, and resettlement project—if you stand away from the justice purposes of it all and look at it from a demographic perspective.

From this perspective, you wouldn't imagine this as a justice system but as something else. In fact, what we've started to look at are similarities to forced migration as a result of political, developmental, or even natural disasters. As we enter the post War on Crime era, the transition for these neighborhoods is almost akin to the transition from authoritarian rule that some countries have experienced. So one dimension of this work has been to look at what this geographical and migration impact shares with international approaches to rethinking governance.

It has also brought me back to basics, to the most fundamental ideas about what the criminal justice system is about, what safety is about, and how it's achieved. I remember Marc Mauer asking, many years ago, What are the characteristics of a safe neighborhood? Are they lots of people going in and out of jails, the presence of tons of police, etc.? Of course not. They are strong civil institutions, strong schools, networks of families, employment, etc. And that's where society and public safety and social control get into your bones. But when the balance is shattered, and we have neighborhoods where criminal justice is the predominant form of governance, the whole thing falls apart; it doesn't work as a public safety venture any longer. Rather, it becomes a contributing factor to the disintegration and undermining of those neighborhoods that are already plagued by poverty, etc.

So in trying to reframe some of the work we do with the states, we have to understand that if we're going to reduce the criminal justice system's reach, impact, and harm, there has to be concomitant reinvestment in civil structures. In some ways, we can imagine this problem—in its most benign form—as a governmental response to weak civil institutions that have been plagued by histories of

racism, poverty, etc. [and have] overinvested in [and become] overdependent on criminal justice governance. Well, if we start to pull back, can that pull-back be accomplished at the same time as a reinvestment in those civil institutions?

We've looked a little bit at other populations in those neighborhoods that share some of the displacement characteristics—people displaced not by incarceration but by chronic homelessness, chronic unemployment, separation of families through foster care, etc. All of a sudden we started mapping people who were involved in those government programs, and as we expected they overlapped tremendously with the incarcerated population. They're mirror images of one another. Juvenile detention rates at the block group level are almost mirror images of foster care rates.

That's the negative side, but we're always trying to think about what those shared displaced characteristics can tell us about ways to move forward. The imaginary thought experiment that we try to go through is, what would a neighborhood look like if, instead of these disparate, fragmented, policy-isolated government programs, justice protocols were instead reorganized around all the populations that are being displaced and resettled? What if the whole goal was, in fact, to be doing something about the real nature of what these agency and government programs are actually taking part in—this constant breaking of ties and networks. . . . That's why one can't simply think only about withdrawing the justice system without also reinvesting in those civil structures that are the real guarantors of public safety and neighborhood well-being.

From my experience in alternative-to-prison advocacy, I've been trying to think about where we are going to be limited when we start thinking about purely legal reforms. I think it's hard for people to remember that eight or nine years ago, no one was talking about reentry. It was absent from the discussion. But today it's discussed in every statehouse, in every county, and it has enlivened all sorts of criminal justice reform discussions— about sentencing reform, disenfranchisement, and other issues.

So I started asking myself, what can maximize the success of legal reforms? From both current and past experience, I've learned that judges, prosecutors, state legislators, and governors are always looking for real options on the ground.

To use Obama's language, one question is, what are the shovel-ready projects in the states? In many ways, a judge is much more willing to find an alternative to jail and prison if he or she already has an on-the-ground, operational alternative—whether it's an overmedicalized drug treatment protocol or a potentially more productive operation. Those alternatives are missing in great, great part in most of the country. (New York may be an exception, having a long history of putting together these alternatives.)

Without those "infrastructures" in place,

even legal progress is going to be impeded. So, more and more, we're starting to ask, how do you reinvest in these infrastructures? I work with states across the country on the concept of justice reinvestment, which ties the idea of reducing overdependence and overuse of prisons to some sort of reinvestment in high-incarceration neighborhoods. It's gotten some traction, partly because government officials want some options they can couch reforms in. They do not want to be stuck in a position of saying, "Let's simply reduce our use of prisons." If they are able to reframe the public safety agenda for a particular neighborhood and cite new protocols, they're much more likely to buy into justice reform.

When I think about these kinds of civil investments, I make a distinction between plopping down giant service centers in neighborhoods and carefully reinvesting in indigenous social networks. People depend on social, familial, and other networks to get things done. What would it be like if we were in fact targeting investments to strengthen those already existing networks?

NOTES

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Advocacy for Racial Justice:
Prospects for
Criminal Justice Reform

MARC MAUER

Over the past decade, a variety of criminal justice funders and reform groups have commissioned public opinion research on reform strategies and prospects for change. The issues addressed in these studies include alternatives to incarceration, juvenile justice reform, the death penalty, and felony disenfranchisement, among others. Typically, the researchers conduct focus groups and public opinion polls to identify the reform messages that will best resonate with various targeted constituencies.

Among the tested messages are arguments on racial disparity. For example, researchers might ask, "If I told you that discrimination against blacks and Latinos contributes to these groups' being more likely to end up on death row [or to be disenfranchised], would that be a good reason to support reform?" Invariably, the public response (particularly among whites) is that these arguments are not very influential, certainly less so than some other messages.[1] This finding generally leads the consultants to recommend not framing the reform strategy around issues of racism in the justice system or larger society.

While we should not discount these research findings, we need to recognize that they leave us with a dilemma: if we never confront racism, how will we ever get beyond racism? How would we have ever had antislavery or civil rights movements if the subject of race were off the table?

We need to be cognizant of the degree of racism and resistance to change in the broader society, and we need to develop strategies to confront this opposition in ways that build support for reform and racial justice. This chapter examines several criminal justice reform movements to assess how such strategies have been employed and distills three key insights:

- Arguments for racial justice need to be advanced, but strategically and in concert with promoting public safety.
- Racial justice arguments in themselves are not as ineffective as the research suggests and in some cases can be very compelling.
- The message and its messengers are both crucial to building a movement for racial justice.

The sections that follow describe how these organizing strategies have played out in three areas: crack cocaine reform, felony disenfranchisement, and racial impact statement legislation. Justice reform advocates have made significant progress in each of these areas, and the changes have enhanced the degree of racial fairness in the justice system.

THE MOVEMENT FOR CRACK COCAINE REFORM

Federal crack cocaine mandatory sentencing policies were adopted in 1986 and 1988 as a hasty legislative response to the emergence of the new form of cocaine in the mid-1980s. With virtually no consultation with drug or other experts, the five- and ten-year mandatory minimum sentences imposed for crack cocaine were set at levels far more punitive than for powder cocaine, from which crack is derived. It was not coincidental that the image of the crack user and seller, as displayed on news magazine covers and the nightly news, was that of a young black male. Whether accurate or not, this perception framed the direction of the policy response, not unlike the racial dynamics of past approaches to drug issues.

The racial impact of law enforcement practices and new sentencing laws for crack cocaine offenses quickly became clear. More than 80 percent of the people charged with such offenses in federal court have been African American, while for powder cocaine it is much more likely that defendants will be white or Latino.[2] Most of the people charged with these offenses were hardly the kingpins of the drug trade but were nonetheless snared by the sweep of unyielding statutes. These included such people as Kemba Smith, sentenced for a first-time conviction to twenty-four years in prison for serving as an accomplice to her boyfriend drug dealer's high-level activities. Only as a result of a national campaign was she able to secure a commutation from President Clinton, after serving more than six years of her sentence.[3]

Movements to equalize penalties between crack and powder cocaine began shortly after the laws' adoption and gained ground in the early 1990s, with in-

creasingly strong evidence of the racial disparities produced by the policies. By 1995, the U.S. Sentencing Commission issued a comprehensive analysis of the laws' impact and recommended to Congress that penalties for the two drugs be equalized. That recommendation was opposed by the Clinton administration and overwhelmingly rejected by Congress.[4] Reform efforts continued, and by 2002 the Sentencing Commission was moving toward a less ambitious recommendation, which this time was halted by the Bush administration.[5]

By 2007, the advocacy efforts culminated in two historic decisions by the Sentencing Commission: first, to revise the sentencing guidelines for crack offenses, and second, to make them retroactive for people currently in federal prison on a crack offense. As a result, about twenty thousand people in prison became eligible to apply for a sentence reduction, which will average about two years.[6] Momentum continued after those decisions, culminating in congressional passage of sentencing reform legislation in 2010, which reduced but did not eliminate the sentencing disparity between the two forms of cocaine. This series of reforms marked a major milestone, so it is important to assess the changes in the political environment that ultimately made them possible.

Over a period of time, advocates for reform developed a combined message that argued for racial fairness and greater effectiveness in ensuring public safety. That is, while the crack cocaine laws clearly produce unwarranted racial disparities, they also are irrational as approaches to drug policy. Even if all persons charged with a crack offense were white, it would still not make sense to spend well over $100,000 to impose a five-year mandatory prison term for possessing five grams of crack. The message of ineffectiveness was also used in conjunction with an argument about overfederalization—that low-level drug offenses should not be prosecuted in federal courts—and that message appealed to many conservatives.

It is noteworthy that only a handful of states maintain a sentencing distinction between crack and powder cocaine, and none of these has statutes nearly as extreme as the 100:1 ratio. Thus reformers did not downplay the racial arguments but, rather, enhanced them by demonstrating that current policy is counterproductive as a public safety strategy.

Two types of messengers were key to building support for crack cocaine sentencing reform. The stories of people affected by crack cocaine, such as Kemba Smith, put a human face on the issue. Just as the story of Willie Horton illustrated the ills of the criminal justice system for many people, the images of many low-level drug

offenders separated from their families and communities for long periods of time conveyed the full impact of these policies.

And the reform movement expanded to include mainstream and nontraditional messengers. While traditional groups such as the Sentencing Project, Families Against Mandatory Minimums, and the ACLU had led the effort for many years, over time strong support also came from the American Bar Association, federal judges, and other mainstream constituencies. Advocates also secured conservative opposition to current penalties, most notably led by the Christian evangelical organization Justice Fellowship and by political leaders concerned with overfederalization. As a result, the reform legislation adopted by Congress was cosponsored in the Senate by liberal Democrat Richard Durbin (D-IL) and conservative Republican Jeff Sessions (R-AL) and was passed by both houses of Congress on a voice vote.

