

## The Black Family in the Age of Mass Incarceration

American politicians are now eager to disown a failed criminal-justice system that's left the U.S. with the largest incarcerated population in the world. But they've failed to reckon with history. Fifty years after Daniel Patrick Moynihan's report "The Negro Family" tragically helped create this system, it's time to reclaim his original intent.

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*Atlantic Magazine*. October 2015 Issue

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### I.

#### **"lower-class behavior in our cities is shaking them apart."**

By his own lights, Daniel Patrick Moynihan, ambassador, senator, sociologist, and itinerant American intellectual, was the product of a broken home and a pathological family. He was born in 1927 in Tulsa, Oklahoma, but raised mostly in New York City. When Moynihan was 10 years old, his father, John, left the family, plunging it into poverty. Moynihan's mother, Margaret, remarried, had another child, divorced, moved to Indiana to stay with relatives, then returned to New York, where she worked as a nurse. Moynihan's childhood—a tangle of poverty, remarriage, relocation, and single motherhood—contrasted starkly with the idyllic American family life he would later extol. "My relations are obviously those of divided allegiance," Moynihan wrote in a diary he kept during the 1950s. "Apparently I loved the old man very much yet had to take sides ... choosing mom in spite of loving pop." In the same journal, Moynihan, subjecting himself to the sort of analysis to which he would soon subject others, wrote, "Both my mother and father—They let me down badly ... I find through the years this enormous emotional attachment to Father substitutes—of whom the least rejection was cause for untold agonies—the only answer is that I have repressed my feelings towards dad."

As a teenager, Moynihan divided his time between his studies and working at the docks in Manhattan to help out his family. In 1943, he tested into the City College of New York, walking into the examination room with a longshoreman's loading hook in his back pocket so that he would not "be mistaken for any sissy kid." After a year at CCNY, he enlisted in the Navy, which paid for him to go to Tufts University for a bachelor's degree. He stayed for a master's degree and then started a doctorate program, which took him to the London School of Economics,

where he did research. In 1959, Moynihan began writing for Irving Kristol's magazine *The Reporter*, covering everything from organized crime to auto safety. The election of John F. Kennedy as president, in 1960, gave Moynihan a chance to put his broad curiosity to practical use; he was hired as an aide in the Department of Labor. Moynihan was, by then, an anticommunist liberal with a strong belief in the power of government to both study and solve social problems. He was also something of a scenester. His fear of being taken for a "sissy kid" had diminished. In London, he'd cultivated a love of wine, fine cheeses, tailored suits, and the mannerisms of an English aristocrat. He stood six feet five inches tall. A cultured civil servant not to the manor born, Moynihan—witty, colorful, loquacious—charmed the Washington elite, moving easily among congressional aides, politicians, and journalists. As the historian James Patterson writes in *Freedom Is Not Enough*, his book about Moynihan, he was possessed by "the optimism of youth." He believed in the marriage of government and social science to formulate policy. "All manner of later experiences in politics were to test this youthful faith."

Moynihan stayed on at the Labor Department during Lyndon B. Johnson's administration, but became increasingly disillusioned with Johnson's War on Poverty. He believed that the initiative should be run through an established societal institution: the patriarchal family. Fathers should be supported by public policy, in the form of jobs funded by the government. Moynihan believed that unemployment, specifically male unemployment, was the biggest impediment to the social mobility of the poor. He was, it might be said, a conservative radical who disdained service programs such as Head Start and traditional welfare programs such as Aid to Families With Dependent Children, and instead imagined a broad national program that subsidized families through jobs programs for men and a guaranteed minimum income for every family.

Influenced by the civil-rights movement, Moynihan focused on the black family. He believed that an undue optimism about the pending passage of civil-rights legislation was obscuring a pressing problem: a deficit of employed black men of strong character. He believed that this deficit went a long way toward explaining the African American community's relative poverty. Moynihan began searching for a way to press the point within the Johnson administration. "I felt I had to write a paper about the Negro family," Moynihan later recalled, "to explain to the fellows how there was a problem more difficult than they knew." In March of 1965, Moynihan printed up 100 copies of a report he and a small staff had labored over for only a few months.

The report was called "The Negro Family: The Case for National Action." Unsigned, it was meant to be an internal government document, with only one copy distributed at first and the other 99 kept locked in a vault. Running against the tide of optimism around civil rights, "The Negro Family" argued that the federal government was underestimating the damage done to black families by "three centuries of sometimes unimaginable mistreatment" as well as a "racist virus in the American blood stream," which would continue to plague blacks in the future:

That the Negro American has survived at all is extraordinary—a lesser people might simply have died out, as indeed others have ... But it may not be supposed that the Negro American community has not paid a fearful price for the incredible mistreatment to which it has been subjected over the past three centuries.

That price was clear to Moynihan. “The Negro family, battered and harassed by discrimination, injustice, and uprooting, is in the deepest trouble,” he wrote. “While many young Negroes are moving ahead to unprecedented levels of achievement, many more are falling further and further behind.” Out-of-wedlock births were on the rise, and with them, welfare dependency, while the unemployment rate among black men remained high. Moynihan believed that at the core of all these problems lay a black family structure mutated by white oppression:

In essence, the Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of the American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well.

Moynihan believed this matriarchal structure robbed black men of their birthright—“The very essence of the male animal, from the bantam rooster to the four-star general, is to strut,” he wrote—and deformed the black family and, consequently, the black community. In what would become the most famous passage in the report, Moynihan equated the black community with a diseased patient:

In a word, most Negro youth are in *danger* of being caught up in the tangle of pathology that affects their world, and probably a majority are so entrapped. Many of those who escape do so for one generation only: as things now are, their children may have to run the gauntlet all over again. That is not the least vicious aspect of the world that white America has made for the Negro.

Despite its alarming predictions, “The Negro Family” was a curious government report in that it advocated no specific policies to address the crisis it described. This was intentional. Moynihan had lots of ideas about what government could do—provide a guaranteed minimum income, establish a government jobs program, bring more black men into the military, enable better access to birth control, integrate the suburbs—but none of these ideas made it into the report. “A series of recommendations was at first included, then left out,” Moynihan later recalled. “It would have got in the way of the attention-arousing argument that a crisis was coming and that family stability was the best measure of success or failure in dealing with it.”

President Johnson offered the first public preview of the Moynihan Report in a speech written by Moynihan and the former Kennedy aide Richard Goodwin at Howard University in June of 1965, in which he highlighted “the breakdown of the Negro family structure.” Johnson left no doubt about how this breakdown had come about. “For this, most of all, white America must accept responsibility,” Johnson said. Family breakdown “flows from centuries of oppression and persecution of the Negro man. It flows from the long years of degradation and discrimination, which have attacked his dignity and assaulted his ability to produce for his family.”

The press did not generally greet Johnson’s speech as a claim of white responsibility, but rather as a condemnation of “the failure of Negro family life,” as the journalist Mary McGrory put it. This interpretation was reinforced as second- and thirdhand accounts of the Moynihan Report, which had not been made public, began making the rounds. On August 18, the widely syndicated newspaper columnists Rowland Evans and Robert Novak wrote that Moynihan’s document had

exposed “the breakdown of the Negro family,” with its high rates of “broken homes, illegitimacy, and female-oriented homes.” These dispatches fell on all-too-receptive ears. A week earlier, the drunk-driving arrest of Marquette Frye, an African American man in Los Angeles, had sparked six days of rioting in the city, which killed 34 people, injured 1,000 more, and caused tens of millions of dollars in property damage. Meanwhile, crime rates had begun to rise. People who read the newspapers but were not able to read the report could—and did—conclude that Johnson was conceding that no government effort could match the “tangle of pathology” that Moynihan had said beset the black family. Moynihan’s aim in writing “The Negro Family” had been to muster support for an all-out government assault on the structural social problems that held black families down. (“Family as an issue raised the possibility of enlisting the support of conservative groups for quite radical social programs,” he would later write.) Instead his report was portrayed as an argument for leaving the black family to fend for itself.

Moynihan himself was partly to blame for this. In its bombastic language, its omission of policy recommendations, its implication that black women were obstacles to black men’s assuming their proper station, and its unnecessarily covert handling, the Moynihan Report militated against its author’s aims. James Farmer, the civil-rights activist and a co-founder of the Congress of Racial Equality, attacked the report from the left as “a massive academic cop-out for the white conscience.” William Ryan, the psychologist who first articulated the concept of “blaming the victim,” accused Moynihan’s report of doing just that. Moynihan had left the Johnson administration in the summer to run for president of the New York City Council. The bid failed, and liberal repudiations of the report kept raining down. “I am now known as a racist across the land,” he wrote in a letter to the civil-rights leader Roy Wilkins.

In fact, the controversy transformed Moynihan into one of the most celebrated public intellectuals of his era. In the summer of 1966, Moynihan was featured in *The New York Times*. In the fall of 1967, after Detroit had exploded into riots, *Life* magazine dubbed him the “Idea Broker in the Race Crisis,” declaring, “A troubled nation turns to Pat Moynihan.” Between 1965 and 1979, *The New York Times Magazine* ran five features on Moynihan. His own writing was featured in *The Atlantic*, *The New Yorker*, *Commentary*, *The American Scholar*, *The Saturday Evening Post*, *The Public Interest*, and elsewhere. Yet despite the positive coverage, Moynihan remained “distressed not to have any influence on anybody” in Washington, as he put it in a 1968 letter to Harry McPherson, a Johnson aide.

Meanwhile, the civil-rights movement was fading and the radical New Left was rising. In September of 1967, worried about political instability in the country, Moynihan gave a speech calling for liberals and conservatives to unite “to preserve democratic institutions from the looming forces of the authoritarian left and right.” Impressed by the speech, Richard Nixon offered Moynihan a post in the White House the following year. Moynihan was, by then, embittered by the attacks launched against him and, like Nixon, horrified by the late-’60s radical spirit.

But Moynihan still professed concern for the family, and for the black family in particular. He began pushing for a minimum income for all American families. Nixon promoted Moynihan’s proposal—called the Family Assistance Plan—before the American public in a television

address in August of 1969, and officially presented it to Congress in October. This was a personal victory for Moynihan—a triumph in an argument he had been waging since the War on Poverty began, over the need to help families, not individuals. “I felt I was finally *rid of a subject*. A subject that just ... *spoiled* my life,” Moynihan told *The New York Times* that November. “*Four—long—years* of being called awful things. The people you would most want to admire you detesting you. Being anathematized and stigmatized. And I said, ‘Well, the President’s *done* this, and now I’m rid of it.’ ”

But he was not rid of it. The Family Assistance Plan died in the Senate. In a 1972 essay in *The Public Interest*, Moynihan, who had by then left the White House and was a professor at Harvard, railed against “the poverty professionals” who had failed to support his efforts and the “upper-class” liars who had failed to see his perspective. He pointed out that his pessimistic predictions were now becoming reality. Crime was increasing. So were the number of children in poor, female-headed families. Moynihan issued a dire warning: “Lower-class behavior in our cities is shaking them apart.”

But America had an app for that.

