

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.

6

The Fire This Time

Shortly after sunrise, on September 20, 2007, more than ten thousand protestors had already descended on Jena, Louisiana, a small town of about three thousand people. Because of the congestion on the roads to Jena, some protestors 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."¹

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 protestors 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 hangman'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."²

For a moment, the nation's eyes were trained on the plight of the "Jena 6," and debates could be heard in barber shops, in cafés, and in lines at grocery stores about whether the criminal justice system was, in fact, biased against black men or whether the black teens got exactly what they deserved for a brutal attack on a defenseless young white teen. Grim statistics about the number of black men in prison were trotted out, and commentators argued over whether those numbers reflected crime rates or bias and whether white teens would ever be charged with attempted murder and tried as adults if they attacked a black kid in a schoolyard fight.

The uprising on behalf of the six black teens paid off. Although the prosecutor refused to back down from his decision to bring adult charges against the youths, an appellate court ultimately ruled the teens had to be tried as juveniles, and many of the charges were reduced or dropped. While this result undoubtedly cheered the thousands of Jena 6 supporters around the country, the spectacle may have been oddly unsettling to parents of children imprisoned for far less serious crimes, including those locked up for minor drug offenses. Where were the protestors and civil rights leaders when their children were tried as adults and carted off to adult prisons? Where was the national news media then? Their children were accused of no crimes of violence, no acts of cruelty, yet they faced adult criminal charges and the prospect of serving years, perhaps decades, behind bars for possessing or selling illegal drugs—crimes that go largely ignored when committed by white youth. Why the outpouring of support and the promises of a "new civil rights movement" on behalf of the Jena youth but not their children?

If there had been no nooses hanging from a schoolyard tree, there would have been no Jena 6—no mass protests, no live coverage on CNN. The decision to charge six black teens as adults with attempted murder in connection with a schoolyard fight was understood as possibly racist by the mainstream media and some protestors only because of the sensational fact that nooses were first hung from a tree. It was this relic—the noose—showing up so brazenly and leading to a series of racially charged conflicts and controversies that made it possible for the news media and the country as a whole to entertain the possibility that these six youths may well have been treated to Jim Crow justice. It was this evidence of old-fashioned racism that made it possible for a new generation of protestors to frame the attempted murder charges against six black teens in a manner that mainstream America would understand as racial.

Ironically, it was precisely this framing that ensured that the events in Jena would *not* actually launch a "new civil rights movement." A new civil rights movement cannot be organized around the relics of the earlier system of control if it is to address meaningfully the racial realities of our time. Any racial justice movement, to be successful, must vigorously challenge the public consensus that underlies the *prevailing* system of control. Nooses, racial slurs, and overt bigotry are widely condemned by people across the political spectrum; they are understood to be remnants of the past, no longer reflective of the prevailing public consensus about race. Challenging these forms of racism is certainly necessary, as we must always remain vigilant, but it will do little to shake the foundations of the current system of control. The new caste system, unlike its predecessors, is officially colorblind. We must deal with it on its own terms.

Rethinking Denial—Or, Where Are Civil Rights Advocates When You Need Them?

Dealing with this system on its own terms is complicated by the problem of denial. Few Americans today recognize mass incarceration for what it is: a new caste system thinly veiled by the cloak of colorblindness. Hundreds of thousands of people of color are swept into this system and released every year, yet we rationalize the systematic discrimination and exclusion and turn a blind eye to the suffering. Our collective denial is not merely an inconvenient fact; it is a major stumbling block to public understanding of the role of race in our society, and it sharply limits the opportunities for truly transformative collective action.

The general public's collective denial is fairly easy to forgive—if not excuse—for all the reasons discussed in chapter 5. The awkward silence of the civil rights community, however, is more problematic. If something akin to a racial caste system truly exists, why has the civil rights community been so slow to acknowledge it? Indeed, how could civil rights organizations, some of which are larger and better funded than at any point in American history, have allowed this human rights nightmare to occur on their watch?

The answer is not that civil rights advocates are indifferent to racial bias in the criminal justice system. To the contrary, we care quite a lot. Nor have we been entirely ignorant of the realities of the new caste system. In recent

years, civil rights advocates have launched important reform efforts, most notably the campaigns challenging felon disenfranchisement laws, crack sentencing policies, and racial profiling by law enforcement. Civil rights groups have also developed litigation and important coalitions related to the school-to-prison pipeline, inadequate indigent defense, and juvenile justice reform, to name a few.

Despite these important efforts, what is most striking about the civil rights community's response to the mass incarceration of people of color is the relative quiet. Given the magnitude—the sheer scale—of the New Jim Crow, one would expect that the War on Drugs would be the top priority of every civil rights organization in the country. Conferences, strategy sessions, and debates regarding how best to build a movement to dismantle the new caste system would be occurring on a regular basis. Major grassroots organizing efforts would be under way in nearly every state and city nationwide. Foundations would be lobbied to prioritize criminal justice reform. Media campaigns would be unleashed in an effort to overturn the punitive public consensus on race. The rhetoric associated with specific reform efforts would stress the need to end mass incarceration, not merely tinker with it, and efforts would be made to build multiracial coalitions based on the understanding that the racial politics that gave birth to the War on Drugs have harmed poor and working-class whites as well as people of color. All of that could have happened, but it didn't. Why not?

Part of the answer is that civil rights organizations—like all institutions—are comprised of fallible human beings. The prevailing public consensus affects everyone, including civil rights advocates. Those of us in the civil rights community are not immune to the racial stereotypes that pervade media imagery and political rhetoric; nor do we operate outside of the political context. Like most people, we tend to resist believing that we might be part of the problem.

One day, civil rights organizations may be embarrassed by how long it took them to move out of denial and do the hard work necessary to end mass incarceration. Rather than blaming civil rights groups, however, it is far more productive to understand the reasons why the response to mass incarceration has been so constrained. Again, it's not that civil rights advocates don't care; we do. And it's not just that we are afflicted by unconscious racial bias and stereotypes about those behind bars. Civil rights organizations have

reasons for their constraint—reasons that no longer make good sense, even if they once did.

