

A Nation of Jailers? Race, Incarceration and the Quality of American Democracy

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(This is a rough and incomplete draft!)

I am a social scientist, and we are here to discuss criminal justice policy. I fear, therefore, that I will need to proceed with caution!

Why this trepidation? Well, the proper role for the social scientist in discussions of social policy is not self-evident, because the most challenging public policy problems are never merely technical. To rightly decide about how to govern ourselves we must confront questions of ethics and values. Paraphrasing a well-known politician, that sort of value-based discussion is typically taken to be above the pay grade of a mere social scientist!

There's a good reason for that. Policy talk is not only *instrumental*. It is also *expressive* and *constitutive*. A nation's history and its political culture matter. Constitutive public discourse asks and answers the question: what manner of people are we? It promotes (or retards) the framing of key ethical judgments by the citizenry. It sets an agenda for public action, marks-out boundaries between civic and communal responsibility and (implicitly) conveys a narrative about the nation's history, thereby establishing the significance of that history for the present-day agenda of public action. What vision should we affirm with our policies? What example would we set before the world, and before our children? These are not scientific questions. They cannot be answered by consulting the data. Still, such questions must be asked – and answered – if we are to govern ourselves in a reflective and not merely a visceral manner. And so, warily, and with due humility, I proceed in this vein.

Now, among the preeminent moral challenges of our time is the fact that incarceration on a massive scale has become a central component of social policy in the United States. The plain fact is that America's prison system has grown into a leviathan unmatched in human history. The data, which I have just sketchily reviewed, are well known and not in dispute: an unprecedented expansion and transformation of penal institutions in the United States has occurred over the past four decades. By any measure we are a vastly more punitive society now than we were in 1970.

Put directly and without benefit of euphemism, America has become a nation of jailers – and, I will go on to suggest here, racist jailers at that.

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 black urban poor because I have lived among them – because I am related to them by the bonds of social and psychic affiliation. As it happens, I have myself passed through the courtroom, even 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 in such matters to the false pretense of clinical detachment and scientific objectivity. Since 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 that 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 an irrelevancy 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 can be 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 the evening news, or open a magazine, or listen carefully to the rhetoric of any 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 among law-breakers or in the population at large or, to racially defined and historically marginalized groups.

Why should this be so? And, more crucially, how can those charged with the supervision of our penal apparatus sleep well at night knowing that it is so?

This is a circumstance that I wish here to decry. But, of course, it is not enough simply to complain. Still, these developments *should* be deeply troubling to anyone who professes to love liberty. After all, here we Americans are – with great armies marching abroad under a figurative banner that reads FREEDOM – and yet, we are home to the largest custodial infrastructure for the mass deprivation of liberty on the planet. As we have just seen, other industrial, democratic societies, some with diverse populations and big crime problems of their own, are less punitive than we by an order of magnitude. Moreover, as the data we have just reviewed clearly indicate, the demographic profile of prisoners in the U.S. is highly skewed. Most are young, male, poorly educated and members of racial minority groups. Though only one-fourth of the population, blacks and Hispanics account for roughly two-thirds of all inmates. This racial disparity in imprisonment exceeds that to be found in any other arena of American social life. As sociologist Bruce Western documents, more black male high school dropouts are in prison than belong to unions or are enrolled in any state or federal social welfare programs. Here is the brutal fact of the matter: for poorly educated young adult black and Hispanic men, coercion is the most salient feature of their encounters with the state. This is not merely law enforcement policy – not simply a matter of catching ‘bad guys’ and locking them up. This is also social policy, writ large. And, no other nation in the world does it quite like we do. Why, we must ask ourselves, is the United States of America such an international outlier? Why?

Now, science may be necessary to understanding and evaluating this situation, but it is certain to be insufficient. Thus, consider that a comprehensive cost-benefit analysis of our world-historic prison build-up over the past 35 years would have to specify how one reckons in that calculation the pain being imposed on the persons imprisoned and, crucially, the pain imposed on those to whom offenders are connected by bonds of social and psychic affiliation. Valuing this aspect of policy is, to my mind, a salient ethical issue. And yet, by omitting a consideration of such ‘collateral damage’ from their calculations, most studies of the ‘rationality’ of our current system are implicitly discounting the humanity of the thieves, drug sellers, prostitutes, rapists and, yes, of those whom we would unceremoniously put to death. Clearly, deciding what weight – if any – to put on a “thug's” wellbeing, or on that of his wife or his daughter and son, is not a scientific question. Nor can Science tell us how much additional cost borne by the offending classes can be justified in order to obtain a given increment in security of life and property – or just in peace of mind – for the rest of us. Thus, there are fundamental limitations on the extent to which our social scientific analyses can identify the ideal shape which our institutions should take, and we ought never to lose sight of this fact.

