

those. ... So when we talk about locking up more and more people, what we're really talking about is locking up more and more black men."<sup>37</sup> Another commentator noted, "It is unnecessary to speak directly of race [today] because speaking about crime is talking about race."<sup>38</sup> Indeed, not long after the drug war was media campaign a few years after the drug war was announced in an effort to publicize horror stories involving black crack users and crack dealers in ghetto communities. Although crack cocaine had not yet hit the streets when the War on Drugs was declared in 1982, its appearance a few years later created the perfect opportunity for the Reagan administration to build support for its new war. Drug use, once considered a private, public-health matter, was reframed through political rhetoric and media imagery as a grave threat to the national order.

Jimmie Reeves and Richard Campbell show in their research how the media imagery surrounding cocaine changed as the practice of smoking cocaine came to be associated with poor blacks.<sup>35</sup> Early in the 1980s, the typical cocaine-related story focused on white recreational users who snorted the drug in its powder form. These stories generally relied on news sources associated with the drug treatment industry, such as rehabilitation clinics, and emphasized the possibility of recovery. By 1985, however, as the War on Drugs moved into high gear, this frame was supplanted by a new "siege paradigm," in which transgressors were poor, nonwhite users and dealers of crack cocaine. Law enforcement officials assumed the role of drug "experts," emphasizing the need for law and order responses—a crackdown on those associated with the drug. These findings are consistent with numerous other studies, including a study of network television news from 1990 and 1991, which found that a predictable "us against them" frame was used in the news stories, with "us" being white, suburban America, and "them" being black Americans and a few corrupted whites.<sup>36</sup>

The media bonanza inspired by the administration's campaign solidified in the public imagination the image of the black drug criminal. Although explicitly racial political appeals remained rare, the calls for "war" at a time when the media was saturated with images of black drug crime left little doubt about who the enemy was in the War on Drugs and exactly what he looked like. Jerome Miller, the former executive director of the National Center for Institutions and Alternatives, described the dynamic this way: "There are certain code words that allow you never to have to say 'race,' but everybody knows that's what you mean and 'crime' is one of those. ... So when we talk about locking up more and more people, what we're really talking about is locking up more and more black men."<sup>37</sup> Another commentator noted, "It is unnecessary to speak directly of race [today] because speaking about crime is talking about race."<sup>38</sup> Indeed, not long after the drug war was ramped up in the media and political discourse, almost no one imagined that drug criminals could be anything other than black.

A survey was conducted in 1995 asking the following question: "Would you close your eyes for a second, envision a drug user, and describe that person to me?" The startling results were published in the *Journal of Alcohol and Drug Education*. Ninety-five percent of respondents pictured a black drug user, while only 5 percent imagined other racial groups.<sup>39</sup> These results contrast sharply with the reality of drug crime in America. African Americans constituted only 15 percent of current drug users in 1995, and they constitute roughly the same percentage today. Whites constituted the vast majority of drug users then (and now), but almost no one pictured a white person when asked to imagine what a drug user looks like. The same group of respondents also perceived the typical drug trafficker as black.

There is no reason to believe that the survey results would have been any different if police officers or prosecutors—rather than the general public—had been the respondents. Law enforcement officials, no less than the rest of us, have been exposed to the racially charged political rhetoric and media imagery associated with the drug war. In fact, for nearly three decades, news stories regarding virtually *all* street crime have disproportionately featured African American offenders. One study suggests that the standard crime news "script" is so prevalent and so thoroughly racialized that viewers imagine a black perpetrator even when none

exists. In that study, 60 percent of viewers who saw a story with no image falsely recalled seeing one, and 70 percent of those viewers believed the perpetrator to be African American.<sup>40</sup>

