

3

The New Jim Crow

Mass Incarceration in the
Age of Colorblindness

Revised Edition

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1

The Rebirth of Caste

[T]he slave went free; stood a brief moment in the sun; then moved back again toward slavery.

—W.E.B Du Bois, *Black Reconstruction in America*

For more than one hundred years, scholars have written about the illusory nature of the Emancipation Proclamation. President Abraham Lincoln issued a declaration purporting to free slaves held in Southern Confederate states, but not a single black slave was actually free to walk away from a master in those states as a result. A civil war had to be won first, hundreds of thousands of lives lost, and then—only then—were slaves across the South set free. Even that freedom proved illusory, though. As W.E.B. Du Bois eloquently reminds us, former slaves had “a brief moment in the sun” before they were returned to a status akin to slavery. Constitutional amendments guaranteeing African Americans “equal protection of the laws” and the right to vote proved as impotent as the Emancipation Proclamation once a white backlash against Reconstruction gained steam. Black people found themselves yet again powerless and relegated to convict leasing camps that were, in many ways, worse than slavery. Sunshine gave way to darkness, and the Jim Crow system of segregation emerged—a system that put black people nearly back where they began, in a subordinate racial caste.

Few find it surprising that Jim Crow arose following the collapse of slavery. The development is described in history books as regrettable but predictable, given the virulent racism that gripped the South and the political dynamics

of the time. What is remarkable is that hardly anyone seems to imagine that similar political dynamics may have produced another caste system in the years following the collapse of Jim Crow—one that exists today. The story that is told during Black History Month is one of triumph; the system of racial caste is officially dead and buried. Suggestions to the contrary are frequently met with shocked disbelief. The standard reply is: “How can you say that a racial caste system exists today? Just look at Barack Obama! Just look at Oprah Winfrey!”

The fact that some African Americans have experienced great success in recent years does not mean that something akin to a racial caste system no longer exists. No caste system in the United States has ever governed all black people; there have always been “free blacks” and black success stories, even during slavery and Jim Crow. The superlative nature of individual black achievement today in formerly white domains is a good indicator that the old Jim Crow is dead, but it does not necessarily mean the end of racial caste. If history is any guide, it may have simply taken a different form.

Any candid observer of American racial history must acknowledge that racism is highly adaptable. The rules and reasons the political system employs to enforce status relations of any kind, including racial hierarchy, evolve and change as they are challenged. The valiant efforts to abolish slavery and Jim Crow and to achieve greater racial equality have brought about significant changes in the legal framework of American society—new “rules of the game,” so to speak. These new rules have been justified by new rhetoric, new language, and a new social consensus, while producing many of the same results. This dynamic, which legal scholar Reva Siegel has dubbed “preservation through transformation,” is the process through which white privilege is maintained, though the rules and rhetoric change.¹

This process, though difficult to recognize at any given moment, is easier to see in retrospect. Since the nation’s founding, African Americans repeatedly have been controlled through institutions such as slavery and Jim Crow, which appear to die, but then are reborn in new form, tailored to the needs and constraints of the time. As described in the pages that follow, there is a certain pattern to this cycle. Following the collapse of each system of control, there has been a period of confusion—transition—in which those who are most committed to racial hierarchy search for new means to achieve their goals within the rules of the game as currently defined. It is during this period of uncertainty that the backlash intensifies and a new form of racialized

social control begins to take hold. The adoption of the new system of control is never inevitable, but to date it has never been avoided. The most ardent proponents of racial hierarchy have consistently succeeded in implementing new racial caste systems by triggering a collapse of resistance across the political spectrum. This feat has been achieved largely by appealing to the racism and vulnerability of lower-class whites, a group of people who are understandably eager to ensure that they never find themselves trapped at the bottom of the American hierarchy.

The emergence of each new system of control may seem sudden, but history shows that the seeds are planted long before each new institution begins to grow. For example, although it is common to think of the Jim Crow regime following immediately on the heels of Reconstruction, the truth is more complicated. And while it is generally believed that the backlash against the Civil Rights Movement is defined primarily by the rollback of affirmative action and the undermining of federal civil rights legislation by a hostile judiciary, the seeds of the new system of control—mass incarceration—were planted during the Civil Rights Movement itself, when it became clear that the old caste system was crumbling and a new one would have to take its place.

With each reincarnation of racial caste, the new system, as sociologist Loïc Wacquant puts it, "is less total, less capable of encompassing and controlling the entire race."² However, any notion that this evolution reflects some kind of linear progress would be misguided, for it is not at all obvious that it would be better to be incarcerated for life for a minor drug offense than to live with one's family, earning an honest wage under the Jim Crow regime—notwithstanding the ever-present threat of the Klan. Moreover, as the systems of control have evolved, they have become perfected, arguably more resilient to challenge, and thus capable of enduring for generations to come. The story of the political and economic underpinnings of the nation's founding sheds some light on these recurring themes in our history and the reasons new racial caste systems continue to be born.

The Birth of Slavery

Back there, before Jim Crow, before the invention of the Negro or the white man or the words and concepts to describe them, the Colonial population con-

sisted largely of a great mass of white and black bondsmen, who occupied roughly the same economic category and were treated with equal contempt by the lords of the plantations and legislatures. Curiously unconcerned about their color, these people worked together and relaxed together.³

—Lerone Bennett Jr.

The concept of race is a relatively recent development. Only in the past few centuries, owing largely to European imperialism, have the world's people been classified along racial lines.⁴ Here, in America, the idea of race emerged as a means of reconciling chattel slavery—as well as the extermination of American Indians—with the ideals of freedom preached by whites in the new colonies.

In the early colonial period, when settlements remained relatively small, indentured servitude was the dominant means of securing cheap labor. Under this system, whites and blacks struggled to survive against a common enemy, what historian Lerone Bennett Jr. describes as "the big planter apparatus and a social system that legalized terror against black and white bondsmen."⁵ Initially, blacks brought to this country were not all enslaved; many were treated as indentured servants. As plantation farming expanded, particularly tobacco and cotton farming, demand increased greatly for both labor and land.

The demand for land was met by invading and conquering larger and larger swaths of territory. American Indians became a growing impediment to white European "progress," and during this period, the images of American Indians promoted in books, newspapers, and magazines became increasingly negative. As sociologists Keith Kilty and Eric Swank have observed, eliminating "savagery" is less of a moral problem than eliminating human beings, and therefore American Indians came to be understood as a lesser race—uncivilized savages—thus providing a justification for the extermination of the native peoples.⁶

The growing demand for labor on plantations was met through slavery. American Indians were considered unsuitable as slaves, largely because native tribes were clearly in a position to fight back. The fear of raids by Indian tribes led plantation owners to grasp for an alternative source of free labor. European immigrants were also deemed poor candidates for slavery, not because of their race, but rather because they were in short supply and enslavement would, quite naturally, interfere with voluntary immigration to the

new colonies. Plantation owners thus viewed Africans, who were relatively powerless, as the ideal slaves. The systematic enslavement of Africans, and the rearing of their children under bondage, emerged with all deliberate speed—quicken by events such as Bacon's Rebellion.

Nathaniel Bacon was a white property owner in Jamestown, Virginia, who managed to unite slaves, indentured servants, and poor whites in a revolutionary effort to overthrow the planter elite. Although slaves clearly occupied the lowest position in the social hierarchy and suffered the most under the plantation system, the condition of indentured whites was barely better, and the majority of free whites lived in extreme poverty. As explained by historian Edmund Morgan, in colonies like Virginia, the planter elite, with huge land grants, occupied a vastly superior position to workers of all colors.⁷ Southern colonies did not hesitate to invent ways to extend the terms of servitude, and the planter class accumulated uncultivated lands to restrict the options of free workers. The simmering resentment against the planter class created conditions that were ripe for revolt.

Varying accounts of Bacon's rebellion abound, but the basic facts are these: Bacon developed plans in 1675 to seize Native American lands in order to acquire more property for himself and others and nullify the threat of Indian raids. When the planter elite in Virginia refused to provide militia support for his scheme, Bacon retaliated, leading an attack on the elite, their homes, and their property. He openly condemned the rich for their oppression of the poor and inspired an alliance of white and black bond laborers, as well as slaves, who demanded an end to their servitude. The attempted revolution was ended by force and false promises of amnesty. A number of the people who participated in the revolt were hanged. The events in Jamestown were alarming to the planter elite, who were deeply fearful of the multiracial alliance of bond workers and slaves. Word of Bacon's Rebellion spread far and wide, and several more uprisings of a similar type followed.

In an effort to protect their superior status and economic position, the planters shifted their strategy for maintaining dominance. They abandoned their heavy reliance on indentured servants in favor of the importation of more black slaves. Instead of importing English-speaking slaves from the West Indies, who were more likely to be familiar with European language and culture, many more slaves were shipped directly from Africa. These slaves would be far easier to control and far less likely to form alliances with poor whites.

Fearful that such measures might not be sufficient to protect their interests, the planter class took an additional precautionary step, a step that would later come to be known as a "racial bribe." Deliberately and strategically, the planter class extended special privileges to poor whites in an effort to drive a wedge between them and black slaves. White settlers were allowed greater access to Native American lands, white servants were allowed to police slaves through slave patrols and militias, and barriers were created so that free labor would not be placed in competition with slave labor. These measures effectively eliminated the risk of future alliances between black slaves and poor whites. Poor whites suddenly had a direct, personal stake in the existence of a race-based system of slavery. Their own plight had not improved by much, but at least they were not slaves. Once the planter elite split the labor force, poor whites responded to the logic of their situation and sought ways to expand their racially privileged position.⁸

By the mid-1770s, the system of bond labor had been thoroughly transformed into a racial caste system predicated on slavery. The degraded status of Africans was justified on the ground that Negroes, like the Indians, were an uncivilized lesser race, perhaps even more lacking in intelligence and laudable human qualities than the red-skinned natives. The notion of white supremacy rationalized the enslavement of Africans, even as whites endeavored to form a new nation based on the ideals of equality, liberty, and justice for all. Before democracy, chattel slavery in America was born.

It may be impossible to overstate the significance of race in defining the basic structure of American society. The structure and content of the original Constitution was based largely on the effort to preserve a racial caste system—slavery—while at the same time affording political and economic rights to whites, especially propertied whites. The Southern slaveholding colonies would agree to form a union only on the condition that the federal government would not be able to interfere with the right to own slaves. Northern white elites were sympathetic to the demand for their "property rights" to be respected, as they, too, wanted the Constitution to protect their property interests. As James Madison put it, the nation ought to be constituted "to protect the minority of the opulent against the majority."⁹ Consequently, the Constitution was designed so the federal government would be weak, not only in its relationship to private property, but also in relationship to the rights of states to conduct their own affairs. The language of the Constitution itself was deliberately colorblind (the words *slave* or *Negro* were

never used), but the document was built upon a compromise regarding the prevailing racial caste system. Federalism—the division of power between the states and the federal government—was the device employed to protect the institution of slavery and the political power of slaveholding states. Even the method for determining proportional representation in Congress and identifying the winner of a presidential election (the electoral college) were specifically developed with the interest of slaveholders in mind. Under the terms of our country's founding document, slaves were defined as three-fifths of a man, not a real, whole human being. Upon this racist fiction rests the entire structure of American democracy.

The Death of Slavery

The history of racial caste in the United States would end with the Civil War if the idea of race and racial difference had died when the institution of slavery was put to rest. But during the four centuries in which slavery flourished, the idea of race flourished as well. Indeed, the notion of racial difference—specifically the notion of white supremacy—proved far more durable than the institution that gave birth to it.

White supremacy, over time, became a religion of sorts. Faith in the idea that people of the African race were bestial, that whites were inherently superior, and that slavery was, in fact, for blacks' own good, served to alleviate the white conscience and reconcile the tension between slavery and the democratic ideals espoused by whites in the so-called New World. There was no contradiction in the bold claim made by Thomas Jefferson in the Declaration of Independence that "all men are created equal" if Africans were not really people. Racism operated as a deeply held belief system based on "truths" beyond question or doubt. This deep faith in white supremacy not only justified an economic and political system in which plantation owners acquired land and great wealth through the brutality, torture, and coercion of other human beings; it also endured, like most articles of faith, long after the historical circumstances that gave rise to the religion passed away. In Wacquant's words: "Racial division was a consequence, not a precondition of slavery, but once it was instituted it became detached from its initial function and acquired a social potency all its own."¹⁰ After the death of slavery, the idea of race lived on.

