To the Graduate Council:

I am submitting to the Council a dissertation written by Andrew Wayne Austin entitled "Caste, Class, and Justice: Segregation, Accumulation, and Criminalization in the United States." I have examined the final copy of this dissertation for form and content and recommend that it be accepted in partial fulfillment of the requirements for the Doctor of Philosophy degree, with a major in Sociology.

Asafa Jalata

Asafa Jalata, Major Professor

We have examined and recommend
the acceptance of this dissertation:

Jan Shefner

Michael L. Benson

Faye V. Harrison

Accepted for the Council:

Interim Vice Provost
and Dean of The Graduate School

CASTE, CLASS, AND JUSTICE: SEGREGATION, ACCUMULATION, AND CRIMINALIZATION IN THE UNITED STATES

A Dissertation
Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Andrew Wayne Austin
August 2000

ACKNOWLEDGMENTS

There are several people I wish to recognize. I am grateful to Asafa Jalata and Faye V. Harrison for their constructive criticisms of my work. They have improved the quality of my dissertation immeasurably. Any remaining mistakes are mine. I especially want to thank Dr. Jalata, my major professor. Through him I have learned the vital importance of history in social studies. I was fortunate to have studied under William I. Robinson during his brief appointment to the Department of Sociology. Professor Robinson instilled in me the conviction that sociology must take the vantage point of the oppressed. I appreciate fellow graduate student Sam Zahran's friendship and patience. I want to acknowledge my parents, Benjamin S. Austin and Gloria J. Hamilton, both scholars in the social sciences. Not only did they listen as I struggled through ideas, but they provided emotional support when I needed it most. I also wish to acknowledge the Sociology Department for their financial support of my graduate work.

I reserve my deepest appreciation for my partner and friend, Mona, and our son, Nikolas. Graduate school is an ordeal, and desiring to spend as much time as I could with them I designed my work routine to maximize my presence in the household. Too often, though, this brought my ordeal home to them — papers scattered everywhere, books piled high around me (a paper fortress), the dining room table transformed into a workbench, my mind often somewhere else altogether. I cherish them so much, and I thank them for tolerating me and supporting me. Now that the project is completed, we have some semblance of a normal life again.

ABSTRACT

This dissertation investigates how dominant groups and classes in US society secure, perpetuate, and expand their wealth, power, and privilege by segregating and criminalizing African Americans. Using a caste-class model of crime and punishment differentiation, I compare five phases of US history and "prehistory" to reveal a long-standing program of race formation that explains the circumstances blacks have confronted vis-à-vis crime patterns and the criminal justice system. The five phases compared are (1) the development of racial slavery and class formation in the European world-system and the evolution of punishment from the late Middle Ages to the early North American colonial period (c. 1450-1618); (2) the establishment of capitalism in North America, where a class-caste system was fashioned and white supremacy was achieved, a period covering the introduction of African labor into Virginia through the war of national independence that founded the United States (1619-1789); (3) the post-"Revolutionary War" period, during which the regionalization of wage-labor and slavery became fixed, the penitentiary system was developed, and leading intellectuals constructed an ideology of racialist scientism (1790-1865); (4) the abolition of slavery, the development of apartheid in the South and racial segregation in the North, and the increasing disproportion of blacks in the criminal justice system (1866-1964); and (5) the abolition of formal apartheid, its replacement by color-blind racial hegemony, and the expansion of the prison-industrial complex (1965-present). Comparing phases that cover key aspects of the history of European colonization of North America and the United States and the

oppression of Africans and their descendants, and linking these with structures and processes of law and order, I contend that it is an error to suppose that recent trends in the prisonization of African Americans represent a unique development in US history. Rather, I theorize that blacks are experiencing removal from and relocation to analogous conditions of unfreedom and servitude, and that criminal definitions and prisons are but concrete forms in a series of general forms of physical punishments and social injustices that blacks have historically suffered at the hands of white capitalist society.

PREFACE

The central thesis of this dissertation is that throughout the history of the United States, and even before the nation was formed, Africans and their descendants have been moved through a series of analogous conditions of unfreedom and servitude, achieved in part though criminalization, and that this continuity of racial oppression materially, socially, and psychologically benefits those who are defined as white and hold privileged positions in the structure of society. Before moving to the study of this, however, clarification is in order, for although criminalization is the main focus of my work, I do not, as the title is meant to indicate, limit the scope of this dissertation to that subject. More precisely, I take a dialectical and comprehensive view of criminalization and social control with an explicit concern for the problems of justice. Why?

For one thing, patterns of criminalization — which include law, policy, and control — are neither understandable nor explicable without an analysis of key elements of the matrix in which they embed. It is to form a tautology to say that official criminalization is ultimately carried out by those who have the power to define, police, and punish wrongdoers. It is probably axiomatic to say that official criminalization is guided by the ideological and material interests of those politicians, judges, and intellectuals who criminalize or play a role in criminalization. Gramsci's statement about the "organic intellectual" — that "[e]very social group, coming into existence on the original terrain of an essential function in the world of economic production, creates together with itself, organically, one or more strata of intellectuals which give it

homogeneity and an awareness of its own function not only in economic but also in the social and political fields"[1] – is true of other politico-legal actors and on the basis of other interests beyond those generated by economic production. People are not separable from the institutions that form and condition them. Thus it is of great theoretical import that the *interests* of those who control society's institutions, and the *imperatives* of the institutions that control them (and us), are exposed.

Such an exposé must turn itself upon the investigator, too. The struggle over the ontology of crime –where it is observed that what is criminal is not necessarily criminalized, and, obversely, what is criminalized is not necessarily criminal – reveals the political character of criminology's subject matter. The apparent paradox requires, if one is to be intellectually honest, and morally responsible, a critical, polemical approach to the subject matter. When we ask why *this* is criminal but *that* is not, we probably have in mind that *this* should not be and *that* should. And although it is certainly true that the behaviors and conditions society fails to criminalize are in principle infinite, given the structure of the argument I advance in this book their consideration is theoretically meaningful and politically significant, and they reveal much about the values I hold.

For another thing, the objective behavior, and often times the conditions and identities, that receive a criminal label have social structural origins. Reality is much

---

[1] Antonio Gramsci, *The Antonio Gramsci Reader. Selected Writings 1916-1935*, ed. D. Forgacs (New York: New York University Press, 2000), 301 "The capitalist entrepreneur," Gramsci writes, "creates alongside himself the industrial technician, the specialist in political economy, the organizer of a new culture, of a new legal system etc," Gramsci, *Selected Writings*, 301

closer to Quetelet famous characterization — that "[s]ociety prepares the crime, and the guilty are only the instruments by which it is executed"[2] — than it is to the behavioristic formulations of classical liberals, such as Beccaria and Bentham, where the metaphysic of "free will" inevitably escapes all attempts to falsify it; which is to say that the classical liberal theory of crime is tautological (if not theological). A sociological approach to questions of crime means that to understand and explain crime one must involve her/himself in a depth analysis of things where the outcome (crime) is hardly mentioned at all and the forces that cause it (race, class, gender, age) mean almost everything. In short, then, for the purposes of this study, criminalization is an empirical target exploited to theoretically demonstrate the character of the racial and economic structures of the United States of America.

"Analogous Conditions of Unfreedom"

What do I mean by "analogous conditions of unfreedom"? During the early period of colonization, in the tobacco southeast, English colonists, capitalists and servants and "free" labor alike, gained materially and psychologically from the exploitation of slave-labor. After winning the struggle for national independence, where the American patriots achieved "emancipation" from their British "slave masters," racial slavery in the antebellum South sustained and enriched white capitalists and secured for ordinary whites relatively favorable positions in the structure of production. Slavery was formally abolished in 1865, but whites, elite and

---

[2] Adolpho Quetelet, *A Treatise on Man and the Development of his Faculties* (Gainesville, FL. Scholars' Facsimiles and Reprints, 1969), 108

ordinary folk alike, continued to profit from the exploitation and oppression of African American "serfs" in the postbellum sharecropping system and cheap proletarian labor in the North.[3] Throughout the twentieth century, under apartheid in the South and in ghettos in the North, the economic role the majority of blacks performed changed, as the value of unskilled labor diminished and white Americans forced blacks further to the periphery of US society. A double movement occurred. Popular forces, made up of the oppressed and fellow travelers, and liberal political figures representing segments of white society striving to preserve the overall racial order of US society and under pressure to "make good on America's promise,"[4] dissolved the formal structure of apartheid and secured the legal-political order that entrenched de facto racial segregation. An organized strategy issued from these conditions, one requiring the

---

[3] Several writers characterize agricultural labor in the sharecropping system as "serfs." See, for example, Daniel C. Thompson, "The Role of the Federal Courts in the Changing Status of Negroes Since World War II," *Journal of Negro Education* 30 (1961); Orlando Patterson, "For Whom the Bell Curves," in *The Bell Curve Wars: Race, Intelligence, and the Future of America*, ed. Steven Fraser (New York: Basic Books, 1995). As an abstraction slavery may be treated generally, but I hesitate to similarly treat the categories of feudal society. I use the term here analogously rather than descriptively.

[4] The term "America" when used uncritically as a euphemism for the "United States" is US-centric America (or the Americas) are much larger than the United States and conflating the two can efface knowledge of, and diminish concern for, other Americans I try to eschew but sometimes use "America" for stylistic purposes to avoid repetition of "United States." But in other instances my use of "America" has another purpose, namely to denote the dominance of the *idea* of America and the impact of that idea, accompanied by the material force of US imperialism, on the world-system. The United States as "America" *does* efface the knowledge of other people — this is one of the main effects of US oppression. I often critically employ words, such as "America" and "slave," in the manner of oppressors to avoid neutrality rhetoric that might mask the true nature of US power relations. Other scholars use "America" to indicate this larger purpose For example, when critical political economists speak of the "Americanization" of, or the influence of the "American way of life" on, other cultures, they mean to indicate the force of a particular culture-idea See, for instance, Robert W. Cox, "Critical Political Economy," in *International Political Economy: Understanding Global Disorder*, ed. Björn Hettne, (New Jersey: Zed Books, 1996).

mass warehousing of blacks in jails and penitentiaries, and the development, and the rehabilitation, of schemes to exploit minorities under conditions of forced labor. Therefore, while the concrete form of unfreedom African Americans experience is historically variable, an essential reality remains throughout: blacks stay unfree. This persistent condition of unfreedom indicates that the United States is fundamentally a racial caste society and that resolution of this moral problem can only be overcome by transcending the institutions of the US nation-state.

Notes on Method

My method involves the production and comparison of historical narratives to expose the forces racially ordering US society, creating, at least to this point, persistent unfreedom. This dissertation thus assumes the vantage point Braudel calls the *longue durée,*[5] or long view, a corrective lens for the myopia that occurs when one looks upon history in too narrow a time-frame. One of the principal reasons for taking the long view is my frustration with the tendency of historiography on crime and punishment to begin with a detailed analysis of the present (putting aside their correctness for the time being) and leaving the past distant and ambiguous. I am from that school of historical sociology that believes that one cannot identify, let alone estimate, the impact of the social structures and forces that configure the present, and possibly the future (though never precisely), without studying their history, their shifts in form and content, their imperatives, their intentions and consequences, and their origins.

---

[5] Fernand Braudel, *A History of Civilizations* (New York Penguin, 1994)

To show how different historical phases are concrete configurations of a long-term strategy of white supremacy, I critically examine the history and prehistory of the United States from 1450 to 2000. By "prehistory" I mean the period of English colonization of North America. The world after 1789 only makes sense if we begin at a point in time before that: the crisis of feudalism and the emergence of capitalism and racial slavery. It is crucial to understand why Africans were treated as inferiors the moment they arrived in North America. Moreover, beginning with the emergence of the European world-system gives the analysis a natural starting point: the dawn of a qualitatively different historical epoch. The fact that the United States was built upon a foundation of capitalist accumulation, racial caste, and patriarchal relations, helps explain the persistence of class, race, and gender oppression.

Such an approach is deeply dialectical. Postan writes, "A dialectical explanation of an historical situation will demonstrate how it arose from the situation which preceded it; a dialectical prognosis will show how a certain future is fashioned by forces operating in the present." [6] My analysis is concerned with understanding and explaining how each successive phase of US history, from colonization, through slavery and apartheid, and now formal race-neutrality, has kept blacks in a marginalized and subordinated condition. The analysis also reveals possible futures, though it does not, contrary to Postan's characterization of method, promise any certain ones. Postan writes that "the historical dialectic is an attitude to social and

---

[6] M. M. Postan, *Fact and Relevance: Essays on Historical Method* (Cambridge, MA. Cambridge University Press, 1971), 37

historical phenomena which seeks to explain them by their relative positions in time."[7] Although this procedure may seem at moments tedious, I nonetheless believe it provides the best approach to complex subject matter.

Structure of the Argument and Overview of Book Chapters

The argument presented in this dissertation rests on the exploration of three major aspects or domains of human activity: (1) The *world-historical*, which includes macroeconomic developments, colonialism (internal and external), the concrete conditions under which labor is exploited, and the structure of racism; (2) the *political-societal*, which encompasses the state and juridical developments, political-legal documents (policies and laws), especially the legal constructions of race and ethnicity, and so forth; and (3) the *cultural-ideological*, covering the development of race prejudice, from its cultural types, through its scientistic formulations, and its race-neutral forms. These aspects are interlocking and their specific configuration and content mark the character of the historical periods analyzed. These periods are compared to reveal their continuities and discontinuities.

This dissertation, which is in two volumes, is divided into two parts and ten chapters. In part 1, "Models and Methods," I present an organized way to think about the race-class segmentation of crime and punishment in the United States. In four chapters I define terms and concepts, present various models to organize historical materials, and explain the more difficult logics of structural and institutional racism

---

[7] Postan, *Fact and Relevance*, 37.

and internal colonialism. In the historical analysis (part 2) these models and logics are often implicit, so a detailed explication of them in part 1 enhances limpidity.

Chapter 1, "Introduction," orients the reader to the concepts, methods, and theories used in the book. As alluded to, my epistemological bearings are based on a modified materialist conception of history, one based on a dialectical procedure. The theoretical-methodological framework is eclectic, drawing from Marxian political economy, critical race theory, world-systems theory, and Gramscian political sociology. Theories exploited include internal colonialism, the caste school of race relations, and critical theories of crime and punishment. It is desirable that the assumptions and values that underpin my political and historical-scientific stance are clearly articulated at the outset, so I devote a chapter to these matters.

Chapter 2, "The Carceral Archipelago: A Legacy of Repression," introduces the reader to the central problem of this book by exploring the contemporary manifestation of racial oppression: the carceral archipelago. Facts about the recent trends in crime and incarceration and common explanations for these facts and trends are critically reviewed, and an alternative explanation is suggested. Thus, before embarking on our journey through time, we begin in the present so that we have a clear picture of where history will wind up, although it must be emphasized that the historical periods analyzed are not meant to merely explain the present circumstances, but to reveal the long-standing program of white supremacy.

Chapter 3, "Class, Race, and Racial Caste," explores two categories central to social science discourse about inequality: class and race. Class is a structural position

in the system of material production. The structure of social class is linked to process of capitalist accumulation. It is, therefore, historically variable, so the model presented is a heuristic device not a conclusion. Race is an ascribed position in a status hierarchy. Two basic racial groups are examined in detail: white and black. Contrary to much of the literature that treats social class as an objective system of categories yet conceives of race as an ideology, a critical realist standpoint is taken concerning both class and race. Finally, I review and critique previous attempts to conceptualize the intersection of class and race by exploring the idea of racial caste. Chapter 3 lays the analytical foundation for the construction of a unified model presented in the next chapter.

Chapter 4, "The Caste-Class Segmentation of Crime and Punishment," explicates a general analytical model about the caste-class structure of US society. Retaining what ideas I find to be valid and sound from the previous chapter, I synthesize them in a single analytical model. This ensemble — what I call the *caste-class* system — is organized into two regions of existence for people living in the United States: one region for those who are white and affluent; another for those who are non-white and impoverished. After detailing the particulars of the model, with supporting evidence from the contemporary period, I specify the model for crime and punishment and review the evidence that buttresses this specification. The historiography developed in this book is dedicated to demonstrating the soundness of this model, along with explaining how race and class differentiate crime and punishment. It needs to be emphasized that the model and its components are abstractions of concrete contexts.

Part 2, "Race, Class, Crime, Punishment," contains the development of periodized historical narratives that make up the substantive basis for comparison. Here I trace the evolution of the system I identify in part 1. Comparisons take place during and across chapters, each successive phase of history building upon the previous one, each previous phase providing meaning for the next, giving the exposition the flow of time and significance. This is in contrast to organizing the text strictly thematically; however, the chapters are internally organized thematically, usually following a format of first presenting historical background, then analysis of law and order, and finally surveying the ideological landscape. I need to stress that the disjunctures in history that require restructuring concrete methods of racial control are contextualized in such a way as to reveal the active maintenance of continuity in racial ordering; therefore, I usually assume a point in time before the transition in periods so that I capture the moment of transformation, theorizing the factors that cause it, rather than leaving transitions theoretically ambiguous by organizing chapters strictly by period. It is in this second part of the book that the deeper meaning of crime and punishment — that they are the consequence of racial and oppressive class relations — becomes apparent.

This part contains six chapters. Chapter 1, "The 'Prehistory' of Race, Class, and 'Modern' Punishment, circa 1450-1618," documents the character of punishment in the early period of the European world-system. This requires theorizing the change in punishment in Europe during the middle ages and the rise of capitalism. The chapter also lays the historical foundation necessary to counter theories that explain racism

primarily by its function to divide labor or to meet the needs of the capitalist system to secure a superexploitable labor force. While the former is erroneous, the latter oversimplifies history and is logically tenuous. Dialectically, I advance the proposition that a "prehistory of racism" combined with the expansion of the capitalist world-economy to racialize the world and incarcerate Africans and their descendants in slave labor camps (plantations), ghettos, and prisons. The theoretical goal (and in part a political objective) is to move beyond class-reductionist assumptions embedded in contemporary historical materialism.

Chapter 2, "Constructing Racial Slavery, 1619-1789," explores the history of slavery and the development of racial caste in pre-US North America. I examine this history to show the significance of racial ordering in America and how the law guaranteed that order. I also explore class formation and the conditions of European labor (a significant portion of which were captive in one form or another) and the structure of punishment in this period. The chapter concludes with an analysis of the ideological structures prevailing then, revealing the racial content of Enlightenment thought.

In Chapter 3, "Enlightened White Republic, 1790-1865," the birth of the United States is theorized. Key documents are analyzed for their racial and class-interested form and contents. The caste differentiation of crime and punishment is studied, and the development of the classical conception of behavior and justice is explored and linked to the creation of a dual society, wherein white males, belonging to the realm of citizenship and freedom, enjoy a different system of justice from those determined to

be non-citizens (mainly blacks). The chapter finishes with an analysis of the development of racial ideology, especially the emergence of scientific racism and its relationship to Christianity.

In Chapter 4, "First Reconstruction: Re-'Normalizing' Racial Caste, 1866-1964," I analyze the reconstruction of white supremacy in the aftermath of the Civil War. Emancipation required the construction and normalization of a new regime of racial caste. This was accomplished through various modes of segregation, such as Jim Crow in the South and ghettoization in the North. I thus show how the law in both the North and the South upheld white privilege and continued the deprived circumstances of African Americans. I document that the shift from slavery to apartheid was accompanied by an increase in the use of repressive public controls. As with the previous chapters, I conclude with an analysis of racial ideology, showing how beliefs in the inferiority of non-whites underpinned eugenics, a program of racial purification achieved through sterilization and immigration restrictions.

Chapter 5, "Preparing a 'Tomb [for] the Living': Dissimulation and Prisonization, 1965-2000," develops a history of the restructuring of racial oppression in response to the African American challenge to white hegemony in the 1950s-60s. I develop the narrative to show how the reformation of racism, by developing the mechanisms of consensual domination (formal race-neutral policy), secured the racial hegemony of whites. At the same time, the black struggle was redefined in "law and order" terms and the police state was reorganized and expanded to entangle African Americans in the criminal justice web. Contrary to accounts that locate the shift in

penal policy in the mid-1970s, I argue that the primary basis for the latest expansion of the prison-industrial complex was created in the early years of this phase thus reflecting racial interests rather than solely economic ones. This chapter returns the discourse to the black prisonization problematic set forth in part 1, chapter 2.

Chapter 6, "The Persistent *Dominus*: Caste-Class Segmentation of Crime and Punishment in Historical Perspective," summarizes the main arguments of the book and concludes that the changes seen in crime and justice coincide with the changing structure of white supremacy and the ebb and flow of the capitalist economy. Thus, despite the particular historical configurations of the racial-capitalist system, there is a continuity of racial-class oppression in United States. This chapter also explores the moral implications of the treatment of blacks in white society and advocates abolishing the racial hierarchy and capitalism and reorganizing society as a multi-cultural democracy based on values of solidarity, common concern, and sympathy. I thus conclude my work by offering a substantive policy alternative based on democratic socialist conceptions of justice, which can only be achieved by radically transforming US society.

Scope, Values, and Social Science

All social life is essentially *practical* All the mysteries which lead theory into mysticism find their rational solution in human practice and in the comprehension of this practice.

— Karl Marx[7]

Studies in the intersections of class, race, and criminalization too frequently (actually, almost exclusively) restrict their inquiry to conventional crime; that is, the

---

[7] Karl Marx, *The Portable Karl Marx*, ed. Eugene Kamenka (New York: Penguin, 1983), 157

eye of the criminal anthropologist is turned only to those crimes held to be acts of moral turpitude; or critical scholars are drawn to the most obvious examples of racist criminal justice policy, for instance the drug war. I include these empirical targets but go beyond them by not only rooting criminalization in history but by broadening the scope of what is understood by criminalization; I have in this book analyzed the way the law affects African American generally, as well as specifically. Just in the last several years a spate of books on the racial economy of criminal justice, most relying on the same body of evidence, all thematically similar, have been published.[9] I have strived to make a unique contribution to the literature by enlarging the scope of the inquiry about race, class, and justice and asking different sorts of questions than these other books.

As suggested earlier, my approach leads the reader into the realm of morality and public policy. This could not be helped. Nor should it be. At the outset, it was clear to me that the contradictions between the ideal and the real America lead US political and cultural leaders continually into hypocrisy. They drag us there with them. When US political elites wield the moral authority of the citizens they claim to represent to demand an end to human rights violations around the world, they do so before a global audience who very frequently knows more about the United States'

---

[9] For instance, Katherine Beckett and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America* (Thousand Oaks, CA: Pine Forge Press, 2000), David Cole, *No Equal Justice: Race and Class in the American Justice System* (New York: The New Press, 1999), Elliot Currie, *Crime and Punishment in America* (New York: Owl Books, 1998); Marc Mauer, *Race to Incarcerate* (New York. The New Press, 1999); Michael Tonry, *Malign Neglect — Race, Crime, and Punishment in America* (New York Oxford University Press, 1995); and the 1996 revision of Jeffrey Reiman, *and the Poor Get Prison: Economic Bias in American Criminal Justice* (Boston, MA: Allyn and Bacon, 1996)

dismal and appalling record on human rights than do US citizens.[10] But the fallout from the inequities of the US criminal justice system harms more than the reputation of the nation-state Ronald Reagan called that "shining city upon the hill."[11] The impoverished and the marginalized in America absorb the blunt end of America's legacy of repression. This book is concerned about their lives and is interested in their happiness.

I believe it is irresponsible for social scientists to shy away from acknowledging the deep injustices that plague white capitalist society. In my view, social scientists should work to reveal the causes of those injustices and to recommend real and radical solutions. In characterizing attempts to restrict the practical application of the scientist's work, the brilliant US pragmatist George Herbert Mead wrote, "The reference of his data is always to the solution of problems in the world that is there about him, the world that tests the validity of his hypothetical reconstructions. Nothing would more completely squeeze the interests out of his world than the resolution of it into the data of observation."[12] More than this, value neutrality, besides

---

[10] The US State Department annually publishes a document titled *Annual Human Rights Report* condemning over 100 nations for their human rights records. The report says nothing about the on-going human rights violations in the United States. In October 1998, Amnesty International condemned the United States for what it calls a "persistent and widespread pattern of human rights violations." See "United States of America: Rights for All," Amnesty International Publications, New York, October 1998

[11] Ronald Reagan uttered these words at his farewell address from the White House, Wednesday, 11 January 1989. The phrase "the shining city upon the hill" comes from John Winthrop, a Puritan describing his utopia Winthrop was a strict disciplinarian who governed the colony at Massachusetts Bay in mid-1600s. The colony stands as one of the first manifestations of the repressive culture that would distinguish North America.

[12] George Herbert Mead, *George Herbert Mead on Social Psychology: Selected Papers*, ed Anselm Stauss (Chicago. University of Chicago, 1977), 61.

its ideological function of masking inequalities of wealth and power, is a false doctrine. We impact the world regardless. We should, therefore, impact the world in a liberating way.

Andrew W. Austin
Knoxville, 25 July 2000

TABLE OF CONTENTS

VOLUME I

PART I: MODELS AND METHODS 1

1. INTRODUCTION 2
Unpacking the Title of the Dissertation 4
Critical Realist Historiography 21
The Historical-Comparative Method 40
Can Historiography be Scientific? 49
Conclusion 51

2. THE CARCERAL ARCHIPELAGO: A LEGACY OF REPRESSION 53
The Prisonization of the Black Community 53
Common Explanations 57
Prisons Without Fences 67
Conclusion 79

3. CLASS, RACE, AND RACIAL CASTE 81
Exploitation and Class Structure 81
Race and Racialization 88
Racial Caste 96
Features of the Dual Society 105
Conclusion 125

4. THE CASTE-CLASS SEGMENTATION OF CRIME AND PUNISHMENT 127
The Caste-Class Model 129
Crime and Punishment 138
Conceptualizing Colonialism: The Processual Side of Caste-Class 161
Conclusion 175

PART II: RACE, CLASS, CRIME, PUNISHMENT 178

1. THE "PREHISTORY" OF RACE, CLASS, AND "MODERN" PUNISHMENT 1450-1618 179
Crime and Punishment in the *Ancien Régime* 187
The Early European World-System and Slavery 214
Racial Ideology Before Slavery was Established in British North America 226
Racial Thinking as a Technique of Neutralization 244
Conclusion 254

2. CONSTRUCTING RACIAL SLAVERY 1619-1789 257
Colonialism, Mercantilism, and Socioeconomic Growth and Development 265
Class and White Labor 275
Caste and Black Labor 287
Law and Punishment in Early Colonial America 297
Race, Slavery, Ideology, and Enlightenment 311
Conclusion 325

3. ENLIGHTENED WHITE REPUBLIC, 1790-1865 328
Forming a Racial State: The Meaning of the United States Constitution 331
The Changed Colonial Relation and the End of Indenture 369
The Caste-Class Differentiation of Crime and Punishment 374
Mongrels, Hybrids, and Hierarchies: The Rise of Scientific Racism 401
Conclusion 422

VOLUME II

4. FIRST RECONSTRUCTION: RE-"NORMALIZING" RACIAL CASTE 1866-1964 427
Civil War, Reconstruction, and Redemption 440
No Escape: Apartheid and Ghettoization 453
The Mechanics of Repressive Control: Lynching, Urban Violence, and Penal Slavery 468
Racial Ideology, Social Darwinism, and Positive Criminology 511
Conclusion 546

5. PREPARING A "TOMB [FOR] THE LIVING": DISSIMULATION AND PRISONIZATION 1965-2000 549
A New Deal? WWII and the Fascist Mirror 559
Cold War and Cold Warriors: Anti-Communism and American Race Relations 577
Civil Rights and the Right to be Uncivil 602
"Second Reconstruction": From Civil Rights to Crime War 635
The Character of the Present Epoch 675
Conclusion 691

6. THE PERSISTENT *DOMINUS*: THE CASTE-CLASS SEGMENTATION OF CRIME AND PUNISHMENT IN HISTORICAL PERSPECTIVE 692
The Caste-Class System 700
The Character of Caste and Crime and Punishment in American Society and the Radical Solution to Caste-Class Oppression 716

SELECTED BIBLIOGRAPHY.....724

VITA.....805

LIST OF FIGURES

1.1 The Structure-Process Connections/Disconnections in the Dissertation's Title 22
1.2.1 Growth in Prison Population 1900-2000 54
1.2.2 Index Crime Rate Per 100,000, Total, Violent, Property 1960-1998 59
1.2.3 Change in Prison Population Each Decade 1900-2000 78
1.3.1 The Class System 85
1.3.2 The Caste System 97
1.3.3 "Vertical-Horizontal" Segmentation of US Society 104
1.4.1 The Caste-Class System 135
1.4.2 The Caste-Class Segmentation of Crime and Punishment 140
1.4.3 Black-White Involvement in Crimes by Crime Type and SES 156
1.4.4 Dynamic Caste-Class Segmentation Model 162
2.4.1 Lynchings 1882-1914 472
2.4.2 Prison Commitments 1850-1890 498
2.5.1 Change in Prison Population Each Decade 1910-1960 600
2.5.2 Unemployment Rate 1960-1998 662
2.6.1 Traditional Conception of the Relationships of Crime and Police/Punishment 697
2.6.2 Historical Relationship of Crime and Punishment 697
2.6.3 Caste-Class Segmentation of Crime and Punishment, 1619-1789 704
2.6.4 Caste-Class Segmentation of Crime and Punishment, 1790-1863 706
2.6.5 Caste-Class Segmentation of Crime and Punishment, 1864-1964 709
2.6.6 Caste-Class Segmentation of Crime and Punishment, 1965-2000 711

VOLUME I

PART 1

MODELS AND METHODS

I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and blacks races — that I am not nor ever have been in favor of making voters and jurors of Negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will for ever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race. — Abraham Lincoln

CHAPTER 1

INTRODUCTION

It no longer is fashionable for white or black public officials to discuss flagrant examples of racial inequalities openly A moratorium has been declared when it comes to confronting concrete symptoms of American racism such as segregated schools and colleges, segregation in housing, pervasive job discrimination, racial bias in the administration of the system of law enforcement and criminal justice Instead, these manifestations of racism are masked by such labels as "reverse discrimination," "quotas" or "benign neglect" And efforts to combat racism are being diverted by the myth that social and economic injustices are a function of class, not race
— Kenneth B Clark[1]

This study examines how dominant classes and groups in the United States — namely, white capitalists, residents, and workers — obtain, guard, preserve, and enlarge their fortunes, hegemony, and advantage through racial segmentation and criminalization, specifically through the oppression of black Americans. This requires a critical analysis of the US criminal justice system and its relationship to the long-standing race and class hierarchies in North America. Operating behind the racial struggles and harsh criminal and other punishments that have marked the history and prehistory[2] of the United States is the world capitalist economy, the dynamic structure-process of accumulation that formed through colonialism. However, racial oppression is not reducible to class exploitation.

The theoretical goal of laying bare the purpose of racial oppression is pursued through two research objectives that may be distinguished by characterizing one as

---

[1] Kenneth B. Clark, "The Role of Race," *The New York Times*, 5 October 1980, sec. 6, 25

[2] By "prehistory" I mean the periods before the United States became officially designated as such and was in fact such an entity. This terminology is necessary for both theoretical and analytical reasons. Theoretically, it permits analysis of the formation of the nation. Analytically, it clarifies the ambiguity that might otherwise result from referring to certain historical contexts with the label "United States" when the US did not yet exist

general and the other as specific. The general research objective involves investigating what I call "analogous conditions of unfreedom." The purpose of this work is to cut through the concrete forms of racialized group oppression — slavery, apartheid, etc. — to reveal the transhistorical structure and dynamic of racism. The specific research objective, which is in the service of the general objective, is to show how each successive phase of history depends on the previous historical phase and creates the conditions for further transformation of the societal system.

In this introductory chapter, I first "unpack" the terms of the dissertation's title, explaining that the title represents an equation that balances the structure-dynamics of caste/segregation, class/accumulation, and justice/criminalization. This gives the readers a sense of the issues that pull the research in certain directions. Second, I explain my general epistemological orientation, the "materialist conception of history," and delineate the ways I have modified this approach. I do not operate with the basic theory, but rather with a set of "sensitizing concepts" that facilitate theory construction. I also explain the character of critical theorizing. Third, I explicate the procedure I used in adjudicating the historical evidence presented in this dissertation. Fourth, I conclude with a response to the oft-posed question of whether historical sociology is scientific. One response to this question is to side-step it by asserting that using or producing science is not necessarily the goal of critical historiography. In contrast, I argue that a scientific approach to historical matters is important and that historical sociology is social science.

Unpacking the Title of the Dissertation

The title of this dissertation is *Caste, Class, and Justice: Segregation, Accumulation, and Criminalization in the United States.* Since in social science and political-philosophical discourse the terms that comprise that title are contested — indeed, some are "essentially contested concepts"[3] — it is helpful if I at the outset conceptually unpack the title, albeit only in cursory fashion in this introduction.

Caste is a hereditary social-cultural system based on ascription, i.e., the imposition of status, as opposed to social systems based on achieved status, such as class (although the latter remain largely theoretical or ideological constructions). In a caste system, birth to a particular group virtually guarantees that a person will live out her/his life identified with a particular social station. Even though social forces transform caste systems over time, such systems are relatively fixed for any given generation. Consequently, comparatively static caste identities determine and condition life-chances. Although caste is popularly associated with negative outcomes, caste designations may have relatively positive or negative effects. Types of caste systems include religious hierarchies, such as exists among the Hindus of India (and to some extent in the Hindu diaspora), and racial hierarchies, such as exists in South Africa.

A *racial* caste system,[4] the type of system explored in this study, is generally an exclusive hierarchical ordering of social groupings based on visible stigmata, such as

---

[3] W. B. Gallie, "Essentially Contested Concepts," *Aristotelian Society*, 56 (1956).

[4] The idea of caste was applied to the study of US black-white relations during the Jim Crow period. See e.g. Allison Davis, Burleigh B Gardner, and Mary R Gardner, *Deep South. A*

skin color, hair texture, and speech patterns.[5] Although there are no longer laws forbidding inter-marriage between members of the different castes, there is a very high degree of endogamy. As I will discuss later, racial caste is arguably the paradigm of caste.[6] Because of the racial structures, strategies, and ideologies that reproduce the caste system, members of otherwise similar social standing experience life in different and often opposed ways.

This dissertation theorizes that the United States is a racial caste society in which the legal inferiority of blacks has subjected them to repeated social injury. Racial caste functions to impoverish and exclude from power racialized groups defined as nonwhite, while it enriches and gives power to those groups defined as white. Because the application of caste to US race relations is controversial, I devote considerable time to critically reviewing the intellectual history of the idea in part 1, chapter 3.

Caste is not the sole basis for segmentation in US society. *Class* is a system of property relations and objective social-structural positions about the forces of production and in the system of economic exploitation where categories associated

---

Social Anthropological Study of Caste and Class (Chicago University of Chicago Press, 1941), Gunnar Myrdal, *An American Dilemma* (New York: Harper and Row, 1944), John Dollard, *Caste and Class in a Southern Town* (New York: Harper and Row, 1949).

[5] Racial caste is not based exclusively on visible stigmata. Because of widespread sexual interaction between members of racialized groups, phenotypic markers are not always reliable in determining racial difference Cultural and legal rules of descent are necessary to regulate space and property For example, *hypodescent*, a rule that assigns the offspring of "racially" different parents to the subordinate "race," is designed to protect the property and "racial purity" of the dominant groups See Marvin Harris, *Patterns of Race in the Americas* (New York: Walker and Co., 1964).

[6] Cf. Oliver C. Cox, *Caste, Class, and Race* (Garden City. Doubleday, 1948).

with these relations determine the class identity of people occupying those categories.[7] The degree of class mobility varies with the type of social system. Certain systems, such as the estate system in feudal society, greatly constrained mobility. Under capitalism, although the degree of movement is geographically and historically variable, class mobility is comparatively freer.

The distinction between caste and class is that individuals can theoretically, and to some extent practically, change social classes and reconstitute their social class identity. They change their class relations by changing their position vis-à-vis the forces of production. Because of class structure, the degree of wealth and income inequality within racial castes may at times be quite wide. This leads to the possibility that members of subordinated racial castes, such as African Americans, may have more wealth than members of the dominant racial caste, i.e., whites. This does not, however, obviate the reality of racial caste (just as racial caste does not obviate the reality of social class).

It is a major contention of this study that caste and class intersect and form a unified assemblage — the *caste-class* system. This system is so configured that wage-labor and slave-labor, both representing major social classes in the history of the United States, are also divisions in the structure of racial caste. The basic caste-class

---

[7] Although I find fault with his empiricism, Erik Olin Wright, in *Class Counts* (New York. Verso, 1998) and *Classes* (New York Verso, 1975), presents a clear analytical model of class.

relationship, what might be described as a "split labor market,"[8] continued after slavery only in a different form.

Justice, according to Sankowski, "in one sense is identical with the ethics of who should receive benefits and burdens, good or bad things of many sorts, given that others might receive these things."[9] In his view, a broad conception of justice does not take questions of benefit and burden apart from the concrete relations that constitute them. Nor does a broad conception of justice limit itself to legal conceptions of justice. I follow Sankowski in this broader understanding.[10] More than this, I conceive justice as *social* justice, and concern myself with questions of whether social systems or aspects of them are fair and equitable, that is, whether they are materially or substantively just.

Too often public discussions elevate formal justice principles over substantive justice concerns. This is as theoretically important as it is ethically meaningful. To

---

[8] See Edna Bonacich, "A Theory of Ethnic Antagonism: The Split Labor Market," *American Sociological Review*, 37 (1972), "Abolition, the Extension of Slavery, and the Position of Free Blacks A Study of Split Labor Market in the United States, 1830-1863," *American Journal of Sociology*, 81 (1975) I am not endorsing her explanation, but the concept is descriptively useful.

[9] Edward T Sankowski, "Justice," in *The Oxford Companion to Philosophy*, ed. Ted Honderich (Oxford, NY. Oxford University Press, 1995), 433

[10] Three major species of justice have been identified in the literature: *Retributive* justice concerns the application and administration of punishment. *Distributive* justice concerns appropriateness in the apportionment of burdens and benefits, addressing questions such as whether all people are entitled to the same protections under the law or whether a system of production is fair in its distribution of work and profit *Corrective* justice concerns righting wrongs (not in the retributive sense) and repairing breaches caused by past, present, or future action. It requires a change in the environment or person to prevent a wrong from reoccurring The rehabilitation of wrongdoers is the obvious example of corrective justice, but so is making reparations for black slavery. The present study concerns all three species of justice (they are not mutually exclusive). See John Rawls, *A Theory of Justice* (Cambridge, MA Harvard University Press, 1971), Brian Barry, *Theories of Justice* (Berkeley, CA University of California, 1989); Michael Walzer, *Spheres of Justice* (Oxford, NY Blackwell, 1985).

compare, formal justice concerns equality and impartiality in the application of principles, such as rules or set criteria. One finds these concerns in procedural justice or standards discourse, such as the problem of due process. This form of justice does not require that the principle in question be just or fair; it only demands that the principle is equally applied. Substantive justice, on the other hand, concerns the *fairness* of the principle. At one level, substantive justice is closely connected with deserts and rights discourses. At a deeper, more critical level, it is concerned with the struggle for equality.

The Affirmative Action controversy provides a ready illustration of the difference. Two individuals, one black, one white, take an entrance exam to get into college. Formal justice principles obliges ignorance of their skin color. However, while it may be formally just to treat them equally in this regard, America's legacy of white supremacy makes it highly likely that equal treatment will advantage the white person, thus leading to an inequitable outcome. Why? A demand for formal equality forgets history by assuming a priori two approximately equal parties and then regarding differential treatment as "unfair." The injustice of regarding approximate equality has two problems. First, as Stanley Fish puts it: "The word 'unfair' is hardly an adequate description of [the black] experience, and the belated gift of 'fairness' in the form of a resolution no longer to discriminate against them legally is hardly an adequate remedy for the deep disadvantages that the prior discrimination had

produced."[11] Second, putting aside concern for restitution for a moment, treating our hypothetical exam-takers equally will result in inequality because the advantages that the average white person enjoys — better schools, the appropriate cultural knowledge, and so forth — better equip whites as a group to perform well on college entrance exams. Substantive justice requires, beyond reparations, mechanisms to negate white advantage. Knowing this, insisting on a formal equality principle reflects a desire to perpetuate white privilege.

The contradiction between formal and substantive justice is fundamental to the political-economic machinery of the United States. Consider the perpetuation of class relations. Through the irreconcilable mechanisms of political-legal equality and private property, the polity and the economy have been formally decoupled and are said to constitute independent spheres of activity. One finds this separation in the oft-articulated dichotomy of political versus civil societies. It is a relatively easy task to demolish this political-legal construction on empirical and rational grounds by exposing the actual intrinsic relation between the two spheres and reducing the formal justice principle to its logical contradiction: that there is nothing unequal about inequality. In fact, adherence to formal justice requirement reproduces material injustice. Yet private property is enshrined in the US Bill of Rights.

Decoupling was secured in the domain of race relations with the passage of the 1964 Civil Rights Act. Before the law, it was legal in parts of the United States to

---

[11] Stanley Fish, "Reverse Racism, or How the Pot Got to Call the Kettle Black," in *Affirmative Action· Social Justice of Reverse Discrimination*, eds. Francis J. Beckwith and Todd E Jones (Amherst, NY Prometheus Books, 1997), 144

discriminate against certain groups of people on the basis of race. Formal principles, such as equal and unhindered access to vote, the ability to bear witness in a criminal or civil trial, and access to educational institutions, were all constrained or prohibited by the law. While passage of the act approximated formal racial equality, expressed in the liberal principle of "equality of opportunity," the law had limited impact in reducing the level of material inequity in the United States.[12] Since US legal philosophy generally does not define racial discrimination in group terms,[13] the Civil Rights Act did not direct the dismantling of racial segregation, only the abolition of laws requiring it. In some of its features, the racial order entrenched — formal equality dissembles the reproduction of substantial inequality.[14] For this reason, the current body of race-neutral policy, cloaked in color-blind rhetoric and formal justice principles, is a racist program. Gotanda writes that "the U.S. Supreme Court's use of

---

[12] In 1967, in a speech "The Role of the Behavioral Scientist in the Civil Rights Movement," Martin Luther King, Jr., argued that the substantive exclusion of blacks from US society should challenge social scientists to learn more about the structural barriers blacks face. "Science should have been employed more fully to warn us that the Negro, after 350 years of handicaps, mired in an intricate network of contemporary barriers, could not be ushered into equality by tentative and superficial changes," quoted in "King's Challenge to the Nation's Social Scientists," *APA Monitor*, 30 (January 1999)

[13] Alan David Freeman, "Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," in *Critical Race Theory· The Key Writings that Formed the Movement*, eds Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995); Mari Matsuda, "Looking to the Bottom. Critical Legal Studies and Reparations," in *Critical Race Theory*, Crenshaw et al

[14] Richard Thompson Ford provides one of the more lucid explanations for how material inequality is reproduced without laws requiring inequality See "The Boundaries of Race: Political Geography in Legal Analysis," in *Critical Race Theory*, Crenshaw et al

color-blind constitutionalism — a collection of legal themes functioning as a racial ideology — fosters white racial domination."[15]

Finally, central to concerns of substantive justice is the legal concept of "unjust enrichment," one remedy for which is restitution or reparations.[16] Restitution grew out of a long standing principle in jurisprudence, part of the body of the law of obligation.[17] Several progressive scholars have explored this as it is expressed in a racist society and the obligations of those who have benefited from racism.[18] Against this, Marxists typically argue that the ideology of racism harms all working people and that to build class unity racism must be subordinated to the goals of the proletarian movement. I disagree with the traditional Marxist line. White workers do benefit from racism. They were never enslaved. They enjoy higher wages, nicer neighborhoods, better schools *because* blacks do not. They receive favorable treatment in the criminal justice system. Their white skin gives them a psychological advantage over non-white groups. They share what George Lipsitz calls a "possessive investment in whiteness."[19]

---

[15] Neil Gotanda, "A Critique of 'Our Constitution is Color-Blind'," in *Critical Race Theory*, Crenshaw et al

[16] Dagan Hanokh, *Unjust Enrichment: A Study of Private Law and Public Values* (New York. Cambridge University Press, 1997), István Vásárhelyi, *Restitution in International Law*, rev Gy Haraszti, trans I. Szászy (Budapest, Hungary. House of the Hungarian Academy of Sciences, 1964): Graham Virgo, *The Principles of the Law of Restitution* (Oxford, NY. Oxford University Press, 1999)

[17] David Ibbetson, *A Historical Introduction to the Law of Obligations* (Oxford, NY. Oxford University Press, 2000).

[18] Ian Ayers and Frederick E. Vars, "When Does Private Discrimination Justice Public Affirmative Action?" *Columbia Law Review*, 98 (1998), Theodore Cross, *The Black Power Imperative: Racial Inequality and the politics of Nonviolence* (New York: Faulkner, 1984), Richard Delgado, *The Coming Race War?* (New York. New York University Press, 1996); Patricia Williams, *The Alchemy of Race and Rights* (Cambridge, MA Harvard University Press, 1991).

[19] George Lipsitz, "The Possessive Investment in Whiteness: Racialized Social Democracy and the 'White' Problem in American Studies," *American Quarterly*, 47 (1995).

The obligation of whites to African Americans requires social changes that cannot wait on social revolution from a traditional class politics perspective, although they ultimately require such a transformation to be complete, just as transcending capitalist society requires the abolition of white privilege.

The word, *segregation*, Douglas Massey noted, has generally disappeared from the US vocabulary.[20] Racial segregation is the separation of groups or individuals defined as racially different. Dominant groups construct racial differences from cultural or ethnic distinctions (cultural racism) or selected physical features (biological racism) or (typically) both. Since race is not a biological reality,[21] racial differentiation (racialization) and racism are part of the same process. This dissertation does not define racism as race prejudice or race discrimination, or even as racist ideology, although at times it may involve one or all of these things. "Racism," writes Harrison, "must be understood to be a nexus of material relations within which social and discursive practices perpetuate oppressive power relations between populations presumed to be essentially different."[22]

Racial segregation in the United States takes several forms: racial slavery, ghettoization,[23] industrial segmentation,[24] apartheid, repugnant rules against

---

[20] Douglas S. Massey and Nancy A Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993)

[21] Luca Cavalli-Sforza, Paolo Menozzi and Alberto Piazza, *The History and Geography of Human Genes* (Princeton, NJ Princeton University Press, 1994)

[22] Faye V. Harrison, "The Persistent Power of 'Race' in the Cultural and Political Economy of Racism," *Annual Review of Anthropology*, 24 (1995), 65.

[23] Melvin L. Oliver and Thomas M Shapiro, *Black Wealth/White Wealth. A New Perspective on Racial Inequality* (New York Routledge, 1995)

"miscegenation," etc. Such forms may be intentional or effective, de jure or de facto, physical or symbolic. Racial segregation, in one form or another, has perpetually existed in North America ever since twenty Africans entered Jamestown on a Dutch slave ship in 1619 (whether these twenty Africans were slaves is a matter of controversy, but that the colonists treated them as racially different is difficult to dispute[25]). Racial segregation, supported by law and culture, lies behind the impoverished conditions of the black community and is the ultimate cause of disproportionate black involvement in street crime and their relatively greater accessibility by law enforcement. The same process also lies in back of the enriched position of whites as a group, creating for them a position wherein the consequences for wrongdoing are overall qualitatively different (although, as noted, class cuts across the caste structure). Segregation is the dynamic forming and transforming the racial caste structure. Racial castes exist because dominant groups define people racially and objectively segregate them. Different historical conditions and the variable needs of the ruling class and dominant groups require that the forms of segregation change from time to time. But racial slavery, apartheid, and race-neutral white hegemony are all species of the same genus of oppression.

Accumulation is the process of amassing the social surplus generated in collective production. Surplus is production over what is required to reproduce

---

[24] Bonacich, "Ethnic Antagonism" and "Abolition." See also "Advanced Capitalism and Black/White Race Relation in the United States. Split Labor Market Interpretation," *American Sociological Review*, 41 (1976)

[25] Howard Zinn, *A People's History of the United States 1492-Present* (New York: HarperPerennial, 1995).

socially necessary labor (subsistence). The circumstances of private ownership and control over resources and the labor process unequally distribute surplus production, both in efforts and in results. Accumulation takes many different forms, from estate (or feudal or corveé) production to capitalist production.

In the present study, the type of accumulation investigated is *capitalist* accumulation (although I analyzed elements of estate production in their relation to the capitalist form). Capitalism is a system of commodity production wherein those who control the productive forces employ immediate producers, pay them wages or buy their bodies, and convert the surpluses generated into private profit.[26] Capitalist accumulation involves the exploitation of several labor forms, primarily wage- and slave-labor in North America (slave-labor was legally abolished on a nationwide basis in 1865, however, slave-like conditions continued to exist for decades afterwards). Class directly relates to accumulation as it grows out of the process of accumulation and at any given point reflects the structure of socioeconomic production. Thus accumulation and the flux it generates, which in turn alter the conditions of production, constitute the dynamic from which class forms and is transformed.

Criminalization, which links to the question of justice, is typically defined as "the process whereby criminal law is selectively applied to social behavior."[27] But criminalization should not be imagined as dealing solely with the construction of

---

[26] The definitive work on the mechanics of capitalist accumulation remains Karl Marx, *Capital: A Critique of Political Economy*, vols 1-3, trans Ben Fowkes and David Fernbach (New York: Penguin Books, 1990-92)

[27] Piers Beirne and James Messerschmidt, *Criminology*, 3rd ed. (Boulder, Co: Westview, 2000), 15

criminal laws. An expanded definition encompasses the enactment of legislation and the installation of law-enforcement programs – surveilling, policing, and imprisoning – that target social behavior. Moreover, criminalization involves the selection and control of situations, conditions, and identities. Thus criminalization is collective behavior that (justly or unjustly) intentionally or effectively targets particular groups or specific activities for social control.

Criminalization is an inherent political activity, and it must be judged by its formulations, applications, and consequences. Likewise, what crime is, is an inherently political activity. "We start with the premise that no behavior is inherently criminal," Kaulzlarich and Kramer write; "There is no act that is in and of itself criminal. Criminality is not a quality that resides within behavior of persons. If one accepts this presupposition, then it follows that, in any arena we can identify (political or scholarly, for example), some definitional process is a necessary condition for the existence of 'crime.'"[28] Whether one agrees with Kaulzlarich and Kramer's apparent suggestion that there are no universally recognized wrongs (such as murder), one must recognize that the identification of criminal behavior is a human activity and presupposes the legal ordering of society. "Since criminal behavior is not preexistent," they continue,

> there must be some procedure that can be used to identify acts that are criminal and acts that are not. Every political jurisdiction, for example, must develop some legal mechanism to select out certain behaviors and define them as criminal (leaving other behaviors as noncriminal). Individual nation-states establish legislative bodies to pass criminal laws (effectively "creating" crime), police agencies to enforce these laws, prosecutorial units to bring charges based on these laws, and courts to convict and punish individuals who have violated these laws (thereby

---

[28] David Kaulzlarich and Ronald C. Kramer, *Crimes of the Nuclear State: At Home and Abroad* (Boston, MA. Northeastern University Press, 1998), 11

"creating" criminals). These laws and their supporting institutions are rooted in the moral values and concrete interests of those who created them or of their political supporters.[29]

Criminalization in a racist society, its imposition and its patterns, cast considerable doubt on the neutrality of purpose of state action and the moral authority of public institutions. Michael Tonry has advanced the proposition that the federal and state and local governments, when the effects of their policies are adjudicated using the criteria for determining responsibility set forth in the criminal law, are reasonably guilty of acts analogous to transgressing the criminal law.[30] First, under a *mens rea* analysis, knowledge of a crime is equally culpable with the intent to commit a crime. Any action taken with the knowledge that a deleterious effect is a predictable outcome is legally identical with an intent to cause that outcome. Tonry suggests that anyone with knowledge of the racial patterns of crime in the United States could predict that the policies enacted under Reagan and Bush would have the effect of bringing blacks disproportionately under the repressive control of the criminal justice system.

Similarly, under a modern *actus reus* analysis, where an actor who has the power or is in a position to prevent an ill befalling another person or group may be held criminally responsible for the action of non-action, the state is also guilty of analogous criminal conduct. Given that there are a number of alternative and more humane actions that the Reagan and Bush administrations could have taken to address

---

[29] Kaulzlarich and Kramer, *Nuclear State*, 11 See also Richard Quinney, *The Social Reality of Crime* (Boston, MA Little, Brown, 1970)

[30] Michael Tonry, *Malign Neglect – Race, Crime, and Punishment in America* (Oxford, NY: Oxford University Press, 1995).

inner-city crime, the failure to pursue these alternatives knowingly put blacks at risk for increased incarceration and, again, violation of their civil rights.

Mandatory minimum sentencing of crack cocaine offenders illustrates Tonry's arguments. In 1986, Congress passed a bill, the "Anti-Drug Abuse Act of 1986," establishing severe mandatory sentences for crack cocaine possession. The bill made sentences for crack cocaine possession 100 times greater than those for powdered cocaine. This was with the knowledge that the only real difference between crack and powder cocaine was the race of the people using them: African Americans disproportionately use crack cocaine, whereas whites disproportionately use powder cocaine.[31] The effects were dramatic. Before mandatory minimums for crack offenses, the average federal drug offense sentence for blacks was 11 percent higher than for whites. Four years after the changes in drug sentencing laws, the average federal drug offense sentence was 49 percent higher for blacks.[32] By 1997, African Americans were accounting for 84 percent of the defendants convicted of crack cocaine offenses. The average sentence in a federal prosecution was 125 months.[33]

In 1995, the US Sentencing Commission called for the elimination of the disparity between crack and powder cocaine. Even those on the commission who dissented from the majority (there were three dissenters) agreed that the 100 to 1

---

[31] Steven Donziger, ed , *The Real War on Crime: The Report of the National Criminal Justice Commission* (New York: Harper Perennial, 1996) .

[32] Barbara S. Meierhoefer, *The General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed* (Washington DC: Federal Judicial Center, 1992)

[33] "Conyers Supports Equitable Sentencing Guidelines for Crack Cocaine Offenders," from the office of Representative John Conyers, Jr., 14th District, Michigan, 25 March 1999.

disparity was unjust. Given the high profile character of the debate, there was clearly now widespread awareness about the racial disparity in cocaine sentencing. It follows that if political elites were truly opposed to racism, as they have long claimed they are, then it would be ethnically incumbent upon them to eliminate the disparity. Yet, in H.R.2259 and S.1254, Congress overwhelmingly rejected recommendations from the US Sentencing Commission to reduce the disparity. Whether they knew of the racist consequences of the policy before the debate is arguable, but Congress was now explicitly advocating a racist drug policy.

In June 1997, H.R. 2031, the "Crack-Cocaine Equitable Sentencing Act of 1997," was introduced in the House. This bill sought to eliminate mandatory minimum penalties for trafficking in, and possession, importation, or distribution of crack cocaine. With the attention the issue was now being given, US Attorney General Janet Reno and "drug czar" Barry McCaffrey recommended that the 100 to 1 disparity between cocaine and crack possession be reduced to 10 to 1 (for federal sentencing purposes only).[34] Three months earlier, the US Sentencing Commission had modified its 1995 stance to allow for racial disparity.[35] Yet the Senate again passed a bill to block

---

[34] McCaffrey admitted that he thought the disparity should be eliminated, but Reno convinced him that the punishment for crack ought to be more severe.

[35] The Supreme Courts had a chance to change the policy, but instead deferred to Congress. The story has had wide play in the media See Steven Holmes, "Black Lawmakers Criticize Clinton Over Cocaine Sentencing," *New York Times*, 24 July 1997; Angie Cannon and Jodi Enda, "Clinton Ease disparity on crack, powder cocaine," *Philadelphia Inquirer*, 23 July 1997, A1, Associated Press, "Crack vs Cocaine," *Newsday*, 23 July 1997; Christopher S. Wren, "Reno and Top Drug Official Urge Smaller Gap in Cocaine Sentences," *New York Times*, 22 July 1997, A1; Roberto Suro, "Officials Draft Plan to Reduce Cocaine Sentencing Disparities," *Washington Post*, 22 July 1997, A2, Ronald J Ostrow, "Reno, McCaffrey Urge Revised Drug Sentences," *Los Angeles Times* (Washington Edition), 22 July 1997, A8, Peter Baker, "Clinton Would Cut Disparity In Some Cocaine Sentences," *Washington Post*, 23 July 1997, A2

the new sentencing guidelines and proposals. It then proposed to increase the sentences for powder cocaine by making the triggers for mandatory minimums 100 grams for 5 years and 1000 grams for ten years instead of 500 and 5000. Evidently the compromise was not racist enough. In November 1999, the Senate voted to reduce the disparity from 100-1 to 10-1 by triggering the 5-year mandatory for powder cocaine at 50 grams instead of 500 grams and leaving the penalty for crack cocaine where it was.[36]

I go further than Tonry in this dissertation by emphasizing that it is not only the Reagan and Bush administrations to which these criteria can be successfully applied, but that policies designed and administered by Lyndon Johnson, Richard Nixon, predecessors, advisers, state and local elites — and in the 1990s under Clinton — also fail these tests. These public actors have not been held responsible for the extensive harm — breaking up families, disfranchising voters, and stigmatizing African Americans, etc.[37] — they have caused. Elites have operated with more than knowledge of the consequences of their actions. A longer view of history reveals law and order policies have been designed with the intent of repressing African Americans

---

[36] Catherine Strong, "U S Senate Adopts Michigan Senator's Measure to Reduce Cocaine Sentence Disparity," AP Wire, 10 November 1999

[37] A study of disenfranchisement, "Losing the Vote· The Impact of Felony Disenfranchisement Laws in the United States," by Marc Mauer and Jamie Fellner, provides a clear example of the harm caused by criminalization. "Thirteen percent of African American men — 1.4 million — are disenfranchised, representing just over one-third (36 percent) of the total disenfranchised population In two states almost one in three black men is disenfranchised. In eight states, one in four black men is disenfranchised If current trends continue, the rate of disenfranchisement for black men could reach 40 percent in the states that disenfranchise ex-offenders." The authors point out that this is the medieval equivalent of "civil death," and that these laws reflect "race-neutral" voting restrictions first imposed on the South following black emancipation. Document available at Human Rights Watch, 350 Fifth Avenue, 34th Floor, New York, NY 10018.

and other minorities (for example, Chinese immigrants[38]) and protecting the privileges of white Americans. Thus, unlike the structure-process correspondence between caste-segregation and class-accumulation, the justice-criminalization pair represents a disjuncture, as criminalization in America is more precisely *injustice*.

Combining these elements — caste, class, justice, segregation, accumulation, and criminalization — I theorize that the US justice system cleaves into two relatively dissimilar patterns of existence creating a unified caste-class structure: the enrichment and inclusion pattern, on the one hand, and the impoverishment and exclusion pattern, on the other. The former pattern (or region or zone) includes capitalists, most managers, a significant portion of the petty bourgeoisie and capital and knowledge intensive workers. This structure is disproportionately white, with maximum whiteness concentrated among capitalist class and upper echelon of the professional-managerial class. The impoverishment/exclusion pattern is something of a mirror image of the first region, including those groups defined and structured as non-white and poor, uneducated/unskilled whites. Categories on this end of the continuum become "blacker" the more we move towards the supernumerary.

Criminality, criminalization, and material justice are differentiated by this structure. Rich and poor, white and nonwhite, criminally offend in ways that correspond to their social locations, with the poor and nonwhite offender overrepresented in street crime, and the rich and white offender overrepresented in

---

[38] Michael A. Olivas, "The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History," *Critical Race Theory: The Cutting Edge*, ed Richard Delgado (Philadelphia, PA. Temple University Press, 1995)

white-collar and corporate crime.[39] The character of societal reaction, represented most obviously by the criminal justice system, is correspondingly differentiated, with the experience of individuals encountering the justice system depending on their racial designation and class location.[40] While the enriched and included enjoy an internally administered, marginally enforced, restitutive system of civil justice, the impoverished and excluded suffer a repressive criminal justice system focused on strong-arm law enforcement, retributive justice, and deprivation of freedom and life. (The details of this model are presented in part 1, chapter 4.) Crime and punishment are therefore theorized as outcomes of the same historical system. (See figure 1.1.1 for the relations between elements in the dissertation's title. Note the disjuncture between justice and criminalization.)

Critical Realist Historiography

My methodological orientation is basically Marxian, or historical materialism.[41] This approach is dialectical, which is to say that it involves a constant movement between theory and data using heuristics, i.e., flexible conceptual models, to guide the evaluation of evidence and working hypotheses. Rather than theory testing, I am theory building. A dialectical approach to the study of crime and justice requires the

---

[39] Anthony R. Harris and Lisa R Meidinger, "Criminal Behavior. Race and Class," *Criminology. A Contemporary Handbook*, 2nd ed., ed. Joseph F Sheley (New York Wadsworth, 1995).

[40] Jeffrey Reiman, . . . *the Poor Get Prison. Economic Bias in American Criminal Justice* (Boston, MA. Allyn and Bacon, 1996).

[41] Karl Marx, *Preface and Introduction to a Contribution to a Critique of Political Economy* (Peking, China Foreign Language Press, 1976), Karl Marx and Frederick Engels, *The German Ideology*, part 1 (New York International Publishers, 1995) By using the term "materialist" Marx and Engels meant to convey an approach that produces a scientific study of history, one focusing on the real and most important structures of the social formation, generally beginning with but not limited to the socioeconomic base of society.

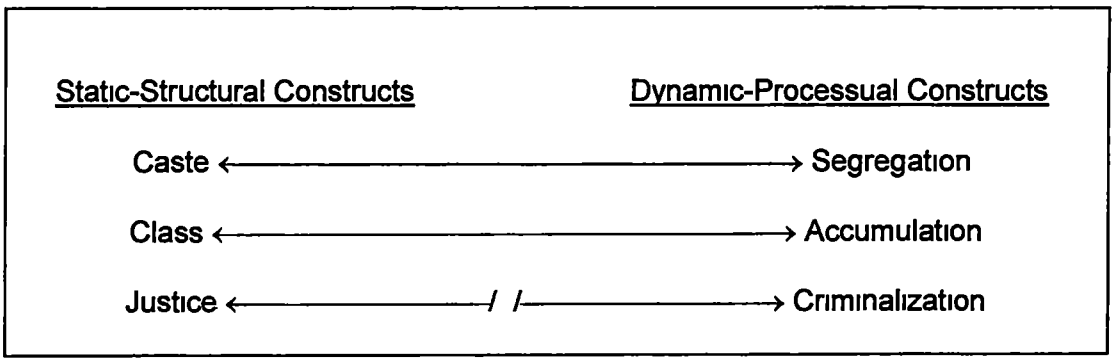


Figure 1 1
The Structure-Process Connections/Disconnections
in the Dissertation's Title

exploration of the larger historical system in which crime and justice occur, especially searching out contradictions and antagonisms that explain the patterns observed. The dialectic assists social historians in explaining the development of the social totality by focusing on major determinants and their interrelations.

Marxists emphasize their role in generating knowledge that is intended for practical application in the endeavor to advance justice for the oppressed and exploited. This standpoint strengthens objectivity by jettisoning the neutrality ideal.[42] Wallerstein concludes that during the positivist revolution in science the "neutrality of the scholar became the fig leaf of their shame in having eaten the apple of knowledge."[43] Marx avers, "*One* basis for life and another for *science* is *a priori* a lie."[44] Robert Cox captures the epistemological spirit of dialectics when he writes that

---

[42] Sandra Harding, ed., *The "Racial" Economy of Science. Toward a Democratic Future*, (Bloomington, IN Indiana University Press, 1993); Harding, "After the Neutrality Ideal: Science, Politics, and 'Strong Objectivity,'" *Social Research*, 59 (1992) "What is left of the objectivity ideal when neutrality is abandoned?" asks Harding "Fairness, honesty, and an important kind of 'detachment,' to start with," "Neutrality Ideal," 570

[43] Immanuel Wallerstein, "Social Science and the Quest for a Just Society," *American Journal of Sociology*, 102 (1997), 1250

there is no theory in itself, no theory independent of a concrete historical context. Theory is the way the mind works to understand the reality it confronts. It is the self-consciousness of that mind, the awareness of how facts experienced are perceived and organized so as to be understood. Theory thus follows reality in the sense that it is shaped by the world of experience. But it also precedes the making of reality in that it orients the minds of those who by their actions reproduce or change that reality

Theory is always *for* someone and *for* some purpose [45]

These general features distinguish the dialectical method from standard social science methods: Dialectics examine objects and/or systems for complex interrelations. The method grasps social forms in their systemic interconnections. Reality is viewed in its totality, and parts of the whole are understood in relation to the logic of the whole. The totality is treated as an objective reality (ontological relationalism). This is in contrast to the categorical and abstract method of traditional idealist logic, embodied in positivism, which treats the empirical world as congeries of discrete objects and events with no necessary connections among them, rather viewing causality as a mental association of objects and events constantly conjoined.[46] Dialects conceptualizes reality as internally stratified and differentiated, and situations and events as

---

[44] Karl Marx, *Economic and Philosophic Manuscripts of 1844*, trans. Martin Milligan (Buffalo, NY: Prometheus, 1987), 110.

[45] Robert W Cox, "Critical Political Economy," in *International Political Economy Understanding Global Disorder*, ed Björn Hettne (New Jersey: Zed Books, 1996), 31. The Marxian dialectic occupies a position between idealism and materialism. It synthesizes the two traditions, but subordinate the former to the latter. The resulting approach permits, among other things, the examination of the objective social and material arrangement of social formations at the same time it considers both the dynamic and subjective elements of society, that is, the objectification of the world through labor and the symbolic activity of human beings. Perhaps more importantly, this synthesis resolves the Kantian antinomy between the cognitive and moral dimensions of human existence. See Shlomo Avineri, *The Social and Political Thought of Karl Marx* (New York: Cambridge University Press, 1968)

[46] The positivist model is derived from the logic of David Hume For the definitive critique see Roy Bhaskar, *A Realist Theory of Science* (New York Verso, 1975) It is of course unwise to dismiss positivism outright More reasonably, historical materialists reject the positivist epistemology and reduce the latter's techniques to the status of scientific tools that aid in the overall explanation of social reality but play a subordinate role in explanation.

constituted by deeper structural relations and forces that exist mind-independently. I stress that because describing and explaining the totality is practically impossible, and in any case the continual transformation of reality would confound such an attempt, the research must select empirical targets. I have selected crime and punishment as primary targets for investigation.

Dialectics studies objects and/or systems in their concreteness. This does not mean that historical analysis is idiographic in the neo-Kantian sense (such as the methods of Dilthey, Rickert, or Windelband[47]). Rather it means two things: First, abstractions are elements of the conceptual systems employed (they are also induced from the facts). The distinction between the world and ideas about the world is thus strictly maintained.[48] Second, Marxists do not allow variability in concrete instances and disjunctive moments of oppression and exploitation to conceal the general forms of, and historical continuities in, oppressive-exploitative relations. The totality *is* the concrete, and this includes entire historical-social systems. The idea is to find the truth behind the appearance.

The concrete-abstract distinction in dialectics is different from the reasoning process in analytical logic. In analytical logic, the abstraction, most desirably a universal reality, becomes the truth, with the empirical material being data points in a universe. The method of idealist science is to identify the features and relations

---

[47] For an overview of their methods, see Frederick Copleston, *A History of Philosophy*, vol 7 (New York: Doubleday, 1994)

[48] Karl Marx, *Grundrisse. Foundations of the Critique of Political Economy*, trans. Martin Nicolaus (New York Penguin, 1993).

common to all social systems and treat these as theories. This is the nomothetic procedure. Genuine scientific theories from this perspective are said to be suprahistorical, that is, standing outside or above history, devoid of any empirical content.[49] The goal is to identify behavior that exists out of social context or universal forms of social relations. Features of the world such abstractions represent are only the most general and tautological features of social systems. According to dialectical logic, abstractions treated in this way take us further from the thing itself and potentially, especially when held to be suprahistorical, become barriers to complete theoretical accounts of actuality, which is essentially historical — history being the objective and, in part, intentional collective activity of people. Abstractions are therefore not necessarily the goal of materialist scientific activity as they are in idealist science, but are developed to advance scientific understanding of concrete realities. It must be emphasized that showing continuity in a historical system is not a nomothetic endeavor.

The dialectic grasps forms in their development. The present form of society is understood as historically constituted. The world is never ultimately fixed, though it may remain relatively static through generations. Different parts of historical systems move at different rates and qualities of change. Therefore, the world must not only be viewed in its static forms, or synchronically (that is structurally and functionally), but dynamically, or diachronically (that is developmentally and historically). This

---

[49] See, e.g., Jonathan H. Turner, *The Structure of Sociological Theory*, 5th ed (Belmont, CA Wadsworth, 1991). Turner argues that theories with empirical content are only empirical generalizations.

approach directly challenges the logic of statistical modeling. Statistical models treat the exogenous context from which variables are abstracted as existing atemporally.[50] Theorizing in terms of development, however, does not mean giving up on structure. Rather it means combining the processual and the structural, seeing them as two styles of abstracting the same reality. Thus, the present is explained structurally through using an abstract political economic system and concretely by studying the history of the system's development. This is the constant interplay between fact and theory.

The Marxist approach is founded on a central premise: The social world, and the human being itself, are the result of collective social activity. Materialist dialectics reject the reduction of human activity to abstract conjectures about "human essence." Such postulates preclude the possibility of historical variability, and are, in any case, ideological. Marx counters the ahistorical conception of human beings: "The essence of man is no abstraction inherent in each separate individual. In its reality it is the ensemble (aggregate) of social relations."[51] The rejection of "human nature" has ramifications for all scientific production. It means that society is not a natural, eternal thing, nor is society the reflection of a human nature per se; social reality is a historically constituted object, produced by the human collectivity. This is why the dialectical approach does not necessarily aim to provide the researcher with a specific

---

[50] For a critique, see Larry W. Isaac and Kevin T Leicht, "Regimes of Power and the Power of Analytic Regimes Explaining US Military Procurement Keynesianism as Historical Process," *Historical Methods*, 30 (1997). See also Douglass C North, Economic Development in Historical Perspective," in *The Wealth of Nations in the Twentieth Century*, ed. Ramon H Myers (Stanford. Hoover Institution, 1996)

[51] Karl Marx, "Theses on Feuerbach," *The Portable Karl Marx*, ed Eugene Kamenka (New York: Penguin, 1983), 157

theory to test, but rather means to furnish the historical sociologist with a flexible epistemological framework and conceptual tools with which to build theory from the raw materials of concrete reality. Marxism is unique among social scientific theories in its degree of self-reflexivity, "its analysis of the relation of theory and society is such that it can, in an epistemologically consistent manner, locate itself historically by means of the same categories with which it analyzes its social context."[52]

I modify the Marxian approach in three key ways; or, more accurately, I use three directions inspired by Marx and Engels' work to extend the historical materialist project into other domains of the social world. First, although the later chapters focus mainly on the US domestic context (in fact, the focus increasingly concentrates on the United States as the analysis unfolds), I use a world-systems approach to understand the development of capitalism and contextualize national development.[53] World-system theory reconceptualizes class antagonisms at the global level, seeing world historical development as the product of class struggles internal to nation-states and transcending national boundaries. Overlaying the dynamics of class struggle is the

---

[52] Moishe Postone, *Time Labor, and Social Domination* (Cambridge, MA: Cambridge University, 1996), 5

[53] Marx theorized with a world market in back of his thoughts, but, as sweeping as the *Manifesto* is, however thorough his account of primitive accumulation in *Capital* may be, he never systematically analyzed the development of the world system For this we turn to Immanuel Wallerstein. See *The Modern World-System*, vols 1-3 (New York: Academic Press, 1974-1988), "The Rise and Future Demise of the World Capitalist System. Concepts for Comparative Analysis," *Comparative Studies in History and Society* 16 (1974) For overviews see Stephen K Sanderson and Thomas D Hall, "World System Approaches to World-Historical Change," *Civilizations and World Systems Studying World-Historical Change*, ed Stephen K. Sanderson (Walnut Creek AltaMira Press, 1995), Thomas R. Shannon, *An Introduction to the World-System Perspective* (Boulder. Westview Press, 1989); Alvin Y So, *Social Change and Development. Modernization, Dependency, and World-System Theories* (Newbury Park, CA Sage, 1990).

competition of economic regions, or zones, between "core" and "periphery," manifest primarily through international economic, political, and military competition. Racial slavery and the slave trade emerged within the European world-system. It was the various state entities of Europe, in establishing their empires during the mercantilist period, that colonized Africa and the Americas. The Western legal system and racial conceptions are shared by a trans-Atlantic society. Racial caste and social class today are products of a world-system that is over 500 years old. Therefore, although this perspective has neglected race relations, the broader methodology proves to be quite useful.[54]

Second, for political-sociological and cultural-ideological analysis, I use the elaboration of Antonio Gramsci.[55] A prisoner under Mussolini during the rise of fascism in Europe, Gramsci produced several notebooks setting forth a conception of Marxism that emphasized cultural-ideological domination, the role of intellectuals in

---

[54] World-systems theorists have not entirely ignored the issue of race. See Martha Gimenez, "Minorities in the World-System Theoretical and Political Implications of Internationalization," and June Nash, "Cultural Parameters of Sexism and Racism in the International Division of Labor," in *Racism, Sexism and the World-System*, ed Joan Smith et al. (Westport: Greenwood, 1988). Gimenez and Nash contend that racism functions to advance exploitation of peripheral labor and to submerge immigrants in the core to labor-intensive and low-wage industries Wallerstein theorizes that ethnic stratification is a relatively independent determinant in the development of the world-system. According to him, racism justifies economic inequality by reference to cultural or biological inadequacies of the poor. Facilitating the imposition of capitalism globally through the ideology of Western cultural superiority, racism acts as a buffer against loss of political legitimacy during periods of economic decline See Wallerstein, *Geopolitics and Geoculture* (New York Cambridge University, 1991). For a succinct review see Shannon, *Introduction to the World-System*, 191-195

[55] Antonio Gramsci, *Selections from the Prison Notebooks*, ed. and trans. by Quintin Hoare and Geoffrey Nowell Smith (New York. International Publishers, 1971); *Prison Notebooks* vols 1-2, ed. Joseph A. Buttigieg, trans J A. Buttigieg and Antonio Callari (New York Columbia University Press, 1992-1996), *The Antonio Gramsci Reader Selected Writings 1816-1935*, ed David Forgacs (New York New York University Press, 2000)

class struggle, and the organization of political-economic history into complex historical blocs. Gramsci's work provides an alternative to the class-reductionism that pervades Marxist scholarship.[56] Consequently, his approach is useful for analyzing other forms of oppression, such as racial oppression.

Third, I pursue a critical analysis of the law that does not see the law as simply a reflection of the economic system. Such reductionism is found primarily in structuralist approaches to studying law. These approaches possess several strengths over idealist conceptions of the law. Structuralists imagine social forms, such as the law, emerging from the socioeconomic structure. They understand that although law issues from, embeds, and inheres in these structures, the law develops a degree of independence from other social structures, an independence structuralists call "relative autonomy."[57] Relatively autonomous, law becomes an organic phenomenon, evolving appetites, needs, and motives. A definite culture and sensibility grow up within in. It develops according to internal dynamics and contradictions. Yet, at the same time, law forms and transforms within an overall system of social formation. The shape of the whole ultimately conditions and determines societal constituents, with a "structure in dominance" conditioning and limiting developmental possibilities.[58]

---

[56] At the risk of appearing to single out scholars arbitrarily, representative of class reductionism in the matter of race relations are Wright, *Class Counts*, Oliver C Cox, *Caste, Class, and Race*, Barbara Fields, "Ideology and Race in American History," in *Region, Race and Reconstruction*, eds. J Morgan Kousser and James M McPherson (New York Oxford University Press, 1982), and Edna Bonacich, "Class Approaches to Ethnicity and Race," *The Insurgent Sociologist*, 10 (1980).

[57] See Nicos Poulantzas, *Political Power and Social Classes* (London· New Left Books, 1973). See also Bob Jessop, *Nicos Poulantzas. Marxist Theory and Political Strategy* (New York· St. Martin's Press, 1985)

[58] Louis Althusser and Étienne Balibar, *Reading Capital* (New York Verso, 1970)

On these strengths, social scientists often recognize that structuralist approaches to understanding law and politics are a good starting point for theoretical historiography. They are not the final word on the matter, however. The troubles for structuralists begin when their critics call upon them to explain changes in the law and in political society in an empirio-historiographical fashion. Too often structuralists base their explanations of social change on functional teleological schemes of causality. This form of functionalist analysis involves explaining the existence and transformation of a social component based on knowledge of how that component facilitates the maintenance and development of the social system. This is tenuous explanatory logic; teleology has eternally been the devil in historical explanation.

In one such reduction, Marxists have supposed features of the law to function to reproduce the capitalist mode of production by securing for capitalists desirable labor-power character. Leiman contends the shift in emphasis to monopoly capital following the Second World War caused changes in law and public policy. The needs of the monopoly capitalist, namely his demand for skilled labor, weakened racism and played a crucial role in ending formal segregation and promoting of equality of opportunity. In this case, the economic needs of leading capitalist fractions translated into legislation advancing capital accumulation.[59] Radical criminologists propose that a rational solution to the problem of surplus workers, the "industrial reserve army," from the capitalist point of view is to eliminate excess labor from the market through imprisonment. Relative surplus population is regarded as a principal impetus of crime

---

[59] Melvin Leiman *The Political Economy of Race* (East Haven: Pluto Press, 1993)

control legislation and practice.[60] In these cases, scholars see the variable effects of capital accumulation as the result of anonymous structural processes.

Perhaps the exemplar of a Marxist theory of criminal justice formation using the idea of system needs is the work of Richard Quinney, who writes:

> In the late stages of capitalism the mode of production and the forms of capital accumulation accelerate the growth of the relative surplus population. The state must then provide social-expense programs, including criminal justice, both to legitimate advanced capitalism and to control the surplus population. Instead of being able to absorb the surplus population into the political economy, advanced capitalism can only supervise and control a population that is now superfluous to the capitalist systems. The problem is especially acute when the surplus population threatens to disturb the system, either by overburdening the system or by political action Criminal justice is the modern means of controlling the surplus population produced by late capitalist development.[61]

Although structurally-based political economic theories explain many facts, fact-theory correspondence is inadequate. Of course, all scientific theories are underdetermined by facts; and theories are not supported merely by facts.[62] A theory must carry epistemic force, by strengthening theoretically supposed relationships between structural causes and historical events, specifying proximate causal factors (or meso-level theoretics), or by including several different classes of factors in explanation. But there must also be detailed historiography — fact-driven analysis that provides a "thick" description of the context and the forces transforming that context that is used in theorizing. By the standards of the dialectic, explanations advanced by

---

[60] Capital accumulation, Marx argues, "constantly produces, and produces indeed in direct relation with its own energy and extent, a relatively redundant working population, i.e., a population which is superfluous to capital's average requirements for its own valorization, and is therefore a surplus population" *Capital*, vol 1, 782

[61] Richard Quinney *Class State and Crime*, 2nd. edition (New York. Longman, 1980).

[62] Mary Hesse, "Theory and Value in the Social Science" in *Action and Interpretation*, eds Christopher Hookway and Philip Pettit (Cambridge, MA: Cambridge University Press, 1978).

scholars like Leiman and Quinney, while a significant advancement over atheoretical historical scholarship, are incomplete. They err in the opposite direction of the atheoretical historian: they are ahistorical and too abstract.

These deficiencies, and the problems that stem from them, have not gone ignored by scholars who insist on greater specificity in explanation. About the structuralist work of Marxist criminologists, for example, Humphries and Greenberg write: "It is the essence of a systems theory that the explanation of a social phenomenon does not refer to the meanings or goals of the members of the society. It does not see change as a consequence of the purposeful activity of identifiable social actors, but as a spontaneous and unwitting convulsion of the entire system. Nor does it explain how or why anyone realizes what a system or a mode of production needs and insures that these needs are met." They conclude that "[s]ince systems theories . . . fail to specify how the outcome (crime control) is connected to the cause (functional need of the system), they are at best incomplete."[63]

Functionalist accounts de-emphasize the political and ideological side of juridical modes of social control, arguing instead that the "function" of the legal system is to contain and maintain the labor force. Paradoxically, structuralists often fail to note the relative autonomy of other social forces in the world-historical context. Their language too often veils reductionism, explaining everything from the attitude of structural imperatives, often with a mechanical interpretation of the capitalist

---

[63] Drew Humphries and David F Greenberg, "The Dialectics of Crime Control," in *Crime and Capitalism: Readings in Marxist Criminology*, ed David F Greenberg (Philadelphia, PA Temple University, 1993), 464

accumulation process. Structuralists downplay or ignore instrumental linkages because of an epistemological bias against considering the role of human agency in analysis. But social scientists cannot explain legal and political phenomena, such variability in criminal justice policy, or the institutionalization of the black struggle, simply by appealing to the function they serve in reproducing an exploitative economic order, even if there is factual-theoretical correspondence.

This dissertation challenges rigid structuralist accounts of law and politics. I argue for radical politico-historiographical methods and call for synthesizing structural and historical approaches in the study of law. The law is historically and politically constituted in concrete world-historical systems. An approach that incorporates radical historiography gains epistemic force through greater specification of the operational structure of social formations under analysis. This means researchers ought to look for evidence of conscious/intentional political and cultural practice. We can find this conscious practice in the social act of legislation and policy making. For this, theory must enlarge its focus to encompass world-historical change and the terrain of political struggle. I argue that changes in the direction of civil rights law and criminal justice policy reflect more than the short term economic needs of the capitalist class. They also reflect political and cultural needs, such as foreign policy concerns and securing legitimacy for the ruling party, and the long range economic imperative of perpetuating the capitalist mode of production. Thus a complex web of factors mediates economic imperatives, and class struggle exists on grounds that transcend immediate economic interests. Crucially, the law is not an objective entity

standing over above society; it is simultaneously a structural component in the sociomaterial relations that constitute social formations *and* a site of political, economic, and cultural struggle. These traditions are embodied in Critical Legal Studies[64] and Critical Race Theory.[65]

The structural model of the caste-class segmentation of crime and punishment presented in part 1, chapter 4 is synthesized from many theoretical strands. This synthesis takes place over two chapters, so I will only briefly review that material and its integration here. In part 1, chapter 3, I critically review conceptions of class and race that most closely approximate the realist perspective I have adopted over the course of several preliminary studies in this area. For the components of social class, I adapt Wright's class categories and his relational emphasis. I use some of his empirical research to flesh out the model.[66] Concerning race, I form a materialist conception of racial relations through a critique of Roediger's studies of whiteness and Winant's idea

---

[64] Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977) and *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (New York Oxford Univ Press, 1992); Roberto M. Unger, *The Critical Legal Studies Movement* (Cambridge, MA. Harvard University Press 1986), Robert W. Gordon, "Unfreezing Legal Reality Critical Approaches to Law," *Florida State Law Review* 15 (1987), "Critical Legal Histories" in Critical Legal Studies, ed Alan Hutchinson (Totowa, Rowan and Littlefield, 1989), 82-83, and "The Past as Authority and as Social Critic Stabilizing and Destabilizing Functions of History in Legal Argument," in *The Historic Turn in the Human Sciences*, ed. Terrence J. McDonald (Ann Arbor· University of Michigan Press, 1996), 339-378; Duncan Kennedy, "Toward an Historical Understanding of Legal Consciousness. The Case of Classical Legal Thought in America, 1850-1940," *Research in Law and Sociology*, 3 (1980): 3-24, *A Critique of Adjudication* (Cambridge, MA: Harvard University Press, 1998) See also William W Fisher, Morton J Horwitz, and Thomas A Reed, eds , *American Legal Realism* (Oxford, NY: Oxford University Press, 1993).

[65] Crenshaw et al , eds *Critical Race Theory. The Key Writings*, Delgado, ed., *Critical Race Theory· The Cutting Edge.*

[66] Wright, *Class Counts* and *Classes*

of racial formation.[67] I contend that although both advance our understanding of race and racism, they stop short in articulating a realist/objectivist model of racism. I combine with my critique a holistic definition of race developed by Jalata. He conceptualizes racism as a project expressing both practical and cognitive dimensions.[68] This definition accords with Harrison's definition quoted above. For caste components, I review the history of racial caste as a social science construction. I find most useful the model developed by Davis, Gardner and Gardner in *Deep South: A Social Anthropological Study of Caste and Class*, which conceptualizes caste as cutting across class.[69]

I pull from these critiques the raw materials for the core model I develop in part 1, chapter 4. Again, I have already described key elements of the model above, so I shall not restate them here. I flesh out the model by reviewing some of the facts about crime and punishment, however most of the evidence waits for the historical narrative that begins in part 2. I should note here that I found particularly useful a model presented by Harris and Meidinger, where class and race distributions in crime are combined to reveal a parabolic relationship between independent and dependent

---

[67] David R Roediger, *The Wages of Whiteness. Race and the Making of the American Working Class* (New York: Verso, 1991) and *Towards the Abolition of Whiteness* (New York: Verso, 1994). Howard Winant, *Racial Conditions Politics, Theory, Comparisons* (Minneapolis: University of Minnesota, 1994). See also Michael Omi and Howard Winant, *Racial Formation in the United States* (New York: Routledge, 1986)

[68] Asafa Jalata, "The Impact of a Racist U S Foreign Policy on Oromo National Struggle," *The Journal of Oromo Studies*, 6 (1999), 49

[69] Davis, Gardner, and Gardner, *Deep South*, 10-11 See also Benjamin B. Ringer and Elinor R. Lawless, *Race-Ethnicity and Society* (New York: Routledge, 1989), 41.

variables rather than the linear relationship usually posited in the literature.[70] I expand on their insights and apply them to punishment, as well.

This accounts for the structural or synchronic model. The structural model serves as a heuristic that guides data analysis within bounded historical periods (described below). I synthesize another set of theoretical leads to produce the diachronic heuristic that guides analysis across historical periods. Here I draw from theorizing on colonialism, both from within and without world-systems theory. In particular, I am inspired by the work of Robert Blauner on domestic colonialism,[71] and Walter Rodney and Manning Marable's work on the underdevelopment of African people in Africa and the Americas at the hands of Europeans.[72]

On the subject of punishment, my work elaborates Rusche and Kirchheimer's analysis of punishment regimes and cycles of penal policy found in their landmark work, *Punishment and Social Structure*. In this book they ask, "Why are certain methods of punishment adopted or rejected in a given social situation? To what extent is the development of penal methods determined by the basic social relations?" By tracing the development of punishment in the European world-system from the latter Middle Ages to the early twentieth century, they are able to demonstrate that punishment is not the sole result of societal response to criminal activity, but it is also a structure appropriate to concrete mode of production. In fact, crime has very little to do with

---

[70] Harris and Meidinger, "Criminal Behavior"

[71] Robert Blauner, *Racial Oppression in America* (New York: Harper and Row, 1972).

[72] Walter Rodney, *How Europe Underdeveloped Africa* (Washington, DC Howard University Press, 1982), Manning Marable, *How Capitalism Underdeveloped Black America* (Boston: South End Press, 1983)

punishment, they contend. Instead, the penal apparatus under capitalism is designed to regulate labor markets. This line of argument tends towards teleology, however, the insight of Rusche and Kirchheimer's book is not their structural work per se, but their emphasis on history: "Insofar as the theories consider punishment to be something eternal and immutable, they interfere with every historical investigation."[73]

In my work, however, I move beyond the focus on accumulation patterns and the impact of class struggle on punishment regimes. The capitalist economy underpins a larger historical system: the European world-system. As capitalism expanded through colonial activities, world populations became subject to a process of racialization, a force I argue emerges with capitalism but is irreducible to capitalism (or, if you like, I expand the conception of "capitalist mode of production" to include racial formation). The facts show that not only are punishment regimes differentiated by class, they are also differentiated by racial caste. For example, one basis for the racial differentiation of punishment emerges from a long-standing legal pattern neglected in *Punishment and Social Structure* and other Marxist works, namely the principle or doctrine of *paterfamilias*. This principle, the product of the Roman and medieval patriarchal systems, confers upon the father or lord of a household the power to determine the fate of those living with the scope of his authority.[74] Since in North America slaves were property in a patriarchal system observing this principle,

---

[73] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939), 3.

[74] Graeme Newman, *The Punishment Response* (Philadelphia J B Lippincott Company, 1978).

they were subject to *paterfamilias*, and thus they were treated differently from free labor on a basis not directly linked to production imperatives (though indirectly through the totality of which production is an essential component).

Actually, this larger focus returns the mode of critical theorizing to the foundations of historical materialism where things are understood to be relatively independent of and within and intrinsically related to the totality. Friedrich Engels, who considered the matter of crime at length in *The Conditions of the Working Class*,[75] wrote in a letter to a colleague:

> According to the materialist conception of history the determining element in history is *ultimately* the production and reproduction of real life. More than this neither Marx nor I have ever asserted If therefore somebody twists this into the statement that the economic element is the *only* determining one, he transforms it into a meaningless, abstract and absurd phrase The economic situation is the basis, but the various elements of the superstructure — political forms of the class struggle and its consequences, constitutions established by the victorious class after a successful battle, etc. — forms of law — and then even the reflexes of all these actual struggles in the brains of the combatants: political, legal, philosophical theories, religious ideas and their further development into systems of dogma — also exercise their influence upon the course of historical struggles and in many cases preponderate in determining their *form*. There is an interaction of all these elements in which . . . the economic movement finally asserts itself as necessary. Otherwise the application of the theory to any period of history one chooses would be easier than the solution of a simple equation of the first degree.[76]

---

[75] Frederick Engels, *The Condition of the Working-Class in England in 1844*, trans. Florence Kelley Wischnewtzky (London: Sonnenschein, 1892).

[76] Letter to Joseph Bloch, 21 September 1890, quoted in Robert K. Merton, *The Sociology of Science: Theoretical and Empirical Investigations*, ed. Norman W. Storer (Chicago The University of Chicago Press, 1973), 117 In a letter to Conrad Schmidt, Engels writes. "In a modern state, law must not only correspond to the general economic position and be its expression, but must also be an expression which is *consistent in itself*, and which does not, owing to inner contradictions, look glaringly inconsistent And in order to achieve this, the faithful reflection of economic conditions is more and more infringed upon. All the more so the more rarely it happens that a code of law is the blunt, unmitigated, unadulterated expression of the domination of a class — this in itself would already offend the 'conception of justice,'" quoted in Merton, 19.

Finally, whereas many critical theories focus exclusively on punishment, leaving criminality undertheorized, I incorporate into my analysis patterns of crime and their structural causes. By doing this I strengthen the point of view that punishment operates relatively independent of crime at the same time show the full effects of the capitalist mode of production on society. Criminogenic conditions proliferate the structure of capitalist society, but only some people are punished for their criminal activities. The model I present in this dissertation captures the panorama of crime and counters the myth that blacks are disproportionately involved in criminal activity. Instead, we find that African Americans are only overrepresented in *street* crime, a small part of crime in the United States.[77] Despite the recognition of the street criminogenic effects of unemployment, poverty, and inequality, conceptualization and theorization of the operation of capitalism and white supremacy vis-à-vis criminology require further elaboration.[78]

I need to emphasize a point noted earlier concerning the dialectical method. I do not work from a pat theory. Rather I am theory-building. Theory construction depends on developing historical narrative and drawing useful or relevant

---

[77] The federal government estimates the total cost of street crime in 1998 at $15.8 billion, 35 percent of which was recovered by police. Federal Bureau of Investigation, *Crime in the United States, 1998* (Washington, DC. US Government Printing Office, 1999). In contrast, Jerald Greenberg estimates the total cost of employee theft at $200 billion. See "The STEAL Motive. Managing the Social Determinants of Employee Theft," in *Antisocial Behavior in Organizations*, eds Robert A. Giacalone and Jerald Greenberg (Thousand Oaks, CA: Sage, 1997).

[78] See Michael J Lynch, W. Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994) See also Lynch, "The Extraction of Surplus Value, Crime and Punishment: A Preliminary Examination," *Contemporary Crisis*, 12 (1999)

components from past theoretical constructions. My work is not an "empirical test" of, for example, Blauner's thesis of internal colonialism, although my work supports his conclusions. Rather, I use his work to guide my analysis. Similarly, my work supports the arguments made by Rusche and Kirchheimer, but their theoretical constructions are exploited to aid the construction of my theory. My goal is to add to and combine these bodies of critical scholarship. These past studies are for the most part valid and sound and do not, in my view, require "testing." Indeed, I would not use their ideas heuristically if I did not believe they were substantially correct.

The Historical-Comparative Method

To answer the questions I pose in this dissertation, I compare over the course of five historical chapters (presented in part 2) five phases of US history and prehistory: (1) the prehistory of race, class, and punishment, circa 1450-1618; (2) the construction of racial slavery, 1619-1789; (3) the creation of a white capitalist republic, i.e., the United States, 1790-1865; (4) the reconstruction of racial caste after the emancipation of blacks from slavery, 1866-1964; and (5) the restructuring of the racial hierarchy during the "Second Reconstruction," 1965-2000. Perhaps it goes without saying that one must approach periodization with caution. As a realist, I believe that historical trends and disjunctures tend to block time into qualitatively different period. At the same time, I recognize that how one divides historical stages depends in part on the factors and conditions one is focused on, that is, on one's theoretical and even ideological orientation. I concur with Chomsky who writes, "History does not come neatly

packaged into distinct periods, but by imposing such a structure upon it, we can sometimes gain clarity without doing too much violence to the facts."[79]

By comparing phases that cover key aspects of the history of European colonization of North America I reveal the long-standing program of race formation that explains the situation blacks confront today vis-à-vis crime patterns and the criminal justice system. I contend that the structural and instrumental dynamics from which the post-Civil Rights era took its character, including crime patterns, are the result of the long development of racial caste in US history and prehistory. Likewise the period following the abolition of slavery was conditioned by the history of racial slavery and colonization. Each successive phase depends on the previous phase for its character; therefore all phases are explored.

Because of the confluence of hypothesized causal factors, my dissertation requires using a combinatorial logic that emphasizes contingency. This approach falls under the general heading of historical-comparative methods. The focus is on a single nation across time with comparisons drawn between historical periods. Data are quantitative and qualitative, and are drawn from primary and secondary sources. Primary sources include documents produced by elite organizations, such as corporate media, think tanks, organic intellectuals (such as sociologists), and the US government, and alternative sources, such as investigatory journalists and activists. I also examine the form and contents of the law. Secondary data analysis involves theoretically reorganizing the abundant literature on US labor history, white supremacy, patterns of

---

[79] Noam Chomsky, *Deterring Democracy* (New York Hill and Wang, 1992), 1

racial segregation, crime causation, and the evolution of the criminal justice system. Given the telescoping of history, much of the primary data analysis occurs in the latter phases, with earlier historical movements taking the form of a dialectical reorganization of secondary analyses.

However, the mode of theorizing departs from mainstream historical comparative method in the logic of adjudicating relevant facts. My procedure requires the research community to travel two paths. First, through abstraction, analysts induce general ideas, or abstract determinations, from empirical data. These categories, often furnished by previous efforts, serve as heuristics for analyzing concrete circumstances and for forecasting possible paths of development. Along the second path "the abstract determinations lead towards a reproduction of the concrete by way of thought."[80] These abstractions and their critiques are combined with other categories developed over the course of this study and applied to the historical materials to fashion the overall theory. My task is to concretize the analytical model I present in part 1, chapter 4, and develop the theory further at each stage of the analysis, by evaluating specific historical facts and incorporating sound extant historical interpretations of these facts. In this process, empirically and theoretically inadequate abstractions are rejected or revised (a process that is not presented in the dissertation, since the mode of presentation must necessarily differ from the mode of analysis). Hypotheses derived from abstractions judged valid link evidence back to the overall theoretical

---

[80] Marx, *Grundrisse*, 101.

framework.[81] Theory is adjusted to reality through a series of conceptual approximations. This procedure has been characterized as "the method of rising from the abstract to the concrete."[82] The "finished" product is a reproduction of the concrete in thought.

As I have noted, an approach that focuses on the totality of capitalist society from a dialectical perspective stresses continuity and change. The objective of theorizing is to demonstrate that abstractions that posit general developmental principles (albeit principles specific to the historical system under investigation) hold valid despite their concrete articulation. Understanding a cultural and historical context in its own terms is important, but it can also be blinding if one fails to take the long view grasping historical systems and their development as wholes, thus keeping "their permanent features, their structures" "distinct from the accidents and vicissitudes that mark their development."[83]

The purpose of scientific historiography in this dissertation is to demonstrate how the general laws of capitalist development (not universal laws of societal development) and the goals of white supremacy determine and condition the concrete historical configurations of societal events, trends, and institutions. This is not a hunt

---

[81] Contrary to the claims of mainstream methodologists, the logic of hypothesis evaluation in this procedure is confirmatory and verificatory, not "illustrative." The characterization of the dialectical method as "illustrative" represents a bias in mainstream social science in favor of more positivistic formulations

[82] Marx, *Grundrisse*, 101 See also the procedure "analytic induction modeling" articulated by Norman K. Denzin in *The Research Act: A Theoretical Introduction to Sociological Methods*, 2 ed. (New York· McGraw-Hill, 1978).

[83] Fernand Braudel, *A History of Civilizations*, trans Richard Mayne (New York Penguin, 1994), 35

for the nomothetic in the positivist sense; the comparisons are made between historical phases in a common historical system to demonstrate developmental dynamics, rather than a search for general socio-historical/cultural principles discerned through comparisons of different societal/historical systems. I underscore the limitations I have set on this project: although the totality is kept in mind throughout my investigation, I am not producing a comprehensive history of the United States and North America. More reasonably, I am selecting features of several phases of history for comparisons based on their utility in answering the research questions I am posing.[84] Historical narratives serve a theoretical purpose, not a descriptive one. Theoretical completeness is accomplished by combining analyses of structural, cognitive-behavioral, and structural-conjunctural levels of social reality in those features I have selected for study.

The structural dimension in theorizing involves analyzing the underlying system of social relations that constitute the societal basis — the enabling and constraining relations that structure situations and behavioral responses within concrete situations. Structures are generally transformed over time by anonymous, non-intentional mass behavior — behavior that germinates emergent structures — and primarily the logic of development inherent in the historical system, a logic of

---

[84] In this I am following the procedure of Daniel Jonah Goldhagen in his study, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York. Alfred A Knopf, 1996) In characterizing his work, Goldhagen writes that it "makes no pretense of providing a comprehensive history of the Holocaust. Its cases derive not from considerations of narrative fluency and comprehensiveness, but of their appropriateness for answering certain questions, for testing certain hypotheses The book's intent is primarily explanatory and theoretical. Narrative and description, important as they are for specifying the perpetrators' actions and the settings for their actions properly, are here subordinate to the explanatory goals," 463.

development that involves structural dynamics such as capitalist accumulation. The cognitive-behavioral (or ideological-practical or practical-conjunctural) level of theorizing involves studying the policymaking community and intentional activity. Structural-conjunctural levels of analysis concern the interaction of the underlying societal structures and concrete historical circumstances; "structural factors structure a situation, and conjunctural factors condition the concrete outcomes."[85] Thus comprehensiveness is achieved about the subject matter with the caveat that much remains to be explained about the larger historical system.

One possible objection to my approach concerns how evidence is accessed and adjudicated and whether theoretical completeness is actually achieved. For instance, it will be noticed that in my analysis of the ideological-political networks that design and implement criminal justice policy I do not survey actors to tap their personal thoughts and actions. I eschew doing this for practical and theoretical reasons. For one thing, policymakers may lie or code their remarks, thus hiding or rationalizing their intentions. For another thing, my approach sees individual actors, their thought and behavior, determined, or at least conditioned, by the social networks of which they are a part; therefore, it is the character of these social networks that are directly relevant to my research questions and the primary point of access, not what the individual actors may believe about the system.[86]

---

[85] William I. Robinson, *Promoting Polyarchy: Globalization, US Intervention, and Hegemony* (Cambridge University Press, 1996), 10.

[86] Goldhagen reasons that the perpetrators of the Holocaust "could not be understood, their actions could not be explained, if wrested from their institutional context. It makes little sense to view them as individuals disembedded from their immediate social relations. Without

Another possible objection is my reliance primarily on secondary sources. There is a debate about whether it is essential to use primary sources (interviews, documents, etc.). A common argument for primary sources is that they yield more valid data, especially when trying to assess motive, for example in a policy document. It would be assumed that in such a document policymakers would explain the reasons they advocate a particular view, giving researchers insights into their belief system. For a theorist making claims about human agency this would appear to be crucial data. Secondary sources are often treated as less than strongly valid than are primary sources because of the secondhand and interpretive character of the data. It may be noted that when using secondary sources, primary sources, if any are used, are found in the footnotes, endnotes, and bibliographies, so if a researcher wishes to check the existence and the interpretation of the evidence they may do so. As with primary sources, one way to improve the validity of secondary sources is to present multiple interpretations of an event or series of events.

There is much to be said for exploiting and/or theoretically reorganizing another scholar's historical interpretation. When a historian or sociologist produces an analysis, that scholar has produced a useful history. One should be critical of such works, but at the same time one must not go around reinventing the wheel. A good historical work may not only save a tremendous amount of time, but may also increase

---

studying the units in which they operated, too little would be learned about the character of their lives for a proper assessment of their motivations Studying some scientific sample of individuals from many units would efface the institutional, material, and social psychological circumstances of the Holocaust's perpetration," *Willing Executioners*, 466.

the validity of the present work, since scholars often specialize in certain areas and their conclusions are probably superior to the work of scholars who might take it upon themselves to generate another interpretation of a subject crucial to their thesis but about which they are inexperienced. Secondary sources are in some ways more useful than primary sources since it was the work of an historian or sociologist who made a piece of history intelligible, if not by simply pulling a body of work in relation to itself and seeing through the rhetoric to the meaning of that body of work. This points to the importance of recognizing that no scholar works alone — there is a research community and several research programs of which scholars are a part. We should take advantage of the intellectual division of labor.

Still another possible criticism of my work is my almost exclusive focus on the relations between blacks and whites. This focus is not intended to dismiss the significance of relations between the many racial-ethnic groups who live in the United States.[87] American Indian,[88] Latinos,[89] and Chinese immigrants[90] have been oppressed by capitalism and the criminal justice system. The inequities of their circumstances and

---

[87] There is a tendency to focus on African Americans and lump other minorities together. See Michael J. Leiber, "A Comparison of Juvenile Court Outcomes for Native Americans, African Americans and Whites," *Justice Quarterly*, 11 (1994).

[88] Ronet Bachman, Alexander Alvarez, Craig Perkins, "Discriminatory Imposition of the Law Does it Affect Sentencing Outcomes for America," *Native Americans, Crime, and Justice*, eds Marianne Q. Nelson and Robert A Silverman (Boulder, Co: Westview Press, 1996), Edwin L. Hall and Albert A. Simkus, "Inequality in the Types of Sentences Received by Native Americans and Whites," *Criminology*, 13 (1975)

[89] Majorie S. Zatz, "Chicano Youth Gangs and Crime The Creation of a Moral Panic," *Contemporary Crises*, 11 (1987). Cf Stephen Klein, Joan Petersilia, and Susan Turner, "Race and Imprisonment Decisions in California," *Science*, 247 (1990)

[90] Ronald T Takaki, *Strangers from a Different Shore: A history of Asian Americans* (Little: Brown, 1989)

their struggles against persecution are real and worthy of study. They deserve a detailed analysis that cannot be provided here. I focus on the oppression of blacks because of its centrality in US history: I regard the dynamic between whites and blacks as pivotal to the past, present, and future racial ordering of the United States — it is the motor of the US caste-class system I detail in this dissertation. While the oppression other racialized and ethnicized groups face is substantial, oppression carried out by whites is not distributed equally across racial-ethnic groups. A treatment of the panorama of racial-ethnic relations would gloss the depth of seriousness of the circumstances African Americans have faced and continue to face.

I am not alone in recognizing the uniquely important character of white oppression of blacks. In the early 1980s, Benjamin Ringer wrote that

> the racial encounter that from early colonial days has been, and still is, at the heart of this struggle is that of the black with white America. No other encounter has played as direct and dramatic a part in the creation, growth, and institutionalization of America's duality. It was on the back of the enslaved black that the white settler constructed his first comprehensive model of a plural society. After the abolition of slavery, the southern white built a second and almost as comprehensive a model with Jim Crow legislation, again on the backs of the black.

Crucially, Ringer did not leave the South to bear the responsibility for the oppression of blacks alone. "The northern white, who had abolished slavery much earlier," Ringer wrote, "developed his own distinctive versions both before and after the Civil War."[91] More recently, Michael Tonry has written that "black Americans are our most numerous minority group, the group that longest and most cruelly suffered the pains of slavery and legal discrimination and that today experiences the sharpest disparities

---

[91] Benjamin Ringer, *"We the People" and Others: Duality and America's Treatment of its Racial Minorities* (New York: Tavistock Publications, 1983), 13

in the justice system."[92] An obvious caveat to my dissertation, then, is that my theory, built from an examination of whites oppressing blacks, may not apply to the situation of other minority groups. I do not make the claim that my theory has general application. However, my method may provide insights when adapted to these other circumstances.

Can Historiography be Scientific?

My study of the caste-class structure of crime and punishment involves applying the methods of qualitative historical analysis without primary resort to the methods of quantitative sociology.[93] This might raise the question: can critical historiography be scientific? In *The Sociological Imagination*, probably one of the most important documents in the social sciences, C. Wright Mills asserts, "The weary debate over whether or not historical study is or should be considered a social science is neither important nor interesting. The conclusion depends so clearly upon what kinds of historians and what kinds of social scientists you are talking about."[94] But my experience is that many social scientists have not tired of the debate. Indeed, they consider the matter quite important, if not interesting.

---

[92] Tonry, *Malign Neglect*, ix.

[93] By "quantity" we are referring to an attribute of an event, object, conditions, etc., that is measurable by degrees, typically by assigning numbers to a concept defined as a variable. For example, the rate of surplus value may be determined by reference to an equation that measures the economic exploitation of labor by capital. See Marx, *Capital* This is opposed to qualitative sociology, wherein an event, object, condition, etc., either does or does not possess a certain "quality," such as a mode of exploitation being capitalistic or not. Neither quantitative nor qualitative approaches exclude the other, but rather it is typically a matter of emphasis

[94] C Wright Mills, *The Sociological Imagination* (New York· Oxford University Press, 1959), 143.

Of course, stating that the scientific status of historical sociology is controversial immediately begs two questions: what exactly is social science? and, more broadly, what is science? — questions that are beyond the scope of this dissertation. Hopefully, it suffices to state here that if science is the attempt to determine the "real structures which endure and operate independently of our knowledge, our experience and the conditions which allow us to access them,"[95] I believe sociology is and should be a science,[96] and, moreover, that historical sociology is an instance of the social scientific enterprise. It should be made clear, though, that this vision of science may not be the prevailing view (science is usually defined in a logical empiricist fashion). I know for certain that my approach is discordant with what many social scientists, probably representing the mainstream of social science, believe science ought to be (i.e. value-neutral).[97] My criticism of mainstream social science is not that quantitative sociologists should put aside their current projects and follow me, or even that their projects are illegitimate. On the contrary, I exploit the findings of quantitative sociology in my work.[98] Rather, I do not use positivistic approaches in the present study.

---

[95] Bhaskar, *A Realist Theory*, 25.

[96] Which probably alienates me from the humanist camp, although I believe the dichotomy between humanism and naturalism erects a barrier that limits critical knowledge. See Brian Fay and J. Donald Moon, "What Would an Adequate Philosophy of Social Science Look Like?" *Introductory Readings in Philosophy of Science*, 3rd edition, eds. E D. Klemke, Robert Hollinger, and David Wyss Rudge (Amherst, NY: Prometheus Books, 1998). For background on the split, see Georg H. von Wright, *Explanation and Understanding* (Ithaca, NY Cornel University Press, 1971)

[97] Cf. Turner; Don Martindale, *The Nature and Types of Sociological Theory*, 2nd ed. (Boston: Houghton Mifflin, 1981)

[98] For example, Lynch et al., "Surplus Value and Crime."

