

USA: The Roots of Racist Policing

A view from the United States

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The debate over the causes of mass incarceration, and its class and racial roots, is crucial not only because it gives us an insight into the current rise of the Black Lives Matter movement, but also because it forces us to look more deeply into the persistence of racism throughout American life. At the same time, despite the revelations of the depth of racism in the US and, indeed, across much of the “western” world, rooted in slavery and colonialism brought to light by the Black Lives Matter movement, there has been a growing tendency on the social democratic left to demote racism as a factor in mass incarceration and the criminal justice system. Rather than looking at incarceration itself, here I will examine the race and class origins and practices of policing in the US that inevitably underlie trends in incarceration and criminal justice in general.

My point of departure is a series of articles written by Cedric Johnson in *New Politics* and *Catalyst*, but could just as well address the works of several others writing on this subject in the last couple of years that contest the idea that race and racism is at the heart of mass incarceration. [1]

To put things in context, we need to examine the realities of the criminal justice system on which Cedric Johnson and others base their argument. Much of Johnson’s argument demoting the role of race and racism in the rise of mass incarceration is drawn from James Forman, Jr.’s account of the role of Black communities and officials in supporting the escalation of “tough-on-crime” policies in the 1970s, and a similar argument made by Clegg and Usmani. [2] The racist framework of policing in America and many of the specific tactics that would characterize the War on Drugs, however, were already well established long before the escalation of incarceration after Reagan declared the War on Drugs in the mid-1980s or Nixon’s 1971 “war on drugs.” Indeed, stop-and-frisk operations that have come to characterize American policing were upheld by the Supreme Court in the 1968 *Terry v. Ohio* ruling, which reversed the previous trend toward civil liberties represented by the *Miranda* ruling, and helped set the tone for future police policies at all levels. The escalation of incarceration was largely a political choice made under Reagan, increased under Clinton, and continued under Bush and Obama. [3]

Local authorities, Black or white, that imposed draconian policies in the 1970s and later, were following a well-trod path. In fact, the practice of what Forman perceptively calls “the paradox of the African American experience: the simultaneous over-and-under-policing of crime” [4]; that is, a lack of emphasis on protecting Black residents, on the one hand, while over-policing and criminalizing low-income Black neighborhoods, on the other, goes further back to at least the post-WWII era as the black working class populations of northern cities grew and new ghettos formed. Walter Thabit, in *How East New York Became a Ghetto*, gives a clear example of this in the process of ghetto formation in Brooklyn in the 1960s. In addition to poor service from the sanitation and fire departments experienced by the residents of East New York, “The police were not as responsive to complaints as they should have been; yet they harshly ruled the streets, deciding which laws to enforce and when to enforce them.” [5]

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As a study of Milwaukee in the 1950s and early 1960s reveals, a policy known as “close surveillance,” which focused on Black areas, “flooded the inner core with large numbers of police personnel, a concentration not found elsewhere in the city.” As early as 1952, this led to the “a staggering one arrest of a Black resident for every three African Americans in the city.” This same study notes a similar policy in Chicago where the city’s Black newspaper, the *Chicago Defender*, complained in 1958 that the Chicago Police “prey on racial districts.” [6]

Historian Heather Ann Thompson quotes a Detroit resident about the police presence there, “the ugliest part of the problem in the ‘50s was police brutality against Black people.” This led to rising complaints and efforts against police brutality in the 1960s well before the 1967 rebellion. [7]

In the period of northern Black ghetto formation following World War II, the number of Black arrests grew significantly faster than those of whites. Reflecting this reality, the disproportionate percentage of Black citizens arrested each year has become consistent over the decades even as the total number of arrests grew. African-Americans accounted for 28% of all those arrested in 1950, 30% in 1960, and 27% in 1970, compared to 25% in 1980, 31% in 1999, and 28% in 2010 even after the number of annual arrests levelled off by the late 1990s. [8] Racism in policing, the entry point into the criminal justice system and incarceration, has been a constant feature of the American law enforcement for generations.

