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The New Jim Crow: Mass Incarceration in the Age of Colorblindness

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It was no ordinary Sunday morning when presidential candidate Barack Obama stepped to the podium at the Apostolic Church of God in Chicago. It was Father's Day. Hundreds of enthusiastic congregants packed the pews at the overwhelmingly black church eager to hear what the first black Democratic nominee for president of the United States had to say.

The message was a familiar one: black men should be better fathers. Too many are absent from their homes. For those in the audience, Obama's speech was an old tune sung by an exciting new performer. His message of personal responsibility, particularly as it relates to fatherhood, was anything but new; it had been delivered countless times by black ministers in churches across America. The message had also been delivered on a national stage by celebrities such as Bill

Cosby and Sidney Poitier. And the message had been delivered with great passion by Louis Farrakhan, who more than a decade earlier summoned one million black men to Washington, D.C., for a day of “atonement” and recommitment to their families and communities.

The mainstream media, however, treated the event as big news, and many pundits seemed surprised that the black congregants actually applauded the message. For them, it was remarkable that black people nodded in approval when Obama said: “If we are honest with ourselves, we’ll admit that too many fathers are missing—missing from too many lives and too many homes. Too many fathers are MIA. Too many fathers are AWOL. They have abandoned their responsibilities. They’re acting like boys instead of men. And the foundations of our families are weaker because of it. You and I know this is true everywhere, but nowhere is this more true than in the African American community.”

The media did not ask—and Obama did not tell—where the missing fathers might be found.

The following day, social critic and sociologist Michael Eric Dyson published a critique of Obama’s speech in *Time* magazine. He pointed out that the stereotype of black men being poor fathers may well be false. Research by Boston College social psychologist Rebekah Levine Coley found that black fathers not living at home are more likely to keep in contact with their children than fathers of any other ethnic or racial group. Dyson chided Obama for evoking a

black stereotype for political gain, pointing out that “Obama’s words may have been spoken to black folk, but they were aimed at those whites still on the fence about whom to send to the White House.”¹ Dyson’s critique was a fair one, but like other media commentators, he remained silent about where all the absent black fathers could be found. He identified numerous social problems plaguing black families, such as high levels of unemployment, discriminatory mortgage practices, and the gutting of early-childhood learning programs. Not a word was said about prisons.

The public discourse regarding “missing black fathers” closely parallels the debate about the lack of eligible black men for marriage. The majority of black women are unmarried today, including 70 percent of professional black women.² “Where have all the black men gone?” is a common refrain heard among black women frustrated in their efforts to find life partners.

The sense that black men have disappeared is rooted in reality. The U.S. Census Bureau reported in 2002 that there are nearly 3 million more black adult women than men in black communities across the United States, a gender gap of 26 percent.³ In many urban areas, the gap is far worse, rising to more than 37 percent in places like New York City. The comparable disparity for whites in the United States is 8 percent.⁴ Although a million black men can be found in prisons and jails, public acknowledgment of the role of the criminal justice system in “disappearing” black men is surprisingly rare. Even in the black media—which is generally more willing to raise and tackle

issues related to criminal justice—an eerie silence can often be found.⁵

Ebony magazine, for example, ran an article in December 2006 entitled “Where Have the Black Men Gone?” The author posed the popular question but never answered it.⁶ He suggested we will find our black men when we rediscover God, family, and self-respect. A more cynical approach was taken by Tyra Banks, the popular talk show host, who devoted a show in May 2008 to the recurring question, “Where Have All the Good Black Men Gone?” She wondered aloud whether black women are unable to find “good black men” because too many of them are gay or dating white women. No mention was made of the War on Drugs or mass incarceration.