FELONY DISENFRANCHISEMENT REFORM

The movement for disenfranchisement reform has also achieved significant success. While disenfranchisement policies have been in effect since the founding of the nation, their practical effect grew dramatically with the advent of mass incarceration. About five million Americans are now ineligible to vote as a result of a current or previous felony conviction, with highly disproportionate rates of disenfranchisement in communities of color.[7]

While there have been periods of progress on this issue over time, an especially strong reform movement developed in the past decade. Since 1997, twenty-three states have reformed their disenfranchisement practices, some relatively modestly by providing more transparency in the rights restoration process and others more broadly by repealing entire categories of disenfranchisement. As a result, an estimated eight hundred thousand people have regained the right to vote.[8]

As with the crack cocaine reform movement, the movement for disenfranchisement reform incorporated an argument for racial fairness along with concerns for public safety and democracy. The argument for racial fairness was multilayered. First, the laws in many states originally reflected a history of intentional discrimination (although one not necessarily recognized in the courts). Even where the *intent* is debatable, the extremely disproportionate *impact* of current disenfranchisement practices is quite clear, and it is exacerbated by unwarranted racial disparities in the criminal justice system—a consequence of the drug war and other policies.

Disenfranchisement clearly is not only a criminal justice issue but one that raises fundamental questions of democracy and participation in the community. As such, the advocacy message has also emphasized the long struggle for full participation in the electoral arena, beginning with the very limited democracy at the time of the founding of the nation through the gradual extension of rights to African Americans, women, and other excluded groups.

> In most states, the reform movement has been spearheaded by a mix of black legislators, civil rights groups, and criminal justice reform organizations, but significant progress has also been made in gaining mainstream and law enforcement support.

The public safety argument has also been a compelling message. Initial research suggests that voting participation may contribute to reduced recidivism,[9] the theory being that engaging people with positive institutions in the community links them to constructive opportunities and social networks. From a democratic participation viewpoint, one can argue that all felony disenfranchisement laws are inherently unfair in restricting fundamental rights of citizenship, and therefore it should not matter whether they affect public safety one way or another. But since it appears that, in fact, these laws run counter to legitimate public safety goals, this argument has helped to make the case for reform.

Personal stories have again helped to put a human face on this complex issue. Powerful messengers have included people like Andres Idarraga, a young man who served eight years in prison in Rhode Island for drug trafficking. Idarraga was subsequently admitted to Brown University, but his thirty-year parole period would essentially have disenfranchised him for most of his adult life. His story and others convinced state voters in 2006 to repeal the voting ban for people on probation or parole.[10]

In most states, the reform movement has been spearheaded by a mix of black legislators, civil rights groups, and criminal justice reform organizations, but significant progress has also been made in gaining mainstream and law enforcement support. Thus, for example, in Rhode Island the police chief of Providence co-authored an op-ed in the state's leading newspaper that advocated reform,[11] and professional groups like the American Correctional Association and the American Probation and Parole Association also have adopted policy statements and spoken out. Such developments have framed the issue as one of not only racial justice but also reasonable reentry policy and public safety.

RACIAL IMPACT STATEMENT LEGISLATION

The movement to adopt racial impact statements as legislative policy is based explicitly on an argument about racial fairness, in contrast to the multiple strategic frames used in crack cocaine and felony disenfranchisement reform. Building on sustained advocacy around racial profiling, the disproportionate impact of the War on Drugs, and other racially biased practices, the political environment has changed sufficiently to create openings for direct challenges to these and others policies. In 2008, five states—Iowa, Connecticut, Illinois, Minnesota, and Wisconsin—enacted policies and practices designed to assess the impact of sentencing policies on communities of color.[12]

Iowa's legislation responded to a report by the Sentencing Project documenting the fact that Iowa had the most racial disparity in incarceration of any state. The report received broad attention statewide, including front-page coverage and editorials in the *Des Moines Register*, and generated expressions of concern by the governor and legislative leaders. In collaboration with the Sentencing Project, Rep. Wayne Ford, the longest-serving African American legislator in the state, introduced a racial impact assessment bill in early 2008 and guided it through adoption by the legislature with almost unanimous bipartisan support.[13]

Similar developments took place in Connecticut (also a national leader in disproportionate rates of incarceration),[14] led there by Rep. Mike Lawlor, a longtime leader on justice reform issues. As in Iowa, the measure was presented as a "good government" issue. The message here was that, just as legislators routinely use fiscal and environmental impact statements to project the consequences of changes in policy, so too should they anticipate any unwarranted racial effects of criminal justice policy change prior to adoption. (Had such a policy been in effect in Congress in the 1980s, perhaps there would have been a different debate and outcome in the crack cocaine sentencing legislation.)

The movement in Wisconsin was sparked by a report from the National Council on Crime and Delinquency[15] documenting the state's leading position in disproportionate rates of juvenile detention. It resulted in a sweeping executive order by the governor that created a Racial Disparities Oversight Commission charged with "advocacy concerning programs and policies to reduce disparate treatment of people of color across the spectrum of the criminal justice system."

In Illinois, the legislature established a commission "to study the nature and ex-

tent of harm caused to minority communities through the practical application of [drug policies],"[16] and in Minnesota the Sentencing Guidelines Commission made an internal decision to begin preparing racial impact statements for proposed sentencing policy changes.[17]

The explicit focus on racial fairness in these reforms was possible, in large part, because reformers have spoken out about disparities in the justice system for many years—including through widespread critiques and analyses of the racial injustice of the War on Drugs, implementation of the death penalty, and mass incarceration. Legislative leaders in these states had been engaged in long-term efforts to create a more receptive political environment. The shaming factor also played an influential role: the media, legislators, and executive leadership acknowledged reports showing that these states were among the nation's leaders in racial disparity as deeply troubling. Therefore, racial disparity *in itself* was sufficient to trigger a policy response, regardless of how the issue may have been perceived in terms of public safety, financial costs, or other dimensions.

IMPLICATIONS FOR STRATEGY

While the racial/ethnic dynamics of the criminal justice system are clearly horrific in many respects, there is reason for cautious optimism regarding the prospects for change. The examples described here demonstrate that progress on racial justice is indeed possible, and there are other ongoing efforts in criminal justice and juvenile justice that are equally encouraging.

Not surprisingly, the ways in which reform strategies use race-based arguments vary depending on the issue and political climate. Successful reform advocates have fashioned their messages and messengers to meet the challenges and opportunities posed by local circumstances. At times, these arguments have combined race-based issues with broader concerns of public safety and effectiveness. In other cases, race-based arguments are sufficient in themselves to advance policy change.

We should not underestimate the persistence of racism or the scale of change that is needed, but we also should not discount the possibility of change in addressing issues of structural racism. The national conversation on race is at a unique point in time, which is all the more reason to deepen and extend the conversation.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

MARC MAUER: I've been involved peripherally with a number of public opinion polls, focus groups, and commissions on criminal justice issues in recent years. When it comes to the arguments about race, the pollsters always say, "Bad news: race doesn't make it, especially with white people. Don't raise the racial arguments. They just think that's tired, old, liberal stuff. And they're not very sympathetic, so lead with other stuff."

Well, we're not going to stop talking about race just because white people don't get it, right? We somehow have to get beyond that. If, back in 1950, you had a group of ministers sitting around a table planning a new civil rights movement and relying on focus group results that said, "Don't talk about race," where would we be today? Nonetheless, the results are sobering and not necessarily unexpected. The challenge is to understand the resistance that's out there.

It seems to me that we have a few parts to the strategy we need to employ. One part is to talk about race but also other relevant things—and the primary other thing is public safety. Public safety is presumably the rationale for many of the policies that we're trying to change; that's why they're in place. That's what the proponents tell us when they implement these policies, so we should challenge them on their public safety effectiveness while we also analyze and describe the racial intentions and consequences. If you think of a few issue areas where that strategy has taken place—crack cocaine, felony disenfranchisement, racial profiling—the extent to which we've had success has hinged on the merging of those two kinds of arguments.

On the crack cocaine issue, the racial dynamics could not be more clear. Eighty percent of the people prosecuted have been African American; there are completely disparate law enforcement and sentencing policies that work against people of color. But our reform community has also made the argument that these laws don't make sense in terms of effective law enforcement and drug strategy. To lock someone up in prison for five years for five grams of crack cocaine is not a good use of public funds to deal with drug problems. Those arguments, coupled together, have resonated in many ways.

Similarly, in the work on felony disenfranchisement, there have been very clear periods in history where there was very direct racist intent in some of these laws in at least some of the states. Certainly, there is a very racially disparate impact today, but the laws also are fundamentally undemocratic, unfair, and counter to public safety. When people finish their prison sentence and come back into the community, it's not in our interest to treat them as second-class citizens if we want

a healthy community and want people to feel engaged in the community. So the laws are fundamentally opposed to what our goals should be.

It's similar with racial profiling. The racist nature of profiling is obvious on the surface, but from a strict law enforcement point of view we know from all sorts of research and personal experience that law enforcement works best when it targets not broad categories but specific information and specific situations. When we engage in racial profiling, we clearly are going to get all sorts of false positives, and all kinds of other problems that emerge. So we want to couple the race-based arguments with public safety ones.

The second part of the strategy is that we need to think about the messengers and how we get these ideas out there. We interpret information better when we can identify with it. In a very negative sense, that was the Willie Horton story. Willie Horton was very broad policy, very misguided in the way it was presented to us, but Willie Horton captured the imagination of many people. Conversely, we've all been able to use stories of people like Kemba Smith and many others who lost their right to vote when we talk about crack cocaine and other sentencing inequities. Having people tell their own stories of experiences with the system has been very effective.

It's also our job to get unlikely allies to broaden the base of messengers who are telling these stories. The American Bar Association has been a very solid messenger on mandatory sentencing, crack cocaine, and disenfranchisement; federal judges speak out about mandatories and crack cocaine. That has an influence over policy makers. Law enforcement and correction, to a certain extent, are with us on some of these issues, too; they've been very helpful on disenfranchisement. In many cases, Prison Fellowship and the evangelical Christian organizations that reach conservative constituencies have been helpful, too. I think our strategy needs to incorporate all of these messengers and arguments.

The final part, it seems to me, is to do careful analysis. As in any social movement, you need to analyze the prospects, the situation, and how far along we are in the struggle. There are times and places when we can raise a fundamental race-based argument, and we might *want* to talk about public safety but we might not *need* to, because it's so fundamentally clear.

Just in the past several years we've been involved in the idea of racial impact statements for state sentencing and parole policy and the like. Just as we'd use a fiscal or environmental impact statement [to inform] public policy, when it comes to sentencing policy we should also proactively gauge the racial/ethnic impact of proposed policies.

The classic case here is the federal crack cocaine laws back in 1986. These raced through Congress in about twenty minutes or so. There was absolutely no

discussion of impact and certainly no discussion of any racial impact. It should be good government policy, before adopting a new mandatory sentencing law or changing parole policies, to project what the likely racial/ethnic impact is going to be.