Decades of cognitive bias research demonstrates that both unconscious and conscious biases lead to discriminatory actions, even when an individual does not want to discriminate.<sup>41</sup> The quotation commonly attributed to Nietzsche, that "there is no immaculate perception," perfectly captures how cognitive schemas—thought structures—influence what we notice and how the things we notice get interpreted.<sup>42</sup> Studies have shown that racial schemas operate not only as part of conscious, rational deliberations, but also automatically—without conscious awareness or intent.<sup>43</sup> One study, for example, involved a video game that placed photographs of white and black individuals holding either a gun or other object (such as a wallet, soda can, or cell phone) into various photographic backgrounds. Participants were told to decide as quickly as possible whether to shoot the target. Consistent with earlier studies, participants were more likely to mistake a black target as armed when he was not, and mistake a white target as unarmed, when in fact he was armed.<sup>44</sup> This pattern of discrimination reflected automatic, unconscious thought processes, not careful deliberations.

Most striking, perhaps, is the overwhelming evidence that implicit bias measures are disassociated from explicit bias measures.<sup>45</sup> In other words, the fact that you may honestly believe that you are not biased against African Americans, and that you may even have black friends or relatives, does not mean that you are free from unconscious bias. Implicit bias tests may still show that you hold negative attitudes and stereotypes about blacks, even though you do not believe you do and do not want to.<sup>46</sup> In the study described above, for example, black participants showed an amount of "shooter bias" similar to that shown by whites.<sup>47</sup> Not surprisingly, people who have the greatest explicit bias (as measured by self-reported answers to survey questions) against a racial group tend also to have the greatest implicit bias against them, and vice versa.<sup>48</sup> Yet there is often a weak correlation between degrees of explicit and implicit bias; many people who think they are not biased prove when tested to have relatively high levels of bias.<sup>49</sup> Unfortunately, a fairly consistent finding is that punitiveness and hostility almost always increase when people are primed—even subliminally—with images or verbal cues associated with African Americans. In fact, studies indicate that people become increasingly harsh when an alleged criminal is darker and more "stereotypically black"; they are more lenient when the accused is lighter and appears more stereotypically white. This is true of jurors as well as law enforcement officers.<sup>50</sup>

Viewed as a whole, the relevant research by cognitive and social psychologists to date suggests that racial bias in the drug war was inevitable, once a public consensus was constructed by political and media elites that drug crime is black and brown. Once blackness and crime, especially drug crime, became conflated in the public consciousness, the "criminal blackman," as termed by legal scholar Kathryn Russell, would inevitably become the primary target of law enforcement.<sup>51</sup> Some discrimination would be conscious and deliberate, as many honestly and consciously would believe that black men deserve extra scrutiny and harsher treatment. Much racial bias, though, would operate unconsciously and automatically—even among law enforcement officials genuinely committed to equal treatment under the law.

Whether or not one believes racial discrimination in the drug war was inevitable, it should have been glaringly obvious in the 1980s and 1990s that an extraordinarily high *risk* of racial bias in the administration of criminal justice was present, given the way in which all crime had been framed in the media and in political discourse. Awareness of this risk did not require intimate familiarity with cognitive bias research. Anyone possessing a television set during this period would likely have had some awareness of the extent to which black men had been demonized in the War on Drugs.

The risk that African Americans would be unfairly targeted should have been of special concern to the U.S. Supreme Court—the one branch of government charged with the responsibility of protecting "discrete and insular minorities" from the excesses of majoritarian

## Chapter 5

### The New Jim Crow

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

The message was a familiar one: black men should be better fathers. Too many are absent from their homes. For those in the audience, Obama's speech was an old tune sung by an exciting new performer. His message of personal responsibility, particularly as it relates to fatherhood, was anything but new; it had been delivered countless times by black ministers in churches across America. The message had also been delivered on a national stage by celebrities such as Bill Cosby and Sidney Poitier. And the message had been delivered with great passion by Louis Farrakhan, who more than a decade earlier summoned one million black men to Washington, D.C., for a day of "atonement" and recommitment to their families and communities.