The fact that Barack Obama can give a speech on Father’s Day dedicated to the subject of fathers who are “AWOL” without ever acknowledging that the majority of young black men in many large urban areas are currently under the control of the criminal justice system is disturbing, to say the least. What is more problematic, though, is that hardly anyone in the mainstream media noticed the oversight. One might not expect serious analysis from Tyra Banks, but shouldn’t we expect a bit more from the *New York Times* and CNN? Hundreds of thousands of black men are unable to be good fathers for their children, not because of a lack of commitment or desire but because they are warehoused in prisons, locked in cages.

They did not walk out on their families voluntarily; they were taken away in handcuffs, often due to a massive federal program known as the War on Drugs.

More African American adults are under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850, a decade before the Civil War began.⁷ The mass incarceration of people of color is a big part of the reason that a black child born today is less likely to be raised by both parents than a black child born during slavery.⁸ The absence of black fathers from families across America is not simply a function of laziness, immaturity, or too much time watching Sports Center. Thousands of black men have disappeared into prisons and jails, locked away for drug crimes that are largely ignored when committed by whites.

The clock has been turned back on racial progress in America, though scarcely anyone seems to notice. All eyes are fixed on people like Barack Obama and Oprah Winfrey, who have defied the odds and risen to power, fame, and fortune. For those left behind, especially those within prison walls, the celebration of racial triumph in America must seem a tad premature. More black men are imprisoned today than at any other moment in our nation's history. More are disenfranchised today than in 1870, the year the Fifteenth Amendment was ratified prohibiting laws that explicitly deny the right to vote on the basis of race.⁹ Young black men today may be just as likely to suffer discrimination in employment, housing, public benefits, and jury service as a black man in the Jim

Crow era—discrimination that is perfectly legal, because it is based on one's criminal record.

This is the new normal, the new racial equilibrium.

The launching of the War on Drugs and the initial construction of the new system required the expenditure of tremendous political initiative and resources. Media campaigns were waged; politicians blasted “soft” judges and enacted harsh sentencing laws; poor people of color were vilified. The system now, however, requires very little maintenance or justification. In fact, if you are white and middle class, you might not even realize the drug war is still going on. Most high school and college students today have no recollection of the political and media frenzy surrounding the drug war in the early years. They were young children when the war was declared, or not even born yet. Crack is out; terrorism is in.

Today, the political fanfare and the vehement, racialized rhetoric regarding crime and drugs are no longer necessary. Mass incarceration has been normalized, and all of the racial stereotypes and assumptions that gave rise to the system are now embraced (or at least internalized) by people of all colors, from all walks of life, and in every major political party. We may wonder aloud “where have the black men gone?” but deep down we already know. It is simply taken for granted that, in cities like Baltimore and Chicago, the vast majority of young black men are currently under the control of the criminal justice system or branded criminals for life. This

extraordinary circumstance—unheard of in the rest of the world—is treated here in America as a basic fact of life, as normal as separate water fountains were just a half century ago

How It Works

Precisely how the system of mass incarceration works to trap African Americans in a virtual (and literal) cage can best be understood by viewing the system as a whole Only when we view the cage from a distance can we disengage from the maze of rationalizations that are offered for each wire and see how the entire apparatus operates to keep African Americans perpetually trapped.

This, in brief, is how the system works: The War on Drugs is the vehicle through which extraordinary numbers of black men are forced into the cage. The entrapment occurs in three distinct phases The first stage is the roundup. Vast numbers of people are swept into the criminal justice system by the police, who conduct drug operations primarily in poor communities of color. They are rewarded in cash—through drug forfeiture laws and federal grant programs—for rounding up as many people as possible, and they operate unconstrained by constitutional rules of procedure that once were considered inviolate. Police can stop, interrogate, and search anyone they choose for drug investigations, provided they get “consent.” Because there is no meaningful check on the exercise of police discretion, racial biases are granted free rein. In fact, police are allowed to rely on race as a factor in selecting whom to stop and

search (even though people of color are no more likely to be guilty of drug crimes than whites)—effectively guaranteeing that those who are swept into the system are primarily black and brown.

