

# We Are All Doing Time: Listening to the Criminal Justice Debate

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Fall, 2000

## Preface

Writing this paper was difficult. Along the way I discovered that I would rather not know what lurks under the statistics, the explanations, the justifications for the rising prison population in the United States coupled with the polarizing political, cultural, and economic agendas. Often I found myself face to face with my wish to turn my back, to choose a more comfortable and familiar concern, to fill my attention with the banal.

I have been reminded of Victoria Barnett's work on the complicity of "bystanders" during the Nazi regime. She writes of the psychological mechanisms used to come to terms with the suffering of another, whether the person is standing right before us or is 2,000 miles away. She writes:

"Long before we are called to help our neighbors, we have usually determined who our neighbors are. Confronted with a situation involving someone who has not been our "neighbor" up to now, a long, difficult process begins, in which we try to determine exactly what our stake in the matter is. Throughout this process our prejudices about "the otherness" of the victims may have devastating effects on our readiness to help. . . (T)he indifference of bystanders . . . is the mechanism by which people—whether they are secretly troubled or genuinely don't care about the victims—choose to step outside the events occurring around them. Once such compartmentalization occurs and people have established their place in the scheme of things, the rationalizations begin and never ends. Supported by mechanisms at every level of society, passivity requires less and less effort. It is activism—the fight against indifference, the rebellion against silence—that demands a monumental and courageous effort.<sup>1</sup>

As I wrote this paper I asked myself to remember that the criminal, the prisoner, the prison guards, and policy makers, the stockholders of prison corporations and the indifferent "public" are my neighbors, my kin, and these problems are our own.

## Introduction

This paper invites the reader to experience different modes of discourse on the issue of the criminal justice system in the United States. Statistical analysis, the folk narratives of rumor, the academic narratives of sociology, law, economics and history each provide a possibility for listening to this moment in history, for asking ourselves where our place in the criminal justice system begins and ends. We are called to be conscious of what is being done in our name.

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<sup>1</sup> Victoria Barnett, *Bystanders: Conscience and Complicity During the Holocaust*, (Praeger: Westport, Connecticut, 1999) 118-123.

### We Are All Doing Time: Listening to the Criminal Justice Debate

In the last quarter century the criminal justice policy in the United States has generated a huge wave of prisoners. Crime rates increased as the baby boomers arrived at adolescence and the jails became more crowded. Crime rates have been level or declining since 1980. Nevertheless, political attitudes and sentencing policies grew tougher. The numbers tell something about the flood of prisoners—the consequences of being "tough on crime," and the "war on drugs."

- The U.S. has only 4 percent of the world's population and 25 percent of the world's prisoners. China, by comparison, has a population of 1 billion, and has approximately three hundred thousand people in prison.<sup>2</sup>
- The U. S. is locking up offenders at a rate six to ten times that of most comparable countries.<sup>3</sup>
- For property crime, the U.S. rates are roughly equal to comparable nations. The 1996 homicide rate in the U.S, at a thirty year low, was 5-7 times the rate of most industrialized nations.<sup>4</sup>
- There are 2 million persons in jail as of February, 2000 with 6.3 million in the criminal justice system. There were just under 200,000 persons in prison in 1972.<sup>5</sup>
- From June 1998 to June 1999, the number of federal prisoners rose by 9.9%, the largest 12-month gain ever reported.<sup>6</sup>
- From 1996 to 1997 the "expected time of incarceration" for murder has nearly tripled, for rape it has tripled, for robbery, an increase of 70 percent, while for burglary and for serious assault it has doubled.<sup>7</sup>
- Between 1985 and 1995 the rate of incarceration for drug offenses rose by 478 percent, while the rate increase for violent offenses was less than 100 percent.<sup>8</sup>
- The rate of incarceration for non-violent crimes in the U. S. is more than three times that of Canada and England/Wales.<sup>9</sup>

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<sup>2</sup> Derrick Jenson, "Crimes of Punishment: An Interview with Christian Parenti," *The Sun* (October, 2000) 6.

<sup>3</sup> Marc Mauer, *Race to Incarcerate* (The New Press: New York, 1999) 9.

<sup>4</sup> *Ibid.*, 29.

<sup>5</sup> Justice Policy Institute Web: [www.drcnet.org](http://www.drcnet.org)

<sup>6</sup> *Ibid.*

<sup>7</sup> National Center for Policy Analysis, *NCPA Policy Report* No. 22 (, October 1999) 6. "Expected punishment is the number of days a criminal can expect to serve per crime, given the probabilities of being apprehended, prosecuted, convicted and going to prison, and the median months served for each crime."

<sup>8</sup> *Race to Incarcerate*, p. 34.

<sup>9</sup> *Ibid.*, 37.