Conclusion

This introductory chapter presented in summary fashion the main concepts that comprise my dissertation's title, *Caste, Class, and Justice: Segregation, Accumulation, and Criminalization in the United States,* a balanced equation with three structure-dynamics: (1) caste/segregation, (2) class/accumulation, and (3) justice/criminalization. I explained my epistemological orientation, making explicit several assumptions that guide my theoretical vision. I explained that theory is something that is produced during historiography, as opposed to beginning with a theory and attempting to falsify it. I then presented the comparative-historical method that I employ, emphasizing the heuristical approach and my use of primary and secondary sources. Finally, I briefly addressed the question of the scientific status of historical sociology. There I expressed my opinion that critical historiography is a legitimate social scientific enterprise.

In the next chapter, "The Carceral Archipelago: The US Legacy of Repression," I introduce the reader to the problem of racial oppression by exploring a contemporary manifestation of white power: the *carceral archipelago.*[99] Outstanding facts about recent crime trends and the direction of US penal policies are surveyed. I then review some common explanations for these trends. In a section titled "Prisons Without Fences," I suggest an alternative theory wherein Africans and their descendants are shown to have for over five hundred years experienced analogous forms of criminalization and

---

[99] This term is found in Michel Foucault, *Discipline and Punish. The Birth of the Prison,* trans Alan Sheridan (New York Pantheon, 1977)

imprisonment in the European world-system. This chapter, which presents the current landscape of history, gives the reader a clear empirical image of the types of theoretical problems the dissertation desires to solve.

CHAPTER 2

THE CARCERAL ARCHIPELAGO: A LEGACY OF REPRESSION

In the United States, every aspect of political repression, of racism, has been historically bolstered by the legal system and the law It was the law that said that Black people were three-fifths of a human being — it was in the Constitution of the United States When Black people were enslaved, slavery was legal. With Jim Crow, the US version of segregation and apartheid was established after the Civil War, and again it was codified in law. People do not understand that the law is used to destroy the legitimate political aspirations of people of color.

— Dhoruba Bin Wahad[1]

The Prisonization of the Black Community[2]

Recent trends in US carceral policy are generally held to have begun in the mid-1970s when political elites "finally got serious" about fighting crime.[3] I will challenge this view in my dissertation. Whenever the trend began, however, by the end of the 1990s the US was incarcerating more people than during any other decade of American history. Over 800,000 persons (the vast majority, around 94 percent, are men) were imprisoned or jailed during the decade, exceeding the prison growth of the 1980s by 61 percent. Prison growth in the 1990s was nearly thirty times the average prison population growth of any decade before the 1970s.[4] See figure 1.2.1.

---

[1] Dhoruba Bin Wahad, "Still Black, Still Strong: Survivors of the US War Against Black Revolutionaries," in *Brotherman. The Odyssey of Black Men in America — An Anthology*, eds Herb Boyd and Robert L. Allen (New York: One World, 1995)

[2] Michael Benson, professor of criminology at the University of Tennessee, suggested "prisonization" The term is narrowly used in the literature to conceptualized prison socialization/assimilation See James W. Marquart and Jonathan R. Sorensen, eds., *Correctional Contexts: Contemporary and Classical Readings* (Los Angeles Roxbury Publishing, 1997) I use it more generally to denote the process of imprisoning black America

[3] Blumstein attributes rising incarceration in part to policy shifts in the late-1970s and 1980s. According to him, these changes were in response to studies showing inefficacy of rehabilitation and growing public concern for crime Alfred Blumstein, "Prisons," in *Crime*, eds. James Q Wilson and Joan Petersilia (San Francisco, CA: ICS Press, 1995)

[4] Vincent Schiraldi and Jason Ziedenberg, "The Punishing Decade Prison and Jail Estimates at the Millennium" (1999) Document available at Justice policy Institute, 2208 Martin Luther King, Jr. Ave. SE Washington, DC 20020.

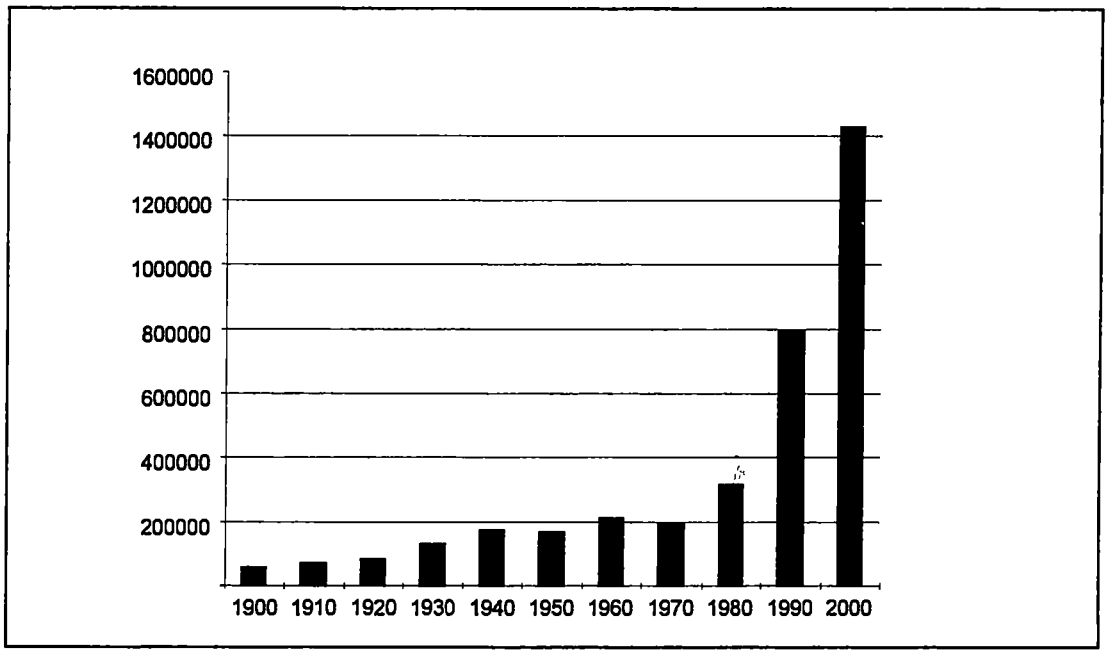


Figure 1 2 1
Growth in Prison Population 1900-2000[5]

The United States begins the new century with the distinction of being the nation that locks up more people than any other country in the world.[6] One recent study estimates the 1999 state and federal prison and local jail population to be 1,983,084 (over 1.2 million of these inmates were non-violent offenders).[7] The US incarceration rate is 6-10 times greater than most industrialized countries.[8] The

---

[5] Schiraldi and Ziedenberg, "The Punishing Decade," 1 The data for the 2000 column is from 1999. These data are from *The Sourcebook of Criminal Justice Statistics* (Washington, DC: Bureau of Justice Statistics, 1997) and *Historical Corrections Statistics in the United States, 1850-1984* (Washington, DC: Bureau of Justice Statistics, 1986)

[6] The US is second only to Russia in rates of incarceration See Marc Mauer, "Americans Behind Bars: US and International Use of Incarceration, 1995" (1997) Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004.

[7] The increase in non-violent offenders in state correctional facilities reflects not only increased incarceration of property offenders but fallout from the drug war. *Prisoners in 1996,* (Washington, DC Bureau of Justice Statistics, June 1997).

[8] Mauer, "Americans Behind Bars."

number of people in prison is four times what it was in 1980[9] and has grown five-fold from 1973.[10] Another study estimates that the unemployment rate would be 2 percent higher if people in prison and jails were counted.[11] If present trends hold,[12] the United States, with approximately 5 percent of the world's population, will hold one-quarter of the world's incarcerated population — two million of Earth's eight million prisoners.[13] When all people involved in some way with the US legal system are counted — inmates in prisons and jails, parolees, and probationers — a figure of close to six million human beings emerges.[14] Vivien Stern has decried the trend in imprisonment in many parts of the world as "a sin against the future,"[15] for example because of its destructive effects on families through forced separations.

The outstanding feature of these developments is their racial character. Over the past several decades, African American involvement with the legal system and

---

[9] The Sentencing Project, "Prison Populations, 'Projections and Analysis,'" Briefing/Fact Sheet #1040 (1999). Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004

[10] Marc Mauer, *Race to Incarcerate* (New York The New Press, 1999).

[11] Katherine Beckett and Bruce Western, "How Unregulated is the US Labor Market? The Penal System as a Labor Market Institution." Paper presented at the American Sociological Association meetings, Toronto 1997.

[12] Based on the 1997-98 rate of increase (4.8 percent for prisons, 4.5 percent for jails). Calculated from *Prisoners in 1998* (Washington, DC: Bureau of Justice Statistics, 1999).

[13] Schiraldi and Ziedenberg, "The Punishing Decade "

[14] The Sentencing project estimates the total correctional population in 1999 at 6 million. The Sentencing Project, "Facts About Prisons and Prisoners," April 2000 Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004. This still undercounts. In 1997 there were approximately 125,805 juveniles in residential placement. See H Snyder, and M. Sickmund, *Juvenile Offenders and Victims 1999 National Report* (Washington, DC· Office of Juvenile Justice and Delinquency Prevention, 1999).

[15] Vivian Stern, *A Sin Against the Future: Imprisonment in the World* (Boston Northeastern University Press, 1998)

presence in US penitentiaries and jails has drastically increased.[16] Between World War Two and the early 1970s the proportion of blacks in prison averaged around 30 percent, up from 21 percent in 1928.[17] In 1998, half (49.4 percent) of all male inmates in state and federal penitentiaries were African American.[18] This fact is especially striking when it is recognized that black males represent only six percent of the national population.[19] To compare white-black rates of incarceration, in 1997 whites were imprisoned at a rate of 491 per 100,000, blacks were incarcerated at a rate of 3,253 per 100,000 residents.[20]Almost one in three young black men age 20-29 is under some form of correctional control. A black man has a 20 percent chance of serving time in prison at some point during his life.[21] Although blacks have been overrepresented in criminal justice statistics for decades, a fact reflecting the long-standing racist orientation of US

---

[16] Marc Mauer, "Intended and Unintended Consequences. State Racial Disparities in Imprisonment." Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004.

[17] US Department of Justice, *Survey of State Prison Inmates, 1991* (Washington, DC: Bureau of Justice Statistics, 1993); Neal Shover and James Inverarity, "Adult Segregative Confinement," in *Criminology: A Contemporary Handbook*, second edition, ed Joseph F. Sheley (New York Wadsworth, 1995). In 1890, 29.5 percent of prisoners were black, representing the third largest proportion of prison inmates. Monroe N. Work, "Crime Among the Negroes in Chicago A Social Study," *American Journal of Sociology* 6 (1900).

[18] Allen J. Beck and Christopher J. Mumola, *Prisoners in 1998* (Washington, DC. Bureau of Justice Statistics, 1999) For various studies discussing African American overrepresentation in prison see Scott Christianson, "Our Black Prisons," *Crime and Delinquency*, 27 (1981), Hawkins, "Trends in Black-White Imprisonment: Changing Conceptions of Race or Changing Patterns of Social Control?" *Crime and Social Justice*, 24 (1985), George Bridges and Robert Crutchfield, "Law, Social Standing and Racial Disparities in Imprisonment," *Social Forces*, 66 (1988).

[19] According to the Census Bureau's April 1, 2000 population estimates, the total population of the United States is 274,520,000 There are 16,722,000 black males in the United States These data are obtained by writing Population Estimates Program, Population Division, US Census Bureau, Washington, D.C 20233.

[20] Beck and Allen, *Prisoners in 1998*.

[21] The Sentencing Project, "Facts About Prisons and Prisoners " Sixty-seven percent of juveniles in residential placement were minority. See Snyder, and Sickmund, *Juvenile Offenders and Victims*

institutions,[22] African Americans became increasingly overrepresented as the United States approached the 21st century, indicating that a change occurred at some point during the 20th century that brought the weight of repressive state controls to bear even more disproportionately on blacks.

Common Explanations

What change or changes in the United States caused the rise in prison populations, especially among African Americans? Various statistics support the argument that the disproportional imprisonment of African Americans is, in part, a consequence of rising rates of street crime that disproportionately involve blacks. Uniform Crime Report (UCR) data show a slow but steady climb in rates of street crime throughout the 1950s-1960s. By 1968, index crimes had risen to over 3,000 per 100,000 inhabitants. This was followed by a steep and unstable secular increase. In 1971, the index broke 4,000 per 100,000 inhabitants. In 1975, the crime index passed the 5,000 mark, and remained at this high plateau through the early 1990s, nearly reaching 6,000 in 1980-81 and 1990-91. Despite fluctuations, crime remained throughout the 1970s and 1980s at a level higher than in the two previous decades.[23]

It has been noted by critics of Uniform Crime Report data that growth in UCR statistics reflects in part increases in police activity and better reporting by law enforcement.[24] Others point to victimization studies to show that crimes remained

---

[22] Cf. William Wilbanks, *The Myth of a Racist Criminal Justice System* (Monterey: Brooks/Cole, 1987).

[23] Federal Bureau of Investigation, *Crime in the United States 1998* (Washington, D.C.. United States Department of Justice, 1999), FBI, *Uniform Crime Reports, Index of Crimes, United States, 1960-1995* (Washington, DC: Government Printing Office, 1998)

[24] Among the many problematic features of Uniform Crime Reports, two have contributed directly to the increase in crime rates: (1) their basis in arrest incidence and (2) changes in

stable or declined during this period.[25] Such claims have merit, however they do not explain away all the increase. The rise in crime in this period appears to be real, albeit not the dramatic portrait the statistics paint. See figure 1.2.2.

Overall, the evidence supports the claim that there are racial-ethnic differences in criminal offending. According to official statistics, blacks commit proportionately more street crime given their representation in the population than other ethnic groups. (The opposite is true for crimes committed by the affluent. White males are overrepresented in white collar and corporate crime.) Although blacks comprise approximately 12.8 percent of the population, according to FBI statistics produced during the 1980s, blacks consistently accounted for almost 50 percent of violent crime arrests and over 30 percent of property crime arrests.[26] Victimization data compiled by the US Justice Department also show greater black involvement in street crime.[27] Self-report studies are somewhat ambiguous, but they do show that where racial

---

tabulation. First, policing was expanded after 1967, raising official crime rates as a matter of course. Second, a proportion of the increase in crime rates over the past three decades is attributable to computerization For example, in 1973 police were recording approximately half of all the crimes reported to them; in 1988 police were recording well over 95 percent of crimes reported to them The consequence was that whereas the number of aggravated assaults did not increase much between 1973 and 1988, improved record keeping made it appear that the rates doubled. The same patterns occurred with robbery and rape. See Steven Donziger, ed., *The Real War on Crime: The Report of the National Criminal Justice Commission* (New York: Harper Perennial, 1996), 4. For a methodological critique of the UCR see John I. Kitsuse and Andrew V. Cicourel, "A Note on the Uses of Official Statistics," *Social Problems*, 11 (1963).

[25] While the rise in crime according to the National Crime Victimization Survey (NCVS), a survey produced by the US Justice Department, is less clear, the NCVS began in the 1970s and probably misses the moment of increase and upward trend. After 1980, these surveys do show a decline in the crime victimization. For a methodological critique of these data see Richard F. Sparks, "Surveys of Victimization: An Optimistic Assessment," *Crime and Justice: An Annual Review of Research*, 3 (1981).

[26] FBI, *Uniform Crime Reports, 1960-1995*

[27] Michael J. Hindelang, "Race and Involvement in Crimes," *American Sociological Review*, 43 (1978), and "Variations in Sex-Race-Age Specific Incidence Rates of Offending," *American Sociological Review*, 46 (1981)

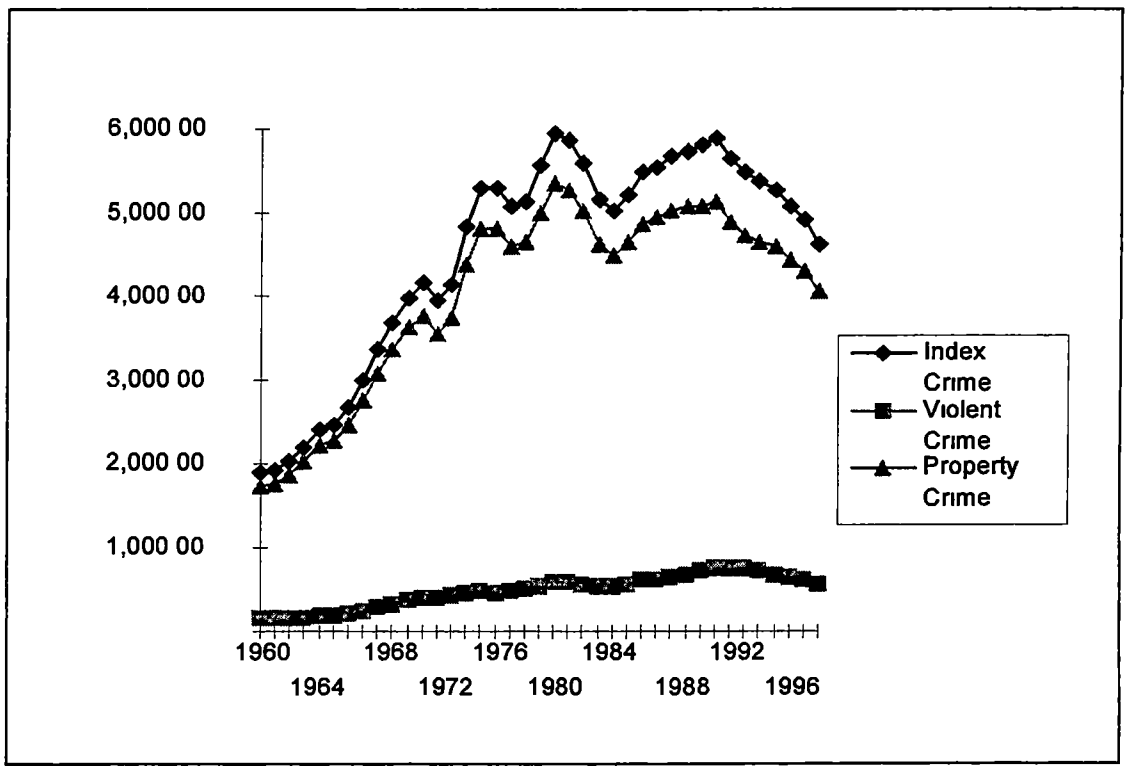


Figure 1 2 2 Index Crime Rate Per 100,000, Total, Violent, Property 1960-1998[28]

differences appear it is in the seriousness of the crime committed: it appears that blacks are involved in comparatively more severe crimes, such as robbery, whereas for less serious crimes, such as non-violent property crimes, blacks and whites show few differences.[29] Blacks are also on average more likely to be the victims of street crime.[30]

---

[28] Data to produce this figure were culled from FBI, *Crime in the United States, 1998*; FBI, *Uniform Crime Reports, 1960-1995*

[29] Piers Beirne and James Messerschmidt, *Criminology*, 3rd ed. (Boulder, Co. Westview, 2000); Delbert S Elliott and Suzanne S. Ageton, "Reconciling Race and Class Differences in Self-Reported and Official Estimates of Delinquency," *American Sociological Review*, 45 (1980) One national study of juveniles found very little support for racial differences in juvenile delinquency. See David Huizinga and Delbert S Elliot, "Juvenile Offenders Prevalence, Offender Incidence, and Arrest Rates by Race," *Crime and Delinquency*, 33 (1987).

[30] Elliot Currie, *Crime and Punishment in America* (New York Henry Holt, 1998); Randall Kennedy, *Race, Crime, and the Law* (New York. Vintage Books, 1997) Most crime is intra-racial.

Assuming rising crime rates account for all or most of the increased use in prison, it remains to be explained why crime rates rose either for the general population or specifically for blacks. Describing a handful of statistical correlations does not rise to the level of explanation. Common explanations run the gamut. Liberal structuralists theorize that large-scale domestic trends and a legacy of racial discrimination, such as ghettoization during the first half of the twentieth century, have played a role in locating the black community, as Hagan puts it, on the "moral, as well as physical, periphery of the economic system."[31] Being situated in the "underclass" leads to overrepresentation in crime both as a matter of course (since ordinary policing practice is concentrated in the impoverished neighborhoods) and because blacks become disproportionately involved in various forms of street crime and the sex and drug trades, what are called "deviance service centers,"[32] organized in a web of "ethnic vice industries."[33]

---

[31] John Hagan, "Crime and Capitalization Toward a Developmental Theory of Street Crime in America," in *Developmental Theories of Crime and Delinquency*, ed. Terence P Thornberry (New Brunswick Transaction Publishers, 1997). See Douglas S Massey, "American Apartheid: Segregation and the Making of the Underclass," *American Journal of Sociology*, 96 (1990); Massey and Nancy A Denton, *American Apartheid. Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993), Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York· Routledge, 1995), William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago. University of Chicago Press, 1980), *The Truly Disadvantaged· The Inner City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1990), *The Ghetto Underclass. Social Science Perspectives* (Newbury Park, CA: Sage Publications, 1993), and *When Work Disappears: The World of the New Urban Poor* (New York Knopf, 1996), Nicolas Lemann, *The Promised Land· The Great Black Migration and How it Changed America* (New York· Vintage Books, 1992); Loïc J. D Wacquant and W. J Wilson, "The Costs of Racial and Class Exclusive in the Inner City," *Annals of the American Academy of Political and Social Science* 501 (1989)

[32] Donald Clairmont, "The Development of a Deviance Service Center," in *Decency and Deviance*, eds Jack Haas and Bill Shafir (Toronto. McClelland, 1974).

[33] Ivan Light, "The Ethnic Vice Industry, 1880-1944," *American Sociological Review*, 42 (1977); Mercer Sullivan, *Getting Paid Youth Crime and Work in the Inner City* (Ithaca, NY: Cornell University Press, 1989); Elijah Anderson, *Street Wise: Race, Class, and Change in an Urban*

Conservative behaviorists blame social welfare policy during the 1950s-70s that combined "dysfunctional black traditions," "broken families," and government-induced "learned helpless" to created a "culture of poverty."[34] Characteristics of the culture of poverty are a lack of "self-reliance," poor labor force attachments, an inability to delay gratification (impulsiveness), promiscuity, violent tendencies — in short a pathological "lower class culture."[35] Sowell writes that "groups characterized by a high incidence of broken homes have also been characterized by high incidences of exaggerated 'masculinity' in the form of violence, liquor, obstreperousness, and sexual exploitation .... The same characteristics have also been observed by many in the American Negro."[36] The "criminogenic culture" of black America combined with

---

Community (Chicago University of Chicago Press, 1990); Kirk Williams, *The Cocaine Kids* (New York: Addison-Wesley, 1989); Jeffrey Fagan, "Drug Selling and Elicit Income in Distressed Neighborhoods The Economic Lives of Street-Level Drug Users and Dealers," in *Drugs, Crime and Social Isolation*, eds. A. Harrell and G. Peterson (Washington, DC· Urban Institute Press, 1993); Felix Padilla, *The Gang as an American Enterprise* (New Brunswick, NJ Rutgers University Press, 1992). This approach has its roots in the work of Clifford Shaw and Henry McKay other scholars of the Chicago School See, e.g., Shaw and McKay, *Juvenile Delinquency and Urban Areas* (Chicago University of Chicago Press, 1942)

[34] Edward C. Banfield, *The Unheavenly City· The Nature and Future of Our Urban Crisis* (Boston: Little, Brown, 1968), Patrick F Fagan and Robert E Moffit, "Crime," chapter 8 in *Issues '96· The Candidate's Briefing Book* (Washington DC Heritage Foundation, 1996), Charles Murray, *Losing Ground. American Social Policy, 1950-1980* (New York: Basic Books, 1985); Thomas Sowell, *Race and Economics* (New York· Longman, 1975) Cf. William Ryan, *Blaming the Victim* (New York Random House, 1971)

[35] Miller's celebrated study of street crime advanced a series of "focal concerns" characteristic of a "lower class culture," which included "trouble," "toughness," "excitement," and "fate." See Walter Miller, "Lower Class Culture as a Generating Milieu of Gang Delinquency," *Journal of Social Issues*, 14 (1958)

[36] Quoted in Ken Auletta, *The Underclass*, updated and revised (Woodstock, NY Overlook, 1999), 137. There are tests of this theory that use the variables these theorists cite as the most important. For instance, Sampson found a relationship between female-headed households, but linked it to the lack of employment in inner-city communities that causes family instability The empirical relationship existed independent of several variables, including income, race, age, and, crucially, welfare benefits Sampson finds no support for a dysfunctional black culture See Robert J Sampson, "Urban Black Violence· The Effect of Male Joblessness and Family Disruption," *American Journal of Sociology*, 93 (1987)

"liberal permissiveness" in criminal justice policy — that is, the abandonment of sure and swift punishment for "coddling" criminals in rehabilitation regimes — to drive up crime rates.[37]

Radical criminologists link prisonization to street crime caused by material deprivation, typically seeing the statistical overrepresentation of African Americans as a side-effect of class oppression. They propose that the greed, nihilism, misery, alienation, decadence, exploitation, and discrimination that inevitably result from capitalist arrangements systematically generate the criminogenic conditions that induce people at the bottom of the social structure to engage in criminal activity.[38] Crime rates are thus sensitive to economic instability. There are critical approaches that have examined the relationship of racial inequality and crime. Blau and Blau found, for example, that variations in urban criminal violence rates are explained by racial inequality in socioeconomic circumstances. They found the strongest

---

[37] The claim has been made that the recent decline in crime rates is the result of the "get tough" policies that Republicans have deployed over the past couple of decades. This view is not supported by the facts. Since the economy improved considerably after 1993, the falling rates of crime after 1995 may be attributable to the decline in the unemployment rate To rule out economic effects on punishment, the period before 1994 must be considered Michael J. Lynch has done this, analyzing the period between 1972 and 1993. He found no deterrent effect in tougher criminal justice policy. See Michael J Lynch, "Beating a Dead Horse. Is There any Basic Empirical Evidence for the Deterrent Effect of Imprisonment?" *Crime, Law and Social Change*, 31 (1999).

[38] M. J. Lynch, W. Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime. A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994); Willem Adriaan Bonger, *Criminality and Economic Conditions*, trans. Henry P. Horton (Boston: Little, 1916); Karl Marx, "Population, Crime and Pauperism," *New York Daily Tribute*, September 16, 1859, Frederick Engels, *The Condition of the Working-Class in England in 1844* (London: Sonnenschein, 1892). Much mainstream criminology has sustained these findings for violent crime as well as property crime, Steven F Messner and Richard Rosenfeld, *Crime and the American Dream* (Belmont, CA. Wadsworth, 1994)., Robert Crutchfield, "Labor Stratification and Violent Crime," *Social Forces*, 68 (1989), Kenneth Land, P. McCall, and Lawrence Cohen, "Structural Co-variates of Homicide Rates: Are There Any Invariances Across Time and Space?" *American Journal of Sociology*, 95 (1990).

relationship in the South (which has theoretically been attributed to the Southern tradition of violence) and the proportion of blacks in metropolitan areas (which they note has been explained by reference to a subculture of ghetto violence, especially the emphasis on toughness and excitement, components of a culture of poverty). They find that once the socioeconomic conditions caused by structured racial inequality are accounted for neither poverty, southern location, nor culture of violence carry much if any explanatory power. If there is a culture of violence, they contend, it is caused by the same forces that cause crime: economic inequalities rooted in a racially ascriptive social system.[39]

However, it is an error to suppose that the upward trend in repressive social control is primarily because of, or justified by, crime trends. While it may be true that street crime increased during the 1960s-70s, the criminal justice response has been out of proportion to the actual threat, something akin to hunting doves with an elephant gun. This is assuming, to carry the metaphor further, that dove hunting is a legitimate activity – an assumption that scholars and policymakers around the world have increasingly questioned, many countries having long moved away from repressive strategies of crime control.[40]

Furthermore, the suggestion that disproportionality in prison admissions reflects disproportionality in criminal involvement is often articulated in the context of

---

[39] Judith R Blau and Peter M. Blau, "The Cost of Inequality Metropolitan Structure and Violent Crime," *American Sociological Review*, 47 (1982). See also Steven Messner and Reid Golden, "Racial Inequality and Racially Disaggregated Homicide Rates: An Assessment of Alternative Theoretical Explanations," *Criminology*, 30 (1992), James Balkwell, "Ethnic Inequality and the Rate of Homicide," *Social Forces*, 69 (1990)

[40] Stern, *Sin Against the Future*

denying racial discrimination in the former.[41] The tack of such arguments is to find that the differences are due to income differences or the severity of the crime committed, etc., but not to racial discrimination.[42] Such arguments, assuming they were true (they are to a certain extent[43]), simply pass the source of racial discrimination to a point beyond arrest, conviction, and prison admission to be able to deny any discrimination at all in the system of justice. If prison admissions are a reasonable proxy for crime trends, racial discrimination in the latter, as the structural inequalities (such as income) that cause crime (including its severity), constitutes racial discrimination in the former. To use an analogy, if a white supervisor fails to promote blacks workers in the firm because their low status in the company hierarchy makes them invisible one cannot reasonably claim they are not discriminated against by his actions.

That the prison population reflects a response to increasing crime is to be doubted on at least two rather mundane counts. First, leaving aside drug offenses, the three crimes for which people are most often incarcerated, namely, murder, robbery,

---

[41] Alfred Blumstein, "The Racial Disproportionality of United States Prison Populations," *Journal of Law and Criminology*, 73 (1982).

[42] Donald J Black, "Production of Crime Rates," *American Sociological Review*, 35 (1970); Michael J. Hindelang, "Race and Involvement in Common Law Personal Crimes," *American Sociological Review*, 43 (1978), Gary Kleck, "Racial Discrimination in Criminal Sentencing A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty," *American Sociological Review*, 46 (1981).

[43] They are factually correct, but inadequate for a theoretical interpretation. Research over the years has consistently supported the claim of racial disparity in all phases of the criminal justice process; see Jim Sidanius, "Race and Sentence Severity: The Case of American Justice," *Journal of Black Studies*, 18 (1988), J. Petersilia, *Racial Disparities in the Criminal Justice System* (Santa Monica, CA· Rand, 1983), Thomas M. Uhlman, *Racial Justice* (Lexington, MA D.C Heath, 1979).

and burglary, remained relatively stable between the mid-1970s and mid-1990s.[44] There has, however, been a trend in the likelihood of imposing sanctions on defendants and lengthening their prison terms.[45] Second, the relationship between demographic trends (usually solid predictors of crime) and incarceration is contradictory. The number of males in the crime-prone age cohort (around 18 years of age) declined after 1980.[46] However, since the peak age of incarceration occurs later in the age structure, the movement of this cohort through time did contribute to the rise in incarceration in the 1980s (though probably not by much). After 1990, again because of cohort effects, incarceration rates should have declined.[47] In fact, they have skyrocketed.

Why law enforcement stepped up their activities against impoverished and marginal populations requires explanation independent of crime trends.[48] Given the

---

[44] Blumstein, "Prisons," 391. Blumstein notes that stability also means that the level of the big three (which account for one-third of all prisoners) did not appreciably decline, contradicting the deterrent theory that ostensibly justified the rapid increase in prison utilization.

[45] Patrick A. Langan, "America's Soaring Prison Population," *Science* 241; Jacqueline Cohen and Jose A. Canela-Cacho, "Incarceration and Violent Crime — 1965-1988," in *Understanding and Preventing Violence: Consequences and Control*, , vol. 4, eds Albert J. Reiss, Jr. and Jeffrey A Roth (Washington, DC: National Academy of Science, 1994)

[46] A Blumstein, J Cohen, and Harold Mills, "Demographically Disaggregated Projections of Prison Populations," *Journal of Criminal Justice*, 8 (1980) Based on demographic data, crime rates were predicted to climb during the latter 1990s and beyond, but this has not happened.

[47] Blumstein, "Prisons "

[48] This point should not diminish the fact that large-scale social-structural transformation of the United States across several decades in the first half of the twentieth century did alter patterns of street crime Patterns of segregation and changes in the structure of accumulation, causing high unemployment and impoverishment among marginalized populations in the US, exacerbated criminogenic conditions, leading to increasing activity of law enforcement in these areas. Thus, by the mid to late 1960s the increased calls for repressive state action from the public and elites had, at least in part an empirical impetus crime was increasing. Don Wallace and Drew Humphries 1993 "Urban Crime and Capitalist Accumulation, 1950-1971," *Crime and Capitalism. Readings in Marxist Criminology*, ed David Greenberg (Philadelphia: Temple University, 1993)

history of the United States, it is not unreasonable to suspect that there are factors other than crime motivating the direction of criminal justice policy and practice. Since the offenses for which the state arrests and punishes blacks are usually forms of street crime,[49] two obvious questions come to the fore: (1) what has forced blacks into street-criminogenic conditions? and (2) why are blacks the subjects of excessive criminalization? This dissertation critically investigates these two questions.

Two points of clarification: The first question as I have put it assumes that criminality has an outside source, that causal forces lie in the social conditions in which individuals find themselves embedded, rather than innate individual traits (e.g., personality, IQ, etc.),[50] or different types of persons, such as "temporary" versus "persistent" antisocial persons.[51] First, race is not a biological reality.[52] Second, since crime is distributed throughout the class and race/ethnic structure, it is not reasonable to claim that blacks are "more criminal." Whites disproportionately commit affluent crime, a form of crime that is far more prevalent than street crime.[53] Affluent white

---

[49] Anthony R Harris and Lisa R. Meidinger, "Criminal Behavior Race and Class," in *Criminology*, ed. Sheley, 141.

[50] Cf. James Q. Wilson and Richard J Herrnstein, *Crime and Human Nature* (New York Simon, 1985), R. J. Herrnstein and Charles Murray, *The Bell Curve* (New York: Free Press, 1994), J Philippe Rushton, *Race, Evolution, and Behavior A Life-History Perspective* (New Brunswick, NJ. Transaction, 1996)

[51] Cf Terrie E Moffit, "Adolescence-Limited and Life-Course-Persistent Offending: A Complementary Pair of Development Theories," in Thornberry. Although Moffit does not articulate a theory of innate racial differences in this article, the theory logically implies such a theory If differences in offending are explained in part because of individual behavioral traits, and African Americans are statistically more likely to be in the persistent offending category, then the inference is that these behavioral traits are more likely to cluster in African American boys and men than in groups whose constituents are more likely to be "temporary" anti-social persons, i.e , middle class white boys

[52] See Luca Cavalli-Sforza, Paolo Menozzi and Alberto Piazza, *The History and Geography of Human Genes* (Princeton University Press, 1994).

[53] See Harris and Meidinger, "Criminal Behavior "

crime also presents problems for control theories that posit that patterns of early childhood socialization explain criminal involvement.[54] The second question assumes that since crime is in part a social and political construction — which is to say that human behavior must be at some point defined as *criminal* behavior — there must be important interests involved in deciding what is crime and who is criminal. Although the rhetoric of an "objective rule of law" pervades Western discourse, the law does not in fact write itself.

Prisons Without Fences

Liberal structuralists are right to look at the history of racial discrimination to explain present crime and criminal justice trends. Answering the questions I just posed requires exploring race and class formation in the United States. The social forces that locate blacks in the impoverished neighborhood where street crime prevails, and the ideological and policy orientations that guide agents of social control to target African Americans, did not emerge in the second half of the twentieth century. On the contrary, the patterns of street crime that issued from the 1960s resulted from the patterns of racial segmentation that systematically privileged whites and disadvantaged blacks throughout the twentieth century, patterns that included legal and extralegal control of the black population. Not only did racism function during this time to repress blacks in a direct fashion, but its effect was to structure blacks into positions where they were more likely to be repressively controlled.

---

[54] See Travis Hirschi, Michael R Gottfredson and Travis Hirschi, *The General Theory of Crime* (Stanford, CA: Stanford University Press, 1990), T Hirschi, *Causes of Delinquency* (Berkeley University of California Press, 1969) and "The Family," in Wilson and Petersilia

However, a careful look at history reveals much more than the mechanisms — segregation, ghettoization, suburbanization, capital disinvestment — that exposed blacks to participation in, and victimization by, street crime and the criminal justice apparatus in the twentieth century. Africans and their descendants have experienced analogous forms of criminalization, victimization, and imprisonment in the European world-system for over five hundred years. To treat the ghetto or Jim Crow or racial slavery as completely unique landmarks on the terrain of American history is to miss the forest for the trees. "American Apartheid" is not a twentieth century phenomenon, but rather a constant in the history (and prehistory) of the United States.

Part of the problem with contemporary mainstream discourse on the subject of crime and imprisonment, whether it raises the subject of race or smuggles it in through the back door (a racial subtext is inevitable), is the language academics use to talk about race in America. They do not speak frankly. If Douglas Massey and Richard Thompson Ford[55] are disconcerted that the word "segregation" has "disappeared from the American vocabulary,"[56] they should be distressed to hear what were in fact slave labor camps constantly being uncritically characterized as "plantations," a label, if used without qualification, that conjures a genteel image of the American antebellum South.[57] Such euphemisms, Peter Wood charges, block out the reality of racism. "If

---

[55] Ford, "The Boundaries of Race: Political Geography in Legal Analysis," *Critical Race Theory. The Key Writings that Formed the Movement*, eds. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, eds. (New York The New York Press, 1995).

[56] Massey, *American Apartheid*, 1.

[57] Perhaps worse is that a major book about street crime and punishment trends, containing the contributions of twenty-eight "leading experts" on crime, can appear without the terms "African American," "blacks," or "race" even being listed in the index. See *Crime*, eds. Wilson and Petersilia.

racism has proved more tenacious in modern America than many anticipated," he writes, "this is due in part to the fact that racial enslavement was far worse than most Americans have understood."[58] The United States, he says, is "a nation in denial."

Voices from the past tell us that some of those who lived in the world of slave labor camps were not ignorant of the parallels between slavery and imprisonment. David Walker, in a 1829 pamphlet, *An Appeal to the Colored Citizens of the World,* recognized slavery for what it was: a form of incarceration.[59] Walker was a black man living in a society that practiced racial slavery, so some might find his insight unsurprising. But whites also recognized the parallels. For example, Angelina Grimké, a contemporary of Walker, observed that blacks were "chained and driven like criminals, and incarcerated in the great prison-house of the South."[60]

The parallel *should* have been obvious: an explicit component of the ideology legitimating slavery held that African slaves *were* prisoners. Englishmen such as John Locke justified slavery in the colonies on the principle that it was the continuation of war captivity: the slave's life had been spared in battle and this act of mercy required

---

[58] Peter H Wood, "Slave Labor Camps in Early America: Overcoming Denial and Discovering the Gulag," *Inequality in Early America,* eds Carla Gardina Pestana and Sharon V. Salinger (Hanover: University Press of New England, 1999).

[59] The full title of the pamphlet was *Walker's Appeal, in Four Articles. Together with a Preamble, to the Coloured Citizens of the World, but in particular, and very expressly, to those in the United States of America, written in Boston, State of Massachusetts, September 28, 1829.* Smith writes, "The Indians of North and South America — the Greeks — the Irish, subjected under the king of Great Britain — the Jews, that ancient people of the Lord — the inhabitants of the islands of the sea — all the inhabitants of the earth, (except however, the sons of Africa) are called *men,* and of course are, and ought to be free. Be we, (colored people) and our children are *brutes!!*" Quoted in *A Documentary History of the Negro People in the United States from Colonial Times Through the Civil War,* ed. Herbert Aptheker (New York. The Citadel Press, 1951), 93-94.

[60] Quoted in Wood, "Slave Labor Camps," 226

that the slave toil for the merciful indefinitely.[61] The normalization of slavery coupled with the widespread belief in the inferiority of blacks functioned to put racial oppression and injustice out of the sight of many white Americans who benefited from slavery. So much so that Virginians were genuinely incredulous that their slaves would flee to join the British side in the War of Independence.[62] At the very least, it allowed whites to diminish in their minds and consciences moral responsibility for a system that privileged them while dehumanizing others.

There are social scientists and historians who are tackling the issue of race in a historical and honest fashion.[63] But too many scholars look at the large African American population behind bars, in jumpers, and in chains and see this as something unique in the American experience. A veil of ignorance permits conservatives, and sometimes liberals, to suggest, with seeming credibility, that recent developments, like the expansion of Aid to Families with Dependent Children (AFDC) in the 1960s and 1970s, are the cause of the historic levels of incarceration. It is not race or criminalization that lies behind the crisis of black America, they insist, but rather "failure of character" or a "culture of poverty." Such notions ignore history.

The public appears oblivious to the racial realities of the character of black incarceration, most probably unaware of the racial disparities in criminal justice policy, while others, influenced by the culture of white supremacy and the well-

---

[61] Anthony Gronowicz, *Race and Class Politics in New York City Before the Civil War* (Boston: Northeastern University Press, 1998), 12.

[62] Patricia Bradley, *Slavery, Propaganda, and the American Revolution* (Jackson: University Press of Mississippi, 1998).

[63] For example, Manning Marable, *How Capitalism Underdeveloped Black America* (Boston: South End Press, 1983); David R Roediger, *The Wages of Whiteness" Race and the Making of the American Working Class* (New York Verso, 1991)

publicized work of the conservative and liberal intellectual, believe that blacks are either socialized to be, or are inherently, more criminal than whites.[64] In part, the popular failure to see the racial implication of contemporary criminal justice policies stems from the pervasive sway of the race-neutral doctrine and colorblind mythology. Americans are a people who, by and large, believe they put racism behind them in 1964.[65]

The normality of whiteness plays its vital role here.[66] Through the disguise of cultural propriety white supremacy exercises racial oppression relatively invisibly.[67] This is true even when whites in periods of crisis assert the superiority of their culture; because being "white" is synonymous with being "American," the crisis of white culture often appears as heightened patriotic sentiment.[68] African Americans and other minorities are expected to live by a white middle-American measuring rod. Ideological devices, such as the "culture of poverty," perform an important service in reaffirming white normality. But they do even more than this: "The construction of a pathological underclass diverts the public eye from the structured dependencies and crises of the predominantly white middle class,"[69] thus protecting chaste whiteness.

---

[64] Joe R Feagin and Clairece Booher Feagin, *Racial and Ethnic Relations*, 6th ed (New Jersey. Prentice Hall, 1999)

[65] This is based on survey data collected by National Opinion Research Center, University of Chicago, 1155 East 60th Street, Chicago, Illinois 60637. A majority believes that the conditions blacks face today are due mainly to black's lack of effort and not to white discrimination

[66] Faye V Harrison, "The Persistent Power of 'Race' in the Cultural and Political Economy of Racism," *Annual Review of Anthropology*, 24 (1995).

[67] George Lipsitz, "The Possessive Investment in Whiteness Racialized Social Democracy and the 'White' Problem in American Studies," *American Quarterly*, 47 (1995)

[68] Harrison, "Persistent Power," 63. See also Howard Winant, "Behind Blue Eyes Whiteness and Contemporary US Racial Politics," *New Left Review*, 225 (1997)

[69] Harrison, "Persistent Power," 62

There is, then, a need to redefine the terms of the discussion of racial unfreedom in the United States. I extend Wood's redefinition of the plantation. It was not only under slavery that blacks were treated as criminals. Jim Crow segregation is analogous to house arrest or to the regime of status offenses (that are often arbitrarily) imposed on adolescents. There were curfews and restrictions on movement — laws and rules instructed blacks where they could be and with whom they could be. A legal standard of "separate but equal" in a white society inevitably conferred upon whites a superior status and guaranteed the protection of privileges that accrued to that status.[70]

Segregation was, of course, not perpetrated solely by southerners. In the North, blacks were political-legal inferiors, as well. Law enforcement was used to restrict the freedom of African Americans and to perpetuate their material and social deprivations. Like Jim Crow, the ghetto was the purposeful creation of northern whites, buttressed by the law.[71] Contrary to the poverty of culture thesis, the ghetto is not a situation that has been created and recreated by African Americans — blacks do not express a desire to perpetuate, either in their thinking or their behavior, the conditions of the US inner city. The harm caused to blacks by the existence of the ghetto, with its intolerable and immoral levels of poverty and social ills, rivals the other forms of oppression blacks have been forced to endure over the centuries.

---

[70] This doctrine was recognized in 1896 when the US Supreme Court upheld a Louisiana law that made a legal distinction between whites and blacks. Speaking for the majority, Justice Brown concluded that legal distinctions between blacks and whites had "no tendency to destroy the legal equality of the two races," *Plessy v. Ferguson* 163 US 537 (1896).

[71] Massey and Denton, *American Apartheid*; Oliver and Shapiro, *Black Wealth/White Wealth*; Benjamin Ringer, *"We the People" and Others: Duality and America's Treatment of its Racial Minorities* (New York: Tavistock Publications, 1983)

Accompanying formal legal oppression has been the travail blacks have had to endure for centuries as the white majority has perpetrated private and collective acts of control and violence upon them. Housing and other forms of discrimination, and beatings and lynchings, constitute a systematic pattern of extralegal repression. Legal and extralegal repressions are, moreover, woven together. As the posture of the former increases the likelihood of the latter, as the legal system fails to protect minorities from or change the circumstances of minorities caused by the actions of private actors, as the majority's belief in the inherent inferiority of minorities is legitimated and sanctioned by the legal definition of those groups as inferiors, as knowing the law will look the other way when the victim is an acknowledged inferior amounts to a tacit agreement that members of the majority are to assume collective responsibility for reproducing the system of oppression — inferior legal status puts racialized populations in danger.[72] For blacks, these dangers run from the past into the present. The horror of lynching is not some distant barbaric act — certainly it is barbaric, but its horror is twentieth century.[73]

There must be a recognizing and naming of whiteness: "Historicized analyses of whiteness go against the convention of ignoring yet universalizing whiteness as an unspoken but naturalized norm presumed to be unaffected by racism."[74] We have to

---

[72] Hate crime laws are designed to address crimes that are perpetrated against individuals because of their identification with a particular group The law assumes the reality of what it is trying to deter. crimes of collective hatred This is an important step forward It is unclear, though, whether the late presence of hate crime laws will have the opposite effect on violence as their long-standing absence Moreover, they have been at least once recklessly misapplied, in the charging of a black man whose victims were white

[73] See Marable, *Capitalism Underdeveloped Black America.*

[74] Harrison, "Persistent Power of 'Race,'" 63

pierce through white cultural normality to expose how black underprivilege is the consequence of white privilege.[75] Morgan's observation that that the "rights of Englishmen were preserved by destroying the rights of Africans"[76] — or as Marable put it, "each advance in white freedom was purchased by black enslavement"[77] — must train the vision of our research on race, crime, and incarceration.

An examination of the racial history of crime and punishment in the United States does much more than strengthen the body of thought that posits the criminal justice system as a primary mechanism through which racial dominance is achieved. It forces us to confront the truth that race formation and oppression are central to political, cultural, and economic development in the United States, and that the modern criminal justice system is but one concrete manifestation of a living body of analogous social injuries perpetrated against African Americans.

To say that the criminal justice system is a concrete manifestation of race formation and oppression is to articulate two essential points. First, accompanying its general class orientation, the character of the criminal justice system at any given point mirrors the prevailing structure of racial caste and the culture-ideology of white supremacy. The criminal justice system supported the institutions of slavery and apartheid and continues to support the prevailing racial hegemony.

---

[75] Peggy McIntosh, Working Paper 189 "White Privilege and Male Privilege. A Personal Account of Coming To See Correspondences through Work in Women's Studies" (1988). Paper may be obtained by writing Wellesley College Center for Research on Women, Wellesley MA 02181

[76] Edmund S Morgan, *The Challenge of the American Revolution* (New York: Norton, 1978), 166. See also Morgan, "Slavery and Freedom The American Paradox," *Journal of American History*, 59 (1972).

[77] Marable, *Capitalism Underdeveloped Black America*, 2

Second, it follows from this that changes in the character of crime and punishment result from alterations in racial structure and formation, and that criminalization plays a role in shoring up racial regimes. For example, changes following the 1964 Civil Rights Act, most obviously the abolition of de jure apartheid, were in part reflected in the reorganization of the criminal justice system. The deepening crisis of US social life during the 1960s-80s created a window of opportunity for the relatively marginalized interests of key segments and class fractions of American society, namely the conservative right. Public solutions to the crisis that gained currency were carefully cultivated by rightwing politicians and policymakers to appeal to shifting public opinion, this shift the result of suburbanization and changes in the domestic economic structure.[78] Repressive criminal justice strategies became part of a larger political program to roll back the New Deal, especially social welfare, industrial and financial regulation, and civil rights gains. A similar pattern followed Abolition, as has been noted by Marable and others, where in the transition from slavery to apartheid incarceration of blacks increased rapidly.[79] Thus the qualitative shifts in the linked structure of racial caste and social

---

[78] See Amy E. Ansell, ed. *Unraveling the Right: The New Conservatism in American Thought and Politics* (Boulder, Co Westview Press, 1998); Sara Diamond, *Roads to Dominion: Right-Wing Movements and Political Power in the United States* (New York The Guilford Press, 1995); Tony Platt and Paul Takagi, "Intellectuals for Law and Order: A Critique of the New 'Realists,'" *Crime and Social Justice*, 7 (1977); Donziger, *Real War on Crime*; Winant, "Behind Blue Eyes "

[79] Marable, *Capitalism Underdeveloped Black America*. In his analysis of convict labor in the post-Slavery South, where a dramatic increase in the penitentiary system occurred, Marable concludes that the "explosion of the Black prison population reflected an abrupt alteration of Southern laws," 112. See also George M Fredrickson, *White Supremacy. A Comparative Study in American and South African History* (Oxford University Press, 1981); H. Bruce Franklin, ed , *Prison Writing in 20th-century America* (New York. Penguin Books, 1998).

class, which may be regarded as periods of crisis in the system of racial and class domination, require a transformation in the structure of social control.

With this in mind, and with the historical materials laid out in front of me, it is abundantly clear that the criminal justice system, while always playing a role in supporting the structure of white privilege, enlarged its public role with each successive freedom gained by blacks in other areas of the social order.

Under slavery, black slaves were foremost under the control of their owners.[80] Free blacks were more likely to be subjected to public social control.[81] Thus public oppression of blacks through official criminal justice activity was comparatively less than succeeding historical periods. However, the more threatened the institution of slavery became in the mid-1800s, the more developed the law enforcement apparatus became.[82] Still, overall, blacks, overwhelmingly slaves, the vast majority in the South, endured private forms of repression that was backed by government institutions.

When blacks were emancipated from slavery, the criminal justice structure was broadened considerably, playing a more direct role in securing the economic order while apartheid was formed and normalized.[83] Prison populations increased steadily during this period, leveling off in 1940. The proportion of blacks in prisons increased

---

[80] Christopher Adamson, "Towards a Marxian Penology: Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (1984).

[81] "Although less than 2 percent of the population of the free states (fewer than 250,000 persons), African Americans were severely restricted in their movement amd the exercise of basic rights," Jeffrey C. Stewart, *1001 Things Everyone Should Know About African American History* (New York Doubleday, 1996), 93.

[82] Stewart, *1001 Things Everyone.*

[83] Marable, *Capitalism Underdeveloped Black America*

relative to whites, especially after WWII.[84] Blacks were increasingly being managed through the criminal justice end of the political-legal system, as private spheres of racial control were diminishing. However, apartheid, with its regime of status offenses and character of analogous house arrest, still served to control blacks largely without resort to prisons.

After the civil rights legislation of the 1960s dissolved the system of legal apartheid, the criminal justice apparatus expanded exponentially. In the period 1960-70 there had been a drop in the prison population. See figure 1.2.3. This was time of relative prosperity in the United States and there was a movement in the domestic policymaking community to reduce the repressiveness of the criminal justice system. These combined, despite rising crime and societal unrest, to reduce prison admissions and the length of sentences. The next decade, however, saw a dramatic increase in prisoners, more than twice that of any previous decade.[85] The rise in prison admissions and increased length of prison terms indicates rising crime rates and a return in repressive criminal justice policy. But what the figure does not indicate is that the outstanding feature of the carceral trend was an increase in the proportion of blacks committed to prison. Whereas thirty-nine percent of inmates were non-white (mostly black) in 1960, by the mid-1970s, 47 percent were black.[86] Today, blacks have the largest prison presence of any ethnonational group.

---

[84] Scott Christianson, *With Liberty for Some. 500 Years of Imprisonment in America* (Northeastern University Press, 1998)

[85] Schiraldi and Ziedenberg, "The Punishing Decade."

[86] Christianson, *With Liberty for Some*

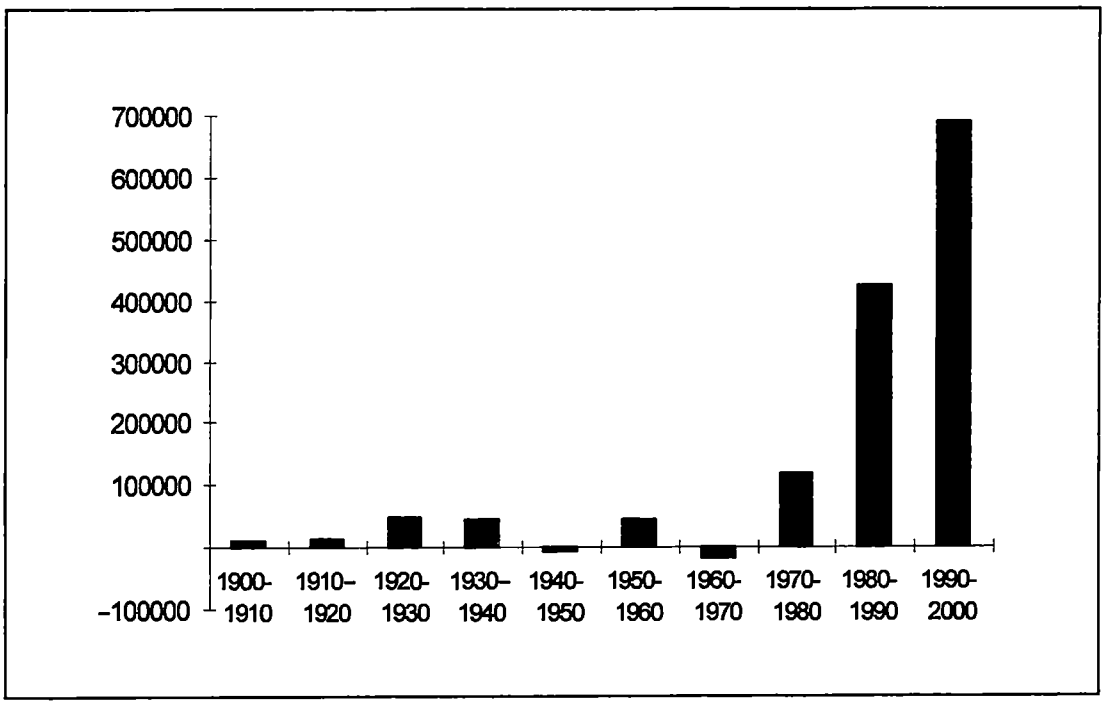


Figure 1.2 3
Change in Prison Population Each Decade 1900-2000[87]

We need to be clear about the character of this change. The growth in prisons was accelerated by the macroeconomic crisis in the 1970s-80s, when governmental elites decided to manage the catastrophe of the working class by tightly controlling their behavior and by incarcerating them. This policy was *knowingly* guaranteed to increase the proportion of African Americans in state and local prisons and jails.[88] But

---

[87] Schiraldi and Ziedenberg, "The Punishing Decade," 2

[88] Gloria T Lessan, "Macro-Economic Determinants of Penal Policy: Estimating the Unemployment and Inflation Influences on Imprisonment Rate Changes in the United States, 1948-1985" *Crime, Law and Social Change*, 16 (1991); Ivan Jankovic, "Labor Market and Imprisonment," *Crime and Social Justice*, 8 (1977); David E. Barlow and Melissa. H Barlow, "Federal Criminal Justice Legislation and the Post-World War II Social Structure of Accumulation in the United States," *Crime, Law and Society*, 22 (1995), D E Barlow, M H. Barlow, and Theodore G. Chiricos, "Long Economic Cycles and the Criminal Justice System in the US" *Crime, Law and Social Change*, 19 (1993); Don Wallace, "The Political Economy of Incarceration trends in late US Capitalism. 1971-1977," *Insurgent Sociologist*, 9 (1980); T. Chiricos and Miriam A Delone, "Labor Surplus and Punishment A Review and Assessment of Theory and Evidence," *Social Problems*, 39 (1992).

what is crucial for the reader to recognize is that the trend in incarceration begins *before* the major macroeconomic disturbances that began in the mid-1970s. This is not a matter of temporal sequencing. The US nation-state under Lyndon Johnson, bringing the states into cooperation with the federal government, embarked on an unprecedented expansion of the police state. Johnson and other political leaders and policymakers were reacting to what they perceived as a crisis, and that crisis, according to their policy documents, revolved around black Americans. Thus the trends we see in police state expansion, harsher penal policies, and the increasing disproportion of African Americans incarcerated in US penitentiaries have been the direct consequence of a *racially consciousness* public policy.

The historical materials reveal a clear pattern: Blacks are removed from one or more conditions of unfreedom and servitude (e.g. slavery) to other analogous conditions (e.g. imprisonment). Just as the principle of capitalist accumulation remains basically the same whether the concrete mode of exploitation is slave-, peasant-, or wage-labor, the principle of racial oppression remains constant despite its variable historical manifestations — whether slavery, apartheid, or the carceral society. *Plus ça change plus c'est la méme chose.*

Conclusion

In this chapter, I examined the contemporary racial character of street crime and imprisonment. There has been over the past thirty years a dramatic increase in the number of prison commitments in the United States. The US now has more people in prison than any other country. The majority of these prisoners are black. I also

documented the increase in crime throughout the 1970s and 1980s. Because blacks disproportionately commit street crime, violent and non-violent, and because law enforcement targets poverty areas where the inhabitants are disproportionately African American, blacks are overrepresented in the crime statistics. I reviewed several explanations for why we should see these patterns and found all of them inadequate (although some were better than others). Finally, I presented the explanation I use throughout this dissertation: that blacks have existed under relative conditions of unfreedom throughout the history and prehistory of the United States. The carceral archipelago is a concrete manifestation of America's legacy of repression.

In the next chapter, I critique conceptions of class, race, and their intersections to clarify the way I use these concepts in my dissertation. It cannot be assumed that the reader and I share the same definitions and conceptualizations of what are essentially contested social science (and popular) terms. Unlike approaches that base class on intersubjective recognition or define racism as the expression of color-prejudice, I take a realist approach to both class and race, conceptualizing them as objective systems in which people embed. These concepts are examined especially for the way they overlap and cut across each other, doubling the oppression of racialized groups, thus laying the conceptual foundation for an explication of the caste-class model I use to adjudicate the historical evidence.

CHAPTER 3

CLASS, RACE, AND RACIAL CASTE

In the next chapter, I develop a model to guide me in resolving two theoretical problems: (1) how race and class are linked and (2) how crime and punishment are differentiated by the resulting race-class model. The present chapter lays the foundation for that task. To understand race and class and their nexus at an abstract level, I criticize the relevant literature with an eye towards developing a more complete connection between the two. The principal explanatory factors I use to develop this model are capitalist accumulation, or *exploitation*, and racial formation, or *racialization*. These two engines of capitalist development lie at the core of socioeconomic stratification in the United States.[1]

Exploitation and Class Structure

Accumulation of wealth under capitalism rests on the dynamic of surplus-value extraction, or exploitation.[2] Surplus-value is that quantum of labor performed beyond socially necessary labor and is the source of profit. Surplus also provides income for affluent classes. In the current structure, for example, surplus enriches the capitalists, professional-managerial class and a privileged sector of the working class, the capital-intensive and knowledge-intensive worker. These privileged locations in

---

[1] Karl Marx, *Capital: A Critique of Political Economy*, vol one (New York: Penguin, 1990); Melvin Leiman, *The Political Economy of Race* (Pluto Press, 1993).

[2] For example, Erik Olin Wright, *Class Counts: Comparative Studies in Class Analysis* (New York University of Cambridge, 1997), *Classes* (New York: Verso, 1985); Marx, *Capital*, vols. 1-3 (New York Penguin Books, 1990-92), Paul Baran and Paul Sweezy, *Monopoly Capital: An Essay on the American Economic and Social Order* (New York Monthly Review Press, 1966), Ernest Mandel, *Late Capitalism*, trans Joris De Bres (New York: Verso, 1978)

the class structure have emerged with the evolution of the capitalist mode of production, as the rising organic composition of capital has drawn about it greater levels of control over the labor process and the creation of a skilled stratum of workers to carry out this function.[3]

Because capitalist firms maximize surplus-value by reducing the amount of socially necessary labor contained in commodities, or what they are laying out in variable capital costs, firms strive to reduce the amount of variable capital deployed in production through wage suppression, mechanization, rationalization, and automation. Those who live off wages, while able to organize and marginally control terms under which their labor-power is sold, are structurally disadvantaged in the system of wage-labor. Capitalist strategies to undercut labor increase inequality, marginalize labor, and expand the industrial reserve army. Thus the same process that creates wealth and power for some segments of society, impoverishes and peripheralizes other segments of society.

Capitalist exploitation is one of the main forces determining and conditioning the character of crime and punishment The production of socioeconomic inequality links capitalist accumulation to criminogenic conditions.[4] Because raising the organic composition of capital increases output per worker, high-wage production requires

---

[3] Harry Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974)

[4] See Michael J. Lynch, W Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994). See also Lynch, "The Extraction of Surplus Value, Crime and Punishment A Preliminary Examination," *Contemporary Crisis*, 12 (1999).

fewer workers. Waves of disemployment either increase the size of the labor surplus or force workers into labor-intensive industries and low-wage service sector work. Thus exploitation spawns greater levels of street crime by impoverishing the population through increasing inequality, reduction of wages, and enlargement of the surplus population.

At the same time, the socially disruptive effects of capitalist accumulation link the structure and history of capitalist society to the character of the criminal justice response.[5] The penal structure of capitalism is a structure attendant to capitalist accumulation.[6] The dominant mode of justice under capitalism primarily reflects the needs and interests of dominant social classes and privileged racial groups.[7] Private control of property gives the capitalist class the structural capacity to ultimately determine the direction of the law and the activities of the state. The historical development of white bourgeois society and the structural imperatives of the capitalist mode of production stamp state, law, and justice with a bourgeois character. If popular forces and/or rapid social change threaten the structure of class privilege, the coercive

---

[5] David Jacobs, "Inequality and Police Strength: Conflict Theory and Coercive Control in Metropolitan Areas," *American Sociological Review*, 44 (1979), Richard Quinney, *Class, State, and Crime* (York Longman, 1980)

[6] Nils Christie, *Crime Control as Industry Towards Gulags Western Style?* (New York: Routledge, 1993); Christopher Adamson, "Toward a Marxian Penology. Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (4, April 1984); Georg Rusche, "Thoughts on the Sociology of Criminal Justice," *Crime and Social Justice*, 10 (1978); Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939). Christie, Nils

[7] See William J. Chambliss and Robert Seidman, *Law, Order, and Power* (Reading. Addison-Wesley, 1982), Richard Quinney, *Critique of the Legal Order: Crime Control in Capitalist Society* (Boston: Little, Brown, 1974), *Criminology· Analysis and Critique of Crime in America* (Boston· Little, 1975); Karl Marx, "Capital Punishment," *New York Daily Tribune*, 18 February 1853

arm of the state will expand and/or intensify its activities. Crime and punishment constitute a totality, a *double movement* in capitalism. This effect is independent race.

Social class grows out of the motion of accumulation and at any given point represents the structure of production. Social class is a system of property relations and objective social-structural positions in relation to the forces of production and in the system of exploitation where categories associated with these relations determine the class identity of people occupying those categories, although not necessarily determining their consciousness or their political activity. Social class is thus a structural (or structured) position determined by capitalist accumulation. The social class system is only relatively stable, as the transformation of accumulation over time transforms class positions and relations.

While there are several ways to think about class within the parameters of the basic Marxian scheme, class is usefully categorized in terms of property and control. See figure 1.3.1. For the sake of analytical clarity, we can divide the class structure into four basic categories: (1) the *capitalist class*; (2) the *professional-managerial class*; (3) the *working class*; and (4) the *industrial reserve*. The capitalist class, or the exploiter class, owns productive capital (or constant capital), seeks profit, and buys labor-power (variable capital). The owner class may be further divided into large employers, small employers, and the petty bourgeois.[8] The professional-managerial class (the most

---

[8] This follows Wright's basic scheme in *Class Counts* In Marx's scheme, the petty bourgeoisie occupy a separate class category The true capitalist class, the large employers in Wright's scheme, are of two main types, monopolistic (typically capital-intensive firms) and non-monopolistic (typically competitive, labor-intensive firms) bourgeoisie The bourgeoisie can also be divided into types of capital owned, such as agrarian, mining, banking/financial,

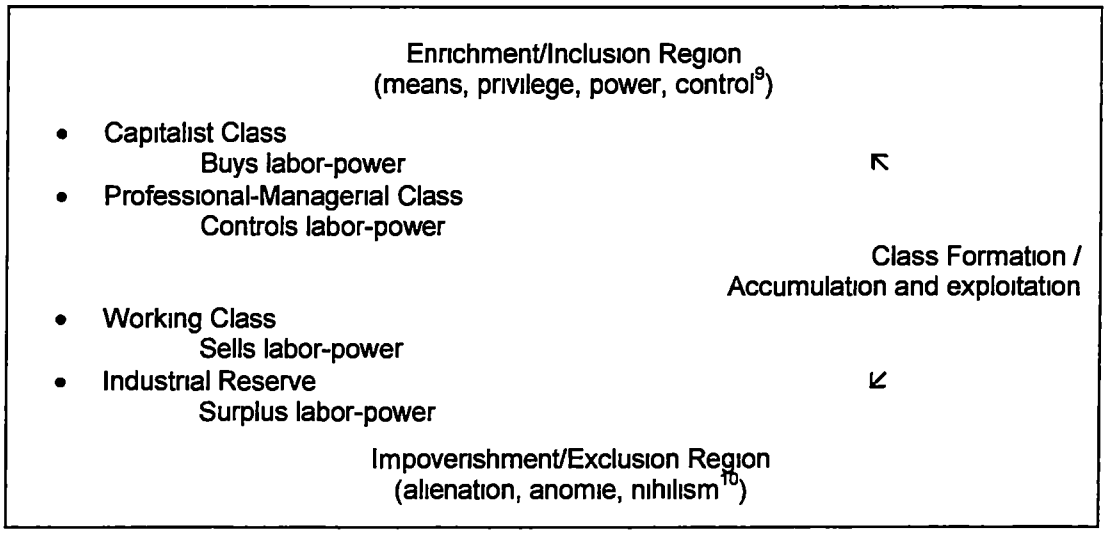


Figure 1 3 1 The Class System

privileged group of the employee classes) does not own capital, but controls labor-power.[11] This class location may be divided into skilled professionals, managers, and

---

industrial, and commercial See Ronald H. Chilcote, *Theories of Development and Underdevelopment* (Boulder, CO Westview Press, 1984), 7.

[9] *Means* refers to ownership and/or control over capital. *Privilege* means the right, advantage, and immunity that accrue to a particular class situation or status group position Status is the capacity to make effective claims to esteem in terms of positive and negative privileges. See Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, vol 1, ed Guenther Roth and Claus Wittich (Berkeley University of California Press, 1968), 305. *Power*, whether through authority or influence, is the capacity to compel others to do what they otherwise would not do, or to secure for self a desirable position *Control* is the power to direct, restrain, or regulate All of these components are interlocking.

[10] *Alienation* is a state or condition wherein an individual or group becomes estranged from (a) the results of her/his creative activity, (b) her/his or its surroundings, (c) to other individuals or groups, and/or (d) to her/his or its (collective) self. See Karl Marx, *Economic and Philosophic Manuscripts of 1844* (Buffalo, Prometheus, 1987). *Anomie*, understood here in its Durkheimian and Mertonian senses, is (1) a state of sociocultural disorganization and ambiguous conduct norms and (2) strain between the pull of culture and the push of socioeconomic impediment For the first sense, see Emile Durkheim, *The Division of Labor in Society*, trans. George Simpson (New York Free Press, 1984). For the second sense see Robert K Merton, *Social Theory and Social Structure* (London The Free Press, 1957). *Nihilism* is a condition in which greater truths are desublimated by the compressing effect of commodification and consumer culture, with negation of the moral order as a consequence. See Herbert Marcuse, *One-Dimensional Man* (Boston: Beacon, 1969)

supervisors.[12] The working class, which may be skilled or unskilled, sells labor-power. The industrial reserve are workers who cannot sell their labor. Marx writes that "capitalist accumulation itself constantly produces, and produces indeed in direct relation with its own energy and extent, a relatively redundant working population, i.e., a population that is superfluous to capital's average requirements for its own valorization, and is therefore a surplus population."[13]

Each class category has multiple internal levels, or class fractions or strata — classes, which, while their interests are objectively determined,[14] are probably never monolithic, hence there is considerable intra-class conflict. This means that concrete levels of power and privilege are highly variable. The professional-managerial and working classes may own capital (as stocks). The working class may marginally control the conditions under which they sell their labor-power; they may even have some control over aspects of the use of the labor-power. Some skilled workers make more money than petty capitalists — some professionals make considerably more than smaller employers.[15]

---

[11] Sometimes called the "new middle class" or the "new petty bourgeoisie." Chilcote, *Theories of Development.*

[12] Wright, *Class Counts*

[13] Marx, *Capital,* vol. 1, 782 Marx argues that the industrial reserve becomes a necessary level in accumulation. Moreover, the industrial reserve puts downward pressure on wages. The capitalist mode of production "creates a mass of human material always ready for exploitation by capital in the interests of capital's own changing valorization requirements," 794

[14] Isaac Balbus, "The Concept of Interests in Pluralist and Marxian Analysis," in ed. Ira Katznelson, *The Politics and Society Reader* (New York· McKay, 1970)

[15] Which is why income stratification models are not very useful See James Stolzman and Herbert Gamberg, in "Marxist Class Analysis Versus Stratification Analysis as General Approaches to Social Inequality," *Berkeley Journal of Sociology,* 18 (1979).

The class structure is sufficiently fluid and internally complex so as to make it difficult to assign percentages to these categories, but a close approximation of the current US system, not including the industrial reserve, would find around 50-60 percent in the working class, with some 40 or so percent being unskilled employees, and around 15 percent in the owner class, with capitalists employing 10 or more people representing some 1-2 percent. The remaining percentages are divided among the various professional-managerial class fractions.[16]

The proportion of the general population that might be considered located in the industrial reserve depends on how the industrial reserve is conceptualized. It also depends on the needs of production at any given moment which has either structural or cyclical features. While under capitalism the labor market is structurally constrained in utilizing all the labor in the system, at different times in the business cycle and in different regions of the economy a greater or lesser number of workers will find themselves in the industrial reserve. Official estimates of cyclical unemployment, the most common measure used in America, usually underreport unemployment by 2-3 times.[17] Complicating matters further is that underemployment means that many workers float between the working class and industrial reserve categories.[18]

---

[16] The numbers are drawn from Wright, *Class Counts* The numbers have changed relatively little since the publication of Wright's *Classes.*

[17] Ivan Jankovic, "Labor Market and Imprisonment," *Crime and Social Justice,* 8 (1977). Braverman suggests multiplying any official unemployment statistics by a factor of 3. See *Labor and Monopoly Capital*

[18] There have been advancements in calculating underemployment. Studies show that it is considerably higher than the official unemployment rate See Lawrence Mishel, Jared Bernstein, and John Schmitt, *The State of Working America 1996-1997 Economic Policy Institute* (Armonk: M E Sharpe, 1997)

What is important for my analysis is not the exact apportionment of people to the various class locations — these are variable — but the recognition that social class is a major source of inequality in wealth and power in capitalist societies and an understanding of the general patterns. Inequalities in wealth and power exist along a continuum where they may be roughly grouped together, which is to say that on the one hand possession of wealth brings relative power, privilege, and control, while on the other lack of wealth brings relative powerlessness.

Thus, I have organized the inequality continuum into regions of "enrichment/inclusion" and "impoverishment/exclusion." Those in the first region are enriched through the accumulation of capital and are included in, and by varying degrees control, society's dominant social and cultural institutions. Those in the second region are more likely to be impoverished the more they approach the industrial reserve and, as a consequence, find themselves increasingly excluded from control over societal and cultural institutions.

Race and Racialization

To view race as a social construct rather than a biological category is to attend to the material specificity of shifting racial categories at different points in history. — Stephen Pfohl[19]

Many scholars, including self-described Marxists, agree that Marxism is inadequate for studying race.[20] First, despite having theorized primitive accumulation

---

[19] *Images of Deviance and Social Control: A Sociological History*, 2nd ed. (New York: McGraw-Hill, 1994), 455

[20] David R Roediger, *The Wages of Whiteness. Race and the Making of the American Working Class* (New York: Verso, 1991). In his historiography of "whiteness," Roediger observes that "no answer to the 'white problem' can ignore the explanatory power of historical materialism, but neither does Marxism, as presently theorized, consistently help focus on the central issue of why so many workers define themselves as white," 6.

and slavery and racism in the US South, and analogously the nationalist struggles between the English and the Irish,[21] Marx never considers race in any systematic fashion. Therefore, race formation was left out of what Burawoy identifies as the "hard core" of historical materialism.[22] Second, for example, in Cox's work, Marxists tend to reduce race to class dynamics, treating racism as an ideology of justification rather than as an objective social structure that racializes and oppresses humans.[23] Third, some Marxists assume too strong an instrumentalist view of racism, claiming that racial stratification is a capitalist plot to divide and conquer or that racism benefits only elites.[24] This is only partly true. Fourth, many Marxist explanations of race tend towards a functionalist explanation in which the system of exploitation calls forth the

---

[21] See *Capital* for Marx's terse treatment of slavery. Marx's comparison of the African American situation and the conflict between Irish and English workers is in an 1870 letter to Meyer and Vogt, quoted in Leiman, *The Political Economy of Race*, 146

[22] Michael Burawoy, "Marxism as Science: Historical Challenges and Theoretical Growth," *American Sociological Review*, 55 (1990).

[23] Oliver C Cox, *Caste, Class, and Race* (Garden City: Doubleday, 1948). See also Barbara Fields, "Ideology and Race in American History," in *Region, Race and Reconstruction*, eds Morgan Kousser and James M. McPherson (New York, 1982), 143.

[24] *The Guardian*, in a January 1978 editorial, "Racism: Capitalism's indispensable prop," presents the classic formulation of this line of thinking when they write: "Racism is institutionalized in the U.S because it is an indispensable prop of the capitalist system. White supremacy and the prevalence of racist ideology make possible one of the most convenient means of stabilizing an industrial reserve, underlie the accumulation of superprofits, make viable tens of thousands of marginal enterprises and — hardly the least of it — serve to divert the working class to struggle against itself rather than to unite and struggle against capital," 26. This statement may be reduced to the proclamations of an ideological publication; however similar albeit more sophisticated arguments are advanced by Victor Perlo, *Economics of Racism, U.S.A.* (New York· New Internal, 1975), Herbert Aptheker, *Afro-American History: The Modern Era* (New York: Citadel, 1971); Michael Reich, "Economic Theories of Racism," *School in a Corporate Society*, ed Martin Carnoy (New York: David McKay, 1972), M. Reich, "The Economics of Racism," *The Capitalist System*, eds Richard C Edwards, Michael Reich, and Thomas E Weisskopf (Englewood Cliffs, N J Prentice-Hall, 1972). Cf. Sidney M. Willhelm, "Can Marxism Explain America's Racism?" *Social Problems*, 28 (1980)

existence of other systems of domination to split the working class and create superexploitable labor.[25]

Roediger raises two objections to those vulgar Marxist approaches that seek to reduce racism to capitalists' interests. First, he criticizes the claim that racism is an elite creation used to blunt the worker movement. Marxists like Cox incorrectly argue that racism is "the socio-attitudinal concomitant of the racial exploitative practice of a ruling class in a capitalistic society."[26] Recent labor historiography, Roediger points out, "should help us call into question any theory that holds that racism simply trickles down the class structure from the commanding heights at which it is created." Rather, "workers, even during periods of firm ruling class hegemony, are historical actors who make (constrained) choices and create their own cultural forms."[27] "There is no denying that racist attitudes and practices are deeply embedded in the working class," adds Melvin Leiman, "even in the rank and file of labor unions."[28]

The second objection Roediger raises is to the treatment of racism as merely an ideological phenomenon. Here, Barbara Fields comes in for criticism for her theory of

---

[25] Wright, *Class Counts.*

[26] Cox, *Caste, Class, and Race* , 470.

[27] Roediger, *Wages of Whiteness,* 9.

[28] Leiman, *Political Economy of Race,* 5 Leiman flirts with reductionism "My examination," he writes, "centers on class as the primary unit of analysis. intra- and interclass conflict are seen as the driving force conditioning the directions of change Racial conflict overlay the antagonism between classes," 3. This view is just a bit better than the idealizations Wright presents in *Class Counts,* where race is reduced to functional terms. In my view, race does emerge with capitalism, or more precisely the modern world-system, but to speak of racism as "overlaying" social class and/or explaining racism in terms of its function in the reproduction of capitalism risks class reductionism and systems-theoretics.

race as a form of "false consciousness." Fields contends that race is "a notion that is profoundly and in its very essence ideological."[29] From this perspective, "Race disappears into the 'reality' of class," contends Roediger.[30] Howard Winant also criticizes Fields for this view. Winant argues that Fields sets up a false paradox where "race is either an illusion that does ideological work or an objective biological fact."[31] Finding that race is not an objective biological fact, she concludes that race is an illusion. At best, Fields' theory may account for the origins of racial thinking, but not the racial structure of bourgeois society. Fields' model excludes such an explanation a priori: "Race cannot take on a life of its own; it is pure ideology, an illusion."[32]

According to Winant, Fields' thinking misses two important and closely-related features of race. First, it neglects the salience of social constructs: whereas biological race may be a fiction, people globally have been racialized for so long that it does not much matter whether it is a fiction or not. Social constructions are part of real systems that structure people's lives.[33] The second feature Fields misses is the

---

[29] Fields, "Ideology and Race," 143

[30] Roediger, *Wages of Whiteness*, 8.

[31] Howard Winant, *Racial Conditions: Politics, Theory, Comparisons* (Minneapolis: University of Minnesota, 1994)

[32] Winant, *Racial Conditions*, 15 Fields criticizes anti-racists for unwittingly reproducing racism. She writes, "Nothing handed down from the past could keep race alive if we did not constantly reinvent and re-ritualize it to fit our own terrain If race lives on today, it can do so only because we continue to create and re-create it in our social life, continue to verify it, and thus continue to need a social vocabulary that will allow us to make sense, not of what our ancestors did then, but of what we choose to do now," Fields, "Ideology and Race in American History," 118. Unfortunately, as Winant notes, "Fields [is not] alone in claiming that racial ideology persists because people insist on thinking racially. Her position is espoused by many, on both the left and the right of racial debates," 16.

[33] I would amplify this point by noting that race has *never been* a biological construct. Just because the scientific community is finally learning that race is not a biological fact does not mean that race is no longer a salient social force, since *it was always only a social force.*

importance of racial identity: "U.S. society is so thoroughly racialized that to be without racial identity is to be in danger of having no identity. To be raceless is akin to being genderless."[33] This is the other side of the dynamic identified in the previous point, here focusing on what we think of ourselves rather than what we think of others. At this point in the development of the racial system, racial identity has become so organic to mass consciousness that to describe it as "ideological" — a term which from a Marxist perspective is defined as systematically distorted representations of reality — systematically distorts the meaning of race (as well as undermines the ability of oppressed groups to fight racial oppression by redefining their racial identity and using it as a weapon in their struggle).

Yet, both Roediger and Winant, despite their having made important advances in the way we understand race, miss an opportunity to explain race in *objective social relational* terms, that is, in a fashion similar to realist conceptions of social class. This, I believe, is the key to integrating concepts about the caste-class system, a system which *in reality*, that is, independent of the mind, dialectically unifies class and race and *structurally* divides the population. Blacks are oppressed not only because of what whites think about them and the ways they act towards them but because people defined as blacks move in racialized spaces that reproduce their oppression anonymously.[34] Roediger apparently accepts Field's argument that whereas social class has objective dimensions (he even puts "objective" in quotes), race does not

---

[33] Winant, *Racial Conditions*, 16

[34] Richard Thompson Ford, "The Boundaries of Race: Political Geography in Legal Analysis," *Critical Race Theory: The Key Writings that Formed the Movement*, ed Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas (New York The New Press, 1995)

possess analogs to these material class characteristics. This is not to suggest that either Roediger or Fields believe racism has no real effects, but it is to say that they miss the double character of racism as an objective set of structural relations and, probably only secondarily, a complex ideational phenomenon.

Winant, after advancing such a solid critique of Fields' views, turns around and commits the same error Roediger makes by arguing that it is "problematic to assign objectivity to the race concept."[35] He is talking not only about treating race as a biological reality, something I also disagree with, but also about those social scientists whose explanations for race differences (and he tarnishes all of them with the culture of poverty thesis) involve what he calls a "creeping objectivism of race."[36] What is missing, according to Winant, is a conception of "racial formation."[37] What Winant misses is that all the features he supposes to find with his concept of racial formation are features of the *objective structure* of race — indeed, *structures are in formation.* Winant makes room for his conception of race formation by asserting that a position advancing the objectivity of race is a position that cannot account for racial formation and the historicity of racial identity.

---

[35] Winant, *Racial Conditions*, 17.

[36] Winant is vague here, but his idea of objectivity appears to centered on the idea that to say something is "objective" means that one is claiming it is a "fixed" or "external" reality that involves something not social This is evident, I think, in his enumerated criticism of the objectivist view that (1) "it cannot grasp the processual and relational character of racial identity and racial meaning", (2) "it denies the historicity and social comprehensiveness of the race concept", and (3) "it cannot account for the way actors, both individual and collective, have to manage incoherent and conflictual racial meanings and identities in everyday life," 18 I find none of the reasons compelling

[37] Winant, *Racial Conditions*, 18.

Asafa Jalata captures the many sides of racism when he writes, "Racism is a *discourse* and a *practice* in which a racial/ethnic project is politically, culturally and 'scientifically' constructed by global and regional elites in the capitalist world system to naturalize and justify racial/ethnic inequality, in which those at the top of the hierarchy oppress and exploit those below them by claiming biological and/or cultural superiority."[38] Here, along with the ideology and discourse of racism, we have a practice that organized as a racial/ethnic project. Jalata identifies the processual side of racial formation without sacrificing its objective character.

One of the mechanisms through which racism operates, Jalata explains, is by dividing populations along socially selected phenotypical features, typically skin color, and hierarchically arranging these racialized divisions.[39] Because human populations do not naturally divide into different racial types — that is, "race" does not exist at the genetic level[40] — "races" have to be invented. Human populations are

---

[38] Asafa Jalata, "The Impact of a Racist U S Foreign Policy on Oromo National Struggle," 49, *Journal of Oromo Studies*, 6 (1999). I have added the emphases. Because Jalata uses this definition in conjunction with his analysis of US foreign policy on Oromos, he focuses on the role of elites rather than ordinary persons However, he recognizes the part non-elites play in racial formation.

[39] Harrison notes that visible stigmata are not the only criteria which are used to organize race. "Race mixing" blurs lines drawn around phenotypic markers. Racism thus depends on cultural and legal rules of descent, such *hypodescent*, a rule that assigns the offspring of "racially" different parents to the subordinate "race." Faye Harrison, personal communication See also Marvin Harris, *Patterns of Race in the Americas* (New York Walker and Co , 1964).

[40] Luca Cavalli-Sforza, Paolo Menozzi and Alberto Piazza, *The History and Geography of Human Genes* (Princeton University Press, 1994) "The book's firm conclusion· once the genes for surface traits such as coloration and stature are discounted, the human 'races' are remarkably alike under the skin The variation among individuals is much greater than the differences among groups In fact, the diversity among individuals is so enormous that the whole concept of race becomes meaningless at the genetic level. The authors say there is 'no scientific basis' for theories touting the genetic superiority of any one population over another," Sribala Subramanian, "The Story in Our Genes," *Time*, 16 January 1995 Many anthropologists reached this conclusion long before Cavalli-Sforza and associates did. See Frank B Livingston's "On the

therefore "raced," or "racialized." Races are socially constructed and historically constituted. "Race and racism are socio-political constructs since all human groups are biologically and genetically more alike than different."[41]

I argue that once constructed and hierarchically arranged, the racial system becomes an objective system of relations and interactions. Racism is not only a mental event or a set of shared beliefs that structures behavior, but a real structure that imposes itself on human behavior. It is more accurate to say, then, that the system of racism is an objectively structured set of social relations, and is therefore more than what is typically meant by the subjectivist notion of a "social construction." Understanding how racial stratification works to divide human beings from one another requires in-depth analysis of social relations as "really existing things." Many features of racial oppression have been, and probably remain to be discovered. Thus understanding and explaining racism is a matter of readjusting our consciousness to uncover the "natural" or hidden mechanisms of power in white bourgeois society. This is where Roediger, Winant, and others, make their mistake, I think: they fail to make a commitment to the objectivity of racial structures.

I conceptualize race in the following way: At the ideological level, race is a product of the naturalization of geographical, climatic, and sociocultural variation: children are taught to observe the socially attenuated physical and cultural features

---

Nonexistence of Human race" (1964) and Gloria Marshall's "Racial Classifications" (1969) in *The "Racial" Economy of Science. Toward a Democratic Future* ed Sandra Harding (Bloomington Indiana University Press, 1993) See also Stephen Jay Gould, *The Mismeasure of Man* (New York. Norton, 1981)

[41] Jalata, "Racist U.S Foreign Policy," 49-50

that potentially differentiate groups as inherent expressions of different biological types. These features become markers used not only to distinguish different peoples but to order them into superior and inferior statuses. At the material level, racialized groups comprise an objective hierarchically-organized social structure. Dialectically, the ideological-cultural system reproduces the objective racial hierarchy at the same time the racial hierarchy reproduces the ideological-cultural system.[42]

Racial Caste

Against class reductionist models, I argue that the racial system in the United States is a *caste* system as opposed to a class system. See figure 1.3.2. In contrast to class relations, caste is based on *ascription*. In a caste system, birth to a particular group virtually guarantees that a person will live out her/his life identified with a particular caste grouping; life-chances are largely determined by caste identity. A social system based on socioeconomic class is theoretically open: an individual's class location changes when a new position in the structure of production is assumed.[43] For example,

---

[42] Ethnic differences, often the product of a long process of cultural development, are not equivalent to racial ordering. Moreover, there are phenotypic variations among human beings which result from adaptive and migratory processes (or clines) At least one of four things must be present for the recognition of different cultural systems (ethnicity) or selection of features of human variation (clines) to be considered racism First, a pattern of thinking is racist if clines are organized into races, or different human types Typologies organizing human variation are instances of pre-scientific thinking that have never been successfully integrated with modern evolutionary science Second, if racially differentiated groups are believed to innately exhibit certain behavioral characteristics or moral deficits relative to other racial groups, then this thinking pattern is racist Third, and closely related to the second, if ethnicity is held to originate in inherently different human types, rather than resulting from historical and cultural forces, the pattern of thought is racist Fourth, a pattern of thinking is racist if ethnic groups are organized hierarchically in some system of value terms

[43] Wright, *Class Counts* and *Classes*. Although in the concrete this can be pretty messy, since people may occupy more than one category simultaneously.

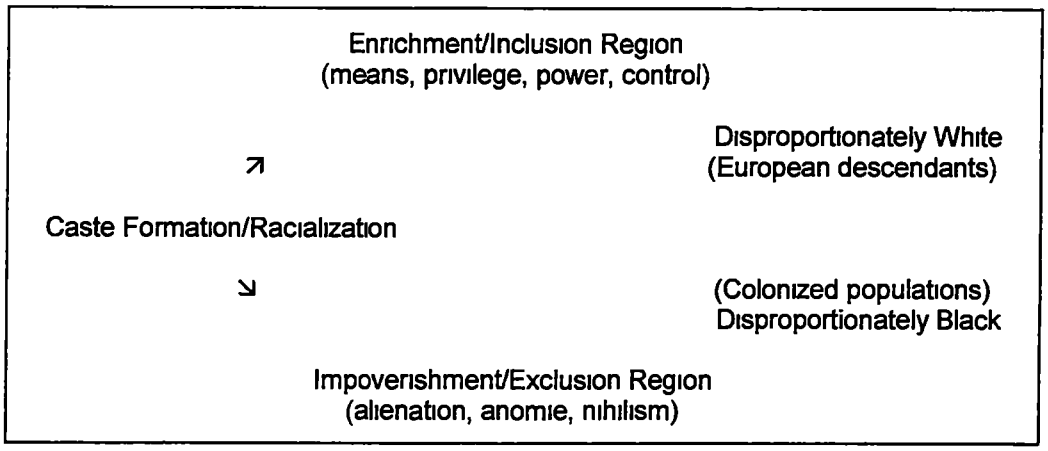


Figure 1 3 2 The Caste System

a worker who founds a company with five employees becomes a capitalist; she/he now extracts surplus-labor from others. A caste system is an exclusive system of social groupings wherein those defined as one race cannot simply become a member of another race by changing class locations.[45] A black capitalist is still black.

The concept of caste has a long history of general use in the social sciences. In *Economy and Society,* Weber writes that a "caste structure transforms the horizontal and unconnected coexistences of ethnically segregated groups into a vertical social system of super- and subordination."[46] Applying Weber's definition to the history of capitalist development, we would find that different cultural groups were brought into relation with one another during colonialism and organized into a social hierarchy, or caste structure. This is oversimplified, but nonetheless correct in its broad outlines. The use

---

[45] Exclusion need not be total, only marked by restricted exogamous social intercourse. Moreover, features of racial systems do change, and sometimes rapidly, such as following the Civil War or during the 1960s. However, white supremacy in the global system has shown a remarkable stability and persistence over the past several hundred years despite the variable concrete forms it takes

[46] Weber, *Economy and Society,* 934

of the term specific to the US context was developed in the 1940s when scholars, such as W. Lloyd Warner,[46] organized the so-called "caste school of race relations." This perspective issued from the criticisms of perspectives that focused on race prejudice as the *sin qua non* of racism. The caste school focused instead on institutional and structural discrimination, thus representing a significant advance over attitudinal models of racism. The purpose of this section is to rehabilitate the social scientific construction of caste and clarify its use in my dissertation. This is necessary because the utility of the caste concept in developing an understanding of US racial history is disputed (most vocally in the Marxist tradition by Oliver C. Cox[47]). I present a brief overview of the intellectual history behind the development caste in US sociology to orient the reader.

The caste school applied the concept very narrowly to the southern United States under Jim Crow segregation: "the social order which emerged with the abolition of slavery was a system of caste — caste based on race and color."[48] Observers of the racial situation in the United States then recognized that the inter-racial inequality was qualitatively different from intra-racial inequality.[49] Gunnar Myrdal wrote, "A man

---

[46] W Lloyd Warner, "Introduction," in ed. Allison Davis, *Deep South* (Chicago: University of Chicago Press, 1941), 4-6, Warner and Leo Srole, *The Social Systems of American Ethnic Groups* (New Haven. Yale University Press, 1945).

[47] Oliver C Cox, "Race and Caste· A Distinction," *American Journal of Sociology*, 50 (1945). Cox's arguments on this matter are convoluted and at times nonsensical

[48] Robert Park, *Race and Culture* (Glencoe. The Free Press, 1950), 181 See also Allison Davis, Burleigh B. Gardner, and Mary R Gardner, *Deep South: A Social Anthropological Study of Caste and Class* (Chicago: University of Chicago Press, 1941); Gunnar Myrdal, *An American Dilemma* (New York Harper, 1944), John Dollard, *Caste and Class in a Southern Town*, 2nd. ed. (New York, Harper, 1949).

[49] Benjamin B. Ringer, *"We the People" and Others· Duality and America's Treatment of its Racial Minorities* (New York: Tavistock Publications, 1983)

born a Negro or a white is not allowed to pass from the one status to the other as he can pass from one class to another. In this important respect, the caste system of America is closed and rigid, while the class system is, in a measure, always open and mobile."[50]

The caste school focused on the endogamous character of the caste system and the severe restrictions on social mobility that the racial structure imposed. Prohibitions, formal and informal, against miscegenation were the focal point of early theorists. In their view, this rule virtually guaranteed that blacks could not move into white society, no matter what their economic and intellectual achievements were. "The two in-marrying groups are perpetuated as castes whose differences are regarded as inherent, 'in the very nature of things'."[51] Caste scholars distinguished this from class where, while there are usually in-group marriage patterns, individuals from different social classes can marry and often do. Even excepting the rule against miscegenation it has been very difficult for blacks to achieve any between-group mobility.

An important assumption running through these early formulations is that caste is a form of racial segmentation characterized by accommodation and that it functions to promote social stability. This line of thinking, which seems to rest on a consensus model, supposes, along with structural and institutional coercion, an elaborate culture-ideological system that legitimates racial subordination and superordination. Many researchers in the caste school observed "a commonly shared

---

[50] Myrdal, *American Dilemma*, 668 (the original was italicized).
[51] Davis, Gardner, and Gardner, *Deep South*, 24-25

body of beliefs about the status and capabilities of Negroes. This body of beliefs constitutes an ideological system that is used to justify the social relationships between the superordinate whites and the subordinate Negroes."[52] The ideological system required a degree of participation from both groups. "According to the dogma, and to a large extent actually, the behavior of both Negroes and white people must be such as to indicate that the two are socially distinct and that the Negro is subordinate."[53]

Doyle avered that most people who live within a social system take an insider point of view of that system, coming to regard aspects of their circumstances as natural and correct, even to the point of accepting the moral system handed down by the dominant groups.[54] In the 1960s, Hart presented a similar view in jurisprudence by drawing a distinction between external and internal points of view, maintaining that the continued reproduction of a legal system depends on many of those affected by the system assuming the internal viewpoint.[55] Evidence for this partial acceptance are judgments oppressed people make concerning fair treatment in systems of oppression,[56] such as distinguishing good and bad slaveowners.

It was reasonable for caste researchers to suppose that systems of oppression depend on a degree of compliance and trust between oppressor and oppressed, what

---

[52] Davis, Gardner, and Gardner, *Deep South*, 20.

[53] Davis, Gardner, and Gardner, *Deep South*, 22-23.

[54] B. Doyle, *The Etiquette of Race Relations in the South: A Study in Social Control* (Port Washington, NY, Kennikat Press, 1968), 136

[55] Herbert L A Hart, *The Concept of Law* (Oxford: Claredon Press, 1961)

[56] See Laurence Thomas, "American Slavery and the Holocaust," *Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy*, ed Tommy L Lott (Lanham Rowman and Littlefield Publishers, 1998)

Gramsci characterizes as *consensual* domination.[57] While it is theoretically possible to maintain an external system of coercive oppression indefinitely, such a system is sure to tax resources, brutalize the population and politicize their grievances. This is why, as Theda Skocpol observed, "inclusionary" or "open" authoritarian states (such as totalitarian states) are more stable than "exclusionary" or "closed" authoritarian ones (such as dictatorships): they secure to some extent the consent of the dominated.[58]

Observers of the southern situation emphasized that not only were there expressed norms and values supportive of the system, but that the caste system was deeply embedded in the southern institutional arrangement.[59] "All social structures in the society operate to reinforce the caste system — associations, churches, the courts, even the schools and the Negro class system — for none of these challenges the fundamental separate, endogamous nature of the two caste groups."[60] This way of looking at things is somewhat consistent with Gramsci's conception of "hegemony." According to the caste school, "the caste system defined a comprehensive and inclusive order of relations between black and white that was made into a cohesive whole by an elaborate and all-embracing normative and institutional framework."[61]

It must be emphasized that hegemony does not rest only on consensual domination. As Manning Marable put it: "Beneath the velvet glove of fraud exists the

---

[57] Antonio Gramsci, *Selections from the Prison Notebooks* (New York: International Publishers, 1971), *Prison Notebooks* vols 1-2 (New York: Columbia University Press, 1992-96).

[58] Jeff Goodwin and Theda Skocpol, "Explaining Revolutions in the Contemporary Third World," *Social Revolutions in the Modern World* (New York University of Cambridge Press, 1994)

[59] Ringer, *"We the People,"* 230

[60] Davis, Gardner, and Gardner, *Deep South*, 44-45

[61] Ringer, *"We the People,"* 230.

iron fist of force." [62] Hegemony ultimately rests on force. Indeed, blacks, Marable argues, are more aware of the "delicate balance between consensus vs. coercion" than are whites. It would be a grave error to suppose blacks voluntarily agree to the system of racial caste or that the character of their behavior is the result of a thorough indoctrination. While both whites and blacks conformed to the rules of the caste system in the US South, they differed widely on the degree to which they subscribed to the cultural-ideological system that attempted to legitimate the rules. This is because conforming to a system of expectations is not co-extensive with *choosing* to conduct oneself according to normative expectations. It is understood, for example, that the goal of reforming criminals is to *compel* them to conform to society's expectations; the warden does not require a "change in heart" (it is a rare warden who expects it). To say that blacks conformed to the caste system is at the same time to acknowledge that whites compelled them to accept the terms of their marginal existence.

Researchers in the caste school clearly recognized this, but maintained the importance of ideology in understanding the stability of the system. They were sure that whites took a thoroughly internalist view of the system — this was hardly problematic. However, conformity exhibited by blacks appeared to be more dependent on the external constraint of the rules — if blacks failed to follow the rules there would be consequences. Fear of consequences ensured (or at least it was hoped it would ensure) that blacks would conform to the rules. Consequences not only resulted from

---

[62] Manning Marable, *How Capitalism Underdeveloped Black America* (Boston: South End Press, 1983), 107

the transgression of formal rules. At moments when the caste system was in crisis, organizations like the Ku Klux Klan and mobs of white residents would terrorize black communities. "Small wonder then that various observers have stressed the widespread tendency of blacks to accommodate themselves to the caste system," Ringer observes; "They saw little evidence of overt aggression by blacks against the system or against whites."[64] "Accommodation" was a survival strategy.

One must be careful not interpret passivity on the part of the oppressed as an acceptance of their oppression. An extreme of example of this was witnessed in the 1880s work camps in the South organized by the deplorable practice of convict leasing. Prisoners there had cultivated a docility necessary for survival. "Convicts themselves seldom complained publicly about the conditions they had to endure; the reasons for such behavior are obvious." When committees appointed by the local grand juries were sent to the camps to view the working conditions they would almost invariably report back: "The convicts were afforded full opportunity to make complaints to us, but without exception they expressed themselves satisfied with the treatment they received."[65]

I retain in my conception of racial caste Davis, Gardner, and Gardner's initial insight of a vertical-horizontal segmented society. See figure 1.3.3. In this system, while there is a racial cleavage, social class is not co-extensive with it. Each caste grouping is class stratified, as is the class structure fully racialized. In contrast to

---

[64] Ringer, *"We the People,"* 231.

[65] Quoted in Matthew J Mancini, "Race, Economics, and The Abandonment of Convict Leasing," *Journal of Negro History*, 63 (1978), 347

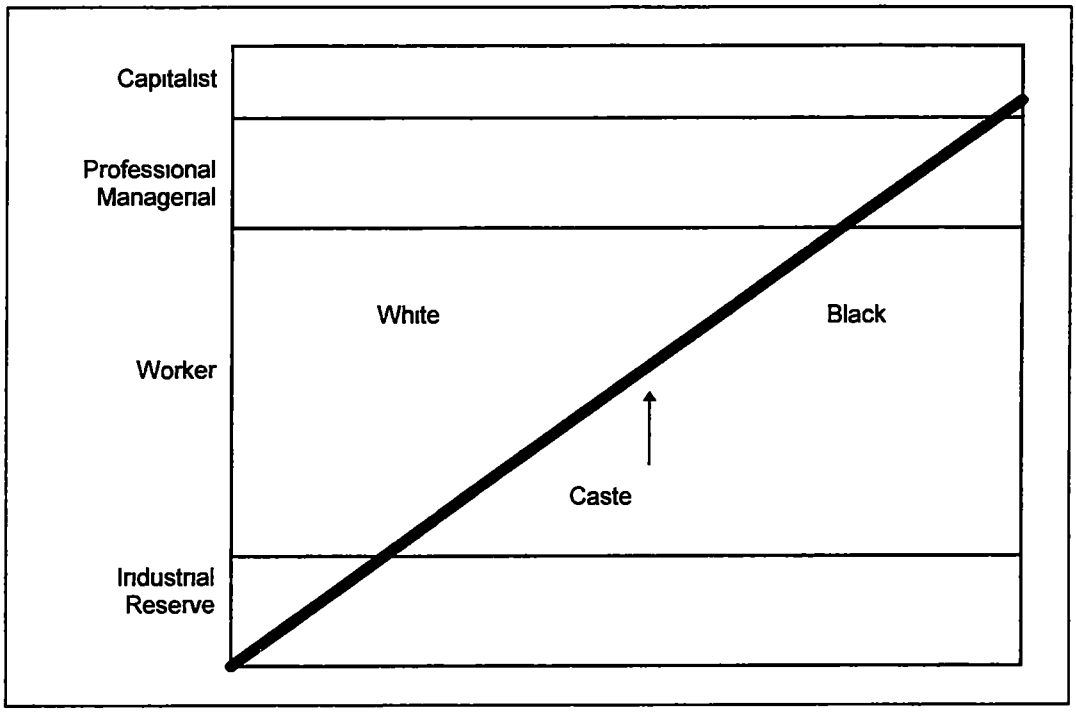


Figure 1.3 3
"Vertical-Horizontal" Segmentation of US Society[66]

Davis, Gardner amd Gardner, I extend the caste concept to other historical periods. Those who originally developed the idea saw it as a mode of racial domination replacing the system of slavery rather than seeing racial slavery as a form of caste system. After the Civil War there was an interregnum where black-white relations were unstable. Caste theorists contend that the development of the caste system restored stability in Southern race relations. I argue that one form of caste — racial slavery — was replaced by another form of caste — apartheid. In a similar fashion, I argue that a new form of caste system, carried out via the use of "race-neutral" policy

---

[66] Inspired by Benjamin B. Ringer and Elinor R Lawless, *Race-Ethnicity and Society* (New York Routledge, 1989), 41 Areas are conceptual, not proportional

and the criminal justice system, replaced apartheid following the period of racial crisis after 1964. It may be argued that while apartheid and slavery may be considered species of racial caste, this cannot be said of the post-Civil Rights period. I disagree. The system of de facto racial segmentation in the post-Civil War period still possesses all the minimal characteristics of racial caste — endogamy, ascriptive status, hereditary status, ranking in a hierarchy — as it is ordinarily understood.

Features of the Dual Society

Benjamin Ringer, in following the lead of Myrdal, Furnivall, Smith, and others in conceiving of a "dual society," notes two creeds that lie at the heart of North American existence. On the one hand there is the "American creed." Myrdal characterizes this creed as possessing the "ideals of the essential dignity of the individual human being, of the fundamental equality of all men, and of certain inalienable rights to freedom, justice, and a fair opportunity."[67] These ideals are enshrined in the Declaration of Independence and the US Constitution that established, with the phrase "We the People," a *people's domain*. These documents, including a federal bill of rights, set forth the legal-normative environment meant to guide the development of the United States. It is necessary to stress the point that while this argument makes a pretense to a moral code shared by Americans — hypostatic features of the American character — the ideal of "fundamental equality" or "fair opportunity" among all people has probably never been universally shared and has never been practiced. This is in part because the United States has on the other

---

[67] Myrdal, *American Dilemma*, 4

hand a "racial creed," and, contrary to Myrdal's characterizations, this creed is fundamental to the US social formation and reinforced legally.[67] Ringer writes, "This legal-moral character of the American creed raises an important question which Myrdal and the others do not come to grips with directly: namely, what is the historical relevance of the American creed as a legal-normative framework for the treatment of the black?"[68] But the other part of this is that, ignoring for a moment the racial aspects of American society, the United States has never secured for "the people" the ideals of "equality" and "liberty," as those terms are normally understood, nor is the ideal *in toto* even desirable. Certainly elements of the "American creed" would be incorporated into a socialist democracy, such as fundamental equality and inalienable rights to freedom and justice (elements that are not unique to liberal capitalist philosophy, incidentally). But other elements, like "fair opportunity," must be rejected, as they are nothing more than values recoding social failures as individual ones.

That the ideals set forth in the founding documents have never been met in the real — even if we ignore race — does not prevent an analysis from reckoning the degree and quality of disparity between the real and the ideal vis-à-vis different groups. Even taken at its ideals, the American creed is revealing, for instance in its explicit protection of the right to property and its omission of any distinction between

---

[67] Myrdal believed that racism in the US represented a backward mentality. He described racial interests as parochial, i.e., the primordial interests of whites Thus for Myrdal, the racial greed, unlike the American creed, was never legitimated by the state This is untrue, as I will demonstrate in forthcoming chapters The notion that the racial system is a moribund social formation is simply false.

[68] Ringer, *"We the People,"* 244.

personal property and capital — an omission designed to secure a primary source of power for the elite: private ownership and control over the means of production, and therefore of labor itself. Because the material basis of society is taken off-line in the founding documents of, and in legal practices in, the United States, the political-legal processes they allegedly secure are effectively beyond "the people." But such an examination is more than revealing. These documents can be, and have been, turned against themselves and against reality as effective critiques and challenges to the structure of power, mainly to argue that their claims of equality — as restricted as these are — must be honored in practice (a reasonable short-term strategy). Judgments of equality depend on who is defined as "men" and "the people," and so the history of the black struggle has often been focused on redefining Africans in America as part of "the people," as well as becoming seen as people, or more specifically, fully human in the eyes of the dominant culture.[70]

I document in future chapters dozens of instances where the law secures the racial order. But what must be underscored here is that legal orders are deceptive, in that what they secure they secure not only by acting in an explicitly discriminatory way, but also by failing to correct situations with discriminatory outcomes. This is easily illustrated with two examples: residential segregation and affirmative action.

---

[70] Unfortunately, this has sometimes led prominent African American leaders, such as Booker T Washington, into accepting the precepts of social Darwinism, the social gospel, and laissez-faire and advocating that blacks make the adjustment, not white society. See Richard D. Chesteen, "Bibliographical Essay The Legal Validity of Jim Crow," *Journal of Negro History*, 56 (1971). There are numerous contemporary examples, such as Thomas Sowell, Shelby Steele, Glenn C Loury, and Walter E. Williams. See Mark Megalli, "The High Priests of the Black Academic Right," *Journal of Blacks in Higher Education*, 9 (1995), for a critique of conservative black intellectuals.

These examples are not selected arbitrarily. They were chosen to illustrate and make explicit the underlying thesis of my dissertation, namely that, in the meantime, the oppressive contradiction in US society between formal and substantive justice should be corrected, and, in the long haul, the ideal itself must be rejected and replaced with a new one. I might have selected more specific instances found in the criminal justice literature, but I did not for three reasons. First, the dissertation is replete with examples of the substantive injustices in the criminal justice system. Second, as I explained in the introduction, I am concerned with exposing the general conditions blacks face in America, determining the overall logic of oppression, not just the instances obviously specific to criminalization. Third, these examples raise the question of the status of policies and non-policies that are socially injurious in a manner analogous to criminal activity, as defined by Sutherland,[70] and for which there are possible common law bases for their being criminal (or at least being able to hold institutions and actors legally culpable). This raises the question, consistent with Tonry's reasoning,[71] of why knowing neglectfulness among those with the power to

---

[70] In his famous article on the sometimes criminal prosecution of corporations, "Is 'White collar Crime' Crime?" *American Sociological Review*, 10 (1945), Edwin Sutherland, finds that there "is a problem in the legal definition of crime and [it] involves two types of questions: May the word 'crime' be applied to the behavior regarding which these decisions were made? If so, why is it not generally applied and why have not the criminologists regarded white collar crime as cognate with other crime?" The two criteria for a crime to have occurred is that (1) it must be a legally described act of social injury and (2) there must be a "legal provision of a penalty for the act," 132 Sutherland finds that by the first criteria, all the acts of corporate misconduct he examined were socially injurious. Moreover, they all shared characteristics with common law that would make them potentially criminal Yet, the second criteria must be present for a criminal act to have *legally* occurred, and it is here that the orientation of the criminal justice system comes into play

[71] Michael Tonry, *Malign Neglect – Race, Crime, and Punishment in America* (New York· Oxford University Press, 1995).

change circumstances that perpetuate de facto segregation or discriminatory educational and occupational practices is not criminally negligent? That it is not reflects two closely related things: (1) the structure of power is such that those injuring Africans Americans (and other minorities) through purposeful oversight or unwillingness to act properly are not defined as criminal and are generally not held responsible; and (2) the structural and ideological orientation of legal system is geared towards upholding white privilege and securing black subordination by not criminalizing socially injurious circumstances African Americans face.

