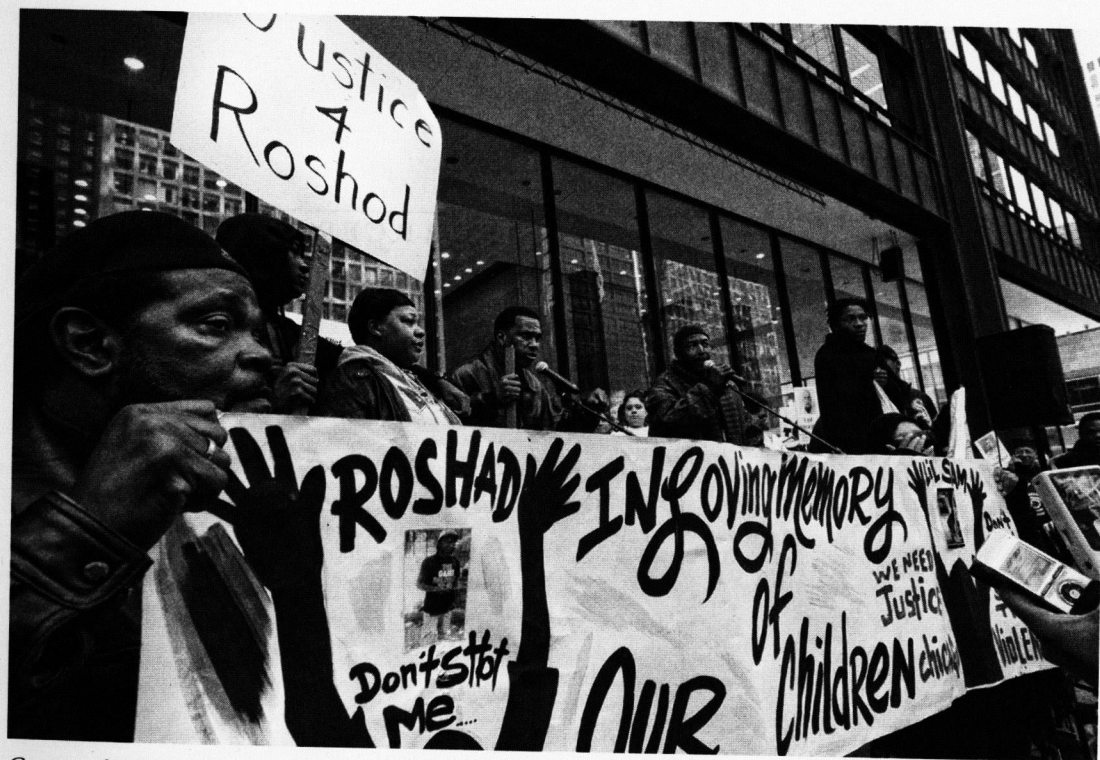




Courtesy of WISDOM

1

A SNAPSHOT OF THE SYSTEM

Since the 1980s, the United States has embarked on the most extensive campaign of prison building and incarceration in modern history. Lawyer Bryan Stevenson, winner of the 2012 Smithsonian American Ingenuity Award, argues that “mass incarceration defines us as a society the way slavery once did.”¹ Former New York and Pennsylvania state prison administrator Martin Horn sums it up: “We are on a prison binge. We’re addicted to incarceration in this country.”² To begin to understand why, we’ll need some background on the system.

INCARCERATION NATION

Our prison binge can be assessed in several ways. *The total number of people imprisoned is growing rapidly.* From 1980 to 2013, the number of people in U.S. prisons and jails rose from just over five hundred thousand to more than 2 million, reaching a peak in 2009 at about 2.5 million. With only 5 percent of the world’s population, the United States holds 25 percent of the world’s prisoners.³

Compared to other countries, America’s gone stir crazy. Among industrialized nations, the United States is an outlier, incarcerating at more than four times the rate of Britain and China and more than fourteen times the rate of Japan.⁴

Prisons lock up more and more money. Prison and jail expenditures in America jumped from

\$7 billion in 1980 to \$57 billion in 2000 and have exceeded \$70 billion every year since 2007. During that period, crime rates first remained steady and then declined after 1993.⁵ Those figures don't include the downstream costs to society or the opportunity costs, the things we can't do because we spend so much money on prisons.

Besides locking up millions of people, the United States has expanded the ranks of those under some form of community oversight, usually called parole, probation, or supervised release. In 1980 about 1.3 million people were under such supervision; by 2011, their numbers had grown to 4.8 million—about 2.9 percent of American adults.⁶ *The burdens of the after-prison system have grown in proportion to the prison system itself.*

Here are seven key facts about mass incarceration to chart some of the symptoms of our prison addiction:

1. The U.S. incarceration rate in 2013 was 702 per 100,000 people, topping all nations with a population of more than 100,000. Russia was second among industrialized nations at 470 per 100,000. The rate for the United Kingdom was 149; for China, 124; and for Sweden, just 60.⁷
2. Annual admissions to U.S. prisons and jails rose from 171,884 in 1980 to a peak of 747,031 in 2006.⁸
3. In 2012 incarceration rates for Blacks stood at 2,805 per 100,000—about six times higher than that of whites and almost three times that of Hispanics.⁹
4. Although women make up only 8 percent of the U.S. incarcerated population, their rate of 67 per 100,000 is higher than that of more than three dozen countries, including Japan, Nigeria, India, Yemen, and Pakistan.¹⁰
5. In 2012 New York spent more than \$60,000 a year to incarcerate one person. By comparison, the total 2011–2012 annual cost of attending Harvard was \$52,652 for tuition, room, board, and fees combined.¹¹
6. In 2012 some 5.8 million people were denied the right to vote because of a felony conviction.¹²
7. At least 2,500 people in the United States are serving life sentences for crimes

they committed as juveniles. Many serve time in adult prisons even while they are juveniles.¹³

These basic facts show the scale of U.S. mass incarceration, but to understand it we must address two critical questions: who gets locked up? and why has incarceration increased so dramatically?

WHO GETS LOCKED UP?

The overall number of people behind bars has skyrocketed, but the selection is not random. The incarcerated population has been largely determined by factors of race, class, and gender.

Mass Incarceration Pro and Con

Political scientist John Dilulio Jr. explained his support for mass incarceration in 1996: "On average it costs about \$25,000 a year to keep a convicted criminal in prison. For that money society gets four benefits: Imprisonment punishes offenders and expresses society's moral disapproval. It teaches felons and would-be felons a lesson: Do crime, do time. Prisoners get drug treatment and education. And, as the columnist Ben Wattenberg has noted, 'a thug in prison can't shoot your sister.'"¹⁴

In her 2010 book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander offers a different view:

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.¹⁵

PEOPLE OF COLOR, PARTICULARLY AFRICAN AMERICANS, ARE DISPROPORTIONATELY INCARCERATED

While African Americans make up only about 13 percent of the U.S. population, by 2012 Blacks¹⁶ constituted nearly 40 percent of those in prisons and jails. Hispanics are about a 14 percent of the general population, yet they are about 22 percent of those incarcerated. The prison population has changed from about 30 percent people of color in the 1970s to roughly 70 percent in 2012.¹⁷ Transgender people also have extremely high rates of incarceration, with one in six experiencing some form of incarceration during their lifetime.¹⁸

POOR PEOPLE, REGARDLESS OF RACE, ARE THE MOST LIKELY TO BE INCARCERATED

People in prisons and jails have lower average incomes on the outside than the general population, are more likely to be unemployed, and less likely to have completed high school or college. They represent the poorest, most marginalized members of the U.S. working class. Wealthy people who commit white-collar crimes that lead to losses that go into the millions often avoid prosecution or receive lighter sentences than those responsible for theft, robbery, or drug sales involving far smaller amounts of money. Paul Wright, editor of *Prison Legal News*, refers to this “two-tier nature of the American criminal justice system, where you have one system of justice for the poor and politically unconnected and another system of justice for the wealthy and politically connected.”¹⁹

One of the most egregious instances of special justice for the rich was the 2014 case of a young white Texan named Ethan Crouch. He drove while under the influence of alcohol and caused a crash that killed four people. During the trial, his lawyer called a witness who claimed Crouch suffered from “affluenza,” an affliction of privileged children whose wealthy parents never set limits on their behavior. In passing sentence, presiding Judge Jean Boyd acknowledged the affluenza issue, sentenced Crouch to ten years’ probation, and mandated that he live in an upmarket treatment facility at a cost of about a quarter of a million dollars per year.²⁰ Crouch’s parents were required to pay only about \$13,000 of those annual fees. The remainder was covered by taxpayers.²¹

The Structure of the U.S. Criminal Legal System

When a person is arrested, he or she is generally sent to a county jail. In minor cases, individuals may be released shortly thereafter and will remain in the community until their cases are resolved. This is called release on own recognizance (ROR). Others will have to pay bail or bonds to the court in order to be released until resolution of their cases. In more serious matters, the accused will usually remain in jail until the case is resolved in court. If convicted of a serious charge, a felony, a person will be sentenced to more than a year and typically will go to a prison. After completing the sentence, one is normally under a form of community supervision called parole. People who serve less than a year, usually convicted of misdemeanors, complete their sentence in a county jail. When they are released, they usually go on probation, which is like parole but under the authority of the county rather than the state. More details about parole and probation are discussed in chapter 6.

Prisons are divided into federal, state, and county systems. Violators of federal law are processed in federal courts and, if convicted, serve time in a facility run by the Federal Bureau of Prisons. Federal prisons hold about 10 percent of the incarcerated population. Each state has its own laws, and most states have their own prison systems run by their departments of corrections. State prisons hold about 60 percent of the nation’s prisoners. Most counties have their own jails, which range in size from a few beds to facilities in big cities that hold thousands. On a given day, county jails hold about 20 percent of the imprisoned population.