From the mid-1970s to the mid-’80s, America’s incarceration rate doubled, from about 150 people per 100,000 to about 300 per 100,000. From the mid-’80s to the mid-’90s, it doubled again. By 2007, it had reached a historic high of 767 people per 100,000, before registering a modest decline to 707 people per 100,000 in 2012. In absolute terms, America’s prison and jail population from 1970 until today has increased sevenfold, from some 300,000 people to 2.2 million. The United States now accounts for less than 5 percent of the world’s inhabitants—and about 25 percent of its incarcerated inhabitants. In 2000, one in 10 black males between the ages of 20 and 40 was incarcerated—10 times the rate of their white peers. In 2010, a third of all black male high-school dropouts between the ages of 20 and 39 were imprisoned, compared with only 13 percent of their white peers.

Our carceral state banishes American citizens to a gray wasteland far beyond the promises and protections the government grants its other citizens. Banishment continues long after one’s actual time behind bars has ended, making housing and employment hard to secure. And banishment was not simply a well-intended response to rising crime. It was the method by which we chose to address the problems that preoccupied Moynihan, problems resulting from “three centuries of sometimes unimaginable mistreatment.” At a cost of \$80 billion a year, American correctional facilities are a social-service program—providing health care, meals, and shelter for a whole class of people.

As the civil-rights movement wound down, Moynihan looked out and saw a black population reeling under the effects of 350 years of bondage and plunder. He believed that these effects could be addressed through state action. They were—through the mass incarceration of millions of black people.

## II.

**“we are incarcerating too *few* criminals.”**

The Gray Wastes—our carceral state, a sprawling netherworld of prisons and jails—are a relatively recent invention. Through the middle of the 20th century, America’s imprisonment rate hovered at about 110 people per 100,000. Presently, America’s incarceration rate (which accounts for people in prisons *and* jails) is roughly 12 times the rate in Sweden, eight times the rate in Italy, seven times the rate in Canada, five times the rate in Australia, and four times the rate in Poland. America’s closest to-scale competitor is Russia—and with an autocratic Vladimir Putin locking up about 450 people per 100,000, compared with our 700 or so, it isn’t much of a competition. China has about four times America’s population, but American jails and prisons hold half a million more people. “In short,” an authoritative report issued last year by the National Research Council concluded, “the current U.S. rate of incarceration is unprecedented by both historical and comparative standards.”

What caused this? Crime would seem the obvious culprit: Between 1963 and 1993, the murder rate doubled, the robbery rate quadrupled, and the aggravated-assault rate nearly quintupled. But the relationship between crime and incarceration is more discordant than it appears. Imprisonment rates actually fell from the 1960s through the early ’70s, even as violent crime increased. From the mid-’70s to the late ’80s, both imprisonment rates and violent-crime rates rose. Then, from the early ’90s to the present, violent-crime rates fell while imprisonment rates increased.

(Robert Sampson. Data from: Bureau of Justice Statistics; Sourcebook of Criminal Justice Statistics; Uniform Crime Reporting System.)

The incarceration rate rose independent of crime—but not of criminal-justice policy. Derek Neal, an economist at the University of Chicago, has found that by the early 2000s, a suite of tough-on-crime laws had made prison sentences much more likely than in the past. Examining a sample of states, Neal found that from 1985 to 2000, the likelihood of a long prison sentence nearly doubled for drug possession, tripled for drug trafficking, and quintupled for nonaggravated assault.

That explosion in rates and duration of imprisonment might be justified on grounds of cold pragmatism if a policy of mass incarceration actually caused crime to decline. Which is precisely what some politicians and policy makers of the tough-on-crime ’90s were claiming. “Ask many politicians, newspaper editors, or criminal justice ‘experts’ about our prisons, and you will hear that our problem is that we put too many people in prison,” a 1992 Justice Department report read. “The truth, however, is to the contrary; we are incarcerating too *few* criminals, and the public is suffering as a result.”

History has not been kind to this conclusion. The rise and fall in crime in the late 20th century was an international phenomenon. Crime rates rose and fell in the United States and Canada at roughly the same clip—but in Canada, imprisonment rates held steady. “If greatly increased severity of punishment and higher imprisonment rates caused American crime rates to fall after 1990,” the researchers Michael Tonry and David P. Farrington have written, then “what caused the Canadian rates to fall?” The riddle is not particular to North America. In the latter half of the 20th century, crime rose and then fell in Nordic countries as well. During the period of rising crime, incarceration rates held steady in Denmark, Norway, and Sweden—but declined in

Finland. “If punishment affects crime, Finland’s crime rate should have shot up,” Tonry and Farrington write, but it did not. After studying California’s tough “Three Strikes and You’re Out” law—which mandated at least a 25-year sentence for a third “strikeable offense,” such as murder or robbery—researchers at UC Berkeley and the University of Sydney, in Australia, determined in 2001 that the law had reduced the rate of felony crime by no more than 2 percent. Bruce Western, a sociologist at Harvard and one of the leading academic experts on American incarceration, looked at the growth in state prisons in recent years and concluded that a 66 percent increase in the state prison population between 1993 and 2001 had reduced the rate of serious crime by a modest 2 to 5 percent—at a cost to taxpayers of \$53 billion.

From the mid-1970s to the mid-’80s, America’s incarceration rate doubled. From the mid-’80s to the mid-’90s, it doubled again. Then it went still higher.

This bloating of the prison population may not have reduced crime much, but it increased misery among the group that so concerned Moynihan. Among all black males born since the late 1970s, one in four went to prison by their mid-30s; among those who dropped out of high school, seven in 10 did. “Prison is no longer a rare or extreme event among our nation’s most marginalized groups,” Devah Pager, a sociologist at Harvard, has written. “Rather it has now become a normal and anticipated marker in the transition to adulthood.”

The emergence of the carceral state has had far-reaching consequences for the economic viability of black families. Employment and poverty statistics traditionally omit the incarcerated from the official numbers. When Western recalculated the jobless rates for the year 2000 to include incarcerated young black men, he found that joblessness among all young black men went from 24 to 32 percent; among those who never went to college, it went from 30 to 42 percent. The upshot is stark. Even in the booming ’90s, when nearly every American demographic group improved its economic position, black men were left out. The illusion of wage and employment progress among African American males was made possible only through the erasure of the most vulnerable among them from the official statistics.

These consequences for black men have radiated out to their families. By 2000, more than 1 million black children had a father in jail or prison—and roughly half of those fathers were living in the same household as their kids when they were locked up. Paternal incarceration is associated with behavior problems and delinquency, especially among boys.

Baltimore police respond to a call at the Gilmor Homes, where Freddie Gray was arrested before sustaining a fatal spinal injury in April while in police custody. July 28, 2015. (Greg Kahn)

“More than half of fathers in state prison report being the primary breadwinner in their family,” the National Research Council report noted. Should the family attempt to stay together through incarceration, the loss of income only increases, as the mother must pay for phone time, travel costs for visits, and legal fees. The burden continues after the father returns home, because a criminal record tends to injure employment prospects. Through it all, the children suffer.

Many fathers simply fall through the cracks after they’re released. It is estimated that between 30 and 50 percent of all parolees in Los Angeles and San Francisco are homeless. In that context—

employment prospects diminished, cut off from one's children, nowhere to live—one can readily see the difficulty of eluding the ever-present grasp of incarceration, even once an individual is physically out of prison. Many do not elude its grasp. In 1984, 70 percent of all parolees successfully completed their term without arrest and were granted full freedom. In 1996, only 44 percent did. As of 2013, 33 percent do.

The Gray Wastes differ in both size and mission from the penal systems of earlier eras. As African Americans began filling cells in the 1970s, rehabilitation was largely abandoned in favor of retribution—the idea that prison should not reform convicts but punish them. For instance, in the 1990s, South Carolina cut back on in-prison education, banned air conditioners, jettisoned televisions, and discontinued intramural sports. Over the next 10 years, Congress repeatedly attempted to pass a No Frills Prison Act, which would have granted extra funds to state correctional systems working to “prevent luxurious conditions in prisons.” A goal of this “penal harm” movement, one criminal-justice researcher wrote at the time, was to find “creative strategies to make offenders suffer.”

### III.

#### **“you don’t take a shower after 9 o’clock.”**

Last winter, I visited Detroit to take the measure of the Gray Wastes. Michigan, with an incarceration rate of 628 people per 100,000, is about average for an American state. I drove to the East Side to talk with a woman I’ll call Tonya, who had done 18 years for murder and a gun charge and had been released five months earlier. She had an energetic smile and an edge to her voice that evidenced the time she’d spent locked up. Violence, for her, commenced not in the streets, but at home. “There was abuse in my grandmother’s home, and I went to school and I told my teacher,” she explained. “I had a spot on my nose because I had a lit cigarette stuck on my nose, and when I told her, they sent me to a temporary foster-care home ... The foster parent was also abusive, so I just ran away from her and just stayed on the streets.”

Tonya began using crack. One night she gathered with some friends for a party. They smoked crack. They smoked marijuana. They drank. At some point, the woman hosting the party claimed that someone had stolen money from her home. Another woman accused Tonya of stealing it. A fight ensued. Tonya shot the woman who had accused her. She got 20 years for the murder and two for the gun. After the trial, the truth came out. The host had hidden the money, but was so high that she’d forgotten.

When the doors finally close and one finds oneself facing banishment to the carceral state—the years, the walls, the rules, the guards, the inmates—reactions vary. Some experience an intense sickening feeling. Others, a strong desire to sleep. Visions of suicide. A deep shame. A rage directed toward guards and other inmates. Utter disbelief. The incarcerated attempt to hold on to family and old social ties through phone calls and visitations. At first, friends and family do their best to keep up. But phone calls to prison are expensive, and many prisons are located far from one’s hometown.

Over the past half century, deindustrialization has ravaged much of Detroit. African Americans have had to deal not just with vanishing jobs but with persistent racism. (Greg Kahn)



“First I would get one [visit] like every four months,” Tonya explained to me. “And then I wouldn’t get none for like maybe a year. You know, because it was too far away. And I started to have losses. I lost my mom, my brothers ... So it was hard, you know, for me to get visits.”

As the visits and phone calls diminish, the incarcerated begins to adjust to the fact that he or she is, indeed, a prisoner. New social ties are cultivated. New rules must be understood. A blizzard of acronyms, sayings, and jargon—PBF, CSC, ERD, “letters but no numbers”—must be comprehended. If the prisoner is lucky, someone—a cell mate, an older prisoner hailing from the same neighborhood—takes him under his wing. This can be the difference between survival and catastrophe. On Richard Braceful’s first night in Carson City Correctional Facility, in central Michigan, where he had been sent away at age 29 for armed robbery, he decided to take a shower. It was 10 p.m. His cell mate stopped him. “Where are you going?” the cell mate asked. “I’m going to take a shower,” Braceful responded. His cell mate, a 14-year veteran of the prison system, blocked his way and said, “You’re not going to take a shower.” Braceful, reading the signs, felt a fight was imminent. “Calm down,” his cell mate told him. “You don’t take a shower after 9 o’clock. People that are sexual predators, people that are rapists, they go in the showers right behind you.” Braceful and the veteran sat down. The veteran looked at him. “It’s your first time being locked up, ain’t it?” he said. “Yeah, it is,” Braceful responded. The veteran said to him, “Listen, this is what you have to do. For the next couple of weeks, just stay with me. I’ve been here for 14 years. I’ll look out for you until you learn how to move around in here without getting yourself hurt.”