With this lecture I will try to go beyond Science, venturing out onto the proverbial limb, to suggest that the racial disparity in the incidence of punishment in America, when viewed in proper historical context, is patently unjust; that it diminishes the legitimacy of our institutions of order maintenance in the eyes of many citizens; and that, given our tortured racial history, and in light of the harm that punishment on such a scale inflicts upon the communities from which most offenders come and to which they inevitably return, it is a predictable outcome that critics have come to see America's punitive social policies as bordering on the barbaric. Put plainly and with no benefit of euphemism, we have become a society which fosters 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.

By rounding up—and locking down—so many millions, we Americans have not merely been meting out to “bad actors” their justice deserts. Let's admit it: we have also, through this unprecedented transformation of punishment policy over the past four decades wanted, to ‘send a message’. And we've done just that – with a vengeance. Yet, along the way we've also provided an answer for the question: Who is to blame for the maladies besetting our troubled civilization? We have put a face on a domestic enemy. We have constructed a narrative, created scapegoats, assuaged our fears and indulged our need to feel virtuous. In effect, we have met the enemy and the enemy, in the now familiar caricature, is THEM – a bunch of anomic, menacing, morally deviant “thugs.”

Now, can we please be honest about this: In the midst of such dramaturgy – unavoidably so in the United States of America – there invariably lurks a potent racial subplot.

Forgive me, because I know it is controversial and unfashionable to say that kind of thing in this post-racial age of Obama, but I am afraid I must insist on this point: Whatever may be the skin color of a President or an Attorney General of the United States, it remains the case that, as a political, cultural and historical matter, the element of race is critical for an understanding and evaluation of today's punishment regime. Sure, African slavery ended long ago. But, it is also true that the habituated social practice and ideology of racial subordination, which accompanied the institution of African slavery, has cast quite a long shadow. Historians and political scientists have argued, persuasively to my mind, that our unlovely history is not unrelated to the current situation – either as a matter of historical causation – because the structure of our cities, with their massive racial ghettos, is implicated in the production of deviancy amongst those living their; or as a matter of ethical evaluation – because the decency of our institutions depends on the extent to which they comport with a narrative of national purpose that acknowledges and seeks to limit and to reverse the consequences of history's wrongs.

Indeed, I have been forced by recent developments to the conclusion that the rise of the mass imprisonment state has opened-up a new front in the historic struggle for racial justice in the US. I make no apology here for linking notions of race and social justice, in the context of discussing crime control policy. It is plausible to claim that the racial disparity in our punishment complex reflects both explicit and tacit racism. Put differently, the emergence of this punishment infrastructure has garnered public support sometimes *because* of, and at other times *despite*, the racial disparity of its incidence. And, whether one wants to call the current system ‘racist’ or not, it is surely arguable that the deeply ingrained practice of managing social dysfunction through imprisonment has now become a principal means by which racial stratification is reproduced.

What does this state of affairs say about our purportedly open and democratic society? What manner of people does our incarceration policy reveal us Americans to be?

Race has not been peripheral to America's evolving social policy in recent decades. It has played a central role according to historians of the American welfare state. Racial attitudes and perceptions often shaped the emergence of the mass incarceration state, and it should be viewed within this broader context: What I'm saying here, not to mince words, is that there is a reason why the US is exceptional among democratic industrial societies in the scope and severity of its punitive policy, and the paucity of its institutions for fostering human development. There is a reason why such social solidarity as we manage to muster seems not to extend into certain societal backwaters -- why; that is, our inclination toward forgiveness for the violators of our behavioral strictures is so stunted; why our political discourses are so bereft of reflexive self-examination and searching societal criticism. These phenomena, I am convinced, have a great deal to do with the fact that --borrowing Derrick Bell's phrase -- "the faces at the bottom of the well" in American society are, in vastly disproportionate numbers, black and brown faces. In effect, these people are not seen as belonging to the same general public body as the rest of us. It has become possible, therefore, to do just about anything with them.

I wish, with the observations that follows, to suggest that this posture that is inconsistent with the attainment of any distribution of benefits and burdens in society that can rightly be called just.

Here is the Basic Moral Argument I wish to make:

To punish is to undertake a *political* project. Among the most salient things the state can do in a democracy is forcibly to deprive citizens of their liberty. So the punishing of criminals -- necessary for order maintenance and the doing of justice -- should always be undertaken in a manner that comports with our most cherished political values. And yet, there is reason to doubt that current practice meets this test. In particular, it would appear that not enough weight has been given in the formulation of policy to the costs imposed on law-breakers themselves, and on those who are knitted together with them in networks of social and psychic affiliation.

The infrastructure of punishment with which we are now burdened reveals a yawning chasm between an ugly and uniquely American reality, and our nation's exalted image of itself. For, not only has the scope of imprisonment expanded impressively in the U.S. The ideas that underlie the punishing of criminals -- that is, the superstructure of justifications and rationalizations -- have also changed. Rehabilitation is a dead letter; retribution is the thing. We no longer seek to reform or re-direct offenders. We are now content merely to warehouse them. "The prison," writes David Garland, has today become a "reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety." We have elaborated 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. We should be ashamed of ourselves for having done so.