The conviction marks the beginning of the second phase: the period of formal control. Once arrested, defendants are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the drug war’s harsh sentencing laws, drug offenders in the United States spend more time under the criminal justice system’s formal control—in jail or prison, on probation or parole—than drug offenders anywhere else in the world. While under formal control, virtually every aspect of one’s life is regulated and monitored by the system, and any form of resistance or disobedience is subject to swift sanction. This period of control may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released. They are transferred from their prison cells to a much larger, invisible cage.

The final stage has been dubbed by some advocates as the period of invisible punishment.¹⁰ This term, first coined by Jeremy Travis, is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework. These

sanctions are imposed by operation of law rather than decisions of a sentencing judge, yet they often have a greater impact on one's life course than the months or years one actually spends behind bars. These laws operate collectively to ensure that the vast majority of convicted offenders will never integrate into mainstream, white society. They will be discriminated against, legally, for the rest of their lives—denied employment, housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality.

In recent years, advocates and politicians have called for greater resources devoted to the problem of “prisoner re-entry,” in view of the unprecedented numbers of people who are released from prison and returned to their communities every year. While the terminology is well intentioned, it utterly fails to convey the gravity of the situation facing prisoners upon their release. People who have been convicted of felonies almost never truly reenter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to everyone else. They become members of an undercaste—an enormous population of predominately black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status. This is the final phase, and there is no going back.

Nothing New?

Some might argue that as disturbing as this system appears to be, there is nothing particularly new about mass incarceration; it is merely a continuation of past drug wars and biased law enforcement practices. Racial bias in our criminal justice system is simply an old problem that has gotten worse, and the social excommunication of “criminals” has a long history; it is not a recent invention. There is some merit to this argument.

Race has always influenced the administration of justice in the United States. Since the day the first prison opened, people of color have been disproportionately represented behind bars. In fact, the very first person admitted to a U.S. penitentiary was a “light skinned Negro in excellent health,” described by an observer as “one who was born of a degraded and depressed race, and had never experienced anything but indifference and harshness.”¹¹ Biased police practices are also nothing new, a recurring theme of African American experience since blacks were targeted by the police as suspected runaway slaves. And every drug war that has ever been waged in the United States—including alcohol prohibition—has been tainted or driven by racial bias.¹² Even postconviction penalties have a long history. The American colonies passed laws barring criminal offenders from a wide variety of jobs and benefits, automatically dissolving their marriages and denying them the right to enter contracts. These legislatures were following a long tradition, dating back to ancient Greece, of treating criminals as less than full

citizens. Although many collateral sanctions were repealed by the late 1970s, arguably the drug war simply revived and expanded a tradition that has ancient roots, a tradition independent of the legacy of American slavery.

In view of this history and considering the lack of originality in many of the tactics and practices employed in the era of mass incarceration, there is good reason to believe that the latest drug war is just another drug war corrupted by racial and ethnic bias. But this view is correct only to a point.

In the past, the criminal justice system, as punitive as it may have been during various wars on crime and drugs, affected only a relatively small percentage of the population. Because civil penalties and sanctions imposed on ex-offenders applied only to a few, they never operated as a comprehensive system of control over any racially or ethnically defined population. Racial minorities were always overrepresented among current and ex-offenders, but as sociologists have noted, until the mid-1980s, the criminal justice system was marginal to communities of color. While young minority men with little schooling have always had relatively high rates of incarceration, “before the 1980s the penal system was not a dominant presence in the disadvantaged neighborhoods.”¹³

Today, the War on Drugs has given birth to a system of mass incarceration that governs not just a small fraction of a racial or ethnic minority but entire communities of color. In ghetto

communities, nearly everyone is either directly or indirectly subject to the new caste system. The system serves to redefine the terms of the relationship of poor people of color and their communities to mainstream, white society, ensuring their subordinate and marginal status. The criminal and civil sanctions that were once reserved for a tiny minority are now used to control and oppress a racially defined majority in many communities, and the systematic manner in which the control is achieved reflects not just a difference in scale. The nature of the criminal justice system has changed. It is no longer concerned primarily with the prevention and punishment of crime, but rather with the management and control of the dispossessed. Prior drug wars were ancillary to the prevailing caste system. This time the drug war *is* the system of control.

