

[A Nation of Jailers](#)



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LEAD ESSAY

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The most challenging problems of social policy in the modern world are never merely technical. In order properly to decide how we should govern ourselves, we must take up questions of social ethics and human values. What manner of people are we Americans? What vision would we affirm, and what example would we set, before the rest of the world? What kind of society would we bequeath to our children? How shall we live? Inevitably, queries such as these lurk just beneath the surface of the great policy debates of the day. So, those who would enter into public argument about what ails our common life need make no apology for speaking in such terms.

It is precisely in these terms that I wish to discuss a preeminent moral challenge for our time — that imprisonment on a massive scale has become one of the central aspects of our nation’s social policy toward the poor, powerfully impairing the lives of some of the most marginal of our fellow citizens, especially the poorly educated black and Hispanic men who reside in large numbers in our great urban centers.

The bare facts of this matter — concerning both the scale of incarceration and its racial disparity — have been much remarked upon of late. Simply put, we have become a nation of jailers and, arguably, racist jailers at that. The past four decades have witnessed a truly historic expansion, and transformation, of penal institutions in the United States — at every level of government, and in all regions of the country. We have, by any measure, become a vastly more punitive society. Measured in constant dollars and taking account of all levels of government, spending on corrections and law enforcement in the United States has more than quadrupled over the last quarter century. As a result, the American prison system has grown into a leviathan unmatched in human history. This development should be deeply troubling to anyone who professes to love liberty.

Here, as in other areas of social policy, the United States is a stark international outlier, sitting at the most rightward end of the political spectrum: We imprison at a far higher rate than the other industrial democracies — higher, indeed, than either Russia or China, and vastly higher than any of the countries of Western Europe. According to the International Centre for Prison Studies in London, there were in 2005 some 9 million prisoners in the world; more than 2 million were being held in the United States. With approximately one twentieth of the world’s population, America had nearly one fourth of the world’s inmates. At more than 700 per 100,000 residents, the U.S. incarceration rate was far greater than our nearest competitors (the Bahamas, Belarus, and Russia, which each have a rate of about 500 per 100,000.) Other industrial societies, some of them with big crime problems of their own, were less punitive than we by an order of magnitude:

the United States incarcerated at 6.2 times the rate of Canada, 7.8 times the rate of France, and 12.3 times the rate of Japan.

The demographic profile of the inmate population has also been much discussed. In this, too, the U.S. is an international outlier. African Americans and Hispanics, who taken together are about one fourth of the population, account for about two thirds of state prison inmates. Roughly one third of state prisoners were locked up for committing violent offenses, with the remainder being property and drug offenders. Nine in ten are male, and most are impoverished. Inmates in state institutions average fewer than eleven years of schooling.

The extent of racial disparity in imprisonment rates exceeds that to be found in any other arena of American social life: at eight to one, the black to white ratio of male incarceration rates dwarfs the two to one ratio of unemployment rates, the three to one non-marital child bearing ratio, the two to one ratio of infant mortality rates and the one to five ratio of net worth. More black male high school dropouts are in prison than belong to unions or are enrolled in any state or federal social welfare programs. The brute fact of the matter is that the primary contact between black American young adult men and their government is via the police and the penal apparatus. Coercion is the most salient feature of their encounters with the state. According to estimates compiled by sociologist Bruce Western, nearly 60% of black male dropouts born between 1965 and 1969 had spent at least one year in prison before reaching 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. My point is that this is not merely law enforcement policy. It is social policy writ large. And no other country in the world does it quite like we do.

This is far more than a technical issue — entailing more, that is, than the task of finding the most efficient crime control policies. Consider, for instance, that it is not possible to conduct a cost-benefit analysis of our nation's world-historic prison buildup over the past 35 years without implicitly specifying how the costs imposed on the persons imprisoned, and their families, are to be reckoned. Of course, this has not stopped analysts from pronouncing on the purported net benefits to "society" of greater incarceration without addressing that question! Still, how — or, indeed, whether — to weigh the costs born by law-breakers — that is, how (or whether) to acknowledge their humanity — remains a fundamental and difficult question of social ethics. Political discourses in the United States have given insufficient weight to the collateral damage imposed by punishment policies on the offenders themselves, and on those who are knitted together with offenders in networks of social and psychic affiliation.