Michigan prisons assign each inmate to a level corresponding to the security risk the inmate is believed to pose. As the levels decrease, privileges—yard time, for instance—increase. Level V is maximum security. Level I is for prisoners who will soon be released. At Level IV, you will find many prisoners with life sentences and not many prisoners with fewer than five years left to serve. A prisoner with a life sentence who has reached Level II has generally proved that he or she is not a danger to others. But there are very few such prisoners, because it is very hard to remain at the more draconian levels without acquiring “tickets”—demerits for violating prison protocol, often involving fighting. “It’s hard to stay ticket-free for 10 years without somebody getting stabbed, somebody getting into a fight,” Braceful, who is now out of prison, explained to me when I visited him in Detroit last December. “Because there are people that are there who might look at you and go, ‘He’s a small guy. I’m gonna take advantage of him.’ ”

When this happens, a prisoner can decide either to defend himself or to “lock up”—that is, to report to the guards that he fears for his safety. The guards will then place the prisoner in solitary confinement for his own protection. “Those are my only two choices,” Braceful explained. “And if you lock up, everybody know you lock up. When you come back out, you gonna have a bigger problem.”

“Because you’re prey,” I said.

“Exactly,” he responded. “So you fight, you know. And when the fight gets serious enough, you gotta find something to stab with, you gotta find something, you know, you gotta make your weapon, you gotta do something.”

Richard Braceful, who served several years in the Michigan prison system, photographed at his home in Detroit. August 9, 2015. (Greg Kahn)

Michigan leads the country in the average length of a prison stay—4.3 years—yet most prisoners do eventually say goodbye. The bliss of freedom, the joy of family reunion, can quickly be tempered by the challenge of staying free. The transition can be jarring. “I panicked,” Tonya told me, speaking of how it felt to be out of prison after 18 years. “I was only used to a cell—opposed to having multiple rooms, and there was always somebody there with me in the cell—whether it was a bunkie or officer, somebody’s always in this building. To go from that to this? I stayed on the phone. I made people call me, you know. It was scary. And I still experience that to this day. Everybody looks suspect to me. I’m like, ‘He’s up to something.’ A friend of mine told me, ‘You’ve been gone a long time, over a decade, so it’s gonna take you about two years for you to readjust.’”

The challenges of housing and employment bedevil many ex-offenders. “It’s very common for them to go homeless,” Linda VanderWaal, the associate director of prisoner reentry at a community-action agency in Michigan, told me. In the winter, VanderWaal says, she has a particularly hard time finding places to accommodate all the homeless ex-prisoners. Those who do find a place to live often find it difficult to pay their rent.

The carceral state has, in effect, become a credentialing institution as significant as the military, public schools, or universities—but the credentialing that prison or jail offers is negative. In her book, *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*, Devah Pager, the Harvard sociologist, notes that most employers say that they would not hire a job applicant with a criminal record. “These employers appear less concerned about specific information conveyed by a criminal conviction and its bearing on a particular job,” Pager writes, “but rather view this credential as an indicator of general employability or trustworthiness.”

One in four black men born since the late 1970s has spent time in prison.

Ex-offenders are excluded from a wide variety of jobs, running the gamut from septic-tank cleaner to barber to real-estate agent, depending on the state. And in the limited job pool that ex-offenders can swim in, blacks and whites are not equal. For her research, Pager pulled together four testers to pose as men looking for low-wage work. One white man and one black man would pose as job seekers without a criminal record, and another black man and white man would pose as job seekers with a criminal record. The negative credential of prison impaired the employment efforts of both the black man and the white man, but it impaired those of the black man more. Startlingly, the effect was not limited to the black man with a criminal record. The black man *without* a criminal record fared worse than the white man *with* one. “High levels of incarceration cast a shadow of criminality over all black men, implicating even those (in the majority) who have remained crime free,” Pager writes. Effectively, the job market in America regards black men who have never been criminals as though they were.

Just as ex-offenders had to learn to acculturate themselves to prison, they have to learn to re-acculturate themselves to the outside. But the attitude that helps one survive in prison is almost

the opposite of the kind needed to make it outside. Craig Haney, a professor at UC Santa Cruz who studies the cognitive and psychological effects of incarceration, has observed:

A tough veneer that precludes seeking help for personal problems, the generalized mistrust that comes from the fear of exploitation, and a tendency to strike out in response to minimal provocations are highly functional in many prison contexts but problematic virtually everywhere else.

Linda VanderWaal told me that re-acculturation is essential to thriving in an already compromised job market. “I hate to say this, but it’s a reality,” she said. “Making eye contact, the way they walk—people judge you the moment you walk in the doors for an interview ... We literally practice eye contact, smiling, handshaking, how you’re sitting.”

The sociologist Bruce Western explains the current inevitability of prison for certain demographics of young black men.

In America, the men and women who find themselves lost in the Gray Wastes are not picked at random. A series of risk factors—mental illness, illiteracy, drug addiction, poverty—increases one’s chances of ending up in the ranks of the incarcerated. “Roughly half of today’s prison inmates are functionally illiterate,” Robert Perkinson, an associate professor of American studies at the University of Hawaii at Mānoa, has noted. “Four out of five criminal defendants qualify as indigent before the courts.” Sixty-eight percent of jail inmates were struggling with substance dependence or abuse in 2002. One can imagine a separate world where the state would see these maladies through the lens of government education or public-health programs. Instead it has decided to see them through the lens of criminal justice. As the number of prison beds has risen in this country, the number of public-psychiatric-hospital beds has fallen. The Gray Wastes draw from the most socioeconomically unfortunate among us, and thus take particular interest in those who are black.

#### IV.

#### **“the crime-stained blackness of the negro”**

It is impossible to conceive of the Gray Wastes without first conceiving of a large swath of its inhabitants as both more than criminal and less than human. These inhabitants, black people, are the preeminent outlaws of the American imagination. Black criminality is literally written into the American Constitution—the Fugitive Slave Clause, in Article IV of that document, declared that any “Person held to Service or Labour” who escaped from one state to another could be “delivered up on Claim of the Party to whom such Service or Labour may be due.” From America’s very founding, the pursuit of the right to labor, and the right to live free of whipping and of the sale of one’s children, were verboten for blacks.

The crime of absconding was thought to be linked to other criminal inclinations among blacks. Pro-slavery intellectuals sought to defend the system as “commanded by God” and “approved by Christ.” In 1860, *The New York Herald* offered up a dispatch on the doings of runaway slaves residing in Canada. “The criminal calendars would be bare of a prosecution but for the negro prisoners,” the report claimed. Deprived of slavery’s blessings, blacks quickly devolved into

criminal deviants who plied their trade with “a savage ferocity peculiar to the vicious negro.” Blacks, the report stated, were preternaturally inclined to rape: “When the lust comes over them they are worse than the wild beast of the forest.” Nearly a century and a half before the infamy of Willie Horton, a portrait emerged of blacks as highly prone to criminality, and generally beyond the scope of rehabilitation. In this fashion, black villainy justified white oppression—which was seen not as oppression but as “the corner-stone of our republican edifice.”

To fortify the “republican edifice,” acts considered legal when committed by whites were judged criminal when committed by blacks. In 1850, a Missouri man named Robert Newsom purchased a girl named Celia, who was about 14 years old. For the next five years, he repeatedly raped her. Celia birthed at least one child by Newsom. When she became pregnant again, she begged Newsom to “quit forcing her while she was sick.” He refused, and one day in June of 1855 informed Celia that he “was coming to her cabin that night.” When Newsom arrived and attempted to rape Celia again, she grabbed a stick “about as large as the upper part of a Windsor chair” and beat Newsom to death. A judge rejected Celia’s self-defense claim, and she was found guilty of murder and sentenced to death. While she was in jail, she gave birth to the child, who arrived stillborn. Not long after, Celia was hanged.

Celia’s status—black, enslaved, female—transformed an act of self-defense into an act of villainy. Randall Kennedy, a law professor at Harvard, writes that “many jurisdictions made slaves into ‘criminals’ by prohibiting them from pursuing a wide range of activities that whites were typically free to pursue.” Among these activities were:

learning to read, leaving their masters’ property without a proper pass, engaging in “unbecoming” conduct in the presence of a white female, assembling to worship outside the supervisory presence of a white person, neglecting to step out of the way when a white person approached on a walkway, smoking in public, walking with a cane, making loud noises, or defending themselves from assaults.

Antebellum Virginia had 73 crimes that could garner the death penalty for slaves—and only one for whites.

The end of enslavement posed an existential crisis for white supremacy, because an open labor market meant blacks competing with whites for jobs and resources, and—most frightening—black men competing for the attention of white women. Postbellum Alabama solved this problem by manufacturing criminals. Blacks who could not find work were labeled vagrants and sent to jail, where they were leased as labor to the very people who had once enslaved them. Vagrancy laws were nominally color-blind but, Kennedy writes, “applied principally, if not exclusively, against Negroes.” Some vagrancy laws were repealed during Reconstruction, but as late as the Great Depression, cash-strapped authorities in Miami were found rounding up black “vagrants” and impressing them into sanitation work.

“Pitchfork Ben” Tillman, a U.S. senator from South Carolina, who advocated lynching black men to keep them from raping white women. (Library of Congress)

“From the 1890s through the first four decades of the twentieth century,” writes Khalil Gibran Muhammad, the director of the Schomburg Center for Research in Black Culture at the New York Public Library, “black criminality would become one of the most commonly cited and longest-lasting justifications for black inequality and mortality in the modern urban world.” Blacks were criminal brutes by nature, and something more than the law of civilized men was needed to protect the white public. Society must defend itself from contamination by “the crime-stained blackness of the negro,” asserted Hinton Rowan Helper, a Southern white-supremacist writer, in 1868. Blacks were “naturally intemperate,” one physician claimed in *The New York Medical Journal* in 1886, prone to indulging “every appetite too freely, whether for food, drink, tobacco, or sensual pleasures, and sometimes to such an extent as to appear more of a brute than human.”

Rape, according to the mythology of the day, remained the crime of choice for blacks. “There is something strangely alluring and seductive to [black men] in the appearance of a white woman,” asserted Philip Alexander Bruce, a 19th-century secretary of the Virginia Historical Society. “It moves them to gratify their lust at any cost and in spite of every obstacle.” These outrages were marked “by a diabolical persistence” that compelled black men to assault white women with a “malignant atrocity of detail that [has] no reflection in the whole extent of the natural history of the most bestial and ferocious animals.”

Before Emancipation, enslaved blacks were rarely lynched, because whites were loath to destroy their own property. But after the Civil War, the number of lynchings rose, peaked at the turn of the century, then persisted at a high level until just before the Second World War, not petering out entirely until the height of the civil-rights movement, in the 1960s. The lethal wave was justified by a familiar archetype—“the shadow of the Negro criminal,” which, according to John Rankin, a congressman from Mississippi speaking in 1922, hung “like the sword of Damocles over the head of every white woman.” Lynching, though extralegal, found support in the local, state, and national governments of America. “I led the mob which lynched Nelse Patton, and I’m proud of it,” declared William Van Amberg Sullivan, a former United States senator from Mississippi, on September 9, 1908, the day after Patton’s lynching. “I directed every movement of the mob, and I did everything I could to see that he was lynched.” Standing before the Senate on March 23, 1900, “Pitchfork Ben” Tillman, of South Carolina, declared to his colleagues that terrorized blacks were the victims not of lynching, but of “their own hot-headedness.” Lynching was a prudent act of self-defense. “We will not submit to [the black man’s] gratifying his lust on our wives and daughters without lynching him,” Tillman said. In 1904, defending southern states’ lack of interest in education funding for blacks, James K. Vardaman, the governor of Mississippi, offered a simple rationale, as one report noted: “The strength of [crime] statistics.”

