

Policy Paper for Moshe Canty

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Abstract

This paper examines the interconnection between chattel slavery, mass incarceration, and the U.S. criminal justice system. It commences with questioning the effectiveness of the U.S. criminal justice in relation to its stated purpose of seeking to reduce crime. Secondly, the scope of the problem demonstrates how chattel slavery, mass incarceration and the U.S criminal justice system have, historically, impacted people of color. Thirdly, the paper focuses on past policies that have come to shape the goals of the U.S. criminal justice system. Fourthly, the current policies are illustrated to examine how efforts have been made to reform the U.S. criminal justice system. Fifthly, proposed solutions are provided. Finally, 3-6 key organizations are mentioned which lay the groundwork as to how they can be of some assistance in influencing policy that can benefit the targeted demographic mentioned in this paper.

Keywords: chattel slavery, mass incarceration, U.S. criminal justice system,

Eliminate the Existence of Mass Incarceration in the United States Criminal Justice System

Goal Statement

According to the Prison Policy Initiative, the United States currently has the highest incarceration rate in the world with its prison population standing at approximately 2.2 million people. Over four million more are under some form of probation or supervision; this population is part of the U.S. criminal justice system made up of government and private agencies designed to manage those accused and convicted of crimes.

The U.S. criminal justice system is an intricate phenomenon with its various components operating interdependently as a check against lawlessness. Despite its exorbitant costs, proponents argue that the need for a hyper-aggressive approach is needed to prevent crime from running amok. Conversely, opponents have questioned whether the U.S. criminal justice system's objective of incarcerating its citizens at such a high rate has been an effective tool at reducing crime. Some have even accused the U.S. of engaging in a systemic pattern of mass incarcerating its racial and ethnic minorities (Alexander, 2012).

This contentious battle between conservatives on the right and liberals on the left has caused this nation to be further divided surrounding the purpose and role of the U.S. criminal justice system. Is the currently structured system the best model for helping to address crime or is there room for improvement? Whatever side of the aisle one is on cannot deny the fact that the U.S. has a crime problem on its hands. However, does incarcerating people (primarily minorities) at this alarming rate seek to realistically solve the crime problem?

Scope of the Problem

At no time in its history has the United States imprisoned its citizens than at its current rate. What exacerbates this problem is that young Black men in the U.S. are experiencing the highest rate of incarceration in comparison to their racial and ethnic counterparts. In fact, one out of every fifteen people incarcerated in the U.S. is black. These alarming statistics have caused scholars to suggest that the U.S criminal justice system is complicit in its mass incarceration of its Black citizens. They contend that mass incarceration refers not only to the U.S. criminal justice system but also to the larger web of laws, policies, and customs that control those labeled criminal both in and out of prison (Alexander, 2012).

The control of Black people by the U.S. criminal justice system is not a recent phenomenon. In fact, mass incarceration owes its origins to the 16th century where European colonists established the system of slavery and the Trans-Atlantic slave trade in the Americas. With the advent of the institution of slavery—and its oppressive social, political, economic, & cultural structural and social forces—American society was divided into two classes of people: those with control of the necessary resources and those without (the so-called “haves” and “have-nots”). The “haves” used slavery as a tool of social control over the “have-nots.” Critical towards this process of social control was a deliberate effort to destroy African institutions of family, religion, politics, culture, economics, and education (Mooney, 2013). Thus, any outward expression of the African identity was viewed as a threat to the status quo resulting in the criminalization of said identity.

The practice of justifying and benefitting from labeling Black people criminals continued long into the 19th century with Congress’s passing of the Thirteenth Amendment to the U.S

Constitution which outlawed chattel slavery but legalized slavery as a punishment except for duly convicted criminals. This led to thousands of blacks being systematically arrested for petty crimes and sold as property to the highest bidder within the convict leasing system (Blackmon, 2009). This initial phase of mass incarceration would eventually result in the convict population growing ten times the rate of the general population.

