

Chapter 5: The New Jim Crow

It was no ordinary Sunday morning when presidential candidate Barack Obama stepped to the podium at the Apostolic Church of God in Chicago. It was Father's Day. Hundreds of enthusiastic congregants packed the pews at the overwhelmingly black church eager to hear what the first black Democratic nominee for president of the United States had to say.

The message was a familiar one: black men should be better fathers. Too many are absent from their homes. For those in the audience, Obama's speech was an old tune sung by an exciting new performer. His message of personal responsibility, particularly as it relates to fatherhood, was anything but new; it had been delivered countless times by black ministers in churches across America. The message had also been delivered on a national stage by celebrities such as Bill Cosby and Sidney Poitier. And the message had been delivered with great passion by Louis Farrakhan, who more than a decade earlier summoned one million black men to Washington, D.C., for a day of "atonement" and recommitment to their families and communities.

The mainstream media, however, treated the event as big news, and many pundits seemed surprised that the black congregants actually applauded the message. For them, it was remarkable that black people nodded in approval when Obama said: "If we are honest with ourselves, we'll admit that too many fathers are missing—missing from too many lives and too many homes. Too many fathers are MIA. Too many fathers are AWOL. They have abandoned their responsibilities. They're acting like boys instead of men. And the foundations of our families are weaker because of it. You and I know this is true everywhere, but nowhere is this more true than in the African American community."

The media did not ask—and Obama did not tell—where the missing fathers might be found.

The following day, social critic and sociologist Michael Eric Dyson published a critique of Obama's speech in *Time* magazine. He pointed out that the stereotype of black men being poor fathers may well be false. Research by Boston College social psychologist Rebekah Levine Coley found that black fathers not living at home are more likely to keep in contact with their children than fathers of any other ethnic or racial group. Dyson chided Obama for evoking a black stereotype for political gain, pointing out that "Obama's words may have been spoken to black folk, but they were aimed at those whites still on the fence about whom to send to the White House."¹ Dyson's critique was a fair one, but like other media commentators, he remained silent about where all the absent black fathers could be found. He identified numerous social problems plaguing black families, such as high levels of unemployment, discriminatory mortgage practices, and the gutting of early-childhood learning programs. Not a word was said about prisons.

The public discourse regarding "missing black fathers" closely parallels the debate about the lack of eligible black men for marriage. The majority of black women are unmarried today, including 70 percent of professional black women.² "Where have all the black men gone?" is a common refrain heard among black women frustrated in their efforts to find life partners.

The sense that black men have disappeared is rooted in reality. The U.S. Census Bureau reported in 2002 that there are nearly 3 million more black adult women than men in black communities across the United States, a gender gap of 26 percent.³ In many urban areas, the gap is far worse, rising to more than 37 percent in places like New York City. The comparable disparity for whites in the United States is 8 percent.⁴ Although a million black men can be found in prisons and jails, public acknowledgment of the role of the criminal justice system in "disappearing" black men is surprisingly rare. Even in the black media—which is generally more willing to raise and tackle issues related to criminal justice—an eerie

silence can often be found.⁵

Ebony magazine, for example, ran an article in December 2006 entitled “Where Have the Black Men Gone?” The author posed the popular question but never answered it.⁶ He suggested we will find our black men when we rediscover God, family, and self-respect. A more cynical approach was taken by Tyra Banks, the popular talk show host, who devoted a show in May 2008 to the recurring question, “Where Have All the Good Black Men Gone?” She wondered aloud whether black women are unable to find “good black men” because too many of them are gay or dating white women. No mention was made of the War on Drugs or mass incarceration.

The fact that Barack Obama can give a speech on Father’s Day dedicated to the subject of fathers who are “AWOL” without ever acknowledging that the majority of young black men in many large urban areas are currently under the control of the criminal justice system is disturbing, to say the least. What is more problematic, though, is that hardly anyone in the mainstream media noticed the oversight. One might not expect serious analysis from Tyra Banks, but shouldn’t we expect a bit more from the *New York Times* and CNN? Hundreds of thousands of black men are unable to be good fathers for their children, not because of a lack of commitment or desire but because they are warehoused in prisons, locked in cages. They did not walk out on their families voluntarily; they were taken away in handcuffs, often due to a massive federal program known as the War on Drugs.

More African American adults are under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850, a decade before the Civil War began.⁷ The mass incarceration of people of color is a big part of the reason that a black child born today is less likely to be raised by both parents than a black child born during slavery.⁸ The absence of black fathers from families across America is not simply a function of laziness, immaturity, or too much time watching Sports Center. Thousands of black men have disappeared into prisons and jails, locked away for drug crimes that are largely ignored when committed by whites.

The clock has been turned back on racial progress in America, though scarcely anyone seems to notice. All eyes are fixed on people like Barack Obama and Oprah Winfrey, who have defied the odds and risen to power, fame, and fortune. For those left behind, especially those within prison walls, the celebration of racial triumph in America must seem a tad premature. More black men are imprisoned today than at any other moment in our nation’s history. More are disenfranchised today than in 1870, the year the Fifteenth Amendment was ratified prohibiting laws that explicitly deny the right to vote on the basis of race.⁹ Young black men today may be just as likely to suffer discrimination in employment, housing, public benefits, and jury service as a black man in the Jim Crow era—discrimination that is perfectly legal, because it is based on one’s criminal record.

This is the new normal, the new racial equilibrium.

The launching of the War on Drugs and the initial construction of the new system required the expenditure of tremendous political initiative and resources. Media campaigns were waged; politicians blasted “soft” judges and enacted harsh sentencing laws; poor people of color were vilified. The system now, however, requires very little maintenance or justification. In fact, if you are white and middle class, you might not even realize the drug war is still going on. Most high school and college students today have no recollection of the political and media frenzy surrounding the drug war in the early years. They were young children when the war was declared, or not even born yet. Crack is out; terrorism is in.

Today, the political fanfare and the vehement, racialized rhetoric regarding crime and drugs are no longer necessary. Mass incarceration has been normalized, and all of the racial stereotypes and assumptions that gave rise to the system are now embraced (or at least internalized) by people of all colors, from all walks of life, and in every major political party.

We may wonder aloud “where have the black men gone?” but deep down we already know. It is simply taken for granted that, in cities like Baltimore and Chicago, the vast majority of young black men are currently under the control of the criminal justice system or branded criminals for life. This extraordinary circumstance—unheard of in the rest of the world—is treated here in America as a basic fact of life, as normal as separate water fountains were just a half century ago.

States of Denial

The claim that we really know where all the black men have gone may inspire considerable doubt. If we know, why do we feign ignorance? Could it be that most people really don’t know? Is it possible that the roundup, lock-down, and exclusion of black men en masse from the body politic has occurred largely unnoticed? The answer is yes and no.

Much has been written about the ways in which people manage to deny, even to themselves, that extraordinary atrocities, racial oppression, and other forms of human suffering have occurred or are occurring. Criminologist Stanley Cohen wrote perhaps the most important book on the subject, *States of Denial*. The book examines how individuals and institutions—victims, perpetrators, and bystanders—know about yet deny the occurrence of oppressive acts. They see only what they want to see and wear blinders to avoid seeing the rest. This has been true about slavery, genocide, torture, and every form of systemic oppression.

Cohen emphasizes that denial, though deplorable, is complicated. It is not simply a matter of refusing to acknowledge an obvious, though uncomfortable, truth. Many people “know” and “not-know” the truth about human suffering at the same time. In his words, “Denial may be neither a matter of telling the truth nor intentionally telling a lie. There seem to be states of mind, or even whole cultures, in which we know and don’t know at the same time.”¹⁰

Today, most Americans know and don’t know the truth about mass incarceration. For more than three decades, images of black men in handcuffs have been a regular staple of the evening news. We know that large numbers of black men have been locked in cages. In fact, it is precisely because we know that black and brown people are far more likely to be imprisoned that we, as a nation, have not cared too much about it. We tell ourselves they “deserve” their fate, even though we know—and don’t know—that whites are just as likely to commit many crimes, especially drug crimes. We know that people released from prison face a lifetime of discrimination, scorn, and exclusion, and yet we claim not to know that an undercaste exists. We know and we don’t know at the same time.

Upon reflection, it is relatively easy to understand how Americans come to deny the evils of mass incarceration. Denial is facilitated by persistent racial segregation in housing and schools, by political demagoguery, by racialized media imagery, and by the ease of changing one’s perception of reality simply by changing television channels. There is little reason to doubt the prevailing “common sense” that black and brown men have been locked up en masse merely in response to crime rates when one’s sources of information are mainstream media outlets. In many respects, the reality of mass incarceration is easier to avoid knowing than the injustices and sufferings associated with slavery or Jim Crow. Those confined to prisons are out of sight and out of mind; once released, they are typically confined in ghettos. Most Americans only come to “know” about the people cycling in and out of prisons through fictional police dramas, music videos, gangsta rap, and “true” accounts of ghetto experience on the evening news. These racialized narratives tend to confirm and reinforce the prevailing public consensus that we need not care about “those people”; they deserve what they get.

Of all the reasons that we fail to know the truth about mass incarceration, though, one stands out: a profound misunderstanding regarding how racial oppression actually works. If

someone were to visit the United States from another country (or another planet) and ask: Is the U.S. criminal justice system some kind of tool of racial control? most Americans would swiftly deny it. Numerous reasons would leap to mind why that could not possibly be the case. The visitor would be told that crime rates, black culture, or bad schools were to blame. “The system is not run by a bunch of racists,” the apologist would explain. “It’s run by people who are trying to fight crime.” That response is predictable because most people assume that racism, and racial systems generally, are fundamentally a function of attitudes. Because mass incarceration is officially colorblind, it seems inconceivable that the system could function much like a racial caste system. The widespread and mistaken belief that racial animus is necessary for the creation and maintenance of racialized systems of social control is the most important reason that we, as a nation, have remained in deep denial.

The misunderstanding is not surprising. As a society, our collective understanding of racism has been powerfully influenced by the shocking images of the Jim Crow era and the struggle for civil rights. When we think of racism we think of Governor Wallace of Alabama blocking the schoolhouse door; we think of water hoses, lynchings, racial epithets, and “whites only” signs. These images make it easy to forget that many wonderful, good-hearted white people who were generous to others, respectful of their neighbors, and even kind to their black maids, gardeners, or shoe shiners—and wished them well—nevertheless went to the polls and voted for racial segregation. Many whites who supported Jim Crow justified it on paternalist grounds, actually believing they were doing blacks a favor or believing the time was not yet “right” for equality. The disturbing images from the Jim Crow era also make it easy to forget that many African Americans were complicit in the Jim Crow system, profiting from it directly or indirectly or keeping their objections quiet out of fear of the repercussions. Our understanding of racism is therefore shaped by the most extreme expressions of individual bigotry, not by the way in which it functions naturally, almost invisibly (and sometimes with genuinely benign intent), when it is embedded in the structure of a social system.

