The New Jim Crow

Mass Incarceration in the Age of Colorblindness

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The Rebirth of Caste

[The slave went free; stood a brief moment in the sun; then moved back again toward slavery.

—W.E.B Du Bois, Black Reconstruction in America

For more than two hundred years, scholars have written about the illusory nature of the Emancipation Proclamation. President Abraham Lincoln issued a declaration purporting to free slaves held in Southern Confederate states, but not a single black slave was actually free to walk away from a master in those states as a result. A civil war had to be won first, hundreds of thousands of lives lost, and then—only then—were slaves across the South set free. Even that freedom proved illusory, though. As W.E.B. Du Bois eloquently reminds us, former slaves had “a brief moment in the sun” before they were returned to a status akin to slavery. Constitutional amendments guaranteeing African Americans “equal protection of the laws” and the right to vote proved as impotent as the Emancipation Proclamation once a white backlash against Reconstruction gained steam. Black people found themselves yet again powerless and relegated to convict leasing camps that were, in many ways, worse than slavery. Sunshine gave way to darkness, and the Jim Crow system of segregation emerged—a system that put black people nearly back where they began, in a subordinate racial caste.

Few find it surprising that Jim Crow arose following the collapse of slavery. The development is described in history books as regrettable but predictable, given the virulent racism that gripped the South and the political dynamics of the time. What is remarkable is that hardly anyone seems to imagine that similar political dynamics may have produced another caste system in the years following the collapse of Jim Crow—one that exists today. The story that is told during Black History Month is one of triumph; the system of racial caste is officially dead and buried. Suggestions to the contrary are frequently met with shocked disbelief. The standard reply is: “How can you say that a racial caste system exists today? Just look at Barack Obama! Just look at Oprah Winfrey!”

The fact that some African Americans have experienced great success in recent years does not mean that something akin to a racial caste system no longer exists. No caste system in the United States has ever governed all black people; there have always been “free blacks” and black success stories, even during slavery and Jim Crow. The superlative nature of individual black achievement today in formerly white domains is a good indicator that Jim Crow is dead, but it does not necessarily mean the end of racial caste. If history is any guide, it may have simply taken a different form.

Any candid observer of American racial history must acknowledge that racism is highly adaptable. The rules and reasons the political system employs to enforce status relations of any kind, including racial hierarchy, evolve and change as they are challenged. The valiant efforts to abolish slavery and Jim Crow and to achieve greater racial equality have brought about significant changes in the legal framework of American society—“new ‘rules of the game,’” so to speak. These new rules have been justified by new rhetoric, new language, and a new social consensus, while producing many of the same results. This dynamic, which legal scholar Reva Siegel has dubbed “preservation through transformation,” is the process through which white privilege is maintained, though the rules and rhetoric change.

This process, though difficult to recognize at any given moment, is easier to see in retrospect. Since the nation’s founding, African Americans repeatedly have been controlled through institutions such as slavery and Jim Crow, which appear to die, but then are reborn in new form, tailored to the needs and constraints of the time. As described in the pages that follow, there is a certain pattern to this cycle. Following the collapse of each system of control, there has been a period of confusion—transition—in which those who are most committed to racial hierarchy search for new means to achieve their goals within the rules of the game as currently defined. It is during this period of uncertainty that the backlash intensifies and a new form of racial-
ized social control begins to take hold. The adoption of the new system of control is never inevitable, but to date it has never been avoided. The most ardent proponents of racial hierarchy have consistently succeeded in implementing new racial caste systems by triggering a collapse of resistance across the political spectrum. This feat has been achieved largely by appealing to the racism and vulnerability of lower-class whites, a group of people who are understandably eager to ensure that they never find themselves trapped at the bottom of the American hierarchy.

The emergence of each new system of control may seem sudden, but history shows that the seeds are planted long before each new institution begins to grow. For example, although it is common to think of the Jim Crow regime following immediately on the heels of Reconstruction, the truth is more complicated. And while it is generally believed that the backlash against the Civil Rights Movement is defined primarily by the rollback of affirmative action and the undermining of federal civil rights legislation by a hostile judiciary, the seeds of the new system of control—mass incarceration—were planted during the Civil Rights Movement itself, when it became clear that the old caste system was crumbling and a new one would have to take its place.

With each reincarnation of racial caste, the new system, as sociologist Loïc Wacquant puts it, "is less total, less capable of encompassing and controlling the entire race." However, any notion that this evolution reflects some kind of linear progress would be misguided, for it is not at all obvious that it would be better to be incarcerated for life for a minor drug offense than to live with one's family, earning an honest living under the Jim Crow regime—notwithstanding the ever-present threat of the Klan. Moreover, as the systems of control have evolved, they have become perfected, arguably more resilient to challenge, and thus capable of enduring for generations to come. The story of the political and economic underpinnings of the nation's founding sheds some light on these recurring themes in our history and the reasons new racial caste systems continue to be born.

The Birth of Slavery

Back there, before Jim Crow, before the invention of the Negro or the white man or the words and concepts to describe them, the Colonial population consisted largely of a great mass of white and black bondsmen, who occupied roughly the same economic category and were treated with equal contempt by the lords of the plantations and legislatures. Curiously unconcerned about their color, these people worked together and relaxed together. —Lerone Bennett Jr.

The concept of race is a relatively recent development. Only in the past few centuries, owing largely to European imperialism, have the world's people been classified along racial lines. Here, in America, the idea of race emerged as a means of reconciling chattel slavery—as well as the extermination of American Indians—with the ideals of freedom preached by whites in the new colonies.

In the early colonial period, when settlements remained relatively small, indentured servitude was the dominant means of securing cheap labor. Under this system, whites and blacks struggled to survive against a common enemy, what historian Lerone Bennett Jr. describes as "the big planter apparatus and a social system that legalized terror against black and white bondsmen." Initially, blacks brought to this country were not all enslaved; many were treated as indentured servants. As plantation farming expanded, particularly tobacco and cotton farming, demand increased greatly for both labor and land.

The demand for land was met by invading and conquering larger and larger swaths of territory. American Indians became a growing impediment to white European "progress," and during this period, the images of American Indians promoted in books, newspapers, and magazines became increasingly negative. As sociologists Keith Kilty and Eric Swank have observed, eliminating "savages" is less of a moral problem than eliminating human beings, and therefore American Indians came to be understood as a lesser race—uncivilized savages—thus providing a justification for the extermination of the native peoples.

The growing demand for labor on plantations was met through slavery. American Indians were considered unsuitable as slaves, largely because native tribes were clearly in a position to fight back. The fear of raids by Indian tribes led plantation owners to grasp for an alternative source of free labor. European immigrants were also deemed poor candidates for slavery, not because of their race, but rather because they were in short supply and enslavement would, quite naturally, interfere with voluntary immigration to the
new colonies. Plantation owners thus viewed Africans, who were relatively powerless, as the ideal slaves. The systematic enslavement of Africans, and the rearing of their children under bondage, emerged with all deliberate speed—quickened by events such as Bacon’s Rebellion.

Nathaniel Bacon was a white property owner in Jamestown, Virginia, who managed to unite slaves, indentured servants, and poor whites in a revolutionary effort to overthrow the planter elite. Although slaves clearly occupied the lowest position in the social hierarchy and suffered the most under the plantation system, the condition of indentured whites was barely better, and the majority of free whites lived in extreme poverty. As explained by historian Edmund Morgan, in colonies like Virginia, the planter elite, with huge land grants, occupied a vastly superior position to workers of all colors. Southern colonies did not hesitate to invent ways to extend the terms of servitude, and the planter class accumulated uncultivated lands to restrict the options of free workers. The simmering resentment against the planter class created conditions that were ripe for revolt.

Varying accounts of Bacon’s rebellion abound, but the basic facts are these: Bacon developed plans in 1675 to seize Native American lands in order to acquire more property for himself and others and nullify the threat of Indian raids. When the planter elite in Virginia refused to provide militia support for his scheme, Bacon retaliated, leading an attack on the elite, their homes, and their property. He openly condemned the rich for their oppression of the poor and inspired an alliance of white and black bond laborers, as well as slaves, who demanded an end to their servitude. The attempted revolution was ended by force and false promises of amnesty. A number of the people who participated in the revolt were hanged. The events in Jamestown were alarming to the planter elite, who were deeply fearful of the multicrarial alliance of bond workers and slaves. Word of Bacon’s rebellion spread far and wide, and several more uprisings of a similar type followed.

In an effort to protect their superior status and economic position, the planters shifted their strategy for maintaining dominance. They abandoned their heavy reliance on indentured servants in favor of the importation of more black slaves. Instead of importing English-speaking slaves from the West Indies, who were more likely to be familiar with European language and culture, many more slaves were shipped directly from Africa. These slaves would be far easier to control and far less likely to form alliances with poor whites.

Fearful that such measures might not be sufficient to protect their interests, the planter class took an additional precautionary step, a step that would later come to be known as a “racial bribe.” Deliberately and strategically, the planter class extended special privileges to poor whites in an effort to drive a wedge between them and black slaves. White settlers were allowed greater access to Native American lands, white servants were allowed to police slaves through slave patrols and militias, and barriers were created so that free labor would not be placed in competition with slave labor. These measures effectively eliminated the risk of future alliances between black slaves and poor whites. Poor whites suddenly had a direct, personal stake in the existence of a race-based system of slavery. Their own plight had not improved by much, but at least they were not slaves. Once the planter elite split the labor force, poor whites responded to the logic of their situation and sought ways to expand their racially privileged position.