In his article, "The Boundaries of Race," Richard Thompson Ford contends that public and private actors cooperate to construct "racially identified spaces." Such spaces define political boundaries that determine and condition the distribution of individuals, economic resources, and political power. The spaces are externally imposed or emerge from divisive structural forces. One of the myths surrounding racialized spaces is that they are "quasi-natural," "prepolitical," or primordial associations of individuals. In fact, these spaces are political creations that accumulate, after they are formed, a "natural" history and develop an "organic" social organization. In other words, scholars must be careful to avoid mistaking the effect for a cause.

Central to Ford's argument is the promotion of race-neutral policy that has become the main component in the strategy to create and maintain racialized spaces: "racially identified space interacts with facially race-neutral legal doctrine and public

policy to reinforce racial segregation rather than to eliminate it gradually."[73] Understanding how race-neutral policy perpetuates and even intensifies racial segregation is the key to understanding the situation the United States faces today. Indeed, it has been the exploitation of the ignorance of the public and most experts about the reality of race as structural power, and the relationship of the law to this reality, that lies at the heart of the assault on minimalist civil rights programs (such as affirmative action) and the prevailing legal thinking that puts substantive civil rights goals virtually out of reach.

Ford asks us to imagine a society with two groups — one black and one white — that are differentiated only by visible physical variation.[74] Because of a history of racial discrimination in Ford's invented society, blacks earn significantly less income and own substantially less wealth in comparison to whites. Over the past thirty years or so, whites have come to understand the sin of racial discrimination and have abolished the legal structure that had formally maintained the system of discrimination. Moreover, the society installed a regime of public education on the subject of race and succeeded in eliminating race prejudice. This society, Ford asks us to accept, is color-blind. Ford's exercise desires to prove fallacious the argument that, with de jure discrimination and racial prejudice eliminated, the racial divide should, with time, disappear.

---

[73] Ford, "Boundaries of Race," 450

[74] It should be emphasized (although Ford does not stress this) that the landmarks of physical variation are racialized markers — that is, socially selected physical features deemed to be political and culturally significant. This is not to deny human variation, but rather to point out that what is racially signifying is socially constructed

Before reform, Ford's society had in place a system of racial segregation in which each of these municipalities consisted of two enclaves, black and white, or municipalities incorporated as white or black. These municipalities, decentralized and geographically defined governments, are political units that tax their citizens and use the revenues to provide public services, education, utilities, and infrastructure. "Thus," Ford notes, "the now color-blind society confronts a situation of almost complete segregation of the races – a segregation that also fairly neatly tracks a class segregation."[74]

In those municipalities that are "racially mixed," even though public services are equally distributed among the neighborhood, whites have, because of their higher incomes, amassed more wealth, as larger homes, larger bank accounts, etc. The black-white cities would therefore have substantially inferior public services compared to exclusively white cities who would enjoy a higher average tax base (or would at least enjoy a lesser tax burden given same level of services). Exclusively black cities would be in the worst position of the three types of municipalities, with considerably inferior public services and/or higher relative taxes.

Under such circumstances, whites in "mixed" cities would have an economic incentive to leave or secede from the city; and unincorporated white areas would also have a reason to resist being incorporated in the mixed cities. However, it seems a reasonable assumption that blacks would favor the superior public services (or lower

---

[74] Ford, "Boundaries of Race," 453

tax burden) of white neighborhoods and would, if they had the means, move there.[76] If this occured, it might be assumed further that over time economic segregation would replace racial segregation.

But, as Ford points out, this outcome depends on a false assumption: that residential segregation has not economically hamstrung blacks. Residential segregation affects employment opportunities and economic status for three reasons. First, since education is financed by local taxes, there would be different levels of educational opportunity and outcome. Those who enjoyed superior educational facilities would be better trained for the higher income jobs. Second, informal social networks would be racially differentiated, and these would act as barriers against outsiders entering the privileged jobs sectors. Third, the market value of homes would present with marked inequity depriving black families of the collateral necessary to buy homes in white neighborhoods.

The history of residential segregation would have created (and would continue to generate) deficits in what some have imagined as "social capital." As a result, blacks would have substantially lower incomes, earning lower wages and probably suffering higher levels of unemployment (given what would surely be an undercapitalized neighborhood). Given these disadvantages, poor blacks would be unable to move into privileged neighborhoods. On the other end, whites would understandably be reluctant to give up their privileges to relocate to black neighborhoods (for they would suffer inferior public services and higher taxes). The outcome would be, absent

---

[76] Ford, "Boundaries of Race," 453

intervention, the reproduction across generations of economic inequity. "At some point an equilibrium might be achieved: generally better-connected and better-educated whites would secure the better, higher-income jobs and disadvantaged blacks would occupy the lower-status and lower-wage jobs."[77]

One of the important features of Ford's imaginary society is that these outcomes occur without the presence of racial prejudice or a racial ideology. "There is no racist actor or racist policy in this model, and yet a racially stratified society is the inevitable result." On purely economic grounds, those of rational self-interest, the structure of racial segregation perpetuates itself. This is what I referred earlier as objective racism. It is objective because its existence does not depend on the consciousness of the actors. It is a species of racism because the effect is to privilege one group of people over another, a group identifiable only by their previously racialized physical features. "Even in the absence of racism, then, race-neutral policy could be expected to entrench segregation and socioeconomic stratification in a society with a history of racism. Political space plays a central role in this process. Spatially and racially defined communities perform the 'work' of segregation silently."[78]

Blacks do not exist in Ford's imaginary society. They exist in a world that has all the features and dynamics of Ford's model and more: the conscious struggle by whites to secure racial privilege by actively denying blacks the opportunity to achieve substantial racial equality by taking off the table the right to secure redress for racially

---

[77] Ford, "Boundaries of Race," 453

[78] Ford, "Boundaries of Race," 454.

differentiated outcomes. These outcomes are said by those who oppose substantive racial equality to either be the result of historical inequities or the fault of the disadvantaged. Those who advance the former believe that over time racial equality will be achieved. But, as Ford demonstrates, even under the most ideal circumstances this is impossible and so this viewpoint effectively advocates the status quo. Those who advance the latter – that the fate blacks suffer is of their own doing – explicitly advocate the status quo while at the same time express a desire to absolve whites of any responsibility for the fate of their black brothers and sisters.

Perhaps no contemporary debate defines the contradiction between the "internal" and ideal logic of the law and the "external" and *real* force of social and historical reality as does the debate surrounding affirmative action and the policies that flow from its logic. More important, the struggle over reformist civil rights policy reveals the racist assumptions that guide US legal philosophy. Affirmative action is a set of practices involving a variety of steps taken in education, employment, and contracting to reverse the legacy of discrimination and increasing racial and gender diversity. Those favoring this policy argue that affirmative action is necessary to redress centuries of inequality leaving women, blacks, and other disfavored minorities at a competitive disadvantage in US society. Their argument is essentially one asking the state to consider the law in conjunction with the historical and social reality that *in theory* lies outside the law. For this reason, affirmative action is a mild reparations program.

Those opposed to affirmative action argue the policy gives "individual preferences" based on "group rights." Affirmative action, they aver, is contrary to the ideals of civil liberties. Moreover, it is unnecessary, since the United States government dismantled the formal machinery of racial and gender discrimination in the 1960s. According to what is effectively a pro-discriminatory point of view, to maintain purity of the principle of individual liberty the law *must* proceed on the assumption of a color blind society. This means judging individuals only on personal merit — not by the groups of which they may be members. To do otherwise is discrimination in reverse.

Carl Cohen's *Naked Racial Preference*,[78] a book of legal anecdotes arguing against affirmative action policies and programs, is exemplary of the on-going attack on the (minimalist) liberal-progressive civil rights agenda. Cohen is an organic intellectual for collective white male interests, so his work will serve as target of critique. *Naked Racial Preference* attacks "preferences" in law school and medical school admissions and in employment decisions. It assails quotas, goals, set-asides, and racial-ethnic-gender proportionality because these programs are "inherently unfair." It uses the abstract civil liberty ideal of a color blind and theoretically groupless society to defend a position for discrimination. Cohen reduces advocates of affirmative action to mere "decent people who mean to be just and do good."[79] In trying to help the disadvantaged, he contends, the liberal do-gooder just makes things worse. This

---

[78] Carl Cohen *Naked Racial Preference* (New York. Madison Books, 1995). Cohen composed much of *Naked Racial Preference* with essays he has published on affirmative action over the past 20 years (in *The Nation* and various academic newsletters and journals). These essays document Cohen's unwavering opposition to affirmative action

[79] Cohen, *Naked Racial Preference*, 212

argument has a clear ideological origin, principally found in an argument style advanced by neoconservatives. One might call it the philosophy of "unintended consequences," and it comes up again and again in neoconservative discourse. Neoconservative scholar James Q. Wilson states the standpoint succinctly in the "Foreword" to *The Essential Neoconservative Reader*: "Liberals desire greater social equality, so they embrace any data that show that inequality is bad or getting worse; neoconservatives are not friends of inequality but find the reality underlying these data complex and often counterintuitive."[81] The good-intentions-unintended-consequences argument reaches its zenith in Marvin Olasky's *The Tragedy of American Compassion*, where it is contended, in stealth social Darwinian fashion, that helping the disadvantaged harms the disadvantaged.[82] Carl Cohen echoes this rhetoric in *Naked Racial Preference*, reminding us in one chapter heading: "The Road to Hell Is Paved with Good Intentions."[83]

Books like Cohen's represent an assault on minimalist civil rights policy. A spate of books on affirmative action, both pro and con, has flooded the market of intellectual and political discourse.[84] On the pro-affirmative action side, for example, is

---

[81] James Q. Wilson, "Foreword," *The Essential Neoconservative Reader* (Reading: Addison-Wesley, 1996), viii.

[82] Marvin Olasky, *The Tragedy of American Compassion* (Washington DC: Regency, 1992).

[83] Cohen, *Naked Racial Preference*, 212.

[84] Francis J Beckwith and Todd E. Jones, eds., *Affirmative Action: Social Justice or Reverse Discrimination?* (Amherst Prometheus, 1997), Barbara Bergmann, *In Defense of Affirmative Action* (New York: Basic Books, 1996); Clint Bolick, *The Affirmative Action Fraud: Can We Restore the American Civil Rights Vision?* (Washington, DC: Cato Institute, 1996), George E Curry, ed., *The Affirmative Action Debate* (Reading: Addison-Wesley, 1996); Avon W. Drake and Robert D. Holsworth, *Affirmative Action and the Stalled Quest for Black Progress* (Urbana: University of Illinois Press, 1996); Terry Eastland, *Ending Affirmative Action: The Case for Colorblind Justice* (New York: Basic Books, 1996); Nicolaus Mills, ed., *Debating Affirmative Action. Race, Gender,*

Barbara Bergmann's *In Defense of Affirmative Action*.[85] Bergmann openly advocates the use of the law and administrative activity to right the wrongs of a racist past, wrongs that extend into the present through institutional racism and historic inequity. Scholars opposing affirmative action have been far more prolific. While affirmative action for women and other minorities has hardly been controversial among opponents of affirmative action, these scholars have been relentless in going after the way the program helps blacks.

Terry Eastland's *Ending Affirmative Action* provides the standard anti-affirmative action argument: racial preferences are discriminatory.[86] These policies discriminate against whites and they discriminate against men. "Whatever might be said in support of preferences," Eastland contends, "they necessarily discriminate against those who lack the 'right' race or sex. There is no getting around this fact." *Ending Affirmative Action* presents examples of "reverse discrimination," e.g., noting that a white female plaintiff denied admission to the University of Texas law school "had academic credentials superior to most of the black and Mexican-American students admitted under an affirmative action plan." The title of Cato scholar Clint Bolick's anti-affirmative tract says it all: *The Affirmative Action Fraud*.[87]

Ethnicity and the Politics of Inclusion (NY: Delta Trade, 1996), Albert G Mosley and Nicholas Capaldi, *Affirmative Action: Social Justice Or Unfair preference?* (Lanham Rowman & Littlefield Publishers, 1996), John David Skrentny, *The Ironies Of Affirmative Action: Politics, Culture, And Justice In America* (Chicago: University of Chicago Press, 1996); Richard F. Tomasson, Faye J. Crosby, and Sharon D. Herzberger, *Affirmative Action: The Pros And Cons Of Policy And Practice* (Washington, D.C . American University Press, 1996).

[85] Bergmann, *Defense of Affirmative Action*

[86] Eastland, *Ending Affirmative Action*

[87] Bolick, *Affirmative Action Fraud*

What I want to draw particular attention to here is the way that the anti-affirmative action argument divides the world into the real and the ideal. Works like *In Defense of Affirmative Action* defend affirmative action on the grounds that since the law works in the real world, and since we profess to hold democratic values of equality and fairness, the state must put the law to the task of securing these values in the context of social and historical reality. The argument implicitly asserts an organic relation of civil and political society, or more commonly called the "private" and "public" sectors. Works like *Ending Affirmative Action*, on the other hand, argue that securing values of equality and fairness lie in sequestering the law from social and historical reality. Society must keep the law pure. We have built equality and fairness in our country by administering the law according to an internal color blind logic and its objective standing as the true arbiter of individual liberty. At least this is the prevailing myth.

Carl Cohen's book attempts to follow the latter logic, but, like most idealists, he finds it very difficult to keep the external world out of his argument. In the end, his book degenerates into not-too-subtle racism: he winds up blaming the victim. Cohen argues that "the use of racial classifications undermines the quest for social justice." He argues that "deteriorating race relations across the country now drive this point home: racial preferences 'foster intolerance and antagonism against the entire membership of the favored classes.'"[87] There is really nothing in Cohen's book to support his claim that racial classifications undermine the quest for social justice. His

---

[87] Cohen, *Naked Racial Preferences*, 212.

footnotes are replete with references to Supreme Court and lower federal court decisions regarding affirmative action cases. But there are no empirical data supporting his claim of prejudice and discrimination outside the law as a result of affirmative action. On what basis then can Cohen redefine oppressed groups in America as "favored"? Certainly not on the basis that blacks and other disfavored minorities are on equal footing with whites, and therefore to preference individuals belonging to these groups is to favor them over whites.

Cohen and others advancing such arguments use two principal tactics: (1) remove the argument from the realm of empirical reality to the lofty world of juridical neutrality and individualist ideology by adopting the perpetrator's perspective and discounting the victim's reality; (2) point to test scores and other performance measures that allegedly show blacks to be "unqualified" and therefore "undeserving" of affirmative action programs. Using the first argument, Cohen demands that since *in principle* all people are treated as individuals under the US political system, they must be *practically* treated on that basis. But the law is not some abstract entity neutralizing the social reality of group conflict. The idealism of the law never captures the realism of our lives. The law — like everything else that is produced by or enters into human group life — is *for somebody* and *for something*. By Cohen appealing to the ideal neutrality of the law, and asking this ideal neutrality to be restored — when in fact this ideal has never been realized — he is using the law to deny empirically disfavored minorities an equal opportunity to realize the American ideal of equality and fairness. His argument *rhetorically* ignores the external world because only by retaining the

celibacy of the law can he assert the argument. This argument is not a neutral argument; the rhetorical tactic comes with the price of reinforcing discrimination through juridical passivity.

When idealism fails to sway — that is, when libertarian ideals run up against the objective reality of white supremacy — Cohen and others are forced to turn to statistics alleging black inferiority. For example, Cohen points to bar examinations in Michigan in 1971 where 71 percent of white candidates passed the test, whereas 17 percent of black candidates passed the test. After supposedly demonstrating black inferiority — resorting to measures constructed and standards set by white male middle class sociocultural standards — Cohen then draws the following conclusion: "The demands for racial proportionality in the professions, advanced through the consideration of race in professional school admissions, even when intellectual and other pertinent considerations are counterindicative, exacts a high price. It must result in the tendency, at least statistical, to yield minority group professionals less well qualified, less respected, less trusted than their counterparts in the majority. This is a great disservice to minority groups, stigmatizing their members in a most unfortunate way."[89]

Cohen's argument is derivative of Thomas Sowell's argument in *Black Education: Myths and Tragedies*. Sowell writes: "Those black people who are already competent, and who could be instrumental in producing more competence among rising generations, will be completely undermined, as black becomes synonymous —

---

[89] Cohen, *Naked Racial Preferences*, 33

in the minds of black and white alike — with incompetence, and black achievement becomes synonymous with charity or payoffs."[89] Why should this necessarily be the case? Blacks are held back by the structure of white supremacy, not because they are incompetent. There is no evidence of the racial inferiority required for Sowell's assumption concerning blacks as a group to be viable, an assumption that at the same time implies that differences are not caused by social and historic inequity. If the ideologues who held blacks to be inferior *before* affirmative action still find a way to rationalize blacks as inferior *after* affirmative action, by supposing *a priori*, as both Cohen and Sowell do, that blacks will be more likely to be incompetent, then this only means that white supremacy should persist. The ideological basis for further discrimination persists as Cohen and Sowell's arguments. To put this another way, blaming the policy that is working to redress the grievances of centuries of white supremacy for persistent racial discrimination is not only contradictory, it is racist.

Consider the matter of incompetent whites. Do people encountering incompetent whites stop and ponder the structure that has placed whites into those positions? Not very often. So why the focus on blacks? Might it be that the call for racial proportionality is received as a call for lessening the privileges white males have enjoyed at the expense of blacks and other minorities? Consider who sets the standards against which blacks are judged. Consider that conservatives and liberal opponents of affirmative action rarely bring a charge of incompetence against women, who are by far the largest beneficiaries of affirmative action policies, or against

---

[89] Sowell, quoted in Cohen, *Naked Racial Preferences*, 34

immigrants, who are increasingly helped by these programs (this is not to deny women and immigrants are oppressed, but rather that discrimination against blacks is far less subtle in this respect). When conservatives say that affirmative action leads to the admission and placement of unqualified or incompetent blacks, what are they really saying? To gain insight on these questions, we must turn to Peggy McIntosh's argument about white male privilege.

As its core, Cohen's argument is attempting to dissimulate white male privilege.[90] While many people have written eloquently on this matter, Peggy McIntosh has provided perhaps the most accessible account of the character of white male privilege.[91] Frustrated by her colleague's unwillingness to grant their "overprivilege," even when stipulating the disadvantages of women, McIntosh

---

[90] The critical study of white privilege involves development of "racial taxonomy" or the analysis "racial architecture" in the literature. See Ian F Haney Lopez, *White by Law: The Legal Construction of Race* (New York. New York University Press, 1996); Neil Gotanda, "A Critique of 'Our Constitution Is Color Blind,'" *Stanford Law Review*, 44 (1991) and "'Other Non-Whites' in American Legal History: A Review of Justice at War," *Columbia Law Review* 85 (1985); Cheryl I Harris, "Whiteness as Property," *Harvard Law Review*, 106 (1993), Ruth Frankenberg, ed., *Displacing Whiteness: Essays in Social and Cultural Criticism* (Durham, NC Duke University Press, 1997); George Lipstiz, *The Possessive Investment in Whiteness. How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 1997) and "The Possessive Investment in Whiteness Racialized Social Democracy and the 'White' Problem in American Studies," *American Quarterly*, 47 (1995), Mike Hill, ed., *Whiteness: A Critical Reader*, (New York New York University Press, 1997), in particular the essay "The Universalization of Whiteness Racism and Enlightenment" by Warren Montag, Joe L Kincheloe, Shirley R Steinberg, and Ronald E. Chennault eds., *White Reign: Deploying Whiteness in America* (New York: St Martins Press, 1998); Abby L. Ferber, *White Man Falling. Race, Gender, and White Supremacy* (Landham, MD: Rowman and Littlefield, 1998), Richard Delgado and Jean Stefancic, eds , *Critical White Studies. Looking Behind the Mirror* (Philadelphia Temple University Press, 1997); Stephanie M. Wildman, Trina Grillo, and Adrienne D Davis, *Privilege Revealed: How Invisible Preference Undermines America* (New York: New York Univerity Press, 1996)

[91] Peggy McIntosh, 1988, "White Privilege and Male Privilege. A Personal Account of Coming To See Correspondences through Work in Women's Studies " Working Paper 189, Wellesley College, Wellesley MA

developed her social critique to bring materials developed in women's studies to the rest of the curriculum at Wellesley College. Men would readily say they supported raising the standing of women, promising to step up to the plate in securing equality and fairness for all. But the men refused to lessen *their* privilege to achieve this. Furthermore, the fact that men gained advantage by disadvantaging women was a taboo subject. The source of privilege was to be kept silent. Ultimately, the system of patriarchy that privileged men was treated as neutral and natural, with women's lower standard implicitly the result of essential gender differences. All this served to protect male privilege.

Her mind soon turned to the matter of race. She considered how she was taught that racism is something that put minorities at a disadvantage. She never considered the way that being white *advantaged* her. Whites, like males, are socialized not to see white privilege; she had been the victim of the invisibility of whiteness. Once she realized fully the power of white privilege, she saw the world in a new way. She writes that "I have come to see white privilege as an invisible package of unearned assets that I can count on cashing in each day, but about which I was 'meant' to remain oblivious. White privilege is like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools , and blank checks."[92] McIntosh argues that white male privilege operates unconsciously. The privileges granted by both whiteness and maleness operate at a structural-institutional level and are defended by white males when their privilege is threatened. This helps us

---

[92] McIntosh, "White Privilege," 1

understand the attack on affirmative action. Threats to white male privilege appear as attacks against equality because white male privilege has been historically defined *as* equality. The framers of the Constitution, the authors of the Declaration of Independence, and the authors of virtually every other piece of legislation in US history equated equality with whiteness and maleness.

The myth of the meritocracy proves to be quite intractable. Because of the power of individualism, white privilege proves to be, in Peggy McIntosh's words, "an elusive and fugitive subject." The individualist ideology that lies at the core of the American ethos inoculates individuals against recognizing the realities of the social forces that determine and condition their lives. In challenging this sacred principle, we might be forced to admit that people are not self-made, that our society is not open and free, but that doors are opened for individuals because of their gender and the color of their skin. Skin color and gender are an asset in the United States; they act as a de facto affirmative action program. Whites have had, and continue to have, the best affirmative action program in US history.

We can push the arguments of people like Cohen back on several grounds — test scores and grade point averages are not good measures of academic outcomes; these measures themselves are a way of excluding minorities from participation in academic life; racial and gender discrimination persists and affects real people; etc. But the most powerful critique of their standpoint is to note the denial and ignorance of white racial preferences legitimated by the law. This is the continuing effect of racial caste — caste, as with other oppressive hierarchies, operate both because those

privileged by it struggle to preserve it and because features of racism operate anonymously. Cohen maintains, against his critics, that his position "is based in ethics and the law," but he and the others who advance this line of argument exploit the race-neutrality of the law, denying the objectivity of race discrimination and, ultimately, appealing to the myth of black inferiority. Such arguments are ideological not just because they are put in the service of upholding white male privilege but because they mask the reality of racial inequality, both historically and structurally.[94] Critical legal scholar Morton J. Horwitz points out that

> Neutral principles are always an attempt to create a formal relationship that leaves out the power element in the real relationships . . The Supreme Court established freedom of contract as the basis for interpreting the Fourteenth Amendment, on the notion that to look at the actual economic power or coercive power of one or the other parties was not neutral. Neutrality required that you eliminate the power element and think of it only in terms of a formal relationship
>
> Color blindness has the same intellectual function that neutrality had in terms of economic power. Color blindness wishes to eliminate the history of power relations between the races, and assess how we feel about any particular policy, as if today can be a starting point, without looking at how we got here today As if we don't talk about the inequalities of entitlements that are given to one or another race, because to do so would be noncolor blind. It seems to be quite the opposite, that unless you look at the history of how you got to the particular starting point today, you can't begin to assess what is in truth a color-blind situation, a situation that eliminates the prior benefits, illicit benefits that people got on the basis of race [95]

Affirmative action opponents not only fail to stand up for what is right in the face of the law, but they use the law *against* the oppressed and downtrodden. This struggle, basic to the perceived interests of dominant legal scholars, against minimalist positive action to reduce the degree of racial inequality combines with the structure of

---

[94] See Morton J Horwitz, "The Constitution of Change. Legal Fundamentality without Fundamentalism," *Harvard Law Review*, 107 (1, 1993) 30-117, where he argues that the 19th century Lochner court's use of neutrality to mask economic power is comparable to the Supreme Court's current drive to use colorblindness to hide racial inequity

[95] "Morton Horwitz Law and Civility," interview with Kim Ann Savelson, *Appendix*, 3 (1997), http.//www appendx org/issue3/savelson/index1 htm, 175.

US law to reinforce the bulwark against any real change in the circumstances blacks face. With every step forward blacks make in achieving freedom, their continuing condition of unfreedom is rationalized by the language of neutrality. After 1964, when all formal *positive* measures guaranteeing subordination were eliminated, the full promise of neutrality was realized as white privilege could be secured through the oppressive instrument of colorblindness.

Conclusion

This chapter explored two categories central to social science discourse about inequality: class and race. Class is a structural-relational position in the system of socioeconomic production theoretically linked to the process of capitalist accumulation, which is in fact the objective basis for the former's existence. Race, an ascribed position in a status hierarchy, was examined in a binary configuration of black and white. I briefly reviewed and critiqued previous attempts to conceptualize the intersection of class and race in terms of racial caste. I retained the basic insight of earlier conceptualization, adopting the concept of class stratification within racialized categories. I was critical of the over-reliance on consensus in previous work. Finally, I provided two illustrations capturing key features of the dual society: the automatic reproduction of racial inequality and the intentional behavior of whites to preserve racial inequality. Understanding the structural dynamic in the dual society is crucial for the thesis of the present work because with each dismantling of the explicit structure of racial domination it has been supposed that the United States is achieving its ideal of racial equality. This is an illusion.

CHAPTER 4

THE CASTE-CLASS SEGMENTATION OF CRIME AND PUNISHMENT

Race affects class formation and class influences racial dynamics in ways that have not yet been adequately investigated. The entire relation between race and class interest (and racial and class privilege) is an exceedingly complicated one that social theorists might well explore in a deeper fashion. It is the most important question that must be faced in constructing a theoretical model of a racial capitalist society — Robert Blauner[1]

There are, in the main, two theoretical problems analysts face in explaining crime and punishment in the racialized context of the United States. First, analysts have struggled to grasp the social class-racial caste complex as a unified social force differentiating the United States. David Roediger, in a fashion similar to Blauner, challenges us: "the most pressing task for historians of race and class is not to draw precise lines separating race and class but to draw lines *connecting* race and class."[2] Second, crime and punishment, while operating relatively independent of one another (punishment may increase when crime is stable or falling), are both ultimately products of the historical system in which they appear; social scientists have excessively abstracted crime and especially punishment from their historical circumstances.[3]

A racialized socioeconomic structure differentiates crime the same way it differentiates everything else in bourgeois society: rich and poor, white and nonwhite,

---

[1] Robert Blauner, *Racial Oppression in America* (New York: Monthly Review Press, 1972), 28.

[2] David R. Roediger, *The Wages of Whiteness Race and the Making of the American Working Class* (New York Verso, 1991), 11. My emphasis.

[3] To be sure, the literature is not completely impoverished See Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York Columbia University, 1939), Michel Foucault, *Discipline and Punish. The Birth of the Prison* (New York· Pantheon, 1977)

criminally offend in ways that correspond to their social locations, with the poor and nonwhite offender overrepresented in street crime, and the rich and white offender overrepresented in white-collar and corporate crime.[4] The character of societal reaction, represented most obviously by the criminal justice system, likewise assumes a tiered shape; which tier of justice an individual encounters depends on his or her class location and race designation.[5] While the affluent enjoy an internally administered, marginally enforced, restitutive system of civil justice, elites and dominant institutions reserve for and impose upon poor and working class lawbreakers a repressive criminal justice system focused on police enforcement, retributive justice, and deprivation of freedom and life. Thus crime and punishment are theorized as outcomes of the same historical system. After explaining the structural model, I explicate a feature of the pending dynamic theory: colonialism.

One caveat before proceeding. Observing that crimes and punishments are racially and economically stratified does not mean that there are no forms of crime that have universal acceptance among all groups as wrongs. When they are defined as such, murder and rape, and a host of other acts, deeply offend the moral sensibilities of members of all social categories. Furthermore, when defined as such, even lesser crimes, such as theft, are recognized as criminal among rich and poor, black and white alike, and people of all social classes and racial-ethnic categories desire to hold

---

[4] Anthony R. Harris and Lisa R. Meidinger, "Criminal Behavior: Race and Class," in *Criminology, 2nd* edition, ed. Joseph Sheley (New York: Wadsworth), 141.

[5] Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison: Economic Bias in American Criminal Justice* (Boston: Allyn and Bacon, 1996).

offenders responsible for these crimes.[6] But even universally accepted crimes are differentiated by the structures I am theorizing. The rape of a poor black woman is much less significant in the eyes of law enforcement, the media, and the general public, than the rape of an affluent white woman.[7] This reflects "vestiges of an older sexual-stratification system that punishes men accused of rape according to the race of the victim-offender dyad. Cases involving black offenders and white victims were treated most seriously, while black intraracial cases were treated the least seriously."[8] In short, the depth of moral outrage felt about certain criminal acts, the intensity of their *mala in se* quality, does not change the basic outlines of the caste-class character of US jurisprudence.

The Caste-Class Model

One of the earliest attempts to understand the class-race nexus was produced by Oliver C. Cox. Cox adopted a Marxist approach to the problem, arguing that the

---

[6] Steven Box, *Power, Crime and Mystification* (New York Tavistock, 1983); Randall Kennedy, *Race, Crime, and the Law* (New York: Vintage Books, 1997).

[7] Abena Busia argues that rape is constructed as a crime against white women but that black women are constructed as unrapable. See Abena Busia, "And This is What We've Decided to Tell You After Everything We've Shared," in *Theorizing Black Feminisms: The Visionary Pragmatism of Black Women*, ed. Stanlie M. James and P.A. Abena (New York: Routledge, 1993). See also Adele Logan Alexander, "She's No Lady, She's a Nigger': Abuses, Stereotypes, and Realities from the Middle Passage to Capitol (and Anita) Hill," in *Race, Gender, and Power in America: The Legacy of the Hill-Thomas Hearing*, eds. Anita Faye Hill and Emma Coleman Jordan (New York: Oxford University Press, 1995), Catherine Clinton, "With a Whip in His Hand: Rape, Memory, and African-American Women," in *History and Memory in African American Culture*, eds. Geneviève Fabre and Robert O'Meally (New York: Oxford University Press, 1994), bell hooks, *Ain't I a Woman: Black Women and Feminism* (Boston, MA. South End Press, 1981); Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge, MA: Harvard University Press, 1991).

[8] Gary D LaFree, *Rape and Criminal Justice* (1989), 239. The same pattern is seen in the application of the death penalty. See Randall Kennedy, "McCleskey v. Kemp: Race, Capital Punishment, and the Supreme Court," *Harvard Law Review*, 101 (1988).

capitalist class carries out racial exploitation as an economic strategy to maximize surplus-value. In his arguments, he emphasized that it was not skin color that was the reason for blacks' domination under slavery; rather it was the labor needs of the capitalist class that enslaved Africans. The need for cheap labor created a system of racial subordination. This hierarchy of domination became defined in racial terms — it became *ideologically racialized*. Race prejudice developed out of economic arrangements as a culture-ideology legitimating class domination.[9] Cox's theory is a species of class reductionism.

W.E.B. Du Bois also employed a variant of Marxist class analysis to explore the problem of race in the European dominated world-system. Like Cox, Du Bois argued that capitalist class oppression/exploitation and racial oppression/exploitation are intrinsically linked. But he avoided Cox's tendency to reduce racism to economic imperatives by theorizing that class struggles are carried out in racialized categories that exist at all levels of the class structure. For Du Bois, capitalism and racism are distinct yet interrelated sets of relations existing in a larger systemic whole.[10] Moreover, Du Bois understood the role white workers played in producing and reproducing racism.

What Cox and Du Bois' arguments have in common is an emphasis on the importance of social class and the material needs and interests of the ruling economic class in analyzing modes of racial domination/exploitation. This emphasis places the

---

[9] Oliver C. Cox, *Caste, Class, and Race* (Garden City Doubleday, 1948).

[10] William E. B. Du Bois, "Is Man Free?" *Scientific Monthly* 66 (May 1948); Manning Marable, *How Capitalism Underdeveloped Black America* (Boston: South End Press, 1983).

analysis on the ground, thus avoiding idealist explanations that conceive of race as only attitude. Also, by locating racism in the structure of capitalist society, these scholars avoid the errors of reifying and essentializing race as something intrinsic to individuals who are racialized and/or treating race as a free-floating culture-ideology or as forms of ignorance with an independent history or species of primordial communal affiliation.[11] This side-steps the commonsense univeralization of racism, sometimes supposed as an instinctive impulse,[12] a belief with no basis in history. Du Bois' work especially advances our understanding. He argues that more than the fact that blacks struggle within social class categories, all workers struggle *within* racialized categories. This is what led him to the observation that white workers often actively embrace whiteness. Capitalists do not simply manipulate white workers into racism. Whiteness has become an intrinsic part of worker identity.[13] This identity brings both psychological and material privileges.

As figure 1.3.3 in part 1, chapter 3 alluded to, the distribution of racialized groups is uneven across class locations. Whereas the capitalist class is almost

---

[11] Edna Bonacich, "Class Approaches to Ethnicity and Race," *Insurgent Sociologist*, 10 (Fall 1980), 11.

[12] Various sociobiological theories have advanced the claim that certain behaviors that might be considered racist are instances of human nature. For example, racism is the organism maximizing its inclusive fitness by practicing nepotism. Human beings are vehicles for the genes which seek genes like themselves (although not too much like themselves). A central tenet of sociobiology is that what is assumed to be altruistic behavior is actually genetic selfishness. The message? Do not blame whites for pulling together against blacks — it is only the result of individuals selfishly acting on behalf of their genes to maximize inclusive fitness For a review of sociobiological ideas see David P Barash, *Sociobiology and Behavior* (New York. Elsevier, 1977); Michael Ruse, *Sociobiology, Sense and Nonsense* (Boston Reidel, 1979); Edward O Wilson, *On Human Nature* (Cambridge Harvard University Press, 1978)

[13] W.E.B. Du Bois, *Black Reconstruction in the United States, 1860-1880* (New York, 1977) Understanding this is one of the strengths of Roediger's *The Wages of Whiteness* See also Roediger, *Towards the Abolition of Whiteness* (New York. Verso, 1994)

exclusively white, and the professional-managerial and petty bourgeois classes are predominantly white, the working class is more "evenly" divided among white and nonwhite groups, and the so-called "underclass" is disproportionately nonwhite. Because the system of racial caste cuts across class, class locations are internally racially stratified. This has the consequence of whites and blacks occupying the same class position yet moving in very different cultural-ideological worlds, living out unequal political-legal and socioeconomic lives, with blacks suffering in racially subordinated positions and whites enjoying relatively higher socioeconomic and cultural fortunes — including the psychological privilege and sociomaterial advantages Du Bois called the "wages of whiteness."[14] These are the effects of racial caste.[15]

Systems of race and class have relatively independent effects that are analytically separable but concretely interrelated and therefore must be understood ultimately in terms of their intersection.[16] In capitalist society, there is no final distinction between class and race. Social class under capitalism has been historically racialized and fragmented, and racialized groups have been organized into social class

---

[14] Du Bois, *Black Reconstruction.*

[15] In *Political Economy of Race* (Pluto Press, 1993), Melvin Leiman avers that this is why a "relevant Marxist analysis of racism must explain the specific oppression of blacks as well as how racism fits within the generalized oppression of the capitalist system," 147 Leiman is privileging class over race in his language He admits this earlier in his work "My examination centers on class as the primary unit of analysis intra- and interclass conflict are seen as the driving force conditioning the directions of change. Racial conflict overlays the antagonism between classes," 3

[16] Cf Milton M. Gordon, who writes, "The two systems must be kept conceptually separate, for otherwise the nature of their interrelationship cannot be discovered," *Social Class in American Sociology* (New York, 1963), 252 The next year, Gordon developed the construct of "ethclass " See *Assimilation in American Life* (New York. Oxford University Press, 1964)

fractions. "As a theoretical construct capitalism is conceivable without racism. But racism is historically rooted in the combined slave-capitalist system, and its persistence suggests that overcoming racism would require transcending capitalist society."[17] More important than their independent effects, then, is the impact of a system where forms of domination dovetail to maintain power and privilege at one end of society and subordination and exploitation at the other end. The intersection of caste and class divides the socioeconomic structure and compounds the suffering of marginalized people.

For the working class, this involves the combination of occupation-based and racialized labor markets in such a manner that binds a privileged sector of the working class to the capitalist class. The occupation-based system, or dual-labor market,[18] is based on the division between labor-intensive and capital/knowledge-intensive

---

[17] Leiman, *Political Economy of Race*, 5

[18] Dual labor market theory is advanced by several scholars and with several different emphases so an extended note here is useful. There are two major forms. One, advanced by Piore and Doeringer and others, is based on human capital approaches and tends to blame the victim by emphasizing personal employment instability in explaining the emergence and maintenance of the dual labor market. See Peter B. Doeringer and Michael J. Piore, *Internal Labor Markets and Manpower Analysis* (Lexington. Heath, 1971), Suzanne Berger and Michael Piore, *Dualism and Discontinuity in Industrial Societies* (New York Cambridge University Press, 1980), Peter B Doeringer and Michael J. Piore, *Internal Labor Markets, Technological Change, and Labor Force Adjustment* (Cambridge Cambridge University Press, 1966). Barry Bluestone and others have developed another line of thought, including radical dual labor market and industrial segmentation approaches. These forms of the argument avoid culture of poverty explanations by examining structural factors that produce and reproduce dual labor markets (or economic dualism) It is the latter approach that I use, although with considerable modification, principally by informing industrial segmentation with Marx's theory of capital intensiveness and split labor market theory See Barry Bluestone, William M Murphy, and Mary Stevenson, *Low Wages and the Working Poor* (Ann Arbor, MI University of Michigan, 1973). Barry Bluestone and Bennett Harrison, *The Deindustrialization of America. Plant Closings, Community Abandonment, and the Dismantling of Basic Industry* (New York· Basic Books, 1982). David M Gordon, *Theories of Poverty and Underemployment, Orthodox, Radical, and Dual Labor Market Perspectives* (Lexington Lexington Books, 1972); Gilles Saint-Paul, *Dual Labor Markets* (Cambridge MIT Press, 1996)

industries. Labor-intensive industries are low-wage industries by necessity: since surplus-value is derived from the variable exercising of human labor, labor-intensive industries have high labor costs and therefore impose downward pressure on the price of labor. Capital and knowledge intensive industries, because of automation and mechanization and costs in the skilled labor commodity, generate a greater amount of surplus-value given labor inputs and therefore tend towards higher wages, but also require fewer laborers and thus increase the size of the industrial reserve. The racialized system, or split-labor market,[19] divides the working population into racial groups, with whites enjoying higher wages and greater job security, and blacks and Latinos working for low wages in unstable labor markets. Thus when we examine industrial organization we find that whereas whites (principally white males) dominate positions of leadership and wealth, minorities occupy subordinate position.

In my model, the two relatively distinct patterns of existence created by the combination of these systems are organized into two regions or patterns of existence. See figure 1.4.1. The *enrichment/inclusion* pattern of existence is the region of economic, political, and cultural privilege that includes capitalists, most managers, a significant portion of the petty bourgeoisie and capital and knowledge

---

[19] Edna Bonacich wrote a series of articles in the 1970s developing the split labor market theory See Bonacich, "A Theory of Ethnic Antagonism. The Split Labor Market," *American Sociological Review*, 37 (1972), "Abolition, the Extension of Slavery, and the Position of Free Blacks: A Study of Split Labor Market in the United States, 1830-1863," *American Journal of Sociology*, 81 (1975), "Advanced Capitalism and Black/White Race Relation in the United States: Split Labor Market Interpretation," *American Sociological Review*, 41 (1976). See also Bonacich, "United States Capitalist Development A Background to Asian Immigration," *Labor Immigration Under Capitalism*, eds Lucie Cheng and E. Bonacich (Berkeley University of California Press, 1984)

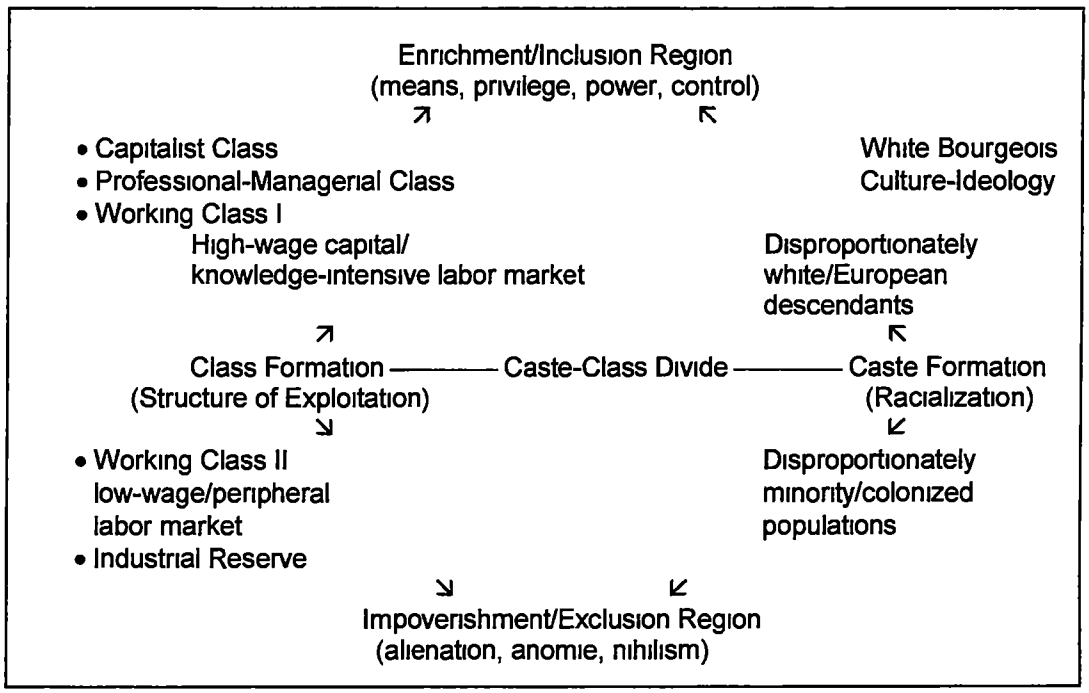


Figure 1 4 1
The Caste-Class System

intensive workers. This region is disproportionately white, especially among the more affluent sectors. Racialization processes that code in-coming groups "white" direct "acceptables" into the ranks of the enriched and included. The structure becomes "whiter" or "lighter" the more we move towards the capitalist class and upper echelon of the professional-managerial class.[20] The *impoverishment/exclusion* pattern is

---

[20] In the late 1980s, the Bush Administration and Congressional Republicans sponsored a report, *The Glass Ceiling Report* (Washington, DC U.S Department of Labor, 1990), that revealed that in the largest corporations in the United States, only 6/10 of 1 percent of senior management positions were held by blacks. Blacks make up 12-13 percent of the population Latinos make up 4/10 of a percent (Latinos are 10 percent of the population) and Asian Americans make up a mere 3/10 of a percent (Asian Americans are 3 percent of the population) Women held between 3 and 5 percent of the positions Over half of the population are women By contrast, white males make up 43 percent of the work force, yet hold 95 percent of senior management positions Again, racism need not exclude every individual defined as non-white to be of consequence Blacks occasionally make it into the affluent region In fact, the gap between affluent blacks and the rest of the African American population is quite large But

something of a mirror image of the first region. It includes those groups defined and structured as non-white (black, Latino, American Indian) and poor, uneducated/ unskilled whites (who, through the language of "white trash," are the victims of attempted racialization). Here, the process of racialization codes in-coming groups "non-white," directing stigmatized individuals into the ranks of the impoverished and excluded. Categories on this end of the continuum become "blacker" or "darker" the more we move towards the supernumerary.

There is evidence that supports this model. In the early 1980s, Erik Olin Wright found that while almost 60 percent of blacks were in the working class, only 37 percent of whites were. Whereas 16 percent of whites were employers or petty bourgeois, only three percent of blacks were. Dividing these categories by gender, Wright found that nearly 70 percent of black women were working class, in contrast to 27 percent of white men. One white man in six was either in the capitalist class or in a class location closely allied with the capitalist class (such as expert manager). "If we add to this other managers and experts, over a third of all white men in the labour force are in solidly exploiting class positions."[21] Contrary to the view of the average worker being a white male, Wright finds that "the working class in contemporary American capitalism is constituted substantially [nearly two-thirds] by women and minorities."[22] Wright's

---

affluent blacks still suffer discriminated Moreover, affluent blacks serve an important ideological function, in the same way media promote self-made millionaires as evidence of a classless society, propagandists exploit exceptions as representative of the colorblindness of the US. See also Joe R Feagin, "The Continuing Significance of Race. Antiblack Discrimination in Public Places," *American Sociological Review*, 56 (1991).

[21] Erik Olin Wright, *Classes* (New York: Verso, 1985), 201

[22] Wright, *Classes*, 201 He concludes. "Any political strategy for the mobilization of the working class has to take this demographic structure into consideration," 201.

recent research (1997) finds that things have not changed: "In terms of proletarianization, nearly 87% of black women, 77% of black men and 67% of white women in the employed labor force are in the extended working class, compared to only about 51% of white men." Looking at this from the proportional participation of each group in the labor market paints a similar picture. "Only 33% of the people in the working class and 39% in the extended working class are white males. By a large margin, the American working class now predominantly consists of women and racial minorities."[23]

As we can see, race and class divide each pattern internally. However, not only does the system privilege affluent whites, but it also privileges poor whites (although they sometimes do not feel this way)[24]; moreover, white bourgeois society never fully accepts blacks who move into the affluent strata (the effects of caste). Concrete reality is, of course, a messy situation; nevertheless, however simplistic we must define it to capture it, there is a real bifurcation in the structure of production that makes for two qualitatively different regions of social life in the United States.

I emphasize that the twin-dynamic of accumulation and racialization causes both of these patterns. Blacks are not underdeveloped because the class structure excludes them.[25] Rather blacks, as Manning Marable has pointed out, are the victims of the process of development and underdevelopment, wherein the interpenetration of the two poles causes wealth to accumulate at one pole and poverty to amass at the

---

[23] Wright, *Class Counts Comparative Studies in Class Analysis* (New York: University of Cambridge, 1997), 69

[24] Du Bois, "Is Man Free?" and *Black Reconstruction.*

[25] Marable, *Capitalism Underdeveloped Black America*

other pole.[26] In this system — the consequence of economic-racial structuring emerging from the dynamic of colonialism — racialized populations exist at the US domestic periphery of the capitalist world-economy and the American sociocultural order. Therefore racialization not only divides the working class ideologically, but also *structurally*. The centrality of wealth accumulation in the capitalist world-economy and the dependency of the ruling class and privileged sectors of the working class on a system of racialized labor to maximize economic surplus, control the mass of workers, and defend advantaged statuses, makes these determinations inevitable.

Crime And Punishment

Contrary to the mainstream view, which holds that crime is a product of the "dangerous classes," the facts of crime show that it is diffused throughout the socioeconomic structure.[27] Indeed, most criminal activity occurs among the affluent segments of US society as socially harmful activity perpetrated by corporations and well-to-do individuals in pursuit of material gain. Crimes of the affluent have the greatest impact on the society, both in financial and human terms. Noting this fact is not intended to diminish the consequences of street crime, rather it is to expose the greater source of criminal activity and to mark the consequences of its masking — the relative invisibility of affluent crime leads to the erroneous perception that blacks are overrepresented in crime. The reality that elites perpetrate far more crime and socially harmful acts than the rest of society, yet the criminal justice system overflows with

---

[26] Michael Parenti, *Dirty Truths* (San Francisco: City Lights, 1995).

[27] Harold E. Pepinsky and Paul Jesilow, *Myths that Cause Crime* (Washington DC: Seven Locks Press, 1992); Harris and Meidinger, "Criminal Behavior," 141; Reiman, *Poor Get Prison*

poor people and African Americans, is direct and dramatic evidence of the class and racial character of the state. What follows is an explication of the regions shown in figure 1.4.2, an expanded version of figure 1.4.1, elaborated with the distribution of types of crime and punishment. I begin with crimes of impoverishment and enrichment, and conclude with the exclusion and inclusion bifurcation of punishment.

People located in the lower socioeconomic rungs of US society are disproportionately involved in street crime. This is especially true for African Americans. Blacks commit proportionately more street crime given their representation in the population than any other ethnic group. Given that street-level violent crime is linked to extreme levels of socioeconomic deprivation, and given that blacks are disproportionately subjected to extreme levels of socioeconomic deprivation, it is expected that street crime disproportionately involves blacks.

The search for the causes of street crime usually begins by examining degree of socioeconomic inequality and marginalization, level of poverty, and official unemployment rates.[28] Based on recent analyses by researchers using Marxian economic theory,[29] I reconceptualize these factors as proximate causes. Ultimate factors

---

[28] For a review of the literature see Theodore G Chiricos, "Rates of Crime and Unemployment. An Analysis of Aggregate Research Evidence," *Social Problems*, 34 (1987); Emilie A. Allan and Darrell J Steffensmeier, "Youth Underemployment, and Property Crime· Differential Effects of Job Availability and Job Quality on Juvenile and Young Adult Arrest Rates," *American Sociological Review*, 54 (1989) David Cantor and Kenneth C. Land, "Unemployment and Crime Rates in the Post-World War II United States: A Theoretical and Empirical Analysis," *American Sociological Review*, 50 (1985), Elliot Currie, *Confronting Crime. An American Challenge* (New York. Pantheon, 1985) and *Crime and Punishment in America* (New York: Owl Books, 1998)

[29] See Michael J. Lynch, W Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994) See also Lynch, "The Extraction of

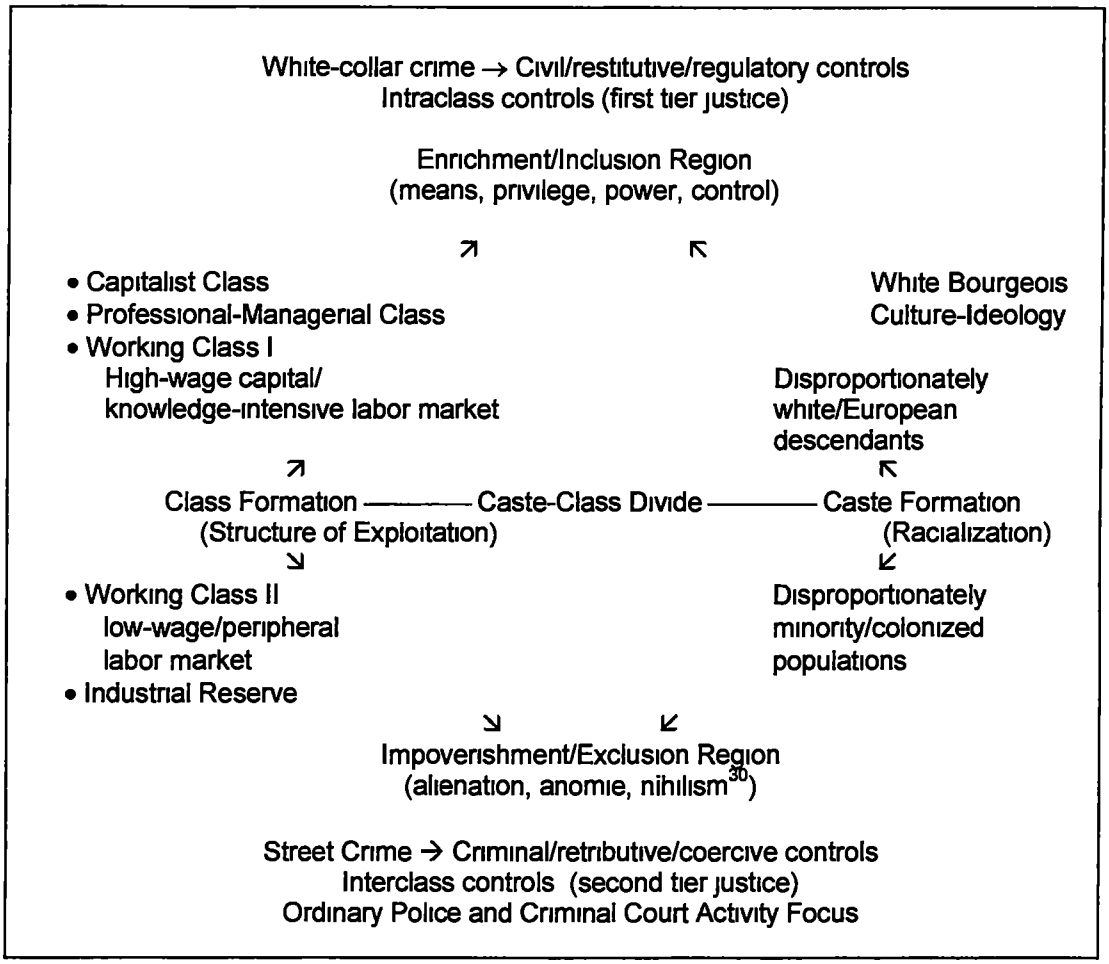


Figure 1 4 2
The Caste-Class Segmentation of Crime and Punishment

Surplus Value, Crime and Punishment A Preliminary Examination," *Contemporary Crisis*, 12 (1999)

[30] Because human beings via their inherently communal activities are the creators and re-creators of themselves collectively and individually, alienation to any or all fundamental aspects of social life creates social-psychological distress, which is potentially criminalized. Both the loss of or ambiguity in, meaning and the disjuncture between means and desire can lead to forms of innovation which may be criminalized. See Steven F Messner and Richard Rosenfeld, *Crime and the American Dream* (Belmont· Wadsworth, 1994) Nihilism causes a similar effect see Cornel West, *Race Matters* (New York Vintage, 1994) and Charles Derber in the *Wilding of America. How Greed and Violence are Eroding Our Nation's Character* (New York: St. Martin's Press, 1996). These conditions also affect those on the other side of the class line — there is a progressive deterioration of the moral order in capitalist society that affects all social groups (since all groups are constituents of the historical system). However, these patterns among the affluent are rarely criminalized

structure these variables, namely exploitation and racialization. These factors have primary importance in understanding the changing structure of crime, as well as continuity in crime causation. Recall that to maximize surplus-value, capitalists strive to reduce the mass of socially necessary labor involved in production, a practice that increases the surplus labor quantum of capital goods and finished commodities but at the same time produces conditions conducive to street criminality. Detailed empirical studies showing that the rate of exploitation is associated with the crime rate lend strong support to this argument.[31]

Because of their marginal position in the periphery of the U.S. economy, the changing structure of capitalist accumulation has had a bigger impact on blacks than whites. Racism allows for the maximization of profits through a split labor market that puts black and other minority workers in a position to be superexploited. Not only is surplus-value extracted from minority labor, but capitalists compensate minority workers at a rate less than the socially necessary labor as determined by skill level and labor market conditions.[32] According to U.S. Labor Department statistics, blacks earn three-fifths of what whites earn at every level of educational attainment.[33] The impoverishment of blacks through superexploitation, their relative exclusion from the economy through the racialization of the industrial reserves, and the system of residential segregation have forced blacks to live in ghettoized areas where they are

---

[31] See Lynch, Groves, and Lizotte, "Rate of Surplus Value and Crime"

[32] Richard Child Hill, "Race, Class and the State The Metropolitan Enclave System in the United States," *The Insurgent Sociologist*, 10 (2, Fall 1980)

[33] Statistics obtained from the U.S. Commerce Department, Washington DC.

frequently seduced by informal and illegal economic activities, such as the drug and sex trades.[34]

The statistical associations between street crime and the working class have too frequently produced one-sided, ideological interpretations of the US situation. Ready to identify political and corporate crimes and their causes, too many radicals rationalize, ignore, or dismiss working class criminality. Some even idealize street criminals. The consequence has been an impoverished body of knowledge on the etiology of street crime in the new criminological directions. This need not have been the case. Greenberg points out that "one could have accepted the claim that criminality is widely distributed in the class structure . . . and still tried to establish causal explanations of criminality."[35]

A similar lack of realism exists concerning race. Many argue that the racial disparity in the commission of street crime reflects the racial bias of the criminal justice system rather than street-criminality among some racialized populations: the system targets minorities and therefore over-represents them in official statistics. Of course, this is true to a certain extent, and this fact is relevant for questioning the profile suggested by the official data; but at the same time, racial bias cannot account for all the disparity in race.[36] Looking over the data, many researchers have concluded that

---

[34] John Hagan, "Crime and Capitalization Toward a Developmental Theory of Street Crime in America," *Developmental Theories of Crime and Delinquency*, Terence P Thornberry, editor (New Brunswick Transaction Publishers, 1997); Sidney Wilhelm, "Can Marxism Explain America's Racism?" *Social Problems*, 28 (1980)

[35] David F. Greenberg *Crime and Capitalism. Readings in Marxist Criminology*, revised and updated (Philadelphia: Temple University, 1993), 58

[36] Kennedy, *Race, Crime, and the Law*

racial discrimination in the criminal justice system *and* greater involvement of blacks in street crime account for the higher arrest rate among blacks.[37]

Ironically, neglecting the etiology of street crime misses an opportunity to critique white bourgeois society. An understanding of the systemic causes of crime must first admit to the realities of criminal activity among the proletariat. Those politically opposed to capitalism cannot miss the role of capitalism and the ruling class in producing crime among the working classes; to ignore proletarian criminality is to ignore the full problem and threat that capitalism presents to humanity. Working class criminals among the working class may be characterized as just one more misery the capitalist system has heaped upon the masses. It is more reasonable to follow Thio who, during the emergent period of radical criminology, disagreed with radicals who tended "to consider deviance as 'caused' by mere legal *definition*. In contrast, he wrote, "we see deviance as *caused* by the powerful through their influential role in shaping the character of the socio-cultural conditions of society which then directly generate deviance."[38] The social conditions that impoverish workers, especially racial minorities force them into alienating and anomic situations where their antisocial and illegal activities are constituted as street crime. Consistent with these patterns, the evidence shows that poor and minority populations exist under a punishment style regulated by criminal law possessing a repressive and retributive character.

---

[37] See Piers Beirne and James Messerschmidt, *Crime*, 3rd ed (Westview Press, 2000), 459.
[38] Alex Thio, "Class Bias in the Sociology of Deviance," *The American Sociologist*, 8 (1973)

Law and order policies under capitalism have historically had a deep class character. Over the past 30 years, prisons have been filling with people from the underclass and the lower rungs of the working class, those with little education, the underemployed and the unemployed.[39] "About 70 percent of the prison inmates in the United States are illiterate."[40] According to the Sentencing Project, in 1991 65 percent of inmates in state prisons had not completed high school, 32 percent of jail inmates (those who had been free at least one year prior to their arrest) had annual incomes under 5,000 dollars, and 33 percent of jail inmates were unemployed before entering jail.[41] "The system is bias against the poor from the start," Reiman writes; "for the acts that are treated as serious crimes, the poor are far more likely than the well-off to be arrested, if arrested, charged, if charged, convicted, and if convicted, sentenced to prison."[42]

Further evidence of the class character of law and order are the categories of offenses for which the state punishes individuals. Convictions in 1995 were, for the most part, for violating statutes designed to regulate the morality of the working class, for example, drug prohibition (31 percent), and for crimes of property (29 percent). Drug convictions represent much of the total number of convictions. In 1983, one of ten individuals in jail was there for drug offenses; in 1989, one of four jail inmates was

---

[39] See Reiman, *the Poor Get Prison*, for a comprehensive discussion of the class character of criminal justice See also Quinney, *Class, State, and Crime* (New York: Longman, 1980).

[40] Schlosser, "The Prison-Industrial Complex," 54.

[41] The Sentencing Project, *New Justice Department Figures Mark a Quarter Century of Prison Building*. www.sproject.com, 1998. This study provides figures from 1997 back. 1998 numbers used by the Project are from the US Department of Justice and were widely reported in the media, see, e.g , "U S. Prison Population Has Doubled," Associated Press, 15 March 1999

[42] Reiman, *Poor Get Prison*.

in for a drug offense.[43] In 1992, a person arrested for a drug violation was 5 times more likely to go to prison than 12 years before.[44] This increase indicates a well-organized national policy of drug prohibition. Whereas, 23 percent of state prison inmates in 1995 were drug offenders (not a meager number), 60 percent of federal prison inmates were there for drug offenses.

Differential treatment by race exists at all stages of the criminal justice system. Police arrest blacks more often than whites (3 to 1). Criminal profiling nets an alarming number of black and Latino males. A 1988 meta-analysis of numerous studies on race and criminal justice policy concluded that "most studies . . . reveal what many police officers freely admit: that police use race as an independently significant, if not determinative, factor in deciding whom to follow, detain, search, or arrest."[45] A study comparing UCR statistics with statistics from the NCVS found that police arrest blacks about 30 percent more frequently than the occurrence of their perceived offenses. Once in the criminal justice system blacks suffer another round of discrimination; courts convict seven blacks for every one white convicted. Judges set high bails or deny bail out-right. During sentencing courts mete out stiffer penalties to disfavored minorities. In 1994, one of every third black man between the age of 20 and 29 was under some form of criminal justice supervision.[46]

Consider the prison-industrial complex. Black men are disproportionately represented among the almost two million men incarcerated in the United States: 51

---

[43] Sentencing Project, *Quarter Century of Prison Building.*
[44] Steven Donziger, ed *Real War on Crime* (New York HarperPerennial, 1996).
[45] Reiman, *Poor Get Prison,* 98
[46] Reiman, *Poor Get Prison* See also Donziger, *Real War on Crime*

percent of prisoners in U.S. prisons or jails are black men, although, as noted, black men comprise less than 7 percent of the U.S. population. According to the Sentencing Project, "The growth in incarceration has had its greatest impact on minorities, particularly African Americans. In the ten-year period 1985-95, the number of African Americans in state prisons increased by 132 percent, compared to an increase of 109 percent for white prisoners. For drug offenses, there was a 707 percent rise in the number of imprisoned blacks, compared to 306 percent for whites." Of black men between the ages of 20 and 29, nearly one in three (32 percent) is under some form of correctional supervision. Whereas white men have a 4 percent chance of serving time in prison at some point in their lives, black men have a 29 percent chance of incarceration.[47] In California, where 6.8 percent of the total population is black, 31.6 percent of inmates are black. By contrast, whites comprise 55.6 percent of California's population, yet only 29 percent of prisoners are white.[48] Nationally, over 60 percent of prisoners are from racial and ethnic minority backgrounds.[49]

Racial disparity shows itself again in the trend towards severe punishment, in time, scope, and intensity. Although whites and blacks are murder victims in nearly equal numbers, 82 percent of those executed since 1977 were convicted of murdering a white person. It has long been a fact in the US criminal justice system that a white corpse weighs much more heavily upon the scales of vengeance than does a black

---

[47] Sentencing Project, *Quarter Century of Prison Building.*

[48] The Prison Activist Resource Center, *Update: California's Expanding Prison-Industrial Complex*, www igc.org/prisons, 1998.

[49] Amnesty International, *Amnesty International Report*, www.amnesty.org, 1998, 56

corpse.[50] In Columbus, Georgia, as of 1995, 78 percent of cases recommended for capital punishment involved white victims, even though 65 percent of murder victims were black.[51] But it is not just the South that is guilty of racism. A study found that in Philadelphia a black defendant is almost four times more likely to receive a sentence of death than a white defendant. Since 1978 (the year Pennsylvania reinstated the death penalty), Philadelphia has sentenced more than eight times as many blacks to death than whites. Nationally, 42 percent of those on death row are black, although blacks make up just 12.8 percent of the population. In early 1998, only five of the 26 people under a federal sentence of death were white.[52] As of 1995, of the 16,000 people killed by the state (that we have records of), just 30 cases involved a white man sentenced to die for murdering a black person.[53] Amnesty international notes that the "overwhelming majority of the district attorneys and other officials who make the decision as to whether to seek the death penalty are white," and that in "many counties, black prospective jurors are disproportionately removed from the jury pool by prosecutors during jury selection. In Georgia, six of the 12 black prisoners executed since 1983 were convicted and sentenced by all-white juries after all black nominees had been removed."[54]

The drug war has been especially devastating to certain groups of minorities. Ninety percent of those admitted to prison for drug offenses are black or Latino.

---

[50] Marable, *Capitalism Underdeveloped Black America.*

[51] Edward Tivan, *The Moral Imagination: Confronting the Ethical Issues of Our Day* (New York: Simon and Schuster, 1995).

[52] Amnesty, *Amnesty International Report*, 109

[53] Tivan, *Moral Imagination*

[54] Amnesty, *Amnesty International Report*, 109-110.

Although blacks constitute only 13 percent of all drug users, they represent 35 percent of those arrested for drug possession, 55 percent of those convicted for drug offenses, and 74 percent of those sentenced to prison for drug offenses. The criminal justice system works as a sieve, letting whites escape to freedom and channeling blacks into long prison terms. Police are five times more likely to arrest a black person for drugs than a white person for drugs. Between 1985 and 1989 alone, the number of blacks arrested for drug crimes doubled. The figures for cities are staggering. In New York City, 92 percent of drug arrests in 1991 were black or Latino. In Columbus, Ohio, 90 percent of drug arrests were black. Yet blacks only comprise 8 percent of the city's population. In St. Paul, the police were 26 times more likely to arrest and charge a black person for drugs than they were a white person. In some cities, police are 50 times more likely to arrest a black.[55]

Elite classes and strata *externally* impose this harsh punishment regime on the impoverished, the politically and culturally excluded segments of the population. Because of structures and processes of economic and racial segregation, the poor and the powerless are denied the capacity to determine to any substantial degree the system of justice. Therefore, even though whites as a group are more criminal, the state punishes blacks as a group more often and with greater intensity.

In contrast to street crime, affluent crime is constituted by white collar crime, forms of crime far more costly to society in both financial and human terms.[56] These

---

[55] Donziger, *Real War on Crime*

[56] Estimates put the economic costs of white collar crime at twenty times the cost of street-level crime See Messner and Rosenfeld, *Crime and the American Dream* (Belmont: Wadsworth, 1994).

crimes result because of the imperatives of accumulation: maximizing surplus-value and minimizing production costs, which means maximizing externalities, motivate capitalists to endanger the public.[57] "In the name of profit, business corporations pollute air, land, and water; they poison, maim, and kill workers and consumers; they cheat, lie to, and simply steal from the government, consumers and one another."[58]

Consider the capitalist threat on the environment. The goal of accumulation is to expand commodity production and commercial markets.[59] "From an economic point of view, sustainable capitalism must of necessity be an expanding capitalism."[60] The goal of capitalist production, profit, is not only an incentive to expand production, but is the means for expansion. An ideology of growth accompanies this structural imperative, what Schmookler calls "the cult of growth."[61] Yet expanding production and consumption depletes resources.[62] The growth imperative presents problems for environmental conservation and protection.[63] The structure of profit maximization

---

[57] Michael L Benson and Francis T Cullen, *Combating Corporate Crime* (Boston: Northeastern University Press, 1998) See also David M. Ermann and Richard J. Lundman, *Corporate and Governmental Deviance*, 4th ed (New York Oxford University Press, 1992); Francis T Cullen, William J Maakestade, and Gray Cavender, *Corporate Crime Under Attack* (Cincinnati: Anderson, 1987); Stuart L Hills, *Corporate Violence* (Totowa: Rowman, 1987); Frank, *Crimes Against Health and Safety*, Ellen Hochstedler, *Corporations as Criminals* (Beverly Hills: Sage, 1984).

[58] Benson and Cullen, *Combating Corporate Crime*, 21.

[59] Karl Marx, *Capital*, vol 1 (New York Penguin, 1990), Richard Douthwaite, *The Growth Illusion* (Gabriola Island, B.C. New Society Publishers, 1999)

[60] James O'Connor, "Is Sustainable Capitalism Possible?" In *Is Capitalism Sustainable?* ed. Martin O'Connor (New York: The Guildford Press, 1994), 159

[61] Andrew Bard Schmookler, *The Illusion of Choice: How the Market Economy Shapes Our Destiny* (Albany: State University of New York Press, 1993), 210.

[62] Juan Martínez Alier, "Ecological economics and ecosocialism," in *Capitalism Sustainable?*, 23.

[63] Allan Schnaiberg and Kenneth Alan Gould, *Environment and Society: The Enduring Conflict* (New York: St Martin's Press, 1994); Allan Schnaiberg, *The Environment. From Surplus to Scarcity* (New York Oxford University Press, 1980)

requires the maximum externalization of production costs. This results in what Friedman calls "third party effects," such as water and air pollution and the problem of waste disposal.[64] Crucially, the social structure of production unfairly distributes negative externalities. Disadvantaged and racialized groups disproportionately bear industrial production's costs.[65] Externalization costs and the unfair burden industrial production places on certain groups create the corporate need to prevent the public and sympathetic government agencies from demanding corporate accountability.[66]

When distinguishing crimes of the affluent, typically called white-collar crime, one must make several distinctions of types, levels, and qualities of criminality. Sutherland focuses on corporate crime in his classic study of elite deviance. In 1940, he set down the basic features of white-collar crime: white-collar crime really is crime and white-collar criminals are administratively segregated from conventional criminals because of the segmented application of criminal law.[67] Others, such as Clinard and

---

[64] Milton Friedman and Rose Friedman, *Free to Choose* (New York Harcourt Brace, 1980)

[65] Deirdre Guthrie March, "Environmental Racism on Montana Reservation," *Z Magazine*, 1997; Andrew Szasz and Michael Meuser, "Environmental Inequalities Literature Review and Proposals for New Directions in Research and Theory," *Current Sociology*, 45 (1997), Paul Mohai and Bunyan Bryant, "Demographic Studies Reveal a Pattern of Environmental Injustice," in *Environmental Justice*, ed. Jonathan S Petrikin (San Diego· Greenhaven Press, 1995),; Andrew Szasz, *Ecopopulism· Toxic Waste and the Movement for Environmental Justice* (Minneapolis: University of Minnesota Press, 1994); Conner Bailey, Charles E. Faupel and James H. Gundlach, "Environmental Politics in Alabama's Blackbelt," in *Confronting Environmental Racism: Voices from the Grassroots*, ed. Robert Bullard (Boston: South End Press, 1993), Edward Walsh, Rex Warland, and D Clayton Smith, "Backyards, NIMBYs and Incinerator Sitings· Implications for Social Movement Theory," *Social Problems*, 40 (1993), Dana Alston, "Transforming a Movement. People of Color Unite at Summit Against Environmental Racism," *Sojourners*, 21 (1992)

[66] Harold C Barnett, *Toxic Debts and the Superfund Dilemma* (Chapel Hill University of North Carolina, 1994), Michael R Edelstein, *Contaminated Communities: The Social and Psychological Impacts of Residential Toxic Exposure* (Boulder Westview Press. Edelstein, 1988).

[67] Edwin Sutherland, "White-Collar Criminality," *American Sociological Review*, 5 (1940). Sutherland coined the term "white-collar" crime He argued further that the fact of white-collar crime calls into question traditional theories of criminality that focus on the poor. He suggested

Quinney,[68] widened the focus to include occupational crime, etc. The levels of distinction are important to a certain extent. Occupational crimes, for example, are crimes committed by individuals working in organizations for their own personal gain. Embezzling from one's employer is a typical occupational crime. In contrast, corporate crime is committed to benefit the corporation.

It has often been pointed out that since many corporate crimes are not defined as crime, rather their transgressions are sanctioned and handled by regulatory agencies, the definition of crime cannot rely solely on official definitions of crime. What is required is the expansion of criminality to include analogous socially injurious behavior. However, the fact that many of the socially injurious actions of elites and organizations are not defined as criminal is itself revealing and accords with the model I have specified. But even those who commit occupational crimes, especially fraudulent crimes, enjoy a relatively privileged status in the justice arena.

The development of crime under capitalism is intimately related to all the levels of capitalist activity. The existence of employee theft, for example, is a function of the existence of capitalist property. Before capitalism, various natural resources, water, firewood, grazing lands, were often open to access by those who needed it.

---

a theory that could explain both white-collar and conventional crime, which was his own differential association/social disorganization approach However, it is unclear why a general theory of crime causation is necessary It is more likely that causes of crime are structurally differentiated than there being a general theory that explains all or most criminality. For an overview of corporate crime, see Marshall B Clinard and Peter C Yeager, *Corporate Crime* (New York Free Press, 1980) See also Frank Pearce and Laureen Snider, *Corporate Crime Contemporary Debates* (Buffalo. University of Toronto Press, 1995)

[68] Marshall B Clinard and Richard Quinney, *Criminal Behavior Systems* (New York Holt, Rinehart and Winston, 1973)

Objects of use and production formed from these resources were primarily the property of those who made them. As capitalism emerged in Europe laws were passed that restricted access to the resources and the products that were made by the laborer became the products of the capitalist. Thus it became illegal to appropriate for oneself the products of ones own labor.[69] In the context of wage suppression, workers found wages-in-kind in the objects their labor produced. Hence employee theft came into existence.

Employee theft is widespread in the United States.[70] This form of theft in a sense lies between "crime in the suites" and "crime in the streets." These crimes are committed by workers, some of whom move between employment and the industrial reserve. However, many, if not most, offenders are from the professional-managerial ranks.[71] Employee theft is thus stratified by class. The nature of occupational structure and power dictates the degree and level of involvement. For instance, those who handle large sums of money more than likely enjoy a greater level of trust in the

---

[69] Jason Ditton, "Perks, Pilferage, and the Fiddle: The Historical Structure of Invisible Wages," *Theory and Society*, 4 (1977), Stuart Henry, "The Political Economy of Informal Economies," *Annals of the American Academy of Political and Social Science*, 493 (1987).

[70] Jerald Greenberg, "The STEAL Motive. Managing the Social Determinants of Employee Theft," in *Antisocial Behavior in Organizations*, eds. Robert A Giacalone and Jerald Greenberg (Thousand Oaks, CA Sage, 1997); Lloyd W. Klemke, *The Sociology of Shoplifting. Boosters and Snitches Today* (Westport, Conn. Praeger, 1992) Richard C Hollinger and John P. Clark, *Theft by Employees* (Lexington, MA Lexington Books, 1983), Richard C Hollinger, "Acts Against the Workplace. Social Bonding and Employee Deviance," *Deviant Behavior*, 7 (1986)

[71] Norman Jaspan, *Mind Your Own Business* (Englewood Cliffs, NJ: Prentice-Hall, 1974); Michael J Comer, *Corporate Fraud* (New York: McGraw-Hill, 1977), Holliger and Clarke For a delineation of the relationship between occupational position and type and level of employee theft, see Gerald Mars, *Cheats at Work* (Boston Unwin, 1983. See also Stuart Henry, *The Hidden Economy: The Context and Control of Borderline Crime* (London: Robertson, 1978) and Stuart Henry and Gerald Mars, "Crime at Work The Social Construction of Amateur Property Theft," *Sociology*, 12 (1978)

organization, hence they are in a better position to steal from their employers. Those of lower status in the organization are increasingly carefully monitored and are in less advantageous positions to embezzle.[72] This is particularly true with increasing complexity of systems, where many lower-level employees do not have the technical skills to pull off large embezzlement schemes.[73] The bulk of occupational fraud lies beyond the ability of lower-level employees. Such crimes are typically the domain of the petty bourgeoisie, such as physicians,[74] or the professional, such as traders.[75]

While occupational crimes are sometimes committed by the working class, corporate criminality and misconduct are clearly beyond the reach of the ordinary proletarian. Corporate crime is often thought of in money terms, such as in price fixing and fraudulent advertising,[76] or as bribery.[77] However, corporations commit violence

---

[72] There is a general trend in surveillance in capitalist societies. See Christopher Dandeker, *Surveillance, Power and Modernity: Bureaucracy and Discipline From 1700 to the Present Day* (New York: St Martin's Press, 1990).

[73] Stephen M Rosoff, Henry N. Pontell, and Robert H Tillman, *Profit Without Honor: White-Collar Crime and the Looting of America* (Upper Saddle River, NJ: Prentice-Hall, 1998) Certainly low-level employees have little ability to devise more complex schemes, such as collective embezzlement Kitty Calvita, Henry N Pontell, and Robert H Tillman, *Big Money Fraud and Politics in the Savings and Loan Crisis* (Berkeley University of California Press, 1997).

[74] James W Coleman, *The Criminal Elite: Understanding White-Collar Crime*, 4th ed (New York St Martin's Press, 1998), Paul D Jesilow, Henry N Pontell, and Gilbert Geis, "Medical Criminals Physicians and White-Collar Offenses," *Justice Quarterly*, 2 (1985); Jeffrey Reiman, *Poor Get Prison* Rosoff, Pontell, and Tillman, *Profit Without Honor.*

[75] August Bequai, *White-Collar Crime. A 20th-Century Crisis* (Lexington, MA: Lexington Books, 1978); Rosoff, Pontell, and Tillman, *Profit Without Honor*

[76] Coleman, *Criminal Elite*, Rosoff, Pontell, and Tillman, *Profits Without Honor*; Francis Cullen, William J Maakestad, and Gray Cavender, *Corporate Crime Under Attack* (Cincinnati: Anderson, 1987), David R Simon, *Elite Deviance* (Boston Allyn and Bacon, 1999); Frank Pearce, *Crimes of the Powerful* (London, Pluto Press, 1976), Mark Green, Beverly C. Moore, and Bruce Wasserstein, *The Closed Enterprise System* (New York Bantam Books, 1972).

[77] Coleman, *Criminal Elite*, John Braithwaite, "Transnational Corporations and Corruption. Towards Some International Solutions," *International Journal of the Sociology of Law* 7 (2, 1979)

against people, as well.[78] Corporate violence is often the result of hazardous workplace conditions in violation of safety standards,[79] unsafe consumer products,[80] environmental pollution.[81]

While the study of white and silk collar crime is less developed than studies of street crime, careful studies support my argument about the class-caste differentiation of crime, namely that "there is only *one* basic race-crime relationship in America, and it is parabolic, not linear."[82] Studies that have distinguished between lower-level and

---

[78] Stuart Hills, ed , *Corporate Violence* (Totowa, NJ: Rowman and Littlefield, 1987); David O. Friedrichs, *Trusted Criminals: White-Collar Crime in Contemporary America* (Belmont, CA: Wadsworth, 1996); Reiman, *Poor go to Prison;* Nancy K Frank, *Crimes Against Worker Health and Safety* (San Francisco: Sierra Club Books, 1985); Nancy K. Frank and Michael J *Lynch, Corporate Crime, Corporate Violence* (Albany, NY: Harrow and Heston, 1992); Coleman, *Criminal Elite;* Cullen, Maakestad, and Cavender, *Corporate Crime Under Attack;* Russell Mokhiber, *Corporate Crime and Violence* (San Francisco Sierra Club, 1988).

[79] Daniel M Berman, *Death on the Job: Occupational Health and Safety Struggles in the United States* (New York: Monthly Review Press, 1978) Hills, *Corporate Violence;* John Braithwaite, *Corporate Crime in the Pharmaceutical Industry* (Boston: Routledge and Kegan Paul, 1984). Coleman reports that the National Safety Council estimates that each year ten thousand people are killed in work-related accidents and around 100,000 die from job-related illnesses. James Coleman, *The Criminal Elite,* third edition (New York St Martin's Press, 1994)

[80] Braithwaite, *Pharmaceutical Industry;* Steven Box, *Power and Mystification* (New York· Tavistock, 1983) Rosoff, Pontell, and Tillman, *Profits Without Honor.* Mokhiber In the National Product Safety Commission's 1993 annual report estimated over 4 thousand deaths associated from consumer products in a single year The National Electronic Surveillance System (NEISS) estimates that hospital emergency rooms confronted 13,300,000 consumer product-related injuries National Product Safety Commission, *Annual Report* (Washington, DC· Government Printing Office, 1993)

[81] Coleman, *Criminal Elite.* Rosoff, Pontell, and Tillman, *Profits Without Honor,* Christopher D Stone, *Where the Law Ends: The Social Control of Corporate Behavior* (Chicago University of Chicago Press, 1987), Matt Tallmer, "Chemical Dumping as a Corporate Way of Life," in ed. Stuart L. Hills, *Corporate Violence* (Totowa: Rowman, 1987).

[82] Harris and Meidinger, "Criminal Behavior," 141. See also Stanton Wheeler, Kenneth Mann, and Austin Sarat, *Sitting in Judgment: The Sentencing of White-Collar Criminals* (New Haven: Yale University Press, 1988) I must caution the reader about using occupational categories in answering questions of social class. In Harris and Meidinger's study it is not much of a problem, but in other cases it is. For example, in Stanton Wheeler, David Weisburd, and Nancy Bode's article, "Sentencing the White-Collar Offender Rhetoric and Reality," *American Sociological Review,* 47 (1982), the probability of imprisonment increases with the defendant's occupational status However, occupation is not a proxy of social class in this study (in fact, they

middle-level offenders in the occupational structure, by distinguishing blue collar and white collar employees from middle- and upper-level managers and executives, find that while blacks are overrepresented in lower-level offenses by a factor of some 2.5 to 1, whites are overrepresented among middle-level offenders by a factor of around 2.7 to 1. Moreover, middle-level offenders are more than twice as likely to be college educated as are lower-level offenders. See figure 1.4.3.

Harris and Meidinger argue that "as we try to focus on higher levels of white collar crime, we begin to see traces emerging of the photographic negative of the race-street-crime relations: an image in which whites are overrepresented by a factor approximating blacks' overrepresentation in street crime! If this 'inverted' race–crime relationship holds for middle-level white collar crime, whites are undoubtedly overrepresented in corporate, silk collar, or suite crime, to an extent equal to, if not greater than, blacks' overrepresentation in street crime." They add, "This observation underscores our theoretical need to examine the relationship of race to crime *in general*, not just to street crime, in the United States."[83]

In *The Conditions of the Working Class in England*, Frederick Engels writes, "If one individual inflicts a bodily injury upon another which leads to the death of the person attacked we call it manslaughter; on the other hand, if the attacker knows beforehand that the blow will be fatal we call it murder. Murder has also been

---

only look at affluent criminal actors), therefore the study cannot claim, as it does, to be a study of social class.

[83] Harris and Meidinger, "Criminal Behavior," 141

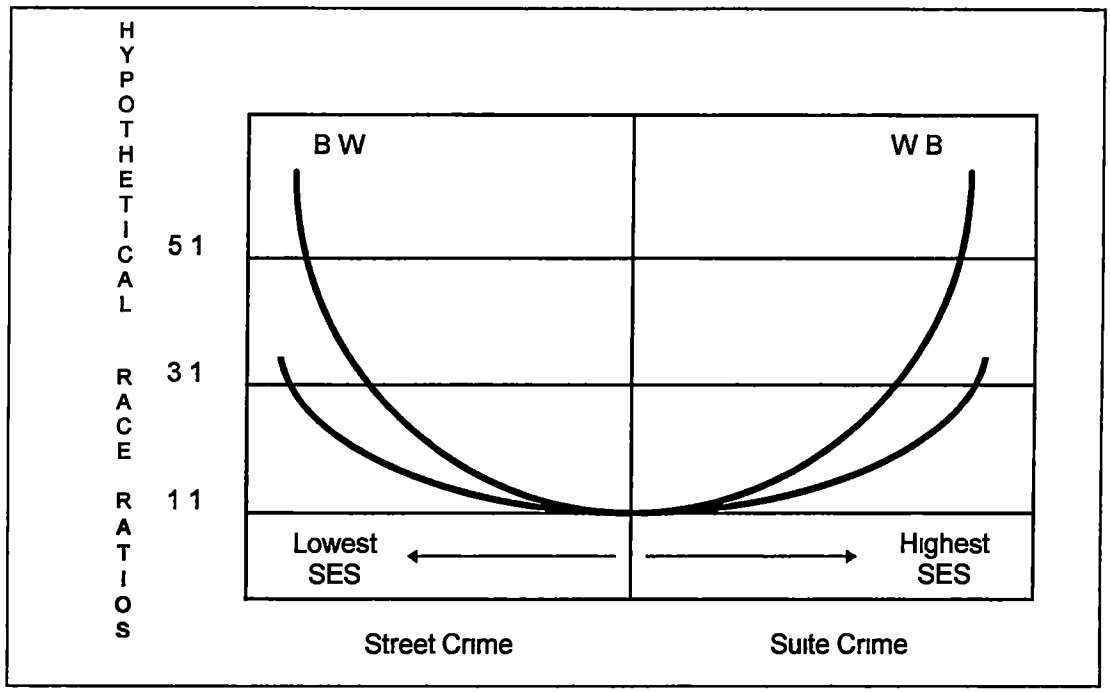


Figure 1 4 3
Black-White Involvement in Crimes
by Crime Type and SES[84]

committed if society places hundreds of workers in such a position that they inevitable come to premature and unnatural ends. Their death is as violent as if they had been stabbed or shot . . . . Murder has been committed if society knows perfectly well that thousands of workers cannot avoid being sacrificed so long as these conditions are allowed to continue. Murder of this sort is just as culpable as the murder committed by an individual."[85]

Economic crimes are not the only crime types committed by the powerful. "Human radiation experiments have been sponsored by the U.S. government since the dawn of the atomic age. The vast majority of these experiments were illegal under

---

[84] Adapted from Harris and Meidinger, "Criminal Behavior," 141
[85] Quoted in Reiman, *Poor Get Prison,* 45

international law since they violated the Nuremberg Code."[86] Millions of people were exposed to radioactive fallout from nuclear testing and many thousands have since developed thyroid cancer and other diseases.[87] Between 1932 and 1972, in the Tuskegee Syphilis Study, the US Public Health Service in Macon County, Alabama denied 399 black sharecroppers treatment for syphilis to observe the "natural history" of the disease. On July 26 1972, *The New York Times* reported that the Tuskegee Syphilis Study was "the longest nontherapeutic experiment on human beings in medical history."[88] Finally domestic political crimes, defined as "violations of law and unethical conduct by state officials or agencies whose victimization occurs within the boundaries of the United States," [89] many of which I document in the pending chapters, have usually escaped punishment.[90]

In contrast to the powerless and oppressed segments of the population, corporations possess the financial resources and command the political power necessary for controlling law enforcement agencies.[91] Elites occupy positions of power

---

[86] David Kaulzlarich and Ronald C Kramer, *Crimes of the Nuclear State. At Home and Abroad* (Boston: Northeastern University Press, 1998), 140 These studies included "nutrition" studies at MIT where developmentally disabled children were fed radioactive iron and calcium, testicular irradiation of prisoners, "total body irradiation" (or TBI), and plutonium injection experiments

[87] Howard Ball, *Justice Downwind: America's Atomic Testing in the 1950s* (New York: Oxford University Press, 1986, A Costandina Titus, *Bombs in the Backyard: Atomic Testing and American Politics* (Reno University of Nevada Press, 1986).

[88] Jean Heller, "Syphilis Victims in the U S. Study Went Untreated for 40 Years," *The New York Times*, 26 July 1972 See James H Jones, *Bad Blood The Tuskegee Syphilis Experiment* (New York Free Press, 1993) .

[89] Beirne and Messerschmidt, *Crime*, 406.

[90] See Michael Parenti, *Democracy for the Few* (New York: St Martin's Press, 1983).

[91] Harold Barnett, "Wealth, Crime and Capital Accumulation ," in *Crime and Capitalism;* Reiman, *the Poor Get Prison*, August Bequai, *White-Collar Crime: A 20th-Century Crisis* (Lexington, Mass. Lexington Books, 1978)

in law enforcement agencies.[92] Standing against popular influences are the power and wealth corporations possess to influence elections and elected officials — state officials may depend on votes to get elected to office and for incumbency, but they need *money* to run campaigns. Given the structure of political society, the concerns of the business class tend to prevail, especially since private sector elites usually control the candidates vying for elected positions.[93] Wealth and power not only influence the behavior of prosecutors; legislatures must criminalize socially-harmful corporate behavior. Here the same influences prevail. It is a relatively uncontroversial fact that the United States is a business-run society. Political-legal society in a capitalist economy is oriented towards advancing capitalism (one entertains contradiction to state the matter otherwise). Indeed, government agencies that become confused about their class function and go after corporations that commit socially harmful acts are perceived or depicted as anti-business zealots bent on harming economic growth and causing job losses.

There are numerous ordinary constraints on the control of elite crime. The budget of a given district's criminal justice system constrains the ability of local prosecutors to investigate and prosecute affluent offenders. Many communities simply do not have law enforcement agencies large enough or with sufficient resources to handle economic crimes. Criminal justice systems must be organized to investigate and prosecute these types of crimes; the presence of specialized economic crime units

---

[92] Quinney, *Critique of the Legal Order* (Boston Little, Brown, 1974)

[93] Thomas Dye, *Who's Running America? The Conservative Years*, fourth edition. (Engelwood Cliffs: Prentice-Hall, 1986). *Who's Running America? The Clinton Years*, sixth edition (Engelwood Cliffs: Prentice-Hall, 1995)

is strongly correlated with government activities against corporate crime. There is often competition between different units in a criminal justice system; high levels of violent crime reduce the level of activity against corporate crime. Resource constraints, organization, and priorities of criminal justice agencies greatly impact the degree to which corporate crime is investigated and prosecuted. The variability in resources and commitments explains much of the variation in the prosecution of white collar criminals.

The ability of corporations to thwart investigations and to hire attorneys capable of stifling prosecutors and controlling the process present a formidable challenge to successful prosecution of white collar offenders. This ability is representative of the power and privilege inherent in the class structure. One of the primary structural impediments related to power and privilege is the reality that many corporate offenses are treated in the regulatory system where prosecution is the last resort.[94] Viewed as the engine of progress, social control agents deal with the transgressions of corporations in non-punitive and ineffective fashion. Moreover, there are legal difficulties in establishing *mens rea* with respect to corporations. Compounding this is that there are often no specific victims; and when there are victims, they are frequently reluctant to cooperate with the investigation (power intimidates). Another barrier to successful control of corporate crime is that the harm corporations cause often diffuses throughout the general population. Often those who suffer the most damage at the hands of corporate and white-collar criminals are the

---

[94] Benson and Cullen, *Combating Corporate Crime*

most disadvantaged and powerless; part of their disadvantaged and powerless status is their invisibility as victims (this is also true for poor and minority victims of street crime[95]). These difficulties are tied to norms embedded in U.S. legal culture about harm and blameworthiness. The legal culture is constituted by a worldview that most criminal justice official share,[96] thus explaining the relative uniformity of criminal justice responses.

The criminal justice system in the United States has always been a primary element in the social structure of accumulation and in upholding the racial order. The primary task of this structure is to manage the long-term interests of the capitalist class, but it also privileges ordinary whites. For the affluent, the role of the criminal justice system, and the state generally, is often notable not for what it does but for what it does *not* do, namely, define what corporations do as criminal or prosecute corporate offenders. Unlike the crimes of the poor, white collar crime is regulated *internally* by a system of civil laws and regulations that possess a restitutive character. Unlike the poor and marginalized, those living in the enrichment/inclusion zone *do* enjoy the political, economic and cultural power to define the terms of justice for themselves and their children. It follows from logic that when elites and ordinary whites and the system that enriches and privileges them are potentially or actually

---

[95] Steven Box emphasizes the point that conventional "crimes do have their victims whose suffering is real; steps should be taken to understand and control these crimes so that fewer and fewer people are victimized A radical criminology which appears to deny this will be seen as callous and rightly rejected," *Power, Crime and Mystification*, 3. See also Kennedy, *Race, Crime, and the Law.*

[96] Wheeler, Mann, and Sarat, *Sitting in Judgment*, Benson and Cullen, *Combating Corporate Crime*

threatened, the political and legal system will make necessary adjustments to secure and perpetuate their rule.

Conceptualizing Colonialism: The Processual Side of Caste-Class

The model I have presented so far is a structural one. It is abstracted from the several historical periods I have studied for this dissertation and modeled specifically on present circumstances. Because the model was found to be valid for each historical period examined after 1618, I have concluded that there are underlying transhistorical (though not suprahistorical) forces -- indeed, these comprise the dynamic of historical development in the European world-system and world capitalist economy. These are racialization and capital accumulation, and they combine to cause and reproduce the caste-class structure I have modeled above. In this section, I present aspects of the processual side of the caste-class segmentation of crime and punishment. See figure 1.4.4. One process is colonialism, and so features of the diachronic side of my modeling of crime and punishment will be explained initially by reviewing the intellectual history of theories of colonialism and societal development. The substantive theory work waits for the historical chapters.

In North America, as in many parts of the capitalist world-economy, capitalist colonialism has involved the use of forced labor, primarily African labor, exploited on expropriated land, acquired in the North American instance through genocide and, later, with removal and internment in concentration camps (reservations) of the American Indian. With the creation of the United States, colonial relations involving blacks and Indians did not end, but underwent interiorization, creating conditions

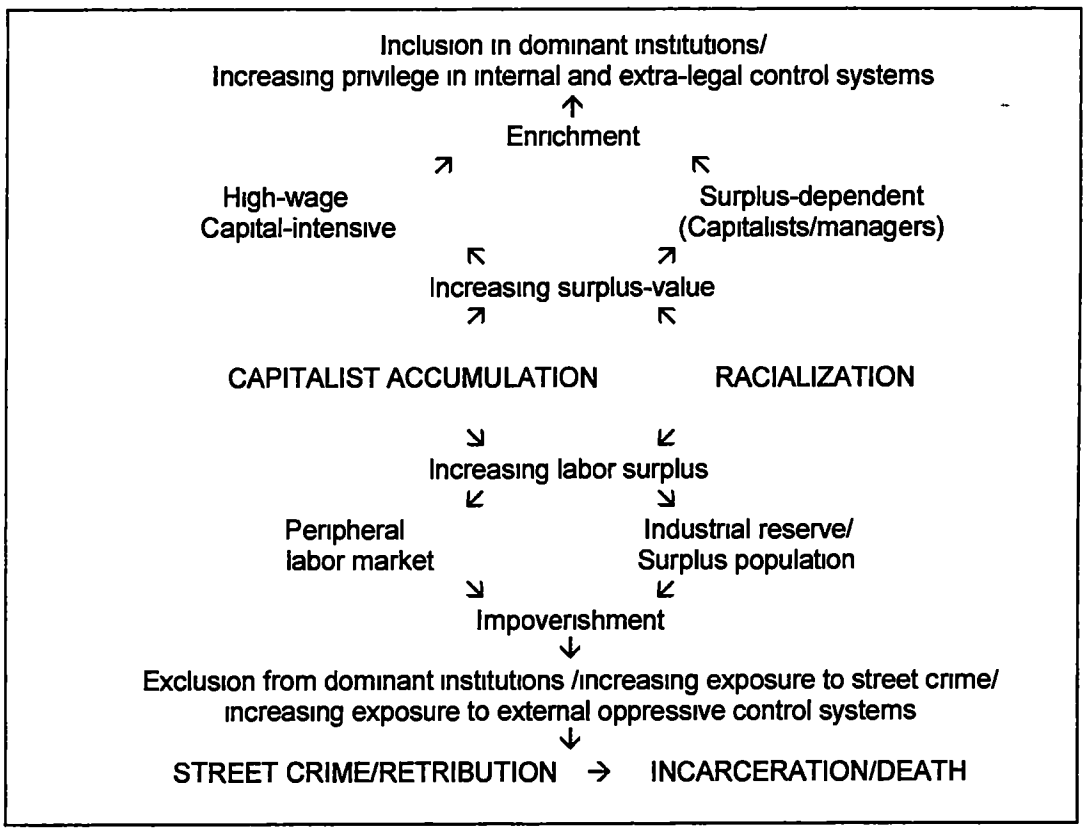


Figure 1 4 4
Dynamic Caste-Class Segmentation Model

referred to variously as "domestic" or "internal" colonialism. There was, of course, no social revolution — things were little changed in the United States of America after the war. Most of the same masters were in control. The same capitalist mode of production prevailed; labor was exploited in the same way. The primary social institutions (family and religious life, etc.) remained intact. The dependent-colonies-now-independent-states continued producing primary commodities — tobacco, cotton, etc. — for the European market just as before.

However, in another sense things did change. The war of independence gathered for Europeans in North America a relatively independent basis for power

and created a vision of national destiny. The colonials did redefine their political ties to England. They established a new constitutionally-based system, one that managed to avoid the chief imperfection of the English parliamentary system: its potential for genuinely proportional representation. This solution was the federalist system. US federalism allowed groups to legitimately exist in qualitatively different states of unfreedom, an arrangement that Furnivall and others have called the "plural society."[97] The structure of power, tightly controlled by elites, permitted elites to play off one another, to, like a Babushka doll, conceal the different shells of power, to frustrate almost endlessly the popular will. It has proven to be one of the most successful strategies of control ever devised, about which I shall have much more to say in this dissertation.

But my attention in this section is fixed on how to think about internal colonialism and the problem of duality — the double standard, one for whites, another for nonwhites — in US history. Because the focus is on the United States, its history and prehistory, and its treatment of African Americans, the idea of colonialism must be specified for the intra-national context. Moreover, whereas the models presented above are static representations of the class-caste dynamic, i.e., synchronic models, the

---

[97] See John S. Furnivall, *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India* (New York, New York University Press, 1956); *Netherlands India: A Study of Plural Economy* (London, Cambridge University Press, 1967). This concept was applied to the British American context by Michael G Kammen, *People of Paradox. An Inquiry Concerning the Origins of American Civilization* (New York Knopf, 1972); *Colonial New York: A History* (New York: Scribner, 1975), *Empire and Interest: The American Colonies and the Politics of Mercantilism* (Philadelphia, Lippincott, 1970), *Politics and Society in Colonial America Democracy or Deference?* 2nd ed (Hinsdale: Dryden Press, 1973) See also Michael Garfield Smith, *The Plural Society in the British West Indies* (Berkeley, University of California Press, 1965), John Rex, *Race Relations in Sociological Theory*, 2nd ed. (Boston Routledge, 1983).

material presented in this section conceptualizes the diachronic dimension of social structural relations.

The social scientific construct internal colonialism has a long intellectual history, beginning with models developed around the Latin American situation, such as Mexico,[98] then increasingly abstracted to other contexts, for instance Africa,[99] and finally to the US situation.[100] Colonialism is typically defined as a political-economic relationship in which a state forcibly and/or effectively controls territories or polities beyond its borders. This is an ancient practice. Colonialists may migrate to the controlled territory, maybe because their homelands are overpopulated or because of poor conditions there. For this reason there should be a distinction drawn between colonialism and colonization.

Colonialism is the exploitation of a region where the exploiters remain largely external to the colony, operating through collaborators and client regimes (the term imperialism is an apt term here, with a distinction drawn between ancient imperialism and capitalist imperialism). The exploiters in this context are colonialists and the process of bringing the region under external control is colonialization. Colonization, by contrast, is where the external group sets up colonies to permanently settle the region. The invading group would in this instance be colonists. Both activities may occur in the same region.

---

[98] Pablo Gonzalez, *Democracy in Mexico* (New York Oxford University Press, 1970)

[99] Harold Wolpe, "The Theory of Internal Colonialism the South African Case," *Beyond the Sociology of Development Economy and Society in Latin America and Africa*, eds Ivar Oxaal, Tony Barnett and David Booth (Boston: Routledge and Kegan Paul, 1975) see also Ronald Chilcote, *Theories of Development and Underdevelopment* (Boulder, CO Westview Press, 1984)

[100] Blauner, *Racial Oppression*

A colony may be of two non-exclusive possibilities: a territory that exists in an unequal economic, political, and military relationship with a dominating state or state-like entity, where people other than the colonizers are controlled; an extension of the mother country replicating its hierarchical relations in the new territory. The North American colonies present with both of these. The character of the colony forces us to recognize the structuring force of the colonials; "beyond the causes that are so to speak 'inherent' in capitalism, there exists another independent motive force that generates the colonial phenomenon, a social factor proper to it": "the colonials themselves."[101] This adds another layer of conflict, as the settlers (fractions of the colonizers) develop interests contrary to the imperial power to which they are supposed to be loyal. Just such a case developed in British North America. "The most difficult struggles of the imperialist countries since the eighteenth century had not been with the natives in their colonies but with their own settlers. And it should not be forgotten that if England is a second-class power today, this is due to its defeat in a conflict of this type and the subsequent founding of the United States. Without this, North America would now be an ex-colony of American Indians recently promoted to independence and therefore still exploited by England."[102]

Colonialism has been traditionally abstracted from relationships between European nation-states and their territories, Asia, Africa, and Latin America. This particular configuration, the interstate system, tends to occupy the minds of many

---

[101] Arghiri Emmanuel, "White-Settler Colonialism and the Myth of Investment Imperialism," *Introduction to the Sociology of "Developing Societies,"* eds. Hamza Alavi and Teodor Shanin (New York: Monthly Review Press, 1982), 91.

[102] Emmanuel, "White Settler Colonialism," 92-93

scholars as monolithic poles of oppressor and oppressed in the context of nation-states. This has given the idea of colonialism a limited externalist sense. The problem with the restricted view of colonialism is manifold. As we will see, colonialism began at the dawn of the European world-system and was constitutive of it.[103] Nation-states were then in their primitive stage of formation. Europe was a conglomeration of quasi-ethnonational entities colonizing the world for emerging political-economic and culture-ideological (primarily religious) interests and advantages. Existence at the early developmental stage of capitalism gives colonialism a formative role in the system. One might go further and theorize that colonialism permitted capitalistic relations to form into capitalist relations. In any case, colonialism is definitely not an externality in the sense of an ancillary or dispensable social formation; it plays a crucial role in the development of the European world-system.[104] This puts colonialism historically before the stable interstate system.

Failure to recognize this creates many errors. There are studies that purport to show colonialism playing a lesser role in the development of Europe.[105] Other studies theorize that colonialism is a specific temporally-bounded capitalist strategy to fix

---

[103] As with race, it is possible to draw up an analytical model of capitalism growing and developing without resort to colonialism But colonialism is historically and concretely part of the development of the capitalist world-economy, so such a point would be an adventure into idealism The expansion of "real-world" capitalism entailed colonialism and colonialism stimulated the growth of capitalism in Europe.

[104] Georges Balandier, "The Colonial Situation: A Theoretical Approach," in *Social Change. The Colonial Situation*, ed. Immanuel Wallerstein (New York Wiley, 1966).

[105] John Spanier, *American Foreign Policy Since World War II*, 12th ed. (New York· Congressional Quarterly Press, 1991)

domestic crisis in the age of finance capital[106] — crisis as underconsumption/ overproduction, for instance.[107] But these analyses usually begin their historical narratives with later stages of colonialism, either in the imperialist age (from the 1870s to the first world war) or later (even after WWII). Consequently, this reduction disguises the more fundamental exploitative linkages. These accounts furthermore tend to take a state-centric view. The reduction of the relationship to an internationalist one in the current sense maps back upon the past the relations that are taken for granted today, thus leaving unanalyzed different manifestations of colonialism and its historical structuring of the world along particular political-economic and ethnic lines.

To complicate matters, history changed the realities upon which conceptions of colonialism have been drawn. After the second Great War of the twentieth century, the

---

[106] Vladimir I. Lenin, "Imperialism The Highest Stages of Capitalism," in *The Lenin Anthology*, ed Robert C. Tucker (New York W.W Norton, 1975), John A. Hobson, *Imperialism* (London, G Allen & Unwin ltd , 1938); Rudolf Hilferding, *Das Finanzkapital. Eine Studie Uber die Jungste Entwicklung des Kapitalismus* (Berlin: Dietz Verlag, 1955); Rosa Luxemburg, *The Accumulation of Capital*, trans Agnes Schwarzchild (New York, Monthly Review Press, 1968). Cf Michael Barratt Brown, *Essays on Imperialism* (Nottingham, Bertrand Russell Peace Foundation, 1972); Warren Bill, *Pioneer of Capitalism* (London New Left Books, 1980).

[107] This theory posits a secular imbalance between aggregate supply and aggregate demand Bleaney distinguishes two types The first emphasizes the impoverishment of the population reducing aggregate demand and thus a tendency towards underconsumption (this has roots in both disproportionately and the rising organic composition of capital). Realization problems result causing stagnation or crisis. Capitalism is crisis-prone because of a contradiction: the reinvestment of profits to increase productive capacity; and the tendency to cut production costs by suppressing wages Both of these cause a chronic tendency to produce beyond effective demand (overproduction) Imperialism is the behavior of capitalist in search of consumers upon which to unload surplus production. The second is the tendency of capitalists to oversave. Capitalists cannot save themselves from this bind by investing rather than saving because that expands productive capacity again and exacerbate the divide between supply and demand. Thus capital seeks new investment markets, often overseas Michael F. Bleaney, *Underconsumption Theories. A History and Critical Analysis* (New York. International Publishers, 1976)

capitalist periphery was decolonized. Nationalist revolutions there and changing policy imperatives in the core (largely determined by the global struggle between capitalism and communism) changed the character of geopolitical and world-economic relations. Magdoff notes three factors behind decolonization: "(1) the realignment of world power, with the United States and the Soviet Union emerging as the leading giants; (2) the declining ability of the old colonial powers to hold on to their far-flung empires; and (3) the evolution of independence movements and wars of national liberation powerful enough to remove foreign rule."[108] Core countries moved their militaries out of colonized regions (often only ostensibly) and former colonies asserted their national independence and political autonomy from the core (some more than others). Although they did it with less direct political and military presence, the core nevertheless continued to exploit and dominate the periphery socioeconomically and culture-ideologically.[109]

These new countries are often called "post-colonial societies." Post-colonial societies are typically defined as those former colonies that gained political independence and developed regional, national and local systems of self-government. Of course, imperialist collaboration has been institutionalized in these societies and

---

[108] Harry Magdoff, "Imperialism: A Historical Survey," *Sociology of "Developing Societies,"* 24.

[109] Although there were many justifications for intervening militarily when things did not work out exactly like core interests wanted See William Blum, *Killing Hope: U.S. Military and CIA Interventions Since World War II* (Monroe, MN. Common Courage Press, 1995). Noam Chomsky and Edward S Herman, *The Washington Connection and Third World Fascism* (Boston. South End Press, 1979) and *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology* (Boston: South End Press, 1979). What we find is that the neocolonial mode of oppression is that while it is fundamentally economic, colonial political and military forces are always present to secure the arrangement

peripheral elites are able to act as proxies for core powers. Colonialism, scholars have argued, has been replaced by a new phase or form of colonialism, what some call "neocolonialism" or "neoimperialism."[110] The engine of this new development is the multinational corporation.[111]

Neocolonialism occurs when former colonies become independent of their colonizers but continue to be controlled by capitalist forces, such as corporations, based in the former colonial nations/regions. "A neocolonial situation is one in which a postcolonial country (for example, an African country) has separated politically from a European colonial power but continues to be dependent on that country. The former colony uses indigenous leaders to help the former colonial power exploit the local population economically."[112] Neocolonialism depends more fundamentally on collaborators from the subjected territories than on external force. The culture of the dominant group is usually imposed on the subjected populations or articulated with indigenous culture formation. As noted earlier, it is uncertain whether these new arrangements are that much different from the previous arrangement. Given the depth

---

[110] William J Pomeroy, *American Neo-Colonialism: Its Emergence in the Philippines and Asia* (New York: International Publishers, 1970) For a discussion of how political controls are achieved in these circumstances, see William I. Robinson, *Promoting Polyarchy Globalization, US Intervention, and Hegemony* (New York Cambridge University Press, 1996) and "Globalization, the World System, and 'Democracy Promotion' in U.S Foreign Policy," *Theory and Society*, 25 (1997).