In addition, the federal government is responsible for immigration detention centers, which hold people charged under immigration law violations, which are civil, not criminal violations. They make up about 1.5 percent of those behind bars. Some Native American nations also have their own courts and jails, which account for fewer than 1 percent of those in custody. See Figure 1.1 for more details.

The Thirteenth Amendment Allows Slavery for the "Convicted"

Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction. (Emphasis added.)

THE BURDENS OF MASS INCARCERATION ARE APPORTIONED BY GENDER

The overwhelming majority of those in prisons and jails are men. Overall, men's prisons and jails hold more than 90 percent of all those behind bars. Although men suffer the actual imprisonment, their removal has important effects on those left behind in their communities, mostly women and children. The absence of men shifts a host of tasks onto the largely female group that remains behind—financial support for the family, care of children and other loved ones, and civic and community duties. In addition, women often have to lend financial and emotional support to the incarcerated men, contributing money toward basic necessities for loved ones on the inside and organizing visits to often distant prisons and jails. When men finally gain release from custody, women frequently must provide housing, food, supervision, and assistance with the emotional transition to life on the outside.

INCARCERATION RATES FOR HISPANICS AND WOMEN HAVE RISEN SHARPLY SINCE 2001

Although African Americans have the highest incarceration rate per capita, since 2001 the absolute number of Hispanics behind bars has been growing at a much faster pace than that of any other racial group. In fact, from 2000 to 2013, the number of Blacks in prison declined slightly, whereas the number of Hispanics increased by more than 50 percent.

PEOPLE'S CHANCES OF ENDING UP IN PRISON RISE DRAMATICALLY IN TARGETED NEIGHBORHOODS

Large sectors of the incarcerated population come from low-income urban communities, usually either predominantly African American or Latino. In certain parts of the United States, Native American communities in reservations, urban areas, and poor rural towns with largely white populations also suffer disproportionate levels of incarceration.

Music of the Incarceration Experience

The collective experience of mass incarceration has sparked a vast array of music depicting the reality of communities that have been directly affected by it. A number of hip-hop artists have crafted numbers that chronicle police victimization and life behind bars. Perhaps the most well known is Akon's "Locked Up," which grabbed nearly 50 million YouTube views. Other high-profile numbers include Public Enemy, "Black Steel in the Hour of Chaos"; Nas, "Last Words"; Jah Cure, "Prison Walls"; Beanie Sigel, "What Ya Life Like"; and Ludacris and friends, "Do Your Time." Nate Dogg performed his "One More Day" in an orange jumpsuit surrounded by his crew in the same prison attire. California artist Tiny Doo was actually charged with criminal conspiracy based on the content of his 2014 album *No Safety*. The prison theme has not been limited to men, with several songs by female artists focusing on the experience of women whose partner is incarcerated, such as "Gotta Man" by Eve, with more than 2 million YouTube views.

We have also seen a rapid growth in the number of women in prisons and jails. From 2000 to 2010, the population of women in prison grew at a far faster rate than that of men, and the absolute numbers for white and Hispanic women rose faster than those for African American women.

Finally, from 2009 to 2011, the total number of people in prisons throughout the United States declined slightly for the first time since the 1970s. The figure rose slightly in 2012, then fell by 0.6 percent for 2013. The reasons for these recent trends are economic as well as political. We will explore shifts toward "decarceration" in chapter 14.

This brief profile of mass incarceration raises many disturbing issues. The key question, however, is *why* this major transformation in U.S. society has taken place. A number of researchers and activists have offered explanations. Here we will look at several.

WHY HAS INCARCERATION INCREASED SO DRAMATICALLY?

Mass incarceration has its roots in a time when crime rates were rising. Throughout the 1970s, crime, especially violent crime, steadily increased. Once mass incarceration began in the early 1980s, however, crime rates varied. During the 1980s, crime rates increased, then declined, then increased again, hitting a peak in the early 1990s. From 1993 onward, violent and property crime decreased year after year. Yet the number of people incarcerated rose every year from the late 1970s to 2009. Author and legal scholar Michelle Alexander maintains that “violent crime rates have fluctuated over the years and bear little relationship to incarceration rates—which have soared during the past three decades regardless of whether violent crime was going up or down.”²²

Supporters of expanded imprisonment argue that locking people up is necessary to reduce crime. President Richard Nixon articulated this view quite succinctly in 1968 when he said, “Doubling the conviction rate in this country would do more to cure crime in America than quadrupling the funds for . . . war on poverty.”²³

Some social scientists, such as James Q. Wilson and Steve Levitt, contend that putting a “criminal” behind bars prevents a significant number of crimes. Wilson and Levitt maintain that the United States had a serious crime problem in the late 1970s and early 1980s and that mass incarceration has made a major impact by reducing crime rates and making cities safer.²⁴

Critics of mass incarceration have responded to these arguments and pointed out other explanations for fluctuating crime rates and the rise of mass imprisonment. Here we will summarize three perspectives.

ECONOMIC REASONS

In her renowned book *The Golden Gulag*, scholar-activist Ruth Wilson Gilmore linked the rise of mass incarceration to globalization. She described the late 1970s as a moment of crisis for the U.S. economy, highlighted by falling corporate profits.²⁵ Sociologist Loïc Wacquant echoed Gilmore’s perspective in *Punishing the Poor: The Neoliberal Government of Social Insecu-*

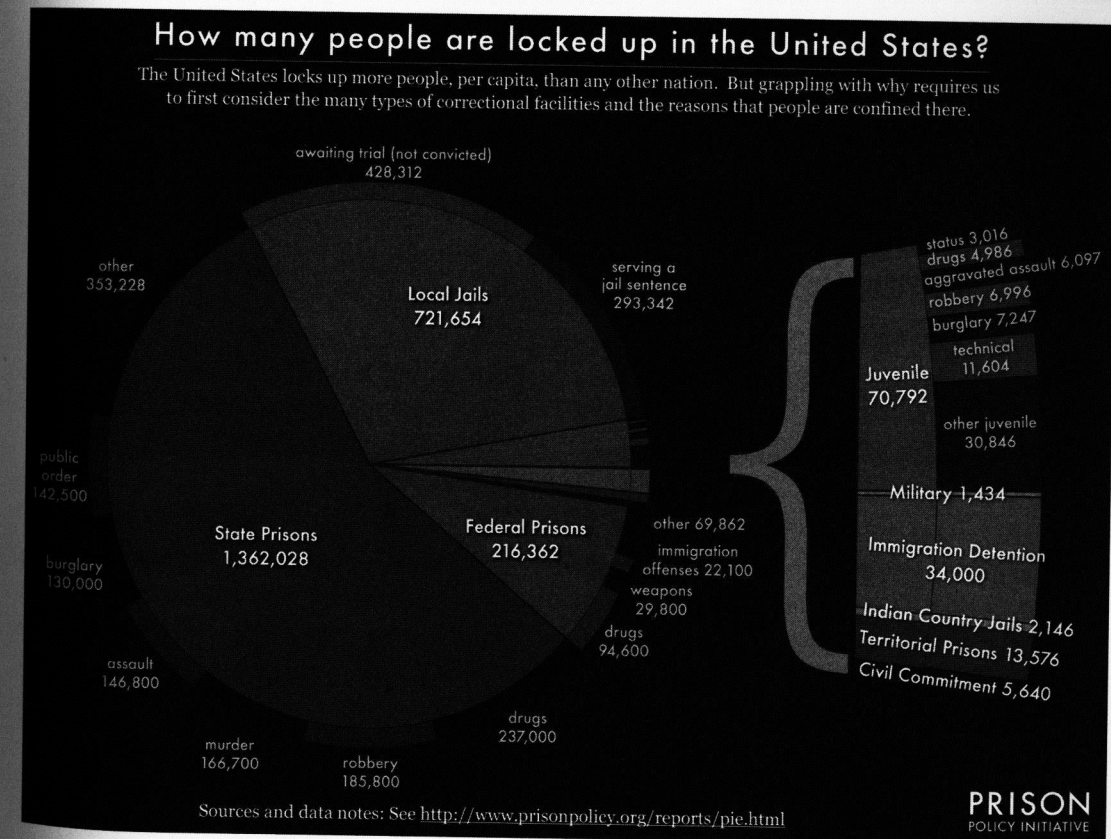


Figure 1.1. The Whole Pie. Courtesy of the Prison Policy Initiative

rity, noting that the U.S. government responded to this economic crisis by abandoning social welfare in favor of corporate welfare. Cutbacks targeted public housing, Aid to Families with Dependent Children (now Temporary Assistance to Needy Families, or TANF), food stamps (now Supplementary Nutritional Assistance Program, SNAP), and other social programs. More resources went into security, including the expansion of prisons and jails. This shift was

complemented by a campaign on the part of political leaders to draw attention to crime and promote a tough “law and order” approach as the solution.²⁶

The drive for greater corporate profits led many U.S. companies to move manufacturing jobs offshore—to countries with much lower wage rates and fewer regulations on production. This capital flight increased domestic unemployment levels, particularly in large cities with sizable African American populations, such as Detroit, Cleveland, and Chicago. High levels of unemployment frequently left criminal activity as one of the few ways to secure an income. That’s why Gilmore and others have concluded that globalization caused changes that precipitated mass incarceration.