James K. Vardaman, governor of Mississippi, who said in 1904 that crime statistics disinclined southern states to invest in educating African Americans. (Library of Congress)

Even as African American leaders petitioned the government to stop the lynching, they conceded that the Vardamans of the world had a point. In an 1897 lecture, W. E. B. Du Bois declared, “The first and greatest step toward the settlement of the present friction between the races—commonly called the Negro problem—lies in the correction of the immorality, crime, and laziness among the Negroes themselves, which still remains as a heritage from slavery.” Du

Bois' language anticipated the respectability politics of our own era. "There still remain enough well authenticated cases of brutal assault on women by black men in America to make every Negro bow his head in shame," Du Bois claimed in 1904. "This crime must at all hazards stop. Lynching is awful, and injustice and caste are hard to bear; but if they are to be successfully attacked they must cease to have even this terrible justification." Kelly Miller, who was then a leading black intellectual and a professor at Howard University, presaged the call for blacks to be "twice as good," asserting in 1899 that it was not enough for "ninety-five out of every hundred Negroes" to be lawful. "The ninety-five must band themselves together to restrain or suppress the vicious five."

In this climate of white repression and paralyzed black leadership, the federal government launched, in 1914, its first war on drugs, passing the Harrison Narcotics Tax Act, which restricted the sale of opiates and cocaine. The reasoning was unoriginal. "The use of cocaine by unfortunate women generally and by negroes in certain parts of the country is simply appalling," the American Pharmaceutical Association's Committee on the Acquirement of the Drug Habit had concluded in 1902. *The New York Times* published an article by a physician saying that the South was threatened by "cocaine-crazed negroes," to whom the drug had awarded expert marksmanship and an immunity to bullets "large enough to 'kill any game in America.' " Another physician, Hamilton Wright, the "father of American narcotic law," reported to Congress that cocaine lent "encouragement" to "the humbler ranks of the negro population in the South." Should anyone doubt the implication of *encouragement*, Wright spelled it out: "It has been authoritatively stated that cocaine is often the direct incentive to the crime of rape by the negroes of the South and other sections of the country."

The persistent and systematic notion that blacks were especially prone to crime extended even to the state's view of black leadership. J. Edgar Hoover, the head of the FBI for nearly half a century, harassed three generations of leaders. In 1919, he attacked the black nationalist Marcus Garvey as "the foremost radical among his race," then ruthlessly pursued Garvey into jail and deportation. In 1964, he attacked Martin Luther King Jr. as "the most notorious liar in the country," and hounded him, bugging his hotel rooms, his office, and his home, until his death. Hoover declared the Black Panther Party to be "the greatest threat to the internal security of the country" and authorized a repressive, lethal campaign against its leaders that culminated in the assassination of Fred Hampton in December of 1969.

Today Hoover is viewed unsympathetically as having stood outside mainstream ideas of law and order. But Hoover's pursuit of King was known to both President Kennedy and President Johnson, King's ostensible allies. Moreover, Hoover was operating within an American tradition of criminalizing black leadership. In its time, the Underground Railroad was regarded by supporters of slavery as an interstate criminal enterprise devoted to the theft of property. Harriet Tubman, purloiner of many thousands of dollars in human bodies, was considered a bandit of the highest order. "I appear before you this evening as a thief and a robber," Frederick Douglass told his audiences. "I stole this head, these limbs, this body from my master, and ran off with them."

In Douglass's time, to stand up for black rights was to condone black criminality. The same was true in King's time. The same is true today. Appearing on *Meet the Press* to discuss the death of Michael Brown in Ferguson, Missouri, the former New York City mayor Rudy Giuliani—in the

fashion of many others—responded to black critics of law enforcement exactly as his forebears would have: “How about you reduce crime? ... The white police officers wouldn’t be there if you weren’t killing each other 70 to 75 percent of the time.”

But even in Giuliani’s hometown, the relationship between crime and policing is not as clear as the mayor would present it. After Giuliani became mayor, in 1994, his police commissioner William Bratton prioritized a strategy of “order maintenance” in city policing. As executed by Bratton, this strategy relied on a policy of stop-and-frisk, whereby police officers could stop pedestrians on vague premises such as “furtive movements” and then question them and search them for guns and drugs. Jeffrey Fagan, a Columbia University law professor, found that blacks and Hispanics were stopped significantly more often than whites even “after adjusting stop rates for the precinct crime rates” and “other social and economic factors predictive of police activity.” Despite Giuliani’s claim that aggressive policing is justified because blacks are “killing each other,” Fagan found that between 2004 and 2009, officers recovered weapons in less than 1 percent of all stops—and recovered them more frequently from whites than from blacks. Yet blacks were 14 percent more likely to be subjected to force. In 2013 the policy, as carried out under Giuliani’s successor, Michael Bloomberg, was ruled unconstitutional.

If policing in New York under Giuliani and Bloomberg was crime prevention tainted by racist presumptions, in other areas of the country ostensible crime prevention has mutated into little more than open pillage. When the Justice Department investigated the Ferguson police department in the wake of Michael Brown’s death, it found a police force that disproportionately ticketed and arrested blacks and viewed them “less as constituents to be protected than as potential offenders and sources of revenue.” This was not because the police department was uniquely evil—it was because Ferguson was looking to make money. “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs,” the report concluded. These findings had been augured by the reporting of *The Washington Post*, which had found a few months earlier that some small, cash-strapped municipalities in the St. Louis suburbs were deriving 40 percent or more of their annual revenue from various fines for traffic violations, loud music, uncut grass, and wearing “saggy pants,” among other infractions. This was not public safety driving policy—it was law enforcement tasked with the job of municipal plunder.

The job market in America regards black men who have never been criminals as though they were.

It is patently true that black communities, home to a class of people regularly discriminated against and impoverished, have long suffered higher crime rates. The historian David M. Oshinsky notes in his book *“Worse Than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice* that from 1900 to 1930, African Americans in Mississippi “comprised about 67 percent of the killers in Mississippi and 80 percent of the victims.” As much as African Americans complained of violence perpetrated by white terrorists, the lack of legal protection from everyday neighbor-on-neighbor violence was never then, and has never been, far from their minds. “Law-abiding Negroes point out that there are criminal and treacherous Negroes who secure immunity from punishment because they are fawning and submissive toward whites,” observed the Nobel Prize-winning economist Gunnar Myrdal in his famous 1944 book about

race in America, *An American Dilemma: The Negro Problem and Modern Democracy*. “Such persons are a danger to the Negro community. Leniency toward Negro defendants in cases involving crimes against other Negroes is thus actually a form of discrimination.”

Crime within the black community was primarily seen as a black problem, and became a societal problem mainly when it seemed to threaten the white population. Take the case of New Orleans between the world wars, when, as Jeffrey S. Adler, a historian and criminologist at the University of Florida, has observed, an increase in the proportion of crimes committed by blacks “on the streets and in local shops and bars,” as opposed to in black homes and neighborhoods, produced an enduring mix of fear and fury among whites. In response, Louisiana district attorneys promised that “Negro slayers of Negroes will be thoroughly prosecuted.” A common tool in homicide cases was to threaten black suspects with capital punishment to extract a guilty plea, which mandated a life sentence. So even as violent crime declined between 1925 and 1940, Louisiana’s incarceration rate increased by more than 50 percent. “Twice as many inmates entered state correctional facilities in low-crime 1940 as in high-crime 1925,” Adler writes. At Angola State Penal Farm, the “white population rose by 39 percent while the African American inmate population increased by 143 percent.”

The principal source of the intensifying war on crime was white anxiety about social control. In 1927, the Supreme Court had ruled that a racial-zoning scheme in the city was unconstitutional. The black population of New Orleans was growing. And there was increasing pressure from some government officials to spread New Deal programs to black people. “At no time in the history of our State,” the city’s district attorney claimed in 1935, “has White Supremacy been in greater danger.”

The staggering rise in incarceration rates in interwar Louisiana coincided with a sense among whites that the old order was under siege. In the coming decades, this phenomenon would be replicated on a massive, national scale.

## V.

### **the “baddest generation any society has ever known”**

The American response to crime cannot be divorced from a history of equating black struggle—individual and collective—with black villainy. And so it is unsurprising that in the midst of the civil-rights movement, rising crime was repeatedly linked with black advancement. Elijah Forrester, a Democratic congressman from Georgia, opposed the Eisenhower administration’s 1956 civil-rights bill on the grounds that “where segregation has been abolished,” black villainy soon prospered. “In the District of Columbia, the public parks have become of no utility whatever to the white race,” Forrester claimed, “for they enter at the risk of assaults upon their person or the robbery of their personal effects.” Unless segregation was immediately restored, “in 10 years, the nation’s capital will be unsafe for them in the daytime.” Around that time, Basil Whitener, a North Carolina congressman, dismissed the NAACP as an organization pledged to “the assistance of Negro criminals.”

In 1966, Richard Nixon picked up the charge, linking rising crime rates to Martin Luther King’s campaign of civil disobedience. The decline of law and order “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 obey them.” The cure, as Nixon saw it, was not addressing criminogenic conditions, but locking up more people. “Doubling the conviction rate in this country would do far more to cure crime in America than quadrupling the funds for [the] War on Poverty,” he said in 1968.

As president, Nixon did just that: During his second term, incarceration rates began their historic rise. Drugs in particular attracted Nixon’s ire. Heroin dealers were “literally the slave traders of our time,” he said, “traffickers in living death. They must be hunted to the end of the earth.”

Nixon’s war on crime was more rhetoric than substance. “I was cranking out that bullshit on Nixon’s crime policy before he was elected,” wrote White House counsel John Dean, in his memoir of his time in the administration. “And it was bullshit, too. We knew it.” Indeed, if sinking crime rates are the measure of success, Nixon’s war on crime was a dismal failure. The rate of every type of violent crime—murder, rape, robbery, aggravated assault—was up by the end of Nixon’s tenure. The true target of Nixon’s war on crime lay elsewhere. Describing the Nixon campaign’s strategy for assembling enough votes to win the 1972 election, Nixon’s aide John Ehrlichman later wrote, “We’ll go after the racists ... That subliminal appeal to the antiblack voter was always in Nixon’s statements and speeches on schools and housing.” According to H. R. Haldeman, another Nixon aide, the president believed that when it came to welfare, the “*whole* problem [was] really the blacks.” Of course, the civil-rights movement had made it unacceptable to say this directly. “The key is to devise a system that recognizes this while not appearing to,” Haldeman wrote in his diary. But there was no need to devise new systems from scratch: When Nixon proclaimed drugs “public enemy No. 1,” or declared “war against the criminal elements which increasingly threaten our cities, our homes, and our lives,” he didn’t need to name the threat. A centuries-long legacy of equating blacks with criminals and moral degenerates did the work for him.