By the mid-1770s, the system of bond labor had been thoroughly transformed into a racial caste system predicated on slavery. The degraded status of Africans was justified on the ground that Negros, like the Indians, were an uncivilized lesser race, perhaps even more lacking in intelligence and laudable human qualities than the red-skinned natives. The notion of white supremacy rationalized the enslavement of Africans, even as whites endeavored to form a new nation based on the ideals of equality, liberty, and justice for all. Before democracy, chattel slavery in America was born.

It may be impossible to overstate the significance of race in defining the basic structure of American society. The structure and content of the original Constitution was based largely on the effort to preserve a racial caste system—slavery—while at the same time affording political and economic rights to whites, especially propertied whites. The southern slaveholding colonies would agree to form a union only on the condition that the federal government would not be able to interfere with the right to own slaves. Northern white elites were sympathetic to the demand for their “property rights” to be respected, as they, too, wanted the Constitution to protect their property interests. As James Madison put it, the nation ought to be constituted “to protect the minority of the opulent against the majority.” Consequently, the Constitution was designed so the federal government would be weak, not only in its relationship to private property, but also in relationship to the rights of states to conduct their own affairs. The language of the Constitution itself was deliberately colorblind (the words slave or Negro were
never used), but the document was built upon a compromise regarding the prevailing racial caste system. Federalism—the division of power between the states and the federal government—was the device employed to protect the institution of slavery and the political power of slaveholding states. Even the method for determining proportional representation in Congress and identifying the winner of a presidential election (the electoral college) were specifically developed with the interest of slaveholders in mind. Under the terms of our country’s founding document, slaves were defined as three-fifths of a man, not a real, whole human being. Upon this racist fiction rests the entire structure of American democracy.

The Death of Slavery

The history of racial caste in the United States would end with the Civil War if the idea of race and racial difference had died when the institution of slavery was put to rest. But during the four centuries in which slavery flourished, the idea of race flourished as well. Indeed, the notion of racial difference—specifically the notion of white supremacy—proved far more durable than the institution that gave birth to it.

White supremacy, over time, became a religion of sorts. Faith in the idea that people of the African race were bestial, that whites were inherently superior, and that slavery was, in fact, for blacks’ own good, served to alleviate the white conscience and reconcile the tension between slavery and the democratic ideals espoused by whites in the so-called New World. There was no contradiction in the bold claim made by Thomas Jefferson in the Declaration of Independence that “all men are created equal” if Africans were not really people. Racism operated as a deeply held belief system based on “truths” beyond question or doubt. This deep faith in white supremacy not only justified an economic and political system in which plantation owners acquired land and great wealth through the brutality, torture, and coercion of other human beings; it also endured, like most articles of faith, long after the historical circumstances that gave rise to the religion passed away. In Wacquant’s words: “Racial division was a consequence, not a precondition of slavery, but once it was instituted it became detached from its initial function and acquired a social potency all its own.” After the death of slavery, the idea of race lived on.

One of the most compelling accounts of the postemancipation period is The Strange Career of Jim Crow, written by C. Vann Woodward in 1955. The book continues to be the focal point of study and debate by scholars and was once described by Martin Luther King Jr. as the “historical bible of the Civil Rights Movement.” As Woodward tells the story, the end of slavery created an extraordinary dilemma for Southern white society. Without the labor of former slaves, the region’s economy would surely collapse, and without the institution of slavery, there was no longer a formal mechanism for maintaining racial hierarchy and preventing “amalgamation” with a group of people considered intrinsically inferior and vile. This state of affairs produced a temporary anarchy and a state of mind bordering on hysteria, particularly among the planter elite. But even among poor whites, the collapse of slavery was a bitter pill. In the antebellum South, the lowliest white person at least possessed his or her white skin—a badge of superiority over even the most skilled slave or prosperous free African American.

While Southern whites—poor and rich alike—were utterly outraged by emancipation, there was no obvious solution to the dilemma they faced. Following the Civil War, the economic and political infrastructure of the South was in shambles. Plantation owners were suddenly destitute, and state governments, shackled by war debt, were penniless. Large amounts of real estate and other property had been destroyed in the war; industry was disorganized, and hundreds of thousands of men had been killed or maimed. With all of this went the demoralizing effect of an unsuccessful war and the extraordinary challenges associated with rebuilding new state and local governments. Add to all this the sudden presence of 4 million newly freed slaves, and the picture becomes even more complicated. Southern whites, Woodward explains, strongly believed that a new system of racial control was clearly required, but it was not immediately obvious what form it should take.

Under slavery, the racial order was most effectively maintained by a large degree of contact between slave owners and slaves, thus maximizing opportunities for supervision and discipline, and minimizing the potential for active resistance or rebellion. Strict separation of the races would have threatened slaveholders’ immediate interests and was, in any event, wholly unnecessary as a means of creating social distance or establishing the inferior status of slaves.

Following the Civil War, it was unclear what institutions, laws, or customs would be necessary to maintain white control now that slavery was gone.
Nonetheless, as numerous historians have shown, the development of a new racial order became the consuming passion for most white Southerners. Rumors of a great insurrection terrified whites, and blacks increasingly came to be viewed as menacing and dangerous. In fact, the current stereotypes of black men as aggressive, unruly predators can be traced to this period, when whites feared that an angry mass of black men might rise up and attack them or rape their women.

Equally worrisome was the state of the economy. Former slaves literally walked away from their plantations, causing panic and outrage among plantation owners. Large numbers of former slaves roamed the highways in the early years after the war. Some converged on towns and cities; others joined the federal militia. Most white people believed African Americans lacked the proper motivation to work, prompting the provisional Southern legislatures to adopt the notorious black codes. As expressed by one Alabama planter: “We have the power to pass stringent police laws to govern the Negroes—this is a blessing—for they must be controlled in some way or white people cannot live among them.” While some of these codes were intended to establish systems of peonage resembling slavery, others foreshadowed Jim Crow laws by prohibiting, among other things, interracial seating in the first-class sections of railroad cars and by segregating schools.

Although the convict laws enacted during this period are rarely seen as part of the black codes, that is a mistake. As explained by historian William Cohen, “the main purpose of the codes was to control the freedmen, and the question of how to handle convicted black law breakers was very much at the center of the control issue.” Nine southern states adopted vagrancy laws—which essentially made it a criminal offense not to work and were applied selectively to blacks—and eight of those states enacted convict laws allowing for the hiring-out of county prisoners to plantation owners and private companies. Prisoners were forced to work for little or no pay. One vagrancy act specifically provided that “all free negroes and mulattoes over the age of eighteen” must have written proof of a job at the beginning of every year. Those found with no lawful employment were deemed vagrants and convicted. Clearly, the purpose of the black codes in general and the vagrancy laws in particular was to establish another system of forced labor. In W.E.B. Du Bois’s words: “The Codes spoke for themselves. . . . No open-minded student can read them without being convinced they meant nothing more nor less than slavery in daily toil.”

Ultimately, the black codes were overturned, and a slew of federal civil rights legislation protecting the newly freed slaves was passed during the relatively brief but extraordinary period of black advancement known as the Reconstruction Era. The impressive legislative achievements of this period include the Thirteenth Amendment, abolishing slavery; the Civil Rights Act of 1866, bestowing full citizenship upon African Americans; the Fourteenth Amendment, prohibiting states from denying citizens due process and “equal protection of the laws”; the Fifteenth Amendment, providing that the right to vote should not be denied on account of race; and the Ku Klux Klan Acts, which, among other things, declared interference with voting a federal offense and the violent infringement of civil rights a crime. The new legislation also provided for federal supervision of voting and authorized the president to send the army and suspend the writ of habeas corpus in districts declared to be in a state of insurrection against the federal government.

In addition to federal civil rights legislation, the Reconstruction Era brought the expansion of the Freedmen’s Bureau, the agency charged with the responsibility of providing food, clothing, fuel, and other forms of assistance to destitute former slaves. A public education system emerged in the South, which afforded many blacks (and poor whites) their first opportunity to learn to read and write.

While the Reconstruction Era was fraught with corruption and arguably doomed by the lack of land reform, the sweeping economic and political developments in that period did appear, at least for a time, to have the potential to seriously undermine, if not completely eradicate, the racial caste system in the South. With the protection of federal troops, African Americans began to vote in large numbers and seize control, in some areas, of the local political apparatus. Literacy rates climbed, and educated blacks began to populate legislatures, open schools, and initiate successful businesses. In 1867, at the dawn of the Reconstruction Era, no black man held political office in the South, yet three years later, at least 15 percent of all Southern elected officials were black. This is particularly extraordinary in light of the fact that fifteen years after the passage of the Voting Rights Act of 1965—the high water mark of the Civil Rights Movement—fewer than 8 percent of all Southern elected officials were black.

At the same time, however, many of the new civil rights laws were proving largely symbolic. Notably absent from the Fifteenth Amendment, for example, was language prohibiting the states from imposing educational, resi-
The terrorist campaign proved highly successful. "Redemption" resulted in the withdrawal of federal troops from the South and the effective abandonment of African Americans and all those who had fought for or supported an egalitarian racial order. The federal government no longer made any effort to enforce federal civil rights legislation, and funding for the Freedmen's Bureau was slashed to such a degree that the agency became virtually defunct.