A bit of civil rights history may be helpful here. Civil rights advocacy has not always looked the way it does today. Throughout most of our nation's history—from the days of the abolitionist movement through the Civil Rights Movement—racial justice advocacy has generally revolved around grassroots organizing and the strategic mobilization of public opinion. In recent years, however, a bit of mythology has sprung up regarding the centrality of litigation to racial justice struggles. The success of the brilliant legal crusade that led to *Brown v. Board of Education* has created a widespread perception that civil rights lawyers are the most important players in racial justice advocacy. This image was enhanced following the passage of the Civil Rights Acts of 1965, when civil rights lawyers became embroiled in highly visible and controversial efforts to end hiring discrimination, create affirmative action plans, and enforce school desegregation orders. As public attention shifted from the streets to the courtroom, the extraordinary grassroots movement that made civil rights legislation possible faded from public view. The lawyers took over.

With all deliberate speed, civil rights organizations became “professionalized” and increasingly disconnected from the communities they claimed to represent. Legal scholar and former NAACP Legal Defense Fund lawyer Derrick Bell was among the first to critique this phenomenon, arguing in a 1976 *Yale Law Journal* article that civil rights lawyers were pursuing their own agendas in school desegregation cases even when they conflicted with their clients’ expressed desires.³ Two decades later, former NAACP Legal Defense Fund lawyer and current Harvard Law School professor Lani Guinier published a memoir in which she acknowledged that, “by the early 1990s, [civil rights] litigators like me had become like the Washington insiders we were so suspicious of. . . . We reflexively distanced ourselves from the very people on whose behalf we brought the cases in the first place.”⁴ This shift, she noted, had profound consequences for the future of racial justice advocacy; in fact, it was debilitating to the movement. Instead of a moral crusade, the movement became an almost purely legal crusade. Civil rights advocates pursued their own agendas as unelected representatives of communities defined by race and displayed considerable skill navigating courtrooms and halls of power across America. The law became what the lawyers

and lobbyists said it was, with little or no input from the people whose fate hung in the balance. Guinier continued:

In charge, we channeled a passion for change into legal negotiations and lawsuits. We defined the issues in terms of developing legal doctrine and establishing legal precedent; our clients became important, but secondary, players in a formal arena that required lawyers to translate lay claims into technical speech. We then disembodied plaintiffs' claims in judicially manageable or judicially enforceable terms, unenforceable without more lawyers. Simultaneously, the movement's center of gravity shifted to Washington, D.C. As lawyers and national pundits became more prominent than clients and citizens, we isolated ourselves from the people who were our anchor and on whose behalf we had labored. We not only left people behind; we also lost touch with the moral force at the heart of the movement itself.⁵

Not surprisingly, as civil rights advocates converted a grassroots movement into a legal campaign, and as civil rights leaders became political insiders, many civil rights organizations became top-heavy with lawyers. This development enhanced their ability to wage legal battles but impeded their ability to acknowledge or respond to the emergence of a new caste system. Lawyers have a tendency to identify and concentrate on problems they know how to solve—i.e., problems that can be solved through litigation. The mass incarceration of people of color is not that kind of problem.

Widespread preoccupation with litigation, however, is not the only—or even the main—reason civil rights groups have shied away from challenging the new caste system. Challenging mass incarceration requires something civil rights advocates have long been reluctant to do: advocacy on behalf of criminals. Even at the height of Jim Crow segregation—when black men were more likely to be lynched than to receive a fair trial in the South—NAACP lawyers were reluctant to advocate on behalf of blacks accused of crimes unless the lawyers were convinced of the men's innocence.⁶ The major exception was anti-death penalty advocacy. Over the years, civil rights lawyers have made heroic efforts to save the lives of condemned criminals. But outside of the death penalty arena, civil rights advocates have long been reluctant to leap to the defense of accused criminals. The “politics of respectability” has influenced civil rights litigation and advocacy, leading even

the most powerful civil rights organizations to distance themselves from the most stigmatized elements of the community, especially lawbreakers. Advocates have found they are most successful when they draw attention to certain types of black people (those who are easily understood by mainstream whites as “good” and “respectable”) and tell certain types of stories about them. Since the days when abolitionists struggled to eradicate slavery, racial justice advocates have gone to great lengths to identify black people who defy racial stereotypes, and they have exercised considerable message discipline, telling only those stories of racial injustice that will evoke sympathy among whites.

A prime example is the Rosa Parks story. Rosa Parks was not the first person to refuse to give up her seat on a segregated bus in Montgomery, Alabama. Civil rights advocates considered and rejected two other black women as plaintiffs when planning a test case challenging segregation practices: Claudette Colvin and Mary Louise Smith. Both of them were arrested for refusing to give up their seats on Montgomery's segregated buses, just months before Rosa Parks refused to budge. Colvin was fifteen years old when she defied segregation laws. Her case attracted national attention, but civil rights advocates declined to use her as a plaintiff because she got pregnant by an older man shortly after her arrest. Advocates worried that her “immoral” conduct would detract from or undermine their efforts to show that blacks were entitled to (and worthy of) equal treatment. Likewise, they decided not to use Mary Louise Smith as a plaintiff because her father was rumored to be an alcoholic. It was understood that, in any effort to challenge racial discrimination, the litigant—and even the litigant's family—had to be above reproach and free from every negative trait that could be used as a justification for unequal treatment.

Rosa Parks, in this regard, was a dream come true. She was, in the words of Jo Ann Gibson Robinson (another key figure in the Montgomery Bus Boycott), a “medium-sized, cultured mulatto woman; a civic and religious worker; quiet, unassuming, and pleasant in manner and appearance; dignified and reserved; of high morals and strong character.” No one doubted that Parks was the perfect symbol for the movement to integrate public transportation in Montgomery. Martin Luther King Jr. recalled in his memoir that “Mrs. Parks was ideal for the role assigned to her by history,” largely because “her character was impeccable” and she was “one of the most respected people in the Negro community.”⁸

The time-tested strategy of using those who epitomize moral virtue as symbols in racial justice campaigns is far more difficult to employ in efforts to reform the criminal justice system. Most people who are caught up in the criminal justice system have less than flawless backgrounds. While many black people get stopped and searched for crimes they did not commit, it is not so easy these days to find young black men in urban areas who have never been convicted of a crime. The new caste system labels black and brown men as criminals early, often in their teens, making them "damaged goods" from the perspective of traditional civil rights advocates. With criminal records, the majority of young black men in urban areas are not seen as attractive plaintiffs for civil rights litigation or good "poster boys" for media advocacy.