In 1968, while campaigning for president, Nixon was taped rehearsing a campaign ad. “The heart of the problem is law and order in our schools,” he said. “Discipline in the classroom is essential if our children are to learn.” Then, perhaps talking to himself, he added, “Yep, this hits it right on the nose, the thing about this whole teacher—it’s all about law and order and the damn Negro—Puerto Rican groups out there.”

“I was cranking out that bullshit on Nixon’s crime policy before he was elected. And it was bullshit, too. We knew it.”

As incarceration rates rose and prison terms became longer, the idea of rehabilitation was mostly abandoned in favor of incapacitation. Mandatory minimums—sentences that set a minimum length of punishment for the convicted—were a bipartisan achievement of the 1980s backed not just by conservatives such as Strom Thurmond but by liberals such as Ted Kennedy. Conservatives believed mandatory sentencing would prevent judges from exercising too much leniency; liberals believed it would prevent racism from infecting the bench. But reform didn’t just provide sentencing guidelines—it also cut back on alternatives (parole, for instance) and generally lengthened time served. Before reform, prisoners typically served 40 to 70 percent of their sentences. After reform, they served 87 to 100 percent of their sentences. Moreover, despite

what liberals had hoped for, bias was not eliminated, because discretion now lay with prosecutors, who could determine the length of a sentence by deciding what crimes to charge someone with. District attorneys with reelection to consider could demonstrate their zeal to protect the public with the number of criminals jailed and the length of their stay.

Prosecutors were not alone in their quest to appear tough on crime. In the 1980s and '90s, legislators, focusing on the scourge of crack cocaine, vied with one another to appear toughest. There was no real doubt as to who would be the target of this newfound toughness. By then, Daniel Patrick Moynihan had gone from the White House to a U.S. Senate seat in New York. He was respected as a scholar and renowned for his intellect. But his preoccupations had not changed. "We cannot ignore the fact that when we talk about drug abuse in our country, in the main, we are talking about the consequence it has for young males in inner cities," he told the Senate in 1986. This might well have been true as a description of drug *enforcement policies*, but it was not true of actual drug abuse: Surveys have repeatedly shown that blacks and whites use drugs at remarkably comparable rates. Moynihan had by the late Reagan era evidently come to believe the worst distortions of his own 1965 report. Gone was any talk of root causes; in its place was something darker. The young inner-city males who had so concerned Moynihan led "wasted and ruined" lives and constituted a threat that could "bring about the destruction of whole communities and cities across this Nation."

In seeming to abandon scholarship for rhetoric, Moynihan had plenty of company among social scientists and political pundits. James Q. Wilson, the noted social scientist and a co-creator of the "broken windows" theory of policing, retreated to abstract moralizing and tautology. "Drug use is wrong because it is immoral," he claimed, "and it is immoral because it enslaves the mind and destroys the soul." Others went further. "The inner-city crack epidemic is now giving birth to the newest horror," the *Washington Post* columnist Charles Krauthammer declaimed: "A bio-underclass, a generation of physically damaged cocaine babies whose biological inferiority is stamped at birth." In this way, "the crime-stained blackness of the Negro" lived on to haunt white America.

In 1995, Adam Walinsky, a politically liberal lawyer who had been an aide to Senator Robert F. Kennedy, wrote a cover story for this magazine that, drawing on Moynihan's 1965 report, predicted doom. American policy toward the black family had, Walinsky wrote, "assured the creation of more very violent young men than any reasonable society can tolerate, and their numbers will grow inexorably for every one of the next twenty years." The solutions Walinsky proposed included ending racism, building better schools, and hiring more police. But the thrust of his rhetoric was martial. "We shrink in fear of teenage thugs on every street," he wrote. "More important, we shrink even from contemplating the forceful collective action we know is required."

Even as *The Atlantic* published those words, violent crime had begun to plunge. But thought leaders were slow to catch up. In 1996, William J. Bennett, John P. Walters, and John J. DiIulio Jr. partnered to publish perhaps the most infamous tract of the tough-on-crime era, *Body Count: Moral Poverty ... and How to Win America's War Against Crime and Drugs*. The authors (wrongly) predicted a new crime wave driven by "inner-city children" who were growing up "almost completely unmoralized and develop[ing] character traits" that would "lead them into a

life of illiteracy, illicit drugs, and violent crimes.” The threat to America from what the authors called “super-predators” was existential. “As high as America’s body count is today, a rising tide of youth crime and violence is about to lift it even higher,” the authors warned. “A new generation of street criminals is upon us—the youngest, biggest, and baddest generation any society has ever known.” Incarceration was “a solution,” DiIulio wrote in *The New York Times*, “and a highly cost-effective one.” The country agreed. For the next decade, incarceration rates shot up even further. The justification for resorting to incarceration was the same in 1996 as it was in 1896.

“No one can say I’m soft on crime.” In 1994, Bill Clinton signed a bill that offered grants to states that built prisons and cut back on parole, driving up the nation’s incarceration numbers. He now says he regrets doing that. (Doug Mills/AP)

Many African Americans concurred that crime was a problem. When Jesse Jackson confessed, in 1993, “There is nothing more painful to me at this stage in my life than to walk down the street and hear footsteps and start thinking about robbery, then look around and see somebody white and feel relieved,” he was speaking to the very real fear of violent crime that dogs black communities. The argument that high crime is the predictable result of a series of oppressive racist policies does not render the victims of those policies bulletproof. Likewise, noting that fear of crime is well grounded does not make that fear a solid foundation for public policy.

The suite of drug laws adopted in the 1980s and ’90s did little to reduce crime, but a lot to normalize prison in black communities. “No single offense type has more directly contributed to contemporary racial disparities in imprisonment than drug crimes,” Devah Pager, the Harvard sociologist, has written.

Between 1983 and 1997, the number of African Americans admitted to prison for drug offenses increased more than twenty-six-fold, relative to a sevenfold increase for whites ... By 2001, there were more than twice as many African Americans as whites in state prison for drug offenses.

In 2013, the ACLU published a report noting a 10-year uptick in marijuana arrests. The uptick was largely explained as “a result of the increase in the arrest rates of Blacks.” To reiterate an important point: Surveys have concluded that blacks and whites use drugs at roughly the same rates. And yet by the close of the 20th century, prison was a more common experience for young black men than college graduation or military service.

By the mid-’90s, both political parties had come to endorse arrest and incarceration as a primary tool of crime-fighting. This conclusion was reached not warily, but lustily. As a presidential candidate, Bill Clinton flew home to Arkansas to preside over the execution of Ricky Ray Rector, a mentally disabled, partially lobotomized black man who had murdered two people in 1981. “No one can say I’m soft on crime,” Clinton would say later. Joe Biden, then the junior senator from Delaware, quickly became the point man for showing that Democrats would not go soft on criminals. “One of my objectives, quite frankly,” he said, “is to lock Willie Horton up in jail.” Biden cast Democrats as the true party without mercy. “Let me define the liberal wing of the Democratic Party,” he said in 1994. “The liberal wing of the Democratic Party is now for 60

new death penalties ... The liberal wing of the Democratic Party has 70 enhanced penalties ... The liberal wing of the Democratic Party is for 100,000 cops. The liberal wing of the Democratic Party is for 125,000 new state prison cells.”

In Texas, the Democratic governor, Ann Richards, had come to power in 1991 advocating rehabilitation, but she ended up following the national trend, curtailing the latitude of judges and the parole board in favor of fixed sentencing, which gave power to prosecutors. In 1993, Texas rejected a bid to infuse its schools with \$750 million—but approved \$1 billion to build more prisons. By the end of her term, Richards had presided over “one of the biggest public works projects in Texas history,” according to Robert Perkinson’s *Texas Tough: The Rise of America’s Prison Empire*. In New York, another liberal governor, Mario Cuomo, found himself facing an exploding prison population. After voters rejected funding for more prisons, Cuomo pulled the money from the Urban Development Corporation, an agency that was supposed to build public housing for the poor. It did—in prison. Under the avowedly liberal Cuomo, New York added more prison beds than under all his predecessors combined.

This was penal welfarism at its finest. Deindustrialization had presented an employment problem for America’s poor and working class of all races. Prison presented a solution: jobs for whites, and warehousing for blacks. Mass incarceration “widened the income gap between white and black Americans,” writes Heather Ann Thompson, a historian at the University of Michigan, “because the infrastructure of the carceral state was located disproportionately in all-white rural communities.” Some 600,000 inmates are released from America’s prisons each year, more than the entire population of America’s prisons in 1970—enough people, according to Pager, to “fill every one of the fast-food job openings created annually nearly five times over.”

Dark predictions of rising crime did not bear out. Like the bestial blacks of the 19th century, super-predators proved to be the stuff of myth. This realization cannot be regarded strictly as a matter of hindsight. As the historian Naomi Murakawa has shown in her book, *The First Civil Right: How Liberals Built Prison America*, many Democrats knew exactly what they were doing—playing on fear for political gain—and did it anyway. Voting on the Anti-Drug Abuse Act of 1986, Nick Rahall II, a congressman from West Virginia, admitted that he had reservations about mandatory minimums but asked, “How can you get caught voting against them?” Congresswoman Patricia Schroeder of Colorado accused her colleagues of using the 1986 bill to score points before an election. In the end, she voted for it. “Right now, you could put an amendment through to hang, draw, and quarter,” said Claude Pepper, a historically liberal congressman from Florida, referring to the same law. Pepper also voted for it.

In 1994, President Clinton signed a new crime bill, which offered grants to states that built prisons and cut back on parole. Clinton recently said that he regrets his pivotal role in driving up the country’s incarceration numbers. “I signed a bill that made the problem worse,” he told the NAACP in July. “And I want to admit it.” In justifying his actions of 20 years earlier, he pointed to the problems of “gang warfare” and of “innocent bystanders” shot down in the streets. Those were, and are, real problems. But even in trying to explain his policies, Clinton neglected to retract the assumption underlying them—that incarcerating large swaths of one population was a purely well-intended, logical, and nonracist response to crime. Even at the time of its passage, Democrats—much like the Republican Nixon a quarter century earlier—knew that the 1994

crime bill was actually about something more than that. Writing about the bill in 1993, Clinton's aides Bruce Reed and Jose Cerda III urged the president to seize the issue "at a time when public concern about crime is the highest it has been since Richard Nixon stole the issue from the Democrats in 1968."

## VI.

### **"it's like i'm in prison with him."**

On the evening of December 19, 1973, Odell Newton, who was then 16 years old, stepped into a cab in Baltimore with a friend, rode half a block, then shot and killed the driver, Edward Mintz. The State of Maryland charged Odell with crimes including murder in the first degree and sentenced him to life in prison. He has now spent 41 years behind bars, but by all accounts he is a man reformed. He has repeatedly expressed remorse for his crimes. He has not committed an infraction in 36 years.

The Maryland Parole Commission has recommended Odell for release three times since 1992. But in Maryland, all release recommendations for lifers are subject to the governor's approval. In the 1970s, when Odell committed his crime, this was largely a formality. But in our era of penal cruelty, Maryland has effectively abolished parole for lifers—even juvenile offenders such as Odell. In 2010, the U.S. Supreme Court ruled that life sentences without the possibility of parole for juveniles found guilty of crimes other than homicide were unconstitutional. Two years later, it held the same for mandatory life sentences without parole for juvenile homicide offenders. But the Court has yet to rule on whether that more recent decision was retroactive. Fifteen percent of Maryland's lifers committed their crimes as juveniles—the largest percentage in the nation, according to a 2015 report by the Maryland Restorative Justice Initiative and the state's ACLU affiliate. The vast majority of them—84 percent—are black.