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

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

The following day, social critic and sociologist Michael Eric Dyson published a critique of Obama's speech in *Time* magazine. He pointed out that the stereotype of black men being poor fathers may well be false. Research by Boston College social psychologist Rebekah Levine Coley found that black fathers not living at home are more likely to keep in contact with their children than fathers of any other ethnic or racial group. Dyson chided Obama for evoking a black stereotype for political gain, pointing out that "Obama's words may have been spoken to black folk, but they were aimed at those whites still on the fence about whom to send to the White House."<sup>1</sup> Dyson's critique was a fair one, but like other media commentators, he remained silent about where all the absent black fathers could be found. He identified numerous social problems plaguing black families, such as high levels of unemployment, discriminatory mortgage practices, and the gutting of early-childhood learning programs. Not a word was said about prisons.

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

The sense that black men have disappeared is rooted in reality. The U.S. Census Bureau reported in 2002 that there are nearly 3 million more black adult women than men in black communities across the United States, a gender gap of 26 percent.<sup>3</sup> In many urban areas, the gap is far worse, rising to more than 37 percent in places like New York City. The comparable disparity for whites in the United States is 8 percent.<sup>4</sup> Although a million black men can be found in prisons and jails, public acknowledgment of the role of the criminal justice system in "disappearing" black men is surprisingly rare. Even in the black media—which is generally more willing to raise and tackle issues related to criminal justice—an eerie silence can often be found.<sup>5</sup>

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

The fact that Barack Obama can give a speech on Father's Day dedicated to the subject of fathers who are "AWOL" without ever acknowledging that the majority of young black men in many large urban areas are currently under the control of the criminal justice system is disturbing, to say the least. What is more problematic, though, is that hardly anyone in the mainstream media noticed the oversight. One might not expect serious analysis from Tyra Banks, but shouldn't we expect a bit more from the *New York Times* and CNN? Hundreds of thousands of black men are unable to be good fathers for their children, not because of a lack of commitment or desire but because they are warehoused in prisons, locked in cages. They did not walk out on their families voluntarily; they were taken away in handcuffs, often due to a massive federal program known as the War on Drugs.

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

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

This is the new normal, the new racial equilibrium.

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

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

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

### **States of Denial**

The claim that we really know where all the black men have gone may inspire considerable doubt. If we know, why do we feign ignorance? Could it be that most people really don't know? Is it possible that the roundup, lock-down, and exclusion of black men en masse from the body politic has occurred largely unnoticed? The answer is yes and no.

Much has been written about the ways in which people manage to deny, even to themselves, that extraordinary atrocities, racial oppression, and other forms of human suffering have occurred or are occurring. Criminologist Stanley Cohen wrote perhaps the most important book on the subject, *States of Denial*. The book examines how individuals and institutions—victims, perpetrators, and bystanders—know about yet deny the occurrence of oppressive acts. They see only what they want to see and wear blinders to avoid seeing the rest. This has been true about slavery, genocide, torture, and every form of systemic oppression.

Cohen emphasizes that denial, though deplorable, is complicated. It is not simply a matter of refusing to acknowledge an obvious, though uncomfortable, truth. Many people "know" and "not-know" the truth about human suffering at the same time. In his words, "Denial may be neither a matter of telling the truth nor intentionally telling a lie. There seem to be states of mind, or even whole cultures, in which we know and don't know at the same time."<sup>10</sup>

Today, most Americans know and don't know the truth about mass incarceration. For more than three decades, images of black men in handcuffs have been a regular staple of the evening news. We know that large numbers of black men have been locked in cages. In fact, it is precisely because we know that black and brown people are far more likely to be imprisoned that we, as a nation, have not cared too much about it. We tell ourselves they "deserve" their fate, even though we know—and don't know—that whites are just as likely to commit many crimes, especially drug crimes. We know that people released from prison face a lifetime of discrimination, scorn, and exclusion, and yet we claim not to know that an undercaste exists. We know and we don't know at the same time.