Once again, vagrancy laws and other laws defining activities such as "mischief" and "insulting gestures" as crimes were enforced vigorously against blacks. The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder. Douglas Blackmon, in Slavery by Another Name, describes how tens of thousands of African Americans were arbitrarily arrested during this period, many of them hit with court costs and fines, which had to be worked off in order to secure their release.18 With no means to pay off their "debts," prisoners were sold as forced laborers to lumber camps, brickyards, railroads, farms, plantations, and dozens of corporations throughout the South. Death rates were shockingly high, for the private contractors had no interest in the health and well-beings of their laborers, unlike the earlier slave-owners who needed their slaves, at a minimum, to be healthy enough to survive hard labor. Laborers were subject to almost continual lashing by long horse whips, and those who collapsed due to injuries or exhaustion were often left to die.

Convicts had no meaningful legal rights at this time and no effective redress. They were understood, quite literally, to be slaves of the state. The Thirteenth Amendment to the U.S. Constitution had abolished slavery but allowed one major exception: slavery remained appropriate as punishment for a crime. In a landmark decision by the Virginia Supreme Court, Ruffin v. Commonwealth, issued at the height of Southern Redemption, the court put to rest any notion that convicts were legally distinguishable from slaves:

For a time, during his service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is civiliter mortus; and his estate, if he has any, is administered like that of a dead man.19
The state of Mississippi eventually moved from hiring convict labor to organizing its own convict labor camp, known as Parchman Farm. It was not alone. During the decade following Redemption, the convict population grew ten times faster than the general population. “Prisoners became younger and blacker, and the length of their sentences soared.” It was the nation’s first prison boom and, as they are today, the prisoners were disproportionately black. After a brief period of progress during Reconstruction, African Americans found themselves, once again, virtually defenseless. The criminal justice system was strategically employed to force African Americans back into a system of extreme repression and control, a tactic that would continue to prove successful for generations to come. Even as convict leasing faded away, strategic forms of exploitation and repression emerged anew. As Blackmon notes: “The apparent demise . . . of leasing prisoners seemed a harbinger of a new day. But the harsher reality of the South was that the new post–Civil War neoslavery was evolving—not disappearing.”

Redemption marked a turning point in the quest by dominant whites for a new racial equilibrium, a racial order that would protect their economic, political, and social interests in a world without slavery. Yet a clear consensus among whites about what the new racial order should be was still lacking. The Redeemers who overthrew Reconstruction were inclined to retain such segregation practices as had already emerged, but they displayed no apparent disposition to expand or universalize the system.

Three alternative philosophies of race relations were put forward to compete for the region’s support, all of which rejected the doctrines of extreme racism espoused by some Redeemers: liberalism, conservatism, and radicalism. The liberal philosophy of race relations emphasized the stigma of segregation and the hypocrisy of a government that celebrates freedom and equality yet denies both on account of race. This philosophy, born in the North, never gained much traction among Southern whites or blacks.

The conservative philosophy, by contrast, attracted wide support and was implemented in various contexts over a considerable period of time. Conservatives blamed liberals for pushing blacks ahead of their proper station in life and placing blacks in positions they were unprepared to fill, a circumstance that had allegedly contributed to their downfall. They warned blacks that some Redeemers were not satisfied with having decimated Reconstruction, and were prepared to wage an aggressive war against blacks throughout the South. With some success, the conservatives reached out to African American voters, reminding them that they had something to lose as well as gain and that the liberals’ preoccupation with political and economic equality presented the danger of losing all that blacks had so far gained.

The radical philosophy offered, for many African Americans, the most promise. It was predicated on a searing critique of large corporations, particularly railroads, and the wealthy elite in the North and South. The radicals of the late nineteenth century, who later formed the Populist Party, viewed the privileged classes as conspiring to keep poor whites and blacks locked into a subordinate political and economic position. For many African American voters, the Populist approach was preferable to the paternalism of conservatives. Populists preached an “equalitarianism of want and poverty, the kinship of a common grievance, and a common oppressor.” As described by Tom Watson, a prominent Populist leader, in a speech advocating a union between black and white farmers: “You are kept apart that you may be separately fleeced of your earnings. You are made to hate each other because upon that hatred is rested the keystone of the arch of financial despotism that enslaves you both. You are deceived and blinded that you may not see how this race antagonism perpetuates a monetary system which beggars both.”

In an effort to demonstrate their commitment to a genuinely multiracial, working-class movement against white elites, the Populists made strides toward racial integration, a symbol of their commitment to class-based unity. African Americans throughout the South responded with great hope and enthusiasm, eager to be true partners in a struggle for social justice. According to Woodward, “It is altogether probable that during the brief Populist upheaval in the nineties Negroes and native whites achieved a greater comity of mind and harmony of political purpose than ever before or since in the South.”

The challenges inherent in creating the alliance sought by the Populists were formidable, as race prejudice ran the highest among the very white populations to which the Populist appeal was specifically addressed—the depressed lower economic classes. Nevertheless, the Populist movement initially enjoyed remarkable success in the South, fueled by a wave of discontent aroused by the severe agrarian depression of the 1880s and 1890s. The Populists took direct aim at the conservatives, who were known as comprising a party of privilege, and they achieved a stunning series of political
victories throughout the region. Alarmed by the success of the Populists and the apparent potency of the alliance between poor and working-class whites and African Americans, the conservatives raised the cry of white supremacy and resorted to the tactics they had employed in their quest for Redemption, including fraud, intimidation, bribery, and terror.

Segregation laws were proposed as part of a deliberate effort to drive a wedge between poor whites and African Americans. These discriminatory barriers were designed to encourage lower-class whites to retain a sense of superiority over blacks, making it far less likely that they would sustain interracial political alliances aimed at toppling the white elite. The laws were, in effect, another racial bribe. As William Julius Wilson has noted, "As long as poor whites directed their hatred and frustration against the black competitor, the planters were relieved of class hostility directed against them." Indeed, in order to overcome the well-founded suspicions of poor and illiterate whites that they, as well as blacks, were in danger of losing the right to vote, the leaders of the movement pursued an aggressive campaign of white supremacy in every state prior to black disenfranchisement.

Ultimately, the Populists caved to the pressure and abandoned their former allies. "While the [Populist] movement was at the peak of zeal," Woodward observed, "the two races had surprised each other and astonished their opponents by the harmony they achieved and the good will with which they co-operated." But when it became clear that the conservatives would stop at nothing to decimate their alliance, the biracial partnership dissolved, and Populist leaders re-aligned themselves with conservatives. Even Tom Watson, who had been among the most forceful advocates for an interracial alliance of farmers, concluded that Populist principles could never be fully embraced by the South until blacks were eliminated from politics.

The agricultural depression, taken together with a series of failed reforms and broken political promises, had pyramided to a climax of social tensions. Dominant whites concluded that it was in their political and economic interest to scapegoat blacks, and "permission to hate" came from sources that had formerly denied it, including Northern liberals eager to reconcile with the South, Southern conservatives who had once promised blacks protection from racial extremism, and Populists, who cast aside their dark-skinned allies when the partnership fell under siege.

History seemed to repeat itself. Just as the white elite had successfully driven a wedge between poor whites and blacks following Bacon's Rebellion by creating the institution of black slavery, another racial caste system was emerging nearly two centuries later, in part due to efforts by white elites to decimate a multiracial alliance of poor people. By the turn of the twentieth century, every state in the South had laws on the books that disenfranchised blacks and discriminated against them in virtually every sphere of life, lending sanction to a racial ostracism that extended to schools, churches, housing, jobs, restrooms, hotels, restaurants, hospitals, orphanages, prisons, funeral homes, morgues, and cemeteries. Politicians competed with each other by proposing and passing ever more stringent, oppressive, and downright ridiculous legislation (such as laws specifically prohibiting blacks and whites from playing chess together). The public symbols and constant reminders of black subjugation were supported by whites across the political spectrum, though the plight of poor whites remained largely unchanged. For them, the racial bribe was primarily psychological.

The new racial order, known as Jim Crow—a term apparently derived from a minstrel show character—was regarded as the "final settlement," the "return to sanity," and "the permanent system." Of course, the earlier system of racialized social control—slavery—had also been regarded as final, sane, and permanent by its supporters. Like the earlier system, Jim Crow seemed "natural," and it became difficult to remember that alternative paths were not only available at one time, but nearly embraced.

The Death of Jim Crow

Scholars have long debated the beginning and end of Reconstruction, as well as exactly when Jim Crow ended and the Civil Rights Movement or "Second Reconstruction" began. Reconstruction is most typically described as stretching from 1863 when the North freed the slaves to 1877, when it abandoned them and withdrew federal troops from the South. There is much less certainty regarding the beginning of the end of Jim Crow.