[111] Stephen Hymer, "The Multinational Corporation and the Law of Uneven Development," *Economics and World Order from the 1970s to the 1990s*, ed. Jagdish N. Bhagwati (Macmillan Publishing, 1972). James H Mittelman, ed., *Globalization: Critical Reflections* (Boulder Lynne Reinner, 1996); Yoshikazu Sakamoto, ed., *Global Transformation: Challenge to the State System* (Tokyo United Nations University Press, 1995), Richard J. Barnet and John Cavanagh, *Global Dreams Imperial Corporations and the New World Order* (New York Simon and Schuster, 1994)

[112] Joe R. Feagin and Clairece Booher Feagin, *Racial and Ethnic Relations*, 6th ed. (Upper Saddle River. Prentice Hall, 1999), 53.

of colonialism, the new relationship does not appear to be a radical break from the past.[113]

The limitations, uncertainties and ambiguities in the terms colonialism and neocolonialism contributed to the analytical differentiation of "internal colonialism" from "external" colonialism. Internal colonialism exists where colonizers from colonial powers become distinct from the originally colonizing forces, through national independence, for example, and control subjected populations internally.[114] This idea expands the definition of colonialism to emphasize two empirical realities. First, colonialism, since it is primarily a political-economic relation, cuts across national boundaries in the juridical-political sense. Second, the core-periphery relationship exists not only between geographical regions and economic zones, but also *within* geographical regions and economic zones. Concretely there really is no "external" versus "internal" colonialism, rather there is colonialism as a practice where one ethnic/racially privileged group dominates and exploits other ethnic/racial groups.[115] But we need the term because of the accepted meaning of the term colonialism as external relations.

---

[113] Arghiri Emmanuel, in noting that neocolonialism was "devised for argument's sake, in the face of an unexpected situation," argues that such terms "fail to save the traditional theory." The theory in question is the necessity of political domination was a precondition for economic domination. According to him, colonial dependencies are often an economic burden rather than a boon. "White-Settler Colonialism."

[114] Pablo Gonzalez-Casanova, "Internal Colonialism and National Development," in *Latin American Radicalism. A Documentary Report on Left and Nationalist Movements*, eds. Irving Horowitz, Josu de Castro, and John Gerassi (New York: Random House, 1969).

[115] Frantz Fanon, *The Wretched of the Earth*, ed. Constance Farrington (New York: Grove Press, 1968)

We also need to clarify who qualifies as colonial subjects. Limited definition of colonialism, internal or otherwise, typically have an "indigenous" group that becomes subjected to external and/or interiorized rule. But colonized people within a geographical region, such as American Indians, are not the only colonial subjects in the United States. Those subjected populations imported in the geographical territory and subordinated to the national elite, such as west Africans brought into North America during the slave trade and used in agricultural production in the US South, also qualify as colonized subjects. Then with the separation of the United States from Great Britain and other European powers with the so-called American Revolution, and with the further development of the interstate political structure, the colonial relations became more exclusively intrastate.[116]

To summarize, at the most general level of approximation, a colonial relationship exists between a core and a periphery. The core is the exploiting and dominating political economic power, and can be represented by a state, region, or dominant economic class. The periphery is a region or zone that is economically integrated with the larger socioeconomic system but is economically, politically, militarily and culturally subjected by the core.[117] In this respect, internal colonialism in the United States presents with more colonial symptoms than current interstate linkages. Although it is the economic relations that are most often focused on in

---

[116] Just as imperialism's shift to neoimperialism only altered the character of core domination of the periphery, so would the abolition of slavery only alter the character of racial domination in the United States

[117] Andre Gunder Frank, "The Development of Underdevelopment," *Monthly Review*, 18 (1966), *Capitalism and Underdevelopment in Latin America* (New York: Monthly Review Press, 1967), *World Accumulation and Underdevelopment* (New York: Monthly Review Press, 1978).

theorizing colonialism, in many places where blacks have been concentrated in the US, they are politically, militarily (more accurately through the police apparatus), and culturally dominated with a relative absence of economic exploitation since, from the perspective of capital, they are superfluous labor.[118]

We have noted that although the colony may formally, and even to some degree substantively, possess a degree of political autonomy, colonies are effectively deprived of self-government. Whether the colony is an integral part of a larger economic system or abandoned by capital, the people in the colony are effectively "emancipated" from self-determination in that system. This has been the ordinary state of affairs for Africans in America.

As will be shown in the next chapter, from the beginning, the colonizers viewed the people they subjected in the colonies as different from themselves. This self-concept is intrinsic to the dominator-dominated dialectic. It is also the case that in class-exploitative systems, those who are exploited are viewed as different from those who exploit them. But as Frantz Fanon observes, the rule of the colonizers over the colonized is more brutal than the that of the bourgeoisie over labor. Cultural differences between Europeans and the peoples of other continents, while partially manufactured by the Europeans, set the colonizer and the colonized apart.[119] Without well-developed means of consensual domination, the colonizers must rely more on

---

[118] Sidney Willhelm, *Who Needs the Negro?* (Cambridge, MA Schenkman, 1970); William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York. Knopf, 1996), Jeremy Rifkin, *The End of Work. The Decline of the Global Labor Force and the Dawn of the Post-Market Era* (New York Tarcher/Putnam, 1996)

[119] Fanon, *Wretched of the Earth*

their coercive machinery. These violent relations set people further apart as one group is conquering, enslaving, and systematically liquidating, through assimilation and genocide, other group or groups. This explains why blacks have suffered greater levels of physical violence in the United States, first under the private *dominus*, then, later, under the collective one. Moreover, the racial-political interests explain why whites continue to determine black lives even when the latter have no formal economic value.[120]

Cultural differences and socially selected phenotypic features — the "primary commodities" for racialization — become persistent markers for a system of domination between colonizer and colonized. The power differential, combined with racialized differences, becomes interpreted as a natural hierarchy, one in which white Europeans are believed to be inherently superior to the racialized populations they subject. Race prejudice becomes a justification for the oppression of colonized people. But it is much more than this: people really are racially divided by the actions of the colonizers, as the colonizers make ethnic distinction, amalgamate, and construct parts of a foundation for a system of inequality and domination.

It must be emphasized that while much of the system is consciously constructed by Europeans, much of it develops beyond the conscious action of any groups involved in the developing system. In other words, the reproduction of this

---

[120] By "formal economic value" I mean that surplus black labor-power becomes excluded from "legitimate" labor market participation or that surplus-value produced with black labor-power is generated outside the "ordinary" economy. Black labor continues to be exploited in informal economies (various non-criminal forms of underground labor markets, as well as sex and drug trades) and superexploited, such as in prison labor

system of racial domination does not, for the most part, depend on the coordinated actions of race-conscious Europeans. It is not that group encounter in the colonial situation begins with difference and remain different. The differences become exaggerated and more differences are manufactured. Over time a deep racial stratification emerges. As Madhubuti observes: "I am a product of America's *whiteness* and *Blackness*: these two forces penetrate every cell in my body and like fire and water have become antagonistic and are not able to occupy the same space at the same time without one being master and the other slave. We know which is which without asking or thinking too hard about it; that too speaks to our Americanization."[121]

The importance of understanding colonialism in all of its guises, especially for constructing a synthesis of class and race relations, is transparent, I think: racism is historically part of capitalism, and one cannot come to terms with either race or class without considering both together as fundamental to the operation of the capitalist mode of production and its colonizing imperative. No matter how hidden this relation is in the concrete, no matter how submerged beneath the machinery of market exchange and coded in the language of liberal-democracy, no matter how well-versed the public is in race-neutral speech, the longer view reveals the fundamentally exploitative and racist nature of the European world-system. The construct of internal colonialism helps us discover this long-standing relation.

We must avoid simplifying race in relation to class if we desire an understanding of accumulation and racialization. Similar to Oliver Cox's class

---

[121] Haki Madhumbiti, *Enemies: The Clash of Races* (Chicago, IL: Third World Press, 1978), i

reductionist explanation of racism, Nash has theorized that racism emerged to "legitimate" labor exploitation in the periphery, as well as exploitation of immigrants in low wage industries in the core.[122] This is in part true, of course, but it theoretically prioritizes material interests in a way that treats racism as a superstructural phenomenon. Rather, racism is an intrinsic part of the system of labor exploitation in the periphery, both internal and external to the core. This way of talking about it, rather than falsely seeing racism as an ideological system "justifying" the low pay of certain workers, allows us to reckon racism as an objective structure of exploitation that depends on the racialization of certain populations, the naturalization and inferiorization of their "ethnic" characters. By doing this we substitute a conception of racism as ideology for a realist conception of race as an objective set of social relations. Whereas the presence or absence of *property* is the basis of exploitation in the class system, the presence or absence of *whiteness* is the basis of oppression in the racial system.

Conclusion

In this chapter, I presented three analytical models about the caste-class structure of US society. Integrating the ideas I found to be valid and sound from the previous chapter, I generated a single basic structural model: *the caste-class system* (figure 1.4.1). This ensemble, only an approximation, is composed of two zones of existence: one zone, the inclusion/enrichment region, is composed of the racially and

---

[122] June Nash, "Cultural Parameters of Sexism and Racism in the International Division of Labor," in *Racism, Sexism and the World-System*, eds. Joan Smith et al (Westport: Greenwood, 1988).

economically privileged; the other zone, the exclusion/impoverishment region, is reserved primarily for those who are non-white and impoverished. After delineating the features of the basic model, I specified the model for crime and punishment indicating the *caste-class segmentation of crime and punishment* (figure 1.4.2). These models conceptualized the structural side of the crime and punishment in a racist/capitalist society. For the dynamic side of the system, I sketched a *dynamic caste-class segmentation* model (figure 1.4.4) by exploring the internal (or domestic) colonialism framework, an exercise which also sets up the pending historical discussion.

We are now prepared to theoretically organize the historical evidence. But before moving to this, I want to underscore the design and purpose of this work. As noted in part 1, chapter 1, I am pursuing two objectives. One objective is general: to expose the transhistorical structure and dynamic of the racial ordering of the European world-system specific to North America. The other objective is specific: to show how each successive phase of history depends on the previous phase and creates the conditions for further transformation of the societal system. To accomplish these objectives, the pending chapters are organized into thematic sections. Some chapters follow the format: (1) the logic of the historical system; (2) the caste-class differentiation of crime and punishment; and (3) the corresponding ideological system. Other chapters substitute the evolution of political society for the logic of the historical system and combine the latter with the analysis of the caste-class segmentation of crime and punishment. Why are these elements focused on? The evolution of criminal

jurisprudence and penal philosophy cannot be understood apart from the structure-dynamic of the larger historical context to which it is attendant. At some points, the story of the evolution of the caste-class system is better told through an analysis of political society. These domains are reinforced, and in part caused, by the prevailing ideological system. No one feature by itself is explanatory of crime patterns and trends in societal response, rather there are primary causal factors in a concrete totality. I mean to capture the essence of the totality and isolate these primary causal factors; this explains shifts in the relative importance of explanatory factors.

Chapters 1-5 in part 2 concern the English colonization of North America and the history of the United States. This is the core of the historical analysis. The next chapter, "The Prehistory of Race, Class, and 'Modern' Punishment 1450-1618," prepares the ground for this analysis by exploring the development of capitalism in Europe, the transformation in the structure of punishment in that context, the expansion of the European world-system, and the early development of racial ideology. I contend that the logics created at this stage of world-historical development set in motion the forces that determine the lives of blacks in America today.

PART 2

RACE, CLASS, CRIME, PUNISHMENT

Segregation now! Segregation tomorrow! Segregation forever!
— George Wallace

CHAPTER 1

THE "PREHISTORY" OF RACE, CLASS, AND "MODERN" PUNISHMENT 1450-1618

The spoliation of the church's property, the fraudulent alienation of the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reckless terrorism, were just so many idyllic methods of primitive accumulation. They conquered the field for capitalistic agriculture, made the soil part and parcel of capital, and created for the town industries the necessary supply of a "free" and outlawed proletariat. Karl Marx[1]

A common point of entry into the chronological sequence of unfreedom in the United States is the English colonies in North America. The English were not the first Europeans on the Continent. There were Spanish colonies in North America, primarily in Florida, extending at times into what are now called Alabama and Virginia, in the early 1500s.[2] Spanish presence in North America is perhaps not inconsequential for my dissertation's theme; they constructed the first major prison in North America in 1570 at St. Augustine, Florida.[3] But it would be the English, with British economic and naval supremacy, who would occupy North America and English culture would determine the character of the United States, and so they become the focus.[4]

Virginia was the first successful colony founded by the British in 1607.[5] Colonies soon followed in New York and Massachusetts. Labor discipline was cruel in

---

[1] Karl Marx, *Capital*, vol. 1 (New York: Penguin, 1990), 895.

[2] The literature typically focuses on the Spanish in Central and South America, but the Spanish pushed extensively into North America, as well See Jeffrey C. Stewart, *1001 Things Everyone Should Know About African American History* (New York· Doubleday, 1996).

[3] Scott Christianson, *With Liberty for Some 500 Years of Imprisonment in America* (Boston· Northeastern University Press, 1998)

[4] Herbert Aptheker, *The Colonial Era* (New York International Publishers, 1959), 7.

[5] There were several unsuccessful attempts to colonize North America. Sir Gilbert Humphrey landed in Newfoundland in 1583, but his ship sank on the return voyage. Sir Walter Raleigh, landed 107 men on Roanoke Island in North Carolina, but a year later they abandoned the colony and sailed back to England. In 1587 John White and 150 colonists, organized by Raleigh, landed on Roanoke and then disappeared See Herbert L Osgood, *The American*

the colonies; workers toiled under a variety of form of extra-economic coercion.[6] Indentured servants, convicts, kidnapped children, and American Indians were the earliest types of captive labor.[7] But not long after settling into the Virginia countryside, Europeans procured another type of captive labor: African people. The first Africans in the English colonies arrived in Jamestown, Virginia in 1619. Records show that twenty African bound servants, referred to as "Negers," arrived on a Dutch ship.[8] These were not the first Africans in North America,[9] but their arrival is significant for my argument: the Dutch shipment would signal the beginning of systematic black oppression in what would become the United States.

The political-legal status of those 20 Africans is a matter of controversy, existing as it did amid many other forms of labor unfreedom.[10] Some historians argue

---

Colonies in the Seventeenth Century, vol 1. (Gloucester. Peter Smith, 1957). In the early 1600s, Sir John Popham landed in Kennebec (Maine) with a crew made up of convicts. See Christianson, *Liberty for Some*.

[6] The brutality of labor regimes is well-documented Karen Ordahl Kupperman compares them to concentration camps in "Apathy and Death in Early Jamestown," *Journal of American History* 66 (June 1979) See also Osgood.

[7] See Christianson, *Liberty for Some*, for a rich history of captive English labor.

[8] See Stewart, *1001 Things*.

[9] There is evidence of Africans landing in the Americas before Jamestown. When Spanish explorer Vasco Núñez de Balboa arrived in the New World he found black people living there. Columbus reported black people who traded with the American Indians there and he recorded in his notes that he believed they were Guinea (West Africa) In 1513, Balboa brought 30 Africans to Panama. In 1519 Hernando Cortés had 300 Africans with him when he fought the Aztecs Juan Ponce de León and several Africans explored Florida Lucas Vásquez de Ayllón and several Africans explored the eastern coast of Virginia in the early 1500s. Perhaps the most interesting story is that of the African slave Estevanico who survived, along with three Spaniards, a tremendous ordeal in Tampa Bay, Florida in 1528 (in which some 200 Spaniards died), and led the party on to Mexico to search for the Spanish settlement (which took 8 years!) Estevanico then led an expedition throughout the southwestern United States. Stewart, *1001 Things*.

[10] Stephan Palmié, "Introduction," in *Slave Cultures and the Cultures of Slavery*, ed Stephan Palmié (Knoxville, TN The University of Tennessee Press, 1995), xi Cf. Timothy H. Breen, "A Changing Labor Force and Race Relations in Virginia," *Journal of Social History*, 7 (1973), Edmund S. Morgan, "Slavery and Freedom. The American Paradox," *Journal of American History*

that Africans in Virginia shared a status with English indentured servants. Ballagh and Franklin, for instance, contend that blacks were treated the same as whites: both were indentured servants, with a term of service of some years.[11] Others, for example, Bruce, argue that blacks were treated differently; blacks were, according to him, for the most part permanent servants.[12] Zinn suggests that "the strong probability is that, even if they were listed as 'servants' (a more familiar category to the English), they were viewed as being different from white servants, were treated differently, and in fact were slaves."[13] Whatever the fate of those twenty Africans, within their life-times all Africans brought into or born in Virginia were slaves.[14]

However, the question of whether black and white servants in Virginia had equal status, a question separate from whether blacks were enslaved, is fairly easy to resolve by looking at legal documents and the application of the law to members of the colony. Virginia court records from the first half of the 1600s show that blacks and whites who committed the same crimes received different punishments. For instance,

---

59 (1972); Timothy H. Breen and Steven Innes, *Myne Owne Ground: Race and Freedom on Virginia's Eastern Shore, 1640-1675* (New York Oxford University Press, 1980.

[11] James C Ballagh, *A History of Slavery in Virginia* (New York, Johnson, 1968), and *White Servitude in the Colony of Virginia* (Baltimore. The John Hopkins Press, 1985), and John H. Franklin and Alfred A. Moss, Jr , *From Slavery to Freedom*· A History of African Americans (New York: McGraw-Hill, 1994) See also Stewart, *1001 Things.*

[12] Phillip A Bruce, *Institutional History of Virginia in the Seventeenth Century* vols 1-2 (New York. G.P Putnam, 1910).

[13] Howard Zinn, *A People's History of the United States 1492-Present* (New York· Present HarperPerennial, 1995), 23

[14] A 1664 Maryland law, "An Act Concerning Negroes and other Slaves," was representative of the other colonies This law made slaves of the children of slaves and made a slave for life of any English woman "forgettfull of their free Condicion" who chose to "disgrace of our Nation" and "intermarry with Negro Slaves," quoted in Leslie H. Fishel, Jr. and Benjamin Quarles, *The Negro American A Documentary History* (Glenview, IL· Scott, Foresman and Company, 1967), 20 This included the offspring of such unions that occurred before the act was passed until the age of thirty. The act was explicitly meant to deter interracial marriage.

whereas white servants had their term of service amended by a few to several years, blacks did not; this was because permanent servants cannot have their terms of service extended.[15] Other records show punishments meted out for interracial coupling. Black and white servants were listed separately in public records. And blacks were restricted from owning firearms.[16]

The fact of differential treatment experienced by Africans in the British colonies raises immediately the question of the character of racial thinking that existed then. Ideological racism is when one group of people believes that another group of people is in some fashion inherently different from them and that they are inferior.[17] Racism is more than an ideology, however; it is also behavioral and structural (see part 1, chapter 3). It is the standard position that racial thinking and antagonisms were generally absent in the "ancient" world; many scholars place the origin of ideological racism in the 16th century.[18] I argue in this chapter that a set of ideas and practices that had developed over the course of at least a century and a half before Africans arrived

---

[15] A 1661 Virginia law stated "*Bee itt enacted* That in case any English servant shall run away in company with any negroes who are incapable of makeing satisfaction by addition of time, *Bee it enacted* that the English so running away in company with them shall serve for the time of the said negroes absence as they are to do for their owne by a former act," quoted in Fishel and Quarles, *The Negro American*, 20

[16] Lawrence M. Friedman, *Crime and Punishment in American History* (New York Basic Books, 1993), Zinn, *People's History*, Christianson, *Liberty for Some*

[17] Dante A Puzzo, "Racism in the Western Tradition," *Journal of the History of Ideas*, 25 (1964). Ideological racism operates on two assumptions. "that a correlation exists between physical characteristics and moral qualities, that mankind is divisible into superior and inferior stocks," 579.

[18] Frederick G. Detweiler, "The Rise of Modern Race Antagonisms," *American Journal of Sociology*, 37 (1932) Puzzo, "Western Tradition " Detweiler assumes the objectivity of biological race in his article, for him racial antagonisms occur when one group dislikes another based on the belief that the groups are innately different. Aristotle believed that there was something innately different about "barbarians" (i e , non-Greeks) that justified their being enslaved See also Puzzo.

in Jamestown, resulting from the integration of capitalism with a "prehistory" of analogous racial thinking and practices, such as was exhibited during English colonization of Ireland,[19] created a context where Africans who arrived in the colonies were regarded as racially inferior and therefore legitimately subjugated and enslaved. My argument, therefore, puts racial thinking and practices before the 16th century.

The term "prehistory" may be misunderstood; since it is a very useful way to conceptualize the nature of racial thinking before the development of full-blown racism, its use here needs to be clarified. The common dictionary definition is a good starting place: prehistory is "a history of the events or incidences leading to a crisis or situation."[20] The *history* of racism as a *system* of group domination, in both its social-structural and cognitive-behavioral aspects, begins with the expansion of the European world-system in 1450. We cannot locate *racism as a system* any earlier than this. But because there is evidence of widespread forms of thought analogous to racial thinking before the appearance of systemic racism, and since the cognitive-behavioral side of racism retains many of these earlier forms, we must clearly distinguish the *history* of racism from its *prehistory* so that both can be used in the analysis.

Failure to make this distinction is what leads many scholars to suppose that racism pre-dates capitalism. Liberal-rationalist thinkers make this error, treating racism as a form of "irrationalism" or "backwardness." They contend that racism will disappear with "modernization." Other scholars subsume ethnocentrism and other

---

[19] Nicholas P. Canny, "The Ideology of English Colonization From Ireland to America," *William and Mary Quarterly*, 30 (1973)

[20] *The Random College Dictionary*, rev ed (New York Random House, 1984).

forms of group chauvinism and discrimination under the construct "racism" and suppose it has a primordial basis (some even root racism in the biological makeup of the species, such as the sociobiologist's notion of "territorial imperative"). At the same time, because racism has a prehistory, it did not occur *after* the emergence of world capitalism. Marxists commonly make the error of supposing racism comes later in the development of world capitalism and hence explain its origin and persistence in either structural-functional terms[21] ("racism functions to divide the working class" or "racism functions to provide capitalists with a superexploitable labor") or instrumental terms ("capitalists created racism to divide the working class"). Both of these positions reflect a political need; the first to glorify modernity; the second means to subordinate racism to the class struggle.[22] To be sure, capitalism played, and continues to play, a central role in the history of black subjection (and the subjection of

---

[21] Functionalist accounts de-emphasize ideological and juridical-legal modes of social control, arguing instead that the "function" of the criminal justice system is to contain and maintain labor power. Structuralists downplay or dismiss these instrumental linkages because of an epistemological bias against considering the role of human agency and ideology in analysis. Drew Humphries and David Greenberg write, "It is the essence of a systems theory that the explanation of a social phenomenon does not refer to the meanings or goals of the members of the society. It does not see change as a consequence of the purposeful activity of identifiable social actors, but as a spontaneous and unwitting convulsion of the entire system. Nor does it explain how or why anyone realizes what a system or a mode of production needs and insures that these needs are met," "The Dialectics of Crime Control," *Crime and Capitalism. Readings in Marxist Criminology*, ed. David Greenberg (Philadelphia. Temple University, 1993), 464.

[22] Brittan and Maynard write: "Marxism has played a major role in elucidating the class position of out-groups and in explaining how this situation arose and is maintained. However, difficulties arise with both the orthodox and neo-Marxist arguments due to their implicit insistence that the terms of the debate can only be couched from within the context of capitalism and its class system. Such an approach immediately opens up the danger of reductionism and indeed some writers have almost mechanically explained racism (and sexism, too) in both its institutionalized and personalized forms, in terms of the needs and interests of capital. The demands of the 'system' are regarded as paramount and almost anything can be reduced to, and thus explained by, the 'system's' requirements," quoted in Richard H Thompson, *Theories of Ethnicity: A Critical Appraisal* (New York: Greenwood Press, 1989), 145

many other racialized groups). But the existence of pre-capitalist racial thinking forces us to confront important factors that lay beyond capitalist class formation and economic exploitation, namely the European mind, a mind that appears early on compelled to racialize human populations.

Before we attempt to understand the colonial mind, we need to explore the world-systemic causes of European colonization of the world. My theory is not a monocausal explanation of black oppression. As explained in part 1, chapter 4, colonialism is the process whereby a world-economic system incorporates, subjugates, and peripheralizes people living in regions formerly external to that system. The dominant economic powers of Europe pulled the rest of the world into their economic sphere to enlarge and extend their imperial might and scope and to draw economic surpluses into their countries, mainly for the benefit of the dominant classes, but also in the process elevating the affluence of the working class in the homeland. Capitalist colonialism, unlike other imperial systems, operates fundamentally on racialization, uprooting diverse ethnic groups and turning them into races (for example, the diverse cultures of African[23]), constructing still more ethnic groups (such as the "white European"[24]), and exterminating groups or forcing them onto reservations (such as the

---

[23] Joseph E Harris, *Africans and Their History*, second edition (New York: Meridian, 1998).

[24] Theodore W Allen, *The Invention of the White Race* (New York Verso, 1994); W.E.B. Du Bois, *Black Reconstruction in America* (New York. Atheneum, 1992), Joe R Feagin and Aaron Porter, "White Racism: Bibliographic Essay," *Choice*, 33 (1996); Robert J. C Young, *Colonial Desire. Hybridity in Theory, Culture and Race*; David R Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991) and *Towards the Abolition of Whiteness* (New York Verso, 1994).

American Indian[25]). In the end, non-Europeans have either been subordinated to or assimilated with European rule.

Moreover, this is a book about law and order in a capitalist society; thus it must concern itself with the emergence of crime patterns and the evolution of the criminal justice system under capitalism. Although I pay attention to the precursors of racism and their effects, I still agree with Aptheker: "The founding of the colonies which became the United States of America was a consequence of the appearance of capitalism in Europe."[26] It was the rising capitalist class who expanded the world market in their desire for riches, and it was capitalism that transformed law and order from its medieval character to the rational system we see today. The analysis of human bondage in America therefore must begin with a historical account of the emergence of capitalism in Europe with particular attention to the transformation in the structure of punishment.

Therefore, although the arrival of slaves in the "New World" provides an empirically clean entry into a narrative about North American unfreedom, an analysis of the development of the larger sociohistorical and cultural system — the European (or modern) world-system — provides the context necessary for understanding why Africans brought to the colonies were immediately regarded by the British colonists as possessing a status different from indentured servants, thus establishing the deep

---

[25] For a comprehensive review of the literature see Colin G Galloway, *New Worlds for All: Indians, Europeans, and the Remaking of Early America* (Baltimore: John Hopkins University Press, 1997). See also Edward H Spicer, *Cycles of Conquest* (Tuscon. University of Arizona Press, 1962); Sale Kirkpatrick, *The Conquest of Paradise* (New York Knopf, 1990), Russell Thornton, *American Indian Holocaust and Survival* (Norman. University of Oklahoma Press, 1987); C Matthew Snipp, *American Indians: The First of This land* (New York: Russell Sage Foundation, 1989)

[26] Aptheker, *The Colonial Era*, 7.

racial dichotomy that has characterized the United States throughout her history. I begin with crime and punishment in Europe at the dawn of capitalism. I then move to a brief account of the rise of the European world-system. Finally, I explore the character of racial ideology before English slavery in North America.

Crime and Punishment in the Ancien Régime

If permitted, the spectacle of the Inquisition will surely blind the eye to the world of ordinary crime and punishment.[27] But in the Middle Ages the primary ways to punish rule-breakers were not with thumbscrews or burnings at the stake but with fines and penance. Although the Holy Inquisition raised an impressive structure, overall the level of the productive forces could not support an extensive system of criminal law and incarceration to regulate conventional crime. Large-scale surveillance and punishment structures were not possible because of the lack of a centralized, bureaucratic system under feudalism. Moreover, the structure of society was not such to require repressive public control.[28] It has been argued that the character of the socio-

---

[27] Graeme Newman, *The Punishment Response* (Philadelphia J.B. Lippincott Company, 1978) C. Warren Hollister, *Medieval Europe: A Short History* (New York McGraw-Hill, Inc., 1994), R I Moore, *The Formation of a Persecuting Society* (Oxford: Blackwell, 1990), H. C. Erick Midelfort's *Witchhunting in Southwestern Germany 1562-1684: The Social and Intellectual Foundations* (Standford University Press, 1972), Alan Kors and Edward Peters, *Witchcraft in Europe, 1100-1700. A Documentary History* (University of Pennsylvania Press· Philadelphia, 1972). Spectacular is an understatement. Between 1481-1808 a recorded 341,021 people were burned at the stake. This figure excludes beheadings, garrotings, hangings, live burials, disembowlings, and a myriad of other ways of killing and maiming human beings. Assuming many, maybe most records did not survive history, it is almost certain these numbers undercount the carnage. Newman quotes this figure from George R Scott, *The History of Torture throughout the Ages* (London: Luxor Press, 1938). Henry Charles Lea's *A History of the Inquisition of the Middle Ages* (New York Russell and Russell, 1955).

[28] There are several histories of feudal society I have relied primarily upon the excellent history of Marc Bloch, *Feudal Society* (University of Chicago Press: Chicago, 1961) Several other accounts were helpful Perry Anderson, *Passages from Antiquity to Feudalism* (Atlantic Highlands, NJ Humanities Press, 1974), Pierre Bonnassie, *From Slavery to Feudalism* in South Western Europe (New York: Cambridge University Press, 1991), Maurice H Dobb, *Studies in the*

legal relationship between lord and vassal produced a relatively cohesive class structure, maintained by a complex system of consensual domination characterized by "a deferential social order of dependence and obligation between unequals."[29] Some even contend that feudal class relations was a non-exploitative arrangement and, therefore, not involuntary servitude."[30] More plausibly, feudalism was not organized in a criminogenic way and lacked a surplus populations that would need to be managed (both features of capitalism).

There were other limitations to the development of a large punishment regime. Because of the autonomy enjoyed by lords and vassals in the decentralized feudal structure, local powers understandably resisted attempts by emerging central state actors to influence the internal affairs of their communities, particularly where such extensions threatened their power and privilege.[31] Central state actors were forced to rely on local actors to manage populations, and this required that they secure the

---

Development of Capitalism (New York International Publishers, 1963); Georges Duby, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century* (Ithaca, NY, Cornell University Press, 1974), *The Three Orders: Feudal Society Imagined* (Chicago: University of Chicago Press, 1980), *Rural Economy and Country Life in the Medieval West* (Columbia, University of South Carolina Press, 1968), *The Making of the Christian West, 980-1140* (Geneva] Skira, 1967), and *The Chivalrous Society* (Berkeley, LA· University of California Press, 1977), Rodney H. Hilton, *Bond Men Made Free. Medieval Peasant Movements and the English Rising of 1381* (London· Temple Smith, 1973), Bryce Lyon, *The Origins of the Middle Ages· Pirenne's Challenge to Gibbon* (New York: Norton, 1972), *Studies of West European Medieval Institutions* (London· Variorum Reprints, 1978), and *A Constitutional and Legal History of Medieval England* (New York. Norton, 1980), Carl Stephenson, *Medieval Feudalism* (Ithaca, NY. Cornell University Press, 1956), and *Medieval History· Europe from the Second to the Sixteenth Century* (New York, Harper and Row, 1962).

[29] Christopher Dandeker, *Surveillance, Power and Modernity. Bureaucracy and Discipline from 1700 to the Present Day* (New York: St. Martin's Press, 1990), 113.

[30] Douglas North and Robert Thomas," The Rise and Fall of the Manorial System A Theoretical model," *Journal of Economic History* 31 (1971) Cf Stefano Fenoaltea, "The Rise and Fall of a Theoretical Model· The Manorial System," *Journal of Economic History* 35 (1975).

[31] John A Hall, *Powers and Liberties· The Causes and Consequences of the Rise of the West* (Oxford: Blackwell, 1985)

cooperation of local powers. Consequently, the local powers accomplished for their social class considerable freedom from the system of legal controls. Thus the system of patronage and the weak position of the central state went hand in hand. Most conflicts were resolved privately as a matter of course. "Insofar as the subordinate population's interests were politically articulated at all within legitimate structures, these were expressed through their connections with hierarchical systems of patron-client relations of personal obligation."[32] Group conflicts of the sort that might stimulate criminal law responses, except for the occasional revolt, were comparatively lacking. Consequently, criminal law, although it did exist, was not required as a primary means of sustaining order. "The main emphasis of criminal law lay in the maintenance of public order between equals in status and wealth."[33] Thus, rather than criminal law as an imposition of the affluent upon the impoverished, it was a manner of controlling the behavior of equals. What is more, as with larger state actors, local authorities had limited ability to police their communities.

Offenses against property were not emphasized in the criminal law. Rather the criminal codes focused on offenses against persons, which called for retribution, and moral transgressions, e.g., adultery. One of the earliest forms of retribution in England was the blood feud. Crimes against persons were promptly addressed to prevent blood feuds. Without a measured response from the community, unchecked acts of

---

[32] Dandeker, *Bureaucracy and Discipline*, 113

[33] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York Columbia University Press, 1939), 9 The structure of Rusche and Kirchheimer's narrative of the early history of punishment in Europe heavily influenced this chapter

vengeance could snowball into chaos.[34] These were handled through compensation by *bot* and *wergild*.[35] At the public level retribution was sublimated as the Mosaic law of *lex talionis*. This tradition combined with Roman law to yield forms of justice based on compensation.[36] Crimes of moral order were ritualized for the sake of the community. When such crimes occurred, free men would meet and judge the merits of the case and decide a punishment. Usually, the offender was required to pay a fine or do penance.[37] There was a feeling of reforming the wrongdoer in such measures. There is evidence that people at the time (as early as the 10 century) believed that punishment of wrongdoing had a deterrent effect.[38] Thus we have three of the primary contemporary justifications for criminal punishments — retribution, deterrence, and reformation — present in the pre-Enlightenment period.

Medieval punishments were differentiated by social class. Penance was graded according to perpetrator and victim's status. While penance and fines were the standard punishments, corporal punishment was used for those who were unable to pay fines. The effect of this was that corporal punishment became automatic for the poor. The same automatic double standard is in operation in the contemporary criminal justice system, where the poor suffer greater levels of physical punishment

---

[34] Newman, *Punishment Response*

[35] Barbee-Sue Rodman, "Bentham and the Paradox of Penal Reform," *Journal of the History of Ideas*, 29 (1968)

[36] Theodore F. T Plunckett, *A Concise History of the Common Law*, 5th ed. (Boston, MA. Little, Brown, 1956); Henry Maine, *Ancient Law. Its Connection with the Early History of Society and its Relation to Modern Ideas* (Gloucester, MA: P. Smith, 1970)

[37] Rusche and Kirchheimer, *Punishment and Social Structure*. See also John T McNeill and Helena M Gamer, *Medieval Handbooks of Penance* (New York, Columbia University Press, 1938) For a general history of English law see William Searle Holdsworth, *A History of English Law* (Boston, MA Little, Brown, 1922-72)

[38] Rodman, "Bentham "

because they are unable to pay fines, afford a quality defense attorney, or post bail.[39] Corporal punishment usually took the form of imprisonment. Students of criminal justice are often taught that the penitentiary are recent inventions, emerging with the Industrial Revolution.[40] "It is common in modern writings on prison to assume that it is a relatively recent (since 1800) method of punishing criminals. Prison has been with us for centuries, not just as a holding place for persons awaiting trial, but as a punishment as well."[41] Rusche and Kirchheimer note a Sion statue of 1338 that required imprisonment and a diet of bread and water for anyone unable to pay their fines. "This statute not only illustrates the automatic character of the transformation of penance into corporal punishment, but it also shows the imprisonment was regarded as a form of corporal punishment at this time."[42] The Sion statute was typical. Still, while prisons existed and were used, the modern penitentiary system would have to wait. Physical punishments, such as floggings, however, were rarely used, a fact that also runs contrary to much of the earlier literature.

The character of ordinary crime is significant for any historical narrative documenting the transformation of crime and punishment under capitalism. In many accounts, people have worked the ordinary history out of the historical narrative, leaving the wonder of the Inquisition to block out the sun (hence the "Dark Ages," I suppose). The history books collectively paint a picture of a barbaric and superstitious

---

[39] Jeffrey Reiman, *The Rich Get Rich and the Poor Get Prison* (Needham Height, MA: Allyn and Bacon, 1996).

[40] Thorsten Sellin disputed this claim in *Slavery and the Penal System* (New York: Elsevier, 1976)

[41] Newman, *Punishment Response*, 84

[42] Rusche and Kirchheimer, *Punishment and Social Structure*, 10

people delighting in the torture of their comrades. Implicit in those characterizations is a glorification of modernity.[43] What we find is quite contrary to this: while the Inquisition was certainly grotesque, generally punishments were not as severe than they were in twentieth century America. They were much less brutal than the punishments that would emerge in Europe with the acts of "primitive accumulation."

Because of the comparatively smaller size and scope of the criminal justice system during the early Middle Ages, and the small community existence of feudal society, most punishment occurred in the private domain. The right of certain individuals, the *dominus*, to exercise social control in this domain was derived in part from ancient Roman practices based on the civil law principle of *patria potestas*, or paternal authority.[44] Paternal authority was translated in feudal society as the doctrine of *paterfamilias* where the father of a household or a master commanded unlimited power over subjects within his domain, which encompassed household and business. Feudal society was a deeply patriarchal society. The father of the household, if he was a warrior or lord, stood at the top of a personal hierarchy. Wealth took a patrilineal line of descent. The principle of primogeniture passed the wealth to the oldest son.

---

[43] Kenan Malik, in *The Meaning of Race* (New York: New York University Press, 1996), extols the virtues of modernity in this fashion He supports his argument that racial prejudice is a product of the backwardness of feudal society by noting that feudal society burned witches With the coming of the Enlightenment, he contends, it became possible for the first time in human history for such backwardness prejudices to be washed away and a new order of equality to be ushered in. Malik describes feudal subjects as "ignorant " Racism exists, he contends, only because capitalism failed to reduce inequality and needed an ideological cover-up. What Malik fails to recognize is that racism, mutilations, and myriad other tyrannies intensified with capitalism and in many instances were created by capitalism, for example racial slavery, to advance the system

[44] Roy C. Cave and Herbert H. Coulson, eds , *A Source Book for Medieval Economic History* (New York, Biblo and Tannen, 1965).

Despite the many grades of unfreedom, the domain of the "citizen" was consciously distinguished from the public domain in feudal societies.[45] Thus we have in the Western socio-legal tradition the adumbration of the future cleavage of society into the private and public spheres, with the former to be codified in the "rights of man" *for those defined as men,* and the latter specifying the responsibilities and the limitations of the "social contract," i.e., the political machinery.[46] This matter bears directly on the thesis of the present study: the right of the *dominus* to administer corporal punishment to those under his control covered serfs, bonded servants, and slaves.[47] The treatment of the unfree unrelated persons under *paterfamilias* was harsher

---

[45] P. Krueger, ed., *Codex Justinianus,* (Berlin, 1877), 984; reprinted in Roy C. Cave & Herbert H. Coulson, eds , *A Source Book for Medieval Economic History* (Milwaukee. The Bruce Publishing Co., 1936; reprinted New York: Biblo and Tannen, 1965).

[46] The doctrine of *paterfamilias* helps us understand how unmarried women became the objects of religious persecution during the Holy Inquisition. Those unwedded women by definition existed beyond the boundaries of marriage and therefore beyond the subjection of a man; because they were not ruled by a specific *dominus,* they were subject to collective man. This may in part explain a noted fact in the criminology literature ever since Adolfo Quetelet surveyed the French *Compte General* in the early 19th century, in *Research on the Propensity for Crime at Different Ages* (Cincinnati. Anderson, 1984): women have much lower rates of crime than men Similar to France in 1826, an examination of several English countries between 1300-1348 found the ratio of female to male felons was 1 9. See Barbara A Hanawalt, "The Female Felon in Fourteenth Century England," in *Women in Medieval Society,* ed. S. M. Stuard (Philadelphia: University of Pennsylvania Press, 1976) The patriarchy served (and continues to serve) as a micro-level power structure controlling women through segregation from the male domain It may also explains why crime rates are rising among women with the suppression of the patriarchy. See William A Bonger, *Criminality and Economic Conditions* (Boston: Little, 1916); Freda Adler, *Sisters in Crime: The Rise of the New Female Offender* (New York. McGraw-Hill, 1975), "The Interaction Between Women's Emancipation and Female Criminality A Cross-Cultural Perspective," *International Journal of Criminology and Penology* 5 (1, 1977), John Hagan, *Structural Criminology* (New Brunswick, NJ Rutgers University Press, 1989). It has been suggested that rape represents an extralegal mechanism to keep women in line, to restrict their range of movement in male society. See Lori Heise, "Global War Against Women," *Utne Reader* (Nov-Dec, 1989), Catharine A. MacKinnon, *Feminism Unmodified Discourses On Life And Law* (Cambridge: Harvard University Press, 1987) There are parallels between women and blacks, for example, lynching as a form of collective control.

[47] The presence of slaves continued into the eleventh century Some serfs suffered what amounted to slavery The main difference between slaves and serfs was that the latter was not

than for other members of the households. "Although children and slaves were equally at the mercy of the *dominus*, the law discriminated much more against slaves, and in general the punishments were much more severe."[48]

When racial slavery was instituted in the capitalist context, the doctrine of *paterfamilias* was applied to slaves, now defined as private property. European males, affluent and ordinary alike, increasingly enjoyed the transformation of the law that was being spurred and legitimated by Enlightenment principles (after the late 1700s) — the extension of so-called "the rights of man." The character of punishment in the people's domain was increasingly rationalized, which means, as we will see, that the focus shifted, at least ideally, from corruption of the physical body to reform of the mental subject (though still corporal since it involved extreme deprivation of liberty).[49] But for those who continued to exist under the *dominus* — indentured servants and slaves — the character of punishment remained violently physical, involving whippings, brandings, and even death. As chattel in the private domain of control the black slave had no rights; this permitted extreme brutality, not to mention their captivity in perpetuity.

I do not want to leave the reader with the false impression that conditions for free men in feudal society were improving with the maturation of feudal society and the emergence of capitalism from the subsequent crisis of feudalism. On the contrary,

---

deprived of her/his legal personality. Jerome Blum, "The Rise of Serfdom in Eastern Europe," *The American Historical Review* 62 (1957)

[48] Newman, *Punishment Response*

[49] Michael Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995)

the criminal justice system would become more brutal and more extensive as the *ancien régime* crumbled and capitalism came to the fore, as I document here. The brutal punishments would emerge with a shift in emphasis from retribution and reformation to deterrence in the late Middle Ages, especially in the English penal system.[50] This would be particularly true in those areas more densely populated and more subject to control by central authorities. We shall turn to this matter directly.

During the early Middle Ages land was plentiful and could accommodate a growing population. After 1200, the population of Europe grew rapidly. The availability of land provided for a comparatively stable social condition during the initial population growth. Eastward colonization of Europe by central European groups and rising population stimulated high labor demand and induced migration.[51] This put landlords, fearful of losing their serfs, in a weakened position. Fear of losing labor resulted in two very different responses. One was to impose harsh labor regimes. Similar patterns were seen in areas where lords moved to enserf free peasant populations to meet rising demand. The other response was to increase the level and quality of freedom. Similarly, landlords who needed laborers to colonize the new land offered attractive terms of tenure to free peasants. In these cases the conditions of serfs

---

[50] Rodman, "Bentham " See also Richard W. Kaeuper, "Law and Order in Fourteenth Century England The Evidence of Special Commission of Oyer and Terminer," *Speculum* 54 (1979).

[51] See Blum, "Rise of Serfdom," for a detailed historiography of eastward colonization

were generally improved.[52] This also depended on the degree that central power was intruding on the traditional relation between lord and serf.[53]

By the latter Middle Ages, however, these trends were reversed and private criminal law began to yield to greater levels of public punishment. According to Rusche and Kirchheimer, three forces undermined the private character of the law. First, the feudal lords increased repression of labor. Second, central authorities attempted to extend their jurisdiction and politically-legally consolidate Europe (the emerging nation-states). Third, political elites began to realize fiscal benefits in increasing the scope of criminal law enforcement. The imposition of fines provided income for political elites. This could be very profitable, for example, when fees were redistributed using escheats and forfeitures (as the prerogative of the lord).

The emerging capitalist world-economy began to undermine the feudal order and reorganize key aspects of society, such as labor markets, to suit the needs of the capitalist accumulators.[54] This occurred in an extended moment of "primitive" or "original" accumulation. Original accumulation occurred in different places and at different time in Europe. Moreover, primitive accumulation occurred outside Europe, as well, in the colonization of the world. Primitive accumulation represents the first wave of the new mode of criminalization in the present world-historical epoch.

---

[52] Marc Bloc, *Slavery and Serfdom in the Middle Ages* (Berkeley: University of California Press, 1975); Rodney H Hilton, *The Decline of Serfdom in Medieval England* (New York: St. Martin's Press, 1982).

[53] Blum, "Rise of Serfdom."

[54] Immanuel Wallerstein, *The Modern World-System I. Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York. Academic Press, 1974)

According to Marx, "the accumulation of capital presupposes surplus-value; surplus-value presupposes capitalist production." Moreover, "capitalist production presupposes the availability of considerable masses of capital and of labor-power in the hands of commodity producers."[55] Taken in their motion these facts swirl in a vicious circle. The only way out of the vortex is to assume a moment of original accumulation, such as Adam Smith does in *Wealth of Nations*, that precedes the capitalist mode of production — where the system is erected through some form of accumulation that is not the ordinary accumulation of the subsequent system.[56]

Classical political economy sanitizes this moment in history by inventing a fable. They tell a story that involves two sorts of people: on the one hand are the intelligent, diligent, and frugal; on the other hand are the stupid, lazy people for whom life is a party (this myth is evident in the modern culture of poverty thesis). According to the anecdote, "it came to pass that the former sort accumulated wealth, and the latter sort finally had nothing to sell except their own skins. And from this original sin dates the poverty of the great majority who, despite all its labour, have up to now nothing to sell but themselves, and the wealth of the few that increases constantly, although they have long ceased to work."[57] As he did in *Grundrisse*, Marx emphasizes that bourgeois ideology — the fable of Robinson Crusoe — is designed to legitimate the bourgeois right to property.[58]

---

[55] Marx, *Capital*, 873. Marx's historiography of primitive accumulation remains one of best analyses of the rise of capitalism in Europe and I have relied heavily from his narrative in fashioning this part of the chapter

[56] Adam Smith, *The Wealth of Nations* (New York: Modern Library, 1937).

[57] Marx, *Capital*, 873.

[58] In *Grundrisse* (New York: Penguin, 1993), Marx takes the political economists (Smith and Ricardo) to task for their regarding Robinson Crusoe, the image of the "isolated hunter and

Against such ideological accounts, Marx pursues the matter via concrete historiography and, not surprisingly, he finds that the liberal account is not just ideological but wrong. He finds the moment of primitive accumulation to have instead involved "conquest, enslavement, robbery, murder, briefly force." These are the reason for the situation people face today: a handful of rich on the one side, and a great mass of workers and poor people on the other. "In the tender annals of political economy, the idyllic reigns from time immemorial," Marx remarks; "As a matter of fact, the methods of primitive accumulation are anything but idyllic."[59]

In Marx's theory, money and commodities are in themselves not capital, just as production means and the objects of subsistence are not themselves capital. Capital is a *social relationship*, and as such it requires that the bearers of two kinds of commodities, the capitalists with their money-capital and the workers with their labor-power, come face-to-face and exchange labor for wages.[60] This is the fundamental condition that must be in place before capitalism can exist: capitalism requires that labor be separated from the means with which they might produce their existence. Once capitalism is set in motion its function is to reproduce this separation continually and to expand it inexorably. "The process, therefore, that clears the way for the capitalist system, can be

---

fisherman," as the starting point of theorizing. "Smith and Ricardo still stand with both feet on the shoulders of the eighteenth-century prophets, in whose imaginations this eighteenth-century individual — the product on one side of the dissolution of the feudal forms of society, on the other side of the new forces of production developed since the sixteenth century — appears as an ideal, whose existence they project into the past Not as a historic result but as history's point of departure As the Natural Individual appropriate to their notion of human nature, not arising historically, but posited by nature This illusion has been common to each new epoch to this day," 83

[59] Marx, *Capital*, 874

[60] Confusing the commodity for commodity *relations* is a special form of alienation Marx labels "commodity fetishism."

none other than the process which takes away from the laborer the possession of his means of production; a process that transforms, on the one hand, the social means of subsistence and of production into capital, on the other, the immediate producers into wage-laborers."[61]

To create "free" labor, feudalism, particularly the social relations that protected labor under that system, had to be destroyed. Serfs had to be forced off the land and their protective social bonds erased. The guilds had to be destroyed since their system constrained the ability of capital to put labor at a disadvantage. "The feudal system of industry, under which industrial production was monopolized by closed guilds, now no longer sufficed for the growing wants of the new markets."[62] They must become unattached proletarians. Thus the emerging industrial capitalist class had to destroy two primary institutions of feudalism: the guild and the lord. The wealth held by these classes had to be extracted from them and the labor that produced that wealth freed to work in the factories of the capitalist. "In this respect, their conquest of social power appears as the fruit of a victorious struggle both against feudal lordship and its revolting prerogatives, and against the guilds and the fetters they laid on the free development of production and the free exploitation of man by man." In reality, however, what occurred was a *transformation* in the *appearance* and *form* of exploitation: a change from feudal exploitation (pre-capitalist *corveé* production) to *capitalist* exploitation (the extraction of surplus labor for realization as profit in the market).

---

[61] Marx, *Capital*, 874

[62] Karl Marx and Frederick Engels, *The Communist Manifesto* (New York Verso, 1998), 36

To take up the first matter identified by Rusche and Kirchheimer, the root cause of immediate increased control over the subjected lies in changing socieconomic and demographic circumstances. When capitalism first appears in England and in western Europe, serfdom as a legal institution had in substance already been abolished (for example, serfdom was abolished in the latter 1300s in England) and sovereign towns were losing their independence through their incorporation in the European world-system. The *ancien régime* was crumbling. Most people at this time were free farmers (peasant proprietors). There were wage-laborers (peasants), but they were a minority of labor. Between peasant proprietors and peasants was a middle stratum of peasant-farmers. There were vast tracts of common land which farmers and peasants could freely use to graze cattle and cut for timber and firewood. The character of punishment, as noted earlier, was largely one of community and private vigilance and retribution, due to the underdevelopment of the public sphere; there were very few organized public social control structures.

William Chambliss has analyzed the period of the collapse of serfdom and found that as early as the mid-14th century laws were emerging, primarily vagrancy statutes, that reflected the dawn of a new historical system,[63] although, as Marx has pointed out, labor's subordination to capital was only in form, since "the mode of production itself had yet no specifically capitalist character."[64] In 1349, a statute

---

[63] William J Chambliss, "A Sociological Analysis of the Law and Vagrancy," *Social Problems* 12 (1964). See also "Functional and Conflict Theories of Crime. The Heritage of Emile Durkheim and Karl Marx," in *Whose Law? Whose Order? A Conflict Approach to Criminology*, W J Chambliss and Milton Mankoff, eds (New York John Wiley, 1976) See also Jerome Hall, *Theft, Law and Society*, 2nd ed. (Indianapolis: Bobbs-Merrill, 1952).

[64] Marx, *Capital*, 900

appears criminalizing able-bodied idle laborers. These laws began appearing with the appearance of unemployed peasants. Dislodged from their land, they began migrating from the rural to urban areas. Policies were in formation everywhere "to force laborers (whether personally free or unfree) to accept employment at a low wage in order to insure the landowner an adequate supply of labor at a price he could afford to pay."[65] This is a clear instance of criminalizing a state or condition, rather than an act.[66]

Marx emphasizes that the proportion of the population composed of wage-laborers in the latter 1300s was very small and for this reason the first labor laws were designed to extract more labor from this small class. These workers were protected by the peasant proprietor in the rural areas and the guild in the towns. Socially, the master and the workers worked closely together and were socially close. The organic composition of capital was, moreover, at an early stage, with variable capital occupying the greatest capital outlays. These were labor-intensive industries. The more capital was accumulated and production expanded the greater the need for labor became.

The supply of labor grew slowly at first. At a certain point there became a shortage of wage-laborers and legislation was required to extend the length of the working day and suppress wages. In 1350, France issued a parallel ordinance. The

---

[65] Chambliss, "Law and Vagrancy," 69

[66] Only later would the principle enter into jurisprudence that one could not be held criminally liable for a condition, such as unemployment or poverty (which is as much to protect the community of employers and the affluent as it is to protect the unemployed and impoverished) Arguably this is only an ideal People are often criminalized for their states or conditions, such as drug addiction A clear example is the regime of status offenses that apply only to people who suffer from the condition of being under a certain age (such as 18 or 21) The recent rounding up of the homeless in New York city, while widely held to be an outrage, has a long history in Western jurisprudence

statute set a strict upper limit on wages (there was no imposed wage minimum). Anyone paying wages higher than the limit was punished. Anyone who took higher wages was punished more severely. In 1360, a statute stiffened the law and permitted employers to use corporal punishment to extract labor from their employees. The statute also nullified and voided all previous labor contracts that had been negotiated among skilled laborers (trade unions were in fact criminal from the 1300-1800s).

After 1400, the population of Europe, in relation to the level of productive forces, began to exhaust the carrying capacity of many places in Europe. The supply of fresh land was becoming exhausted. Agricultural techniques, which had depended on opening up new land for cultivation, were inadequate for growing food on soil-depleted lands. Lands could not lay fallow for the time necessary for high yields. The land in eastern Europe was becoming densely populated and the labor surpluses allowed landlords to depress living standards, increase impoverishment, and to raise levels of coercive control. Demand for cheap grain, a consequence of the rapidly growing urban areas, stimulated by an overall increase in economic development due largely to the emerging world market, raised the value of land in the East. Increasing land value closed off the land to newcomers, thus halting the flow of labor from central Europe (which would have reduced population pressures). In western and southwestern Europe, as we have seen, the peasantry also suffered from increased repression (for example, enclosure in England in the 1400s).[67]

---

[67] Rusche and Kirchheimer, *Punishment and Social Structure* See also Norman Zacour, *An Introduction to Medieval Institutions* (New York St. Martin's Press, 1969)

Urban growth continued to accelerate in the 1400s. Poverty increased, as urban productive forces, although in ascension, were still insufficient to accommodate the swelling populations in the cities.[68] Labor surpluses increased the misery of the laboring classes and raised the level of repressive punishment. Peasants entering the towns threatened the advantage of skilled laborers, and guilds and towns closed themselves off to the entering strangers. Without work, the mass of peasant laborers became vagrants and many turned to property crime. Others became cheap mercenaries, which threatened the institution of the knights, thus weakening a traditional form of power. Many vassals turned to crime, but, unlike peasant criminals, were often able to disguise it behind warfare.[69]

Capitalist accumulation continued to accelerate, and by now the capitalist world-economy was consolidating. The surplus of peasants entering the towns and cities afforded to capitalists an inexhaustible supply of cheap labor. Real wages fell precipitously between 1450 and 1600 (by over 50 percent). The amassing of proletarians and their impoverished circumstances led to rising collective consciousness of their conditions and their causes. This struck fear into the hearts of elites. The prospect of revolt from below was becoming very real.[70]

The second factor identified by Rusche and Kirchheimer — that elites sought to strengthen their hold over local areas through the extension of their juridical reach as

---

[68] Richard H. Tawney, *Religion and the Rise of Capitalism, A Historical Story* (Gloucester, MA: P. Smith, 1962)

[69] Rusche and Kirchheimer, *Punishment and Social Structure.*

[70] Johan Huizinga, *The Waning of the Middle Ages* (Garden City, NY Doubleday, 1954)

political power began to consolidate in Europe[71] — was also the result of the emergence and expansion of the capitalist world-economy. The rise of state power and the nascent capitalist class began to redefine social relations, as many areas once under the domain of private parities took on, with the development of a public sphere, a more public character. The bourgeoisie "agglomerated population, centralized means of production, and . . . concentrated property in a few hands. The necessary consequence of this was political centralization. Independent, or but loosely connected provinces, with separate interests, laws, governments and systems of taxation, became lumped together into one nation, with one government, one code of laws, one national class interest, one frontier and one customs tariff."[72] The wealth being amassed by many European elites allowed the development of expanded state institutions — indeed, it required them.

The third factor Rusche and Kirchheimer identify — fiscal concerns — occurred as rule enforcers saw a profit in increasing the application of the criminal law. "The administration of criminal law," Rusche and Kirchheimer write, "proved to be a fruitful source of income rather than a financial burden until comparatively recent time."[73] Law administrators would extract wealth from rule-breakers at trial in the forms of fines and confiscated property. This provided an incentive for law enforcers to increase the legal entanglement beyond law and order.[74] As had been the case with the Inquisition, fiscal matters became an important cause in the growth of the system.

---

[71] See also Blum, "Rise of Serfdom "

[72] Marx and Engels, *Communist Manifesto*, 40.

[73] Rusche and Kirchheimer, *Punishment and Social Structure*, 10

[74] Julius Goebel, Jr , *Felony and Misdemeanor* (University of Pennsylvania press, 1987)

Rusche and Kirchheimer contend that "the attempt to extract revenue from the administration of criminal law was one of the principal factors in transforming criminal law from a mere arbitration between private interests, with the representative of public authority simply in the position of arbitrator, to a decisive part of the public law."[75]

As capitalism established itself in Europe, the criminal law grew increasingly repressive and fell more heavily on the lower classes. Part of this was due to the rise in criminality among the lower classes, the consequence of the proliferation of criminogenic contexts. Another part of this was the growing importance of private property. The nascent bourgeoisie was particularly concerned with property crimes and pushed central authorities to crack down on street crime. "Wherever they had the monopoly of legislation and jurisdiction they pursued this demand with the greatest energy." In France, Rusche and Kirchheimer write that "it was the bourgeoisie who always tried to obtain from the Crown an intensification of the repressive system."[76] In the mid-1300s they criticized the royalty for the liberal use of mercy, which was a prerogative of royalty. They passed legislation that restricted the prerogative to nobility.

While the criminal law system expanded, the types of punishments already outlined — fines and prisons — remained in place. However, the social distribution of those punishments entrenched. Private mediation of criminal acts between involved parties was increasingly forbidden. Property offenses began to be punished more

---

[75] Rusche and Kirchheimer, *Punishment and Social Structure*, 10-11

[76] Rusche and Kirchheimer, *Punishment and Social Structure*, 15.

severely. What determined the punishment was not the act itself but who perpetrated the act. In contrast to the impoverished, crimes committed by the affluent did not receive harsh punishments. The feud provided a legal cover for many crimes of the elite; the law permitted immunity for feudal lords from many offenses for which the lower classes could be held responsible. Because the emerging urban bourgeoisie increasingly controlled the machinery of government, they sought to use the law to achieve their ends, through labor discipline and population control. Because of the growing social emphasis on private property, crimes against property by the propertyless were viewed increasingly as a threat to the social order.[77]

Thus punishment was stratified appropriate to the social structure. The affluent were allowed to pay fines for their criminal misdeeds, with many criminal acts being redefined as non-criminal for these particular social groups or simply not prosecuted. Corporal punishments, such as incarceration, were imposed upon the poor, and for the poor there were many more punishable offenses. Where corporal punishments were applied to the affluent they were permitted to exchange such punishments for fines, a luxury not enjoyed by the poor, or exile (which was often little more than an extended vacation). Vagrancy laws became the fashion. The laws were designed to control labor, but they were also designed to deal with rising crime among the poor. Law administrators believed punishment deterred crime. Rising crime therefore required raising the level of punishment. This had the effect of brutalizing society, disproportionately effecting the poor. As the numbers of poor swelled, the regime of

---

[77] Carl L von Bar, *A History of the Continental Criminal Law* (Boston: Little, Brown, and Company, 1916)

punishments followed suit, expanding the range of criminal activities for which the poor could be convicted and intensifying the punishment regime. "The poorer the masses became, the harsher the punishments in order to deter them from crime." The governments expanded the range of corporal punishment. Incarceration was still used, but now were added whippings, torture, mutilation, and death. Death had been used only in extreme cases before the 1400s. Procedures in court were clearly tilted against the poor, especially the repeat offender. The goal was in part population control. "Execution, banishment, mutilation, branding, and flogging more or less exterminated the whole range of professional rogues from murderers and robbers to vagrants and gypsies."[78] The view shifted from the death penalty as an extreme form of punishment, used on in the most extreme cases, to a mechanism to exterminate problematic people. For those who escaped the most serious punishments, the stigma of being a criminal knifed off their opportunities to gainful employment, which returned them to the deviant pathway and subjected them to harsher punishments.[79] In many cases this stigma was physical mutilation: hands and fingers were removed, the tongue was cut off or torn out, eyes were put out, ears were cut off, etc. All of this was tied to the workings of the economy. "The whole system of punishment in the later Middle Ages makes it quite clear that there was no shortage of labor, at least in the towns. As the price paid for labor decreased, the value set on human life became smaller and smaller.

---

[78] Rusche and Kirchheimer, *Punishment and Social Structure*, 18. During Henry the eighth's reign, 72,000 thieves were hanged Elizabeth perpetrated mass hangings of three or four hundred The population of England at the time was around three million. See T Hampe, *Crime and Punishment in Germany as illustrated by the Nuremberg Malefactors Books* (London, 1929)

[79] Rusche and Kirchheimer, *Punishment and Social Structure*. See also Hans von Hentig, *Punishment; its Origin, Purpose and Psychology* (Montclair, NJ: Patterson Smith, 1973)

The hard struggle for existence molded the penal system in such a way as to make it one of the means of preventing too great an increase of population." The system was designed as a mechanism for "destroying those who the upper classes considered unfit for society."[80]

According to Marx, in the latter 15th century and the beginning of the 16th century, the feudal retainers were broken up and the mass of free laborers were created. This occurred at the same time that the feudal lords, in defiance of the King and Parliament, began driving the peasantry off the land and usurping the common lands. The evictions were driven by changes in the world-market. Flemish wool manufacturers drove up the price of wool in England so there was a need to transform the land for pasture for sheep. This began a succession of enclosures. Arable land was turned into pasture. The enclosures were then depopulated. Peasants and laborers were driven from the land. With this crisis, the state moved in to stop the hemorrhage. Beginning in 1489, the state, contrary to the needs of capitalists, passed a series of laws to try and protect the large farms and slow the massive migration of peasants from the land into the urban centers. In the 16th century, the Reformation threw even more numbers into the proletariat. The Catholic church controlled a vast about of land in England, wherein a great number of people lived, not only those in the monasteries, but hereditary sub-tenants. The land was confiscated and either given away to elites or sold to farmers. Once in control of the land, the new owners drove the inhabitants off

---

[80] Rusche and Kirchheimer, *Punishment and Social Structure*, 20.

the land. Customs and laws that guaranteed property to the poor (secured by tithes) were overthrown.

In a chapter titled, "Bloody Legislation Against the Expropriated, from the End of the Fifteenth Century. The Forcing Down of Wages by Acts of Parliament," Marx details laws passed against labor. The large section of the mass of "free" proletariats that had been thrown into the work force by the processes of primitive accumulation became surplus population (this is the structural origin of the industrial reserve). The emerging manufacturing system could not employ them all. "They were turned *en masse* into beggars, robbers, vagabonds, partly from inclination, in most cases from stress of circumstances."[81] The criminalization of vagabondage was accelerated at the end of the fifteenth century throughout western Europe.

The campaign began in earnest in 1530 under Henry VIII in England. Beggars who were old and/or disabled were given a license that exempted them from the law. The young and able-bodied were either whipped or imprisoned. During their punishments they were compelled to take an oath that they would return to their place of birth and find employment. Later Henry reinforced the law; if a person was arrested twice for vagabondage, they were to be whipped again and have a piece of their ear removed. The third offense brought death. Here we find an early version of the "three-strikes-and-you're-out" law.

In 1547, Edward VI issued an ordinance that the unemployed be temporarily enslaved to the persons who brought charges of vagabondage against them. The law

---

[81] Marx, *Capital*, 896

permitted, indeed seemed to require, ill treatment of the slave, including chains and whippings. If any slave came up missing for two weeks, he or she would be branded with the letter "S" and condemned permanently to slavery. A second escape would result in death. The ordinance gave the right to the slaveowner to sell or give away the slave, or to rent the slave to another. In the law, slaves were recognized as chattel. Slaves who went against their masters were under threat of death. The state even had officials who would on instruction hunt down the offending slaves. If the vagabond was idle for three days they were branded with a "V" and put to public work in chains. Children could be removed from vagabonds and kept as apprentices until they were adults (24 years for boys, 20 for girls). If an apprentice tried to escape, they were enslaved until these ages.

In 1572, Elizabeth ordained that unlicensed beggars over 14 years of age were to be whipped and branded unless someone could be found to take them and put them to work for two years. A second act of vagrancy resulted in death, unless someone could be found to take them in and work them. A third offense resulted in a felony conviction and death.[82] Elizabeth issued a similar statute in 1597. In the Statute of Apprentices, Elizabeth proclaimed that any employer who pays wages higher than the law permitted was to suffer ten days in prison, but that any apprentice who accepted those higher wages would receive twenty-one days in prison. James I (who reigned from 1603-1625) decreed that vagrants and beggars be publicly whipped and

---

[82] The level of wrongdoing labeled a "felony" has its history in feudalism where it applied to a breech of trust between lord and vassal By the 12th century this idea of a breech in trust was grafted onto the idea of king's peace and a felony designated homicide and robbery. By the 17th century, it applied to any serious offense. See Rodman, "Bentham," 199.

then imprisoned for six months for their first offense and then imprisoned for two years for their second. Rogues were to be branded with an "R" and put to hard labor. A second offense brought death.[83]

"Thus were the agricultural folk first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, and then whipped, branded and tortured by grotesquely terroristic laws into accepting the discipline necessary for the system of wage-labor." Once this system was set up and running, extra-economic compulsion played a diminished role. "The rising bourgeoisie needed the power of the state and used it to 'regulate' wages, i.e., to force them into the limits suitable for making a profit, to lengthen the working day, and to keep the worker himself in the normal level of dependence. This is an essential element of the so-called primitive accumulation."[84]

The punishments that were used during this period were focused on the physical corruption of the offender. Punishments — "the gloomy festival of punishment," Foucault writes — sought the body as a major target of penal repression. These were corporal punishments. And punishment, lavish in torture, was a public spectacle.[85] The range of corporal punishments was great and their character, if I may be permitted this word, creative: it was as though the executioner designed to develop varied and extravagant ways for people to be killed. Rusche and Kirchheimer write that "the most morbid imagination today can hardly picture the variety of tortures

---

[83] These laws were in effect until the early 18th century, when Anne (of the House of Stuart) repealed them. In France and Holland, similar laws required that able-bodied adults, if unemployed, were sent to the galleys, such as a statute of Charles the Fifth passed in 1537 in the Netherlands

[84] Marx, *Capital*, 899-900

[85] Foucault, *Discipline and Punish*, 7-8

inflicted." Beheadings, hangings, the stake, breaking on the wheel (taken from the Greek practice of *apotympanismos* and the Roman practice of *rota mittere*), live burials and drownings, burnings, disembowelling, garroting, and quartering, are a few examples of the ways people were put to death.[86]

There were many different motives for punishing people through the corruption of their bodies. Throughout Europe during the Middle Ages, retribution appears to have been a main motive for punishing. That retribution was the manifest function of, for example, beheading, is evidenced by the practice in sixteenth century England of using a machine, the Halifax Gibbet (which resembled a guillotine), that allowed the "victim" to operate the mechanism that caused the death of the offender. It was believed that the character of punishments reflected the character of the offenses for which they were being administered — this was not a critique in the spirit of Bentham, who saw in this "reflection" the crime being committed twice over; rather the communities thought that punishments *should* reflect in some way the crime itself as a matter of exacting proper retribution (the same view tends to prevails today about the death penalty).[87] This was a way for the community to register among all its members the moral transgression of the offense.

There were class distinctions in the types of punishments administered, even when the penalty was death. Beheading, or "ploughing" the head, taken up in feudal society and even into capitalist society, was frequently reserved for those among the higher social statuses. In contrast, hanging, which had been for centuries regarded as

---

[86] Rusche and Kirchheimer, *Punishment and Social Structure*

[87] Newman, *Punishment Response.*

disgraceful, was reserved for those of lower statuses.[88] Eventually, the gallows would become the main method of execution in England and the United States, as the primary targets of retributive justice became the poor and minority (its use would begin to decline in the mid-18th century).[89] It should be emphasized that public execution and torture (there were many tortures, such as the removal of hands and tongues, pillory, flogging, branding) were not the most frequent types of punishments. The majority of crimes were punished by fines or banishment, which often were accompanied by some sort of public torture of humiliation. Many times laws were not enforced,[90] for example infanticide[91] and child abandonment[92] Even though executions were applied to almost every crime, it was simply impossible to have executed all the criminals.

It was in the 1500s and after that, that the Inquisition stepped into high gear. As the masses sunk deeper into poverty, they began to scapegoat various groups, particularly the Jews. The authorities often used the tendency among the masses to blame pariah groups to divert them from the real source of their miseries. The spectacle of the punishments also motivated punishment. "The masses who witnessed executions were constantly demanding new sensations."[93]

---

[88] Newman, *Punishment Response*

[89] Stern, *Sin Against the Future.*

[90] Foucault, *Discipline and Punish*

[91] Lloyd deMause, "The Evolution of Childhood," in *The History of Childhood* (New York Psychohistory Press, 1974). See also Elizabeth W. Marvick, same volume

[92] John E Boswell, "*Expositio* and *Oblatio*. The Abandonment of Children and the Ancient and Medieval Family," *American Historical Review* 89 (February)

[93] Rusche and Kirchheimer, *Punishment and Social Structure*, 21

Primarily, however, the increase in the criminal justice response, its increasing public character, the expansion of the range of criminal offenses, and the extravagance of its punishments, were rooted in the changing economic circumstances and the needs of the capitalist class. Europe was undergoing a social revolution, which is something different from the idea of revolution as either a change in the state apparatus or an overthrow of one government and its replacement by another. "At a certain stage in the development of these means of production and of exchange, the conditions under which feudal society produced and exchanged, the feudal organization of agriculture and manufacturing industry, in one word, the feudal relations of production became no longer compatible with the already developed productive forces; they became so many fetters. They had to be burst asunder; they were burst asunder."[94] The revolution I am describing was not contained to Europe. The rise of capitalism required external behavior — that is, colonialism. It is in the external face of primitive accumulation that Africans were taken as slaves and that the features of the feudal mode of production described in here, while withered away for the wage-laborer under bourgeois relations, reappeared for the slave and the bonded servant in the New World.

The Early European World-System And Slavery

We can now turn to a brief analysis of the emergence of the world market and racial slavery. According to Marx, Wallerstein, and others, the capitalist world-

---

[94] Marx and Engels, *Communist Manifesto*, 41.

economy emerged and consolidated between 1450 and 1620.[95] This long moment in history was the result of several converging forces that began around one thousand years ago. Magdoff argues that the blockade of the Ottoman Empire forced Europeans to develop their navel capacity, which in turn opened up the Americas.[96] Improvements in agriculture, the development of regional trading networks, the expansion of craft production, and stimulation of urban areas are often cited as primary causes.[97] The impact of these forces accelerated when, around 700 years ago, Europe experienced considerable population growth and Mediterranean city-states, especially in modern Italy, increased their participation in commercial activity. These changes led to the rapid growth of northern European cities and contributed to their political consolidation. As a result, the outlines of an interstate system are discernible, with England, France, and Spain emerging as dominant political units, what would by the 1500s organize into modern nation-states.[98]

---

[95] Karl Marx, *Capital*; Paul Sweezy, "Karl Marx and the Industrial Revolution," in *Modern Capitalism and Other Essays* (New York. Monthly Review Press, 1972); Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II* (New York· Harper and Row, 1973); Immanuel Wallerstein, *The Modern World-System I: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York: Academic Press, 1974) and *The Modern World-System II. Mercantilism and the Consolidation of the European World-Economy, 1600-1750* (New York: Academic Press, 1974 and 1980). Cf. Étienne Balibar, "The Basic Concepts of Historical Materialism," in *Reading Capital*, Louis Althusser and É. Balibar (New York: Verso, 1970).

[96] Harry Magdoff, "Imperialism: A Historical Survey," *Introduction to the Sociology of "Developing Societies,"* eds. Hamza Alavi and Teodor Shanin (New York: Monthly Review Press, 1982).

[97] Wallerstein refers to these as a "series of accidents." See "The Rise and Future Demise of the World Capitalist System." Cf Theda Skocpol, "Wallerstein's World Capitalist System: A Theoretical and Historical Critique," *Social Revolutions in the Modern World* (New York: Cambridge University Press, 1994)

[98] Shannon, *An Introduction to the World-System* See also Eric Wolf, *Europe and the People Without History* (Berkeley: University of California Press, 1982) and Lynn White, *Medieval Technology and Social Change* (Oxford: Clarendon, 1962)

These developments were occurring in a political-economic system that had integrated empires in Asia and the Middle East, and cities in western Europe through an extensive trading network and an intercontinental market, according to Janet Abu-Lughod.[99] This system began to decline after 1300. In the 14th century, in what Wallerstein sees as a "crisis of feudalism" — indicated by economic disorganization, political disorder (wars and other violent struggles), waves of plagues, and population decline — the feudal order in Europe began to weaken and break.[100] That order began to be replaced by the *national* state. "The relationship of lord and vassal which, with the vague claims of pope and emperor in the background, so long seemed to exhaust political thought, gave way to an idea of princely power over all the inhabitants of a domain."[101] Thus from the decaying feudal system a new historical system emerged, one based increasingly on the economics of the capitalist merchant and interstate competition among European powers. Because of the relatively greater power of the merchant class, the developing nation-states were shaped by the new economic system.[102] The emerging states were destined to become *capitalist* states.

Accompanying these political consolidations was a growing sense of nationhood and national difference among the people of Europe. This enhanced the already developing notion people had of the "native-born." Even before the emergence of full-blown nation-states (while there was state-building in Europe since

---

[99] Janet Abu-Lughod, *Before European Hegemony The World-System A.D 1250-1350* (New York· Oxford University Press, 1989). See also Magdoff, "Imperialism."

[100] Wallerstein, *Modern World-System,* vol 1. See also Wolf, *Europe and the People*

[101] J M. Roberts, *History of the World* (New York: Penguin, 1995), 486

[102] Wallerstein, *Modern World-System,* vol 1, Daniel Chirot, *Social Change in the Modern Era* (New York Harcourt Brace, 1986).

the 12th century,[103] there would not be a nation in the contemporary sense of the word until early 16th century England[104]) feelings of national community were buttressed by the development of culture-ideologies, including the production of national histories, the "discovery" of national heroes, and mythologies of patron saints. People began to orient their thoughts towards a collective identity. Ethnicities were refashioned or even fashioned out of a collection of earlier cultural orientations. Just as the Catholic church gave Europeans a collective consciousness of being part of a particular society, so did nationalism permit a clearer distinction to be drawn between "us" and "them."[105] Central to this national community was the belief, a sentiment holding together the faithful, that their way was inherently superior to the ways of others and that this inherent superiority reflects something special about the people themselves. Reifying their cultural productions and forgetting or never knowing their social origins, Europeans projected back upon themselves their existence as a superior breed of people.[106] This is not to say that European peoples, who were at the time loosely into quasi-national entities, should be thought of as a monolithic cultural mind, rather it is much more about Europe's relationship the rest of the world in the process of the development of the racist/capitalist system. Europeans were the colonizers and they

---

[103] Michael Mann, *The Sources of Social Power, Vol 1: A History of Power from the Beginning to AD 1760* (Cambridge Cambridge University Press, 1986), *The Sources of Social Power, Vol. 2. The Rise of Classes and Nation-states, 1760-1914*(Cambridge. Cambridge University Press, 1993)

[104] Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, MA Harvard University Press, 1992)

[105] Roberts, *History of the World*

[106] Cf. William Sewell, "Ideologies and Social Revolution Reflections on the French Case," in Skocpol, *Social Revolutions* He contends the concept of nation was abstract and rational, "incapable of inspiring passionate emotional commitment to the state on the part of the mass of citizens," 193 Rather, an appeal was made to *La Patrie*, which signified both the land where one was born and the love of liberty This eventually came to be understood as nation and blood.

were bound together by some central ideas, one of them being Christianity. Thus, while we begin to see the differentiation of the region into autonomous nation-states in this period, all the nation-states would be organized with a sense of a larger religious community. They all stood in relation to the Catholic Church (for example, the Holy Inquisition was carried out all over Europe in much the same fashion because the persecution of non-Christians issued from a body of shared assumptions). Furthermore, precisely because of Europe's relationship to the rest of the world in a larger macroeconomic system, despite sub-regional uneven development, there was an overall logic of societal evolution.

In the fifteenth century, the western European system began to expand geographically. Political and economic actors desired gold and other things that lay beyond their national borders.[107] Geographic expansion, which possessed a capitalist character, occurred within the emerging interstate political system, wherein state actors struggled for geographic dominance. Outward expansion involved colonizing Asia, Africa, and the Americas. Through their colonial activities and imperialist rivalries, European states achieved greater national unity and an enhanced ability to accumulate the technology that increased their ability to fling themselves further out into the world.[108] Imperialism set in motion the process of underdevelopment whereby Europe developed her economies and her ability to conquer the Earth, while those

---

[107] Wallerstein, *Modern World-System,* vol 1

[108] Silvio Frondizi identifies this as a form of commercial imperialism associated with what Aptheker, following Marx, conceptualizes as the first stage in capitalist development See Aptheker, *Colonial Era* Frondizi distinguishes this type from US industrial imperialism, associated with what Aptheker conceptualizes as the second stage of capitalist development For a review of Fondizi's ideas see Ronald Chilcote, *Theories of Development and Underdevelopment* (Boulder. Westview Press, 1984).

regions Europe colonized were impoverished and their peoples subjugated or destroyed, including part of Europe itself, such as Ireland.[109]

There is considerable debate over whether capitalism developed first in Europe and then colonialism followed or whether colonial exploits raised the economic system of capitalism in Europe.[110] These matters are better approached dialectically than linearly. It is more likely that both forces developed together as aspects of a larger process: the European world-system. However, there is no question that colonialism was a main engine of economic development in Europe. The gold and silver that flowed into Europe, the trade in human beings, and the imperative to develop further the technologies of imperial conquest, all provided a stimulus to the expansion of the West.

---

[109] The literature on Europe's role in global underdevelopment and the necessity of colonialism for development of the core is vast. See Samir Amin, *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment*, vols 1-2 (New York Monthly Review Press, 1974), *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism* (New York: Monthly Review Press, 1976), *Imperialism and Unequal Development* (New York: Monthly Review Press, 1977), André Gunder Frank, "The Development of Underdevelopment," *Monthly Review* 18 (September, 1966); *Sociology of Development and Underdevelopment of Sociology* (London: Pluto, 1971); *World Accumulation, 1492-1789* (New York Monthly Review Press, 1978). See also Harry Bernstein, "Sociology of Underdevelopment vs. Sociology of Development?" *Development Theory: Four Critical Essays*, ed. David Lehman (London: Frank Cass, 1979); Anthony Brewer, *Marxist Theories of Imperialism* (London. Routledge, 1980). Cf. Robert Brenner, "The Origins of Capitalist Development. A Critique of Neo-Smithian Marxism," *New Left Review*, 104 (1977)

[110] Blaut criticizes theories that see capitalism emerging in the 1400s because this locates the moment of capitalism's emergence before colonialism Such a theory is Eurocentric: it credits Europe with having the unique characteristics that gave rise to capitalism. See James Blaut, *The Colonizer's Model of the World. Geographical Diffusionism and Eurocentric History* (New York: Guilford Press, 1993) Andre Frank has gone so far as to deny that there ever has been such thing as a capitalist mode of production See Andre Gunder Frank, "The Modern World-System Revisited. Rereading Braudel and Wallerstein," in *Civilizations and World Systems: Studying World-Historical Change*, ed. Stephen K Sanderson (Walnut Creek, CA: Altamira, 1995). Cf. Immanuel Wallerstein, "Europocentrism and its Avatars: The Dilemmas of Social Science," *New Left Review* 226 (Nov/Dec, 1997).

The incorporation of the external regions of the world in the European world-system in the period between 1450 and 1620, and this includes the peripheralization of European regions, is captured by Marx's notion of "primitive accumulation."[111] Primitive accumulation occurred in all regions wherein capitalism developed and extended, in both the modern core and periphery.[112] In the core, primitive accumulation took the form of overthrowing the feudal order or its vestiges, privatizing land and property, freeing peasant labor up for incorporation in the emerging capitalist structure of production, and criminalizing unattached labor. In the periphery, primitive accumulation took the form of colonization, slavery, and genocide.[113]

The plunder of Africa by Europe was made easier by the historic ties between the continents that had developed under the previous world-system (1250-1350) Abu-Lughod has identified. Spain and Portugal, both rising to power in the early 1400s, had long been tied to Africa through Muslim control of the region. Seeking national independence, Spanish and Portuguese forces began pushing Muslims back across the Straits of Gibraltar and using their maritime technology to expand trading routes and

---

[111] Marx, *Capital*

[112] The analytical constructs of core and periphery have a long genealogy in historical social science Prebisch distinguished between "center" (industrialized countries) and "periphery" (underdeveloped countries). He argued against the notion that development in the center will be reproduced in the periphery See "The Dynamics of Peripheral Capitalism," *Democracy and Development in Latin America*, No 1 (Toronto· Studies on the Political Economy, 1980); also see Werner Baer, "The Economics of Prebisch and ECLA," *Latin America. Problems in Economic Development* (New York· Free Press, 1969), Joseph L Love, "Raúl Prebisch and the Origins of Unequal Exchange," *Latin American Research Review* 15 (1980). Frank reconceptualized these as "metropolis" vs. "satellite," in *Sociology of Development and Underdevelopment of Sociology* They appeared as "core" and "periphery" in Wallerstein's work, and this is the most commonly use dichotomy

[113] Aptheker, *Colonial Era.*

to locate more sources of gold. Gold was the main goal of the explorers; as noted, the massive influx of gold into Europe greatly excited the growth of capitalism in the core.[114]

Within the century, the Portuguese had taken over the African gold trade centered in the region that would become known as the Gold Coast. Soon the kingdoms in Africa and the cities of Europe were integrating in complex trading relations.[115] At first, since it was meeting the demand for perfumes, silks, spices, sugars, and other goods through their trade routes with Asia, Europe's main interest in Africa was gold. The Continent was seen as rich in gold. However, when the terrain of the Americas was opened up in the 16th century, and gold and silver mines were established and the plantation system began to emerge, producing sugar and other agricultural products, Africa became seen as having other riches, namely slave labor. Thereupon, though slowly at first, the Atlantic slave trade began.[116]

The Portuguese first seized Africans as "curiosity pieces" to prove to other Europeans the new and different world that they had traveled to, exotic places where different sorts of people lived (the recognition of difference between Europeans and Africans, as we will see, is a constant theme running throughout this history).[117] The earliest record of a slave-catching expedition was in 1446.[118] In the record, the inhabitants of the villages that were attacked by the Portuguese were referred to as

---

[114] Aptheker, *Colonial Era.*

[115] Harris, *Africans.*

[116] Aptheker, *Colonial Era.*

[117] Harris, *Africans.*

[118] Detweiler, "Race Antagonisms," dates this at 1442 William C Macleod, in *The American Indian Frontier* (New York, 1928), contends that as early as 1309 blacks slaves were traded in Portugal and Spain

"Negroes."[119] The Portuguese took 165 captives and killed many. The first Africans brought to Libson (Portugal) were treated reasonably well, sometimes celebrated, and they were valued for their knowledge of the new colonial territories. Many became guides in further explorations of Africa. However, as more arrived they were soon no longer "honored," and were increasingly relegated to menial tasks in Portuguese society.[120] "The beginning of the modern African slave trade preceded Columbus' voyage to the Western world by half a century. It started with Europeans invading the West African coast and seizing its inhabitants, in a rather crude and unorganized fashion, for sale on the European market."[121]

By 1500, a trade in African slaves was well-established, with slave labor being used in Portugal, Spain, Italy, and Sicily.[122] In Spain and Portugal, the shipment of Africans was licensed under the *asiento* system.[123] These were highly prized licenses obtained from the crown that gave prominent merchants monopolies over the trade and distribution of slaves. Within fifty years African labor could be found in France and England.[124] The actual numbers of slaves imported into Europe is a matter of dispute. "Whatever the numbers, the point to emphasize here is that a half century prior to their settlement in the Americans, many Europeans . . . had become accustomed to the enslavement of Africans."[125]

---

[119] Aptheker, *Colonial Era.*
[120] Harris, *Africans*
[121] Aptheker, *Colonial Era*, 14.
[122] Harris, *Africans*; Zinn, *People's History*
[123] Stewart, *1001 Things*
[124] Aptheker, *Colonial Era*
[125] Harris, *Africans*, 81-82

Racial slavery in Europe would reach its peak in the fifteenth and sixteenth centuries.[126] At the same time, European expeditions opened up the New World and the need for labor in mining and agriculture was recognized: "the special function of Africa as a great source for much of that labor was established."[127] King Ferdinand of Spain decreed that "Negroes born in the power of Christians were . . . allowed to pass to the [West] Indies." In 1505, Ferdinand promised Hispaniola's governor that he would "send more Negro slaves." Bartolomé de Las Casas, a former explorer to the New World horrified at the treatment of the Indians in the Antilles (a Catholic priest there estimated 3 million Indians died between 1494-1508), "beseeched his king to introduce Negroes from Guinea as a substitute" there. Las Casas' request indicates that Africans were viewed as less human than Indians. Moreover, because of their ability to withstand disease, he saw them as sturdier than the Arawaks and Caribs. In 1517 the King arranged the first *asiento* sending slaves to the Antilles.[128] By 1528 almost ten thousand Africans were in the New World, most of them slaves.[129] By 1540, some 30,000 Africans had been transported to Hispaniola.[130]

Thus at a time when the European world-system was still comparatively small — the core comprised Spain, Portugal, France, and England (all still nascent nation-states), Italy and central Europe not yet part of the core, and the colonial territories of

---

[126] Wallerstein, *Modern World-System II*
[127] Aptheker, *Colonial Era*, 15
[128] Christianson, *Liberty for Some*, 5.
[129] Stewart, *1001 Things*, 7.
[130] Christianson, *With Liberty for Some*

Central and South America representing the newly incorporated periphery[131] — slavery was emerging as a major mode of exploitation under merchant capitalism.

Along with slaves, the European explorers and settlers in the New World carried with them convicts from their home countries. Thus the crews of ships and the forced labor in the colonies was a collection of convicts, African slaves, and Indian captives. This use of convicts as crew members on explorations included the British, who in 1560s became involved in the slave trade (although their involvement was minor at the time); some British believed, although this push would have to wait, that "a large-scale conscription of criminals [would be] a better way to settle the New World."[132]

There was minimal reaction in Europe to the use of slaves and convicts in the New World. Las Casas regretted having requested that Africans to be sent to the New World after seeing their treatment there. He realized that he had not saved Indians but had instead expanded the scope of unfreedom. Other Spaniards publicly criticized the slave trade. Often their views were suppressed by the government. In England there were critics of the use of convicts in settling the New World. Francis Bacon wrote, "It is a shameful and unblessed thing to take the scum of people, and wicked and condemned one, to be the people with whom you plant."[133] But such opposition stemmed neither the flow of Africans nor convicts to the New World.

---

[131] Shannon, *Introduction to World Systems*
[132] Christianson, *Liberty for Some*
[133] Francis Bacon, "Of Plantations," quoted in Christianson, *Liberty for Some*, 7

Portugal's dominance in the slave trade was overthrown by Dutch commercial expansion during the middle part of the 17th century (the peak of Dutch hegemony was 1625-1673).[134] Britain, with the Royal African Company, became the major force in the trade of slaves in the 18th century. The Dutch, having first lost their sugar plantations, saw their control over the slave trade end by 1675.[135] The British controlled more than half the trade by the latter part of the century (England's reign as world hegemon peaked between 1815-1873).[136] The use of slavery in Italy and Sicily (and elsewhere in Europe, such as in southern Spain) declined drastically during this period as "the trade in African slaves (who were formerly imported to the Mediterranean by the Portuguese) was diverted to the Americas."[137] Thus, the shift in hegemony in the slave trade and the needs of production in the new world produced a decline in the use of African slaves in Europe.

At the end of the 1700s, Liverpool had more than one hundred ships transporting human cargo.[138] England transported the largest number of West Africans to the New World.[139] The core of operations of the slave trade shifted from the British mainland to the North America late in the century; by the time the United States was

---

[134] This dating system is from Terry Hopkins, I Wallerstein and associates, "Cyclical Rhythms and Secular Trends of the Capitalist World-Economy: Some Premises, Hypotheses, and Questions," in World-System Analysis Theory and Methodology, ed. T. Hopkins, I Wallerstein, Robert Bach, Christopher Chase-Dunn, and Ramkrishna Mukherjee (Beverly Hills, CA: Sage, 1982) . See also Wallerstein, *Modern World-System II*; Shannon, *Introduction to the World-System*, Stephen K. Sanderson and Thomas D Hall, "World System Approaches to World-Historical Change," in *Civilizations and World Systems. Studying World-Historical Change*, ed. Stephen K. Sanderson (Walnut Creek, CA: Altamira, 1995)

[135] Wallerstein, *Modern World-System II*, 52

[136] Harris, *Africans.*

[137] Wallerstein, *Modern World-System II*, 146

[138] Wallerstein, *Modern World-System II*, Zinn, *People's History*

[139] Stewart, *1001 Things*

formed, American citizens controlled much of the slave trade. Overall, the eighteenth century was the most active century of the slave trade.[140] Estimates vary, but between 1450 and 1600, about 367,000 Africans were taken out of Africa. Around 2 million were removed during the seventeenth century. Over 6 million were taken from Africa in the eighteenth century. After 1800 another three and a half million were taken from Africa, most of them after the slave trade was abolished early in the century.[141]

Racial Ideology Before Slavery was Established in British North America

Similar to the debate over whether capitalism or colonialism came first, there is considerable debate over whether slavery or racism came first. Much ancient slavery lacked a racial character, so one can understand the interest in this question. Most historians of slavery emphasize the economic character of slavery, mainly because it is the easier question to answer — the economic aspect is self-evident. With this emphasis, racism becomes an ideology justifying an economic interests.[142] However, the formulation of this question is too simplified. Africanist Joseph Harris stresses the dialectical argument that "it was a combination of European attitudes about blacks and the demand for cheap labor that sired the Atlantic slave trade and New World black slavery."[143] Eltis has run against the grain of mainstream scholarship by

---

[140] These shifts in slave trade are linked to the cycles of hegemony analyzed by world-systems theorists, an important matter beyond the scope of this book The United Provinces of Holland were the hegemonic power between 1575 and 1700. Great Britain assumed hegemonic status in 1789 and held it until 1897, when US imperialism became dominant See Hopkins, Wallerstein et al, "Cyclical Rhythms."

[141] Stewart, *1001 Things*

[142] See, for example, Malik, *Meaning of Race* Others, such as David Brion Davis, tend to reduce racism to economics. See *Slavery and Human Progress* (Oxford, NY Oxford University Press, 1984)

[143] Harris, *Africans*, 81

suggesting that it "is not slavery per se but rather which groups are considered eligible for enslavement and why this eligibility changes over time."[144] This raises the question of why the decision was made to enslave blacks rather than whites. A related question is whether colonialism created racism, or whether racism was a culture-ideology that justified colonialism. Again, the formulation of the question is oversimplified. Much attention has been focused on the use of slaves and the colonization and exploitation of Africa to enhance material wealth. Yet material interests are insufficient to explain the racial character of the European world-system. What other forces played a role in the murder and subjugation of certain non-Europeans?

The development of the nation-state and nationalism are important to consider in understanding the development of racism. States in the European world-system are *nation*-states. According to the standard definition, nation-states "have one government for the territory of the nation-state, a single educational system, a single economy and occupation system, and usually one set of legal rights for all citizens."[145] This is, of course, an idealization. We see in the United States, for instance, that there are different governments within the national territory, each government's imperatives are selectively allowed to play against each other to advance the interests of the ruling class and dominant ethnic groups (a scheme called "federalism"). We find under Jim Crow segregation in the US South, two educational systems, "separate but equal," and

---

[144] David Eltis, "Europeans and the Rise and Fall of African Slavery in the America: An Interpretation," *The American Historical Review* 98 (1993), 1400

[145] Anthony D. Smith, "State-Making and Nation-Building," in *States in History*, ed John A. Hall (Oxford: Basil Blackwell, 1986), 228 See also Smith, *The Ethnic Origins of Nations* (New York Basil Blackwell, 1986).

throughout the history of the country a relatively split occupational system (the split-labor market). Furthermore, as we saw in part 1, chapter 4, the legal system in the United States is clearly segmented. Nevertheless, despite contradictions, nation-states, which differ from previous states because they organize a people into *nationalities*, have become regarded as the only legitimate political community in the global system.[146]

Nationalism is the ideological and practical component to being constructed as a nationality. It is "primarily psychological — the affiliation of individuals to a set of symbols and beliefs emphasizing communality among the members of a political order."[147] Nationalism is a form of chauvinism, thereby inherently creating the potential for the negative treatment of groups defined as different nationalities or who are perceived to threaten the national identity. National identity is one of the primary ways distinctions are drawn between "us" and "them" in the bourgeois world-epoch and in its prehistory in Europe. It must be emphasized that there are two forms of nationalism: oppressor nationalism and oppressed nationalism. Oppressor nationalism is the form being discussed here. Oppressed nationalism is the political and cultural organization of subjected groups around a national identity, often characterized as an "ethnonational" identity, to struggle for self-determination. Consistent with the argument I have advanced throughout this dissertation, one cannot view the practice of developing group identity independent of the structure of power in which such

---

[146] Smith, "State-Making." The discussion of nation-state and nationalism in this dissertation cannot go to deeply into detail.

[147] Anthony Giddens, *The Nation-State and Violence* (Cambridge: Polity Press, 1985), 116. See also Anthony D Smith, *National Identity* (Reno University of Nevada Press, 1991).

groups are formed. It is the failure to recognize this that leads to the incorrect equation, for example, of "white power" with "black power." These cannot be the same because there is a fundamental asymmetry of power in white society.[148]

Nation-states and nationalism combine in the international ordering of the world and obtain from the masses consent for concentrated state power and capitalism. This legitimacy allows for acts to be carried out against other peoples without the understanding that these are violations of substantive human freedoms. Since it is "us" against "them," "all is fair in love and war." When a group is told that their existence as a group is threatened by the presence of other groups, their response is typically to deprive the other groups of their human rights. For instance, American Indian political units were recognized by the English colonist as "nations" and were treated as if they were national units in an interstate political system. Policies were designed and treaties were negotiated and signed in the fashion of two nations forced together by global circumstances. This situation permitted European nationalities to prosecute the genocide and subjection of North America's indigenous population when it was to their benefit, aggression rationalized as a matter of national destiny, as an act of self-defense, or as an act of war.[149] At the same time, nationalist visions of cultural superiority drove the English colonists to murder Indians. Alongside more material interests, nationalism was both a cause and a rationalization for brutality.

---

[148] By using the term "white society" I mean to underscore the outsider and non-citizen status of blacks

[149] Eventually American Indian groups would be defined as "domestic dependent nations." See D'Arcy McNickle, *The Indian Tribes of the United States* (London Oxford University Press, 1962).

Thus, notions of "nation" and "national community" provide an identity for people that, while not necessarily co-extensive with various racial and/or ethnic classificatory systems, permit a relatively sure recognition of affiliation and identity.[150] The evolution from a sense of national community to notions of shared heritage and then to ideologies that root national unity in the blood closely tracks the history of race in Europe. Nationalism is not racism, but it is one of the ideological and practical threads that is folded into modern racism. For the framers of the US Constitution, as with the Nazis who dreamed of a thousand year Reich, race and nationality became features of the same idea and practice.

England, to take the most relevant example, long had aggressive national ambitions. In the mid-1600s, the leaders of England desired to bring all of Ireland, that "savage nation," under their control. Before 1565, colonization of Ireland was privately sponsored. Until that time, justifications for why Irish lands were exploited for material gain had to be generated by the private adventurer. But the government's program "produced an outpouring of justifications for colonization and conquest."[151] Even though the English had title to the land because of their conquest of Ireland in the twelfth and thirteenth century, oppressing the Irish and restoring control over the territory was greatly assisted by further racializing the Irish (a process that had begun four centuries earlier).

---

[150] "Although in reality ethnic identity is *socially* acquired, the idea that nationhood describes a community of *biologically* shared decent is an extremely powerful (and politically consequential) one," Christopher Pierson, *The Modern State* (New York: Routledge, 1996), 62

[151] Canny, "Ideology of English Colonization," 576.

Canny argues that one of the outstanding features of English colonization of Ireland was the development of a secular ideology that propounded a theory of unilinear cultural evolution, of national development, wherein the Irish were coded as barbarians (undeveloped) and the English as civilized (in fact, the highest level of development humankind had yet obtained). This processual theory, something quite new to the English, and paralleling contemporary modernization theory,[152] rested upon an earlier static cultural distinction drawn between the Gaelic and the English cultures during the 12th-13th century invasions. The English behavior towards the Irish then took on many of the characteristics associated with racial segregation; for example, the Statutes of Kilkenny in 1366 established an apartheid system and forbade the intermarriage of Irish and English.[153] The new distinction, emerging in the mid-1500s, organized segregation developmentally and hierarchically, with England reckoned by far the superior of the two. This cultural ordering, defined in racial terms, was used to justify the killing of the Irish. In 1573, an English elite make the remark, after a program of mass starvation of Irish, "how godly a dede it is to overthrowe so

---

[152] Modernization theory was developed in the 1950s and 1960s as a theoretical justification for the Americanization project following the second world war Perhaps it most famous proponent has been W.W. Rostow, e g., *The Stages of Economic Growth. A Non-Communist Manifesto* (Cambridge, Eng Cambridge University Press, 1960) Modernization theory is based on the structural-functionalist framework developed by, among others, Harvard sociologist Talcott Parsons in the 1950s, e.g., *The Social System.* (Glencoe, Ill., Free Press, 1951). Its vision is that social change is unilinear, *progressing* from "traditional societies" to "modern societies" (the assumption is that progress is good) Some cultures are better than others (especially those with values of individualism and equality) and thus explained why they have reached the modern stage more rapidly than other cultures The modern cultures have a "responsibility" to help the lagging cultures pick up their pace in the race to modernity (they do this through political, economic, and often military "assistance")

[153] Terence de Vere White, *Ireland* (London Thames and Hudson, 1968), John A Watt, *The Church and the Two Nations in Medieval Ireland* (Cambridge, Eng. Cambridge University Press, 1970)

wicked a race the world may judge: for my part I thinke there canot be a greater sacryfice to God."[154]

The English mixed the secular theory of civilizational development with their sacred requirement to regard non-Christians as pagans. Not only did Gaelic religious observances and rituals barely cover the pre-Christian customs and traditions they had retained in their culture, but the English confronted the Irish (who practiced Catholicism) as Protestants. A pamphlet was circulated in 1572 titled "On the Disorders of the Irishry," wherein it stated that Irish and Gaelic laws were "contrary to God his lawe and also repugnant to the Queens Majesties lawes."[155] The Irish were, the pamphlet charged, "open idolaters." The claim that the Irish were pagans in the face of their practicing Christianity rested not on the doctrinal discrepancies between English and Gaelic religion but on their relative ranking in the secular theory of civilization. The English distinguished between religion and civility, but they reasoned an intrinsic relation between them: while a people could be civilized without being Christian (for example, the Romans), an uncivilized people could not be Christian. They would have to first be civilized; then they could be Christianized. Carry points out that the English were well aware of civilizations beyond their borders. They did not view the world simply as a dichotomy between their civilized state and a world of barbers and savages. However, they did view themselves as superior. "Supremacy was claimed for

---

[154] Quoted in Canny, "Ideology of English Colonization," 581.
[155] Quoted in Canny, "Ideology of English Colonization," 586.

western civilization because it combined the benefits of Christianity with those of civility."[156]

Since the Irish were uncivilized -- and their alien customs, habits, and language proved it[157] -- they were automatically pagan. In turn, their pagan status made them barbarian. In fact, the Irish were believed to be an inferior race of humans. They were brutes, the English claimed: uncivil and unclean. One elite stated in a report to the queen, in a manner echoing the current culture of poverty rhetoric, "Swerlie there was never a people that lived in more miserie than they doe, nor as it should seme of wourse myndes, for matrimonie emongs them is no more regarded in effect than conjunction betwene unreasonable beastes, perjurie, robberie and murder counted alloweable."[158] Their inferiorization and dehumanization, indeed, *criminalization*, removed the barriers to their being dominated and exploited by the English colonizers.

At the same time the colonizers claimed that their mission was a moral one: to rescue the Irish from their paganism and their barbaric existence. English propagandists proclaimed that their religious and civic duty was to train the Gaelic beasts "in vertuous labor and in justice, and to teach them our English lawes and civilitie and leave robbyng and stealing and killying one of another."[159] The arguments the English used to justify the enslavement of the Irish were the same as were used in

---

[156] Canny, "Ideology of English Colonization," 586

[157] Canny writes, "many of the colonizers came to Ireland with a preconception of what a barbaric society was like, and they found features in Gaelic life to fit this model," 587

[158] Quoted in Canny, "Ideology of English Colonization," 585

[159] Quoted in Canny, "Ideology of English Colonization," 588

enslaving Africans; and they were the same arguments the Southern white American used to rationalize the plantation system. When it was recognized that the Irish were being forced to labor for the English (and this was not difficult to recognize), their existence under tyranny was indeed admitted to. But, it was said that the Irish "were not yet ready for liberation since they were at an earlier stage of cultural development — a stage at which the English had been when the Romans had arrived. They needed to be made bondsmen to enlightened lords who would instruct them in the ways of civil society."[160] The colonial mind reasoned that slavery was a natural developmental stage between barbarism and civilization. Just as the English had to pass through bondage under the Romans to become civilized, so too would the Irish have to pay their dues, now that England was the seat of civilization — the new Rome.

"The events of 1565-1576 in Ireland have a significance in the general history of colonization that transcends English and Irish history," writes Canny.[161] The English colonial ideologue honed his rhetorical skills on the Irish. Because the Irish were cast as culturally inferior, extralegal means of subjection were justified. These methods were extralegal since no English subject would, at least in theory, be treated in this fashion. These measures were taken to America. There, the American Indians were recognized not only as culturally and politically different from European nations but were regarded as "savages" (sometimes "noble savages,"[162] but more typically

---

[160] Canny, "Ideology of English Colonization," 589.

[161] Canny, "Ideology of English Colonization," 595.

[162] Robert Spencer and Jesse D Jennings, *The Native Americans* (New York: Harper and Row, 1965)

"bloodthirsty savages"[163]) and as "heathens," categories typically denoting cultural inferiority, usually conceived as inherent.[164] The English proclaimed their mission to save the Indians from their pagan existence.[165] The same arguments were applied to Africans. "Both Indians and blacks, like the Irish, were accused of being idle, lazy, dirty, and licentious."[166] Regarding American Indians in this way justified in the minds of the colonists exterminating them by the millions. Seeing blacks as cultural inferiors legitimated their enslavement.

Religion played a major role in the development of European race prejudice. "Jew, Turk, heathen . . . stand over against Christian Europe and serve as forerunners of the concept of alien races."[167] By the Middle Ages Christianity had grown into a

---

[163] Joe R. Feagin and Clairece Booher Feagin, *Racial and Ethnic Relations*, 6th ed. (New Jersey. Prentice Hall, 1999)

[164] Although when Indians adopted slavery and the plantation system they gained considerable respect in the eyes of whites in the US South American Indian slaveholding appears to have been extensive, with Cherokees, Choctaw, Chickasaw, and Creek being the primary slave-owning nations. The Native American slave system was highly developed, with a system of slave codes. American Indians had practiced indigenous slavery and "African slavery was grafted onto pre-existing forms of institutionalized unfreedom," Renate Bartl, "Native American Tribes and Their African Slaves," *Slave Cultures*, 165 Halliburton writes that the Cherokees "exhibited no moral bias against slavery and were quick to accept numerous accouterments of European Civilization — including the institution of black slavery," Richard Halliburton, Jr , "Origins of Black Slavery among the Cherokees," *Chronicles of Oklahoma* 52 (1974/75), 486. The Cherokee and Choctaw were committed to slavery. During implementation of the Indian Removal Act (1830) Indians took their slaves with them to build the plantations in the Indian Territories The lone exception among the largest Indian nations was the Seminole nation. See R Halliburton, "Black Slave Control in the Cherokee Nation," *Journal of Ethnic Studies* 3 (3, 1975), William G. McLoughlin, "Red Indians, Black Slavery and White Racism America's Slaveholding Indians," *American Quarterly* 26 (1974), Daniel F. Littlefield and Lonnie E. Underhill, "Slave 'Revolt' in the Cherokee Nation, 1842," *American Indian Quarterly* 3 (1977), William Loren Katz, *Black Indians. A Hidden Heritage* (New York Atheneum, 1985)

[165] The Judeo-Christian worldview has had, for nearly two thousand years now, a firm grip on the minds of elites and masses alike in Europe (and elsewhere in the world). As it was practiced in Europe at the dawn of the European world-system, Christianity carried with it a deep chauvinism and a burning desire to baptize the world

[166] Canny, "Ideology of English Colonization," 596

[167] Detweiler, "Race Antagonisms," 741

powerful institution in Europe. British historian J. M. Roberts is exaggerating when he writes, "the Church came to be the same thing as European society during the Middle Ages," but clearly Christianity was a major force determining and conditioning people's thoughts and actions. "By 1500 only a few Jews, visitors and slaves stood apart from the huge body of people who (at least formally) shared Christian beliefs. Europe was Christian."[168] Harris argues that "commercial expansion was fired by the imperial ideology of Christianity, which, like Islam, expanded and converted others abroad." The "commitment to universal conversion to their faith reflected the belief in their superiority which later manifested itself in policies and practices during the colonial occupation."[169] The dynamic interplay of religion and profit combined to entrench colonial domination. While Christian beliefs in the inferiority of Africans did not cause slavery to be practiced by Christians, "the era of the slave trade further entrenched and indeed extended the concept of black inferiority . . . . Missionaries and other Christian spokesmen participated in the trade and cited the Bible to justify enslavement of Africans."[170]

---

[168] Roberts, *History of the World*, 473.

[169] Harris, *Africans*, 77.

[170] Harris, *Africans*, 90-91. Zinn writes of a Catholic priest in 1610 who inquired as to the legality of the slave trade and the institution of slavery. His response was "Your Reverence writes me that you would like to know whether the Negroes who are sent to your parts have been legally captured. To this I reply that I think your Reverence should have no scruples on this point, because this is a matter which has been questioned by the Board of Conscience in Lisbon, and all its members are learned and conscientious men. Nor did the bishops who were in Sao Thome, Cape Verde, and here in Loando — all learned and virtuous men — find fault with it. We have seen here ourselves for forty years and there have been among us very learned Fathers . never did they consider the trade as illicit Therefore we and the Fathers of Brazil buy these slaves for our service without any scruple," quoted in *People's History*, 29

The Jewish and Islamic traditions contributed to the development of notions of black inferiority. The most important influence were the interpretations of Noah's curse of Ham in Genesis. This myth, which appears as a justification for slavery and race-ethnic degradation throughout the historical periods I analyze, predates capitalism by several hundred years. It begins in the Jewish oral tradition, recorded in part in the *Babylonian Talmud*, where descendants of Ham were believed to have been turned black as part of a divine curse. The basic form of the myth is:

> "It must be Canaan, your firstborn, whom they enslave . Canaan's children shall be born *ugly* and *black*! [. . .] Your grandchildren's hair shall be twisted into kinks . . [their lips] shall swell " Men of this race are called Negroes; their forefather Canaan commanded them to love theft and fornication, to be banded together in hatred of their masters and never to tell the truth [171]

As with Christianity, race prejudice in the *Babylonian Talmud* does not by itself explain the enslavement of Africans,[172] but when connected with passages in Genesis where God fated Canaan to be enslaved the myth becomes a powerful justification for racial slavery — "Cursed be Canaan, the lowest of slaves will he be to his brothers. He also said, blessed be the Lord God of Shem, may Canaan be the slave of Shem. May God

---

[171] Harris, *Africans*, 5 The original source of this quote is Robert Graves and Raphael Patai's *Hebrew Myths* (New York, 1964), 121. Cf Ephraim Isaac, "Genesis, Judaism, and the 'Sons of Ham'," *Slavery and Abolition* 1 (1980); "The Talmud Does Not Teach Racism," afterword to Harold Brackman's *Ministry of Lies: The Truth Behind the Nation of Islam's The Secret Relationship Between Blacks and Jews* (New York Four Walls, Eight Windows, 1994); David H. Aaron, "Early Rabbinic Exegesis on Noah's Son Ham and the So-Called Hamitic Myth," *Journal of the American Academy of Religion*, 63 (1995); David M Goldenberg, "The Curse of Ham: A Case of Rabbinic Racism?" in *Struggles in the Promised Land: Toward a History of Black-Jewish Relations in the United States*, eds. Jack Salzman and Cornel West (New York, Oxford University Press, 1997).