Whether or not one agrees, two things should be clear: social scientists can have no answers for the question of what weight to put on a "thug's," or his family's, well-being; and a morally defensible public policy to deal with criminal offenders cannot be promulgated without addressing that question. To know whether or not our criminal justice policies comport with our deepest values, we must ask how much additional cost

borne by the offending class is justifiable per marginal unit of security, or of peace of mind, for the rest of us. This question is barely being asked, let alone answered, in the contemporary debate.

Nor is it merely the scope of the mass imprisonment state that has expanded so impressively in the United States. The ideas underlying the doing of criminal justice — the superstructure of justifications and rationalizations — have also undergone a sea change. Rehabilitation is a dead letter; retribution is the thing. The function of imprisonment is not to reform or redirect offenders. Rather, it is to keep *them* away from *us*. “The prison,” writes sociologist David Garland, “is used today as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety.” We have elaborated what are, in effect, 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.” We have, in other words, marched quite a long way down the punitive road, in the name of securing public safety and meting out to criminals their just deserts.

And we should be ashamed of ourselves for having done so. Consider a striking feature of this policy development, one that is crucial to this moral assessment: the ways in which we now deal with criminal offenders in the United States have evolved in recent decades in order to serve expressive and not only instrumental ends. We have wanted to “send a message,” and have done so with a vengeance. Yet in the process we have also, in effect, provided an answer for the question: who is to blame for the maladies that beset our troubled civilization? That is, we have constructed a narrative, created scapegoats, assuaged our fears, and indulged our need to feel virtuous about ourselves. We have met the enemy and the enemy, in the now familiar caricature, is *them* — a bunch of anomic, menacing, morally deviant “thugs.” In the midst of this dramaturgy — unavoidably so in America — lurks a potent racial subplot.

This issue is personal for me. As a black American male, a baby-boomer born and raised on Chicago’s South Side, I can identify with the plight of the urban poor because I have lived among them. I am related to them by the bonds of social and psychic affiliation. As it happens, I have myself passed through the courtroom, and the jailhouse, on my way along life’s journey. 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. Whenever I step to a lectern to speak about the growth of imprisonment in our society, I envision voiceless and despairing people who would have me speak on their behalf. Of course, personal biography can carry no authority to compel agreement about public policy. Still, I prefer candor to the false pretense of clinical detachment and scientific objectivity. I am not running for high office; I need not pretend to a cool neutrality that I do not possess. While I recognize that these revelations will discredit me in some quarters, this is a fate I can live with.

So, my racial identity is not irrelevant to my discussion of the subject at hand. But, then, neither is it irrelevant that among the millions now in custody and under state supervision are to be found a vastly disproportionate number of the black and the brown. There is no

need to justify injecting race into this discourse, for 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. The fact 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 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 to an extent unlike virtually any other, those bearing the heavy burden of order-enforcement belong, in numbers far exceeding their presence in the population at large, to racially defined and historically marginalized groups. Why should this be so? And how can those charged with the supervision of our penal apparatus sleep well at night knowing that it is so?

This punitive turn in the nation’s social policy is intimately connected, I would maintain, with public rhetoric about responsibility, dependency, social hygiene, and the reclamation of public order. And such rhetoric, in turn, can be fully grasped only when viewed against the backdrop of America’s often ugly and violent racial history: There is a reason why our inclination toward forgiveness and the extension of a second chance to those who have violated our behavioral strictures is so stunted, and why our mainstream political discourses are so bereft of self-examination and searching social criticism. An historical resonance between the stigma of race and the stigma of prison has served to keep alive in our public culture the subordinating social meanings that have always been associated with blackness. Many historians and political scientists — though, of course, not all — agree that the shifting character of race relations over the course of the nineteenth and twentieth centuries helps to explain why the United States is exceptional among democratic industrial societies in the severity of its punitive policy and the paucity of its social-welfare institutions. Put directly and without benefit of euphemism, the racially disparate incidence of punishment in the United States is a morally troubling residual effect of the nation’s history of enslavement, disenfranchisement, segregation, and discrimination. It is not merely the accidental accretion of neutral state action, applied to a racially divergent social flux. It is an abhorrent expression of who we Americans are as a people, even now, at the dawn of the twenty-first century.