I'm pleased to see that last year we had two states, Iowa and Connecticut, adopt racial impact statement laws that go into effect this year. The way they did it was based fundamentally on a racial fairness argument. Partly it was a shaming strategy. If you look at the racial dynamics in how states use incarceration, Iowa has the highest black-white disparity in the nation, and Connecticut is in the top five. To their credit, leaders in the states felt bad about this. You know, they can't

quite figure out where it comes from and all that, but they have a sense this is not a good place to be. And so they wanted to do something about it, and they had some good leadership in the legislature.

We want to be proactive; we want to raise these issues. There are times and places when we should be very up front and say, "This is all about race, and if you want to do something good to remedy this situation, here's a place you can start. Here's how we start to have the conversation." If we have that conversation out in the open, then one would like to think that we can at least modify some of the more oppressive policies and start to turn around some of the policies that are currently in place. That's our agenda.

Notes

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MASS INCARCERATION
AND GREEN CITIES

PHIL THOMPSON

Criminal justice reformers have successfully drawn the nation's attention to the reentry of formerly incarcerated individuals into their home communities, a transition that more than six hundred thousand people undergo annually in the United States. Much of the public discussion has focused on interventions to address the obvious reintegration challenges presented by this continuous flow of largely unskilled, unrehabilitated men and women back into low-opportunity urban, suburban, and rural enclaves. But the reformers have made the same mistake made by advocates for low-income families: they tackle the issues—including systemic unemployment, low-paying jobs, lack of affordable housing, health care needs, education failure—in isolation, rather than promoting comprehensive approaches to solve what really is a complex problem of economic, social, and political marginalization. This oversight encourages political fragmentation and weakens advocates' impact on public policy.

Our nation now faces an urgent new challenge that presents a rare opportunity to address the issues of formerly incarcerated individuals more coherently and also to reframe the problem of mass incarceration. That challenge is climate change. To address climate change we will need to reconfigure the built environment in substantial ways, which will require more workers. And as we move to a politics of full employment, we can recast the conversation about mass incarceration in labor-force terms and revisit our long struggle for true equal opportunity.

It is no secret that American prisons serve as warehouses for people on the margins of the workforce. Most fall into a growing "contingent class" of workers who perform routine, tedious, temporary jobs for low pay and no benefits and who are most vulnerable to the vagaries of the economic cycle. With 2.3 million people—many of them black and brown—currently behind bars, prisons conceal an army

of contingent labor that is largely unorganized, underskilled, undereducated, and, because of racism, least favored by employers. This situation masks America's true unemployment rate by at least several percentage points.[1]

Race and its conflation with crime have long inhibited a progressive approach to resolving mass incarceration, job discrimination, and other social equity issues. But the urgency of climate change and the prospect of millions of new "green" job openings in communities across the nation are changing the playing field. Climate change will give labor organizers a second chance to build racially inclusive movements. Community builders will have new opportunities to train local residents for good jobs that pay a living wage. Criminal justice reformers will be able to demonstrate that employment opportunity is the most powerful antidote to inner-city crime, recidivism, and neighborhood insecurity.

Green cities are not a panacea for all of America's social ills. Certainly, the process of addressing climate change will not magically undo this nation's legacy of structural racism. The enormous infrastructural imperatives will, however, create political and economic space for transformation that will not be fully exploited unless reformers perceive connections across their respective sectors and seize opportunities for collaboration.

CLIMATE CHANGE FROM A BROAD PERSPECTIVE

On an international scale, climate change is the cause of melting glaciers; higher temperatures; growing oceans; widening deserts; dead zones in oceans; and associated weather changes, food shortages, economic productivity problems, floods, and the loss of infrastructure that now lies (or soon will) below rising water levels. On a more local scale, there is no doubt that poor countries and neglected communities will bear the brunt of future climate-related disasters, as New Orleans's Ninth Ward did in 2005 with Hurricane Katrina.

One of the leading causes of climate change is carbon emissions. The United States and China lead the world in carbon emissions, with India coming fast behind. Without radical changes in the development patterns of these and other nations, carbon emissions will continue to increase rapidly. In the United States, whose population is one quarter the size of China's, the reason for high carbon emissions is our lifestyle. We use a lot of energy to heat and cool buildings. We drive cars a lot. Our sprawling cities require lots of roads and extended infrastructure. Since we bulldozed family farms to build suburbs, the average vegetable we eat must

travel fifteen hundred miles (refrigerated at thirty-eight degrees Fahrenheit) before it hits our plate.[2] And we have lots of energy-consuming gadgets in our houses, like plasma TVs and microwave clocks, that never turn off. These energy costs are enormous and unsustainable.

Moreover, our wasteful use of energy has been tied to U.S. military domination in the Middle East (as well as oil-producing countries like Venezuela) since the Second World War. Oil was so cheap in the beginning that Americans didn't think much about energy conservation. Now, one of the major issues of our time is whether the United States can agree with other nations to reduce carbon emissions and share natural resources on an equitable basis. The alternative is a sharp escalation of military confrontations over control of oil, water, food, and other natural resources.

Most U.S. citizens and news media are engaging with the issue of climate change through the prism of depleting resources, especially oil and natural gas, and the resulting rise in energy costs. The average family in the United States spends $5,000 per year on energy,[3] and energy costs are expected to rise by at least ten percent annually—probably a conservative estimate. (The price of a barrel of oil, for example, has more than doubled since 2000, despite an economic recession.[4] In 2009 alone, heating oil prices in Boston jumped 40 percent.) At a 10 percent rate of increase, the average energy bill for a family earning less than $50,000 a year will be around $10,000 in ten years, $26,000 in twenty years, and $68,000 in thirty years.[5] These rising costs are alarming for ordinary families and businesses, and public demand is growing for something to be done about energy costs—separate from the looming environmental effects of climate change on food, water, and other key resources.

The cheapest and easiest way to reduce energy costs is to stop using so much of it. Another way is to use fewer finite resources, like oil, and instead tap renewable sources of energy, such as solar, wind, and thermal. Cities are the biggest targets for reducing energy costs because they use the most energy, and that is because they have the most buildings. The construction and operation of buildings account for at least 40 percent of energy consumption in the nation (cars account for another 20 percent).[6] Retrofitting buildings with better insulation, energy efficient appliances, geothermal heating and cooling systems (using the earth's constant temperature to heat and cool air or water that can then circulate through buildings), solar panels on roofs and walls, heat and light sensing, green plants on roofs, and the like can dramatically reduce energy costs.

There are currently about 4 million commercial buildings and 126 million housing units in the United States, and almost all of them need to be retrofitted to reduce energy consumption. In New York City alone, 980,000 buildings need retrofitting.[7] Moreover, the U.S. population will increase by fifty million over the next twenty years, so at least six million new housing units will be needed.[8] New York City alone estimates a need for a million new units between now and 2030.[9] All will have to be built green—that is, capable of conserving energy.

The mayors of New York and Chicago are trying to implement building retrofits at a massive scale, and one thousand other U.S. cities have pledged to do the same.[10] Yet they face a major problem—and it's not the cost, because the money saved on energy bills quickly pays off the cost of retrofitting a building. The problem is that retrofitting the vast number of buildings involved will require an entirely new workforce of trained green electricians, plumbers, carpenters, and so on. There will also be a need for highly skilled building managers—people who know how to run and maintain geothermal, solar, and heat-sensing equipment.

New York City will need an estimated half-million workers in the building sector alone. Workers will be needed to produce energy-efficient appliances (e.g., air conditioners, refrigerators, windows, boilers) to install in the buildings. More workers will be needed to repair crumbling bridges, rail lines, water canals, and levees across the nation, and to expand mass transit to regional airports in places like New York and Boston. (Newark, for example, capped all new flights in early 2010 due to limited capacity.)

Nationally, we will need trillions of dollars in new investment, especially if we are going to reduce our dependence on cars. The federal government currently spends only $60 billion annually on infrastructure, of which $30 billion goes for roads.[11]

The green labor challenge represents the greatest opportunity for high-quality jobs since the formation of the modern ghetto. No city has yet created a system for remedial education, preapprenticeship training, and apprenticeship for the large number of unemployed or underemployed young people who will need to learn green construction. But if cities develop construction-training programs without the involvement of the building trades (i.e., labor unions), the trades will become largely irrelevant, and then we will have no assurance that green construction jobs will pay decent wages. Realizing this, the building trades are beginning to acknowledge that their future is tied to green construction and to the inner-city youth who are a prime source of future labor. Unions in Southern California, for

example, recently organized a green construction conference and pushed the City of Los Angeles's community redevelopment agency to require that all of its projects use union labor.[12] The unions accepted lower pay rates for construction in residential neighborhoods and agreed to train and

> The building trades are beginning to acknowledge that their future is tied to green construction and to the inner-city youth who are a prime source of future labor.

deploy workers from the inner-city neighborhoods. This was a tremendous win both for the unions and for inner-city, unemployed young people. (One ex-felon, featured in a recent report by the UCLA Labor Resource Center, now makes up to $80,000 per year as a skilled tradesman.)[13] The unions plan to extend the same concept to other city and county agencies. And while Los Angeles is in the forefront, other cities are also paying attention.

This development represents a fantastic opportunity to win broad public support for reeducating and employing ex-felons at a large scale. The entire process could speed up through initiatives already under way in cities like Los Angeles, Milwaukee, Miami, Cambridge, and Chicago, and with the creation of networks to spread lessons and cultivate interest.

Failure to make cities green in an equitable manner will have grave consequences. Sprawling U.S. cities, one of the major causes of carbon emission in the entire world, grew out of white (and, later, middle-class black and Latino) flight from inner-city racial violence, crime, and laws enforcing school integration. One of the great challenges of greening U.S. cities, which the environmental movement has not addressed, is how to lure whites and middle-class minorities back into central cities in order to minimize use of materials and energy and to lessen reliance on cars—without pushing poor people (largely black and Latino) out of central cities.

Poor people's displacement from our cities merely redistributes the burden of high transportation and infrastructure costs to those who can least cope with it. This has happened in many places across the country, where communities like Harlem, Northwest Washington (District of Columbia), West Oakland, and the Mission in the Bay Area have become increasing white and upper middle class while outer suburbs become increasingly poor and minority. Displacement does not eliminate urban sprawl, and it increases stresses on poor families as those who choose to remain in cities have to cope with rising real estate prices in addition to increasing energy costs.