Indeed, police brutality and “over-policing” in Oakland’s Black ghetto in the mid-1960s gave rise to the Black Panthers, who, Johnson warns “can’t save us now”, well before Nixon declared war on crime in the nation’s Black communities. The Black and white politicians and police officials who made sentencing mandatory, accelerated and lengthened sentencing in the 1970s and 1980s, and introduced “broken windows” and “zero tolerance” policies later that accelerated incarceration, were building on older practices and entrenched assumptions about policing. More importantly, they were acting in the context of a class and racially biased framework of law enforcement that had been established decades before and which would make police targeting of Blacks and Latinos virtually inevitable.

Given the weight that Johnson gives to Forman’s arguments in diminishing the importance of race, it is worth quoting Forman’s own caveat to his readers:

But in focusing on the actions of black officials, I do not minimize the role of whites or racism in the development of mass incarceration. To the contrary: racism shaped the political, economic, and legal context in which the black community and its elected representatives made their choices. [9]

CLASS AND RACE IN THE AMERICAN CRIMINAL JUSTICE SYSTEM

While crime and its punishment have a long history as a class-based project, the criminal justice system as we know it had its origins in the rise of capitalism, wage labor, and increased urbanization. The first professional police forces were established in the early 1800s by Sir Robert Peel first in Ireland in 1822 with the Royal Irish Constabulary as a sort of colonial occupation force. This was followed in 1829 with the formation of the London Metropolitan Police to patrol the streets of London, its officers known as “Bobbies” and “Peelers” after their founder. The earliest penitentiaries and professional municipal police forces in the US were established between the 1820s and 1850s as industry began to take shape, concentrations of urban wage workers grew, the first efforts at trade unions and worker political action were attempted, and public “disorder” or

riots committed by the “dangerous classes” became common. [10] Despite all the changes in society since that time, the police remain the dependable frontline street-level defenders of capitalist “order,” whether in breaking up a union picket line, shooting down “rioters”, or arresting and disbursing social protesters from suffragists and civil rights and anti-war activists, to Wall Street Occupiers and Black Lives Matter demonstrators. At the same time, they insulated the elite from both “street crime” and punishment for the crimes committed in elite circles.

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The most basic evidence of the class and race bias of modern law enforcement from its origins to today is the historic focus of policing on “street crimes”. In line with this focus, recent statistics on arrests show that the largest categories of crimes for which (suspected) offenders were “busted” in 2016 were drug-related activities (1,242,630), assaults (1,158,119), property crimes such as burglary and theft (1,074,136), drunkenness (299,248), and disorderly conduct (291,951), which together account for half of all arrests in this FBI count. And this does not include the many other “street crimes” pinned disproportionately on Black and Latino people, including murder and robbery. These “street crimes” are typically confronted by police in public places and in poorer neighborhoods, and are mostly traceable. Arrests for less visible white collar, middle class, or entrepreneurial crimes such as fraud (101,301), forgery and counterfeiting (44,831), embezzlement (12,592), or for that matter rape—think Hollywood, #Me Too, etc.—(18,606) count for little. [11]

Also important are the countless number of crimes for which no arrests are made because they are conducted under the cover of the opaque circuits of capital, the proprietary spaces of big business and finance, or the protected enclaves of the wealthy. “Respectable” middle class neighborhoods forego significant arrest rates because there is no dealer on the corner and drug use, assault, sexual violence, child abuse, and other offenses are kept indoors, private, or “in the family” aided by the absence of a snooping police presence. These are crimes that if they are pursued at all are generally beyond the daily sight or reach of the “cop on the beat” or more commonly these days, the patrol car.