My recitation of the brutal facts about punishment in today’s America may sound to some like a primal scream at this monstrous social machine that is grinding poor black communities to dust. And I confess that these facts do at times leave me inclined to cry out in despair. But my argument is intended to be moral, not existential, and its principal thesis is this: we law-abiding, middle-class Americans have made collective decisions on social and incarceration policy questions, and we benefit from those decisions. That is, we benefit from a system of suffering, rooted in state violence, meted out at our behest. Put differently our society — the society we together have made — first tolerates crime-promoting conditions in our sprawling urban ghettos, and then goes on to act out rituals of punishment against them as some awful form of human sacrifice.

It is a central reality of our time that a wide racial gap has opened up in cognitive skills, the extent of law-abidingness, stability of family relations, and attachment to the work

force. This is the basis, many would hold, for the racial gap in imprisonment. Yet I maintain that this gap in human development is, as a historical matter, rooted in political, economic, social, and cultural factors peculiar to this society and reflective of its unlovely racial history. That is to say, *it is a societal, not communal or personal, achievement*. At the level of the individual case we must, of course, act as if this were not so. There could be no law, and so no civilization, absent the imputation to persons of responsibility for their wrongful acts. But the sum of a million cases, each one rightly judged fairly on its individual merits, may nevertheless constitute a great historic wrong. This is, in my view, now the case in regards to the race and social class disparities that characterize the very punitive policy that we have directed at lawbreakers. And yet, the state does not only deal with individual cases. It also makes policies in the aggregate, and the consequences of these policies are more or less knowable. It is in the making of such aggregate policy judgments that questions of social responsibility arise.

This situation raises a moral problem that 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 we are also prepared to say that we have turned our backs on the ideal of equality for all citizens and abandoned the principles of justice. We ought to be asking ourselves two questions: Just what manner of people are we Americans? And in light of this, what are our obligations to our fellow citizens — even those who break our laws?

Without trying to make a full-fledged philosophical argument here, I nevertheless wish to gesture — in the spirit of the philosopher John Rawls — toward some answers to these questions. I will not set forth a policy manifesto at this time. What I aim to do is suggest, in a general way, how we ought to be thinking differently about this problem. Specifically, given our nation's history and political culture, I think that there are severe limits to the applicability in this circumstance of a pure ethic of personal responsibility, as the basis for distributing the negative good of punishment in contemporary America. I urge that we shift the boundary toward greater acknowledgment of social responsibility in our punishment policy discourse — even for wrongful acts freely chosen by individual persons. In suggesting this, I am not so much making a “root causes” argument — he did the crime, but only because he had no choice — as I am arguing that the society at large is implicated in his choices because we have acquiesced in structural arrangements which work to our benefit and his detriment, and yet which shape his consciousness and sense of identity in such a way that the choices he makes. We condemn those choices, but they are nevertheless compelling to him. I am interested in the moral implications of what the sociologist Loïc Wacquant has called the “double-sided production of urban marginality.” I approach this problem of moral judgment by emphasizing 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 intrinsic to the people caught in these structures. Neither are they independent of the behavior of the people who stand outside of them.

Several years ago, I took time to read some of the nonfiction writings of the great nineteenth century Russian novelist Leo Tolstoy. Toward the end of his life he had

become an eccentric pacifist and radical Christian social critic. I was stunned at the force of his arguments. What struck me most was Tolstoy's provocative claim that the core of Christianity lies in Jesus' Sermon on the Mount: You see that fellow over there committing some terrible sin? Well, if you have ever lusted, or allowed jealousy, or envy or hatred to enter your own heart, then you are to be equally condemned! This, Tolstoy claims, is the central teaching of the Christian faith: we're all in the same fix.

Now, without invoking any religious authority, I nevertheless want to suggest that there is a grain of truth in this religious sentiment that is relevant to the problem at hand: That is, while the behavioral pathologies and cultural threats that we see in society — the moral erosions “out there” — the crime, drug addiction, sexually transmitted disease, idleness, violence and all manner of deviance — while these are worrisome, nevertheless, our moral crusade against these evils can take on a pathological dimension of its own. We can become self-righteous, legalistic, ungenerous, stiff-necked, and hypocritical. We can fail to see the beam in our own eye. We can neglect to raise questions of social justice. We can blind ourselves to the close relationship that actually exists between, on the one hand, behavioral pathology in the so-called urban underclass of our country and, on the other hand, society-wide factors — like our greed-driven economy, our worship of the self, our endemic culture of materialism, our vacuous political discourses, our declining civic engagement, and our aversion to sacrificing private gain on behalf of much needed social investments. We can fail to see, in other words, that the problems of the so-called underclass — to which we have reacted with a massive, coercive mobilization — are but an expression, at the bottom of the social hierarchy, of a more profound and widespread moral deviance — one involving all of us.