Building green cities, therefore, requires learning how to build racially and economically integrated neighborhoods. This is hard to imagine doing without directly confronting the huge number of formerly incarcerated individuals—largely men of color caught up in deindustrialization and an ideological, race-centered War on Drugs—who are now un- or underemployed in inner cities. Greening cities offers a chance to see these individuals in an entirely different light. If we treat the reentry issue separately, as a moral issue or something that only impacts minorities, we will have lost a great opportunity.

KEY ISSUES FOR GREEN TRANSFORMATION

Five policy issues (or political battles) will dictate the pace and scale of going green in the United States, and the issue of reintegrating formerly incarcerated individuals has to be incorporated into each if we hope to produce a common vision and collaboration across policy silos.

Energy conservation versus new production

Let me start with an example. Florida's electric utility provider wants to build a nuclear reactor at a cost of $7 billion or more. The city of Miami, meanwhile, is developing an energy conservation plan that will save as much electricity as the new power plant will supply. That plan will cost about $2 billion to initiate and will pay for itself over time, because it lowers costs below current expenditures for electricity.[14]

Conservation, such as retrofitting buildings, creates a lot more jobs—especially for low-income people like ex-felons—than nuclear plants do and is cheaper, safer, better for consumers and workers, and better for our social fabric.[15] There are similar public policy battles emerging all across the country; nuclear plants have been proposed in at least twenty-two different places, at an astronomical cost. We must win these battles to get public dollars committed to conservation and jobs for low-income people in cities. Due to extreme policy fragmentation in the United States, however, advocates for low-income people are entirely missing from the nuclear energy debate.

Rebuilding cities

The United States has urban programs but does not have an urban policy. This puts us in a dangerous position, because increased transportation costs and penal-

ties on carbon emissions will create incentives for people to move from the outer suburbs into cities—places where poor people are concentrated. The increased population in cities will lead to higher real estate prices, as it already has in many parts of the country. One of three things will then happen to poor people: (a) they will be stuck with higher costs for housing, compounding the crisis in affordable housing; (b) they will be forced to move into the distant suburbs to find cheaper housing, where they will face high transportation costs—with no reduction of urban sprawl; or (c) they will live in informal settlements in cities so that they can get to work. We have already seen this informal shantytown pattern and its effects in Latin America, Africa, and Asia.

We need an urban policy that ensures workers can find affordable housing in greening cities and does not create massive uprooting, higher fuel costs, and further impoverishment as a result of greening cities. The challenge is to create policies that build economically and racially integrated communities with good schools, high rates of productive employment, and low crime. We are far from that right now.

Creative ways to finance affordable housing and urban improvements already exist. Britain, Australia, Colombia, and other South American countries have for decades assessed the value of property before and after public improvements such as the construction of parks and infrastructure.[16] Part of the windfall that some property owners receive after public investment is used to fund low-income housing or open space, or to compensate people who suffer the negative consequences of public decisions. Now is the time to explore similar approaches in the United States.

Good jobs

There is nothing automatically "good" about construction jobs. Historically, they were good jobs because they were unionized and therefore paid well. But many unions kept minorities and women out of those jobs, so they were not good jobs for everybody. Today, it is clear we need a monumentally large, new workforce to retrofit the millions of commercial buildings and tens of millions of homes that need to reduce their energy consumption, build ecologically sound water-management systems, and fill local manufacturing jobs (which will become more cost-effective for manufacturers than paying to transport goods created elsewhere).

The big and unanswered questions are, will these workers be well trained and well paid? How will the training take place at the scale required? Who will pay for it?

How will remedial education be provided to people whose reading and math skills are below par? And how will wage standards get set?

City governments will answer many of these questions in their green city plans. We need to help them ensure that the jobs created by greening our cities lift people out of poverty and do not just create handfuls of new millionaires.

Wealth generation

Many of our urban electrical grids are operating at full capacity, putting us at risk of brownouts as demand increases. Thus there is a short-term need for more energy as well as for conservation. One alternative to building new power plants is to use community-based power generators that run on natural gas or hydrogen. They are relatively inexpensive (and pay for themselves quickly), clean, and much more efficient than big power plants.

Moreover, some towns allow local energy producers to sell energy back to the grid. So, for example, residents of a subsidized housing development could do their laundry at night and run the generator for profit during the day, when energy prices are highest. The same can be said for water management facilities at the community level. In this way, energy can be an economic engine for low-income communities, just as it is for big energy companies. Ultimately, the sale of community-based energy could replace drug dealing as a means of wealth generation.

Building an environmental, labor, and urban community coalition

It will take a powerful political movement to bring about the kinds of policies outlined above. But if we include good jobs, broad wealth generation, and transforming cities in our vision of what green means, we have a huge opportunity to build a movement that unites people in poor urban communities with big-city mayors, labor unions, justice reformers, and environmentalists. And if we do not build such a coalition, I think we soon will be in more trouble than we are now.

ADDITIONAL COMMENTS FROM THE PUBLIC FORUM

PHIL THOMPSON: I'm not going to talk about criminal justice per se, mainly because I don't know that much about it. But when the numbers of incarcerated and formerly incarcerated people are as large as they are in inner-city neighborhoods, talking about criminal justice as an issue unto itself, separate from community, to me is just wrong. When I look at my own family, I don't talk about criminal justice as a separate issue because it's a family issue. I feel the same way about the community.

The fragmented way in which we are approaching problems like housing, schools, and prisons is killing us politically. All the groups that go and get their money in their own little window are hurting us. And we don't have any of the old movements we once had that have the language or the frameworks you're talking about here. We've actually regressed politically from where we were a generation ago in terms of how we think about what's going on in communities. So that's why I'm not starting with criminal justice.

I wanted to focus on opportunity in my paper, and I think that right now green jobs are a real opportunity. Energy prices have gone down recently. Gas, anyway, has gone down. But that's temporary. In the year 2012, the federal government says, we're going to peak globally in terms of oil and gas production. Every year after that there'll be less of it at a time when China, India, and other countries are growing rapidly and demanding more oil. So this little downturn in prices is very misleading.

If every homeowner, building owner, and business owner who owns a building does not retrofit to reduce energy consumption, their energy bills are going to be more than their mortgages. That's the economics behind it. Another reason to reduce consumption is that future taxes on carbon will make buildings more expensive.

Knowing this, I went with a labor leader last summer to have a conversation with the national building trades. I said, "Guys, I don't know if you've been following this, but a lot of cities are writing green plans. New York says they're going to green (retrofit) 980,000 buildings. Chicago says they're going to green 600,000 buildings. Do you know how many jobs that means? But you weren't in their plan. There's no workforce to do this work at that scale, but they're not thinking about you. Why do you think that is?"

Then we said to them, "If these jobs are union jobs, you're going to double or triple in size fast. However, if these jobs are nonunion jobs, you're done. If another workforce training system gets developed to do this green work, then that's going to put you out of business because the scale of this is so big. People won't pay

you when there's a cheaper alternative that gets built around you. And why are people building alternatives around you? Because the labor force of the future is black and brown. These Irish kids in the suburbs are not breaking your doors down to become laborers or carpenters. And people in communities of color have given up on you. So if you don't change now, at your roots—if you don't rethink your history and message and change—you're dead."

They have really embraced this big-time. They've done some deep soul searching in a matter of months. Now they're saying they're going to open up their 1,100 training centers focused on young, urban people of color to target for training, to build a new workforce of a million or more people to do all of this work that's coming. However, they've also said that the work has to really be there. The building trades in New Orleans tried something similar but the Bush administration decided not to rebuild the city, and they got burned.

So we joined with some community groups and more unions and went to the Obama administration. We asked for $10 billion in loan guarantees to be in the economic stimulus package to leverage private money to finance green retrofitting. We asked for half a billion dollars for training. We asked for $5 billion to be set aside for low-income retrofits. We met this week with the administration, and in the stimulus package they put $50 billion for retrofitting schools, buildings, other public buildings. They put in

all the money we requested for training, and more. They put in $6 billion for low-income housing retrofitting, and $100 billion for loan guarantees that will be split between some of the green technology people and our sort of retrofitting projects. So for the building trades this is now real.

Now what are our problems? One is our model for designing programs that will get young, inner-city people into the trades and on the job. In New Orleans, 60 percent of the young people who come to job training centers have a third- or fourth-grade level of functional reading and math. Laborers require an eighth-grade minimum, and carpenters and electricians require a twelfth-grade minimum. So clearly, we need remedial programs. We also need drug treatment programs. Many of the people coming in for jobs are formerly incarcerated individuals so we need to deal with their issues, and we don't have a model yet. There are some promising models in Los Angeles, Seattle, and other places, but we don't really have a good model for how this is going to work. So that's emergency number one.

Number two: stimulus money and loan guarantees are coming for retrofitting individual buildings. A lot will be privately financed, but money is also coming in for schools and public buildings. There's also money coming for infrastructure, so here's a chance to actually rebuild cities and neighborhoods comprehensively. If we redo all of these things separately, in isolation from each other, we'll miss huge

opportunities to actually take whole communities off the grid and reduce their energy bills to zero forever. That's the kind of opportunity that exists, but you've got to plan for it.

Number three: how's the financing going to work? Retrofitting the ghetto is different from retrofitting downtown. As soon as you touch one of our old schools, a lot of our old buildings, you hit asbestos problems, and that doesn't fit the business models of banks that want to invest in this work. So they will skip our neighborhoods unless you force them to deal with it. We have to organize labor-community coalitions in cities across the United States, because you've got to have advocacy and pressure on the mayors and governors to make sure that poor neighborhoods don't get skipped and that they adhere to wage standards and support training programs.

Those are the emergencies on our plate now. They're daunting, but the goal of the trades is to reach a million training centers in two years, and we can do it. (They have 1,100 centers now.) The Obama administration has said they can't do everything so they're really going to do the things they care about, and one of the things they care about is jobs for our urban, unemployed, and underemployed young people. They are punching in this direction. So now the onus is on us to really step up.

Notes

1. Now at a twenty-six-year high of 9.7 percent, according to the Bureau of Labor Statistics (July 8, 2009). See www.google.com/publicdata?ds=usunemployment&met=unemployment_rate&tdim=true&q=unemployment+rate.

2. B. McKibben, *Deep Economy: The Wealth of Communities and the Durable Future* (New York: Times Books, 2007), 64.

3. Households earning less than $50,000 per year spend more than $4,300 per year; wealthier households spend considerably more. See http://politics.usnews.com/news/washington-whispers/articles/2010/03/23/high-energy-costs-for-the-poor-might-push-action-in-congress.html.