One of the most compelling accounts of the postemancipation period is *The Strange Career of Jim Crow*, written by C. Vann Woodward in 1955.¹¹ The book continues to be the focal point of study and debate by scholars and was once described by Martin Luther King Jr. as the "historical bible of the Civil Rights Movement." As Woodward tells the story, the end of slavery created an extraordinary dilemma for Southern white society. Without the labor of former slaves, the region's economy would surely collapse, and without the institution of slavery, there was no longer a formal mechanism for maintaining racial hierarchy and preventing "amalgamation" with a group of people considered intrinsically inferior and vile. This state of affairs produced a temporary anarchy and a state of mind bordering on hysteria, particularly among the planter elite. But even among poor whites, the collapse of slavery was a bitter pill. In the antebellum South, the lowliest white person at least possessed his or her white skin—a badge of superiority over even the most skilled slave or prosperous free African American.

While Southern whites—poor and rich alike—were utterly outraged by emancipation, there was no obvious solution to the dilemma they faced. Following the Civil War, the economic and political infrastructure of the South was in shambles. Plantation owners were suddenly destitute, and state governments, shackled by war debt, were penniless. Large amounts of real estate and other property had been destroyed in the war, industry was disorganized, and hundreds of thousands of men had been killed or maimed. With all of this went the demoralizing effect of an unsuccessful war and the extraordinary challenges associated with rebuilding new state and local governments. Add to all this the sudden presence of 4 million newly freed slaves, and the picture becomes even more complicated. Southern whites, Woodward explains, strongly believed that a new system of racial control was clearly required, but it was not immediately obvious what form it should take.

Under slavery, the racial order was most effectively maintained by a large degree of contact between slave owners and slaves, thus maximizing opportunities for supervision and discipline, and minimizing the potential for active resistance or rebellion. Strict separation of the races would have threatened slaveholders' immediate interests and was, in any event, wholly unnecessary as a means of creating social distance or establishing the inferior status of slaves.

Following the Civil War, it was unclear what institutions, laws, or customs would be necessary to maintain white control now that slavery was gone.

Nonetheless, as numerous historians have shown, the development of a new racial order became the consuming passion for most white Southerners. Rumors of a great insurrection terrified whites, and blacks increasingly came to be viewed as menacing and dangerous. In fact, the current stereotypes of black men as aggressive, unruly predators can be traced to this period, when whites feared that an angry mass of black men might rise up and attack them or rape their women.

Equally worrisome was the state of the economy. Former slaves literally walked away from their plantations, causing panic and outrage among plantation owners. Large numbers of former slaves roamed the highways in the early years after the war. Some converged on towns and cities; others joined the federal militia. Most white people believed African Americans lacked the proper motivation to work, prompting the provisional Southern legislatures to adopt the notorious black codes. As expressed by one Alabama planter: "We have the power to pass stringent police laws to govern the Negroes—this is a blessing—for they must be controlled in some way or white people cannot live among them."¹² While some of these codes were intended to establish systems of peonage resembling slavery, others foreshadowed Jim Crow laws by prohibiting, among other things, interracial seating in the first-class sections of railroad cars and by segregating schools.

Although the convict laws enacted during this period are rarely seen as part of the black codes, that is a mistake. As explained by historian William Cohen, "the main purpose of the codes was to control the freedmen, and the question of how to handle convicted black law breakers was very much at the center of the control issue."¹³ Nine Southern states adopted vagrancy laws—which essentially made it a criminal offense not to work and were applied selectively to blacks—and eight of those states enacted convict laws allowing for the hiring-out of county prisoners to plantation owners and private companies. Prisoners were forced to work for little or no pay. One vagrancy act specifically provided that "all free negroes and mulattoes over the age of eighteen" must have written proof of a job at the beginning of every year. Those found with no lawful employment were deemed vagrants and convicted. Clearly, the purpose of the black codes in general and the vagrancy laws in particular was to establish another system of forced labor. In W.E.B. Du Bois's words: "The Codes spoke for themselves. . . . No open-minded student can read them without being convinced they meant nothing more nor less than slavery in daily toil."¹⁴

Ultimately, the black codes were overturned, and a slew of federal civil rights legislation protecting the newly freed slaves was passed during the relatively brief but extraordinary period of black advancement known as the Reconstruction Era. The impressive legislative achievements of this period include the Thirteenth Amendment, abolishing slavery; the Civil Rights Act of 1866, bestowing full citizenship upon African Americans; the Fourteenth Amendment, prohibiting states from denying citizens due process and "equal protection of the laws"; the Fifteenth Amendment, providing that the right to vote should not be denied on account of race; and the Ku Klux Klan Acts, which, among other things, declared interference with voting a federal offense and the violent infringement of civil rights a crime. The new legislation also provided for federal supervision of voting and authorized the president to send the army and suspend the writ of habeas corpus in districts declared to be in a state of insurrection against the federal government.

In addition to federal civil rights legislation, the Reconstruction Era brought the expansion of the Freedmen's Bureau, the agency charged with the responsibility of providing food, clothing, fuel, and other forms of assistance to destitute former slaves. A public education system emerged in the South, which afforded many blacks (and poor whites) their first opportunity to learn to read and write.

While the Reconstruction Era was fraught with corruption and arguably doomed by the lack of land reform, the sweeping economic and political developments in that period did appear, at least for a time, to have the potential to seriously undermine, if not completely eradicate, the racial caste system in the South. With the protection of federal troops, African Americans began to vote in large numbers and seize control, in some areas, of the local political apparatus. Literacy rates climbed, and educated blacks began to populate legislatures, open schools, and initiate successful businesses. In 1867, at the dawn of the Reconstruction Era, no black man held political office in the South, yet three years later, at least 15 percent of all Southern elected officials were black. This is particularly extraordinary in light of the fact that fifteen years after the passage of the Voting Rights Act of 1965—the high water mark of the Civil Rights Movement—fewer than 8 percent of all Southern elected officials were black.¹⁵

At the same time, however, many of the new civil rights laws were proving largely symbolic.¹⁶ Notably absent from the Fifteenth Amendment, for example, was language prohibiting the states from imposing educational,

residential, or other qualifications for voting, thus leaving the door open to the states to impose poll taxes, literacy tests, and other devices to prevent blacks from voting. Other laws revealed themselves as more an assertion of principle than direct federal intervention into Southern affairs, because enforcement required African Americans to take their cases to federal courts, a costly and time-consuming procedure that was a practical impossibility for the vast majority of those who had claims. Most blacks were too poor to sue to enforce their civil rights, and no organization like the NAACP yet existed to spread the risks and costs of litigation. Moreover, the threat of violence often deterred blacks from pressing legitimate claims, making the "civil rights" of former slaves largely illusory—existing on paper but rarely to be found in real life.

Meanwhile, the separation of the races had begun to emerge as a comprehensive pattern throughout the South, driven in large part by the rhetoric of the planter elite, who hoped to reestablish a system of control that would ensure a low-paid, submissive labor force. Racial segregation had actually begun years earlier in the North, as an effort to prevent race-mixing and preserve racial hierarchy following the abolition of Northern slavery. It had never developed, however, into a comprehensive system—operating instead largely as a matter of custom, enforced with varying degrees of consistency. Even among those most hostile to Reconstruction, few would have predicted that racial segregation would soon evolve into a new racial caste system as stunningly comprehensive and repressive as the one that came to be known simply as Jim Crow.

The Birth of Jim Crow

The backlash against the gains of African Americans in the Reconstruction Era was swift and severe. As African Americans obtained political power and began the long march toward greater social and economic equality, whites reacted with panic and outrage. Southern conservatives vowed to reverse Reconstruction and sought the "abolition of the Freedmen's Bureau and all political instrumentalities designed to secure Negro supremacy."¹⁷ Their campaign to "redeem" the South was reinforced by a resurgent Ku Klux Klan, which fought a terrorist campaign against Reconstruction governments and local leaders, complete with bombings, lynchings, and mob violence.

The terrorist campaign proved highly successful. "Redemption" resulted in the withdrawal of federal troops from the South and the effective abandonment of African Americans and all those who had fought for or supported an egalitarian racial order. The federal government no longer made any effort to enforce federal civil rights legislation, and funding for the Freedmen's Bureau was slashed to such a degree that the agency became virtually defunct.

Once again, vagrancy laws and other laws defining activities such as "mischief" and "insulting gestures" as crimes were enforced vigorously against blacks. The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder. Douglas Blackmon, in *Slavery by Another Name*, describes how tens of thousands of African Americans were arbitrarily arrested during this period, many of them hit with court costs and fines, which had to be worked off in order to secure their release.¹⁸ With no means to pay off their "debts," prisoners were sold as forced laborers to lumber camps, brickyards, railroads, farms, plantations, and dozens of corporations throughout the South. Death rates were shockingly high, for the private contractors had no interest in the health and well-being of their laborers, unlike the earlier slave-owners who needed their slaves, at a minimum, to be healthy enough to survive hard labor. Laborers were subject to almost continual lashing by long horse whips, and those who collapsed due to injuries or exhaustion were often left to die.

Convicts had no meaningful legal rights at this time and no effective redress. They were understood, quite literally, to be slaves of the state. The Thirteenth Amendment to the U.S. Constitution had abolished slavery but allowed one major exception: slavery remained appropriate as punishment for a crime. In a landmark decision by the Virginia Supreme Court, *Ruffin v. Commonwealth*, issued at the height of Southern Redemption, the court put to rest any notion that convicts were legally distinguishable from slaves:

For a time, during his service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is *civilitur mortuus*; and his estate, if he has any, is administered like that of a dead man.¹⁹

The state of Mississippi eventually moved from hiring convict labor to organizing its own convict labor camp, known as Parchman Farm. It was not alone. During the decade following Redemption, the convict population grew ten times faster than the general population: "Prisoners became younger and blacker, and the length of their sentences soared."²⁰ It was the nation's first prison boom and, as they are today, the prisoners were disproportionately black. After a brief period of progress during Reconstruction, African Americans found themselves, once again, virtually defenseless. The criminal justice system was strategically employed to force African Americans back into a system of extreme repression and control, a tactic that would continue to prove successful for generations to come. Even as convict leasing faded away, strategic forms of exploitation and repression emerged anew. As Blackmon notes: "The apparent demise . . . of leasing prisoners seemed a harbinger of a new day. But the harsher reality of the South was that the new post-Civil War neoslavery was evolving—not disappearing."²¹

Redemption marked a turning point in the quest by dominant whites for a new racial equilibrium, a racial order that would protect their economic, political, and social interests in a world without slavery. Yet a clear consensus among whites about what the new racial order should be was still lacking. The Redeemers who overthrew Reconstruction were inclined to retain such segregation practices as had already emerged, but they displayed no apparent disposition to expand or universalize the system.

Three alternative philosophies of race relations were put forward to compete for the region's support, all of which rejected the doctrines of extreme racism espoused by some Redeemers: liberalism, conservatism, and radicalism.²² The liberal philosophy of race relations emphasized the stigma of segregation and the hypocrisy of a government that celebrates freedom and equality yet denies both on account of race. This philosophy, born in the North, never gained much traction among Southern whites or blacks.

The conservative philosophy, by contrast, attracted wide support and was implemented in various contexts over a considerable period of time. Conservatives blamed liberals for pushing blacks ahead of their proper station in life and placing blacks in positions they were unprepared to fill, a circumstance that had allegedly contributed to their downfall. They warned blacks that some Redeemers were not satisfied with having decimated Reconstruction, and were prepared to wage an aggressive war against blacks throughout

the South. With some success, the conservatives reached out to African American voters, reminding them that they had something to lose as well as gain and that the liberals' preoccupation with political and economic equality presented the danger of losing all that blacks had so far gained.