The general public typically traces the death of Jim Crow to *Brown v. Board of Education*, although the institution was showing signs of weakness years before. By 1945, a growing number of whites in the North had concluded that the Jim Crow system would have to be modified, if not entirely overturned. This consensus was due to a number of factors, including the increased political power of blacks due to migration to the North and the
growing membership and influence of the NAACP, particularly its highly successful legal campaign challenging Jim Crow laws in federal courts. Far more important in the view of many scholars, however, is the influence of World War II. The blatant contradiction between the country's opposition to the crimes of the Third Reich against European Jews and the continued existence of a racial caste system in the United States was proving embarrassing, severely damaging the nation's credibility as leader of the "free world." There was also increased concern that, without greater equality for African Americans, blacks would become susceptible to communist influence, given Russia's commitment to both racial and economic equality. In Gunnar Myrdal's highly influential book The American Dilemma, published in 1944, Myrdal made a passionate plea for integration based on the theory that the inherent contradiction between the "American Creed" of freedom and equality and the treatment of African Americans was not only immoral and profoundly unjust, but was also against the economic and foreign-policy interests of the United States.30

The Supreme Court seemed to agree. In 1944, in Smith v. Allwright, the Supreme Court ended the use of the all-white primary election; and in 1946, the Court ruled that state laws requiring segregation on interstate buses were unconstitutional. Two years later, the Court voided any real estate agreements that racially discriminated against purchasers, and in 1949 the Court ruled that Texas's segregated law school for blacks was inherently unequal and inferior in every respect to its law school for whites. In 1950, in McLaurin v. Oklahoma, it declared that Oklahoma had to desegregate its law school. Thus, even before Brown, the Supreme Court had already begun to set in motion a striking pattern of desegregation.

Brown v. Board of Education was unique, however. It signaled the end of "home rule" in the South with respect to racial affairs. Earlier decisions had chipped away at the "separate but equal" doctrine, yet Jim Crow had managed to adapt to the changing legal environment, and most Southerners had remained confident that the institution would survive. Brown threatened not only to abolish segregation in public schools, but also, by implication, the entire system of legalized discrimination in the South. After more than fifty years of nearly complete deference to Southern states and noninterference in their racial affairs, Brown suggested a reversal in course.

A mood of outrage and defiance swept the South, not unlike the reaction to emancipation and Reconstruction following the Civil War. Again, racial equality was being forced upon the South by the federal government, and by 1956 Southern white opposition to desegregation mushroomed into a vicious backlash. In Congress, North Carolina Senator Sam Erwin Jr. drafted a racist polemic, "the Southern Manifesto," which vowed to fight to maintain Jim Crow by all legal means. Erwin succeeded in obtaining the support of 101 out of 128 members of Congress from the eleven original Confederate states.

A fresh wave of white terror was hurled at those who supported the dismantling of Jim Crow. White Citizens' Councils were formed in almost every Southern city and backwater town, comprised primarily of middle- to upper-middle-class whites in business and the clergy. Just as Southern legislatures had passed the black codes in response to the early steps of Reconstruction, in the years immediately following Brown v. Board, five Southern legislatures passed nearly fifty new Jim Crow laws. In the streets, resistance turned violent. The Ku Klux Klan reasserted itself as a powerful terrorist organization, committing castrations, killings, and the bombing of black homes and churches. NAACP leaders were beaten, pistol-whipped, and shot. As quickly as it began, desegregation across the South ground to a halt. In 1958, thirteen school systems were desegregated; in 1960, only seventeen.31

In the absence of a massive, grassroots movement directly challenging the racial caste system, Jim Crow might be alive and well today. Yet in the 1950s, a civil rights movement was brewing, emboldened by the Supreme Court's decisions and a shifting domestic and international political environment. With extraordinary bravery, civil rights leaders, activists, and progressive clergy launched boycotts, marches, and sit-ins protesting the Jim Crow system. They endured fire hoses, police dogs, bombings, and beatings by white mobs, as well as by the police. Once again, federal troops were sent to the South to provide protection for blacks attempting to exercise their civil rights, and the violent reaction of white racists was met with horror in the North.

The dramatic high point of the Civil Rights Movement occurred in 1963. The Southern struggle had grown from a modest group of black students demonstrating peacefully at one lunch counter to the largest mass movement for racial reform and civil rights in the twentieth century. Between autumn 1961 and the spring of 1963, twenty thousand men, women, and children had been arrested. In 1963 alone, another fifteen thousand were imprisoned, and one thousand desegregation protests occurred across the region, in more than one hundred cities.32

On June 12, 1963, President Kennedy announced that he would deliver
to Congress a strong civil rights bill, a declaration that transformed him into a widely recognized ally of the Civil Rights Movement. Following Kennedy's assassination, President Johnson professed his commitment to the goal of "the full assimilation of more than twenty million Negroes into American life," and ensured the passage of comprehensive civil rights legislation. The Civil Rights Act of 1964 formally dismantled the Jim Crow system of discrimination in public accommodations, employment, voting, education, and federally financed activities. The Voting Rights Act of 1965 arguably had even greater scope, as it rendered illegal numerous discriminatory barriers to effective political participation by African Americans and mandated federal review of all new voting regulations so that it would be possible to determine whether their use would perpetuate voting discrimination.

Within five years, the effects of the civil rights revolution were undeniable. Between 1964 and 1969, the percentage of African American adults registered to vote in the South soared. In Alabama the rate leaped from 19.3 percent to 61.3 percent; in Georgia, 27.4 percent to 60.4 percent; in Louisiana, 31.6 percent to 60.8 percent; and in Mississippi, 6.7 percent to 66.5 percent. Suddenly black children could shop in department stores, eat at restaurants, drink from water fountains, and go to amusement parks that were once off-limits. Miscegenation laws were declared unconstitutional, and the rate of interracial marriage climbed.

While dramatic progress was apparent in the political and social realms, civil rights activists became increasingly concerned that, without major economic reforms, the vast majority of blacks would remain locked in poverty. Thus at the peak of the Civil Rights Movement, activists and others began to turn their attention to economic problems, arguing that socioeconomic inequality interacted with racism to produce crippling poverty and related social problems. Economic issues emerged as a major focus of discontent. As political scientists Frances Fox Piven and Richard Cloward have described, "blacks became more indignant over their condition—not only as an oppressed racial minority in a white society but as poor people in an affluent one." Activists organized boycotts, picket lines, and demonstrations to attack discrimination in access to jobs and the denial of economic opportunity.

Perhaps the most famous demonstration in support of economic justice is the March on Washington for Jobs and Economic Freedom in August 1963. The wave of activism associated with economic justice helped to focus President Kennedy's attention on poverty and black unemployment. In the summer of 1963, he initiated a series of staff studies on those subjects. By the end of the summer, he declared his intention to make the eradication of poverty a key legislative objective in 1964. Following Kennedy's assassination, President Lyndon Johnson embraced the antipoverty rhetoric with great passion, calling for an "unconditional war on poverty," in his State of the Union Address in January 1964. Weeks later he proposed to Congress the Economic Opportunities Bill of 1964.

The shift in focus served to align the goals of the Civil Rights Movement with key political goals of poor and working-class whites, who were also demanding economic reforms. As the Civil Rights Movement began to evolve into a "Poor People's Movement," it promised to address not only black poverty, but white poverty as well—thus raising the specter of a poor and working-class movement that cut across racial lines. Martin Luther King Jr. and other civil rights leaders made it clear that they viewed the eradication of economic inequality as the next front in the "human rights movement" and made great efforts to build multiracial coalitions that sought economic justice for all. Genuine equality for black people, King reasoned, demanded a radical restructuring of society, one that would address the needs of the black and white poor throughout the country. Shortly before his assassination, he envisioned bringing to Washington, D.C., thousands of the nation's disadvantaged in an interracial alliance that embraced rural and ghetto blacks, Appalachian whites, Mexican Americans, Puerto Ricans, and Native Americans to demand jobs and income—the right to live. In a speech delivered in 1968, King acknowledged there had been some progress for blacks since the passage of the Civil Rights Act of 1964, but insisted that the current challenges required even greater resolve and that the entire nation must be transformed for economic justice to be more than a dream for poor people of all colors. As historian Gerald McKnight observes, "King was proposing nothing less than a radical transformation of the Civil Rights Movement into a populist crusade calling for redistribution of economic and political power. America's only civil rights leader was now focusing on class issues and was planning to descend on Washington with an army of poor to shake the foundations of the power structure and force the government to respond to the needs of the ignored underclass."

With the success of the Civil Rights Movement and the launching of the Poor People's Movement, it was apparent to all that a major disruption in the nation's racial equilibrium had occurred. Yet as we shall see below, Negroes
stood only a "brief moment in the sun." Conservative whites began, once again, to search for a new racial order that would conform to the needs and constraints of the time. This process took place with the understanding that whatever the new order would be, it would have to be formally race-neutral—it could not involve explicit or clearly intentional race discrimination. A similar phenomenon had followed slavery and Reconstruction, as white elites struggled to define a new racial order with the understanding that whatever the new order would be, it could not include slavery. Jim Crow eventually replaced slavery, but now it too had died, and it was unclear what might take its place. Barred by law from invoking race explicitly, those committed to racial hierarchy were forced to search for new means of achieving their goals according to the new rules of American democracy.

History reveals that the seeds of the new system of control were planted well before the end of the Civil Rights Movement. A new race-neutral language was developed for appealing to old racist sentiments, a language accompanied by a political movement that succeeded in putting the vast majority of blacks back in their place. Proponents of racial hierarchy found they could install a new racial caste system without violating the law or the new limits of acceptable political discourse, by demanding "law and order" rather than "segregation forever."

