# From Researching the Past to Reimagining the Future

*Locating Carceral Crisis and the Key to Its End,*

*in the Long Twentieth Century*

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By the first decade of the twenty-first century, the United States found itself in an unimaginable incarceration crisis. As the new millennium dawned, this country was locking up more of its citizens than any other country on the globe. By 2010, more than 7 million Americans had become trapped in the criminal justice system and more than 2 million of them were actually living behind bars. African Americans suffered this turn to mass incarceration most dramatically. Indeed, with one in nine black men aged twenty to thirty-four eventually imprisoned in America, as Lawrence Bobo and Victor Thompson recently pointed out, this nation is now not merely embroiled in a dramatic moment of "mass incarceration," but is in the grips of severely "racialized mass incarceration."[1] And America's embrace of such a vast and discriminatory carceral state has had a devastating impact—tearing at the social fabric of the poorest and most vulnerable communities, putting a serious strain on the economy, and even distorting the democratic process itself.[2] For these reasons, the question of how Americans might step back from such a reliance on imprisonment, and how they might undo the current carceral crisis, looms large for scholars and lay citizens alike. One cannot, however, change a system that one doesn't fully understand.

In fact, this is not the first, nor the first staggeringly racialized, prison crisis that this nation has witnessed. We have been here once before. In the wake of the Civil War, African Americans were also imprisoned in record numbers; then as now, prisons were the site of serious labor exploitation; then as now, the human rights as well as civil rights of prisoners were completely disregarded. By closely examining why the nation's *first* prison crisis came about, and by taking close note of how *it* was stemmed, scholars can derive new and necessary perspectives on the nation's *second,* and current, prison crisis—where it came from and how it,

too, might eventually be ended. In short, by walking more carefully through the prison horrors of the past, we get closer to eradicating those of the present.

Prior to the American Civil War, the majority of African Americans lived in bondage. With the Thirteenth Amendment came freedom, and with freedom came extraordinary African American hope for the future and possibilities for self-determination.[3] This very hopeful moment for the black community, however, also deeply threatened southern whites, who were determined to maintain complete control of the economy, the society, and the political sphere. In numerous ways, postbellum whites attempted to keep African Americans in positions of social and economic dependency, but arguably their most effective move was to completely overhaul the region's criminal justice system and to embrace a brand-new policy of mass imprisonment.[4]

According to the historian David Oshinsky, postbellum whites believed firmly that "bondage had been good for the negro . . . because the system kept his primitive instincts in check. And Freedom was bad because those checks had been removed."[5] Almost immediately after slavery ended, then, whites began using the criminal justice system as a new "dragnet for the negro," one that could keep African Americans in a state of fear much as had the Ku Klux Klan.[6] Indeed, white southerners quickly realized that one of the most effective ways to continue to dominate African Americans, and to make sure that they did not demand their share of the civic and economic pie, was to criminalize their behavior.

As the historian Mary Ellen Curtin has pointed out, when "African Americans asserted their freedom on the street, on election day, and in their efforts to buy and sell goods," such actions "generated a legal backlash."[7] This meant—in terms both immediate and practical—that after the Civil War, localities began to pass altogether new laws that converted certain behaviors, never before prosecuted as "crimes," into offenses punishable by incarceration. Unemployed blacks simply out seeking jobs, for example, could be charged with the crime of "vagrancy." Local and state governments also increased penalties for such crimes as stealing livestock or grain, knowing well that newly freed African Americans might have to resort to theft simply in order to eat.[8] For example, in 1876 the State of Mississippi "passed a major crime bill aimed directly at the Negro . . . [that] redefined grand larceny," and, thereafter, African American "arrests shot up dramatically."[9] More often, argues the journalist Douglas Blackmon, southern sheriffs arrested African Americans for countless "crimes" that they had never actually committed—trumping up charges so that they could secure cheap workers for local business elites.[10]

Such manipulations of the law meant that the South's "local jails and state prisons would grow darker by the year."[11] One jail in Columbus, Mississippi, that had incarcerated no blacks before the Civil War, held fifty-three blacks and no whites by 1866. Statistics from Georgia after the war are even more striking.[12] By 1871, 84 percent of the convicts in that state's penitentiary were black— already a shocking figure considering that there were *no* African Americans there in 1860—but by 1876, with an even greater criminalization of black spaces, a full 90 percent were African American.[13] In Alabama by 1890, whites comprised less than 4 percent of all county prisoners.[14]

Not only was the incarceration crisis of the mid-1870s deeply racialized, it was also defined by extraordinary brutality. As the historian Alex Lichtenstein has shown, black convicts were forced to eat food that "was bug-infested, rotten, and unvarying [and their] 'rest' was taken in unwashed bedding often in wheeled cages nine feet by twenty feet long containing eighteen beds."[15] In addition, "medical treatment and bathing facilities were unsanitary if available at all. And, above all, corporal punishment and outright torture—casual blows from rifle butts or clubs, whipping with a leather strap, confinement in a 'sweatbox' under the southern sun, and hanging from stocks or bars—was meted out for the most insignificant transgressions."[16]

Consider the fate of one inmate, Ed Turner, who was forced to labor for a Georgia company called Alexander, Grant & Co. after being sent to the state penitentiary in Atlanta. One evening in 1870, company officials charged Turner with poisoning one of their hounds, a charge he adamantly denied but to which he eventually confessed after being whipped for a solid hour from 8:00 until 9:00 p.m.[17] The next day Turner was forced outside and told to get to work. He simply could not. He would try to work a while and then collapse. Each time he fell, an overseer would take him out and give him another forty lashes. This happened repeatedly until the overseer finally called the company doctor to evaluate Turner's ability to labor. When the doctor arrived, he not only claimed that Turner could indeed work, but he gave him fifteen lashes himself for being so lazy. By the day's end, Turner had been beaten to death. According to the testimony of one John Christopher, a captain of the Eighteenth United States Infantry who located several prisoners willing to sign affidavits regarding Turner's fate, whereas Dr. S. G. White alleged that the "prisoner had died from sunstroke," in fact he died after receiving between 450 and 600 lashes at the hands of Captain Potts.[18]

As the above account illustrates, not only were the African Americans sentenced to prison in the wake of the Civil War commonly abused, but they were also exploited by private companies determined to work them nearly to death for their own profit. Southern whites' desire to maintain control of the region's

newly freed black population clearly laid the groundwork for so many of them to be imprisoned, but, notably, it was their desire to rebuild the war-torn South on the cheap that ensured that they would continue to be targeted by the criminal justice system of the New South. Incarcerating blacks, they quickly learned, was not only socially useful, it was also highly profitable.

While the nation's first prison crisis was rooted in the South, it is important to note that this country's first carceral crisis was more broadly national than most assume. Recent scholars—Kali Gross, Cheryl Hicks, and Khalil Gibran Muhammad—have established that the North also severely criminalized black behavior, forced inmates to labor for private interests, and resorted to barbaric punishments to meet production quotas in the postbellum period.[19] What happened to Ed Turner and countless other convicts laboring for the State of Georgia happened as well to the inmates in the New Jersey State Prison, whose gruesome deaths, while usually attributed to other causes, had in reality resulted from "the cruel punishments inflicted."[20] Similarly, in Wisconsin, where, according to one report, inmate meals were "putrid"—prisoners were forced to eat "embryo calves, dogs, and glandered horses . . . furnished as meat"—men were also "beaten and put in a black hole . . . as filthy as a dog kennel, and five feet four inches by five in size. A man cannot lie at length in it. There is no ventilation. . . . Men have been placed there for 20 days, and two died."[21]

As the above descriptions make clear, inmate abuse knew no regional boundaries inasmuch as private companies came to profit mightily from prison labor in both regions. Because African Americans were locked up in such unprecedented and shocking numbers in the South of this period as well as in numbers disproportionate to their presence in the North, any contemporary observer could readily conclude that any reforms to the criminal justice system were highly unlikely. By the 1920s, however, many states had begun outlawing the worst abuses of the convict leasing system, and by the New Deal, barriers to private employers' unfettered access to prison labor for profit had finally been put in place at the federal level. To be sure, prisons were still terrible institutions and African Americans continued throughout the twentieth century to be incarcerated at rates disproportionate to whites. Indeed, it would take much more activism in future decades—particularly during the 1960s—to tackle many remaining vestiges of the abuse and exploitation that had fueled the criminal justice system of the postbellum period. Nevertheless, the nation's first racialized prison crisis—which emerged in the aftermath of the Civil War—did not continue unabated. This first carceral crisis, sparked by whites' desires to curtail black claims on freedom, and marked by teeming incarceration rates of African Americans, who were then horrifically treated, eventually netted enough scrutiny, and generated sufficient outrage, to

invite serious censure and meaningful reforms. Exactly why and how this happened is well worth sorting out.

