LECTURE I: Ghettos, Prisons and Racial Stigma

Ethics and Economics

These are lectures on Ethics, on "human values." So, I will try without apology to reach beyond Science and, within the limits of my abilities, to address deeper questions. Anything less, in my humble opinion, would be to evade my responsibility to my country and to "my people." Of course, as an economist and an academic, I also have professional responsibilities. This is an occasion for analysis, not sermonizing. The coin of the realm here is argument and evidence, not moral outrage or rhetorical fervor. This is hardly the time for me, quite obviously of African descent, to "play a race card" – that is, to claim some moral authority deriving from social identity; or to trade on 'insider' status, or to appeal to such sympathies in the audience as my social identity might provoke.

Still, I *am* a black American male, standing before you to address the ethics of mass incarceration in this race-conscious, racially divided nation. As it happens, I have passed through the courtroom, and the jailhouse, on my way to this distinguished podium. I have sat in the visitor's room at a state prison; I have known – personally and intimately – men and women who lived their entire lives with one foot to either side of the law. And, in my minds eye, I can envision voiceless and despairing people who would hope I might represent them on this occasion. I know that these revelations will discredit me in some quarters. (Some may assume that I am siding with the "thug," and not with the "victims of senseless violence." Truth be told, some would assume that no matter what I might say here – so deeply entrenched is this binary opposition in the American public mind. So, I will not even bother to deny or refute the charge.)

So, for better or for worse, my racial identity is not irrelevant here. Neither is it irrelevant to a consideration of the ethics of mass punishment that the millions now in custody and under state supervision are drawn disproportionately from the ranks of the black and the brown. There can be no need to justify injecting race into this discourse. Our prisons are the most race-conscious public institutions that we have. No big city police officer is "colorblind" nor, arguably, can any afford to be. Crime and punishment

in America have a color – just turn on a television, or open a magazine, or listen carefully to the rhetoric of a political campaign – and you will see what I mean. Some radical critics even liken today's prison boom to the slavery of yesteryear (James 2005.) One can agree with that sentiment or not. But, what cannot be denied is that, in this society as in any other, order is maintained by the threat and the use of force. We enjoy our good lives only because we are shielded by the forces of law and order upon which we rely to keep the unruly at bay. Yet, in this society unlike virtually any other, those bearing the heavy burden of order-enforcement belong, vastly disproportionately, to racially defined and historically marginalized groups.

Given all of this, what is a self-respecting social scientist/citizen to do? Science may be necessary, but it is certain to be insufficient here. Consider what I take to be a first-order point: no cost-benefit analysis of our world-historic prison build-up over the past 35 years is possible without specifying how one should reckon in the calculation the pain being imposed on the persons imprisoned, their families and their communities. (This has not, of course, stopped many writers from pronouncing on the benefits and costs of incarceration without bothering to address this fundamental question!) How to value this aspect of policy is, to my mind, a salient ethical issue. Punishment politics, it seems to me, invariably discounts the humanity of the thieves, drug sellers, prostitutes, rapists and, yes, of those whom we unceremoniously put to death. It gives insufficient weight to the welfare, to the humanity, of those people knitted together with offenders in networks of social and psychic affiliation. It should be clear that social science has no answers for the question of what weight to put on a "thug's" wellbeing, or on that of his wife or his daughter and son. Nor can Science tell us how much additional cost borne by the offending class can be justified in order to obtain a given increment in security of life and property – or in peace of mind – for the rest of us.

To illustrate, consider recent discussion of the ethics of racial profiling. The obvious cost-benefit take on that problem goes as follows: With screening resources limited, an agent seeking to detect an unobserved hazard can do so more efficiently by making use of any readily observable information that correlates with the presence of the hazard. If it is known that dangerous people are drawn disproportionately from a group with members who look a certain way, designing a screening process in light of that knowledge eases the monitoring problem. Some have argued that it is morally acceptable to do this when the stakes are sufficiently great and the alternatives limited, even if these costs may fall disproportionately on a disadvantaged group (Risse and Zeckhauser 2004.) A social scientist sees easily how that analysis might go. I find these arguments deeply unsatisfactory.

When we undertake to classify people categorically, and to treat them differently based on this categorization, we do more than simply solve a resource allocation problem. We also commit an expressive act, declaring how we are to look upon and relate to one another. It seems to me that the decision as to whether or not one wants to make such a statement is often the whole ballgame. And yet, how should the "costs" and "benefits" of such constitutive, expressive public actions be reckoned?

Institutional arrangements for dealing with criminal offenders in the United States have evolved to serve expressive as well as instrumental ends. We have wanted to 'send a message,' and have done so with a vengeance. In the process, we have created facts. We have constituted social relations between elements in the polity. We have answered the

question: Who is to blame for the maladies which beset our troubled civilization? We have constructed a national narrative. We have created scapegoats, indulged our need to feel virtuous about ourselves, and assuaged our fears. We have met the enemy, and the enemy is THEM. In the midst of this dramaturgy – unavoidably so in America –lurks a potent racial subplot.

Deciding how citizens of varied social rank within a common polity ought to relate to one another is a more fundamental consideration than is deciding which course of action is most efficient. The question of relationship – the issue of solidarity, the challenge of deciding who belongs to the body politic and who deserves exclusion – these are philosophical concerns of the highest order. It makes about as much sense to speak of the "benefits" and "costs" of citizens relating to one another this way or that, as it does to speak of the benefits and costs of dying for one's country. (This, I regret to report, has not stopped some social scientists from speaking in that way.) Still, in my humble opinion, when the question becomes, "What manner of people are we Americans?" it is utterly foolish – worse, it is morally dangerous – to look to Science for an answer. Put differently, a decent society will on occasion elect to eschew the efficient course of action, for the simple reason that to follow it would be to act as though we were not the people we have determined ourselves to be. (Echoing Kant, to act in a way that is contrary to calculated interest may be the only way to give evidence of our decency.) In any event, the cost-benefit calculus is surely insufficient to the prescriptive task here.

Now a critic will come along and say, "Ah, but you have simply failed fully to account for all of the cost and benefits. Doing so allows value commitments to be taken into account." I understand this argument, but reject it. Occasions will arise where, in the nature of the case, such a modified accounting is *impossible in principle*. It strikes me that assessing the propriety of creating a racially defined pariah class in the middle of our great cities at the start of the 21st century presents us with just such a case. But, then, if social science is insufficient here, where ought we to look for guidance?

My answer is that we ought to look to social philosophy and to history. Guided by a reasoned assessment of first principles – such as that undertaken by John Rawls in his lifelong project; and, grounded in a narrative interpretation of our essential national character – such as that exemplified by Michael Walzer in his work on interpretation and social criticism, we ought to ask ourselves two questions: *Just what manner of people are we Americans? And, what then must we do?*

"That is all well and good, Prof. Loury, but what has 'race' got to do with any of this?" I can almost hear this perennial American question coming in from my right, with toe-tapping impatience. My answer is that only someone as willfully blind to our history as was the US Supreme Court in its 1987 decision in the case McCleskey v. Kemp -- which upheld the constitutionality of capital punishment in the face of overwhelming evidence that its application in the state of Georgia reflected blatant racial bias – could ask such a question in the first place. Let me remind you of what the Court did in this case:

> "McCleskey drew on a statistical study performed by Profs. David C. Baldus and colleagues that demonstrated disparities in the imposition of the death sentence in Georgia based primarily on the race of the murder victim. Focusing on more than two thousand Georgia murder cases during the 1970s, the Baldus

study demonstrated that the death sentence was imposed in 22 percent of the cases involving black defendants and white victims, 8 percent of the cases involving white defendants and white victims, 1 percent of the cases involving black defendants and black victims, and 3 percent of the cases involving white defendants and black victims. Even after accounting for thirty-nine nonracial variables, the study found that defendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks." (Fleury-Steiner 2004)

Despite this systematic evidence, the U.S. Supreme Court voted five to four to uphold McCleskey's death sentence. As Randall Kennedy (1997) states in his impressive study, *Race Crime and the Law*: "In its majority opinion the Court dismissed the Baldus study as indicating a discrepancy that only appeared to correlate with race." Indeed, the Court's majority declared: "*Apparent* disparities in sentencing are an inevitable part of our criminal justice system. Where the discretion that is fundamental to our criminal process is involved, we decline to assume that what is unexplained is invidious…(W)e hold that the Baldus study does not demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital sentencing process." (my emphasis) To which Justice Antonin Scalia added this: "The unconscious operation of irrational sympathies and antipathies including racial, upon jury decisions and (hence) prosecutorial decisions is real, acknowledged in the decisions of this court, and ineradicable."