The Birth of Mass Incarceration

The rhetoric of "law and order" was first mobilized in the late 1950s as Southern governors and law enforcement officials attempted to generate and mobilize white opposition to the Civil Rights Movement. In the years following Brown v. Board of Education, civil rights activists used direct-action tactics in an effort to force reluctant Southern states to desegregate public facilities. Southern governors and law enforcement officials often characterized these tactics as criminal and argued that the rise of the Civil Rights Movement was indicative of a breakdown of law and order. Support of civil rights legislation was derided by Southern conservatives as merely "rewarding lawbreakers."

For more than a decade—from the mid-1950s until the late 1960s—conservatives systematically and strategically linked opposition to civil rights legislation to calls for law and order, arguing that Martin Luther King Jr.'s philosophy of civil disobedience was a leading cause of crime. Civil rights protests were frequently depicted as criminal rather than political in nature, and federal courts were accused of excessive "lenience" toward lawlessness, thereby contributing to the spread of crime. In the words of then-Vice President Richard Nixon, the increasing crime rate "can be traced directly to the spread of the corrosive doctrine that every citizen possesses an inherent right to decide for himself which laws to obey and when to disobey them." Some segregationists went further, insisting that integration causes crime, citing lower crime rates in Southern states as evidence that segregation was necessary. In the words of Representative John Bell Williams, "This exodus of Negroes from the South, and their influx into the great metropolitan centers of other areas of the Nation, has been accompanied by a wave of crime. . . . What has civil rights accomplished for these areas? . . . Segregation is the only answer as most Americans—not the politicians—have realized for hundreds of years."

Unfortunately, at the same time that civil rights were being identified as a threat to law and order, the FBI was reporting fairly dramatic increases in the national crime rate. Despite significant controversy over the accuracy of the statistics, these reports received a great deal of publicity and were offered as further evidence of the breakdown in lawfulness, morality, and social stability. To make matters worse, riots erupted in the summer of 1964 in Harlem and Rochester, followed by a series of uprisings that swept the nation following the assassination of Martin Luther King Jr. in 1968. The racial imagery associated with the riots gave fuel to the argument that civil rights for blacks led to rampant crime. Cities like Philadelphia and Rochester were described as being victims of their own generosity. Conservatives argued that, having welcomed blacks migrating from the South, these cities "were repaid with crime-ridden slums and black discontent."

Barry Goldwater, in his 1964 presidential campaign, aggressively exploited the riots and fears of black crime, laying the foundation for the "get tough on crime" movement that would emerge years later. In a widely quoted speech, Goldwater warned voters, "Choose the way of [the Johnson] Administration and you have the way of mobs in the street." Civil rights activists who argued that the uprisings were directly related to widespread police harassment and abuse were dismissed by conservatives out of hand. "If [blacks]
conduct themselves in an orderly way, they will not have to worry about police brutality,” argued West Virginia Senator Robert Byrd.42

Early on, little effort was made to disguise the racial motivations behind the law and order rhetoric and the harsh criminal justice legislation proposed in Congress. The most ardent opponents of civil rights legislation and desegregation were the most active on the emerging crime issue. Well-known segregationist George Wallace, for example, argued that “the same Supreme Court that ordered integration and encouraged civil rights legislation” was now “bending over backwards to help criminals.”43 Three other prominent segregationists—Senators McClellan, Erwin, and Thurmond—led the legislative battle to curb the rights of criminal defendants.44

As the rules of acceptable discourse changed, however, segregationists distanced themselves from an explicitly racist agenda. They developed instead the racially sanitized rhetoric of “cracking down on crime”—rhetoric that is now used freely by politicians of every stripe. Conservative politicians who embraced this rhetoric purposefully failed to distinguish between the direct action tactics of civil rights activists, violent rebellions in inner cities, and traditional crimes of an economic or violent nature. Instead, as Marc Mauer of the Sentencing Project has noted, “all of these phenomena were subsumed under the heading of ‘crime in the streets.’”45

After the passage of the Civil Rights Act, the public debate shifted focus from segregation to crime. The battle lines, however, remained largely the same. Positions taken on crime policies typically cohered along lines of racial ideology. Political scientist Vesla Weaver explains: “Votes cast in opposition to open housing, busing, the Civil Rights Act, and other measures time and again showed the same divisions as votes for amendments to crime bills. . . . Members of Congress who voted against civil rights measures proactively designed crime legislation and actively fought for their proposals.”46

Although law and order rhetoric ultimately failed to prevent the formal dismantling of the Jim Crow system, it proved highly effective in appealing to poor and working-class whites, particularly in the South, who were opposed to integration and frustrated by the Democratic Party’s apparent support for the Civil Rights Movement. As Weaver notes, “rather than fading, the segregationists’ crime-race argument was reframed, with a slightly different veneer,” and eventually became the foundation of the conservative agenda on crime.47 In fact, law and order rhetoric—first employed by segregationists—would eventually contribute to a major realignment of political parties in the United States.

Following the Civil War, party alignment was almost entirely regional. The South was solidly Democratic, embittered by the war, firmly committed to the maintenance of a racial caste system, and extremely hostile to federal intervention on behalf of African Americans. The North was overwhelmingly Republican and, while Republicans were ambivalent about equality for African Americans, they were far more inclined to adopt and implement racial justice reforms than their Democratic counterparts below the Mason-Dixon line.

The Great Depression effectuated a sea change in American race relations and party alignment. The New Deal— spearheaded by the Democratic Party of President Franklin D. Roosevelt—was designed to alleviate the suffering of poor people in the midst of the Depression, and blacks, the poorest of the poor, benefited disproportionately. While New Deal programs were rife with discrimination in their administration, they at least included blacks within the pool of beneficiaries—a development, historian Michael Klarman has noted, that was “sufficient to raise black hopes and expectations after decades of malign neglect from Washington.”48 Poor and working-class whites in both the North and South, no less than African Americans, responded positively to the New Deal, anxious for meaningful economic relief. As a result, the Democratic New Deal coalition evolved into an alliance of urban ethnic groups and the white South that dominated electoral politics from 1932 to the early 1960s.

That dominance came to an abrupt end with the creation and implementation of what has come to be known as the Southern Strategy. The success of law and order rhetoric among working-class whites and the intense resentment of racial reforms, particularly in the South, led conservative Republican analysts to believe that a “new majority” could be created by the Republican Party, one that included the traditional Republican base, the white South, and half the Catholic, blue-collar vote of the big cities.49 Some conservative political strategists admitted that appealing to racial fears and antagonisms was central to this strategy, though it had to be done surreptitiously. H.R. Haldeman, one of Nixon’s key advisers, recalls that Nixon himself deliberately pursued a southern, racial strategy: “He [President Nixon] emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not ap-
pearing to.” Similarly, John Ehrlichman, special counsel to the president, explained the Nixon administration’s campaign strategy of 1968 in this way: “We’ll go after the racists.” In Ehrlichman’s view, “that subliminal appeal to the anti-black voter was always present in Nixon’s statements and speeches.”

Republican strategist Kevin Phillips is often credited for offering the most influential argument in favor of a race-based strategy for Republican political dominance in the South. He argued in The Emerging Republican Majority, published in 1969, that Nixon’s successful presidential election campaign could point the way toward long-term political realignment and the building of a new Republican majority, if Republicans continued to campaign primarily on the basis of racial issues, using coded anti-black rhetoric. He argued that Southern white Democrats had become so angered and alienated by the Democratic Party’s support for civil rights reforms, such as desegregation and busing, that those voters could be easily persuaded to switch parties if those racial resentments could be maintained. Warren Weaver, a New York Times journalist who reviewed the book upon its release, observed that Phillips’s strategy largely depended upon creating and maintaining a racially polarized political environment. “Full racial polarization is an essential ingredient of Phillips’s political pragmatism. He wants to see a black Democratic party, particularly in the South, because this will drive into the Republican party precisely the kind of anti-Negro whites who will help constitute the emerging majority. This even leads him to support some civil rights efforts.”

Appealing to the racism and vulnerability of working-class whites had worked to defeat the Populists at the turn of the century, and a growing number of conservatives believed the tactic should be employed again, albeit in a more subtle fashion.

Thus in the late 1960s and early 1970s, two schools of thought were offered to the general public regarding race, poverty, and the social order. Conservatives argued that poverty was caused not by structural factors related to race and class but rather by culture—particularly black culture. This view received support from Daniel Patrick Moynihan’s now infamous report on the black family, which attributed black poverty to a black “subculture” and the “tangle of pathology” that characterized it. As described by sociologist Katherine Beckett, “The (alleged) misbehaviors of the poor were transformed from adaptations to poverty that had the unfortunate effect of reproducing it into character failings that accounted for poverty in the first place.” The “social pathologies” of the poor, particularly street crime, illegal drug use, and delinquency, were redefined by conservatives as having their cause in overly generous relief arrangements. Black “welfare cheats” and their dangerous offspring emerged, for the first time, in the political discourse and media imagery.