The widespread aversion to advocacy on behalf of those labeled criminals reflects a certain political reality. Many would argue that expending scarce resources on criminal justice reform is a strategic mistake. After all, criminals are the one social group in America that nearly everyone—across political, racial, and class boundaries—feels free to hate. Why champion the cause of the despised when there are so many sympathetic stories about racial injustice one could tell? Why draw public attention to the "worst" of the black community, those labeled criminals? Shouldn't we direct scarce resources to battles that are more easily won, such as affirmative action? Shouldn't we focus the public's attention on the so-called root causes of mass incarceration, such as educational inequity?

We can continue along this road—it is a road well travelled—but we must admit the strategy has not made much of a difference. African Americans, as a group, are no better off than they were in 1968 in many respects.⁹ In fact, to some extent, they are worse off. When the incarcerated population is counted in unemployment and poverty rates, the best of times for the rest of America have been among the worst of times for African Americans, particularly black men. As sociologist Bruce Western has shown, the notion that the 1990s—the Clinton years—were good times for African Americans, and that "a rising tide lifts all boats," is pure fiction. As unemployment rates sank to historically low levels in the late 1990s for the general population, jobless rates among noncollege black men in their twenties rose to their highest levels ever, propelled by skyrocketing incarceration rates.¹⁰

One reason so many people have a false impression of the economic well-

being of African Americans, as a group, is that poverty and unemployment statistics do not include people who are behind bars. Prisoners are literally erased from the nation's economic picture, leading standard estimates to underestimate the true jobless rate by as much as 24 percentage points for less-educated black men.¹¹ Young African American men were the only group to experience a steep *increase* in joblessness between 1980 and 2000, a development directly traceable to the increase in the penal population. During the much heralded economic boom of the 1990s, the true jobless rate among noncollege black men was a staggering 42 percent (65 percent among black male dropouts).¹²

Despite these inconvenient truths, though, we can press on. We can continue to ignore those labeled criminals in our litigation and media advocacy and focus public attention on more attractive plaintiffs—like innocent doctors and lawyers stopped and searched on freeways, innocent black and brown schoolchildren attending abysmal schools, or innocent middle- and upper-middle-class black children who will be denied access to Harvard, Michigan, and Yale if affirmative action disappears. We can continue on this well-worn path. But if we do so, we should labor under no illusions that we will end mass incarceration or shake the foundations of the current racial order. We may improve some school districts, prolong affirmative action for another decade or two, or force some police departments to condemn racial profiling, but we will not put a dent in the prevailing caste system. We must face the realities of the new caste system and embrace those who are most oppressed by it if we hope to end the new Jim Crow.

That said, no effort is made here to describe, in any detail, what should or should not be done in the months and years ahead to challenge the new caste system. Such an undertaking is beyond the scope of this book. The aim of this chapter is simply to reflect on whether traditional approaches to racial justice advocacy are adequate to the task at hand. What follows is not a plan, but several questions and claims offered for serious consideration by those committed to racial justice and interested in dismantling mass incarceration. They are offered as conversation starters—food for thought, debate, and—I hope—collective action. Each is a challenge to conventional wisdom or traditional strategies. Far more should be said about each point made, but, as indicated, this is meant to be the beginning of a conversation, not an end.

Tinkering Is for Mechanics, Not Racial-Justice Advocates

The first and arguably most important point is that criminal justice reform efforts—standing alone—are futile. Gains can be made, yes, but the new caste system will not be overthrown by isolated victories in legislatures or courtrooms. If you doubt this is the case, consider the sheer scale of mass incarceration. If we hope to return to the rate of incarceration of the 1970s—a time when many civil rights activists believed rates of imprisonment were egregiously high—we would need to release approximately four out of five people currently behind bars today.¹³ Prisons would have to be closed across America, an event that would likely inspire panic in rural communities that have become dependent on prisons for jobs and economic growth. Hundreds of thousands of people—many of them unionized—would lose their jobs. As Marc Maurer has observed, “The more than 700,000 prison and jail guards, administrators, service workers, and other personnel represent a potentially powerful political opposition to any scaling-down of the system. One need only recall the fierce opposition to the closing of military bases in recent years to see how these forces will function over time.”¹⁴

Arguably, Maurer underestimates the scope of the challenge by focusing narrowly on the prison system, rather than counting all of the people employed in the criminal justice bureaucracy. According to a report released by the U.S. Department of Justice’s Bureau of Statistics in 2006, the U.S. spent a record \$185 billion for police protection, detention, judicial, and legal activities in 2003. Adjusting for inflation, these figures reflect a tripling of justice expenditures since 1982. The justice system employed almost 2.4 million people in 2003—58 percent of them at the local level and 31 percent at the state level. If four out of five people were released from prisons, far more than a million people could lose their jobs.

There is also the private-sector investment to consider. Prisons are big business and have become deeply entrenched in America’s economic and political system. Rich and powerful people, including former vice president Dick Cheney, have invested millions in private prisons.¹⁵ They are deeply interested in expanding the market—increasing the supply of prisoners—not eliminating the pool of people who can be held captive for a profit. The 2005 annual report for the Corrections Corporation of America explained

the vested interests of private prisons, matter of factly in a filing with the Securities and Exchange Commission:

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. This possible growth depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions and acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted and sentenced, thereby potentially reducing demand for correctional facilities to house them.¹⁶

American Correctional Association President Gwendolyn Chunn put the matter more bluntly that same year when lamenting that the unprecedented prison expansion boom of the 1990s seemed to be leveling off. “We’ll have a hard time holding on to what we have now,” she lamented.¹⁷ As it turns out, her fears were unfounded. Although prison growth appeared to be slowing in 2005, the market for prisoners has continued to expand. The nation’s prison population broke new records in 2008, with no end in sight. The nonprofit PEW Charitable Trusts reports that inmate populations in at least ten states are expected to increase by 25 percent or more between 2006 and 2011. In short, the market for private prisons is as good as it has ever been. Damon Hinger, the president and chief operations officer of Corrections Corporation of America, the largest private-prison operator in the United States, is thoroughly optimistic. His company boosted net income by 14 percent in 2008, and he fully expects the growth to continue. “There is going to be a larger opportunity for us in the future,” he said.¹⁸

Even beyond private prison companies, a whole range of prison profiteers must be reckoned with if mass incarceration is to be undone, including phone companies that gouge families of prisoners by charging them exorbitant rates to communicate with their loved ones; gun manufacturers that sell Taser guns, rifles, and pistols to prison guards and police; private health care

providers contracted by the state to provide (typically abysmal) health care to prisoners; the U.S. military, which relies on prison labor to provide military gear to soldiers in Iraq; corporations that use prison labor to avoid paying decent wages; and the politicians, lawyers, and bankers who structure deals to build new prisons often in predominately white rural communities—deals that often promise far more to local communities than they deliver.¹⁹ All of these corporate and political interests have a stake in the expansion—not the elimination—of the system of mass incarceration.