Our racial history in this country casts a long shadow – even to this day influencing the deliberations of jurors in capital cases (Fleury-Steiner 2004). But, as a matter of law, are its effects genuinely ineradicable, as Justice Scalia would have it? Are they really of no contemporary ethical significance? I do not see how such a position could possibly survive serious ethical scrutiny.
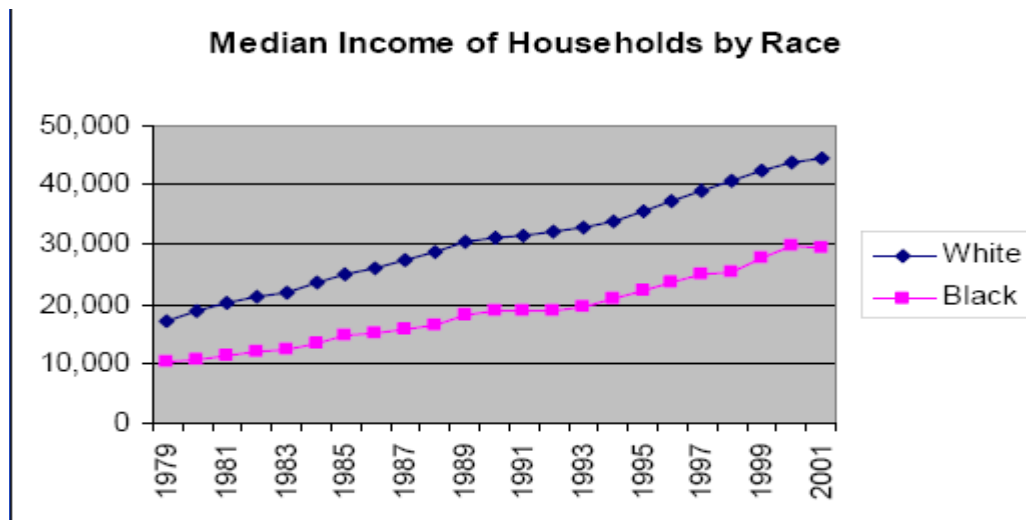
In his influential study, *Slavery and Social Death,* historical sociologist Orlando Patterson argues that one cannot understand slavery without grasping the importance of *honor* (Patterson 1982). More than an institution allowing property-in-people, slavery, is for Patterson, "the permanent, violent domination of natally alienated and generally dishonored persons." He argues that the hierarchy of social standing—masters over slaves, reinforced by ritual and culture—is what distinguishes slavery from any other system of forced labor. In the American context, obviously, the rituals and customs that supported this hierarchical order—the system of taken-for-granted meanings that made possible an adherence to high Enlightenment ideals in the midst of widespread human bondage—came to be closely intertwined in both the popular and the elite culture with ideas about race. As such, *dishonor,* shown by Patterson to be a general and defining feature of slavery, became, in the (American) case at hand, inseparable from the social meaning of race.

So my historical interpretative syllogism is this: In general, slaves are always profoundly dishonored persons. In the experience of the United States, slavery was a thoroughly racial institution. Therefore, the social meaning of race emergent in American political culture at mid-nineteenth century was closely connected with the slaves' dishonorable status. True, "that was a long time ago." Yet, I hold that remnants of this ignoble history are still discernible in the nation's present-day public culture. Moreover, I wish to suggest that if, with Patterson, we can see in American slavery not merely a legal

convention but also a superstructure of justifying ideas defining and legitimating an order of racial hierarchy, then we should also be able to see that termination of the slave's legal subordination could, in itself, never be sufficient to make slaves and their progeny into full members of society. The *racial dishonor* of the former slaves and their descendants, historically engendered and culturally reinforced, would have also to be overcome. I claim that an honest assessment of American politics in the post-civil rights era — our debates about welfare, crime, schools, jobs, taxes, housing, test scores, diversity, urban policy, and much more — reveals the lingering effects of this historically engendered dishonor. [See the images of minstrelsy and lynching at the end of this document which illustrate my point.]

By "racial dishonor" I mean something specific: an entrenched if inchoate presumption of inferiority, of moral inadequacy, of threat to public safety, of unfitness for intimacy, of intellectual incapacity, harbored by observing agents when they regard (at least some of) the racially marked subjects. So, we have come from a history of racial slavery and institutionalized racial subordination. And, the principal venue in which the legacy of that history remains vividly apparent is in the realm of punishment. We are becoming a nation of jailers – and, racist jailers at that. *We must ask, in light of our history, whether this is the nation we want to be. And, deciding not, we must then try to do something about it.*
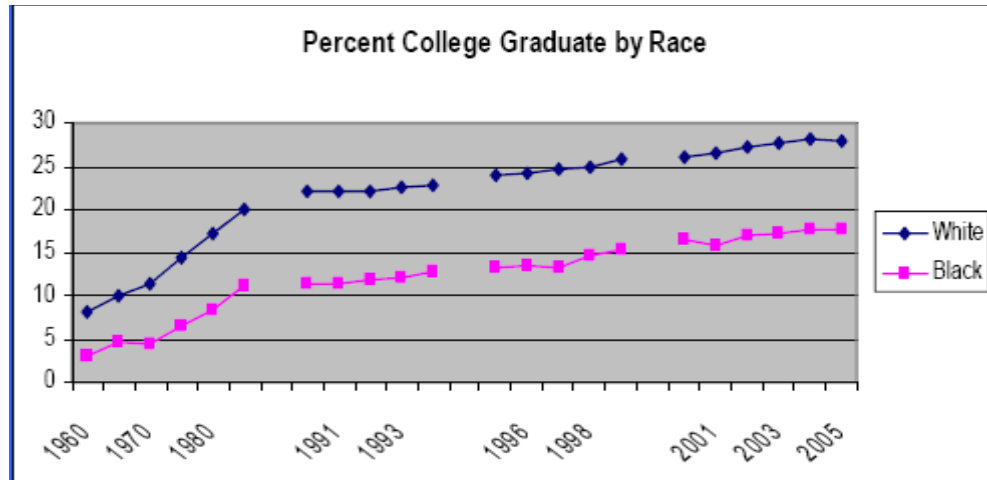
Durable Racial Inequality

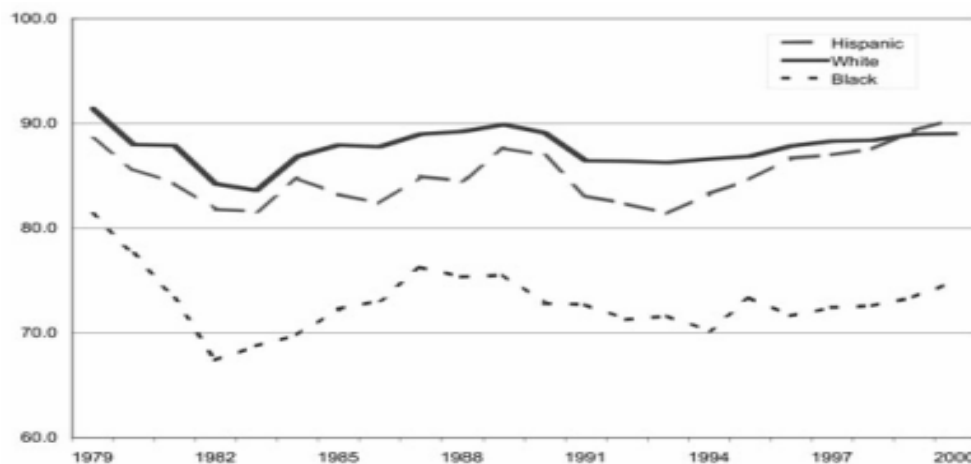

Median Income of Households by Race

As we all know, the end of slavery did not usher in an era of democratic equality for black Americans. Yet another century was to pass before a national commitment to pursue that goal could be achieved. And even now, meaningful civic inclusion eludes many millions of American citizens who are recognizably of African descent. What does that say about the character of our civic culture, about the quality of this American civilization, as we enter a new century?

Strong convergence toward social and economic equality for blacks pretty much ceased in the 1970s. The gap has narrowed little since then. It is worth taking a moment to review the facts. Persistence of racial inequality in America – the stubborn durability

of black's subordinate position – is revealed in numerous social indicators: the incomes available to households where children are raised; the relative wealth holdings of families; the gap in academic achievement between racial groups; the employment rates of adult workers; and the extent of educational attainment, to name a few. (Show data.)
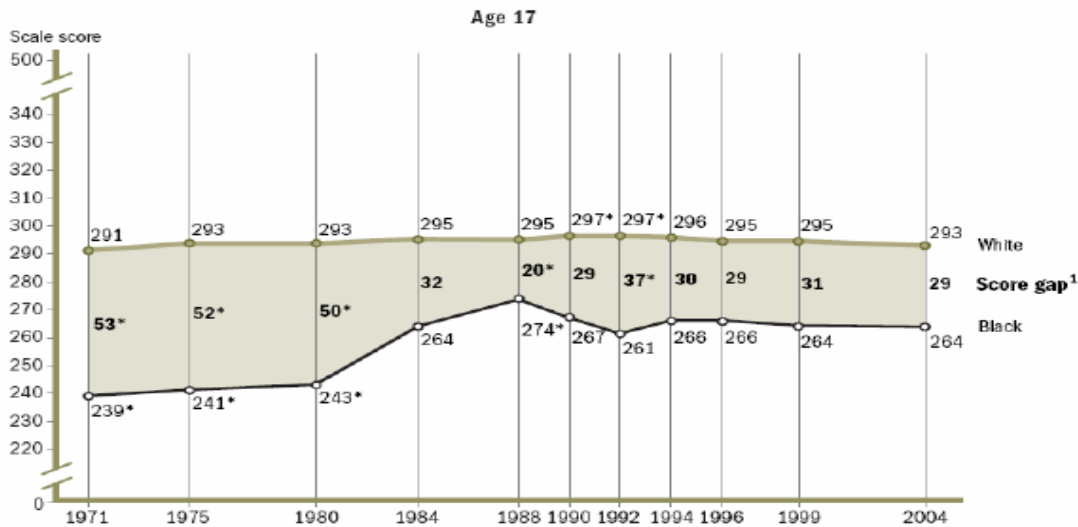

True enough, white attitudes toward blacks today are not what they were at the end of slavery, or in the 1930s.   Neither is black marginalization nearly as severe. De jure segregation is dead. The open violence once used to enforce it has all but disappeared. We have made great progress. Even so, as work over the years of Larry Bobo and his colleagues has demonstrated, a different, more subtle racial bias is discernible in the attitudes of white Americans (Bobo 2001, 2004; Bobo, Kluegel and Smith 1997.) New sources of the social and political marginalization of black people have emerged since the end of the civil rights era. State-sanctioned violence continues to ravage the lives of the black poor, and to impede their participation in our common national life. Contempt for young black men remains abroad in the land, and a new enthusiasm for their debasement has gripped us. I refer here to the devastating impact on the lives of millions of poor black Americans that is due to the rise of the mass incarceration state.