Every once-in-a-while some financier is arrested for crimes too big to conceal, like a Bernie Madoff, but the average offending banker or executive is more likely to get a bonus than a sentence. As Forman put it when in the 1980s law enforcement turned toward arresting drug users as well as dealers, “In D.C. and elsewhere, those with the financial means and networks quickly found alternative, and less risky, ways to buy drugs.” [12]

This focus on “street crimes” and visible criminal activity was sharpened with the “mapping” of crime by urban police forces that began many decades ago. Crime “mapping” goes back to the mid-19th century European “cartographic” school of criminology which documented “the empirical regularity of crime.” In the US, it was further developed by the “Chicago School” in the 1930s, which found that visible crime correlated strongly with “disadvantaged” communities. In addition, in the work of this school, the connection became explicitly racial. Their research claimed to produce a link between delinquency and “features of community structure like economic status, stability, and racial composition.” [13]

This practice and its implications became common in police departments with the use of pins on a city map to locate “high crime areas”. Such areas became the focus of more police activity, more arrests, and hence higher recorded crime rates. As Blacks moved into northern cities during and after the Second World War, Latinos followed more recently, and many working class whites departed to the suburbs, “disadvantaged” urban areas became increasing Black or Latino. It was

this population shift that underlay the inversion of the racial composition of convicts from 70% white at the end of World War Two to 70% Black and Latino now. [14] Thus, mapping which focused on these areas compounded the pre-existing racial bias of policing and the whole criminal justice system, creating a form of institutional or structural racism in the normal routines of daily policing that have become entrenched. By the 1970s, Black politicians, like others, simply translated their constituents' desire for greater safety into policies that fit this already entrenched system.

The structural racial bias of the contemporary criminal justice system is clear. While African-Americans composed only 13% of the population in 2016 they were 27% of those arrested. [15] This isn't just a matter of more crime in poor Black areas, but also of less detection in white areas. James Forman, Jr. provides an example of how this works in terms of the Washington, DC traffic stop and search program meant to find guns in the 1990s, called "Operation Ceasefire." Cops could stop a "suspicious" car for a minor traffic violation and then search the car for guns, drugs or other illegal items. The areas in which Operation Ceasefire were conducted specifically excluded Washington's mostly white middle class and well-to-do Second District on the grounds there was little (though not no) gun crime committed there. Since whites use drugs at about the same rate as Blacks, this meant that well-off whites escaped being discovered, arrested, acquiring a criminal record, or being imprisoned for drug use. [16] This search of Black neighborhoods for guns is all the more suspicious since arrests for weapons are only about 10% of those for drugs and more whites than Blacks are arrested for possessing a weapon of any sort. [17]

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Obviously, the same holds true for pedestrian stop-and-frisk operations in which the vast majority of those stopped are Black or Latino. Partly as a result, the disproportion of Blacks is even worse in terms of those who go to jail. Blacks compose 34.4% of those in jail, two-and-a-half times their proportion of the population. [18] As Loïc Wacquant puts it, jails act as "frontline dams of social disorders in the city," and disrupt family life. [19]

THE GEOGRAPHY OF STRUCTURAL RACISM

The intersection of poverty and race in the US is not geographically random. In this respect, white and Black poverty are very different. Blacks and Latinos live in far greater geographic concentrations of poverty than whites. Major urban areas, including the "inner city" and inner-ring of older suburbs, have become the main sites of "high-poverty areas," as they are designated, increasingly composed of blacks and Latinos. Ferguson, Missouri, a suburb within the St. Louis metro area made famous by the "rioting" that followed the failure to convict the police in the shooting of Michael Brown, is a good example of the spread and concentration of Black poverty. In 1990 Ferguson was three-quarters white. By 2014 it had become two-thirds Black. The poverty rate had risen from 7% to 22% and three of the town's ten neighborhoods are now officially "high-poverty areas." [20] The growth of white poverty is seldom concentrated in this manner.

Because poor whites do not face imposed residential segregation, they are far more geographically dispersed and far less frequently live in areas of concentrated poverty or in major "inner city" urban areas which are more intensely patrolled by police. [21] As a study of residential segregation by the Century Foundation points out, "Non-Hispanic white poor, despite more than doubling in number, are still less likely to live in high-poverty areas." [22] Racial segregation in almost all major American cities, on the other hand, has meant that "high-poverty areas", defined as areas with 40% or more living under the official poverty line, are primarily Black or Latino. It is central urban areas, however, that have been the focus of police "mapping" and arrests for drugs and other "street crimes". And, as we saw above, drug busts are by far the largest source of arrests. [23]

The result of this difference is that while poor whites in concentrated “high-poverty areas” numbered 3.5 million by 2015, they composed only 20% of the nation’s 17.3 million poor whites. The 5 million Blacks in “high-poverty areas”, on the other hand, made up over half the 9.3 million African-Americans living below the official poverty line, while the 4.3 million Latinos in “high-poverty” concentrations were 38% of the 11.2 million in poverty. Furthermore, the proportion of Blacks living in “high-poverty areas” has increased in three-fourths of the top one hundred metropolitan areas since 2000.