Consider also the lengthy to-do list for reformers. If we become serious about dismantling the system of mass incarceration, we must end the War on Drugs. There is no way around it. The drug war is largely responsible for the prison boom and the creation of the new undercaste, and there is no path to liberation for communities of color that includes this ongoing war. So long as people of color in ghetto communities are being rounded up by the thousands for drug offenses, carted off to prisons, and then released into a permanent undercaste, mass incarceration as a system of control will continue to function well.

Ending the drug war is no simple task, however. It cannot be accomplished through a landmark court decision, an executive order, or single stroke of the presidential pen. Since 1982, the war has raged like a forest fire set with a few matches and a gallon of gasoline. What began as an audacious federal program, has spread to every state in the nation and nearly every city. It has infected law enforcement activities on roads, sidewalks, highways, train stations, airports, and the nation's border. The war has effectively shredded portions of the U.S. Constitution—eliminating Fourth Amendment protections once deemed inviolate—and it has militarized policing practices in inner cities across America. Racially targeted drug-law enforcement practices taken together with laws that specifically discriminate against drug offenders in employment, housing, and public benefits have relegated the majority of black men in urban areas across the United States to a permanent second-class status.

If we hope to end this system of control, we cannot be satisfied with a handful of reforms. All of the financial incentives granted to law enforcement to arrest poor black and brown people for drug offenses must be revoked. Federal grant money for drug enforcement must end; drug forfeiture laws must be stripped from the books; racial profiling must be eradicated; the concentration of drug busts in poor communities of color must cease;

and the transfer of military equipment and aid to local law enforcement agencies waging the drug war must come to a screeching halt. And that's just for starters.

Equally important, there must be a change within the culture of law enforcement. Black and brown people in ghetto communities must no longer be viewed as the designated enemy, and ghetto communities must no longer be treated like occupied zones. Law enforcement must adopt a compassionate, humane approach to the problems of the urban poor—an approach that goes beyond the rhetoric of “community policing” to a method of engagement that promotes trust, healing, and genuine partnership. Data collection for police and prosecutors should be mandated nationwide to ensure that selective enforcement is no longer taking place. Racial impact statements that assess the racial and ethnic impact of criminal justice legislation must be adopted.²⁰ Public defender offices should be funded at the same level as prosecutor's offices to eliminate the unfair advantage afforded the incarceration machine. The list goes on: Mandatory drug sentencing laws must be rescinded. Marijuana ought to be legalized (and perhaps other drugs as well). Meaningful re-entry programs must be adopted—programs that provide a pathway not just to dead-end, minimum-wage jobs, but also training and education so those labeled criminals can realistically reach for high-paying jobs and viable, rewarding career paths. Prison workers should be retrained for jobs and careers that do not involve caging human beings. Drug treatment on demand must be provided for all Americans, a far better investment of taxpayer money than prison cells for drug offenders. Barriers to re-entry, specifically the myriad laws that operate to discriminate against drug offenders for the rest of their lives in every aspect of their social, economic, and political life, must be eliminated.

The list could go on, of course, but the point has been made. The central question for racial justice advocates is this: are we serious about ending this system of control, or not? If we are, there is a tremendous amount of work to be done. The notion that all of these reforms can be accomplished piecemeal—one at a time, through disconnected advocacy strategies—seems deeply misguided. All of the needed reforms have less to do with failed policies than a deeply flawed public consensus, one that is indifferent, at best, to the experience of poor people of color. As Martin Luther King Jr. explained back in 1965, when describing why it was far more important to eradicating in mass mobilizations than file lawsuits, “We’re trying to win the right

to vote and we have to focus the attention of the world on that. We can't do that making legal cases. We have to make the case in the court of public opinion."²¹ King certainly appreciated the contributions of civil rights lawyers (he relied on them to get him out of jail), but he opposed the tendency of civil rights lawyers to identify a handful of individuals who could make great plaintiffs in a court of law, then file isolated cases. He believed what was necessary was to mobilize thousands to make their case in the court of public opinion. In his view, it was a flawed public consensus—not merely flawed policy—that was at the root of racial oppression.

Today, no less than fifty years ago, a flawed public consensus lies at the core of the prevailing caste system. When people think about crime, especially drug crime, they do not think about suburban housewives violating laws regulating prescription drugs or white frat boys using ecstasy. Drug crime in this country is understood to be black and brown, and it is *because* drug crime is racially defined in the public consciousness that the electorate has not cared much what happens to drug criminals—at least not the way they would have cared if the criminals were understood to be white. It is this failure to care, really care across color lines, that lies at the core of this system of control and every racial caste system that has existed in the United States or anywhere else in the world.

Those who believe that advocacy challenging mass incarceration can be successful without overturning the public consensus that gave rise to it are engaging in fanciful thinking, a form of denial. Isolated victories can be won—even a string of victories—but in the absence of a fundamental shift in public consciousness, the system as a whole will remain intact. To the extent that major changes are achieved without a complete shift, the system will rebound. The caste system will reemerge in a *new form*, just as convict leasing replaced slavery, or it will be *reborn*, just as mass incarceration replaced Jim Crow.

Sociologists Michael Omi and Howard Winant make a similar point in their book *Racial Formation in the United States*. They attribute the cyclical nature of racial progress to the “unstable equilibrium” that characterizes the United States’ racial order.²² Under “normal” conditions, they argue, state institutions are able to normalize the organization and enforcement of the prevailing racial order, and the system functions relatively automatically. Challenges to the racial order during these periods are easily marginalized or suppressed, and the prevailing system of racial meanings, identity, and roles

ogy seems “natural.” These conditions clearly prevailed during slavery and Jim Crow. When the equilibrium is disrupted, however, as in Reconstruction and the Civil Rights Movement, the state initially resists, then attempts to absorb the challenge through a series of reforms “that are, if not entirely symbolic, at least not critical to the operation of the racial order.” In the absence of a truly egalitarian racial consensus, these predictable cycles inevitably give rise to new, extraordinarily comprehensive systems of racialized social control.