This custom continued well into the mid-to-late 20th century with President Nixon's attack on the Civil Rights movements, respectively. Entangled within this web were men like the late Eddie Ellis, former Black Panther Party member and founder of the Center for Nu Leadership on Urban Solutions (the nation's first academic think tank run by formerly incarcerated men and women) together he spent a total of twenty-five years incarcerated for murder he maintained he did not commit. In 1968, J. Edgar Hoover, former Director of the Federal Bureau of Investigation (F.B.I.), declared the Panthers the greatest threat to the internal security of the country. The bureau's COINTELPRO, or (Counter INTELligence PROgram), successfully discredited and destroyed the Panthers by incriminating, falsely accusing, and even assassinating its leaders. The murder charge against Ellis originated from COINTELPRO activities. While serving his sentence, Ellis, along with four others, established a think tank where they asked themselves, "Why are there so many Black and Latino men behind bars?" Ellis and his cohorts were "trying to make sense out of it" as he described. Eventually, they would find by 1979 "75% of all Blacks and Latinos in the prison system came from seven neighborhoods (Harlem, Lower East Side, South Bronx, Bedford Stuyvesant, Brownsville, East New York, and South Jamaica) in New York City" (Moore, 2007). These statistics illustrate an intergenerational pattern of social control resulting in the systematic criminalization and incarceration of Black and brown bodies. Furthermore, current trends in gentrification and

“reseeding” of urban neighborhoods formerly engrossed in poverty, crime, addiction, and despair, lend credence to the claim that the issue is intentional and functional to the few. 30 years after the former Black Panther examined the ties between poverty and prison, research shows that low-income neighborhoods still send the most men to prison (Moore, 2007).

This persistent process executed with the Reagan Administration’s so-called “War-on-Drugs” where racial disparities in sentencing guidelines and incarceration rates led to a second prison boom unprecedented in world history. This would remain the same into the Bush I and Clinton (Crime Victims Bill) Administrations with some sentencing reforms occurring in the Obama and Trump Administration’s. While tough on-crime policies for political opportunists have been shortsighted if not immediately effective, the reality is, the social and financial costs of mass incarceration have been astronomical. For instance, the social costs alone result in the perpetuation of racial bias and the stigma of criminality. It condones a racial caste system, which labels people of color as criminals and felons for purposes of legally excluding them from major society. Thus, these convicted felons are excluded from jury service, discriminated against in employment, housing, the right to vote, and educational opportunities in their families and communities. This marginalization leads to an increase in crime. Alexander states,

What a growing number of sociologists have found to be common sense: by locking millions of people out of the mainstream legal economy, by making it difficult or impossible for people to find housing or feed themselves, and by destroying familial bonds by warehousing millions for minor crimes, we make crime more—not less—likely in the most vulnerable communities.

The most socially detrimental consequence is the breakup of the family structure that contributes to the school-to-prison pipeline. These schools are exacerbated due to schools in the inner cities that are underfunded, understaffed, and overcrowded. The schools' function like prisons, institutions of social control for those future "criminals." In *Schools, Prisons, and Social Implications of Punishment: Rethinking Disciplinary Practices*, author Pedro A. Noguera suggests that "Public schools in the hyperghetto have similarly deteriorated to the point where they operate in the manner of institutions of confinement whose primary mission is not to educate but too ensure custody and control (Noguera, 2003).

Along with these social costs, the U.S. spends over \$80 billion annually to house its prisoners. During the Clinton presidency alone, \$19 billion taxpayers' dollars were earmarked towards the construction of prisons across America. Between 1980 and 2003, criminal justice expenditures increased 417.5 percent (Karger & Stoesz, 2018). The U.S. criminal justice system has become big business. Private corporations like Wackenhut and the Correction Corporation of America have been no different from the profiteers of chattel slavery and the convict leasing system. In fact, in telephone service, postal fees, medical costs, commissary, (not to mention restitution costs and exploitative practices) corporations of various sorts including government benefits and profits. This is supported by a tough on crime ideology meant to give the appearance that crime on a national level has skyrocketed out of control when the evidence suggests otherwise. According to the Bureau of Justice Statistics (BJS), "From 1993-2021, the rate of violent victimization declined from 79.8 to 16.5 victimizations per 1,000 persons age 12 and older" (Criminal Victimization, 2021).

The U.S. criminal justice system has benefited immensely from the dehumanization, criminalization, and mass incarceration of Black and brown people. The scope of this problem

has reverberated throughout society thereby further empowering one group of people (“the haves”) at the expense of the others (“the have-nots”).