In other words, it is not simply that poor areas are more likely to have higher crime rates than more affluent neighborhoods, but as we will see, that the mapping and subsequent disproportionate deployment of police officers to these areas multiplies the number of arrests and, hence, the crime rates derived mainly from arrest records. The stigma grows and “Overly aggressive law enforcement has continued to profile all ghetto residents as criminals,” concluded a 2016 *New York Times* article. [24] As to racial profiling itself, in his *Washington Post* summary of studies of race and the criminal justice system, Radley Balko cites the well-known police joke: “It never happens... and it works.” [25]

In the last two decades, however, the profiling of Black and Latino neighborhoods has been supplemented and directed by predictive Geographic Information Systems (GIS) software in which geographic crime data are fed to an algorithm that not only locates “high-crime areas”, but on the basis of that data “predicts” where the most offenses will take place. Probability-based programs such as CompStat and PredPol (Predictive Policing) are now used by police forces in 90% of cities with populations of 250,000 or more—precisely those where the largest concentrations of black and Latino poverty are located. [26] As the amount of arrest data grows, including large numbers of less serious crimes such as peddling or using small amounts of drugs, so does the deployment of police, and as a result more arrests and the predictions of crime location. As data scientist Cathy O’Neil describes the results:

This creates a pernicious feedback loop. The policing itself spawns new data, which justifies more policing. And our prisons fill up with hundreds of thousands of people found guilty of victimless crimes. Most of them come from impoverished neighborhoods, and most are black or Hispanic. So even if our model is color blind, the result is anything but. In our highly segregated cities, geography is a highly effective proxy for race. [27]

Later she concludes, given our often misplaced faith in technology, “the result is that we criminalize poverty, believing all the while that our tools are not only scientific but fair.” [28]

“The result is a compounded technological and legal basis for mass discrimination and the criminalization of Black and Latino neighborhoods in law enforcement.”

These probability-based programs don’t actually track criminals before or during the commitment of a crime. Like earlier crime mapping, they simply point to high risk areas on the basis of past data. Unlike earlier mapping, however, these programs make predictions about the location of crime. As one mathematician said of PredPol, “It can’t target individual people at all, only geography.” [29] The geography, in turn, is targeted on the basis of “street crime” data “as opposed to corporate crime, cyber crime, or fraud” in order to predict “high-crime areas” or “hotspots” of criminal activity. [30] Thus, the race bias is built in from the start.

Since most people living in those “high poverty” tracts predicted to be “high-crime areas” are not criminals, many are unfairly swept up in the digital dragnet simply because they are Black or Latino. This, in turn, exaggerates the figures on arrests and “contact” with the police. The most outrageous examples of this, of course, are the stop-and-frisk operations that follow from these predictions. In

2011, 85% of those stopped by police during New York's infamous CompStat-directed stop-and-frisk program were Black or Latino. Few violent crimes were found, but more busts for drug possession and other minor offenses were. [31] In Philadelphia the proportion of Blacks stopped was 72%, while in Boston it was 63% although Blacks compose only 24% of Boston's population. [32]

Indeed, while all these policies of racial profiling and concentration have been launched in the name of curtailing violent crimes, actual arrests for violent crimes across the country remain 5% or less of all arrests. [33] The ghetto residents that Forman pointed to as demanding tougher sentencing for violent crimes back in the 1970s and 1980s couldn't have imagined the actual results. No wonder only 30% of African Americans of all classes had any confidence in the police by 2015-17 compared to 61% of whites, according to a Gallup poll. [34] Today, it would certainly be much lower for Blacks.