Three critical factors combined to stem the nation's first prison crisis. First, as the carceral crisis of the postbellum period deepened, not a few Americans in the free world eventually took it upon themselves to expose, and thus educate the public about, the human costs of this new move to mass imprisonment. Second, eventually some key groups of Americans in the free world realized that a policy of wholesale black incarceration hurt *them* economically, and they began to speak out against it for their own reasons and on their own behalf.[22] Third, prisoners themselves increasingly began to speak out against, and to physically resist, the horrors in the penal institutions that the policies of disproportionate and widespread incarceration had produced.[23]

The fact that convict leasing was brutal and depended on the unprecedented incarceration of African Americans should not have been news to anyone who took even the slightest notice of their surroundings in the postbellum period, least of all African Americans, who were, of course, acutely aware of the nightmare awaiting them should they wind up as convict lessees or members of a chain gang. There was plenty of ugliness in plain sight, for anyone to see. Human cages, literally crammed with men in chains on their way to forced labor camps, were routinely pulled down country roads across the South. Correspondingly, in the North there was an easily visible increase in the number of penal institutions being built to house the scores of similarly hapless people ensnared in the criminal justice system there.

African American activists and writers were some of the most diligently outspoken when it came to calling the nation's attention to this national, and deeply discriminatory, carceral crisis. By 1901, W. E. B. Du Bois was speaking out about the fact that "a new slavery and a new slave trade" had been established in America even while human bondage had been outlawed by the U.S. Constitution. As he made clear, in this new slavery, based as it was on the wholesale imprisonment of black men for their labor, "the innocent were made bad," and, because of this, too many human beings were once again suffering a horrific "death-rate from cruelty, exposure, and overwork."[24] Worse, Du Bois pointed out, "the state became a dealer in crime, profited by it so as to derive a net annual income for her prisoners."[25] Notably, Du Bois was not alone in calling attention to the horrors of the nation's first carceral crisis. Mary Church Terrell, Frederick Douglass, and even Booker T. Washington felt compelled to publicly delineate the many injustices being perpetrated in the name of the law.[26]

But while the message of black reformers like Du Bois reached many Americans, there remained many more living in both the South and the North—mostly

the white residents of the nation—who gave little thought to the incarcerated and cared little about the conditions they faced either under the convict leasing system or locked in record numbers in the state penitentiaries of the North. That is, until the 1920s. In 1921, a story broke that brought home to whites just how draconian and abusive the nation's criminal justice system had become.

That year Martin Tabert, a white twenty-two-year-old from Munich, North Dakota, decided to seek adventure and hopped a ride on a freight train bound for Florida without paying his fare. To this stowaway's dismay, he was discovered, arrested, and subsequently sentenced to ninety days hard labor in Tallahassee—hired out to the Putnam Lumber Camp. Before he was able to complete his sentence, however, Tabert's parents were informed that he had expired from "malarial fever and other complications."[27] The problem for the Putnam Labor Camp, however, and ultimately for the State of Florida, was that his parents probed into their son's death and discovered that he had in fact been murdered. As a convict lessee, he had been "overworked, underfed, and beaten senseless."[28]

Thanks to their pressure, in 1923 the Florida Legislature voted to investigate Tabert's murder.[29] In the course of this inquiry, it became obvious that this boy had been forced to work in hip-deep muddy water fifteen hours a day. When he couldn't keep up, an overseer beat him with a thick strap that he repeatedly dragged through sand and sugar so that Tabert's open wounds would scathe. Witnesses testified that the overseer, Walter Higginbotham, struck Tabert with this lash more than one hundred times.[30] After two days of enduring such torture, Tabert died.[31] Because he was white, Talbert's death made national headlines, and such exposure dealt a serious blow to the practice of convict leasing in Florida, eventually leading to the outlawing of corporal punishment within that system.[32] Ultimately, educating the public had shined some needed light on the extreme abuse that defined the nation's first prison crisis.[33]

While calling national attention to the horrors of America's first racialized carceral crisis was important, it was alone insufficient to ameliorate it. Also needed was the mobilization of other Americans, those who perhaps cared little about what trauma the nation's prisoners endured, but who nevertheless recognized that they were being hurt economically by this dramatic rise in the rate of incarcerated African Americans. Indeed, by the late nineteenth century it was becoming increasingly clear to many citizens that convict leasing in particular, and prison labor more generally, posed unfair competition for their labor and, quite literally, took food from their tables.

For example, prior to the Civil War, many whites had worked the mines in southern states such as Tennessee and Kentucky. By the late 1800s, these same workers were finding it hard to feed their families because mining companies

had determined that they could reap much higher profits by using their new and seemingly endless supply of black convicts.[34] Not only were convict laborers cheaper, but bosses could use extraordinary force to extract harder work from them without any repercussions. As the historian Karin Shapiro has chronicled, however, rather than accept the fact that the wholesale and record imprisonment of newly freed African Americans would lead to their own economic collapse, in 1891 free-world miners mobilized and launched "a rebellion against the use of convict labor in coal mines that would last over a year, involve thousands of Tennesseans and Kentuckians, and engulf five mining communities in east and mid-Tennessee."[35]

White southerners were not the only ones to see the connection between the rise of prison labor and the decline of jobs for them in the free world.[36] Workers across the North spent much energy in the late nineteenth and early twentieth centuries lobbying state legislatures to pass laws banning the use of prison labor.[37] Indeed, as the nineteenth century became the twentieth, American workers across the North, and the labor movement that sought to represent them, clearly recognized that they had a stake in what happened in the American justice system. Their self-interested activism in this regard proved a significant nuisance to those who sought unfettered access to prison labor and to the ability to sell goods made in prison on the national market. Indeed, determined agitation beginning in the 1880s and escalating dramatically during the Great Depression eventually garnered workers three very important pieces of federal legislation that directly limited private as well as public use of prison labor.[38]

While white laborers were instrumental in bringing an end to the nation's prison crisis, the activism of prisoners themselves was equally important. Not only did African American convict lessees protest the conditions they suffered as a result of indiscriminate racialized imprisonment in the South (for example, by maiming themselves so they could no longer net profits for either prison officials or private companies), but black inmates also rebelled in other, even more overt ways in other parts of the country. Consider, for example, that on June 20, 1927, a full 328 convict miners in Lansing, Kansas, went on strike to protest the inhumane conditions under which they were forced to labor. For four days they refused to come out of the mines and held fourteen prison guards hostage. Eventually hunger forced them to the surface, and many were injured in this protest, but actions such as this put state and private employers on notice that they could not treat prison laborers inhumanely without generating intense and unified resistance.[39]

Not coincidentally, as the controversy over the uses and abuses of prison labor escalated in the late nineteenth and early twentieth centuries, a new a discourse

of rehabilitation over punishment began. There had always been corrections officials who argued that rehabilitation must be a central goal of incarceration, but for decades they were well on the outside of the corrections mainstream. For example, it was considered most newsworthy when prison official Zebulon Brockway announced plans to offer his inmates education programs, meaningful job training opportunities, and even some sort of parole incentive at the Elmira State Reformatory in 1876. By 1889, Brockway was still hoping to persuade the corrections community that "the punitive purpose" be "subverted by the improved conditions of prisoners, accorded them out of the humanity of modern Christian society."[40] But it wasn't until the early 1930s, and only after serious steps had already been taken to ameliorate the nation's first prison crisis, that Brockway's thoughts on the merits of rehabilitation over punishment were absorbed in a number of penal facilities, if only in the North. In 1932, for instance, the New York Legislature heard plans for bringing a serious educational program to that state's inmates. "The primary purpose of academic instruction," proponents explained, was "the eradication of illiteracy and the provision for each inmate of sufficient education to read newspapers fairly well, to write an adequate letter, and to be able to perform the commonplace arithmetic of everyday life."[41]

By the early 1940s, thanks to a range of developments—the publicity given the horrors of the convict leasing system by African American luminaries like Du Bois as well as ordinary white families such as the Taberts; the sustained agitation of workers in the free world from Tennessee to New York; and the endless protests launched by the incarcerated themselves—a great many of the worst aspects of the nation's first prison crisis had been put in check. In short, because "powerful interests had emerged to challenge the system on economic as well as humanitarian grounds," a new day had dawned in the nation's criminal justice system.[42] Notably, however, doing away with the most egregious abuses of the convict leasing system, and finally seeing serious attempts to rehabilitate rather than just punish the incarcerated, did not mean that injustice had been rooted out of the nation's criminal justice system completely.