[172] David Brion Davis writes, "The rabbis who compiled the *Talmud* did not endorse Noah's curse as a justification for enslaving black Africans " See "Today's Hatreds Still Bear the Imprint of the History of Slavery and Racism," www wiesenthal.com/resource/today.html, 2000.

extend the territory of Japheth, and may Japheth live in the tents of Shem and may Canaan be his slave."[173]

David Brion Davis notes that medieval Muslims popularized the divine curse and used it to justify Arab and Muslim trade of "black Africans."[174] It is well-established that Muslims were deeply involved in the slave trade and that they created many racial stereotypes, describing Africans as subhuman, ugly, deformed, licentious, and cannibals.[175] However, given the early origins of the story of the curse (around 1500 b.c.e. in its Talmudic form), "there is no denying that the *Babylonian Talmud* was the first source to read a Negrophobic content into the episode by stressing Canaan's fraternal connection with Cush."[176] Whatever the precise origins of the myth, anti-black prejudice was formed into a comprehensive ideology by the Iberians who took over the slave trade in the mid-15th century.[177] These prejudices not only justified the enslavement of Africans and provided an explanation for why they were being enslaved, but also guided Iberians in their selection of slaves. As time passed, combining with class-based forms of color prejudice developing in medieval society,

---

[173] Genesis 9:25-27, The Old Testament of the Hebrew Bible (New International Version).

[174] David Brion Davis, "Today's Hatreds." See also "The Culmination of Racial Polarities and Prejudice," Journal of the Early Republic 19 (1999)

[175] Barnard Lewis, *Race and Slavery in the Middle East: An Historical Enquiry* (NY: Oxford University Press, 1990). Ibn Khaldun, the 14th century Arab historical rejected the Hamitic myth as well as the biblical account of national descent. See *The Mugaddimah* (Princeton, NJ Princeton University Press, 1967). Nevertheless, as St. Clair Drake points out in *Black Folk Here and There* (Los Angeles University of California, 1990), "By the end of the 15th century the image of the Black in European Christendom was definitely a more favorable one than that in Middle East Islam," xix.

[176] Harold Brackman, *The Ebb and Flow of Conflict: The History of Black-Jewish Relations Through 1900* (Los Angeles: University of California, 1977), 80

[177] James H Sweet, "The Iberian Roots of American Racist Thought," *William and Mary Quarterly* 54 (1997).

anti-black prejudice gathered momentum throughout the emerging European world-system.[178]

What of the English colonizers of North America? We know that skin color played a powerful role in English culture. Jordan notes that English voyagers began to reach West Africa around 1550.[179] Generally, Englishmen were at first interested only in trading goods with Africans. The English slave trade would develop much later. The English appear to have not held the African to be a priori a slave. However, the English adventurers did regard African peoples as very different in physical appearance and in their customs (which were decidedly non-Christian), and they took particular note of the color of the African's skin, which they described as "blacke." In nearly every record written by the English voyagers they mentioned it. Jordan underscores the symbolic nature of the term by noting that referring to the skin of a West African as black as an empirical fact is an exaggeration. Moreover, the English made no distinction between West Africans and northern Africans in describing skin color. Their exaggeration and obsession with the color of Africans stems from the symbolic meaning of blackness in English culture before the 16th century. Blackness was associated with such concepts as "dirty," "soiled," "foul," "malignant," "death," "wicked," "sinister," "disgrace," and even "liability to punishment." White, on the other hand, was the color of beauty, especially for women. Blackness was the

---

[178] See Benjamin Braude, "The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods," *William and Mary Quarterly*, 54 (1997), 103-142, Paul Freedman, *Images of the Medieval Peasant* (Stanford, CA: Stanford University Press, 1999).

[179] Winthrop Jordan, *White over Black American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: The University of North Carolina Press, 1968). Jordan also discusses the Hamitic myth.

antithesis of whiteness: "beinge coloures utterlye contrary." The pairings are obvious, sacred versus profane, purity versus pollution, beauty versus ugly, good versus evil. Blacks were described as "ugly" and their features as "disfigured."

Several important points need to be made about these early conceptions of blacks in the context of European development. First, black inferiority is alleged to have a biblical origin and, given the hegemony of the Christian worldview among many European groups, this became the religious justification not only for racial slavery and for the slave trade, but for the subjection of Africans and their descendants. Second, the conceptions of Africans that constitute current racist ideology — that they are "ugly," "black," "prone to steal," "sexually promiscuous," and that they are "less intelligent" than other human groups — are found in texts produced well before the emergence of the capitalist world-economy and slavery. Third, the terms "Negro" and "blacke" which appear frequently in the literature of this period locates a concrete form of racial thinking at the dawn of capitalism.[180]

It is crucial to the argument being developed in this book that I demonstrate that racial and analogously racial conceptions found their way into the minds of the British settlers of North America. I present more evidence for this in the next chapter when I deal specifically with the English colonies. However, based on our knowledge of several facts — to wit, the shifting hegemony of the slave trade from Portugal and

---

[180] The term "negro" is derived from the Latin *niger* or *nigri*, which means "black." It was developed in the classical period of Western antiquity to differentiate members of the dark-skinned race native to Africa The term is the oldest known used to describe dark-skinned Africans as a common race of humanity. Joel A Rogers, *Sex and Race: Negro-Caucasian Mixing in all Ages and Lands*, volumes 1-3 (New York J. A. Rogers Publications, 1940-72). It is likely that this term was used to refer to Africans throughout the European conquest of Africa. See also Roland G Usher, "Primitive Law and the Negro," *Journal of Negro History*, 4 (1919)

Holland to Britain, the fact of the relative independence of merchants involved in the slave trade, where virtually all of Europe are found to have had merchants involved in the traffic of Africans, the shared ideology that legitimated this trade in slaves, the chauvinism of national community well developed by the 17th century, and the symbolic meaning of blackness in English culture — it is highly unlikely that English settlers in Jamestown could have regarded the Africans who arrived at their settlement as anything other than an inferior stock of humans (if they were considered human at all) who were from an ideological standpoint justifiably enslaved.[181] Zinn writes, "it was natural to consider imported blacks as slaves, even if the institution of slavery would not be regularized and legalized for several decades .... African blacks had been stamped as slave labor for a hundred years. So it would have been strange if those twenty blacks, forcibly transported to Jamestown, and sold as objects to settlers anxious for a steadfast source of labor, were considered as anything but slaves."[182]

At a more general theoretical level, developing the historical narrative in terms of material interests and cultural-ideological development moves us past liberal-rationalist and structural-functional accounts of racism as a pre-modern irrationality or the development of racism as a mechanism to advance the development of capitalism. From a humanist ethical standpoint, racism is irrational for its dehumanizing effect on people, but it is not at all irrational from the perspective of the capitalists. To be sure,

---

[181] Myres' statement, "Until the latter part of the eighteenth century, no one had doubted, so far as I can discover, that man, so far as he could be regarded as animal at all, formed a single indivisible species," John L. Myres, *The Influence of Anthropology on the Course of Political Science* (Berkeley: University of California, 1916), quoted in Detweiler, "Race Antagonisms," 741.

[182] Zinn, *People's History*, 25

racism does function to facilitate the capitalist development, but this fact does not explain its existence and only inadequately explains its persistence.

Imagining racism in either liberal-rationalist or structuralist-functionalist fashion leads to ideological interpretations of society. Marxist thinkers have committed both errors. Wright claims that traditionally Marxists have accounted for the relationship between capitalism and racism in two ways.[183] The first account is the orthodox Marxist account. The orthodox Marxist position shares with neoclassical economic thought the assumption that since racism (along with xenophobia, national chauvinism, etc.) is irrational it should disappear with progressive modernization.[184] Rationality undermines traditional ('pre-modern") cultural structures, such as racism, nationalism, religion, and so forth, and causes their eventual demise. The theoretical problem for orthodox Marxists from this standpoint is why racism persists at all in core countries given the rationalization of production in these countries.

More recent Marxist treatments of racism, Wright observes, are based on a functionalist logic. Because racism is functional for the maintenance and development of the capitalist mode of production, such as in dividing the working class or producing and maintaining labor sources that can be "superexploited," it will not disappear unless the system finds a functional equivalent for race. Finding the character of certain social forms in their functional relationship to the whole a sufficient condition for explaining their transformation is a delicate matter, and if the attempt is made to explain the existence of such forms in this manner, fatal logical

---

[183] Erik Olin Wright, *Class Counts*

[184] Malik, *Meaning of Race*, advances this position.

problems are met with. What is needed to counter functionalist reasoning is historical comparative and empirical analysis. Unfortunately, the approaches that neo-Marxists like Wright offer for studying the race-economic nexus have a more functionalist than historio-empirical character.

These formations and desires — nations, nationalism, eurocentrism, English chauvinism, religion — cannot be reduced to ideologies disguising purely economic motives. The emergence and spread of the European world-system between 1450 and 1620 was only in part a social revolution, that is a transformation in the structure of social class. Christianity and the struggle of nations, galvanized by eurocentrism, played central roles in the dramatic extension of Europeans into the world. A prehistory of racial thinking combined with the expansion of capitalism to cause the Western colonization of the Atlantic world. In contrast to rationalist and functionalist approaches to understanding the role of racism in capitalist society, when the matter is explored dialectically, we conclude that the European world created both capitalism and racism — principal components of a single historical system. Those who confuse the analytical model of the "rational market" clean of its "irrational hierarchies" with the concrete historical system do more than reify an ideal system — they create the illusion that a racially-just capitalism is possible. But the facts show that the caste system, fundamental to the emergence and development of capitalism in North America, where social classes have existed within, and are differentiated by, racial categories, persists despite the absence of laws forcing people to live in racialized

spaces. Only dismantling the structures that reproduce caste can permit the construction of a racially-just society.

Racial Thinking as a Technique Of Neutralization

It is a central premise of this dissertation that racial structuring has mind-independent causes and effects: minorities suffer oppression independent of the majority's beliefs about them, for example through physical segregation and impoverishment caused by disadvantaged location in housing and labor markets. But also central to the arguments developed in this book is that racism has a cognitive element that must be reckoned to understand the full character of racial oppression. It is, therefore, critical in analyzing racial oppression and patterns of criminalization to account for the collective cognitive character of the European world-system before and during the enslavement of blacks in North America. What is required is an understanding of the intersubjectivity of those who benefited from the oppression of blacks as a group. What "white" people believe about blacks is a causal agent in the oppression of blacks, not only for justifying what they are doing to blacks, but for what they allow to happen to blacks.

Often the oppressive thought and behavior of Europeans are cast in the past as an unpleasant consequence of the backwardness or Europeans. "They did not know any better," prominent apologists claim; "Now we do, and we are doing something about it — in fact, we have done something about it." But I would submit that Europeans have never been a people devoid of moral sensibilities. Individuals in the European past loved each other, shared one another's heartbreaks, helped to rebuild

each other's lives when those lives fell apart — just like people in all cultures. How can we accept the pessimistic accounts of historians who believe that, before the Enlightenment, Europeans were uniformly heartless? Claims that 17th century parents as a matter of course uncaringly threw their children into the sewers of London, or sold them into prostitution, or sexually molested them, and so forth, blind the audience to the fact that parents also loved their children and cared for them in the 17th century.[185] It is wrong to attribute the brutality of people's actions in subjugating the world to some sort of historic inhumanity.[186] I agree with Foucault who regrets that the decline in physical brutality "has been attributed too readily and too emphatically to a process of 'humanization'" (although he probably means something a little different than this). Not only does relatively dehumanizing past actors lead to our "dispensing with the need for further analysis,"[187] but, in my view, it also absolves perpetrators of complicity in unjust acts by denying that they acted intentionally to bring about the effects that in hindsight distress us so much that we are prepared to act as if they had no hearts!

---

[185] Perhaps the absolution of wrongdoing is worse than the writing out of history the atrocities committed by historical actors The accounts of deMause, "The Evolution of Childhood," probably sound in many respects, are at the same time quite pessimistic DeMause probably draws too firm conclusions from incomplete data. John Gillis asks us to take a more cautious approach to the historical materials. See John R Gillis, *Youth and History* (New York: Academic Press, 1974). Cf. Philippe Ariès, *Centuries of Childhood: A Social History of Family Life* (New York· Random House, 1962) Ariès probably errs in the opposite direction from deMause Cf Viviana A Zelizer, *Pricing the Priceless Child. The Changing Social Value of Children* (New York. Basic Books, 1985)

[186] Cf Kenan Malik, *The Meaning of Race. Race, History and Culture in Western Society* (New York New York University Press, 1996)

[187] Foucault, *Discipline and Punish*, 7

Granting some degree of humanity to Europeans, it is reasonable to assume that the perpetrators and their beneficiaries required a cognitive strategy that freed them from moral responsibility for their actions and subsequent feelings of shame and guilt they surely would have felt otherwise. How could the perpetrators of genocide and slavery treat other human beings as unworthy of life or liberty without an ideological system that dehumanized their victims? How could one group privilege at the expense of other groups without a set of beliefs reassuring them that the plight of the African and Indian peoples was not something the privileged group caused but rather the inevitable outcome of inferior human stock, or of a backwards mode of life incompatible with a forward-looking world?

To answer the question of how people can suspend their consciences, sociologists Sykes and Matza advance the notion of "techniques of neutralization," strategies actors use to permit them to sidestep moral strictures to which they otherwise consistently hold, strictures such as "if it wrong to kill people" or "it is wrong to take something that does not belong to me."[188] Sykes and Matza developed this idea in response to subcultural theorists who explained deviant behavior by reference to actors' commitment to subcultures that transgressed social and moral controls. Sykes and Matza argue that the opposite is true: those who perpetrate acts incompatible with the larger moral system are, in the main, committed to that system. It is because of their commitment to that system, they theorize, that there must be a set

---

[188] Gresham M. Sykes and David Matza, "Techniques of Neutralization A Theory of Delinquency," *American Sociological Review* 22 (1957). See also David Matza, *Delinquency and Drift* (New York: John Wiley, 1964)

of techniques that allow wrongdoers to rationalize or "neutralize" responsibility for their wrongdoing.

Sykes and Matza identify several neutralization techniques. "Denial of responsibility" is where the wrongdoer blames the circumstances instead of his actions. In "denial of injury" the wrongdoer claims that since nobody was harmed the moral sanction against the behavior does not apply. "Denial of victim" finds the wrongdoer admitting to the criminal act but claiming that the act was not wrong given the circumstances, namely, the identity of victim. In this last technique, the legitimacy of the victim's claim to victimhood is denied by coding the victim as deserving of the perpetrator's actions. Perpetrators may even deny injury by defining the victim as a nobody, a subhuman undeserving of human regard. Sykes and Matza are quick to point out that not all perpetrators are shielded from feelings of guilt and shame and that some perpetrators are isolated from the larger moral order sufficient to not require using the techniques, but in the normal course of life wrongdoers are likely to use these techniques either to escape punishment or to live with themselves.[189]

In *Hitler's Willing Executioners*, Daniel Goldhagen presents an account of the Holocaust that uses a variant of the neutralization theme. In contrast to Sykes and

---

[189] There is some empirical support for Sykes and Matza's techniques, but the difficulty in directly measuring this cognitive strategy within the positivist tradition has raised doubts about the approach See Richard Ball, "An Empirical Exploration of Neutralization Theory," *Criminology* 4 (1966), Carl B Klockers, *The Professional Fence* (New York: Free Press, 1974) Cf John E Hamlin, "The Misplaced Role of Rational Choice in Neutralization Theory," *Criminology* 26 (1988); Michael J Hindelang, "The Commitment of Delinquents to Their Misdeeds. Do Delinquents Drift?" *Social Problems* 17 (1970), David F Greenberg, "Delinquency and the Age Structure of Society," *Contemporary Crises* 1 (1977).

Matza, Goldhagen does not suppose that the genocidal intersubjectivity[190] represents a diversion from the larger moral order, rather genocide is one among several moral currents that predominates in a given historical conjuncture that allows the suspension of other cultural-ideological commitments. "Eliminationist" and "exterminationist" anti-Semitism was a major ideological thread that ran through German culture. He writes that "ideas about Jews that were pervasive in Germany, and had been for decades, induced ordinary Germans to kill unarmed, defenseless Jewish men, women, and children by the thousands, systematically and without pity."[191] Not everybody in Germany was dedicated to anti-Semitism, and even dedicated anti-Semites did not directly perpetrate the Holocaust. Just as there were anti-slavery voices in Europe throughout the history of racial slavery, there were Germans who decried the persecution of the Jews. Nevertheless, anti-Semitism allowed the perpetrators to neutralize the victim's humanity in their minds, allowing the perpetrators to isolate themselves from other moral threads that would surely would have brought upon them guilt and shame.

To strengthen his claim of the necessity of neutralization, Goldhagen reviews many of the explanations that have been offered to explain the perpetrators' actions during the Holocaust: the killers were coerced (their acts were the product of external compulsion); the perpetrators blindly followed orders (they were being obedient); the perpetrators were subject to social psychological or situational pressures (German

---

[190] Sykes and Matza did not analyze the Holocaust, but clearly the Holocaust as a crime fits within their scheme.

[191] Daniel J Goldhagen, *Hitler's Willing Executioners*, 9

soldiers found it virtually impossible to resist conforming to the dictates of the killing institution); Germans were soulless technocrats (they moved within the bureaucracy of death to achieve self-interested goals of career advancement); the perpetrators were ignorants (they were players in a process so fragmented they would not conceive of the whole and thus had no sense of their responsibility in it). All of these explanations may be dismissed, Goldhagen contends. German soldiers were not forced to kill Jews. They willingly murdered then. A German, like any human being, had the ability to say "no." Even if they would have been punished for refusing to participate (arguably a reason for not saying "no") there should be a record of their resistance. There is no record of this. The notion of career advancement might make the perpetrators appear as soulless entities, but we know they were family men who loved their spouses and children. How could they so easily kill Jewish women and children? The perpetrators were not ignorant people. They were not amoral actors. Yet they participated in mass murder on an unparalleled scale. They knew what they were doing. The killers took pictures of their victims, they took trophies, they even sold pictures and trophies of their deeds, just like the white mobs who lynched blacks in the US South.[192]

Goldhagen looks over the conventional explanations and finds in them one common feature: they "assume a neutral or condemnatory attitude on the part of the perpetrators towards their actions." In so doing, Goldhagen contends, "They either ignore, deny, or radically minimize the importance of Nazi and perhaps the perpetrators' ideology, moral values, and conception of the victims, for engendering

---

[192] Marable, *Capitalism Underdeveloped Black America.*

the perpetrators' willingness to kill." Ironically, the perpetrators are dehumanized and decentered in conventional explanations. "They do not conceive of the actors as human agents, as people with wills, but as beings moved solely by external forces or by transhistorical and invariant psychological propensities, such as the slavish following of narrow 'self-interest'." Moreover, "none of the conventional explanations deems the *identity* of the victims to have mattered."[193] It should be emphasized that Goldhagen does not reduce behavior to will, but roots will formation in the cultural and historical contexts in which people are socialized and live out their lives.

Goldhagen advances a compelling line of thought that may be applied to other circumstances. When Columbus' soldiers butchered Arawak Indians in the New World, the identity of their victims takes center stage. The perpetrators of this genocidal episode were not indiscriminate killers. They specifically targeted Arawaks. Columbus' men killed willingly and they killed for fun, because their victims were judged to be inhuman — not because the perpetrators were inhuman. It is difficult to believe that Europeans of Columbus's day did not share the sympathy for other humans that marks the character of our time.[194] Such a defense glosses over the fact that people loved and trusted each other in the 15th century as they do today. Shakespeare, writing in the Elizabethan era, spoke of romance so powerful that its denial drove young lovers to suicide. *Romeo and Juliet* was not science fiction, but an

---

[193] Goldhagen, *Hitler's Willing Executioners*, 13

[194] DeMause, in "The Evolution of Childhood," appears to deny the humanity of parents of the Middle Ages

idealization of the emotional content of European society, and Europe had not just discovered love in the 16th century.

Can we rightly dehumanize Columbus and his fellow explorers? Can we explain the atrocities they perpetrated by claiming that "they did not know any better"? To do this would be to excuse Columbus of a great crime and perpetuate the false image of an honorable man worthy of monuments and holidays (and one does not reasonably request we raise statues and dedicate holidays to Hitler because he turned the German economy around, so whatever else Columbus might have accomplished does nothing to mitigate his crimes against humanity). Should we be so chauvinistic as to assume that we of the 20th century have achieved a new level of civilization where humanity has finally been fully recognized? How can we, when the 20th century was the most barbaric 100 years in the history of the planet?[195]

If it is reasonable to assume that German perpetrators of the Holocaust required an ideology that dehumanized their victims so that the grizzly task of exterminating a people could be completed and German nationhood and Aryan blood could be restored to health and purity, then it is reasonable to assume that Columbus and his men required an ideology (one that was apparently missing among the Arawak) to carry out the mass murder of a peaceful and sharing people. It is likewise reasonable to assume that the Europeans who trafficked in human beings and built

---

[195] Michael Parenti, *Blackshirts and Reds: Rational Fascism and the Overthrow of Communism* (City Lights Books: San Francisco, 1997), William Blum, *Killing Hope: US Military and CIA Intervention Since World War II* (Monroe, ME: Common Courage Press, 1995). Adding to US caused casualties the numbers of killed by Germany in WWII, including some 6 million Jews, millions of Serbs, Gypsies, and Homosexuals, and over 20 million Russians, the 20th century towers over any other century in terms of death and destruction

slave labor camps in South America used similar justifications, which they found in ample supply in European culture. And the English who settled North America also required an ideology to murder Indians and take their land and participate in the African slave trade. And southern gentlemen similarly required an ideology to exploit the labor of millions of black slaves. And white men and women moreover required an ideology to lynch blacks. And white men and women today require an ideology that permits one in every two black children to live in poverty.

Shifting to the present with the notion of neutralization in mind we might consider the following: If the number of white males in US prisons and jails today were proportional to the current number of imprisoned black men, the white prisoner population would be greater than the population of the District of Columbia or each of the following thirty-nine states: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mass, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. If there were racial proportionality in our prisons and jails there would be more captive white males than the combined populations of Wyoming, Vermont, Alaska, North Dakota, South Dakota, Delaware, Montana, Rhode Island, and Washington DC. It strikes me as entirely implausible that the white majority would support a criminal justice policy that locked up over six and a half million of their fathers, sons, and brothers. Even if we do not reckon the crisis in terms

of white people, each of the eight states and the district mentioned two sentences ago has a smaller population than the number of blacks currently in prisons and jails. If it is reasonable that whites would not stand for such a proportionally large white prison population, why do they stand for such a large black prison population?

This is one of the critical roles that the cognitive side of racism has played throughout European history in perpetuating racial oppression: those who benefit from the exploitation and repression of racialized minorities have a set of justifications that neutralizes their moral responsibility to act to change the situation. The culture-ideology that conceives of blacks as inferior and prone to crime and violence creates a false reality of black failure — it is blacks who are to blame for what is happening to them. This technique, *ideological racism,* suspends all or most of the guilt or shame they might feel for the circumstances of African Americans. Through ideology, relatively absolved of any wrongdoing, whites carry out their relatively privileged lives without the nagging bother of remorse and mortification.

Neutralizing the humanity of one's victims exists not only in reproducing systems of oppression. It must also exist in some form before the atrocities and oppressions begin. Columbus and his crew perpetrated the genocide of the Arawaks with an ideology in back of them that Europeans were civilized and Christian and racially superior, while the Arawaks were inferior savages and heathens. These beliefs were necessary for the selection of the victims and the moral justification for enslaving and murdering them. It would be rather odd causal reasoning to suggest that the ideology that justified the killing of the Arawak Indians was developed after the

killing began and the perpetrators were given a racial ideology as a mental salve to heal their guilty consciences.

Racism runs deeply through US society not because the United States was conceived as a racist country after 1619, but because North America was conquered by Europeans who legitimated conquest, genocide, and slavery by conceiving their victims as cultural and biological inferiors. "From the beginning, the English settlers and their descendants saw themselves as quite different from Native Americans and African Americans, who they often stereotyped as 'uncivilized,' 'idolaters,' 'absolute brutes,' and 'savages'."[196] The society they established, a society in which colonized populations continue to be oppressed, is intrinsically racist, both because of the objective structure of caste-class and because this structure generates and requires and was in part created by racist ideology.

Conclusion

This chapter analyzed punishment in the early period of the European world-system. This required theorizing the change in punishment in Europe during the middle ages and the rise of capitalism. I noted several developments that will have an impact on the future development of punishment under capitalism. Three stand out: First, the mechanisms of control of the slave were left primarily to the private sphere, i.e., the rule of the *dominus*. The character of punishments in this domain was brutally physical. The existence of this mode of social control was explained by the lingering

---

[196] Joe R Feagin and Clairece Booher Feagin, *Racial and Ethnic Relations*, 6th ed (Upper Saddle River: Prentice Hall, 1999), 82 These sentiments existed years before whiteness covered all European people

influence of Roman civil law and the relatively lesser development of the state system. This is relevant to my dissertation in that a similar logic cam e to be applied to the control of slaves in the US system. Second, the emphasis in the conception of the criminal act shifted from punishing moral transgressions to protecting property. This is explained by a shift in the overall historical system: the character of crime and punishment reflected the increasingly capitalist character of the social order. The emerging state apparatus and the desire of state actors to control a greater part of the social system also contributed to the expansion of the criminal law. Third, the acts of primitive accumulation created the proletariat and the reserve army of the unemployed. The matter of crime and punishment in the waning Middle Ages was addressed first for temporal and theoretical reasons: the Medieval background came before the other developments analyzed in my dissertation; and, because of this, the class character of the criminal justice system were developed early than its racial character.

The chapter examined the broader developments to contextualize these changes and to lay the historical foundation for the following chapters. Out of the dissolution of feudal society would rise the bourgeois world epoch. I believe it was especially necessary to show the relatively autonomous development of racism in the European world-system to counter liberal-rationalist and structural functionalist theories about the origins and character of racism. The failure to make the distinction between the history of racism and its prehistory confuses racism with its precursors and eternalizes a concrete mode of thought and behavior. The failure to recognize

racism's prehistory serves a perceived political need to subordinate race to class. From a dialectical standpoint, I advanced the theory that combining with the capitalist world-economy in the European world-system was a collection of racially analogous modes of thinking and acting, among them color-prejudice, and this produced modern racism. The resulting system racialized the world and would contribute to the creation of a caste system that became amalgamated with the class structure of the English colonies in North America and later in the United States. The caste system would take several forms through history: the disproportionate incarceration of Africans and their descendants in slave labor camps, ghettos, and prisons. Therefore, a specific theoretical objective in this chapter has been to move beyond class-reductionist accounts of the development of racism so that we may correctly determine the relative impact of racial interests in the development of trans-Atlantic history.

The next chapter explores the history of slavery and the development of racial caste in colonial North America. The analysis documents the extent and significance of racial ordering in America, especially how the law was used to guarantee that order. I historically and theoretically contextualize this analysis by examining features of the role of the colonial economy in the capitalist world market, aspects of class formation, the socioeconomic conditions of European and African labor, and the structure and function of punishment in this period. The chapter concludes with an account of the developing ideological system, wherein I expose the racial character of Enlightenment thought.

CHAPTER 2

CONSTRUCTING RACIAL SLAVERY, 1619-1789

The struggle over slavery's memory has been almost as intense as the struggle over slavery itself — *Remembering Slavery*[1]

Blauner identifies four fundamental processes in colonialism.[2] First, colonialism begins with a forced, involuntary entry. This takes many different forms concretely. It may involve the removal and extermination of indigenous populations. There were approximately 10-14 million North American Indians when Europeans arrived on the continent. By 1890, there were fewer than one-quarter million left alive.[3] It may involve the subjugation of indigenous populations. In the early days of the Louisiana colony, the majority of slaves held by French settlers were Native Americans.[4] Emphasis on the first strategy may require the importation of labor from other places, such as African labor imported into English colonies between the 17th and 19th centuries. All three strategies were used in North America.

Second, colonialism has a dramatic cultural impact on the people of the subjugated region. "The effects of colonization on the culture and social organization

---

[1] "Introduction Slavery as Memory and History," in *Remembering Slavery*, eds. Ira Berlin, Marc Fauvreau, and Steven F. Miller (New York The New Press, 1998), xiii.

[2] Robert Blauner, *Racial Oppression in America* (New York: Harper and Row, 1972).

[3] For a comprehensive review of the literature see Colin G. Galloway, *New Worlds for All: Indians, Europeans, and the Remaking of Early America* (Baltimore, MD. Johns Hopkins University, 1997)

[4] See Daniel H Usner, Jr , "Indian-Black Relations in Colonial and Antebellum Louisiana," *Slave Cultures and the Cultures of Slavery*, ed. Stephan Palmié (Knoxville, TN· The University of Tennessee Press, 1995), Almon W. Lauber, *Indian Slavery in Colonial Times within the Present Limits of the United States* (New York· Columbia University Press, 1953) American Indians slaves were governed by rules similar to those governing African slaves, such as prohibitions on sexual intercourse between slaves and settlers.

of the colonized people are more than the results of such 'natural' processes as contact and acculturation," Blauner writes; "The colonizing power carries out a policy that constrains, transforms, or destroys indigenous values, orientations, and ways of life."[5] Along with the scattering of families, the colonizers alter the mental existence of the colonized. The English desired to colonize the minds of the people they subjugated, eradicating native moral and ethical systems and replacing them, though never completely, with Christian religious ideology — its vision of black and white, evil and good — and the European world-view that placed European at the top of cognitive and cultural pyramid. Social-psychological trauma is the result: "In domestic colonialism the pulverization of the 'colonized' culture and religion can be even more complete; the net result may be pervasive anomie and alienation among the oppressed."[6] I defined these concepts earlier (part 1, chapters 3 and 4) and added to them West's idea that nihilism is also a result of racist history.[7] Because of their inferior status throughout the history of the United States (what has appeared a terminal condition), and because of their persistent relegation to the subterranean side of American society, blacks, domestic colonial subjects, suffer disproportionately from the social-psychological and structural fallout of capitalist social relations.

Third, under colonialism there is a particular relationship between subjected populations and the foreign governmental bureaucracies and legal systems that control them. Representatives of the dominant power administer the lives of the

---

[5] Blauner, *Racial Oppression*, 84.

[6] Benjamin Ringer, *"We the People" and Others. Duality and America's Treatment of its Racial Minorities* (New York Tavistock Publications, 1983), 531

[7] Cornel West, *Race Matters* (New York Vintage, 1994)

subordinated group. "The colonized have the experience of being managed and manipulated by outsiders who look down upon them," Blauner writes. The original legal relations of colonized populations — which were of myriad sorts — are dissolved and the people are required to be judged in a different system of law and by a different standard of punishment. This feature of colonialism is represented in my model (see part 1, chapter 4) as the external or between-strata imposition of a political-legal system on colonized subjects. Whereas the members of the enrichment-inclusion zone judge each other by one punishment standard, they judge those in the lower strata by a different standard. Those in the impoverishment-exclusion zone are not permitted to develop internal standards with which to judge their peers. In fact, this degree of restriction on self-determination roughly indicates the intensity of a people's colonized status.

The fourth component of colonialism identified by Blauner is racism. "Racism is a principle of social domination by which a group seen as inferior or different in alleged biological characteristics is exploited, controlled, and oppressed socially and psychologically by a superordinate group."[8] Given that colonialism can be conceptualized as a generic mode of domination, the claim that racism is an essential element of colonialism must be clarified. In arguments I have made so far, I, too, have conceptualized colonialism as not only the external behavior of capitalism but also as a process whereby the populations of the world are racialized. However, pre-capitalist societies engaged in colonial behavior without apparently racializing the conquered

---

[8] Blauner, *Racial Oppression*, 84.

subject. On the other hand, there must have been some method of selection to distinguish between colonizer and colonized, whether this was ethnic differences (e.g., linguistic or religious characteristics) or something else. These distinctions may or may not be what I have called, perhaps awkwardly, the prehistory of race (see part 2, chapter 1). In any case, Blauner is referring to European colonialism, which, as we have seen, unquestioningly engages in racializing populations.

For Blauner, the colonial situation in North America is different from the traditional colonial relations observed elsewhere. Ordinarily, the colonist would have used the Indian for forced labor, but this proved to be problematic for several reasons noted in the literature (although there is little consensus on some of the claims). First, Indians had no immunity from many of the diseases Europeans carried (such as small pox).[9] This made Indians bad investments from a business standpoint. This was not the case with other non-European groups, such as the Africans whom had ancient contact with European society. Second, Indians were primarily gatherers and hunters or horticulturalists, and therefore had no, or at least little, experience with large-scale agriculture. However, this was true for much of English labor, as well, and probably for some of the African imports, so it is unclear how significant this cause was. Moreover, Native American agricultural techniques may have been more sophisticated

---

[9] Marvin T. Smith, "Aboriginal Depopulation in the Postcontact Southeast," in *The Forgotten Centuries Indians and Europeans in the American South, 1521-1704*, eds Charles Hudson and Carmen Chaves Tesser (Athens, GA The University of Georgia Press, 1994); Henry Dobyns, *Their Number Become Thinned Native American Population Dynamics in Eastern North America* (Knoxville, TN: University of Tennessee Press, 1983); Cole Harris, "Voices of Disaster. Smallpox around the Strait of Georgia in 1782," *Ethnohistory*, 41 (1994)

than previous scholars have allowed for.[10] Third, Indians knew the terrain better than Europeans and therefore had tactical advantage over Europeans.[11] Africans would be ideal in this regard since they were uprooted from their homelands and removed to completely alien worlds.[12] Fourth, Europeans wanted Indian land, not the Indians on that land, and the conquest of *lebensraum* required removal and/or genocide.[13] This was achieved primarily through warfare.[14] Steele argues that this was not necessarily because of superior technology on the European side, but more because the native populations lacked cohesion — Indians were not the homogenous racial-ethnic group commonly portrayed in the history books.[15]

Since forced Indian labor was not feasible, Africans became central to the system of forced labor. However, blacks were not the only form of forced labor in the colonies. Along with African labor, the colonists used bonded and indentured servants

---

[10] Helen C. Rountree, *The Powhatan Indians of Virginia; Their Traditional Culture* (Norman, OK University of Oklahoma Press, 1989); John R. Swanton, "The Indians of the Southeastern United States," *Smithsonian Institution Bureau of American Ethnology*, Bulletin 137 (1970); Bruce D. Smith, *Rivers of Change, Essays on Early Agriculture in Eastern North America* (Smithsonian Institution Press, 1993) and "Origins of Agriculture in Eastern North America," *Science*, 24 (1989).

[11] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York· Columbia University Press, 1939).

[12] Herbert Aptheker, *The Colonial Era: A History of the American People* (New York· International Publishers, 1959).

[13] Russell Thornton, *American Indian Holocaust and Survival: A Population History since 1492* (Norman, OK: University of Oklahoma Press, 1987) See Aptheker, *Colonial Era*, for a graphic account of English inhumanity towards the native population

[14] John E Ferling, *A Wilderness of Miseries: War and Warriors in Early America* (Greenwood Press. Westport, Conn. 1980), Douglas E. Leach, *Arms for Empire· A Military History of the British Colonies in North America, 1607-1763* (New York Macmillan, 1973); J. Frederick Fausz, "Fighting 'Fire' with Firearms: The Anglo-Powhatan Arms Race in Early Virginia," *American Indian Culture and Research Journal*, 3 (1979), Francis Jennings, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill, NC: University of North Carolina Press, 1975).

[15] Ian K. Steele, *Warpaths· Invasions of North America* (New York and Oxford. Oxford University Press 1994)

(who existed in various states of unfreedom), convicts, and kidnapped children. Moreover, side-by-side with the forced labor system (more accurately, systems) was the "free" labor system. As Adamson points out, under capitalism all labor "is fundamentally forced labor, since the accumulation of capital depends upon the continuous extraction of surplus value from labor and its transformation into additional capital."[16] The term "free" refers only to the worker exchanging labor-power for wages in a labor market. More often than not, being free in the capitalist context means serving at the whim of the employer, that is, being free from any security in obtaining an income. Still, those who lived under forced labor regimes suffered the worse conditions; those who were free were relatively privileged in the system.[17] Once slaves were introduced into the colonies, free and unfree labor broke up along racialized lines of white and non-white labor (see part 1, chapters 3 and 4). As I have explained, this situation became fundamental to the system of exploitation in the United States.

This chapter extends the logic of the core-periphery exploitation model to both internal and external capitalist relations with some modifications (see part 1, chapter 4, last section). This theoretical extension is in the background, since the chapter is primarily organized as several historical narratives. It has been argued that an internal core and periphery relation exists in the periphery and that attention must be paid to institutional linkages between the core of the core and the core of the periphery. In the

---

[16] Christopher Adamson, "Towards a Marxian Penology: Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (1984), 437

[17] Scott Christianson, *With Liberty for Some: 500 Years of Imprisonment in America* (Boston Northeastern University Press, 1998)

external periphery, a peripheral core, a client of the capitalist core, exploits peripheral labor along with the global capitalist. Peripheral labor is therefore double exploited, first by core elites then by peripheral elites whose responsibility it is to secure favorable productive conditions for the external elite. In this view, the world is comprised by a hierarchical chain of power elites in the context of a structurally differentiated world-economy.

The colonial relation explains the underdevelopment of the external periphery and how such conditions can be maintained against the interests of the majority. The periphery cannot develop economically because external ties are structured to pump surplus (usually as raw materials and primary commodities) out of the periphery into the core. Surplus is not reinvested into the peripheral production forces, especially infrastructure, in such a way to develop the periphery. It is not a goal of the exploiter to develop these regions, especially because they might compete with industries in the core. Insofar as a colony can achieve relative independence from the home country they can begin to develop internally. This is not to suggest that those areas that remain dependencies, such as the North American south after the war of independence, are moribund social formations. On the contrary, they are like any other colony: useful until they are depleted or become too much trouble to manage.

In the southern regions of North America the peripheral elites were the slave owners. They exploited African labor to generate a product for the capitalist world market (tobacco, cotton, etc.), surplus production to be sold to capitalists in the European core (at first, England). Compared to England, southern North America

remained in a condition of underdevelopment. This state of underdevelopment was secured by the slaveowners to their benefit, and this was legitimated by the static racial ideology of the South. Black slaves were thus exploited by both the British industrialists and the capitalist slaveowner — they were double-exploited. When the United States was founded, this relationship was transformed, although the South remained for some time a neocolony of England.

I have argued that the character of race relations, and with it crime and punishment, in the United States cannot be understood without grasping the history of the colonization of the New World and the larger system of colonialism. We saw that the conquest and colonization of the Atlantic world comprised a uniquely European affair. Europeans settled the New World and exterminated the indigenous populations they found there and took their land, greatly reducing the numbers of native people. Europeans subjugated Africans and Indians and enslaved them. Europeans established a system-wide structure of racial segmentation wherein blacks were defined as chattel property. What is more, the English rounded up and removed from Europe the "criminal element" and transported them to the Americas (prior to 1776, England was removing about 1,000 criminals every year and sending them on to the colonies[18]). These events are incorporated with the legacy of feudal arrangements that, rather than being destroyed with emergence of capitalism, were transformed with the

---

[18] Michael Sherman and Gordon Hawkins, *Imprisonment in America. Choosing the Future* (Chicago: University of Chicago Press, 1981)

racialization of the world and incorporated in capitalism. These developments set up the logic for law and order processes down to the present.[19]

Colonialism, Mercantilism, and Socioeconomic Growth and Development

"The capitalist revolution was marked by the swift accumulation of fluid capital. To enhance the rate of profit derived from such accumulations and to develop the markets for the products of the rising capitalist economy, overseas enterprises took special consequences." The joint-stock companies that proliferated in North America grew out of the collective endeavors of merchant adventurers whose class interests had developed in feudal society. Their companies, for example the Royal African Trading Company, played a crucial role in expanding the European economy into northeastern Europe, the Near East, and into Africa. Joint-stock companies, such as the Plymouth Company and the London Company, expanded the European system into North America. There were other forces at work in the colonization push; for example, the results of primitive accumulation had "created fierce poverty, widespread unemployment, and wholesale vagabondage. These in turn produced serious social tensions and great danger for the rich and their state." [20]

Why did the English choose North America for extensive settlement? Portugal and Spain had turned early to colonialism. Portugal found the route around Africa to the East Indies in 1488 when Bartolomeu Dias reached the Cape of Good Hope.

---

[19] For an overview of the research into colonial legal history see Cornelia Hughes Dayton, "Turning Points and the Relevance of Colonial Legal History," *The William and Mary Quarterly*, 50 (1993); Richard J Ross, "The Legal Past of Early New England. Notes for the Study of Law, Legal Culture, and Intellectual History," *The William and Mary Quarterly*, 50 (1993).

[20] Aptheker, *Colonial Era*, 10, 11.

Portuguese merchants realized great profits from their investments in long-range trade. Spain, searching westward for a route to the East found the West Indies in 1492. There they discovered gold and silver (and many people, whom they killed, subjected, or assimilated). The effect of the money-capital flowing into Europe through Spain would deliver the *coup de grace* to the stumbling feudal order and would fuel the drive for, and make possible, further exploration. "Moreover, the increment of enormous profits by merchant families led many of them to invest their excess in textile, leather, wool and metal manufacturing; this, in turn, intensified the shift from a feudal to a capitalist economy and the resulting demand for overseas markets to absorb the products of industry."[21] France and England, coming late to the colonial game, and with these pressures in back of them, were forced to either take Spain's wealth by force (which they often did) or to trade for it, two strategies that were closely intertwined, especially since trade disputes often led to military conflicts.[22]

Today, intellectuals and policymakers almost uniformly believe that it is the overall level of trade that is most important to economic growth: more trade, more wealth, more growth. This view dates back to the last half of the 18th century, articulated most notably by Adam Smith in *Wealth of Nations* in 1776.[23] But the hegemonic economic philosophy-praxis in the period of early colonization was mercantilism. Mercantilism, both a theory and a macroeconomic policy, rested on the

---

[21] Aptheker, *Colonial Era*, 12 Thus had the effect of raising prices throughout Europe, which suppressed the incomes of the already impoverished masses, greatly increasing their misery.

[22] Jeremy Atack and Peter Passell, *A New Economic View of American History from Colonialism Times to 1940*, 2nd ed (New York W W. Norton and Company, 1994).

[23] Adam Smith, *The Wealth of Nations* (New York Modern Library, 1937)

premise that money is power, i.e., a rich nation is a powerful nation. Rather than seeing the fortunes of a country as arising from the productive forces, which under capitalism means expanding productive capital, to become wealthy a nation must accumulate goal and silver, i.e., money-capital. Mercantilism was based on the assumption of a zero-sum game: it was not how much nations were trading, but who was getting the better of their trading partners. This policy required the expansion of colonial activities to discover more sources of wealth and to achieve more control over trade to obtain more wealth. Of the two ways to accumulate money-capital vis-à-vis one's national competitors — war and trade — trade was the more preferable. As Sir Walter Raleigh put it, "Who rules the trade of the world rules the wealth of the world and consequently the world itself."[24] The goal was therefore to have a favorable trade balance, to export more than is imported. Compelling evidence for a trans-Atlantic world market and a transnational hegemonic mode of thought among political-economic elites is the fact that the various nations comprising the interstate system all subscribed to the basic tenets of mercantilism.

Colonialism provided core nations with the materials and goods they needed for production and consumption without having to trade with other nations and risk their money-capital. Colonies offered the possibility of developing export commodities markets to compete with Asian markets and to supply new products. Thus the areas sought out for colonization were those areas that were as different from the core as

---

[24] Quoted in Aptheker, *Colonial Era*, 22.

possible.[25] To maintain this difference, the state restricted colonial production in the periphery so that it would not interfere with domestic industries in the core. Colonial elites also constrained intercolonial trade to keep the colonies dependent on the core.[26]

Many of the accounts of early colonization of North America portray the settlers almost uniformly as religious dissidents fleeing persecution to start a utopia. Such accounts obscure key facts of history, such as, the twenty African slaves on that Dutch slave ship landed in Virginia a year before the Mayflower reached Plymouth. History books give the white settler in North America a heroic cast. In the New World, the pilgrims, a rather inappropriate designation, are said to have struggled mightily to survive the harsh conditions to built a Godly society. Although the first colonies did struggle, the main purpose of most of these settlements was to produce wealth for English elites. The colonies were primarily business ventures. The famous religious settlements, such as the one founded at Plymouth, were eventually folded into the larger commercial colonies; Massachusetts Bay Colony, for instance, absorbed Plymouth.

---

[25] Atack and Passell, *New Economic View.*

[26] Aptheker, *Colonial Era,* reviews several laws forbidding manufacturing in the colonies, including the Wool Act of 1699, the Hat Act of 1732, and the Iron Act of 1750) The colonies were meant to remain dependencies The initial desire was that the colonies would provide gold and silver. But Spain, having long colonized South and Central America, had a lock on the bulk of the trans-Atlantic treasure. Because so many of the prime areas were already taken by powerful militarist nation-states, England tried several strategies to raise the wealth of the country. Their schemes involved North America For example, Roanoke Island was chosen for settlement in 1584 for its strategic location in Spain's shipping routes From here the English would attack the Spanish ships and rob them of their riches. Roanoke failed, but the English, via the London Company, later renamed the Virginia company, were successful in colonizing in the area of modern-day Virginia and pursuing alternative strategies of wealth generation. They selected this area because it was the same latitude as southern Spain and Italy and they believed they could cultivate wine-making and silk industries. See Atack and Passell

There rapidly developed a division of labor in the North American colonies. Virginia grew tobacco for export to England.[27] Massachusetts was organized as a sea port. Other colonies followed — Maine, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland — though Virginia and Massachusetts were by far the largest. By 1770 the population of the Thirteen Colonies was 1.7 million Europeans and one-half million Africans (almost all of them were slaves).[28] Fifty years earlier the population total had been around half a million.[29] Between 1720 and 1770 population growth was approximately 35 percent per decade. Much of the white population growth was internal; European immigrants accounted for about 20 percent of the growth in the white population. The black population grew more rapidly than the white population; between 1720 and 1779 their proportional representation in the population increased from 15 percent to 21 percent. The importation of blacks into the colonies accounted for 40 percent of black population growth. Most blacks were concentrated in the South; only 11 percent of blacks lived north of Maryland.[30] That the

---

[27] It is perhaps ironic, given the recent obsession elites have had with recreational drugs, that one of the first trades the colonies engaged in was in drugs Even back then there were some who were concerned about tobacco use. One statement is remarkable for its similarity to the arguments made today about cocaine: "Many a young nobleman's estate is altogether spent and scattered to nothing in smoke [and] a man's estate runs out through his nose," quoted in Christianson, *Liberty for Some*, 8.

[28] *American History Desk Reference*, eds. Marilyn Miller and Marian Faux (New York: Macmillan, 1997)

[29] U.S Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, DC U.S Government Printing Office, 1975).

[30] Marc Engal, "The Economic Development of the Thirteen Continental Colonies, 1720 to 1775," *William and Mary Quarterly*, 32 (1975) Egnal estimated from evidence presented by Lewis Cecil Gray, *History of Agriculture in the Southern United States to 1860*, 2 vols. (Peter Smith, 1958) See also Philip D. Curtin, *The Atlantic Slave Trade; A Census* (Madison, University of Wisconsin Press, 1969).

English colonies grew rapidly was disastrous for the native inhabitants. It is estimated that two-thirds of the Indians in the region were murdered or driven out of the area.[31]

The English were not the only Europeans settling in the region. The Dutch colonized the area of modern New York, Long Island, and Hudson bay, founding New Amsterdam. New Amsterdam was set up to provide logistical support for Dutch interests in South America. In 1626, the Dutch famously purchased the isle of Manhattan from Indians for approximately 25 dollars. England, however, defeated the Dutch there in 1674 and soon controlled the whole region. The English also faced the French to the north and the Spanish to the south. The British government promoted westward expansion to deprive the French and Spanish room to grow. This fit with their general strategy: more colonies for England meant fewer colonies for their competitors. It was a successful tactic at first; however, as we will see, it created problems for the crown down the road, as white settlers pushed westward.[32]

Eighty-five percent of the work force of the colonies was employed in agricultural production, both subsistence and commercial farming. Commercial farms were concentrated in the South, but there was considerable commercial farming in the North.[33] In the Middle Atlantic and New England colonies, agricultural production

---

[31] Atack and Passell, *New Economic View.*

[32] For a cogent explanation of the problem governments face in maintaining their colonies when settler colonization is used as a primary strategy see Arghiri Emmanuel, "White-Settler Colonialism and the Myth of Investment Imperialism," in *Introduction to the Sociology of "Developing Societies,"* eds Hamza Alavi and Teodor Shanin (New York: Monthly Review Press, 1982)

[33] Atack and Passell, *New Economic View.* See also Percy Wells Bidwell and John I Falconer, *History of Agriculture in the Northern United States, 1620-1860* (New York, P. Smith, 1941).

yielded surpluses.[34] Engal attributes the socioeconomic development to two conditions: an expansion of total output and a rise in per capital income.[35] Output was achieved by a rapidly increasing population, abundant land, and real productivity gains in agriculture (e.g., rice).[36] Per capital income rose due to productivity gains, the market value of their goods, and a supply of available capital.[37] Growth was uneven, occurring in two long cycles between 1720 and 1770. The first cycle lasted between 1720 and 1745 (the growth phase ended in the early 1930s). The second cycle lasted between 1745 and 1775, expansion slowing after 1760. These cycles correspond to the rhythms of the trans-Atlantic economy. Between 1720 and 1745 England experienced growth, though it was dampened by an overproduction crisis in their agricultural sector. After 1745, England experienced rapid economic expansion that lasted until 1760. England was beginning the process of industrialization, and manufacturers' demand for raw materials and primary commodities spurred economic growth in the colonies. England benefited also from commercial markets in the colonies. After 1769

---

[34] James Lemon, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* (Baltimore: John Hopkins University Press, 1972)

[35] Engal, "Thirteen Continental Colonies."

[36] Duane Ball and Gary M Walton, "Agricultural Productivity Change in Eighteenth Century Pennsylvania," *Journal of Economic History*, 36 (1976)

[37] Rising per capita income has led many, including Egnal, to imply that living conditions were good in North America. Income is composed of wages, rent, and profit Per capita income divides the total national income by the population. The calculation gives no indication of the mix of income sources or the internal distribution of income. Countries with high per capita incomes, such as the United States, can have a high level of inequality considerable poverty, whereas countries with moderate per capita incomes, such as the former Soviet Union, can have a much lesser degree of inequality and very little poverty. See Shirley Cereseto, "Socialism, Capitalism, and Inequality," *Insurgent Sociologist*, 11 (1982)

the world economy slowed and would not pick up again in England until the 1780s, primarily on the basis of a new industry: cotton textiles.[38]

Besides the still comparatively low level of the productive forces in the colonies, there were artificially imposed limits on economic development: recall that mercantilism required that production in the colonies not conflict with industries in the home country. The English bourgeoisie organized North America as an exporter of agricultural products -- tobacco, indigo, and rice. An indication of the extent of exporting is that as much as 10 percent of the work force was in shipping and one-sixth of the colonial economy.[39] Despite English efforts, intercolonial trade grew to become an important market and manufactures did develop in the northern colonies (primarily textile and shoe production).[40] Thus, despite the contraction of the world economy in the period between 1760 and 1775, the colonies continued to develop. However, elites at the close of this period were arguing that there was another limitation on growth: the lack of a national government (I take this matter up in the next chapter).

---

[38] Engal, "Thirteen Continental Colonies." See also Phyllis Deane and W A Cole, *British Economic Growth 1688-1959. Trends and Structure* (London, Eng. Cambridge University Press, 1967); R M. Hartwell, ed., *The Causes of the Industrial Revolution in England* (London, Eng Methuen, 1967), J H. Plumb, *England in the Eighteenth Century* (Baltimore: Penguin Books, 1963) ; E L Jones, "Agriculture and Economic Growth in England, 1660-1750. Agricultural Change," *Journal of Economic History*, 25 (1965).

[39] James E Shepherd and Gary M Walton, *Shipping, Maritime Trade and the Economic Development of Colonial North America* (Cambridge, England Cambridge University Press, 1972); Walton and Shepherd, *The Economic Rise of Early America* (New York Cambridge University Press, 1979)

[40] Egnal, "Thirteen Continental Colonies "

The state's role in the social control of populations had throughout this period expanded dramatically. Mercantilism required extensive and intensive state organization and oversight. This contributed to the growth of the nation-state and state direction of economic development, a development quite different from the decentralized nature of feudal arrangements. These political-economic factors provided a stimulus to the trend in central state regulation of human social life, a regulation that went hand in hand with the progressive commodification of social space. This is one of the main ironies of the free market mythology. The position is often advanced that capitalism reduces the scope and power of the state and creates an environment of free individual activity.[41] In fact, the opposite is true: capitalism is associated with the rise of the centralized bureaucratic state.[42] Controlling the millions of people who are hemmed in by the nation state and who are exploited under conditions of wage-labor, slave-labor, and peasant-labor requires systematic, albeit often invisible and automatic, surveillance and discipline.[43]

As shown in part 2, chapter 1, the rise of capitalism is correlated with the rise of repressive punishments. We learned there that it is not true that the rise of capitalism brought an end to the brutal repressive punishments of the *ancien régime*; rather, the

---

[41] Some go one step further and argue that the liberal state has been corrupted by the socialistically inclined. See Friedrich A von Hayek, *The Road to Serfdom* (Chicago, University of Chicago Press, 1944)

[42] There were three types of enterprises, all were regulated by the state, varying by degrees of control Royal colonies were the most directly controlled In proprietary colonies, the crown granted political and economic rights to individuals In chartered colonies, the crown granted political and economic rights to joint-stock companies. Aptheker, *Colonial Era.*

[43] Christopher Dandeker, *Surveillance, Power and Modernity· Bureaucracy and Discipline from 1700 to the Present Day* (New York. St Martin's Press, 1990)

emergence of widespread corporal punishment emerged from the crisis of the feudalism.[44] Furthermore, because the logic of accumulation under mercantilism was viewed as a zero-sum game, trade disputes were common and often deteriorated into military struggle, which in turn required emerging nation-states' to pursue an arms race, creating a culture marked by militarism and authoritarianism. Militarism, which justifies and increases the incidence of mass killing, is inevitably turned inward and people's hearts are hardened against those of the lower classes and perennial others within national border and increasingly respond in collective repression.[45] The despised masses become a "dangerous class," and are seen as a threat to the internal security of the nation. Victims of circumstance are victimized further. As a consequence, whenever there is crisis in the system, the habituated response is state repression and terror, both domestically and internationally, and usually with the vocal majority at their backs urging them on.[46] This is as true in the twentieth century as it was then; we have surviving victims of, and eye witnesses to, the eruptions of

---

[44] This is why Durkheim's problematic laws of evolution in punishment — where it is held that in the movement from "mechanical" ("less developed type") to "organic" (advanced industrial type) solidaries the style of punishment changes from repressive/retributive to restitutive/deprivation of liberty — are qualified with a proposition about the brutality of authoritarian regimes (e.g the absolutist state under mercantilism). See Émile Durkheim, "Two Laws of Penal Evolution," in *Durkheim and the Law*, eds Steven Lukes and Andrew Scull, trans T. Anthony Jones and Andrew Scull (New York St Martin's Press, 1983)

[45] For a contemporary study of the connection between state's organization for war and internal interracial effects see Warren Schaich, "A Relationship Between Collective Racial Violence and War," *Journal of Black Studies*, 5 (1975)

[46] Cf Noam Chomsky's assertion that there is no correlation between the internal freedom of a country and its external behavior, in *Manufacturing Consent. Noam Chomsky and the Media*, prods /dirs Mark Achbar and Peter Wintonick, prod. Adam Symansky, Necessary Illusions in co-production with National Film Board of Canada (New York· Zeitgeist Films Ltd., 1994).

state brutality in Hitler's Germany or Reagan's America. The "war on crime" and "war on drugs" are instances of this mentality.

Class and White Labor

Through colonization, the English "created a society whose institutions were molded in their racial, religious, and national image."[47] Whatever rights and freedoms were granted to people living in the colonies, and later in the states, applied only to privileged European colonists and their descendants. Non-Europeans could not by definition be part of "the people." This was especially true of Africans. As we saw in part 2, chapter 1, Africans were treated differently the moment they arrived in the Virginia colonies. Whether the first arrivals were slaves is beside the point: it was the case that soon after Africans were introduced in the colonies almost all of them were enslaved, and, in any case, free blacks, what few there were, were not part of the "American community."[48] This, along with the fact that English citizens were never slaves (though they were unfree), testifies to the racial character of the British colonies. In fact, it was written into law that whites could not be enslaved to blacks or Indians. And as for the racial designations "black" and "white," these were being used in the construction of provincial statutes in the colonies as early as 1652. Laws throughout

---

[47] Ringer, *"We the People,"* 7

[48] In 1857, the Supreme Court would affirm the diminished status of blacks by declaring that those of African descent, free or slave, were not citizens of the United States. For histories of free blacks in the United States prior to emancipation see Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Oxford University Press, 1981), Winthrop Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: The University of North Carolina Press, 1968) and *The White Man's Burden: Historical Origins of Racism in the United States* (New York, Oxford University Press, 1974); Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: University of Chicago Press, 1961).

the first three-quarters of 17th century defined and redefined African slaves as property (though not without conscious contradictions of principle, as we will see in the discussion of the Articles of Confederation in the next chapter). By 1686, the statutes were firm, and the logic of slavery remained in place until 1865.

But before slaves arrived in great numbers, the English settlers were the primary sources of exploited labor,[49] and many of them could hardly be said to be free. Most owned no productive capital. They owned only their labor-power, and this was controlled by the company. Their living arrangements were usually dreadful. They were housed in cramped barracks, worked in gangs, suffered corporal punishment or the threat of it, and were poorly fed. Their health and well-being was sacrificed for the greater objective of profit. The goal of the Virginia Company was to pay the lowest possible wages (if any wages were paid at all) and maximize labor productivity through the extreme disciplinary regimes.[50] This scheme was carried out at the highest levels of the ruling circles. "A plantation economy, rather than agriculture by numerous freeholders, was of special interest to the rulers of England, because it provided the best means for control of a large labor force needed to produce raw materials missing from the home country."[51] This section examines the situation of white labor during this period.

Colonial elites, constituents of the English class system, desired to reproduce the main features of their law and societal order in the New World. The great

---

[49] Some settlers were from other European ethnic groups By the eve of the War of Independence one-third of the white population were non-English See Aptheker, *Colonial Era.*

[50] Atack and Passell, *New Economic View*

[51] Aptheker, *Colonial Era,* 15.

transformation that had become by the end of the "long 16th century" a world capitalist market[52] had produced by the 17th century all the basic constituents of the capitalist class: the agrarian, mining, industrial, commercial, and banking bourgeoisie. Along with the capitalist class, though often in a contradictory location in relation to wealth and power, were various petty bourgeoisie, owners of small business and artisan industries in the urban areas, and tenant farmers in the rural areas. On the other side of the production relation were those who owned no capital, the various proletariat, farm and industrial workers. The English brought with them to North America the practice of hierarchically organizing society.

The "well-bred" were granted generous parcels of land to copy their power to the other side of the Atlantic ocean. Land ownership, which was the main capital asset at the time, can tell us great deal about the concentration of wealth in the colonies. By the end of the 1600s, three-fourths of the acreage in New York was held by fewer than a dozen people. In Virginia, just seven people owned 1.7 million acres.[53] The concentration of land in the hands of a small minority, barring some popular massive land reform measure, guaranteed the reproduction of patterns of wealth well into the future. Studies of wealth distribution of the colonies find a significant and expanding disparity in wealth and income. By the end of 17th century, the wealthiest ten percent controlled roughly one-quarter of the wealth. Over the 18th century wealth

---

[52] Immanuel Wallerstein, *The Modern World-System I. Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York Academic Press, 1974) and *The Modern World-System II Mercantilism and the Consolidation of the European World-Economy, 1600-1750* (New York. Academic Press, 1974 and 1980)

[53] Paul Kalra, *The American Class System: Divide and Rule* (Pleasant Hill Antenna Publishing, 1995)

concentrated, with the wealthiest ten percent seeing their share of the wealth grow to nearly one-half (in some cities even more).[54] "By 1760 most of the commerce, banking, mining and manufacturing on the eastern seaboard was controlled by fewer than 500 men in five colonial cities who also owned much of the land."[55]

In contrast to the opulence of the elite, a population of freeholders, tenants, indentured servants, and a small number of black slaves, lived a largely agrarian and impoverished existence where excessive rents and taxes and low incomes guaranteed a life of impoverishment. At the bottom of the class structure there emerged, as in England, a stratum of unemployed free labor or industrial reserve.[56] Capitalism's perpetual creation of a surplus of people, directly linked to the system of private control of investment and profits,[57] has long vexed elites who wish to present the system of capitalism as a utopia and would become maybe the principal reason for expansion in the use of prisons.[58]

---

[54] Edward Pessen, *Riches, Class, and Power Before the Civil War* (Lexington, Mass., D C. Heath, 1973). Studies reviewed include counties and/or cities in Pennsylvania, Boston, New York, and New Jersey, as well as regions.

[55] Kalra, *American Class System*, 44. See also Jackson Turner Main, *The Social Structure of Revolutionary America* (Princeton, NJ: Princeton University Press, 1969).

[56] Marx, *Capital*, volume 1 (New York Penguin Books, 1990).

[57] For a discussion of how crisis and consciousness related to the American war for independence, see Charles A Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillan, 1962); H. Aptheker, *Early Years of the Republic: From the End of the Revolution to the First Administration of Washington (1783-1793)* (New York International Publishers, 1976)

[58] Ivan Jankovic, "Labor Market and Imprisonment," *Crime and Social Justice*, 8 (1977); Ted Chiricos and Miriam A Delone, "Labor Surplus and Punishment A Review and Assessment of Theory and Evidence," *Social Problems*, 39 (1992)

To make sure that there would be no popular leveling measures, such as land reform,[59] colonial elites mimicked the British political system, which was at the time organized around a King, a House of Commons and a House of Lords. The colonists set up a governor's office, a governing council, and a legislature. Legislators were elected to office, which gave the appearance of a measure of popular control over governmental policy; however restrictions on who could vote and who could hold office made sure this was a hollow freedom; ordinary folks were not meant to participate in governmental affairs, outside of taking part in manufacturing artificial consensus. Property requirements disqualified around one-third of the white male population from voting. Other property requirements put political office beyond the reach of ordinary people. Therefore, for the other two-thirds of white males, except for a tiny minority, the selection of candidates was constrained to the capital-holding few whose interests roughly coincided. This led to a monopoly of political rule by the wealthy minority.[60] This in turn increased the concentration of capital and class power in the hands of a small colonial elite. Moreover, elected officials in the colonies were typically surrogates for the King and the ruling class in England; to a large extent it

---

[59] There was a high degree of class consciousness on both sides of the class divide, but especially among the elite. The latter were well aware that the legitimacy of their claims for a natural hierarchy of wealth, status, and honor was breaking down. See Thomas N Ingersoll, "'Riches and Honour were Rejected by Them as Loathsome Vomit'· The Fear of Leveling in New England," in *Inequality in Early America*, eds. Carla Gardina Pestana and Sharon V. Salinger (Hanover: University Press of New England, 1999). Part of the source of this questioning was the development of capitalism and the "subversive" ideology accompanying it that held it was possible to move up the class ladder. See Bernard Bailyn, "The Apologia of Robert Keanye," *William and Mary Quarterly*, 7 (1950), Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (Gloucester, MA : P Smith, 1988); Stephen Foster, *Their Solitary Way. The Puritans Social Ethic in the First Century of Settlement in New England* (New Haven, CT Yale University Press, 1971)

was the colonizers back home who controlled the colonies, their interests represented by colonial governors and governing councils.[61] These were, afterall, *English* colonies.

There were differences, to be sure, between homeland and colony, and these differences explain much of the divergence we see in patterns of development between the two. England was overcrowded, with a surplus of labor, and the country possessed a relatively well-developed infrastructure given the level of development in the productive forces. These were conditions that permitted surplus-value production on the mainland mainly through the exploitation of wage-labor. North America, in contrast, was an open expanse with a low level of productive forces. Facing such an abundance of land in North America, it was believed that independent-minded settlers might strike out on their own. Adam Smith observed that the colonies desired "to collect laborers from all quarters, and to reward them with the most liberal wages. But those liberal wages, joined to the plenty of cheapness of land, soon make these laborers leave him, in order to become landlords themselves and to reward, with equal liberality other laborers, who soon leave them for the same reason they left their masters."[62] A capitalist market depends on a predictable labor force and on labor being contained. In the absence of such predictability and containment the colonists had to rely on extra-economic means of coercion and a captive labor force.[63]

---

[60] Michael Parenti, *Democracy for the Few*, 4th ed. (New York. St. Martin's Press, 1983); Aptheker, *Early Years*.

[61] Kalra, *American Class System*.

[62] A. Smith, *Wealth of Nations*, 359

[63] E. P. Thompson, *The Making of the English Working Class* (New York, 1963) and "Time, Work-Discipline, and Industrial Capitalism," *Past and Present*, 37 (1967)

These different circumstances would lead to the development of a class system that deviated from the content, if not from the outlines, of the English system, especially in the greater variety of forms of unfreedom. The contrast would, however, be overdrawn if we were to claim that, while North American colonists relied on coerced labor requiring extra-economic forms of compulsion (indentured servitude, black slavery, and convict labor), England had a "pure" capital/wage-labor system, where labor coercion was "purely" economic (i.e., coercion by necessity). England used extra-economic means of compulsion and labor discipline, such as the houses of corrections designed to instill labor discipline in the unadjusted proletarian.[64] In both places the state (which was the same state) and the capitalist class disciplined their labor force. Moreover, unions and strikes were illegal; other forms of collective and popular action, demonstrations and propaganda, were repressed. As Berberoglu points out "while state intervention in the economy was kept to a minimum to permit the capitalists to enrich themselves without regulation, the capitalist-controlled state became heavily involved in the conflict between labor and capital on behalf of the capitalist class, bringing to bear its repressive apparatus on labor and its allies who threatened the capitalist order." The criminal justice system was central to managing class antagonisms on both sides of the Atlantic. "Law and order enforced by the state

---

[64] Barbee-Sue Rodman, "Bentham and the Paradox of Penal Reform," *Journal of the History of Ideas*, 29 (1968). During the seventeenth century the English government on the mainland often considered and sometimes imposed regimes of labor coercion within national borders in the forms of prisons and workhouses Proposals and programs, which including controlling more than the idle poor, were pursued for social control purposes and to increase labor efficiency Because labor was in transition from peasant farmers to proletarians it was believed that work camps provided the necessary resocialization (this idea would be picked up by liberal

in early capitalism (and right up to the present) served to protect and preserve the capitalist system and prevent its transformation."[65] Rather, the difference we find is that England's relatively free labor market and surplus of workers permitted capitalism to develop there without resort to slavery and indentured servitude. The fact of slavery and servitude in the English colonies of North America would in time produce something quite distinct from the English class system.[66]

Although by the last third of the 18th century 21 percent of the colonial population would be black (this is a much larger proportion of blacks than the current racial distribution of the United States), and all of them, except for the youngest children would be laborers, the main labor system throughout the seventeenth century was term servants and contract workers. There was a significant minority of black servants in the English colonies, but the large-scale dual labor system composed of white workers and black slaves that would eventually develop was not possible for two main reasons. First, the international slave trade was not yet developed to the point where an adequate number of Africans could be obtained in North America. The trade was focused on transporting slaves to South America and the Caribbean, and England had yet to move into its hegemonic position in the slave trade. Second, European labor was, early on, adequate to meet the needs of colonial elites.

---

penal reformers, e.g., Cesare Beccaria) See Karl Polanyi, *The Great Transformation* (Boston, MA. Beacon Press, 1957).

[65] Berch Berberoglu, *Political Sociology: A Comparative Historical Approach* (New York. General Hall, 1990), 83 He means here transformation to socialism. The transformation of capitalism within its development parameters was allowed, encouraged, and coordinated

[66] Curtis P. Nettels, *The Roots of American Civilization. A History of American Colonial Life* (New York, Appleton-Century-Crofts, 1963)

One of the rationales for English colonization of North America was the transfer of surplus population from England to North American colonies. As we saw in part 2, chapter 1, the dissolution of the feudal retainers in the 15th century and Reformation in the 16th century, created a surplus of people in the urban areas in England. Sir Humphrey Gilbert, seeing a unique opportunity, wrote in 1774, "We might inhabit some part of these Countryes and settle there such needy people of our country which now trouble the commonwealth and through want here at home are enforced to commit outrageous offences, whereby they are dayly consumed by the gallows." Much earlier, in 1611, the Spanish Minister to England wrote, "Their principle reason for colonizing these parts is to give an outlet to so many idle, wretched people, and thus to prevent the dangers that might be feared of them." The London Company stated as its colonial objective: "The removing of the surcharge of necessitous people, the matter of fuel of dangerous insurrections, and thereby leaving the greater plenty to sustain those remaining within the Land."[67] Thus as the colonial economy grew, demand for workers coincided with the needs of the English elite to maintain social stability on the island.[68]

Much of the European labor came as voluntary indentured servants. An indentured servant was a debt bondsman who received no wages. He or she (typically he) was obligated for a term of service of four to seven years (though the range was at times larger, between two to fourteen years) to the planters who secured their fare

---

[67] Quoted in Aptheker, *Colonial Era*, 12

[68] George Fredrickson, *White Supremacy A Comparative Study in American and South African History* (New York: Oxford University Press, 1981)

across the Atlantic. Convicts were also sent to the colonies. They often had longer term contracts. The convict class were drawn from of the "lumpenproletariat," i.e., vagabonds and paupers.[69] There were also orphans and state-dependent children sent to be servants to the colonial elites.[70] These unfortunate souls, criminalized by a host of discriminatory laws against the poor and unemployed, were rounded up by the thousands by traffickers in human beings and the government.

The colonial system of indenture represented a unique condition for labor; there was no real equivalent in England. For example, a bondsman's obligation to his/her employer was governed by criminal law. In contrast, a servant in England was usually a wage-laborer with a term of contract of one year. The English servant's contract was voluntary and mediated by civil law. The conditions of an indentured servant were poor and they were often mistreated by their employers.[71] Ill treatment of indentured servants reflected the growing belief in English culture that the idle poor were inherently inferior human types and/or members of the dangerous classes. These beliefs were part of an ideology that had emerged in the sixteenth century, largely the result of developing capitalist attitudes and the Protestant worldview.[72] As we saw in the last chapter, these attitudes were applied to the Irish. On the basis of this ideology,

---

[69] Marcus Wilson Jernegan, *Laboring and Dependent Classes in Colonial America, 1607-1783* (New York. Ungar, 1965); Edmund S. Morgan, *American Slavery – American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975)

[70] Christianson, *Liberty for Some.*

[71] James Curtis Ballagh, *White Servitude in Virginia: A Study of the System of Indentured Labor in the American Colonies* (Baltimore The Johns Hopkins Press, 1895)

[72] These middle class attitudes about the laboring masses endured through the industrial capitalist era and are still widespread, albeit reformulated as "the culture of poverty" and "welfare dependency"

the poor enjoyed diminished rights and deserved to be treated with less respect than would be afforded a "decent" member of English society. "The British rulers came from a society in which the lives of their own subjects (especially the poor) were evaluated very cheaply," writes Aptheker; "thus, the theft of a loaf of bread was a capital crime."[73] English inhumanity mirrored the acquisitive society its bourgeoisie built.

The tendency towards brutal repression of labor was there from the birth of the colonial experience in North America. In 1610, in Virginia, a dictatorship was imposed on the colony by Lord Delaware. His successor was even more oppressive.[74] On this account, Kupperman has drawn a parallel between the colony and the concentration camp.[75] Labor suffered extraordinary inequity and austere living conditions. It should be noted, though, that there is evidence showing that the labor conditions improved over time, as companies had to make life sweeter for laborers because the latter might choose to set up their own farm rather than continue working for a taskmaster.[76] These pressures, along with proletarianization, certainly contributed to the development of the free labor market. We saw in part 2, chapter 1, the same patterns in the maturing and crisis-ridden years of feudalism, where opportunities for land had a mixed effect on the fortunes of the serf and the free peasant, leading to both harsher and improved conditions for labor (this is not paradoxical since economies develop unevenly

---

[73] Aptheker, *Colonial Era*, 19.

[74] Christianson, *Liberty for Some*

[75] Karen Ordahl Kupperman, "Apathy and Death in Early Jamestown," *Journal of American History*, 66 (June 1979)

[76] See Atack and Passell, *New Economic View*, for this position

between and across sectors and regions). But this improvement in the condition of white labor in the colonies occurs also for another reason: once Africans were introduced into the colonies on a widespread basis, slave labor fell under the harsh labor regimes.

From the beginning, the system of indentured servitude had limitations. First, indentured servants served a term of contract. When this term of contract expired, servants became free men and women. This led to the development of a social stratum, the class of proletarians, that existed beyond the immediate control of economic elites. Since members of this stratum were unlikely to become property owners, the economic elite faced a similar situation to their island counterparts: a floating class fraction of laborers. It was in part because of the political fear this generated among property owners that laws were passed establishing strict property qualifications for suffrage.[77] Second, elites were fearful that resentful workers represented a physical danger. This was not an unfounded fear since rebellions did erupt from time to time (for example, Shay's Rebellion, of which I shall say more in the next chapter, represented one of the capitalist's worse nightmare — next to slave rebellions). Third, the institution of indentured servitude in the colonies declined with the growth of the factory system in England. Labor surpluses were a diminishing problem in England — they were being absorbed in manufactures — and this reduced a key push factor in emigration to the North American colonies.[78] Without a constant supply of indentured servants, and

---

[77] T. H. Breen, "A Changing Labor Force and Race Relations in Virginia," *Journal of Social History*, 7 (1973); Morgan, *American Slavery*

[78] Christopher Hill, *Century of Revolution, 1603-1714* (Edinburgh, T. Nelson, 1961)

without a push for the permanent enslavement of whites (which was probably impossible), the term of contract would see that their numbers naturally dwindled. Fourth, colonies were proliferating in North America, and many immigrants chose colonies with policies less dictated by the plantation system, such as New York and Pennsylvania. One of the primary effects of these concerns and developments was that economic elites had to improve the terms of contracts to attract fresh labor, which meant that they gave up considerable control over labor.

Caste and Black Labor

In 1663, the Royal African Company, a London based slave trading company, reincorporated, providing the colonies with a steady supply of African slaves.[79] The reincorporating of the Royal African Company occurred at an important historical conjuncture. The disintegration of the system of indenture, caused by the industrialization in England absorbing surplus populations, coincided with a great expansion of the Atlantic slave trade within the British sphere of control. Africans were already laboring on the plantations of North America, but the growth of the Atlantic slave trade made it possible to acquire a great many more Africans and acquire them at a reduced cost; labor shortages combined with supply to cause a steady stream of Africans into North America.[80] Over time, the white indentured servant was replaced by the black slave.[81]

---

[79] Kenneth G Davies, *The Royal African Company* (New York, Atheneum, 1970). For a history of the slave trade see Basil Davidson, *The African Slave Trade: Precolonial History 1450-1850* (Boston: Little, Brown, 1961).

[80] Of the 15 million or so Africans imported to the Americas, about 5 percent were sent to North America Philip D Curtain, *The Atlantic Slave Trade* (Madison. University of Wisconsin Press, 1969). Aptheker estimates "that in four centuries, from the 15th through the 19th, Africa

Beyond the direct economic benefits, the development of a slave system had several other advantages. I will mention two here: logistics and hegemony. There were, first of all, the obvious logistical advantages of slave labor over free labor. Differences between England and in the colonies again explain US exceptionalism. The particular configuration of England's economic, political, and cultural structures allowed for more orderly control of the laboring masses. In addition to the more "pure" system of wage-labor exploitation, the high level of development in the nation-state, with all that this entails — centralized governmental power, monopoly on legitimate force, standing armies, and so forth — allowed elites to efficiently manage a large proletariat. In North America, where there was no factory system or developed state system, the labor situation presented elites with considerable problems.[82] When the size of the colonies were relatively small and the system of indenture was firmly in place, labor controls functioned better; but with the growth in size of the colonies, the increasing numbers of free laborers, and the opening up of the West, elites faced the

---

lost in enslaved and killed about 65 to 75 million people, and these were a select part of the population, since normally one does not enslave the aged, the lame, the sickly," *Colonial Era*, 17

[81] Oscar Handlin and Mary F Handlin, "Origins of the Southern Labor System," *William and Mary Quarterly*, 7 (1950) It should be noted that although the flow of poor English citizens was stemmed, other European groups would enter the country in waves, particularly increasing the North which progressively abandoned slavery over time (e g , New York 1827). "From the beginning, then, the English colonies served as safety valves for the high social pressures built up by the exploitation and oppression in European states, and this continued well into the twentieth century England, Scotland, Ureland, France, Germany, Italy, Greece, Sweden, Poland, Russia, and other lands were the source from whence for centuries millions of working people went West — brining with them their skills, their strength, and their aspirations," Aptheker, *Colonial Era*, 13

[82] Fredrickson, *White Supremacy*

possibility of losing their grip over labor. Slavery allowed for a greater level of control over labor in the colonies.

Secondly, slavery helped secure the social order. Before the widespread use of slave-labor, class distinctions among Europeans and their descendants were blatant. Developing a racial hierarchy would prove beneficial to economic elites by enhancing the status of free white labor and preventing a coalition of blacks and whites workers that might rise up against the colonial masters.[83] This would distract workers by elevating their short-term pecuniary interests, as well as increasing their perceived level of freedom. "Commitment to a labor regime under which non-European slaves did virtually all of the menial and subservient work had the effect of lessening the possibility of class conflict among whites by elevating all of them to a relatively privileged social status."[84] Sparing white workers the most arduous labor tasks improved the living conditions and life chances of free whites.

The benefits of slavery were not felt by all. Of course, slaves did not benefit from the system (although elites tried to rationalize that they did, chiefly by claiming that blacks were civilized under the care of the benevolent slaveowner). The plantation regime was grounded in force and violence. Slaveowners "drove their slaves relentlessly, often to the limits of exertion. Those who faltered faced severe discipline. In the process, millions died."[85] But the fortunes of groups of whites were also imperiled by the presence of slaves. The use of slaves primarily strengthened the

---

[83] Morgan, *American Slavery.*

[84] Fredrickson, *White Supremacy.*

[85] Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: Harvard University Press, 1998), 98.

economic position of those who had the means to employ a large number of slaved. Farmers who held smaller parcels of land and owned no slaves were put at a considerable disadvantage by the large slave labor camps, most of them pushed off the best lands and politically marginalized. Thus, despite the benefits derived from the caste system, concentrated wealth in the hands of the wealthiest elites kept alive class antagonisms.[86]

The institutionalization of the slavery necessitated the development of laws to secure the social order. This began in earnest in the 1660s. There were several reasons for this. The Navigation Acts of 1660 and 1661 cut into tobacco profits, which were already depressed due to overproduction. The flow of blacks into the colonies were growing and there was a move to determine their status. The crown could see slave-labor as a stable labor force in the colonies, and with the growth of capitalism a large exploitable and controllable pool of laborers was needed.[87] The economic value of racial slavery, along with its social functions, set the fate of blacks in America for centuries to come.

The Virginia colony led the way in developing the legal system of racial slavery in North America. Virginia colonial statutes in 1661 admitted the legal existence of slavery. Other statues provided for extensions on the length of a white servants term of contract if they ran away with black slave or aided in a black slave's escape. There were statutes against white men and women marrying a "negro" or a "mulatoo." The

---

[86] Kalra, *American Class System.*

[87] Stanley Elkins and Erik McKitrick, "Institutions and the Law of Slavery The Dynamics of Unopposed Capitalism," *American Quarterly,* 9 (1957)

following year Virginia made slavery hereditary. Virginia developed the model classification system defining slavery in 1670. Massachusetts removed Indians and Africans from the militia in 1656.[88] Maryland made slavery hereditary in a series of laws in the mid-1660s. A 1664 law condemned any white woman who married a slave to perpetual bondage to her husband's master.[89] In 1670, Massachusetts passed a law recognizing the bondage of children born to slaves and the existence of a trade in Negro children. New York acknowledged slavery as an institution in 1684. South Carolina developed legislation defining slavery in 1686, although the Carolinas had legal codes dealing with slavery more than a decade before this. Connecticut, Rhode Island. New Hampshire, New Jersey, Delaware, Pennsylvania, and Georgia, whether actively or passively, all permitted slavery.[90] A 1726 Pennsylvania law decreed that a free black person who married a white person could be sold into slavery.[91]

Focusing only on legislative accomplishment can obscure matters. The early development of slavery was an organic phenomenon that did not require fundamental legal sanction to be legitimate. In fact, as Wiecek has noted, no American jurisdiction ever adopted a statute that declared "slavery shall exist." The legal basis for slavery

---

[88] Lois E Horton, "From Class to Race in Early America Northern Post-Emancipation Racial Reconstruction," *Journal of the Early Republic*, 19 (1999), 629

[89] Leslie H Fishel, Jr and Benjamin Quarles, *The Negro America: A Documentary History* (Glenview, IL Scott, Foresman and Company, 1967)

[90] Philip S Foner, *The History of Black Americans· From Africa to the Emergence of the Cotton Kingdom* (Westport, CT: Greenwood Press, 1975) Lorenzo Johnston Greene, *The Negro in Colonial New England 1620-1776* (New York, Atheneum, 1968); Charles E. Clark, *The Eastern Frontier: The Settlement of Northern New England, 1610-1763* (New York, Knopf, 1970). For a comprehensive accounting of these laws, see William M Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *William and Mary Quarterly*, 34 (1977).

[91] Horton, "Class to Race "

was in the form of provincial legislative acts, i.e., statutes were passed surrounding the institution of slavery. Legal developments therefore reflected a fundamental reality in the colonies: the racial ordering of class and labor. Wiecek identifies seven analytical categories of statutes attendant to the institution of slavery. There were statutes that prohibited slavery or sanctioned its elements; protected whatever rights slaves were permitted to have; sanctioned noncriminal slave policing; created criminal slave policing (i.e., control of slaves who transgressed criminal law); regulated the behavior between whites and blacks (such as intermarriage[92]); regulated manumissions; and controlled free blacks.[93] More broadly, Elkins and McKitrick identify four major legal categories: terms of servitude, marriage and the family, police and disciplinary powers over the slave, and property and other civil rights.[94] I focus on police and disciplinary powers over the slave in the next section, but for the remainder of this section I want to characterize the law on slavery and pass judgment on England's role in slavery and the slave trade.

---

[92] Anti-miscegenation laws play an important role in the racial caste system very early in colonial development The existence of such laws reflected the multiracial character of the colonies and the fact that blacks and whites were engaged in much personal interaction, including sexual activity Anti-miscegenation laws were not only designed to protect racial purity, but also to preserve descent and property rights, which reinforced each other. See Morgan, *American Slavery* See also Gary Nash, *The Urban Crucible: Social Change, Political Consciousness and the Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1979), Bernard Bailyn and Barbara DeWolfe, *Voyagers to the West· A Passage in the Peopling of America on the Eve of the Revolution* (New York Knopf, 1986), Edgar J McManus, *Black Bondage in the North* (Syracuse, NY. Syracuse University Press, 1973)

[93] Wiecek, "Slavery and Race," 259.

[94] Stanley Elkins and Eric McKitrick, "Institutions and the Law of Slavery: Slave in Capitalist and Non-Capitalist Cultures," *American Quarterly*, 9 (1957)

Several colonies very early on passed laws banning slavery. Rhode Island and Georgia had total bans; New Jersey, Massachusetts, and New York had partial bans. Rhode Island produced one of the more interesting antislavery laws in 1652. The law is revealing for two reasons. First, its language clearly demonstrates the thorough racialization of colonial life: "Whereas, there is a common course practised amongst English men to buy negers, to that end they may have them for service or slaves forever; for the preventinge of such practices among us, let it be ordered, that no blacke mankind or white being forced by covenant bond, or otherwise, to serve any man or his assighnes longer than ten yeares."[95] After this period slaves were to become free "as in the manner is with the English servants." If the owner does not wish to free the slave, the law continues, he is required to sell the slave in another colony. Second, the statute did not prevent the development of slavery in Rhode Island (nor did similar statues in other colonies). Newport, RI became the center of the colonial trade in slaves. Despite statutes banning slavery, by the last third of the 18th century, all colonies had a system of statutes regulating slaves and blacks.

The American system of slavery had four outstanding characteristics. First, to be a slave meant to exist in perpetual bondage. Second, slavery was hereditary and the rule of *partus sequitur ventrem* prevailed: descent was reckoned through the mother's line.[96] This guaranteed that the offspring of white men would not be entitled to the father's estate — indeed, the child as property would increase the father's estate. This

---

[95] Wiecek, "Slavery and Race," 260.

[96] This reversed the common law practice of reckoning descent through the father. As Wiecek notes, "This would not be the first time that English legal tradition was bent to serve the needs of the New World slave societies," "Slavery and Race," 263.

was a rather perverse restoration of "mother-right"! More than this, this rule prevented the "unthinkable blurring of racial and social lines in a society that viewed miscegenation as a 'stain and contamination' to white racial purity."[97] The plantation system also avoided "the creation of a free mulatto class." This generated the principle, which was universally understood by southern jurists, that "the father of a slave is unknown in our law,"[98] thus creating, *in the eyes of the law*, a race of bastards. Third, slavery was thoroughly racialized; specifically, only Negroes, mulattos, Indians, and, later, mestizos could be slaves. A free black person shouldered the burden of proof if his or her status was questioned.[99] Fourth, slaves had a dual legal status as property and as persons; which status was relevant at any given moment depended on the advantage the slavemaster and white society was seeking.[100] So when it suited the slavemaster to treat the slave as a vendible thing, to sell or lease the slave, he or she was property. When it suited society to treat the slave as a person, for example, to obtain a conviction in a criminal trial, then that is what the law did. However, the slave or a black person was never treated as the same type of person as a white was treated.

---

[97] Wiecek, "Slavery and Race," 263.

[98] Elkins and McKitrick, "Capitalist and Non-Capitalist Cultures," 161

[99] This requirement was similar to the recent California legislation, Proposition 187, which would have required free Latino citizens to produce proof of their citizenship upon request by authorities See Kevin F. McCarthy and Georges Vernez, *Immigration in a Changing Economy California's Experience* (Washington, DC Rand, 1997). It is also similar to the requirement that anybody applying for a job must prove their citizenship. This modern law, which is meant to target immigrants, is required of everybody to fulfill formal justice requirements

[100] There was a long struggle over how exactly to define the slave as property. Was the slave realty (i.e., land), personalty (i e., chattel), or a mix of the two? The former condition, especially in the form called "freehold," would have been analogous to feudal arrangements.

The question of England and slavery must be resolved. At the time of colonization, chattel slavery, in the form we are speaking about here, was not officially a lawful institution in England, even though England permitted English citizens to engage in the Atlantic slave trade.[101] This distinction between the legality of slavery in the English colonies and its illegality in England, while real at a formal level, is often used to hide or diminish the complicity of England in the slave trade and the development of slavery. Some naively characterize England's allowance of slavery and the slave trade by its citizens as "ambivalence."[102] In their view, England's politicians choose not to interfere with colonial activities (for whatever reason) and thus their role in perpetuating slavery was at most the product of neglect.

There are several points to be made against those seeking to absolve England of her participation in slavery. The settlers in North America were mainly English subjects and the colonies were an extension of the British capitalist system. Jamestown, the English colony where the first slaves were put to work, was built by employees of the Southern Company, a joint-stock company formed by merchants under the auspices of James I of England.[103] England established the colonies to obtain raw materials and strengthen the capitalist market. The colonial system was established under the authority of the King, and represented a coalition of state and private enterprise controlled or regulated by the British parliament. England was active in

---

[101] Fredrickson, *White Supremacy*

[102] Kenan Malik, *The Meaning of Race: Race, History and Culture in Western Society* (New York. New York University Press, 1996)

[103] Joe R. Feagin and Clairece Booher Feagin, *Racial and Ethnic Relations*, 6th ed (New Jersey Prentice Hall, 1999)

regulating slavery in the colonies. For example, a 1723 Virginia act designed to reduce the number of Africans being imported into the colony was overturned by the British Parliament because it damaged British trade with the colonies. In fact, the colonies often used resistance to the slave trade (such as through boycotts) in their opposition to British colonialism (though as a political weapon, not out of moral concern). The First Continental Congress suspended trade with the British in 1774. When the Continental Congress in 1776 voted to prevent slaves from being imported into the Thirteen Colonies, it was to harm British interests. England did not abolish the slave trade until 1807. They did not abolish slavery within the British Empire until 1834.[104]

Given these facts, English support for slavery cannot in any fashion be described — opposition to slavery among many English citizens notwithstanding — as "ambivalence." Slavery was not practiced in England because the hegemony of the wage-labor system and an abundance of "free" labor, displaced by the expansion of the world-economy in Europe, provided them with all the workers they needed. Rather England saw it as important for the colonies to use slave labor to produce the raw materials for their factories, since the conditions there made the widespread use of wage labor difficult. The British did not tolerate slavery — *they imposed it.* Perhaps some Western elites were "ambivalent" about slavery; but others — those with power — supported and defended slavery and benefited from it.

---

[104] Jeffrey C Stewart, *1001 Things Everyone Should Know About African American History* (New York: Doubleday, 1996)

Law and Punishment in Early Colonial America

North American colonies, along with other colonies around the Atlantic world, were prime destinations for convicts. Spain and Portugal engaged in the practice in the 1400s sporadically, eventually abandoning the practice. It was the English who "became the first country to introduce systematic transportation of criminals, a method of punishment made necessary by her colonial expansion."[105] Christianson argues that by the mid-17th century, "most British emigrants to colonial America went as prisoners of one sort or another." It might be said that English North America was a giant penal colony. "There were some significant distinctions between indentured servants, transported convicts, slaves, [etc.], but all of these qualified as prisoners, since they were deprived of their liberty to leave."[106] The trade in prisoners became fundamental to the creation of wealth for English capitalists. Georgia would in fact be founded by the director of the Royal African Company and English prisoners. This trade fell not only on the backs of the poor but also on the backs of oppressed ethnonational groups, such as the Irish.[107]

The use of convict labor was both a practical and a political solution to two problems English capitalists faced. The first dilemma was logistical. On one side of the Atlantic they had a vast world that was (from their perspective) a bounty of untapped wealth. On the other side of the ocean they had a wealthy segment of the population demanding colonial goods (and those who were not yet demanding those products

---

[105] Rusche and Kirchheimer, *Punishment and Social Structure*, 58.
[106] Christianson, *Liberty for Some*, 13
[107] Antonia Fraser, *Cromwell, the Lord Protector* (New York: Knopf, 1973)

soon would be). The second issue was political: rising population pressures and increasing impoverishment of the masses brought about by the emergence of capitalism represented a dark storm cloud pregnant with rebellion. However, domestic capitalists had an interest in who would be transported to North America. They did not wish to lose their best workers to the colonies. One observer reflecting on fruits of the policy wrote that "they have drained us of multitudes of our people who might have been serviceable at home, and advanced improvements in husbandry and manufactures; that this kingdom is worse peopled, by so much as they are increased; and that inhabitants being the wealth of a nation, by how much they are lessened, by so much we are poorer than when we first began to settle those colonies."[108] The obvious choice was to send those convicts who would otherwise have been executed or languished in prison. "Such an approach could supply workers for the plantations and help to rid the home of undesirables."[109]

The idea to transport criminals from England to the colonies ran into troubles. The vagrancy statutes that had been in effect since the 1300s (see part 2, chapter 1), did not permit exile from England. Elizabeth changed the policy to allow for banishment, which came at the same time her policies expanded the criminal definition, catching more of the population in the criminal justice dragnet and toughing up the penalties. The Vagrancy Act of 1597 legalized deportation, providing that "such rogues as shall be thought fitt not to be delivered shall be banyshed out of this Realme and all the

---

[108] J Cary, *An Essay towards Regulating the Trade and Employing the Poor of This Kingdom*, 2nd. ed. (London, 1719), quoted in Rusche and Kirchheimer, 59.

[109] Christianson, *Liberty for Some*, 9

domynions thereof and shall be conveied to such parties beyond the seas as shall be at any time hereafter for the purpose assigned by the Private Counsell."[110] Some convicts were sent to Virginia in 1606. In 1611, the Governor of Virginia asked the Crown to send prisoners facing the death penalty to the colonies.[111]

But large-scale removal and relocation of prisoners was still problematic given the prevailing legal philosophy of the day. Some contended that the Magna Carta did not allow for exile. Convict trade was also opposed by other capitalist fractions. Some business interests and religious leaders opposed transport because they believed the criminal element would contaminate the colonies; and in any case, where was the machinery in the colonies to control such a dangerous mass? In the end, those who desired a steady source of forced labor won out. A royal commission was convened and it was determined that, except for the worse offenses (such as murder, rape, and witchcraft) transportation to the colonies was acceptable.[112] A royal proclamation was issued in 1617 that "granted reprieve and stay of execution to those persons convicted of robbery and felony and who were strong enough to be employed in service beyond the sea."[113] Eventually the standard punishment for larceny and theft was transportation to the colonies. By mid 17th century, a trans-Atlantic prisoner trade was flourishing.

---

[110] Quoted in Rusche and Kirchheimer, *Punishment and Social Structure*, 59. Australia was also used as a penal colony

[111] Rusche and Kirchheimer, *Punishment and Social Structure.*

[112] Abbot Emerson Smith, *Colonists in Bondage White Servitude and Convict Labor in America. 1607-1776* (Gloucester, MA, P Smith, 1965)

[113] Rusche and Kirchheimer, *Punishment and Social Structure*, 59

Conditions for the convicts were at first comparatively good. Conditions were bad in England, which was one reason the convicts found themselves in their predicament in the first place. However, with the emergence of slavery the condition of the convicts worsened as they became less valuable to capitalists. Once the flow of slaves was regular the colonists desired to put an end to the importation of criminals, especially political criminals, to the New World (the latter, as they would stir up rebellious sentiments).[114] As Jeremy Bentham described it, it was a rebellion against the "humiliating obligation of receiving every year an importation of the refuse of the British population."[115] Those who wished to stem the flow of convicts into the colonies were met, however, by the capitalists who believed that creating a labor surplus in the colonies drove down the wages and increased the rate of exploitation. Therefore they continued to import convicts. The colonists resisted but until the declaration of independence the crown continued sending convicts. Francis Bacon wrote, "It is a shameful and unblessed thing to take the scum of people, and wicked condemned men, to be the people with whom you plant; and not only so, but it spoileth the plantation; for they will ever live like rogues, and not fall to work, but be lazy, and do mischief, and spend victuals, and be quickly weary, and then certify over to their country to the discredit of the plantation."[116]

While convict laborers were eventually freed from their service to their masters, slaves were not. The difference between convicts and slaves throughout most

---

[114] Christianson, *Liberty for Some*. They also desired to keep out "seasoned" slaves, i.e., slaves who were politically astute

[115] Quoted in Rusche and Kirchheimer, *Punishment and Social Structure*, 61.

[116] Quoted in Rusche and Kirchheimer, *Punishment and Social Structure*, 62

of North America was that convicts were set free after a term of service. Convicts were hired, not sold. All servants during this period suffered whippings and other corporal punishments, but only black slaves endured the whipping post their entire lives without committing any criminal offense. And they suffered more than whippings; for example, laws allowed for the removal of an ear or a hand, and nose-slitting.

Kennedy contends that black slaves were protected in ways that free blacks were not. Since slaves were economic investments their masters could not afford for them to be imprisoned, killed, or maimed.[117] Yet the state or colonial government compensated slaveowners for the loss of their slaves in the event of a death sentence (even if compensation was usually below market value), so it is doubtful that slaves could count on being protected by the pecuniary interests of their exploiters. In fact, capital punishment was often used in colonial America, more so in the South, and more so on slaves. In Virginia between 1706 and 1784, 555 slaves were sentenced to death. Of course, the death penalty was carried out in the North. For instance, in 1741 18 blacks were hanged and 13 burned at the stake in New York for an alleged plot to engage in criminal activity.[118]

However, most control over slaves was privately exercised. Here pre-capitalist common law reigned. The slave, not part of the "people's domain," (i.e., the public

---

[117] Randall Kennedy, *Race, Crime, and the Law* (New York: Vintage Books, 1991).

[118] Fishel and Quarles, *Negro American;* Lawrence M. Friedman, *Crime and Punishment in American History* (New York Basic Books, 1993); Philip J Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge, LA: Louisiana State University Press, 1988); Daniel Horsmanded, *The New-York Conspiracy, or, A history of the Negro Plot, with the Journal of the Proceedings Against the Conspirators at New-York in the Years 1741-2,* 2nd ed. (New York, Negro Universities Press, 1969)

sphere), was under the jurisdiction of his or her owner, and thus depended on his kindness for her/his fortunes and feared his wrath. *Paterfamilias* was central to the plantation system and its logic and the ideology that accompanied it determined the character of the law. Although Berlin draws too great a distinction between "slave society" and "societies with slaves" in the degree of *paterfamilias* (almost seeming to assign the doctrine exclusively to slave societies), he does capture well the situation blacks faced in the slave labor camps: "As the 'fathers' of their vast plantation families, paternalists granted themselves the right to enter into the slaves' most intimate affairs, demanded the complete obedience due a father, and consigned slaves to permanent childhood. This domestication of domination became a central element in shaping slave life."[119] The "Masters and overseers had the basic job of controlling the slaves and policing slave society. They punished petty offenses quickly and summarily, on the plantation and in their homes."[120] For this reason, wrongdoing by slaves was probably underrepresented in court cases. Because slaves were so tightly watched and controlled it is unlikely that they committed many of the sorts of crimes that free men and women did (which is not to say that they did not commit an assortment of crimes, from theft to murder).[121]

Despite the private control of slaves, the colonial governments, organized by the bourgeoisie, played a key role in upholding the legitimacy of the slave system. The private and public systems worked in concert. Slave codes were constructed and an

---

[119] Berlin, *Many Thousands Gone*, 99
[120] Friedman, *Crime and Punishment*, 53
[121] Christianson, *Liberty for Some*

intricate control apparatus was emplaced.[122] Slave patrols and the law of slave police were organized.[123] Eventually the local militias (which would become the state militias) were organized as slave patrols. Lists of slaves and their proper place were kept on file. By the mid-18th century, the colonies were passing statutes carefully regulating these patrols, the forerunners of the modern police force. Over time, the tools of imprisonment became more conspicuous. Slaves were branded, shaved, and there were dress codes.[124]

Many of the offenses were to prevent slaves from building coalitions among themselves for overthrowing slavery. Slaves were forbidden to congregate in town or on plantations, leaving the plantation grounds without a pass, hunting with or walking dogs, and moving about without a white escort. Slaves were also, obviously, forbidden to own weapons, drums, and other things that might be used to bring harm to the slavemaster and the system of slavery.[125] Colonial masters were fearful that blacks and whites would join across racial lines and rise up against capitalism. Splitting labor was not enough to alleviate elite apprehension, and the growing

---

[122] See, e.g , the model law "An Act for the Better Ordering and Governing of Negroes and Slaves" enacted in South Carolina in 1712 Fishel and Quarles, *Negro American*, 21-26.

[123] Wiecek notes that the law of slave police rested "on two related but seemingly inconsistent premises· (1) for one of the basic purposes of slavery, forced labor, the master was left almost entirely to his own resources; the state did not intervene to force a slave to work, but (2) all in the slaveholding society, including non-slaveholding whites and even blacks, had to be mobilized to preserve discipline and to police slaves whose behavior did not conform," "Slavery and Race," 269

[124] Slaves should dress like slaves, to wit· they should not wear "any sort of apparel whatso[e]ver, finer, other, or of greater value than negro cloth, duffils, kerseys, osnabrigs, blue linen, check linen or course garlix, or callicoes, checked cottons, or Scotch plaids," quoted in Wiecek, "Slavery and Race," 268.

[125] Wiecek, "Slavery and Race." Drums were restricted because colonist feared that the Africans would use them to communicate and thus plot rebellion. However, rebellions were uncommon before the 1800s

numbers of Africans and their descendants in North America exacerbated those fears. This led to the institution of laws to regulate the activities of blacks and restrict their intercourse with whites.[126] Widespread fear among whites that blacks would become the numerical majority in the colonies (by 1787, both Georgia and South Carolina had black numerical majorities) led some colonial governments to put limits on the growth of the black population.

It is probably obvious, but it should be emphasized anyway that behavior and conditions that were criminal for blacks were not crimes for whites regardless of their social standing. This means that a complex system of status offenses separated colonial society into a segregated criminal justice system. Segregated systems persist in American society. Status offenses for blacks (they did not apply only to slaves) parallel the situation juveniles continue to face in the United States.[127] Moreover, double standards continue to be imposed on blacks, such as when driving cars that appear to be beyond their means or walking in white neighborhoods brings them under police scrutiny.

---

[126] Wiecek, "Slavery and Race"

[127] The doctrine of *parens patriae* does impose something of a slave status on juveniles The due process rights of PINS, i.e , "persons in need of supervision" (or, variously, MINS — "minors in need of supervision," CHINS — "child in need of supervision," and the UC, or "unruly child") are problematic, their punishments arbitrary, and their legal status a priori incompetent Status offenses have been controversial See LaMar T Empey, "Juvenile Justice Reform. Diversion, Due Process, and Deinstitutionalization," ed., Lloyd E. Ohlin, *Prisoners in America* (Englewood Cliffs, NJ: Prentice-Hall, 1973; Scott H Decker, ed., *Juvenile Justice Policy. Analyzing Trends and Outcomes* (Beverly Hills, CA: Sage, 1984); Anne L. Schneider, "Divesting Status Offenses from Juvenile Court Jurisdiction," *Crime and Delinquency*, 30 (1984), Hartmann, ed , *From Children to Citizens* (New York: Springer-Verlag, 1987)

The colonial governments' principal role, besides supporting the system of segregation, was to permit the slaveowner to systematically violate what the colonists themselves recognized as natural human rights. Kennedy writes that deliberately "withholding protection against criminality (or conduct that should be deemed criminal) is one of the most destructive forms of oppression that has been visited upon African-Americans."[128] He calls this "racially selective underproduction." Wiecek writes, "Statutory provision directly or indirectly securing the rights of slaves were scanty."[129]For example, slaves could through an intermediary, a guardian *ad litem* (since the law regarded them as legally incompetent), challenge their condition of slavery. If the slaveowner lost the suit, the slave was entitled to damages; if the slave lost, they were entitled to corporal punishment (usually a whipping). So much for the positive statutory provisions. Negative provisions were much more common; here slaveowners and overseers were required to feed, clothe and shelter slaves and show restraint in the punishment of slaves. Some colonies banned work on Sunday and set limits on the length of the working day (usually to between 14 and 16 hours). Slavemasters could not simply murder their old slaves, even though the elderly were clearly an economic liability.

Some theoretical points need to be made here From an "instrumental" Marxian perspective,[130] state-capital cooperation in securing slavery is expected since the ruling

---

[128] Kennedy, *Race, Crime, and the Law*, 29

[129] Wiecek, "Slavery and Race," 265

[130] Ralph Miliband is perhaps the leading proponent of this view. See *The State in Capitalist Society* (London Weidenfeld and Nicolson, 1969), and *Marxism and Politics* (Oxford. Oxford University Press, 1977).

class is, in most aspects, in control of the machinery of government. As Marx and Engels noted, "The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie."[131] Wiecek observes, "Denominating a slave a chattel was merely a way of giving legal recognition to an underlying economic fact: the slave was a capital investment. As such, he represented an expectation to his master and had to be protected like all other forms of capital." At the same time, the observation of the structural Marxist is also true. Poulantzas theorized, "The relation between the bourgeois class and the state is an objective relation. This means that if the function of the state in a determinate social formation and the interests of the dominant class in this formation coincide, it is by reason of the state itself: the direct participation of members of the ruling class in the state apparatuses is not the cause but the effect, and moreover a chance and contingent one, of this objective coincidence."[132] Looking over the historical materials we find, for instance, the Board of Trade, an intercolonial quasi-governmental apparatus organized by the crown protecting the class interests of the plantation system over against individual planters, persuading the colonial assemblies to pass laws protecting slaves even from their masters (though to a limited extent).[133] Thus the state secures the long-term interests of the capitalist class over the short-term interests of the individual slaveowner.[134]

---

[131] Karl Marx and Frederick Engels, *The Communist Manifesto: A Modern Edition* (New York· Verso, 1998), 37.

[132] Nicos Poulantzas, *Political Power and Social Classes* (London. New Left Books, 1973), 245 See also "The Problem of the Capitalist State," *New Left Review*, 58 (1969)

[133] Wiecek, "Race and Slavery " See also Leonard Woods Labaree, ed., Royal Instructions to British Colonial Governments, 1670-1776, vol 2 (New York D Appleton-Century Company, 1935) The colonies passed various laws, typically punishing the intentional murder of a slave with a fine. Manslaughter brought a lower fine Mutilation (cutting out the tongue, putting out

The recognition of class interests in the government's meting out of punishments is perhaps most clearly seen in the fear of "outlying" slaves and "maroon colonies."[135] Some slaves would escape the plantation and establish with other slaves independent colonies. This was especially distressing to slaveowners, as it set an example for other slaves that freedom was possible. Just as slaveowners lived with the constant fear that their slaves might rise up and kill them, they lived in fear of losing their slaves' loyalties (which were scarce) or their slaves altogether. The colonial governments organized campaigns to find maroon colonies and, if the slaves resisted, legally exterminate them. Outlying slaves who were caught killing hogs or chicken-stealing were subject to summary execution. Punishments for such slaves were severe. In 1705, Virginia allowed for the punishment of dismemberment, which included castration until 1769. The objective was to terrify the other slaves.[136] "Masters were sometimes recompensed for slaves thus killed, indicating that the extermination of maroons transcended control of individual slaves and became an issue affecting the entire society."[137]

The history of slavery provides compelling support for my contention of an enduring two-tiered criminal justice system; there, the colonial government did not

---

an eye, castrating, scalding, burning, removing hands, feet, etc.) brought a fine (though it was lower than for manslaughter) There were usually exceptions for death incurred during the disciplining of a slave.

[134] Considering the matter dialectically, instrumental and structural theories are not opposed, since both capture one side of a demonstrable reality

[135] Wiecek, "Race and Slavery"

[136] *The Statutes at Large* There were other late medieval punishments used, such as breaking on the wheel, impalement, beheading, and quartering, with the body parts then displayed prominently so other slaves would get the message.

[137] Wiecek, "Race and Slavery," 271

even attempt to hide the segmentation of justice behind the rhetoric of formal equality. Nothing illustrates this more clearly than the killing of slaves by white people. In 1669, a Virginia expressly granted immunity from felonious judgment the "accidental" killing of a slave during discipline, i.e., the court was not to presume malice aforethought in these cases. Since the slave was valuable property, it was determined that an owner killing a slave for any other reason beside correction was illogical and therefore not possible.[138] The statute states that "it cannot be presumed that prepensed malice (which alone makes murther felony) should induce any man to destroy his owne estate."[139] The distinction does however suggest that in principle the killing of a slave could be a felony if it was premeditated. However, this rarely occurred. In South Carolina between 1712 and 1740, for example, the intentional murder of a slave by a stranger was a misdemeanor and required restitution to the slaveowner.[140]

If the murder of a slave did result in a felony conviction, the government recognized the political importance of upholding the diminished status of the slave and there was either a pardon or a higher court overturned the decision. In Virginia, in 1729, an overseer was sentenced to death after beating a slave to death (one of the rare occasions where felony murder law was actually applied to a slave's death). The governor pardoned him under the theory that if the sentence was carried out it would embolden slaves to defy their masters and overseers in the future. The Virginia Council stated that such an act would "in all probability stir up the Negro's to a

---

[138] Friedman, *Crime and Punishment*
[139] Quoted in Wiecek, "Race and Slavery," 267
[140] Kennedy, *Race, Crime, and the Law*

contempt of their Masters and Overseers, which may be attended with dangerous consequences to this colony."[141]

Finally, the parallel between the plantation and the prison must be made explicit. In part 1, chapter 2, I used the phrase "prisons without fences" to characterize the many analogous forms of prisonization Africans Americans have had to endure. The metaphor (although it really is not a metaphor) occurred to me in 1994 during a conversation with D. Stanley Eitzen, a professor at the University of Colorado. He had just given a talk on the Clinton crime bill (that was moving through Congress) at the university I was attending. During the question-answer period he went to great lengths to convince a conservative student that the best anti-crime bill would be one that eliminated the ghetto. Afterwards I explained to Eitzen that I did not see how that would be possible, as the ghetto itself functions as a *prison without fences*, performing a valuable service in the US political economy.