This geographic approach to crime prediction and, hence, arrest, has been underwritten by the Supreme Court in *People v. Wardlow* in 2000 and subsequently in lower courts as well by creating a waiver of a citizen's Fourth Amendment protection "against unreasonable searches and seizures." Specifically, these court rulings have given a legal basis to the focus on "high-crime areas" as at least one major criteria and justification for police targeting. [35] As legal scholar Andrew Ferguson noted in 2016, "In the years since *Wardlow* there have been more than one thousand federal and state cases that have used the term "high-crime area" in the context of Fourth Amendment reasonable suspicion." [36] The result is a compounded technological and legal basis for mass discrimination and the criminalization of Black and Latino neighborhoods in law enforcement.

None of this is to say that crime is evenly distributed or that violent crime is not more prevalent in poor Black or Latino neighborhoods than in most white residential areas, but rather that the historic "street crime" focus of local law enforcement, the geography of race that emerged in the twentieth century and intensified in the twenty-first, along with the juridical support of this view coming from courts and legislatures, and more recently the technological acceleration of this race bias, have intensified the racial outcomes of law enforcement in the US. This is a structural reality of racism in the US that is missing in the downplaying of race in the growth of mass incarceration and even in Forman's well-documented account of the role of Black officials in tough-on-crime policy formation.

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P.S.

Spectre

<https://spectrejournal.com/the-roots-of-racist-policing/>

Footnotes

[1] Cedric Johnson (2017) "The Panthers Can't Save Us Now": Anti-Policing Struggles & the Limits of Black Power" *Catalyst* 1(1): 57-85; Cedric Johnson (2019) "Who's Afraid of Left Populism?" *New Politics* 66, XVII(2): 21-37; John Clegg and Adaner Usmani, "The Economic Origins of Mass Incarceration" *Catalyst* 3(3) (Fall 2019), 9-53; Mark Jay, "Cages and Crises: A Marxist Analysis of Mass Incarceration" *Historical Materialism* 27(1) (2019), 182-223.

[2] James Forman, Jr. (2017) *Locking Up Our Own: Crime and Punishment in Black America* (London: Abacus); John Clegg and Adaner Usmani, "the Economic Origins of Mass Incarceration" *Catalyst* 3(3) (Fall 2019).

[3] Michelle Alexander (2012) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press), 5, 46, 58-96; Drug Policy Alliance (2016) *A Brief History of the Drug War*, <http://www.drugpolicy.org/issues/brief-history-drug-war>; Lewis R. Katz (2004) "Terry v. Ohio at Thirty-Five: A Revisionist View." *Mississippi Law Journal* 74(2): 423-86. The concept of "law and order" as part of capital's controlling ideology has a very long history in the US dating back at least to the anti-labor "Law and Order Leagues" of the 1880s. See David Montgomery (1989) *The Fall of the House of Labor: The workplace, the state, and American labor activism, 1865-1925*, 209; Daniel J. Walkowitz (1981) *Worker City, Company Town: Iron and Cotton-Worker Protest in Troy and Cohoes, New York, 1855-84* (Urbana IL: University of Illinois Press), 233-242.

[4] Forman, *Locking Up*, 35.

[5] Walter Thabit (2003) *How East New York became a Ghetto* (New York: New York University Press), 76-77.

[6] Simon Ezra Balto (2013) "'Occupied Territory': Police Repression and Black Resistance in Postwar Milwaukee, 1950-1968" *The Journal of African American History* 98(2).