Employment/population ratios for males 25-34 years old, by race.

"But this is different," a critic might argue. "Equality before the law was never meant to imply freedom from the constraint of law. So long as laws are enforced without racial bias, the mere fact of some disparity in the incidence of incarceration is in no way indicative of a new anti-black animus," my hypothetical critic might continue. As I see it, an argument more or less of that form underlies the passivity, even the enthusiasm, with

Reading Scores (National Assessment of Educational Progress)

Age 17

Scale score

White — 291, 293, 293, 295, 295, 297*, 297*, 296, 295, 295, 293
Score gap[1] — 53*, 52*, 50*, 32, 20*, 29, 37*, 30, 29, 31, 29
Black — 239*, 241*, 243*, 264, 274*, 267, 261, 266, 266, 264, 264

Years: 1971, 1975, 1980, 1984, 1988, 1990, 1992, 1994, 1996, 1999, 2004

The Much Discussed Racial Achievement Gap Stops Closing in the Late 80's

which so many informed Americans have greeted these new developments. Many Americans who profess to love liberty, who are most proud of the progress we have made on the civil rights front, upon learning about the rising tide of black imprisonment must console themselves with just such an argument as this. A distinguished philosopher friend of mine – an ethicist, no less – who shall remain nameless here, once said to me: "Glenn, I don't understand why you continue to complain about there being so many black men in prison? When more people fall sick, more hospitals are built. Yet, nobody thinks that the mere fact of an increase in hospitalization signals some social failure. So, too, with blacks and prisons: Do a crime, whatever your race, and you are justly required to do the time."

All of this is apiece with an increasingly common view (see, e.g., D'Souza 1995; Thernstrom and Thernstrom 1997; Steele, 1998; McWhorter, 2000) about the woeful tragedy now playing itself out among the black poor, which might be paraphrased as follows: Blacks may languish, but this is their own fault: There is work available in the inner-cities; if the immigrants can find it, why not the blacks? If the blacks would marry, if they embrace the responsibilities of freedom, if they would cease to see themselves as victims, if they would just stop their lawbreaking – then their prospects would brighten.

I find this line of argumentation to be a shockingly a-historical, shortsighted and "ethically challenged" response to what is one of the great social transformations of our time. Yet, arguments of this kind emerge naturally from ideas about personal responsibility, personal morality, and social causation that are now abroad in the land. (I know how seductive this worldview can be. I once made a public career using similar

arguments myself [Loury 1995].) My intent in these lectures is to correct this record, and to set forth and defend an alternative view of the matter.

Summary of the Argument
        Permit me now to offer a summary of my overarching argument: In this lecture and the next I will argue with a much passion as I can muster (for which I offer no apology; somebody has to speak for those juveniles locked in a Florida penitentiary for life without possibility of parole; for non-violent drug offenders serving interminable sentences in a super-max hell hole with no human contact for years on end; for the AIDS victims cuffed to their bunks and dieing of medical neglect in a quarantined Alabama prison – if not me, then who? and if not now, then when?...), that the racially disparate incidence of this massive punitive structure is, when viewed in historical context, patently unjust, and that this situation weakens the legitimacy of the American political regime – appropriately so – in the eyes of many of its citizens, and in the view of a great many people throughout the world who see our social practice, in light of our racial history, as barbaric. (That some of these people happen to be French doesn't make them wrong!)
        In what remains of this first lecture I will present a concise, dense and brutal "history" of the rise of the race/class/punishment nexus since the 1960's – covering the basic facts concerning incarceration rates, how the incidence of punishment varies by social location, the social and epidemiological harm that punishment inflicts on the communities from which "offenders" come and to which they return, and the connection of this development to the rhetoric of social discipline writ large: rhetoric about dependency, personal responsibility, social hygiene, and punishment as the reclamation of public order. In doing this, I hope to encourage some reflection about what it means to create institutions whose business is the infliction of harm on some citizens at the behest of other citizens, thereby creating durable incentives for the maintenance and expansion of punishment-as-a-way-of-life, a seemingly entrenched practice that mirrors (in a sick fashion) the old conservative critique of welfare-as-a-way-of-life. I wish also to suggest that *history* – not theory, not abstract debates about "human values" that live only within the academy – history is presenting us with a nightmare scenario, one that goes to the heart of the contradictions of a liberal democratic society that has been poisoned by race.
        Now, I have a problem here. My recitation of the brutal facts about punishment in today's America may sound to some like a primal scream of rage at this monstrous social machine that is grinding poor black communities to dust. And, as I've already indicated, these facts do incline me to cry out in despair. But, I wish not to be dismissed as merely venting anger at the consequences of the failures of my co-racialists. I very much wish to be taken seriously in analytical, not only existential terms. So, I want you to know that the second of these lectures sets forth a hard core analysis of the moral problem we face – the burden of which will be to suggest that we law-abiding, middle class Americans are the beneficiaries of a system of suffering rooted in violence meted out at our request. This is a problem which we cannot avoid. We cannot pretend that there are more important problems in our society, or that this circumstance is the necessary solution to other, more pressing problems – unless, that is, we are also prepared to say that we have turned our backs on the idea of equality of civil status for all citizens and have abandoned all principles of social justice; unless we are willing to cast ourselves as a society that creates

criminogenic conditions for some of its members, and then acts-out rituals of punishment against them as if engaged in some awful form of human sacrifice.
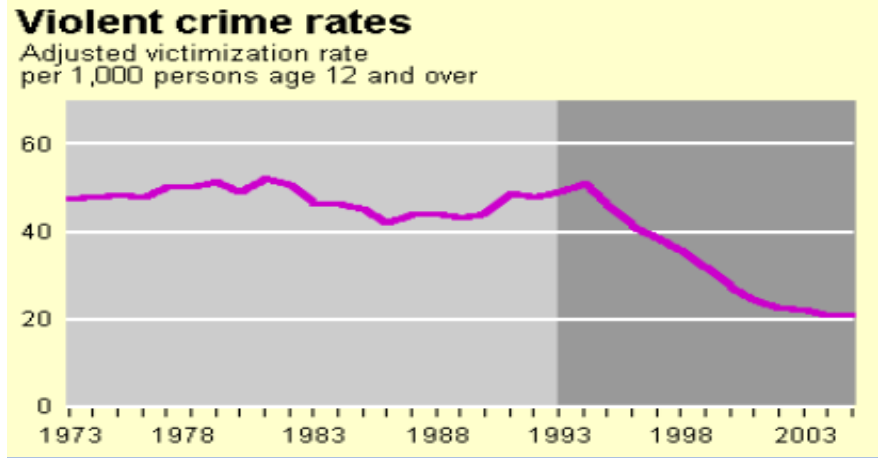
I will argue that we will not have solved our historic moral problem of unequal citizenship for the descendants of slaves – which has existed for now a century and a half after the Emancipation and which is built into the social, economic and political structure of the country, civil rights reforms to the contrary notwithstanding – unless and until we come far closer than we are now to achieving equality of life-chances, honor and public standing for blacks. I will be talking about substantive racial justice, not about procedural race neutrality. Substantive racial justice was not achieved in 1954 with *Brown,* or in 1964-65 with the Civil Rights and Voting Rights Acts, and it eludes us still today.

