

paranoia about the white establishment. "Is there a conspiracy," Democratic Representative Bobby Rush asked during the sentencing debate, "to incarcerate as many African American males as possible?" Such sentiment has led black jurors to acquit clearly guilty criminal defendants to avoid sending more black men to jail. You see its consequences in other areas as well. Take the stifling of intelligent debate over decriminalization of drugs. On one side are claims that the war on drugs is genocidal because a disproportionate number of those subject to arrest, prosecution and incarceration are black. On the other are claims that decriminalizing drug use would amount to genocide because blacks would constitute a disproportionate number of those allowed to pursue their drug habits without deterrent intervention. Both of these claims are without basis. Both illustrate conspiratorial, disparity-mindedness run amok. Both are the products of calculated exaggeration. Both are aimed at short-circuiting rather than deepening discussion.

I do not want to leave the impression that there is no race problem within the administration of criminal justice. There are a good many Mark Fuhrmans in the ranks of the police. Scores of prosecutors daily violate their oaths of office when, for racial reasons, they *peremptorily* strike potential jurors. Courts authorize the police to treat a person's race—typically blackness—as a proxy for an increased likelihood of misconduct. Therefore, if I, a black man, alight from an airplane, I

stand a much greater risk than my white fellow citizen of being stopped and questioned by the Drug Enforcement Administration because courts have permitted it to use blackness as part of its drug courier profile.

Liberals should attack these violations of racial neutrality in the administration of criminal justice and demand that conservatives join with them in doing so. After all, for the past quarter century conservatives have argued that the state should act without regard to race, though they have done so vehemently only in their opposition to affirmative action.

There is, of course, a race problem in the administration of criminal justice—a big one. But that problem resides not in race-neutral legislation such as the crack law, but rather in laws and practices that purposefully treat blacks differently from whites. The crack law, in my view, is overly harsh. Though there should be a difference in punishment between crack and powder because crack is more socially destructive than powder, the current 100 to 1 ratio is too extreme. But by milking overheated and unsupportable racial rhetoric, liberals alienate people whose support they ultimately need to enact sensible reform. Going overboard, making a mistake, even being a damned fool is different from "racism." The difference matters.

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### **Between black crime and judicial racism.**

# THE IMPOSSIBLE DILEMMA

*By Glenn Loury*

America has a violent crime problem. It is, to a substantial degree, concentrated in this country's central cities. And black Americans, disproportionately concentrated in these dangerous environments, bear its brunt. In 1992, black males 12 to 19 years old were 25 percent more likely to be victims of crime than whites of their age group. Young black females (largely as the result of sexual assault) were 70 percent more likely than their white counterparts. The murder rate among black youths (persons under age 20), which was already three times that of white youths in 1986, doubled in the five years between 1986 and 1991, while the white rate remained unchanged. In Philadelphia, Princeton political scientist John DiIulio reports, there were eighty-nine murders of

people under age 20 in 1994. All but five of the victims were nonwhite.

Black criminals generally prey on their own. A Justice Department statistic that blacks are fifty times more likely to commit violent crime against whites than vice versa has led some to suggest that black criminals target whites, but the evidence does not bear this out. There are roughly eight times as many whites as blacks; and there are about six times as many violent criminals per capita among blacks as among whites. So, if criminals chose their victims at random, without regard to race, one would expect the black on white victimization rate per black person to be 48 times as large as the white on black rate per white person. Thus, it does not appear that black criminals take affirmative action to find white victims.

Not surprisingly, black Americans increasingly view crime as their number one concern. DiIulio reports that the percentage of Americans who cited crime as a major national problem rose from about five to seven between 1985 and 1991. Yet the proportion of blacks living in central cities who identified crime as a major problem in their neighborhood rose from about one in ten to nearly one in four. Moreover, one in five black children in central city neighborhoods say they fear being attacked on their way to and from school; more than one-half of these children "worry a lot" or "worry somewhat" about being a crime victim. One study cited by DiIulio found that some 27 percent of black children, compared to 5 percent of white children, think it is "likely that they will be shot." Only a decade ago, one national magazine after another reported on the purported psychological damage done to American children by their fears of nuclear war. Whatever the merits of those claims, it seems clear that the fears experienced by urban minority youngsters—very real fears of being raped, bludgeoned or shot—must be far more debilitating.