The radical philosophy offered, for many African Americans, the most promise. It was predicated on a searing critique of large corporations, particularly railroads, and the wealthy elite in the North and South. The radicals of the late nineteenth century, who later formed the Populist Party, viewed the privileged classes as conspiring to keep poor whites and blacks locked into a subordinate political and economic position. For many African American voters, the Populist approach was preferable to the paternalism of liberals. Populists preached an "equalitarianism of want and poverty, the kinship of a common grievance, and a common oppressor."²³ As described by Tom Watson, a prominent Populist leader, in a speech advocating a union between black and white farmers: "You are kept apart that you may be separately fleeced of your earnings. You are made to hate each other because upon that hatred is rested the keystone of the arch of financial despotism that enslaves you both. You are deceived and blinded that you may not see how this race antagonism perpetuates a monetary system which beggars both."²⁴

In an effort to demonstrate their commitment to a genuinely multiracial, working-class movement against white elites, the Populists made strides toward racial integration, a symbol of their commitment to class-based unity. African Americans throughout the South responded with great hope and enthusiasm, eager to be true partners in a struggle for social justice. According to Woodward, "It is altogether probable that during the brief Populist upheaval in the nineties Negroes and native whites achieved a greater comity of mind and harmony of political purpose than ever before or since in the South."²⁵

The challenges inherent in creating the alliance sought by the Populists were formidable, as race prejudice ran the highest among the very white populations to which the Populist appeal was specifically addressed—the depressed lower economic classes. Nevertheless, the Populist movement initially enjoyed remarkable success in the South, fueled by a wave of discontent aroused by the severe agrarian depression of the 1880s and 1890s. The Populists took direct aim at the conservatives, who were known as comprising a party of privilege, and they achieved a stunning series of political

victories throughout the region. Alarmed by the success of the Populists and the apparent potency of the alliance between poor and working-class whites and African Americans, the conservatives raised the cry of white supremacy and resorted to the tactics they had employed in their quest for Redemption, including fraud, intimidation, bribery, and terror.

Segregation laws were proposed as part of a deliberate effort to drive a wedge between poor whites and African Americans. These discriminatory barriers were designed to encourage lower-class whites to retain a sense of superiority over blacks, making it far less likely that they would sustain interracial political alliances aimed at toppling the white elite. The laws were, in effect, another racial bribe. As William Julius Wilson has noted, "As long as poor whites directed their hatred and frustration against the black competitor, the planters were relieved of class hostility directed against them."²⁶ Indeed, in order to overcome the well-founded suspicions of poor and illiterate whites that they, as well as blacks, were in danger of losing the right to vote, the leaders of the movement pursued an aggressive campaign of white supremacy in every state prior to black disenfranchisement.

Ultimately, the Populists caved to the pressure and abandoned their former allies. "While the [Populist] movement was at the peak of zeal," Woodward observed, "the two races had surprised each other and astonished their opponents by the harmony they achieved and the good will with which they co-operated."²⁷ But when it became clear that the conservatives would stop at nothing to decimate their alliance, the biracial partnership dissolved, and Populist leaders re-aligned themselves with conservatives. Even Tom Watson, who had been among the most forceful advocates for an interracial alliance of farmers, concluded that Populist principles could never be fully embraced by the South until blacks were eliminated from politics.

The agricultural depression, taken together with a series of failed reforms and broken political promises, had pyramided to a climax of social tensions. Dominant whites concluded that it was in their political and economic interest to scapegoat blacks, and "permission to hate" came from sources that had formerly denied it, including Northern liberals eager to reconcile with the South, Southern conservatives who had once promised blacks protection from racial extremism, and Populists, who cast aside their dark-skinned allies when the partnership fell under siege.²⁸

History seemed to repeat itself. Just as the white elite had successfully driven a wedge between poor whites and blacks following Bacon's Rebellion

by creating the institution of black slavery, another racial caste system was emerging nearly two centuries later, in part due to efforts by white elites to decimate a multiracial alliance of poor people. By the turn of the twentieth century, every state in the South had laws on the books that disenfranchised blacks and discriminated against them in virtually every sphere of life, lending sanction to a racial ostracism that extended to schools, churches, housing, jobs, restrooms, hotels, restaurants, hospitals, orphanages, prisons, funeral homes, morgues, and cemeteries. Politicians competed with each other by proposing and passing ever more stringent, oppressive, and downright ridiculous legislation (such as laws specifically prohibiting blacks and whites from playing chess together). The public symbols and constant reminders of black subjugation were supported by whites across the political spectrum, though the plight of poor whites remained largely unchanged. For them, the racial bribe was primarily psychological.

The new racial order, known as Jim Crow—a term apparently derived from a minstrel show character—was regarded as the "final settlement," the "return to sanity," and "the permanent system."²⁹ Of course, the earlier system of racialized social control—slavery—had also been regarded as final, sane, and permanent by its supporters. Like the earlier system, Jim Crow seemed "natural," and it became difficult to remember that alternative paths were not only available at one time, but nearly embraced.

The Death of Jim Crow

Scholars have long debated the beginning and end of Reconstruction, as well as exactly when Jim Crow ended and the Civil Rights Movement or "Second Reconstruction" began. Reconstruction is most typically described as stretching from 1863 when the North freed the slaves to 1877, when it abandoned them and withdrew federal troops from the South. There is much less certainty regarding the beginning of the end of Jim Crow.

The general public typically traces the death of Jim Crow to *Brown v. Board of Education*, although the institution was showing signs of weakness years before. By 1945, a growing number of whites in the North had concluded that the Jim Crow system would have to be modified, if not entirely overthrown. This consensus was due to a number of factors, including the increased political power of blacks due to migration to the North and the

growing membership and influence of the NAACP, particularly its highly successful legal campaign challenging Jim Crow laws in federal courts. Far more important in the view of many scholars, however, is the influence of World War II. The blatant contradiction between the country's opposition to the crimes of the Third Reich against European Jews and the continued existence of a racial caste system in the United States was proving embarrassing, severely damaging the nation's credibility as leader of the "free world." There was also increased concern that, without greater equality for African Americans, blacks would become susceptible to communist influence, given Russia's commitment to both racial and economic equality. In Gunnar Myrdal's highly influential book *The American Dilemma*, published in 1944, Myrdal made a passionate plea for integration based on the theory that the inherent contradiction between the "American Creed" of freedom and equality and the treatment of African Americans was not only immoral and profoundly unjust, but was also against the economic and foreign-policy interests of the United States.³⁰

The Supreme Court seemed to agree. In 1944, in *Smith v. Allwright*, the Supreme Court ended the use of the all-white primary election; and in 1946, the Court ruled that state laws requiring segregation on interstate buses were unconstitutional. Two years later, the Court voided any real estate agreements that racially discriminated against purchasers, and in 1949 the Court ruled that Texas's segregated law school for blacks was inherently unequal and inferior in every respect to its law school for whites. In 1950, in *McLaurin v. Oklahoma*, it declared that Oklahoma had to desegregate its law school. Thus, even before *Brown*, the Supreme Court had already begun to set in motion a striking pattern of desegregation.

Brown v. Board of Education was unique, however. It signaled the end of "home rule" in the South with respect to racial affairs. Earlier decisions had chipped away at the "separate but equal" doctrine, yet Jim Crow had managed to adapt to the changing legal environment, and most Southerners had remained confident that the institution would survive. *Brown* threatened not only to abolish segregation in public schools, but also, by implication, the entire system of legalized discrimination in the South. After more than fifty years of nearly complete deference to Southern states and noninterference in their racial affairs, *Brown* suggested a reversal in course.

A mood of outrage and defiance swept the South, not unlike the reaction to emancipation and Reconstruction following the Civil War. Again, racial

equality was being forced upon the South by the federal government, and by 1956 Southern white opposition to desegregation mushroomed into a vicious backlash. In Congress, North Carolina senator Sam Erwin Jr. drafted a racist polemic, "the Southern Manifesto," which vowed to fight to maintain Jim Crow by all legal means. Erwin succeeded in obtaining the support of 101 out of 128 members of Congress from the eleven original Confederate states.

A fresh wave of white terror was hurled at those who supported the dismantling of Jim Crow. White Citizens' Councils were formed in almost every Southern city and backwater town, comprised primarily of middle- to upper-middle-class whites in business and the clergy. Just as Southern legislatures had passed the black codes in response to the early steps of Reconstruction, in the years immediately following *Brown v. Board*, five Southern legislatures passed nearly fifty new Jim Crow laws. In the streets, resistance turned violent. The Ku Klux Klan reasserted itself as a powerful terrorist organization, committing castrations, killings, and the bombing of black homes and churches. NAACP leaders were beaten, pistol-whipped, and shot. As quickly as it began, desegregation across the South ground to a halt. In 1958, thirteen school systems were desegregated; in 1960, only seventeen.³¹

In the absence of a massive, grassroots movement directly challenging the racial caste system, Jim Crow might be alive and well today. Yet in the 1950s, a civil rights movement was brewing, emboldened by the Supreme Court's decisions and a shifting domestic and international political environment. With extraordinary bravery, civil rights leaders, activists, and progressive clergy launched boycotts, marches, and sit-ins protesting the Jim Crow system. They endured fire hoses, police dogs, bombings, and beatings by white mobs, as well as by the police. Once again, federal troops were sent to the South to provide protection for blacks attempting to exercise their civil rights, and the violent reaction of white racists was met with horror in the North.

The dramatic high point of the Civil Rights Movement occurred in 1963. The Southern struggle had grown from a modest group of black students demonstrating peacefully at one lunch counter to the largest mass movement for racial reform and civil rights in the twentieth century. Between autumn 1961 and the spring of 1963, twenty thousand men, women, and children had been arrested. In 1963 alone, another fifteen thousand were imprisoned, and one thousand desegregation protests occurred across the region, in more than one hundred cities.³²

On June 12, 1963, President Kennedy announced that he would deliver

to Congress a strong civil rights bill, a declaration that transformed him into a widely recognized ally of the Civil Rights Movement. Following Kennedy's assassination, President Johnson professed his commitment to the goal of "the full assimilation of more than twenty million Negroes into American life," and ensured the passage of comprehensive civil rights legislation. The Civil Rights Act of 1964 formally dismantled the Jim Crow system of discrimination in public accommodations, employment, voting, education, and federally financed activities. The Voting Rights Act of 1965 arguably had even greater scope, as it rendered illegal numerous discriminatory barriers to effective political participation by African Americans and mandated federal review of all new voting regulations so that it would be possible to determine whether their use would perpetuate voting discrimination.

Within five years, the effects of the civil rights revolution were undeniable. Between 1964 and 1969, the percentage of African American adults registered to vote in the South soared. In Alabama the rate leaped from 19.3 percent to 61.3 percent; in Georgia, 27.4 percent to 60.4 percent; in Louisiana, 31.6 percent to 60.8 percent; and in Mississippi, 6.7 percent to 66.5 percent.³³ Suddenly black children could shop in department stores, eat at restaurants, drink from water fountains, and go to amusement parks that were once off-limits. Miscegenation laws were declared unconstitutional, and the rate of interracial marriage climbed.

While dramatic progress was apparent in the political and social realms, civil rights activists became increasingly concerned that, without major economic reforms, the vast majority of blacks would remain locked in poverty. Thus at the peak of the Civil Rights Movement, activists and others began to turn their attention to economic problems, arguing that socioeconomic inequality interacted with racism to produce crippling poverty and related social problems. Economic issues emerged as a major focus of discontent. As political scientists Frances Fox Piven and Richard Cloward have described, "blacks became more indignant over their condition—not only as an oppressed racial minority in a white society but as poor people in an affluent one."³⁴ Activists organized boycotts, picket lines, and demonstrations to attack discrimination in access to jobs and the denial of economic opportunity.

Perhaps the most famous demonstration in support of economic justice is the March on Washington for Jobs and Economic Freedom in August 1963. The wave of activism associated with economic justice helped to focus President Kennedy's attention on poverty and black unemployment. In the

summer of 1963, he initiated a series of staff studies on those subjects. By the end of the summer, he declared his intention to make the eradication of poverty a key legislative objective in 1964.³⁵ Following Kennedy's assassination, President Lyndon Johnson embraced the antipoverty rhetoric with great passion, calling for an "unconditional war on poverty," in his State of the Union Address in January 1964. Weeks later he proposed to Congress the Economic Opportunities Bill of 1964.