Past Policy

The five primary goals of criminal justice policy in the U.S. have centered around social retribution, prevention of further criminal acts through incapacitation, deterrence of further crimes, rehabilitation of the offender and restoration of the victim (reparation). Firstly, social retribution is simply ensuring that the person who commits the crime is held accountable for their actions. This also indicates that the offense is equal to punishment and that the latter should not exceed the former. Secondly, incapacitation is guaranteeing that when an offender commits an offense and is punished for it that they will be incarcerated which prevents them from engaging in similar acts in the future. Thirdly, deterrence ensures that the person punished for committing an offense is discouraged from repeating the behavior in the future because they are aware of the penalty that comes with the act. Deterrence also has an impact on those in society when they become aware that someone committed an offense and was punished, that this would discourage them from engaging in this behavior as well. Fourthly, rehabilitation suggests an incarcerated offender seeking the help they need to address any underlying issues that have contributed to them being placed in the carceral setting. Finally, restoration (reparation) is justice for the victim of a crime. For example, if a victim was robbed of their personal belongings, then they should have a say in what that offender’s punishment should be.

In the past, these policies have been administered inequitably as it pertains to Black people entangled in the U.S. criminal justice system. There have been disparities on every level of these policies leading many to believe that Black people in America will never experience true

justice. It is as if there are two separate criminal justice systems, one that is serving the interests of upper affluent white class of citizens, and another that seeks to punish everyone else (Schwartz, 2016).

Current Policy

There is a plethora of current policies that play a significant role in helping to shape the U.S. criminal justice system. For example, in New York State, the Less Is More Act (LIM) seeks to address prison overcrowding and the exorbitant costs associated with incarceration. LIM impacts anyone who is serving a NYS-imposed sentence of community supervision. According to the Legal Aid Society, the LIM Act creates a pathway to finish parole early through earned time credits. LIM is an innovative process that seeks to reward parolees for their good behavior. This innovative approach is aligned with restorative justice which aims to reexamine the criminal justice system's response to crime (Sered, 2009). Therefore, anyone under supervision can now earn 30 days of time credit for every 30 days in the community. This would reduce a parolee's parole sentence in half. LIM comes as a reprieve to many under parole supervision since recent data show racial inequities in parole supervision. According to the Columbia University's Justice Lab, their research found that Black and brown people are significantly more likely than white people to be under supervision, to be jailed pending a violation hearing, and to be incarcerated in New York State prisons for a parole violation (Racial Inequities in New York State Parole Supervision, 2020).

Since 1974, the Juvenile Justice and Delinquency Prevention Act (JJDP) has made efforts to address the disparities in sentencing guidelines, engage in research to offer what practices are best, along with providing funding to states to improve their juvenile systems (The

Annie E. Casey Foundation, 2009). Across the U.S., Black juveniles are disproportionately stopped by police, arrested, sent to prison, put on probation, and worse, even killed by members of the law enforcement community. Thus, the U.S. criminal justice system has not been kind to this targeted demographic; in fact, they have done more to perpetuate injustices against them while putting a band-aid over a festering sore.

Proposed Solutions

“White America recognize that justice for Black people cannot be achieved without radical changes in the structure of our society.”

—Dr. Martin Luther King Jr.

The U.S. criminal justice is faced with a litany of problems too many to name in this policy brief. However, while I provide some points of emphasis, note that they are not exhaustive but simply a reflection of my perspective with respect to how these pertinent matters can be addressed.

- Reparations to descendants of slaves in the form of academic, technological, and vocational scholarships.
- Increased federal funding of public schools in inner cities.
- Increase federal funding to inner city programs.
- Abolish the 13th Amendment which legalizes prison slavery.
- Federal and state legislation outlawing ownership and profiting in private prisons.
- Federal legislation which radically reforms the Mandatory Sentencing Guidelines.
- Federal and state legislation ordering the closing of carceral institutions.

- Mandated student enrollment in post-secondary education in prison on the federal and state levels.
- Increase federal and state funding for vocational trades and post-secondary programs in prison.
- Defunding the police.
- Corporate revision of hiring practices of formerly incarcerated persons.

3-6 Key Organizations

Center for Community Alternatives

According to its website (communityalternatives.org), the Center for Community Alternatives has been a leader in community-based alternatives to incarceration for over 40 years. They promote reintegrative justice and a reduced reliance on incarceration through advocacy, services, and public policy development in pursuit of civil and human rights.

Exodus Transitional Community

According to its website, (etcny.org), Exodus Transitional Community believes in changing the systems that perpetuate incarceration across communities of color and poverty. They actively participate in policy work and advocacy to reduce incarceration and build an equitable justice system.

Columbia University's Center for the Study of Social Difference

The aim of the Center for the study of Social Difference is bring together Barnard and Columbia faculty and graduate students with alums of Columbia's prison education programs to think

together about how to strengthen the courses and other educational opportunities

(<http://www.socialdifference.columbia.edu>).

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