This summer, I visited Odell's mother, Clara; his sister Jackie; and his brother Tim at Clara's home in a suburb of Baltimore. Clara had just driven seven hours round-trip to visit Odell at Eastern Correctional Institution, on the Eastern Shore of Maryland, and she was full of worry. He was being treated for hepatitis. He'd lost 50 pounds. He had sores around his eyes.

Odell Newton's mother, Clara, with Odell's sister-in-law Lavenia, his brother Tim, and his sister Jackie at Clara's home in Maryland. (Greg Kahn)

I asked Clara how they managed to visit Odell regularly. She explained that family members trade visits. "It takes a lot out of the family," she explained. "Then you come back home, [after] you've seen him up there like that, [and] you're crying. I got so bad one time, I was losing weight ... Just thinking, *Was it gonna be all right? Was it gonna kill him? Was he gonna die?*"

In framed photographs, Odell. (Greg Kahn)

Clara was born and raised in Westmoreland, Virginia. She had her first child, Jackie, when she was only 15. The next year she married Jackie's father, John Irvin Newton Sr. They moved to Baltimore so that John could pursue a job at a bakery. "We stuck it out and made things work," Clara told me. They were married for 53 years, until John passed away, in 2008.

Odell Newton was born in 1957. When he was 4 years old, he fell ill and almost died. The family took him to the hospital. Doctors put a hole in his throat to help him breathe. They transferred Odell to another hospital, where he was diagnosed with lead poisoning. It turned out that he had been putting his mouth on the windowsill.

“We didn’t sue nobody. We didn’t know nothing about that,” Clara told me. “And when we finally found out that you could sue, Odell was 15. And they said they couldn’t do anything, because we waited too long.”

In prison, Odell has repeatedly attempted to gain his G.E.D., failing the test several times. “My previous grade school teacher noted that I should be placed in special education,” Odell wrote in a 2014 letter to his lawyer. “It is unclear what roll childhood lead poisoning played in my analytical capabilities.”

In June of 1964, the family moved into a nicer house, in Edmondson Village. Sometime around ninth grade, Clara began to suspect that Odell was lagging behind the other kids in his class. “We didn’t find out that he was really delayed until he was almost ready to enter into high school,” Jackie told me. “They just passed him on and passed him on.” Around this time, Clara says, Odell got “mixed up with the wrong crowd.” Not until he wrote his first letter home from prison did Clara understand the depth of his intellectual disability. The letter read as though it had been written by “a child just starting pre-K or kindergarten,” Clara told me. “He couldn’t really spell. And, I don’t know, it just didn’t look like a person of his age should be writing like that.”

Odell Newton is now 57. He has spent the lion’s share of his life doing time under state supervision. The time he’s served has not affected him alone. If men and women like Odell are cast deep within the barrens of the Gray Wastes, their families are held in a kind of orbit, on the outskirts, by the relentless gravity of the carceral state. For starters, the family must contend with the financial expense of having a loved one incarcerated. Odell’s parents took out a second mortgage to pay for their son’s lawyers, and then a third. Beyond that, there’s the expense of having to make long drives to prisons that are commonly built in rural white regions, far from the incarcerated’s family. There’s the expense of phone calls, and of constantly restocking an inmate’s commissary. Taken together, these economic factors fray many a family’s bonds.

And then there is the emotional weight, a mix of anger and sadness. While I was in Detroit last winter, I interviewed Patricia Lowe, whose son Edward Span had been incarcerated at age 16, sentenced to nine and a half to 15 years for carjacking, among other offenses. When I met with Patricia, Edward was about three years into his sentence, and she was as worried for him as she was angry at him. He’d recently begun calling home and requesting large sums of money. She was afraid he was being extorted by other prisoners. At the same time, she was unhappy about carrying the burden Edward had placed on her after all the hard work she’d put in as a mother. “He never ate school lunch. I would get up in the morning and make subs, sandwiches, salads, spaghetti, fried chicken,” she said. “We had dysfunction, but what family don’t? There’s no excuse for his misbehavior. So whatever you did out there, you can’t do in here. You know what it’s about. I told you out here what’s going to happen in there. So you gave me heartache out here. You can’t give it to me in there.”

But the heartache was unavoidable. “It’s like I’m in prison with him. I feel like I’m doing every day of that nine-and-a-half to 15.” When he was 17, Edward was taken from juvenile detention and put in an adult prison. Even in juvenile, Edward couldn’t sleep at night. “He feared going to prison,” Patricia told me. “He calls home and tells me he’s okay. But I know different because he has a female friend he calls. He can’t sleep. He’s worried about his safety.”

Odell Newton was 16 when he killed a cab driver. Four decades later, his family is still hoping for his release.

Odell’s brother Tim graduated from Salisbury State College with a degree in sociology in 1982. Two years later, he took a job with the State of Maryland as a corrections officer. For 20 years, while one son, Odell, served time under the state, another son, Tim, worked for it. This gave Tim a front-row seat for observing how Maryland’s carceral system grew more punitive. Whereas inmates had once done their time and gone to pre-release facilities, now they were staying longer. Requirements for release became more onerous. Meanwhile, the prisons were filling to capacity and beyond. “They just kept overcrowding and overcrowding and not letting people go home,” Tim told me. The prisons began holding two people in cells meant for one. “If you’re in an 8-by-10 space that’s only big enough for one person and now you got two people in there, it’s just more aggravation,” Tim said. “And then they cut out a lot of the college programs that they did have. They cut out the weights being in the yard.”

The overcrowding, the stripping of programs and resources, were part of the national movement toward punishing inmates more harshly and for longer periods. Officially, Maryland has two kinds of life sentences—life with the possibility of parole, and life without. In the 1970s, Maryland’s governor paroled 92 lifers. Parole for lifers declined after Marvin Mandel’s last term ended, in 1979, and then ground to a halt in 1993, when Rodney Stokes—a lifer out on work release—killed his girlfriend and then himself. Parris Glendening, the Democratic governor elected in 1994, declared, “A life sentence means life.” Glendening’s Republican successor, Robert L. Ehrlich Jr., commuted five lifers’ sentences and granted only a single instance of medical parole.

In 2006, Martin O’Malley (who’s currently vying to be the Democrats’ nominee for president in 2016) defeated Ehrlich to become governor, but he took an even stricter stance on lifers than his predecessor, failing to act on even a single recommendation of the Parole Commission. Recognizing that the system had broken down, the Maryland legislature changed the law in 2011 so that the commission’s recommendations would automatically be carried out if the governor did not reject them within 180 days. This changed almost nothing. After the law’s passage, O’Malley vetoed nearly every recommendation that reached his desk.

This is not sound policy for fighting crime or protecting citizens. In Maryland, the average lifer who has been recommended for but not granted release is 60 years old. These men and women are past the age of “criminal menopause,” as some put it, and most pose no threat to their community. Even so, the Maryland Parole Commission’s recommendation is not easily attained: Between 2006 and 2014, it recommended only about 80 out of more than 2,100 eligible lifers for release. Almost none of those 80 or so men and women, despite meeting a stringent set of requirements, was granted release by the governor. Though Maryland’s Parole Commission still

offers recommendations for lifers, they are disregarded. The choice given to judges to levy sentences for life either with or without parole no longer has any meaning.

For more than five years, from February 1988 to June 1993, Odell Newton worked in the community through work release; for part of that period, he was able to visit his relatives through the state's family-leave policy. Reports from Odell's former work-release employers are glowing. "His character is above reproach," one wrote in 1991. Another said: "I consider it a privilege to have Mr. Newton as an employee, and would rehire Odell at any time." With his family, he would often go out to eat, or have a cookout or a party. Family leave was supposed to be a bridge to Odell's eventual release. But the program was suspended for lifers in May of 1993, after a convicted murderer fled while visiting his son. The Stokes killing followed just weeks later. After that, parole was effectively taken off the table for all lifers, and Maryland ended work release for them as well. Believing for years that Odell was on his way to coming home, and then seeing the road to freedom snatched away, frustrated the family. "I could see you doing it to people that's starting out new, and this is a new law you're putting down," his sister Jackie told me. But this is "like me buying a house and I have it one price, then when you come in and sign the papers, they're going, 'Oh no, I changed my mind, I want \$10,000 more for it.' "

I asked Odell's family how they coped with the experience. "You just have to pray and keep praying," his mother told me.

For most of Odell's time in prison, the power to sign the papers has rested in the hands of Democrats, who in recent decades have taken a line on lifers at least as harsh as any Republican has. "The Glendening administration's policies, and Gov. Martin O'Malley policies made a paroleable life sentence a 'non paroleable sentence,' " Odell wrote to his lawyer, "and that's not right."

Patricia Lowe and her son Uriah sit on the bed of Patricia's other son Edward, who has been incarcerated since he was 16. Edward is currently serving the fourth year of a 9.5-to-15-year sentence. August 8, 2015. (Greg Kahn)

## VII.

### **"our value system became surviving versus living."**

Born in the late 1950s, Odell Newton was part of the generation that so troubled Moynihan when he wrote his report on "The Negro Family." But Odell had the very bulwark that Moynihan treasured—a stable family—and it did not save him from incarceration. It would be wrong to conclude from this that family is irrelevant. But families don't exist independent of their environment. Odell was born in the midst of an era of government-backed housing discrimination. Indeed, Baltimore was a pioneer in this practice—in 1910, the city council had zoned the city by race. "Blacks should be quarantined in isolated slums," J. Barry Mahool, Baltimore's mayor, said. After the U.S. Supreme Court ruled such explicit racial-zoning schemes unconstitutional, in 1917, the city turned to other means—restrictive covenants, civic associations, and redlining—to keep blacks isolated.

These efforts curtailed the ability of black people to buy better housing, to move to better neighborhoods, and to build wealth. Also, by confining black people to the same neighborhoods,



these efforts ensured that people who were discriminated against, and hence had little, tended to be neighbors only with others who also had little. Thus while an individual in that community might be high-achieving, even high-earning, his or her ability to increase that achievement and wealth and social capital, through friendship, marriage, or neighborhood organizations, would always be limited. Finally, racial zoning condemned black people to the oldest and worst housing in the city—the kind where one was more likely to be exposed, as Odell Newton was, to lead. A lawyer who handled more than 4,000 lead-poisoning cases across three decades recently described his client list to *The Washington Post*: “Nearly 99.9 percent of my clients were black.”

That families are better off the stronger and more stable they are is self-evidently important. But so is the notion that no family can ever be made impregnable, that families are social structures existing within larger social structures.

Robert Sampson, a sociologist at Harvard who focuses on crime and urban life, notes that in America’s ghettos, “like things tend to go together.” High rates of incarceration, single-parent households, dropping out of school, and poverty are not unrelated vectors. Instead, taken together, they constitute what Sampson calls “compounded deprivation”—entire families, entire neighborhoods, deprived in myriad ways, must navigate, all at once, a tangle of interrelated and reinforcing perils.