The shift in focus served to align the goals of the Civil Rights Movement with key political goals of poor and working-class whites, who were also demanding economic reforms. As the Civil Rights Movement began to evolve into a "Poor People's Movement," it promised to address not only black poverty, but white poverty as well—thus raising the specter of a poor and working-class movement that cut across racial lines. Martin Luther King Jr. and other civil rights leaders made it clear that they viewed the eradication of economic inequality as the next front in the "human rights movement" and made great efforts to build multiracial coalitions that sought economic justice for all. Genuine equality for black people, King reasoned, demanded a radical restructuring of society, one that would address the needs of the black and white poor throughout the country. Shortly before his assassination, he envisioned bringing to Washington, D.C., thousands of the nation's disadvantaged in an interracial alliance that embraced rural and ghetto blacks, Appalachian whites, Mexican Americans, Puerto Ricans, and Native Americans to demand jobs and income—the right to live. In a speech delivered in 1968, King acknowledged there had been some progress for blacks since the passage of the Civil Rights Act of 1964, but insisted that the current challenges required even greater resolve and that the entire nation must be transformed for economic justice to be more than a dream for poor people of all colors. As historian Gerald McKnight observes, "King was proposing nothing less than a radical transformation of the Civil Rights Movement into a populist crusade calling for redistribution of economic and political power. America's only civil rights leader was now focusing on class issues and was planning to descend on Washington with an army of poor to shake the foundations of the power structure and force the government to respond to the needs of the ignored underclass."³⁶

With the success of the Civil Rights Movement and the launching of the Poor People's Movement, it was apparent to all that a major disruption in the nation's racial equilibrium had occurred. Yet as we shall see below, Negroes

stood only a "brief moment in the sun." Conservative whites began, once again, to search for a new racial order that would conform to the needs and constraints of the time. This process took place with the understanding that whatever the new order would be, it would have to be formally race-neutral—it could not involve explicit or clearly intentional race discrimination. A similar phenomenon had followed slavery and Reconstruction, as white elites struggled to define a new racial order with the understanding that whatever the new order would be, it could not include slavery. Jim Crow eventually replaced slavery, but now it too had died, and it was unclear what might take its place. Barred by law from invoking race explicitly, those committed to racial hierarchy were forced to search for new means of achieving their goals according to the new rules of American democracy.

History reveals that the seeds of the new system of control were planted well before the end of the Civil Rights Movement. A new race-neutral language was developed for appealing to old racist sentiments, a language accompanied by a political movement that succeeded in putting the vast majority of blacks back in their place. Proponents of racial hierarchy found they could install a new racial caste system without violating the law or the new limits of acceptable political discourse, by demanding "law and order" rather than "segregation forever."

The Birth of Mass Incarceration

The rhetoric of "law and order" was first mobilized in the late 1950s as Southern governors and law enforcement officials attempted to generate and mobilize white opposition to the Civil Rights Movement. In the years following *Brown v. Board of Education*, civil rights activists used direct-action tactics in an effort to force reluctant Southern states to desegregate public facilities. Southern governors and law enforcement officials often characterized these tactics as criminal and argued that the rise of the Civil Rights Movement was indicative of a breakdown of law and order. Support of civil rights legislation was derided by Southern conservatives as merely "rewarding lawbreakers."

For more than a decade—from the mid-1950s until the late 1960s—conservatives systematically and strategically linked opposition to civil

rights legislation to calls for law and order, arguing that Martin Luther King Jr.'s philosophy of civil disobedience was a leading cause of crime. Civil rights protests were frequently depicted as criminal rather than political in nature, and federal courts were accused of excessive "lenience" toward lawlessness, thereby contributing to the spread of crime. In the words of then-vice president Richard Nixon, the increasing crime rate "can be traced directly to the spread of the corrosive doctrine that every citizen possesses an inherent right to decide for himself which laws to obey and when to disobey them."³⁷ Some segregationists went further, insisting that integration causes crime, citing lower crime rates in Southern states as evidence that segregation was necessary. In the words of Representative John Bell Williams, "This exodus of Negroes from the South, and their influx into the great metropolitan centers of other areas of the Nation, has been accompanied by a wave of crime. . . . What has civil rights accomplished for these areas? . . . Segregation is the only answer as most Americans—not the politicians—have realized for hundreds of years."³⁸

Unfortunately, at the same time that civil rights were being identified as a threat to law and order, the FBI was reporting fairly dramatic increases in the national crime rate. Beginning in the 1960s, crime rates rose in the United States for a period of about ten years. Reported street crime quadrupled, and homicide rates nearly doubled. Despite significant controversy over the accuracy of crime statistics during this period (the FBI's method of tracking crime was changing), sociologists and criminologists agree that crime did rise, in some categories quite sharply. The reasons for the crime wave are complex but can be explained in large part by the rise of the "baby boom" generation—the spike in the number of young men in the fifteen-to-twenty-four age group, which historically has been responsible for most crimes. The surge of young men in the population was occurring at precisely the same time that unemployment rates for black men were rising sharply, but the economic and demographic factors contributing to rising crime were not explored in the media. Instead, crime reports were sensationalized and offered as further evidence of the breakdown in lawfulness, morality, and social stability in the wake of the Civil Rights Movement.³⁹

To make matters worse, riots erupted in the summer of 1964 in Harlem and Rochester, followed by a series of uprisings that swept the nation following the assassination of Martin Luther King Jr. in 1968. The racial imagery

associated with the riots gave fuel to the argument that civil rights for blacks led to rampant crime. Cities like Philadelphia and Rochester were described as being victims of their own generosity. Conservatives argued that, having welcomed blacks migrating from the South, these cities "were repaid with crime-ridden slums and black discontent."⁴⁰

Barry Goldwater, in his 1964 presidential campaign, aggressively exploited the riots and fears of black crime, laying the foundation for the "get tough on crime" movement that would emerge years later. In a widely quoted speech, Goldwater warned voters, "Choose the way of [the Johnson] Administration and you have the way of mobs in the street."⁴¹ Civil rights activists who argued that the uprisings were directly related to widespread police harassment and abuse were dismissed by conservatives out of hand. "If [blacks] conduct themselves in an orderly way, they will not have to worry about police brutality," argued West Virginia senator Robert Byrd.⁴²

While many civil rights advocates in this period actively resisted the attempt by conservatives to use rising crime as an excuse to crack down on impoverished black communities, some black activists began to join the calls for "law and order" and expressed support for harsh responses to lawbreakers. As Vanessa Barker describes in *The Politics of Imprisonment*, black activists in Harlem, alarmed by rising crime rates, actively campaigned for what would become the notorious Rockefeller drug laws as well as other harsh sentencing measures.⁴³ Wittingly or unwittingly, they found themselves complicit in the emergence of a penal system unprecedented in world history. Black support for harsh responses to urban crime—support born of desperation and legitimate concern over the unraveling of basic security in inner-city communities—helped provide political cover for conservative politicians who saw an opening to turn back the clock on racial progress in the United States. Conservatives could point to black support for highly punitive approaches to dealing with the problems of the urban poor as "proof" that race had nothing to do with their "law and order" agenda.

Early on, little effort was made to disguise the racial motivations behind the law and order rhetoric and the harsh criminal justice legislation proposed in Congress. The most ardent opponents of civil rights legislation and desegregation were the most active on the emerging crime issue. Well-known segregationist George Wallace, for example, argued that "the same Supreme Court that ordered integration and encouraged civil rights legislation" was now "bending over backwards to help criminals."⁴⁴ Three other prominent

segregationists—Senators McClellan, Erwin, and Thurmond—led the legislative battle to curb the rights of criminal defendants.⁴⁵

As the rules of acceptable discourse changed, however, segregationists distanced themselves from an explicitly racist agenda. They developed instead the racially sanitized rhetoric of "cracking down on crime"—rhetoric that is now used freely by politicians of every stripe. Conservative politicians who embraced this rhetoric purposefully failed to distinguish between the direct action tactics of civil rights activists, violent rebellions in inner cities, and traditional crimes of an economic or violent nature. Instead, as Marc Mauer of the Sentencing Project has noted, "all of these phenomenon were subsumed under the heading of 'crime in the streets.'"⁴⁶

After the passage of the Civil Rights Act, the public debate shifted focus from segregation to crime. The battle lines, however, remained largely the same. Positions taken on crime policies typically cohered along lines of racial ideology. Political scientist Vesla Weaver explains: "Votes cast in opposition to open housing, busing, the Civil Rights Act, and other measures time and again showed the same divisions as votes for amendments to crime bills. . . . Members of Congress who voted against civil rights measures proactively designed crime legislation and actively fought for their proposals."⁴⁷

Although law and order rhetoric ultimately failed to prevent the formal dismantling of the Jim Crow system, it proved highly effective in appealing to poor and working-class whites, particularly in the South, who were opposed to integration and frustrated by the Democratic Party's apparent support for the Civil Rights Movement. As Weaver notes, "rather than fading, the segregationists' crime-race argument was reframed, with a slightly different veneer," and eventually became the foundation of the conservative agenda on crime.⁴⁸ In fact, law and order rhetoric—first employed by segregationists—would eventually contribute to a major realignment of political parties in the United States.

Following the Civil War, party alignment was almost entirely regional. The South was solidly Democratic, embittered by the war, firmly committed to the maintenance of a racial caste system, and extremely hostile to federal intervention on behalf of African Americans. The North was overwhelming Republican and, while Republicans were ambivalent about equality for African Americans, they were far more inclined to adopt and implement racial justice reforms than their Democratic counterparts below the Mason-Dixon line.

The Great Depression effectuated a sea change in American race relations and party alignment. The New Deal—spearheaded by the Democratic Party of President Franklin D. Roosevelt—was designed to alleviate the suffering of poor people in the midst of the Depression, and blacks, the poorest of the poor, benefited disproportionately. While New Deal programs were rife with discrimination in their administration, they at least included blacks within the pool of beneficiaries—a development, historian Michael Klarman has noted, that was “sufficient to raise black hopes and expectations after decades of malign neglect from Washington.”⁴⁹ Poor and working-class whites in both the North and South, no less than African Americans, responded positively to the New Deal, anxious for meaningful economic relief. As a result, the Democratic New Deal coalition evolved into an alliance of urban ethnic groups and the white South that dominated electoral politics from 1932 to the early 1960s.

That dominance came to an abrupt end with the creation and implementation of what has come to be known as the Southern Strategy. The success of law and order rhetoric among working-class whites and the intense resentment of racial reforms, particularly in the South, led conservative Republican analysts to believe that a “new majority” could be created by the Republican Party, one that included the traditional Republican base, the white South, and half the Catholic, blue-collar vote of the big cities.⁵⁰ Some conservative political strategists admitted that appealing to racial fears and antagonisms was central to this strategy, though it had to be done surreptitiously. H.R. Haldeman, one of Nixon’s key advisers, recalls that Nixon himself deliberately pursued a Southern, racial strategy: “He [President Nixon] emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.”⁵¹ Similarly, John Ehrlichman, special counsel to the president, explained the Nixon administration’s campaign strategy of 1968 in this way: “We’ll go after the racists.”⁵² In Ehrlichman’s view, “that subliminal appeal to the anti-black voter was always present in Nixon’s statements and speeches.”⁵³

Republican strategist Kevin Phillips is often credited for offering the most influential argument in favor of a race-based strategy for Republican political dominance in the South. He argued in *The Emerging Republican Majority*, published in 1969, that Nixon’s successful presidential election campaign could point the way toward long-term political realignment and the building of a new Republican majority, if Republicans continued to campaign primar-

ily on the basis of racial issues, using coded antiblack rhetoric.⁵⁴ He argued that Southern white Democrats had become so angered and alienated by the Democratic Party’s support for civil rights reforms, such as desegregation and busing, that those voters could be easily persuaded to switch parties if those racial resentments could be maintained. Warren Weaver, a *New York Times* journalist who reviewed the book upon its release, observed that Phillips’s strategy largely depended upon creating and maintaining a racially polarized political environment. “Full racial polarization is an essential ingredient of Phillips’s political pragmatism. He wants to see a black Democratic party, particularly in the South, because this will drive into the Republican party precisely the kind of anti-Negro whites who will help constitute the emerging majority. This even leads him to support some civil rights efforts.”⁵⁵ Appealing to the racism and vulnerability of working-class whites had worked to defeat the Populists at the turn of the century, and a growing number of conservatives believed the tactic should be employed again, albeit in a more subtle fashion.