Upon reflection, it is relatively easy to understand how Americans come to deny the evils of mass incarceration. Denial is facilitated by persistent racial segregation in housing and schools, by political demagoguery, by racialized media imagery, and by the ease of changing one's perception of reality simply by changing television channels. There is little reason to doubt the prevailing "common sense" that black and brown men have been locked up en masse merely in response to crime rates when one's sources of information are mainstream media outlets. In many respects, the reality of mass incarceration is easier to avoid knowing than the injustices and sufferings associated with slavery or Jim Crow. Those confined to prisons are out of sight and out of mind; once released, they are typically confined in ghettos. Most Americans only come to "know" about the people cycling in and out of prisons through fictional police dramas, music videos, gangsta rap, and "true" accounts of ghetto experience on the evening news. These racialized narratives tend to confirm and reinforce the prevailing public consensus that we need not care about "those people"; they deserve what they get.

Of all the reasons that we fail to know the truth about mass incarceration, though, one stands out: a profound misunderstanding regarding how racial oppression actually works. If someone were to visit the United States from another country (or another planet) and ask: Is the U.S. criminal justice system some kind of tool of racial control? Most Americans would swiftly deny it. Numerous reasons would leap to mind why that could not possibly be the case. The visitor would be told that crime rates, black culture, or bad schools were to blame. "The system is not run by a bunch of racists," the apologist would explain. "It's run by people who are trying

to fight crime." That response is predictable because most people assume that racism, and racial systems generally, are fundamentally a function of attitudes. Because mass incarceration is officially colorblind, it seems inconceivable that the system could function much like a racial caste system. The widespread and mistaken belief that racial animus is necessary for the creation and maintenance of racialized systems of social control is the most important reason that we, as a nation, have remained in deep denial.

The misunderstanding is not surprising. As a society, our collective understanding of racism has been powerfully influenced by the shocking images of the Jim Crow era and the struggle for civil rights. When we think of racism we think of Governor Wallace of Alabama blocking the schoolhouse door; we think of water hoses, lynchings, racial epithets, and "whites only" signs. These images make it easy to forget that many wonderful, good-hearted white people who were generous to others, respectful of their neighbors, and even kind to their black maids, gardeners, or shoe shiners—and wished them well—nevertheless went to the polls and voted for racial segregation. Many whites who supported Jim Crow justified it on paternalist grounds, actually believing they were doing blacks a favor or believing the time was not yet "right" for equality. The disturbing images from the Jim Crow era also make it easy to forget that many African Americans were complicit in the Jim Crow system, profiting from it directly or indirectly or keeping their objections quiet out of fear of the repercussions. Our understanding of racism is therefore shaped by the most extreme expressions of individual bigotry, not by the way in which it functions naturally, almost invisibly (and sometimes with genuinely benign intent), when it is embedded in the structure of a social system.

The unfortunate reality we must face is that racism manifests itself not only in individual attitudes and stereotypes, but also in the basic structure of society. Academics have developed complicated theories and obscure jargon in an effort to describe what is now referred to as *structural racism*, yet the concept is fairly straightforward. One theorist, Iris Marion Young, relying on a famous "birdcage" metaphor, explains it this way: If one thinks about racism by examining only one wire of the cage, or one form of disadvantage, it is difficult to understand how and why the bird is trapped. Only a large number of wires arranged in a specific way, and connected to one another, serve to enclose the bird and to ensure that it cannot escape.<sup>11</sup>

What is particularly important to keep in mind is that any given wire of the cage may or may not be specifically developed for the purpose of trapping the bird, yet it still operates (together with the other wires) to restrict its freedom. By the same token, not every aspect of a racial caste system needs to be developed for the specific purpose of controlling black people in order for it to operate (together with other laws, institutions, and practices) to trap them at the bottom of a racial hierarchy. In the system of mass incarceration, a wide variety of laws, institutions, and practices—ranging from racial profiling to biased sentencing policies, political disenfranchisement, and legalized employment discrimination—trap African Americans in a virtual (and literal) cage.