The unfortunate reality we must face is that racism manifests itself not only in individual attitudes and stereotypes, but also in the basic structure of society. Academics have developed complicated theories and obscure jargon in an effort to describe what is now referred to as structural racism, yet the concept is fairly straightforward. One theorist, Iris Marion Young, relying on a famous “birdcage” metaphor, explains it this way: If one thinks about racism by examining only one wire of the cage, or one form of disadvantage, it is difficult to understand how and why the bird is trapped. Only a large number of wires arranged in a specific way, and connected to one another, serve to enclose the bird and to ensure that it cannot escape.¹¹

What is particularly important to keep in mind is that any given wire of the cage may or may not be specifically developed for the purpose of trapping the bird, yet it still operates (together with the other wires) to restrict its freedom. By the same token, not every aspect of a racial caste system needs to be developed for the specific purpose of controlling black people in order for it to operate (together with other laws, institutions, and practices) to trap them at the bottom of a racial hierarchy. In the system of mass incarceration, a wide variety of laws, institutions, and practices—ranging from racial profiling to biased sentencing policies, political disenfranchisement, and legalized employment discrimination—trap African Americans in a virtual (and literal) cage.

Fortunately, as Marilyn Frye has noted, every birdcage has a door, and every birdcage can be broken and can corrode.¹² What is most concerning about the new racial caste system, however, is that it may prove to be more durable than its predecessors. Because this new system is not explicitly based on race, it is easier to defend on seemingly neutral grounds. And while all previous methods of control have blamed the victim in one way or another, the

current system invites observers to imagine that those who are trapped in the system were free to avoid second-class status or permanent banishment from society simply by choosing not to commit crimes. It is far more convenient to imagine that a majority of young African American men in urban areas freely chose a life of crime than to accept the real possibility that their lives were structured in a way that virtually guaranteed their early admission into a system from which they can never escape. Most people are willing to acknowledge the existence of the cage but insist that a door has been left open.

One way of understanding our current system of mass incarceration is to think of it as a birdcage with a locked door. It is a set of structural arrangements that locks a racially distinct group into a subordinate political, social, and economic position, effectively creating a second-class citizenship. Those trapped within the system are not merely disadvantaged, in the sense that they are competing on an unequal playing field or face additional hurdles to political or economic success; rather, the system itself is structured to lock them into a subordinate position.

How It Works

Precisely how the system of mass incarceration works to trap African Americans in a virtual (and literal) cage can best be understood by viewing the system as a whole. In earlier chapters, we considered various wires of the cage in isolation; here, we put the pieces together, step back, and view the cage in its entirety. Only when we view the cage from a distance can we disengage from the maze of rationalizations that are offered for each wire and see how the entire apparatus operates to keep African Americans perpetually trapped.

This, in brief, is how the system works: The War on Drugs is the vehicle through which extraordinary numbers of black men are forced into the cage. The entrapment occurs in three distinct phases, each of which has been explored earlier, but a brief review is useful here. The first stage is the roundup. Vast numbers of people are swept into the criminal justice system by the police, who conduct drug operations primarily in poor communities of color. They are rewarded in cash—through drug forfeiture laws and federal grant programs—for rounding up as many people as possible, and they operate unconstrained by constitutional rules of procedure that once were considered inviolate. Police can stop, interrogate, and search anyone they choose for drug investigations, provided they get “consent.” Because there is no meaningful check on the exercise of police discretion, racial biases are granted free rein. In fact, police are allowed to rely on race as a factor in selecting whom to stop and search (even though people of color are no more likely to be guilty of drug crimes than whites)—effectively guaranteeing that those who are swept into the system are primarily black and brown.

The conviction marks the beginning of the second phase: the period of formal control. Once arrested, defendants are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the drug war’s harsh sentencing laws, drug offenders in the United States spend more time under the criminal justice system’s formal control—in jail or prison, on probation or parole—than drug offenders anywhere else in the world. While under formal control, virtually every aspect of one’s life is regulated and monitored by the system, and any form of resistance or disobedience is subject to swift sanction. This period of control may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released. They are transferred from their prison cells to a much larger, invisible cage.

The final stage has been dubbed by some advocates as the period of invisible

punishment.¹³ This term, first coined by Jeremy Travis, is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework. These sanctions are imposed by operation of law rather than decisions of a sentencing judge, yet they often have a greater impact on one's life course than the months or years one actually spends behind bars. These laws operate collectively to ensure that the vast majority of convicted offenders will never integrate into mainstream, white society. They will be discriminated against, legally, for the rest of their lives—denied employment, housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality.

In recent years, advocates and politicians have called for greater resources devoted to the problem of “prisoner re-entry,” in view of the unprecedented numbers of people who are released from prison and returned to their communities every year. While the terminology is well intentioned, it utterly fails to convey the gravity of the situation facing prisoners upon their release. People who have been convicted of felonies almost never truly re-enter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to everyone else. They become members of an undercaste—an enormous population of predominately black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status. This is the final phase, and there is no going back.

Nothing New?

Some might argue that as disturbing as this system appears to be, there is nothing particularly new about mass incarceration; it is merely a continuation of past drug wars and biased law enforcement practices. Racial bias in our criminal justice system is simply an old problem that has gotten worse, and the social excommunication of “criminals” has a long history; it is not a recent invention. There is some merit to this argument.

Race has always influenced the administration of justice in the United States. Since the day the first prison opened, people of color have been disproportionately represented behind bars. In fact, the very first person admitted to a U.S. penitentiary was a “light skinned Negro in excellent health,” described by an observer as “one who was born of a degraded and depressed race, and had never experienced anything but indifference and harshness.”¹⁴ Biased police practices are also nothing new, a recurring theme of African American experience since blacks were targeted by the police as suspected runaway slaves. And every drug war that has ever been waged in the United States—including alcohol prohibition—has been tainted or driven by racial bias.¹⁵ Even post-conviction penalties have a long history. The American colonies passed laws barring criminal offenders from a wide variety of jobs and benefits, automatically dissolving their marriages and denying them the right to enter contracts. These legislatures were following a long tradition, dating back to ancient Greece, of treating criminals as less than full citizens. Although many collateral sanctions were repealed by the late 1970s, arguably the drug war simply revived and expanded a tradition that has ancient roots, a tradition independent of the legacy of American slavery.

In view of this history and considering the lack of originality in many of the tactics and practices employed in the era of mass incarceration, there is good reason to believe that the latest drug war is just another drug war corrupted by racial and ethnic bias. But this view is correct only to a point.

In the past, the criminal justice system, as punitive as it may have been during various

wars on crime and drugs, affected only a relatively small percentage of the population. Because civil penalties and sanctions imposed on ex-offenders applied only to a few, they never operated as a comprehensive system of control over any racially or ethnically defined population. Racial minorities were always overrepresented among current and ex-offenders, but as sociologists have noted, until the mid-1980s, the criminal justice system was marginal to communities of color. While young minority men with little schooling have always had relatively high rates of incarceration, “before the 1980s the penal system was not a dominant presence in the disadvantaged neighborhoods.”¹⁶

Today, the War on Drugs has given birth to a system of mass incarceration that governs not just a small fraction of a racial or ethnic minority but entire communities of color. In ghetto communities, nearly everyone is either directly or indirectly subject to the new caste system. The system serves to redefine the terms of the relationship of poor people of color and their communities to mainstream, white society, ensuring their subordinate and marginal status. The criminal and civil sanctions that were once reserved for a tiny minority are now used to control and oppress a racially defined majority in many communities, and the systematic manner in which the control is achieved reflects not just a difference in scale. The nature of the criminal justice system has changed. It is no longer concerned primarily with the prevention and punishment of crime, but rather with the management and control of the dispossessed. Prior drug wars were ancillary to the prevailing caste system. This time the drug war is the system of control.

If you doubt that this is the case, consider the effect of the war on the ground, in specific locales. Take Chicago, Illinois, for example. Chicago is widely considered to be one of America’s most diverse and vibrant cities. It has boasted black mayors, black police chiefs, black legislators, and is home to the nation’s first black president. It has a thriving economy, a growing Latino community, and a substantial black middle class. Yet as the Chicago Urban League reported in 2002, there is another story to be told.¹⁷

If Martin Luther King Jr. were to return miraculously to Chicago, some forty years after bringing his Freedom Movement to the city, he would be saddened to discover that the same issues on which he originally focused still produce stark patterns of racial inequality, segregation, and poverty. He would also be struck by the dramatically elevated significance of one particular institutional force in the perpetuation and deepening of those patterns: the criminal justice system. In the few short decades since King’s death, a new regime of racially disparate mass incarceration has emerged in Chicago and become the primary mechanism for racial oppression and the denial of equal opportunity.

In Chicago, like the rest of the country, the War on Drugs is the engine of mass incarceration, as well as the primary cause of gross racial disparities in the criminal justice system and in the ex-offender population. About 90 percent of those sentenced to prison for a drug offense in Illinois are African American.¹⁸ White drug offenders are rarely arrested, and when they are, they are treated more favorably at every stage of the criminal justice process, including plea bargaining and sentencing.¹⁹ Whites are consistently more likely to avoid prison and felony charges, even when they are repeat offenders.²⁰ Black offenders, by contrast, are routinely labeled felons and released into a permanent racial undercaste.

The total population of black males in Chicago with a felony record (including both current and ex-felons) is equivalent to 55 percent of the black adult male population and an astonishing 80 percent of the adult black male workforce in the Chicago area.²¹ This stunning development reflects the dramatic increase in the number and race of those sent to prison for drug crimes. From the Chicago region alone, the number of those annually sent to prison for drug crimes increased almost 2,000 percent, from 469 in 1985 to 8,755 in 2005.²² That figure, of course, does not include the thousands who avoid prison but are arrested, convicted, and sentenced to jail or probation. They, too, have criminal records that will follow them for life.

More than 70 percent of all criminal cases in the Chicago area involve a class D felony drug possession charge, the lowest-level felony charge.²³ Those who do go to prison find little freedom upon release.

When people are released from Illinois prisons, they are given as little as \$10 in “gate money” and a bus ticket to anywhere in the United States. Most return to impoverished neighborhoods in the Chicago area, bringing few resources and bearing the stigma of their prison record.²⁴ In Chicago, as in most cities across the country, ex-offenders are banned or severely restricted from employment in a large number of professions, job categories, and fields by professional licensing statutes, rules, and practices that discriminate against potential employees with felony records. According to a study conducted by the DePaul University College of Law in 2000, of the then ninety-eight occupations requiring licenses in Illinois, fifty-seven placed stipulations and/or restrictions on applicants with a criminal record.²⁵ Even when not barred by law from holding specific jobs, ex-offenders in Chicago find it extraordinarily difficult to find employers who will hire them, regardless of the nature of their conviction. They are also routinely denied public housing and welfare benefits, and they find it increasingly difficult to obtain education, especially now that funding for public education has been hard hit, due to exploding prison budgets.

The impact of the new caste system is most tragically felt among the young. In Chicago (as in other cities across the United States), young black men are more likely to go to prison than to college.²⁶ As of June 2001, there were nearly 20,000 more black men in the Illinois state prison system than enrolled in the state’s public universities.²⁷ In fact, there were more black men in the state’s correctional facilities that year just on drug charges than the total number of black men enrolled in undergraduate degree programs in state universities.²⁸ To put the crisis in even sharper focus, consider this: just 992 black men received a bachelor’s degree from Illinois state universities in 1999, while roughly 7,000 black men were released from the state prison system the following year just for drug offenses.²⁹ The young men who go to prison rather than college face a lifetime of closed doors, discrimination, and ostracism. Their plight is not what we hear about on the evening news, however. Sadly, like the racial caste systems that preceded it, the system of mass incarceration now seems normal and natural to most, a regrettable necessity.