The truth was that even while the worst of the nation's first prison crisis had been ameliorated, far too many American citizens—black and white, from South to North—were still trapped in the criminal justice system; far too many still faced horrific conditions. Even though the worst elements of the nation's post–Civil War carceral crisis had successfully been eradicated by the New Deal era, there was still much work to do over the subsequent two decades, singularly and collectively, to make that system more humane. As one inmate reported about conditions at Leavenworth Prison in 1930: "There are still brutalities in prisons—plenty of them . . . prisoners chained to the bars day after day until the blood

oozed from their swollen fingertips. I have seen strong men broken and weak men hounded to madness."[43] Similarly, conditions were still so bad for inmates at the Eastern State Penitentiary in the early 1930s, particularly regarding how the guards treated them and their specific practice of locking prisoners in "punishment cells" for days and weeks on end, that the prisoners rioted in both 1933 and 1934. Upon investigation, the Pennsylvania Department of Welfare felt compelled subsequently to order "close supervision of the guards by the Warden and the Board of Trustees to obviate brutality" as well as "medical control of the punishment cells."[44]

Despite major efforts having been made to humanize penal institutions, they not only remained quite brutal for those detained in them, but African American inmates still bore the brunt of the prison system's worst abuses. In southern states from Arkansas to Texas, it was still an overwhelmingly black prison population being forced out into the prison's fields and worked to the point of collapse from dawn until dusk as late as the 1960s, And, as the historian Robert Chase has shown, southern states routinely placed the most violent and aggressive inmates in charge of the rest of the prisoners.[45] Called "trustee guards," these inmates ruled with an iron hand, using everything from extortion to terror to keep other prisoners in line. And whatever horrors these men did not experience at the hands of trustees, they suffered at the hands of the line overseers or administrators, who used various instruments of torture to keep them in line: "Black Annie" (a thick-strapped whip) on the prison farms of Arkansas, as well as the notorious "Tucker Telephone" (a telephone with live electric wires extending from it to be attached to inmates' genitals).[46]

The African Americans who lived in disproportionate numbers behind bars in the North also experienced terrible conditions well after the worst of the nation's first prison crisis had been stemmed.[47] For example, at New York City's largest jail, known as the Tombs, black inmates awaiting trial in the 1960s and early 1970s endured severe and inhumane overcrowding simply because too many of them could not afford to pay the exorbitant bails that judges set for them.[48] Designed to hold only 932 men, on the weekend of August 7–9, 1970, for example, this facility was jammed to 212 percent over capacity. There were four men crammed into each of the jail's tiny cells, and many Tombs detainees had nowhere to sleep but the concrete floor without so much as a blanket. Such overcrowded quarters meant that inmates lived in squalor and had to deal regularly with infestations of body lice and colonies of roaches and rats that skittered and nested in the facility's filthy cells.[49] One inmate who "hadn't showered in a week" noted that when guards finally allowed him to clean up, they subsequently told him to put on the same filthy clothes he had come in with.[50] It mattered not that he had been sleep-

ing on the floor in these clothes every night. "They stunk," he said. "No matter how clean I was, I still stunk."[51]

All the while enduring conditions wholly unfit for human beings, the Tombs detainees were effectively barred from exercising their constitutional rights as U.S. citizens as well. There was, for starters, the issue of due process. It was a rare day when a Tombs inmate got to trial speedily.[52] In August 1970 eight thousand men were sitting in New York's city jails who had not yet gone to trial and who, therefore, had not been found guilty of any crime.[53] Being confined to the Tombs because one couldn't afford bail raised serious quality-of-life as well as constitutional issues. There existed no clear procedures for ensuring that a detainee had regular access to his family members, nor was there any easy mechanism for them to send or receive mail either personal or legal. Telephone access was completely out of the question. According to a later report, "a man who is presumed innocent should not be cut off from people who can help him raise bail, to secure witnesses, to obtain an attorney, or failing that, to lend him moral support during the time he is awaiting trial."[54]

New York's prisons weren't much better than its jails as the 1960s came to a close and the 1970s began. Attica, like the Tombs, had an overwhelmingly African American prison population. Inmates experienced significant hardships and discrimination while incarcerated. Even though only 37 percent of their population was white, for example, whites held 74 percent of the jobs in Attica's powerhouse, comprising 67 percent of the coveted clerk's positions and 62 percent of the staff in the officers' mess hall.[55] By contrast, 76 percent of the inmates in the dreaded and low-paid metal shop, and 80 percent in the grueling grading companies, were African Americans or Spanish-speaking.[56] It was common at Attica to have "white inmate[s] starting off at a higher pay grade in the same job."[57] What is more, "in 74 percent of the job categories, racial proportions are significantly different from the racial ratios of the general population."[58]

Racialized conditions at Attica were not simply restricted to prison labor. Attica's inmates in general and its black inmates in particular also had intensely felt grievances about the insufficient food they received. Of the meals they did get, pork was a mainstay despite the fact the Black Muslims could not eat it. Medical care for black inmates was substandard, and their medical needs, systematically ignored.[59] One inmate who had broken bones in his hand literally begged Dr. Sternberg, one of Attica's two staff physicians, to do something to help him because his pain had been "getting worse and worse" and his bones were actually "coming out."[60] But, according to another inmate who bunked near and overheard this conversation, Sternberg "turned around and said 'well, write a letter to another doctor.' He couldn't even move his fingers."[61]

Attica's prisoners found it hard to deal as well with the prison's all-white guards who could be hostile and even abusive and felt little compunction about using racial epithets and engaging in explicitly discriminatory behaviors. When guards felt slighted, it was not uncommon for them to retaliate violently such as happened when one corrections officer who had been cat-called by one black inmate "decided to frisk several of the inmates there and tear up their cells."[62] According to another guard, "it took days to get their cells reordered . . . [and the] individual [who had cat-called] got the shit kicked out of him."[63]

Notably, the same forces that, together, stemmed the nation's first prison crisis continued to work throughout the postwar period to improve the criminal justice system in both North and South. The first powerful force was, again, groups of citizens in the free world who committed themselves to exposing any continuing prison abuse. As had happened earlier in the century, for example, the prisoner mistreatments that continued to flourish on the penal plantations of the South came to light, and eventually were ended, because of men such as Tom Murton who were determined to end the horrors that they observed personally. Murton had come to Arkansas from a previous position as an assistant professor of criminology at the University of Illinois and, before that, as acting chief of corrections in Alaska. Asked by the governor merely to run the Cummins and Tucker prison farms, Murton felt compelled to completely overhaul them almost as soon as he arrived. In his best-selling book *Accomplices to Crime,* Murton informed the world just how bad conditions remained for black inmates in the South.[64] Similarly, the prison reformer Austin MacCormick, who directed the Osborne Association in New York, worked hard to investigate and expose conditions in the Texas system beginning in the 1940s. Indeed, according to the historian Robert Chase, "By the end of his sixty-five-year career as a penological expert, MacCormick had visited every state prison in the nation, and had served as an investigator and chief reformer for the prison systems in Alabama, Arkansas, Louisiana, Mississippi, North Carolina and Texas."[65]

As was the case with earlier efforts to ameliorate the nation's first prison crisis, though, efforts to educate the public needed to be wedded to other efforts on the part of free-world citizens to change the system. Notably, however, in the postwar period this group of citizens did not herald from the organized working class. From the moment that federal regulators had alleviated their fears about prison labor competition, America's working class appeared to care little about the fact that prisoners themselves were still being exploited and abused within the nation's penal institutions. And thus it took activists and organizations from the civil rights movement, as well as from other social movement struggles on the Left, to speak out loudly for additional prison reforms. From the NAACP, the Student

Nonviolent Coordinating Committee (SNCC), the Black Panther Party, and the Young Lords Party to the National Lawyers Guild, the ACLU, and various radical groups such as the Weather Underground, the Socialist Workers Party, and the Revolutionary Communist Party, prison rights became a galvanizing issue.