4. Http://www.eia.doe.gov/EMEU/steo/realprices/index.cfm.

5. Rough calculations by the author, which do not account for inflation.

6. Energy Information Administration, http://www.eia.doe.gov/.

7. Http://www.nyc.gov/html/planyc2030/downloads/pdf/report_energy.pdf.

8. Http://www.huduser.org/Publications/PDF/demographic_trends.pdf.

9. Http://www.nyc.gov/html/planyc2030/downloads/pdf/report_housing.pdf.

10. Http://www.usmayors.org/climateprotection/revised.

11. Http://www.infrastructurereportcard.org/report-cards. See also http://www.nap.edu/catalog.php?record_id=12638.

12. Http://www.labor.ucla.edu/programs/pdf/ConstructionCareersForOurCommunities FullReport.pdf.

13. Ibid.

14. Http://www.miamigov.com/msi/pages/Climate%20Action/MiPlan%20Final%20 062608.pdf.

15. Http://www.world-nuclear.org/info/inf41.html.

16. P. Acosta, "Policy Learning: New Challenges for Smart Value Capture in Colombia" (master's thesis, MIT, 2008), http://dspace.mit.edu/handle/1721.1/7877/search?query=acosta &rpp=10&sort_by=0&order=DESC&submit=Go.

TOWARD A NEW DEAL FOR TWENTY-FIRST-CENTURY CRIMINAL JUSTICE IN AMERICA

Changing the
Public Common Sense
about Crime and Punishment

KEITH O. LAWRENCE

Justice reformers understandably concentrate on the many glaring and urgent institutional and systemic inequities in America's vast justice and punishment architecture. In areas like legal representation for poor defendants, racial profiling, mandatory sentencing, disposition of juvenile cases, and many others, there is no shortage of laws and policies in urgent need of passage or repeal. Many police, court, and prison practices also urgently need public exposure and equitable repair. These visibly flawed aspects of the criminal justice architecture are some obvious reasons why the daily lives of so many people of color are regulated in some way by the criminal justice system.

Despite the already large scope of that justice reform agenda, however, an even more ambitious one is needed to disable the mechanisms that actually amplify the race-making power of each issue. The obvious features and effects of America's justice architecture today mask its subtler, everyday role in sustaining associations between color, nativity, and social worth in the post–civil rights period. Along with the racial/spatial surveillance and containment we readily perceive, our social control apparatus also operates on a deeper psychological level to reinscribe race continuously on what Americans most deeply value and fear. What, whom, and how we punish thus reinforces gut-level assumptions that crime, social space, and race are interrelated and mutually constructive.

Much of this processing is unconscious, according to social cognition experts. Everyday media imagery of black and brown street crime and social dysfunction encode the quality of community in racial terms within the public mind. So does public discourse about undocumented immigrants and terrorists who are not white.

A common sense laden with racialized cognitive frames helps to maintain a permissive environment for the prevailing black and brown overincarceration paradigm. Americans are not horrified by the race/prison picture because it seems an unavoidable prerequisite for the "community ideal." Despite a public rhetoric of inclusion and multiculturalism in recent decades, market forces dictate that the ideal community remains an essentially white space shielded from black and brown encroachment by a variety of highly effective racial sorting devices—such as our law enforcement and justice systems, local zoning policies, and mass transit arrangements—that appear neutral on the surface. Such spaces are largely exempt from the intensive law enforcement scrutiny that criminalizes daily life in poorer, nonwhite urban spaces. And so the seemingly uneventful, law-abiding lives of most white Americans reconfirm beliefs about what deserves to be labeled "crime," who poses the gravest threats to our security, and—more broadly—who merits full social inclusion.

Ultimately, it is this American impulse to continually find criminal justice rationales for sorting, monitoring, confining, and excluding darker-skinned populations that really must concern justice reformers. Efforts to reform American justice comprehensively cannot stop with discrete institutional and procedural fixes, because these are unlikely to add up to equitable justice. If history is any guide, the justice system will reinforce the crime-race cognitive connection that does so much to stigmatize color and national origin in everyday life, despite those fixes. Therefore, comprehensive reformers must also tackle dominant perceptions and popular narratives of community, race, crime, and security head-on. And they must promote an alternative ideology of public safety that resonates with the communitarian and colorblind values that more and more Americans seem willing to embrace publicly.

Discussions during the framing of the project "Rethinking Crime and Punishment for the Twenty-First Century," which generated this volume, suggest that a new public knowledge about the meanings and relatedness of *race*, *crime*, *security*, and *community* might require these essential building blocks:

- A changed public common sense about "whiteness" and "color" that reverses incentives for a national politics that privileges mass incarceration and other forms of racial-spatial sorting as devices for creating security, reducing fear, and managing risk

- Wider recognition that social and economic rights were fundamental cornerstones of American democracy and part of the basis of our nation's security

- Heightened public awareness that the state must guarantee those social and economic rights

What follows below are eight specific ideas for generating these supports for a new, racially equitable context of public knowledge and rights for criminal justice.[1]

Identify opportunities to unlink race and crime in the public understanding.

Since crime and race are so linked in the public imagination, reformers must seize and exploit every opportunity to undermine this insidious and durable connection. September 11 exemplified a valuable missed opportunity to change the dominant crime frame by providing an alternative language for mobilizing a fearful electorate. That tragic event briefly altered perceptions of a domestic law-abiding/law-breaking profile that coincided with race. It created space for alternative frames relating to who and what needed to be most feared. Many observers sensed a realignment in perceptions that replaced black males in the threat column with foreign Muslims and illegal immigrants. Needless to say, this substitution was no cause for celebration. Racial equity and social justice obviously are not served by replacing one group stereotyped as inherently threatening with another disfavored one. This example is valuable, however, because it demonstrates that unexpected shifts in the cultural psyche provide opportunities for breaking down the common sense of essential and permanent black/white sociocultural differences that are used to justify black subordination (Ian Haney López).

The widespread economic devastation caused by recent crises in the financial and housing sectors offer another window of opportunity for reframing social security (broadly defined) and what most threatens that security. Progressive reformers need to be sufficiently agile and resourceful, however, to fill a perceptual vacuum like this with frames that do not activate new racial biases.

Raise the profile of white-collar crimes that actually affect more people's lives than localized street crime.

Efforts to unlink blackness from crime might also benefit from equal prosecutorial and media attention to tax fraud, insider trading, corporate corruption, and other major financial crimes and more public transparency in the disposition of such cases. That might go a long way toward changing beliefs about who is "criminally inclined" and might also illuminate the social costs of white-collar crime (Jonathan Simon). The public is largely unaware of the far-reaching harm caused

by corporate crime and greed and how privileged corporate figures exploit the judicial and legislative systems (e.g., through plea bargaining and immunity deals) for their own benefit.

Decriminalize social problems that afflict poor communities of color disproportionately.

The de facto criminalization of drug and alcohol dependency and mental illness effectively penalizes entire families and communities. It also makes the criminal justice and prison systems (rather than, say, schools or community centers) *the* dominant public institutions in poor communities of color. Minor drug possession, for example, still brings a disproportionate number of black and Latino youth into contact with law enforcement. There are important complexities to be considered, of course, such as the quality-of-life concerns of law-abiding residents of these same communities. Another complex issue relates to the unintended racial consequence of increased societal attention to domestic violence and child abuse and neglect. Perpetrators of violence against women and children must be held accountable, punished, and deterred. Yet we must also be aware that socioeconomic realities and biases within the enforcement systems governing these areas result in the disproportionate arrest and imprisonment of minority men and women for these offenses (Kimberlé Crenshaw).

Publicize the widespread disaffection with mass incarceration within law enforcement, corrections departments, and the courts.

Hardly anyone administering the criminal justice system has faith in it or believes that harsh punishment and prison make people better or society safer. Reformers might remind the public that although imprisonment seems a logical justice response, police officers typically feel that it is ineffectual and that their work is underappreciated; judges often feel hobbled by mandatory sentencing guidelines; and many corrections departments feel overburdened and underresourced. A public that is more aware of such widespread discontent might be much more open to innovative, more rational criminal justice visions and remedies (Todd Clear).

Highlight ways in which our nation's laws, penal system, and other institutional areas that shape opportunity are structured by racism.

Racial equity advocates face a formidable public communications challenge due to the growing appeal of colorblindness as a post–civil rights racial ideology. Col-

orblindness now dominates the pub-
lic common sense about race, largely
because conservative strategists want
to promote individualism and dele-
gitimize aggregate racial outcomes
as measures of social justice. Color-
blindness has also gained traction be-
cause the problem of structural rac-
ism has not been defined, developed,

> Colorblindness has also gained traction because the problem of structural racism has not been defined, developed, applied, and communicated in lay terms to which people can relate.

applied, and communicated in lay terms to which people can relate (Ian Haney López). Criminal justice advocates might consider making the translation and ev-eryday application of this concept a top priority. It is vital to filter what the public knows or thinks it knows about crime and punishment through a sophisticated lens that contextualizes individual responsibility within America's history of racial hierarchy and white privilege.

For instance, sentencing disparities associated with the races of defendants and victims (e.g., blacks convicted of killing whites are twenty-two times more likely to receive the death penalty) are unlikely to be persuasive unless criminal justice reform advocates use such facts to tell a structural racism story. Indeed, the im-morality of race-based justice has not, for the most part, been a winning argument with the courts.[2] Even when judges acknowledge racial disparities and concede a likelihood of racial bias, they are loath to identify racism as a cause or explanation and tend instead to elaborate a conception of racism more consistent with color-blindness, in which actors are either purely, intentionally racist or purely innocent. Despite the growing research evidence, unconscious racial biases of individuals or institutional actors have not been recognized by our courts.

In this legal and legislative environment, a popular translation of structural rac-ism for every opportunity-related sector might be helpful. For criminal justice and every other domain, illustration that structural racism is continuing, cumu-lative, cultural, concrete, and functional could go a long way toward changing narrow perceptions of intent (Ian Haney López). Applied to criminal justice, structural racism's *continuity* might be illustrated by examples of racialized poli-cies and practices of the past that are the foundation of the current criminal justice system. Its *cumulative* nature might be revealed through demonstrations of how effects of race accumulate at critical decision points within the justice system—for example, police officers' decisions about arrests and charging, jury selection, prosecutorial discretion, sentencing decisions, legislative priorities—

and how these choices interact with others in education, housing, public health, and other sectors to the disadvantage of minorities. Specific *cultural* ideas that legitimize ongoing criminal justice disparities and perpetuate the way our society punishes and functions might be identified. Attention might be drawn to the *concreteness* of structural racism—its manifestation in the cement, bars, practices, jails, ghettos, and other entrenched machinery of mass incarceration. And reformers could highlight the *functional* nature of structural racism due to its embeddedness in the unconscious mind we all apply reflexively in our assessments of crime, risk, and security.