Black people face this tangle of perils at its densest. In a recent study, Sampson and a co-author looked at two types of deprivation—being individually poor, and living in a poor neighborhood. Unsurprisingly, they found that blacks tend to be individually poor and to live in poor neighborhoods. But even blacks who are not themselves individually poor are more likely to live in poor neighborhoods than whites and Latinos who are individually poor. For black people, escaping poverty does not mean escaping a poor neighborhood. And blacks are much more likely than all other groups to fall into compounded deprivation later in life, even if they managed to avoid it when they were young.

“It’s not just being poor; it’s discrimination in the housing market, it’s subprime loans, it’s drug addiction—and then all of that following you over time,” Sampson told me recently. “We try to split things out and say, ‘Well, you can be poor but still have these other characteristics and qualities.’ It’s the myth of the American Dream that with initiative and industriousness, an individual can always escape impoverished circumstances. But what the data show is that you have these multiple assaults on life chances that make transcending those circumstances difficult and at times nearly impossible.”

On a brisk Thursday morning last December, I climbed into an SUV with Carl S. Taylor and Yusef Bunchy Shakur and drove to the West Side of Detroit, where both men had grown up. Shakur is a community activist and the author of two books chronicling his road to prison, his experience inside, and his return to society. Taylor is a sociologist at Michigan State University, where he researches urban communities and violence and serves as an adviser to Michigan’s prisons and juvenile detention centers. A 24-year age gap separates Taylor and Shakur, a gap that’s reflected in their visions of Detroit. Shakur, who is 42, recalls a town ravaged by deindustrialization, where unemployment was rampant, social institutions had failed, and gangs had taken their place. “The community collapsed,” Shakur said. “Our value system became

surviving versus living. Drugs, gangs, lack of education all came to the forefront. And prison and incarceration.”

After serving time in prison, Yusef Bunchy Shakur became a community activist in Detroit. Photographed at his mother’s home on the West Side of Detroit. August 8, 2015. (Greg Kahn)

Taylor, who is 66, recalls a more hopeful community where black professionals lived next door to black factory workers and black maids and black gangsters, and the streets were packed with bars, factories, and restaurants. “All of this was filled,” Taylor said, pointing out the car window at a row of abandoned housing. “Everybody was working. It was smaller factories all up and down. But the strip was here also. The legendary Chit Chat Lounge was down here, where the Motown and jazz musicians played.”

We stopped on the desolate corner of Hazelwood and 12th Street. “I lived in that first house right there that’s boarded up,” Taylor said. He pointed out at the street, gesturing toward businesses and neighbors long gone. “Right here was a drugstore and produce. There was a black woman right here that owned a drapery-cleaning business. Negroes used to have draperies! Here was the wig shop and the beauty salon for the street girls. Church ladies weren’t going in there. I lived right here, and this is a very powerful place for me.” In black cities around the country, Jim Crow—with its housing segregation and job discrimination—imposed boundaries. And within those boundaries an order took root. This world was the product of oppression—but it was a world beloved by the people who lived there. It is a matter of some irony that the time period and the communities Taylor was describing with fond nostalgia are the same ones that so alarmed Daniel Patrick Moynihan in 1965. Taylor was not blind to the problems—many of them outlined in Moynihan’s report—but he described them as embedded within a larger social fabric, giving them a kind of humanity that Moynihan’s alarmism stripped away.

“This was the good time, the good life,” Taylor said. “And when the riot hit, this is where it jumped off.”

Like so many urban riots during the long, hot summers of the 1960s, Detroit’s began with law enforcement. On July 23, 1967, the Detroit police raided an after-hours watering hole on the West Side. For several days, the city’s black communities burned. As in other cities, the riot demarcated the end of “the good life.” In fact the good life, to the extent it ever existed, had begun decaying long before. As Thomas J. Sugrue, a historian at New York University, observes in his book *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, “Between 1947 and 1963, Detroit lost 134,000 manufacturing jobs, while its population of working-aged men and women actually increased.” From the end of the 1940s to the beginning of the 1960s, Detroit suffered four major recessions. Automakers began moving to other parts of the country, and eventually to other parts of the world. The loss of jobs meant a loss of buying power, affecting drugstores, grocery stores, restaurants, and department stores. “By the late 1950s,” Sugrue writes, Detroit’s “industrial landscape had become almost unrecognizable.”

Black residents of Detroit had to cope not just with the same structural problems as white residents but also with pervasive racism. Within a precarious economy, black people generally worked the lowest-paying jobs. They came home from those jobs to the city’s poorest

neighborhoods, where most of them used their substandard wages to pay inflated prices for inferior housing. Attempts to escape into white neighborhoods were frustrated by restrictive covenants, racist real-estate agents, block associations, and residents whose tactics included, as Sugrue writes, “harassment, mass demonstrations, picketing, effigy burning, window breaking, arson, vandalism, and physical attacks.” Some blacks were richer than others. Some were better educated than others. But all were constricted, not by a tangle of pathologies, but by a tangle of structural perils.

Peril is generational for black people in America—and incarceration is our mechanism for maintaining that peril.

The fires of 1967 conveniently obscured those perils. But the structural problems, along with the wave of deindustrialization, were what gifted America with the modern “Negro problem.” By the 1970s, the government institution charged with mediating these problems was, in the main, the criminal-justice system. As we drove around Detroit, Shakur described the world in which the black men he knew came of age in the 1970s and ’80s. Out of every 10 men, “probably seven of their fathers have been in prison. Possibly two of their mothers have been killed. The majority of their fathers and mothers haven’t graduated from high school.” Shakur sounded a lot like Moynihan—except he understood that the family was interacting with something larger. “When you grow up and you seen nothing but drugs, you seen nothing but prostitution, that becomes normal,” he said. “So when you talk about Carl”—Taylor, who went to college and graduate school and became a professor—“Carl becomes abnormal, because he’s so far from my world. I’ve never talked with a doctor until he be sewing me up after I got shot. I never talked with a lawyer until he was sending me to prison. I never talked with a judge until he convicted me.”

The blacks incarcerated in this country are not like the majority of Americans. They do not merely hail from poor communities—they hail from communities that have been imperiled across both the deep and immediate past, and continue to be imperiled today. Peril is generational for black people in America—and incarceration is our current mechanism for ensuring that the peril continues. Incarceration pushes you out of the job market. Incarceration disqualifies you from feeding your family with food stamps. Incarceration allows for housing discrimination based on a criminal-background check. Incarceration increases your risk of homelessness. Incarceration increases your chances of being incarcerated again. “The prison boom helps us understand how racial inequality in America was sustained, despite great optimism for the social progress of African Americans,” Bruce Western, the Harvard sociologist, writes. “The prison boom is not the main cause of inequality between blacks and whites in America, but it did foreclose upward mobility and deflate hopes for racial equality.”

“This was the good time, the good life,” says Carl S. Taylor, a sociologist at Michigan State University, talking about 1960s Detroit before riots and mass incarceration eviscerated the black community. August 8, 2015. (Greg Kahn)

If generational peril is the pit in which all black people are born, incarceration is the trapdoor closing overhead. “African Americans in our data are distinct from both Latinos and whites,” Robert Sampson told me. “Even when we control for marital status and family history of criminality, we still see these strong differences. The compounded deprivation that African

Americans experience is a challenge even independent of all the characteristics we think are protective.”

Characteristics such as the one Daniel Patrick Moynihan focused on—family.

## VIII.

### **“the negro poor having become more openly violent”**

Moynihan is in the midst of a renaissance. Fifty years after the publication of “The Negro Family: The Case for National Action,” a coterie of sociologists, historians, and writers are declaring it prophecy. In their version of history, a courageous and blameless Moynihan made one mistake: He told the truth. For his sins—loving the black family enough to be honest—Moynihan was crucified by an intolerant cabal of obstinate leftists and Black Power demagogues. “Liberals brutally denounced Moynihan as a racist,” the columnist Nicholas Kristof wrote in *The New York Times* this past spring. In the eyes of his new acolytes, Moynihan has been vindicated by the rising percentage of female-headed households and the intractable problems of America’s inner cities. Intimidated by “the vitriolic attacks and acrimonious debate” over the black family, as the sociologist William Julius Wilson has put it, liberal scholars steered clear of the controversy. Conservatives stepped into the breach, eagerly taking up Moynihan’s charge to examine the family, but stripping it of any structural context, and dooming the dream of a benevolent welfare state.

A raft of sociological research has indeed borne out Moynihan’s skepticism about black progress, as well as his warnings about the kind of concentrated poverty that flowed from segregation. Moynihan’s observation about the insufficiency of civil-rights legislation has been proved largely correct. Moreover, Moynihan’s concern about the declining rates of two-parent households would have struck the average black resident of Harlem in 1965 as well placed. Nationalist leaders like Malcolm X drew much of their appeal through their calls for shoring up the black family.

But if Moynihan’s past critics exhibited an ignorance of his oeuvre and his intent, his current defenders exhibit a naïveté in defense of their hero. “The Negro Family” is a flawed work in part because it is a fundamentally sexist document that promotes the importance not just of family but of patriarchy, arguing that black men should be empowered at the expense of black women. “Men must have jobs,” Moynihan wrote to President Johnson in 1965. “We must not rest until every able-bodied Negro male is working. Even if we have to displace some females.” Moynihan was evidently unconcerned that he might be arguing for propping up an order in which women were bound to men by a paycheck, in which “family” still meant the right of a husband to rape his wife and intramarital violence was still treated as a purely domestic and nonlegal matter.

Moynihan’s defenders also overlook his record after he entered the Nixon White House in 1969. Perhaps still smarting from his treatment in the Johnson administration, Moynihan fed Nixon’s antipathies—against elites, college students, and blacks—and stoked the president’s fears about crime. In a memo to Nixon, he asserted that “a great deal of the crime” in the black community was really a manifestation of anti-white racism: “Hatred—revenge—against whites is now an acceptable excuse for doing what might have been done anyway.” Like his forebears who’d

criminalized blacks, Moynihan claimed that education had done little to mollify the hatred. “It would be difficult to overestimate the degree to which young well educated blacks detest white America.”

Whereas Johnson, guided by Moynihan, had declared that “white America must accept responsibility” for the problems of the black community, Moynihan wrote Nixon that “the Negro lower class would appear to be unusually self-damaging.” He continued:

The Negro poor having become more openly violent—especially in the form of the rioting of the mid 1960’s—they have given the black middle class an incomparable weapon with which to *threaten* white America. This has been for many an altogether intoxicating experience. “Do this or the cities will burn.” ... What building contracts and police graft were to the 19th-century urban Irish, the welfare department, Head Start, and Black Studies programs will be to the coming generation of Negroes. They are of course very wise in this respect.

In this same memo, Moynihan ominously cited a “rather pronounced revival—in impeccably respectable circles—of the proposition that there is a difference in genetic potential” between the two races. Moynihan claimed that he did not believe in a genetic difference in intelligence, but said he considered the matter “an open question.”

Crime really did begin to rise during the early 1970s. But by this point, Moynihan had changed. According to the Moynihan of the Nixon era, middle-class blacks were not hardworking Americans attempting to get ahead—they were mobsters demanding protection money in exchange for the safety of America’s cities. And the “unusually self-damaging” black poor were hapless tools, the knife at the throat of blameless white America. In casting African Americans as beyond the purview of polite and civilized society, in referring to them as a race of criminals, Moynihan joined the long tradition of black criminalization. In so doing, he undermined his own stated aims in writing “The Negro Family” in the first place. One does not build a safety net for a race of predators. One builds a cage.