Liberals, by contrast, insisted that social reforms such as the War on Poverty and civil rights legislation would get at the “root causes” of criminal behavior and stressed the social conditions that predictably generate crime. Lyndon Johnson, for example, argued during his 1964 presidential campaign against Barry Goldwater that antipoverty programs were, in effect, anticrime programs: “There is something mighty wrong when a candidate for the highest office bemoans violence in the streets but votes against the War on Poverty, votes against the Civil Rights Act and votes against major educational bills that come before him as a legislator.”

Competing images of the poor as “deserving” and “undeveloping” became central components of the debate. Ultimately, the racialized nature of this imagery became a crucial resource for conservatives, who succeeded in using law and order rhetoric in their effort to mobilize the resentment of white working-class voters, many of whom felt threatened by the sudden progress of African Americans. As explained by Thomas and Mary Edsall in their insightful book Chain Reaction, a disproportionate share of the costs of integration and racial equality had been borne by lower- and lower-middle-class whites, who were suddenly forced to compete on equal terms with blacks for jobs and status and who lived in neighborhoods adjoining black ghettos. Their children—not the children of wealthy whites—attended schools most likely to fall under busing orders. The affluent white liberals who were pressing the legal claims of blacks and other minorities “were often sheltered, in their private lives, and largely immune to the costs of implementing minority claims.” This reality made it possible for conservatives to characterize the “liberal Democratic establishment” as being out of touch with ordinary working people—thus resolving one of the central problems facing conservatives: how to persuade poor and working-class voters to join in alliance with corporate interests and the conservative elite. By 1968, 81 percent of those responding to the Gallup Poll agreed with the statement that “law and order has broken down in this country,” and the majority blamed “Negroes who start riots” and “Communists.”
During the presidential election that year, both the Republican candidate, Richard Nixon, and the independent segregationist candidate, George Wallace, made “law and order” a central theme of their campaigns, and together they collected 57 percent of the vote.\(^{59}\) Nixon dedicated seventeen speeches solely to the topic of law and order, and one of his television ads explicitly called on voters to reject the lawlessness of civil rights activists and embrace “order” in the United States.\(^{60}\) The advertisement began with frightening music accompanied by flashing images of protestors, blooied victims, and violence. A deep voice then said:

It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in a system of government that provides for peaceful change, there is no cause that justifies resort to violence. Let us recognize that the first right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States.

At the end of the ad, a caption declared: “This time . . . vote like your whole world depended on it . . . NIXON.” Viewing his own campaign ad, Nixon reportedly remarked with glee that the ad “hits it right on the nose. It’s all about those damn Negro—Puerto Rican groups out there.”\(^{61}\)

Race had become, yet again, a powerful wedge, breaking up what had been a solid liberal coalition based on economic interests of the poor and the working and lower-middle classes. In the 1968 election, race eclipsed class as the organizing principle of American politics, and by 1972, attitudes on racial issues rather than socioeconomic status were the primary determinant of voters’ political self-identification. The late 1960s and early 1970s marked the dramatic erosion in the belief among working-class whites that the condition of the poor, or those who fail to prosper, was the result of a faulty economic system that needed to be challenged. As the Edsalls explain, “the pitting of whites and blacks at the low end of the income distribution against each other intensified the view among many whites that the condition of life for the disadvantaged—particularly for disadvantaged blacks—is the responsibility of those afflicted, and not the responsibility of the larger society.”\(^{62}\) Just as race had been used at the turn of the century by Southern elites to rupture class solidarity at the bottom of the income ladder, race as a national issue had broken up the Democratic New Deal “bottom-up” coalition—a coalition dependent on substantial support from all voters, white and black, at or below the median income.

The conservative revolution that took root within the Republican Party in the 1960s did not reach its full development until the election of 1980. The decade preceding Ronald Reagan’s ascent to the presidency was characterized by political and social crises, as the Civil Rights Movement was promptly followed by intense controversy over the implementation of the equality principle—especially busing and affirmative action—as well as dramatic political clashes over the Vietnam War and Watergate. During this period, conservatives gave lip service to the goal of racial equality but actively resisted desegregation, busing, and civil rights enforcement. They repeatedly raised the issue of welfare, subtly framing it as a contest between hardworking, blue-collar whites and poor blacks who refused to work. The not-so-subtle message to working-class whites was that their tax dollars were going to support special programs for blacks who most certainly did not deserve them. During this period, Nixon called for a “war on drugs”—an announcement that proved largely rhetorical as he declared illegal drugs “public enemy number one” without proposing dramatic shifts in drug policy. A backlash against blacks was clearly in force, but no consensus had yet been reached regarding what racial and social order would ultimately emerge from these turbulent times.

In his campaign for the presidency, Reagan mastered the “excision of the language of race from conservative public discourse” and thus built on the success of earlier conservatives who developed a strategy of exploiting racial hostility or resentment for political gain without making explicit reference to race.\(^{63}\) Condemning “welfare queens” and criminal “predators,” he rode into office with the strong support of disaffected whites—poor and working-class whites who felt betrayed by the Democratic Party’s embrace of the civil rights agenda. As one political insider explained, Reagan’s appeal derived primarily from the ideological fervor of the right wing of the Republican Party and “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.”\(^{64}\) To great effect, Reagan echoed white frustration in race-neutral terms through implicit racial appeals. His “color-blind” rhetoric on crime, welfare, taxes, and states’ rights was clearly under-
stood by white (and black) voters as having a racial dimension, though claims
to that effect were impossible to prove. The absence of explicitly racist
rhetoric afforded the racial nature of his coded appeals a certain plausible
deniability. For example, when Reagan kicked off his presidential campaign
at the annual Neshoba County Fair near Philadelphia, Mississippi—the
town where three civil rights activists were murdered in 1964—he assured
the crowd “I believe in states’ rights,” and promised to restore to states and
local governments the power that properly belonged to them.\textsuperscript{65} His critics
promptly alleged that he was signaling a racial message to his audience, sug-
uggesting allegiance with those who resisted desegregation, but Reagan firmly
denied it, forcing liberals into a position that would soon become familiar—
arguing that something is racist but finding it impossible to prove in the ab-
sence of explicitly racist language.

Crime and welfare were the major themes of Reagan’s campaign rhetoric.
According to the Edsalls, one of Reagan’s favorite and most-often-repeated
anecdotes was the story of a Chicago “welfare queen” with “80 names, 30
addresses, 12 Social Security cards,” whose “tax-free income alone is over
$150,000.”\textsuperscript{66} The term “welfare queen” became a not-so-subtle code for
“lazy, greedy, black ghetto mother.” The food stamp program, in turn, was a
vehicle to let “some fellow ahead of you buy a T-bone steak,” while “you were
standing in a checkout line with your package of hamburger.”\textsuperscript{67} These highly
racialized appeals, targeted to poor and working-class whites, were nearly al-
ways accompanied by vehement promises to be tougher on crime and to en-
hance the federal government’s role in combating it. Reagan portrayed the
criminal as “a staring face—a face that belongs to a frightening reality of our
time: the face of the human predator.”\textsuperscript{68} Reagan’s racially coded rhetoric and
strategy proved extraordinarily effective, as 22 percent of all Democrats de-
fected from the party to vote for Reagan. The defection rate shot up to 34
percent among those Democrats who believed civil rights leaders were push-
ing “too fast.”\textsuperscript{69}

Once elected, Reagan’s promise to enhance the federal government’s
role in fighting crime was complicated by the fact that fighting street crime
has traditionally been the responsibility of state and local law enforcement.
After a period of initial confusion and controversy regarding whether the
FBI and the federal government should be involved in street crime, the Just-
tice Department announced its intention to cut in half the number of
specialists assigned to identify and prosecute white-collar criminals and to
shift its attention to street crime, especially drug-law enforcement.\textsuperscript{70} In
October 1982, President Reagan officially announced his administration’s
War on Drugs. At the time he declared this new war, less than 2 percent of
the American public viewed drugs as the most important issue facing the
nation.\textsuperscript{71} This fact was no deterrent to Reagan, for the drug war from
the outset had little to do with public concern about drugs and much to do
with public concern about race. By waging a war on drug users and dealers,
Reagan made good on his promise to crack down on the racially defined
“others”—the undeserving.

Practically overnight the budgets of federal law enforcement agencies
soared. Between 1980 and 1984, FBI antidrug funding increased from $8
million to $95 million.\textsuperscript{72} Department of Defense antidrug allocations in-
creased from $33 million in 1981 to $1,042 million in 1991. During that
same period, DEA antidrug spending grew from $86 to $1,026 million, and
FBI antidrug allocations grew from $38 to $181 million.\textsuperscript{73} By contrast, fund-
ing for agencies responsible for drug treatment, prevention, and education
was dramatically reduced. The budget of the National Institute on Drug
Abuse, for example, was reduced from $274 million to $57 million from
1981 to 1984, and antidrug funds allocated to the Department of Education
were cut from $14 million to $3 million.\textsuperscript{74}

Determined to ensure that the “new Republican majority” would continue
to support the extraordinary expansion of the federal government’s law en-
forcement activities and that Congress would continue to fund it, the Rea-
gan administration launched a media offensive to justify the War on Drugs.\textsuperscript{75}
Central to the media campaign was an effort to sensationalize the emer-
genence of crack cocaine in inner-city neighborhoods—communities devas-
tated by deindustrialization and skyrocketing unemployment. The media
frenzy the campaign inspired simply could not have come at a worse time for
African Americans.