- 20 states with the highest incarceration increases between 1991-98 — averaging 72 percent — saw their crime go down 13 percent. At the same time, crime fell 17 percent in 30 states averaging only 30 percent incarceration increases.<sup>10</sup>
- Between 1986 and 1996 the rate of incarceration for drug offenses among African Americans increased by 10,102 percent in Louisiana; in Georgia, by 5,499 percent; in Arkansas 5,033 percent; in Iowa 4,284 percent; and in Tennessee, 1,473 percent.<sup>11</sup>
- African Americans were imprisoned at a rate of 6.7 to 1 European American in 1985. In 1995 the ratio was 7.5 to 1.<sup>12</sup>
- African Americans commit crimes at roughly three times the rate of whites nationwide, but are locked up at roughly seven times the rate of whites.<sup>13</sup>
- In a 1992 survey in Baltimore, 56% of all of its young African American males were in prison, jail, on probation/parole, on bail, or being sought on arrest warrants. However, fewer than 1 in 20 arrests in Baltimore were for violent crimes. Ninety percent of these arrests were for "possession."<sup>14</sup>
- Between 1979 and 1990, states increased their spending on prisons by 325 percent on operational costs and 612 percent on buildings. This is three times the increase on national military spending. In 1993, the U. S. spent 50 percent more on its prisons than on the judiciary, whereas ten years earlier, budget levels were the same for both.<sup>15</sup>
- More money is being spent in the United States building prisons than building universities.<sup>16</sup>
- For the first time in California's history, the 1996-1997 state budget appropriates more money for corrections (9.4%) than for higher education (8.7%). In 1980, the state spent 2.3% of its General Fund on corrections and 9.2% on higher education. Since 1984, California constructed 21 new prisons and only one state university. The California Department of Corrections added 25,864 employees, while there was a reduction of 8,082 higher education employees.<sup>17</sup>
- Corrections Corporation of America ranks among the top five performing companies on the New York Stock Exchange over the past three years. The value of its shares has soared from \$50 million when it went public in 1986 to more than \$3.5 billion at its peak last October.<sup>18</sup>

## The End of Narrative

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<sup>10</sup> Op. Cit., 92.

<sup>11</sup> Jerome G. Miller, "American Gulag," *Yes! Magazine* (Fall 2000).

<sup>12</sup> Bureau of Justice Statistics, *Correctional Populations in the United States*, 1995 (Government Printing Office, Washington, 1997).

<sup>13</sup> U. S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1996* in Eric Lotke, "Hobbling a Generation," 1.

<sup>14</sup> *Hobbling a Generation: African-American Males in Baltimore, Maryland's Criminal Justice System*, National Center on Institutions and Alternatives, (September 1992), A9. Cited in Jerome Miller, *Search and Destroy* (Cambridge University Press: Cambridge, 1996) 8.

<sup>15</sup> Loic Wacquant, "From Welfare State to Prison State: Imprisoning the American Poor," *Le Monde Diplomatique*, (July 1998) 3. (translated by Julie Stoker)

<sup>16</sup> Roberto Suro, "More Is Spent On New Prisons Than Colleges," *Washington Post* (February 24, 1997) A12.

<sup>17</sup> Tara-Jen Ambrosio and Vincent Schiraldi, "From Classrooms to Cell Blocks: A National Perspective," Justice Policy Institute (February 1997).

<sup>18</sup> Eric Bates, "Private Prisons," *The Nation Magazine*, in <http://www.november.org>.

Contemporary culture places a high premium on numbers and statistics as representing a "secure standard of evidence." Thus almost every book, article, essay, or paper (even this one) begins with statistics and graphs to make its point.

In the discourse on crime and imprisonment, the familiar narrative of care and connection, a relational narrative that grounds the social sciences, has almost been overshadowed by the distanced, *objective* sensibility of the numerical analysis. The transition from a conversation of connection to one of transaction is eased by the numbers.

For example, in this *Wall Street Journal* article we encounter the language of the marketplace inserted into the communal dialogue on crime and punishment:

"The New York Police Department set out to do something outside the normal course of police work when it set out to lower the crime rate. It did so as a business would, "managing by objective," an axiom popularized by management consultant Peter Drucker. The results were stunning--crime dropped across the city's 76 precincts by 50% to 90% in three years.

"I'm trying to run the NYPD as you would a private corporation," said Mr. Guiliani's first police commissioner, William Bratton. He used words like "productivity" and made precinct captains directly answerable for crime rates.

In any city a tiny fraction of the population, about 7%, commits most of the crime. An even smaller fraction, 1%, the hard-core psychopaths, commits several felonies per day per psychopath. Taking one of these people off the street earlier rather than later in his career can spare the public hundreds of crimes. That, in fact, makes crime an easy problem to get leverage over, if you care to do it. In New York, crime fell almost immediately."

Some now feel it was a mistake to triple the unit's size early in 1997, when crime had already fallen sharply. But protests by the black community, white liberals and the odd drop-in celebrity since the Diallo shooting greatly exaggerate how much damage 362 cops can inflict on community relations in a city of 7.5 million. The unit made 9,500 arrests in 45,000 stops in the last two years, a hit rate of 20%. From any realistic perspective, that's not a bad ratio. ..<sup>19</sup>

When persons are construed as percentages and "numbers of felonies per day," it is not a leap to measuring the outcomes of policy in terms of the number of dollars spent. Cost becomes a central criterion over care or comprehension or community. The paradigm of commerce replaces the paradigm of community.