Thus in the late 1960s and early 1970s, two schools of thought were offered to the general public regarding race, poverty, and the social order. Conservatives argued that poverty was caused not by structural factors related to race and class but rather by culture—particularly black culture. This view received support from Daniel Patrick Moynihan’s now infamous report on the black family, which attributed black poverty to a black “subculture” and the “tangle of pathology” that characterized it. As described by sociologist Katherine Beckett, “The (alleged) misbehaviors of the poor were transformed from adaptations to poverty that had the unfortunate effect of reproducing it into character failings that accounted for poverty in the first place.”⁵⁶ The “social pathologies” of the poor, particularly street crime, illegal drug use, and delinquency, were redefined by conservatives as having their cause in overly generous relief arrangements. Black “welfare cheats” and their dangerous offspring emerged, for the first time, in the political discourse and media imagery.

Liberals, by contrast, insisted that social reforms such as the War on Poverty and civil rights legislation would get at the “root causes” of criminal behavior and stressed the social conditions that predictably generate crime. Lyndon Johnson, for example, argued during his 1964 presidential campaign against Barry Goldwater that antipoverty programs were, in effect, anticrime programs: “There is something mighty wrong when a candidate for the highest office bemoans violence in the streets but votes against the War on Poverty,

votes against the Civil Rights Act and votes against major educational bills that come before him as a legislator."⁵⁷

Competing images of the poor as "deserving" and "undeserving" became central components of the debate. Ultimately, the racialized nature of this imagery became a crucial resource for conservatives, who succeeded in using law and order rhetoric in their effort to mobilize the resentment of white working-class voters, many of whom felt threatened by the sudden progress of African Americans. As explained by Thomas and Mary Edsall in their insightful book *Chain Reaction*, a disproportionate share of the costs of integration and racial equality had been borne by lower- and lower-middle-class whites, who were suddenly forced to compete on equal terms with blacks for jobs and status and who lived in neighborhoods adjoining black ghettos. Their children—not the children of wealthy whites—attended schools most likely to fall under busing orders. The affluent white liberals who were pressing the legal claims of blacks and other minorities "were often sheltered, in their private lives, and largely immune to the costs of implementing minority claims."⁵⁸ This reality made it possible for conservatives to characterize the "liberal Democratic establishment" as being out of touch with ordinary working people—thus resolving one of the central problems facing conservatives: how to persuade poor and working-class voters to join in alliance with corporate interests and the conservative elite. By 1968, 81 percent of those responding to the Gallup Poll agreed with the statement that "law and order has broken down in this country," and the majority blamed "Negroes who start riots" and "Communists."⁵⁹

During the presidential election that year, both the Republican candidate, Richard Nixon, and the independent segregationist candidate, George Wallace, made "law and order" a central theme of their campaigns, and together they collected 57 percent of the vote.⁶⁰ Nixon dedicated seventeen speeches solely to the topic of law and order, and one of his television ads explicitly called on voters to reject the lawlessness of civil rights activists and embrace "order" in the United States.⁶¹ The advertisement began with frightening music accompanied by flashing images of protestors, bloodied victims, and violence. A deep voice then said:

It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in a system of government that provides for peaceful change, there is no cause that

justifies resort to violence. Let us recognize that the first right of every American is to be free from domestic violence. So I pledge to you, we shall have order in the United States.

At the end of the ad, a caption declared: "This time . . . vote like your whole world depended on it . . . NIXON." Viewing his own campaign ad, Nixon reportedly remarked with glee that the ad "hits it right on the nose. It's all about those damn Negro-Puerto Rican groups out there."⁶²

Race had become, yet again, a powerful wedge, breaking up what had been a solid liberal coalition based on economic interests of the poor and the working and lower-middle classes. In the 1968 election, race eclipsed class as the organizing principle of American politics, and by 1972, attitudes on racial issues rather than socioeconomic status were the primary determinant of voters' political self-identification. The late 1960s and early 1970s marked the dramatic erosion in the belief among working-class whites that the condition of the poor, or those who fail to prosper, was the result of a faulty economic system that needed to be challenged. As the Edsalls explain, "the pitting of whites and blacks at the low end of the income distribution against each other intensified the view among many whites that the condition of life for the disadvantaged—particularly for disadvantaged blacks—is the responsibility of those afflicted, and not the responsibility of the larger society."⁶³ Just as race had been used at the turn of the century by Southern elites to rupture class solidarity at the bottom of the income ladder, race as a national issue had broken up the Democratic New Deal "bottom-up" coalition—a coalition dependent on substantial support from all voters, white and black, at or below the median income.

The conservative revolution that took root within the Republican Party in the 1960s did not reach its full development until the election of 1980. The decade preceding Ronald Reagan's ascent to the presidency was characterized by political and social crises, as the Civil Rights Movement was promptly followed by intense controversy over the implementation of the equality principle—especially busing and affirmative action—as well as dramatic political clashes over the Vietnam War and Watergate. During this period, conservatives gave lip service to the goal of racial equality but actively resisted desegregation, busing, and civil rights enforcement. They repeatedly raised the issue of welfare, subtly framing it as a contest between hardworking, blue-collar whites and poor blacks who refused to work. The not-so-subtle

message to working-class whites was that their tax dollars were going to support special programs for blacks who most certainly did not deserve them. During this period, Nixon called for a "war on drugs"—an announcement that proved largely rhetorical as he declared illegal drugs "public enemy number one" without proposing dramatic shifts in drug policy. A backlash against blacks was clearly in force, but no consensus had yet been reached regarding what racial and social order would ultimately emerge from these turbulent times.

In his campaign for the presidency, Reagan mastered the "excision of the language of race from conservative public discourse" and thus built on the success of earlier conservatives who developed a strategy of exploiting racial hostility or resentment for political gain without making explicit reference to race.⁶⁴ Condemning "welfare queens" and criminal "predators," he rode into office with the strong support of disaffected whites—poor and working-class whites who felt betrayed by the Democratic Party's embrace of the civil rights agenda. As one political insider explained, Reagan's appeal derived primarily from the ideological fervor of the right wing of the Republican Party and "the emotional distress of those who fear or resent the Negro, and who expect Reagan somehow to keep him 'in his place' or at least echo their own anger and frustration."⁶⁵ To great effect, Reagan echoed white frustration in race-neutral terms through implicit racial appeals. His "color-blind" rhetoric on crime, welfare, taxes, and states' rights was clearly understood by white (and black) voters as having a racial dimension, though claims to that effect were impossible to prove. The absence of explicitly racist rhetoric afforded the racial nature of his coded appeals a certain plausible deniability. For example, when Reagan kicked off his presidential campaign at the annual Neshoba County Fair near Philadelphia, Mississippi—the town where three civil rights activists were murdered in 1964—he assured the crowd "I believe in states' rights," and promised to restore to states and local governments the power that properly belonged to them.⁶⁶ His critics promptly alleged that he was signaling a racial message to his audience, suggesting allegiance with those who resisted desegregation, but Reagan firmly denied it, forcing liberals into a position that would soon become familiar—arguing that something is racist but finding it impossible to prove in the absence of explicitly racist language.

Crime and welfare were the major themes of Reagan's campaign rhetoric. According to the Edsalls, one of Reagan's favorite and most-often-repeated

anecdotes was the story of a Chicago "welfare queen" with "80 names, 30 addresses, 12 Social Security cards," whose "tax-free income alone is over \$150,000."⁶⁷ The term "welfare queen" became a not-so-subtle code for "lazy, greedy, black ghetto mother." The food stamp program, in turn, was a vehicle to let "some fellow ahead of you buy a T-bone steak," while "you were standing in a checkout line with your package of hamburger."⁶⁸ These highly racialized appeals, targeted to poor and working-class whites, were nearly always accompanied by vehement promises to be tougher on crime and to enhance the federal government's role in combating it. Reagan portrayed the criminal as "a staring face—a face that belongs to a frightening reality of our time: the face of the human predator."⁶⁹ Reagan's racially coded rhetoric and strategy proved extraordinarily effective, as 22 percent of all Democrats defected from the party to vote for Reagan. The defection rate shot up to 34 percent among those Democrats who believed civil rights leaders were pushing "too fast."⁷⁰

Once elected, Reagan's promise to enhance the federal government's role in fighting crime was complicated by the fact that fighting street crime has traditionally been the responsibility of state and local law enforcement. After a period of initial confusion and controversy regarding whether the FBI and the federal government should be involved in street crime, the Justice Department announced its intention to cut in half the number of specialists assigned to identify and prosecute white-collar criminals and to shift its attention to street crime, especially drug-law enforcement.⁷¹ In October 1982, President Reagan officially announced his administration's War on Drugs. At the time he declared this new war, less than 2 percent of the American public viewed drugs as the most important issue facing the nation.⁷² This fact was no deterrent to Reagan, for the drug war from the outset had little to do with public concern about drugs and much to do with public concern about race. By waging a war on drug users and dealers, Reagan made good on his promise to crack down on the racially defined "others"—the undeserving.

Practically overnight the budgets of federal law enforcement agencies soared. Between 1980 and 1984, FBI antidrug funding increased from \$8 million to \$95 million.⁷³ Department of Defense antidrug allocations increased from \$33 million in 1981 to \$1,042 million in 1991. During that same period, DEA antidrug spending grew from \$86 to \$1,026 million, and FBI antidrug allocations grew from \$38 to \$181 million.⁷⁴ By contrast, funding

for agencies responsible for drug treatment, prevention, and education was dramatically reduced. The budget of the National Institute on Drug Abuse, for example, was reduced from \$274 million to \$57 million from 1981 to 1984, and antidrug funds allocated to the Department of Education were cut from \$14 million to \$3 million.⁷⁵

Determined to ensure that the "new Republican majority" would continue to support the extraordinary expansion of the federal government's law enforcement activities and that Congress would continue to fund it, the Reagan administration launched a media offensive to justify the War on Drugs.⁷⁶ Central to the media campaign was an effort to sensationalize the emergence of crack cocaine in inner-city neighborhoods—communities devastated by deindustrialization and skyrocketing unemployment. The media frenzy the campaign inspired simply could not have come at a worse time for African Americans.

In the early 1980s, just as the drug war was kicking off, inner-city communities were suffering from economic collapse. The blue-collar factory jobs that had been plentiful in urban areas in the 1950s and 1960s had suddenly disappeared.⁷⁷ Prior to 1970, inner-city workers with relatively little formal education could find industrial employment close to home. Globalization, however, helped to change that. Manufacturing jobs were transferred by multinational corporations away from American cities to countries that lacked unions, where workers earn a small fraction of what is considered a fair wage in the United States. To make matters worse, dramatic technological changes revolutionized the workplace—changes that eliminated many of the jobs that less skilled workers once relied upon for their survival. Highly educated workers benefited from the pace of technological change and the increased use of computer-based technologies, but blue-collar workers often found themselves displaced in the sudden transition from an industrial to a service economy.

The impact of globalization and deindustrialization was felt most strongly in black inner-city communities. As described by William Julius Wilson, in his book *When Work Disappears*, the overwhelming majority of African Americans in the 1970s lacked college educations and had attended racially segregated, underfunded schools lacking basic resources. Those residing in ghetto communities were particularly ill equipped to adapt to the seismic changes taking place in the U.S. economy; they were left isolated and jobless. One study indicates that as late as 1970, more than 70 percent of all blacks work-

ing in metropolitan areas held blue-collar jobs.⁷⁸ Yet by 1987, when the drug war hit high gear, the industrial employment of black men had plummeted to 28 percent.⁷⁹

The new manufacturing jobs that opened during this time period were generally located in the suburbs. The growing spatial mismatch of jobs had a profound impact on African Americans trapped in ghettos. A study of urban black fathers found that only 28 percent had access to an automobile. The rate fell to 18 percent for those living in ghetto areas.⁸⁰

Women fared somewhat better during this period because the social-service sector in urban areas—which employs primarily women—was expanding at the same time manufacturing jobs were evaporating. The fraction of black men who moved into so called pink-collar jobs like nursing or clerical work was negligible.⁸¹

The decline in legitimate employment opportunities among inner-city residents increased incentives to sell drugs—most notably crack cocaine. Crack is pharmacologically almost identical to powder cocaine, but it has been converted into a form that can be vaporized and inhaled for a faster, more intense (though shorter) high using less of the drug—making it possible to sell small doses at more affordable prices. Crack hit the streets in 1985, a few years after Reagan's drug war was announced, leading to a spike in violence as drug markets struggled to stabilize, and the anger and frustration associated with joblessness boiled. Joblessness and crack swept inner cities precisely at the moment that a fierce backlash against the Civil Rights Movement was manifesting itself through the War on Drugs.