Even more alarming, this situation will likely worsen considerably over the next decade as the male population aged 14 to 17 grows by about 25 percent overall and by 50 percent among blacks. Aggravating this demographic trend is the fact that, for at least a half-century, each successive generation of juvenile criminals has been more violent, and has committed more crimes, than its predecessor. Each twenty-year period since 1950 has witnessed an approximate tripling in the extent of violent lawbreaking among juveniles engaged in crime. There is no reason to expect this progression to attenuate, given the dismal condition of so many poor children in America's cities. Violent crime is, therefore, bound to increase in inner cities (and not only there) in the short run. Necessarily, a disproportionate number of the victims claimed by this rising tide of violence will be black.

**U**rban violence on such a scale, involving blacks as both perpetrators and victims, poses a profound dilemma for black leaders and intellectuals. On the one hand, black elites must represent the decent, law-abiding majority of African Americans who cower fearfully inside their homes while drug-peddling teenagers rule the inner-city streets. They must do so not only to enhance their group's reputation among whites, but as a precondition for black dignity and self-respect.

On the other hand, these elites must counter the demonization of young black men in which the majority culture is now feverishly engaged. Even as they condemn them for degrading their community, they cannot but view with sympathy the plight of the many poor, black youngsters who are not incorrigible but who have nevertheless committed crimes. They must wrestle with the complex causes—historical and contemporary, internal and external to the black experience—that account for this pathology, even as they insist that,

despite them, each black youngster has the freedom to choose a moral way of life. This, too, is necessary for the black community's dignity and self-respect.

This dilemma is made all the more difficult by the reaction of whites to the threat posed by young blacks in the cities. White Americans are, to put it bluntly, frightened by and disgusted with the violent criminal behavior that, with reason, they associate with inner-city black youths. Their fear and disgust have bred contempt; and that contempt has in turn produced a truly remarkable degree of publicly expressed disrespect and disdain for blacks. It is no exaggeration to say that black, male youngsters in the central cities have been demonized in the popular mind as have no other group in recent American history. What was once whispered is now openly shouted. One conservative critic has declared, perhaps aptly, of white opinion: "the criminal and irresponsible black underclass represents a revival of barbarism in the midst of Western civilization." The objective basis for such harsh statements notwithstanding, there is more than a hint of racism in the relish with which some have taken up this newly liberated racial discourse. No reflective black American can fail to be alarmed by such rhetoric. What, for example, might the majority be expected to do, having discovered a malignant barbarism in its midst? Is it any wonder that rumors of genocidal plots against blacks circulate with credibility among residents of the poorest urban precincts?

The wise political scientist James Q. Wilson observed, in the aftermath of 1992's Los Angeles riots, that white fear of young black males has powerfully contributed to worsening race relations. Fear, he noted, often produces behavior indistinguishable from that produced by old-fashioned racism: it keeps whites out of black neighborhoods and makes them uneasy about blacks moving into theirs; it can induce one police officer to intimidate black suspects and lead another, seeking the release of tensions, to tell a racist joke. This is all plausible, but it is only part of the story. For, as Wilson would surely acknowledge, there is also a fair amount of white racism abroad in the land. (Yes, there is black racism, too!) A predisposition among some whites who, seeking a rationale for their invidious disdain for blacks, categorically deny them any benefit of the doubt can combine with the suspicions engendered in fair-minded whites by their well-founded fears to create an implacable racial antagonism.

It is surely fear, and an instinct for self-preservation, that explains the broad political support for efforts to increase the size of the incarcerated population. Over the last fifteen years, the public has rewarded politicians who promise to "lock them up and throw away the key" and has punished those who appear soft on crime. The politicians have learned their lesson. A shift of historic proportions has occurred in the administration of criminal justice since 1980, when the combined population of all state and federal prisons was some 500,000. By 1994, that number had tripled to over 1.5 million. This growth greatly exceeds the increase in violent crime during the same period. And the number of black men

behind bars has probably risen almost four-fold.

On a given day in 1992, 372 whites and Hispanics were incarcerated for each 100,000 in the overall population, while the rate for blacks was 2,678 per 100,000. Blacks, 13 percent of the U.S. population, represented 45 percent of those arrested for violent felonies in 1992 and roughly one-half of those held in state and federal prisons. On a typical day in 1994 nearly one-third of black men aged 20-29 were either incarcerated, on parole or on bail awaiting trial. The racial disparity in prison populations has increased sharply in recent years, despite the fact (as nearly all experts agree) that blacks are not sentenced more severely than whites who have been convicted of the same crimes.