One example of the way in which a well established racial order easily absorbs legal challenges is the infamous aftermath of the *Brown v. Board of Education* decision. After the Supreme Court declared separate schools inherently unequal in 1954, segregation persisted unabated. One commentator notes: “The statistics from the Southern states are truly amazing. For ten years, 1954–1964, virtually *nothing happened*.”²³ Not a single black child attended an integrated public grade school in South Carolina, Alabama, or Mississippi as of the 1962–1963 school year. Across the South as a whole, a mere 1 percent of black school children were attending school with whites in 1964—a full decade after *Brown* was decided.²⁴ *Brown* did not end Jim Crow; a mass movement had to emerge first—one that aimed to create a new public consensus opposed to the evils of Jim Crow. This does not mean *Brown v. Board* was meaningless, as some commentators have claimed.²⁵ *Brown* gave critical legitimacy to the demands of civil rights activists who risked their lives to end Jim Crow, and it helped to inspire the movement (as well as a fierce backlash).²⁶ But standing alone, *Brown* accomplished for African Americans little more than Abraham Lincoln’s Emancipation Proclamation. A civil war had to be waged to end slavery; a mass movement was necessary to bring a formal end to Jim Crow. Those who imagine that far less is required to dismantle mass incarceration and build a new, egalitarian racial consensus reflecting a compassionate rather than punitive impulse toward poor people of color fail to appreciate the distance between Martin Luther King Jr.’s dream and the ongoing racial nightmare for those locked up and locked out of American society.

The foregoing should not be read as a call for movement building to the exclusion of reform work. To the contrary, reform work is the work of movement building, provided that it is done consciously *as* movement-building work. If all the reforms mentioned above were actually adopted, a radical transformation in our society would have taken place. The relevant question

is not whether to engage in reform work, but how. There is no shortage of worthy reform efforts and goals. Differences of opinion are inevitable about which reforms are most important and in what order of priority they should be pursued. These debates are worthwhile, but it is critical to keep in mind that the question of how we do reform work is even more important than the specific reforms we seek. If the way we pursue reforms does not contribute to the building of a movement to dismantle the system of mass incarceration, and if our advocacy does not upset the prevailing public consensus that supports the new caste system, none of the reforms, even if won, will successfully disrupt the nation's racial equilibrium. Challenges to the system will be easily absorbed or deflected, and the accommodations made will serve primarily to legitimate the system, not undermine it. We run the risk of winning isolated battles but losing the larger war.

Let's Talk About Race— Resisting the Temptation of Colorblind Advocacy

So how should we go about building this movement to end mass incarceration? What should be the core philosophy, the guiding principles? Another book could be written on this subject, but a few key principles stand out that can be briefly explored here. These principles are rooted in an understanding that any movement to end mass incarceration must deal with mass incarceration as a racial caste system, not as a system of crime control. This is not to say crime is unimportant; it is very important. We need an effective system of crime prevention and control in our communities, but that is not what the current system is. This system is better designed to *create* crime, and a perpetual class of people labeled criminals, rather than to eliminate crime or reduce the number of criminals.

It is not uncommon, however, to hear people claim that the mere fact that we have the lowest crime rates, at the same time that we have the highest incarceration rates, is all the proof needed that this system works well to control crime. But if you believe this system effectively controls crime, consider this: standard estimates of the amount of crime reduction that can be attributable to mass incarceration range from 3 to 25 percent.²⁷ Some scholars believe we have long since passed a tipping point where the declining marginal return on imprisonment has dipped below zero. In other words, they say,

now creates far more crime than it prevents, by ripping apart fragile social networks, destroying families, and creating a permanent class of unemployedables.²⁸ Although it is common to think of poverty and joblessness as leading to crime and imprisonment, this research suggests that the War on Drugs is a major cause of poverty, chronic unemployment, broken families, and crime today. Todd R. Clear's book *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Communities Worse* powerfully demonstrates that imprisonment has reached such extreme levels in many urban communities that a prison sentence and/or a felon label poses a much greater threat to urban families than crime itself. This is not to say that crime—especially violent crime—does not pose a serious threat in ghetto communities today; it does. In fact, although violent crime rates have been falling nationwide, among black men violent crime is actually on the rise, especially in cities such as Chicago, where the drug war has been waged with the greatest ferocity. What a growing number of sociologists have found ought to be common sense: by locking millions of people out of the mainstream legal economy, by making it difficult or impossible for people to find housing or feed themselves, and by destroying familial bonds by warehousing millions for minor crimes, we make crime more—not less—likely in the most vulnerable communities. The success of pilot programs like Operation Ceasefire and Oakland's Lifeline program—which reach out to gang members and offer them jobs and opportunities rather than prison time if they cease their criminal activities—in dramatically reducing violent crime rates should not be met with shock and amazement.²⁹ When given a choice, most people in the ghetto, like anywhere else, would prefer to be able to work, support their families, and live without fear of harm or violence, if given the chance.

But even assuming that our nation achieved as much as a 25 percent reduction in crime overall through mass incarceration, it still means that the overwhelming majority of incarceration—75 percent—has had absolutely no impact on crime, despite costing nearly \$200 billion annually. As a crime reduction strategy, mass incarceration is an abysmal failure. It is largely ineffective and extraordinarily expensive.

Saying mass incarceration is an abysmal failure makes sense, though, only if one assumes that the criminal justice system is designed to prevent and control crime. But if mass incarceration is understood as a system of social control—specifically, racial control—then the system is a fantastic success.³⁰ In less than two decades, the prison population quadrupled, and

arge majorities of poor people of color in urban areas throughout the United States were placed under the control of the criminal justice system or saddled with criminal records for life. Almost overnight, huge segments of ghetto communities were permanently relegated to a second-class status, disenfranchised, and subjected to perpetual surveillance and monitoring by law enforcement agencies. One could argue this result is a tragic, unforeseeable mistake, and that the goal was always crime control, not the creation of a racial undercaste. But judging by the political rhetoric and the legal rules employed in the War on Drugs, this result is no freak accident.