Mapping the Parallels

Those cycling in and out of Illinois prisons today are members of America’s new racial undercaste. The United States has almost always had a racial undercaste—a group defined wholly or largely by race that is permanently locked out of mainstream, white society by law, custom, and practice. The reasons and justifications change over time, as each new caste system reflects and adapts to changes in the social, political, and economic context. What is most striking about the design of the current caste system, though, is how closely it resembles its predecessor. There are important differences between mass incarceration and Jim Crow, to be sure—many of which will be discussed later—but when we step back and view the system as a whole, there is a profound sense of *déjà vu*. There is a familiar stigma and shame. There is an elaborate system of control, complete with political disenfranchisement and legalized discrimination in every major realm of economic and social life. And there is the production of racial meaning and racial boundaries.

Many of these parallels have been discussed at some length in earlier chapters; others have yet to be explored. Listed below are several of the most obvious similarities between Jim Crow and mass incarceration, followed by a discussion of a few parallels that have not been discussed so far. Let’s begin with the historical parallels.

Historical parallels. Jim Crow and mass incarceration have similar political origins. As

described in Chapter 1, both caste systems were born, in part, due to a desire among white elites to exploit the resentments, vulnerabilities, and racial biases of poor and working-class whites for political or economic gain. Segregation laws were proposed as part of a deliberate and strategic effort to deflect anger and hostility that had been brewing against the white elite away from them and toward African Americans. The birth of mass incarceration can be traced to a similar political dynamic. Conservatives in the 1970s and 1980s sought to appeal to the racial biases and economic vulnerabilities of poor and working-class whites through racially coded rhetoric on crime and welfare. In both cases, the racial opportunists offered few, if any, economic reforms to address the legitimate economic anxieties of poor and working-class whites, proposing instead a crackdown on the racially defined “others.” In the early years of Jim Crow, conservative white elites competed with each other by passing ever more stringent and oppressive Jim Crow legislation. A century later, politicians in the early years of the drug war competed with each other to prove who could be tougher on crime by passing ever harsher drug laws—a thinly veiled effort to appeal to poor and working-class whites who, once again, proved they were willing to forego economic and structural reform in exchange for an apparent effort to put blacks back “in their place.”³⁰

Legalized discrimination. The most obvious parallel between Jim Crow and mass incarceration is legalized discrimination. During Black History Month, Americans congratulate themselves for having put an end to discrimination against African Americans in employment, housing, public benefits, and public accommodations. Schoolchildren wonder out loud how discrimination could ever have been legal in this great land of ours. Rarely are they told that it is still legal. Many of the forms of discrimination that relegated African Americans to an inferior caste during Jim Crow continue to apply to huge segments of the black population today—provided they are first labeled felons. If they are branded felons by the time they reach the age of twenty-one (as many of them are), they are subject to legalized discrimination for their entire adult lives. The forms of discrimination that apply to ex—drug offenders, described in some detail in Chapter 4, mean that, once prisoners are released, they enter a parallel social universe—much like Jim Crow—in which discrimination in nearly every aspect of social, political, and economic life is perfectly legal. Large majorities of black men in cities across the United States are once again subject to legalized discrimination effectively barring them from full integration into mainstream, white society. Mass incarceration has nullified many of the gains of the Civil Rights Movement, putting millions of black men back in a position reminiscent of Jim Crow.

Political disenfranchisement. During the Jim Crow era, African Americans were denied the right to vote through poll taxes, literacy tests, grandfather clauses, and felon disenfranchisement laws, even though the Fifteenth Amendment to the U.S. Constitution specifically provides that “the right of citizens of the United States to vote shall not be denied ... on account of race, color, or previous condition of servitude.” Formally race-neutral devices were adopted to achieve the goal of an all-white electorate without violating the terms of the Fifteenth Amendment. The devices worked quite well. Because African Americans were poor, they frequently could not pay poll taxes. And because they had been denied access to education, they could not pass literacy tests. Grandfather clauses allowed whites to vote even if they couldn’t meet the requirements, as long as their ancestors had been able to vote. Finally, because blacks were disproportionately charged with felonies—in fact, some crimes were specifically defined as felonies with the goal of eliminating blacks from the electorate—felony disenfranchisement laws effectively suppressed the black vote as well.³¹

Following the collapse of Jim Crow, all of the race-neutral devices for excluding blacks from the electorate were eliminated through litigation or legislation, except felon disenfranchisement laws. Some courts have found that these laws have “lost their

discriminatory taint” because they have been amended since the collapse of Jim Crow; other courts have allowed the laws to stand because overt racial bias is absent from the legislative record.³² The failure of our legal system to eradicate all of the tactics adopted during the Jim Crow era to suppress the black vote has major implications today. Felon disenfranchisement laws have been more effective in eliminating black voters in the age of mass incarceration than they were during Jim Crow. Less than two decades after the War on Drugs began, one in seven black men nationally had lost the right to vote, and as many as one in four in those states with the highest African American disenfranchisement rate.³³ These figures may understate the impact of felony disenfranchisement, because they do not take into account the millions of ex-felons who cannot vote in states that require ex-felons to pay fines or fees before their voting rights can be restored—the new poll tax. As legal scholar Pamela Karlan has observed, “felony disenfranchisement has decimated the potential black electorate.”³⁴

It is worthy of note, however, that the exclusion of black voters from polling booths is not the only way in which black political power has been suppressed. Another dimension of disenfranchisement echoes not so much Jim Crow as slavery. Under the usual-residence rule, the Census Bureau counts imprisoned individuals as residents of the jurisdiction in which they are incarcerated. Because most new prison construction occurs in predominately white, rural areas, white communities benefit from inflated population totals at the expense of the urban, overwhelmingly minority communities from which the prisoners come.³⁵ This has enormous consequences for the redistricting process. White rural communities that house prisons wind up with more people in state legislatures representing them, while poor communities of color lose representatives because it appears their population has declined. This policy is disturbingly reminiscent of the three-fifths clause in the original Constitution, which enhanced the political clout of slaveholding states by including 60 percent of slaves in the population base for calculating Congressional seats and electoral votes, even though they could not vote.

Exclusion from juries. Another clear parallel between mass incarceration and Jim Crow is the systematic exclusion of blacks from juries. One hallmark of the Jim Crow era was all-white juries trying black defendants in the South. Although the exclusion of jurors on the basis of race has been illegal since 1880, as a practical matter, the removal of prospective black jurors through race-based peremptory strikes was sanctioned by the Supreme Court until 1985, when the Court ruled in *Batson v. Kentucky* that racially biased strikes violate the equal protection clause of the Fourteenth Amendment.³⁶ Today defendants face a situation highly similar to the one they faced a century ago. As described in Chapter 3, a formal prohibition against race-based peremptory strikes does exist; as a practical matter, however, the Court has tolerated the systematic exclusion of blacks from juries by allowing lower courts to accept “silly” and even “superstitious” reasons for striking black jurors.³⁷ To make matters worse, a large percentage of black men (about 30 percent) are automatically excluded from jury service because they have been labeled felons.³⁸ The combined effect of race-based peremptory strikes and the automatic exclusion of felons from juries has put black defendants in a familiar place—in a courtroom in shackles, facing an all-white jury.

Closing the courthouse doors. The parallels between mass incarceration and Jim Crow extend all the way to the U.S. Supreme Court. Over the years, the Supreme Court has followed a fairly consistent pattern in responding to racial caste systems, first protecting them and then, after dramatic shifts in the political and social climate, dismantling these systems of control and some of their vestiges. In *Dred Scott v. Sandford*, the Supreme Court immunized the institution of slavery from legal challenge on the grounds that African Americans were not citizens, and in *Plessy v. Ferguson*, the Court established the doctrine of “separate but equal”—a legal fiction that protected the Jim Crow system from judicial scrutiny for racial bias.

Currently, *McCleskey v. Kemp* and its progeny serve much the same function as *Dred Scott* and *Plessy*. In *McCleskey*, the Supreme Court demonstrated that it is once again in protection mode—firmly committed to the prevailing system of control. As Chapter 3 demonstrated, the Court has closed the courthouse doors to claims of racial bias at every stage of the criminal justice process, from stops and searches to plea bargaining and sentencing. Mass incarceration is now off-limits to challenges on the grounds of racial bias, much as its predecessors were in their time. The new racial caste system operates unimpeded by the Fourteenth Amendment and federal civil rights legislation—laws designed to topple earlier systems of control. The Supreme Court’s famous proclamation in 1857—“[the black man] has no rights which the white man is bound to respect”—remains true to a significant degree today, so long as the black man has been labeled a felon.³⁹

Racial segregation. Although the parallels listed above should be enough to give anyone pause, there are a number of other, less obvious, similarities between mass incarceration and Jim Crow that have not been explored in earlier chapters. The creation and maintenance of racial segregation is one example. As we know, Jim Crow laws mandated residential segregation, and blacks were relegated to the worst parts of town. Roads literally stopped at the border of many black neighborhoods, shifting from pavement to dirt. Water, sewer systems, and other public services that supported the white areas of town frequently did not extend to the black areas. The extreme poverty that plagued blacks due to their legally sanctioned inferior status was largely invisible to whites—so long as whites remained in their own neighborhoods, which they were inclined to do. Racial segregation rendered black experience largely invisible to whites, making it easier for whites to maintain racial stereotypes about black values and culture. It also made it easier to deny or ignore their suffering.

Mass incarceration functions similarly. It achieves racial segregation by segregating prisoners—the majority of whom are black and brown—from mainstream society. Prisoners are kept behind bars, typically more than a hundred miles from home.⁴⁰ Even prisons—the actual buildings—are a rare sight for many Americans, as they are often located far from population centers. Although rural counties contain only 20 percent of the U.S. population, 60 percent of new prison construction occurs there.⁴¹ Prisoners are thus hidden from public view—out of sight, out of mind. In a sense, incarceration is a far more extreme form of physical and residential segregation than Jim Crow segregation. Rather than merely shunting black people to the other side of town or corralling them in ghettos, mass incarceration locks them in cages. Bars and walls keep hundreds of thousands of black and brown people away from mainstream society—a form of apartheid unlike any the world has ever seen.