**W**hat then accounts for the more rapid growth in black imprisonment? While participation in violent crime has risen faster for blacks than whites, this accounts for no more than half the disparity. In *Malign Neglect: Race, Crime and Punishment in America*, University of Minnesota criminologist Michael Tonry argues that the "war on drugs" has been an important cause of the growing black presence in prisons over the last decade and a half. He notes that between 1980 and 1990 the proportion of drug offenders among those admitted to federal prisons in the U.S. rose from 22 to 40 percent, while over the same period the proportion of blacks among those arrested nationwide for drug offenses grew from 24 to 41 percent, and the percentage of blacks among persons admitted to state and federal prisons rose from 39 to 53 percent.

It is worth noting that this anti-drug policy did little to reduce drug use in the U.S., even as it locked up a growing number of blacks. As Tonry observes, narcotic use had been falling for at least five years before the anti-drug campaign began in the mid-1980s, and this trend was not accelerated by the "war on drugs." Moreover, a number of police officials and prosecutors have admitted that pressure for tangible results in the drug war led to more arrests in poor inner-city areas where, due in large part to the disorganization of these communities, drug sales frequently occur on the streets, and undercover operations are relatively easy to mount.

This is not to say that fighting the drug traffic in urban black communities was not in the interest of residents. It would be hard to imagine any single thing that would improve life more in poor black neighborhoods. The point is that, ironically, increased arrests of street-level drug dealers have not reduced the availability or raised the price of cocaine. Disrupted open-air drug markets easily move to new locations; and there appears to be no shortage of young inner-city blacks willing to replace the street-level dealers arrested in anti-drug sweeps. In the end, the anti-drug strategy has had a negligible impact on the supply of cocaine and heroin, but it has caused a major increase in the supply of black convicts. It is likely that, because they often commit violent crimes, many of these convicts deserve to be behind bars anyway. Still, it is hardly surprising that many blacks remain skeptical about the extent to which

the "war on drugs" has benefited their communities.

There can be little doubt that blacks, even those living in the most dangerous communities, are deeply ambivalent about the trend toward increased incarceration of young black men. After all, those wreaking havoc in the urban ghettos are also the brothers, lovers, cousins and sons of law-abiding residents in these same districts. For most urban blacks, the desire for retribution is tempered by identification with the perpetrators. (There, but for the grace of God, go I, or my husband, or my son.) Thus, we now find urban jurors voting to "nullify" criminal charges against guilty black defendants and defending their action by saying they could not bear the thought of sending another young "brother" to prison. And we find liberal black politicians from the highest crime areas arguing against punitive criminal justice policies, even though their constituents could gain most from an improvement in public safety. These jurors are not fools; neither, I believe, are the politicians knaves. It is a safe assumption that these are deeply conflicted people, caught on the horns of an impossible dilemma.

After all, the muted response of inner-city residents (and of their representatives) to their own victimization constitutes just about the only check on the severity of contemporary criminal justice policy in America. Were the residents of America's ghettos to demand, through their political leaders, in the name of justice and civil rights, that they be protected from the predation of "these vicious criminals who just happen to be black," then their cries would powerfully complement the trend toward law and order that already dominates political debate. It would be arrogant to attribute, as do some on the right, their reticence to "false consciousness." More plausibly, this muted response in the face of victimization is a direct and powerful reflection of their ambivalence toward—and identification with—the perpetrators of these crimes. Viewed in this light, one can better appreciate the tragic moral dilemma in which these people are trapped.

**I** was reminded of this delicate, perplexing dilemma when talking recently with a young black lawyer of many years' acquaintance, who now labors as a prosecutor for the juvenile division of the district attorney's office in a large city. This young woman, let us call her "Elaine," did not want her identity publicly disclosed.

When first entering law school, Elaine never dreamed she would become a prosecutor. Like many of her peers, she presumed that the "black struggle" could be best pursued as a member of the defense bar. However, a summer in the public defender's office changed that. "I realized that *all* of our clients were guilty, some of the most heinous offenses." Shaken from her naïveté, she applied for an assistant D.A. position upon graduation, to serve her community by protecting the good people from the predations of the bad. After a brief apprenticeship, she assumed responsibility for a large number of juvenile felony cases that came into the D.A.'s office.

Elaine describes her experience as "difficult and frustrating." She talks derisively of "those little gang bangers," every one black or Hispanic, who are both defendants and victims in the endless stream of shooting cases that come across her desk. "It seems that there aren't that many good guys out there; most of these kids involved in gang-related cases, both the victims and the defendants, are bad guys." Especially troubling to her is the extent to which the gangs use the criminal justice system as a mere extension of their street activities. A victim in a case one day becomes a defendant the next, walking right out of court to seek retaliation against the assailant's gang. Or a witness one day disappears the next as a sudden truce between the warring gangs leads him to "forget" what he first claimed to have seen.