I will suggest that the rise of the mass imprisonment state opens a new front in this struggle for historic justice. It reflects both explicit and tacit racism. That is, this policy has sometimes been popular *because,* and sometimes *despite*, its having a disproportionately adverse impact on blacks (and on others; I know that it is not only blacks who suffer.) I will suggest that all of this has occurred when feasible alternatives policies existed, and were known to exist, that might have produced much less harm. I will suggest that this punishment policy complex has become a principal way in which racial hierarchy is reproduced in our society, and I will insist that this matter requires and deserves the concerted attention of the nation's policy makers. In a rush to declare ourselves "healed" of the disease of racism which had been festering for a century after emancipation – in a hurry to celebrate our having solved Gunnar Myrdal's "American Dilemma" (Myrdal 1944) – we have embraced what criminologist Michael Tonry (1996) calls a policy of "malign neglect," and in doing so we, as a society, have stumbled more or less wittingly into a God-awful cul de sac. I will claim that the connection of this apparatus to the history of racial degradation and subordination in our country (lynching, minstrelsy, segregation, ghetto-ization) is virtually self-evident (Wacquant 2000, 2001), and that the racial subtext of our law and order political discourse over the last three decades has been palpable (Morone 2003; Weaver 2006).

Looking Back

Let us look back for a moment. Violent crime peaked in early 1990s, and began what would prove to be a long, precipitous decline. (See the Figure below.) But, no one saw this coming. Crime was a real problem two decades ago – a problem that policy makers were concerned to address, and to be seen addressing. For many observers, even liberal ones, a mass incarceration state did look like something to be feared. To be sure, there were detractors. But, fighting crime and drugs was popular; it reflected the common wisdom and good sense of decent, ordinary Americans. Only someone who had never "recovered" from the 1960's would have had difficulty seeing this. Such was the conventional wisdom of the time.

Fighting the war on crime was a bi-partisan policy. It was part of Bill Clinton's New Democratic philosophy. Certainly his credible promise to do so – a promise that he kept with a vengeance – helped get him elected and re-elected to the presidency.

Violent crime rates
Adjusted victimization rate
per 1,000 persons age 12 and over

Consider how the crime situation must have appeared to the average American, say, twenty years ago. Two decades ago, it is fair to say, America faced a violent crime problem. Take the city of New Haven, Connecticut: Between 1960 and 1990 the number of murders in the city rose from 6 to 31; the number of rapes went from 4 to 168; robberies climbed from 16 to 1,784. (All of this while the city's population declined by 14%.) Things were worst in central cities. For instance, in 1990 two-fifths of violent crimes committed in the state of Pennsylvania occurred in the city of Philadelphia, where one-seventh of the state's population resided. (Loury 1996) Homicide victimization rates spiked for young black males caught up in the "crack wars" of the late 1980s. This was a time when drive-by shootings and drug-deals-gone-violently-bad were common fare on local news, when the War on Drugs was taken to a new level, and "gangsta" rap was born.

In 1990, most observers thought the situation could only get worse. Dire forecasts were being bandied about – announcing the coming of a new kind of criminal – the "super-predator." Extrapolating trends in offending rates, and consulting the demographic tables, scholars and pundits warned that we had better prepare ourselves for an onslaught. And so we did. Yet, the onslaught never came. Instead, the plague subsided. (Yes, punishment policy no doubt contributed to this decline. But, even the most generous estimates suggest that no more than ¼ of the drop in crime over the 1990's was due to rising incarceration.) Violent and property crime rates fell, along with the unemployment rate, throughout the years of Clinton's presidency. By decade's end, the stock market was way up; Rudy Guiliani (not David Dinkins) was Mayor of New York; zero-tolerance policing was raising the quality of life there and elsewhere – or so, at least, was the view from the Upper West Side; things were a bit more complicated in East New York, the South Bronx, or Bedford-Stuyvesant. In any event, the prison boom -- stoked by fear of victimization, by political opportunism and by the need for a policy response to a very real social problem – continued its unrelenting march.

The Great and Awesome Prison Boom

Today, 15 years after crime peaked, the American prison system has become a leviathan unmatched in human history. Never has a supposedly "free country" denied basic liberty to so many of its citizens. As of December 2006, some two-and-one-quarter million persons were being held in the nearly 5,000 prisons and jails that are scattered, like an archipelago, across America's urban and rural landscapes. Consider that a black
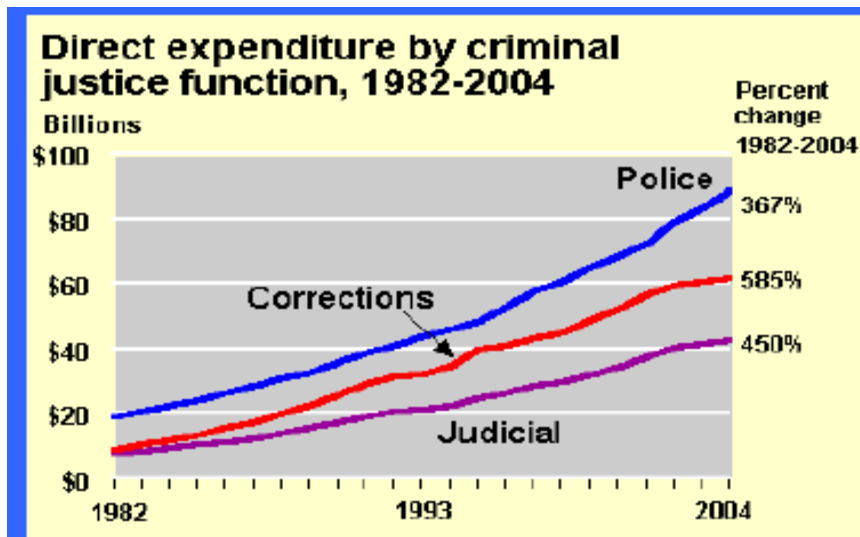
male resident of the state of California is more likely to go to a state prison than to a state college (Zeidenberg and Schiraldi 2002). Or, consider that more Americans are employed in the corrections sector than belong to the combined workforces of General Motors, Ford and Wal-Mart, the three biggest corporate employers in the country. (Elsner 2004)

Adult Incarceration Rate, 1950–2001

According to a report of the International Centre for Prison Studies in London, there were some nine million prisoners in the world as of February 2005. With 5% of the world's population, America houses 25% of the world's inmates. The US incarceration rate (of 714 per 100,000 residents) is far greater than our nearest competitors (the Bahamas, Belarus and Russia each imprisons at the rate of 532 per 100,000.) Other industrial democracies, some with big crime problems of their own, are less punitive than we by an order of magnitude: the US incarcerates at 6.2 times the rate for Canada, 7.8 times the rate for France, and 12.3 times the rate for Japan.

A huge institutional expansion has occurred. Coercive state power has been deployed internally on a massive scale. And, it is costing us a veritable fortune. Spending on law enforcement and corrections at all levels of government now totals roughly a fifth of a trillion dollars per year. In constant dollars, this spending has more than quadrupled over the last quarter-century. The table below indicates how this spending breaks-down by function:

The Prison Reality

The first American jail of note, built by the Quakers on Philadelphia's Walnut St., was believed by many forward-looking observers, particularly Europeans, to be a humane alternative to corporal punishment. (Davis 2002) Observing such progress in the "science of punishment" was a principal impetus for the sojourn of the French nobleman Alexis de Tocqueville on this side of the Atlantic in the early 19th century, immortalized in his 1835 classic, *Democracy in America*. Tocqueville in his wildest imaginings could never have foreseen the massive imprisonment complex that would emerge in our freedom-loving land. (Although, were he somehow to have been made aware of future developments, he would likely have predicted that the descendants of slaves would predominate amongst the imprisoned.) Today's American prison, perhaps more accurately called a warehouse than a "house of correction," is something that no humane observer could describe as *progressive*. And yet, the scope and severity of punishment is not simply tolerated here, it is often applauded by the governing majority. Thus, one finds a Gallup organization report on this issue, based on nationwide polling conducted in February 2004, that is revealingly entitled "Public on Justice System: Fair, but Still Too Soft." And so it is that no sensible politician can today allow himself or herself to be depicted as "soft on crime" or as "pro-criminal."

America's exceptional position in matters pertaining to punishment is not simply a matter of scale. By any humane international standard, prisons in the US are god-awful places – "total institutions" (Goffman; Sykes) where brutality and human degradation are the coin of the realm. Thus, *Confronting Confinement,* a report released last year from the Commission on Safety and Abuse in America's Prisons (Gibbons and Katzenback 2006), finds that our penal institutions are dangerously overcrowded, that they rely too much on physical isolation to manage the behavior of inmates (which, the Commission found, can have a lasting adverse effect on the prisoners' mental health), and that they are horribly, unnecessarily violent. The report estimates that more than 1.5 million people annually are released from prisons and jails with a life-threatening infectious disease – the HIV, drug-resistant staph infections, hepatitis-C, and tuberculosis; and, that at least one out of every six prisoners – over 350,000 people on a given day – are "seriously mentally ill." What is more, prisoners' ability to challenge these horrid conditions in the federal courts has been stymied by the so-called Prison Litigation Reform Act of 1996 which, as was surely the Congressional intent, has succeeded in reducing the number of inmates able to file civil rights cases by 50%. (DeParle 2007)

Here are a few graphic illustrations, drawn more or less at random from recent headlines, of the savage, war-of-all-against-all character of life inside America's prisons:

Item: "Roderick Johnson, a former inmate at the Allred Unit (located in Wichita County, Texas), *belonged* to a gang called the Gangster Disciples, but not in the usual sense, the gang's former No.2 man explained to a federal court. When asked by one of Mr. Johnson's lawyers, 'Was Mr. Johnson considered a member of the Gangster Disciples?' the witness, an imposing black man in prison garb and shackles, replied: 'No.' "What was he considered,' the lawyer continued. 'Property,' came the reply, meaning that gang members could rape Mr. Johnson at will. They could also rent him out for sex, and they did, daily. A purchased rape, the witness said, cost from $3 to $7. Roderick. Johnson says the abuse went on for 18 months." (Liptak 2005a)

Item: "About 9,700 American prisoners are serving life sentences for crimes they committed before they could vote, serve on a jury or gamble in a casino -- in short, before they turned 18. More than a fifth of these (some 2,200 souls) have no chance for parole… Theoretically, the sentence of life without parole is available for juvenile criminals in about a dozen countries, but the United States is one of only a handful of countries that actually uses it. A joint Human Rights Watch/Amnesty International report could find juveniles serving such sentences in only three other countries: Israel has seven, South Africa has four and Tanzania has one… Yet, there are 270 juvenile offenders serving life sentences without the possibility of parole in the state of Florida, alone.**" (Liptak 2005b)

Item: "From Indiana and Washington to Alabama and Arizona, chain gangs are back; both state prisons and county jails are putting prisoners in chains and distinctive uniforms and forcing them to clear trash from roadways and cut weeds. In Wisconsin the chain gangs have to wear 50,000-volt stun belts. These experiments in public torment – often initiated at the county level where elected, publicity-seeking sheriffs control the jail systems – are cheap political theater. The actual amount of work performed by chain gangs is of minimal economic value. But the normalization of the chain gang spectacle inflates a symbolic economy of revenge." (Parenti 2000, p. 176)

Item: "AIDS wasting, a condition largely eradicated since the early years of the AIDS epidemic, remained a major problem at Limestone (Alabama's segregated prison for inmates with AIDS). Undernourished patients were left literally to waste away. The overwhelming majority of the men were severely malnourished. Most had not received what would be considered even remotely adequate nutrition or vitamin supplementation, especially for a person with a profoundly compromised immune system. Limestone's nearly non-existent medical system resulted in years of needless dying and suffering. Said court-appointed medical examiner, Dr. Stephen Tabet: 'The conditions at Limestone are unsafe for both the incarcerated and for the staff. There is a sense of hopelessness and helplessness among the patients at Limestone – to a degree I have not witnessed prior." (Fleury-Steiner and Crowder, unpublished manuscript, p. 11.)

Item: "By denying the vote to felons, the average state disenfranchises 2.4 percent of its voting-age population – but 8.4 percent of its voting-age blacks. In fourteen states, the share of blacks stripped of the vote exceeds 10 percent. And in five states it exceeds 20 percent. Felony disenfranchisement laws keep nearly one in seven black men from voting nationwide." (DeParle 2007, pp. 35-36)

Locking-in Racial and Class Hierarchy

Princeton sociologist Bruce Western's excellent recent book, *Punishment and Inequality in America* (Russell Sage, 2006), provides a useful survey of the facts regarding the scope, the nature and the consequences of contemporary imprisonment. One-third of inmates in state prisons are violent criminals who have committed homicide, rape, or robbery, but, the remainder consists mostly of property and drug offenders. On average, state inmates have fewer than eleven years of schooling. African Americans and Hispanics together account for about two-thirds of state prison populations.

The extent of racial disparity in imprisonment rates is greater than in any other major arena of American social life: at eight-to-one, the black-white ratio of incarceration rates dwarfs the two-to-one ratio of unemployment rates, three-to-one non-marital child bearing ratio, the two-to-one black-white ratio of infant mortality rates and one-to-five

ratio of net worth. Whereas three out of two hundred whites were incarcerated in 2000, the rate for young blacks was one out of nine. More black male high school dropouts are incarcerated than belong to unions or are enrolled in all social/welfare programs, combined. (Western 2006. See table below.)

Men Incarcerated (2000), in Unions, or in Social Programs (1996)

	Whites	Hispanics	Blacks
All men, age twenty to forty			
In prison or jail	1.60%	4.60%	11.50%
In labor union	9.70%	10.7	11.5
On welfare	1.70%	1.40%	2.30%
In any program (including welfare)	6.70%	4.90%	10.80%
Male high school dropouts, age twenty to forty			
In prison or jail	6.70%	6.00%	32.40%
In labor union	6.30%	8.10%	2.30%
On welfare	6.20%	1.70%	3.70%
In any program (including welfare)	17.90%	6.30%	24.00%

*Survey of Incomes and Program Participation (1996)

Evidently, the primary contact between black American adult men of a certain age and the American state is via the police and the penal apparatus. (As the table above makes clear, among black male high school dropouts ages 20 to 40, a third were under lock and key on a given day in 2000, while fewer than 3% belonged to a union, and less than one-quarter were enrolled in any kind of social program.) The coercive aspect of government is the most salient feature of their experience of the public sector. Western (2006) uses data from several sources (consult the Table below) to estimate that nearly 60% of black male dropouts born between 1965 and 1969 were sent to jail or prison at least once before they reached the age of 35. For these men, and the families and communities with which they are associated, the adverse effects of incarceration will extend beyond their stays behind bars.

This horrid situation is a product of our very recent history. Western (2006) looks at two birth cohorts of black and white men, to be compared as a crude way of identifying the disparate impact by race and by class of the post-1980 prison boom on life experience of young men. The first cohort of men was born in 1945 to 1949, just after World War II. These individuals reached their mid-thirties by 1970, just before the rapid increase in imprisonment rates. The second cohort was born during the Vietnam War, from 1965 to 1969, and reached their mid-thirties during the height of the prison boom:

Cumulative Risk of Imprisonment	All (1)	(2)	Less than HS	(3)	HS or GED	(4)	All Noncollege	Some Cllge. (5)
White men								
Born 1945 to 1949	1.4		4		1		2.1	0.5
Born 1965 to 1969	2.9		11.2		3.6		5.3	0.7
Black men								

| Born 1945 to 1949 | 10.5 | 17.1 | 6.5 | 12 | 5.9 |
| Born 1965 to 1969 | 20.5 | 58.9 | 18.4 | 30.2 | 4.9 |

Notice that the aggregate risk of imprisonment is twice as great in the later cohort – 2.9% as compared to 1.4%. Moreover, one can see from the table that the experience of incarceration for poorly educated black men is estimated to be four times more prevalent in the later than in the earlier cohort – 58.9% as compared to 17.1%. The massive scale of this policy shift is stunning. To repeat: there is a nearly three-fifths chance that a black male with less than HS diploma born between 1965-69 will have gone to prison or jail at least once prior to reaching age 35.

Western and Pettit (2004) argue that passage to adulthood means going through a sequence of ordered stages, each affecting an person's life trajectory long after the early transitions are completed. To arrive at the status of a mature and functioning adult, an individual moves from school to work to marriage to establishing a home to parenthood. Those who fail to secure the markers of adulthood are more likely to lapse into criminal behavior. And, those who fall into crime end up, more often than not, in prison. Their main point, though, is that the experience of prison feeds-back to affect the life course. Once one has been sent to prison, it is a whole new ballgame, for the rest of one's life. The evidence of prison affecting subsequent life chances is considerable and impressive.

Table 5.2
Wages, Employment, Earnings

| | Incarceration Status | | |
	Never	Before	After
Hourly wages (dollars per hour)			
White	14.7	11.14	11.8
Hispanic	13.59	12.3	10.31
Black	12.34	10.25	9.25
Annual employment (weeks per year)			
White	44	37	23
Hispanic	43	35	24
Black	40	35	21
Annual earnings (thousands of dollars per year)			
White	26.44	13.7	9.76
Hispanic	23.9	13.29	9.14
Black	20.37	13.34	7.02

The table above reproduces Western's (admittedly crude but suggestive) estimates of the impact of imprisonment on subsequent labor market outcomes. Hourly wages of incarcerated black men are 10% lower after prison than before. And weeks worked per year of all imprisoned men are down by 1/3 or more after release, as compared with prior to their incarceration. Now, consider the nearly 60% of black male high school dropouts born in the late 1960s who will have been imprisoned before their fortieth year. For these men, their links to family have been disrupted; their subsequent work lives will be diminished; their voting rights are often permanently revoked. They will suffer, quite literally, a "civic excommunication" from American democracy. It is no exaggeration to say that, given our zeal for social discipline, these men will be consigned to a permanent,

non-white, male nether caste. And yet, since these men – whatever their shortcomings – have emotional and sexual and family needs, including the need to be fathers and lovers and husbands – we will have created a bio-political situation where the children of this nether caste are likely themselves to join a new generation of untouchables. In other words, social discipline via "law and order" (wars against crime and against drugs) must generate a race-based nether caste so long as "blackness" is seen as a bio-political site of disorder that is to be met with force and incarceration as the primary methods of social hygiene. (I am aware that this sounds like hyperbole, and that a listener may be unsettled by such vituperation, on so august an occasion as this. I assure you, however, that this reading of the situation is the product of my sober reflections, upon becoming acquainted with the facts. I am, myself, somewhat unsettled by the visceral reactions this has evoked in me.)