Prisons, however, are not the only vehicle for racial segregation. Segregation is also created and perpetuated by the flood of prisoners who return to ghetto communities each year. Because the drug war has been waged almost exclusively in poor communities of color, when drug offenders are released, they are generally returned to racially segregated ghetto communities—the places they call home. In many cities, the re-entry phenomenon is highly concentrated in a small number of neighborhoods. According to one study, during a twelve-year period, the number of prisoners returning home to “core counties”—those counties that contain the inner city of a metropolitan area—tripled.⁴² The effects are felt throughout the United States. In interviews with one hundred residents of two Tallahassee, Florida, communities, researchers found that nearly every one of them had experienced or expected to experience the return of a family member from prison.⁴³ Similarly, a survey of families living in the Robert Taylor Homes in Chicago found that the majority of residents either had a family member in prison or expected one to return from prison within the next two years.⁴⁴ Fully 70 percent of men between the ages of eighteen and forty-five in the impoverished and overwhelmingly black North Lawndale neighborhood on Chicago’s West Side are ex-

offenders, saddled for life with a criminal record.⁴⁵ The majority (60 percent) were incarcerated for drug offenses.⁴⁶ These neighborhoods are a minefield for parolees, for a standard condition of parole is a promise not to associate with felons. As Paula Wolff, a senior executive at Chicago Metropolis 2020 observes, in these ghetto neighborhoods, “It is hard for a parolee to walk to the corner store to get a carton of milk without being subject to a parole violation.”⁴⁷

By contrast, whites—even poor whites—are far less likely to be imprisoned for drug offenses. And when they are released from prison, they rarely find themselves in the ghetto. The white poor have a vastly different experience in America than do poor people of color. Because whites do not suffer racial segregation, the white poor are not relegated to racially defined areas of intense poverty. In New York City, one study found that 70 percent of the city’s poor black and Latino residents live in high-poverty neighborhoods, whereas 70 percent of the city’s poor whites live in nonpoverty neighborhoods—communities that have significant resources, including jobs, schools, banks, and grocery stores.⁴⁸ Nationwide, nearly seven out of eight people living in high-poverty urban areas are members of a minority group.⁴⁹

Mass incarceration thus perpetuates and deepens pre-existing patterns of racial segregation and isolation, not just by removing people of color from society and putting them in prisons, but by dumping them back into ghettos upon their release. Youth of color who might have escaped their ghetto communities—or helped to transform them—if they had been given a fair shot in life and not been labeled felons, instead find themselves trapped in a closed circuit of perpetual marginality, circulating between ghetto and prison.⁵⁰

The racially segregated, poverty-stricken ghettos that exist in inner-city communities across America would not exist today but for racially biased government policies for which there has never been meaningful redress.⁵¹ Yet every year, hundreds of thousands of poor people of color who have been targeted by the War on Drugs are forced to return to these racially segregated communities—neighborhoods still crippled by the legacy of an earlier system of control. As a practical matter, they have no other choice. In this way, mass incarceration, like its predecessor Jim Crow, creates and maintains racial segregation.

Symbolic production of race. Arguably the most important parallel between mass incarceration and Jim Crow is that both have served to define the meaning and significance of race in America. Indeed, a primary function of any racial caste system is to define the meaning of race in its time. Slavery defined what it meant to be black (a slave), and Jim Crow defined what it meant to be black (a second-class citizen). Today mass incarceration defines the meaning of blackness in America: black people, especially black men, are criminals. That is what it means to be black.

The temptation is to insist that black men “choose” to be criminals; the system does not make them criminals, at least not in the way that slavery made blacks slaves or Jim Crow made them second-class citizens. The myth of choice here is seductive, but it should be resisted. African Americans are not significantly more likely to use or sell prohibited drugs than whites, but they are made criminals at drastically higher rates for precisely the same conduct. In fact, studies suggest that white professionals may be the most likely of any group to have engaged in illegal drug activity in their lifetime, yet they are the least likely to be made criminals.⁵² The prevalence of illegal drug activity among all racial and ethnic groups creates a situation in which, due to limited law enforcement resources and political constraints, some people are made criminals while others are not. Black people have been made criminals by the War on Drugs to a degree that dwarfs its effect on other racial and ethnic groups, especially whites. And the process of making them criminals has produced racial stigma.

Every racial caste system in the United States has produced racial stigma. Mass

incarceration is no exception. Racial stigma is produced by defining negatively what it means to be black. The stigma of race was once the shame of the slave; then it was the shame of the second-class citizen; today the stigma of race is the shame of the criminal. As described in Chapter 4, many ex-offenders describe an existential angst associated with their pariah status, an angst that casts a shadow over every aspect of their identity and social experience. The shame and stigma is not limited to the individual; it extends to family members and friends—even whole communities are stigmatized by the presence of those labeled criminals. Those stigmatized often adopt coping strategies African Americans once employed during the Jim Crow era, including lying about their own criminal history or the status of their family members in an attempt to “pass” as someone who will be welcomed by mainstream society.

The critical point here is that, for black men, the stigma of being a “criminal” in the era of mass incarceration is fundamentally a racial stigma. This is not to say stigma is absent for white criminals; it is present and powerful. Rather, the point is that the stigma of criminality for white offenders is different—it is a nonracial stigma.

An experiment may help to illustrate how and why this is the case. Say the following to nearly anyone and watch the reaction: “We really need to do something about the problem of white crime.” Laughter is a likely response. The term white crime is nonsensical in the era of mass incarceration, unless one is really referring to white-collar crime, in which case the term is understood to mean the types of crimes that seemingly respectable white people commit in the comfort of fancy offices. Because the term white crime lacks social meaning, the term white criminal is also perplexing. In that formulation, white seems to qualify the term criminal—as if to say, “he’s a criminal but not that kind of criminal.” Or, he’s not a real criminal—i.e., not what we mean by criminal today.

In the era of mass incarceration, what it means to be a criminal in our collective consciousness has become conflated with what it means to be black, so the term white criminal is confounding, while the term black criminal is nearly redundant. Recall the study discussed in Chapter 3 that revealed that when survey respondents were asked to picture a drug criminal, nearly everyone pictured someone who was black. This phenomenon helps to explain why studies indicate that white ex-offenders may actually have an easier time gaining employment than African Americans without a criminal record.⁵³ To be a black man is to be thought of as a criminal, and to be a black criminal is to be despicable—a social pariah. To be a white criminal is not easy, by any means, but as a white criminal you are not a racial outcast, though you may face many forms of social and economic exclusion. Whiteness mitigates crime, whereas blackness defines the criminal.

As we have seen in earlier chapters, the conflation of blackness with crime did not happen organically; rather, it was constructed by political and media elites as part of the broad project known as the War on Drugs. This conflation served to provide a legitimate outlet to the expression of antiblack resentment and animus—a convenient release valve now that explicit forms of racial bias are strictly condemned. In the era of colorblindness, it is no longer permissible to hate blacks, but we can hate criminals. Indeed, we are encouraged to do so. As writer John Edgar Wideman points out, “It’s respectable to tar and feather criminals, to advocate locking them up and throwing away the key. It’s not racist to be against crime, even though the archetypal criminal in the media and the public imagination almost always wears Willie Horton’s face.”⁵⁴

It is precisely because our criminal justice system provides a vehicle for the expression of conscious and unconscious antiblack sentiment that the prison label is experienced as a racial stigma. The stigma exists whether or not one has been formally branded a criminal, yet another parallel to Jim Crow. Just as African Americans in the North were stigmatized by the Jim Crow system even if they were not subject to its formal control, black men today are stigmatized by mass incarceration—and the social construction of the “criminalblackman”—

whether they have ever been to prison or not. For those who have been branded, the branding serves to intensify and deepen the racial stigma, as they are constantly reminded in virtually every contact they have with public agencies, as well as with private employers and landlords, that they are the new “untouchables.”

In this way, the stigma of race has become the stigma of criminality. Throughout the criminal justice system, as well as in our schools and public spaces, young + black + male is equated with reasonable suspicion, justifying the arrest, interrogation, search, and detention of thousands of African Americans every year, as well as their exclusion from employment and housing and the denial of educational opportunity. Because black youth are viewed as criminals, they face severe employment discrimination and are also “pushed out” of schools through racially biased school discipline policies.⁵⁵

For black youth, the experience of being “made black” often begins with the first police stop, interrogation, search, or arrest. The experience carries social meaning—this is what it means to be black. The story of one’s “first time” may be repeated to family or friends, but for ghetto youth, almost no one imagines that the first time will be the last. The experience is understood to define the terms of one’s relationship not only to the state but to society at large. This reality can be frustrating for those who strive to help ghetto youth “turn their lives around.” James Forman Jr., the cofounder of the See Forever charter school for juvenile offenders in Washington, D.C., made this point when describing how random and degrading stops and searches of ghetto youth “tell kids that they are pariahs, that no matter how hard they study, they will remain potential suspects.” One student complained to him, “We can be perfect, perfect, doing everything right and still they treat us like dogs. No, worse than dogs, because criminals are treated worse than dogs.” Another student asked him pointedly, “How can you tell us we can be anything when they treat us like we’re nothing?”⁵⁶

The process of marking black youth as black criminals is essential to the functioning of mass incarceration as a racial caste system. For the system to succeed—that is, for it to achieve the political goals described in Chapter 1—black people must be labeled criminals before they are formally subject to control. The criminal label is essential, for forms of explicit racial exclusion are not only prohibited but widely condemned. Thus black youth must be made—labeled—criminals. This process of being made a criminal is, to a large extent, the process of “becoming” black. As Wideman explains, when “to be a man of color of a certain economic class and milieu is equivalent in the public eye to being a criminal,” being processed by the criminal justice system is tantamount to being made black, and “doing time” behind bars is at the same time “marking race.”⁵⁷ At its core, then, mass incarceration, like Jim Crow, is a “race-making institution.” It serves to define the meaning and significance of race in America.

The Limits of the Analogy

Saying that mass incarceration is the New Jim Crow can leave a misimpression. The parallels between the two systems of control are striking, to say the least—in both, we find racial opportunism by politicians, legalized discrimination, political disenfranchisement, exclusion of blacks from juries, stigmatization, the closing of courthouse doors, racial segregation, and the symbolic production of race—yet there are important differences. Just as Jim Crow, as a system of racial control, was dramatically different from slavery, mass incarceration is different from its predecessor. In fact, if one were to draft a list of the differences between slavery and Jim Crow, the list might well be longer than the list of similarities. The same goes for Jim Crow and mass incarceration. Each system of control has been unique—well adapted to the circumstances of its time. If we fail to appreciate the differences, we will be hindered in our ability to meet the challenges created by the current moment. At the same

time, though, we must be careful not to assume that differences exist when they do not, or to exaggerate the ones that do. Some differences may appear on the surface to be major, but on close analysis they prove less significant.

An example of a difference that is less significant than it may initially appear is the “fact” that Jim Crow was explicitly race-based, whereas mass incarceration is not. This statement initially appears self-evident, but it is partially mistaken. Although it is common to think of Jim Crow as an explicitly race-based system, in fact a number of the key policies were officially colorblind. As previously noted, poll taxes, literacy tests, and felon disenfranchisement laws were all formally race-neutral practices that were employed in order to avoid the prohibition on race discrimination in voting contained in the Fifteenth Amendment. These laws operated to create an all-white electorate because they excluded African Americans from the franchise but were not generally applied to whites. Poll workers had the discretion to charge a poll tax or administer a literacy test, or not, and they exercised their discretion in a racially discriminatory manner. Laws that said nothing about race operated to discriminate because those charged with enforcement were granted tremendous discretion, and they exercised that discretion in a highly discriminatory manner.

The same is true in the drug war. Laws prohibiting the use and sale of drugs are facially race neutral, but they are enforced in a highly discriminatory fashion. The decision to wage the drug war primarily in black and brown communities rather than white ones and to target African Americans but not whites on freeways and train stations has had precisely the same effect as the literacy and poll taxes of an earlier era. A facially race-neutral system of laws has operated to create a racial caste system.

Other differences between Jim Crow and mass incarceration are actually more significant than they may initially appear. An example relates to the role of racial stigma in our society. As discussed in Chapter 4, during Jim Crow, racial stigma contributed to racial solidarity in the black community. Racial stigma today, however—that is, the stigma of black criminality—has turned the black community against itself, destroyed networks of mutual support, and created a silence about the new caste system among many of the people most affected by it.⁵⁸ The implications of this difference are profound. Racial stigma today makes collective action extremely difficult—sometimes impossible; whereas racial stigma during Jim Crow contained the seeds of revolt.