Several analysts have emphasized that once mass incarceration took off, prison expansion continued to gain support because it represented a new source of profits and a livelihood for many people. This strand of the economic argument stresses how a range of business interests profit from carceral growth. In their collection *Prison Profiteers: Who Makes Money from Mass Incarceration*, Tara Herivel and Paul Wright describe how each step of prison and jail expansion represents a new flow of revenue—first for the financiers who provide loans for these massive construction projects; then for the architects, engineers, and construction firms involved in the building phase; and then later, once the facility is operational, for the companies who supply goods and services to the prison population.²⁷ Everything from food to toilet paper to prisoner phone calls is an entrepreneurial opportunity. As the prison system expanded, more and more people, from prison guards to bureaucrats in departments of corrections, relied on incarceration for their jobs. By 2012 nearly a million people were employed in corrections. Largely because of its profit possibilities and economic benefits for certain people, many critics refer to the prison system as the prison-industrial complex, a system that benefits small groups of people at the expense of the majority. Scholar and activist Angela Y. Davis has argued that this system while generating economic activity actually drains rather than produces wealth.

The penal system as a whole does not produce wealth. It devours the social wealth that could be used to subsidize housing for the homeless, to ameliorate public

education for poor and racially marginalized communities, to open free drug rehabilitation programs for people who wish to kick their habits, to create a national health care system, to expand programs to combat HIV, to eradicate domestic abuse—and, in the process, to create well-paying jobs for the unemployed.²⁸

POLITICAL REASONS

In *The New Jim Crow*, Michelle Alexander argues that a political agenda motivated changes in the criminal legal system after 1980. She contends that the gains won by the civil rights movement in the 1960s and '70s unleashed fear and insecurity among large sectors of the white population. She maintains many whites believed their jobs and educational opportunities were imperiled because of affirmative action.

Alexander describes how conservatives, led by President Richard Nixon and later by President Ronald Reagan, played on this fear to win whites to the ranks of the Republican Party. She shows how politicians used the discourse of “colorblindness” to mask their strategy of exploiting racism among the electorate. Because of the success of the civil rights movement, Alexander contends, no political leader could mobilize support during the 1970s and '80s with an *explicitly* racist agenda. Instead, she documents how conservatives used crime as a symbolic way of referring to African Americans. Without ever mentioning race, a common understanding developed among whites that the word *criminal* meant a young Black male.

Alexander cites statements by Nixon’s closest advisers, Bob Haldeman and John Ehrlichman. According to Haldeman, Nixon concluded that “you have to face the fact that the whole problem is the blacks. The key is to devise a system that recognizes this while not appearing to.” Ehrlichman declared quite explicitly “that subliminal appeal to the anti-black voter was always present in Nixon’s statements and speeches.”²⁹ In Alexander’s view, this undercurrent of racism among whites was essential to making mass incarceration feasible.

PHILOSOPHICAL REASONS

In their book *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*, Todd Clear and Natasha Frost argue that a key shift in criminal justice philosophy occurred

after 1980. In previous decades, the dominant ethos in criminal legal circles was the goal of rehabilitation.³⁰ Prisons, jails, and juvenile justice facilities were viewed as institutions that provided people with a “second chance,” often through extensive education and job training programs or substance abuse treatment. With the rise of mass incarceration, however, attitudes began to change. Gradually the proponents of mass incarceration and the general public began to call for the system to punish or incapacitate people rather than rehabilitate them. The sense was that prisoners were “criminals” who, because they had broken the law, didn’t deserve further investment or a second chance. The solution was to isolate them from society. Clear and Frost called this the punishment imperative—a popular urge to respond to a perceived threat of crime in a punitive manner.

This punishment imperative didn’t mean only criminal prosecution but also included political disenfranchisement. For example, many states introduced prison gerrymandering, a process through which, for election purposes, people in prison are counted as residents of the district where they are incarcerated, not as residents of the district where they lived prior to arrest. The result is more political power to the predominantly white rural areas where most prisons are located and less power in the hands of the urban communities of color where most people in prison come from.

This shift in philosophy came with a change in beliefs about the root cause of crime. In the 1970s, most sociologists and criminologists linked crime to social problems. They believed that it grew out of poverty, inequality, and lack of opportunity. Furthermore, they argued that crime and punishment reflected the racial and class fault lines in U.S. society. The mainstream political rhetoric of the 1980s encouraged a heightened sense of individual responsibility for crime. From this perspective, people turned to crime not because of lack of opportunity or obstacles such as racial or class discrimination, but because they made “bad choices.” Under this punishment paradigm, halting crime came down to teaching “criminals” to accept responsibility for their actions, take their punishment, and then turn their lives around.

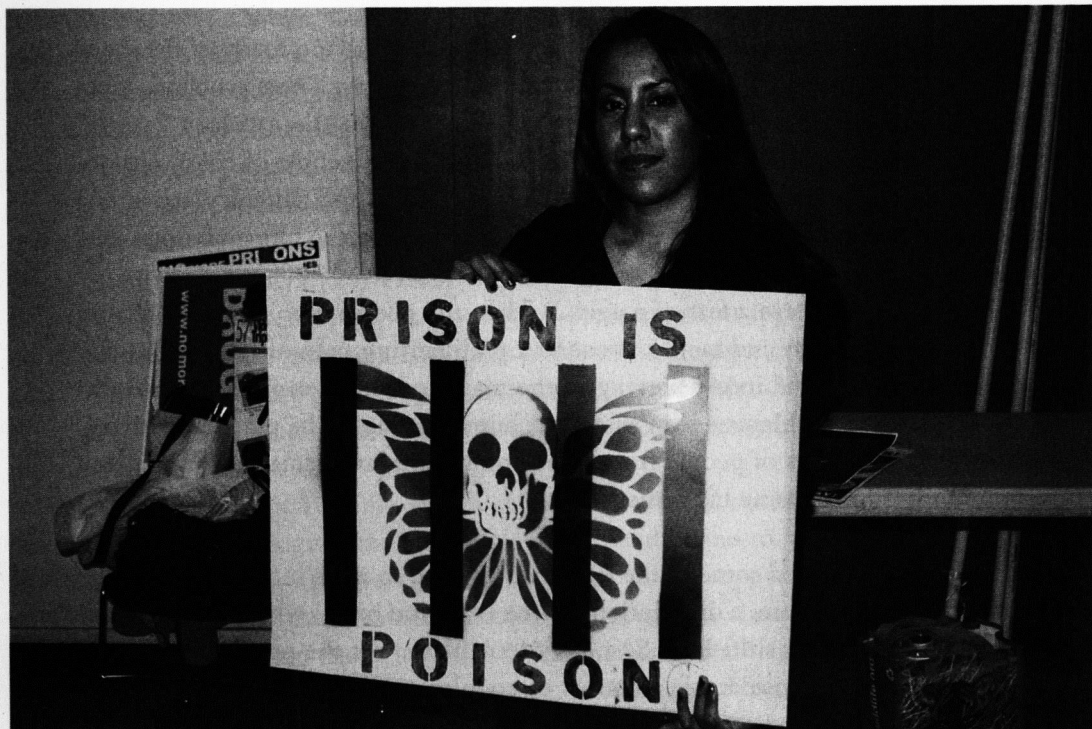
Angela Y. Davis attributes this move toward increased punishment to shifting ideas about poverty and race. She connects this to the philosophy of retributive justice, whereby the

criminal legal system exists only to exact retribution—to punish—rather than to offer second chances or the possibility of forgiveness. Davis contends that this punitive philosophy has contributed to the criminalization of acts that were previously either ignored or handled with nonlegal interventions. In a well-known essay on this topic she argued:

Imprisonment has become the response of first resort to far too many of the social problems that burden people who are ensconced in poverty. These problems often are veiled by being conveniently grouped together under the category “crime” and by the automatic attribution of criminal behavior to people of color. Homelessness, unemployment, drug addiction, mental illness, and illiteracy are only a few of the problems that disappear from public view when the human beings contending with them are relegated to cages.

Prisons thus perform a feat of magic. Rather, the people who continually vote for new prison bonds and tacitly assent to a proliferating network of prisons and jails have been tricked into believing in the magic of imprisonment. But prisons do not disappear problems—they disappear human beings. The practice of disappearing vast numbers of people from poor, immigrant, and racially marginalized communities has become big business.³¹

This chapter has provided some of the basic background to mass incarceration by offering a general profile of the system, a description of who is behind bars, and some historical explanations why this enormous shift in U.S. society took place. Yet the prison system could not have expanded without considerable amounts of popular support. Gaining support for mass incarceration was a complex, prolonged, and intentional process, one that is often ignored in analyses of the criminal justice system.



Courtesy of Mary Sutton

2

BUILDING POPULAR SUPPORT FOR GROWING THE PRISON SYSTEM

A key social change underlying the advance of mass incarceration has been an increasing respect for the absolute authority of the law and those involved in law enforcement. This attitude has not always prevailed. The social movements of the 1960s and early '70s raised many questions about the fundamental fairness of the U.S. criminal justice system. Martin Luther King Jr. repeatedly challenged the notion of blind respect for the law. In his famous "Letter from a Birmingham Jail," King asserted that "there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws."¹ Such ideas inspired many people of the day to defy racial segregation and eventually gain passage of more egalitarian legislation, including the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

A similar questioning of the law emerged in regard to the Vietnam War. A large number of those in the United States who opposed the war believed it was unjust. Thousands of young men acted on these beliefs by defying the mandatory draft and refusing military service. Many broke the law by fleeing to Canada to avoid being drafted. Even public figures, such as heavyweight boxing champion Muhammad Ali, defied the law and refused to join the

military. Ali became one of some nine thousand people convicted of draft-related offenses during this period. A large number of them ended up serving prison sentences.²

One of the most famous antiwar activists, Daniel Ellsberg, was a consultant who worked for the Pentagon in the 1960s. He leaked the *Pentagon Papers* to the press. This secret Defense Department study consisted of thousands of military and security documents pertaining to the Vietnam War. In explaining his decision to take this action, he said, "There was no question in my mind that my government was involved in an unjust war that was going to continue and get larger. Thousands of young men were dying each year."³ Ellsberg was charged with twelve felonies for leaking the documents, but the counts were ultimately dismissed due to government misconduct.