**T**hus, while Elaine began thinking she would help protect the community from bad people, she has begun to wonder, especially when dealing with gang violence, whether this was an impossible vision. She has also begun to question how her office handles gang-related violence. Every allegation is pursued straightforwardly, even though it is ultimately unclear whether "justice" is being done. "They're just shooting each other, and we're sweeping up the mess," she says. "The more we sweep, the dustier it gets. Sometimes I wonder if we wouldn't do more good by just standing back and letting them have at it." But she immediately dismisses the thought.

The scale of the "mess" is staggering. "I just don't know how long I can go on, staring into the vacant eyes of these *children* who have, without apparent remorse, done the most awful things." In one case, a 14-year-old child used a baseball bat to bludgeon a parent to death. In another, youngsters aged 13 and 14 collaborated in a robbery-cum-murder, masquerading as petty drug dealers to lure their prey out of his automobile. In yet another, a 15-year-old boy explained his apparently senseless shooting spree that resulted in several serious injuries by saying, "I had a lot to prove." He was referring to his need to earn the respect of fellow gang members.

Elaine constantly laments that "these little gang bangers have no fear, either of jail or of death, it seems." Indeed, Elaine finds them almost indifferent to the prospect of incarceration, which they see as a rite of passage, another step in their burgeoning criminal careers. "They don't see any future for themselves; their future doesn't extend beyond tomorrow. They have no hope. They don't respect or value human life." She believes that many of the youngsters whom she encounters have been abused or neglected, though she cannot be certain since only a small fraction of her juvenile defendants' families have open cases pending with the state's child and family welfare department. In about a quarter of her cases, the defendant has an incarcerated parent at the time of the hearing. She says that, invariably, one or more of the following factors—welfare dependency, serious behavioral problems in school, parental drug addiction or a history of neglect and abuse—are present in the juvenile felony cases she sees.

Elaine has dealt with abuse cases as bad as any that have made national headlines. They seem to be taking their toll on her. In one, several crack-addicted welfare mothers lived collectively in an apartment with their children. Investigators found the children, left to their own devices for a number of days, malnourished and living in utter filth. One of these children later turned up, at age 13, as a murder defendant in a case of Elaine's. Later, after the boy was remanded to a therapeutic school to await trial, he attempted suicide. "It's like his life has already been totally destroyed, and he's still just a baby. Yet, if we let him walk around on the street, God only knows how many other lives he'd destroy. But I doubt that we can help him."

Like other judges and prosecutors working with juvenile criminal defendants, Elaine believes that youthful crime records should not be sealed after the child becomes an adult. She notes that this gives gangs the incentive to use juveniles as "shooters," since the penalties they face if caught are relatively light. Unlike many of her fellow prosecutors, though, Elaine is wary of the claims made by the police in certain cases: "There are a number of cases in which I go before the judge and request charges be dismissed because I'm convinced that the cop was lying. Some white cops just decide they're going to ride into the ghetto and lock up some little nigger tonight. When I think that's going on, I seek dismissal and take the files right to the shredder. Police officers have too much discretion; sometimes they abuse it."

But these occasions are not the norm. Elaine's views of the role of police in poor black communities are complicated. "Sure," she says, "the police patrol our community, sweeping these young men into jail. But those kids are doing terrible things. If something is wrong with our community, then we've got to fix it, and [if we did] we wouldn't have to be concerned about the attitudes of white cops."

**“W**hat manner of people are you, who live like this?" The question is unavoidable. It is true that black Americans are a scarred and diminished people who have survived, more or less intact, after a tremendous travail. But this is not the only truth. Blacks are a people of resourcefulness, ingenuity, creativity, courage, beauty and wonder. Foremost, blacks are a quintessentially *American* people. But the historical scar tissue so evidently manifest in the lives of these poor, black urban masses makes their circumstance special.

It does no good to say that these are a minority of black persons; that there are good and sufficient reasons for their troubling behaviors; that others, who are not black, have also fallen short. These are truths, of course; but voicing them changes nothing. Middle-class blacks must admit, and begin to overcome, their fear in the face of this carnage. We are afraid to go into these communities. We do not recognize these kids as us; the distance is great and difficult to bridge. We are also embarrassed by their behavior; we pick up the newspa-

per with trepidation, bracing ourselves for news that the latest crime has been committed by a black person. This silence cannot continue. All blacks are connected—by bonds of history, family, conscience and common perception in the eyes of outsiders—to those in the urban slums. Black politicians, clergy, intellectuals, businessmen and ordinary folk must create hope in these desolate young lives; they must work to rebuild these communities; they must become their brother's keeper. Only then will change be possible. The nearly 1 million black men who marched on Washington just over two months ago seemed instinctively to understand this.