Described below are a number of the other important differences between Jim Crow and mass incarceration. Listing all of the differences here is impractical; so instead we will focus on a few of the major differences that are most frequently cited in defense of mass incarceration, including the absence of overt racial hostility, the inclusion of whites in the system of control, and African American support for some “get tough” policies and drug war tactics.

Absence of racial hostility. First, let’s consider the absence of overt racial hostility among politicians who support harsh drug laws and the law enforcement officials charged with enforcing them. The absence of overt racial hostility is a significant difference from Jim Crow, but it can be exaggerated. Mass incarceration, like Jim Crow, was born of racial opportunism—an effort by white elites to exploit the racial hostilities, resentments, and insecurities of poor and working-class whites. Moreover, racial hostility and racial violence have not altogether disappeared, given that complaints of racial slurs and brutality by the police and prison guards are fairly common. Some scholars and commentators have pointed out that the racial violence once associated with brutal slave masters or the Ku Klux Klan has been replaced, to some extent, by violence perpetrated by the state. Racial violence has been rationalized, legitimated, and channeled through our criminal justice system; it is expressed as police brutality, solitary confinement, and the discriminatory and arbitrary imposition of the death penalty.⁵⁹

But even granting that some African Americans may fear the police today as much as their grandparents feared the Klan (as a wallet can be mistaken for a gun) and that the penal system may be as brutal in many respects as Jim Crow (or slavery), the absence of racial hostility in the public discourse and the steep decline in vigilante racial violence is no small matter. It is also significant that the “whites only” signs are gone and that children of all colors can drink from the same water fountains, swim in the same pools, and play on the same playgrounds. Black children today can even dream of being president of the United States.

Those who claim that mass incarceration is “just like” Jim Crow make a serious mistake. Things have changed. The fact that a clear majority of Americans were telling pollsters in the early 1980s—when the drug war was taking off—that they opposed race discrimination in nearly all its forms should not be dismissed lightly.⁶⁰ Arguably some respondents may have been telling pollsters what they thought was appropriate rather than what they actually believed, but there is no reason to believe that most of them were lying. It is more likely that most Americans by the early 1980s had come to reject segregationist thinking and values, and not only did not want to be thought of as racist but did not want to be racist.

This difference in public attitudes has important implications for reform efforts. Claims that mass incarceration is analogous to Jim Crow will fall on deaf ears and alienate potential allies if advocates fail to make clear that the claim is not meant to suggest or imply that supporters of the current system are racist in the way Americans have come to understand that term. Race plays a major role—indeed, a defining role—in the current system, but not because of what is commonly understood as old-fashioned, hostile bigotry. This system of control depends far more on racial indifference (defined as a lack of compassion and caring about race and racial groups) than racial hostility—a feature it actually shares with its predecessors.

All racial caste systems, not just mass incarceration, have been supported by racial indifference. As noted earlier, many whites during the Jim Crow era sincerely believed that African Americans were intellectually and morally inferior. They meant blacks no harm but believed segregation was a sensible system for managing a society comprised of fundamentally different and unequal people. The sincerity of many people’s racial beliefs is what led Martin Luther King Jr. to declare, “Nothing in all the world is more dangerous than sincere ignorance and conscientious stupidity.” The notion that racial caste systems are necessarily predicated on a desire to harm other racial groups, and that racial hostility is the essence of racism, is fundamentally misguided. Even slavery does not conform to this limited understanding of racism and racial caste. Most plantation owners supported the institution of black slavery not because of a sadistic desire to harm blacks but instead because they wanted to get rich, and black slavery was the most efficient means to that end. By and large, plantation owners were indifferent to the suffering caused by slavery; they were motivated by greed. Preoccupation with the role of racial hostility in earlier caste systems can blind us to the ways in which every caste system, including mass incarceration, has been supported by racial indifference—a lack of caring and compassion for people of other races.

White victims of racial caste. We now turn to another important difference between mass incarceration and Jim Crow: the direct harm to whites caused by the current caste system. Whites never had to sit at the back of the bus during Jim Crow, but today a white man may find himself in prison for a drug offense, sharing a cell with a black man. The direct harm caused to whites caused by mass incarceration seems to distinguish it from Jim Crow; yet, like many of the other differences, this one requires some qualification. Some whites were directly harmed by Jim Crow. For example, a white woman who fell in love with a black man and hoped to spend the rest of her life with him was directly harmed by anti-miscegenation laws. The laws were intended for her benefit—to protect her from the corrupting influence of

the black man and the “tragedy” of mulatto children—but she was directly harmed nonetheless.

Still, it seems obvious that mass incarceration directly harms far more whites than Jim Crow ever did. For some, this fact alone may be reason enough to reject the analogy. An “interracial racial caste system” may seem like an oxymoron. What kind of racial caste system includes white people within its control? The answer: a racial caste system in the age of colorblindness.

If 100 percent of the people arrested and convicted for drug offenses were African American, the situation would provoke outrage among the majority of Americans who consider themselves nonracist and who know very well that Latinos, Asian Americans, and whites also commit drug crimes. We, as a nation, seem comfortable with 90 percent of the people arrested and convicted of drug offenses in some states being African American, but if the figure were 100 percent, the veil of colorblindness would be lost. We could no longer tell ourselves stories about why 90 percent might be a reasonable figure; nor could we continue to assume that good reasons exist for extreme racial disparities in the drug war, even if we are unable to think of such reasons ourselves. In short, the inclusion of some whites in the system of control is essential to preserving the image of a colorblind criminal justice system and maintaining our self-image as fair and unbiased people. Because most Americans, including those within law enforcement, want to believe they are non-racist, the suffering in the drug war crosses the color line.

Of course, the fact that white people are harmed by the drug war does not mean they are the real targets, the designated enemy. The harm white people suffer in the drug war is much like the harm Iraqi civilians suffer in U.S. military actions targeting presumed terrorists or insurgents. In any war, a tremendous amount of collateral damage is inevitable. Black and brown people are the principal targets in this war; white people are collateral damage.

Saying that white people are collateral damage may sound callous, but it reflects a particular reality. Mass incarceration as we know it would not exist today but for the racialization of crime in the media and political discourse. The War on Drugs was declared as part of a political ploy to capitalize on white racial resentment against African Americans, and the Reagan administration used the emergence of crack and its related violence as an opportunity to build a racialized public consensus in support of an all-out war—a consensus that almost certainly would not have been formed if the primary users and dealers of crack had been white.

Economist Glenn Loury made this observation in his book *The Anatomy of Racial Inequality*. He noted that it is nearly impossible to imagine anything remotely similar to mass incarceration happening to young white men. Can we envision a system that would enforce drug laws almost exclusively among young white men and largely ignore drug crime among young black men? Can we imagine large majorities of young white men being rounded up for minor drug offenses, placed under the control of the criminal justice system, labeled felons, and then subjected to a lifetime of discrimination, scorn, and exclusion? Can we imagine this happening while most black men landed decent jobs or trotted off to college? No, we cannot. If such a thing occurred, “it would occasion a most profound reflection about what had gone wrong, not only with THEM, but with US.”⁶¹ It would never be dismissed with the thought that white men were simply reaping what they have sown. The criminalization of white men would disturb us to the core. So the critical questions are: “What disturbs us? What is dissonant? What seems anomalous? What is contrary to expectation?”⁶² Or more to the point: Whom do we care about?

An answer to the last question may be found by considering the drastically different manner that we, as a nation, responded to drunk driving in the mid-1980s, as compared to crack cocaine. During the 1980s, at the same time crack was making headlines, a broad-based,

grassroots movement was under way to address the widespread and sometimes fatal problem of drunk driving. Unlike the drug war, which was initiated by political elites long before ordinary people identified it as an issue of extraordinary concern, the movement to crack down on drunk drivers was a bottom-up movement, led most notably by mothers whose families were shattered by deaths caused by drunk driving.

Media coverage of the movement peaked in 1988, when a drunk driver traveling the wrong way on Interstate 71 in Kentucky caused a head-on collision with a school bus. Twenty-seven people died and dozens more were injured in the ensuing fire. The tragic accident, known as the Carrollton bus disaster, was one of the worst in U.S. history. In the aftermath, several parents of the victims became actively involved in Mothers Against Drunk Driving (MADD), and one became its national president. Throughout the 1980s, drunk driving was a regular topic in the media, and the term *designated driver* became part of the American lexicon.

At the close of the decade, drunk drivers were responsible for approximately 22,000 deaths annually, while overall alcohol-related deaths were close to 100,000 a year. By contrast, during the same time period, there were no prevalence statistics at all on crack, much less crack-related deaths. In fact, the number of deaths related to all illegal drugs combined was tiny compared to the number of deaths caused by drunk drivers. The total of all drug-related deaths due to AIDS, drug overdose, or the violence associated with the illegal drug trade, was estimated at 21,000 annually—less than the number of deaths directly caused by drunk drivers, and a small fraction of the number of alcohol-related deaths that occur every year.⁶³

In response to growing concern—fueled by advocacy groups such as MADD and by the media coverage of drunk-driving fatalities—most states adopted tougher laws to punish drunk driving. Numerous states now have some type of mandatory sentencing for this offense—typically two days in jail for a first offense and two to ten days for a second offense.⁶⁴ Possession of a tiny amount of crack cocaine, on the other hand, carries a mandatory minimum sentence of five years in federal prison.

The vastly different sentences afforded drunk drivers and drug offenders speaks volumes regarding who is viewed as disposable—someone to be purged from the body politic—and who is not. Drunk drivers are predominantly white and male. White men comprised 78 percent of the arrests for this offense in 1990 when new mandatory minimums governing drunk driving were being adopted.⁶⁵ They are generally charged with misdemeanors and typically receive sentences involving fines, license suspension, and community service. Although drunk driving carries a far greater risk of violent death than the use or sale of illegal drugs, the societal response to drunk drivers has generally emphasized keeping the person functional and in society, while attempting to respond to the dangerous behavior through treatment and counseling.⁶⁶ People charged with drug offenses, though, are disproportionately poor people of color. They are typically charged with felonies and sentenced to prison.

Another clue that mass incarceration, as we know it, would not exist but for the race of the imagined enemy can be found in the history of drug-law enforcement in the United States. Yale historian David Musto and other scholars have documented a disturbing, though unsurprising pattern: punishment becomes more severe when drug use is associated with people of color but softens when it is associated with whites.⁶⁷ The history of marijuana policy is a good example. In the early 1900s, marijuana was perceived—rightly or wrongly—as a drug used by blacks and Mexican Americans, leading to the Boggs Act of the 1950s, penalizing first-time possession of marijuana with a sentence of two to five years in prison.⁶⁸ In the 1960s, though, when marijuana became associated with the white middle class and college kids, commissions were promptly created to study whether marijuana was

really as harmful as once thought. By 1970, the Comprehensive Drug Abuse Prevention and Control Act differentiated marijuana from other narcotics and lowered federal penalties.⁶⁹ The same drug that had been considered fearsome twenty years earlier, when associated with African Americans and Latinos, was refashioned as a relatively harmless drug when associated with whites.