While activists critiqued the legitimacy of the law, many lawyers and criminologists were questioning the efficacy of prison and harsh punishment. Even with an incarceration rate less than a quarter of what it would be by the new millennium, many legal scholars and policy makers pushed for further cutbacks. A National Advisory Commission on Criminal Justice Standards and Goals in 1973 recommended that "no new institutions for adults should be built and existing institutions for juveniles should be closed."⁴

SHAPING PUBLIC OPINION

Public opinion polls also reflected a liberal perspective often critical of the criminal justice system. For example, popular opposition to the death penalty reached its peak in 1965 and remained above 50 percent from 1957 to 1972.⁵ (By the mid-1990s, it would fall to 20 percent.) People also doubted the integrity of the police. In a national survey conducted by the City University of New York, only 37 percent of people in 1977 said they rated the ethics of police officers as very high or high (the figure would soar to 78 percent by 2001).⁶

Similarly, significant swaths of official and popular opinion rejected the law-and-order approach to crime, citing social and economic factors as the causes of crime rather than individual character issues or a lenient criminal justice system. The 1967 commission led by U.S.

Social Movements Resist Unjust Laws

The social movements of the 1960s and '70s constantly called the legitimacy of the law into question. Particular actions by these movements raised questions about just and unjust laws and the responsibilities of individuals and government. The most prominent actions included: Native Americans' occupation of Alcatraz Island in California from 1969 to 1971 to demand the restoration of Native American land ownership and national sovereignty. Latino activist Reies Tijerina in 1967 led an occupation of a courthouse in New Mexico demanding restoration of land that previously belonged to Mexico. The legitimacy of law came under further attack from those who campaigned for legalization of abortion, homosexuality, and recreational drug use. A number of people who defied the law faced legal repercussions and, in some cases, lengthy prison sentences. Among the most high profile of these "political prisoners" were:

- African American activist Angela Davis;
- Black Panther leader Huey P. Newton;
- Religious war resisters Fathers Daniel and Patrick Berrigan;
- The Chicago Eight, leaders of various social movements charged with sparking a riot at the 1968 Democratic Convention;
- Women who killed men who had sexually attacked them, including Joanne Little and Inez Garcia;
- California prisoner and author George Jackson, killed by prison authorities in 1971;
- Other groups of activists charged collectively with crimes who became known by their group names: the San Quentin Six, the Wilmington (North Carolina) Ten, the New York Twenty-One, the Seattle Seven, Los Siete de la Raza, and Puerto Rican Prisoners of War.

attorney general Nicholas Katzenbach concluded, "The most significant action that can be taken against crime is action designed to eliminate slums and ghettos, to improve education, to provide jobs, to make sure that every American is given the opportunities and freedoms that will enable him to assume his responsibilities."⁷

Incarcerated men and women began to mobilize within prisons in the 1960s and '70s, questioning the legitimacy of the laws that held them in prison. They petitioned for better conditions and more opportunities for education and training, but their aspirations also incorporated the notions of basic rights and human dignity that were integral to the civil rights and antiwar movements. In California in 1970, prisoners went so far as to organize the short-lived United Prisoners Union (UPU). The UPU reflected a new vision of the humanity of "the convicted class."⁸ These views were encapsulated in its Bill of Rights, issued in 1970.

We, the people of the Convicted Class, locked in a cycle of poverty, failure, discrimination and servitude; DO HEREBY DECLARE, before the World, our situation to be unjust and inhuman. Basic human rights are systematically withheld from our class.

We have been historically stereotyped as less than human, while in reality we possess the same needs, frailties, ambitions and dignity indigenous to all humans. Our class has been unconstitutionally denied equal treatment under the law. . . . We hereby assert before the tribunal of mankind that our class ought not to be subject to one whit more restraint, nor one ounce more deprivation than is essential to implementing the constructive purposes of the criminal law.⁹

THE BACKLASH ON THE RISE

Even as late as 1981, a national poll found that most Americans believed that unemployment was the main cause of crime.¹⁰ As the strength of the social movements of the 1960s and '70s ebbed and mass incarceration became a reality, reformers lost ground to champions of unquestioning support for "law and order."

Although critiques of the law-and-order approach gained considerable traction throughout the 1960s and '70s, powerful political forces kept a "tough on crime" agenda alive. J. Edgar Hoover, director of the Federal Bureau of Investigation from 1935 to 1972, played a key role in maintaining a tough-on-crime perspective in government, devoting considerable effort to characterizing the activities of the social movements of the day as "criminal." He used the bureau's resources to surveil and undermine any movement that he deemed "radical" or "Communist." Hoover paid special attention to Black political leaders, especially Martin Luther King Jr., and tried to establish links between the civil rights movement and international Communism. Under Hoover's direction, the FBI initiated the secret Counter Intelligence Program (COINTELPRO). The inner workings of COINTELPRO, made public in 1971, revealed a consistent effort by the FBI to disrupt domestic political organizations through the use of infiltrators. One of Hoover's priorities, especially after King's assassination in 1968, was to prevent any possibility of the emergence of what he called a "Black messiah"—another African American leader of the caliber of King or Malcolm X.

President Nixon on Crime

We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes and our lives.

—State of the Union Address,
1970

NIXON'S WAR ON CRIME

Hoover's views found great resonance during Richard Nixon's presidential years (1969–74). Nixon became a key advocate of law and order. He publicly declared a war on "criminal elements" while actively contesting the notion of just and unjust laws. On the policy front, Nixon promoted the goal of a higher conviction rate as central to the reduction of crime levels.¹¹ He also greatly increased funding for law enforcement. Between 1969, when Nixon entered the White House, and the spring of 1973, the federal government's law enforcement budget tripled, and federal aid to state and local law enforcement grew from \$60 million to almost \$800 million.¹²

One of the principal conduits for these funds was the Law Enforcement Assistance Administration (LEAA), established the year before Nixon took office. For the 1972 fiscal year, LEAA received eleven times the funds it had in 1969. LEAA funding provided financial support for closed-circuit video surveillance equipment, computerization of records, and police training.¹³ Nixon also signed the Drug Enforcement Agency (DEA) into existence in his final year in office. The DEA soon became an important player in the War on Drugs.

While Nixon kept the law-and-order strategy alive, he never gained strong support for his "war on criminal elements." His approach failed to reduce crime rates, which continued to escalate during his presidency and by 1970 had more than doubled for the decade. During his final three years in office, violent crimes rose significantly, reaching a previously unprecedented level each year.¹⁴

More important, other issues diverted attention from Nixon's war on crime. First, his order for a secret U.S. military invasion of Cambodia in 1970 precipitated a national student strike. National Guard members and police officers killed four students at a protest at Kent State in Ohio and five students at Jackson State in Mississippi. These deaths prompted widespread outrage. Subsequent revelations of Nixon's involvement in the illegal break-ins at the Democratic National Headquarters in the Watergate office complex eventually forced him to resign in 1974, far from victorious in his war on crime. His own actions undermined his attempts to criticize social justice activists like King who chose to disobey unjust laws.

THE CARTER YEARS

The Carter presidency (1977–81) took criminal justice in a different direction. During his election campaign, Carter came out in favor of decriminalizing marijuana. Once in power, he reduced funding to the LEAA and cut back on surveillance of political activists. Although Carter did attempt to engineer some changes in criminal justice, he lasted only one term as president.

By the time Carter left office, the economy was plunging. The inflation rate had hit 13 percent and unemployment was at about 10 percent. Law-and-order supporters blamed

the economic crisis on the social movements of the 1960s and early '70s, laying the rhetorical groundwork for a revival of a tougher approach to lawbreaking.

REAGAN RESTARTS THE WAR ON CRIME

Ronald Reagan's approach to crime followed the tradition of Nixon and J. Edgar Hoover. Reagan became a strong voice for law and order, linking the harsh punishment of "offenders" to a broader political agenda of conservative values laced with the rhetoric of patriotism. Once in office, he immediately adopted a warlike approach to crime, launching a renewed War on Drugs and expanding funding for law enforcement.

Reagan's administration was the key period in the shift to more punitive legislation and prison expansion. When he took office in 1980, there were just over half a million people in American prisons and jails. By the time of his departure in 1988, that population had more than doubled.¹⁵ The passage of the 1984 Federal Sentencing Guidelines laid the groundwork for expanded prosecutions and lengthy sentences, ensuring the continued growth of prisons and punishment. While Reagan was a controversial president often at odds with Democrats over social issues, by the time he left office in 1988 he had built bipartisan support for being "tough on crime." During Reagan's final year, the House voted on an Anti-Drug Abuse Act, which expanded the use of the death penalty in drug cases and added a five-year mandatory minimum prison sentence for possession of cocaine base. The vote tally for this bill was 346 in favor and only 11 against.¹⁶ Virtually everyone from both parties had bought into the agenda of "tough on crime."

THE PRISON BINGE CONTINUES

Reagan kicked off what law lecturer Martin Horn called the "prison binge," but Democrat Bill Clinton took it to a higher level. His Omnibus Crime Bill of 1994 allocated \$9.7 billion to prison construction and also opened the door to more participation by private corrections corporations. As a result, during the Clinton years the nation's prison population increased

by more than a half million. By the time he left office, federal, state, and local corrections expenditures had reached a total of \$57 billion a year, more than eight times the level of 1980.¹⁷ Moreover, the Omnibus Crime Bill and a second piece of legislation, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, cut the rights and opportunities for people with felony convictions, even eliminating federal college scholarships for people in prison.¹⁸ The Personal Responsibility Act also criminalized many survival strategies for people on federal assistance. According to Clinton, the act marked the "end of welfare as we know it" by limiting welfare recipients to a maximum of five years of benefits and compelling those receiving assistance to work.¹⁹ In fact, Clinton and other Democrats played such an important role in advancing mass incarceration that Naomi Murakawa, in her book *The First Civil Right: How Liberals Built Prison in America*, and other authors have argued that liberals carried primary responsibility for policies that facilitated prison building from the 1980s onward.²⁰

THE (BLACK) FACE OF CRIME IN THE MEDIA

The mainstream media promoted the agenda of law and order in various ways during this period. In general, they created the mythical images of lawbreakers that dominated public discussion of crime during the Reagan years.