The Reverend Johnny Ray Youngblood of Saint Paul Community Baptist Church in Brooklyn, renowned for his work in urban reconstruction, has forcefully addressed this issue. In his 1992 Walter Wriston Lecture, presented before the conservative Manhattan Institute of New York City, he said: "Why do we rebuild? We rebuild for our own dignity. We rebuild for our own self-respect in the eyes of our fellow men and women, and for respect in the eyes of our God and our children and grandchildren. *We build that we be no more a reproach.* There is hope in that." And dignity as well.

This quest for black dignity is illustrated by the work of the Ten Point Coalition of Boston, a group of black ministers devoted to the reconstruction of inner-city communities. One member, Reverend Bruce Wall, works by day in the juvenile courts and ministers by night at a local skating rink where young people gather. His philosophy is tough, Christian love. ("I'm being Daddy to these kids; you do something wrong, I'll kick your butt. I want to show the white community that African American men care about these kids.") He has called publicly for the revocation of probation for known gang members and for "Wanted" posters with the names and pictures of gang leaders to be posted in the community.

Another coalition member is Reverend Eugene Rivers, pastor of Azusa Christian Community. After gang rivalry led to a shooting inside a Boston church in 1992, Rivers said: "No one in the North End [an old Italian neighborhood of Boston] would challenge the notion that a criminal who desecrates a house of worship should be disciplined by the community." He went on to argue for armed patrols by black churchmen in some of the roughest areas, noting that the black community must "discipline its criminal underclass, or risk playing into the hands of right-wing whites who dismiss minorities as lawless."

A doctor by profession, Reverend Ray Hammond, pastor of the Bethel AME Church and a coalition member, has abandoned medicine to devote himself full-time to his ministry. In a speech delivered on Martin Luther King Day, 1995, he said: "Where do we go from here? The choice is ours. We can curse the darkness, or we can allow new light to shine through us. We can be the bearers of bad news or what Martin Luther King called 'the drum majors for justice.' We can be those paralyzed by fear or those who are energized by a faith in God and in one another." Reverend Hammond and his colleagues have chosen to struggle, against long odds but with

indomitable faith, to create hope in the lives of their brethren.

It is, of course, terribly unfair to expect that blacks can or should repair this rent in the social fabric—such a profound malady, one so long in the making. Despite the nobility and morality of their efforts, Reverends Wall, Rivers and Hammond cannot possibly succeed on their own. They deserve help. Indeed, because they have taken responsibility for actively engaging the problem, they have earned the regard, and the cooperative involvement, of those outside the black community.

**D**ealing with the "root causes" of black crime may require remedies beyond the reach of individuals, families or ethnic collectives. The term "root causes" has become a pejorative in some quarters. It is said with a sneer, as if the only reason to think about the fundamental sources of criminal behavior is exculpatory—to relieve some perpetrator of responsibility for his act. If one wants to do more than simply "lock them up and throw away the key," it is essential to think about "root causes." If, on the other hand, one is looking to fix blame for the unlovely character of one's civilization on a pathologically deficient race, then thinking deeply about causation can only get in the way.

There are individual, communal and social responsibilities involved here. Persons must be held accountable for their wrongful acts. That they act under myriad influences beyond their control cannot be allowed to subvert their accountability. Families and communities are, to some considerable degree, responsible for the behavior of their children. The task of socializing a child is inescapably a familial and communal task, one which can be aided only in the crudest way by government action. But, in the end, there is no escaping the need for social action, mediated by government and politics, in which resources are mobilized in the public sphere to help meet the needs of the indigent. We can argue about how this is to be done and what should be the extent of such social provision, but a decent society cannot tolerate with indifference the deprivation of innocents.

I have not said here what I think "we" should do about the root causes of urban black crime. That discussion, necessarily speculative, is for another time. I mean only to observe that, absent the will to engage this problem, and with the seductive temptation to avoid it so readily at hand, there is a very good chance that nothing will be done, beyond the construction of ever more prison cells.

Recently, the hard-nosed criminologist John DiIulio, while observing that some "150,000 juvenile criminals may have to be incarcerated in the years just ahead," declared the following: "But some of these children are now still in diapers, and they can be saved. So let our guiding principle be 'Build churches, not jails'—or we will reap the whirlwind or our own moral bankruptcy." In black communities around the country, serious people have recognized the truth in this observation and have devoted their lives to the task ahead. What manner of people are "we," that they should be left to labor alone? •

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