In view of the nation's treatment of predominately white drunk drivers and drug offenders, it is extremely difficult to imagine that our nation would have declared all-out war on drug offenders if the enemy had been defined in the public imagination as white. It was the conflation of blackness and crime in the media and political discourse that made the drug war and the sudden, massive expansion of our prison system possible. White drug "criminals" are collateral damage in the War on Drugs because they have been harmed by a war declared with blacks in mind. While this circumstance is horribly unfortunate for them, it does create important opportunities for a multiracial, bottom-up resistance movement, one in which people of all races can claim a clear stake. For the first time in our nation's history, it may become readily apparent to whites how they, too, can be harmed by anti-black racism—a fact that, until now, has been difficult for many to grasp.

Black support for "get tough" policies. Yet another notable difference between Jim Crow and mass incarceration is that many African Americans seem to support the current system of control, while most believe the same could not be said of Jim Crow. It is frequently argued in defense of mass incarceration that African Americans want more police and more prisons because crime is so bad in some ghetto communities. It is wrong, these defenders claim, for the tactics of mass incarceration—such as the concentration of law enforcement in poor communities of color, the stop-and-frisk programs that have proliferated nationwide, the eviction of drug offenders and their families from public housing, and the drug sweeps of ghetto neighborhoods—to be characterized as racially discriminatory, because those programs and policies have been adopted for the benefit of African American communities and are supported by many ghetto residents.⁷⁰ Ignoring rampant crime in ghetto communities would be racially discriminatory, they say; responding forcefully to it is not.

This argument, on the surface, seems relatively straightforward, but there are actually many layers to it, some of which are quite problematic. To begin with, the argument implies that African Americans prefer harsh criminal justice policies to other forms of governmental intervention, such as job creation, economic development, educational reform, and restorative justice programs, as the long-term solution to problems associated with crime. There is no evidence to support such a claim. To the contrary, surveys consistently show that African Americans are generally less supportive of harsh criminal justice policies than whites, even though blacks are far more likely to be victims of crime.⁷¹ This pattern is particularly remarkable in that less educated people tend to be more punitive and blacks on average are less educated than whites.⁷²

The notion that African Americans support "get tough" approaches to crime is further complicated by the fact that "crime" is not a generic category. There are many different types of crime, and violent crime tends to provoke the most visceral and punitive response. Yet as we have seen in Chapter 2, the drug war has not been aimed at rooting out the most violent drug traffickers, or so-called kingpins. The vast majority of those arrested for drug crimes are not charged with serious offenses, and most of the people in state prison on drug charges have no history of violence or significant selling activity. Those who are "kingpins" are often able to buy their freedom by forfeiting their assets, snitching on other dealers, or becoming paid government informants. Thus, to the extent that some African Americans support harsh policies aimed at violent offenders, they cannot be said to support the War on Drugs, which has been waged primarily against nonviolent, low-level offenders in poor communities of color.

The one thing that is clear from the survey data and ethnographic research is that African Americans in ghetto communities experience an intense “dual frustration” regarding crime and law enforcement. As Glenn Loury explained more than a decade ago, when violent crime rates were making headlines, “The young black men wreaking havoc in the ghetto are still ‘our youngsters’ in the eyes of many of the decent poor and working-class black people who sometimes are their victims.”⁷³ Throughout the black community, there is widespread awareness that black ghetto youth have few, if any, realistic options, and therefore dealing drugs can be an irresistible temptation. Suburban white youth may deal drugs to their friends and acquaintances as a form of recreation and extra cash, but for ghetto youth, drug sales—though rarely lucrative—are often a means of survival, a means of helping to feed and clothe themselves and their families. The fact that this “career” path leads almost inevitably to jail is often understood as an unfortunate fact of life, part of what it means to be poor and black in America.

Women, in particular, express complicated, conflicted views about crime, because they love their sons, husbands, and partners and understand their plight as current and future members of the racial undercaste. At the same time, though, they abhor gangs and the violence associated with inner-city life. One commentator explained, “African American women in poor neighborhoods are torn. They worry about their young sons getting involved in gang activity. They worry about their sons possibly selling or using drugs. They worry about their children getting caught in the crossfire of warring gangs. . . . These mothers want better crime and law enforcement. Yet, they understand that increased levels of law enforcement potentially saddle their children with a felony conviction—a mark that can ensure economic and social marginalization.”⁷⁴

Given the dilemma facing poor black communities, it is inaccurate to say that black people “support” mass incarceration or “get tough” policies. The fact that some black people endorse harsh responses to crime is best understood as a form of complicity with mass incarceration—not support for it. This complicity is perfectly understandable, for the threat posed by crime—particularly violent crime—is real, not imagined. Although African Americans do not engage in drug crime at significantly higher rates than whites, black men do have much higher rates of violent crime, and violent crime is concentrated in ghetto communities. Studies have shown that joblessness—not race or black culture—explains the high rates of violent crime in poor black communities. When researchers have controlled for joblessness, differences in violent crime rates between young black and white men disappear.⁷⁵ Regardless, the reality for poor blacks trapped in ghettos remains the same: they must live in a state of perpetual insecurity and fear. It is perfectly understandable, then, that some African Americans would be complicit with the system of mass incarceration, even if they oppose, as a matter of social policy, the creation of racially isolated ghettos and the subsequent transfer of black youth from underfunded, crumbling schools to brand-new, high-tech prisons. In the era of mass incarceration, poor African Americans are not given the option of great schools, community investment, and job training. Instead, they are offered police and prisons. If the only choice that is offered blacks is rampant crime or more prisons, the predictable (and understandable) answer will be “more prisons.”

The predicament African Americans find themselves in today is not altogether different from the situation they faced during Jim Crow. Jim Crow, as oppressive as it was, offered a measure of security for blacks who were willing to play by its rules. Those who flouted the rules or resisted them risked the terror of the Klan. Cooperation with the Jim Crow system often seemed far more likely to increase or maintain one’s security than any alternative. That reality helps to explain why African American leaders such as Booker T. Washington urged blacks to focus on improving themselves rather than on challenging racial discrimination. It is also why the Civil Rights Movement initially met significant resistance among some

African Americans in the South. Civil rights advocates strenuously argued that it was the mentality and ideology that gave rise to Jim Crow that was the real source of the danger experienced by blacks. Of course they were right. But it is understandable why some blacks believed their immediate safety and security could best be protected by cooperation with the prevailing caste system. The fact that black people during Jim Crow were often complicit with the system of control did not mean they supported racial oppression.

Disagreements within the African American community about how best to respond to systems of control—and even disagreements about what is, and is not, discriminatory—have a long history. The notion that black people have always been united in opposition to American caste systems is sheer myth. Following slavery, for example, there were some African Americans who supported disenfranchisement because they believed that black people were not yet “ready” for the vote. Former slaves, it was argued, were too illiterate to exercise the vote responsibly, and were ill-prepared for the duties of public office. This sentiment could even be found among black politicians such as Isaiah T. Montgomery, who argued in 1890 that voting rights should be denied to black people because enfranchisement should only be extended to literate men. In the same vein, a fierce debate raged between Booker T. Washington and W.E.B. Du Bois about whether—and to what extent—racial bias and discrimination were responsible for the plight of the Negro and ought to be challenged. Du Bois praised and embraced Washington’s emphasis on “thrift, patience, and industrial training for the masses,” but sharply disagreed with his public acceptance of segregation, disenfranchisement, and legalized discrimination. In Du Bois’s view, Washington’s public statements arguing that poor education and bad choices were responsible for the plight of former slaves ignored the damage wrought by caste and threatened to rationalize the entire system. In Du Bois’s words:

[T]he distinct impression left by Mr. Washington’s propaganda is, first, that the South is justified in its present attitude toward the Negro because of the Negro’s degradation; second, that the prime cause of the Negro’s failure to rise more quickly is his wrong education in the past; and, thirdly, that his future rise depends primarily on his own efforts. Each of these propositions is a dangerous half-truth. . . . [Washington’s] doctrine has tended to make the whites, North and South, shift the burden of the Negro problem to the Negro’s shoulders and stand aside as critical and rather pessimistic spectators; when in fact the burden belongs to the nation, and the hands of none of us are clean if we bend not our energies to righting these great wrongs.⁷⁶

Today, a similar debate rages in black communities about the underlying causes of mass incarceration. While some argue that it is attributable primarily to racial bias and discrimination, others maintain that it is due to poor education, unraveling morals, and a lack of thrift and perseverance among the urban poor. Just as former slaves were viewed (even among some African Americans) as unworthy of full citizenship due to their lack of education and good morals, today similar arguments can be heard from black people across the political spectrum who believe that reform efforts should be focused on moral uplift and education for ghetto dwellers, rather than challenging the system of mass incarceration itself.

Scholars, activists, and community members who argue that moral uplift and education provide the best solution to black criminality and the phenomenon of mass incarceration have been influenced by what Evelyn Brooks Higginbotham has called the “politics of respectability”—a politics that was born in the nineteenth century and matured in the Jim Crow era.⁷⁷ This political strategy is predicated on the notion that the goal of racial equality can only be obtained if black people are able to successfully prove to whites that they are worthy of equal treatment, dignity, and respect. Supporters of the politics of respectability

believe that African Americans, if they hope to be accepted by whites, must conduct themselves in a fashion that elicits respect and sympathy rather than fear and anger from other races. They must demonstrate through words and deeds their ability to live by and aspire to the same moral codes as the white middle class, even while they are being discriminated against wrongly.⁷⁸ The basic theory underlying this strategy is that white Americans will abandon discriminatory practices if and when it becomes apparent that black people aren't inferior after all.

The politics of respectability made sense to many black reformers during the Jim Crow era, since African Americans had no vote, could not change policy, and lived under the constant threat of the Klan. Back then, the only thing black people could control was their own behavior. Many believed they simply had no choice, no realistic option, but to cooperate with the caste system while conducting themselves in a such a dignified and respect able manner that it would eventually become obvious to whites that their bigotry was misplaced.

This strategy worked to some extent for a segment of the African American community, particularly those who had access to education and relative privilege. But a much larger segment—those who were uneducated and desperately poor—found themselves unable, as one historian put it, “to conform to the gender roles, public behavior, and economic activity deemed legitimate by bourgeois America but which the forces of Jim Crow sought to prevent black people from achieving.”⁷⁹ In many cases, the relatively privileged black elite turned against the black urban poor, condemning them and distancing themselves, while at the same time presenting themselves as legitimate spokespeople for the disadvantaged. It was a pattern that would repeat itself in cities throughout the United States, as black communities found themselves embroiled in deep conflict over goals and strategies pursued by the black elite. What happened in Atlanta in the wake of the New Deal is a case in point.