The Culture of Control
> Nor is it merely the scope of the mass imprisonment state that has expanded so impressively. The ideas underlying the doing of criminal justice – the superstructure of justifications and rationalizations – have also undergone a sea change; and new institutional forms have emerged. Alongside bureaus of policing and imprisonment, what David Garland (2001b) calls a "new apparatus of prevention and security" has arisen. This expanding sector is made up of "crime prevention organizations, public-private partnerships, community policing arrangements, and multi-agency working practices that link together the different authorities whose activities bear upon the problem of crime and security… This sector consists mainly of networks and coordinating practices – local authority panels, working groups, multi-agency forums, so-called "Business Improvement Districts and various action committees – whose primary task is to link up the activities of existing actors and agencies and direct their efforts toward crime reduction." (p. 168)

Garland is quite explicit (and, also, quite exercised) about the function of these new developments: to keep THEM away from US: "The prison is used today as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety… It is a "string of work camps and prisons strung across a vast country housing millions of people drawn mainly from classes and racial groups that are seen as politically and economically problematic." The border between prison and community, Garland argues, is "heavily patrolled and carefully monitored to prevent leaking-out from one to the other. Those offenders who are released 'into the community' are subject to ever tighter control and are often returned to custody for violation of the conditions of their release. Many of these parolees and ex-convicts are never really 'free', in that they continue to be closely monitored and never really live a normal life." (p. 178)
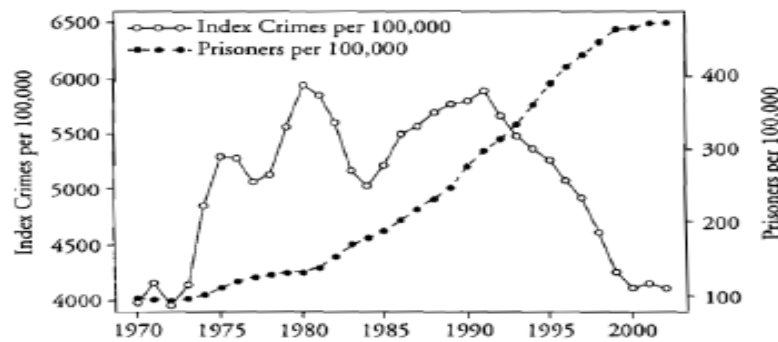
Under this brave new security dispensation, relations between the media, the politicians and the public have also been transformed: High profile cases get excessive media attention and engender public outrage: Some predator does an awful thing to an innocent. The system has failed, yet again, allowing a perpetrator (Willie Horton) out on furlough, releasing an apparently guilty defendant because the convicting evidence was gathered in violation of his rights; giving yet another example of 'revolving door justice.' (This was what the Clint Eastwood's wildly popular 'Dirty Harry' films in the 1970's were all about). The public attention to such cases was typically all out of proportion to

their actual frequency of occurrence, and yet laws ('three strikes and you're out', the violent sexual predator laws) and political careers were made on the basis of the public's visceral, fear-driven reaction to the publicity given such events. (p. 173) In such a way, by accretion, has the edifice of this system been built. And, despite signs that the horrid nature of this shift is being more widely recognized today, the slow-moving behemoth-of-a-system is unlikely now to be turned on a dime.

And Yet Crime Has Been Falling Sharply for More Than a Decade.

Figure 2.1   Trends in Index Crime Rate and Imprisonment

Sources: *Crime in the United States* (1977, 1991, 2004); Pastore and Maguire (2005, table 628).

The crime situation today is not what it was twenty or even forty years ago. The irony is that, although crime rates are now quite low by historical standards, imprisonment continues its upward march. It can't but be true that the massive increase in incarceration has helped depress crime rates. The question is by how much. Estimates of the share of the 1990's fall in violent crime attributable to the prison boom range from 5% (Western 2006) to 25% (Levitt 2004). Whatever the case, analysts of all political stripes now agree that we have long since passed into the zone of diminishing returns. Conservative analyst John DiIulio, who in the early 1990's in *The Weekly Standard* warned of "The Coming of the Super-Predators" was, by the end of that decade, declaring in *The Wall Street Journal* that "Two Million Prisoners Are Enough." Yet, so far there is insufficient political momentum for getting out of the mass incarceration business in America. The policy throttle seems to be stuck.

How could imprisonment rates continue to rise while crime rates were falling so sharply? This happened for one simple reason: because we have become progressively more punitive. Blumstein and Beck (1999) analyzed the factors contributing to the growth in incarceration over the period 1980-1996. Candidate explanations considered were (1) more crime; (2) more arrests per crime; (3) more commitments to prison per arrest; and (4) longer time served, including parole recommitment. Blumstein (2004) summarized the findings as follows:

> It turns out that none of the growth was attributable to more crime and there was no change … in arrests per crime. The growth was entirely attributable to a growth in punitiveness, about equally to growth in prison commitments per arrest (tougher prosecution and judicial sentencing) and to longer time served

(longer sentences, elimination of parole, greater readiness to recommit parolees to prison for technical violations or new crimes. One of the most important recent sources of growth in prison population is the level of recommitment of parolees. Parole boards have received the same political message that they too ought to become tougher. They have been more aggressive in delaying release decisions; in performing urinalysis on parolees, and in making recommitments for violations. (p. 73)

Thus, throughout the period 1980-2001, just under half of complaints to police resulted in an arrest. However, the chances that an arrest would result in prison roughly doubled, from 13 to 28 percent. Time served in prison by violent offenders also increased significantly, from an average of 33 months in 1980 to 53 months by 2001. Because time served and the rate of prison admission both increased, the incarceration rate for violent crime rose from 76 per 100,000 to 208 per 100,000, despite the decline in the level of violence.(Western 2006).

Self-reported data on offending from the National Longitudinal Surveys of Youth confirm that criminal offending by juveniles was far lower at the end of the 1990's than it had been at the beginning of the 1980's. (For example, 16 percent of black teenagers from poor families said they sold drugs in 1980, compared to just 5 percent in 2000.) Victimization data tell a similar story: public safety from violent crime had improved dramatically by the late 1990's (Western 2006):

Criminal Victimization Among Men Age Twenty-Two to Thirty

	1980 to 1983	1997 to 2000	Percentage Change
Victimization per 1000			
All men	568	179	-68.7
White dropouts	541	215	-60.3
Black dropouts	466	132	-71.7
Hispanic dropouts	433	101	-76.6

A New Dispensation

Despite a precipitate decline in the objective risk of victimization, today's practice of criminal justice has become meaner and less caring than it has been at any other time in modern American history. The emphasis has shifted, as Garland puts it, from a "welfarist" to a "punitive" modality – and it seems to have gotten stuck there. The table below shows trends in sentencing policies at the state level, 1980-2000:

Limited Judicial Discretion in Crime Sentencing

States that Have:	1980	1990	2000
Sentencing guidelines	2	10	17
Abolished of limited parole	17	21	33
Three-strikes laws	0	0	24
Truth-in-sentencing laws (a)	3	7	40

(a) Includes states that mandate at least 50 percent of sentences be served for some offenses.

As Garland (2001b) laments, policies have become more punitive across the board:

"Sentencing law and practice give greater priority to retributive, incapacitative, and deterrent aims. Probation represents itself as a punishment in the community, not as a social work alternative to conviction. Juvenile courts in the US routinely waive young offenders up to the adult courts for harsher sentencing, while they increasingly stress guilt and individual responsibility." (And, just whose 'fault' is it when a 15 year old threatens us with a gun? Whose failure? GL) "Custodial institutions for young people … become increasingly indistinguishable from adult prisons... The penal mode has become more punitive, more expressive, more security-minded… Offenders … are now less likely to be represented in official discourse as socially deprived citizens in need of support. They are depicted instead as culpable, undeserving and somewhat dangerous individuals who must be carefully controlled for the protection of the public and the prevention of further offending. *Rather than clients in need of support they are seen as risks who must be managed.* (My emphasis. GL) Instead of emphasizing rehabilitative methods that meet the offender's needs, the system emphasizes effective controls that minimize costs and maximize security." (178)

Felons are no longer *persons* to be supported. They are *risks* who must be dealt with. They are not US – persons with whom we share out community. They are THEM – alien and threatening objects of social approbation. They are the stigmatized – they are the fit subjects for shaming. And when this "othering" process takes-on a racial valence, we may expect the stigmatizing effects to be especially powerful, since they resonate with and echo the powerfully violent American history of racial degradation. I speak here of the history of lynching throughout the country (Orlando Patterson, *Rituals of Blood*), and the racially biased policing and judging in the South under Jim Crow, and in the cities of the Northeast, Midwest and West to which blacks migrated in great numbers after the first and second world wars (Randall Kennedy, *Race, Crime and the Law*). This historical resonance between the stigma of imprisonment and the stigma of race (Pager 2003) serves to keep alive in our public culture the subordinating social meanings that have always been associated with "blackness."