Even opposition to the "war on drugs" is advanced within the paradigm of the "bottom line." William F. Buckley writes:

"We ARE (author's emphasis) speaking of a plague that consumes an estimated \$75 billion per year of public money, exacts an estimated \$70 billion a year from consumers, is responsible for nearly 50 per cent of the million Americans who are today in jail, occupies

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<sup>19</sup> Holman W. Jenkins Jr. *Wall Street Journal*, "What Happened When New York Got Businesslike About Crime" (April 28, 1999). URL: <http://www.mapinc.org/drugnews/v99.n459.a02.html>

an estimated 50 per cent of the trial time of our judiciary, and takes the time of 400,000 policemen yet a plague for which no cure is at hand, nor in prospect." <sup>20</sup>

On the other side of the debate, experts arguing on behalf of tough sentences and the war on drugs enter the conversation with "bottom line" criteria as well. Some proponents of mandatory sentencing construe persons, not as a meaning makers capable of making moral , relational choices, but as a corporate entities that weigh the costs and benefits of crime:

" A major reason for the reduction is that crime has become *more costly* to the perpetrators. . . . One study found that each additional prisoner incarcerated reduces the number of crimes by approximately 15 per year, and yields a **social benefit of at least \$53,900 annually**. Thus, even at \$25,000 a year, the **cost** of keeping the average criminal in prison is worthwhile. . . . In effect, the system constructs a list of **prices** (expected punishments) for various criminal acts, and criminals decide whether they are willing to **pay**, just as many of us decide whether to risk parking or speeding tickets. " <sup>21</sup>

There is meanness to this paradigm. It omits any discussion of the relationship of socioeconomic conditions to crime. There is a cruelty to this paradigm because it does not include the loss of personal, family, or communal future in the "pricetag" of punishment. There is a blindness to this paradigm, that omits white collar crime from its calculations and even its definitions of "crime."

How might the actual experience of a community in which half of all the young men between eighteen and thirty-five are in the criminal justice system be expressed? If we choose to make meaning of the numbers from within a paradigm of care and community, how do we keep from using the word *genocide*?

### "The Word on the Streets"

Translating the statistics into the realm of human experience needs the story mind of narrative. When we look at the astronomical increases in the rates of incarceration, especially of African Americans over the last twenty years, we might consider how meaning is being made in an oral culture of ordinary citizens.

Folklorist, Patricia Turner, has been collecting "texts" of rumors and contemporary legends that the "folk" of our society believe. The focus of her work is African-American "rumors" which she has collected in informal face-to-face encounters with black "folk" of all ages. She defines

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<sup>20</sup> W. F. Buckley, "The War on Drugs in Lost" from the *November Coalition*: <http://www.november.org/contents.html>

<sup>21</sup> National Center for Policy Analysis, *NCPA Policy Report No. 229*, October 1999, pp.1-6.

"rumor" as a brief, oral, non-narrative statement based on hearsay. There are "no secure standards of evidence" present in rumor texts.<sup>22</sup>

Turner traces the themes of anti-black conspiracies against the communal well being and the individual bodies of blacks. She discovers these themes are found in the stories of cannibalism traced back to the first contact between white Europeans and black Africans. "The intentional elimination of black bodies, one by one, from American streets, cities, and factories" is the stuff of a continuing legend, the communal narrative of beliefs about the nature of reality, in the African American community.<sup>23</sup>

The rumor that the production and mass distribution of drugs is an attempt by the white man to keep blacks from making it in the world crosses color lines. Here are some versions of that genocidal rumor text collected by Professor Turner:

- The demonic system by which the black man is destroyed begins with the brainwashing of black youth. Miseducation leads to poor jobs which in turn forces blacks to sell drugs which other blacks use for survival or escape.
- The government delivers drugs and guns and black self hate directly to the black community. ("Who else could afford the planes?")
- Crack cocaine became a major problem during the term of Ronald Reagan, as did the increase in black on black crime. Some say he is the devil in human form. The number of letters in his name (Ronald Wilson Reagan) equals 666.
- While blacks are a prime consumer market for drugs, blacks are not in charge of much beyond low-level distribution. The drug crisis was not a crisis until white teenagers came home with holes in their noses.
- Television never shows whites using drugs but in reality 80% of crack users are white. Television shows blacks in poverty.
- Drugs were brought into communities so that blacks could be controlled and so that they would kill each other in power struggles. ("They could keep the medfly out of California, surely they could keep out drugs.")
- The FBI planned to get rid of blacks in office. They set up Marion Barry and they want to use drugs to eliminate all blacks they can't control.<sup>24</sup>

Turner argues that the African American community attempts to make sense of a very real cultural assault with rumor cycles such as these. Faced with unyielding second-class citizenship,

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<sup>22</sup> Gordon Allport and Leo Postman, *The Psychology of Rumor* (Henry Holt: New York, 1947, ix. Quoted in *I Heard It Through The Grapevine*.

<sup>23</sup> Patricia Turner, *I Heard It Through The Grapevine* (Berkeley: California, 1993,) 2-3.

<sup>24</sup> *Ibid.*, 180-183. Texts have been edited for brevity.

vulnerable people find that they can best make sense of their plight by reducing systemic oppression to the personal level of conspiracy. She concludes, "In a sense, the rumors about the drug conspiracy allow African- Americans to take some control of what could be considered a hopeless situation."