Civil rights activists in particular understood that their efforts to end oppression on the outside of prison walls would be greatly advanced if oppression was not allowed to flourish on the inside, and vice versa. The recognition that the racism of the free world and the racism within penal institutions were inexorably linked led 1960s activists to, among other things, file critically important "prisoner rights" lawsuits that markedly improved prison life for African American and white inmates alike. As one scholar has put it: "A platoon, eventually a phalanx, of prisoner rights lawyers, supported by federal and foundation funding, soon appeared and pressed claims. They initiated and won prisoner rights cases that implicated every aspect of prison governance."[66]

As a result of outside mobilization and concerted legal interventions, the "Hands Off" doctrine that had long determined America's internal prison policy finally weakened under the onslaught of two decades of significant legal decisions: *Bailleaux v. Holmes* (1961) established that prison officials could not restrict the study of law when it could be shown that such a practice impeded one's right of access to the courts); *Furman v. Georgia* (1972) ruled that the death penalty was applied in an arbitrary and discriminatory manner, which violated the Eighth and Fourteenth Amendments to the U.S. Constitution; *Estelle v. Gamble* (1976) established that officials who acted with deliberate indifference to an inmate's medical needs were violating that inmate's constitutional right not to endure cruel and unusual punishment; *Ruiz v. Estelle* (1980) ruled that the conditions of imprisonment within the Texas prison system constituted cruel and unusual punishment in violation of the U.S. Constitution. These cases established unequivocally that outsiders with their own guiding interests had finally established that prisoners did not in fact lose their humanity, or their constitutional rights, when they were imprisoned in America.[67]

Just as had occurred during the nation's first prison crisis in the wake of the Civil War, inmates' determined activism decades later was critical to generating further substantive changes within the criminal justice system of the 1960s. Although inmates had protested the conditions of their incarceration throughout the twentieth century, the most organized and politically effective inmate rebellions would have to wait until the late 1960s and early 1970s. In 1970, for example, the jail inmates who had been enduring such terrible conditions at the Tombs in Manhattan staged a dramatic rebellion that not only netted them much public attention and support, but also produced palpable changes in jail operations. Help-

ing their protest tremendously was the fact that such exposés as Tom Murton's had made headlines. Added to this, radical lawyers across the country were now willing to file cases on inmates' behalves and activists were willing to launch protest after protest against the injustices that remained in the nation's prisons. Because of these broader efforts to humanize the American criminal justice system, in the case of the Tombs rebellion, Mayor John Lindsay not only acknowledged the legitimacy of the inmates' demands but also pledged to do something about them. As he told the inmates still held in the Tombs: "I am aware of your grievances and problems. I am prepared to deal with them positively, and to enlist the aid of the courts and the state."[68]

Just as the inmates at the Tombs launched a dramatic rebellion that netted them both great attention and a real opportunity to press for needed reforms, so did those at Attica. On September 9, 1971, more than 1,200 inmates took over the prison and took dozens of hostages as leverage so that state officials would negotiate with them. Notably, because these inmates also had the support of countless activists and reformers on the outside who were determined to expose the prisoners' miserable conditions for the American public, by September 11, 1971, they got the prison commissioner himself, Russell Oswald, to agree, at least in principle, to twenty-eight of the thirty-three demands that they had put forth. These included his agreement to "recommend the application of the New York State minimum wage law standards to all work done by inmates"; to "allow all New York State prisoners to be politically active, without intimidation or reprisal"; to "institute realistic, effective rehabilitation programs for all inmates according to their offense and personal needs"; and to "modernize the inmate education system, including the establishment of a Latin library."[69]

Despite the fact that negotiations were still under way, this particular rebellion ended horrifically. On September 13, 1971, Governor Nelson Rockefeller decided to retake Attica by sending in more than six hundred armed state troopers, who proceeded to shoot more than 2,400 bullets—many intended for large game and thus outlawed—into the 50′ × 50′ enclosure where inmates and hostages alike had gathered for the negotiations. Ultimately the bullets of troopers and corrections officers killed twenty-nine inmates and ten hostages while wounding and maiming hundreds of others.[70] Although the state's brutal reaction to the 1971 Attica rebellion lives on in infamy, it is important that the nature of the inmates' uprising not be forgotten. Their insistence on bettering the conditions under which they were incarcerated ultimately sparked other important prisoner rebellions that, together, netted substantial reforms to America's prisons.[71] Importantly, and specifically as a result of the Attica rebellion, eighty-five prison-reform bills were proposed to the New York State Legislature. By the end of 1972, not

only had many of these bills been signed into law, but $12 million of public funds had been earmarked to make sure that key reforms were actually implemented.[72]

Ultimately, because of the powerful efforts of multiple parties—reformers who sought to expose prison abuses; civil rights and Left activists and organizations who challenged the criminal justice system from the outside; and inmates who risked everything they had to change the conditions in prison—the later 1960s and early 1970s represented a remarkable moment when reform, not crisis, defined the American justice system. In the immediate aftermath of the Attica uprising, for example, not only were prisons humanized in important ways, but ordinary Americans indicated a newfound sympathy for inmates and greater support for their basic human as well as civil rights. Significantly, soon after the Attica uprising, when Americans were asked whether they "would favor a policy of using armed force, such as in Attica, or not using force and sitting down with the prisoners to hear their complaints," only 10 percent responded, "use armed force, as at Attica."[73] And, according to a 1971 Roper Commercial Survey, when a random group of Americans was asked whether "there should be greater use of physical punishment in prisons," only 9 percent agreed,[74] whereas 92 percent agreed that "rehabilitation and job training should be greatly increased for prisoners," and 72 percent noted that "the guards should be more understanding and humane."[75] When asked whether they thought that "blacks breed crime," the vast majority of respondents answered no.[76]

Such data clearly suggest that the aftermath of the Attica uprising pointed toward significant reforms in the American criminal justice system, particularly those reforms that acknowledged that even prisoners were entitled to basic human rights. Why, then, one is compelled to ask, did this nation end up in yet another incarceration crisis—one more extensive and racialized than any that had come before it?

By the close of the twentieth century, the United States was indeed again in the midst of a severe carceral crisis—one that, like its predecessor, was characterized by a dramatic spike in the number of Americans who found themselves behind bars. The rates of imprisonment that came to mark the nation's second prison crisis, however, made those of the first pale in comparison. As the scholars Henry Ruth and Kevin Reitz note: "Over a one hundred year period, 1880 to 1980, the nation added a total of about 285,000 inmates to the prison systems. During the ensuing twenty years, from 1980 to 2000, the nation added about 1.1. million inmates."[77] This extraordinary jump in incarceration meant that, by 2006, one in every thirty-one Americans was either locked up, on probation, or on parole.[78]

The nation's second carceral crisis shared more with the first than imprisoning

record numbers of Americans. It, too, was severely racialized from the start. To be sure, African Americans had always suffered disproportionate rates of incarceration throughout the nineteenth and twentieth centuries, but as the twentieth century wound down and the new prison crisis began, they once again found themselves particularly singled out by a battery of new laws that criminalized the urban spaces where most of them lived. Just as all-black rural spaces were criminalized in new ways after the Civil War, leading to record rates of African American incarceration at the end of the nineteenth century, so were overwhelmingly black urban spaces targeted in new ways in the wake of the civil rights advances of the 1960s, leading to even more staggering and disproportionate African American incarceration at the end of the twentieth century. Whereas in 1926, 21 percent of the Americans admitted to state and federal prisons were black (still an unacceptable figure given African Americans' percentage in the U.S. population as a whole), 44 percent of those admitted in 1986 were black.[79] While "the recorded number of black prisoners in 1986 was nearly 9 times larger than the number recorded in 1926[,] the recorded number of white prisoners was [only] 3 times larger."[80] By the close of 2007, a full 3,138 black males per 100,000 black males were sentenced prisoners compared with only 481 white males per 100,000 white males.[81] By 2006, one in fifteen African Americans, as compared with one in thirty-one Americans of every race, was in some way trapped in this nation's criminal justice system.[82]