In the early 1980s, just as the drug war was kicking off, inner-city com-
unities were suffering from economic collapse. The blue-collar factory
jobs that had been plentiful in urban areas in the 1950s and 1960s had sud-
enly disappeared.\textsuperscript{76} Prior to 1970, inner-city workers with relatively little
formal education could find industrial employment close to home. Global-
ization, however, helped to change that. Manufacturing jobs were transfer-
red by multinational corporations away from American cities to countries
that lacked unions, where workers earn a small fraction of what is consid-
ered a fair wage in the United States. To make matters worse, dramatic technological changes revolutionized the workplace—changes that eliminated many of the jobs that less skilled workers once relied upon for their survival. Highly educated workers benefited from the pace of technological change and the increased use of computer-based technologies, but blue-collar workers often found themselves displaced in the sudden transition from an industrial to a service economy.

The impact of globalization and deindustrialization was felt most strongly in black inner-city communities. As described by William Julius Wilson, in his book When Work Disappears, the overwhelming majority of African Americans in the 1970s lacked college educations and had attended racially segregated, underfunded schools lacking basic resources. Those residing in ghetto communities were particularly ill equipped to adapt to the seismic changes taking place in the U.S. economy; they were left isolated and jobless. One study indicates that as late as 1970, more than 70 percent of all blacks working in metropolitan areas held blue-collar jobs. Yet by 1987, when the drug war hit high gear, the industrial employment of black men had plummeted to 28 percent.

The new manufacturing jobs that opened during this time period were generally located in the suburbs. The growing spatial mismatch of jobs had a profound impact on African Americans trapped in ghettos. A study of urban black fathers found that only 28 percent had access to an automobile. The rate fell to 18 percent for those living in ghetto areas.

Women fared somewhat better during this period because the social-service sector in urban areas—which employs primarily women—was expanding at the same time manufacturing jobs were evaporating. The fraction of black men who moved into so-called pink-collar jobs like nursing or clerical work was negligible.

The decline in legitimate employment opportunities among inner-city residents increased incentives to sell drugs—most notably crack cocaine. Crack is pharmacologically almost identical to powder cocaine, but it has been converted into a form that can be vaporized and inhaled for a faster, more intense (though shorter) high using less of the drug—making it possible to sell small doses at more affordable prices. Crack hit the streets in 1985, a few years after Reagan’s drug war was announced, leading to a spike in violence as drug markets struggled to stabilize, and the anger and frustration associated with joblessness boiled. Joblessness and crack swept inner cities precisely at the moment that a fierce backlash against the Civil Rights Movement was manifesting itself through the War on Drugs. The Reagan administration leaped at the opportunity to publicize crack cocaine in inner-city communities in order to build support for its new war.

In October 1985, the DEA sent Robert Stutman to serve as director of its New York City office and charged him with the responsibility of shoring up public support for the administration’s new war. Stutman developed a strategy for improving relations with the news media and sought to draw journalists’ attention to the spread of crack cocaine. As Stutman recounted years later:

The agents would hear me give hundreds of presentations to the media as I attempted to call attention to the drug scourge. I wasted no time in pointing out its [the DEA’s] new accomplishments against the drug traffickers. . . . In order to convince Washington, I needed to make it [drugs] a national issue and quick. I began a lobbying effort and I used the media. The media were only too willing to cooperate, because as far the New York media was concerned, crack was the hottest combat reporting story to come along since the end of the Vietnam War.

The strategy bore fruit. In June 1986, Newsweek declared crack to be the biggest story since Vietnam/Watergate, and in August of that year, Time magazine termed crack “the issue of the year.” Thousands of stories about the crack crisis flooded the airwaves and newsstands, and the stories had a clear racial subtext. The articles typically featured black “crack whores,” “crack babies,” and “gangbangers,” reinforcing already prevalent racial stereotypes of black women as irresponsible, selfish “welfare queens,” and black men as “predators”—part of an inferior and criminal subculture.

When two popular sports figures, Len Bias and Don Rogers, died of cocaine overdoses in June 1986, the media erroneously reported their deaths as caused by crack, contributing to the media firestorm and groundswell of political activity and public concern relating to the new “demon drug,” crack cocaine. The bonanza continued into 1989, as the media continued to disseminate claims that crack was an “epidemic,” a “plague,” “instantly addictive,” and extraordinarily dangerous—claims that have now been proven
false or highly misleading. Between October 1988 and October 1989, the
Washington Post alone ran 1,565 stories about the “drug scourge.” Richard
Harwood, the Post’s ombudsman, eventually admitted the paper had lost “a
proper sense of perspective” due to such a “hyperbole epidemic.” He said
“politicians are doing a number on people’s heads.” Sociologists Craig
Reinarn and Harry Levine later made a similar point: “Crack was a god-
send to the Right. . . . It could not have appeared at a more politically op-
pportunity moment.”

In September 1986, with the media frenzy at full throttle, the House
passed legislation that allocated $2 billion to the antidrug crusade, required
the participation of the military in narcotics control efforts, allowed the
death penalty for some drug-related crimes, and authorized the admission of
some illegally obtained evidence in drug trials. Later that month, the Senate
proposed even tougher antidrug legislation, and shortly thereafter, the presi-
dent signed the Anti-Drug Abuse Act of 1986 into law. Among other harsh
penalties, the legislation included mandatory minimum sentences for the
distribution of cocaine, including far more severe punishment for distribu-
tion of crack—associated with blacks—than powder cocaine, associated
with whites.

Few criticisms of the legislation could be heard en route to enactment.
One senator insisted that crack had become a scapegoat distracting the
public’s attention from the true causes of our social ills, arguing: “If we
blame crime on crack, our politicians are off the hook. Forgotten are the
failed schools, the malign welfare programs, the desolate neighborhoods,
the wasted years. Only crack is to blame. One is tempted to think that if
-crack did not exist, someone somewhere would have received a Federal
grant to develop it.” Critical voices, however, were lonely ones.

Congress revisited drug policy in 1988. The resulting legislation was once
again extraordinarily punitive, this time extending far beyond traditional
criminal punishments and including new “civil penalties” for drug offenders.
The new Anti-Drug Abuse Act authorized public housing authorities to evict
any tenant who allows any form of drug-related criminal activity to occur on
or near public housing premises and eliminated many federal benefits, in-
cluding student loans, for anyone convicted of a drug offense. The act also
expanded use of the death penalty for serious drug-related offenses and im-
posed new mandatory minimums for drug offenses, including a five-year
mandatory minimum for simple possession of cocaine base—with no evi-
dence of intent to sell. Remarkably, the penalty would apply to first-time
offenders. The severity of this punishment was unprecedented in the federal
system. Until 1988, one year of imprisonment had been the maximum for
possession of any amount of any drug. Members of the Congressional Black
Caucus (CBC) were mixed in their assessment of the new legislation—some
believing the harsh penalties were necessary, others convinced that the laws
were biased and harmful to African Americans. Ultimately the legislation
passed by an overwhelming margin—346 to 11. Six of the negative votes
came from the CBC.

The War on Drugs proved popular among key white voters, particularly
whites who remained resentful of black progress, civil rights enforcement,
and affirmative action. Beginning in the 1970s, researchers found that racial
attitudes—not crime rates or likelihood of victimization—are an important
determinant of white support for “get tough on crime” and antiwelfare mea-

ures. Among whites, those expressing the highest degree of concern about
crime also tend to oppose racial reform, and their punitive attitudes toward
crime are largely unrelated to their likelihood of victimization. Whites, on
average, are more punitive than blacks, despite the fact that blacks are far
more likely to be victims of crime. Rural whites are often the most punitive,
even though they are least likely to be crime victims. The War on Drugs,
cloaked in race-neutral language, offered whites opposed to racial reform a
unique opportunity to express their hostility toward blacks and black pro-
gress, without being exposed to the charge of racism.

Reagan’s successor, President George Bush Sr., did not hesitate to employ
implicit racial appeals, having learned from the success of other conserva-
tive politicians that subtle negative references to race could mobilize poor
and working-class whites who once were loyal to the Democratic Party. Bush’s
most famous racial appeal, the Willie Horton ad, featured a dark-skinned
black man, a convicted murderer who escaped while on a work furlough and
then raped and murdered a white woman in her home. The ad blamed
Bush’s opponent, Massachusetts governor Michael Dukakis, for the death
of the white woman, because he approved the furlough program. For months,
the ad played repeatedly on network news stations and was the subject of
incessant political commentary: Though controversial, the ad was stunningly
effective; it destroyed Dukakis’s chances of ever becoming president.
Once in the Oval Office, Bush stayed on message, opposing affirmative action and aggressive civil rights enforcement, and embracing the drug war with great enthusiasm. In August 1989, President Bush characterized drug use as "the most pressing problem facing the nation." Shortly thereafter, a New York Times/CBS News Poll reported that 64 percent of those polled—the highest percentage ever recorded—now thought that drugs were the most significant problem in the United States. This surge of public concern did not correspond to a dramatic shift in illegal drug activity, but instead was the product of a carefully orchestrated political campaign. The level of public concern about crime and drugs was only weakly correlated with actual crime rates, but highly correlated with political initiatives, campaigns, and partisan appeals.