Turner divides the conspiracy rumors into two basic categories—those with *malicious intent* and those of *benign neglect*. She noticed that in the common rumor cycles the government is charged with either a conspiracy to actively bring drugs into the community or to passively ignore their presence..<sup>25</sup> We can wonder with these vulnerable people about how active racism or passive collusion with racism is destroying a community.

### **Malign Neglect of Racism or Conspiracy-Minded Rhetoric?**

Michael Tonry, among others, conflates the "malicious intent" and "benign neglect" conspiracy theories of folk rumor cycles in his analysis of criminal justice policy. He suggests that it is "malign neglect" at the heart of the war on drugs.<sup>26</sup>

Tonry argues that there was no need to start a war on drugs because, in general, use of drugs was declining in the early 1980's. "The goal, evidenced by a continuing decline in drug use, had been achieved before the drug war began." He counsels that any simple comparison of conditions before and after a policy change will be misleading if there is already a long-term trend. He concludes, "By September 1989 when the Office of National Drug Control Policy issued its first National Drug Control Strategy, it was well known among public officials and drug policy scholars that drug use was in steep decline, except for disadvantaged young minorities in the inner city. Although specialized statistical reports like those published by the national Institute on Drug Abuse are seldom seen or read by lay people or journalists, they are well known among professionals. Only the willfully blind could have failed to know that no war was needed."<sup>27</sup>

Tonry's argument continues and bases itself in history. Studies suggest that tolerance for drug use ebbs and flows over time. Quoting David Musto, historian of American drug policies, he notes that during times of declining tolerance "drug use becomes associated. . .with the lower ranks of society, and often with racial and ethnic groups that are feared or despised by the middle class."

<sup>28</sup> Tonry is convinced that "anyone who knew the history of American drug policy could have

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<sup>25</sup> Ibid., 215-219.

<sup>26</sup> Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (Oxford University Press: New York, 1995).

<sup>27</sup> Ibid., 91.

<sup>28</sup> Ibid., 94

foreseen that this war on drugs would target and mostly engage young disadvantaged members of minority groups as the enemy." <sup>29</sup>

Michael Tonry suggests that the lives of minority people were destroyed in order to provide a moral lesson in social control for the children of the white middle class. He writes, "The white-shirted-and-suspended officials of the Office of National Drug Control Policy understood the arcane intricacies of (drug use surveys) better than anyone else in the majority of the population. . . If the criminal law's *mens rea* equivalence between purpose and knowledge were applied to the decision to launch the war, knowing its likely effects on black Americans, the indictments would be unanswerable: The war's planners knew exactly what they were doing." <sup>30</sup>

### **Intention is Distinct from Outcome: Name Calling Doesn't Help**

Randall Kennedy argues, in *Race Crime and the Law*, against the charge of racist intention. He observes that rumors of racist conspiracy, in terms of selective prosecution and sentencing, cannot be substantiated by statistical analysis of cases. According to Kennedy, while racism is a plausible explanation for the disparity in punishment, there are *no secure standards of evidence* for racism. He concludes, "Research has uncovered no cases. . . in which a court has ruled that, on grounds of racial discrimination, a prosecutor abused his discretion." Kennedy observes that not only has no judge found evidence of racial discrimination but also that there is "judiciary hostility to claims of racial discrimination in prosecution."<sup>31</sup> Judges not only do not find racism in prosecution, they are angered by the question itself.

In addition to arguing a lack of judicial support for claims of racism as "evidence" that there is no racist intent in the criminal justice system, Kennedy suggests that, in fact, the drug war was launched *by* the African-American community *for the benefit* of African American communities. He argues that since *black* members of congress supported the Anti-Drug Abuse Act, which created a crack-powder differential in punishment, the law cannot be understood to be racist in its intent. He invites us to understand the law as good faith attempt between and among communities to take crack off the streets and that as such, it was no racist intent. <sup>32</sup>

Kennedy notes that, in fact, the Anti-Drug Abuse Act was intended to *protect* black communities in particular by removing violent criminals who disrupt that community. Lastly, he contends that the increased penalties for selling crack (x 100) provide the African American community with a stronger punitive defense against a drug that is more available than cocaine.

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<sup>29</sup> Ibid., 94.

<sup>30</sup> Ibid., 104.

<sup>31</sup> Randall Kennedy, *Race, Crime, and the Law* (Random House: New York, 1991) 354.

<sup>32</sup> Ibid., 370.

On the basis of these three arguments—no judicial support, black political support, and concern for the safety of black community, Randall Kennedy concludes that given policies may be "wrong headed and imprudent, but not racially motivated."

Randall Kennedy repeatedly reminds us that this is a *political* conversation, one that requires strategic communication with "ascendant political forces."<sup>33</sup> He counsels that "deficient claims for racial discrimination 'debase' the currency of such claims, marginalize well-grounded criticisms of punitive sanctions, and elicit stubborn defensiveness from officials who can concede having been mistaken but cannot abide the charge that racial bias determined their conduct."