If you doubt that this is the case, consider the effect of the war on the ground, in specific locales. Take Chicago, Illinois, for example. Chicago is widely considered to be one of America's most diverse and vibrant cities. It has boasted black mayors, black police chiefs, black legislators, and is home to the nation's first black president. It has a thriving economy, a growing Latino community, and a substantial black middle class. Yet as the Chicago Urban League reported in 2002, there is another story to be told.¹⁴

If Martin Luther King Jr. were to return miraculously to Chicago, some forty years after bringing his Freedom Movement to the city, he would be saddened to discover that the same issues on which he

originally focused still produce stark patterns of racial inequality, segregation, and poverty. He would also be struck by the dramatically elevated significance of one particular institutional force in the perpetuation and deepening of those patterns: the criminal justice system. In the few short decades since King's death, a new regime of racially disparate mass incarceration has emerged in Chicago and become the primary mechanism for racial oppression and the denial of equal opportunity.

In Chicago, like the rest of the country, the War on Drugs is the engine of mass incarceration, as well as the primary cause of gross racial disparities in the criminal justice system and in the ex-offender population. About 90 percent of those sentenced to prison for a drug offense in Illinois are African American.¹⁵ White drug offenders are rarely arrested, and when they are, they are treated more favorably at every stage of the criminal justice process, including plea bargaining and sentencing.¹⁶ Whites are consistently more likely to avoid prison and felony charges, even when they are repeat offenders.¹⁷ Black offenders, by contrast, are routinely labeled felons and released into a permanent racial undercaste.

The total population of black males in Chicago with a felony record (including both current and ex-felons) is equivalent to 55 percent of the black adult male population and an astonishing 80 percent of the adult black male workforce in the Chicago area.¹⁸ This stunning development reflects the dramatic increase in the number and race of those sent to prison for drug crimes. From the Chicago region

alone, the number of those annually sent to prison for drug crimes increased almost 2,000 percent, from 469 in 1985 to 8,755 in 2005.¹⁹ That figure, of course, does not include the thousands who avoid prison but are arrested, convicted, and sentenced to jail or probation. They, too, have criminal records that will follow them for life. More than 70 percent of all criminal cases in the Chicago area involve a class D felony drug possession charge, the lowest-level felony charge.²⁰ Those who do go to prison find little freedom upon release.

When people are released from Illinois prisons, they are given as little as \$10 in “gate money” and a bus ticket to anywhere in the United States. Most return to impoverished neighborhoods in the Chicago area, bringing few resources and bearing the stigma of their prison record.²¹ In Chicago, as in most cities across the country, ex-offenders are banned or severely restricted from employment in a large number of professions, job categories, and fields by professional licensing statutes, rules, and practices that discriminate against potential employees with felony records. According to a study conducted by the DePaul University College of Law in 2000, of the then ninety-eight occupations requiring licenses in Illinois, fifty-seven placed stipulations and/or restrictions on applicants with a criminal record.²² Even when not barred by law from holding specific jobs, ex-offenders in Chicago find it extraordinarily difficult to find employers who will hire them, regardless of the nature of their conviction. They are also routinely denied public housing and welfare benefits, and they find it

increasingly difficult to obtain education, especially now that funding for public education has been hard hit, due to exploding prison budgets.