I am not alone in seeing the resemblance. Kupperman's equation of the English agricultural colony with a concentration camp,[142] or Wood's analog of the slave labor camp to describe the plantation,[143] are examples of how language can be used to pierce through the ordinary ideology that reproduces authoritarian modes of thought to

---

[141] Quoted in Wiecek, "Race and Slavery," 267

[142] See Kupperman, "Apathy and Death " In the 1950s, Adler developed an interesting approach to the sociology of concentration camps Although he focused on Nazi and Soviet camps, the approach he developed could be applied meaningfully to an analysis of all institutions of unfreedom See H. G Adler, "Ideas Toward a Sociology of the Concentration Camp," *American Journal of Sociology*, 63 (1958)

[143] See Peter H Wood, "Slave Labor Camps in Early America Overcoming Denial and Discovering the Gulag," in *Inequality in Early America*, eds Carla Gardina Pestana and Sharon V Salinger (Hanover University Press of New England, 1999)

reveal the essential truths of systems of oppression. Christianson has used a metaphor quite similar to mine in his book, *With Liberty for Some*. There he writes, "Isolated from its neighbors by wide stretches of open fields, dense woods, and running water, the rural Southern plantation was a prison without walls: self-contained, stratified, paternalistic, coercive; a society unto itself with its own laws, rules, customs, and language." The point is that the plantation system was seen then as normal and as necessary as the prison-industrial complex is seen today. No less a man of American stature as George Washington, a third-generation slaveholder, "grew up accepting slavery as natural, necessary, and moral."[144]

Wiecek writes, "Statutory law is a distillation of some of the society's most cherished values, or at least of the values of the class that wields the hegemonic power that produces law. Statutes are one way, and a solemn and formal one, for the elite that imposed its values of society to state what those values are and how behavior should conform to them No other act performs this function so conspicuously and directly."[145] In sum, we can observe that there are two standards in capitalist society, one for the exploiter/oppressor and one for the exploited/oppressed. Just as the law works in favor of modern corporate actors who live in a zone of enrichment and inclusion, so the law worked then in favor of the slaveowner. Over time, rooted in racial prejudice and ethnic sentiment, laws and ideological justifications produced a

---

[144] Christianson, *Liberty for Some*, 54 Washington also used convict labor.
[145] Wiecek, "Race and Slavery," 280

culture-ideology and political-legal structure that defined slavery precisely. The ramifications of this system are felt to this very moment.

Race, Slavery, Ideology, and Enlightenment

Although it is possible that a system of slavery could be imposed without complex legal justification or a legitimating ideology — that is by resort to brute force — objections to and uneasiness over slavery would make perpetuating a slave regime an ugly affair. To guarantee the reproduction of any massive system and to make it as orderly as possible, secular laws securing unfreedom need to be justified beyond simply showing slavery's profitability. The previous analysis was dedicated to showing how the law worked to maintain a slave society. There remains the matter of legitimacy. Although racial slavery and the slave trade had been by the mid-1600s in existence in the European world-system for two centuries, there were enough critics, and the brutality of the system was obvious enough, that its use required justification. At the same time, it should be emphasized that racial ideology was not just a justification for slavery: European racial superiority was fundamental to a white person's worldview.

The colonizers adapted several lines of thinking to fashion an ideology with which to legitimate the use of slave-labor. These lines of thinking were adapted from earlier ideological threads and from the myth of black inferiority (see part 2, chapter 1). One of the principle ideological justifications for the legality of slavery can be found in the 1641 decree by the Massachusetts *Body of Liberties* that there could be no bond slavery in the colony, *except* for captives in a just war or voluntary servitude. "For

seventeenth-century Europeans slavery meant a total or absolute state of unfreedom. In theory, a slave had forfeited his life as a result of a crime or captivity in war but his death was deferred as an act of mercy on the understanding that henceforth he could claim none of the rights associated with being a member of society or one of its constituent corporate groups."[146] The principle was an ancient one, justifying the practice of ancient slavery. With social and political status denied, the slave was property, or chattel, in the state's eyes.[147] The law also allowed for the enslavement of "such strangers as willingly selle themselves or are sold to us."[148] The concept of enslaving strangers is derived from Leviticus which refers to non-Jews; for the colonists "stranger" meant Negro or Indian.[149] Along with Europeans capturing Africans in "war," the notion that captive Africans were guilty of crimes or were prisoners of war *in Africa* was carried over to the English context.

This last component is not as remote as it may seem upon first reflection. Redefining forced labor as an obligation of prisoners is a practice that continues today. Behind the claims of Enlightenment reformers and contemporary politicians and penal "experts" that working prisoners reforms them, or that the burden to taxpayers is

---

[146] Fredrickson, *White Supremacy*, 70. This view was not unopposed, even among Puritans Samuel Sewall produced a pamphlet titled, *The Selling of Joseph: A Memorial*. Most Puritans believed that blacks bore the cure of Cain and that slavery was their atonement and rejected Sewell's interpretation of the bible. See Fishel and Quarles, *Negro American*.

[147] As Fredrickson notes, "In practice, of course, no slave society had ever been able to ignore, even in its slave codes, that the slave was in fact a human being with a will of his own. But legal recognition of the humanity of slaves was more likely to be a pragmatic response to their ability to resist total domination by being insubordinate or rebellious than the reflection of a humanitarian concern with their condition," *White Supremacy*, 71

[148] Quoted in Wiecek, "Race and Slavery," 260

[149] New York had a similar provision

lifted somewhat by making prisoners "pay for their stay," or that seeing criminals in striped jumpers and ball and chain is a deterrent to crime — captive labor is being legitimated. "The chain gang consisting primarily of black convicts working the roads of the Deep South embodied the brutality of southern race relations, the repressive aspects of southern labor relations, and the moral and economic backwardness of the region generally. But when it originated, the penal road gang was regarded as a quintessential southern Progressive reform and as an example of penal humanitarianism, state-sponsored economic modernization and efficiency, and racial moderation."[150] The practice of working prisoners finds it roots in ancient slave law, resurrected in the English colonies, and made fundamental to the caste-class system of domination throughout US history.

This matter of indigenous slavery on the African continent, used to justify the enslavement of Africans bought from other Africans should be mentioned here as it is a source of much controversy. The ideological intent of the claim is to reduce Africans to the moral equivalent of European slavers — "Well, they enslaved their *own* people and sold them into slavery." Such a contention is fallacious in form: how do alleged exploitative practices in Africa justify exploitative practices in the Americas? Does Hitler's genocide of the Jews sanction Jackson's genocide of the American Indian? But putting inadequate logic to one side, the facts do not appear to support the empirical content of the claim. Rodney argues that slavery in Africa existed in a limited number

---

[150] Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South 'The Negro Convict is a Slave," *The Journal of Southern History*, 59 (1993), 85-86

of places and constituted only minor social and economic relations. Rather, the demand for human beings by the European-based slave trade created a network of African elites who prospered from a traffic in human beings. These African elites only then incorporated chattel slavery into their domestic economic structures. From Rodney's standpoint, widespread use of slavery in Africa and Africans' participation in slavery was a result of the condition of underdevelopment at the hands of European colonizers.[151] Of course, this does not justify Africans enslaving Africans, but the corrupting effects of European practices are a legitimate point of critique, revealing one more ill-effect of capitalism. Others, such as Kopytoff and Miers, suggest that the problem is not the existence of slavery per se but how slavery is conceptualized, with African slavery being part of a complex whole of social relations markedly different from European relations.[152] Comparatively, what is often regarded as African slavery takes a form more like the lord-serf relations.[153]

---

[151] See Walter Rodney, "African Slavery and Other Forms of Social Oppression on the Upper Guinea Coast in the Context of the Atlantic Slave Trade," *Journal of African History*, 8 (1966); *How Europe Underdeveloped Africa* (London. Bogle-L'Ouverture Publications, 1972). Cf. John D. Fage, "Slavery and the Slave Trade in the Context of West African History," *Journal of African History*, 10 (1969).

[152] See Igor Kopytoff and Suzanne Miers, "Introduction. African 'Slavery' as an Institution of Marginality," *Slavery in Africa: Historical and Anthropological Perspectives*, eds. Suzanne Miers and Igor Kopytoff (Madison University of Wisconsin Press, 1977).

[153] For further discussions on these issues see David Eltis and Lawrence C. Jennings, "Trade Between Western Africa and the Atlantic World in the Pre-Colonial Era," *American Historical Review*, 93(1988), Joseph E. Inikori, ed., *Forced Migration* (New York: African Publishing Company, 1982); Martin Klein and Paul E. Lovejoy, "Slavery in West Africa," in *The Uncommon Market*, eds. Henry A. Gemery and Jan S. Hogendorn (New York: Academic Press, 1979), Patrick Manning, *Slavery and African Life: Occidental, Oriental and African Slave Trades* (Cambridge: Cambridge University Press, 1990); and John K. Thornton, *African and Africans in the Making of the Atlantic World, 1400-1680* (New York Random House, 1992)

Whatever the legitimacy of carrying over from Africa the practice of enslaving war captives, the view that slaves were war captives and that this principle was universally recognized was given sanction at the intellectual level by the well-respected English philosopher John Locke. Although there is a literature seeking to absolve Locke of his support of North American slavery,[154] Locke was deeply involved in slavery. He was appointed secretary of the Lords Proprietors of Carolina in 1668, where he oversaw aspects of the colony's business and played a principal role in writing the *Fundamental Constitution of the Carolinas* (1669). The *Fundamental Constitution* declared that "every freeman of Carolina shall have absolute power and authority over his negro slaves."[155] Okoye writes, "A reading of the one hundred and tenth article of the government of Carolina makes chillingly obvious that Locke knew about and fully sanctioned the American practice of consigning black people to everlasting servitude."[156] Locke took more than a philosophical and political interest in

---

[154] William Uzgalis, "'. The Same Tyrannical Principle': Locke's Legacy on Slavery," in *Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy*, ed Tommy L. Lott (Maryland: Rowman and Littlefield, 1998); Richard Farr, "'So Vile and Miserable an Estate' — The Problem of Slavery in Locke's Political Thought," *Political Theory*, 14 (1986), 285 Cf M. Seliger, "Locke, Liberalism and Nationalism," in *John Locke. Problems and Perspectives*, ed. John W. Yolton (Cambridge Cambridge University Press, 1969), 28-29. Tommy L. Lott is representative of this literature In the introduction to the edited collection, *Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy* (Lanham: Rowman and Littlefield Publishers, 1998), he writes that "Locke's ambivalence towards slavery continues to frame philosophical discussions in current social and political theory," xiv

[155] Quoted in Uzgalis, "Same Tyrannical Principle," 55

[156] F. Nwabueze Okoye, "Chattel Slavery as the Nightmare of the American Revolutionaries," *William and Mary Quarterly*, 37 (1980), 10.

slavery and the Atlantic slave trade; between 1671-1675, he held stock in Royal African Company, a London-based slave trading company.[157]

Locke advanced the war captive justification for slavery in the *Second Treatise*. There he argued that slaves were "captives taken in a just war . . . of nature subject to the absolute dominion and power of their masters. These men . . . forfeited their lives and with it their liberties, and lost their estates, and being in the state of slavery not capable of any property, cannot in that state be considered as any part of civil society, the chief end whereof is the preservation of property."[158] The argument has a general form that covers more than racial slavery.[159] Under such an argument any war captive of any ethnicity or race could become a slave. Yet only Africans were enslaved in large numbers. The *Second Treatise* was written some time after Locke sold his stock in the Royal African Company and retired from the slavery business. But given previous statements Locke was involved in crafting, namely the *Fundamental Constitution*, it is reasonable to read into his justification a racial assumption. The language of the Carolinas' constitution did more than ordain the power of the slavemaster over his slave; it specifically referred to the "negro slave." Qualifying the term "slave" with the term "negro" in a 1669 legal document again shows that the racialization of slavery was codified long before the United States was founded as a nation. Locke was not just

---

[157] Okoye, "Chattel Slavery"; K. G Davies, *The Royal African Company* (New York. Athenaeum, 1970), Anthony Gronowicz, *Race and Class Politics in New York City Before the Civil War* (Boston· Northeastern University Press, 1998).

[158] Quoted in A. Gronowicz, *Race and Class Politics*, 12

[159] Years later this argument would be used by the famous pro-slavery philosopher George Fitzhugh, the author of *Sociology for the South* (Richmond, VA: A Morris, 1854), "Southern Thought," *DeBow's Review*, 23 (1857), and several other works

one of many liberal philosophers consulted by the colonials. "John Locke was by far the most quoted authority — a phenomenon that led an opponent of the American cause to conclude that the founding fathers were 'all Locke's disciples.'"[160]

Given the depth of religious conviction that existed then, a religious justification was probably inevitable and certainly useful. There was considerable religious opposition to slavery, especially among Quakers (although William Penn owned slaves). Quakers objected in principle to the perpetual bondage of human beings. They also opposed brutal treatment of convicts. Puritans, ardent slave traders,[161] considered Quakers major thorns in their collective side. The Puritan's view was that "an African was better off a slave in a Christian society than free in 'African Savagery.'"[162]

This view did not go unchallenged. In an early anti-slavery pamphlet, *The Selling of Joseph*, written in 1700, Samuel Sewall, while agreeing that "Blackamores" were "the Posterity of Cham," and therefore "under the curse of slavery," and moreover that blacks were biologically different and inferior, believed that this did not justify enslaving them.[163] Against Sewell, John Saffin, in *A Brief and Candid Answer to a Late Printed Sheet, Entitled 'The Selling of Joseph',"* argued that the inequality of man was attributed to a divine plan and that therefore it was good to capture blacks and transport them to America. In justifying his position, he attributed to Africans several

---

[160] Okoye, "Chattel Slavery," 10.

[161] Jeffrey C Stewart, *1001 Things Everyone Should Know About African American History* (New York. Doubleday, 1996)

[162] Joseph E. Harris, *Africans and Their History*, 2nd ed. (New York: Meridian, 1998), 6

[163] Samuel Sewall, *The Selling of Joseph· A Memorial*, ed., Sidney Kaplin (Amherst: University of Massachusetts Press, 1969)

of the characteristics that ring familiar today in racist propaganda: Africans were innately prone to violence, mischief and murder. They were libidinous and rude.[164]

This view that whites were doing blacks a favor by rescuing them from their backwardness would become widespread, and by the time of the War of Independence Virginians were firm in their belief that slaves required their beneficent guidance.[165] The argument, however, did not enjoy an unsoiled rise, and the controversies forced the colonists to change the laws. The savagery justification ran into difficulties when Africans actually began to be baptized in large numbers and on this basis proclaimed their equality with English citizens. The colonies quickly responded with legislation backed up by the argument that being a Christian did not guarantee manumission. After all, "the Bible spoke of slavery without condemning it."[166] Because of its Puritan character, Kalra calls this practice "black Protestant slavery."[167]

Another ideological justification for captivity rested on the contention that blacks were dangerous and could not be trusted. John Saffin had argued that they were innately prone to deceit. This was used to justify bans on blacks testifying against whites in court and for laws making it a criminal offense for a black man to be armed (except in extraordinary conditions of war). Blacks were believed to have "base and

---

[164] In G. H. Moore, *Notes on the History of Slavery in Massachusetts* (New York D. Appleton and Co , 1866). See also Charles H Wesley, "The Concept of Negro Inferiority in American Thought," *Journal of Negro History*, 25 (1940)

[165] Patricia Bradley, *Slavery, Propaganda, and the American Revolution* (Jackson: University Press of Mississippi, 1998)

[166] Harris, *Africans*, 6

[167] Kalra, *American Class System*

corrupt natures." Slave policing and extra-legal violence were justified by claims that slave were "of barbarous, wild, savage natures, and as such renders them wholly unqualified to be governed by laws, customs, and practices of this Province." The government would not be doing its duty if it did not "restrain the disorders, rapines and inhumanity, to which they are naturally prone and inclined."[168]

I have been arguing throughout my dissertation that Europeans believed that non-Europeans could be legitimately enslaved because the latter were inferior and therefore justifiably subject to slavery. Fredrickson contends that this view is problematic. According to him, the evidence suggests that non-Europeans were enslaved because of their legal and cultural vulnerability, rather than the color of their skin or geographic origin. It is more likely, he argues, that the ideology that conceptualized non-Europeans as inferior human types developed later. But his position begs several questions: How is legal, political, and cultural insecurity formed in the first place? Why was it that Africans in the colonies were from the very beginning regarded as having a different status? Why were among the earliest laws pertaining to black laws against race-mixing? In 1630, in Virginia, a white man, one Hugh Davis, was whipped in front of an assembly of blacks for defiling his body by laying with a negro woman.[169]

In contrast, I argue that it is because Africans were viewed as a priori racially inferior, and because European laborers had the security blanket of their membership

---

[168] The quotes are from various state statutes Wiecek assembled in his article, "Race and Slavery"

[169] *The Statutes at Large; Being a Collection of All the laws of Virginia, from the First Session of the Legislature, in the Year 1619*, ed., William Waller Hening (Richmond. Samuel Pleasants, 1809-23).

to the European political and cultural system, regardless of how subordinated or privileged they could be within that system, that blacks were legally and culturally disadvantaged. Reckoning the psychopathological aspects of African inferiority and European superiority complex that dominated the mind of English colonist, Fishel and Quarles write that "the Negroes' lowly status does not wholly account for the prejudicial attitude toward them. For it is to be noted that this attitude was prevalent before slavery had taken firm root, and it existed in sections where Negroes were few."[170] While Fredrickson has produced a substantial work, the effect of his line of reasoning, a class-reductionism he shares with so many other historical social scientists, is to gloss the uniquely racist character of the European world-system and racism's central role in creating the racial caste system.

Some scholars, such as Seymour Drescher, and, more recently, Kenan Malik, go further than Fredrickson in minimizing the racial basis for slavery.[171] "The principal arguments for slavery were not racial but centered around the practicality of economic utility of the use of slaves," Malik contends; "Precisely because slavery was defended for its practical utility, the main debate was that between the rights of property-owners and the right to liberty."[172] Similarly, Drescher writes, "Racial, biblical and classical Aristotelian proslavery arguments occupied a very subordinate place in British

---

[170] Fishel and Quarles, *Negro American*, 7.

[171] Seymour Drescher, *Capitalism and Antislavery: British Mobilization in Comparative Perspective* (Oxford University Press, 1987), and *From Slavery to Freedom: Comparative Studies in the Rise and Fall of Atlantic Slavery* (1999); David B. Davis, *The Problem of Slavery in the Age of Revolution 1770-1823* (Oxford University Press, 1989); Anthony Barker, *The African Link British Attitudes to the Negro in the Era of the Atlantic Slave Trade, 1550-1807* (London Frank Cass, 1978), Malik.

[172] Malik, *Meaning of Race*, 62, 63

political discourse during the eighteenth and early nineteenth centuries."[173] Stephan Palmié contends that in the beginning "the primary criterion for defining social marginality was not skin color or geographic origin, but landlessness."[174] Malik speaks for all of them when he concludes that "the justification for slavery was economic, not racial."[175]

The problem is that these authors concentrate on anti-slavery sentiments in a discourse that gives too much power of influence to what they regard as the correct moral standpoint: abolitionism. Their error is their uncritical commitment to the Enlightenment project. They believe that Enlightenment philosophy, which allegedly holds a universalistic conception of human nature that precludes racial thinking, was shared by elites and therefore they would not have used racial justifications for slavery. This means that the idea that racial thinking played a role in creating slavery was out of the question. Furthermore, they believe that slavery was a conspiracy of a handful of elites, imposed not only on the majority colonists who were not wedded to a racist worldview, but on the capitalist class who were essentially liberal.

Malik's argument is typical of the sort of historiography that desires to impose on the past a relatively nonracialized view of the world by focusing on the legal arguments of liberal elites, which predictably centered on property relations rather than racial ones, and Enlightenment philosophers who allegedly held rather progressive views on human differences. Relying on the arguments developed, for

---

[173] Drescher, *Capitalism and Antislavery*, 20
[174] Stephan Palmié, "Introduction," xi. Cf. Breen, Morgan, *American Slavery*
[175] Malik, *Meaning of Race*, 67

example, in the 1790 Committee on Colonies in the National Assembly in France — where the civil rights of "free men of color" were defended and slavery in the colonies upheld— gives a false picture of the reality of racial formation in the colonies of the "New World." Malik sees racial prejudice as a product of the backwardness of feudal society — the same society that burned witches, he reminds us. With the coming of the Enlightenment, he contends, it became possible for the first time in human history for prejudice to be done away with and a new order of equality to be ushered in. Indeed, Malik describes feudal subjects as "ignorant." The "enlightened view" of elites — European politicians and philosophers — would lead the rest of European society out of the darkness.

Malik's position fails on a number of counts. First, racial prejudice is neither primordial nor the product of "backward feudal societies." Race prejudice emerges as a product of the European world-system and involves the transformation of a prehistory of racism unique to Christian and Muslim worldviews. Second, if Malik's claims were true, the "lower classes" would be the last to be enlightened about the innate equality of human beings. This is doubtful. As Roediger has pointed out, "In certain places and at certain times between 1607 and 1800, the 'lower sorts' of whites appear to have been pleasantly lacking in racial consciousness."[176] (This should not obscure the truth that at other times and places their collective consciousness was quite the opposite.) As for Malik's claims of "feudal backwardness," several historians

---

[176] David R Roediger, *The Wages of Whiteness. Race and the Making of the American Working Class* (New York: Verso, 1991), 24.

have concluded that Portugal, where the slave trade began, was no longer feudal by the end of the fifteenth century.[177] And, as I demonstrated in part 2, chapter 1, the brutality of the state grew with capitalism.

Malik's argument further suffers in his claims that racial consciousness developed after the Enlightenment project, frustrated by the needs of capitalism that caused inequality, was forced to develop a racial ideology to legitimate class differences.[178] But, in fact, modern racial thinking emerged during the Renaissance at the dawn of the capitalist world-market. Furthermore, characterizations of Enlightenment philosophers that portray them as uniformly anti-racist is absurd. Many Enlightenment philosophers were open racists and eagerly helped to strengthen racial ideology. David Hume, for example, wrote in his *Essay and Treatises*, "I am apt to suspect the negroes . . . to be naturally inferior to the white." In fact, for Hume, all races were inferior to the white race: "There never was a civilized nation of any other complexion than white, nor even any individual eminent either in action or speculation. No ingenious manufacturers amongst them, no arts, no sciences."[179] Hume's work was preceded by a voluminous literature published throughout the 18th

---

[177] Sergio Bagú, *Economía de la sociedad colonial, ensayo de historia comparada de América Latina* (Buenos Aires, El Ateneo, 1949) argues that Portugal was already capitalist at this time. See also Caio Prado, *The Colonial Background of Modern Brazil* (Berkeley University of California Press, 1967). The idea of "backwardness" is problematic It more of a chauvinistic remark than a scientific term.

[178] His line of reasoning is drawn from Georg Lukács, *The Destruction of Reason* (Atlantic Highlands, NJ· Humanities Press, 1981). Lukács argument is much more sophisticated, though quite obscure. I discuss Lukács in the next chapter.

[179] Quoted in Harris, *Africans*, 7 Hume's book was published in 1768.

century that described Africans as "monkeys" and as "naturally very stupid."[180] In fact, as Harris points out, "African or black inferiority as a concept reached its high point when it became intellectualized by philosophers of the Enlightenment."[181] The Enlightenment was an intellectual movement rooted in capitalism, so how is it possible that the Enlightenment philosophy would have to degenerate into racism upon the predictable outcomes of the motion of capitalism when it was fathered by the very system that racialized the world?[182]

Showing that the philosophers of the Enlightenment were not monolithically progressive helps us demystify the intellectual context that produced the liberal rhetoric of "equality," "fraternity," "democracy." But the bigger problem with

---

[180] William Bosman, *A New and Accurate Description of the Coast of Guinea* (1705); James Houston, *Some New and Accurate Observations of the Coast of Guinea* (1725), John Barbot, *A Description of the Coasts of North and South Guinea* (1732); Robin Hallet, *The Penetration of Africa* (1761). Montesquieu noted in 1748 "It is impossible for us to suppose these creatures to be men," quoted in Harris, *Africans*, 8.

[181] Harris, *Africans*, 8

[182] Malik, in *Meaning of Race*, rejects the "traditional, indeed common-sense understanding . . . that a racial view of humanity had led to a restriction on the rights of certain groups in society, whether formally and informally," on the grounds that "this is a tautological argument, amounting to the assertion that racial difference give rise to racial inequality," 69 Malik separates out the objective components of a real system, arranges them into a linear argument, and then alleges tautological reasoning. He is thus attacking a figure made of straw. Statements such as, "It is not racial categorisation but the social needs of modern society that impel it to restrict the conception of equal rights," or "Economic utility and the desire not to challenge property rights, not racial ideology, gave rise to Western ambivalence about slavery" are absurdities Malik goes on to racialize cultural difference to make the assertion that cultural distinction equals racial inequality, that is, recognizing cultural differences is a form of racism. But cultural difference is not equivalent to racial inequality/difference. Moreover, racial categorizations and racial ideology clearly played a role in restricting the rights of groups of people from the very beginning of the European world-system Racial differences are constructions of a particular system of inequality that depends fundamentally on racial categorization, elements of which predate that system Like Barbara Fields, Malik is attempting to transform race into an illusion, something akin to claiming that social class categories comprise an ideology created and perpetuated by the status-privileged to hide persistent racial inequalities and divide racial groups

arguments that slavery did not have a racial basis, or that race did not play a primary role in the social ordering of colonial life, or that racial consciousness is merely an ideological cover over pure economic stratification, rests in the brute fact that Europeans were *not* enslaved and Africans *were*, and moreover that free Africans in the Americas did *not* enjoy the status of Europeans. Eltis, who notes major non-economic factors for the enslavement of Africans, argues, "While it certainly became profitable to replace European indentured servants with African slaves, the main issue was not relative profits but rather the inability of colonists to conceive of Europeans as chattel slaves."[183] If the use of slavery was only based on property and propertylessness then why were not Europeans used as slaves? Why could not the captives of European wars be enslaved? And if racial ideology was developed only to protect the property of the elite, why were not the lower social classes of Europe thoroughly racialized? Europeans came to develop a common racial identity — How was this possible without racial thinking or at least racially-analogous thinking?

Conclusion

After a review of Blauner's conceptualization of colonialism and an examination of the relationship of the colonies to the larger trans-Atlantic historical system, several features of colonial life in North America were analyzed, including class structure, the history of slavery, the development of racial caste, and the structure and function of punishment. I emphasized how the law was used to secure the racial

---

[183] David Eltis, "Europeans and the Rise and Fall of African Slavery in the America: An Interpretation," *The American Historical Review*, 98 (1993), 1422.

ordering of the colonial system. I also compared the slave-labor system to other forms of labor in the colonies. Non-slave labor was usually not black. The slave system fostered extreme brutality[184] and was usually a permanent condition. Even convict labor, arguably the closest condition of unfreedom to slave-labor, was not perpetually unfree. One of the key developments concerning free labor was the growth of the reserve army of labor, which would in the future require increasing dedication of state resources to control the emerging proletariat. The caste system is indicated by laws criminalizing the amalgamation of racialized groups and the subjection of blacks and whites to different qualities and quantities of punishments. The chapter concluded with an analysis of the prevailing ideological structures, demonstrating that blacks were not believed to be members in the community of citizens wherein equality as an ideal theoretically applied. This duality is elevated to a governing ethical principle and will be codified in the US Constitution. The dual status of blacks as people and as property precluded their presence in the "people's domain." Finally, we saw that many of the ideological justifications for slavery were carried over from the previous historical period, thus providing continuity in the treatment of privately subjected population from the feudal order to the capitalist order.

In the next chapter, the period from the birth of the United States through the prehistory of the Civil War is theorized. I begin with an analysis of the key documents that founded the country to show how they were meant to establish a white capitalist

---

[184] Cf. Elkins and McKitrick: "Indeed, the truth would doubtless not be greatly stretched were we to concede Ulrich Phillips' sympathetic picture of a just regime tempered with paternal indulgence on the majority of well-run plantations," "Capitalist and Non-Capitalist Cultures," 162

republic. It was never the intent of the framers of the Constitution to create a society that would strive for the ideals of democracy and equality, not even for fellow whites. Rather the design of the nation was as a white *bourgeois* republic. The logics of domination constructed and implemented at this moment of history will have a profound impact on US sociopolitical and economic life. I then analyze the evolution of crime and punishment and its relation to the rhythms of the capitalist economy. The caste differentiation of crime and punishment is studied, and the development of the classical conception of crime and justice is linked to the creation of a dual society, wherein white males, belonging to the realm of citizenship and freedom, enjoy a different system of justice than those determined to be non-citizens. The caste system becomes distinct as most forms of labor unfreedom are abolished, leaving black slavery and convict labor as the only forms of captive labor. With the ending of slavery in the 1860s, slave labor and convict labor would merge. Finally, I finish with an analysis of the state of racial ideology. The key developments in this period are the emergence of scientific racism and amalgamation of rational justifications for slavery with the religious justifications for slavery that had prevailed to that point. Thus we will see, contrary to the notion that rationalism overthrew religion in the 19th century, religion and science accommodate themselves to each other, underpinned by the structural logic of the larger historical system in which they appear.

CHAPTER 3

ENLIGHTENED WHITE REPUBLIC, 1790-1865

The same man also purchased Randall. The little fellow was made to jump, and run across the floor, and perform many other feats, exhibiting his activity and condition All the time the trade was going on, Eliza was crying aloud, and wringing her hands. She besought the man not to buy him unless he also bought herself and Emily She promised, in that case, to be the most faithful slave that ever lived The man answered that he could not afford it, and then Eliza burst into a paroxysm of grief, weeping plaintively. Freeman turned round to her, savagely, with his whip in his uplifted hand, ordered her to stop her noise, or he would flog her. He would not have such work — such sniveling; and unless she ceased that minute he would take her to the yard and give her a hundred lashed . . Eliza shrunk before him and tried to wipe away her tears, but it was all in vain She wanted to be with her children, she said, the little time she had to live. All the frowns and threats of Freeman could not wholly silence the afflicted mother. She kept on begging and beseeching them, most piteously, not to separate the three. Over and over again she told them how she loved her boy. A great many times she repeated her former promises — how very faithful and obedient she would be; how hard she would labor day and night, to the last moment of her life, if he would only buy them all together. But it was to no avail, the man could not afford it. The bargain was agreed upon, and Randall must go alone Then Eliza ran to him, embraced him passionately; kissed him again and again; told him to remember her— all the while her tears falling in the boy's face like rain.

Freeman damned her, calling her a blubbering, bawling wench, and ordered her to go to her place, and behave herself, and be somebody. He swore he wouldn't stand such stuff but a little longer. He would soon give her something to cry about, if she was not mighty careful, and *that* she might depend upon.

The planter from Baton Rouge, with his new purchase, was ready to depart

"Don't cry mama. I will be a good boy. Don't cry," said Randall, looking back, as they passed out of the door.[1]

I do several things in this chapter. First, using a critical mode of document analysis, I demonstrate the racial and class character of the Constitution of the United States both in itself and through other documents. This analysis lays a foundation for understanding the struggle over whiteness in the post-"revolutionary" period. The Constitution, written in 1787, is a different type of document than are the Declaration

---

[1] Solomon Northup, *Twelve Years a Slave: Narrative of Solomon Northup, a Citizen of New-York, Kidnapped in Washington city in 1841, and Rescued in 1853, from a Cotton Plantation near the Red River, in Louisiana* (1853), 73, reproduced in Herbert Aptheker, ed , *A Documentary History of the Negro People in the United States*, vol 1, *From Colonial Times Through the Civil War*, 2nd ed (New York· Citadel Press, 1963), 207-208 The auction was held in New Orleans in 1841. The kidnapping of free blacks was a rampant crime during slavery

of Independence or Virginia's Declaration of Rights, both written in 1776. The "revolutionary" language of those documents has become superimposed on the constitutional documents. But the Constitution of the United States does not mention equality. Nor does the Bill of Rights. Stanley Katz contends that this was an intentional omission, that the framers did not seek to establish a country based on goals of equality.[2] Since the validity of laws passed in the United States are often subject to constitutional interpretations, where their form and content must be consistent with the founding document and precedents based on that document, the undemocratic nature of the US Constitution continues to limit democracy today.

Second, I briefly examine the question of the changed character of United States' relation with England after the War of Independence. I argue that the United States, especially the southern states, remained a neocolony of England. I criticize those perspectives that conceptualize the United States as a "dual mode of production" economy.[3] The line of thinking misuses the Marxian mode of production model and overemphasizes the fractionalism between the North and the South, thus misinterpreting the cause of antagonisms. Rather I argue that the exploitation of slave-labor in the South was capitalist exploitation and, moreover, that northern industries built their wealth on the primary commodities produced by slaves just as England did. Hence I disagree with those who contend that a "contradiction between two modes of

---

[2] Stanley N Katz, "The Strange Birth and Unlikely History of Constitutional Equality," *The Journal of American History*, 75 (1988). He argues that the equality discourse developed much later.

[3] Berch Berberoglu, *Political Sociology: A Comparative Historical Approach* (New York General Hall, 1990), Melvin Leiman, *Political Economy of Race* (Pluto Press, 1993).

production" caused the Civil War. Clearly, the Civil War was not the United States' "bourgeois revolution."

Third, in a continuation of the analysis in part 2, chapter 2, I examine the caste-class segmentation of crime and punishment. I begin with an examination of the criminal justice system as it pertains to free whites by linking changes in the structure of punishment and patterns of crime to the rhythms of the capitalist economy in the period between 1790 and the Civil War. Here we see the imperative of the state to control labor surpluses and discipline labor. Then I explore the diminished racial status of blacks through their underprotection by the laws, courts, and law enforcement of selected states in the years after American independence. I reveal the perpetrators of crimes against blacks being treated differently than crimes perpetrated by blacks. This section supports soundness of the caste-class model presented in part 2, chapter 4. More specifically, I demonstrate the caste differentiation of labor and its relationship to crime and punishment, substantiating the relatively independent impact of racialization in American life.

Fourth, as I have done in the previous chapters, I explore the quality of racial thinking appropriate to the caste-class system and the general level of ideological development under industrial capitalism. Specifically, I develop an intellectual history of scientific racism and show how it combined with the religious justifications for slavery to strengthen the structure of racial caste. The justification in this period transcends racial thinking, however, as class differences are also ideologically rooted in alleged biological differences. Here we see in development the roots of social

Darwinism, which will, after the Civil War (covered in the next chapter), lead to the justification of Jim Crow segregation and racial purification movements, and will foster a certain view of the criminal in which the criminal is conceived as a biological degenerate.

Forming the Racial State. The Meaning of the United States Constitution

The work in this section mixes historical narrative with document analysis to show how the legal basis of the United States is racist and classist. This fact is intimately linked to criminalization because the legacy and current practice of regarding certain "types" groups of people as inferior subject politically-economically marginalized groups disproportionately to repressive controls. Moreover, as I noted in the introduction, the question of justice is central to this dissertation; examining the legal basis of American society is crucial to determining whether the United States is a just society. I will demonstrate that the politico-legal basis of the United States is fundamentally unjust. Texts analyzed include official documents, such as the Declaration of Independence, Articles of Confederation, and several other documents written by the framers, for example, selected Federalist papers. The principal document analyzed is the US Constitution.

West identifies three central features of the dialectical tradition in this type of analysis, citing Georg Lukács as the twentieth century's main innovator. First, *critique* is the mode of theoretical activity. This involves demystifying surface appearances and revealing the underlying structure and process of a thing. It is the underlying reality that determines the appearance of the thing's surface, and that surface, like a pencil in

a glass of water, is often bent and distorted.[4] Part of the distortion may be because of the particular prism through which the thing is perceived, but the thing itself also generates its own deception — although a pencil in water is not really bent, neither is the bent imagined. Second, the dialectical tradition investigates the concrete totality. West writes that "dialectical thought is guided by the rhetorical trope of *synecdoche*: of part-whole relations in which a totality serves as the context within which complex levels are mediated and related."[5] Third, the dialectical tradition avers the necessity of holding in one's mind a vision of a better future, what West calls the problematic of "*sociopolitical crisis*"[6] (although I do not care for that term very much).

Deploying the three features West identifies, I critique and contextualize the documents to reveal their racial intent and class character (which is at times not well hidden, nor is it meant to be). For instance, I show how the US Constitution negated, preserved, and transformed elements of Articles of Confederation. In doing so it justified and secured a more deeply racialized and propertied society, masking the

---

[4] Cornel West, *Keeping Faith: Philosophy and Race in America* (New York Routledge, 1993), 143 This differs, West contends, from the *criticism* of the humanist, which only corrects surface problems, and postmodernism's tactic of *deconstruction*, "a potentially radical yet ultimately barren operation of ingeniously dismantling humanist thought and (attempting to) disarm dialectical reflection "

[5] West, *Keeping Faith*, 143-144 This is in contrast to humanism's use of the *metaphor*, "the "unmediated identification and resemblance (between subject and object, ideas and world) in which correspondence is attained and unity is achieved," and postmodernism's use of *metonymy*, "the juxtaposition or contiguity of the free play of signifiers which preclude correspondence and unity " The part-whole analysis of dialectics should not be confused with the part-whole analysis of structural-functionalism, the latter of which is ahistorical and logically circular, dialectical thought focuses on the development of systems and is therefore neither tautological or illegitimately teleological

[6] The objective of transforming the present is contrasted with humanism's focus on the heroic will (rooted in individualist ideology) and postmodernism's emphasis on the antinomies of humanist thought

depth of class-exploitation through the liberal rhetoric of formal legal equality and individual liberty, and dissembling the racial character of group exclusion while explicitly maintaining group exclusion. It never let go of the central conclusion of the earlier document: that America was a society for rich white men. In fact, the year after ratification the federal state affirmed the ideal racial character of the United States with congressional legislation (1790) restricting naturalization to "white persons" only.[7] And although the Constitution is an imperfect document, it created a flexible framework wherein legislatures and courts could permit without apparent prejudice systematic race and gender discrimination. Thus the Constitution provided a continuation of the purposeful underprotection of non-dominant groups.[8]

I go beyond the type of humanist surface analyses that only identify the contradictions between language and practice. Of course, at one level, the founders were hypocrites.[9] But at a deeper level, I uncover the logic of a dual society that permits the degradation of groups of people by state and economic elites and dominant ethnoclasses without compromising ostensible principles of liberty and

---

[7] Ian F. Haney López, "White by Law," *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia Temple University Press, 1995). As López points out, "the courts constructed the bounds of Whiteness by deciding on a case by case basis who was *not* White," 547

[8] Taking a contemporary example, in May 2000, even though the case had the hallmarks of a hate crime, the US Supreme Court struck down a key provision of the federal Violence Against Women Act in *Brzonkala v. Virginia Polytechnic Institute*, 169 F 3d 820 (1999) on the basis that it is the states' responsibility to protect women from acts of violence, not the role of the federal government Members of Congress used the same argument throughout the twentieth century to stymie anti-lynching legislation.

[9] Morgan suggests that to reduce the matter to hypocrisy does not solve the paradox of the dual society. See Edmund S Morgan, "Slavery and Freedom: The American Paradox," *Journal of American History*, 59 (1972)

equality. Part of the apparent contradiction is the consequence of a society based upon capitalism; a capitalist society is neither free nor equal, yet American society embraces the language of the Declaration of Independence. But it is also because of the racial interests upon which the nation was founded. Chief Justice Taney observed, in *Dred Scott v. Sandford* (1857), that when the authors of the Declaration spoke of all men being created equal they "perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew it would not, in any part of the civilized world, be supposed to embrace the negro race, which, by common consent, had been excluded from civilized governments and the family of nations, and doomed to slavery."[10]

To show the real character of these documents I connect key parts with their wholes (internal critique) and relate them to the society about which the documents pertain, an external, or more accurately, contextual form of critique. The real meaning of the Constitution becomes clearer when its content and production are linked to the class and racial interests of the men who produced the document.[11] Just as the statutes

---

[10] Quoted in Herbert J Storing, "America's Founders Recognized the Dilemma of Slavery," in *Slavery Opposing Viewpoints*, ed William Dudley (San Diego, CA: Greenhaven Press, 1992), 282. Storing contends that the conflicted consciousness of the patriots and framers about slavery contradicts Taney's judgment in rendering the decision There are plenty of examples supporting Storing's claim At the same time, even the most progressive of the founders, e.g. Jefferson, believed blacks were inferior and could never be part of America society. Jefferson advocated colonization of Africa He was not alone. In 1817, Madison and other elites organized the American Colonization Society advocating returning blacks to Africa after slavery even against their will David M Streifford, "The American Colonization Society An Application of Republican Ideology," *The Journal of Southern History*, 45 (1979)

[11] Gramsci writes that "the most widespread methodological error has been to look for the essential characteristic in the intrinsic nature of intellectual activity rather than in the system of relations wherein this activity (and the group that personifies it) is located within the general ensemble of social relations," Antonio Gramsci, *Prison Notebooks* vol. 1 (New York: Columbia University Press, 1996), 200 Gramsci sees intellectuals as constituted by primary social relations

of the early colonial period appear around an essential racial ontology, so too is the Constitution an expression of a real society and particular group locations, internally contradicted and rife with antagonisms.

Analysis of the documents must actively recognize their inadequacies in terms of their moral failures (e.g. sanctioning slavery and capitalism and excluding women, etc.) and in their inability to achieve a better society (the better society requires negating and transcending the society bourgeois legal doctrines code and justify, *not* by fulfilling those documents' idealisms[12]). More important, analysis must recognize the failure of the social arrangements that the framers designed to meet their objectives, as these are contradicted by the achievements of democratic and popular forces in the United States, who have through their struggles broken down many of the barriers the founders erected. We begin with the Declaration and the Articles, the events leading to their construction, and their consequences.

The colonies declared their independence on July 4 1776 in a document titled The United Declaration of the Thirteen United States of America. It was drawn up and signed by members of the Second Continental Congress. The document, while citing "a long train of abuses and usurpation" by the despot from whom they sought to free themselves — the English crown and parliament — explicitly did not mention slavery in the colonies. The patriots would, however, frequently use the rhetoric of slavery to

---

and emerging organically from historical development as necessary components for advancing those relations. Gramsci labels such intellectuals "organic intellectuals," the qualification "organic" denoting their attachment to particular class interests and their emergent politico-economic character.

[12] Some of the most racist programs and proposals circulating today are those demanding that law and policy follow closely the intent of the framers

describe their relationship to the crown.[13] The democrat Thomas Jefferson, a slaveowner, suggested that a condemnation of slavery be included to embarrass England by suggesting that slavery was imposed on the colonies by the king; but his suggestion was struck because the patriots needed the slaveowners' support to prosecute the "Revolution."[14] The document did advance a similar theory: that the King of England was conspiring with "the merciless Indian Savages," whose "known rules of warfare is an undistinguished destruction of all ages, sexes and conditions," to raise ill on the colonists.[15]

The slavery problematic had at this moment in history reached a high point in the consciousness of the colonists. Four years earlier, Lord Mansfield (in the Somerset case) outlawed slavery in Britain, and in doing so he acknowledged there was no specific legislation authorizing slavery in the kingdom.[16] Around that time, slaves in North America began actively challenging the legal basis of enslavement by pleading before the First Continental Congress for their freedom. In 1773, slaves petitioned the General Court of Massachusetts for liberty. This led to extended debates in the Massachusetts's colony legislature during 1774-1775 concerning the slavery question.

---

[13] F. Nwabueze Okoye, "Chattel Slavery as the Nightmare of the American Revolutionaries," *William and Mary Quarterly*, 37 (January 1980). Okoye shows the complexity of the double character of patriotic language in a capitalist society exploiting slave-labor.

[14] John Hope Franklin, "Slavery Left America with a Weak Moral Foundation," in *Slavery. Opposing Viewpoints*, ed Dudley (San Diego, CA Greenhaven Press, 1992). Franklin's book *From Slavery to Freedom* is one of the standards on slavery in America (New York· Knopft, 1979).

[15] *The United Declaration of the Thirteen United States of America*, in George Brown Tindall, *America: A Narrative History*, vol 1, 3rd ed (New York: W.W. Norton, 1992), A16.

[16] Although the English government left the matter of slavery to their colonies, a question arises whether the English colonies, under the authority of the crown and parliament, were included in the 1772 abolition of slavery. If any case, the nationalist war with the English settled the matter

The Continental Congress indeed prohibited importation of slaves in 1776. In this context, the Declaration of Independence, with its emphasis on equality for "all men," and its appeal to the natural law (inalienable right) of "life, liberty, and the pursuit of happiness," seemed to point to a hypocrisy in emerging American society. It should be of no surprise, then, that the document was followed by an increase in the number of slaves pleading for their freedom on the basis of principles the patriots espoused.[17]

John Hope Franklin, who has written eloquently on the moral problematic of slavery in the colonies (albeit from a humanist perspective that pursues mainly a procedure of surface criticism), notes the awareness among many patriots that slavery presented a deviation from the idealism of the "American Revolution." They were, he writes, "apparently troubled by the contradictions between their revolutionary philosophy of political freedom and the holding of human beings in bondage."[18] For example, Patrick Henry, who uttered the famous phase, "Give me liberty or give me death," found slavery repugnant. At the same time, however, he owned slaves. Other patriots who condemned slavery -- Thomas Jefferson, Edmund Randolph, George Mason -- all continued to hold blacks in bondage. Franklin finds that where colonies were becoming less dependent on slavery (in New England and parts of the Middle Atlantic states), they were doing so not out of humanitarian concerns, but because slavery had become unprofitable; they were increasingly in a convenient position to

---

[17] Franklin references the 1781 case of the Cuffe brothers who went before the Massachusetts courts to request that they be absolved of their tax burden on the grounds that since they could not meaningfully participate in governmental affairs, their being taxed thus amounting to "taxation without representation " The courts responded to the Cuffes' request by tossing them in jail

[18] Franklin, "Weak Moral Foundation," 273

condemn slavery. So although they might have been uncomfortable with the practice, "neither in the Continental Congresses nor in the Declaration of Independence did the Founding Fathers take an unequivocal, categorical stand against slavery."[19]

The Constitution, with its famous opening phrase, "We the People," ever begging the question who "the people" actually are, would not be drafted until several years after the Declaration (finalized by committee on September 17, 1787 and becoming law in 1789).[20] But the period between the two documents was not an interregnum. In what is now conceptualized as the interim between secession and nation there was a constitutional government formed as a loose confederation of states. The document legitimating this quasi-state, The Articles of Confederation, in part because it is an imperfect document (more imperfect than the Constitution), tells us a great deal about what the Constitution means and what the dynamics of North American society were then. Around the same time the Articles were being drafted there was considerable movement in northern states towards the abolition of slavery. The Massachusetts courts in a series of decisions in the early 1780s ruled slavery unconstitutional. Pennsylvania's legislature abolished slavery in 1780. And before this, in 1777, Vermont became the first state to incorporate a ban on slavery in their state Constitution. Unlike the "total bans" in the colonies noted in the previous chapter, these state restrictions were more than rhetoric.

---

[19] Franklin, "Weak Moral Foundation," 273.

[20] According to the Charles Beard and Mary Beard, *The Rise of American Civilization* (New York Macmillan, 1930), only about 25 percent of white males (the only ones allowed to participate in political matters) participated in ratification, and many others openly favored a completely new form of government

To fully answer the question of the origin of the Articles, the narrative has to begin just before the Declaration. Between September 5 and October 26, 1774, colonial elites held the First Continental Congress, called to organize against England economically (through boycotts, etc.) and to demand from the King of England an improvement in their conditions. Because English citizens were protesting the comparatively lower level of taxation enjoyed in the colonies (this to stimulate colonial growth — in fact, English citizens living on the island were propping up colonial business ventures with the heavy taxation of their wages), the crown and parliament raised taxes on the colonies with the "Intolerable Acts" of 1774.[21] The colonists interpreted this as a conspiracy to keep the colonies poor and dependent.[22] The congress had precedent. Dissenting colonial elites had drawn up a document in 1765, the "Declaration of Rights and Grievances," claiming that the Stamp Act imposed by England constituted taxation without representation and was therefore invalid. England repealed the act in 1767, but conditions did not improve much, according to the colonists, and grievances accumulated. The Stamp Act Congress was not organized as a nationalist convention. The Continental Congresses were.

At the First Continental Congress, colonists threatened King George with another oppositional congress unless their demands were met. The English parliament rejected the colonies' demands. There were military skirmishes in Lexington and

---

[21] Jeremy Atack and Peter Passell, *A New Economic View of American History from Colonialism Times to 1940*, 2nd ed (New York W W Norton and Company, 1994) The question of whether the colonies were correct in their dispute with England is of no relevance to my study.

[22] T. H Breen, "Narrative of Commercial Life Consumption, Ideology, and Community on the Eve of the American Revolution," *William and Mary Quarterly*, 50 (1993) Breen argues that this was integral to the development of an emerging nationalist consciousness.

Concord between colonists and British troops. In response, the Second Continental Congress organized an army, appointing George Washington, a slaveowner, as commander. In defiance of the crown they established their own currency, a framework of intercolonial trade relations, and developed a foreign policy, dispersing ambassadors to several countries in the hopes of acquiring allies. They helped establish independent governments in each of the colonies, reorganizing England's colonial dependencies into independent states. The states radically rejected their royal charters. In July of 1776 independence from England was declared. In December of that year, the Third Continental Congress was called. The war of independence with England was full on at this point and the war effort needed greater coordination.[23] To prosecute the war, and to establish more definitively the relationship among the colonies, the Congress drew up the Articles of Confederation. The document was finalized March of 1781 and was in force until superseded by the Constitution in 1789.

The Articles are revealing on several counts, and the document's impact was significant. The document identified the racial character of the United States in an open manner purposely absent in the US Constitution by specifically including in the domain of the people the "white inhabitants" of each state and excluding all others (Indians, blacks, and women) from participation in the people's domain. It excluded from the "privileges and immunities of free citizens," paupers, vagabonds, and fugitives from justice, a testament to the class character of the sentiments of the

---

[23] Five thousand slaves would fight on the American side of the war only to find that the liberty they secured by their sacrifice was only for white people. See Franklin, "Weak Moral Foundation."

political class and their designs for government. Under the authority of the Articles (which created the Congress of the Confederation), the Ordinance of 1787 was passed, opening up the Northwest territory (present-day Ohio, Indiana, Illinois, Michigan, Wisconsin, and part of Minnesota) for westward expansion, effectively signing the death warrant for millions of Indians in white America's conquest for *lebensraum*. The new government defined the extent of slavery in the United States: slavery and involuntary servitude were forbidden in the Northwest Territory north of the Ohio River, the National Domain, with one exception: as punishment for a crime.[24] The territory south of the Ohio (what would become Kentucky, Tennessee, Mississippi, and Alabama) would be slave. All states, slave or nonslave, were required to return runaway slaves to their owners. Between 1781 and 1789, there was no effort to restrict the slave trade.

Although the Articles were imperfect and proved for some interests a liability, a confederation was desirable to most elites because they feared concentrated political power. The states joining together was viewed as a practical occurrence, since the states were each too small to defend themselves against invasion alone. A confederation would be able to conduct foreign policy, and to decide trade policies favorable to the region. The confederation permitted a concerted effort against the English in the colonists' war for independence. Moreover, the confederation was desired for its potential to exercise greater control over labor. However, a confederacy

---

[24] Leslie H. Fishel, Jr. and Benjamin Quarles, *The Negro America: A Documentary History* (Glenview, IL Scott, Foresman and Company, 1967).

remained inadequate in the eyes of the nationalists, those elites who desired a unified country with a constitution worthy of a single nation. Since their nationalist vision was opposed by the majority, the framing of the US Constitution was something of a coup d'état. "How the problem was met and the solution achieved by a skillful minority in the face of a hostile majority is a suggestive lesson in political strategy. It is a classic example of the relation of economics to politics; of the struggle between greater property and smaller property for the control of the state."[25] I turn to this matter directly.

In April 1783, the war for national independence from England ended. James Madison, a wealthy slaveowner and tobacco planter, organized a convention of political-economic elites, known as the Annapolis Convention, which met in early September 1786 to discuss how the Articles of Confederation could be modified to achieve better harmony among the states. The Continental Congress narrowly defined the terms of the affair. The meeting was primarily concerned with matters of material interests, such as interstate trade and the question of how to fund the federal government. There were also diplomatic issues; the United States of America were not, as a confederation, so united, and they were finding it difficult to negotiate treaties with such a fragmented status preceding them. Only five states showed, and the evidence suggests that Madison organized the convention at Annapolis to arrange a constitutional convention.[26]

---

[25] Vernon Louis Parrington, *Main Currents in American Thought* (New York: Harcourt Brace, and World, 1958), 274.

[26] Leonard Levy, ed , *The Encyclopedia of the American Constitution* (NY Macmillan Co , 1986)

Dramatic events created momentum for a larger convention. In the summer of 1786 rebellions broke out in Massachusetts. In 1780, Boston had raised property qualifications for suffrage and office holding to keep the rabble from influencing policy. The legislature was strangling farmers by refusing to issue paper money and stop banks from foreclosing on their mortgages. In September of 1786, a former army captain, Daniel Shays and a rag-tag army of farmers rebelled against the government of Massachusetts.[27] The smell of rebellion was in the air, and rumblings were being felt throughout the colonies. The so-called Shay's rebellion was the first major threat to the internal security of the newly formed confederation. Elites recognized they needed to mobilize against the practical exercise of popular sentiment. Representative of the elite view was a general from the war of independence, Henry Knox, who wrote George Washington to warn him of the sentiments that lay behind the rebellion:

> they feel at once their own poverty, compared with the opulent, and their own force, and they are determined to make use of the latter, to remedy the former. Their creed is "That the property of the United States has been protected from the confiscations of Britain by the joint exertions of all, and therefore ought to be the common property of all. And he that attempts opposition to this creed is an enemy to equity and justice and ought to be swept from off the face of the earth."[28]

The Annapolis Convention dissolved with a requirement to reconvene in 1787 in Philadelphia in a convention to discuss how to strengthen the union over against the people.

---

[27] Howard Zinn, *A People's History of the United States 1492-Present*, rev. (New York: HarperCollins, 1995). They would engage in various acts of insurrection throughout the remainder of the year and into early 1787 when the insurrection was put down in February.

[28] Quoted in Zinn, *People's History*, 95.

The meeting in Philadelphia produced the document that remains in force to this day: the US Constitution. By some accounts this was not supposed to happen. Delegates were told by the Continental Congress and their states that the purpose of convention was only to revise the Articles of Confederation and then submit the revisions to the states for consideration.[29] Although it was a desire of state elites to secure the rule of capital, the idea of a centralized state, even a federal one, was controversial. Nevertheless, Madison, Hamilton and other leading nationalists scrapped their charge and set about designing a nation.[30] Their paramount desire was to secure capital's power and thwart democracy, and the prevailing view among the most powerful was that the weak state of a confederacy was insufficient for this task. Madison, warning of the "leveling impulses of the propertyless multitude that composed the majority faction," believed that "the public good and private rights"

---

[29] Herbert M Morais, *The Struggle for American Freedom* (New York International Publishers, 1944) For this reason, state ratification of the Constitution was contentious. New York, New Hampshire, Massachusetts, Rhode Island, and North Carolina all voted against ratification. Elites coerced delegates sent to Congress to vote against the document into changing their votes. They were able to change the votes of three of the states The tactics used to secure ratification were either criminal or unethical. North Carolina and Rhode Island continued to resist ratification. Notoriously, when the Pennsylvania legislature failed to make quorum in their deliberations, paid thugs, masquerading as overzealous members of the rabble, went into the night, broke into the houses of representatives, and took lawmakers by force to the state houses and shoved them into the room. See Bach McMaster and Frederick Stone, eds., *Pennsylvania and the Federal Constitution*, vol. 1, 1787-88 (Historical Society of Pennsylvania, 1970).

[30] Several influential politicians, such as Virginia's governor Edmund Randolph and Col. George Mason, refused to sign the document, claiming that it would lead to tyranny and that it had been constructed without the people's knowledge and consent (they proposed a second convention to discuss the matter further) Although the terms of the convention did not require the signatures of all the delegates, politically they needed those signatures The document was written in such a way that the signatures of any state delegate indicated that state's unanimous consent to the document Dissenting delegates were then asked to sign the document affirming that a majority of delegates approved, thus unanimous consent was manufactured. Max

must be protected "against the danger of such a faction." "Democracies," he wrote, "have ever been spectacles of turbulence and contention; have ever been incompatible with personal security, or the rights of property, and have in general been as short in their lives, as they have been violent in deaths."[31] Hence, the first decision made in the four month convention was to agree that they would establish a national government, rather than a federated one.[32] The extreme anti-democratic sentiment running through the convention is evidenced by the fact that twenty-one of the delegates favored some form of monarchy.[33] They recognized, however, that, given the level of popular protest, establishing an absolutist state might spark a genuine social revolution.[34] Aware of the opposition to their designs, delegates passed resolutions to hold their

---

Ferrand, *The Records of the Federal Convention of 1787*, vols 1-4, rev. ed (New Haven: Yale University Press, 1966).

[31] Michael Parenti, *Democracy for the Few*, 5th ed (New York: St Martins Press, 1988), 58. The Federalist No 10 first appears in *The Daily Advertiser*, 22 November 1787. I used several different collections of the papers over the course of this work, primarily, James Madison, Alexander Hamilton and John Jay, *The Federalist Papers*, eds., Willmoore Kendall and George W. Carey (New Rochelle, NY: Arlington House, 1966) J R. Pole, ed., *The American Constitution. For and Against· The Federalist and Anti-Federalist Papers* (New York Hill and Wang, 1987), except were otherwise noted The Federalist papers were a series of 85 essays, first published in a New York newspaper in 1787 They were in the form of open letters designed to persuade the citizens of the states to ratify the Constitution and sanction the development of a federal-national government. To manufacture a false populism the letters were written under a pseudonym, "Publius " All the papers were written by three individuals, James Madison, John Jay, and Alexander Hamilton.

[32] Levy, *American Constitution* My critique is not an endorsement of the Articles of Confederation. It has been pointed out — by an anarchist no less— that a central state with the flaw that the US federal government possesses, namely, that aspects of it are potentially democratic, provides protection from large interstate corporations. Chomsky argues that recent calls to devolve the federal government to the states are designed to strengthen the power of corporations over against the people. See Noam Chomsky, "You Say You Want a Devolution," *The Progressive*, March 1996

[33] Berberoglu, *Political Sociology*

[34] Parenti, *Democracy for the Few.*

meetings in secret and forbade the taking of notes.[35] "A remarkable change had come over their thinking," Parrington writes, with considerable idealism;

> They discarded the revolutionary doctrines that had served their need in the debate with England. They were done with natural rights and the romantic interpretations of politics and were turned realists. They parted company with English liberalism in its desire for a diminished state. Their economic interests were suffering from the lack of a strong centralized government, and they were in a mood to agree with earlier realists who held that men were animals with turbulent passions, and require a government "proper and adequate" for animals.[36]

The imperatives of social class played a primary role. The political-economic elite of North America controlled the proceedings. The fifty-five delegates were members of key capitalist class fractions, including lawyers (most of them had some legal training), bankers and financiers, merchants, and manufacturers.[37] The wealth possessed by the deputies was staggering. For instance, Edmund Randolph owned 5000 acres and 200 slaves.[38] Forty percent of the delegates were past or present

---

[35] Madison did take notes. See James Madison, *The Debates in the Federal Convention of 1787 which Framed the Constitution of the United States of America*, eds Gaillard Hunt and James B. Scott (Buffalo: Prometheus Books, 1987) Much of my knowledge of what occurred during these meetings is derived from Madison's notes and a lengthy trans-Atlantic communication to Thomas Jefferson Hamilton also took notes, but his are nowhere near as detailed as Madison's. Madison's shadow over the United States is vast. At times in the historical record, he appears as a puppet master

[36] Parrington, *Main Currents*, 278. Many have made some significance of the fact that both Thomas Jefferson and Thomas Paine, the more democratically-minded of the patriots, were both in Europe during the designing of the national government. Even putting slavery aside, I am less sanguine on the radicalism of these historical figures even by their day's standards. However, that the Constitution was manufactured under conditions of near zero democracy and was forced upon the states is indisputable The convention reduced the threshold for ratification from thirteen states to nine, which would effectively obtain consent from the others as soon at they realized they would be left facing a nation alone. See Beard and Beard, *Rise of American Civilization*.

[37] Charles Beard, *An Economic Interpretation of the Constitution of the United States* (New York: Macmillian, 1962)

[38] Kenneth Neill Cameron, *Humanity and Society: A World History* (New York: Monthly Review Press, 1977)

slaveowners.[39] As already noted, George Washington owned hundreds of slaves. In fact, most US presidents from Washington to Grant, were slaveowners.[40] Their concerns were predictably the same as had been at the Annapolis Convention: the material and political interests of the capitalist class. Not represented at the convention: workers, farmers, servants, slaves, Indians, and women. Predictably, the Constitution does not reflect their interests.

Slavery was one of the chief matters under discussion in the convention, and although there was never any real challenge to the institution,[41] a few delegates were critical of aspects of it.[42] Mason, a slaveowner, opposed slavery for what he believed was its corrupting effects on whites. Obviously this was not an indictment of *his* exploitation of slave-labor — presumably he was above corruption.[43] He claimed that the "infernal traffic originated in the avarice of British Merchants."[44] More consistently, Luther Martin, also a slaveowner, desired to prevent the influx of slaves

---

[39] Beard, *Economic Interpretation;* James H Charleton, Robert G. Ferris, and Mary C. Ryan, eds., *Framers of the Constitution,* rev. ed. (Washington, DC: National Archives and Records Administration, 1986)

[40] Joe Feagin, "Slavery Unwilling to Die: The Background of Black Oppression in the 1980s," *Journal of Black Studies,* 17 (1986) Most pre-Civil War presidents owned slaves, and two post-war presidents did

[41] "[O]nly practical and economic considerations held sway. Human considerations simply were not present," Franklin, "Weak Moral Foundation," 276. See also Don B Kates, Jr Abolition, Deportation, Integration Attitudes Toward Slavery in the Early," *Journal of Negro History* 53 (1968)

[42] Ferrand, *Records of the Federal Convention.*

[43] Robert A. Rutland, ed , *The Papers of George Mason: 1725-1792* (Chapel Hill: University of North Carolina Press, 1970)

[44] He argued further, according to Madison, that "Slavery discourages arts and manufactures The poor despise labor when performed by slaves They prevent the immigration of Whites, who really enrich and strengthen a Country They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant." Pinkney countered that there have always been slaves, and therefore it was justified (Pickney was instrumental in extending the deadline for the importation ban).

from the international trade in Africans, preferring to strengthen the domestic slave trade (since some states — Martin's state was one of them — had a surplus of slaves, he and his comrades stood to profit considerably from restriction).[45] However delegates from South Carolina and Georgia, who sustained heavy losses in the war with England, and where the rice swamps exposed slaves to a very high death rate, were adamantly opposed to restrictions on their participation in the international slave trade.[46]

Delegates from the "anti-slave" states shielded the institution or were silent on the question of slavery. Oliver Ellsworth (Connecticut) defended the slave states' autonomy (states' rights) and argued that in any case the rise in the white population would soon make slavery obsolete (although it must be wondered how white labor was to replace black labor if the slave trade was kept open).[47] Pennsylvania had sent the charismatic Benjamin Franklin with a resolution opposed to the slave trade, but he never introduced the resolution into the debate (although his presence on other issues was most prolific).[48] Elbridge Gerry of Massachusetts advanced the form of logic that

---

[45] Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY· ME Sharpe, 1996). States with surpluses were Virginia and Maryland.

[46] James Madison in a letter to Thomas Jefferson, 24 October 1787, in Madison, *Letters and other Writings of James Madison*, vol. 1 (Philadelphia J B Lippincott, 1865). See Franklin, "Weak Moral Foundation," on death rates

[47] Franklin, "Weak Moral Foundation," points to the high numbers of slaves imported into the United States between 1788 and 1808 as contradicting the claim that slavery was on its way out

[48] David R Roediger writes that Franklin "most eloquently . defended not only the slave's right to freedom but also the intellectual abilities of Blacks," *The Wages of Whiteness* (New York Verso, 1991), 24 Yet, when Franklin had his chance to stand up for what he believed, he did nothing Moreover, Franklin justified the brutality of the slave codes by finding them appropriate for controlling a race with "a plotting Disposition, dark, sullen, malicious, revengeful, and cruel in the highest Degree," quoted in Michael H Hunt, *Ideology and U.S. Foreign Policy* (New Haven. Yale University Press, 1987), 45. As Hunt points out, Franklin

would become central to the preservation of racial inequality in America: He argued that the federal government could not forbid slavery, rather they could only avoid sanctioning it.[49] This way the federal government could be absolved of any affiliation with slavery while slavery continued unabated.

Too much has been made about the disputes of the founders concerning slavery. It is true that the North and South were on different paths; each would be taking a fork in the road that would be violently reunited in the 1860s. As noted, some northern states were already expressing their uneasiness with slavery, and many spoke of slavery as a dying institution. Moreover, slavery was relatively distant to people in several of the northern states. Slaves were concentrated in the South. In 1787 there were two slaves for every nine free persons in the colonies; in the South there were two slaves for every four free persons.[50] At the same time, though, all the class fractions were united in their interests as capitalists, and whether they owned slaves or not, whatever their opinion on slavery, they profited from it and therefore were at best, rhetorical flourishes aside, ambivalent on the matter.[51] Much of their rhetoric was designed to absolve them of their complicity in an immoral institution. We have to be

---

"divided humanity according to skin color, assigning to each color characteristic traits." To blacks he assigned the traits, "lazy, thieving, and improviden[ce]," 46

[49] Franklin, "Weak Moral Foundation"

[50] In 1790, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia were 36 percent black (673,462 blacks and 1,178,344 whites) Virginia, which contained almost half of all blacks in the United States, was 41 percent black (305,493 blacks and 442,117 whites). Kates argues that one reason behind the failure to free the slaves was fear of their numbers, specifically that they might intermingle with the white population and amalgamate. See "Abolition, Deportation."

[51] See William Lee Miller, *Arguing About Slavery. The Great Battle in the United States Congress* (New York Knopf, 1996).

cautious of backward projections of motive. While the northern delegates spoke of the slaver's interests collectively as "our Southern brethren," the North had yet to uniformly abolish slavery and thus truly distinguish itself in this regard. Although Vermont, Pennsylvania, and Massachusetts had abolished slavery by the early 1780s, and some other states, such as Connecticut and Rhode Island, had begun gradual emancipation in the mid-1780s, other northern states (e.g., New York and New Jersey) had yet to start the process to bring about an end to slavery. New York freed children of slaves who were born after 1799, but only after they became 25-28 years old. And whatever their opinion on slavery, their racial prejudice was fixed: white elites uniformly viewed blacks are racially inferior. Feagin writes, "An understanding of this entrenched slavery so embedded in the North's legal system is vital for understanding today's internal colonialism. Slave colonialism in the U.S. is not just a southern phenomenon, but an extensive national system of oppression."[52]

Yet those who wrote the language of the document seemed to think it was important not to use explicit racial categories or categories that smacked of extreme unfreedom. Unlike the Articles, the Constitution carefully defined subordinate groups in a fashion that only specifically mentioned the Indian. Huggins writes

> The Founding Fathers, in their conception and framing of a more perfect union, did not address frankly and openly, in any of their official documents, the conspicuous fact of racial slavery . . It is as if the Founders hoped to sanitize their new creation, ridding it of a deep and awful stain If the evil were not mentioned or seen, if would be as if it were not there. By burying the most flagrant contradiction to all their values, there would remain an ideal and perfect monument to republicanism [53]

---

[52] Feagan, "Unwilling to Die," 180. Some blacks were still slaves in New York in the 1850s, only a few years before the Civil War.

[53] Nathan Irvin Huggins quoted in Dudley, *Opposing Viewpoints*, 274.

However, several sections of the US Constitution do pertain to slavery, and since only blacks were slaves the racial character of the Constitution is easy to reveal.

In article 1, section 9, the convention decided to allow US participation in the international slave trade until January 1, 1808. This was a compromise between those who desired to enhance domestic trade and representatives of the southerners who wished to continue their involvement in the slave trade.[54] Although no racial categories are listed, it was understood by all the participants that the range of persons that states could deem proper was carefully restricted in the states to exclude whites. Whites could not be imported as slaves nor could they be enslaved, except as a punishment for crimes and in some cases for racial intermarriage (where a white female could be enslaved by the owner of the Negro slave she married). The ban was ill-enforced and slaves continued to be imported into the country in large numbers throughout the remainder of slavery's existence.

Article 1, section 2 is the most notorious part of the Constitution relating to slaves. The relevant portion reads: "Representatives and direct taxes shall be apportioned among the several states which may be included within this union,

---

[54] W E B Du Bois, *The Suppression of the African Slave Trade to the United States of America, 1638-1870* (New York Schocken Books, 1969). The careful wording of the article indicates the degree of racial consciousness held by the elites at the time: "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year one thousand eight hundred and eight," *The Constitution of the United States.* The article did allow for a tax on each person imported, which would have served as a deterrent to participation in the international market, at the same time that it forbid taxation on exports from the state, again probably in deference to Martin and the interests he represented It had been proposed to end the trade in 1800, but this was quickly shot down The section was reaffirmed in 1807 when congress passed legislation to close the trade

according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons." To clarify, there are enumerated three categories of inhabitants: (1) free persons, including indentured servants (bonded whites were in their life-times accorded the privileges of whiteness); (2) Native Americans (non-citizens); and (3) three-fifths of all other persons (non-citizens). Again, "all other persons" specifically concerns slaves, mostly black (although state laws allowed for at various times, mulattos and mestizos).[55] The wording of this article comes from the compromise made with those states heavily populated by blacks and those states that were not, and feelings about slavery on both sides. At one level this matter concerned simple interests: If slaves were property and not persons then they would be reckoned in estimates of taxation and excluded from the census, and those states with a disproportionate number of slaves would be, in their view, underrepresented in Congress (the northern states wanted slaves counted as property). If they were persons and not property, then they would be reckoned in

---

[55] It is interesting that the article did not specifically address the status of women Since they were not free (e g , they did not have suffrage), they could have been included in the three-fifths rules But we know they were not What this reflects is the almost total hegemony of the patriarchy and the invisibility of women It might be supposed that given their worldview the notion that a woman's status should be defined probably never crossed their mind However, there is evidence of an awareness of women's concerns. John Adams' wife Abigail was vocal about women's rights. "I desire you would Remember the Ladies," she wrote in a letter to her husband, asserting that men were natural tyrants and that she would organize a rebellion if women's concerns were not included in the "revolution." And in 1792, Mary Wollstonecraft produced the *Vindication of the Rights of Women* See Rosemary Skinner Keller, *Patriotism and the Female Sex· Abigail Adams and the American Revolution* (New York: Carlson Pub., 1994); Edith Belle Gelles, *First Thoughts· Life and Letters of Abigail Adams* (New York Twayne Publishers, 1998); Claire Tomalin, *The Life and Death of Mary Wollstonecraft* (New York Harcourt Brace Jovanovich, 1974), Mary Wollstonecraft, *A Vindication of the Rights of Woman, with Strictures on Political and Moral Subjects*, ed Charles W Hagelman, Jr (New York, Norton, 1967).

the census and not in estimates of taxation, thus putting a disproportionate share of the revenue burden on those states with fewer or no slaves (the southern states wanted them counted as people). At another level, treating slaves as full persons presented a potentially worse problem: if slaves were regarded as people then some might think they should be included among "the people," thereby enjoying the rights of free people (there were enough people thinking this way already). The humanity of blacks was thus explicitly degraded by counting them as only three-fifths persons. This was the best of all possible worlds for the South and for the white republic: the southern states got their degraded human property to aid in their representation in Congress and the white republic got partial human beings that could not be legitimately included in the domain of the people.

The problem of the paradox raised by the compromise did not escape the northern members of Congress.[56] The question of the ambiguous or paradoxical status of the blacks because of combining slaves with free citizens as a measure of representation and taxation was answered at some length in Federalist No. 54, published on 12 February 1788.[57] The anonymous author of the essay, henceforth "Publius," the pseudonym used by the authors of the Federalists papers, noted his "Southern brethren" could not deny that they believed that slaves were mere property, and in not in any respect persons. Their concern was not only representation, but also the economic impact of taxes being levied on their property. A slave was clearly

---

[56] Ferrand, *Records of the Federal Convention*

[57] Written by either Alexander Hamilton or James Madison.

property, since the slave was "compelled to labor not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another." In this way "the slave may appear to be degraded from the human rank, and classed with those irrational animals, which fall under the legal denomination of property." But a slave was also a "moral person, not a mere article of property," a "member of society," not an "irrational" animal, since he was "protected . . . in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others."[58] As we have seen, and will see again, protections from violence were few and punishments were great[59]; moreover, how can it be said that the slave is protected as a person when the slave was "subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another"? Perhaps Publius' rather disingenuous remarks (considering the level of knowledge he possessed) concerned principle not reality, but one is hard pressed to identify the principle in operation.

---

[58] Fishel and Quarles, *Negro American*, 65.

[59] Sometimes southern courts defined chattel as persons to the disadvantage of whites. For instance, in 1820 Superior Court of Mississippi ruled that while there was not law on the books concerning the murder of a slave (admitting they were not covered under the criminal statute pertaining to the murder of a white person), the court could still find that a wrongdoing occurred, since it did not follow from the assumption that since slaves had been deprived of some of their rights that they had lost all of their rights (admitting that slaves had natural rights that had been taken away) The court ruled that the slave "is still a human being, and possesses all those rights, of which he is not deprived by the positive provisions of the law." Storing summarized the logic of the decision thusly "Since the common law definition of murder is the taking away the life of a reasonable creature with malice aforethought and since a slave is a reasonable being, such a killing of a slave is murder," "Dilemma of Slavery," 283 The quote from Mississippi Superior Court is from Storing.

At the start of the essay, Publius noted the debate over whether representation should be achieved by wealth or by numbers. It would be difficult to measure wealth precisely, he argued, but numbers are measurable. Publius reasoned that numbers are the best measure of wealth and therefore of taxation, and they are the only measure of representation. Thus he made the case to those opposed to counting slaves and desiring to measure wealth that numbers are a proxy for wealth — in fact, they are not just a proxy but a more precise measure. He feigned surprise "that those who reproach the Southern States with the barbarous policy of considering as property a part of their human brethren, should themselves contend, that the government to which all the States are to be parties, ought to consider this unfortunate race more completely in the unnatural light of property, than the very laws of which they complain?" Publius after exposing his "Southern brethren's" claim that slaves were persons as a political ploy turned to his Northern brethren and chastised them for doing the same (which was, of course, a political ploy of their own).

Publius admitted that the mixed character of black slaves was "bestowed on them by the laws under which they live," that "it is only under the pretext that the laws have transformed the negroes into subjects of property, that a place is disputed them in the computation of numbers." He even declared that "if the laws were to restore the rights which have been taken away, the negroes could no longer be refused an equal share of representation with the other inhabitants" (history has proved him wrong on this claim). It is remarkable that he could admit this yet recognize the laws that degraded blacks were valid. Thus in back of the rhetoric was the assumption that

blacks were of such a nature that they may be properly dispossessed of their natural rights. That their theoretical acceptance as members of society with restored natural rights was properly subject to the whim of their masters was not questioned. This is theoretically important, since it shows that the principle of formal equality could be maintained without surface contradiction in a context where one group of persons was believed to be inherently inferior and was in fact legally treated as so.

Article 4, section 2 concerns the obligation of states in returning fugitive slaves to their owners. This clause is present in several documents, indicating the ever-present fear of losing chattel.[60] "If slaveholders feared possible insurrections by their slaves, they were no less apprehensive about the day-to-day attrition of their institution caused by slaves running away. They wanted to be certain that the Constitution recognized slaves as property and that it offered protection to that property, especially runaways."[61] It is significant that the South, who argued that slaves were persons, would desire to have one form of property protection enshrined in the founding document of the United States: "No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be

---

[60] This had long been a concern among colonists The Articles of Confederation of the United Colonies of New England, written May 19, 1643, between "the Plantations under the Government of the Massachusetts, the Plantations under the Government of New Plymouth, the Plantations under the Government of Connecticut, and the Government of New Haven with the Plantations in Combination," had a provision that runaway servants were to be returned to their masters. *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America*, ed Francis Newton Thorpe (Washington, DC· Government Printing Office, 1909).

[61] Franklin, "Weak Moral Foundation," 277.

delivered up on claim of the party to whom such service or labour may be due." This provision not only reduced the chances for freedom of blacks fleeing slavery, but it also compelled those morally opposed to slavery to give up persons to slaveowners and their bounty hunters or be in violation of the law. In other words, it made criminals out of those seeking to liberate captive human beings from perpetual bondage.

It might be objected that the 13th and 14th amendments to the Constitution set aside these passages. But it is significant that these amendments fail to do the following things: neither do they strike any portion of the language of the provisions nor has the Constitution ever been repealed; nor have blacks ever been compensated for their being held in bondage for almost 250 years, i.e., there has never been added a provision in the Constitution or its amendments restricting the substantive privileges or immunities of whites against those of oppressed minorities -- there is no attempt to redress the injury of unjust enrichment.[62] It might also be objected that we should judge the framers of the Constitution by the standards of their day, that is, we should bound our critique of their (im)morality within racial caste and ideology. I reject such relativism on principle; but even on empirical grounds it cannot be said that the most privileged in early American history, those in a position to know and those in a position to do something about it, were ignorant of the moral breech in their sanctioning slavery. Given that some of the framers were deists and atheists, the

---

[62] See chapter 1 for a discussion of the concept. Presumably this is why the famous language of the Declaration of Independence -- "life, liberty, and the pursuit of *happiness*" -- was changed in the 14th amendment to "life, liberty and the pursuit of *wealth*."

Hamitic myth carried no weight for them. And by their own admission they understood that they had degraded the condition of blacks. Understanding worldviews and hegemonic ideologies from their historical vantage points is theoretically important, but it cannot in the end absolve people of what are generally considered to be violations of basic human rights.

The form of duality in the framers' thinking -- that they were depriving blacks of their rights and that blacks were inferior and therefore undeserving of those rights -- appears repeatedly in the historical record. As I noted earlier, during their struggle for liberation the colonists had characterized their situation with England as "slavery." They did not use the term as a metaphor or analogy, but to indicate a realistic assessment of their circumstances (though in reality they were not "slaves").[63] The patriotic propagandists argued that the various measures England imposed upon the colonists put them in "the greatest slavery and bondage," "perpetual slavery," "unmerited slavery," "vile ignominious slavery," abject slavery," "absolute slavery," etc. How then is it, one might ask, that the colonists, after securing their "emancipation" from "British slavery," could fail to free blacks? "The outrage of the colonials stemmed from their conviction that only black people in America were deserving of servile status."[64] It was not that slavery per se was unjust -- what was

---

[63] Roediger writes, "Such rhetoric is so extravagant when constraints on white American liberties are compared with constraints on Black slaves that one is tempted to conclude that the revolutionary critique of political 'slavery' merely echoed old Anglo-American radical rhetoric and had little to do with actual chattel slavery. This would be a mistake. Although the metaphoric use of *slavery* for any threat to liberty had deep roots in virtually slaveless England, Scotland, Venice and Florence, its special force in the American colonies derived in large part from proximity to chattel slavery," *Wages of Whiteness*, 28

[64] Okoye, "Chattel Slavery," 4

unjust was to treat whites like blacks, i.e., as slaves. While dismay is expressed at the apparent contradiction between liberty and slavery existing side-by-side, there has been a failure to recognize that the racial inferiorization of a group of people plays a crucial role in permitting the existence of a dual society.[65]

As controversial as the formal exclusion of blacks from the people's realm seems today, what was more controversial at the time was the question of the character of the central state and its relationship to "the people," i.e., free white males.[66] Whites were the majority, and in the context of capitalist society they all stood to benefit from the construction of whiteness and the denigration of the black race. What about liberty and democracy for those of equal racial and gender status? How much democracy did republicanism permit? It did not seem like very much. Intra-racial inequality would remain difficult to rationalize, and so the framers did not attempt it. The class character of the federal government is evident — nowhere in the Constitution, either expressly or in spirit, will one find a repeal of capitalism. As

---

[65] Similarly, the creation of an ideology that roots differences of wealth in the unequal distribution of talents allows for the contradictory pairing of liberty and inequality. Once one rises above tautological reasoning and acknowledges that social class is not a reflection of the person who occupies that location, then it is immediately apparent (or at least it ought to be) that if material inequality is to stand then liberty must fall or vice versa. Which condition prevails testifies to the structure of power in US society

[66] The people threatened rebellion. "They resented the fact that the proposed instrument was more concerned with the protection of property rights than in the maintenance of human rights," Herbert M Morias, *The Struggle for American Freedom* (New York: International Publishers, 1944), 253-254. There was tremendous deception on the public front. Knowing that the product they produced was a lot different than that which the people desired, the framers of the Constitution organized a propaganda onslaught to circumvent opposition by the states to the constitution Opposition to the Constitution was what drove elites to fashion a bill of rights, the first ten of which were added to the Constitution in 1791 But these rights were carefully constructed in such a way as to further secure the right to property. Indeed, if the original constitution did not politically institutionalize capitalism, the bill of rights certainly did.

Stanley Katz has pointed out, "Most Americans remember Thomas Jefferson's dictum that 'all men are created equal.' Many of us believe that it is part of the United States Constitution. The hard fact is, of course, that the word 'equality' appears only once in the 1787 document, and it does not apply to individuals." The notion that the founders meant for the nation to have equality is historical revisionism, for "during most of American history, framers of constitutions, lawmakers and judges avoided committing the nation to the protection of individual equality."[67]

As noted earlier, there had been a time when "revolutionary" sentiments were peaking and the idealism of the Enlightenment still held some influence, that the goal of equality was held to be essential to freedom. The Virginia Declaration of Rights declared that "all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity."[68] Again, accumulators constructed that text, so it was understood which sorts of men were by nature equally free and what equality meant,[69] but still such bold humanist language is radical when compared to

---

[67] Katz, "Constitutional Equality," 747. The situation today is something of a mirror image of the controversy of yesterday the question of the economic character of the US government or its relationship to the people is rarely questioned or criticized anymore. Years of indoctrination have effectively paired capitalism with democracy, equality, and liberty

[68] Quoted in Katz, "Constitutional Equality," 748. George Mason wrote the document.

[69] To wit, in an 1806 lawsuit brought in Virginia (*Hudgins v. Wrights*) it was claimed that the Declaration of Rights was a constitutional guarantee of the presumption of equality (freedom). The judge ruled that the Declaration was "notoriously framed with a cautious eye to the subject, and was meant to embrace the case of free citizens, or aliens only, and not by a side wind to overcome the rights of property, and give freedom to those very people whom we have been compelled from imperious circumstances to retain, generally, in the same state of bondage that they were in at the revolution, in which they had no concern, agency or interest," quoted in Katz, "Constitutional Equality," 749

the sparseness of the Constitution and its first ten amendments. The Constitution made no pretense to being the posterity of the Enlightenment project.

There were two schools of thought at the convention on this matter. The majority view was advanced by the "federalists," who desired a national government. Their detractors (the anti-federalists) claimed that they were not therefore properly called federalists.[70] But what the federalists-nationalists had in mind was in fact a very sophisticated federalist scheme where a national government and several state governments would be able to play off each other to maintain control in favor of racial and economic elites. The other view was advanced by the more "democratically"-minded delegates, where the contradiction between universal suffrage and capitalism was noted. Yet the counterposition (the minority view among elites) was only comparatively better. It was still elitist and undemocratic.

The main proponents of the federalist-nationalist view were James Madison, Alexander Hamilton, and John Jay (the authors of the Federalist Papers). They were frank about their feelings on the question of popular governance. Jay wrote, "The people who own the country ought to govern it."[71] Hamilton wrote,

> All communities divide themselves into the few and the many. The first are the rich and well-born, the other the mass of people The voice of the people has been said to be the voice of God, and, however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing, they seldom judge of determine right. Give therefore to the

---

[70] Herbert J Storing, ed , *The Complete Anti-Federalist* (Chicago: University of Chicago Press, 1981), Bertell Ollman and Jonathan Birnbaum, eds , *The United States Constitution: 200 Years of Anti-Federalist, Abolitionist, Feminist, Muckraking, Progressive, and Especially Socialist Criticism* (New York New York University Press, 1990)

[71] Frank Monaghan, *John Jay* (Bobbs-Merril, 1935), 323.

first class a distinct, permanent share in the government They will check the unsteadiness of the second [72]

It should be underscored that Hamilton is not suggesting that the people are ignorant, but rather that they are stupid. This view would be advanced by Italian social theorists some one hundred years later forming a major school of political scientific thought, elite theory.[73] Hamilton's view was a forerunner of social Darwinism, which would emerge after slavery as one of the hegemonic modes of thought among elites.

In an unpublished essay, Mona Austin analyzes the anti-democratic nature behind one of the Federalist Papers.[74] James Madison's work in Federalist no. 10, "provides a window into the mind of the political and economic elite." It was Madison's desire in Federalist no. 10 to dispossess people of the notion that democracy was a desirable form of government. What was required, he argued, was a *republican* constitution. He openly declared that popular democracy (what he refers to as "Pure Democracy") is bad because it "can admit of no cure for the mischiefs of a faction."[75] He wrote, "A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concern results from the form of Government itself; and there is nothing to check the inducements to sacrifice the weaker party, or an obnoxious individual."[76]

---

[72] Beard, *Economic Interpretation*, 199. Hamilton's claim is empirically false· all communities do not divide themselves into the few and the many. The colonial experience with various Indian nations should have told him this.

[73] See, e.g , Gaetano Mosca, in *The Ruling Class* (New York McGraw-Hill, 1939), or Vilfredo Pareto *The Mind and Society A Treatise on General Sociology* (New York: Dover, 1963).

[74] Mona Elisabet Austin, "We the People . Right?" unpublished essay, 1997

[75] James Madison, "The Federalist No 10," *The Heath Anthology of American Literature*, vol. I, 2nd ed., ed. Paul Lauter (Lexington D.C Heath)

[76] Madison. "Federalist No 10"

Madison theorized that "Pure Democracy" allows the majority to oppress the minority. Austin emphasizes, "The minority Madison has in mind is not the type of minority we think about today, such as the African-American community." Given that the Constitution sanctioned slavery, republicanism allowed the majority (whites) to oppress the minority (blacks). "The minority in Madison's mind that needs to be protected is the class of property owners." Madison, speaking for the capitalist class, was calling for a system of government that protects and preserves inequality. He directly confronted the threat of popular democracy to political power, attacking the "theoretic politicians who have patronized this species of Government," i.e., democracy, because they "have erroneously supposed, that by reducing mankind to a perfect equality in their political rights, they would at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions."[77] Madison was not warning of the threat of the substantive equalizing of possessions; he was opposing the granting of basic equality in political rights.

As for substantive equality, Madison believed, as did the functionalists Davis and Moore in the mid-1940s (and every social Darwinist in between), that people's talents were naturally unequally distributed.[78] Since natural talents determined wealth, those who sought equality were violating the natural order of things — that is white men on top, everybody else on bottom. This thinking was long rooted in the European mind, and, as I have shown, is what gave rise to racism as well as classism

---

[77] Madison, "Federalist No 10"

[78] Kingsley Davis and Wilbert Moore, "Some Principles of Stratification," *American Sociological Review* 10 (1945)

(the latter did not deteriorate into the former, as apologists for the Enlightenment continue to claim). "Madison believed that the rich were rich because they were better than the rest of the population. And because the rich were better, they were more qualified to govern. It was far better, Madison argued, that there be no factions and the elite rule, than for there to be factions and 'Pure Democracy,' because 'Pure Democracy' cannot survive because it allows the people to have too much control."[79] In other words, an oligarchical state was preferable to popular democracy (the framers also generally opposed political parties, seeking one train of thought among them).[80] "The diversity in the faculties of men from which the rights of property originated, is not less an insuperable obstacle to the uniformity of interests," he argued; "The protection of these faculties is the object of Government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results: and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties."[81]

Aware of the danger of his clear tone of elitism in what was meant to be, at one level, a call for popular support for the Constitution and centralized government, Madison contended that the better bred among the body of eligible participants in

---

[79] Austin, "We the People Right?" An argument similar to Madison's was advanced by George Keenan, a state department official instrumental in developing the Cold War and anti-communist ideology

[80] The editors of *The New York Library American History Desk Reference* (New York Macmillan, 1997) characterize the Federalist Papers as "masterly interpretation and analysis of the Constitution," 171

[81] Madison, "Federalist No. 10 "

political society will have in mind the welfare of everybody under their governance (one sees why vagabonds, paupers, and fugitives from the law were expressly excluded from participation in political society in the Articles of Confederation). This principle is good and proper since it is the naturally superior talents of these men that allow them to "discern the true interest of their country." Their "patriotism and love of justice" would make them "least likely to sacrifice it to temporary or partial considerations." The document thus openly embraced elitism, loading up the argument with emotional potency — the natural leaders are full of "patriotism" and "love of justice," Madison argued, their "enlightened views" guided by "virtuous sentiments."

At the end of the document, after "showing" why the people are unworthy of self-governance, Madison explains why a federal government is the ideal remedy: "it clearly appears, that the same advantage, which a Republic has over a Democracy, in controlling the effects of faction, is enjoyed by a large over a small Republic — is enjoyed by the Union over the States composing it." Madison contends that this control is useful, since if fractions become too rambunctious, the federal government can intervene. "The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States: . . . a rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union, than a particular member of it." If the federal government is constituted, any state that loses its bearings, i.e., where popular forces gain

considerable control over the political machinery and institute land reform or some other redistributive program, can be reined in by the national government. This appeal is obviously directed towards the elites in each of the states, raising fears about the possibility of insurrection in their states (article 1, section 8 of the Constitution gave Congress the power to "suppress insurrections"). Given that Shay's Rebellion was fresh in people's minds, and the ever present threat of slave rebellion,[82] this was an effective appeal. Political elites live forever in the fear of the people they dominate and they are notoriously bad at concealing this fact. Madison also claims elsewhere, quite openly, that a federal government permits the central state to by-pass the states and secure the people's support directly. This was what the states feared the most.[83] However, combining this tactic with the overall scheme increases the power of the capitalist class by giving the political elite one more level of power to play off the other levels. This is articulated as the strength of "divided government."

As was explained in the Federalist no. 54,

> Government is instituted no less for protection of the property, than of the persons, of individuals The one as well as the other, therefore, may be considered as represented by those who are charged with the government. Upon this principle it is, that in several of the States, . . one branch of the government is intended more especially to be the guardian of property, and is accordingly elected by that part of the society which is most interested in this object of government In the federal Constitution, this policy does not prevail The rights of property are committed into the same hands with the personal rights.

---

[82] Fear of rebellious slaves were based on active resistance of slaves to domination See Jeffrey J Crow, "Slave Rebelliousness and Social Conflict in North Carolina, 1775-1802," *William and Mary Quarterly*, 37 (1980); Allen D. Grimshaw, "Lawlessness and Violence in America and their Special Manifestations in Changing Negro-White Relationships," *Journal of Negro History*, 44 (1959).

[83] Madison explains this at length in his letter to Jefferson. Madison believes this is the most important aspect of the Constitution. see Madison, *Letters*

Property rights have taken clear priority over personal rights in America. It was the property side of black slaves that determined the character of their personhood.

Opposed to the nationalist-federalists were the more democratically-minded politicians such as Daniel Webster. Webster was quite sophisticated in his understanding of the class dialectic and he articulates cogently the contradiction between democracy and capitalism. He writes that democracy

> could not long exist in a community where there was a great inequality of property. The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in a few hands and to render the great mass of the population dependent and penniless In such a case, the popular power must break in upon the right of property, or else the influence of property must limit and control the exercise of popular power.[84]

If this paradox is heeded, that is, if the illusion that capitalism is required for democracy to be possible (the subtext of anti-communism and the guiding principle of neoimperialism, i.e., "Democratization") is given up, then the US system is revealed as a system of unfreedom. The problem was solved by the framers by dispensing with democracy.

In the end, the convention accomplished what its guiding lights had set out to accomplish: a "bourgeois-democratic document for the governing of a slaveholder-capitalist republic."[85] The Constitution allowed only the lower house (the House of Representative) to be popularly elected, and since the states had strict property requirements for suffrage and office holding, it was guaranteed that House representatives would be wealthy elites. Even without property requirements, the

---

[84] Charles A Beard, *The Economic Basis of Politics*, 39.

[85] Herbert Aptheker, *Early Years of the Republic From the End of the Revolution to the First Administration of Washington (1783-1793)* (New York International Publishers, 1976), 55.

structure of social class and its influence on political office (not to mention the structural imperatives of the capitalist state) will reproduce the status quo. This remains largely true. The upper house (the Senate) was elected by the several state legislatures. It would not be until 1913 that the Constitution would be amended to permit popular election of senators. However, even after 1913, those with money in the main still determined the vote of the senator. Alexander Hamilton (or Madison) wrote of "the necessity of a well-constructed Senate only as they relate to the representatives of the people" because "such an institution may be sometimes necessary as a defense to the people against their own temporary errors and delusions." He argued that "there are particular moments in public affairs when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn." He rhetorically asked whether it would be vital to have a senate that would "suspend the blow meditated by the people against themselves, until reason, justice, and truth can regain their authority over the public mind?"[86] The president is to be elected by electors chosen by the state legislatures. The right of the people to popularly elect the president has never been expressly granted, rather it is a tradition.[87] "They created a system in which the three branches were suspended in almost perfect equipoise so that a move by one element in any one direction would be almost immediately offset by a countermove by one or both of the

---

[86] "Federalist Paper No 63," in *The Federalist Papers*

[87] With the rise of the political party in the US, the states progressively permitted popular vote By 1832 only South Carolina prevented popular suffrage for president

others in the opposite direction. The result was a counterdemocratic system dedicated to the virtues of staying put in the face of rising popular pressure."[88]

The Changed Colonial Relation and the End of Indenture

What did the "American Revolution" accomplish with respect to its political-economic relations with England? Something needs to be said about this. We have seen that the settlements in North America were colonies of England and the wealth they generated went to English capitalists. Thus the domination of subjected populations in the colonies were the traditional types of colonial relations. As the white settlers — and this was really only the North American bourgeoisie, since there was no widespread popular support for transferring power from one bourgeois fraction to another — began to turn against England, the relation began to change. Once the US state was formed the colonies were no longer colonial appendage in the full sense of the term, but rather became states (but something different from states) in an independent capitalist nation. The war for independence was just that: a war of independence. Political power was transferred from the core (England) to an ex-colony in a fashion roughly analogous to some species of national liberation struggles. This was not a social revolution, hence the inaccuracy of the label, "Revolutionary War." There was no transfer of class power. There was no fundamental transformation of class relations. Indeed, the same class who ruled before ruled after. Moreover, from England's perspective, the colonial status of North America remained relatively intact,

---

[88] Daniel Lazare, *The Frozen Republic: How the Constitution is Paralyzing Democracy* (New York Harcourt Brace, 1997), 3

especially the South. In effect, the relationship had changed from the more traditional colonial relation to a neocolonial situation, where England still determined the economic fate of much of North America even if direct political control had been wrested from them.

Because of the persisting colonial relations, some have argued that national independence was not completely secured with the war of independence. That would have to wait until the Civil War. "The transformation of the state in the United States from a colonial appendage of the British Empire to an independent capitalist state with jurisdiction over the entire national territory did not occur until the late nineteenth century," according to Berberoglu. "From 1776 to the end of the Civil War in 1865, the United States developed within the framework of a 'neocolonial' relationship with Britain, when the state represented the interests of both the emerging capitalist class in the North and the dependent slaveowning class in the South, which was tied to the British-dominated world economy." During that time the South served the English textile industry, producing raw materials (such as cotton). Berberoglu reasons that because the South was economically related to England in this way, southern interests were in contradiction to the interests of the northern capitalist, principally because the situation pitted England's interests against the northern United States' interests. "The contradictory class relationship between the two rival ruling classes in postcolonial America continued to evolve and develop within the framework of a truce that permitted the co-existence of two distinct modes of production though the sharing of

state power, at least for a time."[89] Berberoglu is not the only one who conceptualizes the North and the South as representing co-existing distinct modes of production. Leiman writes, "Slavery as a separate mode of production coexisted with, influenced and was influenced by capitalism as another separate mode of production." Leiman contends that slavery was essentially "an archaic and inferior precapitalist mode of production dominated by the plantation class, which had engrafted some aspects of bourgeois civilization because of its subordination to the dominant world capitalist system." [90]

I disagree with this line of interpretation. For one thing, at the analytical level, this particular interpretation of the mode of production model is problematic. From the Marxian perspective (and this is also the Wallersteinian view), a mode of production underpins a given social totality. Although elements of earlier modes of production are incorporated into successive modes of production, these previous forms do not exist as subordinate modes of production articulated with the dominant mode of production (this has always been an awkward formulation). Their character becomes whatever the overall character of the social formation is.[91] But even if we accepted this interpretation of the modes of production model (as opposed to the *mode* of production model), at the empirical level slavery in the US South could not possibly have been a precapitalist mode of production since English capitalism did not incorporate slavery but established slavery. Racial slavery in North America was from

---

[89] Berberoglu, *Political Sociology*, 85
[90] Leiman, *Political Economy of Race*, 25
[91] Marx, *Capital*, vol 1 (New York Penguin Books, 1990)

the beginning capitalist production, its products bound for capitalist markets, the organization of its production determined by capitalist rationality.

Berberoglu's notion of "power-sharing" between a de facto English colony (the South) and an independent industrializing nation (the North) is problematic, and it is ironically Leiman who, despite his sharing with Berberoglu this dual mode of production model, undermines Berberoglu's argument. In order to disagree with Wallerstein about the reason behind the decline and overthrow of slavery, Leiman applies Wallerstein's model to the United States, where England is conceptualized as the core country, the Northern US a semiperipheral zone, and the South a peripheral zone, all linked together in the capitalist world-economy. Leiman concludes that "the process by which the South generated its surplus depended on the social relations between classes in the region. Slavery and feudalism in the periphery were compatible with, although subordinate to, capitalism in the semiperiphery and the West European core."[92] Ignoring Leiman's claim that feudalism existed in the United States (although there were feudal-like relations), we see that the division is not fundamental as Berberoglu supposes. One must ask, in what way, outside the normal level of fractionalism in any ruling economic class, can the North and the South be seen as

---

[92] Leiman, *Political Economy of Race*, 25 Leiman undermines one of his own key arguments with this interpretation He argues that slavery is historically so fundamental to capitalism, and that the integral relation of capitalism and racism is founded in this historical relations, that to transcend either requires transcending both However, what is it that permits Leiman to distinguish between the capitalist mode of production and the slave mode of production? One would support that it is the existence of the wage-labor relation in the former and the forced labor condition of the later, which in the United States have divided along racial lines, since whites were not enslaved If capitalism cannot ever be said to present with slave-labor conditions how is racial slavery fundamental to capitalist society?

"two rival propertied classes"?[93] Both groups were capitalist. They were certainly distinct class fractions and this would in time lead to a civil war, but they were not two distinct social classes; and, moreover, as Leiman points out, they were fundamentally dependent on each other. Moreover, what Berberoglu and others miss in their formulations of this type are those interests other than economic interests, such as racial-ethnic interests. I have shown that white racial interests unified the North and the South. What Berberoglu describes as a "truce" (i.e., the Constitution) was actually a coordinated effort to maintain racial caste in America — to construct an enlightened white republic. In fact, both halves of the United States could be regarded as a neocolony to England, and only slowly did the political separation obtained in the 18th century turn into an economic power of England's equal in the 19th.

What of labor conditions? Although the former colonies remained in a similar economic relation with England, national independence "marked the beginning of internal evolutionary changes in America." The abolition movements in the North that occured with national liberation meant that, although much remained the same, the "American Revolution" transformed in many ways "the operation and meaning of class and race." The disintegration of indentures for European-Americans was complete and "this had important consequences for the relationship between poor blacks and poor whites," namely "[t]hey were less likely thereafter to share a common condition." Horton notes that "[r]acial tensions were undoubtedly exacerbated as the

---

[93] Berberoglu writes, "The balance of class forces in the state apparatus from the postindependence period to the Civil Ear was maintained by the Constitution drawn up by the two rival propertied classes in 1787," *Political Sociology*, 85

nation moved toward its first labor surplus in the 1820s with many northern blacks occupying a middle ground of labor, neither slave nor free." These tensions testified to the constant intercourse of labor of various statuses and the constraints placed on collective action by the growing regional differentiation and sectoral character of capitalist production. "A growing racial divide at the bottom of society can be traced through the institution of racially defined political statuses, violent racial conflicts, labor competition, the systematic exclusion of blacks from certain occupations, and the development of an ideology of racial inferiority."[94]

The Caste-Class Differentiation of Crime and Punishment

Outside the slave system was the system of free white labor. Labor here, tied to the wage-labor market, was subject to the brutal rhythms of the capitalist economy more than was slave-labor. To understand the relationship between class and punishment in the 19th century we must turn to the theoretical work of Rusche and Kirchheimer and its application to the US system.[95] Much of the basic theoretical work in understanding the impact of the structure and cycles of capitalism on patterns of crime and punishment regimes was hammered out by Marx's analysis of British capitalism in the 19th century, presented in the first volume of *Capital.*

---

[94] Lois E Horton, "From Class to Race in Early America Northern Post-Emancipation Racial Reconstruction," *Journal of the Early Republic*, 19 (1999), 629.

[95] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York. Columbia University Press, 1939), Christopher Adamson, "Toward a Marxian Penology: Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (1984). See also Rosalind P Petchesky, "At Hard Labor· Penal Confinement and Production in Nineteenth-Century America," in *Crime and Capitalism: Readings in Marxist Criminology*, ed. David F. Greenberg (Philadelphia, PA Temple University Press, 1993).

The size of the industrial reserve may be used as a proxy for the level of crime committed by the proletariat. Research has confirmed, in my view with little doubt, the relationship between unemployment (or more generally the business cycle, of which unemployment rates are one of the best indication) and crime.[96] The post-WWII patterns of crime discussed in chapter 5 clearly demonstrate this. And even just now we see the relationship in the recent fall in crime (1995-2000), which follows the long post-Reagan/Bush business expansion (1993-2000). Along with the criminogenic effects of the business cycle are longer swings in the size of the industrial reserve army, explained by the Kondratieff wave (the US economy is probably experiencing the A-phase of a long wave currently). The long wave is linked to crime legislation[97] and incarceration patterns.[98] Operating beneath both of these rhythms is the rate of surplus value. Its direct effects on crime and punishment (especially crime) have been demonstrated by Lynch and associates.[99] Because crime under capitalism is related to the operation of the economy, crime control measures are also linked to economic motion. Given this, Adamson theorizes "that labor supply and the business cycle

---

[96] See Theodore G Chiricos, "Rates of Crime and Unemployment: An Analysis of Aggregate Research Evidence." *Social Problems*, 34 (1987), Emilie A. Allan and Darrell J. Steffensmeier, "Youth Underemployment, and Property Crime. Differential Effects of Job Availability and Job Quality on Juvenile and Young Adult Arrest Rates," *American Sociological Review*, 54 (1989) David Cantor and Kenneth C, Land, "Unemployment and Crime Rates in the Post-World War II United States: A Theoretical and Empirical Analysis," *American Sociological Review*, 50 (1985); Elliot Currie, *Confronting Crime An American Challenge* (New York: Pantheon, 1985) and *Crime and Punishment in America* (New York. Owl Books, 1998).

[97] David E. Barlow and Melissa H Barlow, "Federal Criminal Justice Legislation and the Post-World War II Social Structure of Accumulation in the United States," *Crime, Law and Society*, 22 (1995)

[98] D. E Barlow, M H. Barlow, and Theodore G Chiricos, "Long Economic Cycles and the Criminal Justice System in the US" *Crime, Law and Social Change*, 19 (1993)

influence how populations are processed through the criminal justice system: whether they are treated as threats to the capitalist mode of production, and/or as economic resources to exploit" [100]

In his examination of crime and punishment patterns over the 19th century, Adamson begins with the period between 1790 and 1812. But there were some important changes before then. Sherman and Hawkins contend that a transformation of consciousness in legal thinking began to occur somewhere in the period between the 1770s and the 1780s and that this has a bearing on the development of the criminal justice system.[101] Hence in our examination of crime "on the outside" we begin in the "revolutionary" period. During this time, there was a general trend in revising colonial penal statutes. For free persons, corporal and capital punishments were abolished except for the most egregious crimes; murder and treason would still carry the penalty of death (except the murder of a black person). For example, in 1786 Pennsylvania constructed a new penal code that substituted hard labor for capital punishment for all but two crimes. These changes have an important ideological origin within the overall development of capitalism: the Enlightenment, specifically what is known in criminology as the "classical school" of crime and punishment.

The classical conception of crime and punishment that became the intellectual basis for the Western criminal justice system appeared in systematic form in the

---

[99] Michael J Lynch, W. Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime. A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994).

[100] Adamson, "Captive Criminal Populations," 437

[101] Michael Sherman and Gordon Hawkins, *Imprisonment in America Choosing the Future* (Chicago University of Chicago Press, 1981)

publication of Cesare Beccaria's *Of Crimes and Punishments* in 1764.[102] Beccaria's ideas, championed by British moral philosopher Jeremy Bentham and American liberals Thomas Jefferson and John Adams,[103] and condemned by the Catholic church for its rationalism,[104] were meant to advance a more "humane" and "effective" criminal justice system program where punishments focused on the body were to be replaced by punishments of detention and work,[105] and the adjudication of criminals was to proceed on grounds of fairness and equality before the law rather than on the arbitrary whims of mobs and kings. We find these ideas in the US Bill of Rights, for example, where defendants are guaranteed, at least in principle (slaves and, in most states, free blacks excepted), a jury trial, no cruel and unusual punishment, freedom from self-incrimination, no searches and seizures without a legitimate warrant, etc. The reform of the criminal was the professed goal in all this. Bentham, who "provided a unified and comprehensive justification for the major practical measures desired by contemporary reformers,"[106] characterized his utopian prison scheme — the Panopticon — as "a machine for grinding rouges honest."[107]

---

[102] Cesare Beccaria, *Of Crimes and Punishments* (Indianapolis: Bobbs-Merrill, 1963)

[103] Jeremy Bentham's ideas were published in 1780 in his *Introduction to the Principles of Morals and Legislation* (New York Hafner Press, 1973), a work widely read and applied by the "founding fathers" of the United States, was derivative of Beccaria's work See Henry Paolucci, "Introduction," to Cesare Beccaria, *Of Crimes and Punishments*

[104] The Catholic church placed the book on their *Index Prohibitorium.*

[105] This has been treated at length by Michael Foucault, *Discipline and Punish: The Birth of the Prison* (New York. Vintage Books, 1995)

[106] Barbee-Sue Rodman, "Bentham and the Paradox of Penal Reform," *Journal of the History of Ideas*, 29 (1968), 200

[107] Quoted in Sherman and Hawkins, *Imprisonment in America*, 57. Bentham ran into problems when he attempted to rationalize reform, which had a religious origin, in his utilitarian system

The structure of society was rapidly changing during the 18th century and with it ideas and realities of freedom and social control. The 18th century has been characterized as a period of "revolution and reform," and the efforts of this period included developing a comprehensive structure of punishment, which involved incorporating and reworking previous institutions of punishment, such as turning the jumble of jails into a system of social control. What would emerge from these changes are core features of the present criminal justice system, even if many of these remain in part ideals. Crucially, Beccaria's theory of crime was based on a new conception of human beings that in part reflected, and at the same time justified, capitalism – that of the rational economic actor. "A Calvinist pessimism about social engineering was yielding to the Enlightenment view of the potential deviant as a rational being who would calculate the costs of breaking the law."[108] This new conception of human nature was rationalized as "natural law," which led to a philosophy of equity in punishment. Blackstone argued that "the infringement of a man's natural right to life and liberty was limited by the extent of his breach of natural (as opposed to municipal or human) law."[109]

The criminal justice reformers of the day in America, like Thomas Jefferson and Benjamin Rush, desired, as did their European counterparts, to move away from grotesque physical punishments, such as the whipping post, the gallows, and the branding iron. They stressed reforming criminals. At Beccaria's suggestion, they

---

[108] Sherman and Hawkins, *Imprisonment in America*, 83
[109] Rodman, "Bentham," 200.

advocated putting criminals to work as the best reform program. City jails were rebuilt and state prisons were built to put convicts to hard labor. But it was not entirely in the soil of "humanitarian concern" that these programs germinated. Those entering the refurbished jails and new prisons were unskilled laborers from urban areas (typically the port towns) and transient agricultural workers. Then, Adamson points out, the presence of crime did not threaten the process of capitalist accumulation, and so harsh physical punishments were unnecessary.[110] Therefore incarceration was used to construct a captive labor force and two concerns intersected in time to spark a construction binge.