The young political scientist Vesla Mae Weaver (2006) is just completing her dissertation (at Harvard) in which, looking at policy history, public opinion, media processes, she attempts to understand the role that race may have played in this criminal justice transformation. She argues, persuasively to this reader, that reaction against civil rights was displaced into a separate policy process such that "punitive policy intervention was not merely an exercise in crime fighting; it both responded to and moved the agenda on racial equality." She calls her core concept, *frontlash* – by which she means a process where formerly defeated groups [i.e., those opposed to civil rights advocacy but unable to prevail against the liberal zeitgeist] become dominant by shifting to a new issue. Rather than reacting directly to civil rights developments, she argues, anti-black politics – like the politics animating George Wallace's campaigns for the presidency which drew so much support in states like Michigan and Wisconsin – were embedded into a seemingly race neutral concern over crime. "Once the clutch of Jim Crow had loosened, opponents of civil rights shifted the 'locus of attack' by injecting crime onto the agenda. Through

the process of frontlash, rivals of civil rights progress defined racial discord as criminal and argued that crime legislation would be a panacea to racial unrest. This strategy both imbued crime with race and depoliticized racial struggle, a formula which foreclosed earlier 'root causes' alternatives. Fusing anxiety about crime to anxiety over racial change and riots, civil rights and racial disorder – initially defined as a problem of minority disenfranchisement – got re-defined as a crime problem, which helped shift debate from social reform to punishment."

Of course, this argument (for which Weaver adduces considerable circumstantial evidence) is speculative. But, something interesting seems to have been going on in the late 60's, regarding the relationship between attitudes on race and social policy.
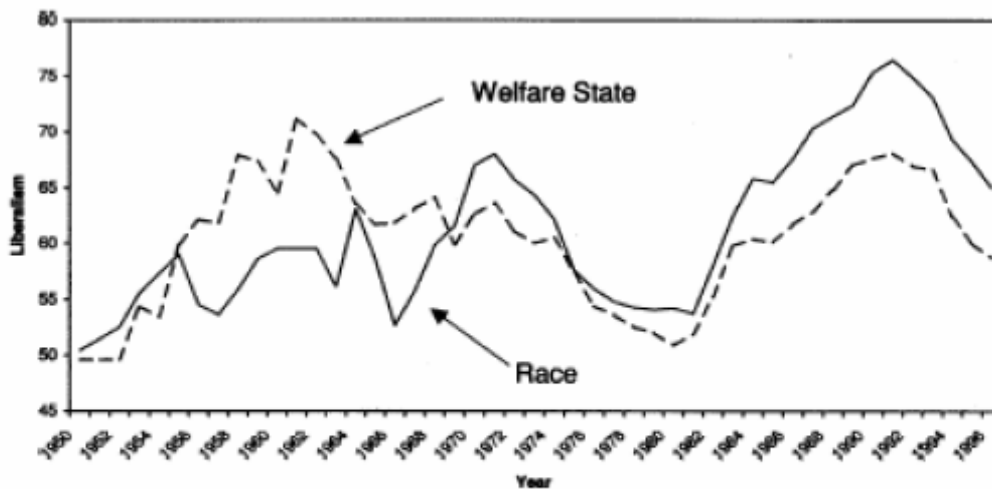

FIGURE 3.7. Racial and Welfare-State Policy Preferences, 1950-1996

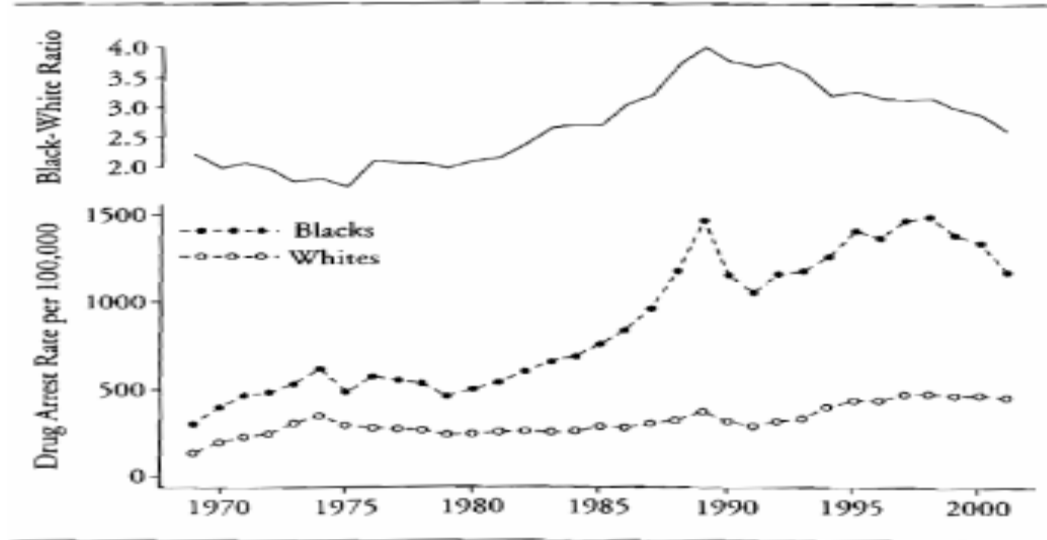Correlation: r = .03 (1950-65) r = .68 (1966-96)

The Figure above demonstrates that public attitudes on the welfare state and on race varied year-to-year independently of one another prior to 1970, but moved in tandem with one another thereafter. The association in the American mind of race with welfare, and of race with crime, has been achieved at a common historical moment. Crime control institutions are part of a larger social policy complex – they relate to and interact with labor market, family welfare efforts, health and social work activities. Indeed, Garland argues that the ideological approaches to welfare and crime control have marched rightward to a common beat: "The institutional and cultural changes that have occurred in the crime control field are analogous to those that have occurred in the welfare state more generally."

We have 'ended welfare as we once knew it,' just as we were deciding to 'lock 'em up and throw away the key.' We are demanding personal responsibility and insisting on accountability across the board. These changes, according to David Garland (2001b), can be understood as "a kind of counter-rhetoric… The infrastructures of the welfare state have not been abolished or utterly transformed. They have been overlaid by a different political culture, and directed by a new style of public management. In the process they have become more restrictive and means-tested, more concerned to control the conduct of claimants, more concerned to transmit the right incentives and discourage 'dependency.'

They are about 'governing' people at close quarters. They are ever vigilant for signs of laxity in their 'clients.' Like the criminal justice reforms… current policies are shaped by the perceived dysfunctions and pathologies of the institutions of the welfare state." (174) Current policies are also shaped, I might add, by the perceived dysfunction of the racially marked subjects of these policies. Consider, as one example, the tortured racial history of the War on Drugs.

The War on Drugs

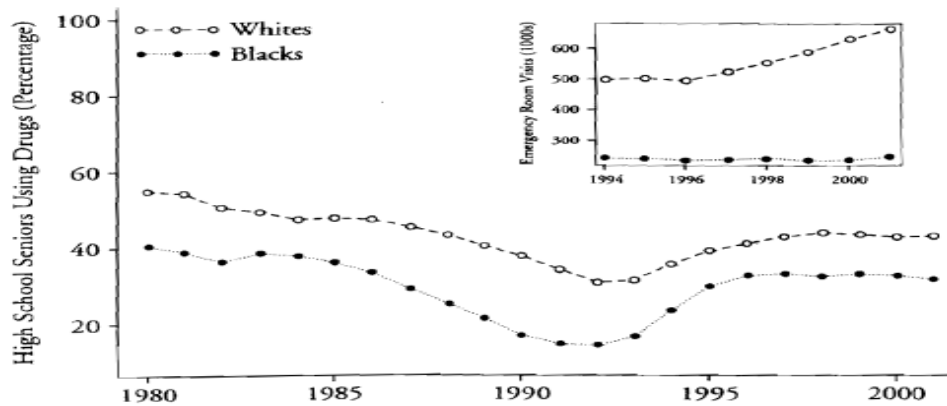Figure 2.2   Drug Offenses and Arrest Rate Ratio

Source: Federal Bureau of Investigation (1993, 2003).
                Drug Arrests of Blacks Spike in Late 80's

Blacks were twice as likely as whites to be arrested for a drug offense in 1975, but four-times as likely (1,460 versus 365 per100,000) by 1989. For all of the 1990's, drug arrest rates remained at historically unprecedented levels. Yet, according to the National Survey on Drug Abuse (NSDA), drug use among adults fell from 20% in 1979 to 11% in 2000. A similar trend occurred for adolescents. In the age groups 12-17 and 18-25, usage of marijuana, cocaine and heroin all peaked at roughly the same time (in the late 1970s), and began a steady decline thereafter (Tonry 2004, Figure 5.14, p. 132). *Thus, a decline in drug use across the board had begun a decade before the War on Drugs was initiated.*
        Western (2006) presents interesting evidence on racial discrepancies between drug use and drug arrests. In figure 2.2 (above) one can see that the drug arrest rate for blacks stood at twice the rate for whites in the late 1970s, rising to 4 times the white rate by 1990. On the other hand, figure 2.3 (below) reveals that throughout this period white high school seniors reported using drugs at a significantly higher rate than blacks.
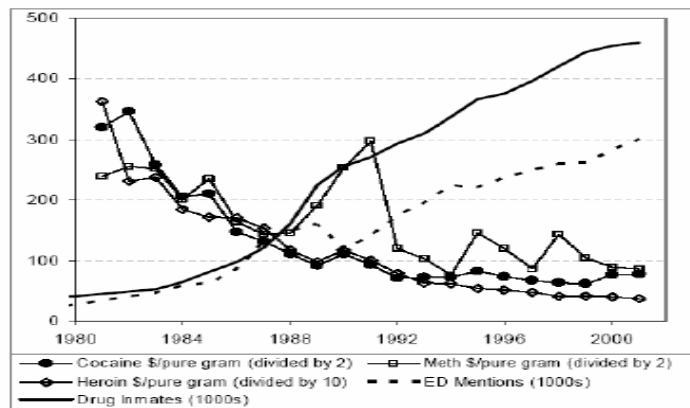
Figure 2.3   **High School Seniors Reporting Drug Use**

Presumably this relatively high rate of drug use in the early 80's in the mainstream of American society partially explains the urgency many felt to mount a national attack on the problem. Yet, how successful has the effort been, and at what cost?