Advance human rights, restoration, decriminalization and other community building values.

One historical-political explanation of the enduring race-crime nexus in the public mind is the United States's long-standing reluctance to legitimize a human rights narrative of minority disadvantage. In earlier periods, a variety of "civilizational," "cultural," and "biological" arguments propped up U.S. resistance to universal human rights. Since World War II, geopolitical expediency has been the biggest barrier. This national posture was an explicit feature of U.S. internationalism in the early twentieth century and of the domestic struggle later on to define black freedom and equality in ways that would not threaten white supremacy and alienate the white supporters who were still uncomfortable with the prospect of complete black inclusion in the private sphere (Carol Anderson). The indivisibility of human rights clashed with a mainstream determination to retain blackness as a symbol of the excluded, undesirable "other."

Although this nation has led a strong international human rights regime since 1948, fewer and fewer leaders within disadvantaged communities of color in recent years have envisioned human rights as a useful mobilizing tool against racial inequities. Reasons for this are complex, but civil rights gains since the 1960s played an important role in undermining its moral appeal and political utility. Yet human rights' devaluation in these respects robs justice reformers of a potentially powerful rallying idea, given the role of the American criminal justice apparatus in the regulation of race.

Under the moral umbrella of human rights, several related criminal justice principles might also be advanced. Collectively, these offer an alternative to the prevailing individual blame and retributive justice model that relies so heavily on prisons. Among these are restorative justice, rehabilitation, community reintegra-

tion, community justice, and other principles more likely to build community capacities, strengthen social ties, and promote security (Alan Mobley).

Focus on effective communication about the meaning of black and brown mass incarceration.

> *"Recitation of facts alone won't bring change."*

> *"Information about disparities of groups that are disfavored actually hardens disfavor against them."*

> *"We need to recognize that we've already won the disparities debate and now focus on communicating its meaning."*

> *"We need to remember that a structural racism analysis is not a program or communications strategy."*

These quotes capture the overall sentiment that there ought to be greater focus on effective communication of a very complicated race argument: that *racism continues to order American society despite civil rights progress and despite a mainstream political rhetoric of equal opportunity, meritocracy, diversity, and colorblindness* (john powell).

The development of effective narratives to counter dominant, decontextualized images of black and brown irresponsibility and criminality is a crucial need. These counternarratives must communicate succinctly that individuals are responsible for their actions but they are also connected to resource and capacity-building systems that powerfully shape their images of progress and the menu of tangible opportunities that are within their reach as individuals.

In particular, this language must be tailored for the audiences most likely to "get it" and do justice to it. This might be accomplished through engagement with groups with the capacity to develop appropriate messages and disseminate them effectively—for instance, journalists, artists, young people, the civil rights community, environmentalists, urban planners, architects, filmmakers, women's organizations, labor unions, advocates and activists who were formerly incarcerated, immigrant coalitions, and death penalty activists.

Initiate place-based work that will generate success stories.

Demonstrable successes with alternative approaches to crime and punishment might go a long way toward changing public perceptions. Reformers could target a few demonstration neighborhoods for comprehensive racial equity/justice engagement, emphasizing the following approaches:

- Leveraging innovative financing strategies and incentives, such as justice reinvestment and local savings of prison costs
- Finding new labor market opportunities (e.g., green building) for the formerly incarcerated, through new business coalitions
- Rethinking the role of other large local institutions, such as universities, with respect to training inside and outside prison walls

Finally, participants in the Rethinking conversation noted that all these "new knowledge" ideas imply that media institutions should be deliberately targeted for reform. Racial niches are starkly outlined by the media, despite the careful attention most mass-media institutions now give to creating multicultural public images. News media are most culpable as perpetuators of racial crime stereotypes, and entertainment media reinforce the narrative of prison as a logical social-control norm, even as they exploit the public's prurient interest in prisons for their own commercial gain. Work must be done to influence all popular media to accept greater responsibility for racial equity and justice through attentiveness to the racial representations and frames they reinforce in the public mind.

Notes

1. Many of these ideas were discussed in depth at the Aspen Roundtable on Community Change's Rethinking Crime and Punishment for the Twenty-First Century Seminar in June 2007. The individuals who offered these ideas are identified parenthetically in the text. See the appendix for their biographical information.

2. *McCleskey v. Kemp*, U.S. 279, 327 (1986).

Targeting Strategic Institutions and Movements for Intervention

KEITH O. LAWRENCE

Some individuals make choices that place them at greater risk of entanglement with the justice system and bear significant personal responsibility for the consequences. But individuals do not operate in a societal vacuum. The institutions and systems within which they, their families, and their communities are embedded also determine their life chances.

In particular, law enforcement departments, courts, and prisons form only the inner core of the architecture of mass incarceration. Several other external structures complement our racialized justice apparatus—directly and indirectly—and play a huge role both in shaping local opportunity and handicapping Americans of color. Therefore, justice reformers should focus strategically on the *full* range of institutions, systems, and movements that increase the likelihood that men and women of color will have contact with the justice system and, once within it, will be treated disadvantageously.

Sectors such as education, employment, social welfare, labor, health care, and housing could, for instance, be primary targets. The *school-to-prison pipeline,* now a commonplace shorthand for the relationship between failed inner-city schools and the low educational levels of most inmates of color, may be the clearest example of a direct connection. Equally direct is the urban unemployment-prison connection: as legitimate blue-collar jobs disappear from cities, illegitimate moneymaking opportunities become more attractive.

These sectors not only determine the supply and distribution of opportunity across communities; many have also evolved draconian and punitive regulatory cultures that help to entangle the people they serve with the criminal justice system. For example, the disciplinary policies and security regimes of many inner-city public

schools are distressingly reminiscent of prison. In many large public housing authorities, management policies overemphasize control, surveillance, and zero tolerance for a long list of infractions. The police presence tends to be significant and constant, particularly where housing developments include many young males of color.

At the same time, trends within some of these "peripheral" institutions may also offer opportunities to build a new infrastructure that advances racial justice. Leading voices in public school reform, labor union reform, child welfare, the green jobs movement, and other sectors share an appreciation of how structural racism and legacies of black and brown marginalization in all those areas feed into racial inequities today. Some suggest that justice reformers take the lead in creating a cross-sectoral infrastructure of organizations and movements to support a more diffuse racial equity agenda. They also advise more deliberate integration of the resources and efforts of progressive academicians, practitioners, policy makers, and others within civil society who are willing to help transform justice.

The Rethinking project surfaced the following ideas for addressing institutional issues, developing infrastructure, and collaborating with movements and organizations to advance racial equity and social justice.[1]

STRATEGIC INSTITUTIONAL TARGETS FOR REFORM

Encourage legal institutions (including the Supreme Court) to broaden the frame of antidiscrimination law.

Civil rights and criminal justice reformers could work together to broaden the current frame governing antidiscrimination law—specifically, on a collective strategy for overturning the "intent" doctrine (Ian Haney López). Antidiscrimination law has been so stifled that a broader definition of *discrimination*, consistent with a structural race analysis, is sorely needed.

Reformers might try to recapture the race discourse, given the growing national sentiment that race is no longer a problem and the strong pressures to ban collection of racial outcomes data (Kimberlé Crenshaw).

A refashioned race discourse must not be just about nonwhites or simplistically situate whites as perpetrators of the problem. It ought to clarify how *everyone* is affected by structural racism (john powell). Equally important is the need to debunk

false distinctions between race and class, given many Americans' comfort with superficial understanding of the latter.

Encourage media and other institutions to take responsibility for racial equity internally and to promote racial equity and social justice externally (in society).

Participants tagged media institutions as crucial targets for reform. Reformers might attempt to "seed" other important institutional venues, in addition to the media and the courts, with a structural race analysis and transformative justice ideas (Eric Cadora). Examples include local and state government planning departments, regional governance organizations, school boards, business coalitions, community colleges, and large universities.

Care should be taken, however, in targeting the criminal justice system itself in this way. Talking about racism as a structural issue may not resonate within correctional circles. More compelling, perhaps, are equity-oriented justice proposals that are fiscally attractive, grounded in experience, and capable of inspiring the trust and confidence of correctional practitioners and a wider public that may always demand safety above all else (Todd Clear).

NEW INFRASTRUCTURE TO BE DEVELOPED

Build an integrated movement infrastructure.

Steps might be taken to vertically and horizontally integrate institutions, organizations, coalitions, and individuals capable of generating research, messaging, communications, and advocacy for countering regressive narratives and policy initiatives. The currently fragmented justice reform community would benefit greatly from closer intellectual and tactical coordination (Kimberlé Crenshaw). And a better-integrated infrastructure might better utilize the inputs of nontraditional stakeholder groups, such as families of the incarcerated, black environmentalist organizations, unions, and immigrant rights organizations (Alan Mobley).

Integration efforts should be accompanied by efforts to construct and support a progressive social science research network. Well-defined visions of alternative penal systems that are not structured by race are particularly needed, and the process of generating them would necessitate much more dialogue among diverse justice reformers and across social science disciplines than currently exists. A research

network might also pay more attention to the acquisition, quality, and application of a broader spectrum of race-related data and to the framing of a twenty-first-century race paradigm to counter the very potent colorblind formulation.

Develop and train a critical mass of leaders and youth who are conscious of structural racism.

We need more leaders who share a structural understanding of race and justice and can engage local governance with that analysis. Training in this area could target leaders in civil rights, social policy, labor unions, business, grassroots organizing, local government, and philanthropy (Phil Thompson). The training curriculum should include policy knowledge and analysis and the skills required to participate in local governance. An approach to youth development, for instance, might include the design and introduction of a high school or an undergraduate curriculum on structural racism.

COLLABORATION WITH MOVEMENTS AND ORGANIZATIONS

Identify and exploit emerging democratic and racial justice opportunities in other domains.

Current debates about climate change, economic globalization, immigration, and national security are creating a new politics that could be shaped to break pernicious links between race, space, and social control norms. There may be a new opportunity to inform domestic and global policy with the awareness that "whiteness" and "color" will continually be reconstructed and revalidated if equity issues in all these areas are resolved in traditional ways. For instance, we can demonstrate how fears and prejudices associated with race quietly facilitate orientations toward governance across many policy domains. From immigration, to terrorism, to health care reform, we see indications of how race and nativity might skew governance priorities more toward security, surveillance, and enforcement than toward equity and human rights.

Seize the electoral and movement opportunities presented by climate change, labor unions, immigration reform, and national security crises.