Randall Kennedy invites critics to be more strategic and effective in the challenge to the "war on drugs": "(T)hese allegations are counterproductive in legislatures. They divert the discussion. . . because allegations of racism put into question more than a person's judgment; they put into question a person's basic moral fitness. Once the racism charge is voiced, considerations of personal honor and public reputation elevate the stakes and polarize the antagonists. . . (B)eing mistaken is different from being racist, and the difference is one that greatly matters."<sup>34</sup>

Thus we are counseled to change the shape of discourse away from accusations of racism in order to be part of creating a more productive environment for a new discourse. What might be the grounds of this discourse?

### **Crime Control Industrial Complex**

Despite the inclination to believe that Ronald Reagan is the devil in light of the consequences of conservative political policies (and the fact that the numbers in his name add up to 666) we need to take our stands with "secure standard of evidence." We need to move beyond the comfort of familiar rumor cycles. If we read the signs of the times we might begin to share the sense of a systematic cultural and economic assault aimed, not just at a scapegoated "other," but also at the social fabric that knits all people together. The social disaster that is now overtaking black males in the United States is likely to overtake us all.

Randall Kennedy suggests that the discourse on crime and punishment is disrupted by the defensiveness of "ascendant political forces" in response to "conspiracy-minded rhetoric". If we agree that labeling our communal partners "racist" serves no strategic purpose, but instead stimulates non productive defensive routines, on what grounds might we engage in a dialogue? How might we address our concerns about the increasing number of persons in the American prison system in a way that addresses our shared humanity and values? Critiquing the "business" of punishment might prove to begin a discussion on "principle."

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<sup>33</sup> Ibid., 386.

<sup>34</sup> Ibid., 352-386.

Jerome Miller makes a case that American criminal justice of the 21<sup>st</sup> century is fueled by the 'crime control-industrial complex' described by the *Wall Street Journal* as an infrastructure born amid political rhetoric and a shower of federal, state and local dollars . . . (T)hese mutually reinforcing interests are forging a formidable new 'iron triangle' similar to the triangle that arms makers, military services and lawmakers formed three decades ago."<sup>35</sup>

Prisons are being sold like cars, or real estate or hamburgers with a simple selling point, private prisons promise to save taxpayer dollars. Eric Bates of *Nation* magazine suggests that "by privatizing prisons, government essentially auctions off inmates--many of them young black men--to the highest bidder." He observes that harsher sentencing is overcrowding prisons and sapping public resources. The corporation's bid to reduce the cost to taxpayers is an attractive option. The bids low enough to attract customers, with plenty of room for profit by cutting costs by reducing guards and replacing them with more restrictive environments and cameras. Private prisons have the financial incentive and influence to lobby lawmakers for harsher prison sentences. The market for private prisons is expected to double in the next five years, because "locking up people is good for business."<sup>36</sup>

Mark Mauer of the Sentencing Project adds that the more than 600, 000 prison and jail guards, administrators, service workers, and other personnel represent a potentially powerful political opposition to any scaling down of the system. It is not surprising, then, that rural communities without industry or a strong tax base are begging state officials to build new prisons in their "backyard."<sup>37</sup> As a result, Hispanic and African American prisoners can and are being exiled to prisons far from their families into prisons in all white communities.

The prison inmate also offers profit in terms of labor. This is hardly a new idea. Convicts can be compelled to work without pay and very few receive a wage close to minimum wage. There is a strong movement to deregulate prison industries. This change in oversight and protection of labor would allow prison-made goods to be in domestic and foreign markets without any interference.

In Hawaii prisoners pack Spaulding golf balls. Prisoners in Illinois sort inventory for ToyRUs. Oregon's convicts manufacture uniforms for McDonald's. Tennessee inmates produce \$80 custom jeans for the Eddie Bauer company. In Oregon, Prison Industries, doing business as UniGroup, sold \$4.5 million worth of clothes in 1995, under the label, "Prison Blues." The inmates

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<sup>35</sup> Jerome G. Miller, *Search and Destroy*, (Cambridge University Press: UK), 228-9.

<sup>36</sup> Eric Bates, *Nation*, "Private Prisons," in <http://www.november.org>.

<sup>37</sup> Marc Mauer, *Race to Incarcerate*, 10.

were paid between 28 cents and \$8 per hour, with \$6,000 per year deducted to defray the cost of their incarceration.<sup>38</sup>

Marc Mauer points to the pervasive profit motive at work in the prison industry, when he shares a quote from one industry's internal communication, "While arrests and convictions are steadily on the rise, profits are to be made—*profits from crime*. Get in on the ground floor of this booming industry now."<sup>39</sup>

### **Coming Full Circle: Prisons in Historical Context**

Economic oppression and imprisonment have always been linked. Scott Christianson, Director of the New York Death Penalty Documentation Project, is convincing on the point of the economic roots of the US penal system, believing that the links between global economic expansion and slavery have "come full circle".