As it did a hundred years earlier, the nation's turn to new levels of racialized mass incarceration after the 1960s devastated the black community. From orphaning more than a generation of black children, to eliminating needy Americans from eligibility for welfare and public housing, to reducing the lifetime income of black men and women, to eroding the public health in neighborhoods of color, to disproportionally disfranchising these same communities of color, the mass incarceration crisis of today is cataclysmic in its reach.[83]

Not only does today's turn to racialized mass imprisonment have a social impact fully as devastating as it did back in the late nineteenth and early twentieth centuries, but, just as alarmingly, it also signifies that Americans once again began gravitating toward a particularly punitive response to the potentiality and realities of crime. Note, for example, the extent to which public opinion had turned against the incarcerated by the last decade of the twentieth century and had retreated from the promises of the rehabilitative 1960s. According to one survey conducted in 1994, when respondents were asked, "Which best describes how you generally feel about punishment for criminals: "an eye for an eye" or "turn the other cheek"?, over 76 percent answered "an eye for an eye."[84] In a similar survey conducted by the Roper Center for Public Opinion Research, out of 1,517 people

who were asked if they "agree or disagree that people who break the law should be given stiffer sentences," 532 "strongly agreed," and 607 "agreed."[85]

Unsurprisingly, with punitive attitudes on the rise as the twentieth century became the twenty-first, prisoners themselves grew newly and ever more vulnerable. Notably, for example, back in the 1960s virtually all Americans had come to agree that it was unethical and immoral for scientists to conduct medical experiments on inmates. By the close of the twentieth century, however, and as the nation's biomedical industry began facing a serious shortage of testing subjects for its new drug trials, the possibility of using prisoners was again up for debate with noticeable public support. Indeed, to cut costs in the 1980s, pharmaceutical companies like Merck and Pfizer had not done enough testing on some of its most touted new drugs such as Vioxx and Bextra, and, as a result, they were forced to pull these very lucrative drugs off the market at a great loss.[86] Remarkably, in the wake of this financial as well as public relations disaster, two esteemed scientific bodies, the Institute of Medicine and the National Academy of Sciences, agreed to conduct a new study on the ethics of medical testing in prisons. Ultimately, both scholarly bodies recommended that federal regulations be loosened so as to permit experiments imposing greater risks if they "had the potential to benefit prisoners." From the perspective of the inmates in question, however, such reasoning seemed ludicrous. As one prisoners' advocate put it, "It strikes me as pretty ridiculous to start talking about prisoners getting access to cutting-edge research and medications when they can't even get penicillin and high-blood-pressure pills."[87]

Notably, arguments for medical testing were only the tip of the new "prisoners are not to be coddled" iceberg. In addition to pharmaceutical companies seeking carte blanche to experiment with inmate bodies, the issue of whether inmates themselves might be able to sell their own organs to medical facilities in exchange for reduced time was now also on the table. One amendment to the National Transplant Act of 1984, for example, proposed that "an inmate could donate an organ for transplant, or for research, upon death" and that, if they wished to do this, "a contract would be drawn up between the inmate, the organ bank, the United Network of Organ Sharing (UNOS), and the Federal Bureau of Prisons."[88] The incentive for inmates, it went on, was that they "could pledge up to 3 organs upon death, for 60 days each of time suspended from his/her sentence — a maximum of 180 days." If any prisoner wanted "one year of suspended time," she/he could "pledge his/her entire body."[89] On the state level, politicians wrote similar legislation to allow inmate organ donation. South Carolina Democrat Ralph Anderson proposed two such bills. The first would allow inmates to leave prison two months early if they agreed to donate bone marrow.

The second would give up to a half year of "good-behavior credit" to "'any inmate who performs a particularly meritorious or humanitarian act,' which Anderson noted, could include living kidney donation."[90] Interestingly, and disturbingly, the senator decided to turn to the prison population to increase donor supplies because of "the shortage of black bone marrow donors" in the free-world population.[91]

Not only did the upsurge of coldly utilitarian laws affecting prisoners' lives indicate that free-world empathy for the incarcerated had waned dramatically, but the post–civil rights 1960s carceral moment had also entailed a revolution in the nature of imprisonment itself with the introduction, and wholesale embrace, of so-called "supermax" facilities. Just like the penitentiaries of the late nineteenth and early twentieth centuries that eventually were deemed "cruel and unusual," the supermax prisons of the early twenty-first century came to rely heavily on sensory deprivation as well as physical abuse to control their inmate populations. Rather than using the iron gag of yesteryear, by the year 2000 the four-point restraint was a favored device for keeping prisoners in line. One prisoner locked in an Indiana supermax prison "was held in four-point restraints for a total of fifteen days," and other prisoners were dying in similarly confining "restraint chairs."[92] And although Americans had already concluded that it was inhumane to keep human beings in indefinite solitary confinement after experimenting heavily with this practice a hundred years ago, by the dawn of the twenty-first century, supermax facilities such as Pelican Bay State Prison in northern California were once again keeping men in complete isolation for decades on end.[93] The modern version of isolation was no more humane. Indeed, one prisoner who had suffered "seizures and psychiatric symptoms since childhood" began having such severe panic attacks after being locked alone in a cell that he suffered "palpitations, sweating, difficulty breathing . . . and he mutilates himself . . . to relieve his anxiety and to be removed from his cell."[94] The mentally ill in particular suffered in the nation's reembrace of punitive penology.[95]

Young people in America also paid a high price as the nation became embroiled in yet another carceral crisis—characterized as it was by an excessive reliance on incarceration and harsher punishment. One of the most significant penal reform victories in the fight against the nation's first carceral crisis was that children became a protected class in the criminal justice system. Thanks to the United Nations Declaration on the Rights of the Child (1959) and cases such as *re Gault* (1967), juveniles who had been locked away, abused, and forgotten in the penal institutions of the nineteenth and early twentieth centuries had special legal representation and their own criminal justice facilities.[96] Just as adult penal facilities grew beyond capacity and were beginning to be run in more punitive

ways as the second carceral crisis arrived and deepened, so did juvenile justice facilities become severely overcrowded and newly brutal. Consider the fact that, by the close of the twentieth century, some of the most notorious juvenile facilities were those run by private companies, for profit, that housed kids who had been convicted of crimes by local and state authorities. Some were set up to house children who had never been convicted of a crime but "might"—so-called "boot camps." Run like a combination of a forced labor camp and the harshest penal facility, such private facilities also made headlines for the shocking number of child fatalities that occurred there.[97]

But how did a nation that, by the mid-1960s, had turned so firmly in a reform-minded direction and against inhumane penal practices, once again find itself in the midst of such a deep carceral crisis? There are many interesting explanations for this punitive turn, but all of them tend to locate today's prison crisis, and the nation's embrace of mass incarceration, in the nation's turn to the political right more generally.[98] If one takes the time to unpack the origins of America's first prison crisis, it is clear that there is indeed an important relationship between the turn to a racialized system of mass incarceration and the simultaneous national turn to a conservative politics. Just as whites threatened with the loss of economic power and color privilege after the Civil War found the solution to their woes in the criminalization of black space back in 1865, it appears that similarly self-interested Americans "rediscovered" this solution after 1965. Discussing the 1880s, David Oshinsky observes that, by locking up newly freed African Americans en masse, southern Democrats were perceived to be "redeeming" their region "from the clutches of 'black power." Similarly, it would appear, those threatened and unnerved by the civil rights and Black Power activism of African Americans in the 1960s and 1970s also sought to regain and maintain control through the carceral state.[99]

If the origins of the most recent carceral crisis eerily resemble those of the late nineteenth century, so do the possibilities for ending it. As did their counterparts in the late nineteenth and early twentieth centuries, at least some segments of the American citizenry in the new twenty-first century began to recognize that their own fate and that of the nation's prisoners are intertwined. They once again began to take note of the brutality in the nation's penal facilities and to speak out against such cruelty; and, perhaps most important, prisoners once again began to act on their own behalf to change the system.