Opportunities presented by practical politics and governance should not be held hostage to the philosophical enterprise of revisioning race, crime, and punishment. These tracks of work could complement each other. Many salient pol-

icy issues—immigration, terrorism, reentry, school safety, among others—intersect sufficiently with race and prisons to be relevant to justice reformers. Moreover, there is ample room for grassroots movement building around a structural racism frame-

> We need more leaders who share a structural understanding of race and justice and can engage local governance with that analysis.

work, as well as for attention to electoral and legislative institutions and processes.

For instance, as concerns grow about the reentry of more than 650,000 formerly incarcerated individuals annually to their home communities, unions (Phil Thompson) and environmental organizations (Van Jones) offer ripe opportunities to create new multiracial alliances around twenty-first-century urban and suburban renewal. Similarly, future demand for blue-collar labor to retrofit our built environment for energy conservation may be an opportunity to engage diverse stakeholders around the workforce effects of mass incarceration. If they materialize, federal, state, and local investments in "green" technologies, conservation, and training promise to dwarf the New Deal in job-creating potential. There also may be unexpected opportunities here for democratic movement building and downsizing prisons.

Many grassroots movements represent excellent examples of areas where community, race, working-class opportunity, and overincarceration converge, but those linkages frequently get overlooked. America's historical narrative on unions, for instance, warrants a major racial reframing (Phil Thompson); other progressive movements evince a similar ambivalence about structural racism and a seeming inability to recognize that the progress they seek requires deliberate attention to internal racial fissures.

In sum, contemporary criminal justice dynamics might present immediate movement building opportunities. Properly contextualized, the reentry phenomenon could provide a unifying thread and common entry point for usually fragmented labor, immigration, jobs, health, housing, and other campaigns, all seeking to improve the political and economic clout of the same communities. Moreover, grassroots engagement around this issue may very well facilitate the bottom-up flow of knowledge that many reformers consider essential for reframing current social and criminal justice values.

Notes

1. Many of these ideas were discussed in depth at the Aspen Roundtable on Community Change's Rethinking Crime and Punishment for the Twenty-First Century Seminar in June 2007. The individuals who offered these ideas are identified parenthetically in the text. See the appendix for their biographical information.

A New Deal for Twenty-First-Century
American Criminal Justice

A PROPOSAL BY THE OPEN SOCIETY FOUNDATIONS AND THE ASPEN INSTITUTE ROUNDTABLE ON COMMUNITY CHANGE

OUR ASPIRATION FOR AMERICA

We seek a New Deal for Twenty-First-Century American Criminal Justice that reflects our deepest aspirations about democracy, liberty, justice, and equal opportunity. We want to live in an American society that realizes its historical commitment to the ideals of democracy, liberty, justice, and equal opportunity. To make these ideals a reality, we must take individual and collective responsibility to address impediments to self-governance, freedom, fairness, and a level social, political, and economic playing field.

The criminal justice system is one of the greatest of such impediments. With the highest incarceration rate in the world, and severe racial disparities in incarceration, the United States has deprived millions of Americans of their capacity to participate in civil society. The criminal justice system has also undermined fairness and equal opportunity with disproportionate policing, enforcement, and imprisonment of minorities.

We must therefore rethink our approach to criminal justice so that we achieve public safety without sacrificing our basic, shared moral principles. With recent shifts in economic and political power, America now has a rare opportunity to create a humane, democratic justice system grounded in rehabilitation, reintegration, fairness, and racial equity.

THREATS TO OUR TWENTY-FIRST-CENTURY JUSTICE ASPIRATION

Over the past four decades of the past century, the United States has relied increasingly on prisons to solve crime and other social problems. Even though we've be-

come the world's leading jailer, however, Americans still feel remarkably insecure. Denying so many of our citizens their most basic freedoms has also made America less democratic at home and less respected as an exemplar of justice and human rights abroad.

If Americans aspire to safe, thriving communities and restored global standing as a beacon of justice, human dignity, and hope, they must acknowledge some deep-rooted barriers to those ambitions:

- Avoidance of an honest discourse on how and why racism and class bias inhabit and distort criminal justice structures

- A self-destructive habit of using criminal justice tools to address social problems such as poverty, unemployment, mental illness, substance abuse, educational underachievement, and homelessness

- A powerful public and private prison industry that does not serve our moral, political, or economic interests

- The centrality of crime and security fears in how we organize and run many public institutions set up to serve our poorest and least-advantaged communities

THE WAY FORWARD: CHANGING OUR FRAME ABOUT CRIME, PUNISHMENT, AND RACE

America's 2008 presidential election marks a great leap forward. This transformational period in our history offers a unique opportunity to change beliefs and policies related to crime and punishment that give us a society in which individuals of color face much higher risk of imprisonment. Traditional justice reform initiatives still need to be pursued, but these alone will not bring transformation. For that, America also needs a new values framework for criminal justice.

President Barack Obama has already sounded two framing themes that can be harnessed for a New Deal on this front:

A broader idea of social responsibility should give equal weight to the obligations of individuals and *government for community progress.*

Individuals are personally responsible for their behavior. However, Americans know that societal factors shape personal decision making, too. We need to be more willing to take collective responsibility where public policies and institutional practices create local conditions that lead to disproportionate minority contact with the justice system.

Social problems often have hidden implications for our national security.

Chronic joblessness and educational underachievement in communities of color are connected in many ways to our nation's criminal justice priorities. Along with their obvious racial inequities, these problems threaten America's physical, economic, and democratic security. For instance, mass incarceration adds to the recruitment challenges facing America's all-volunteer military.[1] Escalating immigrant detentions and deportations over the past decade violate our human rights standards and destabilize our neighbors in Mexico, Latin America, and the Caribbean.[2] High rates of imprisonment have not made Americans feel safer, and they come with a $60 billion annual price tag for taxpayers.[3] And the well-documented disenfranchisement of convicted Americans denies their individual rights and endangers our democracy.

We propose two additional reframing ideas:

Acknowledge and reject our national tradition of regulating social space by connecting color with danger, crime, and foreign identity.

Historically, America's huge institutional commitment to the isolation and containment of so many people of color comes hard on the heels of previous race-control systems—i.e., slavery and Jim Crow. Black and brown criminality and deviance were prominent justifications for those systems. Similar beliefs surround current justice policies, and we desperately need to break such associations in the public imagination.

We cannot transform justice and our democracy without working to change negative images, narratives, and other popular representations, especially those regarding young men of color. Without deliberate efforts on this cognitive front, we may achieve some reforms but we will not break with our history of black and brown containment, exploitation, and exclusion.

Develop and apply socially inclusive conceptions of crime and enlightened approaches to punishment.

Our society needs images of crime and criminality that are socially inclusive and consistent with real social harms.

Retribution, individual liability, fear, revenge—these principles appear to dominate our justice calculus. Rehabilitation, restoration, and collective responsibility deserve much more prominence. These principles recognize that all crime, in some measure, reflects the social ecology we create and maintain. They also acknowledge our equal humanity and are more likely to bring long-term physical and social security.

Moving forward on justice requires rearticulating the things that threaten our collective well-being and reevaluating the impacts of our decisions on vulnerable families and communities. For instance, we need to strike a new balance between justice responses to white-collar financial crimes, which can damage countless lives, and the more personal crimes committed by the poor, which typically lead the evening news. Prevailing conceptions of social problems like drug use, mental illness, and child support nonpayment are clearly inconsistent with our professed concern for community and family values. Rather, they seem to indicate only a passion for removing the least favored and least privileged from our midst.

POLICY RECOMMENDATIONS

We propose a new public safety agenda that pursues these priorities:

1. Support for an innovative research and public education strategy aimed at reducing the salience of crime in our political culture; delinking race and crime in the popular imagination; and advancing restorative, rehabilitative, and humane alternatives to carceral punishment.

2. Creation of a new range of responses to crime that incorporate sanctions more appropriate to the seriousness of the crime and the risk to community safety, with special attention to a new approach to crimes connected to obvious social problems such as drug abuse, mental illness, homelessness, and unemployment.

3. Development of new incentives for the criminal justice system to retain people convicted of crimes as residents of their communities, where they might repair the harm they caused and be reintegrated as citizens into the polity.

4. Creation of incentives for communities with large numbers of residents involved in the justice system, to retain those residents in economically and socially productive roles, with special attention to removing debilitating collateral consequences of conviction.

5. Creation of private-sector targeted incentives for rural communities to shift their economic activity from the prison industry to other industries.

6. Construction of a political economy that allows innovative alternatives to incarceration, consistent with public safety, to be developed and flourish—especially by linking justice system innovation to new initiatives in economic development, such as green programs and infrastructure investment.

NOTES

1. The *NY Daily News* reported in April 2008 that the "Army and Marines last year doubled the number of convicted felons they enlisted, raising new concerns about the strain on the military from fighting two wars." See http://www.nydailynews.com/news/us_world/2008/04/22/2008-04-22_army_marines_up_enlistment_of_exconvicts-1.html.

2. See, for example, UN Office on Drugs and Crime and World Bank Latin America and Caribbean Region, "Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean" (March 2007), report no. 37820, http://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf.

3. Harris Interactive, *Fear of Crime* (results of an October 2006 survey for the National Crime Prevention Council) (New York: Harris Interactive, 2006).

APPENDIX

AUTHORS AND PARTICIPANTS IN THE JUNE 2007 MEETING TO FRAME THE *RETHINKING CRIME AND PUNISHMENT FOR THE TWENTY-FIRST CENTURY* PROJECT

Michelle Alexander[1] holds a joint appointment with the Kirwan Institute and the Moritz College of Law, where she is an associate professor. Previously, she litigated civil rights cases in private practice and directed the Racial Justice Project for the ACLU of Northern California, where she also coordinated the project's litigation, media, lobbying, and grassroots organizing. In 1998, the project launched a campaign against racial profiling in California that gave rise to a national campaign against biased police practices. Professor Alexander was a law clerk on the U.S. Supreme Court for Justice Harry Blackmun and on the U.S. Court of Appeals for the D.C. Circuit for Chief Judge Abner Mikva.

Carol Anderson is an associate professor of history at the University of Missouri and was a fellow at Harvard University's Charles Warren Center for Studies in American History. Her books include *Eyes Off the Prize: The United Nations and the African-American Struggle for Human Rights, 1944–1955*, which won the Gustavus Myers and Myrna Bernath book awards, and *Bourgeois Radicals: The NAACP and the Struggle for Colonial Liberation, 1941–1960*. Professor Anderson has received fellowships and grants from the American Council of Learned Societies, the Ford Foundation, the National Humanities Center, Harvard University, and the Gilder Lehrman Institute of American History. She is a member of the U.S. State Department's Historical Advisory Committee and the Board of Directors of the Harry S. Truman Library Institute for National and International Affairs.