Thus part of the "new way" as it was instituted in the United States would see in some cities prisoners, chained together and wearing distinct prison garb, put to work on city streets and public roads.[111] Pennsylvania led the way in prison reform. In the 1770s, the Walnut Street Jail was built, initially designed to serve a dual purpose as a jail and a house of corrections. It was modified with the change in policy and became the model prison for the new direction in penal policy. Its director, Caleb Lownes, publicized the prison in his *Account of the Alteration and Present States of the Penal Laws of Pennsylvania*, which moved legislators in other states to adopt similar strategies. "The Walnut Street Prison became of nationwide significance not because of any extraordinary conception in its development, but because, for lack of any other model, it became the pattern upon which numerous other State prisons were built and

---

[110] Adamson, "Captive Criminal Populations "

[111] Quakers and other reformers did not understand how this differed much from other corporal punishment. They advocated solitary confinement Their idea, as we will see, was ahead of its time. Blake McKelvey, *American Prisons* (Montclair, NJ: Patterson Smith, 1967)

administered," writes Lewis; "What was done at Walnut Street conditioned practically absolutely the prison system, so far as there was a system, in the United States for nearly forty years."[112]

Several penitentiaries followed the Walnut Street Jail, now known as the "cradle of the penitentiary." There was Newgate Prison in New York City, Massachusetts State Prison at Charlestown, Virginia, Kentucky, Vermont, Maryland, New Hampshire, Ohio — all within a span of 16 years (from 1799 to 1815).[113] The work performed at these facilities was not mindless, useless work, nor was it harsh. The prison reformers sought to make the work meaningful and productive. Adamson argues that the prison reformers were wealthy businessmen and professional. Driven by their worldview, they "viewed criminal populations as an exploitable resource."[114] At the same time, however, there was a widely shared ethic of community service among the wealthy, and thus they did not at first desire to profit from the work the prisoners performed.[115] Rather, the work there in part paid for the prisoners. This would soon change.

"In many respects, the mobilization of convict labor in the United States in 1800 mirrored the forced-labor programs established at the houses of correction in 16th- and 17th century Europe."[116] The designers of the prisons saw the emerging system as

---

[112] Orlando F Lewis, *The Development of American Prisons and Prison Customs, 1776-1845, with Special Reference to Early Institutions in the State of New York* (Montclair, NJ: P. Smith, 1967), 25

[113] Adamson, "Captive Criminal Populations " See also Lewis, *Prison Customs*

[114] Adamson, "Captive Criminal Populations," 440

[115] See Barnard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967)

[116] Adamson, "Captive Criminal Populations," 440

important for raising the wealth of the state. Thus there was fiscal need for prison labor. This was fed by a scarcity of labor. With industries growing rapidly, the demand for labor outstripped its supply. Immigrants were entering the country, but they were easily lured from the cities by the promise of land acquisition. Thus prisons served as a way to provide a ready labor pool for the interests of the city. This represented a considerable degree of state-capital cooperation. Prison industries were geared towards urban industries; convicts performed labor-intensive work, producing primary commodities for the factories.[117] The products were in turn sold on the capitalist market. Politicians and private economic actors had yet to develop fully the sensibility that the state was not to profit from economic activity or to compete with private industries; there was still in operation in the states something of a mercantilist worldview. There is some dispute about the quality of life in the fledgling penitentiaries. While Adamson argues that the scarcity of labor and the growing economy provided favorable conditions for convicts, McKelvey notes that there was serious overcrowding in the prisons and that this was quite controversial at the time.[118]

The nation's economy had grown rapidly since the war of independence. US merchants had grown rich from selling to both sides in the war between France and Britain (the US was neutral). The foreign trade sector of the economy had especially expanded. Exports doubled between 1792 and 1795, and doubled again between 1801 and 1807. Then in 1807, Jefferson emplaced an embargo on trade with the warring

---

[117] Adamson, "Captive Criminal Populations"

[118] McKelvey, *American Prisons*. Sherman and Hawkins contend that the history of prisons in America *is* the history of overcrowding

nations. This caused a calamity — trade would not reach its high point of 1807 again until the late 1840s. The embargo was lifted two years later, but the damage had been done.[119] Following the War of 1812, with US export business severely crippled, the nation entered a recession. This began in 1815, followed by the 1819 bank panic, and then high levels of unemployment by the early 1920s. England was in a better economic position, hence when trade relations with that country were normalized, American industries (including prison industries) were devastated. As a consequence, the industrial reserve swelled. In response, the state began locking up more criminals. As the industrial reserve climbed, so did the volume of voices calling for greater degrees in discipline of the working class. Cracks began to appear in the utopian ideas of the Enlightenment reformers; their liberal policies were beginning to be seen as too lenient.[120]

This era, beginning in 1815, marks the development of the penitentiary system.[121] The influx of prisoners created a crisis of overcrowding in the refurbished (and non-refurbished) jails. States such as Indiana and Illinois built prisons to replace their jails in an attempt to reduce overcrowding, but they still overcrowded.[122] By the

---

[119] Atack and Passell, *New Economic View*. Actually, their view is not as pessimistic They argue that the relative weakness in trade stimulated the growth of domestic industry, as they had to meet the needs of the population. The debate is beyond the scope of this dissertation, except to note that there was an economic crisis that resulted

[120] Adamson, "Captive Criminal Populations."

[121] Sherman and Hawkins, *Imprisonment in America*, McKelvey, *American Prisons*.

[122] Many scholars argue that increasing capacity to relieve overcrowding causes overcrowding by creating more room for more prisoners. See, e g , Milton G Rector, "Are More Prisons Needed Now?" in ed Matthew Matlin, *Should We Build More Prisons?* (Hackensack, NJ· National Council on Crime and Delinquency, 1977) This notion parallels Parkinson's Law. See C Northcote Parkinson, *Parkinson's Law* (Cambridge, MA Houghton Mifflin Co., 1957) See also

early 1820s, there was widespread concern among the intellectual community about overcrowding. For example, Newgate Prison doubled between 1813-1816. By 1818, riots there were severe enough to bring in the military to fire upon the prisoners.[123] Officials contended that reformation was hopeless. Deterrence was the answer. The more brutal measures, such as stocks, irons, and whippings, which had been banned, were again legalized. Adamson quotes prison officials of the day making claims remarkably parallel to the rhetoric that has been heard over the past thirty years, such as that prisoners have it better in prison than on the outside, and that prison is supposed to be an undesirable place. Prison officials introduced the treadmill and solitary confinement. Prisons were built in Pennsylvania that emphasized total isolation; prisoners should not be working, as this was seen as a privilege. "What was needed was a 'penitentiary' and not a 'workhouse.'"[124]

According to Sherman and Hawkins, these changes were in part instigated by the penal reformers themselves. What others saw as a failure of the principle of reform, the reformers saw as a failure to properly execute reform. They noted the haphazard way criminals of all ages and persuasions were thrown together.[125] What was required was the separation of the prisoners into solitary cells. Both Pennsylvania and Auburn systems pioneered this new direction. Pennsylvania tried to keep the model of solitary confinement as a method of moral correction. Auburn made no such

---

Aaron Wildavsky, "Doing better and Feeling Worse The Political Pathology of Health Policy," *Daedalus* (1977).

[123] W David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Itaca, NY Cornell University Press, 1965).

[124] Adamson, "Captive Criminal Populations," 443.

[125] Lewis, *Newgate to Dannemora*

pretenses: "The great end and design of criminal law, is the prevention of crimes, through fear of punishment; the reformation of offenders being a minor consideration."[126] Auburn officials reasoned that they would reach more people this way: a system based on "dread and terror" reached the whole community, whereas reform only reached the individual (and maybe not even this). Lynd, Auburn's warden (and the builder of the notorious Sing Sing penitentiary) was clear about what the purposes of prisons were. "Lynd's model of American imprisonment was the crime control model – deterrence of future offenses outside the prison by making life inside it one of dread and terror – with a little symbolic humiliation thrown in for good measure."[127]

During the Jacksonian era (Adamson dates it 1825-1837), the economy began to grow again. There was a dramatic decline in the percentage of workers employed in agricultural production (from 83 percent to 63 percent). This coincided with a demand for labor. Productivity grew rapidly in the manufacturing sector.[128] Cheap labor was needed for big construction projects, such as railroads and canals.[129] Labor was reintroduced in both the Auburn and Pennsylvania systems. By 1830, the treadmill and isolation systems were eliminated. Ideological justification for the return of labor to the penitentiary system soon followed. A pamphlet, titled *Pauperism*, was distributed in 1827 arguing that forced labor prevented idleness and crime. In 1847,

---

[126] Sherman and Hawkins, *Imprisonment in America*, 87-88

[127] Sherman and Hawkins, *Imprisonment in America*, 88 Lynd was also a leader in designing rituals of symbolic degradation

[128] Atack and Passell, *New Economic View*.

[129] Douglass Cecil North, *The Economic Growth of the United States, 1790-1860* (Englewood Cliffs, NJ: Prentice-Hall, 1961).

Francis Gray published *Prison Discipline in America*, a book that followed in this tradition. Thus the rhetoric had shifted again, now 180 degrees from what it was in the previous period.

Prison labor was useful in several ways. Rusche and Kirchheimer in their work emphasize the relatively independent fiscal motive to use prison labor to obtain revenues for administrators. Here, state governments used prison labor for financial gain. Prison labor also played an important role in transforming the economy, as states wielded captive workers as weapons against the crafts system, to destroy the master mechanic and his journeymen. "By employing convicts, women, and children, in addition to non-apprenticed and untrained laborers, manufacturers were able to sell their goods at reduced prices and thereby push master mechanics completely out of the market." This dissolved the apprenticeship system and cleared the way for industrial production based on wage labor. "Both the contract and lease system of convict labor were powerful weapons on which the merchant capitalists depended in their struggle to replace the master mechanic as the main organizer of production and employer of labor."[130]

Economic troubles returned mid-century. There was a financial panic in 1837, followed by a depression. One-third of the workforce was out of work, and aggregate wages were reduced by possibly as much as 50 percent. Violence erupted in several major cities. The Massachusetts Riot Act was re-written (for the first time since Shays'

---

[130] Adamson, "Captive Criminal Populations," 445

Rebellion) in 1834 in response to Scotch-Irish rioters.[131] Prison industries lost their profitability. Predictably, "state prison investigators called for a tightening of labor discipline, greater severity of punishments, and more efficient industrial management."[132] Officials reintroduced whippings at Auburn, and the conditions in most prisons grew generally harsher. The state might have followed the previous pattern, stopping prison labor and moving to a system of solitary confinement, except that the states, having overspent during the period of prosperity and crippled by the financial crisis, were in need of money. There was during this period a general move towards liberalization of the state institutions, led by an ideological trend towards laissez-faire, with an emphasis on privatizing industries and contracting out state institutions to private interests, especially prison industries.[133]

It was around this time that elites began to see the criminal class as a threat to the system. This was the period of the emergence of industrialization (1840-1860).[134] It was also the beginning of a resurgence in immigration. In 1848, the Irish began to immigrate to America in large numbers. They were relegated to unskilled labor and high unemployment and reviled for their ethnicity.[135] When they resisted their

---

[131] Quoted in Herbert Gutman, "Work, Culture, and Society in Industrializing America, 1815-1919," *The American Historical Review*, 78 (1973), 581

[132] Adamson, "Captive Criminal Populations," 446.

[133] For the use of convict leasing in the South in this period see McKelvey, *American Prisons;* Michael Stephen Hindus, *Prison and Plantation Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill. University of North Carolina Press, 1980); Matthew J. Mancini, "Race, Economics, and the Abandonment of Convict Leasing," *Journal of Negro History*, 63 (1978)

[134] Atack and Passell, *New Economic View*

[135] Roediger, *Wages of Whiteness* Frederick G. Detweiler, "The Rise of Modern Race Antagonisms," *American Journal of Sociology*, 37 (1932)

mistreatment newspapers like Jersey City's *American Standard* referred to them as "animals," writing that the Irish were "a mongrel mass of ignorance and crime and superstition, as utterly unfit for its duties, as they are for the common courtesies and decencies of civilized life."[136] The wide-ranging deployment of labor-saving machinery swelled the industrial reserve. The depression of 1857-1858 reduced demand for prison labor. Unemployment and impoverished conditions heightened racial antagonisms. Street crime, both violent and property, increased dramatically. Before the 1850s, crime rates were ordinary. After 1850, they increased rapidly. There was widespread rioting in the cities, much of it directed towards blacks by whites. Because of social instability, between 1850 and 1860 prison populations tripled.[137] "The combined jail, prison, and house of correction total climbed from 29 per 100,00 citizens in 1850, to 61 in 1860."[138] Prison officials intensified punishments; they believed this would enhance the deterrent effect of prisons.[139] They introduced terrible punishments, such as the "pulley," "shower bath," "ball and chain," "yoke," "iron gag." The criminal justice system was especially harsh on immigrants and they were overrepresented in the penitentiary. "Penal authorities advanced theories about the 'unreformability' of Irish felons in order to justify cruel disciplinary measures."[140] Some prison systems even re-

---

[136] Quoted in Gutman, "Work, Culture, 1815-1919," 584

[137] Adamson, "Captive Criminal Populations "

[138] Sherman and Hawkins, *Imprisonment in America*, 52

[139] Rodman, in "Bentham," notes that the same trend was occurring in England during the 1860s in response to high crime rates. The United States and Great Britain were bound up in a trans-Atlantic cycle of reform, retribution, and deterrence

[140] Adamson, "Captive Criminal Populations," 448

instituted solitary confinement, and as a result harsher prison discipline was imposed to maintain order.

The most obvious thing about being forced to labor against one's will under conditions of unfreedom is that it subjects a people to different quantities and qualities of punishments — they receive more punishment, and the punishments are of more severe. This was the condition of the black unfreedom in the United States.[141] For example, Gutman documents that whippings were used to drive labor on the plantation.[142] Such physical punishment carried long-term effects. For slaves, "a whipping was a public humiliation and brutalization, capable of causing permanent physical (not to mention psychological) scarring with a risk of death from shock or septicemia."[143] Friedman writes, "The concrete form of this power was the right to administer summary punishment or 'correction.' In plain, blunt English, it was the power to beat, to hit, to flog, to whip, to inflict quick and dirty punishment, on the spot and to the point."[144]

---

[141] Cf. Stanley Elkins and Eric McKitrick, "Institutions and the Law of Slavery· Slave in Capitalist and Non-Capitalist Cultures," *American Quarterly*, 9 (1957). They write, "As regards matters of police and discipline, it is hardly necessary to view the typical slave's lot in the nineteenth century as one of strips and torture," 162

[142] Herbert Gutman, "The World Two Cliometricians Made. A Review Essay," *Journal of Negro History*, 60 (1975) This essays takes to task a controversial book (in two volumes) titled *Time on the Cross* (Boston, Little, Brown, 1974), written by Robert William Fogel and Stanley L. Engerman, in which the diary of a Louisiana slaveowner, Bennet H. Barrow, who records the whippings of slaves, is used to argue that whippings were used sparingly on the plantation Burrow's accounts are comparable to another diary, kept by William Byrd, a Virginia planter, where whippings were recorded, this presented in Aptheker, *Colonial Era.*

[143] Atack and Passell, *New Economic View*

[144] Lawrence Friedman, *Crime and Punishment in American History* (New York: BasicBooks, 1993), 85

The law of punishment that grew up around this condition of unfreedom took the form of slave codes. The codes provided the legal-juridical justification of the political-economic system of slavery. Writing in 1853, ten years before the Emancipation Proclamation, William Goodell, a slave, wrote that the slave was "under the control of the law, though unprotected by law, and can know law only as an enemy and not as a friend."[145] This stood in marked contrast to Publius' claim that although blacks slaves were property they were persons also because they were protected from violence (of course, the federalist's claim was false on its face, since the institution of slavery was itself organized violence). The state caused violence against blacks (slave and free) in two ways: First, the individual states legislated and enforced slave codes. The codes were upheld by the federal government. Second, violence against blacks was, either expressly or effectively, decriminalized in the South. The government stepped aside so that whites could secure the racial order through extra-legal violence, ostensibly through the disciplining of people in the slave labor camps where blacks were forced to produce agricultural products for the world capitalist economy.[146] "On our estates," a southern publicist wrote, "we dispense with the whole machinery of public police and public courts of justice. Thus we try, decide, and

---

[145] William Goodell, *The American Slave Code in Theory and Practice* (New York: Negro University Press, 1968), 309.

[146] Andrew Fede, *People without Rights: An Interpretation of the Fundamentals of the Law of Slavery in the U S. South* (New York. Garland Pub., 1992). For other modes of social control besides physical violence see Eugene D Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York, Pantheon Books, 1974).

execute the sentences in thousands of cases, which in other countries would go into the courts."[147]

Because of the degree of cooperation between the state and the slaveowner, the state's active upholding of slave codes, and the state's policy to permit violence against blacks through purposeful inaction, these are a species of political crimes. These violent outcomes were not from lack of oversight. The record is full of statements by elites (elected politicians and justices) that these policies were consciously designed policies and were intentionally carried out to their benefit. Obtaining proof of premeditation and malice aforethought is no problem.[148] "Southern appellate judges, *all* of them, even the most exacting, were complicit in the maintenance, justification, and enforcement of an abominable institution."[149] This pattern would continue after emancipation.

Kennedy argues that the harshness of treatment of slaves had two sources: On the one hand, it was derived from the empathic belief that all human beings react to enslavement in the same way: with the desire to revolt. Knowing that it would take a great deal of coercion to keep blacks enslaved, whites reasoned that they would need a strong deterrent to keep slaves in line. On the other hand, the belief that blacks were

---

[147] J.D B DeBow, quoted in Stanley Elkins and Eric McKitrick, "Law of Slavery," 162. That DeBow would compare the South to other countries rather than to other regions of the United States indicates the sense of autonomy that probably prevailed among southern organic intellectuals.

[148] The obvious remedy for these crimes is to hold the perpetrators responsible for their actions in the same fashion as were the Nazis at the Nuremberg trials. Since the perpetrators of slavery and state officials are dead this is not possible (except beyond a symbolic gesture). However, since the state that perpetrated these crimes is still in force, responsibility can still be determined Reparations are probably the best short-term solution.

[149] Randall Kennedy, *Race, Crime, and the Law* (New York Vintage Books, 1991)

inferior and primitive (documented in the next section) required an extra measure of coercion. The requirement for brutal punishment was upheld by the courts who recognized the political importance of maintaining a stable slave system. Maintaining this order required more than permitting the harsh punishment of slaves by their owners: any white could punish a slave. Florida forbid more than seven male slaves to travel beyond the plantation without a white escort. If they were found they could be whipped without civil authority.[150] In Tennessee, a white person could kill the dogs of any slave found hunting without a white escort.[151] The crime for which a slave was most likely dragged into court was murder or theft; most other offenses were handled outside court, on the spot of the "offense."[152]

The killing of slaves by slaveholders was commonplace and accepted in the South. There were laws formally protecting slaves from murder, such as a North Carolina Law enacted in 1798, but there were exceptions in the law that permitted murder under certain circumstance, such as during the "disciplining" of a slave. Even when the killing did not fall under an exception the case was rarely prosecuted. Elkins and McKitrick write, "the murder of a slave found the law straining all its resources to avoid jurisdiction."[153] As late as 1860 a Mississippi Court overturned a murder conviction for a master who killed a slave for poor performance at a task. The court

---

[150] Public Acts of the Territory of Florida (1839) It was desirable to handle most matters outside of court In Arkansas, for instance, a (1848) law allowed the slaveowner of any slave committing a minor offense to settle the matter outside the courts and punish the slave himself or herself. See Friedman, *Crime and Punishment*. See also Daniel J. Flanigan, *The Criminal Law of Slavery and Freedom 1800-1868* (New York· Garland Pub, 1987)

[151] Friedman, *Crime and Punishment*

[152] Hindus, *Prison and Plantation*

[153] Elkins and McKitrick, "Law of Slavery," 163.

stated that the death was within the range of appropriate punishments for a disobedient slave. Only in 1821 was a stranger murder of a slave a capital offense. This was to protect the slavemaster's investment. The killers of blacks, in any case, never received the same punishment as the killers of whites.[154]

Sometimes slaves were judged partially in terms of common law. In *State v. Caesar, a slave*, the Superior Court of Law of Martin Country in North Carolina decided that a slave who defended himself from the physical attack of a man who was not his owner under unusual circumstance was guilty only of manslaughter if there was no malice aforethought (so they sent the case back for retrial).[155] The slave, however, was not entitled to self-defense. It was argued that the slave was responding to an aggressor's actions that "dethroned reason" and aroused passion causing him to forget his "vast inferiority." In other words, the slave believed his life was in danger and, forgetting he was a slave (temporary insanity), killed his attacker. The dissenting position (by justice Ruffin, whom we shall encounter again) argued that it was well understood and was the precedent that the judging of persons who were *equali jure* and the judging of those who were legally disparaged was different. "It is said," he

---

[154] Kennedy, *Crime, Race, and the Law.*

[155] *State v Caesar, a slave* 9 NC 391 (1849) An appellate court, in *State v Abram* 10 Ala. 928 (1847) ruled that a black man who bit off the ear of an overseer, while "bound to obedience, and forbidden to resist," was not completely deprived of resort to self-defense. The court seemed to acknowledge the humanity of the slave in their decision. But, as Friedman notes, this decision was unusual The text of the *State v Caesar* decision is interesting in that it tells us a great deal about the conditions of slaves The slaves in question were in violation of the law by being out of their home without passes from their owners, and associating with one another in a village in the middle of the night They were, therefore, subject to be picked up. It was reasonable to assume, one of the judges argued, that their mere presence in such circumstances committed a transgression from which they could hardly recover.

wrote, "the law does not allow a slave to feel the degradation of a blow, when inflicted by a white man, to the point of dethroning reason; does the law equally deny him the privilege of pleading the dethronement of reason from the passion of fear and apprehension?"[156]

In an earlier case in the North Carolina Supreme Court, *State v Tackett*, the court declared, "It exists in the nature of things, that where slavery prevails, the relations between a white man and a slave differs from that which subsists between free persons; and every individual in the community feels and understands that the homicide of a slave may be extenuated by acts which would not produce a legal provocation if done by a white person."[157] The court expressed the opinion "that the circumstances are to be judged of with a due regard to the habits and feelings of society." This was in spite of a 1817 statute that required "that the killing of a slave should partake of the same degree of guilt, when accompanied with the like circumstances."[158] The court in *State v. Tackett* contrarily stated that "the different degrees of homicide . . . be ascertained by the common law — a system which adapts itself to the habits, institutions, and actual condition of the citizens, and which is not

---

[156] *State v Caesar*. Hindus found in his research on South Carolina that "only the most atrocious or public murders, frequently committed by men of low standing, resulted in conviction," *Prisons and Plantations*, 134

[157] *State v. Tackett*, 8 NC 395 (1839), 217, quoted in Kennedy, *Crime, Race, and the Law*, 32

[158] *State v Caesar*. An earlier law passed in 1791 by the state legislature required similar punishments for similar acts because it regarded a 1774 law that imposed a year in prison for the willing and malicious murder of slave as "disgraceful to humanity and degrading in the highest degree to the laws and principles of a free, Christian and enlightened country"

the result of the wisdom of any one man or society of men, in any one stage, but of the wisdom and experience of many ages of wise and discreet men."[159]

The courts often considered matters in light of the importance of maintaining the legitimacy of the rule of the slaveocracy. The North Carolina Supreme Court reversed a conviction of an assault and battery caused by a man against a leased slave in *State v. Mann* wrote in part on these grounds. "We cannot allow the right of the master to be brought into discussion in the Courts of Justice," the court argued; "The slave, to remain a slave, must be made sensible that there is no appeal from his master; that his power is in no instance, usurped; but is conferred by the laws of man at least, if not by the law of God."[160] Justice Ruffin argued that obedience of a slave can be secured only by "uncontrolled authority over the body." "The power of the master must be resolute, to render the submission of the slave perfect."[161]

The problem of slaves not being defined as human beings worthy of protection by the law took on obscene forms. This was probably no more true than in the case of sexual crimes. Slave women were unprotected by criminal law from rape. In Mississippi, 1859, a conviction for the rape of a 10 year old girl was overturned by the courts because there was no law against sexual violence against blacks.[162] The

---

[159] *State v Caesar.*

[160] *State v. Mann*, 12 N.C. 263 (1829), quoted in Kennedy, *Crime, Race, and the Law*, 33 See also Thomas D Morris, *Southern Slavery and the Law* (Chapel Hill: University of North Carolina Press, 1996); Mark V Tushnet, *The American Law of Slavery 1810-1860: Considerations of Humanity and Interest* (Princeton, NJ. Princeton University Press, 1981), Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), Orlando Patterson, *Slavery and Social Death. A Comparative Study* (Cambridge, MA Harvard University Press, 1982).

[161] *State v Mann*, quoted in Kennedy, *Crime, Race, and the Law*, 33

[162] *George (a slave) v The State*, 37 Miss Rep. 316 (1859), in Kennedy, *Crime, Race, and the Law*. See also Friedman, *Crime and Punishment*

Mississippi legislature, embarrassed by the decision of their court, did pass a law that punished slaves by death, whipping, or other suitable punishment for raping a female under 12; however, girls and women 12 and over were not protected.[163] And no slave of any age was protected from rape by a white person.[164] What mattered most in these decisions was the race of the victim of rape. Even free black women had little or no protection from being raped by a white man. Since blacks could not testify against whites,[165] laws against rape arguably would not have much mattered.

---

[163] Kennedy, *Crime, Race, and the Law*

[164] Friedman, *Crime and Punishment* For a general discussion of race and rape see also Susan Brownmiller, *Against Our Will· Men, Women and Rape* (New York. Simon and Schuster, 1975), Abena Busia, "And This is What We've Decided to Tell You After Everything We've Shared," in *Theorizing Black Feminisms. The Visionary Pragmatism of Black Women*, ed. Stanlie M. James and P A Abena (New York Routledge, 1993), Adele Logan Alexander, "She's No Lady, She's a Nigger'. Abuses, Stereotypes, and Realities from the Middle Passage to Capitol (and Anita) Hill," in *Race, Gender, and Power in America The Legacy of the Hill-Thomas Hearing*, eds Anita Faye Hill and Emma Coleman Jordan (New York Oxford University Press, 1995); Catherine Clinton, "With a Whip in His Hand: Rape, Memory, and African-American Women," in *History and Memory in African American Culture*, eds. Geneviève Fabre and Robert O'Meally (New York· Oxford University Press, 1994), bell hooks, *Ain't I a Woman: Black Women and Feminism* (Boston, MA South End Press, 1981), Patricia J Williams, *The Alchemy of Race and Rights* (Cambridge, MA Harvard University Press, 1991). One might wonder whether, if the law against rape did not protect black women, if white men who raped could be punished under miscegenation laws, except that slaveowners could use rape as a tool for increasing their property Besides, miscegenation laws were more concerned with protecting marriage.

[165] Every state except Delaware barred all blacks from testifying against whites in court. "The truth shall not be received from a black man, to settle a controversy where a white man is a party Let a man be Christian or infidel . . . let him be of good character or bad, even let him be sunk to the lowest depths of degradation, he may be a witness in our courts if he is not black, *Jordan v Smith* 14 Ohio 199, 202 (1846), quoted in Kennedy, 37. Proslavery scholar Thomas R.R. Cobb in *An Inquiry into the Law of Negro Slavery in the United States of America* (1858), wrote that "the mendacity of the Negro 'is a fact too well established to require the production of proof, either from history, travels or craniology," quoted in Kennedy, 402. A 1850 California statute stated that "no Black, or Mulatto person, or Indian, shall be allowed to give evidence in favor of, or against, a White man," *People v. Hall*, 4 Cal. 399 (1854), in *Kennedy, Crime, Race, and the Law*, 37. See also Daniel J Flanigan, "Criminal Procedure in Slave Trials in the Antebellum South," *The Law of American Slavery*, ed. Kermit L Hall (1987). See also Elkins and McKitrick, "Law of Slavery "

Slaves were criminalized for all manner of things, these primarily to keep them subservient to the system of chattel slavery. Any act of insolence, be it something as harmless as offensive remarks or gestures, met with swift punishment.[166] Often the laws were extended to whites who assisted slaves in accomplishing the forbidden acts. For example, North Carolina passed an act that forbid the teaching of slaves. The act states the belief behind the law: "the teaching of slaves to read and write, has the tendency to excite dissatisfaction in their minds, and to produce insurrection and rebellion." For whites who break the law, they are fined and/or imprisoned. For "free persons of color" who break the law, they are fined, imprisoned, or "whipped . . . not exceeding thirty-nine lashed, nor less than twenty lashes."[167] If a slave who knew how to read in turn taught another slave how to read, that slave "shall be sentenced to receive thirty-nine lashed on his or her bare back."[168]

The differences in punishment in the law (and this law is representative) reflect two important realities of caste society. First, slaves could not be threatened with fines, since the court could not depend upon them to have any money. They could not ordinarily be imprisoned, since their owners would lose money (really they already were imprisoned — "in the great prison-house of the South"[169]). Therefore, they were threatened with the full number of lashes by the whip (forty-save-one is the biblical

---

[166] Friedman, *Crime and Punishment.*

[167] "An Act to Prevent all Persons from Teaching Slaves to Read or Write, the use of Figures Excepted," Fischel and Quarles, *Negro American*, 115

[168] Fischel and Quarles, *Negro American*, 115

[169] Quoted in Peter H. Wood, "Slave Labor Camps in Early America: Overcoming Denial and Discovering the Gulag," in *Inequality in Early America*, eds Carla Gardina Pestana and Sharon V Salinger (Hanover, NH University Press of New England, 1999), 226.

punishment). Second, the law permitted "free men of color" to receive a corporal punishment beyond imprisonment: a whipping. The law did not provide for this option to be imposed on free whites. Here we see that along with the slave system there was a caste system prescribing different punishments for people of different racial statuses. The theoretical point to be made is that a caste system did not replace slavery, but rather the slave system existed within a caste system (as we have seen, the status difference between blacks and whites predates slavery in the colonies). The status of all blacks, free or unfree, was criminalized.[170] A Florida court observed this fact when it ruled that "the degraded caste should be continually reminded of their inferior position, to keep them in a proper degree of subjection to the authority of the free white citizen."[171] It is also significant to note that the caste system did not end in 1964, for, if differential punishments are any indication, blacks are still punished more severely than whites for the same crimes (such as in the crack vs. power cocaine disparity).

An additional theoretical point is to be made on this particular subject. Referring to part 2, chapter 1, I noted that common law since feudalism allowed for the dominant male of a household, the *dominus*, to possess the right to administer

---

[170] For example, the Negro Seamen Acts required any black person aboard a ship in a Louisiana or South Carolina harbor to be imprisoned. The North Carolina Code of 1855 stated: "Any slave, or free negro, or free person of color, convicted of . . . an assault with intent to commit a rape, upon the body of a white female, shall suffer death," Friedman, *Crime and Punishment*, 90 Free blacks were restricted in their intercourse with slaves; they were not permitted to cohabitant, gamble, entertain slaves in their home, etc Free blacks were restricted in gun ownership and to posses other weapons, etc

[171] *Luke v. State*, 5 Fla 185 (1853), quoted in Kennedy, *Crime, Race, and the Law*, 77.

corporate punishment to his subjects (wife, children, servants, and slaves).[172] Being subject to this sort of punishment indicated one's degraded status relative to the public sphere. With the emergence of capitalism and the legal apparatus of the nation-state, the public sphere was enlarged and the private sphere of control over labor was diminished. Physical punishments began to be progressively reduced in the public sphere with the rationalization of the criminal justice apparatus and the application of Enlightenment principles. In Europe, this expansion was enjoyed by most males (at least formally). The chief exceptions there were women (until the twentieth century) and children (who remain legally degraded today). In the United States, however, because of slavery, the private sphere of punishment remained quite extensive and this sphere was relatively isolated from the progressive changes in the public sphere (hence we have the real character of so-called paternalism). Because of this, slaves remained subject to a wide range of possible physical punishments.[173] Classical conceptions aside, this was true of convicts in the United States, as well, which led Sellin to the observation that many of the punishments he observed in the penal system of his day were first developed for use on slaves.[174] Friedman, in noting that parents have the same sort of control over their children, observed that slavery's

---

[172] Graeme Newman, *The Punishment Response* (Philadelphia J B. Lippincott Company, 1978).

[173] Although he does not provide this theoretical explanation, Kennedy notes the same racial disparity in quality of punishments: "The law of slavery imposed differences not only in degrees of punishment but also in the character of punishment Long after maiming, branding, ear cropping, whipping, castration, and other sorts of physically injurious punishments had waned as an approved method of chastising whites, they remained available for the correction of slaves," 77. Another feature of this dual system is that whereas whites were permitted a jury trial, it was required that slaves be tried before a justice of the peace. For a time, Georgia required that free blacks be tried by a justice of the peace, as well

apologists "insisted that southern slave-owners were just like parents in this regard; they loved their slaves, cared for them, were anxious for their welfare."[175] Moreover, the punishment of blacks remained largely outside the legal system, and it was justified on this basis. This argument is bolstered by the evidence: state control of wrongdoing by slaves was but a fraction of the repressive controls slaves faced. Before the Civil War, prisons were almost exclusively white. As one former slave put it: "In slavery times jails was all built for the white folks. There weren't never nobody of my color put in none of them . . . ; they had to work; when they done wrong they was whipped and let go."[176]

Again, Kennedy's claim that slaves enjoyed protection because their status as property made them valuable is contradicted by the use of capital punishment during the period between the founding of nationhood and emancipation. Although whipping was the physical punishment of choice, the gallows were used quite a bit. Again, Virginia will be our example. Between 1783 and 1831, 39 slaves were hanged for rape in Virginia. Between 1832 and 1865, another 19 more were hanged for the same offense. Hanging was used because the crime committed — the alleged murder of a white person or the alleged rape of a white woman — was an affront to white supremacy generally, and for its perceived deterrent effect. Slaves were forced to

---

[174] Thorsten Sellin, *Slavery and the Penal System* (New York. Elsevier, 1976).
[175] Friedman, *Crime and Punishment*, 85
[176] Quoted in Kennedy, *Race, Crime, and the Law*, 128.

attend hangings.[177] The state reimbursed the slaveowner for the loss of their property.[178]

Analysis should avoid only discussing the treatment of blacks in the South. There were blacks in the North (though a very small proportion). Slavery was abolished over the first third of the 19th century. The evidence shows that blacks were treated unfairly compared to white defendants. Racial prejudice was ubiquitous, which meant that blacks subject to jury trials likely did not enjoy the relative benefits of such a trial. The state constitutions of Illinois, Indians, and Oregon barred blacks from immigrating to the state (a judge in Indiana who ruled on the exclusion of one black man also expressed his desire that the state commit itself to remove the ones they already had). Of course people in the North participated in the system of slavery by being compelled, lest they be criminals, to return fugitive slaves to their owners. The supreme court upheld this practice, based on the Constitution. As if this were not enough, the federal government enacted the Fugitive Slave Act of 1850 (of which I shall have more to say in the next chapter). This act, with many forerunners, developed further the federal bureaucracy to govern the systematic return of slaves to their masters.

Thus we find during this period a dual labor system with an attendant dual justice system. One side of the system, associated with the wage-labor market, was reserved primarily for poor and working class whites, wherein, ideally, the Bill of

---

[177] Edward L. Ayers, *Vengeance and Justice. Crime and Punishment in the 19th Century American South* (New York : Oxford University Press, 1984).

[178] For example Laws La 1854, Act No 215, Acts and Resolutions of the General Assembly of the States of South Carolina, 1830 See Friedman, *Crime and Punishment*

Rights applied, defendants were entitled to an attorney and were judged by a jury of their peers. If convicted, they faced a number of different punishments; these, as were their crimes, conditioned by their class location, as well as by the type and severity of their crimes. We saw that the types of punishments and the severity of punishment that confronted white proletarians was conditioned by the rhythms of the labor market. When there were labor surpluses, especially when these were viewed as a threat to the legitimacy of the system, punishments were more frequent and harsher. During capitalist expansion, when there were labor shortages, captive criminal populations were utilized to advance the economic system through forced labor. The other side of the system, associated with the slave-labor system, was reserved for captive blacks and for free blacks, as well. Defendants in this system enjoyed few protections and faced considerably more severe punishments. However, the justice system in which most blacks were controlled, because they were terminally captive, was mainly a private one, its character marked by uncertainty and continual terror. As a result, blacks were underrepresented in the formal criminal justice system, although their presence there was not negligible. The slave-labor system, because of its segregation from the wage-labor market, and because slaveowners had different obligations than the capitalist class fractions exploiting free labor, such as having to by law keep their slaves alive even in times of economic stagnation, moved at a different pace and with markedly different consequences than the free labor system.

Mongrels, Hybrids, and Hierarchies: The Rise Of Scientific Racism

If there be various species of mankind, there must be a natural aristocracy among them, a dominant white species as opposed to the lower races who by their origin are destined to serve the nobility of mankind, and may be tamed, trained, and used like domestic animals, or may,

according to circumstances, be fattened or used for physiological or other experiments without any compunction To endeavor to lead them to a higher morality and intellectual development would be as foolish as to expect that lime trees would, by cultivation, bear peaches, or the monkey would learn to speak by training Wherever the lower races prove useless for the service of the white man, they must be abandoned to their savage state, it being their fate and natural destination All wars of extermination, whenever the lower species are in the way of the white man, are not only excusable, but fully justifiable. Theodor Waitz (1859)[179]

Georg Lukács writes, "Biologism in philosophy and sociology has always been a basis for reactionary philosophical tendencies."[180] Biologism is the application of biological science to the study of social formation and behavior. For Lukács, it emerges from class struggle wherein "pseudo-biological concepts and methods" are made "a suitable instrument of the reactionary battle against the idea of progress."[181] Lukács argues that the effect of applying the organic analogy to society is to show that a natural principle lurks behind social structures, thus legitimating structures of inequality and domination. In this section, I theorize the rise of scientific racism. Lukács' explanation tends towards class reductionism. It is true that scientific racism emerges from class struggle, but it also stems from ethnonationalist struggles and the history of colonialism. In this we must go beyond Lukács. Therefore we must rely on his history and insight but remain unsatisfied with his explanation. Moreover, his history is also incomplete, especially concerning the developments in the United States, so we must turn to other sources, such as Gould's *The Mismeasure of Man*, and

---

[179] Quoted in Robert J C. Young, *Colonial Desire· Hybridity in Theory, Culture and Race* (New York Routledge, 1995), 7

[180] Georg Lukács, *The Destruction of Reason* (Atlantic Highlands, NJ: Humanities Press, 1981). See also John David Smith, *The Biblical and "Scientific" Defense of Slavery* (New York: Garland Pub, 1993)

[181] Lukács, *Destruction of Reason.*

Charles Wesley's 1940 article, "The Concept of Negro Inferiority in American Thought."[182]

This is Lukács' explanation: During the French revolution an ideology of inherent human equality (in the abstract) was advanced to beat down feudal privileges, which were based on a claim of natural hierarchy. Conservative ideology still carries to this day the need for a status hierarchy, which manifests itself periodically in fundamentalist calls for traditional family structure, etc. Of course, today the conservative is a capitalist. The "radical" ideology that conservatism opposed in the late 18th and first half of the 19th century was bourgeois ideology: the capitalist class wished to present themselves as fighting for the equality of all men, which, as we have seen, they meant in a very limited sense, to wit, equal rights for white men in a formal legal context. Lukács points out that the nobility, everywhere under siege in the new economic order, intensified their claim to natural rank, privilege, and order. Racial theory grew out of this struggle, the last gasp of a fading feudal class.[183]

---

[182] Stephen J Gould, *The Mismeasure of Man* (New York: Norton, 1981), Charles H Wesley, "The Concept of Negro Inferiority in American Thought," *Journal of Negro History*, 25 (1940).

[183] In 1727, Count de Boulainvilliers wrote a book claiming that France was composed of two separate races. The nobility were descended from the old Frankish ruling class. The rest of the population were descended from the Gauls To permit a change in the hierarchy would put Gauls in charge, and they were simply not up to the task Such an arrangement would surely cause the degradation of France The count's thesis was met immediately with criticism. Dubos in 1734 called de Boulainvilliers' history legend. Volney, in *Ruins*, attacked the idea that the nobility was a superior race, he showed that the current nobility were not descended from Frankish rulers at all, but were former merchants and artisans who bought their titles. Sieyès attacked the fundamental premise that the nobility, even if they were legitimate descendants of Frankish conquers, had an inherent right to remain in that position.

After the Revolution, racial theorizing was taken over by the bourgeoisie. They were now in the reactionary spot, finding themselves in the position of having to justify continuing, and in many places increasing, social inequalities. This explanation, which has been advanced recently by Kenan Malik,[184] assumes that advocates of the Enlightenment were pro-equality before the various bourgeois revolutions (specifically the French Revolution). This was certainly not the case, as I demonstrated earlier with Locke endorsement of racial slavery and with Hume's repugnant racism. The imperative to racialize people emerges with capitalism, is inherent in it, as the European world-system comes into being and expands. We have seen that while the patriots used Enlightenment attacks on the crown, they at the same time defended chattel slavery. The rhetoric of equality had been an abstract political concept in service of a practical goal, namely, the overthrow of the aristocracy (the old system of inequality) and the establishment of capitalism (the new system of inequality). It is nonetheless true that the bourgeoisie was finding a new way to articulate inequality, and this new way was being fashioned by the scientific community. The emergence of science permitted the attempted rationalization of racial thinking and the new caste-class system. Thus as knowledge "improved" through science, so did racial ideology.

Lukács observes that feudal interests lingered with considerable effect into the new society. Gorbineau's *The Inequality of the Human Races*, one of the more famous racialist tracts, was written for conservative interests during the reactionary period

---

[184] Kenan Malik, *The Meaning of Race: Race, History and Culture in Western Society* (New York New York University Press, 1996)

under Napoleon III.[185] In this book, Gorbineau warned of the degeneration of society if "mixed-bloods" were allowed to institute democracy, an inherently destructive manner of political organization. This was because the inherent inequality of people requires a hierarchical social order. In this, he found great accord with the views of James Madison. He was also in agreement with the framers in his claims that race was central to civilization: "History results only from the mutual contact of white races."[186] Although Gorbineau was finding it hard to get attention with the book in France, he was pleased that the book was having an effect in the United States, especially in the Southern states, where it was translated in 1860. After the political tide shifted again in favor of the bourgeoisie, Gorbineau's thesis, which has been anti-democratic in essence, became potentially useful to explain inequality under capitalism (with modifications). Gorbineau is a significant figure in the development of scientific racism because he introduced racial theory to a wide audience and because of the scientific cast he gave the argument.

While inventing a fictional course of historical development based on races and race-mixing, Gorbineau does not operationalize race. He treats the number and character of races and race-mixing as unproblematic constructs. At the time Gorbineau was producing his racial classification, the culture in which he lived was already thoroughly racialized, and racial reality was regarded as self-explanatory, a taken-for-granted actuality. What remained for Gorbineau was the manufacturing of a racial

---

[185] Arthur Comte de Gobineau, *The Inequality of Human Races*, trans. Adrian Collins (New York, Putnam, 1915) The original, *Essai sur l'inegalité des races humaines* , was four volumes (Paris. Firmin Didot, 1853-1855).

[186] Quoted in Lukács, *Destruction of Reason*, 681

history that advanced his ideological goals. This situation remains true today where we find that despite the research showing the non-existence of biological race, racist books, such as *The Bell Curve*, assume without explanation the racial categories they use. Like *The Bell Curve*, dysgenesis was at the core of Gorbineau's thesis. He wrote, "The white race originally possessed the monopoly of beauty, intelligence and strength, by its union with other varieties hybrids were created, which were beautiful without strength, strong without intelligence, or, if intelligent, both weak and ugly."[187]

There were during Gorbineau's day scholars who recognized the need for tighter definitions and concept formation surrounding the construct of race. Chamberlain, whom Lukács regards as the founder of modern racialism, wrote, "A theory of race that is useful and can be taken seriously cannot be constructed on the tale of Sem, Cham and Japhet and such ingenious institutions, mixed with hair-raising hypotheses, but only on a thorough and comprehensive knowledge of natural science."[188] Gorbineau had not yet shaken the language of his Catholic upbringing. Chamberlain was able to shake the Hebrew mythology off with his anti-Semitism. However, Gorbineau's desire to link race to Biblical accounts was probably one of the features of his work that made it popular in America. In 1835, J. Jacobus Flournoy published a book in the US, titled *An Essay on the Origin, Habits, etc., of the African Race,* that repeated the myth that blacks were descended from Ham and therefore a race of

---

[187] Quoted in Wesley, "Concept of Negro Inferiority," 555
[188] Lukács, *Destruction of Reason*, 676

slaves, and, furthermore, that the black was a degenerate race.[189] Thus Gorbineau's work was introduced into a context that assumed the same things he did.

America was the ultimate racial state, and thus represented a ready market for the theories of racialists like Gorbineau. On the other hand, how much was Gorbineau really needed? There were already earlier and more sophisticated efforts at racial theorizing in America. In 1845, William J. Grayson, in *Slavery in South*, claimed that without whites blacks could not achieve civilization.[190] In 1854, Joshua C. Nott published an article in the *American Journal of the Medical Sciences* titled, "The Mulatto a Hybrid — Probable Extermination of the Two Race if the Whites and Blacks are Allowed to Intermarry."[191] This was followed the next year by a book, *Two Lectures on the Natural History of the Caucasian and Negro Races,*[192] or as Stephen J. Gould put it, the "lectures on niggerology." These lectures had been given as early as 1848. His principle argument was that if all the races were equal biologically, then they should show the same level of cultural development. Since blacks and Indians had never

---

[189] This was also argued in Josiah Priest's *Slavery, as it Relates to the Negro or African Race* (Albany. C. van Benthuysen, 1843). Priest's work is an expression of the symbolic importance of color, as we saw with the English colonists in the 16th century.

[190] William J. Grayson, *Slavery in the South: A Review of Hammond's and Fuller's Letters, and Chancellor Harper's Memoir on the Subject* (Charleston Walker and Burke, 1845. See also Matthew Estes, *A Defense of Negro Slavery as it Exists in the United States* (Montgomery, 1846).

[191] Joshua C. Nott, "The Mulatto a Hybrid — Probable Extermination of the Two Race if the Whites and Blacks are Allowed to Intermarry," *American Journal of the Medical Sciences*, 6 (1843), 252-256 As early as 1854 Frederick Douglass was lecturing and publishing essays disputing the claims made by ethnologists See, for example, "The Claims of the Negro Ethnologically Considered," in *The Life and Writings of Frederick Douglass*, ed Philip Foner (New York, International Publishers, 1950).

[192] Joshua C. Nott, *Two Lectures on the Natural History of the Caucasian and Negro Races* (Mobile, AL Dade and Thompson, 1844)

achieved the level of civilization that whites had, thus proved their inferiority. He argued that interbreeding with the inferior race would degrade the superior race.

In 1854, the year Gorbineau published *The Inequality of the Races*, Nott and George R. Gliddon published *Types of Mankind*, based on information culled from state of the art archaeology, ethnology, geography, philology, and biology.[193] The work also featured other prominent racial scientists, including Samuel George Morton and Louis Agassiz. Gorbineau quickly seized upon this direction, including in his 1956 book, *The Moral and Intellectual Diversity of Races*, an appendix by Nott.[194] Robert Knox's *The Races of Men*, published in 1850, was another early work in racial science. Knox attempted to absolve the British of their mistreatment of the Irish by pointing to the latter's racial inferiority as the culprit behind their antagonisms. In his book the Irish were described as "Africanoids" and "Chimpanzees."[195]

Even before the mid 1800s, however, Europeans and their descendants were using scientistic racial schemes. In the 1770s, J. F. Blumenbach, using the method of

---

[193] Joshua C. Nott and George R. Gliddon, *Types of Mankind: or, Ethnological Researches, Based upon the Ancient Monuments, Paintings, Sculptures, and Crania of Races, and upon their Natural, Geographical, Philosophical, and Biblical History: illustrated by Selections from the unedited papers of Samuel George Morton, M D., and by additional contributions from Prof L. Agassiz, L.L D , W. Usher, M.D., and Prof. H.S. Patterson, M.D* (London. Trubner, 1854) See also Joshua C. Nott, *The Indigenous Races of the Earth, or, New Chapters of Ethnological Enquiry* (Philadelphia: Lippincott, 1857) and "The Negro Race," *Popular Magazine of Anthropology*, 3 (1866).

[194] Joseph Arthur comte de Gobineau, *The Moral and Intellectual Diversity of Races, with Particular Reference to their Respective Influence in the Civil and Political History of Mankind. With an analytical introduction and copious historical notes, by H. Hotz. To which is added an Appendix containing a summary of the latest scientific facts bearing upon the question of the unity or plurality of species By J. C Nott, M.D., of Mobile* (Philadelphia Lippincott, 1856)

[195] Knox developed a theory quite similar to Count de Boulainvilliers, where the English were of Germanic descent, having invaded the island and conquering the Celts

Linnaeus, identified 28 human races.[196] Blumenbach invented the word "Caucasian" and applied it to the "superior race." Edward long, a Jamaican slaveowner, wrote in *History of Jamaica*, "I think there are extremely potent reasons for believing that the white and the Negro are two distinct species." This was in 1774. Charles White, in an *Account of the Regular Gradation of Man*, published in 1799, advanced a similar view in Britain.[197] These writers disagreed with the standard definition developed by Comte de Buffon and John Hunter that the test of a distinct species was fertility. Buffon argued that while there could be hybrids (such as the mule), these hybrids were sterile and thus the natural distinction between horse and donkey was maintained. Whites and blacks had been interbreeding for some time without sterility, which posed a problem for the claim that they were separate species. However, Long claimed to have observed decreasing fertility among mulattos. Given these dates, and given the level of knowledge possessed by the political elites who institutionalized slave society, there is a strong inference to be made about the relation of scientific racialist thought to justifications for enslaving an "inferior race" made by politicians.

But such an inference is unnecessary. Thomas Jefferson's racist beliefs, written down in *Notes on the State of Virginia*, published in 1787, were unequivocal, and in them he makes an appeal to various scientific theories of racial differences.[198] His

---

[196] In *Systema Naturae*, Linnaeus identified four races: American, European, Asiatic, and Negro. In 1781, Blumenbach identified five race: Caucasian, Mongoloid, Malay, American, and Negro. Detweiler Linnaeus identified red, yellow, white, and black races in 1735 William H Tucker, *The Politics of Racial Research* (Chicago. University of Illinois Press, 1994)

[197] Tucker, *Racial Research*

[198] Thomas Jefferson, *Notes on the State of Virginia*, ed. William Peden (Chapel Hill. University of North Carolina Press, 1995). I am using Jefferson as the example because of the founding fathers he was the most progressive and democratically minded By appealing to the

conclusions were nothing more than the stereotypes that were prevailing in his day, prejudices that, of course, he did not invent, but which had existed for hundreds of years before him (and would persist for hundreds of years after him). In the *Notes* he expressed his desire to remove all African Americans from the United States and put them on boats back to Africa so they could colonize the continent. The reason for this was that nature made Negroes and whites distinct (he was not sure whether Negroes began as a separate race or if they are an instance of the differentiation, or more precisely the degradation, of the species).[199] Because of the "natural" differences, the American population was divided against itself and there would always be conflict between these groups. The conflict would end, Jefferson feared, only with the extermination of one race at the hands of another.

Jefferson enumerated the many differences between the races. Whites are more beautiful than Negroes, which is both self-evident and proven by the preference blacks express for white standards of beauty. Black men prefer white women just as the "Oranootan" prefers a black woman over another "Oranootan." In this line of thinking Jefferson may have been influenced by the work of Bernard Roman, who argued for a hierarchy that put Negroes first, "Ourang-outang" second, Apes, third, Baboons fourth, and Monkeys fifth.[200] The effect was to perpetuate the myth of the black rapist.

---

most "left-wing" democrat of the clique, I hope to avoid the charge of constructing a strawman. The *Notes*, hurriedly written and published as a "draught" volume, was injected into the struggle over the Constitution.

[199] He covers his argument and shows off his understanding of comparative anatomy by covering the possibilities that they are different species of the same genus or different varieties

[200] Bernard Romans, *A Concise and Natural History of East and West Florida*, ed. Kathyrn E Holland Braud (Tuscaloosa· University of Alabama Press, 1999), original published in 1775 in New York

There were many physical differences. Because the kidneys of Africans function less than whites, blacks have "a very strong and disagreeable odour." If I understand Jefferson's argument, he believed that blacks sweat urine. Blacks require less sleep (which was good for slaveowners, which Jefferson was, because then blacks were reasonably worked longer). They are as brave and adventuresome as whites, he wrote, but this is probably because they lack "forethought." When they are confronted with danger, blacks display a marked lack of "coolness" compared to whites. In sexual relations blacks are more lusty than whites and lack the tenderness of whites. For blacks love is desire not romance. Also blacks grieve for shorter periods of time. They appeared to Jefferson to live in the moment. They are, Jefferson claimed, primarily sensual beings, whereas whites are reflective beings. He admitted an equality of memory, but that the reasoning ability of blacks is "much inferior." A Negro's imagination is, according to Jefferson, "dull, tasteless, and anomalous."[201]

It might have been supposed that these differences, assuming they exist for the sake of argument (of course they do not), could be explained by the degradation of their conditions having been transported to America. But Jefferson turned this argument around and claimed that conditions under slavery in America were much better for blacks than freedom in Africa. They had been able to learn the English language, learned handicrafts, and profited from their associations with whites. Some

---

[201] Wesley cites a *Boston Gazette* editorial that chastised Jefferson's work "Good God! Mr. Jefferson, whither does this argument carry you If every white man were thus to be proscribed because he could not, like you, perhaps, trace and comprehend the investigations of Euclid, society we are afraid would soon be woefully thinned in its numbers," "Concept of Negro Inferiority," 544.

had even achieved a liberal education and enjoyed the fruits of science, something Africa could not offer them (which was why the black colonization of Africa would have to be supervised by whites). Still, after all this, blacks had not developed. The Native American, who did not have any of the advantages the slave enjoyed had developed more than blacks. The slaves under the Romans were much worse off, yet they produced knowledge. They were, of course, Jefferson reminded his readers, white. Jefferson avered that he had never met "a black" who spoke a thought above a simple description of something. They were incapable of abstract reasoning, their art and poetry were at best simplistic, at worse worthless.

As further proof of their innate inferiority, Jefferson noted the consensus position among intellectuals that when blacks mixed with whites the blacks were greatly improved (the obverse of this was that whites were degraded). For Jefferson, this "proved" that it was nature not nurture. Jefferson concluded that it was "a suspicion only," but that blacks, whether they were a distinct species or a variation were "inferior to the whites in the endowments both of body and mind." This formulation is similar to Richard Nisbet's statement in *Slavery Not Forbidden by Scripture*, that "On the whole, it seems probable that they are a much inferior race of men to the whites in every respect."[202] Because of this, it was necessary to keep the races distinct and, preferably alive (Jefferson was a humanist), which would require their being removed from the United States after their emancipation.

---

[202] Richard Nisbet, *Slavery Not Forbidden by Scripture* (Philadelphia, 1773)

Many of the leading academics, justices, politicians, and inventors in the United States in the last decades of the 18th and first half of the 19th centuries advanced the theory of black inferiority. Jared Sparks, who would become the president of Harvard College wrote in 1824 that however much we sympathized with blacks we could not consider them anything other than inferior. Earlier, Samuel Stanhope Smith, later president of Princeton University, designed an inventory of black traits he claimed constituted their inferiority.[203] He based his theory on Blumenbach's climatic theory of racial difference. Thomas R. Dew, later president of William and Mary College, argued that blacks were culturally inferior to whites.[204] His work was to justify the institution of slavery. He wrote that "it is the order of nature and of God that the being of superior faculties and knowledge and therefore of superior power should control and dispose of those who are inferior."[205] William Harper, who sat on South Carolina's Supreme Court, argued in 1837 that blacks were "an inferior variety of the human race."[206] John C. Calhoun argued before the Senate in 1837 that blacks were incapable of civilization. That year, Julien Virey claimed that

---

[203] Samuel Stanhope Smith, *An Essay on the Causes of the Variety of Complexion and Figure in the Human Species*, ed Winthrop D. Jordan (Cambridge, MA· Harvard University Press, 1965), original published in Philadelphia, 1787

[204] This theme ran alongside and was often combined with biological racism The conditions of blacks in the United States could be blamed on both William C. Buck, in *The Slavery Question* (Louisville, 1849) cited the backwards conditions of Africa as the reason why blacks had not improved. John Fletcher, in *Studies on Slavery in Easy Lessons* (Philadelphia: Thomas, Copperthwait and co., 1952), advanced a similar argument. Others would point to this and say this proves that blacks are biologically inferior

[205] Thomas R Dew, *A Review of the Debate on the Abolition of Slavery in the Virginia Legislature, 1831-1832* (Richmond. T W White, 1832), 30, quoted in Wesley, "Concept of Negro Inferiority," 547

[206] Quoted in Wesley from the 1837 edition, "Concept of Negro Inferiority," 548. William Harper, "Memoir on Slavery," in *The Pro-Slavery Argument* (Charleston, SC Walker, Richards, 1852)

blacks were a distinct species, resembling "ourang-outangs," and that their mental capacity was that of an ape. He produced an inventory of physical characteristics delineating blacks and whites, and these, he said, proved that one race should rule over the other. Samuel Morse, the inventor of the telegraph, produced a pamphlet titled *An Argument on the Ethical Position of Slavery in the Social System and Its Relation to the Politics of the Day* in which he argued that whites correctly ruled over blacks. [207]

One of the more famous books was E. N. Elliott's *Cotton Is King*.[208] This book was celebrated in the South because in it Elliott described the conditions of black people living in the North. He noted several pathologies, for instance, blacks were disproportionately involved in crime. He used this evidence to claim that blacks in the North, because of their freedom from bondage, had regressed to the savage conditions of Africa. In *Slavery in the Light of International Law*, published in 1860, he argued that the framers never intended for blacks to be equal to whites. Three years earlier, in the *Dred Scott* decision, the US Supreme Court had made the same argument, declaring that people of African descent were not citizens of the United States and that they had no rights that whites were obliged to respect. Even those works that were regarded as

---

[207] Wesley, "Concept of Negro Inferiority " Other books from this period are John Campbell, *Negro Mania. Being an Examination of the Falsely Assumed Equality of the Races of Mankind* (Philadelphia: Campbell and Powers, 1851), George Fitzhugh, *Cannibals All! Slaves Without Masters* (Richmond. A. Morris, 1857), W. G Brownlow, *Ought American Slavery to be Perpetuated* (Philadelphia J.B. Lippincott and co., 1858); Sidney George Fisher, *The Laws of Race as Connected with Slavery* (Philadelphia, 1860). One of the more interesting thesis was offered by Herbert Fielder, in *The Disunionist· A Brief Treatise upon the Evils of the Union between the North and South*, in which he noted that whites in the working and poor classes benefited from the existence of an inferior race since this improved their material conditions.

[208] E. N Elliott's *Cotton Is King and Pro-Slavery Arguments* (Augusta, GA: Pritchard, Abbott, and Loomis, 1860)

anti-slavery propaganda still held that blacks were inferior. For example, Hinton Rowan Helper, after showing slavery's impact on the South in *The Impending Crisis of the South* (1857), wrote two books — *La Nojoque* (1867) and *Negroes in Negroland* (1868) — wherein he asserted that blacks were the lowest of all races and they had produced nothing of any cultural merit. The brain of a black person, he claimed, stopped growing at the age of fourteen.[209]

The racist view among elites was globally shared. Linnaeus, the naturalist, mixed anatomy with character. Georges Cuvier, an early geologist, paleontologist, and comparative anatomist, said the black form approached that of a beast.[210] Charles Lyell, compared blacks to monkeys.[211] Charles Darwin theorized that the gap between Homo *sapiens* and other primates would become more distant when the black became extinct. There were some who held more enlightened positions, for example Blumenbach, who advanced a theory of climatic variations, and Alexander von

---

[209] Wesley, "Concept of Negro Inferiority" Hinton Rowan Helper, *The Impending Crisis of the South· How to Meet It*, ed. George Fredrickson (Cambridge, MA· Harvard University Press, 1968), original published in New York, 1857, *La Nojoque. A Question for a Continent* (New York. G. D. Carleton and Co, 1867), *Negroes in Negroland* (New York, 1868).

[210] Cuvier compared blacks to orangutans, claiming their "lips were monstrously large," among other supposed similarities Such comparisons with monkeys and apes that find blacks resembling them more than whites are entirely fallacious. As Gould points out: "The human body can be measured in a thousand ways Any investigator, convinced beforehand of a group's inferiority, can select a small set of measures to illustrate its greater affinity with apes." He observes, parenthetically, "This procedure, of course, would work equally well for white males, though no one made the attempt. White people, for example, have thin lips — a property shared with chimpanzees — while most black African have thicker, consequently more 'human' lips," *Mismeasure of Man*, 86

[211] Lyell, in *A Second Visit to the United States of North America*, vol 1 (London, 1850), wrote that the form of slavery practiced in the South was "benign." He noted that the old lived in the community of their neighbors, whereas if they lived in England they would have been in the poor house. Children were free of any regular work before their tenth or twelfth birthday. Blacks babies, he noted, were "very ugly." He wrote: "The parents indulge their own fancies in naming their children," quoted in Fishel and Quarles, *American Negro*, 99.

Humbolt, who argued against racial ranking. And there was Alfred Russel Wallace, the co-founder of natural selection who disagreed with Darwin about the degree to which natural selection applied to human diversity (a point that has been sustained by contemporary research). Still, even those who disagree with the more extreme views held racist assumptions. If they did not believe racialized peoples were inferior, they believed their cultures were.

During the period of slavery in the United States there were in general two ideological positions on racial differentiation. There were, according to Gould, "hardliners and "softliners."[212] The hardliners believed that blacks were inferior and that this "brute fact" justified colonization and slavery. The softliners, on the other hand, believed that, although blacks were inferior, their liberty should not depend on intelligence. Some softliners believed that education and a higher standard of living could make blacks smarter. Other softliners believed that blacks were permanently inept. There was, therefore, disagreement over the origin of inferiority, whether it was cultural or biological? Of course, in all of this the "fact" of black inferiority was taken for granted.

Gould identifies two bodies of "scientific" theories advanced under slavery. There was the "softer" argument, or monogenism, which held that all types of humans came from a single source but that since Eden the races had grown apart, with some degenerating. Climates were the main causal factor in this theory. Some advanced biological explanations; Etienne Serres, for example, constructed a theory of

---

[212] Gould, *Mismeasure of Man*

recapitulation to explain inferiority.[213] These theories were in themselves radical, since the degree of immutability in the phenotype was being disputed, which brought into question the fixity of the natural order of things. Despite their challenge to the permanence of God's creation, these theories were still more popular than other theories because the Bible, which appears to advance a single source theory of racial differentiation, governed intellectual thinking. Any science that would be accepted broadly would have to be consistent with Biblical accounts. The theory was supported by the fact of interfertility (i.e., "race-mixing"), for it would be difficult to support a claim that human types of different origins could produce hybrids (this argument stemmed from a criterion set forth by Buffon). The other body of theory derived from the "harder" argument of polygeny. Polygeny held that races were separate biological species. David Hume, the Enlightenment philosopher, was a proponent of this theory. The relative atheism of the Enlightenment permitted more radical theories of racial difference than religion, since the latter required one Adam as opposed to several. However, polygeny was primarily an American theory, and it contributed to the rise of an independent anthropological school in America.

Two of the most important racial scientists working in the United States during the period of racial slavery were Louis Agassiz and Samuel George Morton.[214] Agassiz was a Swiss naturalist. He had been a disciple of Culvier. Agassiz immigrated to the

---

[213] His only evidence was the distance between navel and penis. Philippe J Rushton correlates measures of penis and head size, so there are those still following in Serresean tradition See Rushton, *Race, Evolution, and Behavior· A Life-History Perspective* (New Brunswick, NJ Transaction, 1996)

[214] Gould, *Mismeasure of Man* The next several pages draw heavily from Gould's work.

US in 1840 and became a Harvard professor. He was an opponent of slavery and evolution and was a polygenist. He had held the single species of man theory before coming to America; he was a creationist and believed in the biblical myth of Adam. But when he arrived in America two things happened: he came under the influence of friends who advocated polygeny and adopted their views; and he met blacks for the first time. That Agassiz could have such contempt for blacks, whom he had never met, and describe them in such vulgar racial terms, is a testament to the power of racial ideology (like white supremacists in Idaho who have never met a Jew, but have in their heads a detailed image of what a Jew looks and acts like — likely culled from caricatures found in Nazi pamphlets).

Agassiz avered that his position had no political implications — let the politicians decide such matters, he said. Yet he argued, anticipating the arguments of Ernest van den Haag and other modern racialists, that education should be tailored to level of development. There should be a strict division of labor, with blacks trained for "hard work" and whites for "mind work." Gould notes that Agassiz's work is "typical of its genre — advocacy of social policy couched as a dispassionate inquiry into scientific fact."[215] This is as true today as then; claims of objectivity and denigration of their critics as ideologues pervade the work of contemporary racialist thinkers. For months after the publication of *The Bell Curve*, Charles Murray defended his book by an appeal to objectivity. During the Civil War, Agassiz wrote that while blacks should be permitted legal equality, they should be denied social equality. They are like big

---

[215] Gould, *Mismeasure of Man*, 46

overgrown children, he argued, and if given social equality there would be disorder. "No man has a right to what he is unfit to use," he wrote. This view accorded precisely with Lincoln and Johnson's view during and after the civil war. The Supreme Court following slavery would articulate this view when upholding state laws denying blacks social equality. Miscegenation was one of Agassiz's worst fears. White strength depended on the separation of the races, he contended. Comparing "race-mixing" with incest, he wrote: "The production of halfbreeds is a sin against nature." Agassiz, like Gorbineau in Europe, was opposed to "universal equality."

Several points are relevant here. First, we must stress that Agassiz did not manufacture a racialist theory of science, but rather was contributing to a larger project designed to give scientific cover to widespread and centuries old racial views. Second, with science growing, and well aware that evolutionary views threatened the construction of a fixed racial order, intellectuals were duty-bound to throw up a protective belt of scientistic theories to maintain the political-economic order of things. These theories were not advanced solely to explain the growing inequality under capitalist production, as Malik claims. Nor were they solely the product of a reactionary feudal class trying to hang on to its power, as Lukacs appears to suggest. Rather scientific racism was another ideological form through which the racial caste system moved, one in a series of ideological justifications for material ethnic inequality. Third, Agassiz, along with Gorbineau and others, was giving scientific legitimacy to the long-held fear of race-mixing. We have seen that in the 1600s, race-mixing with non-Europeans was held to dishonor the European races and thus

degenerate their moral character. Now, in the 1800s, race-mixing was theorized to produce dysgenesis and race suicide, degenerating the biological character of a people. But rather than one replacing the other, both were combined to strengthen the racial ordering of the European world-system.

Samuel George Morton was another leading racial theorist. He ranked human types on the basis of skull size and cranial capacity (a science known as craniometry). Morton created a new definition of species to support polygeny, redefining species as "primordial organic forms," and linked this directly the Bible. His reasoning was that Noah's Ark beached 4,179 years before Morton's time. If the various species of man had not changed since then, this meant they started off as separate species. Morton had hundreds of skulls from all parts of the earth, including Egyptian tombs, that he claimed supported his theory. Morton's work provided ideological support for two major fronts in the internal colonial war: the inferiority of the American Indian justified their removal and extermination and the inferiority of the African Negro justified their perpetual servility. In *Crania Americana*, published in 1839, he argued that the American Indian mind is inferior to the Caucasian. In *Crania Aegyptiaca*, published in 1844, he claimed to have demonstrated that the difference between blacks and whites was even greater than between whites and Indians, and the difference has been stable for more than three thousand years. Predictably, Morton's *Crania Aegyptiaca* was well received in the South.

Yet, as Gould observes, the polygenist argument was not a crucial component in the ideology of slavery for several reasons. For one thing, polygenists were critical

of ideologues; their search for scientific truth was too risky for the institution of slavery. For another thing, the core of their theory contradicted the Bible. The theory that inferiority was the result of the degeneration of blacks under the curse of Ham proved too powerful a myth; the institution of slavery was not about to lose such an unambiguous claim to white supremacy. Furthermore, polygeny was not the only quasi-scientific theory available to the pro-slavery ideologue. John Bachman used monogenist principles to defend slavery. Another monogenist, S. A. Cartwright, provided useful cover for the institution of slavery, for example, by diagnosing slaves who tried to escape the slave labor camps as suffering from mental disease he called "drapetomania" (why would any sane slave want to leave the comfort of the plantation?).

The monogenists were represented by a well-organized army of proslavery doctors who appealed to their peers, as did Cartwright (he was chairman of the committee appointed by the Medical Association of Louisiana to manufacture propaganda testifying to the inferiority of the Negro), and to laypersons, for example, John H. van Evrie, who argued in *Negroes and Negro "Slavery": The First an Inferior Race; The Latter Its Normal Condition*, that their symmetry was such that enlarging their foreheads through education would render them incapable of locomotion.[216] Gould observes, "Religion still stood above science as a primary source for the rationalization of social order."[217] However, the intermingling of Calvinism and evolutionary theories

---

[216] Tucker, *Racial Research.*
[217] Gould, *Mismeasure of Man*, 71-72

was pregnant with a hybrid: social Darwinism. This set the stage for criminal anthropology and the eugenics movement.

Conclusion

This chapter did not provide an exhaustive account of racial slavery in the United States between Independence and Civil War, or its attendant political and ideological structures. This history is covered in a voluminous literature.[218] Neither has the discussion been concerned with fully exploring the outstanding questions surrounding the dynamics of slavery more generally, such as the question of the importance of slavery in developing the capitalist world-economy (its importance, I believe, cannot be denied: it was central to building the wealth of the United States and Great Britain). I dealt with slavery in this chapter for specific theoretical purposes: to show how slavery was capitalist production, a concrete instance (or series of instances) of the caste system in the early United States of American, and to reveal processes that defined people as inferior and therefore "justifiably" enslaved based on selected physical and cultural characteristics.

These points need to be underscored. First, black slavery was capitalist production. Bonacich writes,

> Although colonial producers of raw materials came to depend upon coerced labor, their orientation was essentially capitalist. They were involved in the investment of capital in the

---

[218] For general treatments of the development of North American slavery see Genovese, *Roll, Jordan, Roll*, Vincent Harding, *There is a River: The Black Struggle for Freedom in America* (Harcourt Brace Jovanovich, 1981); Jacqueline Jones, *Labor of Love, Labor of Sorrow. Black Women, Work, and the Family from Slavery to the Present* (Basic Books, 1985); Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Norton, 1968); Leon Litwack, *North of Slavery The Negro in the Free States, 1790-1860* (University of Chicago Press, 1961); Stephan Palmié, ed., *Slave Cultures and the Cultures of Slavery* (Knoxville, TN: The University of Tennessee Press, 1995)

enterprise whose purpose was the production of commodities for a market, while profits were created by the extraction of surplus from labor by having slaves work longer hours than was necessary for their own subsistence. The oppression of African Americans, past and present, is rooted in the requirements of early capitalism.[219]

Following her reasoning, it will not do to treat slavery in the South as a relatively autonomous "slave mode of production" that "articulated" with the capitalist mode of production. Slavery in the modern world-system, while a concrete mode of exploitation that differs from the ideal-type exploitation of wage-labor, was always part of the *capitalist* mode of production. This is consistent with Marx's position in *Capital*, volume 1:

as soon as peoples whose production still moves within the lower forms of slave-labour, the *corvée*, etc are drawn into a world market dominated by the capitalist mode of production, whereby the sale of their products for export develops into their principal interest, the civilized horrors of over-work are grafted on to the barbaric horrors of slavery, serfdom, etc. Hence the Negro labour in the southern states of the American Union preserved a moderately patriarchal character as long as production was chiefly directed to the satisfaction of immediate local requirements. But in proportion as the export of cotton became of vital interest to those states, the over-working of the Negro, and sometimes the consumption of his life in seven years of labour, became a factor in a calculated and calculating system. It was no longer a question of obtaining from him a certain quantity of useful products, but rather of the production of surplus-value itself [220]

Although Marx errs in describing slave-labor in North America as having at one time been used mainly for the production of use-value and not exchange-value, that he believes the character of slave-labor in the United States came to be a primary producer of surplus-value strongly indicates that Marx believed racial slavery to be capitalist exploitation.[221]

---

[219] Edna Bonacich, "United States Capitalist Development. A Background to Asian Immigration," in *Labor Immigration Under Capitalism*, eds Lucie Cheng and E Bonacich (Berkeley. University of California Press, 1984), 81

[220] Marx, *Capital*, 345

[221] Marx's error is surprising. Assuming that at one time slaves were primarily used for producing use-value for the slaveowner, how did English colonists insure the wealth necessary

I argue that slavery is a concrete manifestation of the caste system that has prevailed in the United States from its inception. I especially concerned myself with the character and transformation of criminalization with respect to the institution of slavery, which entails the exploration of dynamics of racial caste relative to the larger societal-historical context, to reckon the character of a nation that was constituted after its war of independence as a society fundamentally built upon racial caste, what some have called a "herrenvolk democracy,"[222] or what Ringer and others have posed as the contradiction between the "American creed" and the "racial creed" (the "plural" or "dual" society).[223] The United States is part of a world-historical epoch that racialized and continues to racialize global populations. Showing that there has been a long-standing program of racial ordering of political, economic, and cultural life in the West, one that interacts with social class and is enforced and reinforced by the law, explains the circumstances African Americans have faced over the recent decades.

---

to amass slaves for this purpose? In fact, the economic rationale for importing slave-labor was production for the capitalist world market. Elsewhere, Marx seems to view slavery as a "peculiar" institution: "The fact that we now not only call the plantation owners in America capitalists, but that they are capitalists, is based on their existence as anomalies within a world market based on free labour," *Grundrisse: Foundations of the Critique of Political Economy* (New York. Penguin, 1993), 513. Christopher Chase-Dunn, in *Global Formation: Structures of the World-Economy* (Cambridge, MA· Basil Blackwell, 1989), argues that world-system theory goes beyond Marxian historiography in recognizing that chattel slavery in the Americas was capitalist exploitation. Thus the observation that capitalist exploitation involves other forms of labor, namely forms of coerced labor, is regarded as an insight of world-systems theory and Marx is criticized for seeing capitalism as exclusively based on wage-labor This is a mischaracterization of Marx's argument.

[222] George Fredrickson, *White Supremacy A Comparative Study in American and South African History* (New York Oxford University Press, 1981).

[223] Benjamin B Ringer, *"We the People" and Others· Duality and America's Treatment of its Racial Minorities* (New York: Tavistock Publications, 1983).

This discussion was sandwiched between analyses of the development of US political society, particularly its constitutional basis, and the development of racial ideology. The forming of the United States codified the caste system. Blacks were not to share in the promise of the Republican constitution. The logic of the inception of the US legal-political system continues to determine the lives of blacks today. As I explained in part 1, chapters 1 and 3, the basis of juridical thought in the United States, with its emphasis on individualism and formal equity principles, operates silently to reproduce racial segregation. Thus, even when blacks are emancipated from slavery, the subject of the next chapter, they do not achieve substantive freedom.

Finally, I have tried to avoid consideration of the metaphysics of the slavery-freedom dialectic. I believe we must admit to Eltis' point that, in the concrete, freedom and unfreedom are a continuum, rather than oppositionals ("slave versus nonslave").[224] The question of different forms of labor that are exploited under the capitalist order is central to the notion of a caste-class assemblage where the systems overlap and cut across each other. Too often discussions of slavery make either one of two errors: focusing on the master-slave relation and neglecting the role of other species of labor, such as wage-labor, in the formation of social hierarchies[225]; or treating slavery as a class-specific form of labor exploitation, which might be a valid reduction in the absence of racialization but is problematic under conditions of racial

---

[224] David Eltis, "Labour and Coercion in the English Atlantic World from the Seventeenth to the Early Twentieth Century," in *The Wages of slavery: From Chattel Slavery to Wage Labour in Africa, the Caribbean and England*, ed , Michael Twaddle (London· Frank Class, 1993)

[225] This error occurs in the other direction as well, such as in Adamson's neglect of slavery in "Captive Criminal Populations."

caste and capitalist accumulation.[226] Societies do not usually present with monolithic labor systems, and it helps to remind ourselves that slavery as an institution of labor is always mixed with other forms of labor — rarely is slavery the predominant form of exploited labor, "the fact is that, within world history as a whole, slaves have been greatly outnumbered by other, less total types of unfreedom."[227] What we find in North America (as elsewhere) is a complex division of labor and manifold types of labor exploitation. This is what makes the *racial* character of slavery in the "New World" so important to grasp.

---

[226] Slavery clearly did not organize blacks into a "de-classed" stratum, as Sidney M. Willhelm has argued. See "The Economic Demise of Blacks in America, A Prelude to Genocide?" *Journal of Black Studies*, 17 (1986)

[227] Moses Finley, "Slavery," in *A Dictionary of Marxist Thought*, second ed., ed. Tom Bottomore (Cambridge Blackwell, 1991), 496-497

CASTE, CLASS, AND JUSTICE: SEGREGATION, ACCUMULATION, AND CRIMINALIZATION IN THE UNITED STATES

A Dissertation
Presented for the
Doctor of Philosophy
Degree
The University of Tennessee, Knoxville

Andrew Wayne Austin
August 2000

VOLUME II

CHAPTER 4

FIRST RECONSTRUCTION: RE-"NORMALIZING" RACIAL CASTE 1866-1964

With all the machinery of the law in our hands, with every department of the government, Executive, Legislative, and Judicial held by white men, with white juries, white Solicitors, white Sheriffs, it is simply infamous that resort should be had to lynch law, and that prisoners should be murdered because the people have grown weary of the law's delay and its inefficient administration — Benjamin R Tillman[1]

This chapter explores the period between "Emancipation" and the passage of the Civil Rights Act of 1964. After blacks were emancipated from slavery, political-economic and cultural-ideological forces reconfigured the racial caste system to preserve white supremacy. The law was central to achieving this reconfiguration. Infamously, legal apartheid was established in the southern states. But we find that the reorganization of white power involved more than reconstructing the South. Northerners modified their strategies of racial control, too. Moreover, they also used the law to do so.

This is a period of dramatic internal change in the United States. At the time of Abolition, ninety percent of blacks lived in the South and in rural areas. In time, many millions of them would leave the South and go North and West. They would be ghettoized for their efforts. These developments have been the subject of much recent scholarship.[2] I, too, am concerned with showing how the "Great Migration" and the

---

[1] First Inaugural Address to the House of Representatives of the General Assembly of the States of South Carolina, quoted in Leslie H. Fishel, Jr and Benjamin Quarles, *The Negro America: A Documentary History* (Glenview, IL. Scott, Foresman and Company, 1967), 330.

[2] Douglas S Massey, and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993); Melvin L. Oliver and Thomas M Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York: Routledge, 1995), William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public*

urbanization of African American life, and the reaction to these developments by white elites, residents, and workers, situated blacks in those parts of the major cities where, especially in the aftermath of the Great Depression, social ills clustered and the criminogenic features of capitalism were exacerbated.[3] This line of research, by shifting the focus away from the racist southerner, has performed a valuable role in exploding the myth of the non-racist northerner.

Yet there is more to the story of crime and social control in America than the structural processes and governmental policies of racial segregation. This was the period wherein scientific racism came of age. The conclusions and missteps of the evolutionary biologist were exploited and manipulated by racist and classist ideologues and propagandists to legitimate eugenical restrictions on immigration and family life. From this mix the criminal anthropologist would be born. Armed with positive science and the support of pragmatic public officials and the guilded industrialist class at their backs, a new breed of social thinkers attempted to put racism beyond politics and morality by hiding it in a tangle of quantified thickets and dubious theoretical constructions.

Repressive social control was central to reconstruction efforts and the new industrial order. In the North, the network of penitentiaries and reformatories

---

Policy (Chicago: University of Chicago Press, 1990), Nicolas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York. Vintage Books, 1992)

[3] John Hagan, "Crime and Capitalization: Toward a Developmental Theory of Street Crime in America," in *Developmental Theories of Crime and Delinquency*, ed. Terence P Thornberry (New Brunswick Transaction Publishers, 1997), Cyril D Robinson, "The Production of Black Violence in Chicago," in *Crime and Capitalism Readings in Marxist Criminology*, ed David F Greenberg (Philadelphia: Temple University Press, 1993); Edward Green, "Race, Social Status, and Criminal Arrest," *American Sociological Review*, 35 (1970)

broadened and penal philosophy deepened. A mercenary army of psychologists, psychiatrists, sociologists, and anthropologists offered their professional services to the broadening and deepening carceral archipelago. The federal government expanded its role in crime control, coordinating the development of repressive and integrative mechanisms of domination. Drug prohibitions were instituted, imposing upon the worker puritanical controls, to keep their minds clear and their bodies healthy for the assembly line, and, of course, to oppress minorities. In the South, penal slavery was instituted, and then later the chain gang, perpetuating the legacy of involuntary servitude. And beyond the machinery of formal reaction were the white mobs — subalterns volunteering their services to the campaign of terror to restore and maintain the racial caste boundaries.

This chapter has four parts. First, I contextualize the analysis by reviewing the history of the Civil War and its aftermath. I argue that, from the perspective of the North, the war was not about achieving a racially integrated society or even freeing slaves. Because racial equality was not their goal, the North did little to change the South after the war. Second, I analyze the reconstruction of racial caste, first in the South, with the establishment of Jim Crow segregation, and then in the North, with a theoretical summary of the history of ghettoization. Third, I theorize the purpose of repressive social controls in the South and the North. I include both formal and informal modes of racial oppression. Fourth, I continue my exploration of the evolution of racist ideology, tracing the maturation of social Darwinian thought.

One caveat before moving to the first section. I have dated the period 1866 to 1964 — the period between First and Second Reconstructions — because the emancipation of the slaves and the reconstitution of racial caste in this period lays the foundation for the black struggle that culminated in the 1964 Civil Rights Act. However, because my approach in this dissertation is to theoretically capture transitions rather than describe temporal periods, the analysis begins in the couple of decades before the Civil War and terminates in the 1940s-50s, before the landmark *Brown v. Board of Education* decision by the Supreme Court. By showing how whites used the law to create and recreate their racial privileges following the Civil War, I provide the evidence that supports my theory of a continuity in US race formation. By identifying the perpetrators, beneficiaries, victims, motives, strategies, and tactics of white supremacy, I show how the racial hierarchy can change its appearance but at the same time remain substantially the same.

Civil War, Reconstruction, and Redemption

Detailed analyses of events leading to the US Civil War and the war itself (which occurred 1861-1865) are beyond the scope of this dissertation,[4] but several points should be made at the outset in order to clarify what is significant about the war to US racial history — it did, afterall, free the slaves. It would probably be an understatement to record here that the war was a national calamity. The Civil War lasted several years and was the most bloody military conflict in US history until that

---

[4] See Kenneth M. Stampp, *The Imperiled Union Essays on the Background of the Civil War* (New York Oxford University Press, 1980); Stampp, ed., *The Causes of the Civil War* (Englewood Cliffs, NJ: Prentice-Hall, 1974)

time (and would remain so until Vietnam). But it is an overstatement to suggest, as does John Hope Franklin, that "[p]erhaps no human experience is more searing or more likely to have a long-range adverse effect on the participants than violent conflict among peoples of the same national, racial, or ethnic group."[5] Obviously Franklin is talking about the calamity experienced by Union and Confederate soldiers, who were mostly white Americans. Blacks were not in their "national, racial, or ethnic group." Blacks are not the participants to which Franklin refers. True, for years afterwards, right up to today in fact, scholars and laypersons argue about who was at fault in the war — who caused it and who was in the wrong. But the debate has little real negative impact on the fortunes of whites today. True, whites in South Carolina don their Confederate gray and wave the Stars and Bars in Charlotte's town square to show their "pride," but exactly how does the "denigration of Southern Heritage" compare to the searing human experience and long-range adverse consequence of racial slavery and apartheid? What *is* significant about the memory of the Civil War are the myths it generates about southern heroism and racial victimhood.[6] These are still used to oppress black people and advance white privilege.

---

[5] John Hope Franklin, "Mirror for Americans A Century of Reconstruction History," *The American Historical Review*, 85 (1980), 1.

[6] The Civil War was also replayed for more mundane reasons. Kammen writes, "Because battles rarely failed to fascinate the reading public, publishers found it commercially advantageous to refight the Civil War from time to time." But such practices had longer range effects, such as in "the tendency to re-enact the Civil War verbally by means of sectional chauvinism in textbooks and in the classrooms." Moreover, selective memory "kept African Americans outside the mainstream of retrospective consciousness," Michael Kammen, *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: Alfred A Knopf, 1961), 120-121

Contrary to the story presented in history books, the war was not fought to achieve racial equality. Northern elites prosecuting the war were at best ambivalent on that subject. They were even ambivalent about slavery – as long as it stayed where it was. Southern elites were not in the least conflicted about the institution of racial slavery. It was their way of life. But the South had been losing political power for some time, and they began to perceive that the North was engineering the destruction of their culture.

Only a decade before, the "southern gentleman" had felt sure of his position in the US social order. "Between the 1790s and the 1840s the slaveholding oligarchy dominated the U.S. political and economic system."[7] They controlled a considerable share of the national wealth. "King Cotton" had taken off after the 1790s, fueled by British demand, and later demand from northern industrialists. Cotton production grew from over 100,000 bales in 1801 to 5.4 million bales in 1859.

But since Independence, the North and the South had each taken a different fork in the road, and they had grown dissimilar. The North was industrializing, with manufactures such as flour and lumber mills, leather tanneries, cotton textiles, and iron dominating ever more of the national economy. The 1860s saw a shift from water power to steam power. At the Crystal Palace Exhibition in London in 1851, US representatives dazzled the British with the ingenious "American System."[8] The North

---

[7] Joe Feagin, "Slavery Unwilling to Die. The Background of Black Oppression in the 1980s," *Journal of Black Studies*, 17 (1986), 179.

[8] Jeremy Atack and Peter Passell, *A New Economic View of American History from Colonialism Times to 1940*, 2nd ed. (New York: W W. Norton and Company, 1994) It was more bluff than substance, although in munitions the technology was advanced by extensive federal underwriting See David Hounshell, *From American System to Mass Production* (Baltimore Johns Hopkins University Press, 1986). For histories of 19th century US industrialization see, Atack,

was the image of modernism, and although northerners did not seek an end to slavery, they did desire that slavery not spread to the new territories the United States was acquiring in its push across the North American continent.

This desire ran up against the interests of the cotton industry. "The growth of cotton production and the spread of cotton culture were mirrored in the growth and spread of slavery."[9] Cotton was spreading westward, and southerners' feared that being unable to expand slavery into the West would effectively close the West off to cotton. This was especially true of the eastern plantations whose primary commodities were the young slaves they wished to sell to plantations in the West.[10] The southern plantation owner's way of life was jeopardized by restrictions on the extension of slavery. There was still wealth to be made in cotton. Slavery was hardly a moribund social formation. "American slavery on the eve of the Civil War . . . was a flourishing economic proposition."[11]

There were mounting tensions surrounding the status of the Western Territories. The Compromise of 1850 — wherein California was admitted as a free state, New Mexico and Utah were permitted to decide the issue of slavery in their

---

"Economies of Scale and Efficiency Gains in the Rise of the Factory in America, 1820-1900," in *Quantity and Quiddity: Essays in U.S Economic History*, ed Peter Kilby (Middletown, CN. Wesleyan University Press, 1987); Fred Bateman and Thomas Weiss, "Comparative Regional Development in Antebellum Manufacturing," *Journal of Economic History* 35 (1975); Claudia Goldin and Kenneth Sokoloff, "Women, Children, and Industrialization in the Early Republic Evidence from the Manufacturing Census," *Journal of Economic History* 42 (1982), and John A James, "Structural Change in American Manufacturing, 1850-1890," *Journal of Economic History* 43 (1983)

[9] Atack and Passell, *New Economic View*, 302

[10] Alfred Conrad and John Meyer, "The Economics of Slavery in the Antebellum South," *Journal of Political Economy*, 66 (1958)

[11] Staughton Lynd, "Rethinking Slavery and Reconstruction," *Journal of Negro History*, 50 (1965)

territories, and the domestic slave trade was abolished in the District of Columbia — did not defuse the situation. Southerners believed they lost advantage in the compromise. They were probably right. There had been until then a balance between slave and free states; California upset this balance. Loss of advantage was one of the principal reasons given in the succession proclamations initiating the Confederacy. The South was not alone in losing advantage, however. Abolitionism was weakened by the compromise; with this victory the movement lost an issue with which to press the larger agenda of emancipation. Many abolitionists grew satisfied with their accomplishments. The South did score one important victory, though: the Fugitive Slave Act of 1850. But thus, by reaffirming the requirement of northerners to uphold the southerners' way of life, served to raise consciousness among northerners about the moral problematic of slavery.[12] Score one for the abolitionist.

In 1854, Illinois Senator Stephen A. Douglas, seeking to gain southern support for the Kansas-Nebraska Act, introduced legislation that would allow residents of those territories, in a fashion similar to New Mexico and Utah, to decide whether they would become slave states. Northerners opposed this measure because it contradicted the Missouri Compromise of 1819-20 that had prohibited slavery in that territory. The controversy brought together several political forces — Whigs, Free Soilers, and disaffected Democrats — and out of this mix the Republican Party was formed.

The Republican Party platform did not seek to dissolve slavery in the South. It was not an abolitionist party. Rather it desired to prevent slavery from being extended

---

[12] Ronald G Walters, *American Reformers 1815-1860* (New York: Hill and Wang, 1978).

to the new territories. In this, the party was simply giving voice to what was probably a consensus opinion in the North. The Republicans had a reason not to oppose slavery where it existed: "the North was . . . economically dependent on the Cotton South. It even had a stake in the continuation of slavery."[13] Still, the presence of the Republican Party, especially their rhetorical attacks on the southern life-style and their rapid ascension to political power, raised southerners' concerns.[14]

To affirm America's commitment to slavery and to the dehumanization of black people, the Supreme Court ruled in the 1857 *Dred Scott* decision that blacks were not US citizens, that slaves who lived in free territories were still slaves, and that slavery could not be prohibited in any United States territory. Dred Scott, "being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves" was not, despite being a free person born on US soil, a citizen of the United States.[15]

This decision, along with the repugnant symbolism of the Fugitive Slave Act, pushed some northern politicians, such as Charles Sumner and Henry Wilson, toward a more radical abolitionism. Indeed, they began to regard the Republicans as too weak on the question of slavery. This was true; the mainstream Republican was a moderate reflecting the centrist political currents of the Northeast. This reflected one of the chief obstacles facing abolitionists. The popular opinion, if the elections and media of the day give any indication of public mood, was much less than what the abolitionists

---

[13] Atack and Passell, *New Economic View*, 355.

[14] Walters, *American Reformers*

[15] *Dred Scott v. Sanford* 19 Howard 393 (1857). The Opinion of the Court, Mr. Chief Justice Taney, March 11, 1857

desired it should be. As noted, most northerners were not inclined to demand an end to slavery in the South, but more crucially, they were even less inclined to view blacks as equals — the goal of racial equality was not tied to slavery in most people's minds. This explains the North's ambivalence on the slavery question.

By the 1850s, the political and social climate indicated a country about to erupt in widespread violence. Settlers were engaging in guerrilla warfare in Kansas. The rising organic composition of capital under conditions of industrialization had enlarged the reserve army of workers. Overlaying this secular trend was the depression of 1857-1858, which, as we saw in the last chapter, heightened racial antagonisms, increased violent and property crime, and caused urban rioting.[16] Charles Sumner was badly beaten by South Carolina's Preston Brooks while Sumner sat at his desk on the floor of the Senate (Sumner had just maligned slavery and insulted another southern senator).[17] John Brown led a group of white and black anti-slavery opponents in an attack on the Federal Arsenal at Harpers Ferry, Virginia. The trial was sensational. Fear began to mount in the South over slave rebellions; they suspected that the North might support black insurrection (conspiracy theories were

---

[16] Christopher Adamson, "Toward a Marxian Penology Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (1984), Michael Sherman and Gordon Hawkins, *Imprisonment in America. Choosing the Future* (Chicago. University of Chicago Press, 1981)

[17] Walters, *American Reformers*, 98 "Feelings about slavery were running so high that each man became a hero to many," writes Walter "Sumner was glorified as a martyr to southern brutality; Brooks, whose cane broke over Sumner's skull, received a fine collection of replacements from well-wishers "

sweeping the South during this time[18]). On top of this, the Democratic Party was fractured by divergent interests and infighting.

The splits in the Democratic Party allowed Abraham Lincoln, the candidate for the Republican Party, to win the presidency with a minority of votes. The North began to realize that if the slavery issue was not resolved soon, it was only a matter of time before more violence would erupt. The South characterized the Republican Party as an "anti-slave party," yet conservative Republicans produced an amendment — proposed as the 13th amendment — to guarantee slavery eternally in those states that depended directly on slave-labor.[19] Lincoln expressed his willingness to support the measure. But this was not good enough; the slaveowners rejected the proposal.[20] A 13th Amendment would indeed be ratified, but it would not eternalize slavery.

Northern fears about impending violence proved prophetic. South Carolina responded to Lincoln's election by succeeding from the Union in December 1860. Lincoln had tried to reduce southern fears by announcing in his inaugural address: "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so." Southerners had heard this before. Lincoln had a year earlier argued: "I say that we must not interfere with the institution of slavery in the states where it exists, because the constitution forbids it, and the general welfare does not

---

[18] Anti-slavery plots were also supposed to be of foreign origin See David M. Streifford, "The American Colonization Society. An Application of Republican Ideology," *The Journal of Southern History*, 45 (1979).

[19] Herbert Aptheker, *The Unfolding Drama: Studies in US History*, ed Bettina Aptheker (New York International Publishers, 1978), 24

[20] Feagin, "Unwilling to Die."

require us to do so."[21] "As is well known," writes Mallam, "Lincoln long opposed emancipation."[22] He even assured Congress that he would fully support the Constitutional requirement to return fugitive slaves to their owners. Southerners were not buying it.

Other states followed South Carolina's lead, citing the principles articulated in the Declaration of Independence as their justification for succession. Others pointed to the way of life slavery provided them. The Mississippi legislature wrote in their succession proclamation:

> Our position is thoroughly identified with the institution of slavery — the greatest material interest of the world. Its labor supplies the product which constitutes by far the largest and most important portions of commerce of the earth. These products are peculiar to the climate verging on the tropical regions, and by an imperious law of nature, none but the black race can bear exposure to the tropical sun. These products have become necessities of the world, and a blow at slavery is a blow at commerce and civilization

Civil war broke out. The Confederate States of American was established. It elected its own president and began printing its own money. In writing its constitution southern elites made the centrality of slavery to their culture explicit. Article I, section 9 of *The Constitution of the Confederate States of America* was clear: "No bill of attainder, *ex post facto* law, or law denying or impairing the right of property in negro slaves shall be passed."[23]

---

[21] Speech at Cincinnati, Ohio September 17, 1859, *The Collected Works of Abraham Lincoln* vol. 3, ed. Roy P Basler (New Brunswick, NJ Rutgers University Press, 1953), 460

[22] William D. Mallam, "Lincoln and Conservatives," *The Journal of Southern History*, 28 (1962), 33

[23] *The Constitution of the Confederate States of America*, in *A Compilation of the Messages and Papers of the Confederacy Including the Diplomatic Correspondence 1861-1865*, ed. James D. Richardson (Nashville· United States Publishing Company, 1905).

In 1863, in the middle of the war, Lincoln issued the "Emancipation Proclamation," a decree freeing slaves in those states rebelling against the Union. With these words, the president put the ability of the federal government to free any slaves beyond Union military control. The proclamation did not therefore free any slaves. The government admitted this. Secretary of State William Henry Seward stated that "we show our sympathy with the slaves by emancipating the slaves where we cannot reach them and holding them in bondage where we can set them free."[24] Congress had done as much as Lincoln — more actually — in 1862 with the Second Confiscation Act, which seized the property of rebels and freed their slaves. Lincoln had signed the act into law.[25] Yet, the president's famous proclamation postponed the enactment of the confiscation law.[26]

Of the Emancipation Proclamation, Kenneth Stampp writes, "Lincoln's proclamation was not one of his great state papers, for its appeal was not to the rights of man or to any other external principles but only to military necessity. Indeed, it may be said that if it was Lincoln's destiny to go down in history as the Great Emancipator, rarely has a man embraced his destiny with greater reluctance than he."[27] Lincoln was, as Lerone Bennett Jr. puts it, "forced into glory."

---

[24] Quoted in Lerone Bennett Jr., *Forced into Glory: Abraham Lincoln's White Dream* (Chicago: Johnson Publishing Company, 2000), 6. See also Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (New York Knopf, 1973), Roy P Basler, *The Lincoln Legend. A Study in Changing Conditions* (New York: Octagon, 1969); James G Randall, *Mr. Lincoln*, ed. Richard N. Current (New York Dodd, Mead, 1957).

[25] Randall, *Mr Lincoln*

[26] Leonard N. Current, *The Lincoln Nobody Knows* (New York: Greenwood Press, 1958).

[27] Kenneth M Stampp, *The Era of Reconstruction 1865-1877* (New York Knopf, 1965)

In Lincoln's mind the war was not a conflict between nations. The Confederacy was not a legitimate proposition in the president's eyes. It was a fraud perpetrated by disloyal and rebellious Americans. And it was the legal obligation of the government to put down insurrections that threatened the Union. The slave-owners themselves made sure that this duty was included as a federal responsibility outlined in the US Constitution. Lincoln saw his historic mission before him: restoring the Union. But it would stop there. Lincoln did not desire to reconstitute the United States as a radically different social formation. This mission carried over to the period after the war, or "Reconstruction." Reconstruction's primary purpose, as Lincoln saw it, was to re-establish the old ties between the states and the national government.[28]

Lincoln did come to believe in the 1850s that slavery was immoral, but he always contended that he did not allow his personal beliefs about blacks, which were repugnant, to interfere with what he saw as his public responsibility. Since the goal of the Civil War had been to restore the United States, the question of slavery, and thus the fate of blacks, was treated entirely instrumentally. In a famous letter to Horace Greeley, Lincoln wrote, "My Paramount objective in this struggle *is* to save the Union, and is *not* either to save or destroy Slavery. If I could save the Union without freeing *any* slave, I would do it . . . . What I do about Slavery and the colored race, I do because I believe it helps to save this Union."

---

[28] Benjamin B. Ringer, *"We the People" and Others Duality and America's Treatment of its Racial Minorities* (New York Tavistock Publications, 1983) See also Mallam, "Lincoln and Conservatives."

The slavery issue was, of course, a high profile one, and Lincoln was forced to take a position on it. Lincoln's proposals had three main features.[29] First, slaves should be emancipated gradually, the process to be concluded by the year 1901. Second, slave-owners should be compensated for their loss of property. Third, freed slaves would be allowed, persuaded, and enabled, via congressional appropriations, to colonize areas outside the United States. Lincoln was dedicated to the cause of deporting blacks, what was then called "colonization" (or to use more contemporary language, "ethnic cleansing").[30] Colonization was, just as it had been for Thomas Jefferson and James Madison, Lincoln's fervent hope. As for his position of giving blacks the vote, Lincoln did support enfranchising blacks who fought on the union side (some 200,000[31]) and those of the "African race" judged to be "very intelligent" (whatever that meant), but he did not support general enfranchisement. Despite his sometimes feigning neutrality, his position on these matters was no doubt influenced by his belief in the natural inferiority of blacks: blacks, Lincoln believed, could never be the equal of whites.[32] He proclaimed in 1858, "I have expressly disclaimed all intention to bring

---

[29] For this history see Harry S. Blackiston, "Lincoln's Emancipation Plan," *Journal of Negro History*, 7 (1922).

[30] Charles H Wesley, "Lincoln's Plan to Colonize the Emancipated Slaves," *Journal of Negro History*, 4 (1919). The desire to ethnically cleanse the United States was debated and practiced throughout much of US history The American Colonization Society was founded in 1816, with chapters in several states. Lincoln spoke before a state chapter twice (1853 and 1855). States had contributed funds to the federal government to carry out a large-scale deportation, and a few thousand slaves were sent to Liberia. Derrick Bell recently speculated on whether white Americans would support deportation today. See "Racial Realism — After We're Gone: Prudent Speculations on America in a Post-Racial Epoch," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia: Temple University Press, 1995).

[31] The New York Public Library, *American History Desk Reference* (New York: Macmillian, 1997).

[32] Ringer, *"We the People"*, Bennett, *Forced into Glory*. Bennett documents Lincoln in fourteen places between 1854 and 1860 referring to blacks as an "inferior race." He also considered

about social and political equality between the white and black races." In that speech, he stated, perhaps paradoxically, that he believed the Declaration of Independence included blacks in the phrase "all men are created equal." However, he noted, that principle had never been a legal obligation; the Constitution never articulated any such principle. And since the sovereignty of the states established by the Bill of Rights was more important that securing a vague principle laid down in the Declaration of Independence, the federal government had no authority to abolish slavery. Even in those territories free of slavery, Lincoln added, it did not follow that political and social equality should be incorporated.[33] Exactly how these beliefs would have guided Lincoln in Reconstruction in the long-run is not known because he was assassinated in 1965 by a Confederate zealot named John Wilkes Booth. Three days earlier Booth had attended the speech where Lincoln proposed enfranchising "intelligent" and "patriotic" blacks.[34]

Lincoln's successor, Vice President Andrew Johnson (whose assassin wound up drunk in the bar of Johnson's hotel with cold feet), was sympathetic to southern whites. He granted general amnesty and restored property rights (excepting slaves) to most southerners. He excepted the wealthy from amnesty, denying them the right to participate in the electorate; however, he permitted them to obtain pardons on an individual basis. According to Ringer, Johnson hoped that his actions would

---

Mexicans inferior, calling them "mongrels." As with Jefferson, Lincoln is progressive in comparisons with many of his political comrades; my using him as an example, besides the lessons we learn about the nature of US "democracy," avoids constructing a strawman about mainstream US political ideology.

[33] Letter to James N Brown October 18, 1858, *Collected Works*, vol. 3, 328

[34] Booth was part of a large conspiracy that also targeted Lincoln's cabinet and the vice-president. Secretary of State William H. Seward was severely injured in a knife attack

restructure the white establishment. He believed that it was the planters who had caused the war, and so he sought to give more power to less affluent whites, the yeoman farmer, who were expected to take up the charge of reform and change the South. Blacks were to play no role in this restructuring, in Johnson's view; their fate was to be left entirely to the states. The liberal procedures Johnson established to permit the wealthy southerners to obtain pardons and restoration of property rights, however, presented no real barrier to their re-asserting control over the South. This calls into question the sincerity of the motives Johnson articulated. Indeed, Johnson, in declaring in December of 1865 that Reconstruction had been completed, put his seal of approval on a society that looked a great deal like it had before the war.

Agricultural elites were ambitious in the Reconstruction period in restoring the racial hierarchy. They desired to develop an adequate system of labor control.[35] At their behest, southern governments created "black codes," laws designed to coerce blacks into signing contracts with white planters through a system of apprenticeship and vagrancy laws. Accompanying these laws were restrictions on land purchases and pursuit of particular occupations, with the goal that former slaves would remain dependent and unskilled labor.[36] The scope of the laws was extensive, encompassing civil and criminal jurisprudence. There were statutes telling blacks where to live and when to work and where eat and whom to marry. Black workers who signed labor contracts could be physically forced to fulfill those contracts. Although the would be

---

[35] Eric Foner, *Reconstruction: America's Unfinished Revolution* 1863-1877 (New York Harper and Row, 1988).

[36] George Fredrickson, *White Supremacy: A Comparative Study in American and South African History* (New York Oxford University Press, 1981), 213

efforts to limit the South's control over black labor, southern capitalists created controls in this period that would blossom into a total system of labor domination that would last well into the next century.[37] Accompanying these codes were extralegal mechanisms of coercion. In 1866, for example, the Ku Klux Klan was founded.[38]

North of the Mason-Dixon line, Congress passed the Civil Right Act of 1866, which reversed the *Dred Scott* ruling that had denied blacks citizenship. Theoretically, the new law gave African Americans equal protection. Johnson opposed the act (he had vetoed an earlier version of it) because it transgressed state's rights, would be a step on the road to centralized government, and give blacks preferential treatment — all familiar arguments to the contemporary ear. When some congressional leaders questioned the constitutionality of the measure, Republicans proposed the Fourteenth Amendment, which allegedly made full citizens of blacks.

Congressional support for Johnson's approach to Reconstruction had thus quickly eroded. The president alienated moderates, who joined with the radicals and began pushing for tougher policies. Southern belligerency forged their coalition. Congress had rejected Johnson's claim that Reconstruction was over. They overrode Johnson's veto of key pieces of legislation, e.g., the Freedmen's Bureau Bill, which was administered out of the war department to help former slaves and to prosecute civil

---

[37] William Cohen, "Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis," *The Journal of Southern History*, 42 (1976)

[38] David Chamlers, *Hooded Americanism: The History of the Ku Klux Klan*, third edition (New York New Viewpoints, 1976).

rights violations. Northern radicals were attempting through their efforts, to put a brake on the implementation of what amounted to neo-slavery in the South.[39]

The First Reconstruction Act of 1867 imposed military order on the South. The process whereby states wrote new constitutions was carefully monitored and controlled. The right of blacks to vote was secured, or at least an effort was made to secure the vote for them. Acceptance of the new constitutions was contingent on several demands being met, one being ratification of the Fourteenth Amendment. The Second Reconstruction Act of 1867 specified the terms of military occupation, especially securing suffrage for blacks. Johnson opposed both acts (he vetoed them), claiming, with some irony, that military occupation placed the South in "bondage."