The proliferation of images embodying the threat of crime helped create public support for mass incarceration. In the media of the 1960s and '70s, political militants became emblematic, fear-inspiring "criminals." Images of African Americans dominated these representations in newspapers and on television—Black Panthers, political prisoners such as George Jackson and Angela Davis, and participants in urban rebellions in Watts, Detroit, and Newark. Media portrayals of other activists also linked struggles for justice and social progress to crime. The media framed actions by the militant Native Americans who occupied Alcatraz Island in 1969, by uniformed Latino youth groups such as the Young Lords and the Brown Berets, by protesters burning draft cards, flags, or bras, and by hippies, linked to drug use and sexual promiscuity, as criminal threats to the mainstream American way of life.

As the War on Crime proceeded, many media images began to criminalize whole classes of ordinary people in certain communities, specifically young Black males. Researcher Melissa Hickman Barlow summarized this phenomenon: "Evening news broadcasts, television crime dramas, and the 'real' crime stories of programs like *Cops* and *L.A.P.D.* bombard the American public with images of 'young black male' offenders under authoritative police control. The message is that the police are the thin blue line protecting law-abiding citizens from dark and dangerous street criminals."²¹

The media also took part in building certain politically motivated criminal personae, legendary or fictional characters who reinforced the linkages between Blackness and crime. Two of the most important were the Welfare Queen and Willie Horton.

Ronald Reagan first raised the image of the "welfare queen" in his presidential campaign in 1976. Though he didn't use that specific term, he named a woman, Linda Taylor, allegedly a resident of the South Side of Chicago, who he claimed had "eighty names, thirty addresses, twelve Social Security cards and is collecting veteran's benefits on four non-existing deceased husbands. And she is collecting Social Security on her cards. She's got Medicaid, getting food stamps, and she is collecting welfare under each of her names. Her tax-free cash income is over \$150,000."²²

Sociologist Patricia Hill Collins contended that the Welfare Queen notion implied that a Black woman typically had "low morals and uncontrolled sexuality" and passed on her "bad values" to her offspring.²³ Writer Jillilly Kohler-Hausmann maintained that these

The Welfare Queen

Historian Duchess Harris provided a poignant description of the Welfare Queen image: "The Welfare Queen is the defining social stereotype of the Black woman, a lazy, promiscuous single Black mother living off the dole of society. She poses a threat to the Protestant work ethic that drives America and the American dream of social advancement and acceptability."²⁴ Creating the image of the Welfare Queen as a criminal misuser of taxpayer dollars and perpetuator of sexual immorality helped build the case for reallocating money from social services to law and order.

images “framed welfare recipients . . . as deceptive criminals.”²⁵ Loïc Wacquant added that mass incarceration and the criminalization of welfare recipients were the two gender “sides of the same historical coin,” with men of color locked up and women of color left to survive with less and less government support.²⁶

The most powerful media symbol of the criminal Black male in the 1980s was Willie Horton. As a young man serving a life sentence, Horton received several weekend furloughs from prison in Massachusetts in 1988. One weekend he embarked on a crime spree that included the rape and robbery of a white woman. Michael Dukakis, then governor of Massachusetts, had supported the program that led to Horton’s release. Dukakis subsequently became the 1988 Democratic presidential candidate. His opponent, George H.W. Bush, capitalized on the Horton story to play on racialized fears of white voters. Images of Horton appeared throughout the media, and while his race was not verbally noted, the pictures told the story.

A CBS News/New York Times poll showed that Willie Horton ads had more impact than any other commercials aired during the 1988 presidential campaign. The percentage of poll respondents who felt that Bush was “tough enough” on crime rose from 23 percent in July 1988 to 61 percent in late October (after the ads), while the proportion saying Dukakis was “not tough enough” on crime rose from 36 to 49 percent during the same period.²⁹ The ads helped Bush overcome a 17-point Dukakis lead in opinion polls and win the election.³⁰

Race, Media, and Political Agendas

The media, itself an arm of mega-corporate power, feeds the fear industry, so that people are primed like pumps to support wars on rumor, innuendo, legends.

—Mumia Abu-Jamal, political prisoner²⁷

The media perpetuate ideas linking race with criminality. . . . The prevalent typification of Blacks as criminals seems to justify law enforcement tactics that exploit race in criminal investigations.

—Kelly Welch, professor of criminology²⁸

The 1990s saw a huge leap in crime coverage in local and national news. From 1990 to 1998, the number of crime stories on the three major network news programs rose from 542 per year to 1,392—in a period when crime rates were falling.³¹ A similar trend prevailed in local news.

Important additions to TV programming during the era of mass incarceration also reinforced negative images of prisons and prisoners. The program *Oz* depicted an unprecedented level of prison violence. Cultural critic Elayne Rapping summarized the impact of *Oz* as gratifying “a public eager to see monstrous and alien ‘criminals’ apprehended and taken away in police cars, *Oz* takes the next step by assuring us that . . . these incorrigible demons are being properly disposed of.”³²

Moreover, portrayals of incarcerated men as violent and predatory homosexuals also became common in the era of mass incarceration. Jokes and skits about men using soap and

Black Faces and “Mismemory”

Blacks are the repository for the American fear of crime. Ask anyone, of any race, to picture a criminal, and the image will have a black face. The link between blackness and criminality is routinized by terms such as “black-on-black crime” and “black crime.”

Moreover, research by a [Penn State] media-studies expert reveals that memory of crime stories with the suspects’ pictures reflects racial stereotypes, and African Americans are especially likely to be mistakenly identified as perpetrators of violent crimes. When readers were asked to identify criminal suspects pictured in stories about violent crime, they were more prone to misidentify African Americans than white suspects. The same readers, to a far lesser degree, tended to link white offenders more with nonviolent crime. . . . In essence, the Penn State findings support the notion that stereotypes of black men as violent criminals are reflected in what people recall from news reports. This kind of mismemory has many implications ranging from issues related to law enforcement to issues related to everyday activities such as greater fear or distrust of others.”

—Dennis Rome, professor of criminal justice³³

other lubricants to force anal sex on other prisoners became a commonplace theme. This combination of homophobia and the stereotyping of men in prison perhaps reached its nadir with the appearance of the board game *Don't Drop the Soap* in 2007. The game is set in a prison and penalizes players who drop the soap while showering.³⁴

THE PROMISE OF ECONOMIC DEVELOPMENT

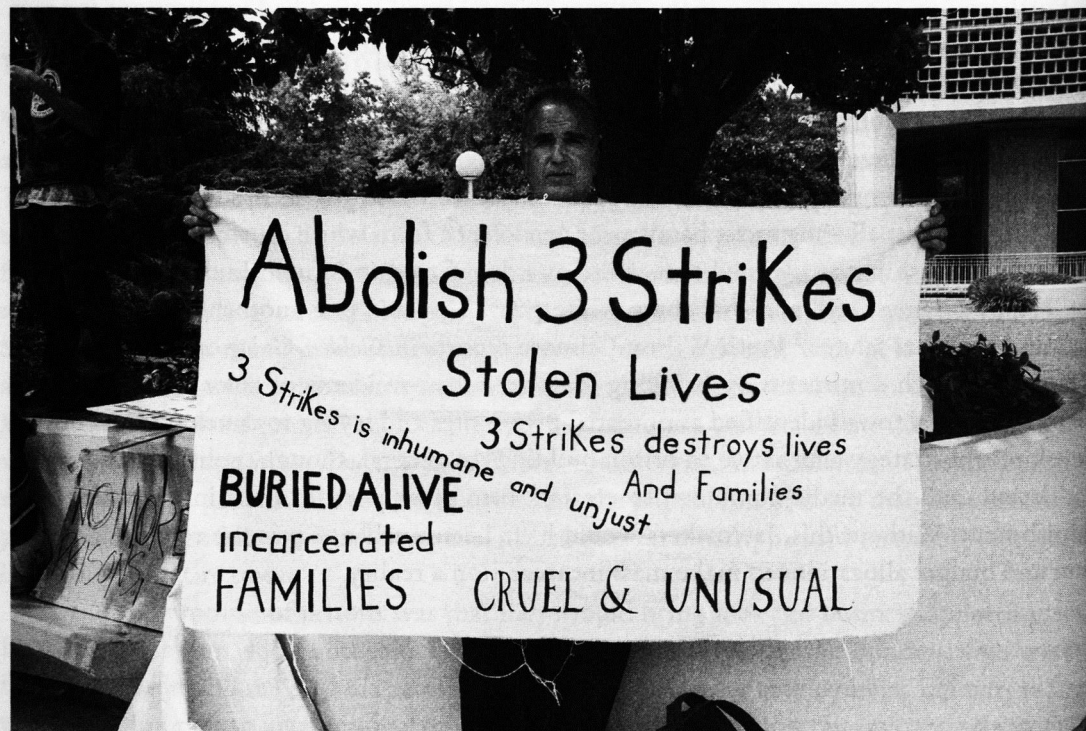
While mass incarceration played on many negative images of criminals, prison expansion also made promises about bringing economic development to certain parts of the country. The rash of prison building in the 1980s and 1990s had a definite geographical pattern. In states such as California, Illinois, Michigan, and New York, prisons were sited in rural areas, far away from the communities from which most of the incarcerated came. According to researcher Tracy Huling, twenty-five prisons per year were built in rural areas during this time. She noted that in many cases entire rural regions became dotted with new prisons. Texas alone built forty-nine prisons in rural areas in the 1990s, most of them in the West Texas Plains. Small "prison towns," such as Susanville, California (subject of the 2007 public television documentary *Prison Town, USA*), Florence, Colorado, and Coleman, Florida, became sites for multiple prisons. In the case of Coleman, the population of more than four thousand people incarcerated in the four local penal institutions far outstripped the count of 703 people living in the entire town.