Eric Cadora directs the Justice Mapping Center in New York City, which produces geographical analyses and maps to help states and local jurisdictions analyze, rethink, and tailor their use of criminal justice and related government resources to high-incarceration and reentry neighborhoods. Previously, Cadora was a program officer for the Open Society Foundations' After Prison Initiative. Cadora also worked for the Center for Alternative Sentencing and Employment Services, where he directed the research and policy, court communications, and information systems units. He is coauthor (with Todd Clear) of *Community Justice*.

Nancy Chang is a program officer in the Open Society Foundations' U.S. Justice Fund. Previously, she was the senior litigation attorney at the Center for Constitutional Rights in New York City and supervising attorney at South Brooklyn Legal Services. Ms. Chang is a graduate of the New York University School of Law and the author of *Silencing Political Dissent: How Post–September 11 Anti-Terrorism Measures Threaten Our Civil Liberties*; "How Democracy Dies: The War on Our Civil Liberties," in *Lost Liberties: Ashcroft and the Assault on Personal Freedom*; and "The War on Dissent," in *The Nation*.

Todd R. Clear is a distinguished professor at the John Jay College of Criminal Justice, City University of New York (CUNY), and executive officer of the Program of Doctoral Studies in Criminal Justice at the CUNY Graduate Center. Previous positions include professorships at Ball State, Rutgers, and Florida State universities. His books include *Community Justice* (coauthored with Eric Cadora), *What Is Community Justice?*, *The Community Justice Ideal*, *The Offender in the Community*, *American Corrections*, and *Harm in American Penology*. Professor Clear is founding editor of *Criminology & Public Policy*, published by the American Society of Criminology, and has been a program and policy consultant to public agencies in more than forty states and five nations.

Kimberlé Crenshaw teaches civil rights and other courses in critical race studies and constitutional law at UCLA and the Columbia School of Law. She was a founder and has been a leader in the intellectual movement called critical race theory. Professor Crenshaw was a William H. Hastie fellow at the University of Wisconsin Law School before clerking for Justice Shirley Abrahamson of the Wisconsin Supreme Court. Her publications include *Critical Race Theory* and *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment*.

Blake Emerson[2] is currently pursuing a Ph.D. in political science and J.D. at Yale University. Previously he was a research assistant at the Aspen Institute's Roundtable on Community Change, where he studied the dynamics of structural racism in various policy domains, and developed content for the Roundtable's Peer Learning Forum website. Mr. Emerson holds a B.A. in philosophy and political science from Williams College.

Ian Haney López teaches law at Boalt Hall (University of California–Berkeley). His books include *Racism on Trial: The Chicano Fight for Justice,* which uses the legal history of the Mexican American civil rights struggle in Los Angeles to explore the relationship between legal violence and self-conceptions of racial identity; and

White by Law: The Legal Construction of Race, which examines a series of cases brought under U.S. naturalization law that maintained a racial bar on citizenship. His articles have appeared in the *Yale Law Journal, California Law Review, Harvard Civil Rights–Civil Liberties Law Review, University of Pennsylvania Law Review,* and numerous anthologies and case books.

William Johnston is a program officer for the After Prison Initiative of the Open Society Foundations' U.S. Justice Fund and has been a program officer for OSF's Community Advocacy Project, Juvenile Justice Policy & Research portfolio, and Gideon Project. Previously, he was site manager of the Eastern State Penitentiary Historic Site. Mr. Johnston holds a bachelor's degree from Drexel University and is now studying sociology at Columbia University, with a focus on the relationship between incarceration and economic, racial, and social inequality.

Van Jones is the founder of the Ella Baker Center for Human Rights, which promotes alternatives to violence and incarceration, and an advocate for both socially equitable and environmentally responsible reforms. He won the 1998 Reebok International Human Rights Award, the international Ashoka Fellowship, and the Rockefeller Foundation's Next Generation Leadership fellowship, and was selected a World Economic Forum Young Global Leader. He has served on the boards of the National Apollo Alliance, Social Ventures Network, Rainforest Action Network, Bioneers, and Julia Butterfly Hill's Circle of Life organization.

Anne Kubisch is director of the Aspen Institute's Roundtable on Community Change. The Roundtable's members are leaders in the field of community revitalization and social policy who meet regularly to distill lessons from the current generation of comprehensive, community building initiatives and to work on cross-cutting problems facing the field. Previously, Ms. Kubisch worked for the Ford Foundation on Latin American programs, as representative in Nigeria, and finally as deputy director of the Urban Poverty Program.

Keith Lawrence is a project manager at the Aspen Institute's Roundtable on Community Change where he has been a leading contributor to its work on structural racism and author of several related publications including *Structural Racism and Community Building*; *Structural Racism and Youth Development: Issues Challenges and Implications*; and *Constructing a Racial Equity Theory of Change: A Practical Guide for Designing Strategies to Close Chronic Racial Outcome Gaps*. He has also contributed essays and opinion pieces on race and community building to a number of edited volumes, periodicals, and other publications. Before joining Aspen

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Errol T. Louis is a columnist for the *New York Daily News*, where he writes about political and social affairs. He is a member of the *Daily News* editorial board and a frequent guest on television and radio news shows. He also teaches reporting at Long Island University's Brooklyn campus. Mr. Louis won the 1996 *New York Magazine* Award as one of ten New Yorkers making a difference "with energy, vision, and independent thinking" and won the North Star Media Prize for "a significant contribution to journalism, media, and communications and the public's understanding of the struggle for social justice."

Marc Mauer, executive director of the Sentencing Project, is one of the country's leading experts on sentencing policy, race, and the criminal justice system. He has directed programs on criminal justice policy reform for thirty years and authored many publications, including *Young Black Men and the Criminal Justice System* and *Americans behind Bars*. *Race to Incarcerate*, Mr. Mauer's book on how sentencing policies led to the expansion of the U.S. prison population, was a semifinalist for the Robert F. Kennedy Book Award in 1999. Mr. Mauer also coedited *Invisible Punishment*, a collection of essays by prominent criminal justice experts on the social cost of imprisonment.

Alan Mobley is a native Southern Californian who became interested in criminal justice issues in 1984, when he was arrested on narcotics charges. At that time, the FBI claimed that Mr. Mobley led the largest cocaine distribution organization on the West Coast. While in federal prison, Mr. Mobley earned degrees in economics and sociology. Upon his release he entered the doctoral program in criminology, law, and society at the University of California–Irvine (UCI). Since his graduation in 2001, Dr. Mobley has taught at UCI; consulted for state criminal justice agencies, philanthropic foundations, and community groups; and conducted research on faith-based corrections, prison privatization, and substance abuse treatment.

Naomi Murakawa is an assistant professor of political science at the University of Washington whose research addresses racial politics, American political development, and crime policy and the carceral state. Her book manuscript, provisionally titled *Electing to Punish: Race and the American Carceral State*, is based on her dissertation, which won the Law and Society Dissertation Prize as well as the

American Political Science Association Best Dissertation in Race, Ethnicity and Politics. As a Robert Wood Johnson Scholar, Ms. Murakawa studied how the War on Drugs is changing as it confronts high-profile white drug epidemics.

Alice O'Connor is an associate professor of history at the University of California–Santa Barbara (UCSB), where she teaches and writes about poverty, social welfare, wealth, and inequality. She is the author of *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth-Century U.S. History* and *Social Science for What?: Philanthropy and the Social Question in a World Turned Rightside Up*. She also co-edited *Urban Inequality: Evidence from Four Cities* and *Poverty and Social Welfare in the United States: An Encyclopedia,* among other publications. Before joining the UCSB faculty, she was a program officer at the Ford Foundation and the Social Science Research Council.

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Tommie Shelby, a philosopher and political theorist, teaches in Harvard's Department of African and African American Studies. His books and articles include *We Who Are Dark: Philosophical Foundations of Black Solidarity; Hip Hop and Philosophy: Rhyme 2 Reason*; "Race and Social Justice: Rawlsian Considerations," *Fordham Law Review*; "Blackness and Blood: Interpreting African American Identity" (with Lionel K. McPherson), *Philosophy & Public Affairs*; "Two Conceptions of Black Nationalism: Martin Delany on the Meaning of Black Political Solidarity," *Political Theory*; "Ideology, Racism, and Critical Social Theory," *Philosophical Forum*; "Parasites, Pimps, and Capitalists: A Naturalistic Conception of Exploitation," *Social Theory and Practice*; "Is Racism in the 'Heart'?" *Journal of Social Philosophy*; and "Foundations of Black Solidarity: Collective Identity or Common Oppression?," *Ethics*.

Jonathan Simon is a law professor and associate dean of the jurisprudence and social policy program at Boalt Hall (University of California–Berkeley). Professor Simon's scholarship concerns the role of criminal justice and punishment in

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Alvin Louis Starks is the associate director of racial justice and fellowships at the Open Society Foundations (OSF) and creator of OSF's Racial Justice Initiative within the U.S. Justice Fund. The initiative focuses on dismantling the structural and systemic barriers that perpetuate racial and class exclusion in an emerging democracy. Mr. Starks is an advocate within the philanthropic community for innovative racial justice funding and has written and presented on the intersection of race and progressive reform for an emerging multiracial democracy. He recently completed the Charles H. Revson Fellowship at Columbia University.

Gretchen Susi is a research associate at the Aspen Institute's Roundtable on Community Change, where she focuses on public housing, the role of grassroots alliances in producing supportive environments, and the challenges presented by social formations, particularly race and class. Previously, Dr. Susi was a fiction editor at Bantam Doubleday Dell publishers. She holds a Ph.D. in environmental psychology from the City University of New York Graduate Center.

Phil Thompson is an urban planner and political scientist. He was deputy general manager of the New York Housing Authority and director of the Mayor's Office of Housing Coordination. Dr. Thompson is a frequent advisor to trade unions in their efforts to work with immigrant and community groups across the United States. He is the coauthor of "To Denigrate, Ignore, or Disrupt: The Health Impact of Policy-induced Breakdown of Urban African American Communities of Support"; author of "Judging Mayors," an article in *Perspectives on Politics*; and author of *Double Trouble: Black Mayors, Black Communities and the Struggle for Deep Democracy*.

Susan B. Tucker is director of Open Society Foundations' After Prison Initiative. Previously, she directed policy and research for victim services in New York City, taught at the New York University School of Law, and worked as a criminal defense lawyer. Ms. Tucker received her J.D. from New York University School of

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NOTES

1. Author Michelle Alexander did not attend the 2007 meeting.
2. Author Blake Emerson did not attend the 2007 meeting.

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