In order to make this point, we need to talk about race openly and honestly. We must stop debating crime policy as though it were purely about crime. People must come to understand the racial history and origins of mass incarceration—the many ways our conscious and unconscious biases have distorted our judgments over the years about what is fair, appropriate, and constructive when responding to drug use and drug crime. We must come to see, too, how our economic insecurities and racial resentments have been exploited for political gain, and how this manipulation has caused suffering for people of all colors. Finally, we must admit, out loud, that it was *because of race* that we didn't care much what happened to "those people" and imagined the worst possible things about them. The fact that our lack of care and concern may have been, at times, unintentional or unconscious does not mitigate our crime—if we refuse, when given the chance, to make amends.

Admittedly, though, the temptation to ignore race in our advocacy may be overwhelming. Race makes people uncomfortable. One study found that some whites are so loath to talk about race and so fearful of violating racial etiquette that they indicate a preference for avoiding all contact with black people.³¹ The striking reluctance of whites, in particular, to talk about or even acknowledge race has led many scholars and advocates to conclude that we would be better off not talking about race at all. This view is buttressed by the fact that white liberals, nearly as much as conservatives, seem to have lost patience with debates about racial equity. Barack Obama noted this phenomenon in his book, *The Audacity of Hope*: "Rightly or wrongly, white guilt has largely exhausted itself in America; even the most fair-minded of whites, those who would genuinely like to see racial inequality ended and poverty relieved, tend to push back against racial victimization—or race-specific claims based on the history of race discrimination in this country."

Adding to the temptation to avoid race is the fact that opportunities for challenging mass incarceration on purely race-neutral grounds have never been greater. With budgets busting, more than two dozen states have reduced or eliminated harsh mandatory minimum sentences, restored early-release programs, and offered treatment instead of incarceration for some drug offenders.³² The financial crisis engulfing states large and small has led to a conversion among some legislators who once were "get tough" true believers. Declining crime rates, coupled with a decline in public concern about crime, have also helped to create a rare opening for a productive public conversation about the War on Drugs. A promising indicator of the public's receptivity to a change in course is California's Proposition 36, which mandated drug treatment rather than jail for first-time offenders, and was approved by more than 60 percent of the electorate in 2000.³³ Some states have decriminalized marijuana, including Massachusetts, where 65 percent of state voters approved the measure.³⁴ Taken together, these factors suggest that, if a major mobilization got under way, impressive changes in our nation's drug laws and policies would be not only possible, but likely, without ever saying a word about race.

This is tempting bait, to put it mildly, but racial justice advocates should not take it. The prevailing caste system cannot be successfully dismantled with a purely race-neutral approach. To begin with, it is extremely unlikely that a strategy based purely on costs, crime rates, and the wisdom of drug treatment will get us back even to the troubling incarceration rates of the 1970s. As indicated earlier, any effort to downsize dramatically our nation's prisons would inspire fierce resistance by those faced with losing jobs, investments, and other benefits provided by the current system. The emotion and high anxiety would likely express itself in the form of a racially charged debate about values, morals, and personal responsibility rather than a debate about the prison economy. Few would openly argue that we should lock up millions of poor people just so that other people can have jobs or get a good return on their private investments. Instead, familiar arguments would likely resurface about the need to be "tough" on criminals, not coddle them or give "free passes." The public debate would inevitably turn to race, even if no one was explicitly talking about it. As history has shown, the prevalence of powerful (unchallenged) racial stereotypes, together with widespread apprehension regarding major structural changes, would create a political environment in which implicit racial appeals could be employed, once again,

with great success. Failure to anticipate and preempt such appeals would set the stage for the same divide-and-conquer tactics that have reliably preserved racial hierarchy in the United States for centuries.

Even if fairly dramatic changes were achieved while ignoring race, the results would be highly contingent and temporary. If and when the economy improves, the justification for a "softer" approach would no longer exist. States would likely gravitate back to their old ways if a new, more compassionate public consensus about race had not been forged. Similarly, if and when crime rates rise—which seems likely if the nation's economy continues to sour—nothing would deter politicians from making black and brown criminals, once again, their favorite whipping boys. Since the days of slavery, black men have been depicted and understood as criminals, and their criminal "nature" has been among the justifications for every caste system to date. The criminalization and demonization of black men is one habit America seems unlikely to break without addressing head-on the racial dynamics that have given rise to successive caste systems. Although colorblind approaches to addressing the problems of poor people of color often seem pragmatic in the short run, in the long run they are counterproductive. Colorblindness, though widely touted as the solution, is actually the problem.

Against Colorblindness

Saying that colorblindness is the problem may alarm some in the civil rights community, especially the pollsters and political consultants who have become increasingly influential in civil rights advocacy. For decades, civil rights leaders have been saying things like "we all want a colorblind society, we just disagree how to get there" in defense of race-conscious programs like affirmative action or racial data collection.³⁵ Affirmative action has been framed as a legitimate exception to the colorblindness principle—a principle now endorsed by the overwhelming majority of the American electorate. Civil rights leaders are quick to assure the public that when we reach a colorblind nirvana, race consciousness will no longer be necessary or appropriate.

Far from being a worthy goal, however, colorblindness has proved catastrophic for African Americans. It is not an overstatement to say the systematic mass incarceration of people of color in the United States would not have been possible in the post-civil rights era if the nation had not fallen

under the spell of a callous colorblindness. The seemingly innocent phrase, "I don't care if he's black . . ." perfectly captures the perversion of Martin Luther King Jr.'s dream that we may, one day, be able to see beyond race to connect spiritually across racial lines. Saying that one does not care about race is offered as an exculpatory virtue, when in fact it can be a form of cruelty. It is precisely because we, as a nation, have not cared much about African Americans that we have allowed our criminal justice system to create a new racial undercaste.

The deeply flawed nature of colorblindness, as a governing principle, is evidenced by the fact that the public consensus supporting mass incarceration is officially colorblind. It purports to see black and brown men not as black and brown, but simply as men—raceless men—who have failed miserably to play by the rules the rest of us follow quite naturally. The fact that so many black and brown men are rounded up for drug crimes that go largely ignored when committed by whites is unseen. Our collective colorblindness prevents us from seeing this basic fact. Our blindness also prevents us from seeing the racial and structural divisions that persist in society: the segregated, unequal schools, the segregated, jobless ghettos, and the segregated public discourse—a public conversation that excludes the current pariah caste. Our commitment to colorblindness extends beyond individuals to institutions and social arrangements. We have become blind, not so much to race, but to the existence of racial caste in America.