No one should ever attempt to minimize the harm caused by crack cocaine and the related violence. As David Kennedy correctly observes, "[c]rack blew through America's poor black neighborhoods like the Four Horsemen of the Apocalypse," leaving behind unspeakable devastation and suffering.⁸² As a nation, though, we had a choice about how to respond. Some countries faced with rising drug crime or seemingly intractable rates of drug abuse and drug addiction chose the path of drug treatment, prevention, and education or economic investment in crime-ridden communities. Portugal, for example, responded to persistent problems of drug addiction and abuse by decriminalizing the possession of all drugs and redirecting the money that would have been spent putting drug users in cages into drug treatment and prevention. Ten years later, Portugal reported that rates of drug abuse and addiction had plummeted, and drug-related crime was on the decline as well.⁸³

Numerous paths were available to us, as a nation, in the wake of the crack crisis, yet for reasons traceable largely to racial politics and fear mongering we chose war. Conservatives found they could finally justify an all-out war on an "enemy" that had been racially defined years before.

Almost immediately after crack appeared, the Reagan administration leaped at the opportunity to publicize crack cocaine in an effort to build support for its drug war. In October 1985, the DEA sent Robert Stutman to serve as director of its New York City office and charged him with the responsibility of shoring up public support for the administration's new war. Stutman developed a strategy for improving relations with the news media and sought to draw journalists' attention to the spread of crack cocaine in inner-city communities. As Stutman recounted years later:

The agents would hear me give hundreds of presentations to the media as I attempted to call attention to the drug scourge. I wasted no time in pointing out its [the DEA's] new accomplishments against the drug traffickers. . . . In order to convince Washington, I needed to make it [drugs] a national issue and quickly. I began a lobbying effort and I used the media. The media were only too willing to cooperate, because as far the New York media was concerned, crack was the hottest combat reporting story to come along since the end of the Vietnam War.⁸⁴

The strategy bore fruit. In June 1986, *Newsweek* declared crack to be the biggest story since Vietnam/Watergate, and in August of that year, *Time* magazine termed crack "the issue of the year." Thousands of stories about the crack crisis flooded the airwaves and newsstands, and the stories had a clear racial subtext. The articles typically featured black "crack whores," "crack babies," and "gangbangers," reinforcing already prevalent racial stereotypes of black women as irresponsible, selfish "welfare queens," and black men as "predators"—part of an inferior and criminal subculture.⁸⁵ When two popular sports figures, Len Bias and Don Rogers, died of cocaine overdoses in June 1986, the media erroneously reported their deaths as caused by crack, contributing to the media firestorm and groundswell of political activity and public concern relating to the new "demon drug," crack cocaine. The bonanza continued into 1989, as the media continued to disseminate claims that crack was an "epidemic," a "plague," "instantly addictive," and extraordinarily dangerous—claims that have now been proven

false or highly misleading. Between October 1988 and October 1989, the *Washington Post* alone ran 1,565 stories about the "drug scourge." Richard Harwood, the *Post's* ombudsman, eventually admitted the paper had lost "a proper sense of perspective" due to such a "hyperbole epidemic." He said that "politicians are doing a number on people's heads."⁸⁶ Sociologists Craig Reinerman and Harry Levine later made a similar point: "Crack was a god-send to the Right. . . . It could not have appeared at a more politically opportune moment."⁸⁷

In September 1986, with the media frenzy at full throttle, the House passed legislation that allocated \$2 billion to the antidrug crusade, required the participation of the military in narcotics control efforts, allowed the death penalty for some drug-related crimes, and authorized the admission of some illegally obtained evidence in drug trials. Later that month, the Senate proposed even tougher antidrug legislation, and shortly thereafter, the president signed the Anti-Drug Abuse Act of 1986 into law. Among other harsh penalties, the legislation included mandatory minimum sentences for the distribution of cocaine, including far more severe punishment for distribution of crack—associated with blacks—than powder cocaine, associated with whites.

Few criticisms of the legislation could be heard en route to enactment. One senator insisted that crack had become a scapegoat distracting the public's attention from the true causes of our social ills, arguing: "If we blame crime on crack, our politicians are off the hook. Forgotten are the failed schools, the malign welfare programs, the desolate neighborhoods, the wasted years. Only crack is to blame. One is tempted to think that if crack did not exist, someone somewhere would have received a Federal grant to develop it."⁸⁸ Critical voices, however, were lonely ones.

Congress revisited drug policy in 1988. The resulting legislation was once again extraordinarily punitive, this time extending far beyond traditional criminal punishments and including new "civil penalties" for drug offenders. The new Anti-Drug Abuse Act authorized public housing authorities to evict any tenant who allows any form of drug-related criminal activity to occur on or near public housing premises and eliminated many federal benefits, including student loans, for anyone convicted of a drug offense. The act also expanded use of the death penalty for serious drug-related offenses and imposed new mandatory minimums for drug offenses, including a five-year mandatory minimum for simple possession of cocaine base—with no evidence

of intent to sell. Remarkably, the penalty would apply to first-time offenders. The severity of this punishment was unprecedented in the federal system. Until 1988, one year of imprisonment had been the maximum for possession of any amount of any drug. Members of the Congressional Black Caucus (CBC) were mixed in their assessment of the new legislation—some believed the harsh penalties were necessary, others convinced that the laws were biased and harmful to African Americans. Ultimately the legislation passed by an overwhelming margin—346 to 11. Six of the negative votes came from the CBC.⁸⁹

The War on Drugs proved popular among key white voters, particularly whites who remained resentful of black progress, civil rights enforcement, and affirmative action. Beginning in the 1970s, researchers found that racial attitudes—not crime rates or likelihood of victimization—are an important determinant of white support for “get tough on crime” and antiwelfare measures.⁹⁰ Among whites, those expressing the highest degree of concern about crime also tend to oppose racial reform, and their punitive attitudes toward crime are largely unrelated to their likelihood of victimization.⁹¹ Whites, on average, are more punitive than blacks, despite the fact that blacks are far more likely to be victims of crime. Rural whites are often the most punitive, even though they are least likely to be crime victims.⁹² The War on Drugs, cloaked in race-neutral language, offered whites opposed to racial reform a unique opportunity to express their hostility toward blacks and black progress, without being exposed to the charge of racism.

Reagan’s successor, President George Bush Sr., did not hesitate to employ implicit racial appeals, having learned from the success of other conservative politicians that subtle negative references to race could mobilize poor and working-class whites who once were loyal to the Democratic Party. Bush’s most famous racial appeal, the Willie Horton ad, featured a dark-skinned black man, a convicted murderer who escaped while on a work furlough and then raped and murdered a white woman in her home. The ad blamed Bush’s opponent, Massachusetts governor Michael Dukakis, for the death of the white woman, because he approved the furlough program. For months, the ad played repeatedly on network news stations and was the subject of incessant political commentary. Though controversial, the ad was stunningly effective; it destroyed Dukakis’s chances of ever becoming president.

Once in the Oval Office, Bush stayed on message, opposing affirmative action and aggressive civil rights enforcement, and embracing the drug war

with great enthusiasm. In August 1989, President Bush characterized drug use as “the most pressing problem facing the nation.”⁹³ Shortly thereafter, a New York Times/CBS News Poll reported that 64 percent of those polled—the highest percentage ever recorded—now thought that drugs were the most significant problem in the United States.⁹⁴ This surge of public concern did not correspond to a dramatic shift in illegal drug activity, but instead was the product of a carefully orchestrated political campaign. The level of public concern about crime and drugs was only weakly correlated with actual crime rates, but highly correlated with political initiatives, campaigns, and partisan appeals.⁹⁵

The shift to a general attitude of “toughness” toward problems associated with communities of color began in the 1960s, when the gains and goals of the Civil Rights Movement began to require real sacrifices on the part of white Americans, and conservative politicians found they could mobilize white racial resentment by vowing to crack down on crime. By the late 1980s, however, not only conservatives played leading roles in the get-tough movement, spouting the rhetoric once associated only with segregationists. Democratic politicians and policy makers were now attempting to wrest control of the crime and drug issues from Republicans by advocating stricter anticrime and antidrug laws—all in an effort to win back the so-called “swing voters” who were defecting to the Republican Party. Somewhat ironically, these “new Democrats” were joined by virulent racists, most notably the Ku Klux Klan, which announced in 1990 that it intended to “join the battle against illegal drugs” by becoming the “eyes and ears of the police.”⁹⁶ Progressives concerned about racial justice in this period were mostly silent about the War on Drugs, preferring to channel their energy toward defense of affirmative action and other perceived gains of the Civil Rights Movement.

In the early 1990s, resistance to the emergence of a new system of racialized social control collapsed across the political spectrum. A century earlier, a similar political dynamic had resulted in the birth of Jim Crow. In the 1890s, Populists buckled under the political pressure created by the Redeemers, who had successfully appealed to poor and working-class whites by proposing overtly racist and increasingly absurd Jim Crow laws. Now, a new racial caste system—mass incarceration—was taking hold, as politicians of every stripe competed with each other to win the votes of poor and working-class whites, whose economic status was precarious, at best, and who felt threatened by racial reforms. As had happened before, former allies

of African Americans—as much as conservatives—adopted a political strategy that required them to prove how “tough” they could be on “them,” the dark-skinned pariahs.

The results were immediate. As law enforcement budgets exploded, so did prison and jail populations. In 1991, the Sentencing Project reported that the number of people behind bars in the United States was unprecedented in world history, and that one fourth of young African American men were now under the control of the criminal justice system. Despite the jaw-dropping impact of the “get tough” movement on the African American community, neither the Democrats nor the Republicans revealed any inclination to slow the pace of incarceration.

To the contrary, in 1992, presidential candidate Bill Clinton vowed that he would never permit any Republican to be perceived as tougher on crime than he. True to his word, just weeks before the critical New Hampshire primary, Clinton chose to fly home to Arkansas to oversee the execution of Ricky Ray Rector, a mentally impaired black man who had so little conception of what was about to happen to him that he asked for the dessert from his last meal to be saved for him until the morning. After the execution, Clinton remarked, “I can be nicked a lot, but no one can say I’m soft on crime.”⁹⁷

Once elected, Clinton endorsed the idea of a federal “three strikes and you’re out” law, which he advocated in his 1994 State of the Union address to enthusiastic applause on both sides of the aisle. The \$30 billion crime bill sent to President Clinton in August 1994 was hailed as a victory for the Democrats, who “were able to wrest the crime issue from the Republicans and make it their own.”⁹⁸ The bill created dozens of new federal capital crimes, mandated life sentences for some three-time offenders, and authorized more than \$16 billion for state prison grants and expansion of state and local police forces. Far from resisting the emergence of the new caste system, Clinton escalated the drug war beyond what conservatives had imagined possible a decade earlier. As the Justice Policy Institute has observed, “the Clinton Administration’s ‘tough on crime’ policies resulted in the largest increases in federal and state prison inmates of any president in American history.”⁹⁹

Clinton eventually moved beyond crime and capitulated to the conservative racial agenda on welfare. This move, like his “get tough” rhetoric and policies, was part of a grand strategy articulated by the “new Democrats” to appeal to the elusive white swing voters. In so doing, Clinton—more than

any other president—created the current racial undercaste. He signed the Personal Responsibility and Work Opportunity Reconciliation Act, which “ended welfare as we know it,” replacing Aid to Families with Dependent Children (AFDC) with a block grant to states called Temporary Assistance to Needy Families (TANF). TANF imposed a five-year lifetime limit on welfare assistance, as well as a permanent, lifetime ban on eligibility for welfare and food stamps for anyone convicted of a felony drug offense—including simple possession of marijuana.