Just look at what we have wrought -- a system of racial caste in the center of our great cities where millions of stigmatized, feared, and invisible people can be found. 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 advanced, civilized, free world. Yet, many Americans have concluded, in effect, that those languishing at the margins of our society are reaping what they have sown. That they suffer is seen to have nothing to do with us -- is not

taken as evidence of systemic failures correctable via public action. 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 and public reflection – in the face of this massive, collective failure.

This punitive turn in our nation's social policy is intimately connected, I would maintain, with a broader public rhetoric about responsibility, dependency, social hygiene, and the reclamation of public order. And the salience of such rhetoric, in turn, can be fully appreciated only when it is 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. As Khalil Muhammad shows in his recently published book, *The Condemnation of Blackness*, 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. 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 21st 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 law-breakers. 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. And, 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?

The core of the problem, I have suggested, is that the socially marginal are not seen as belonging to the same general public body as the rest of us. It becomes possible therefore to do just about anything with them. Our political community acts as though some of us are different from the rest and, because of their culture – because of their bad values, their missing fathers, their poor study habits, 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, because the truth of the matter is that these ghetto enclaves and marginal spaces of our cities, which are the source of most prison inmates – these dysfunctional schools, dangerous public housing projects and abandoned and decaying urban districts – these things 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 would suggest, is inconsistent with the attainment of a just distribution of benefits and burdens in society.

Obviously, I have come here to foist upon you a moral appeal, not to set forth a policy manifesto, at least not at this time. What I aim to do is suggest, in a general way, that we ought to be thinking differently, very differently, about this problem. Public safety is not the only social value. And, locking up “thugs” is not the only way to pursue ‘justice.’ Given our nation’s history and political culture, I am convinced that there are limits, 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 acknowledgement of social responsibility in punishment policy discourses – even for the freely chosen and wrongful acts of individual persons. In suggesting this, I am not making any kind of “root causes” argument – he did the crime, but only because he had no choice. Rather, I argue 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 which shape his consciousness and sense of identity in such a way that the choices he makes, choices which we must condemn, are nevertheless compelling to him.

Here’s a ‘narrative defining’ question for you: Should the racial disparity of punishment in America be understood as an accidental accretion of neutral state action applied to a racially divergent social flux – the chips having fallen as they may, so to speak? Or, alternatively, is this powerfully salient feature of contemporary American social life better understood as the residual effect of our history of enslavement, violent domination, disenfranchisement and discrimination? Is the massive racial inequality in the incidence of punishment in this country a necessary evil, given our need for order maintenance? Or, is it an abhorrent expression of who we Americans

have become as a people at the dawn of the 21st century. I take the latter view. We have inherited a system of racial caste in the center of our great cities, where millions of stigmatized, feared, and invisible people are to be found. And yet, Americans on the whole have concluded, in effect, that those languishing at the margins of our society are simply reaping what they have sown. The scope of their deviance is seen to have nothing to do with us – it is not taken as a systemic failure, entailing social responsibilities, and correctable via public action.

In my view, a pure ethic of *personal responsibility* could never provide an adequate foundation for justifying the current situation. Accordingly, I have set myself the task of trying to shift the public discussion of this problem in the direction of a greater acknowledgement of social responsibility – even for the wrongful acts freely chosen by individual persons. I encourage you to join me in this quest! In pursuing this aim, 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 which shape his consciousness and sense of identity in such a way that the choices he makes, which we must condemn, are nevertheless compelling to him.

This task I have set for myself is, of course, a problem in moral philosophy. As a social scientist I approach this philosophical problem by emphasizing models of social inequality in which closed and bounded structures – like racially homogeneous urban ghettos – create contexts where pathological and dysfunctional cultural forms emerge. However, these forms are not, I stress, intrinsic to the people caught in these structures. Neither are they independent of the behavior of those of us who stand outside of them.

Several years ago, I took time to read some of the non-fiction writings of the great 19th century Russian novelist, Leo Tolstoy. Toward the end of his life he had become an eccentric pacifist and radical Christian critic. I was stunned at the force of his arguments (though, I confess, I was not entirely persuaded on his key point that a true Christian must be absolutely celibate!) What struck me most, however, 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: namely – namely, that 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 mote 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 AIDS-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.

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 roof tops 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.

The futility of pursuing civic inclusion has been declared by reactionary political forces at every step along the way. Yet, in every instance, these forces have been proven wrong. At one time or another, the goal has been derided of including 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 woefully incomplete**. Nowhere is that incompleteness more evident than in the prisons and jails of America. What this means is that American Democracy itself is incomplete. 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.