Although they had grown utterly complacent about the nation's criminal justice system once they had secured protections against wage competition from prison labor during the New Deal, America's workers once again are coming to realize that their fate is intimately tied to the carceral state and, more specifically,

to the fact that there is now an endless supply of prisoners in the nation whom private employers can once again exploit for profit. While they paid no attention to what took place behind prison walls in the postwar period, private corporations, state governments, and the federal government itself were together seeking ways to weaken existing regulations on prison labor. In 1979, they succeeded in overhauling the most significant of these regulations, and by the new millennium, in states across the country, the durable goods that workers in the free world used to make, ranging from desks to eyeglasses, and the service jobs they used to do, ranging from taking phone orders for retailers to placing reservations for travel agencies, have increasingly gone to prisoners who can neither ask for a living wage nor demand that their workplaces be safe.[100] Although the largely white-led labor movement itself was slow to take up this issue—fearing that its criticism of the carceral state might alienate its members who must be "tough on crime"—noticeable movement in that direction was afoot by the close of the 1990s.[101] Increasing numbers of unions of color in particular began tackling this issue, but so did more traditional unions such as the American Federation of State, County and Municipal Employees (AFSCME), the Service Employees International Union (SEIU), and the American Federation of Government Employees (AFGE). As one journalist noted about labor efforts in the western United States in 1999: "The campaign against prison labor in Oregon is picking up steam. The fightback is headed by the Teamsters, the Building Trades unions and the American Federation of State, County and Municipal Employees, whose members include correction officers."[102]

Community activists, particularly activists of color less blinded by race privilege than much of the labor movement, also came increasingly to see that the most recent carceral crisis was their crisis, too. Organizations such as Critical Resistance, StopMax, Children of the Incarcerated, the Prison Activist Resource Center, Families of Prisoners, Families Against Mandatory Minimums (FAMM), to mention but a few, made it their full-time job to organize around the issue of mass incarceration and its myriad devastating effects. As FAMM explained its mission: "We shine a light on the human face of sentencing, advocate for state and federal sentencing reform, and mobilize thousands of individuals and families whose lives are adversely affected by unjust sentences" and "FAMM's vision is a nation in which sentencing is individualized, humane, and sufficient but not greater than necessary to impose just punishment, secure public safety, and support successful rehabilitation and reentry."[103]

Similarly, once again journalists, scholars, and other reformers began working hard to lift the veil on what was happening behind prison walls, trying to educate the public about the costs of mass incarceration, and trying to reform the nation's

penal system. Indeed, by the first decade of the twenty-first century, there were countless articles being written on prisons and the abuses of prisoners within them. Scores of new books also emerged that sought to illuminate the collateral costs of the carceral state. Dozens of academic conferences were soon being devoted to ending mass incarceration and punitive criminal justice policies. One held at the University of Virginia in 2009, entitled "The Problem of Punishment: Race, Inequality, and Justice," made clear that "the aim of this symposium, therefore, is to promote a serious, informed dialogue that will contribute to a growing national debate on the growth of the carceral state. . . . [In this symposium] scholars will focus on the myriad implications of rising prison rates for forms of economic, social, and political exclusion in the United States."[104] Similarly, a conference at Princeton University in 2011, entitled "The Imprisonment of a Race," netted a huge audience of individuals from across the Northeast interested in hearing about "the prison system in a historical and present-day context through the lens of race."[105]

As important, there were soon numerous professional and philanthropic organizations devoting their time and resources to ending the most recent prison crisis as well. Consider, for example, that the Open Society Institute had, by the close of the twentieth century, dedicated an entire "Criminal Justice Fund" to aid "efforts to end the over-reliance on incarceration and harsh punishment in the United States." The institute explained: "The Fund supports advocacy, litigation, strategic research and analysis, public education, communications and organizing efforts to address institutional and structural inequality and reverse the policies and practices that criminalize race, poverty, mental illness, drug and alcohol dependency and youth; expose the destructive and costly impact of current policies on individuals and communities; stimulate rethinking about the appropriate role of prosecution, punishment, and prison in the 21st century; encourage participation and leadership of people with criminal convictions in justice reform; and assure equal access to quality representation and alternatives to incarceration."[106]

With such attention once again finally being trained on penal institutions, prisoners themselves could once again act on their own behalf in ways that made a policy difference as well. Indeed, when American citizens outside of prison walls began recognizing that prison labor harmed them, too, and when they began exposing the abuses again taking place in the nation's penal facilities, prisoners themselves had more public support for their attempts to eliminate the most abusive conditions of their confinement. Notably, it wasn't until groups such as Human Rights Watch and Amnesty International demanded access to supermax facilities in states such as Virginia, and organizations such as STOPMAX began educating the public on what inmates endured when placed in such severe isola-

tion, that inmates could begin a legal assault on these Orwellian institutions.[107] Similarly, while organizations such as the American Friends Service Committee again began looking closely at the issue of prison reform, inmates in isolation units were then able to draw from international as well as constitutional law when they sought help. As Bonnie Kerness of the Newark AFSC office explained:

> The conditions and practices that the imprisoned testify to are in violation of the Universal Declaration of Human Rights, the United Nations Convention against Torture, and the United Nations Convention on the Elimination of All Forms of Racial Discrimination. U.S. prison practices also violate dozens of other international treaties and fit the United Nations definition of genocide. . . . The AFSC has been documenting human rights abuses in prisons for many years, and forwarded the documentation to appropriate U.N. committees, considering U.S. compliance with these agreements.[108]

As prisoners' experience throughout the first two-thirds of the twentieth century had already proved, when prisoners could be heard in courts of law, they could dramatically change their circumstances. Once again, the path toward improving penal conditions and, ultimately, to ending the most recent national carceral crisis, was paved by determined legal activism. Notably, even as the country grew more conservative in the 1980s and 1990s, inmates continued to look to the legal system to restore their human and civil rights. As Heather Schoenfeld points out, "By 1993, 40 states were under court order to reduce overcrowding and/or eliminate unconstitutional conditions of confinement."[109] Indeed, inmates filed so many suits in the late 1970s and into the 1990s that legislators passed the Prison Litigation Reform Act to limit their claims.[110] Nevertheless, even with restricted access to the courts, in the year 2000 inmates still filed 25,505 civil rights petitions. By 2005, they had won a critical civil rights victory when the U.S. Supreme Court ruled in *Garrison Johnson v. State of California* that prison officials could not segregate inmate housing on the basis of race when they entered a California prison.[111] Similarly, knowing that they might now be heard, prisoners filed two legal cases, *Plata v. Schwarzenegger* and *Coleman v. Schwarzenegger,* to fight the terrible health-care consequences of severe prison overcrowding.[112] In 2009, as a result of their activism, the Supreme Court of the State of California ruled that the state's Department of Corrections must release upwards of fifty thousand inmates, which is the equivalent of closing seven to nine prisons.[113] As such victories did a century ago, cumulatively, ameliorate the nation's first prison crisis, so might they end its second. While none of those victories was possible in isolation, collectively they made a substantial difference and could again.

Again, this nation has been here before, and the fact that the historical record

shows clearly that even the most egregious carceral crisis could in fact be stemmed is good news, indeed. But this record carries bad news in tandem. Clearly, without constant vigilance from citizens in the free world, and without keeping the human and civil rights of the incarcerated protected, a racialized incarceration crisis can always again engulf this nation. History matters, and the only way to avoid repeating its worst offenses against humanity—even the humanity of inmates—is to return to "the scene of the crime," as it were. Uncovering the evidence of past abuses contributes to our knowledge of what to do, and not to do, now.

## Notes

1. Lawrence D. Bobo and Victor Thompson, "Racialized Mass Incarceration: Poverty, Prejudice, and Punishment," in *Doing Race: 21 Essays for the 21st Century,* ed. Hazel R. Markus and Paula Moya (New York: Norton, 2010), 329.

2. For more on this impact, see Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *Journal of American History* (December 2010).

3. For a beautiful recapturing of this hope, see Jacqueline Jones, *Labor of Love, Labor of Sorrow* (New York: Basic, 2009); and Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Doubleday, 2008).