As the data below make clear, retail prices on the street of illicit drugs fell steadily and sharply throughout the period 1980-2000 (with the exception of methamphetamine which experienced a price spike in the late 80's-early 90's), even as "war mobilization" caused drug incarceration rate to skyrocket:

Winning the War? Drug Prices, Emergency Treatment and Incarceration Rates: 1980-2000

[Source: Caulkins, Reuter and Taylor, "Can Supply Restrictions Lower Price?" *Contributions to Economic Analysis and Policy* Vol. 5 (2006)]

Spatial Effects

What all this comes to is that, to save "our" middle class kids from the threat of their being engulfed by a drug epidemic that might not have even existed by the time drug incarceration began rapidly rising in the 1980s, we criminalized "our" underclass kids. Arrests went up and up, drug prices went down and down, and drug consumptions seems not to have been much impacted by the policy.

An interesting case in point is New York City. Criminologist Jeffery Fagan and his colleagues (Fagan, West and Holland 2003)) have analyzed data on arrests and in New York City residential neighborhoods and police precincts. They report that, 70% of

state inmates in New York come from New York City. Between 1990 and 2003 the number of state prison inmates coming from the city rose from 55,000 to 70,000. The City also had an average daily jail population of nearly 18,000 in 1999. "Rates of incarceration in NYC have been largely unaffected by the city's dramatic declines in crime. Moreover, the increase in incarceration is in part "attributable to aggressive enforcement of drug laws, especially street-level enforcement resulting in large numbers of felony arrests of retail drug sellers." They note that "drug-related offenses have accounted for an increasing proportion of prison admissions – up from 12% of state prison admissions in 1985 to 31% in 1990, to 38% in 1996. Some 11,600 residents of NYC entered the NY state prison system on drug-related offenses in 1996, compared to 9,345 in 1990.
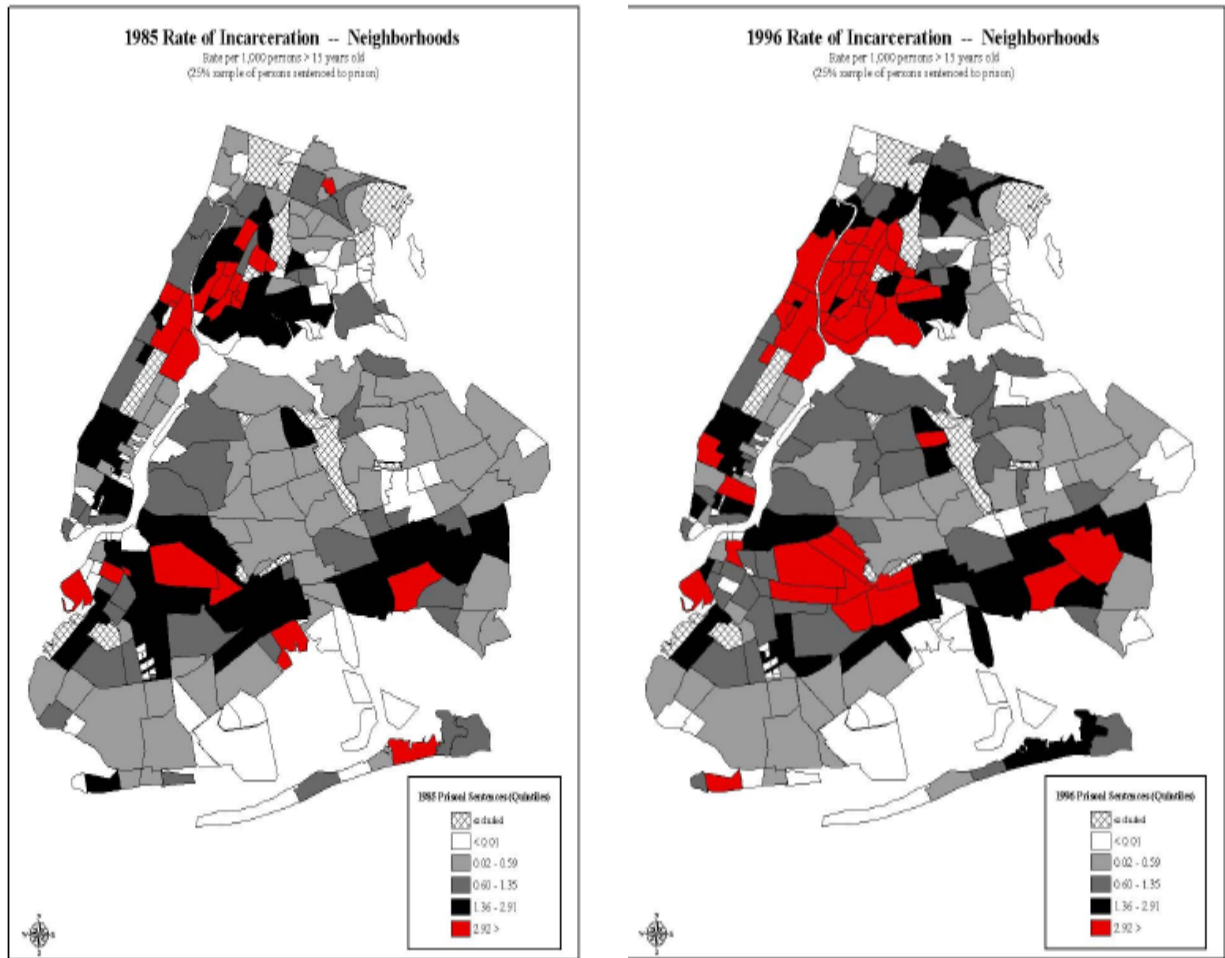
        As the maps below make clear, incarceration was highest in the City's poorest neighborhoods though these were not in every instance the neighborhoods where crime rates were highest. Most interestingly, when these data were analyzed at the level of police precincts, the authors discovered a perverse positive feedback of incarceration on crime: higher incarceration in a given neighborhood seemed to predict higher crime rates one year later in that same neighborhood. They concluded that the growth and persistence of incarceration over time were due primarily to drug enforcement and to sentencing laws that require imprisonment for repeat felons. Police scrutiny was more intensive and less forgiving in neighborhoods high incarceration neighborhoods, and parolees returning to such neighborhoods were more closely monitored. This discretionary, spatially discriminatory police behavior led to a high and increasing rate of repeat prison admissions in the designated neighborhoods, even as crime rates fall.

        The authors conclude that "(i)ncarceration begets more incarceration, and incarceration also begets more crime, which in turn invites more aggressive enforcement, which then re-supplies incarceration... (T)hree mechanisms … contribute to and reinforce incarceration in neighborhoods: the declining economic fortunes of former inmates and the effects on neighborhoods where they tend to reside, resource and relationship strains on families of prisoners that weaken the family's ability to supervise children, and voter disenfranchisement that weakens the political economy of neighborhoods.

Looking Ahead
        In closing, permit me to briefly preview what is to come tomorrow afternoon: I will try to make a normative argument, applying the rational choice-style of reasoning that is natural to an economist. Using a series of formal "models" – hypothetical thought experiments which highlight selected aspects of complex social interaction – I will try to show the limits of an ethic of personal responsibility by highlighting the extent to which a person's actions, including their law-breaking actions, are shaped by social forces beyond their control. With a Rawlsian perspective on distributive justice – but, now, in respect to the distribution not of wealth and income, but instead of the negative good of punishment – I intend to invoke the notion of moral luck made famous by Bernard Williams and Thomas Nagel: while we may be responsible for what we do, what we do depends on a great many factors over which we have no control; so, we are not responsible for what we are and are not responsible for. I will emphasize that closed and bounded social structures – like racially homogeneous urban ghettos, create contexts where "pathological" and "dysfunctional" cultural forms emerge; but, these forms are not, I will argue, intrinsic to

the people caught in these structures. Nor are they independent of the behavior of those who reside outside of them. Thank You.

Source: Fagan, West and Holland, "Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods." *Fordham Urban Law Journal*, 2003.

A 20th Century Lynching:

Minstrelsy at the Lions Club

Enslaved and Profoundly Dishonored Persons

Renty and his daughter Dahlia, property of B.F. Taylor, Columbia, South Carolina, 1856. (Courtesy of Fogg Museum, Harvard)

The Great Al Jolson

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