During Jim Crow, all black people in Atlanta were bound together by the racial caste system, but there was a significant group of African Americans who were well educated and had influence in the halls of power. Numerous black colleges were located in Atlanta, and the city was home to the South's largest population of college-educated African Americans. Members of this relatively elite group believed they could prove their respectability to white Americans and often blamed less educated blacks for sabotaging their quest for racial equality, especially when they committed crimes or failed to conform to white, middle-class norms of dress, cleanliness, and behavior. In the view of these black elites, a “poverty complex” plagued the black poor, one that made them politically apathetic and content with broken-down, overcrowded, and dirty living conditions.⁸⁰ For decades, black elites engaged in private rescue efforts to make black communities tidy, clean, and respectable in a futile effort to gain white approval.⁸¹

Eventually, these rescue efforts gave way to black endorsement of harmful policies aimed at the urban poor. In the 1930s and early 1940s, President Franklin D. Roosevelt began to roll out the New Deal—a massive public works and investment program designed to lift the nation out of a severe depression. Almost immediately, black elites recognized the opportunity for the individual and collective advancement of Negroes who could present themselves favorably to whites. Some black Atlantans were brought from the margins into the sphere of opportunity by New Deal programs, but most were left behind. As historian Karen Ferguson observes, “when [black reformers] had the opportunity to determine the recipients of New Deal largesse, they did not choose the ‘mudsills’ of the black working class but rather the more prosperous elements who were more able to be respectable according to the reformers’ vision.”⁸² Far from prioritizing the needs of the least advantaged, many black reformers began aggressively pursuing policy reforms that would benefit the black elite to the detriment of the poorest segments of the black community. Some of the most discriminatory federal programs of the New Deal era, including the slum-clearance program, received strong

support from African American bureaucrats and reformers who presented themselves as speaking for the black community as a whole.⁸³

Although many poor African Americans rejected the philosophies, tactics, and strategies of the black elite, ultimately moral uplift ideology became the new common sense. Not just in Atlanta but in cities nationwide, the tensions and debates between black reformers struggling to improve and uplift the “slum dwellers” and those committed to challenging discrimination and Jim Crow directly played out over and over again. Black elites found they had much to gain by positioning themselves as “race managers,” and many poor African Americans became persuaded that perhaps their degraded status was, after all, their own fault.

Given this history, it should come as no surprise that today some black mayors, politicians, and lobbyists—as well as preachers, teachers, barbers, and ordinary folk—endorse “get tough” tactics and spend more time chastising the urban poor for their behavior than seeking meaningful policy solutions to the appalling conditions in which they are forced to live and raise their children. The fact that many African Americans endorse aspects of the current caste system and insist that the problems of the urban poor can be best explained by their behavior, culture, and attitude does not, in any meaningful way, distinguish mass incarceration from its predecessors. To the contrary, these attitudes and arguments have their roots in the struggles to end slavery and Jim Crow. Many African Americans today believe that uplift ideology worked in the past and ought to work again—forgetting that ultimately it took a major movement to end the last caste system, not simply good behavior. Many black people are confused—and the black community itself is divided—about how best to understand and respond to mass incarceration. A seemingly colorblind system has emerged that locks millions of African Americans into a permanent undercaste, and it appears that those who are trapped within it could have avoided it simply by not committing crimes. Isn’t the answer not to challenge the system but to try to avoid it? Shouldn’t the focus be on improving ourselves, rather than challenging a biased system? Familiar questions are asked decades after the end of the old Jim Crow. Once again, complicity with the prevailing system of control may seem like the only option. Parents and schoolteachers counsel black children that, if they ever hope to escape this system and avoid prison time, they must be on their best behavior, raise their arms and spread their legs for the police without complaint, stay in failing schools, pull up their pants, and refuse all forms of illegal work and moneymaking activity, even if jobs in the legal economy are impossible to find. Girls are told not to have children until they are married to a “good” black man who can help provide for a family with a legal job. They are told to wait and wait for Mr. Right even if that means, in a jobless ghetto, never having children at all.

When black youth find it difficult or impossible to live up to these standards—or when they fail, stumble, and make mistakes, as all humans do—shame and blame is heaped upon them. If only they had made different choices, they’re told sternly, they wouldn’t be sitting in a jail cell; they’d be graduating from college. Never mind that white children on the other side of town who made precisely the same choices—often for less compelling reasons—are in fact going to college.

The genius of the current caste system, and what most distinguishes it from its predecessors, is that it appears voluntary. People choose to commit crimes, and that’s why they are locked up or locked out, we are told. This feature makes the politics of responsibility particularly tempting, as it appears the system can be avoided with good behavior. But herein lies the trap. All people make mistakes. All of us are sinners. All of us are criminals. All of us violate the law at some point in our lives. In fact, if the worst thing you have ever done is speed ten miles over the speed limit on the freeway, you have put yourself and others at more risk of harm than someone smoking marijuana in the privacy of his or her living room. Yet there are people in the United States serving life sentences for first-time drug offenses,

something virtually unheard of anywhere else in the world.

The notion that a vast gulf exists between “criminals” and those of us who have never served time in prison is a fiction created by the racial ideology that birthed mass incarceration, namely that there is something fundamentally wrong and morally inferior about “them.” The reality, though, is that all of us have done wrong. As noted earlier, studies suggest that most Americans violate drug laws in their lifetime. Indeed, most of us break the law not once but repeatedly throughout our lives. Yet only some of us will be arrested, charged, convicted of a crime, branded a criminal or felon, and ushered into a permanent undercaste. Who becomes a social pariah and excommunicated from civil society and who trots off to college bears scant relationship to the morality of crimes committed. Who is more blameworthy: the young black kid who hustles on the street corner, selling weed to help his momma pay the rent? Or the college kid who deals drugs out of his dorm room so that he’ll have cash to finance his spring break? Who should we fear? The kid in the ‘hood who joined a gang and now carries a gun for security, because his neighborhood is frightening and unsafe? Or the suburban high school student who has a drinking problem but keeps getting behind the wheel? Our racially biased system of mass incarceration exploits the fact that all people break the law and make mistakes at various points in their lives and with varying degrees of justification. Screwing up—failing to live by one’s highest ideals and values—is part of what makes us human.

Urging the urban poor—or anyone—to live up to their highest ideals and values is a good thing, as it demonstrates confidence in the ability of all people to stretch, grow, and evolve. Even in the most dire circumstances, we all have power and agency, the ability to choose what we think and how we respond to the circumstances of our lives. Moreover, we all have duties and responsibilities to each other, not the least of which is to do no harm. We ought never excuse violence or tolerate behavior that jeopardizes the safety and security of others. Just as all people—no matter who they are or what they have done—ought to be regarded as having basic human rights to work, housing, education, and food, residents of all communities have a basic human right to safety and security. The intuition underlying moral-uptift strategies is fundamentally sound: our communities will never thrive if we fail to respect ourselves and one another.

As a liberation strategy, however, the politics of responsibility is doomed to fail—not because there is something especially wrong with those locked in ghettos or prisons today, but because there is nothing special about them. They are merely human. They will continue to make mistakes and break the law for reasons that may or may not be justified; and as long as they do so, this system of mass incarceration will continue to function well. Generations of black men will continue to be lost—rounded up for crimes that go ignored on the other side of town and ushered into a permanent second-class status. It may seem at first blush that cooperating with the system while urging good behavior is the only option available, but in reality it is not a liberation strategy at all.

Fork in the Road

Du Bois got it right a century ago: “The burden belongs to the nation, and the hands of none of us are clean if we bend not our energies to righting these great wrongs.” The reality is that, just a few decades after the collapse of one caste system, we constructed another. Our nation declared a war on people trapped in racially segregated ghettos—just at the moment their economies had collapsed—rather than providing community investment, quality education, and job training when work disappeared. Of course those communities are suffering from serious crime and dysfunction today. Did we expect otherwise? Did we think that, miraculously, they would thrive? And now, having waged this war for decades, we claim some blacks “support” mass incarceration, as though they would rather have their young men

warehoused in prison than going off to college. As political theorist Tommie Shelby has observed, “Individuals are forced to make choices in an environment they did not choose. They would surely prefer to have a broader array of good opportunities. The question we should be asking—not instead of but in addition to questions about penal policy—is whether the denizens of the ghetto are entitled to a better set of options, and if so, whose responsibility it is to provide them.”⁸⁴

Clearly a much better set of options could be provided to African Americans—and poor people of all colors—today. As historian Lerone Bennett Jr. eloquently reminds us, “a nation is a choice.” We could choose to be a nation that extends care, compassion, and concern to those who are locked up and locked out or headed for prison before they are old enough to vote. We could seek for them the same opportunities we seek for our own children; we could treat them like one of “us.” We could do that. Or we can choose to be a nation that shames and blames its most vulnerable, affixes badges of dishonor upon them at young ages, and then relegates them to a permanent second-class status for life. That is the path we have chosen, and it leads to a familiar place.

We faced a fork in the road one decade after Martin Luther King Jr. and Malcolm X were laid to rest. As described in Chapter 1, during the late 1970s, jobs had suddenly disappeared from urban areas across America, and unemployment rates had skyrocketed. In 1954, black and white youth unemployment rates in America were equal, with blacks actually having a slightly higher rate of employment in the age group sixteen to nineteen. By 1984, however, the black unemployment rate had nearly quadrupled, while the white rate had increased only marginally.⁸⁵ This was not due to a major change in black values, behavior, or culture; this dramatic shift was the result of deindustrialization, globalization, and technological advancement. Urban factories shut down as our nation transitioned to a service economy. Suddenly African Americans were trapped in jobless ghettos, desperate for work.

The economic collapse of inner-city black communities could have inspired a national outpouring of compassion and support. A new War on Poverty could have been launched. Economic stimulus packages could have sailed through Congress to bail out those trapped in jobless ghettos through no fault of their own. Education, job training, public transportation, and relocation assistance could have been provided, so that youth of color would have been able to survive the rough transition to a new global economy and secure jobs in distant suburbs. Constructive interventions would have been good not only for African Americans trapped in ghettos, but also for blue-collar workers of all colors, many of whom were suffering too, if less severely. A wave of compassion and concern could have flooded poor and working-class communities, in honor of the late Martin Luther King Jr. All of this could have happened, but it didn’t. Instead we declared a War on Drugs.

The collapse of inner-city economies coincided with the conservative backlash against the Civil Rights Movement, resulting in the perfect storm. Almost overnight, black men found themselves unnecessary to the American economy and demonized by mainstream society. No longer needed to pick cotton in the fields or labor in factories, lower-class black men were hauled off to prison in droves. They were vilified in the media and condemned for their condition as part of a well-orchestrated political campaign to build a new white Republican majority in the South. Decades later, curious onlookers in the grips of denial would wonder aloud, “Where have all the black men gone?”

No one has made this point better than sociologist Loïc Wacquant. Wacquant has written extensively about the cyclical nature of racial caste in America. He emphasizes that the one thing that makes the current penal apparatus strikingly different from previous racial caste systems is that “it does not carry out the positive economic mission of recruitment and disciplining of the workforce.”⁸⁶ Instead it serves only to warehouse poor black and brown people for increasingly lengthy periods of time, often until old age. The new system does not

seek primarily to benefit unfairly from black labor, as earlier caste systems have, but instead views African Americans as largely irrelevant and unnecessary to the newly structured economy—an economy that is no longer driven by unskilled labor.

It is fair to say that we have witnessed an evolution in the United States from a racial caste system based entirely on exploitation (slavery), to one based largely on subordination (Jim Crow), to one defined by marginalization (mass incarceration). While marginalization may sound far preferable to exploitation, it may prove to be even more dangerous. Extreme marginalization, as we have seen throughout world history, poses the risk of extermination. Tragedies such as the Holocaust in Germany or ethnic cleansing in Bosnia are traceable to the extreme marginalization and stigmatization of racial and ethnic groups. As legal scholar John A. Powell once commented, only half in jest, “It’s actually better to be exploited than marginalized, in some respects, because if you’re exploited presumably you’re still needed.”⁸⁷

Viewed in this light, the frantic accusations of genocide by poor blacks in the early years of the War on Drugs seem less paranoid. The intuition of those residing in ghetto communities that they had suddenly become disposable was rooted in real changes in the economy—changes that have been devastating to poor black communities as factories have closed, low-skill jobs have disappeared, and all those who had the means to flee the ghetto did. The sense among those left behind that society no longer has use for them, and that the government now aims simply to get rid of them, reflects a reality that many of us who claim to care prefer to avoid simply by changing channels.