Christianson focuses on the economics of incarceration by shedding light on the history of the American prison system. He understands this system as a gradual transition from chattel slavery to penal slavery. He writes, "To the extent that American history is the story of immigration, then American colonial history is largely the story of the immigration of prisoners,"<sup>40</sup>

Christopher Columbus' crewmen included black youth taken from the Canaries and at least four convicts. Exile to the Virginia Company's colony was a favorite alternative to capital punishment of "rogues and vagabonds," especially those with "other abilities thought fit to be employed in foreign discoveries or other services. Roundups of lower class children was legitimized by every branch and level of government and praised by church officials."<sup>41</sup>

In addition to the trade of African slaves, "thugs" on the streets of London were licensed to apprehend persons and bind them as servants to foreign plantations. Kidnap, arrest, and mass round-ups of vagrants and the Irish accounted for a brisk traffic of "felons" along with the Africans. Genteel fortunes were made as a result of the seizure, imprisonment, shipment, and sale of human beings to America. Prisons were central to sale of human beings. They existed as a holding place near the shore to await shipment abroad. Some of the trading companies maintained their own lockups — a lucrative clandestine business opportunity for guards who prevented relatives from finding missing kin and for thieves who fenced inanimate property as well as people.<sup>42</sup>

Scott Christenson makes the case for a systemic economic stance at the core of American identity. He writes about that identity's birth and infancy:

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<sup>38</sup> Scott Christianson, *With Liberty For Some: 500 Years of Imprisonment in America* (Northeastern University Press: Boston, 1998), 291-292.

<sup>39</sup> Op. Cit., 10.

<sup>40</sup> Ibid., 13.

<sup>41</sup> Ibid., 10-12.

"Above all, the system supplied workers to the colonies, providing labor to private contractors; labor that otherwise would not have been forthcoming; labor that was worth more abroad than at home; labor that the mother country was glad to be rid of and the colonial merchants were eager to traffic; labor that could be easily regulated in volume, since the government could always decrease or increase the number of pardons; captive labor that nevertheless pleaded for the change to go to America rather than to the gallows;. . . labor that could be enormously profitable to transfer as well as to use"<sup>43</sup>

Christenson's economic lens also focuses on the development of the US state prison system. He observes that state prisons in New York and Pennsylvania were created at the same time that bills were passed which provided for the gradual emancipation of slaves. He suggests that while state prisons were not created exclusively for blacks, they emerged out of a fear of large numbers of newly liberated blacks. He writes,

"(Prison) offered a setting that in some ways resembles slavery, but minus certain distasteful features, such as sexual licentiousness, irreligiousness, idleness, and unjustified captivity. . . Persons would no longer be born into bondage; they would have to achieve it by their own illegal deeds. . . Individual masters would no longer own slaves. . . Now, all citizens would relinquish such ownership to the state, and the state alone would serve as master and keeper."<sup>44</sup>

Christianson's analysis suggests that our current use of prisons for both social control and profit is nothing new, but rather a continuation of a system driven by the demands of economic pressure. He writes about the present from the point of view of the future:

"In a sense, it was precisely *because* prison was so expensive that made it something of such economic beauty. A cynic might say that the whole apparatus seemed perfectly designed, since imprisonment was one of the few legal ways in postmodern society by which undereducated, unskilled, drug-addicted, antisocial minority males could generate huge amounts of capital for others. A single drug pusher or burglar, sentenced to two or three years, could give rise to a multifaceted, miniature industry worth hundreds of thousands of dollars per whack."<sup>45</sup>

### **Turbo-Capitalism**

It is possible to connect the rise in prison population and the privatization of punishment with a new kind of capitalism seen to be "raging around the globe". In *Turbo-Capitalism*, Edward Luttwak, a noted international strategist and consultant, warns that the free market has gone amok. He predicts possible massive increases in poverty, crime, and unemployment. Achieving the "American Dream" is becoming out of reach for more people, while the luxury living of the rich

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<sup>42</sup> Ibid., 13-18.

<sup>43</sup> Ibid., 23.

<sup>44</sup> Ibid., 105.

<sup>45</sup> Ibid., 295.

and the debt of the "middle" class becomes more evident. Jobs in the new economy are available only for a few and shame and fear of not making it is shaping the consciousness of a disappearing middle class. Luttwak writes:

"They call it the free market, but that is shorthand for much more than the freedom to buy and sell. What they celebrate, preach, and demand is private enterprise liberated from government regulation, unchecked by effective trade unions, unfettered by sentimental concerns over the fate of employees or communities, unrestrained by customs barriers or investment restrictions, and molested as little as possible by taxation. What they insistently demand is the privatization of state-owned businesses of all kinds and the conversion of public institutions from universities and botanical gardens to prisons, from libraries and schools to old-age homes into private enterprises run for profit. What they promise is a more dynamic economy that will generate new wealth--while saying nothing about the distribution of any wealth, old or new. They call it the free market, but I call it turbo-capitalism."<sup>46</sup>

Stuart Scheingold, law faculty at the Southampton Institute, notes that the rise of turbo capitalism and the destabilization of economies are resulting in a culture of "meanness". He hypothesizes that the American dream of financial success construes wealth as moral virtue. Failure to succeed connotes a loss of personal virtue. For Americans dreaming this dream of financial success, poverty is "sin." Thus the "failures" in the turbo-economy are seen as morally deficient. U. S. policies punish the poor as moral failures, emphasizing the "otherness" of victims. He hypothesizes that crime has become a "hot-button" issue, not because of more actual "crime" but as a consequence of increasing anxiety as the financial condition of the middle class deteriorates. He suggests that the social disruption of turbo-capitalism will invite a new fascism—the cold comfort of control in the face of fear.