Despite claims that these radical policy changes were driven by fiscal conservatism—i.e., the desire to end big government and slash budget deficits—the reality is that government was *not* reducing the amount of money devoted to the management of the urban poor. It was radically altering what the funds would be used for. The dramatic shift toward punitiveness resulted in a massive reallocation of public resources. By 1996, the penal budget doubled the amount that had been allocated to AFDC or food stamps.¹⁰⁰ Similarly, funding that had once been used for public housing was being redirected to prison construction. During Clinton’s tenure, Washington slashed funding for public housing by \$17 billion (a reduction of 61 percent) and boosted corrections by \$19 billion (an increase of 171 percent), “effectively making the construction of prisons the nation’s main housing program for the urban poor.”¹⁰¹

Clinton did not stop there. Determined to prove how “tough” he could be on “them,” Clinton also made it easier for federally assisted public housing projects to exclude anyone with a criminal history—an extraordinarily harsh step in the midst of a drug war aimed at racial and ethnic minorities. In his announcement of the “One Strike and You’re Out” Initiative, Clinton explained: “From now on, the rule for residents who commit crime and peddle drugs should be one strike and you’re out.”¹⁰² The new rule promised to be “the toughest admission and eviction policy that HUD has implemented.”¹⁰³ Thus, for countless poor people, particularly racial minorities targeted by the drug war, public housing was no longer available, leaving many of them homeless—locked out not only of mainstream society, but their own homes.

The law and order perspective, first introduced during the peak of the Civil Rights Movement by rabid segregationists, had become nearly hegemonic two decades later. By the mid-1990s, no serious alternatives to the War on Drugs and “get tough” movement were being entertained in mainstream

political discourse. Once again, in response to a major disruption in the prevailing racial order—this time the civil rights gains of the 1960s—a new system of racialized social control was created by exploiting the vulnerabilities and racial resentments of poor and working-class whites. More than 2 million people found themselves behind bars at the turn of the twenty-first century, and millions more were relegated to the margins of mainstream society, banished to a political and social space not unlike Jim Crow, where discrimination in employment, housing, and access to education was perfectly legal, and where they could be denied the right to vote. The system functioned relatively automatically, and the prevailing system of racial meanings, identities, and ideologies already seemed natural. Ninety percent of those admitted to prison for drug offenses in many states were black or Latino, yet the mass incarceration of communities of color was explained in race-neutral terms, an adaptation to the needs and demands of the current political climate. The New Jim Crow was born.

2

The Lockdown

We may think we know how the criminal justice system works. Television is overloaded with fictional dramas about police, crime, and prosecutors—shows such as *Law & Order*. These fictional dramas, like the evening news, tend to focus on individual stories of crime, victimization, and punishment, and the stories are typically told from the point of view of law enforcement. A charismatic police officer, investigator, or prosecutor struggles with his own demons while heroically trying to solve a horrible crime. He ultimately achieves a personal and moral victory by finding the bad guy and throwing him in jail. That is the made-for-TV version of the criminal justice system. It perpetuates the myth that the primary function of the system is to keep our streets safe and our homes secure by rooting out dangerous criminals and punishing them. These television shows, especially those that romanticize drug-law enforcement, are the modern-day equivalent of the old movies portraying happy slaves, the fictional gloss placed on a brutal system of racialized oppression and control.

Those who have been swept within the criminal justice system know that the way the system actually works bears little resemblance to what happens on television or in movies. Full-blown trials of guilt or innocence rarely occur; many people never even meet with an attorney; witnesses are routinely paid and coerced by the government; police regularly stop and search people for no reason whatsoever; penalties for many crimes are so severe that innocent people plead guilty, accepting plea bargains to avoid harsh mandatory sentences; and children, even as young as fourteen, are sent to adult prisons.

6. Katherine Beckett and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America*, (Thousand Oaks, CA: Sage Publications, 2004), 163.
7. Marc Mauer, *Race to Incarcerate*, rev. ed. (New York: The New Press, 2006), 33.
8. PEW Center on the States, *One in 100: Behind Bars in America 2008* (Washington, DC: PEW Charitable Trusts, 2008), 5.
9. Donald Braman, *Doing Time on the Outside: Incarceration and Family Life in Urban America* (Ann Arbor: University of Michigan Press, 2004), 3, citing D.C. Department of Corrections data for 2000.
10. See, e.g., U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Summary of Findings from the 2000 National Household Survey on Drug Abuse*, NHSDA series H-13, DHHS pub. no. SMA 01-3549 (Rockville, MD: 2001), reporting that 6.4 percent of whites, 6.4 percent of blacks, and 5.3 percent of Hispanics were current users of illegal drugs in 2000; *Results from the 2002 National Survey on Drug Use and Health: National Findings*, NHSDA series H-22, DHHS pub. no. SMA 03-3836 (2003), revealing nearly identical rates of illegal drug use among whites and blacks, only a single percentage point between them; and *Results from the 2007 National Survey on Drug Use and Health: National Findings*, NSDUH series H-34, DHHS pub. no. SMA 08-4343 (2007), showing essentially the same finding. See also Marc Mauer and Ryan S. King, *A 25-Year Quagmire: The "War on Drugs" and Its Impact on American Society* (Washington, DC: Sentencing Project, 2007), 19, citing a study suggesting that African Americans have slightly higher rates of illegal drug use than whites.
11. See, e.g., Howard N. Snyder and Melissa Sickman, *Juvenile Offenders and Victims: 2006 National Report*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (Washington, DC: U.S. Department of Justice, 2006), reporting that white youth are more likely than black youth to engage in illegal drug sales. See also Lloyd D. Johnson, Patrick M. O'Malley, Jerald G. Bachman, and John E. Schulenberg, *Monitoring the Future, National Survey Results on Drug Use, 1975-2006*, vol. 1, *Secondary School Students*, U.S. Department of Health and Human Services, National Institute on Drug Abuse, NIH pub. no. 07-6205 (Bethesda, MD: 2007), 32, "African American 12th graders have consistently shown lower usage rates than White 12th graders for most drugs, both licit and illicit"; and Lloyd D. Johnston, Patrick M. O'Malley, and Jerald G. Bachman, *Monitoring the Future: National Results on Adolescent Drug Use: Overview of Key Findings 2002*, U.S. Department of Health and Human Services, National Institute on Drug Abuse, NIH pub. no. 03-5374 (Bethesda, MD: 2003), presenting data showing that African American adolescents have slightly lower rates of illicit drug use than their white counterparts.
12. Human Rights Watch, *Punishment and Prejudice: Racial Disparities in the War on Drugs*, HRW Reports, vol. 12, no. 2 (New York, 2000).
13. See, e.g., Paul Street, *The Vicious Circle: Race, Prison, Jobs, and Community in Chicago, Illinois, and the Nation* (Chicago: Chicago Urban League, Department of Research and Planning, 2002).

14. Michael Tonry, *Thinking About Crime: Sense and Sensibility in American Penal Culture* (New York: Oxford University Press, 2004), 14.
15. *Ibid.*
16. *Ibid.*, 20.
17. National Advisory Commission on Criminal Justice Standards and Goals, *Task Force Report on Corrections* (Washington, DC: Government Printing Office, 1973), 358.
18. *Ibid.*, 597.
19. Mauer, *Race to Incarcerate*, 17-18.
20. The estimate that one in three black men will go to prison during their lifetime is drawn from Thomas P. Bonczar, "Prevalence of Imprisonment in the U.S. Population, 1974-2001," U.S. Department of Justice, Bureau of Justice Statistics, August 2003. In Baltimore, like many large urban areas, the majority of young African American men are currently under correctional supervision. See Eric Lotke and Jason Ziedenberg, "Tipping Point: Maryland's Overuse of Incarceration and the Impact on Community Safety," Justice Policy Institute, March 2005, 3.

1. The Rebirth of Caste

1. Reva Siegel, "Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing Action," *Stanford Law Review* 49 (1997): 1111; see also Michael Omi and Howard Winant, *Racial Formation in the United States: From the 1960s to the 1990s* (New York: Routledge, 1996), 84-91.
2. Loic Wacquant, "America's New 'Peculiar Institution': On the Prison as Surrogate Ghetto," *Theoretical Criminology* 4, no. 3 (2000): 380.
3. Lerone Bennett Jr., *The Shaping of Black America* (Chicago: Johnson, 1975), 62.
4. For an excellent analysis of the development of race as a social construct in the United States and around the globe, see Howard Winant, *The World Is a Ghetto: Race and Democracy Since World War II* (New York: Basic Books, 2001).
5. Bennett, *Shaping of Black America*, 62.
6. Keith Kilty and Eric Swank, "Institutional Racism and Media Representations: Depictions of Violent Criminals and Welfare Recipients," *Sociological Imagination* 34, no. 2-3 (1997): 106.
7. Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975).
8. *Ibid.*; see also Leslie Carr, *Color-blind Racism* (Thousand Oaks, CA: Sage Publications, 1997), 14-16.
9. Gerald Fresia, *Toward an American Revolution: Exposing the Constitution and Other Illusions* (Boston: South End Press, 1998), 55.
10. Wacquant, "America's New 'Peculiar Institution,'" 380.
11. C. Vann Woodward, *The Strange Career of Jim Crow* (1955; reprint, New York: Oxford University Press, 2001).

12. William Cohen, *At Freedom's Edge: Black Mobility and the Southern White Quest for Racial Control* (Baton Rouge: Louisiana State University Press, 1991), 28.
13. *Ibid.*, 33.
14. W.E.B. Du Bois, "Reconstruction and Its Benefits," *American Historical Review* 15, no. 4 (1910): 784.
15. James McPherson, "Comparing the Two Reconstructions," *Princeton Alumni Weekly*, Feb. 26, 1979, 17.
16. See Michael Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (New York: Oxford University Press, 2004), 49, 52-53.
17. John Hope Franklin and Alfred A. Moss, *From Slavery to Freedom: A History of African Americans*, 8th ed. (New York: Knopf, 2000), 82; and Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 425.
18. Douglas Blackmon, *Slavery by Another Name: The Re-enslavement of Black People in America from the Civil War to World War II* (New York: Doubleday, 2008).
19. *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871).
20. David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press Paperbacks, 1996), 63.
21. See Douglas Blackmon, "A Different Kind of Slavery," *Wall Street Journal Online*, Mar. 29, 2008.
22. Woodward, *Strange Career of Jim Crow*, 45-64.
23. *Ibid.*, 61.
24. Tom Watson, "The Negro Question in the South," cited in Stokely Carmichael and Charles V. Hamilton, *Black Power: The Politics of Liberation in America* (New York: Random House, 1967).
25. Woodward, *Strange Career of Jim Crow*, 64.
26. William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago: University of Chicago Press, 1978), 54.
27. Woodward, *Strange Career of Jim Crow*, 80.
28. *Ibid.*, 81.
29. *Ibid.*, 7.
30. Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper & Brothers, 1944).
31. Manning Marable, *Race, Reform and Rebellion: The Second Reconstruction in Black America, 1945-1990* (Jackson: University Press of Mississippi, 1991), 44; see also Michael Klarman, "Brown, Racial Change, and the Civil Rights Movement," *Virginia Law Review* 80 (1994): 7, 9.
32. Marable, *Race, Reform and Rebellion*, 69.
33. Stephen F. Lawson, *Black Ballots: Voting Rights in the South, 1944-1969* (New York: Columbia University Press, 1976), 300, 321, 329, 331.

34. Frances Fox Piven and Richard A. Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (New York: Pantheon, 1977), 269.
35. John Donovan, *The Politics of Poverty* (Indianapolis: Pegasus, 1973), 23.
36. Gerald McKnight, *The Last Crusade: Martin Luther King, Jr., the FBI, and the Poor People's Campaign* (New York: Westview Press, 1998), 21-22.
37. Richard Nixon, "If Mob Rule Takes Hold in U.S.," *U.S. News and World Report*, Aug. 15, 1966, 64.
38. U.S. House, "Northern Congressmen Want Civil Rights but Their Constituents Do Not Want Negroes," *Congressional Record*, 86th Cong., 2d sess. (1960) 106, pt. 4: 5062-63.
39. Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997), 32; Marc Mauer, "Two-Tiered Justice: Race, Class and Crime Policy," in *The Integration Debate: Competing Futures for American Cities*, ed. Chester Hartman and Gregory Squires (New York: Routledge, 2005), 171.
40. Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21 (Fall 2007): 242.
41. Barry Goldwater, "Peace Through Strength," in *Vital Speeches of the Day*, vol. 30 (New York: City News, 1964), 744.
42. "Poverty: Phony Excuse for Riots? Yes, Says a Key Senator," *U.S. News and World Report*, July 31, 1967, 14.
43. See Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders* (New York: Oxford University Press, 2009), 151.
44. Joel Rosch, "Crime as an Issue in American Politics," in *The Politics of Crime and Criminal Justice* (Beverly Hills: Sage Publications, 1985).
45. Beckett, *Making Crime Pay*, 32.
46. Marc Mauer, *Race to Incarcerate* (New York: The New Press, 1999), 52.
47. Weaver, "Frontlash," 262.
48. *Ibid.*
49. Klarman, *From Jim Crow to Civil Rights*, 110.
50. See, e.g., Patrick Buchanan, *The New Majority: President Nixon at Mid-Passage* (Philadelphia: Girard Bank, 1973).
51. Willard M. Oliver, *The Law & Order Presidency* (Upper Saddle River, NJ: Prentice Hall, 2003), 127-28, citing Dan Baum, *Smoke and Mirrors: The War on Drugs and the Politics of Failure* (Boston: Little, Brown, 1996), 13; H.R. Haldeman, *The Haldeman Diaries* (New York: G.P. Putnam's Sons, 1994), 53 (emphasis in original).
52. John Ehrlichman, *Witness to Power: The Nixon Years* (New York: Simon & Schuster, 1970), 233.
53. *Ibid.*
54. See Kevin Phillips, *The Emerging Republican Majority* (New Rochelle, NY: Arlington House, 1969).