More than forty-five years ago, Martin Luther King Jr. warned of this danger. He insisted that blindness and indifference to racial groups is actually more important than racial hostility to the creation and maintenance of racialized systems of control. Those who supported slavery and Jim Crow, he argued, typically were not bad or evil people; they were just blind. Even the justices who decided the infamous *Dred Scott* case, which ruled "that the Negro has no rights which the white man is bound to respect," were not wicked men, he said. On the contrary, they were decent and dedicated men. But, he hastened to add, "They were victims of a spiritual and intellectual blindness. They knew not what they did. The whole system of slavery was largely perpetuated through spiritually ignorant persons." He continued:

This tragic blindness is also found in racial segregation, the not-too-distant cousin of slavery. Some of the most vigorous defenders of segregation are sincere in their beliefs and earnest in their motives. Although

some men are segregationists merely for reasons of political expediency and political gain, not all of the resistance to integration is the rear-guard of professional bigots. Some people feel that their attempt to preserve segregation is best for themselves, their children, and their nation. Many are good church people, anchored in the religious faith of their mothers and fathers. . . . What a tragedy! Millions of Negroes have been crucified by conscientious blindness. . . . Jesus was right about those men who crucified him. They knew not what they did. They were inflicted by a terrible blindness.³⁶

Could not the same speech be given about mass incarceration today? Again, African Americans have been "crucified by conscientious blindness." People of good will have been unwilling to see black and brown men, in their humanness, as entitled to the same care, compassion, and concern that would be extended to one's friends, neighbors, or loved ones. King recognized that it was this *indifference* to the plight of other races that supported the institutions of slavery and Jim Crow. In his words, "One of the great tragedies of man's long trek along the highway of history has been the limiting of neighborly concern to tribe, race, class or nation." The consequence of this narrow, insular attitude "is that one does not really mind what happens to the people outside his group."³⁷ Racial indifference and blindness—far more than racial hostility—form the sturdy foundation for all racial caste systems.

Abandoning the quest for a colorblind society is easier said than done, of course. Racial justice advocates, if they should choose this path, will be required to provide uncomfortable answers to commonly asked questions. For example, advocates are frequently asked, When will we (finally) become a colorblind society? The pursuit of colorblindness makes people impatient. With courage, we should respond: *Hopefully never*. Or if those words are too difficult to utter, then say: "Not in the foreseeable future."

More than a little patience will be needed when explaining the complete about-face. Probably around the same number of people think the Earth is flat as think race consciousness should be the rule in perpetuity, rather than the exception. It would be a mistake, though, to assume that people are incapable of embracing a permanent commitment to color consciousness. The shift may, in fact, come as something of a relief, as it moves our collective focus away from a wholly unrealistic goal to one that is within anyone's reach right now. After all, to aspire to colorblindness is to aspire to a state of being

in which you are not capable of seeing racial difference—a practical impossibility for most of us. The shift also invites a more optimistic view of human capacity. The colorblindness ideal is premised on the notion that we, as a society, can never be trusted to see race and treat each other fairly or with genuine compassion. A commitment to color consciousness, by contrast, places faith in our capacity as humans to show care and concern for others, even as we are fully cognizant of race and possible racial differences.

If colorblindness is such a bad idea, though, why have people across the political spectrum become so attached to it? For conservatives, the ideal of colorblindness is linked to a commitment to individualism. In their view, society should be concerned with individuals, not groups. Gross racial disparities in health, wealth, education, and opportunity should be of no interest to our government, and racial identity should be a private matter, something best kept to ourselves. For liberals, the ideal of colorblindness is linked to the dream of racial equality. The hope is that one day we will no longer see race because race will lose all of its significance. In this fantasy, eventually race will no longer be a factor in mortality rates, the spread of disease, educational or economic opportunity, or the distribution of wealth. Race will correlate with nothing; it will mean nothing; we won't even notice it anymore. Those who are less idealistic embrace colorblindness simply because they find it difficult to imagine a society in which we see race and racial differences yet consistently act in a positive, constructive way. It is easier to imagine a world in which we tolerate racial differences by being blind to them.

The uncomfortable truth, however, is that racial differences will *always* exist among us. Even if the legacies of slavery, Jim Crow, and mass incarceration were completely overcome, we would remain a nation of immigrants (and indigenous people) in a larger world divided by race and ethnicity. It is a world in which there is extraordinary racial and ethnic inequality, and our nation has porous boundaries. For the foreseeable future, racial and ethnic inequality will be a feature of American life.

This reality is not cause for despair. The idea that we may never reach a state of perfect racial equality—a perfect racial equilibrium—is not cause for alarm. What is concerning is the real possibility that we, as a society, will choose not to care. We will choose to be blind to injustice and the suffering of others. We will look the other way and deny our public agencies the resources, data, and tools they need to solve problems. We will refuse to celebrate

what is beautiful about our distinct cultures and histories, even as we blend and evolve. That is cause for despair.

Seeing race is not the problem. Refusing to care for the people we see is the problem. The fact that the meaning of race may evolve over time or lose much of its significance is hardly a reason to be struck blind. We should hope not for a colorblind society but instead for a world in which we can see each other fully, learn from each other, and do what we can to respond to each other with love. That was King's dream—a society that is capable of seeing each of us, as we are, with love. That is a goal worth fighting for.

The Racial Bribe—Let's Give It Back

The foregoing could be read as a ringing endorsement of affirmative action and other diversity initiatives. To a certain extent, it is. It is difficult to imagine a time, in the foreseeable future, when the free market and partisan politics could be trusted to produce equitable inclusion in all facets of American political, economic, and social life, without anyone giving any thought—caring at all—about race. It may always be necessary for us, as a society, to pay careful attention to the impact of our laws, policies, and practices on racial and ethnic groups and consciously strive to ensure that biases, stereotypes, and structural arrangements do not cause unnecessary harm or suffering to any individual or any group for reasons related to race.