[7] Heather Ann Thompson (2001) *Whose Detroit? Politics, Labor, and Race in a Modern American City* (Ithaca: Cornell University Press), 21, 38-41.p/mfn] In Birmingham, Alabama, where deindustrialization in the 1950s and 1960s had increased poverty among Blacks and brought about "the concentration of poverty in core city and North Birmingham," police brutality and arrests of Blacks had become so extreme over the years that in 1967, the local civil rights organizations put the fight against police brutality at the head of their agenda for the first time.[Robin D. G. Kelley (1994) *Race Rebels: Culture, Politics, and the Black Working Class* (New York: The Free Press), 79-93

[8] U.S. Census Bureau (1975) *Historical Statistics of the United States* (Washington DC: U.S. Government Printing Office), 415; U.S. Census Bureau (1981) *Statistical Abstract of the United States 1981* (U.S. Government Printing Office), 180; U.S. Census Bureau (2001) *Statistical Abstract of the United States 2001* (U.S. Government Printing Office), 191; Bureau of Justice Statistics (2012) *Arrests in the United States, 1990-2010* (U.S. Department of Justice), 2. The fairly constant proportion of Blacks arrested over time is particularly significant in relation to Mark Jay's analysis which attempts to link incarceration to the different periods following WWII. Since both incarceration and overall crime statistics depend on arrests, the constant disproportion of Black arrests points to race as a continuous factor in these.

[9] Forman, *Locking Up*, 11-12.

[10] Dr. Gary Potter (2013) *The History of Policing in the United States*, Part 1, Eastern Kentucky

University, Police Studies Online,
<https://plsonline.eku.edu/insidelook/hisotry-policing-united-states-part-1>; Dr. Kirk A. James (2014) *The History of Prisons in America*,
<https://medium.com/@kirkajames/the-hisotry-of-prisons-in-america-618a8247348>. Law and order in the slave South was a different matter.

[11] FBI, Uniform Crime Reporting (2016) Crime in the United States, Arrests by Race and Ethnicity, Table 21A, Excel;
<https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-21>

[12] Forman, *Locking Up*, 176.

[13] Andrew Guthrie Ferguson (2011) "Crime Mapping and the Fourth Amendment: Redrawing "High-Crime Areas"" *Hastings Law Journal* 179 (2011): 181-189, 226.

[14] Loïc Wacquant (2010) "Class, race & hyperincarceration in revanchist America" *Dædalus* Summer 2010, 79.

[15] FBI, Arrests by Race and Ethnicity, Table 21A.

[16] Forman, *Locking Up*, 198-202.

[17] US Census Bureau, *Statistical Abstract of the United States*, 2012 (Washington DC: U.S. Government Printing Office, 2011), 206.

[18] Bureau of Justice Statistics (2018) *Jail Inmates in 2016* (Washington DC: U.S. Department of Justice), 4.

[19] Loïc Wacquant (2010) "Class, race & hyperincarceration in revanchist America" *Dædalus* Summer 2010, 75.

[20] Paul Jargowsky (2015) *Architecture of Segregation* (Washington DC: The Century Foundation), 25.

[21] Jargowsky, *Architecture*, 10, 19.

[22] Jargowsky, *Architecture*, 12.

[23] Reshaad Shirazi (2016) "It's High Time to Dump the High Crime Area Factor" *Berkeley Journal of Criminal Law* 21(2):77-79.

[24] Cited in Shirazi, "High Time", 90-91.

[25] Balko, "overwhelming evidence."

[26] Ferguson, "Crime Mapping", 189.

[27] Cathy O'Neil (2017) *Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy* (London: Penguin Books), 87.

[28] O'Neil, *Weapons*, 91.

[29] Hannah Fry (2018) *Hello World: How to Be Human in the Age of the Machine* (London: Doubleday), 153. Similar algorithms, such as COMPASS and LSI-R are used in sentencing as well with similarly discriminatory results.

[30] Ferguson, "Crime Mapping", 191-197.

[31] O'Neil, *Weapons*, 91-93. New York's stop-and-frisk program was reduced after 2013 when the courts found it unconstitutional, but continued to stop drivers for minor traffic offenses and frisk some 47,000 pedestrians in 2014, according to Forman, *Locking Up*, 212.

[32] Moody, *On New Terrain*, 101.

[33] FBI, Arrest by Race and Ethnicity, Table 21A.

[34] Gallup (2017) *Confidence in Police Back at Historical Average*, July 10, 2017, <https://news.gallup.com/poll/213869/confidence-police-back-historical-average.aspx?version=print>

[35] Shirazi, "High Time", 94-104.

[36] Ferguson, "Crime Mapping", 198.