Anxiety stimulates black and white thinking. The media via news and entertainment provides a satisfying and reassuring message. The media satisfy our need for clarity in the midst of confusion, giving us "good guys and bad guys" and more..<sup>47</sup>

George Gerbner, professor of communication and media activist, counsels that Americans consume a visual glut of violence delivered by the electronic storytellers of the media. The stories we witness presume a necessity for a strong police presence:

The urban crisis is never presented to us on television except as a situation of menace and fear, to be addressed by building more jails, giving longer and harsher sentences, and supporting the medieval barbarism called executions . . . Our surveys tell us that the more television people watch, the more they are likely to be afraid to go out on the street in their

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<sup>46</sup> Robert Kuttner, *The New York Times Book Review*, Edward Luttwak, *Turbo-Capitalism : Winners and Losers in the Global Economy*, (1999). (Amazon.com)

<sup>47</sup> Stuart A. Scheingold, *The Politics of Race and Crime in the United States*, <http://www.solent.ac.uk/law/prcus.html>

own community, especially at night. They are afraid of strangers and meeting other people. A hallmark of civilization, which is kindness to strangers, has been lost. The mean world syndrome results in a reduced sensitivity to the consequences of violence along with an increased sense of vulnerability and dependence - and therefore a demand for repression from the government.

This has enormous political fallout. It's impossible to run an election campaign without advocating more jails, harsher punishment, more executions, all the things that have never worked to reduce crime but have always worked to get votes. It's driven largely, although not exclusively, by television-cultivated insecurity. Exposure to violence tends to cultivate that kind of insecurity and the approval of so-called strong measures, even repression.<sup>48</sup>

By creating a pervasive sense of danger and by transforming our neighbors into dangerous "others" we seek the "security" of increasing police presence and "toughness" on crime.

Hear the language used by John DiIulio, Professor of Politics and Public Affairs at Princeton, as he writes about the consequences of imprisoning a generation of African American fathers and husbands:

"Today's four to seven year-old inner-city boys are not yet tomorrow's juvenile superpredators or the next century's first class of adult career criminals. Time is rapidly running out, but we still have choices. Especially with respect to the acute dilemma of black youth crime, we must choose both incarceration and salvation; incarceration, to restrain the deviant, delinquent, and criminal element that is already upon us from inflicting further harm against life, liberty and property; salvation via faith-based, church-centered approaches to save young souls and lives before it is too late."<sup>49</sup>

It is chilling to imagine four to seven year black children deprived of fathers and mentors described as *tomorrow's superpredators* who will rob "the saved" of life, liberty and property. It is chilling to imagine the sort of mind that would imagine that it is *their* souls that need saving and not our own.

## Conclusions

It is possible to believe that the economic spirit that enslaved and controlled large populations of poor people via the construction of "criminal" identity moves through an emerging new world order. It is possible to hypothesize a systemic "DNA" of a fused moral/economic identity that continuously generates punitive criminal justice policies reducing both anxiety and freedom. Our current war on drugs has created a host of enemies while building fortune for a few. Walter Wink observes the consequences of our unconsciousness:

"The . . . drug trade perfectly mirrors our own values. . . We are scapegoating addicts and blacks for what we have become as a nation. Drugs are the ultimate consumer products for people who want to feel good now without benefit of hard work, social interaction, or making a productive contribution to society. Drug dealers are living out the rags-to-riches American dream as private

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<sup>48</sup> George Gerbner, "Reclaiming Our Cultural Mythology," in *The Ecology Of Justice* (Context Institute: Philadelphia, 1994), 40.

<sup>49</sup> John J. DiIulio, "The Truth About Crime and Welfare" *First Things* (August/September 1996) 33.

entrepreneurs desperately trying to become upwardly mobile. That is why we could not win the war on drugs. We are the enemy, and we cannot face that fact. So we launched a half-hearted, half-baked war against a menace that only mirrors ourselves."<sup>50</sup>

The malaise of ignorance, the addiction to quick fixes, and the mystification by the numbers provide a refuge from conscience. The sins of our society are as easily hidden behind walled towers and barred windows as columns of numbers and statistical analysis. Scott Christianson opines, "We hide (prisons) from view, not so much because we are afraid of them, but because we don't want to be exposed to the pain and harm we're causing; we don't want to have to witness the suffering imposed in our name. . . Nobody cares to see other human beings defecating, sleeping, masturbating, and weeping in cages. To achieve their intended effect, prison horrors are better left to the imagination."<sup>51</sup>

We are required to wake up, to find the place of hope, and to take our faith to the streets with effective action.