Whatever the slings and arrows Moynihan suffered in the 1960s, his vision dominates liberal political discourse today. One hears Moynihan in Barack Obama’s cultural critique of black fathers and black families. Strains of Moynihan’s thinking ran through Bill Clinton’s presidency. “We cannot ... repair the American community and restore the American family until we provide the structure, the values, the discipline, and the reward that work gives,” President Clinton told a group of black church leaders in Memphis in 1993. He argued for a policy initiative on three fronts—jobs, family, and crime—but the country’s commitment to each of these propositions proved unequal. Incarceration soared during Clinton’s two terms. There’s very little evidence that it brought down crime—and abundant evidence that it hindered employment for black men, and accelerated the kind of family breakdown that Clinton and Moynihan both lamented. In their efforts to strengthen the black family, Clinton and Moynihan—and Obama, too—aspired to combine government social programs with cultural critiques of ghetto pathology (the “both/and” notion, as Obama has termed it), and they believed that Americans were capable of taking in critiques of black culture and white racism at once. But this underestimated the weight of the country’s history.

“It would be difficult to overestimate the degree to which young well educated blacks detest white America.” — *Daniel Patrick Moynihan to Richard Nixon, 1970*

For African Americans, unfreedom is the historical norm. Enslavement lasted for nearly 250 years. The 150 years that followed have encompassed debt peonage, convict lease-labor, and mass incarceration—a period that overlapped with Jim Crow. This provides a telling geographic comparison. Under Jim Crow, blacks in the South lived in a police state. Rates of incarceration were not that high—they didn’t need to be, because state social control of blacks was nearly total. Then, as African Americans migrated north, a police state grew up around them there, too. In the cities of the North, “European immigrants’ struggle” for the credential of whiteness gave them the motive to oppress blacks, writes Christopher Muller, a sociologist at Columbia who studies incarceration: “A central way European immigrants advanced politically in the years preceding the first Great Migration was by securing patronage positions in municipal services such as law enforcement.” By 1900, the black incarceration rate in the North was about 600 per 100,000—slightly lower than the national incarceration rate today.

That early-20th-century rates of black imprisonment were lower in the South than in the North reveals how the carceral state functions as a system of control. Jim Crow applied the control in the South. Mass incarceration did it in the North. After the civil-rights movement triumphed in the 1960s and toppled Jim Crow laws, the South adopted the tactics of the North, and its rates of imprisonment surged far past the North’s. Mass incarceration became the national model of social control. Indeed, while the Gray Wastes have expanded their population, their most significant characteristic remains unchanged: In 1900, the black-white incarceration disparity in the North was seven to one —roughly the same disparity that exists today on a national scale.

## IX.

**“now comes the proposition that the negro is entitled to damages.”**

In his inaugural year as the governor of Texas, 1995, George W. Bush presided over a government that opened a new prison nearly every week. Under Bush, the state’s prison budget rose from \$1.4 billion to \$2.4 billion, and the total number of prison beds went from about 118,000 to more than 166,000. Almost a decade later Bush, by then the president of the United States, decided that he, and the rest of the country, had made a mistake. “This year, some 600,000 inmates will be released from prison back into society,” Bush said during his 2004 State of the Union address. “We know from long experience that if they can’t find work, or a home, or help, they are much more likely to commit crime and return to prison.”

As we enter the 2016 presidential-election cycle, candidates on both sides of the partisan divide are echoing Bush’s call. From the Democratic Socialist Bernie Sanders (“To my mind, it makes eminently more sense to invest in jobs and education, rather than jails and incarceration”) to mainstream progressives like Hillary Clinton (“Without the mass incarceration that we currently practice, millions fewer people would be living in poverty”) to right-wing Tea Party candidates like Ted Cruz (“Harsh mandatory minimum sentences for nonviolent drug crimes have contributed to prison overpopulation and are both unfair and ineffective”), there is now broad agreement that the sprawling carceral state must be dismantled. Longtime criminal-justice-reform activists who struggled through the tough-on-crime ’90s are heartened to see the likes of

Koch Industries, a conglomerate owned by patrons of the libertarian right, teaming up with the Center for American Progress, a liberal think tank, in service of decarceration.

But the task is Herculean. The changes needed to achieve an incarceration rate in line with the rest of the developed world are staggering. In 1972, the U.S. incarceration rate was 161 per 100,000—slightly higher than the English and Welsh incarceration rate today (148 per 100,000). To return to that 1972 level, America would have to cut its prison and jail population by some 80 percent. The popular notion that this can largely be accomplished by releasing nonviolent drug offenders is false—as of 2012, 54 percent of all inmates in state prisons had been sentenced for violent offenses. The myth is that “we have a lot of people in prison and a bunch of good guys, and we can easily see the difference between the good guys and the bad guys,” says Marie Gottschalk, a political scientist at the University of Pennsylvania and the author of the recent book *Caught: The Prison State and the Lockdown of American Politics*. Her point is that it’s often hard to tell a nonviolent offender from a violent offender. Is a marijuana dealer who brandishes a switchblade a violent criminal? How about the getaway driver in an armed robbery? And what if someone now serving time for a minor drug offense has a prior conviction for aggravated assault? One 2004 study found that the proportion of “unambiguously low-level drug offenders” could be less than 6 percent in state prisons and less than 2 percent in federal ones.

One does not build a safety net for a race of predators. One builds a cage.

Decarceration raises a difficult question: What do we mean by violent crime, and how should it be punished? And what is the moral logic that allows forever banishing the Odell Newtons of America to the Gray Wastes? At the moment, that moral logic, as evidenced by the frequency with which the United States locks up people for life, remains peculiarly American. Some 50 out of every 100,000 Americans are serving a life sentence—which is, Gottschalk notes, a rate “comparable to the incarceration rate for *all* prisoners, including pretrial detainees, in Sweden and other Scandinavian countries.” If one purpose of prison is to protect the public, then high rates of life imprisonment make little sense, because offenders, including those convicted of violent crimes, tend to age out of crime. Arguing for leniency toward violent criminals is not easy politically. In many European countries, a 10-year sentence even for a violent crime would seem harsh to citizens, but Gottschalk observes that the fact that American prisons are filled with “lifers and de facto lifers who will likely die in prison” makes the typical European sentence seem lenient to American politicians and their constituents. Thus the initial impediment to undoing mass incarceration in America is not that we don’t have the answers for how to treat violent crime—it’s that our politics seem allergic to the very question.

The Gray Wastes are a moral abomination for reasons beyond the sheer number of their tenants. In 1970 the national correctional system was much smaller than it is today, but even so, blacks were incarcerated at several times the rate of whites. There is no reason to assume that a smaller correctional system inevitably means a more equitable correctional system. Examining Minnesota’s system, Richard S. Frase, a professor of criminal law at the University of Minnesota, found a state whose relatively sane justice policies give it one of the lowest incarceration rates in the country—and yet whose economic disparities give it one of the worst black-white incarceration ratios in the country. Changing criminal-justice policy did very little to change the fact that blacks committed crimes at a higher rate than whites in Minnesota. Why did

blacks in Minnesota commit crimes at a higher rate than whites? Because the state's broad racial gulf in criminal offending mirrored another depressing gulf. "The black family poverty rate in Minnesota was over six times higher than the white poverty rate, whereas for the United States as a whole the black poverty rate was 3.4 times higher," Frase writes.

The lesson of Minnesota is that the chasm in incarceration rates is deeply tied to the socioeconomic chasm between black and white America. The two are self-reinforcing—impoverished black people are more likely to end up in prison, and that experience breeds impoverishment. An array of laws, differing across the country but all emanating from our tendency toward punitive criminal justice—limiting or banning food stamps for drug felons; prohibiting ex-offenders from obtaining public housing—ensure this. So does the rampant discrimination against ex-offenders and black men in general. This, too, is self-reinforcing. The American population most discriminated against is also its most incarcerated—and the incarceration of so many African Americans, the mark of criminality, justifies everything they endure after.

Mass incarceration is, ultimately, a problem of troublesome entanglements. To war seriously against the disparity in unfreedom requires a war against a disparity in resources. And to war against a disparity in resources is to confront a history in which both the plunder and the mass incarceration of blacks are accepted commonplaces. Our current debate over criminal-justice reform pretends that it is possible to disentangle ourselves without significantly disturbing the other aspects of our lives, that one can extract the thread of mass incarceration from the larger tapestry of racist American policy.

Daniel Patrick Moynihan knew better. His 1965 report on "The Negro Family" was explosive for what it claimed about black mothers and black fathers—but if it had contained all of Moynihan's thinking on the subject, including his policy recommendations, it likely would have been politically nuclear. "Now comes the proposition that the Negro is entitled to damages as to unequal favored treatment—in order to compensate for past unequal treatment of an opposite kind," Moynihan wrote in 1964. His point was simple if impolitic: Blacks were suffering from the effects of centuries of ill treatment at the hands of white society. Ending that ill treatment would not be enough; the country would have to make amends for it. "It may be that without unequal treatment in the immediate future there is no way for [African Americans] to achieve anything like equal status in the long run," Moynihan wrote.

As we look ahead to what politicians are now saying will be the end of mass incarceration, we are confronted with the reality of what Moynihan observed in 1965, intensified and compounded by the past 50 years of the carceral state. What of the "damages" wrought by mass incarceration? What of the black men whose wages remained stagnant for decades largely due to our correctional policy? What of the 20th-century wars on drugs repeatedly pursued on racist grounds, and their devastating effects on black communities? The post-civil-rights consensus aims for the termination of injury. Remedy is beyond our field of vision. When old wounds fester, quackery is prescribed and hoary old fears and insidious old concepts burble to the surface—"matriarchy"; "super-predators"; "bio-underclass." This, too, was part of Moynihan, but it wasn't all of him.



To return to its 1972 incarceration rate, America would have to cut its prison and jail population by some 80 percent.

A serious reformation of our carceral policy—one seeking a smaller prison population, and a prison population that looks more like America—cannot concern itself merely with sentencing reform, cannot pretend as though the past 50 years of criminal-justice policy did not do real damage. And so it is not possible to truly reform our justice system without reforming the institutional structures, the communities, and the politics that surround it. Robert Sampson argues for “affirmative action for neighborhoods”—reform that would target investment in both persistently poor neighborhoods and the poor individuals living in those neighborhoods. One class of people suffers deprivation at levels above and beyond the rest of the country—the same group that so disproportionately fills our jails and prisons. To pull too energetically on one thread is to tug at the entire tapestry.

Moynihan may have left any recommendations as to “favored treatment” for blacks out of his report. But the question has not disappeared. In fact, it is more urgent than ever. The economic and political marginalization of black people virtually ensured that they would be the ones who would bear the weight of what one of President Nixon’s own aides called his “bullshit” crime policy, and thus be fed into the maw of the Gray Wastes. And should crime rates rise again, there is no reason to believe that black people, black communities, black families will not be fed into the great maw again. Indeed, the experience of mass incarceration, the warehousing and deprivation of whole swaths of our country, the transformation of that deprivation into wealth transmitted through government jobs and private investment, the pursuit of the War on Drugs on nakedly racist grounds, have only intensified the ancient American dilemma’s white-hot core—the problem of “past unequal treatment,” the difficulty of “damages,” the question of reparations.

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