55. Warren Weaver, "The Emerging Republican Majority," *New York Times*, Sept. 21, 1969.
56. Beckett, *Making Crime Pay*, 34.
57. Lyndon Johnson, "Remarks on the City Hall Steps, Dayton, Ohio," in *Public Papers of the Presidents 1963-64*, vol. 2 (1965), 1371.
58. Thomas Byrne Edsall and Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: Norton, 1992), 12-13.
59. *Ibid.*, 38.
60. *Ibid.*, 74.
61. Weaver, "Frontlash," 259.
62. See Philip A. Klinker and Rogers M. Smith, *The Unsteady March: The Rise and Decline of Racial Equality in America* (Chicago: University of Chicago Press, 1999), 292.
63. Edsall and Edsall, *Chain Reaction*, 4.
64. *Ibid.*, 138; see also Jeremy Mayer, *Running on Race* (New York: Random House, 2002), 71.
65. *Ibid.*
66. Bob Herbert, "Righting Reagan's Wrongs?" *New York Times*, Nov. 13, 2007; see also Paul Krugman, "Republicans and Race," *New York Times*, Nov. 19, 2007.
67. Edsall and Edsall, *Chain Reaction*, 148, quoting *New York Times*, Feb. 15, 1976.
68. *Ibid.*, quoting *Washington Post*, Jan. 28, 1976.
69. Dick Kirschten, "Jungle Warfare," *National Journal*, Oct. 3, 1981.
70. Edsall and Edsall, *Chain Reaction*, 164.
71. Beckett, *Making Crime Pay*, 47.
72. *Ibid.*, 56; see also Julian Roberts, "Public Opinion, Crime and Criminal Justice," in *Crime and Justice: A Review of Research*, vol. 16, ed. Michael Tonry (Chicago: University of Chicago Press, 1992).
73. Beckett, *Making Crime Pay*, 53, citing Executive Office of the President, Budget of the U.S. Government (1990).
74. *Ibid.*, citing U.S. Office of the National Drug Control Policy, National Drug Control Strategy (1992).
75. *Ibid.*
76. *Ibid.*, 56.
77. See William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Vintage, 1997).
78. *Ibid.*, 31 (citing John Kasarda, "Urban Industrial Transition and the Underclass," *Annals of the American Academy of Political and Social Science* 501, no. 1 (1990): 26-47).
79. *Ibid.*, 30 (citing data from the Chicago Urban Poverty and Family Life Survey conducted in 1987 and 1988).
80. *Ibid.*, 39.

81. *Ibid.*, 27.
82. David M. Kennedy, *Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-City America* (New York: Bloomsbury, 2011), 10.
83. Ernesto Benavides, "Portugal Drug Law Show Results Ten Years On, Experts Say," AFP, July 1, 2010 (reporting that those who use hard drugs fell by half following decriminalization, along with a "spectacular" drop in HIV infections and a significant drop in drug-related crime), available at news.yahoo.com/portugal-drug-law-show-results-ten-years-experts-180013798.html; Barry Hatton and Martha Mendoza, "Portugal's Drug Policy Pays Off; US Eyes Lessons," Associated Press, Dec. 26, 2010; Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies* (Washington, DC: Cato Institute, 2009), www.cato.org/pubs/whitepapers/greenwald_whitepaper.pdf.
84. Robert Stutman, *Dead on Delivery: Inside the Drug Wars, Straight from the Street* (New York: Warner Books, 1992), 142.
85. See Craig Reinerman and Harry Levine, "The Crack Attack: America's Latest Drug Scare, 1986-1992," in *Images of Issues: Typifying Contemporary Social Problems*, ed. Joel Best (New York: Aldine De Gruyter, 1995).
86. *Ibid.*, 154.
87. *Ibid.*, 170-71.
88. Doris Marie Provine, *Unequal Under Law: Race in the War on Drugs* (Chicago: University of Chicago Press, 2007), 111, citing *Congressional Record* 132 (Sept. 24, 1986): S 13741.
89. Provine, *Unequal Under Law*, 117.
90. Mark Peffley, Jon Hurwitz, and Paul Sniderman, "Racial Stereotypes and Whites' Political Views of Blacks in the Context of Welfare and Crime," *American Journal of Political Science* 41, no. 1 (1997): 30-60; Martin Gilens, "Racial Attitudes and Opposition to Welfare," *Journal of Politics* 57, no. 4 (1995): 994-1014; Kathryn Taylor Gaubatz, *Crime in the Public Mind* (Ann Arbor: University of Michigan Press, 1995); and John Hurwitz and Mark Peffley, "Public Perceptions of Race and Crime: The Role of Racial Stereotypes," *American Journal of Political Science* 41, no. 2 (1997): 375-401.
91. See Frank Furstenberg, "Public Reaction to Crime in the Streets," *American Scholar* 40 (1971): 601-10; Arthur Stinchcombe et al., *Crime and Punishment in America: Changing Attitudes in America* (San Francisco: Jossey-Bass, 1980); Michael Corbett, "Public Support for Law and Order: Interrelationships with System Affirmation and Attitudes Toward Minorities," *Criminology* 19 (1981): 337.
92. Stephen Earl Bennett and Alfred J. Tuchfarber, "The Social Structural Sources of Cleavage on Law and Order Policies," *American Journal of Political Science* 19 (1975): 419-38; Sandra Browning and Liqun Cao, "The Impact of Race on Criminal Justice Ideology," *Justice Quarterly* 9 (Dec. 1992): 685-99; and Steven F. Cohn, Steven E. Barkan, and William A. Halteman, "Punitive Attitudes Toward Criminals: Racial Consensus or Racial Conflict?" *Social Problems* 38 (1991): 287-96.

93. Beckett, *Making Crime Pay*, 44.
94. *Ibid.*, citing New York Times/CBS News Poll, Aug. 1990, 2-4.
95. See Beckett, *Making Crime Pay*, 14-27.
96. "Ku Klux Klan Says It Will Fight Drugs," *Toledo Journal*, Jan. 3-9, 1990.
97. Michael Kramer, "Frying Them Isn't the Answer," *Time*, Mar. 14, 1994, 32.
98. David Masci, "\$30 Billion Anti-Crime Bill Heads to Clinton's Desk," *Congressional Quarterly*, Aug. 27, 1994, 2488-93; and Beckett, *Making Crime Pay*, 61.
99. Justice Policy Institute, "Clinton Crime Agenda Ignores Proven Methods for Reducing Crime," Apr. 14, 2008, available online at www.justicepolicy.org/content-hmlID=1817&smID=1571&ssmID=71.htm.
100. Loïc Wacquant, "Class, Race & Hyperincarceration in Revanchist America," *Dædalus*, Summer 2010, 77.
101. *Ibid.*
102. Address Before a Joint Session of Congress on the State of the Union, Jan. 23, 1996.
103. U.S. Department of Housing and Urban Development, *Meeting the Challenge: Public Housing Authorities Respond to the "One Strike and You're Out" Initiative*, Sept. 1997, v.

2. The Lockdown

1. See Marc Mauer, *Race to Incarcerate*, rev. ed. (New York: The New Press, 2006), 33.
2. Marc Mauer and Ryan King, *A 25-Year Quagmire: The "War on Drugs" and Its Impact on American Society* (Washington, DC: Sentencing Project, 2007), 2.
3. *Ibid.*, 3.
4. Testimony of Marc Mauer, Executive Director of the Sentencing Project, Prepared for the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, 111th Cong., *Hearing on Unfairness in Federal Cocaine Sentencing: Is It Time to Crack the 100 to 1 Disparity?* May 21, 2009, 2.
5. Mauer and King, *A 25-Year Quagmire*, 2-3.
6. *Ibid.*; and Ryan King and Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s* (New York: Sentencing Project, 2005), documenting the dramatic increase in marijuana arrests. Marijuana is a relatively harmless drug. The 1988 surgeon general's report lists tobacco as a more dangerous drug than marijuana, and Francis Young, an administrative law judge for the Drug Enforcement Administration found there are no credible medical reports to suggest that consuming marijuana, in any dose, has ever caused a single death. U.S. Department of Justice, Drug Enforcement Administration, Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of Administrative Law Judge Francis L. Young, in the *Matter of Marijuana Rescheduling Petition*, Docket no.

- 86-22, Sept. 6, 1988, 56-57. By comparison, tobacco kills roughly 390,000 Americans annually, and alcohol is responsible for some 150,000 U.S. deaths a year. See Doug Bandow, "War on Drugs or War on America?" *Stanford Law and Policy Review* 3: 242, 245 (1991).
7. Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: Pew Charitable Trusts, 2009).
8. *Skinner v. Railway Labor Executive Association*, 489 U.S. 602, 641 (1980), Marshall, J., dissenting.
9. *California v. Acevedo*, 500 U.S. 565, 600 (1991), Stevens, J., dissenting.
10. *Terry v. Ohio*, 392 U.S. 1, 30 (1968).
11. *Ibid.*, Douglas J., dissenting.
12. See generally *United States v. Lewis*, 921 F.2d 1294, 1296 (1990); *United States v. Flowers*, 912 F.2d 707, 708 (4th Cir. 1990); and *Florida v. Bostick*, 501 U.S. 429, 441 (1991).
13. See, e.g., *Florida v. Kerwick*, 512 So.2d 347, 349 (Fla. App. 4 Dist. 1987).
14. See *United States v. Flowers*, 912 F.2d 707, 710 (4th Cir. 1990).
15. *Bostick v. State*, 554 So. 2d 1153, 1158 (Fla. 1989), quoting *State v. Kerwick*, 512 So.2d 347, 348-49 (Fla. 4th DCA 1987).
16. *In re J.M.*, 619 A.2d 497, 501 (D.C. App. 1992).
17. *Illinois Migrant Council v. Pilliod*, 398 F. Supp. 882, 899 (N.D. Ill. 1975).
18. Tracy Maclin, "Black and Blue Encounters—Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter?" *Valparaiso University Law Review* 26 (1991): 249-50.
19. *Florida v. Bostick*, 501 U.S. 429, 441 n. 1 (1991), Marshall, J., dissenting.
20. Maclin, "Black and Blue Encounters."
21. *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973).
22. See *Illinois v. Caballes*, 543 U.S. 405 (2005) and *United States v. Place*, 462 U.S. 696 (1983).
23. See U.S. Department of Justice, Drug Enforcement Administration, *Operations Pipeline and Convoy* (Washington, DC, n.d.), www.usdoj.gov/dea/programs/pipecon.htm.
24. Ricardo J. Bascuas, "Fourth Amendment Lessons from the Highway and the Subway: A Principled Approach to Suspicionless Searches," *Rutgers Law Journal* 38 (2007): 719, 763.
25. *State v. Rutherford*, 93 Ohio App.3d 586, 593-95, 639 N.E. 2d 498, 503-4, n. 3 (Ohio Ct. App. 1994).
26. Gary Webb, "Driving While Black," *Esquire*, Apr. 1, 1999, 122.
27. *Ibid.*
28. Scott Henson, *Flawed Enforcement: Why Drug Task Force Highway Interdiction Violates Rights, Wastes Tax Dollars, and Fails to Limit the Availability of Drugs in Texas* (Austin: American Civil Liberties Union—Texas Chapter, 2004), 9, www.aclu.org/racialjustice/racialprofiling/15897pub20040519.html.