Taking this position does not make me a moral relativist. I merely hold that, when thinking about the lives of the disadvantaged in our society, the fundamental premise that should guide us is that we are all in this together. *Those* people languishing in the corners of our society are *our* people — they are *us* — whatever may be their race, creed, or country of origin, whether they be the crack-addicted, the HIV-infected, the mentally ill homeless, the juvenile drug sellers, or worse. Whatever the malady, and whatever the offense, we're all in the same fix. We're all in this thing together.

Just look at what we have wrought. We Americans have established what, to many an outside observer, looks like a system of racial caste in the center of our great cities. I refer here to millions of stigmatized, feared, and invisible people. The extent of disparity in the opportunity to achieve their full human potential, as between the children of the middle class and the children of the disadvantaged — a disparity that one takes for granted in America — is virtually unrivaled elsewhere in the industrial, advanced, civilized, free world.

Yet too many Americans have concluded, in effect, that those languishing at the margins of our society are simply reaping what they have sown. Their suffering is seen as having nothing to do with us — as not being evidence of systemic failures that can be corrected through collective action. Thus, as I noted, we have given up on the ideal of rehabilitating criminals, and have settled for simply warehousing them. Thus we accept — despite

much rhetoric to the contrary — that it is virtually impossible effectively to educate the children of the poor. Despite the best efforts of good people and progressive institutions — despite the encouraging signs of moral engagement with these issues that I have seen in my students over the years, and that give me hope — despite these things, it remains the case that, speaking of the country as a whole, there is no broadly based demand for reform, no sense of moral outrage, no anguished self-criticism, no public reflection in the face of this massive, collective failure.

The core of the problem is that the socially marginal are not seen as belonging to the same general public body as the rest of us. It therefore becomes impossible to do just about anything with them. At least implicitly, our political community acts as though some are different from the rest and, because of their culture — because of their bad values, their self-destructive behavior, their malfeasance, their criminality, their lack of responsibility, their unwillingness to engage in hard work — they *deserve* their fate.

But this is quite wrongheaded. What we Americans fail to recognize — not merely as individuals, I stress, but as a political community — is that these ghetto enclaves and marginal spaces of our cities, which are the source of most prison inmates, are products of our own making: Precisely because we do not want those people near us, we have structured the space in our urban environment so as to keep *them* away from *us*. Then, when they fester in their isolation and their marginality, we hypocritically point a finger, saying in effect: “Look at those people. They threaten to the civilized body. They must therefore be expelled, imprisoned, controlled.” It is not *we* who must take social responsibility to reform our institutions but, rather, it is *they* who need to take personal responsibility for their wrongful acts. It is not we who must set our *collective* affairs aright, but they who must get their *individual* acts together. This posture, I suggest, is inconsistent with the attainment of a just distribution of benefits and burdens in society.

Civic inclusion has been the historical imperative in Western political life for 150 years. And yet — despite our self-declared status as a light unto the nations, as a beacon of hope to freedom-loving peoples everywhere — despite these lofty proclamations, which were belied by images from the rooftops in flooded New Orleans in September 2005, and are contradicted by our overcrowded prisons — the fact is that this historical project of civic inclusion is woefully incomplete in these United States.

At every step of the way, reactionary political forces have declared the futility of pursuing civic inclusion. Yet, in every instance, these forces have been proven wrong. At one time or another, they have derided the inclusion of women, landless peasants, former serfs and slaves, or immigrants more fully in the civic body. Extending to them the franchise, educating their children, providing health and social welfare to them has always been controversial. But this has been the direction in which the self-declared “civilized” and wealthy nations have been steadily moving since Bismarck, since the revolutions of 1848 and 1870, since the American Civil War with its Reconstruction Amendments, since the Progressive Era and through the New Deal on to the Great Society. This is why we have a progressive federal income tax and an estate tax in this country, why we feed, clothe and house the needy, why we (used to) worry about

investing in our cities' infrastructure, and in the human capital of our people. What the brutal facts about punishment in today's America show is that *this American project of civic inclusion remains incomplete*. Nowhere is that incompleteness more evident than in the prisons and jails of America. And this as yet unfulfilled promise of American democracy reveals a yawning chasm between an ugly and uniquely American reality, and our nation's exalted image of herself.

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