The shift to a general attitude of "toughness" toward problems associated with communities of color began in the 1960s, when the gains and goals of the Civil Rights Movement began to require real sacrifices on the part of white Americans, and conservative politicians found they could mobilize white racial resentment by vowing to crack down on crime. By the late 1980s, however, not only conservatives played leading roles in the get-tough movement, spouting the rhetoric once associated only with segregationists. Democratic politicians and policy makers were now attempting to wrest control of the crime and drug issues from Republicans by advocating stricter anti-crime and antidrug laws—all in an effort to win back the so-called "swing voters" who were defecting to the Republican Party. Somewhat ironically, these "new Democrats" were joined by virulent racists, most notably the Ku Klux Klan, which announced in 1990 that it intended to "join the battle against illegal drugs" by becoming the "eyes and ears of the police." Progressives concerned about racial justice in this period were mostly silent about the War on Drugs, preferring to channel their energy toward defense of affirmative action and other perceived gains of the Civil Rights Movement.

In the early 1990s, resistance to the emergence of a new system of racialized social control collapsed across the political spectrum. A century earlier, a similar political dynamic had resulted in the birth of Jim Crow. In the 1890s, Populists buckled under the political pressure created by the Redeemers, who had successfully appealed to poor and working-class whites by proposing overtly racist and increasingly absurd Jim Crow laws. Now, a new racial caste system—mass incarceration—was taking hold, as politi-

cians of every stripe competed with each other to win the votes of poor and working-class whites, whose economic status was precarious, at best, and who felt threatened by racial reforms. As had happened before, former allies of African Americans—as much as conservatives—adopted a political strategy that required them to prove how "tough" they could be on "them," the dark-skinned pariahs.

The results were immediate. As law enforcement budgets exploded, so did prison and jail populations. In 1991, the Sentencing Project reported that the number of people behind bars in the United States was unprecedented in world history, and that one fourth of young African American men were now under the control of the criminal justice system. Despite the jaw-dropping impact of the "get tough" movement on the African American community, neither the Democrats nor the Republicans revealed any inclination to slow the pace of incarceration.

To the contrary, in 1992, presidential candidate Bill Clinton vowed that he would never permit any Republican to be perceived as tougher on crime than he. True to his word, just weeks before the critical New Hampshire primary, Clinton chose to fly home to Arkansas to oversee the execution of Ricky Ray Rector, a mentally impaired black man who had so little conception of what was about to happen to him that he asked for the dessert from his last meal to be saved for him until the morning. After the execution, Clinton remarked, "I can be nicked a lot, but no one can say I'm soft on crime."

Once elected, Clinton endorsed the idea of a federal "three strikes and you're out" law, which he advocated in his 1994 State of the Union address to enthusiastic applause on both sides of the aisle. The $30 billion crime bill sent to President Clinton in August 1994 was hailed as a victory for the Democrats, who "were able to wrest the crime issue from the Republicans and make it their own." The bill created dozens of new federal capital crimes, mandated life sentences for some three-time offenders, and authorized more than $15 billion for state prison grants and expansion of state and local police forces. Far from resisting the emergence of the new caste system, Clinton escalated the drug war beyond what conservatives had imagined possible a decade earlier. As the Justice Policy Institute has observed, "the Clinton Administration's 'tough on crime' policies resulted in the largest increases in federal and state prison inmates of any president in American history."
Clinton eventually moved beyond crime and capitulated to the conservative racial agenda on welfare. This move, like his “get tough” rhetoric and policies, was part of a grand strategy articulated by the “new Democrats” to appeal to the elusive white swing voters. In so doing, Clinton—more than any other president—created the current racial undercaste. He signed the Personal Responsibility and Work Opportunity Reconciliation Act, which “ended welfare as we know it,” and replaced it with a block grant to states called Temporary Assistance to Needy Families (TANF). TANF imposed a five-year lifetime limit on welfare assistance, as well as a permanent, lifetime ban on eligibility for welfare and food stamps for anyone convicted of a felony drug offense—including simple possession of marijuana.

Clinton did not stop there. Determined to prove how “tough” he could be on “them,” Clinton also made it easier for federally-assisted public housing projects to exclude anyone with a criminal history—an extraordinarily harsh step in the midst of a drug war aimed at racial and ethnic minorities. In his announcement of the “One Strike and You’re Out” Initiative, Clinton explained: “From now on, the rule for residents who commit crime and peddle drugs should be one strike and you’re out.” The new rule promised to be “the toughest admission and eviction policy that HUD has implemented.” Thus, for countless poor people, particularly racial minorities targeted by the drug war, public housing was no longer available, leaving many of them homeless—locked out not only of mainstream society, but their own homes.

The law and order perspective, first introduced during the peak of the Civil Rights Movement by rabid segregationists, had become nearly hegemonic two decades later. By the mid-1990s, no serious alternatives to the War on Drugs and “get tough” movement were being entertained in mainstream political discourse. Once again, in response to a major disruption in the prevailing racial order—this time the civil rights gains of the 1960s—a new system of racialized social control was created by exploiting the vulnerabilities and racial resentments of poor and working-class whites. More than 2 million people found themselves behind bars at the turn of the twenty-first century, and millions more were relegated to the margins of mainstream society, banished to a political and social space not unlike Jim Crow, where discrimination in employment, housing, and access to education was perfectly legal, and where they could be denied the right to vote. The system functioned relatively automatically, and the prevailing system of racial meanings, identi-
There is another path. Rather than shaming and condemning an already deeply stigmatized group, we, collectively, can embrace them—not necessarily their behavior, but them—their humanness. As the saying goes, “You gotta hate the crime, but love the criminal.” This is not a mere platitude; it is a prescription for liberation. If we had actually learned to show love, care, compassion, and concern across racial lines during the Civil Rights Movement—rather than go colorblind—mass incarceration would not exist today.

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." Dyson’s critique was a fair one, but like other media commentators, he remained silent about where 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. "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. 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. Although a million black men can be found in prisons and jails, public acknowledgement 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.

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. 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 able 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 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 Americans 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. 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. 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. Young black men today may be just as likely to suffer discrimination in employment, housing, public benefits, and
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.”

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 demagogy, 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 reign. 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. 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 return 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.”

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. Even postconviction 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 ancien: 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.”

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 re-define 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 been in a cycle of mayors, black police chiefs, black legislators, and it 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.

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 partic-
ular 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. 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. Whites are consistently more likely to avoid prison and felony charges, even when they are repeat offenders. 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. 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.

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. 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. 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. 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. 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. 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. 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.”

**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.

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; others courts have allowed the laws to stand because overt racial bias is absent from the legislative record. 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. 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.”

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. 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. 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. 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. 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. Sanford*, 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.
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. 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. 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. 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. 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 within the next two years. 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. The majority (60 percent) were incarcerated for drug offenses. 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.”

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 no 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. Nationwide, nearly seven out of eight people living in high-poverty urban areas are members of a minority group.

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.

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. 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 more 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. 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. 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.”

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 “criminal/blackman”—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 land-
lords, 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.

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 under-
stood to define the terms of one’s relationship not only to the state but to so-
ciety 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 com-
plained 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?”

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 sub-
ject 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 equiva-

tent 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.” At its core, then, mass incar-
carceration, 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 misappre-
sion. The parallels between the two systems of control are striking, to say the
least—in both, we find racial opportunism by politicians, legalized discrimi-
nation, political disenfranchisement, exclusion of blacks from juries, stigma-
tization, 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 mo-
ment. At the same time, though, we must be careful not to assume that dif-
ferences 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. 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.

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 kicking off—that they opposed race discrimination in nearly all its forms should not be dismissed lightly. 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 nonracist, 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."60 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?"61 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.62

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.63 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.64 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.65 People charged with drug offenses, though, are disproportionately poor people of color. They are typically charged with felonies and sentenced to prison.
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. 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. This pattern is particularly remarkable in that less educated people tend to be more punitive and blacks on average are less educated than whites.

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."

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 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."

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.

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.

Today complicity with the system of mass incarceration may seem like the best option for African Americans, though in reality it is no option at all. We declared a war on people residing 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 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 ware-
housed 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.”

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. This was not due to a major change in black values or black 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.” 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."  

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 intimation 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.

Shortly after sunrise on September 20, 2007, more than ten thousand protesters had already descended on Jena, Louisiana, a small town of about three thousand people. Because of the congestion on the roads to Jena, some protesters left their vehicles and walked into town on foot. Jesse Jackson, Al Sharpton, and Martin Luther King III were among those who traveled hundreds of miles to participate in what was heralded as "the beginnings of a new civil rights movement."  

Black youth turned out to protest in record numbers, joined by rappers Mos Def, Ice Cube, and Salt-n-Pepa. National news media swarmed the town; cameras rolled as thousands of protesters from all over the country poured into the rural community to condemn the attempted murder charges filed against six black teenagers who allegedly beat a white classmate at a local high school.

This was no ordinary schoolyard fight. Many believed the attack was related to a string of racially charged conflicts and controversies at the school, most notably the hanging of nooses from a tree in the school's main courtyard. Rev. Al Sharpton captured the spirit of the protest when he stated boldly, "We've gone from plantations to penitentiaries... They have tried to create a criminal justice system that particularly targets our young black men. And now we sit and stand in a city that says it's a prank to hang a hargman's noose, but that it is attempted murder to have a fight. We cannot sit by silently. That's why we came, and that's why we intend to keep coming."