### **Waking Up**

- The first antidote to our sleeping sickness is obtaining and sharing the basic facts about the criminal justice system—the increasing size, racial disparities, and ineffectiveness of incarceration.
- Learn how to read crime rate statistics, since the public policy debate uses this mode of discourse.<sup>52</sup> For example, learning to read crime statistics will teach us that our crime rate has been stable since the 1970's and similar (except for the rate of homicide with guns) to comparable nations. When we learn to read the statistics we will see that it is not *crime* that is driving our criminal justice system, but the "war on drugs."
- Learn to call things by their proper names. We need to remember the narrative of communal responsibility. The criminal justice system does not exist in a vacuum. "Every black man in prison is a black man without a regular job, every black man who has been arrested is a black man with a criminal record, and every black man paying court costs for his own prosecution has less to spend on his children and family."<sup>53</sup>
- Tour a prison. Become a pen pal to a prisoner.

### **Finding Hope**

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<sup>50</sup> Walter Wink, "Getting Off Drugs: the Legalization Option," *Friends Journal* (1996) 229.

<sup>51</sup> Scott Christianson, *With Liberty For Some*, 308.

<sup>52</sup> See "How to Read Crime Rate Statistics" (National Center on Institutions and Alternatives: Alexandria, VA) at: <http://www.ncianet.org/ncia/facts/html>.

<sup>53</sup> Eric Lotke, "Hobbling a Generation: Young African American Men in D.C.'s Criminal Justice System Five Years Later," *National Center on Institutions and Alternatives* ( August, 1997) at <http://www.ncianet.org/ncia/hobb.html>

- "Every great spiritual, philosophic and religious tradition has emphasized compassion, reconciliation, forgiveness and responsibility. These are not suggestions, they are instructions. When we follow them we thrive, when we don't we will suffer." <sup>54</sup>
- Finding compassion begins with self. We need a regular, personal practice so that fear and shame do not overwhelm us when we are confronted by failure, our own or another's. In every aspect of our own lives we can insist on face to face encounters which emphasize healing of community rather than retribution.
- Oppose retributive law-enforcement practices such as zero-tolerance, racial profiling, and mandatory minimum sentencing.<sup>55</sup>
- Educate ourselves about forms of restorative justice as those forms are expressed in communities and in prisons. Examples of policing policies that are consistent with restorative-justice values are victim-offender mediation programs, community-based sentencing boards, block-by-block community policing, and increasing racial and ethnic diversity within police forces.<sup>56</sup>

### **Taking Action**

- Take seriously the ageless teachings which remind us that we are all connected; that what happens to my neighbor happens to me. When criminal justice policies have an impact on any particular community we are required to speak out.
- Remember that *justice*, not crime control, is the major purpose of sentencing.<sup>57</sup> We need to oppose the war on drugs and challenge mandatory minimum sentencing.
- In our public and private speech we can dispel the popular media myths about crime and criminals. For example, knowing that more than 70% of prisoners are doing time for nonviolent offense we know that without building a single new prison, we have plenty of room for truly dangerous offenders.
- Champion small, local preventative initiatives in early intervention, drug treatment, gang prevention, education, and job training. We need to speak the language of the "marketplace" in order to sell the economic advantages of prevention.<sup>58</sup>

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<sup>54</sup> See Bo Lozoff, Human Kindness Foundation Prison Ashram Project at <http://www.humankindness.org/project.html>

<sup>55</sup> Harmon Wray, "Restorative or Retributive Justice?" *New World Outlook*, (August 1999) at <http://gbgm-umc.org/nwo/99ja/transform.html>

<sup>56</sup> See Wesley G. Skogan, *Disorder and Decline: Crime and the Spiral of Decay In American Neighborhoods* (University of California Press: Berkeley, 1990) for a full discussion of modes of increasing "intervention capacity" of neighborhoods.

<sup>57</sup> Norval Morris, "The Contemporary Prison," *The Oxford History of The Prison* (Oxford: New York, 1995)

<sup>58</sup> *Ibid.*, 8.: "If just half of the non-violent offenders were not incarcerated, about \$8 billion would be saved annually on custodial operating costs. If and addict is convicted of simple possession and sentenced to a five year mandatory minimum sentence, the cost to the public of prison alone is \$100,000. For the same amount of money, society could give the offender one year of prison (\$22,000), one year of residential drug treatment (\$15,000), and three years of supervised probation and outpatient drug treatment (3,500 per year) and still have \$62,500 left over for civic investment."

- Oppose the privatization of prisons in which there is an economic motive to incarcerate more people and to reduce costs by limiting personnel who provide humane supervision, education, and treatment.
- Connect with prisons and prisoners. We can make sure our congregations are available to prisoners in our locale, and get to know them while they're locked up, so we can responsibly welcome them into our community when they are released.

It is not possible for me to include all possible responses to the war against the poor that divides our consciousness and our community. Victoria Barnett has accompanied me in spirit as I made my way through the painful territory of the criminal justice system, the consequences for community, and my own complicit bystanding. Her words guide me as I imagine my own next steps:

"The "otherness" of the stranger is a central aspect of what happened during the Holocaust. . .because it is a crucial element in any genocide. Those who refused to participate in the ideological scapegoating of others were able to see through the false distinctions between "Aryans" and "others": to see, in the face of the stranger, another human being. . . To welcome the stranger is a metaphor for welcoming God—one who by his or her very differentness or otherness calls one's identity into question. . .<sup>59</sup>

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<sup>59</sup> Victoria Barnett, *Bystanders*, 172.