Part of the promise of prisons was that they would bring jobs and business opportunities. In that expectation, local authorities even offered incentives to prison builders: free water, free land, roads, and reduced tax rates. While prisons did create employment, in many places the jobs did not go to local residents. Local businesses also often lost out on contracts to outside competition. Huling's research on fourteen prisons built in rural counties in New York between 1982 and 1999 revealed that counties where a prison was built fared no better than counties without a prison in terms of employment rates or per capita income. Other studies in Colorado, Texas, and California have yielded similar results.

Despite the mixed economic results, some companies and individuals did benefit and con-

tinue to support mass incarceration, along with the politicians who promoted prison construction as a way of bringing prosperity to their communities. Even if all the economic promises didn't become a reality, such politicians enhanced their profile as "tough on crime," which during the era of mass incarceration became an essential component of electability.

Furthermore, the siting of so many prisons in rural small towns had implications for race relations. The local populations and the prison workforce are overwhelmingly white. By contrast, large cohorts of the prison population are urban men and women of color. Researchers Tracy Huling and Kelsey Kauffmann found a number of instances of overt racist activities inside these institutions. Their research revealed that in at least six states, guards have appeared at work in mock Ku Klux Klan uniforms. Black guards in some thirteen states have filed lawsuits alleging racist harassment or violence from white co-workers. Lawsuits in the state of Washington claimed that white guards referred to Martin Luther King Jr. Day as "Happy Nigger Day" and that some white guards greeted one another with "Heil Hitler" and the Nazi salute.³⁵ Ruth Wilson Gilmore reports in *Golden Gulag* on some efforts at overcoming such sentiments by bringing together urban residents of color with poor residents from rural towns identified as potential prison sites and trying to develop an economic development strategy alternative to prison building. In general, though, political campaigns, legislation, and the media combined to create a base of support for mass incarceration and punishment. Without this, lawmakers would have been unable to pass the required legislation and budget allocations to make mass incarceration a reality.



Courtesy of Mary Sutton

3

"LOCK 'EM UP AND THROW AWAY THE KEY": THE RISE OF MASS INCARCERATION

Mass incarceration was aided and abetted by harsher sentencing measures: mandatory minimums, truth in sentencing, three strikes, more frequent life sentences, increased use of the death penalty, sentencing youth as adults, and "sentences within the sentence"—the proliferation of ultrarepressive isolation units where solitary confinement is the rule. Many people have described the attitude informing these sentencing practices as "lock 'em up and throw away the key."

The rebellion at Attica Prison in western New York in 1971 was one of the key historical triggers for harsh sentencing. On September 9 of that year, hundreds of men in the D block of the prison seized control of the building, taking thirty-nine guards hostage. Some of their demands were practical, such as improved diet, better medical treatment, and expanded recreation programs. At the heart of their rebellion, however, was the more general issue of human dignity. L.D. Barkley, one of the prisoner leaders, articulated this demand: "We are Men! We are not beasts and do not intend to be beaten or driven as such. The entire prison populace has set forth to change forever the ruthless brutalization and disregard for the lives of the prisoners here and throughout the United States. What has happened here is but the sound before the fury of those who are oppressed."¹

Despite pleas from the men inside, prison authorities, and a wide range of citizens, Governor

Rockefeller refused to go to the prison to negotiate a peace. Instead, on September 13, he sent in state troopers and other armed law enforcement officers. In the end, L.D. Barkley and twenty-eight other prisoners were killed, along with ten guards. For social justice activists of the day, the "Attica brothers" who died became instant heroes. "Attica is all of us" became a prominent slogan in their circles.

On the other side of the political fence, Governor Rockefeller blamed the uprising on a permissive criminal justice system, linking rebelliousness and criminality to increasing illegal drug use. Over the ensuing two years, the governor drove a set of measures through the New York state legislature that became known as the Rockefeller Drug Laws. These laws kicked off a national swing toward the "lock 'em up and throw away the key" approach. Instead of rehabilitation, incarceration came to have the aim of punishment, deterrence, and incapacitation.

THE RISE OF MANDATORY MINIMUMS

The Rockefeller Drug Laws broke new ground by instituting harsh, inflexible penalties known as mandatory minimums. The New York legislation set the sentence for selling two ounces (57 grams) or more of heroin, morphine, raw or prepared opium, cocaine, or cannabis or possessing four ounces (113 grams) or more of the same substances at a minimum of fifteen years to life. A judge had no choice but to impose these sentences. The adoption of this legislation gave New York State the toughest laws of its kind in the entire United States.² Other states soon followed suit. For instance, Michigan enacted a "650-Lifer Law," which called for life imprisonment without the possibility of parole for the sale, manufacture, or possession of 650 grams (1.43 pounds) or more of cocaine or any opiate.³

Throughout the 1980s, states continued to pass mandatory-minimum legislation. This process accelerated after the launch of the renewed War on Drugs by President Reagan in 1982 and the spread of the use of crack cocaine in the mid-1980s. By 1994, all fifty states had enacted some kind of mandatory minimum sentencing. Perhaps the most important of these measures were the Federal Sentencing Guidelines, passed by Congress in 1984. These

guidelines applied throughout the federal system. They ultimately stipulated mandatory minimums for drug offenses and spelled out specific required sentences for nearly every crime on the federal books. These sentencing guidelines provided a clear-cut indication that the tide had turned to punishment.

THE IMPACT OF MANDATORY MINIMUMS ON CRIMINAL JUSTICE

Mandatory minimums have played a key role in increasing the prison population in the United States. Under these minimums, more people are sentenced to prison, and they generally stay there much longer than under previous sentencing laws. Moreover, these laws have led to major changes in the way criminal justice functions.

First, mandatory minimums took away much of the power of judges to consider mitigating factors when imposing sentence. A person's previous criminal record, family responsibilities, service to the community, history of employment, or any other achievements became irrelevant to a judge under mandatory minimum laws. A judge simply consulted the guidelines or the statute and imposed the prescribed time.

Mandatory minimums have shifted power from judges to prosecutors. Despite the media images of a gavel-wielding judge being the final authority, under mandatory minimums the charges a prosecutor files are more likely to determine the sentence than any actions taken by a judge.

More than 90 percent of criminal cases in the United States never go to trial. They are resolved by plea bargaining—taking a deal. Let's say police arrest John Smith, a small-time

Our reliance on mandatory minimums has been a great mistake. I am not convinced it has reduced crime, but I am convinced it has imprisoned people, particularly non-violent offenders, for far longer than is just or beneficial. It is time for us to let judges go back to acting as judges and making decisions based on the individual facts before them. A one-size-fits-all approach to sentencing does not make us safer.

—Senator Patrick Leahy,
chairman of the Senate
Judiciary Committee,
March 20, 2013⁴

drug dealer in New York, for selling three ounces of heroin. Mr. Smith has no criminal record. Despite his lack of priors, the mandatory minimum is fifteen to life. In most such cases, the prosecutors will use their discretion to move toward a lower sentence by constructing a plea bargain. They may reduce the charges to simple possession or charge Smith for selling one ounce instead of three. Then the prosecutor can offer him a reduced sentence—say, five years in prison instead of fifteen. Mr. Smith then has the option of accepting the plea bargain or taking his case to trial. If he's found guilty in a trial, the judge has to give him at least the mandatory minimum of fifteen years to life. Frequently the prosecutor will make the deal contingent on Mr. Smith cooperating with investigators by telling them who sold him the heroin, who he sells heroin to, and who else he knows who might be involved in the drug trade. If Mr. Smith is reticent to accept the plea bargain, the prosecutor may delay the processing of the case, leaving Mr. Smith languishing in a very uncomfortable county jail until he agrees to plead guilty.

To further complicate such situations, not all those who cooperate with prosecutors tell the truth. They may falsify information in order to protect kingpins for fear of retribution. They may embellish what they know by adding names of totally innocent people just to impress the prosecutor in the hopes of getting a better deal.

Mandatory minimums put great pressure on defendants to accept plea bargains so as to avoid the risk of a trial. In some cases, even people who are totally innocent of any charge plead guilty because of the risk of a draconian minimum if they are wrongly found guilty.

Perhaps worst of all, mandatory minimum sentencing laws have encouraged the use of more confidential informants—"snitches." Faced with a long sentence, many people peripherally involved in drug cases or other criminal activity often opt for becoming a state's witness against a co-defendant as part of a deal to avoid the mandatory sentence. The use of informants often sows mistrust within communities as neighbors end up testifying against one another.

The punitive philosophy behind mandatory minimums, coupled with the urge to curb the discretion of "liberal" judges, has led to a number of other changes in sentencing laws throughout the country. The two most important of these are "truth in sentencing" laws and "three strikes" or "habitual criminal" legislation.

TRUTH IN SENTENCING

The phrase *truth in sentencing* arose in reaction to the fact that in the 1960s and '70s a person could often serve far less time than stated in the sentence due to "time off for good behavior."

Most jurisdictions used indeterminate, parole-based sentencing. For example, a person sentenced in a federal court to serve nine years in prison would be eligible for parole after completing one third of that time. After serving three years, the individual would go before a parole board, which would consider a number of factors, such as the person's disciplinary record in prison, her or his prospects for finding employment or housing upon release, and her or his participation in required programs such as education or drug treatment while in prison. After making its evaluation, the board could either release the person or extend the sentence. The purpose of this approach was to provide incentives for people to participate in their rehabilitation and avoid disciplinary problems during their incarceration.