The impact of the new caste system is most tragically felt among the young. In Chicago (as in other cities across the United States), young black men are more likely to go to prison than to college.²³ As of June 2001, there were nearly 20,000 more black men in the Illinois state prison system than enrolled in the state's public universities.²⁴ In fact, there were more black men in the state's correctional facilities that year *just on drug charges* than the total number of black men enrolled in undergraduate degree programs in state universities.²⁵ To put the crisis in even sharper focus, consider this: just 992 black men received a bachelor's degree from Illinois state universities in 1999, while roughly 7,000 black men were released from the state prison system the following year just for drug offenses.²⁶ The young men who go to prison rather than college face a lifetime of closed doors, discrimination, and ostracism. Their plight is not what we hear about on the evening news, however. Sadly, like the racial caste systems that preceded it, the system of mass incarceration now seems normal and natural to most, a regrettable necessity....

Notes

¹. Michael Eric Dyson, "Obama's Rebuke of Absentee Black Fathers," *Time*, June 19, 2008.

². Sam Roberts, "51% of Women Now Living with a Spouse," *New York Times*, Jan 16, 2007.

3. See Jonathan Tilove, “Where Have All the Men Gone? Black Gender Gap Is Widening,” *Seattle Times*, May 5, 2005; and Jonathan Tilove, “Where Have All the Black Men Gone?” *Star-Ledger* (Newark), May 8, 2005.

4. Ibid.

5. Cf. Salim Muwakkil, “Black Men: Missing,” *In These Times*, June 16, 2005.

6. G. Garvin, “Where Have the Black Men Gone?” *Ebony*, Dec. 2006.

7. One in eleven black adults was under correctional supervision at year end 2007, or approximately 2.4 million people. See Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: Pew Charitable Trusts, 2009). According to the 1850 Census, approximately 1.7 million adults (ages 15 and older) were slaves.

8. See Andrew J. Cherlin, *Marriage, Divorce, Remarriage*, rev. ed. (Cambridge, MA: Harvard University Press, 1992), 110.

9. See Glenn C. Loury, *Race, Incarceration, and American Values* (Cambridge, MA: MIT Press, 2008), commentary by Pam Karlan.

10. See Marc Mauer and Meda Chesney-Lind, eds., *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (New York: The New Press, 2002); and Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (Washington, DC: Urban Institute Press, 2005).

11. Negley K. Teeters and John D. Shearer, *The Prison at Philadelphia, Cherry Hill: The Separate System of Prison Discipline, 1829–1913* (New York: Columbia University Press, 1957), 84.

12. See David Musto, *The American Disease: Origins of Narcotics Control*, 3rd ed. (New York: Oxford University Press, 1999), 4, 7, 43–44, 219–20, describing the role of racial bias in earlier drug wars; and Doris Marie Provine, *Unequal Under Law: Race in the War on Drugs* (Chicago: University of Chicago Press, 2007), 37–90, describing racial bias in alcohol prohibition, as well as other drug wars.

13. Mary Pattillo, David F. Weiman, and Bruce Western, *Imprisoning America: The Social Effect of Mass Incarceration* (New York: Russell Sage Foundation, 2004), 2.

14. Paul Street, *The Vicious Circle: Race, Prison, Jobs, and Community in Chicago, Illinois, and the Nation* (Chicago: Chicago Urban League, Department of Research and Planning, 2002).

15. Street, *Vicious Circle*, 3.

16. Alden Loury, “Black Offenders Face Stiffest Drug Sentences,” *Chicago Reporter*, Sept. 12, 2007.

17. Ibid.

18. Street, *Vicious Circle*, 15.

19. Donald G. Lubin et al., *Chicago Metropolis 2020: 2006 Crime and Justice Index*, (Washington, DC: Pew Center on the States, 2006), 5, www.pewcenteronthestates.org/report_detail.aspx?id=33022.

20. Report of the Illinois Disproportionate Justice Impact Study Commission, Dec. 2010, available at www.centerforhealthandjustice.org/DJIS_ExecSumm_FINAL.pdf.

21. Lubin et al., *Chicago Metropolis 2020*, 37.

22. Ibid., 35.

23. Ibid., 3; see also Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 12.

24. Street, *Vicious Circle*, 3.

25. Ibid.

26. Ibid.