Fortunately, as Marilyn Frye has noted, every birdcage has a door, and every birdcage can be broken and can corrode.<sup>12</sup> What is most concerning about the new racial caste system, however, is that it may prove to be more durable than its predecessors. Because this new system is not explicitly based on race, it is easier to defend on seemingly neutral grounds. And while all previous methods of control have blamed the victim in one way or another, the current system invites observers to imagine that those who are trapped in the system were free to avoid second-class status or permanent banishment from society simply by choosing not to commit crimes. It is far more convenient to imagine that a majority of young African American men in urban areas freely chose a life of crime than to accept the real possibility that their lives were structured in a way that virtually guaranteed their early admission into a system from which they can never escape. Most people are willing to acknowledge the existence of the cage but insist that a door has been left open.

One way of understanding our current system of mass incarceration is to think of it as a birdcage with a locked door. It is a set of structural arrangements that locks a racially distinct group into a subordinate political, social, and economic position, effectively creating a second-class citizenship. Those trapped within the system are not merely disadvantaged, in the sense that they are competing on an unequal playing field or face additional hurdles to political or economic success; rather, the system itself is structured to lock them into a subordinate position.

### **How It Works**

Precisely how the system of mass incarceration works to trap African Americans in a virtual (and literal) cage can best be understood by viewing the system as a whole. In earlier chapters, we considered various wires of the cage in isolation; here, we put the pieces together, step back, and view the cage in its entirety. Only when we view the cage from a distance can we disengage from the maze of rationalizations that are offered for each wire and see how the entire apparatus operates to keep African Americans perpetually trapped.

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

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

The final stage has been dubbed by some advocates as the period of invisible punishment.<sup>13</sup> This term, first coined by Jeremy Travis, is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework. These sanctions are imposed by operation of law rather than decisions of a sentencing judge, yet they often have a greater impact on one's life course than the months or years one actually spends behind bars. These laws operate collectively to ensure that the vast majority of convicted offenders will never integrate into mainstream, white society. They will be discriminated against, legally, for the rest of their lives—denied employment, housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality.

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

### **Nothing New?**

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

Race has always influenced the administration of justice in the United States. Since the day the first prison opened, people of color have been disproportionately represented behind bars. In fact, the very first person admitted to a U.S. penitentiary was a "light skinned Negro in excellent health," described by an observer as "one who was born of a degraded and depressed race, and had never experienced anything but indifference and harshness."<sup>14</sup> Biased police practices are also nothing new, a recurring theme of African American experience since blacks were targeted by the police as suspected runaway slaves. And every drug war that has ever been waged in the United States—including alcohol prohibition—has been tainted or driven by racial bias.<sup>15</sup> Even post-conviction penalties have a long history. The American colonies passed laws barring criminal offenders from a wide variety of jobs and benefits, automatically dissolving their marriages and denying them the right to enter contracts. These legislatures were following a long tradition, dating back to ancient Greece, of treating criminals as less than full citizens. Although many collateral sanctions were repealed by the late 1970s, arguably the drug war simply revived and expanded a tradition that has ancient roots, a tradition independent of the legacy of American slavery.

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

In the past, the criminal justice system, as punitive as it may have been during various wars on crime and drugs, affected only a relatively small percentage of the population. Because civil penalties and sanctions imposed on ex-offenders applied only to a few, they never operated as a comprehensive system of control over any racially or ethnically defined population. Racial minorities were always overrepresented among current and ex-offenders, but as sociologists have noted, until the mid-1980s, the criminal justice system was marginal to communities of color. While young minority men with little schooling have always had relatively high rates of incarceration, "before the 1980s the penal system was not a dominant presence in the disadvantaged neighborhoods."<sup>16</sup>

Today, the War on Drugs has given birth to a system of mass incarceration that governs not just a small fraction of a racial or ethnic minority but entire communities of color. In ghetto communities, nearly everyone is either directly or indirectly subject to the new caste system. The system serves to redefine the terms of the relationship of poor people of color and their