Truth in sentencing removed those incentives and shifted to a punishment model. Under typical truth-in-sentencing laws, certain people would have to serve 85 percent of the time on their sentence before they could be released. Someone sentenced to ten years would have to serve eight and a half. Their time could be extended to the full ten years

Prisons as Breeding Grounds for Racial Hatred

Many prisons have become hotbeds of racist ideology and violence. In many facilities, white supremacist groups, such as the Aryan Brotherhood or the Nazi Low Riders, have proliferated. In California, state men's prison authorities have reinforced this racism by following strict racial segregation in assigning people to two-person cells and even by instituting racial group punishment. For instance, if two white men have a fight, the white population may be subjected to a lockdown, while the remainder of the men continue with regular activities. Prisoner Garrett Johnson filed a lawsuit against such segregation and won a favorable decision from the U.S. Supreme Court in 2005, but prison authorities have never fully desegregated cell assignments or ended race-based lockdowns.

if they had disciplinary problems in prison, but there was no option of time off for good behavior. In 1984 Washington became the first state to adopt truth in sentencing. By 1998 twenty-seven states and the District of Columbia had truth-in-sentencing statutes in place that required people with violent offenses to serve at least 85 percent of their sentences before being considered for release.⁵ The federal system and notoriously severe states, such as Virginia, applied truth in sentencing to everyone convicted of a felony, not just those with violent offenses.

The implementation of truth-in-sentencing laws received an enormous stimulus from funding made available through the Violent Crime Control and Law Enforcement Act of 1994. This act made incentive grants available to states to increase prison capacity to house those incarcerated under truth in sentencing.⁶ From 1996 to 1999, federal grants for this purpose amounted to \$1.8 billion. A large portion of this funding went to prison construction, leading to the addition of more than forty thousand new prison beds throughout the country.⁷

THREE-STRIKES LAWS

Three-strikes laws applied the principle of mandatory minimums to people with extensive criminal histories, particularly those with repeated convictions for violent crimes. More than two dozen states have enacted them in some form. Three-strikes laws emerged during the era of mass incarceration, although a number of states did have previous "habitual offender" legislation that allowed extra penalties for people with repeat offenses. The three-strikes approach increased those penalties and made them mandatory. Twelve states impose a mandatory sentence of life without parole for those convicted of three violent crimes.

Perhaps the most stringent of these statutes was California's initiative, passed by a popular referendum named Three Strikes and You're Out in 1994. The ballot measure was approved by 72 percent and made a sentence of twenty-five years to life mandatory for anyone convicted of a felony who had two prior convictions for violent offenses. A twenty-five-to-life sentence made a person eligible for release only after serving twenty-five years. An additional

feature of the California law was a "second strike" provision, mandating double the normal sentence for someone convicted of a second crime of violence.

The implementation of this law has been particularly controversial. According to a report by the Justice Policy Institute, in the first decade California sentenced more than 4,000 people under three strikes while some 35,000 received doubled sentences as a result of a second strike.⁸ While three-strikes sentences usually apply to convictions for violent crimes, in a number of cases people have been "struck out" for relatively minor offenses. For instance, Santos Reyes of El Monte was given twenty-five years to life for lying on the written portion of a driver's license test. Curtis Wilkerson of Los Angeles got "struck out" for stealing a pair of socks worth \$2.50. Perhaps the most famous California three-strikes case was that of Jerry Dewayne Williams, the "pizza thief." Williams was sentenced to twenty-five years to life in 1995 for stealing a piece of pizza from some children at Redondo Beach. He served five years before a judge reviewed his case and set him free.

FAMILIES AGAINST MANDATORY MINIMUMS

Families Against Mandatory Minimums (FAMM), a national advocacy group led primarily by those with loved ones serving time due to harsh sentencing laws, has been active in pressing for changes to existing legislation. Through the group's work the stories of hundreds of people given extremely long sentences because of mandatory minimums have been told.⁹

CLARENCE AARON

In 1992 Clarence Aaron was a twenty-three-year-old African American college student in Mobile, Alabama, with no previous criminal record. Then he made a big mistake. He introduced two groups of people he knew were in the drug game. He received \$1,500 for making this connection. He never bought or sold drugs. When the others were arrested, they fabricated testimony against Aaron. In order to avoid long sentences, they cast him as a kingpin. A federal court sentenced Aaron to three life terms. He served just over two decades before

President Obama commuted his sentence in December 2013 after a public campaign for his release.

WELDON ANGELOS

Weldon Angelos is serving a mandatory fifty-five years in prison for selling a few pounds of marijuana to an undercover police agent while possessing a firearm. Before his arrest, he had a successful music career and founded a Utah-based rap label, Extravagant Records. He wrote and produced songs for many artists, including Snoop Dogg. Twenty-nine former judges and prosecutors filed a friend-of-the-court brief beseeching Angelos's sentencing judge to declare the sentence unconstitutional.

SHARANDA JONES

In 1999, Sharanda Jones, who had worked as a hair stylist and restaurant manager, was convicted of selling crack cocaine. She was a small-scale, part-time drug seller with no previous criminal record. She was also the sole provider for her eight-year-old daughter. Under the Federal Sentencing Guidelines for selling crack cocaine, she was given life without parole.

As a teenager, her daughter reflected on her mother's sentence: "I was eight years old at the time and my world as I knew it was shattered. . . . Being without my mother for over thirteen years of my life has been extremely difficult. But the thought that she is set to spend the rest of her life in prison as a first-time nonviolent offender is absolutely devastating. . . . My mother does not deserve to come out of prison in a casket."

JUDGES SPEAK OUT

A number of judges have expressed their concerns with mandatory minimums. In 1997 a twenty-seven-year-old African American woman named Stephanie George was given life in a Florida court for holding her boyfriend's cocaine stash. At sentencing, Judge Roger Vinson said, "I wish I had another alternative. . . . Your role has basically been as a girlfriend . . . , so certainly in my judgment it does not warrant a life sentence." But Vinson had no choice.¹⁰

In 1999 Massachusetts judge Judd Carhart had this to say about sentencing Michaelene Sexton, then forty-eight, to ten years for selling coke: "Ten years is an awful long time. When I look at this case compared to crimes of violence, I wonder."¹¹

In 2003 Supreme Court Justice Anthony Kennedy publicly attacked the federal mandatory minimums: "Our resources are misspent, our punishments too severe, our sentences too long. I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases, mandatory minimum sentences are unwise or unjust."¹²

LIFE AND LIFE WITHOUT

Mandatory minimums and three-strikes laws have greatly expanded the use of life sentences. A 2013 report by the Sentencing Project found that more than 159,000 people were serving life sentences in federal and state prisons.¹³ In five states—Alabama, California, Massachusetts, Nevada, and New York—at least one in six prisoners was doing life.¹⁴

Moreover, while the majority of lifers will be eligible for parole at some point, more than 49,000 were serving what is known as LWOP (pronounced EL-wop), life without the possibility of parole. Federal courts, as well as those in Illinois, Iowa, Louisiana, Maine, Pennsylvania, and South Dakota, offer no chance for parole to anyone with a life sentence.¹⁵ A 2012 study by the ACLU, which focused on the federal system and nine states, found more than 3,200 people doing LWOP for drug convictions that involved no violence.¹⁶

JUVENILES

In the 1990s, in response to an upsurge in violent crime largely related to the influx of crack

Terms People in Prison Use for a Life Sentence

- Doing all day
- Through with money
- All washed up
- Got wheels (life will keep going around and around in the same place)
- Struck out (for a life sentence through a three-strikes law)

cocaine, states passed legislation to facilitate trying and sentencing juveniles as adults. Under the slogan "adult crime, adult time," these measures gave judges the power to transfer certain juvenile cases to an adult authority. Typically states set a minimum age for a juvenile to be eligible to be tried as an adult. In Kansas, that age was set at ten for certain crimes. Most other states fixed the age at fourteen. Some states, such as New Jersey, allow transfer to adult courts only for certain violent crimes or serious property crimes. Arizona, on the other hand, allows a transfer for any felony. In a number of states, people can be sentenced to life imprisonment for crimes committed as a juvenile.¹⁷

SENTENCES WITHIN SENTENCES: SUPERMAXES AND CONTROL UNITS

As the criminal justice system grew more punitive, the use of isolation and solitary confinement increased. The most widely known institutions based on isolation are the prisons known as supermaxes. These facilities are allegedly intended to house the most notorious and dangerous people among the prison population. Perhaps the most famous supermax is the federal government's Administrative Maximum Facility, known as ADX, in Florence, Colorado. The Florence ADX houses 490 men who are kept in their cells twenty-three hours a day, allowed out only for an hour a day of solitary recreation. For at least the first year of their sentences, they are not permitted to interact with anyone else in the prison. The facility is designed so people's only view of the outside is through skylights and windows in the ceiling. A former warden, interviewed by *60 Minutes*, described the Florence ADX as "a cleaner version of Hell."¹⁸

Many state prisons have set up units with conditions much like those of the supermaxes. They are called special housing units, security housing units (SHUs), control units, or behavior modification units. From 2011 to 2013, men housed in one of these units at Pelican Bay State Prison in California staged three separate hunger strikes protesting their lengthy terms in isolation. Many of them had spent decades in the unit, confined to cells at least twenty-two hours a day. Authorities claimed that they had committed serious disciplinary violations or had gang affiliations. Yet the strikers and their supporters alleged that many times such

American Supermax

Joseph Dole

*A guard informed me upon arrival that
there are benefits to this isolation.
He promoted the fact that we are now
all safe from gang retaliation.*

*I had to ask "But what of the
retaliation of the prison administration?"
He smiled cryptically as he enjoyed
this in ecstatic contemplation.*

*None of what I was experiencing was
making me feel safe. But then, by "grace,"
I see a new definition. I'm safe from
my family's loving embrace.*

*I'm safe from having education take
ignorance's place.
I'm safe from recreation keeping my
heart's healthy pace.*

*How I wish I could articulate this quasi-
existence that I've grown to hate.
Or get an answer to why so many strangers
sadistically enjoy my monotonous fate.*

*They say societal enlightenment takes time, but what if it takes
longer than your life, and you're forced to wait?¹⁹*

(Joseph Dole is serving a life sentence in Illinois. He spent several years in Tamms supermax. Tamms was closed in 2013.)

charges were trumped up, based solely on something as insignificant as a tattoo that purportedly depicted a gang insignia or a supposedly subversive book in someone's possession. At the outset of their third strike in 2013, some 30,000 people inside California state prisons joined in the strike. The action continued for two months, with 128 people remaining without food until organizers called the strike off on day sixty. While the strikes gained national attention, including an editorial in the *New York Times*, only minor changes took place in the control unit. A few dozen people were released into the general prison population, but hundreds

What Is a Political Prisoner?