Notes

1. Michael Eric Dyson, "Obama's Rebuke of Absentee Black Fathers," *Time*, June 19, 2008.
2. Sam Roberts, "51% of Women Now Living with a Spouse," *New York Times*, Jan. 16, 2007.
3. See Jonathan Tilove, "Where Have All the Men Gone? Black Gender Gap Is Widening," *Seattle Times*, May 5, 2005; and Jonathan Tilove, "Where Have All the Black Men Gone?" *Star-Ledger* (Newark), May 8, 2005.
4. Ibid.
5. Cf. Salim Muwakkil, "Black Men: Missing," *In These Times*, June 16, 2005.
6. G. Garvin, "Where Have the Black Men Gone?" *Ebony*, Dec. 2006.
7. One in eleven black adults was under correctional supervision at year end 2007, or approximately 2.4 million people. See Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: Pew Charitable Trusts, 2009). According to the 1850 Census, approximately 1.7 million adults (ages 15 and older) were slaves.
8. See Andrew J. Cherlin, *Marriage, Divorce, Remarriage*, rev. ed. (Cambridge, MA: Harvard University Press, 1992), 110.
9. See Glenn C. Loury, *Race, Incarceration, and American Values* (Cambridge, MA: MIT Press, 2008), commentary by Pam Karlan.
10. Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (Cambridge, UK: Polity, 2001), 4-5.
11. Iris Marion Young, *Inclusion and Democracy* (New York: Oxford University Press, 2000), 92-99.
12. Marilyn Frye, "Oppression," in *The Politics of Reality* (Trumansburg, NY: Crossing Press, 1983).
13. See Marc Mauer and Meda Chesney-Lind, eds., *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (New York: The New Press, 2002); and Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (Washington, DC: Urban Institute Press, 2005).
14. Negley K. Teeters and John D. Shearer, *The Prison at Philadelphia, Cherry Hill: The Separate System of Prison Discipline, 1829-1913* (New York: Columbia University Press, 1957), 84.
15. See David Musto, *The American Disease: Origins of Narcotics Control*, 3rd ed. (New York: Oxford University Press, 1999), 4, 7, 43-44, 219-20, describing the role of racial bias in earlier drug wars; and Doris Marie Provine, *Unequal Under Law. Race in the War on Drugs* (Chicago: University of Chicago Press, 2007), 37-90, describing racial bias in alcohol prohibition, as well as other drug wars.
16. Mary Pattillo, David F. Weiman, and Bruce Western, *Imprisoning America: The Social Effect of Mass Incarceration* (New York: Russell Sage Foundation, 2004), 2.
17. Paul 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).
18. Street, *Vicious Circle*; 3.
19. Alden Loury, "Black Offenders Face Stiffest Drug Sentences," *Chicago Reporter*, Sept. 12, 2007.
20. Ibid.
21. Street, *Vicious Circle*, 15.
22. Donald G. Lubin et al., *Chicago Metropolis 2020: 2006 Crime and Justice Index*, (Washington, DC: Pew Center on the States, 2006), 5, www.pewcenteronthestates.org/

report_detail.aspx?id=33022.

23. Report of the Illinois Disproportionate Justice Impact Study Commission, Dec. 2010, available at www.centerforhealthandjustice.org/DJIS_ExecSumm_FINAL.pdf.

24. Lubin et al., *Chicago Metropolis 2020*, 37.

25. *Ibid.*, 35.

26. *Ibid.*, 3; see also Bruce Western, *Punishment and Inequality/ in America* (New York: Russell Sage Foundation, 2006), 12.

27. Street, *Vicious Circle*, 3.

28. *Ibid.*

29. *Ibid.*

30. See Chapter 1, p. 61, which describes the view that President Ronald Reagan's appeal derived primarily from the "emotional distress of those who fear or resent the Negro, and who expect Reagan somehow to keep him 'in his place' or at least echo their own anger and frustration."

31. For an excellent discussion of the history of felon disenfranchisement laws, as well as their modern day impact, see Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press, 2006).

32. *Cotton v. Fordice*, 157 F.3d 388, 391 (5th Cir. 1998); see also Marline J. Price, "Note and Comment: Addressing Ex-Felon Disenfranchisement: Legislation v. Litigation," *Brooklyn Journal of Law and Policy* 11 (2002): 369, 382-83.

33. See Jamie Fellner and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (Washington, DC: Sentencing Project, 1998).

34. Loury, *Race, Incarceration, and American Values*, p. 48.

35. See Eric Lotke and Peter Wagner, "Prisoners of the Census: Electoral and Financial Consequences of Counting Prisoners Where They Go, Not Where They Come From," *Pace Law Review* 24 (2004): 587, available at www.prisonpolicy.org/pace.pdf.

36. See *Batson v. Kentucky* 476 U.S. 79 (1986), discussed in Chapter 3, p. 146.

37. See *Purkett v. Elm*, 514 U.S. 765 discussed in Chapter 3, p. 150.

38. Brian Kalt, "The Exclusion of Felons from Jury Service," *American University Law Review* 53 (2003): 65.

39. See *Dred Scott v. Sandford*, 60 U.S. (How. 19) 393 (1857).

40. Travis, *But They All Come Back*, 132.

41. Peter Wagner, "Prisoners of the Census"; for more information, see www.prisonersofthecensus.org.

42. Travis, *But They All Come Back*, 281, citing James Lynch and William Saboi, *Prisoner Reentry in Perspective*, Crime Policy Report, vol. 3 (Washington, DC: Urban Institute, 2001).

43. Dina R. Rose, Todd R. Clear, and Judith A. Ryder, *Drugs, Incarcerations, and Neighborhood Life: The Impact of Reintegrating Offenders into the Community* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2002).

44. Sudhir Alladi Venkatesh, *The Robert Taylor Homes Relocation Study* (New York: Center for Urban Research and Policy, Columbia University, 2002).

45. Street, *Vicious Circle*, 16.

46. *Ibid.*, 17.

47. Keynote address by Paula Wolff at Annual Luncheon for Appleseed Fund for Justice and Chicago Council of Lawyers, Oct. 7, 2008, www.chicagometropolis2020.org/710_25.htm.

48. Katherine Beckett and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America* (Thousand Oaks, CA: Sage Publications, 2004), 36, citing Mercer Sullivan, *Getting Paid: Youth Crime and Work in the Inner City* (New York: Cornell University Press, 1989).

49. Ibid.
50. Loïc Wacquant, "The New 'Peculiar Institution': On the Prison as Surrogate Ghetto," *Theoretical Criminology* 4, no. 3 (2000): 377-89.
51. See, e.g., Douglas Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993).
52. Whites are far more likely than African Americans to complete college, and college graduates are more likely to have tried illicit drugs in their lifetime when compared to adults who have not completed high school. See U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Findings from the 2000 National Household Survey on Drug Abuse* (Rockville, MD: 2001). Adults who have not completed high school are disproportionately African American.
53. Devah Pager, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration* (Chicago: University of Chicago Press, 2007), 90-91, 146-47.
54. John Edgar Wideman, "Doing Time, Marking Race," *The Nation*, Oct. 30, 1995.
55. See Julia Cass and Connie Curry, *America's Cradle to Prison Pipeline* (New York: Children's Defense Fund, 2007).
56. James Forman Jr., "Children, Cops and Citizenship: Why Conservatives Should Oppose Racial Profiling," in *Invisible Punishment*, ed. Mauer and Lind, 159.
57. Wideman, "Doing Time, Marking Race."
58. See discussion of stigma in Chapter 4.
59. See, e.g., Charles Ogletree and Austin Sarat, eds., *From Lynch Mobs to the Killing State: Race and the Death Penalty in America* (New York: New York University Press, 2006); and Joy James, *The New Abolitionists: (Neo) Slave Narratives and Contemporary Prison Writings* (New York: State University of New York Press, 2005).
60. See discussion of polling data in Chapter 3.
61. Glenn C. Loury, *The Anatomy of Racial Inequality* (Cambridge, MA: Harvard University Press, 2003), 82.
62. Ibid., 82-83.
63. Craig Reinerman, "The Crack Attack: America's Latest Drug Scare, 1986-1992" in *Images of Issues: Typifying Contemporary Social Problems* (New York: Aldine DeGruyter, 1995), 162.
64. Marc Mauer, *Race to Incarcerate*, rev. ed. (New York: The New Press, 2006), 150.
65. Ibid., 151
66. Ibid.
67. See Musto, *American Disease*, 4, 7, 43-44, 219-20; and Doris Marie Provine, *Unequal Under Law*, 37-90.
68. Eric Schlosser, "Reefer Madness," *Atlantic Monthly*, Aug. 1994, 49.
69. Mauer, *Race to Incarcerate*, 149.
70. The most compelling version of this argument has been made by Randall Kennedy in *Race, Crime and the Law* (New York: Vintage Books, 1997).
71. Tracy Meares, "Charting Race and Class Differences in Attitudes Toward Drug Legalization and Law Enforcement: Lessons for Federal Criminal Law," *Buffalo Criminal Law Review* 1 (1997): 137; Stephen Bennett and Alfred Tuchfarber, "The Social Structural Sources of Cleavage on Law and Order Policies," *American Journal of Political Science* 19 (1975): 419-38; and Sandra Browning and Ligun Cao, "The Impact of Race on Criminal Justice Ideology," *Justice Quarterly* 9 (Dec. 1992): 685-99.
72. Meares, "Charting Race and Class Differences," 157.
73. Glenn Loury, "Listen to the Black Community," *Public Interest*, Sept. 22, 1994, 35.
74. Meares, "Charting Race and Class Differences," 160-61.
75. See William Julius Wilson, *When Work Disappears: The World of the New Urban*

Poor (New York: Vintage Books, 1997), 22, citing Delbert Elliott study.

76. W.E.B. Du Bois, *The Souls of Black Folk* (1903; New York: Bantam, 1989).

77. See Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920* (Cambridge, MA: Harvard University Press, 1994), 188.

78. Ibid. See also Karen Ferguson, *Black Politics in New Deal Atlanta* (Chapel Hill: University of North Carolina Press, 2002), 5-11; and Randall Kennedy, *Race, Crime and the Law* (New York: Vintage Books, 1997), 17.

79. Ferguson, *Black Politics in New Deal Atlanta*, 5.

80. Ibid., 192.

81. Ibid.

82. Ibid., 9.

83. Ibid., 13.

84. Glenn C. Loury, *Race, Incarceration and American Values* (Cambridge, MA: MIT Press, 2008), 81, commentary by Tommie Shelby.

85. See Troy Duster, "Pattern, Purpose, and Race in the Drug War: The Crisis of Credibility in Criminal Justice," in *Crack In America: Demon Drugs and Social Justice*, ed. Craig Reinerman and Harry G. Levine (Berkeley: University of California Press, 1997).

86. Loïc Wacquant, "From Slavery to Mass Incarceration: Rethinking the Race Question," *New Left Review*, Jan.-Feb. 2002, 53.

87. John A. Powell, Executive Director of the Kirwan Institute for the Study of Race and Ethnicity, personal communication, Jan. 2007.