4. I use the terms "mass imprisonment" and "mass incarceration" to describe even this earlier criminal justice moment that newly freed African Americans faced in the wake of the Civil War both to reflect the steep rise in the number of African Americans who were suddenly confined as prisoners by both state and private interests, and to indicate the scope of how many African Americans fell victim in this period to new laws intended to restrict their freedom and to labor poachers who operated a vast, and only newly appreciated, illegal operation of arresting and even kidnapping African Americans for crimes that had never been committed. On the dramatic and sudden rise in the numbers of incarcerated African Americans, see Mary Ellen Curtin, *Black Prisoners and Their World: Alabama 1865–1900* (Charlottesville: University Press of Virginia, 2000), 2; and Alexander Lichtenstein, *Twice the Work of Free Labor* (New York: Verso, 1996), 60, 180. On the scope of this imprisonment—some of which was itself illegal—see Blackmon, *Slavery by Another Name,* 127.

5. David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996), 19, 29.

6. Ibid.

7. Curtin, *Black Prisoners and Their World,* 8.

8. There is a great deal of controversy surrounding how much crime newly freed African Americans committed in the wake of slavery. Whereas Oshinsky argues that there was a real crime problem in the postbellum South, albeit caused mostly by African American necessity, Douglas Blackmon argues that this crime problem was greatly exaggerated and was used merely as a pretense for securing a convict labor force. While there is little ques-

tion that food theft did occur because one white response to black freedom was to not provide food to those former slaves who refused to do their bidding, it is also clear that acts of food theft were hardly at crisis levels and cannot explain the white South's decision to incarcerate thousands of newly freed African Americans.

9. Oshinsky, *Worse Than Slavery,* 40.

10. Blackmon, *Slavery by Another Name,* 127.

11. Oshinsky, *Worse Than Slavery,* 39.

12. Ibid., 34.

13. Lichtenstein, *Twice the Work of Free Labor,* 60.

14. Curtin, *Black Prisoners and Their World,* 2.

15. Lichtenstein, *Twice the Work of Free Labor,* 183.

16. Ibid, 183. For more on the terrible treatments suffered by female convict lessees, see Talitha LaFlouria, "Convict Women and Their Quest for Humanity: Examining Patterns of Race, Class, and Gender in Georgia's Convict Lease and Chain Gang Systems, 1865–1917" (Ph.D. diss., Howard University, 2009).

17. *Penitentiary. Atlanta, Ga., May 5, 1870* (repr., New York: Arno Press, 1974), 111–14.

18. Ibid.

19. For a fascinating discussion of the ways in which, and the extent to which, African Americans were criminalized in the North, and, indeed, on the ways in which this manufactured association between blackness and crime reverberated both politically and in terms of policy, see Kali Gross, *Colored Amazons: Crime, Violence and Black Women in the City of Brotherly Love, 1880–1910* (Durham: Duke University Press, 2006); Cheryl Hicks, *Talk with You Like a Woman: Urban Reform, Criminal Justice, and African American Women in New York, 1890–1935* (Chapel Hill: University of North Carolina Press, 2010); and Khalil Gibran Muhammad, *The Condemnation of Blackness: Ideas about Race and Crime in the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010). For more on prison labor in general, mostly white, see Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (Cambridge: Cambridge University Press, 2008).

20. Henry Elmer Barnes, *A History of the Penal, Reformatory and Correctional Institutions of the State of New Jersey: Analytical and Documentary* (Trenton, N.J.: MacCrellish and Quigley, 1918; repr., New York: Arno Press, 1974), 133.

21. "A Revolting Story," *Massachusetts Ploughman and New England Journal of Agriculture* 39, no. 4 (October 25, 1879): 3

22. For more on the importance of labor movement activism to limiting prison labor abuses, see Heather Ann Thompson, "Rethinking Working-Class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards," *Labor: Studies in the Working-Class History of the Americas* (Fall 2011).

23. The historian David Oshinsky rightly notes another group whose eventual hostility toward the southern elites' unfettered access to a free workforce also led to the demise of this system: those poorer southern whites, racialized populists, who felt that planter and entrepreneur use of convict lessees only deepened the wealth and class divide in the New South (see Oshinsky, *Worse Than Slavery,* chap. 5).

24. Quoted in Shaun L. Gabbidon, *W. E. B. Du Bois on Crime and Justice: Laying the Foundations of Sociological Criminology* (Farnham, U.K.: Ashgate, 2007), 62.

25. Quoted ibid.

26. See Beverly W. Jones, "Mary Church Terrell and the National Association of Colored Women, 1896 to 1901," *Journal of Negro History* 67, no. 1 (Spring 1982): 20–33; Frederick Douglass on convict leasing in Ida B. Wells, ed., The Reason Why the Colored American Is Not in the World's Columbian Exposition: The Afro-American's Contribution to Columbian literature; and Louis R. Harlan, *Booker T. Washington Papers* (Urbana: University of Illinois Press, 1980).

27. "Grand Jury Today Gets Peonage Case: Witnesses to Tell of the Flogging of Tabert and Others in Lumber Camp," *New York Times,* April 11, 1923; Oshinsky, *Worse Than Slavery,* 74.

28. "Tells of Death Lash in Florida Camp: Ex-Convict Guard Asserts 'Whipping Boss' Gave 100 Strokes to Tabert," *New York Times,* April 18, 1923; Oshinsky, *Worse Than Slavery,* 74.

29. "Florida to Inquire into Peonage Charges," *New York Times,* April 4, 1923; "Two Inquires Start into Death of Tabert: Florida Grand Jury to Sift Circumstances and Legislature Names Joint Committee," *New York Times,* April 10, 1923.

30. "Tells of Death Lash in Florida Camp: Ex-Convict Guard Asserts 'Whipping Boss' Gave 100 Strokes to Tabert," *New York Times,* April 18, 1923.

31. Oshinsky, *Worse Than Slavery,* 75.

32. "Florida House Votes to End All Flogging in Convict Camps, But Keeps Leasing Plan, *New York Times,* April 19, 1923.

33. A similar exposé and trial took place in Arkansas: "Convict Ark. Officer of Slave Raids: Guilty on Seven Counts," *Pittsburgh Courier,* December 5, 1936.

34. "Strikers and Convict Labour in America, *Scotsman,* July 20, 1891.

35. Karin Shapiro, *New South Rebellion: The Battle against Convict Labor in the Tennessee Coalfields, 1871–1896, 2.*

36. "Hits Convict Road Labor: States Construction Council Contends It Adds to Unemployment, *New York Times,* July 11, 1932.

37. "Ban Goods Made by Prison Labor: United Drive by Garment Manufacturers against This Kind of Competition," *New York Times,* August 19, 1923.

38. Hawes-Cooper Act, 1929, c. 79, 1, 2, 45 Stat. 1084, title 49 U.S.C. 60 (49 U.S.C.A. 60); Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45); and Ashurst-Sumner Act, 1935, Public Law 215, 74th Cong. For more on the history of prison labor law and the labor history of inmates, guards, and the American working class, see Thompson, "Rethinking Working-Class Struggle through the Lens of the Carceral State."

39. "The Convict Miners' Strike," *Irish Times,* July 9, 1927.

40. Z. R. Brockway, "The Care of Criminals," *Chautauquan: A Weekly Newsmagazine,* March 1889.

41. *An Educational Program for the New York State's Penal System: Special Report by Commission to Investigate Prison Administration and Construction*, presented to the Legislature of the State of New York, January 1932, 24.

42. Oshinsky, *Worse Than Slavery,* 75.

43. Ralph Chaplin, "Prison Blight," *Forum,* March 1930.

44. Prison Report, Department of Welfare, *A Review of the Four-Year Period, 1931–34, Inclusive, in the Penal and Correctional Institutions of the Commonwealth and a Discussion of Objectives* (Harrisburg: Commonwealth of Pennsylvania, 1935), 46, 48.

45. For a brilliant account of the conditions of Texas prisons in the 1960s, see Robert Chase, "Civil Rights on the Cellblock: Race, Reform, and Violence in Texas Prisons and the Nation, 1945–1990" (Ph.D. diss., University of Maryland, 2009).

46. Tom Murton, *Accomplices to the Crime* (New York: Grove Press, 1969).

47. There are numerous examples of this, but for some particularly interesting treatments, see Bruce Jackson, "Our Prisons Are Criminal," *New York Times,* September 22, 1968; and Toussaint Losier, "'We Are One People': The 1970 New York City Jail Rebellions and the Practice of Solidarity," seminar paper, Department of History, University of Chicago.