Many countries jail people explicitly for political activities or beliefs. While there are many definitions of political prisoner, there is general agreement that people who are incarcerated because of political beliefs or politically motivated activities against the government or because of their racial, ethnic, gender, or religious identity are political prisoners. Officially no one in the United States is classified as a political prisoner. Yet many people held in U.S. prisons claim political prisoner status. The best-known are those arrested after 9/11 and held in the Guantánamo Bay prison as "enemy combatants." The United States also continues to incarcerate a host of people who were convicted for politically motivated activities in the 1960s and '70s.

The most well-known long-serving political prisoners in the United States are Leonard Peltier and Mumia Abu-Jamal. Peltier, a leader of the American Indian Movement, was convicted in 1977 of the 1975 killing of two FBI agents on the Pine Ridge Reservation in North Dakota. Amnesty International placed his case in the "unfair trials" category in its 2010 report.

Abu-Jamal was a journalist and a member of the Black Panther Party in Philadelphia. He was convicted of the murder of a New Jersey state police officer in 1981 and sentenced to death in 1982. His sentence was commuted to life in 2012. In 2001 the *New York Times* called him perhaps the world's best-known death row inmate.

Other high-profile people incarcerated in the United States and often listed as political prisoners include:

more remained in it. Lawyers acting on behalf of the strikers, as well as the strikers themselves, filed a number of lawsuits to continue to press the issue.

THE DEATH PENALTY

A final expression of the harshness of the U.S. criminal justice system is the more frequent imposition of the death penalty. The United States reinstated the death penalty in 1976 after a

- The Angola Three, three men held in isolation in the Angola, Louisiana, prison. All were members of the Black Panther Party and were accused of killing a prison guard in 1972. One of the men, Robert King, was released after twenty-nine years in solitary in 2001. A second man, Herman Wallace, was released in 2013 with terminal liver cancer. He died three days after his release. The third, Alfred Woodfox, remains in prison.
- Members of the Black Liberation Army, an offshoot of the Black Panther Party. Their still-incarcerated members include: Sundiata Acoli (imprisoned in 1973), Herman Bell (1973), Jalil Muntaqim (Anthony Bottom, 1971), and Robert Seth Hayes (1973).
- Oscar Lopez Rivera, a member of a Puerto Rican independence organization, the Armed Forces of National Liberation (FALN), in prison since 1981.

In more recent times, people engaged in antiwar and environmental justice actions have received long sentences for a variety of offenses. These include:

- Chelsea (formerly Bradley) Manning, a U.S. Army soldier convicted in 2013 of leaking documents concerning army activities in Iraq and sentenced to thirty-five years in prison.
- Marius (formerly Marie) Mason, an environmental activist convicted of arson and property damage in 2009 and sentenced to twenty-two years in prison.

four-year suspension. Executions peaked at ninety-nine in 1999 and declined steadily to thirty-nine in 2013. More than twenty people have been executed for crimes committed while they were juveniles.²⁰ With regard to the death penalty, the United States is a global outlier. More than 140 countries have abolished capital punishment, including all members of the European Union.

PRISON OVERCROWDING

Even with the enormous rate of expansion of prison and jail construction in the past three decades, federal facilities and many state systems remain above capacity. In 2012 Alabama had the most overcrowded system, at 195.7 percent of capacity. The federal system has hovered around 130 percent of capacity since the mid-2000s. By 2011 California prisons were so overcrowded that a federal judge ordered their population reduced by 46,000 because the overcrowding made effective health care delivery impossible. Other states at more than 140 percent capacity in 2012 included Alaska, Delaware, Illinois, Nebraska, and North Dakota.²¹

The interim response by many correctional authorities has been to pack two or three people into cells designed for one person or to house people in gyms, dayrooms, and warehouses that were not designed as living spaces. Overcrowding has led to a number of problems: increased potential for violence, a decline in the quality of medical care, a reduction in recreation, and health hazards, particularly in regard to infectious diseases.

Moreover, much of the overcrowding is due to the aging profile of the incarcerated population.²² The extremely long sentences handed down over the past three decades have led to a situation where by 2015 one in ten prisoners was more than fifty-five years old, double the rate in 2008. Wheelchairs, walkers, and oxygen tanks are increasingly becoming part of the prison landscape, all at increasing costs to taxpayers.

SENTENCING BY RACE

Harsh sentencing has heightened racial inequalities in the criminal legal system. Perhaps the most famous instance of racialized sentencing was the federal penalty for possession of crack

The Innocence Project

The zeal to incarcerate has spilled over into prosecuting and sentencing many people who are completely innocent. In recent years, advances in forensics, especially the use of DNA evidence, has provided the basis for overturning many convictions of people who have been in prison for decades. The Innocence Project, founded by Barry Scheck and Peter J. Neufeld, has investigated hundreds of cases. Their work has led to the exoneration of more than three hundred people, including eighteen who served time on death row. Robert Bain, a Florida man who served thirty-five years, is the longest-serving individual freed by the work of the Innocence Project so far.²³ Beyond the Innocence Project, lawyers and other individuals have also pursued investigations of possible wrongful convictions. In 2014 alone 125 people were freed from prison because they were incarcerated for crimes they did not commit. Many had pled guilty because of poor legal advice or because they were threatened with longer prison terms if they took their case to a trial and were found guilty.²⁴

cocaine compared to that of powder cocaine. In the mid-1980s, a federal law targeted at the spread of crack cocaine use set the penalties for an ounce of crack roughly equivalent to those for a hundred ounces of powder. Because the majority of those convicted on crack cocaine charges were African American, this prompted protests concerning racial inequity. In 2010 Congress passed the Fair Sentencing Act, which reduced the relative penalties. Even under the new law, however, penalties still remain grossly unequal: possession of twenty-eight grams of crack cocaine yields a five-year mandatory minimum sentence for a first offense, while it takes five hundred grams of powder cocaine to prompt the same sentence. Despite these inequities, the law offered twelve thousand people serving time for crack possession under the hundred-to-one rule a chance to apply for sentence reduction and earn their releases.²⁵

While crack cocaine is the most obvious example of racial disparity in sentencing, harsh sentences have intensified the racial disparities in the criminal justice system. As early as 1991, a federal commission concluded that use of a mandatory minimum "appears to be related to

the race of the defendant.”²⁶ The commission found that for white defendants either judges more frequently found a way around the mandatory minimum or prosecutors more often reduced the charges to avoid an offense where a mandatory minimum applied.

A 2005 study by Tushar Kansal for the Sentencing Project reviewed dozens of studies on racial disparity in sentencing conducted between 1980 and 2000. While the results varied in different jurisdictions, overall Kansal concluded that:

- Young Black and Latino males are subject to particularly harsh sentencing compared to other offender populations, especially if they are unemployed;
- Black and Latino defendants typically receive longer sentences than whites for taking a case to trial instead of accepting a plea bargain;
- People of color also are less likely to receive substantial sentence reductions for cooperating with government prosecutors, i.e., serving as an informer, or snitch;
- Black defendants convicted of harming white victims suffer harsher penalties than Blacks who commit crimes against other Blacks or white defendants who harm whites;
- and Black and Latino defendants tend to be sentenced more severely than comparably situated white defendants for less serious crimes, especially drug and property crimes.²⁷

Since that time, other studies have shown disparities in the application of specific harsh sentencing measures.

- In California, African Americans are only 7 percent of the general population but make up 28 percent of the prison population and 45 percent of those serving life for three strikes.²⁸
- Nationally, the application of life sentences reveals serious inequities. African Americans make up 47 percent of those serving life and 77 percent of those serving life for a crime committed as a juvenile.²⁹ African Americans constitute 65 percent of those

given life without parole for nonviolent crimes. In Louisiana, African Americans are 91 percent of those sentenced to life without parole for nonviolent offenses.³⁰

- A number of studies have revealed racial bias in applying the death penalty. A report by Amnesty International on the first two decades of resumption of capital punishment in the United States showed that roughly a third of those executed were African Americans. The study also showed that capital punishment has been imposed most often when the perpetrator is Black and the victim is white.³¹
- Testifying on mandatory minimums before Congress in 2010, Marc Mauer, the director of the Sentencing Project, made it clear that such sentences “serve to exacerbate racial disparities within the criminal justice system. A combination of circumstances virtually ensures that this will be an inevitable outcome of such penalties.”³²

In sum, harsher sentencing policies not only have greatly increased the number of people in prison, but also have been applied most harshly to people of color. They have allowed racially discriminatory punishment on a massive scale without overt reference to race—as Michelle Alexander put it, a “colorblind” system. A key factor in this process has been the War on Drugs.