There is, however, a major caveat. Racial justice advocates should consider, with a degree of candor that has not yet been evident, whether affirmative action—as it has been framed and defended during the past thirty years—as functioned more like a racial bribe than a tool of racial justice. One might wonder, what does affirmative action have to do with mass incarceration? Well, perhaps the two are linked more than we realize. We should ask ourselves whether efforts to achieve “cosmetic” racial diversity—that is, reform efforts that make institutions look good on the surface without the needed structural changes—have actually helped to facilitate the emergence of mass incarceration and interfered with the development of a more compassionate race consciousness. In earlier chapters, we have seen that throughout our nation's history, poor and working-class whites have been bought off with racial bribes. The question posed here is whether affirmative action has functioned similarly, offering relatively meager material advantages but sig-

nificant psychological benefits to people of color, in exchange for the abandonment of a more radical movement that promised to alter the nation's economic and social structure.

To be clear: This is *not* an argument that affirmative action policies conflict with King's dream that we might one day be “judged by the content of our character, not the color of our skin.” King himself would have almost certainly endorsed affirmative action as a remedy, at least under some circumstances. In fact, King specifically stated on numerous occasions that he believed special—even preferential—treatment for African Americans may be warranted in light of their unique circumstances.³⁸ And this is not an argument that affirmative action has made no difference in the lives of poor or working-class African Americans—as some have claimed. Fire departments, police departments, and other public agencies have been transformed, at least in part, due to affirmative action.³⁹ Finally, this is not an argument that affirmative action should be reconsidered simply on the grounds that it is “unfair” to white men as a group. The empirical evidence strongly supports the conclusion that declining wages, downsizing, deindustrialization, globalization, and cutbacks in government services represent much greater threats to the position of white men than so-called reverse discrimination.⁴⁰

The argument made here is a less familiar one. It is not widely debated in the mainstream media or, for that matter, in civil rights organizations. The claim is that racial justice advocates should reconsider the traditional approach to affirmative action because (a) it has helped to render a new caste system largely invisible; (b) it has helped to perpetuate the myth that anyone can make it if they try; (c) it has encouraged the embrace of a “trickle down theory of racial justice”; (d) it has greatly facilitated the divide-and-conquer tactics that gave rise to mass incarceration; and (e) it has inspired such polarization and media attention that the general public now (wrongly) assumes that affirmative action is the main battlefield in U.S. race relations.

It may not be easy for the civil rights community to have a candid conversation about any of this. Civil rights organizations are populated with beneficiaries of affirmative action (like myself) and their friends and allies. Ending affirmative action arouses fears of annihilation. The reality that so many of us would disappear overnight from colleges and universities nationwide if affirmative action were banned, and that our children and grandchildren might not follow in our footsteps, creates a kind of panic that is difficult to describe. It may be analogous, in some respects, to the panic once

experienced by poor and working-class whites faced with desegregation the fear of a sudden demotion in the nation's racial hierarchy. Mari Matsuda and Charles Lawrence's book *We Won't Go Back* captures the determination of affirmative-action beneficiaries not to allow the clock to be turned back on racial justice, back to days of racial caste in America. The problem, of course, is that *we are already there*.

Affirmative action, particularly when it is justified on the grounds of diversity rather than equity (or remedy), masks the severity of racial inequality in America, leading to greatly exaggerated claims of racial progress and overly optimistic assessments of the future for African Americans. Seeing black people graduate from Harvard and Yale and become CEOs or corporate lawyers—not to mention president of the United States—causes us all to marvel at what a long way we have come. As recent data shows, however, much of black progress is a myth. Although some African Americans are doing very well—enrolling in universities and graduate schools at record rates thanks to affirmative action—as a group, in many respects African Americans are doing no better than they were when Martin Luther King Jr. was assassinated and riots swept inner cities across America. The child poverty rate is actually higher today than it was in 1968.⁴¹ Unemployment rates in black communities rival those in Third World countries. And that is *with* affirmative action!

When we pull back the curtain and take a look at what our so-called color-blind society creates without affirmative action, we see a familiar social, political, and economic structure—the structure of racial caste. When those behind bars are taken into account, America's institutions continue to create nearly as much racial inequality as existed during Jim Crow.⁴² Our elite universities, which now look a lot like America, would whiten overnight if affirmative action suddenly disappeared. One recent study indicates that the elimination of race-based admissions policies would lead to a 63 percent decline in black matriculants at all law schools and a 90 percent decline at elite law schools.⁴³ Sociologist Stephen Steinberg describes the bleak reality this way: "Insofar as this black middle class is an artifact of affirmative action policy, it cannot be said to be the result of autonomous workings of market forces. In other words, the black middle class does not reflect a lowering of racist barriers in occupations so much as the opposite: racism is so entrenched that without government intervention there would be little progress' to boast about."⁴⁴

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

The predictable response is that civil rights advocates are as committed to challenging mass incarceration and other forms of structural racism as they are to preserving affirmative action. But where is the evidence of this? Civil rights activists have created a national *movement* to save affirmative action, complete with the marches, organizing, and media campaigns, as well as incessant strategy meetings, conferences, and litigation. Where is the movement to end mass incarceration? For that matter, where is the movement for educational equity? Part of the answer is that it is far easier to create a movement when there is a sense of being under attack. It is also easier when a single policy is at issue, rather than something as enormous (and seemingly intractable) as educational inequity or mass incarceration. Those are decent explanations, but they are no excuse. Try telling a sixteen-year-old black youth in Louisiana who is facing a decade in adult prison and a lifetime of social, political, and economic exclusion that your civil rights organization is not doing much to end the War on Drugs—but would he like to hear about all the great things that are being done to save affirmative action? There is a fundamental disconnect today between the world of civil rights advocacy and the reality facing those trapped in the new racial undercaste.

There is another, more sinister consequence of affirmative action: the carefully engineered appearance of great racial progress strengthens the "color-blind" public consensus that personal and cultural traits, not structural arrangements, are largely responsible for the fact that the majority of young black men in urban areas across the United States are currently under the control of the criminal justice system or branded as felons for life. In other words, affirmative action helps to make the emergence of a new racial caste system seem implausible. It creates an environment in which it is reasonable to ask, how can something akin to a racial caste system exist when people like Condoleezza Rice, Colin Powell, and Barack Obama are capable of rising from next to nothing to the pinnacles of wealth and power? How could a caste system exist, in view of the black middle class?

There are answers to these questions, but they are difficult to swallow when millions of Americans have displayed a willingness to elect a black