48. See Public Law 89–465, 89th Cong., S–1357.

49. *New York Times,* August 13, 1970.

50. *Tombs Disturbance Report,* 1970, New York State Senate Committee on Crime and Correction, 31.

51. Ibid.

52. *The Hidden Society,* 1970, Annual Report, New York State Senate Committee on Crime and Correction, 10; *New York Times,* August 12, 1970.

53. *New York Times,* August 22, 1970.

54. *Tombs Disturbance Report,* 28.

55. *Attica: The Official Report of the New York State Special Commission on Attica,* 2nd printing (New York: Bantam, 1972), 39.

56. Ibid.

57. Testimony of David Addison, April 17, 1972, transcript, McKay Commission (New York State Special Commission on Attica Hearings), 57.

58. Ibid.

59. Testimony of Angel Martinez, April 13, 1972, transcript, McKay Commission, 57.

60. J. Rosenberg, interview, in *Voices from Inside: Seven Interviews with Attica Prisoners* (Great Jones Printing, 1972).

61. Ibid.

62. John Stockholm, interview by the author, July 1, 2005, Lehigh Acres, Florida.

63. Ibid.

64. For more on Murton's exposé, see Heather Ann Thompson, "'Blinded by the Barbaric South: Prison Horror, Inmate Abuse, and the Ironic Hisotry of American Penal Reform," in *The Myth of Southern Exceptionalism,*" ed. Matthew Lassiter and Joseph Crespino (New York: Oxford University Press, 2009).

65. Chase, "Civil Rights on the Cellblock," 62.

66. Quote from James B. Jacobs, *New Perspectives on Prisons and Imprisonment* (Ithaca: Cornell University Press, 1983), 39, in Joel Sahama, *Criminal Justice* (Stamford, Ct.: Wadsworth, 2002), 508.

67. All of these cases were crucially important, but for information on one of the most important and long-running of these, see Chase, "Civil Rights on the Cell Block," particularly chapters 7 and 8.

68. Linda Charlton, "Mayor Waits for Two Hours for Inmates to Respond," *New York Times,* October 5, 1970.

69. See original typed copy of "proposals acceptable to Oswald at this time" in the McKay Collection, #15855–90, box 84, New York State Archives, Albany.

70. For a comprehensive history of the Attica prison uprising of 1971 and its legacy, see

Heather Thompson, forthcoming from Pantheon. The material referring to Attica in this essay is drawn from research for this work.

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72. Alfonso A. Narvaez, "Prison Bills Fill Hopper in Albany: 85 Measures Await Action by the 1972 Legislature," *New York Times,* January 11, 1972; "Rockefeller Offers Package for Prison Reform," *New York Times,* April 2, 1972; Alfonso A. Narvaez, "Prison Reform Measures Are Signed by Rockefeller," *New York Times*, May 24, 1972.

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74. Roper Commercial Survey, conducted by Roper Organization, October 18–October 27, 1971, and based on personal interviews with a national adult sample of 1,499 (USROPER.524COM.R20E), Roper Center for Public Opinion Research, University of Connecticut.

75. See ibid.

76. Conducted by Louis Harris & Associates during July 1971, and based on personal interviews with a national adult sample of 1,600 (USHARRIS.71JUL.R26F). Data provided by the Roper Center for Public Opinion Research, University of Connecticut.

77. Henry Ruth and Kevin R. Reitz, *The Challenge of Crime: Rethinking Our Response* (Cambridge: Harvard University Press, 2006), 283.

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83. For specific information on all of the costs of racialized incarceration listed here, and cites to the broader literature on the same, see Thompson, "Why Mass Incarceration Matters."

84. "Crime, Punishments," Survey, September 1994, Wirthlin Group, McLean, Va., from "Polling the Nations" database.

85. "Crime, Punishments," General Social Surveys, 1992, Sample size 1,517, Roper Center for Public Opinion Research, from "Polling the Nations" database.

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92. "Cold Storage: Super-Maximum Security Confinement in Indiana," *Human Rights Watch Report,* October 1997, 30; Nick Wilkinson and Brett Cherry, "Death in the Restraint Chair," *Dayton City Paper,* September 17, 2004.

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98. See, in particular, the work by Vesla Weaver, Michael Flamm, and David Garland on this topic. Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," *Studies in American Political Development* 21 (Fall 2007): 230–65; Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001).

99. Oshinsky, *Worse Than Slavery,* 37. For more on the connection between mass incarceration and the shift in politics experienced in this country after the 1960s, see Thompson, "Why Mass Incarceration Matters."

100. For much more detail on the overhaul of New Deal–era restrictions on prison labor as well as on the impact of this overhaul on America's working class, see Thompson, "Rethinking Working Class Struggle through the Lens of the Carceral State."

101. There is one segment of the American working class that has been slow to see that a buildup of the carceral state is not in its interest: prison guard associations such as the California Peace Officers Association (CPOA) and the New York Safety and Correctional Officers Benevolence Association (NYSCOBA). Joshua Page has written extensively on the ways in which these organizations, which call themselves unions, acted to thwart efforts to reduce prison building and penal populations (see Joshua Page, *The Toughest Beat: Politics, Punishment, and the Prison Officers' Union in California* [Oxford: Oxford University Press, 2011]). Most guard labor unions, however, are not willing to see a wholesale buildup of the carceral state simply to safeguard their own jobs, and when they oppose closing prisons, it is often because of the severe crowding and speed up it causes at other prisons—in other words, those closings have not, in fact, reduced prison populations. For a critical

analysis of Page's argument about the prison guard unions, see Heather Ann Thompson, "Downsizing the Carceral State: The Policy Implications of Prison Guard Unions," *Criminology and Public Policy* (August 2011).

102. Victor Perlo, "Prison Labor in the U.S.," August 17, 1999, www.hartford-hwp.com /archives/45b/157.html.

103. Families against Mandatory Minimums, "About Us," www.famm.org/About FAMM.aspx.

104. "The Problem of Punishment: Race, Inequality and Justice," symposium, April 16–17, 2009, Carter G. Woodson Institute, University of Virginia, http://artsandsciences .virginia.edu/woodson/symposium/index.html.

105. "The Imprisonment of a Race," conference, March 25, 2011, Department of African American Studies, Princeton University, www.princeton.edu/africanamericanstudies /events/imprisonment/.

106. Specific projects include the Gideon Project, which focuses on the fair and equal administration of justice, including death penalty reform, improving public defense, and ending racial profiling; the Sentencing and Incarceration Alternatives Project, which focuses on sentencing reform, including mandatory minimums and crack-powder cocaine disparities, and limiting prison expansion and privatization; the After Prison Initiative, which focuses on reorienting policies and reinvesting resources of prison systems to maximize successful reentry and support the economic and political reenfranchisement of high incarceration communities; and the Soros Justice Fellowships Program, which provides one-year project fellowships to emerging and seasoned criminal justice advocates.

107. www.amnesty-volunteer.org/usa/group159/supermax.html; www.hrw.org/en /reports/2000/02/01/out-sight-super-maximum-security-confinement-us; Laura Magnani, *Buried Alive: Long-Term Isolation in California's Youth and Adult Prisons,* report, American Friends Service Committee, Oakland, May 2008, www.afsc.org/stopmax/ht/a /GetDocumentAction/i/38569%20

108. Magnani, *Buried Alive.*

109. Heather Schoenfeld, "Mass Incarceration and the Paradox of Prison Conditions Litigation," *Law & Society Review* 44, no. 3/4 (August 2010): 731–32.

110. For another take on prisoner rights litigation, and the controversial suggestion that it actually leads to greater incarceration, see Schoenfeld, "Mass Incarceration and the Paradox of Prison Conditions Litigation."

111. John Scalia, BJS statistician, "Prisoner Petitions Filed in U.S. District Courts, 2000, with Trends 1980–2000"; see Court decision in *Johnson v California,* www.usdoj .gov/osg/briefs/2003/3mer/1ami/2003–0636.mer.ami.pdf

112. See the order in these cases: www.prisonlaw.com/pdfs/Plata3JudgeOrder.pdf; and www.prisonlaw.com/pdfs/Coleman3JudgeOrder.pdf.

113. See three-judge panel ruling, www.prisonlaw.com/pdfs/Platatentativeruling.pdf.