Johnson claimed that Republican policies were driven solely by their desire to put blacks on an equal plane with whites. He charged that Congress was "Africanizing" the South. The federal government he avered, had no authority to do this. He claimed that even blacks did not really want this. They were not asking for the vote; most blacks did not even know what the vote was. When the next election cycle saw an advance in strength of the Democratic Party, Johnson stepped up his attacks. He claimed that the Republicans desired for blacks to rule over whites, by electing public officials and shaping the destiny of the country. In his view, blacks were physically, mentally, and morally inferior to whites. No place where blacks were in

---

[39] "If the southern economy had been fully restructured on the basis of the black codes, a form of licit serfdom would have replaced slavery," Fredrickson, *White Supremacy*, 213. See also Manning Marable, *How Capitalism Underdeveloped Black America* (Boston South End Press, 1983)

power had civilization been accomplished. It was the worst form of tyranny to permit the barbarian to rule over the civilized.[40]

The Fourteenth Amendment was ratified in 1868. The amendment was significant in several ways. First, it granted citizenship to blacks, although the wording of the amendment, which does not specify blacks' status regarding state citizenship, would be used by segregationists to support racial oppression. Second, Republicans passed the amendment fearing that the Supreme Court would overturn the Civil Rights Act (which, in fact, they did), indicating that black freedom was recognized at the time as extremely precarious and that the Supreme Court would favor southern whites. Third, the amendment only specified *political* rights; substantive liberty was not addressed (hence its consistency with the limited conception of freedom in the Constitution). Fourth, it clarified the famous phrase in the Declaration of Independence — "Life, Liberty, and the pursuit of Happiness" — with the phrase "life, liberty, and *property*." Thus making the primary goal of the amendment not to secure happiness but to secure the right to pursue wealth, reaffirming the linkages between capitalism, liberty, and life.

In 1868, the Fourth Reconstruction Act was passed. Fearful that future congresses would limit the scope of the act, the Fifteenth Amendment was passed in 1869 and ratified in 1870. The amendment theoretically gave African Americans the vote. However, the amendment, based on the 1867 civil rights legislation, was a retreat from the earlier law. The 1867 law had mandated state authorities to permit black men

---

[40] Ringer, *"We the People."*

to vote. The amendment, in contrast, was worded to allow for the interpretation that it would be wrong to deny blacks the vote solely based on racial status. But the law did not say anything about literacy tests, poll taxes, property requirements, and the "grandfather" clause. The South would use all these tactics after 1890 to deny blacks the vote.[41]

Much of what Republicans tried to do during this time was to protect blacks from violence at the hands of whites. Generally blacks in the South did not enjoy the right to be protected from violence. Violence in the South in the 1860s-70s was sensational, the subject of newspaper coverage and congressional hearings. Familiar to the northern ear were stories of white racists getting away with murder, as local authorities refused to pursue whites who deprived blacks of their civil rights.[42] Violence was a form of social control that sought to restore the systematic control whites held over blacks under slavery. "Educated blacks were especially targeted for punishment," Kennedy notes.[43] Foner writes that "the very pervasiveness of violence in the post-Civil War South may be considered an indication of how high were the stakes being fought over."[44] Attacks on the black community and their sympathizers compelled Republicans to intrude on the South perhaps more than they wished. Examples of protective legislation were the Ku Klux Klan Act of 1871, authorizing the

---

[41] Ringer, *"We the People,"* 199. White southern men were not *en masse* denied the right to vote during Reconstruction See Forrest G Wood, "On Revising Reconstruction History: Negro Suffrage, White Disfranchisement, and Common Sense," *Journal of Negro History*, 51 (1966)

[42] Randall Kennedy, *Race, Crime, and the Law* (New York. Vintage Books, 1991), 39

[43] Kennedy, *Race, Crime, and the Law*, 39.

[44] Eric Foner, "Reconstruction Revisited," *Reviews in American History*, 10 (1982), 95

use of military force against the Klan, and the creation of the Department of Justice to pursue claims of civil rights violations.

The radical Republicans were, at least for a spell, relatively successful in stemming the violence. President Ulysses S. Grant, a former slave owner, even sent federal troops into South Carolina in 1871 to quell widespread anti-black violence in that state. And the radicals did achieve the Civil Rights Act of 1875, which was sweeping in its progressivity, even if its most progressive elements never made it out of Congress. The act, for instance prohibited discrimination in public places. Despite Republican efforts, however, southern elites developed several successful strategies, especially during the post-Reconstruction era, that combined legal and economic constraints to achieve effective and substantive racial dominance. Among these strategies were laws against employers recruiting sharecroppers from other plantations, criminal penalties for breaking contracts, the criminal surety system that bound blacks to planters who paid their fines for minor criminal acts, and a credit system that created conditions of debt servitude/peonage.[45]

Reconstruction collapsed in 1877. Many writers have advanced theories why it failed and why, naively, white supremacy took its place. Conservative legal scholar Randall Kennedy notes several factors that played into the reversal of Republican efforts in the South. The reformers were tentative and confused by the circumstances that confronted them. Southern whites could be exceptionally obstinate in resisting reformers' policies. The South was committed to re-establishing the racial hierarchy

---

[45] Fredrickson, *White Supremacy*, 214.

and northern reformers misjudged southern dedication to this goal. The machinery of the federal government was then nowhere near as extensive as what would later develop; they did not have the tools or the mandate to impose radical transformation on the South. Frustrated by southern resistance and federal inefficacy, reformers burned out. Northerners were also racist, so their dedication to the cause of reform is questionable. Finally, they operated under the federalist ideology of state minimalism. "When Reconstruction came to an end," Kennedy writes, "a remarkable effort to provide blacks with the equal protection of the laws gave way to a rigid pigmentocracy that, once again, deprived African-Americans of basic human rights."[46] Zinn accuses the government of being too timid.[47] Lynd argues that Reconstruction failed "because political change was not reinforced by economic change. The freedman was given the vote but he was not given the land. Had the plantations of leading Confederates been divided among the former slaves, the Southern Negro would have had at least the beginnings of economic independence to support his new political power."[48] Ringer echoes Lynd's point when he writes, "Congress did little to disturb the economic power that inhered in these groups. For a while it had toyed with the idea of a major program of land redistribution for the freedman, but it never did anything substantial about taking land away from the plantation owners. Accordingly

---

[46] Kennedy, *Race, Crime, and the Law*, 41.

[47] Howard Zinn, *The Southern Mystique* (New York, Knopf, 1964).

[48] Lynd, "Rethinking Slavery," 207. See also James M. McPherson, *The Struggle for Equality. Abolitionists and the Negro in the Civil War and Reconstruction* (Princeton. Princeton University Press, 1964)

these groups still retained primary control of property and of the means of production in the South."[49]

Economic power secured cultural-ideological power. The southern planter "stood at the top of the status system. In fact their prestige and social influence were enhanced within the white community by the 'martyrdom' they suffered from the congressional acts. They took on the guise of sanctified heroes. Small wonder that this group lost little of its de facto power with disfranchisement and little of its zeal for reasserting its right to legitimate political power."[50] Thus the southern elite had only to meet the flimsy efforts of the radical Republican, whatever formal edict the latter carried with him from the North, with legions of southern men who were joined across class lines by the privileges of whiteness. Du Bois observed that black and white labor did not come together because whites of all social classes were ethnically united and that this interclass coalition associated with the "open intimidation" and "lawless murder" of blacks by whites.[51] Ringer concludes, "The elite members of this group may not have actually run or even belonged to groups such as the Ku Klux Klan or Knights of the Camelia, which mushroomed during this period, but they provided the spiritual and moral guidance and justification for the widespread resort to violence and terror."[52]

But perhaps we should question the language of failure in mainstream scholarship on Reconstruction. The historian's contention that "Reconstruction failed,"

---

[49] Ringer, "*We the People,*" 200-201.
[50] Ringer, "*We the People,*" 201.
[51] W.E B. Du Bois, *Black Reconstruction in America* (New York· S. A Russell, 1935)
[52] Ringer, "*We the People,*" 201.

assumes a certain position on what the reformers intended. Did they intend to create a racially integrated society? Based on the evidence I have seen, it does not appear so. Others agree. Michael Les Benedict argues that Republicans were operating from conservative principles that folded into Reconstruction their distaste for any extensive intervention in the domestic affairs of the South.[53] Even after 1868, when violence in the South forced the Republicans to broaden federal authority, many of them opposed expansion, and most fought to restrain the expansion. State expansion in wartime was regarded as a dramatic departure from the ordinary circumstances of the federal order; it was only necessary because of the great calamity facing the nation. With the war over, the state was to be reduced. Republicans began to abandon the more "radical" elements of Reconstruction in 1869, years before the policy actually collapsed.

More fundamentally, Les Benedict finds specious the claim that the Supreme Court betrayed in their interpretations the intentions of the Republican amendments. The desire of the core of Republicans was to preserve the constitutional order, to make as few changes as possible, and this meant preserving white supremacy. The Reconstructionist, with this goal in mind, was ill-prepared to protect citizens' rights. What Reconstruction represented was an *adjustment*, one in which the caste system was reconstructed in a fashion consistent with the guiding light of the US Constitution, which meant to secure a *white capitalist republic*. Reconstruction was not a failure, but achieved what it was designed to achieve, what it could only achieve: the preservation of the racial order. Meier argues that the changes touted by more

---

[53] Michael Les Benedict, "Preserving the Constitution The Conservative Basis of Radical Reconstruction," *The Journal of American History*, 61 (1974).

sanguine liberal historian were in fact quite superficial.[54] As Katz noted, before and after the Civil War, the government could do little more than it did if it wished to stay true to the framers' intentions. In *Dred Scott*, the courts were not able to produce an egalitarian solution. "The constitutional community of rights holders was designed to be narrowly circumscribed, and there was nothing that the Supreme Court or the ordinary processes of constitutional change could do to broaden it."[55] When the 14th amendment was passed in 1868, it articulated a possible basis for extending further the community of rights holders. But the institutional logic of the constitutional system was constrained in securing those rights for the new citizens, and it was helpless to secure substantive equality — substantive equality simply lies beyond the Constitution and its interpreters' power to secure. The framers and ratifiers of the 14th Amendment were adamant that the amendment only cover civil rights, not political, and especially not social rights. There were the civil rights acts, but these were also narrowly drafted — or rather "loosely worded" from the Supreme Court's point of view[56] — and were ruled unconstitutional. Limited formal equality was as near to something resembling racial justice as Congress and the Supreme Court were prepared to get. Even with constitutional protections in place, they were rarely enforced and blacks were hardly protected. The courts designed tests for violations of equal protection that permitted

---

[54] August Meier, "Negroes in the First and Section Reconstructions of the South," *Civil War History*, 13 (1967).

[55] Stanley N. Katz, "The Strange Birth and Unlikely History of Constitutional Equality," *The Journal of American History*, 75 (1988), 754

[56] Les Benedict, "Reserving the Constitution " Cf. Foner, "Reconstruction Revisited." He argues that while "Reconstruction's promise certainly exceeded its accomplishments," "so long as Reconstruction survived, so too did the possibility of further change, a prospect only foreclosed with Redemption and later, the final implementation of segregation and disfranchisement," 95

violations of civil liberties to continue. Katz writes, "From 1868 to 1954, constitutional equality meant at most nominally fair legislative classification and statutory application."[57]

No Escape: Apartheid and Ghettoization

> What God hath separated let no man join together.
>
> — Henry W. Grady.[58]

Living conditions for southern blacks deteriorated greatly after the 1870s. There were several causes, but in the main we can attribute their plight to the fact that white supremacy had reasserted itself. During the 1880s, southern states passed "Jim Crow" laws, which imposed a color bar between blacks and whites in all domains of public and private life. The color bars were observed by whites of all social classes. "For the poor white, caste would protect class."[59]

In 1896, *Plessy v. Ferguson* sanctioned the Jim Crow system by ruling constitutional "separate but equal" facilities for whites and blacks thus legalizing racial segregation at the federal level.[60] Justice Brown, speaking for the majority, disagreed with the contention, made by another member of the court, that segregation

---

[57] Katz, "Strange Birth," 758.

[58] Quoted in C Vann Woodward, "Tom Watson and the Negro in Agrarian Politics," *The Journal of Southern History*, 4 (1938), 16 Grady was a prominent segregation in the late 19th century.

[59] Barton J. Bernstein, "Plessy v Ferguson· Conservative Sociological Jurisprudence," *Journal of Negro History*, 48 (1963), 202

[60] *Plessy v. Ferguson* 163 US 537 (1896). The case involved a man, Homer Adolph Plessy, who contended that because he was only one-eighth negro and had no "Negroid" features that he was entitled to the same rights and privileges as a white man. The court did not attempt to answer the question of racial hybridity, although other courts tried In *State v. Chavers* 5 Jones N.C. 1, it was ruled that any visible admixture of "Negro blood" made the person a Negro. In two cases, *People v. Dean* 14 Michigan 406, and *Jones v. Commonwealth* 80 Virginia 538, the threshold was set at one-quarter "Negro blood." If the person was one-quarter black then they were black An Ohio decision, *Gray v. State* 4 Ohio 354, was more subjective, requiring a preponderance of blackness as the standard. See David W Bishop, "Plessy v. Ferguson· A Reinterpretation," *Journal of Negro History*, 62 (1977)

"stamps the colored race with a badge of inferiority." "If this is so," Brown said, "it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." In other words, racial inequality was a figment of African American imagination. The decision had two main effects. First, it legitimated repressive racial laws, "black codes," designed by southern legislatures to keep blacks politically, culturally, and economically subjected, "thus confining them to the bottom rung of the social ladder."[61] Second, the decision sanctioned the "moral" correctness of racial segregation, thus normalizing, or more accurately, *re-"normalizing,"* white racial oppression.

One justice dissented. John Marshall Harlan.[62] On the surface, Justice Harlan's opinion is, in some respects, one of the bright spots in US constitutional history. At least it appears that his heart was in the right place. In other respects, though, he set down in his dissent the philosophical basis for the ideology that justifies a deeper and more invisible racism: colorblindness. He predicted that the majority's opinion would lead to widespread racial discrimination.[63] Racial discrimination unlawfully interfered with individual freedom guaranteed by the federal constitution. As we have seen, the US Constitution does not guarantee individual freedom. But Harlan was correct about the impact of the ruling. More significantly, Harlan claimed, falsely (or ignorantly,

---

[61] Ringer presents an excellent discussion of this in *"We the People,"* although he misses the deeper meaning in Harlan's dissent.

[62] Daniel C Thompson, "The Role of the Federal Courts in the Changing Status of Negroes Since World War II," *Journal of Negro Education*, 30 (1961), 95

[63] Future courts in upholding the *Plessy* never concerned themselves with checking to see if the facilities were in fact equal. "The truth is," Thompson writes, "Southern politicians openly pledged themselves to maintain a system of segregation which guaranteed that white people would be provided superior public facilities to Negroes," "Changing Status of Negroes," 95

although this is unlikely), that the Constitution was colorblind. It "neither knows nor tolerates classes among its citizens," he wrote. He asserted that the Constitution treats everyone equal, and does not and should not take account of color, background, or circumstances. He was dismayed that the court could see it fit to permit states to "regulate the enjoyment by citizens of their civil rights solely upon the basis of race."[64]

Years later, Gunnar Myrdal would observe of *Plessy v. Ferguson*: "The white man's entire system of discrimination is then in no need of moral defense. The Negro becomes deprived of the 'natural rights of man,' and must, instead depend upon civil kindness for his protection, which behooves Christian society. He will be asked not to insist on '*rights*' but to pray for favors."[65] The interesting thing about Myrdal's statement is that if one made a similar statement during slavery it would be just as true. As long as the court upheld *Plessy* it maintained a legal situation similar to slavery, with the exception that one group was not allowed to own the other. This is, of course, a big distinction, but the essentially two-tiered societal system — the caste system — remained firmly in place. Then again, the distinction between slavery and Jim Crow is not as big as it might at first seem, when one considers the circumstances blacks faced in sharecropping and debt peonage,[66] not to mention the conditions of convict leasing.

---

[64] Harlan also pointed out that this not only restricted the freedom of blacks, but of whites, as well Certainly whites were denied the privilege of riding on buses and trains with black people. But the long-term racial interests of whites were what the court had in mind

[65] Gunnar Myrdal, *An American Dilemma* (New York: Harper and Brothers, 1944), 100-101

[66] Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (Urbana University of Illinois Press, 1972), Daniel A Novak, *The Wheel of Servitude Black Forced Labor After Slavery* (Lexington, KY University Press of Kentucky, 1978)

Some historians, most notably Woodward, have advanced the theory that Jim Crow codes grew up only slowly and did not immediately rise in the post-Reconstruction period.[67] They locate the rise of segregation between the 1890s and 1900s with the implementation of *Plessy* in Jim Crow laws. It is true that de jure segregation emerged in the 1890s. But in contrast to the point of view that puts law in front of culture, scholars, like Ira Berlin, contend that segregation was a matter of custom, entrenched by the end of Reconstruction, and that the law codified a pre-existing set of relations.[68] Both theory and evidence support the latter argument. From a structural-theoretical standpoint, the complex and generally uniform codes of the Jim Crow system that covered the South (and much of the North) could not have originated from state legislatures coincidentally coming to the same conclusion at roughly the same moment. There had to have been a common understanding with which the states and the courts were operating. Underlying this common understanding must have been a shared social structure. One is compelled to conclude that the caste system, of which slavery was a concrete instance, determined the post-slavery order. Reconstruction only prevented the full legal, and to some extent social, installment of slavery's replacement: apartheid.

---

[67] C. Vann Woodward, *The Strange Career of Jim Crow* 3rd ed (New York: Oxford University Press, 1974). Woodward's argument was anticipated by George Tindall, *South Carolina Negroes, 1877-1900* (Columbia, SC. University of South Carolina Press, 1952).

[68] Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974). See also Vernon Lane Wharton, *The Negro in Mississippi, 1865-1890* (Chapel Hill, NC University of North Carolina Press, 1947).

If one is not convinced by structural theoretics, there is detailed historiography supporting this interpretation.[69] The postbellum South did differ from the antebellum one, and Republicans helped shape this system. Rabinowitz notes, "by 1890 — before the resort to widespread de jure segregation — de facto segregation had replaced exclusion as the norm in southern race relations."[70] As we have seen, integration was never really pursued by federal elites. This was never the goal of Reconstruction. The proposed clause in the Civil Rights Act of 1875 outlawing segregation was not included in the final version of the bill. The remaining provisions were not usually enforced. And in any case the Supreme Court overturned the law in 1883.[71] Republicans did little to interfere with the social relations of the South. They sought segregation in public institutions as the solution to the problem of exclusion. Rather than keeping blacks from various public facilities altogether, they desired that blacks and whites be separate but treated equally. "It would seem, therefore, that the Republicans had little desire to 'Africanize' the South."[72] Therefore we arrive at the conclusion that it was congressional reconstruction in 1867 that imposed segregation as the solution to the "Negro question," not the Supreme Court in 1896. The separate

---

[69] Howard N Rabinowitz, "From Exclusion to Segregation Southern Race Relations, 1865-1890," *The Journal of American History*, 63 (1976).

[70] Rabinowitz, "Exclusion to Segregation," 326.

[71] The Civil Rights Cases, 109 US 3 (1883). See James M McPherson, "Abolitionists and the Civil Rights Act of 1875," *The Journal of American History*, 52 (1965).

[72] Rabinowitz, "Exclusion to Segregation," 332. Republicans themselves practiced segregation, such as in their political conventions and courtrooms, where blacks were seated separate from whites

but equal doctrine, codified in *Plessy v. Ferguson*, was *the* policy in the 1870s; the logic of *Plessy* was the consensus position among elites, Democrat and Republican alike.[73]

There were pockets of resistance to the restoration of white supremacy. In the 1880s and 1990s the Populist movement challenged the structure of white power and Democratic Party hegemony. At the heart of the movement was the Farmers' Alliance, an interracial organization that threatened the material interests of the white planter class and whites dependent on the plantation system.[74] Union activity, such as the Knights of Labor, the United Mine Workers, and the American Federation of Labor all involved attempts at racial unity with mixed results.

At the core of the Populist movement was a radical agrarianism, and since a large segment of the farmer-tenant class was black, whites crossed to color line to build the movement. Associated with the unions, there were smatterings of anti-capitalist tendencies in the movement.[75] The movement had considerable success, with Republican and Independent candidates doing well at the ballot boxes in several southern states in 1880 and 1884,[76] and in 1892, where the Populists polled over 1 million votes in the presidential election.[77] One of the key figures in the movement, Tom Watson, who tried to form a third party reaching across racial lines, argued that

---

[73] The codification of Jim Crow in *Plessy* saw the rise of the conservative black Booker T Washington, who advocated racial co-existence based on racial separation, rose to prominence under this system. See Barton J Bernstein, "Plessy v Ferguson: Conservative Sociological Jurisprudence," *Journal of Negro History*, 48 (1963)

[74] Steven Hahn, *The Roots of Southern Populism. Yeomen Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York. Oxford University Press, 1983)

[75] More accurately these were anti-monopoly sentiments

[76] J. Morgan Kousser, *The Shaping of Southern Politics Suffrage Restriction and the Establishment of the One-Party South 1880-1910* (New Haven Yale University Press, 1974)

[77] Melvin Leiman, *The Political Economy of Race* (Pluto Press, 1993).

race hatred, a mechanism to perpetuate poverty among all racial groups, was created by elites who desired to maintain a "financial despotism."[78] In 1896, the People's Party wrote into their platform denunciations of lynch law and the Ku Klux Klan, and recommended the abolition of convict leasing.[79]

The Populist movement was short-lived. The decline in the power of agriculture, the long depression of 1893-1898, insufficient linkages to the industrial unions, and the efforts of reactionary forces, through law and terrorism, combined to undercut the strength of the movement. Watson, perhaps showing his opportunistic character, became a staunch racist, stating, "This is a white man's world, and the white man must maintain it."[80] Rather than racial unity being the linchpin of Populism, blacks were now perceived to be the central stumbling block in the movement. As such, they must be disfranchised. Without blacks voting, whites would be able to vote their consciences.[81] The Knights were also weakened, and, later, the United Mine Workers, largely through white terror and intimidation, succumbed to racial exclusion. The AFL abandoned their interracial posture (which was always only limited) and pursued a policy of discrimination against blacks (who were, for example, almost completely shut out of the crafts unions).[82]

Thus, despite episodes of resistance to the re-normalization of racial caste relations in the South, the white supremacist drive to reassert himself prevailed.

---

[78] Leiman, *Political Economy* See also C. Vann Woodward, *Tom Watson: Agrarian Rebel* (Oxford University Press, 1938)

[79] Woodward, "Watson and the Negro "

[80] Quoted in Leiman, *Political Economy*, 349

[81] Woodward, "Watson and the Negro "

[82] Philip Foner, *Organized Labor and the Black Worker 1619-1973* (New York: International Publishers, 1974)

Really, he was never in any danger of loosing his privileged position in the racial order his ancestors had established. And contrary to the wishes of the reformers during the Second Reconstruction, the South remains a racially segregated society. One need only to drive her car through the cities of Atlanta or Memphis or the countryside of Georgia to see a society deeply divided along racial lines.

What about segregation in the North? In 1910, over 80 percent of African Americans lived in twelve southern states. More than 60 percent lived on farms.[83] After 1910, in what is called the "Great Migration," myriad push and pull factors spurred African American migration from the rural South into the central cities of the North and South.[84] Push factors included labor surpluses, racial violence, impoverished living conditions, and several waves of natural disasters (droughts, heavy rains, and boll weevil plagues).[85] There were many pull factors. The labor shortages caused by WWI and, later, restrictions on immigration, required the tapping of domestic sources of cheap labor. With the growth of unions, industrialists' needed strikebreakers to undercut the white workers' movement and cheap labor to maximize competitive advantage. The promise of a better life was also attractive.[86] The demand

---

[83] Feagin, "Unwilling to Die."

[84] Carole Marks "Black Labor Migration· 1910-1920," *Insurgent Sociologist*, 12 (1985); Lemann, *Promised Land.*

[85] John Hope Franklin, *From Slavery to Freedom: A History of American Negroes* 5th edition (New York Knopf, 1980) See also Ronald L Lewis, "From Peasant to Proletarian: The Migration of Southern Blacks to the Central Appalachian Coalfields," *The Journal of Southern History*, 55 (1989),, Florette Henri, *Black Migration. Movement North, 1900-1920* (Garden City, NY Anchor Press, 1975); Henderson H. Donald, "Causes of the Recent Negro Migration," *Journal of Negro History* 6 (1921)

[86] Donald, "Recent Negro Migration " The movement of African Americans out of the rural south began earlier than the post-1910 period, in the 1880s, after the Republican party abandoned their cause in the 1870s, many blacks fled. Lewis, "Peasant to Proletarian."

for labor by northern industrialists, despite periodic business slumps, was probably the primary reason blacks went north. Between 1890 and 1910 it is estimated that around 200,000 blacks had migrated north. In the mid 1910s, the number leaving the South grew dramatically. Between 1916 and mid-1917, probably three to four hundred thousand blacks migrated north.[87] The number grew steadily after WWI until by the 1970s several million had "escaped" the South. The influx of blacks into northern cities would change patterns of ethnic interaction and race formation.

In part 1, chapter 3, to illustrate the character of the dual society, I summarized Richard Thompson Ford's argument concerning the creation and recreation of "racially identified spaces."[88] To this point, we have seen the creation of such spaces in several phases in the development of racial caste. We just documented these spaces being transformed in the South following the abolition of slavery. In the remainder of this section, I briefly examine the development of a primary type of racialized space in the post-slavery city: *residential segregation*.[89] Because considerable theorizing and

---

[87] Lewis, "Peasant to Proletarian"; Henri, *Black Migration*. A considerable number of the hundreds of thousands who left the South were diverted to the coalfields of central Appalachia, West Virginia, eastern Kentucky, and some of the eastern part of Tennessee.

[88] Richard Thompson Ford, "The Boundaries of Race. Political Geography in Legal Analysis," in *Critical Race Theory*

[89] Industrial segmentation is another important form of racial segregation Edna Bonacich split-labor market scheme is considered by many definitive. However, Bonacich's theory "needs to be combined with a full historical account of how the labor market got split in the first place — the conditions under which one group of workers became cheaper and more exploitable than another," Fredrickson, *White Supremacy*, 212 Bonacich's claim that ethnic antagonism first germinates in the industrial situations she describes seems to forget that competition over jobs by different ethnic and racialized groups *presupposes* ethnic and racial divisions. The reasons why labor became racially split in the first place, then, is of historical importance because it forms the background from which racial antagonisms emerge and erupt in the central cities upon the arrival of black migrants Moreover, split labor market theory "requires modification to take account of the semi-autonomous role of the state as a mediating force that may represent other interests and traditions than just those of employers of cheap labor or organized and privileged members of the domestic working class," Fredrickson, *White Supremacy*, 212-213. The

empirical research have already been produced about this topic, I will focus on one central issue in summary fashion: the question of intentionality on the part of whites.

Consistent with what I argued in the introduction to my dissertation, although much of my analysis involves structural theorizing -- because the chain of events described in my dissertation embed in the large-scale developmental trends of a complex historical system -- I have endeavored to show that role human agency plays in oppressing black people. Although the story of residential segregation is often one about the power of anonymous structural forces in shaping the destiny of social groups and individual human lives, the development of the ghetto bears the mark of the intentional actions of white elites, residents, and workers, composed of a number of ethnonational groupings of European heritage, organizing to exclude blacks from industrial production,[90] contain them in racially segregated neighborhoods, and create white "safe-zones." Government policy and capitalist disinvestment after 1930 built on emerging patterns of residential segregation to ghettoize blacks in the central cities[91] and create the suburbs, white "enclaves" isolated from urban areas.[92] Policies emplaced at this historical conjuncture impact the social system throughout the remainder of the century. Ghettoization and industrial caste formation created the

---

state does not simply reflect the interests of the dominant economic classes, rather the state is relatively autonomous of the class structure, operating also on cultural tradition to protect racial identity. The state not only possesses a class character -- it possesses a racial character. The racial character of the state pre-exists racial antagonisms in the central cities

[90] William A Sundstrom, "The Color Line Racial Norms and Discrimination in Urban Labor Markets, 1910-1950," *Journal of Economic History*, 54 (1994).

[91] Massey and Denton, *American Apartheid*; Oliver and Shapiro, *Black Wealth/White Wealth*.

[92] Oliver and Shapiro, *Black Wealth/White Wealth*, Massey and Denton, *American Apartheid*. The term "enclave" is used metaphorically to express the emergent character of the suburbs as a territory safe from the perceived chaos of the urban centers and the backwardness of the rural life

preconditions for the emergence of deviance service industries and intensifying police activity in the cities.[93] The development of white enclaves and a reactionary attitude there would play a key role in the ability of elites to marshal popular support for reorienting the system of racial domination towards coercion in the 1960s.

To understand how social class and race intersect to systematically disadvantage blacks, and to show the level of intentionality in racial formation, Oliver and Shapiro contend that an approach must be adopted that considers racialized patterns of wealth accumulation and inequality, and situates these factors in the historical development of the domestic capitalist economy and white supremacy. Such an analysis accounts for both structural and instrumental features of racialization. What we find is that US government policies have stifled wealth accumulation by black Americans, by excluding blacks from taking advantage of state-sponsored openings for wealth generation, at the same time systematically advantaging whites via social policies targeted to white communities. Not only does the state initiate white advantage, but it institutionalizes patterns of racial discrimination. As Oliver and Shapiro put it: "the distinctive relationships between whites and blacks have been woven into the fabric of state actions."[94]

Oliver and Shapiro organize the facts of racial inequality into three interrelated features that help focus attention on the problem First, in what they term the "racialization of state policy," they show how the government has historically

---

[93] John Hagan, "Crime and Capitalization", Robinson, "Production of Black Violence."

[94] Oliver and Shapiro, *Black Wealth/White Wealth*, 4. See also Steve Valocchi, "The Racial Basis of Capitalism and the State, and the Impact of the New Deal on African-Americans," *Social Problems* 41 (1994)

impaired the capacity of blacks to acquire wealth. Instances of policies the state has pursued to systematically advantage whites are homesteading, land acquisition, and home ownership. Through these policies and actions, the US government has promoted economic expansion for whites but not for other ethnic groups. Three examples should suffice to illustrate the argument: the Social Security Act, the Federal Housing Authority (FHA), and Aid to Families with Dependent Children (AFDC).[95]

The Social Security Act of 1935, arguably the New Dealers' most progressive accomplishment, virtually excluded blacks from participation by making ineligible for the program agricultural and domestic workers. Through the FHA, the Roosevelt Administration found a way to keep blacks out of the housing boom the government in part engineered. The FHA *Underwriting Manual* stated: "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." To achieve this, the FHA sanctioned subdivision regulations and the restrictive covenant.[96] The Supreme Court struck down restrictive covenants in 1948, but this merely submerged the more obvious racial elements of FHA policy.[97] As Kenneth Jackson observes, by establishing a system of rules "reduced to writing, structured in defined procedures, and implemented by individuals only after intensive training, government appraisals institutionalized in a rational and bureaucratic

---

[95] For an assessment of the New Deal after the first four years see John P Davis, "A Survey of the Problems of the Negro Under the New Deal," *Journal of Negro Education*, 5 (1936).

[96] For an analysis of the early development of segregation ordinances see "Roger L Rice, Residential Segregation by Law, 1910-1917," *The Journal of Southern History*, 34 (1968).

[97] One way the government perpetuates these conditions is through the under-enforcement of anti-discrimination law and by failing to expose all the ways racial discrimination shuts people out of the housing market. Myron H Ross, "Prices, Segregation, and Racial Harmony," *Journal of Black Studies*, 2 (1971)

framework a racially discriminatory practice that all but eliminated black access to the suburbs and to government mortgage money."[98] AFDC was designed to support white widows and their children. After cursory state inspection, blacks households were deemed "unsuitable" for AFDC benefits and those families were excluded from the program.[99]

The second feature Oliver and Shapiro note is the underdevelopment of black capitalism. State policy has restricted endogenous growth of black enterprises. Constraints on endogenous black capital formation have also resulted from the structure of society independent of state policy. The disadvantaged position that blacks faced emerging from slavery, specifically the absence of wealth generating property, left blacks without the means to accumulate capital. Putting this observation in the framework developed in this dissertation, we find that in those instances where that has been endogenous economic development, black capitalists have been subordinated in the structure of white capital, much in the manner that client elites in the external peripheral areas of the capitalist world-economy are subordinated to their imperial masters. This maintains the underdeveloped condition of the domestic

---

[98] Kenneth Jackson, *Crabgrass Frontier. The Suburbanization of the United States* (New York: Oxford University Press, 1985), quoted in Oliver and Shapiro, *White Wealth/Black Wealth*, 17. The scheme works like this: Bureaucrats ranked communities according to desirability Black neighborhoods were placed at the bottom. Maps were designed with the categories of desirability colorized from green (most desirable) to red (least desirable). FHA loan officers used the maps to make loans

[99] Michael Katz, *In the Shadows of the Poor House. A Social History of Welfare in America* (New York: Basic Books, 1986) Note that as blacks increasingly accessed the system, AFDC became stigmatized and eventually terminated

periphery. It has nothing to do with a "culture of poverty"[100] or "ethnic backwardness."[101]

This process of underdevelopment must be part of our judgments concerning attempts to find ways to foster the development of black capitalism. While possibly improving the life chances for some in the black community, black capitalism presents no long-term solution to the problems of black poverty. First, independent of racism, capitalism by its nature creates poverty. Black capitalism creates the opportunity of some blacks to exploit the labor of other blacks, thus shifting the ethnicity of the exploiter, not raising the fortunes of the worker in the long-term. Second, the black community is linked to the larger world capitalist economy that operates fundamentally on racialization, putting black capitalists in a position to materially benefit from the suffering of marginalized and superexploited groups in peripheral regions across the planet. And, third, the elaboration of social class among blacks still occurs largely within caste boundaries, and therefore racism itself is not fundamentally challenged.

Finally, the authors identify a process of "sedimentation of racial inequality," where blacks suffer from cumulative disadvantage, i.e., past socioeconomic deficits compounding through time to produce an ever growing structural debt fixing them at the bottom of US society. Specific socioeconomic deficits include propertylessness, low wages, poor schooling/training, residential segregation, and exclusion from dominant

---

[100] Cf Edward C Banfield, *The Unheavenly City. The Nature and Future of Our Urban Crisis* (Boston Little, Brown, 1968), Charles Murray, *Losing Ground: American Social Policy, 1950-1980* (New York: Basic Books, 1985)

[101] Cf. See Thomas Sowell, *Race and Economics* (New York Longman, 1975)

cultural institutions. Blacks' location at the bottom of the nation's racial and class hierarchy is directly linked to the privileges of white people and to the caste-class structure in which whites and blacks both embed: "the same social system that fosters the accumulation of private wealth for many whites denies it to blacks, thus forging an intimate connection between white wealth accumulation and black poverty." Oliver and Shapiro conclude: "Just as blacks have had 'cumulative disadvantages,' many whites have had 'cumulative advantages.'"[102]

Thus, beginning in the 1930s, and through the 1960s, the federal government, under the direction of the Roosevelt Administration and the progeny of the New Dealers, financed and organized white flight from the central cities. The principal strategies were suburbanization and capital disinvestment. The pattern of suburbanization involved the government providing for white families subsidized loans to buy housing outside the central cities, and the implementation of transportation policies that built freeways out of congested urban areas. The suburbanization of America built into social development a new pattern of cumulative advantage for whites, along with the advantages whites already enjoyed.[103] Between 1933 and 1978 government policies enabled over 35 million families to accumulate equity.[104] These families were almost exclusively white. The policy of subsidizing the migration of millions of white families from the central cities followed a period where

---

[102] Oliver and Shapiro, *Black Wealth/White Wealth*, 5.

[103] H. V Savitch, "Black Cities/White Suburbs: Domestic Colonialism as an Interpretive Idea," *Annals of the American Academy of Political and Social Science*, 43 (1970), Wesley Skogan, "Fear of Crime and Neighborhood Change," in *Communities and Crime*, eds. A J. Reiss and M. Ronry (Chicago: University of Chicago Press, 1986), Douglas Massey, "American Apartheid. Segregation and the Making of the Underclass," *American Journal of Sociology*, 96 (1990)

[104] Oliver and Shapiro, *Black Wealth/White Wealth.*

capitalists had induced the migration of millions of black families into the central cities. The uneven development of capitalism in the period following WWII, the loss of jobs due to capital intensiveness, would compound over time to greatly affect those living in the urban centers.[105] Beyond the ghettos, a growing professional-managerial sector was absorbing displaced white manufacturing workers. Because economic expansion was occurring side-by-side with the geographic reorganization of the domestic economy, job loss in the central cities was occurring simultaneously with job growth outside the cities In other words, blacks were shut out of the economic expansion. This developing social profile would become increasingly criminogenic.[106] We now shift the focus of the analysis onto the machinery of repressive controls whites imposed on blacks to oppress them and maintain white advantage. I focus not only on formal strategies of the state, but also on informal tactics of the white majority.

The Mechanics of Repressive Control: Lynching, Urban Violence, and Penal Slavery

> "He [the Negro] has never risen above the government of the club "
> — James V. Vardaman, Senator for Mississippi[107]

Lynching blacks was not "mob justice."[108] It was a mode of social control. Among other things, perceived black resistance to their systematic oppression

---

[105] Douglas S Massey, Andrew B Gross, Kumiko Shibuya, "Migration, Segregation, and the Geographic Concentration of Poverty," *American Sociological Review*, 59 (1994), Douglas S Massey and Mitchell L Eggers, "The Ecology of Inequality Minorities and the Concentration of Poverty, 1970-1980," *American Journal of Sociology*, 95 (1990) Cf. Reynolds Farley and William H Frey, "Changes in the Segregation of Whites from Blacks During the 1980s: Small Steps Toward a More Integrated Society," *American Sociology Review*, 59 (1994)

[106] Robert Bursik, "Political Decisionmaking and Ecological Models of Delinquency: Conflict and Consensus," in *Theoretical Integration in the Study of Deviance and Crime* , eds S Messner, M Krohn, and A Liska (Albany. State University of New York, 1989), "Economic Deprivation and Neighborhood Crime Rates, 1960-1980," *Law and Society Review*, 27 (1993)

[107] *Congressional Record*, 63rd Cong 2nd Sess (Feb 6, 1914), quoted in *Negro America*, 379

triggered the violence. "The high incidence of violence against the Negro populace was, at least in part, the manifest expression of white reaction to Negro resistance," writes Grimshaw, coquetting with the language of the white supremacist; "If Negroes had 'known their place' it would not have been necessary to lynch Negroes in order to remind them of that place."[109] In actuality, Schaich writes, "Blacks seldom directly attacked the power structure."[110] It probably does not really matter if they did. As Goldhagen points out: "Prejudice is not the consequence of its object's actions or attributes. It is not some objective dislike of the object's real nature." Accordingly, "no matter what the object does, whether 'X' or 'not X,' the bigot defames him for it. Prejudice's source is the holder of the beliefs himself, his cognitive models and his culture."[111] The evidence that lynching was a mode of social control comes from observing its variability in conjunction with changing social-structural conditions. Lynching increases in frequency and intensity when other social control mechanisms break down, when the social order is ambiguous or unstable.

Before 1886, most persons lynched were white. Between 1840 and 1860 only 10 percent of lynching victims were black.[112] Such lynchings of whites were probably

---

[108] The practice of lynching is named after Colonel Charles Lynch of Bedford Country, Virginia. In the 1780s, he would organize informal trials and administer corporal punishment beneath a walnut tree in his yard

[109] A D. Grimshaw, "Actions of Police and the Military on American Race Riots," *Phylon*, 24 (1963), quoted in, Warren Schaich, "A Relationship between Collective Racial Violence and War," *Journal of Black Studies*, 5 (1974), 380.

[110] Schaich, "Collective Racial Violence," 380

[111] Daniel Jonah Goldhagen, *Hitler's Willing Executioners* (New York. Alfred A. Knopf, 1996), 39

[112] William Julius Wilson, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago, IL University of Chicago Press, 1980)

instances of "mob justice"; whites were free, the justice system underdeveloped,[113] and so often the community, feeling a simultaneous sense of outrage at the offense and underprotection by public authorities, took matters into their own hands and administered a bit of "the old self-help."[114] The slave-labor system, with its built-in repressive controls, was sufficient to control blacks and to secure a stable social order. Moreover, a black person was a valuable piece of property.[115] Black suffered through extensive private controls.

After the Civil War, federal presence in the South (Reconstruction) provided an external source of social control, forestalling the racial violence that might be expected with an upheaval of the social order. Reconstruction was abandoned in 1877 and the South began to reconstruct white supremacy in its legal aspects. The Populist movement emerged in the 1880s and 1890s, and their seeking unity across the color line enraged many white southerners, who were encouraged by politicians and capitalist fractions opposed to populism to commit violence against members of the movement. The experience with limited formal equality under Reconstruction, and then interracial coalition building, raised the level of racial violence. Soon thereafter lynchings soared. There was a marked shift in the racial composition of lynching victims. After 1886, lynching victims were predominantly black.[116] Between 1882 and

---

[113] W.E.B. Du Bois, *The Souls of Black Folk* (New York: Dover Publications, 1994)

[114] To borrow a phrase apparently in use around that time See Roland G. Usher, "Primitive Law and the Negro," *Journal of Negro History*, 4 (1919). For a history of the vigilante movement see Lawrence Friedman, *Crime and Punishment in American History* (New York: BasicBooks, 1993).

[115] Marable, *Capitalism Underdeveloped Black America*

[116] There were lynchings before this. The Ku Klux Klan is responsible for at least 400 murders between 1868 and 1872. However, there the racial disparity fully emerges after 1886 and there is a qualitative shift in the character of the lynch mob from secrecy (the Klan

1900 there were as least 100 lynchings a year. The record year was 1892: 161 African Americans were lynched. In the period between the Spanish American war and WWI racial violence in the South was almost exclusively lynching.[117] See figure 2.4.1.

In 1919, the NAACP published the report, *Thirty Years of Lynching in the United States, 1889-1918*, documenting that of the 3,224 people lynched in that thirty-year period, 78 percent of them were black. In 1922, the NAACP took out a full-page advertisement in several high-profile newspapers (including *The New York Times* and *The Atlanta Constitution*) titled "The Shame of America" to raise consciousness about the racial character of lynching. Their efforts had immediate but limited impact. The first anti-lynching legislation was approved by the House of Representatives that year. The House was as far as that legislation got; it was killed by a Senate filibuster. The election of Franklin Roosevelt would spark another wave of legislation. However, these laws were also vigorously resisted by opponents of civil rights and defeated. Congress never did pass an anti-lynching law.

Congressmen who opposed the law claimed their opposition was not racist but was based on fear of expanding the scope of the federal government and constitutional problems surrounding states' rights. Lynching may be horrible, they avered, but it did not warrant enlarging the federal machinery. And, in any case, it was a state matter. Their arguments were disingenuous to say the least. As I demonstrate later, these same

---

depended fundamentally on the mystification of white supremacy) to public display See Friedman, *Crime and Punishment*.

[117] Schaich, "Collective Racial Violence"; Grimshaw, "American Race Riots "

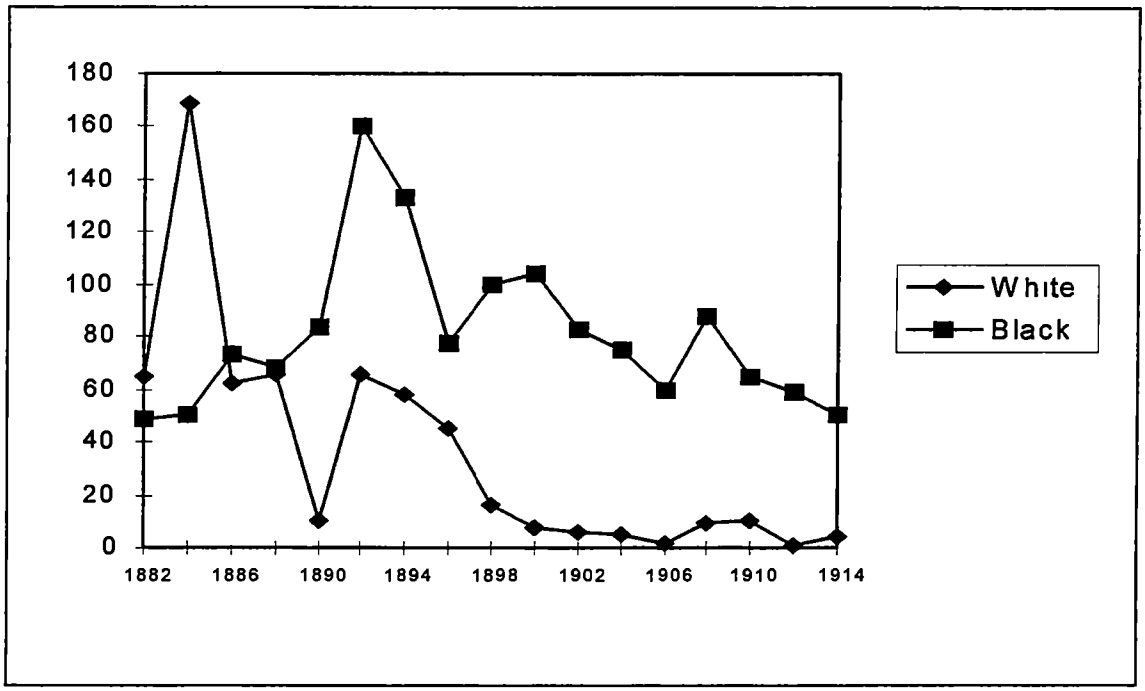


Figure 2 4 1
Lynchings 1882-1914[118]

congressmen passed several other pieces of legislation during this period, for example, the "White Slavery Act," that extended the scope of national law enforcement and intruded upon the sanctity of states' rights. They would pass these laws for equally racist reasons.

The government's failure to act contributed to the continuing of racial violence. Between 1882 and 1968, an estimated 4,742 African Americans would be lynched,[119] mostly in the South. "As many, if not more blacks were victims of legal lynchings (speedy trials and executions), private white violence, and 'nigger hunts," murdered by a variety of means in isolated rural sections and dumped into rivers and creeks."[120]

---

[118] Reproduced from Fischel and Quarles, *American Negro*, 376

[119] This estimate is almost certainly too low See James Allen, ed , *Without Sanctuary: Lynching Photography in America* (Santa Fe, NM. Twin Palms, 2000).

[120] Leon F. Litwack, "Hellhounds," in ed James Allen, *Without Sanctuary*, 12

Given this level of terror and the reluctance of law enforcement to do anything about it — when government officials were not themselves perpetrators or participants in perpetrating racial violence — is suggestive of deep racial commitments among the politicians and policymakers of this period.

Several theories have been developed about the underlying causal processes of lynching. Beck and Tolnay point to the political threat presented by a large black population as a possible source.[121] There is evidence that fear of the black population has at various points figured into the thinking of whites, such as the reluctance to restrict or abolish slavery based a theory about emancipation's destablizing effects.[122] Evidence suggests that the greater the proportion of blacks in a location the greater the frequency of lynchings.[123] Since most blacks lived in the South — in some states (Louisiana and Mississippi) they were a numerical majority — it would be expected that most violence against blacks would be in the South.

Inverarity, drawing from Erickson's "boundary maintenance" model[124] and Durkheim's modernist evolutionary theory (the "mechanical" vs. "organic" solidary scheme),[125] argues that shifts in caste borders perform the causal role.[126] He theorizes

---

[121] E. M. Beck, James L Massey, and Stewart E. Tolnay, "The Gallows, The Mob, The Vote: Lethal Sanctioning of Blacks in North Carolina and Georgia, 1882-1930," *Law and Society Review*, 23 (1989), Jay Corzine, James Creech, and Lin Corzine, "Black Concentration and Lynching in the South: Testing Blalock's Power-Threat Hypothesis," *Social Forces*, 61 (1983).

[122] Don B. Kates, Jr., "Abolition, Deportation, Integration Attitudes Toward Slavery in the Early," *Journal of Negro History*, 53 (1968)

[123] Susan Olzak, "The Political Context of Competition Lynching and Urban Racial Violence 1882-1914," *Social Forces*, 69 (1990); E M Beck and Stewart E Tolnay, "The Killing Fields of the Deep South· The Market for Cotton and the Lynching of Blacks, 1882-1930," *American Sociological Review*, 55 (1990)

[124] Kai T Erikson, *Wayward Puritans. A Study in the Sociology of Deviance* (New York: Wiley, 1966).

[125] Emile Durkheim, *The Division of Labor in Society* (New York Free Press, 1933).

that disruptions in mechanical solidaries (i.e., "traditional" undifferentiated social systems based on shared values and unity of purpose) may result in communal violence as threatened members seek to re-secure the social order and affirm the normalcy of traditional social arrangements. Threats to racial caste caused whites to react in racially violent ways to protect the integrity of their whiteness. If Du Bois claim is true — that whites, no matter how poor they are, enjoy a "public and psychological wage" by virtue of their whiteness[127] — it is reasonable to believe they act in ways to protect these wages.

Inverarity's analysis has weaknesses. As Pope and Ragin note, Inverarity's depiction of the South — rife with class conflict between the white planter class and poor white tenant farmers — belies the characterization of the South as a mechanical solidary. "More than Durkheim's explication of mechanical solidarity, this description brings to mind the Marxian image of class conflict."[128] Instead of *Division of Labor*, Pope and Ragin suggest Durkheim's analysis in *Suicide*, where the French theorist describes collective sentiments in the face of (perceived) danger leading to greater integration. Thus the threat of black freedom, northern intervention, and interracial unity (however tenuous that union was) increased racial solidarity among whites through

---

[126] James M Inverity, "Populism and Lynching in Louisiana 1889-1896 A Test of Erickson's Theory of the Relationship Between Boundary Crisis and Repressive Justice," *American Sociological Review*, 41 (1976)

[127] W E.B. Du Bois, *Black Reconstruction in the United States, 1860-1880* (New York, 1977)

[128] Whitney Pope and Charles Ragin, "Mechanical Solidarity, Repressive Justice, and Lynchings in Louisiana," *American Sociological Review*, 42 (1977), 363-264.

violence.[129] In any case, Inverarity did not reference these works and his "synthesis" of Erickson and Durkheim produced, as Pope and Ragin put it, a "theoretical muddle."

Others look to economic forces, such as the rhythms of cotton production[130] and competition over resources in the split-labor market.[131] They note that periods of material prosperity *ceteris paribus* tended to reduce the frequency of lynchings, whereas depression tended to increase lynchings. Depression reduced the number of available employment opportunities and increased competition for work. Lynching was one mechanism white labor used to drive black labor from the market. The economic approach is attractive because the simple linear formulation of the causal relation is conducive to quantitative methods and the logic of hypothesis testing.

The basic cotton price theory is as follows: During the early part of the 20th century the South's economy became increasing dependent on cotton as the price of cotton between 1900 and 1920 increased and planters rushed to make high profits.[132] At the same time, blacks were beginning the process of out-migration. With cotton

---

[129] Durkheim advanced an argument that is probably more applicable than the logic of his *Suicide*. In *Moral Education*, he writes, "Whenever two populations, two groups of people having unequal cultures come into continuous contact with on another, certain feelings develop that prompt the more cultivated group — or that which deems itself such — to do violence to the other." These feelings of superiority, Durkheim writes, "produce a veritable intoxication, an excessive exaltation of self, a sort of megalomania, which goes to the worst of extremes." Durkheim noted that this frequently occurs in colonial situations where "representatives of European civilization, find themselves involved with underdeveloped peoples," quoted in Pope and Ragin, "Repressive Justice," 365 One might clean up the argument a bit by rejecting Durkheim's ahistorical approach, which treats underdevelopment as a discovered condition rather than a created one, and by observing that those "certain feelings" do not develop out of the "continuous contact" of "unequal cultures," but rather that the inequities experienced by the subordinate groups are the creation of "the more cultivated group "

[130] Arthur Raper, *The Tragedy of Lynching* (1933), Beck and Tolnay, "Killing Fields."

[131] Corzine, Corzine, and Creech, "The Tenant Labor Market and Lynching in the South. A Test of Split Labor Market Theory," *Sociological Inquiry*, 58 (1988)

[132] Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986)

production growing to meet world demand, planters, dependent on black labor and sharecroppers, increasingly resorted to repression to control blacks.[133] Why mobs of whites would resort to racial violence is explained by the same process: since the plantation economy through cotton was tied to the world market, white workers were exposed to the economic fluctuations of the larger capitalist economy. They responded to downturns in their fortunes by lynching blacks. Strengthening this line of argument is that the regular seasonal rhythms of agricultural production have also been associated with the timing of lynchings.[134]

Split-labor market theory provides for a more nuanced explanation. Whereas the white planter class had an interest in exploiting cheap black labor, white labor was threatened by the black labor force, and thus interests were opposed.[135] White planters hiring blacks over whites led to whites employing violent tactics to open the market. However, in times of depression, the interests of rich and poor whites converged; under such conditions, "both the white elite and the white poor may have perceived certain advantages to heightened racial hostility and mob violence."[136]

The evidence for these arguments is compelling. When demand for cotton declined in the early 1890s, lynchings peaked. After the 1890s, when cotton prices rose there was a decline in lynchings.[137] After WWI, when the cotton economy declined

---

[133] Neil Fligstein, *Going North: Migration of Blacks and Whites from the South, 1900-1950* (New York: Academic Press, 1981)

[134] Raper, *Tragedy of Lynching*

[135] Joel Williamson, *The Crucible of Race. Black-White Relations in the American South Since Emancipation* (New York Oxford University Press, 1984).

[136] Beck and Tolnay, "Killing Fields," 527.

[137] Beck and Tolnay caution us on prices. Apparent price increases can reflect inflationary pressures, which would not improve the conditions of labor Indeed, inflation could worsen the conditions. They found that constant dollar increases lower lynchings, whereas inflationary

dramatically, another wave of racial violence issued. The re-birth of the Ku Klux Klan is associated with the latter calamity. Population pressures are theorized to have exacerbated the problem; rapid population growth in the South during this period produced a surplus mass of labor, increasing jobs competition between racialized groups further, and pushing racial tensions to greater heights.[138]

One question that might be raised is to what degree black and white labor actually competed for the same jobs? Some research supports the contention that there was interracial job competition,[139] although descriptions of labor markets in these studies usually depict a racial division of labor.[140] Susan Olzak questions whether direct competition over jobs was a widespread phenomenon. But more crucially, she doubts that it is even the important factor. What may be more critical is *perceived* competition, what she calls "potential competition." She writes that the "evidence suggests that racial violence in response to potential competition was sometimes not directed against the competitors."[141] For example, in the North the large-scale immigration of Europeans into the United States often resulted in violence against blacks not European immigrants, even though it was the immigrants who threatened to white workers' jobs. To be sure, "native" whites had much hatred for European immigrants, and they perpetrated much violence against them. This hatred was

---

increases are associated with increased lynching. Cf. John Reed, Gail E. Doss, and Jeanne S Hulbert, "Too Good to be False An Essay in the Folklore of Social Science," *Sociological Inquiry*, 50 (1987)

[138] Wilson, *Declining Significance of Race*

[139] David H Bennett, *The Party of Fear: From Nativist Movements to the New Right in American History* (University of North Carolina Press, 1988).

[140] E g , John W Blassingam, *Black New Orleans. 1860-1880* (University of Chicago Press, 1973).

[141] Olzak, "Urban Racial Violence."

understood by elites. For instance an 1869 issue of *Scientific America* warned immigrants to assimilate quickly or face "a quiet but sure extermination." Clinging to their traditional cultures would ensure they "share[d] the fate of the native American."[142] But the most intense hatreds and acts of racial violence were reserved for African Americans.

I grant that competition and potential competition are precipitating factors in racial violence. But what underpins these associations is the centrality of race in white capitalist society, specifically the drive to maintain racial caste. Inverarity's "theoretical muddle" admitted, his argument still carries considerable insight on this score. Yes, economic forces exacerbated conditions of racial tension, but it was the prior presence of race antagonism in a system of racial caste that created the *structural* conditions for these tensions to explode into violence. Lynchings occurred during periods of crisis in the structure of white domination, subsets of which were control over jobs or privileges in job markets. Theories based solely on competition or cotton prices do not and cannot tell us why blacks were targets of racial violence.

One indication of the force of racism as a primary causal factor is the character of the atrocities carried out against blacks. Such qualities escape quantification. Three accounts are presented here to provide the reader with a sense of the extremism of the violence and the conspicuous character of lynching. The reader must multiply these accounts by several thousand. The first account is the lynching of a man named Sam

---

[142] Quoted in Herbert Gutman, "Work, Culture, and Society in Industrializing America, 1815-1919," *The American Historical Review*, 78 (1973), 584.

Pettie in Leland, Mississippi. He was the third lynching victim in the vicinity in as many weeks. His murder occured in 1914.

> Placing a rope around his neck he was led to the center of the town and in the presence of women and children they proceeded to hold a conference as to the kind of death that should be meted out to him. Some yelled to hang him, some to burn him alive It was decided in a few minutes Willing hands brought a large dry-goods box, placed it in the center of the street; it in was straw on which was poured a tub of oil, then the man was lifted with a rope around his neck and placed in the box head down, and then another tub of oil was poured over him. A man from the crowd deliberately lit a match and set fire to the living man. While in this position the flames shot up at a great height The crown began to yell as the flames shot upward. In an instance the poor creature managed to lift himself out of the box, a mass of flames. He was fighting the flames with his hands in an effort to shield his face and eyes, and in this condition attempted to run The crowd allowed him to run to the length of the rope, which was held by willing hands, until he reached a distance of about twenty feet then a yell went up from the crowd to shoot In an instant there were several hundred shots and creature fell in his tracks [143]

It is important to note these words of the narrator, an eyewitness to the lynching: "Not a voice was raised in the defense of the man. No one attempted to hide their identity. I looked into the faces of men whom I knew to be officers of the town lending a willing hand in the burning of this man." The contumacious white, confident that nothing would come of his committing murder, was a common characteristic of the behavior of lynching participants. The tacit understanding of the legitimacy of his murderous actions attests to the depth of shared racial consciousness.

The second account of lynching concerns the murder of a woman, the wife of a man who, having been accused of killing their landlord (who was white), had been lynched. She expressed her intention to swear out warrants against the killers. For this she would be murdered in an astonishingly brutal fashion.

> Securely they bound her ankles together and, by then, hanged her to a tree. Gasoline and motor oil were thrown upon her dangling clothes, a match wrapped her in sudden flames. Mocking ribald laughter from her tormentors answered the helpless woman's screams of pain and terror The clothes burned from he crisply toasted body, in which, unfortunately, life still lingered, a man stepped towards the women and, with his knife, ripped open the abdomen in a crude

---

[143] *The Crisis*, 8 May 1914, 20, quoted in Fischer and Quarles, *Negro American*, 376

Cesarean operation Out tumbled the prematurely born child. Two feeble cries it gave — and received for answer the heel of a stalwart man, as life was ground out of the tiny form.[144]

One of the justifications given by whites for lynching blacks was that black crime, especially the murders of a white person and the rape of a white woman, was so horrendous that they had to dealt with in a swift and sure manner. Organic intellectuals of the white supremacists order wrote that blacks naturally and compulsively lusted after white women. Southern politicians openly supported lynching. Governor of South Carolina Ben Tillman, proclaimed in 1892, "I would lead a mob to lynch the negro who ravishes a white woman."[145] US Senator Theodore Bilbo of Mississippi stated that lynching was the only honorable punishment for blacks who raped white women. Another Mississippi senator, William Van Amberg, claimed he had led a lynch mob, even naming the victim (Nelse Patton).

Whether black men were raping white women is at one level irrelevant. As Goldhagen notes, "It makes little sense to discuss the real nature of a bigotry's object . . . when trying to understand the genesis and maintenance of the beliefs."[146] Whites' belief in the "licentious black" worked in concert with perceived racial threats to cause whites to murder blacks. However, it is of some significance that dozens of women were lynched in this period. And if black men needed vindication, extensive research in the 1890s by journalist Ida Wells Barnett proved that most lynchings were not the result of rape or attempted rape, rather "lynching was a device used to frighten and

---

[144] Quoted in Marable, *Capitalism Underdeveloped America*, 120. See also Litwack, "Hellhounds"

[145] Quoted in Kennedy, *Race, Crime, Law*, 45.

[146] Goldhagen, *Willing Executioners*, 39

intimidate African Americans both politically and socially."[147] Later statistical studies associating black crime with lynching found no effect.[148]

The third account involves a married couple, the Holberts, who were lynched because Luther Holbert was accused of murdering his white employer. The *Vicksburg Evening Post* described the lynching:

> When the two Negroes were captured, they were tied to trees and while the funeral pyres were being prepared they were forced to suffer the most fiendish tortures. The blacks were forced to hold out their hands while one finger at a time was chopped off The fingers were distributed as souvenirs. The ears of the murders were cut off. Holbert was beaten severely, his skull was fractured and one of his eyes, knocked out with a stick, hung by a shred from the socket. . The most excruciating form of punishment consisted in the use of a large corkscrew in the hands of some of the mob This instrument was bored into the flesh of the man and woman, in the arms, legs and body, and then pulled out, the spirals tearing out big pieces of raw, quivering flesh every time it was withdrawn [149]

It is difficult to read accounts of lynching and fail to notice their similarity to the behavior of not only the Nazis, but of ordinary Europeans in perpetrating atrocities against Jews and other racialized groups during WWII. In both contexts, the perpetrator's acts were remarkably cruel. It was not enough to execute the victim – the killers had to murder their victim in extravagant and public ways. Afterwards, they expressed pride in their actions, taking trophies, fragments of the corpse, selling body parts as souvenirs, proudly displaying the photographs they had taken in local shop windows. There were postcards made of the pictures of lynched blacks, delivered by US mail. There are similar examples in Nazi Germany. "The story of a lynching, then, is more than the simple fact of a black man or woman hanged by the neck. It is

---

[147] *The New York Public Library American History Desk Reference*, 101.
[148] See Beck and Tolnay, "Killing Fields."
[149] Quoted in Litwack, "Hellhounds," 15

the story of slow, methodical, sadistic, often highly inventive forms of torture and mutilation."[150]

The violence was similar to the Holocaust in another important respect. One of the phenomena observed in the Holocaust was the "spontaneous" collective violence that occurred when the local police were disabled in eastern Europe. Apparently what prevented Lithuanians and other ethnonational groups from beating Jews to death in the streets and in their beds was the presence of local law enforcement in securing the social order. When Nazis invaded and destabilized the legal order, latent exterminationist anti-Semitism was unchained and incredible acts of brutality issued. What marks violence in the US South was that it followed slavery and the absence of controls on the white population. "The demise of slavery, ironically, meant the collapse of an institutional check on violence against Black people."[151] After Reconstruction the violence intensified even more.

This is the problem with research that attempts to quantify lynching: an essential truth is evacuated from their mathematical models. The quantification of racial violence systematically hides the *racist* character of the perpetrators' actions. Even Beck and Tolnay, who carefully quantified the relationship between cotton prices and lynching, note, "Based on accounts of lynchings, it is clear that whites didn't congregate at the gin to lament the soft price of cotton, then decide to murder a black to relieve their psychological stress. Lynch mobs reacted to some supposed infraction

---

[150] Litwack, "Hellhounds," 14.

[151] Marable, *Capitalism Underdeveloped America*, 117. We should emphasize that Marable means violence outside the prison without fences. Slavery itself was a violent institution

of the norms governing caste relations."[152] The brutality of lynching and its acceptance by the white community points to racial hatred and racial interests as the primary causal forces in lynching. The extravagant murder of blacks fulfilled two purposes for whites: (1) affirmation — a vehicle to express one's racial hatred and pride in a public and defiant manner, and (2) intimidation —to send a message to blacks everywhere that this was what awaited them if they transgressed the color line.

Racial violence was not the "strange fruit" of "rural idiocy." There was much racial terror in urban areas. The deaths of blacks in the cities of the North and South have also been linked to the rhythms of capitalism, the transformation of the domestic economy, and migration. Urbanization of blacks is said to increasingly threatened the "normal" structure of labor markets.[153] As the percentage composition of blacks living in urban areas grew (from 12 percent in 1880 to 34 percent in 1920), lynchings became more frequent there, along with other forms of mob terror. One can explain this by reference to the fact of the totality. Olzak writes, "Although the economic and political structures of the North and South differed greatly during this period, the two regions were affected similarly by events in an increasingly integrated world economy."[154]

But like southern rural violence, in back of northern and southern urban violence lurked racism. Economic competition in urban centers may explain when racial violence erupted, but it does not explain why whites killed blacks or repressed immigrants. The race of the attacker and the race of the victim, that they are different,

---

[152] Beck and Tolnay, "Killing Fields," 537

[153] Wilson, *Declining Significance.*

[154] Olzak, "Urban Racial Violence," 399. See also Susan Olzak, "Labor Unrest, Immigration, and Ethnic Conflict in Urban America, 1880-1914," *American Journal of Sociology,* 94 (1989).

means that this was no mere economic violence. Whatever privileges whites believed were being threatened, they habitually defined the conflict in racial terms against a backdrop of racial caste. And since many times poor whites were hardly in a better material position than the blacks they terrorized, the racial factor was the wedge that kept them from turning their numbers against their common class oppressor: the industrialist in the North and the wealthy planter class in the South. And even if the racial wedge had not have been created by the ruling class, they benefited from it nonetheless.

No account of racial violence in this period can ignore the effects of war on collective acts of terrorism. In part 2, chapter 2, I speculated on the brutalizing effect of the constant military struggle engendered by belligerent mercantilism. The chronic war-time conditions may have contributed to toleration of repression of workers in the colonies. Although statistical evidence from this period is not at hand, we might infer from more recent evidence that such a relationship probably existed. It seems certain that an association between war and brutality existed in the period presently in question. Warren Schaich, noting the constant of racism — "Racism is a necessary condition for the outbreak of interracial violence" — contends that the degree to which racism is expressed in open violence is highly variable and this variability is not chance. He hypothesizes that "war generates internal collective violence."[155] Schaich

[155] Schaich, "Collective Racial Violence," 375 Schaich discounts the impact of migration on racial violence. While black migration occurring during war time was associated with racial violence, the largest movement of blacks, during 1929 and 1930 was not associated with violence Moreover, between 1950 and 1960s five million blacks migrated north with no associated racial violence.

identifies two forms of collective racial violence: (1) blacks who challenge the white power structure and (2) whites who "fear black encroachment to sacredly held and racially defined territorial and symbolic boundaries."[156] He takes the period between 1900 and 1967 and records a total of 210 outbreaks of large-scale racially violent events (pogroms and riots). Two hundred and two of those outbreaks occurred in nine years, 1917-1919 (WWI), 1942-43 (WWII), and 1964-67 (Vietnam War), the Korean War being the exception. Most of violent events occurred in the 1960s, beyond the time frame being analyzed in this chapter. However the other periods of heightened violence have some interesting characteristics.

Racial violence during WWI occurred mostly in the South and was usually as white pogroms carried out against blacks. In incidences of riots (two-sided conflicts) whites were rarely arrested and blacks absorbed the worse abuse, especially since the police often joined with the white mobs in beating and killing blacks. Lynchings may also be related to war. Having declined after 1908, lynchings returned to their pre-1908 levels in 1918, and soared in 1919. Many of those lynched were soldiers returning from the battlefields of Europe. Although the South still had the largest number of violent events in the WWII period, a majority of racially violent events occurred outside the South. Events involving servicemen increased dramatically. Eleven of the eighteen incidents involved clashes between black servicemen and white servicemen, white civilians, or white police. Similar to the racially motivated violence observed earlier in

[156] Schaich, "Collective Racial Violence," 375

Eastern Europe, when the attackers were white, the police would step aside and assume the role of spectator while whites beat and killed blacks.

Lynching and other deeds of collective racial violence were acts of social control carried out largely without direct state repression (although the state through mob violence repressed blacks via inaction). What about formal state repression? One way to gauge the racial orientation of the nation is to examine a high profile form of punishment, such as the state execution, and look for racial differences. State executions may represent continuity in control as a formal type of lynching. Although the state pretends to murder rationally, the difference between the lynch mob and execution under civil authority is that one type is not formally legal.

In the period between 1930 and 1963, selected here for practical and theoretical purposes (the beginning point is when the federal government began keeping close count of executions, the end-point the eve of the Civil Rights Act), we find that the total annual number of blacks executed regularly exceeded that of whites, especially in the period 1940-48, where in 1947 more than twice as many blacks were executed than whites. (See table 2.4.1) Predictably, the South had the greatest number of executions. In the period 1930-1964 there were 66 percent more executions in the South than the other three regions combined.[157] Blacks were over eight times more likely that whites to be executed for rape. Except for the peak year of 1938, the 1940s features the most executions for rape.

---

[157] US Department of Justice, Bureau of Justices Statistics, *Correctional Populations in the United States, 1995*, NCJ-163916 (Washington DC: US Department of Justice, 1997). There were 608 executions in the Northwest, 398 in the Midwest, 2304 in the South, and 506 in the West.

Table 2 4 1 Prisoners Executed Under Civil Authority[158]
By Race and Offense, United States, 1930-1963

	White			Black		
	Total	Murder	Rape	Total	Murder	Rape
1963	13	12	0	8	6	2
1962	28	26	2	19	15	2
1961	20	18	1	22	15	7
1960	21	18	0	35	26	8
1959	16	15	1	33	26	7
1958	20	20	0	28	20	7
1957	34	32	2	31	22	8
1956	21	20	0	43	31	12
1955	44	41	1	32	24	6
1954	38	37	1	42	33	8
1953	30	25	1	31	25	6
1952	36	35	1	47	36	11
1951	57	55	2	47	31	15
1950	40	36	4	42	32	9
1949	50	49	0	67	56	10
1948	35	32	1	82	61	21
1947	42	40	2	111	89	21
1946	46	45	0	84	61	22
1945	41	37	4	75	52	22
1944	47	45	2	70	48	22
1943	54	54	0	74	63	11
1942	67	57	4	80	58	21
1941	59	55	4	63	46	16
1940	49	44	2	75	61	13
1939	80	79	0	77	63	12
1938	96	89	1	92	63	24
1937	69	67	2	74	62	11
1936	92	86	2	101	93	8
1935	119	115	2	77	66	11
1934	65	64	1	102	89	13
1933	77	75	1	81	74	6
1932	62	62	0	75	63	10
1931	77	76	1	72	57	14
1930	90	90	0	65	57	6

What about the character of other spaces in the criminal justice apparatus? The end of slavery did not bring about an immediate correspondence between the North and the South regarding penal policy. We noted in part 2, chapter 3, that the trends in carceral policy were distinguished by differences between the North and the South, and that these differences were related to the structure of production, with the North

[158] Adapted from U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 1995*, NCJ-163916 (Washington, DC U S. Department of Justice, 1997), Table 7.26.

developing an industrial capitalism based on wage-labor and the South an agrarian capitalism based on slave-labor. Given the close correspondence between penal policy and economic structure, one should not expect the two regions to converge for sometime after the abolition of slavery.[159]

One of the chief differences was the relative underdevelopment of the criminal justice system in the South. "For such dealing with criminals, white or black, the South had no machinery, no adequate jails or reformatories; its police system was arranged to deal with blacks alone, and tacitly assumed that every white man was *ipso facto* a member of that police."[160] Du Bois observes that in these circumstances there "grew up a double system of justice, which erred on the white side by undue leniency and the practical immunity of red-handed criminals, and erred on the black side with undue severity, injustice, and lack of discrimination."[161] Thus we find the structure of racial caste reflected in the machinery of justice, in the South more purely than in the North, as industrial class organization had yet to take hold, and the vast majority of blacks resided in the South. The development of the penal system must not be understood solely in terms of its manifest function, namely crime control. The penal system is an expression of power and a mode of social control rooted in the productive structure of the capitalist social formation.[162]

---

[159] McKelvey argues that the Civil War disrupted the development of the penitentiary system. Immediately following the Civil War southern states enacted "black codes" in 1865 and 1866. The laws made vagrants of all free blacks which obliged them to hire themselves out to plantation owners It was de facto slavery. See Blake McKelvey, "A Half Century of Southern Penal Exploitation," *Social Forces*, 13 (1934).

[160] Du Bois, *The Souls of Black Folk*, 107-108. In this way, the southern system of law and order was analogous to the law of *Infangthief* of the Middle Ages

[161] Du Bois, *The Souls of Black Folk*, 108.

[162] Michel Foucault, *Discipline and Punish. The Birth of the Prison* (New York: Pantheon,

Convict leasing is one of the more revealing modes of control since its linkages to production are explicit, as well as is its racial character. "By 1880 every former Confederate state except Virginia had a full-blown state leasing program."[163] Mancini writes, "Convict leasing . . . is best understood not as part of the history of prisons, but as part of the elaborate social system of racial subordination which had previously been assured by the practice of slavery."[164] In other words, "the lease system was a component of that larger web of law and custom which effectively insured the South's racial hierarchy."[165] As such, as well as a matter of turning to the tools of oppression most available, it incorporated "the worst features of the old slave tradition."[166] Therefore, "the brutality of convict leasing fits clearly into a more comprehensive pattern of intimidation and violence, and it can be seen as an intrinsic part of that system rather than an aberration."[167] Convict leasing was direct state-organized brutality. "It was not then a question of crime," observes Du Bois, "but rather one of color."[168]

1977); Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939)

[163] Cohen, "Negro Involuntary Servitude," 55

[164] Matthew J Mancini, "Race, Economics, and the Abandonment of Convict Leasing," *Journal of Negro History*, 63 (1978), 339 There are several studies of convict leasing. See Fletcher M. Green, "Some Aspects of the Convict Lease System in the Southern States," *Essays in Southern History* (Chapel Hill, 1949), Jane Zimmerman, "The Penal Reform Movement in the South During the Progressive Era, 1890-1917," *Journal of Southern History*, 17 (1951). McKelvey, "Penal Exploitation"

[165] Mancini, "Race, Economics," 339.

[166] McKelvey, "Penal Exploitation," 153 "Slave methods naturally suggested themselves as the logical patterns for penal discipline," McKelvey, 153

[167] Mancini, "Race, Economics," 339

[168] Du Bois, *Souls of Black Folk*, 108

Control was its broad social function, encompassing general productive and race relations, however convict labor had fiscal and pecuniary functions.

As a fiscal matter, the state was spared costs in maintaining a large prison system. Moreover, the state profited from the system. Enoch Cobb Wines, the late 19th century prison reformer, wrote in 1880 that revenues in convict labor exceeded state costs in maintaining the system by 372 percent.[169] This figure did not include profits made by the owners of mines, railroads, and lumber mills. Fiscal matters, as has been noted by Rusche and Kirchheimer, are often neglected aspect of penal historiography.

Capitalists' pecuniary interests were well-served by the existence of a ready pool of superexploitable labor. "As a device for acquiring cheap and coercible labor for peculiarly laborious quasi-industrial tasks — such as railroad construction, turpentine farming, drainage, and even mining — southern entrepreneurs of the late nineteenth century made substantial use of convict leasing." The entire machinery of the state was concerned with securing for the capitalist cheap and coercible labor. "The contractors relied on the police and the judiciary to crack down on vagrants and impose exorbitant sentences for minor offenses at time when forced labor was needed."[170] In this regard, the penal policy of this period harks back to the tactics used in the late Middle Ages (see part 2, chapter 1). In one respect, free blacks in the post-slavery period were experiencing conditions analogous to free white labor in the transition from feudalism

---

[169] Enoch Cobb Wines, *The States of Prisons and of Child-Saving Institutions in the Civilized World* (Cambridge, 1880)

[170] Fredrickson, *White Supremacy*, 214

to capitalism.[171] But in another respect, it was not at all like this; for the goal of the state was not to free up labor but to re-enslave African Americans. Du Bois writes, "when the Negroes were freed and the whole South was convinced of the impossibility of free Negro labor, the first and almost universal device was to use the courts as a means of reënslaving the blacks."[172] "So convict leasing was not just an expedient by which southern states with depleted treasures could avoid costly expenditures," writes Mancini; "it was also one of the greatest single sources of personal wealth to some of the South's leading businessmen and politicians."[173]

Paradoxically, under these developments, the work of the radical Republicans served to legitimate the new system of racial dominance. "Slavery in the United States did not end after the Civil War; it merely changed forms," Franklin observes; "The necessary legal transformation was effected in 1865 by the very amendment to the Constitution — Amendment 13 — that abolished the old form of slavery." [174] That amendment reads: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."[175] Christianson observes:

---

[171] Ignorance or neglect of the racial character of the United States led Rusche and Kirchheimer to theorize "curtailment of convict labor in the law decades of the nineteenth century" as "largely the result of opposition on the part of free workers," Rusche and Kirchheimer, *Punishment and Social Structure*, 131 Opposition to convict labor was always strong, they note, but with "the gradual disappearance of the frontier," and where they were organized to bring pressure on the state, convict labor was limited, 132 However, convict labor proliferated throughout the South. This might be explained by the relative absence of worker organizing in the South.

[172] Du Bois, *Souls of Black Folk*, 108.

[173] Mancini, "Race, Economics," 339

[174] H Bruce Franklin, ed., *Prison Writing in 20th-century America* (New York: Penguin Books, 1998), 4

[175] *The United Declaration of the Thirteen United States of America*, in George Brown Tindall,

"Under the Thirteenth Amendment to the Constitution of the United States, the status of persons duly convicted of crime remained that of slaves."[176] "Amendment 13 actually wrote slavery *into* the Constitution of the United States," Franklin continues, "but only for those people legally defined as criminals."[177] Mancini makes the implications of this text explicit: the origins of convict labor were in Reconstruction and, in part, created by Republicans orchestrating Reconstruction. The Redeemers did not institute the lease system, rather "officers in the provisional and military governments in the years immediately following the Civil War" did.[178]

The practice of convict leasing spread and an institution very rapidly emerged and its resemblance to slavery was always apparent. The terminology used to describe the labor in the prisons — e.g., "full," "medium," and "dead" hands — were the same categories used under slavery. It was brutal, based on corporal punishment. Former slaves ensnared by the system must have wondered how useful freedom really was; Marable writes that "conditions for the prisoners became literally worse than under slavery."[179] Tortures used in the late Middle Ages were resurrected and aggressively applied to African American convicts. Convicts were leased in the manner of slaves. Typically, they were leased out for five years, but they could be leased for up to twenty years. Of course, the system was "reformed" from time to time. A typical

---

America: A Narrative History, vol 1, 3rd ed (New York W W Norton, 1992), A16.

[176] Scott Christianson, *With Liberty for Some: 500 Years of Imprisonment in America* (Boston Northeastern University Press, 1998), 251. The 13th Amendment continues to justify the use of forced labor. a bill introduced in Congress in 1998, "Pay for Your Stay," mandates a 48 hour work week for all able-bodied prisoners in the federal penitentiary

[177] Franklin, *Prison Writing*, 4.

[178] Mancini, "Race, Economics," 341. See also McKelvey, "Penal Exploitation."

[179] Marable, *Capitalism Underdeveloped Black America*, 112

reform was a Georgia law that required work camps to designate one person to administer punishments. This led to the development of "whipping bosses."

As time went on several trends became apparent: The number of people sentenced to prison skyrocketed. Sentences grew longer. The population grew younger. Ninety percent of convicts in the South were black. "The lease system guaranteed not only a large and reliable labor force, but also a labor force composed of those most fitted for maximum productivity in the work camps."[180] Mancini theorizes that the convict lease system could be worse than slavery because those who took charge of the convicts had little long-term economic incentive to protect prisoners as they might have slaves. Convict labor was, at least at first, much cheaper than slave labor, and it was always more disposable. Death rates in the camps were extraordinarily high. The percentage of prisoners who died building South Carolina's Greenwood and Augusta railroad was nearly 45 percent. As one South Carolina warden put it: "the causalities would have been less if the convicts were property having a value to preserve."[181]

> The system was . . both backward, and forward, looking. It represents one desperate attempt of a caste society to maintain its social structure after it had been defeated in a war fought, at least in part, over just that issue, and yet the men who leased the convicts were the businessmen and New South advocates who were most interested in putting that old society behind them, who wanted to replace the plantation with the factory."[182]

---

[180] Mancini, "Race, Economics," 343

[181] Cohen, "Negro Involuntary Servitude," 56 Comparatively, prisons in the North could boast of humanitarian conditions, for instance, in the first half of the 1880s, New Hampshire, Iowa, Illinois, and Ohio could boast of death rates slightly greater than one percent

[182] Mancini, "Race, Economics," 347

Why did convict leasing end? Not for humanitarian reasons.[183] There was a tendency in the price of leases to increase, which cut into the profitability of convict labor as a primary source of surplus-value. Mancini notes that by 1907, Jim Crow was firmly established and the black population had been either effectively or was in the process of being disfranchised. The convict leasing system had existed in the period of transition from slavery to formal Jim Crow. With apartheid in force, the function of convict labor was dissipating. Against the increasing unprofitability of convict leasing, the chain gang emerged, providing the state with another analogous form of cost effective population control. "In sum, then, the economic value of the convict lease system to private businessmen plummeted at precisely the time that other forces converged to deprive it of its social usefulness. Its demise occurred when both its economic and social utility were undermined." Blacks were throughout the South, "being reminded of their place in society by such alternative, more systematic and official means as Jim Crow and disfranchisement." Mancini concludes: "The convict lease system, which had been hurriedly instituted to help fill the vacuum left by the destruction of slavery, was itself overthrown by the chain gang."[184]

Convict leasing and the chain gang appear to be similar; however, as Lichtenstein points out, the chain gang was actually designed as a progressive social

---

[183] The usual explanation for the abolition of convict leasing is that there was a public uproar over the cruelty of the system. However Mancini notes that uproar always existed over convict leasing, and in any case this does not explain its ending. Examining the matter on a case by case basis he finds that states abolished their programs for several different reasons. For example, in Tennessee, convict labor was abolished because the cost of a maintaining a militia as a deterrence to rebellious businesses not using convict labor

[184] Mancini, "Race, Economics," 349.

policy as part of the "good roads movement."[185] As with most progressive attempts to reform the penal system, chain gangs were hardly an improvement at all — at least not to the convicts. "The chain gang consisting primarily of black convicts working the roads of the Deep South embodied the brutality of southern race relations [and] the repressive aspects of southern labor relations."[186] This "state-controlled forced labor," a large and dependable labor force, was funded through taxation and replaced the old statute labor system, a system of periodic compulsory labor (similar to "warning out" in a feudal system). As with convict labor in the South, blacks were over-represented among those who worked the chain gang. Ninety percent of state prisoners were black.

Lichtenstein documents the close alliance between southern politicians and progressive ideology. In a speech before the Southern Sociological Congress in 1913 Georgia state legislator Hooper Alexander "explained how Progressive penology and modern racial paternalism went hand in hand. According to Alexander, slavery had itself been a reform made necessary by the racial burden left to the colonies by the African slave trade. This burden required governmental action, but 'domestic slavery was an expedient for discharging that duty by contract.' In other words, slavery had been nothing more than the privatization and alienation of the state's function of racial

---

[185] See also George B Tindall, *The Emergence of the New South, 1913-1945* (Baton Rouge, LA: Louisiana State University, 1967) For the ideological landscape of and behind southern progressivism, see Dewey W Grantham, *Southern Progressivism. The Reconciliation of Progress and Tradition* (Knoxville, TN University of Tennessee Press, 1983), George Fredrickson, *The Black Image in the White Mind. the Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper and Row, 1971)

[186] Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict is a Slave'," *The Journal of Southern History*, 59 (1993), 21

control and slave labor was the slaveowner's just compensation for carrying out this function at his own expense."[187] On these grounds chain gangs were argued to be better for blacks, as the state was now the slaveowner — the private *dominus* became a public one. Moreover, chain gangs did not compete with free labor, so it avoided a possible challenge to its legitimacy from the rank and file laborer.

Like convict leasing, conditions in the gangs were dreadful. Accounts of the chain gang between 1920s-1940s found prisoners constantly chained. They worked from sunup to sundown under the gun. Their diet was atrocious. They often slept in wheeled cages like circus animals They endured extreme corporal punishments, e.g., whippings, strappings, the hotbox, and the stocks. In Georgia, by 1908, 77 percent of misdemeanants worked on the roads. Ninety-nine percent of misdemeanor chain gang was black. "Racial ideology, Progressive penology, and the goal of economic modernization were reconciled in the realm of political economy," Lichtenstein writes.[188] This observation points to the interlocking nature of racism and other ideological threads in white society. Racism is too often characterized as an irrational form of reactionism. But we find in penal reforms that progressives operated under the same basic assumptions as their "irrational" comrades.[189]

For the nation as a whole, prison populations grew dramatically after 1860 (see figure 2.4.2). In 1850, there were 6,737 prisoners. The ratio to population was 1 in 3,442.

---

[187] Lichtenstein, "Chain Gangs," 91.

[188] Lichtenstein, "Chain Gangs," 106.

[189] Reform had other functions as well. Sutton found that reforms during this period provided official actors with more flexibility to adjust to systemic changes and bureaucratic pressures See John R Sutton, "Doing Time. Dynamics of Imprisonment in the Reformist States," *American Sociological Review*, 52 (1987)

By 1890, prison commitments would soar to 82,329, with a ratio of 1 in 757.[190] Depressions in 1873-79 and 1893-94 increased unemployment and led to greater levels of incarceration and more severe punishments. The North, in contrast to the South, began to exclude prison-labor from the capitalist market; prison-labor was restricted to the production of public goods. These changes were not only brought about because of *laissez-faire* emphasis in government policy; organized labor appeared as a force in the 1870s-80s, and their presence was surely a factor. However, for the most part the shift was caused by the needs of the bourgeoisie: prison labor had fulfilled its function in the earlier period in dissolving the mechanic and the apprenticeship systems (this was analyzed in part 2, chapter 3). Indeed, had capitalism so desired it might have used prison-labor to weaken labor unions. Now that US capitalism had achieved economies of scale within a competitive context, it was time to push prison industries to the public sector. Many prisons found ways around the restrictions, however, such as through the piece-price system, and the contract system continued in many places as it did before.[191] By 1930, there were 116,670 state prisoners. Between 1910 and 1930 total US population increased by 33.5 percent. Within this time frame, prison population climbed 88 4 percent.[192] Blacks were disproportionately prisoners in this period. In 1890, 29.5 percent of prisoners were black, representing the third largest proportion of

---

[190] Francis Alice Kellor, "Criminal Anthropology in its Relation to Criminal Jurisprudence II," *American Journal of Sociology*, 4 (1899). In 1860 the ratio was 1 in 1,617, in 1870, 1 in 1,171; in 1880, 1 in 855, in 1890, 1 in 757.

[191] Adamson, "Captive Criminal Populations."

[192] Arthur Evans Wood, Crime and Penology," *American Journal of Sociology*, 36 (1931)

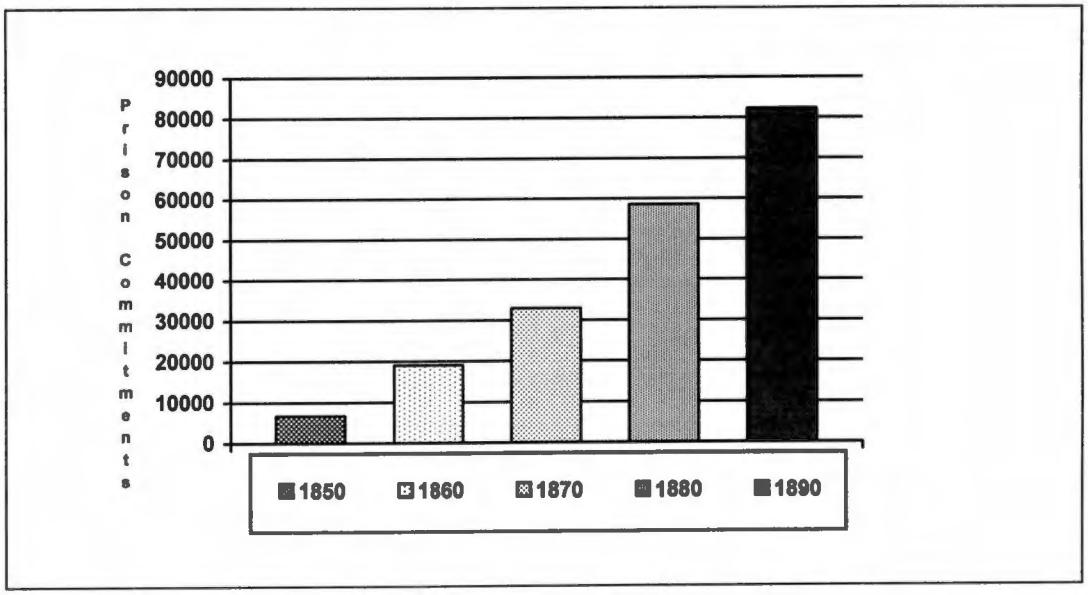


Figure 2.4.2
Prison Commitments 1850-1890

prison inmates.[193] In 1928, representing only around 10 percent of the population, 21 percent of prisoners were black.[194]

Thorsten Sellin, in a 1935 essay tackling the problem of racial bias in the America of his day, noted several important features of the justice system. The judiciary was almost completely "American or 'old' immigrant stock." Blacks and newer immigrants did not confront members of their groups when they went to court. White hegemony meant that blacks and immigrants were confronting a collective consciousness that held certain views about them. The attitudes were predictably unfavorable. "The Negro is generally — the absence of psychological evidence to the contrary — regarded as inferior in native intelligence and prone to certain types of

---

[193] Monroe N. Work, "Crime Among the Negroes in Chicago: A Social Study," *American Journal of Sociology*, 6 (1900).

[194] Neal Shover and James Inverarity, "Adult Segregative Confinement," in *Criminology: A Contemporary Handbook*, second edition, ed. Joseph F. Sheley (New York: Wadsworth, 1995).

crimes, especially sex offenses."[195] Confrontation with the immigrant carried many prejudices, as well, and "present immigration law [was] a thinly disguised attempt to close the door to non-Nordic stock, evidencing a widespread belief in the superiority of Nordic stock."[196]

Sellin points to government statistics at the time showing the length of prison sentences in 1931. The numbers showed that immigrants were given substantially longer prison sentences than "native" whites. Blacks were given longer sentences for rape, sex crimes, and burglary. These were definite sentences and they are revealing in themselves. The data on indeterminate sentences tell the rest of the story. There, blacks received longer sentences than whites in every category but murder in minimum sentences,[197] and longer sentences in all categories save larceny and burglary in maximum sentences. Sellin concludes that, given regional differences in punishment, race prejudice appeared to be stronger in the North than in the South. He theorizes this difference is due to the caste system in the South, a system of greater daily controls under conditions of close contact, whereas in the North blacks are outsiders and punished impersonally through public repressive measures. More recently, Dick Gregory put it this way: "Down South they don't care how close you get

---

[195] Thorsten Sellin, "Race Prejudice in the Administration of Justice," *American Journal of Sociology*, 41 (1935), 214. At the time, measurements of intelligence were rarely questioned. I did find one critical review article published in 1934 in the *Journal of Negro Education* (vol. 3) by Walter F. Dearborn and Howard H. Long, "The Physical and Mental Abilities of the American Negro A Critical Summary " Evidently, Sellin was not aware of the article, although Dearborn and Long were, along with Horace Mann Bond, Du Bois and others, prominent critics of the racial ranking of intelligence

[196] Sellin, "Race Prejudice," 214.

[197] Since blacks carried diminished social value in white society, and since most homicide is intraracial, it is perhaps not surprising that whites would receive longer sentences for murder, since their victims were more likely to be white.

as long as you don't get too big; up North they don't care how big you get as long as you don't get too close."

Sellin's article is revealing because it provides a sense of the levels of crime at a time before crime statistics were uniform, although statistical reporting was greatly improved in the 1930s. Sellin reports that the 1920s were a period of rising crime rates, much of it at the federal level surrounding alcohol and drug prohibitions. Criminal syndicates, while having been around for a long time, were boosted by the illegal market in alcohol. This period was also marked by a considerable amount of elite deviance, especially coalitions between crime syndicates and police organizations. In contrast to the "Roaring 20s," crime in the 1930s was subdued. While larceny increased, burglary dipped and then increased again, and assault remained relatively even, crime rates for murder, robbery, and auto theft declined.[198]

One of the remarkable things about the statistics Sellin provides is the murder rate. While violent crime has been supposed to have been unusually high during the 1970s-80s, these rates compare favorably with rates in the 1920s-30s. Murder rates climbed steadily between 1920 and 1933, to a peak of 9.6 per 100,000, after which they began to decline, falling to a level in 1940 (6.2 per 100,000) much lower than the rate in 1920. Over half of the homicides in 1939 were committed by blacks (4,482 vs. 3,850).

The high crime rate among blacks was a consequence of their social location. Racial segregation structured them into high poverty areas and creating conditions of

---

[198] Some have supposed that the Great Depression contradicts theories that link crime and poverty, since a time of great economic strife is associated with falling crime rates But these criticisms neglect the distinction between absolute poverty and relative poverty (inequality)

extreme alienation and nihilism. Du Bois analyzed this situation in 1904 and, after noting the dramatic rise in black involvement in crime over the thirty years since the end of slavery, and the concomitant concentration of blacks and crime in the slums, came to the conclusion that high crime rates among blacks were not unexpected. "The appearance . . . of the Negro criminal was a phenomenon to be awaited; and while it causes anxiety, it should not occasion surprise," he wrote. He explained that under slavery there could hardly be crime in the ordinary sense of the term. But when blacks are thrown into the world with little or no support systems, "some swim, some sink, and some hang suspended, to be forced up or down by the chance currents of a busy hurrying world."[199] In the 1960s, looking back over the history of blacks and crime in the first half of the 20th century, Vontress came to the conclusion: "the majority of crimes among Negroes [can] be attributed to . . . a melange of causes stemming from the patterns of segregation and discrimination uniquely imposed upon the minority group by the dominant group."[200] In a fashion reminiscent of Quetelet's famous thesis on crime — that society prepares the crime and the criminal commits it — Vontress held white society responsible for black crime. He added to this the racism of the criminal justice system. Beyond blacks' higher participation in street crime, they were more likely to be arrested, convicted, and sentenced to prison.[201]

---

[199] Du Bois, *Souls of Black Folk*, 109.

[200] Clemmon E. Vontress, "Patterns of Segregation and Discrimination. Contributing Factors to Crime Among Negroes," *Journal of Negro Education*, 31 (1962), 108.

[201] Cf. Edward Green, "Race, Social Status, and Criminal Arrest," *American Sociological Review* 35 (1970) Green attributes black crime in this period to the impoverished conditions blacks experienced

The federal system of crime control, like every other component of government, expanded greatly under the New Deal. There are two general perspectives of, or, more precisely, judgments about, the New Deal. Liberal historians have a positive impression of the New Deal. They believe that Roosevelt was genuinely concerned about the underprivileged and that he took on entrenched political and economic power to help the poor by way of redistributive public policy (such as progressive income tax scheme, corporate taxes, social welfare spending, and jobs programs). Left critics, however, see the New Deal as a mechanism for saving capitalism from itself. The Roosevelt administration represented the long-term structural imperatives of the state coming to dominate over the short-term interests of capitalist class fractions.[202]

While both perspectives reflect a side of reality, the second interpretation is consistent with the framework I am using in this dissertation. During this period the state developed and expanded both its repressive and integrative role in securing the general conditions of production.[203] According to Mandel, the repressive function involves the development of coercive institutions, such as the police, the military and the prison-industrial system. The integrative function requires the securing of consent

---

[202] Much of the literature that criticized the New Deal emerged in the cauldron of the 1960s. See for Howard Zinn, ed., *New Deal Thought* (Indianapolis, 1966); Barton J. Bernstein, "The New Deal: The Conservative Achievements of Liberal Reform," in *Towards a New Past: Dissenting Essays in American History*, ed Barton J Berstein (New York: Pantheon Books, 1968); Brad Wiley, "The Myth of New Deal Reform," in *Up Against the American Myth*, ed. Tom Chistoffel, David Finkelhor, and Dan Gilbard (New York: Holt Rinehart Winston, 1970). For criticisms of the criticisms see Irwin Unger, "The 'New Left' and American History: Some Recent Trends in United States Historiography," *American Historical Review*, 72 (1967), Jerold S Auerbach, "New Deal, Old Deal, or Raw Deal: Some Thoughts on the New Left Historiography," *Journal of Southern History*, 35 (1969).

[203] Ernest Mandel, *Late Capitalism* (New York: Verso, 1975)

of the masses. Developments in national crime control can be organized under these two categories. There was a vast expansion of the FBI and the nationalization of policing under Roosevelt.[204] Roosevelt broadened the scope of the agency to include the surveillance and control of subversive activity. He also encouraged the use of propaganda by the FBI to bolster its image and to mold the public mind. It was desired that the public cultivate a positive image of national crime control.

Nationalizing crime control had its roots in the Progressive era. The Bureau of Investigation, forerunner of the FBI and the first national police force, was created in 1908. Several pieces of federal crime legislation, for example the Mann act of 1910 and the Dyer Act of 1919, increased federal intervention. "When Franklin D. Roosevelt assumed the presidency, the Bureau of Investigation was a small and relatively obscure division within the Justice Department."[205] The director was J. Edgar Hoover. Renamed the FBI in 1935, Roosevelt desired to make the agency "as effective an instrumentality of crime detection and punishment as any of the similar agencies of the world."[206]

Roosevelt desired to change the public mind from one of ambivalence and even heroism of crime, to one of fear of the criminal element. And he desired that the public should look upon the crime war as a courageous effort to protect the citizenry. The public was supposed to feel good about repressive crime control. The administration

---

[204] Kenneth O'Reilly, "A New Deal for the FBI The Roosevelt Administration, Crime Control, and National Security," *The Journal of American History*, 69 (1982). See also Friedman, *Crime and Punishment*.

[205] O'Reilly, "New Deal," 643

[206] Quoted in O'Reilly, "New Deal," 643

launched an extensive public relations campaign. The initial subject of the propaganda was organized crime. The agency created the image of the "G-men" and constructed the culture of the "public enemy." Machine gun raids of gangster hideouts and the summary executions of high-profile outlaws were publicized and legitimated. The public-relations campaign involved the coordination of the media and the culture industry.[207]

"The political activities in time accelerated, as the Roosevelt administration's increasing sensitivity to the perceived problem of subversive activities coincided with the emergence of the bureau as a potent crime-fighting bureaucracy."[208] The president ordered reports on the administration's critics (what is currently referred to as "opposition research"). In 1936, the president directed the FBI to begin systematic investigation of subversive activities, especially the communist movement.[209] This would establish a direction that, as we will see, developed the repressive state apparatus that would be used against radical black movements in the 1960s-70s. Friedman's judgment is that "Franklin Roosevelt's administration must shoulder some of the responsibility for boosting the FBI's power."[210]

We find in this period the development of the drug war that would be waged against the working masses for decades to come. Before 1883 there were no drug laws. By the time the Civil Rights Act of 1964 passed Congress, millions of people, especially

---

[207] For a revealing account of state organization of propaganda in this period see Christopher Simpson, *Science of Coercion Communication Research and Psychological Warfare, 1945-1960* (New York Oxford University Press, 1994).

[208] O'Reilly, "New Deal," 646.

[209] O'Reilly, "New Deal," 657

[210] Friedman, *Crime and Punishment*, 271

members of the minority community, would be facing considerable harm from the state's repression of drug users. Crucially, the state selected and subjected only certain classes of drugs and drug users to control. Even in the middle of prohibition (in 1929), when 70 percent of convictions at the federal level were due to prohibition violations, only approximately 24 percent of prison commitments were attributed to prohibition. Contrast this with narcotics control, where convictions constituted only around 6 percent but accounted for 24.5 percent of federal prison commitments.[211] Narcotics laws snared a disproportionate share of minorities.

Musto contends that drug criminalization follows cyclical patterns of state and public tolerance and intolerance.[212] Tonry explains that there are periods of tolerance where "traditional American notions of individual and personal autonomy" permit people to "make their own choices about drug use." During these periods, "drug use is widely seen as only mildly deviant or not deviant at all." At other times, the mood swings towards intolerance, where "drug use is widely seen as deviant, and few people feel comfortable risking moral disapproval or stigmatization by arguing in favor of drug use or tolerance of drug users." These periods of intolerance are described by Tonry as "puritanical periods of uncompromising prohibition."[213]

Attributing these cycles to vague shifts in public opinion between poles of tolerance and intolerance, however, is no explanation. These cycles root in part in the

---

[211] Arthur Evans Wood, "Crime," *American Journal of Sociology*, 35 (1930)

[212] David Musto, *The American Disease: Origins of Narcotic Control* (New York: Oxford University Press, 1987)

[213] Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995), 92.

industrial structure of the US capitalist system. Anti-drug prohibition falls more generally on the working class than on other segments of the population. Consider the period in which the Harrison Narcotics Act of 1914 was passed. This was also the period wherein the Anti-Saloon League, founded in 1893, saw their efforts finally become reality when prohibition on alcohol became law in January 1920. These laws served a productive function. Gramsci writes, "In America, rationalization and prohibition are undoubtedly related: inquiries by industrialists into the private lives of workers and the inspection services created by some industrialists to control the morality of workers are necessities of the new method of work." Gramsci rejected the simplistic explanation that cycling Puritanism was at work in these phenomena. "Those who deride the initiatives and see them merely as a hypocritical manifestation of 'puritanism' will never be able to understand the importance, the significance, and the *objective import* of the American phenomenon, which is *also* the biggest collective effort [ever made] to create, with unprecedented speed and a consciousness of purpose unique in history, a new type of worker and of man." [214]

Gramsci links the patterns of drug controls to the rise of Fordism and of Taylorism, which sought to increase efficiency of industrial production through careful control over the movement of the proletariat. This is a product of the character of corporations, which are inherently authoritarian institutions, and of their leaders, who were often equally authoritarian. He observes that Ford, for instance, set the example of modeling imposed puritanical controls on workers. Ford, like many

---

[214] Antonio Gramsci, *Prison Notebooks*, vols 2 (New York: Columbia University Press, 1996), 215

industrialists, would be taken with the tight ordering of Italian and Germany societies under fascism (Ford was also a dedicated racist). Of Ford, and those who followed his lead, Gramsci writes, "It is obvious that they do not concern themselves with the 'humanity' and the 'spirituality' of the worker, which are crushed." This renders the "spiritual" excuse to purify the proletariat hollow. Purification was for production. "The industrialist is concerned with the continuity of the physical efficiency, the muscular-nervous efficiency, of the worker. It is the industrialist's interest to put together a stable, skilled work force, a permanently attuned industrial ensemble."

The industrialist cannot of course by himself impose this control upon society at large, which is where such a policy must be carried out. This is where the state performs its necessary class function. "So the struggle against alcoholism, the most dangerous factor in the work force, becomes a function of the state." This function is theoretically generalizable: "It is possible for other 'puritanical' struggles as well to become functions of the state if the private initiative of the industrialists proves inadequate and if an extremely widespread moral crisis manifests itself among the working masses, as might happen as a result of unemployment crisis that are too long and extensive."[215]

Thompson writes that the transition to industrial society "entailed a severe restructuring of working habits — new disciplines, new incentives, and a new human nature upon which these incentives could bit effectively."[216] Gutman argues that in

---

[215] Gramsci, *Prison Notebooks*, 216. Gramsci argues that control over sexuality has the same function Thus the industrial society stressed monogamy.

[216] E P Thompson, "Time, Work-Discipline, and Industrial Capitalism," *Past and Present*, 37 (1967), 57

America more than in Europe moral controls became instrumental in integrating immigrants into the work force and that these controls were incorporated into state behavior. By "1910 two-thirds of the workers in twenty-one major manufacturing and mining industries came from Eastern and Southern Europe or were native American blacks."[217] Of the 14,359 common laborers working in Carnegie's Pittsburgh plants, 11,694 of them were from eastern or southern Europe.[218] John L. Hart, the author of *In the School-Room*, published in 1879, wrote that immigrants "know little, positively nothing, of the doctrines of the Christian religion, or of moral duties, or of any higher pleasures than beer-drinking and spirit-drinking, and the grossest sensual indulgence." Hart mixed this with assumptions about race and intelligence, writing that "while they [immigrants] pass through their brute-like existence here, the rich and more intelligent classes are obliged to guard them with police and standing armies, and to cover the lands with prisons, cages, and all kinds of receptacles for the perpetrators of crime."[219] He quotes Hannah Arendt that with successive waves of immigrants into the United States, "each time the law had to be confirmed anew against the lawlessness inherent in all uprooted people."[220] The widening swings of the economy and increasing organization set off waves of strikes, requiring ever more repressive controls.

---

[217] Herbert Gutman, "Work, Culture, and Society in Industrializing America, 1815-1919," *The American Historical Review*, 78 (1973), 546

[218] They worked for well below poverty wages and the casualty rate was astronomical At Carnegie South Works, for instance, for every year between 1907 and 1910, twenty-five percent of immigrants employed there were either killed or injured Yet Carnegie and his managers were never prosecuted

[219] Quoted in Gutman, "Work, Culture, and Society," 585

[220] Quoted in Gutman, "Work, Culture, and Society," 581

Along with the class control function of drug and alcohol prohibition and restriction, there is clear racial oppression. These "puritanical periods of uncompromising prohibition" disproportionately impacted minorities and immigrants (they still do). Indeed, their imposition was fueled by racism. Opium smoking became identified with Chinese immigrants, imported for railroad construction after the Civil War.[221] The importation of smoking opium was restricted in 1909. The importation of crude opium was restricted in 1915. Laws against opium were used to persecute Chinese immigrants. Marijuana was similarly paired with Mexicans, blacks, and immigrants. The Marijuana Tax Act of 1937, passed in the midst of the deep recession following the Great Depression was used to oppress racialized minorities and immigrants.[222] Before WWI, The Harrison Narcotic Act of 1914 had the effect of disproportionately imprisoning blacks.[223] The law also covered cocaine, which President Taft in 1910 had claimed presented the most danger to America of any other drug.[224] Cocaine abuse was linked to blacks by the media. It is largely racial control that explains the divergence between convictions and commitments noted earlier in the federal government's statistics on federal prison activities.

---

[221] David F Musto, "Opium, Cocaine, and Marijuana in American History," *Drugs: Should We Legalize, Decriminalize or Deregulate?* ed Jeffrey A. Schaler (Amherst, NY Prometheus, 1998) Ironically, "the Chinese came to regard opium as a tool and symbol of Western domination That perception helped to fuel a vigorous antiopium campaign in China early in the twentieth century "

[222] Musto, "Opium, Cocaine, and Marijuana " The prohibition against Marijuana was also used to save the control agencies from extinction, since with the repeal of alcohol prohibition they needed a justification for their continued existence.

[223] Passage of the Harrison Act was secured in part because of testimony that "cocaine use increased Negroes' penchant for violent crime, particularly the commission of rape upon white women," *Kennedy, Race, Crime, Law*, 58

[224] Musto, "Opium, Cocaine, and Marijuana "

The history of the Harrison Narcotics Act is exemplary of the racial interests behind the drug laws. The law was initiated by the international desire among imperialists to regulate the narcotic trade and non-medicinal use in their colonies (for example in the Philippines). The State Department's opium commissioner, Hamilton Wright, was in charge of pushing the domestic version of the law. Wright was faced with the reality of state's rights and thus settled on the federal governments ability to tax to regulate the drug.[225] The bill was aggressively pushed through Congress by James Mann, the author of the Mann Act, or the White Slave Traffic Act, which prohibited the transportation of white women across state lines for "immoral purposes." The Mann Act became the first major expansion in (what would become) the FBI's jurisdiction. The act was used to persecute blacks. One famous case concerned heavyweight champion Jack Johnson. Johnson was the first black heavyweight champion and was hated by white Americans. He was convicted under the Mann Act for his high profile relationships with white women. White hatred for Johnson drove former champion James J. Jefferies to quit his retirement and put his undefeated record on the line in a 1910 match with the champion. The "white hope" was soundly beaten. The bout was followed by race riots where nine blacks were killed by white mobs. After Johnson's conviction under the Mann Act, he fled the country and lived in Europe for many years.[226] The anti-narcotics law was a more

---

[225] Francis Burton Harrison, for whom the act is named, had very little to do with the law, actually, he introduced the legislation in the House as a proxy for Wright

[226] It has been rumored that Johnson's loss to Jess Willard in Havana, Cuba, in 1915, was an arranged fight wherein Johnson would be allowed to return to the United States with immunity if he let Willard win If this is true, the US government reneged on the bargain, for after Johnson returned in 1920 he was made to serve his full sentence Patrick Myler, *A Century of Boxing Greats Inside the Ring with the Hundred Best Boxers* (Oarkwest, NY. Robson Books, 1998). See also

difficult proposition and was held up for several years by constitutional concerns. The Supreme Court refused to permit the federal law to apply to the states. But in 1919, led by Oliver Wendell Holmes, the high court ruled in favor of the federal government. Evidently it was appropriate to transgress states' rights to control blacks; it was just not appropriate to transgress states' rights to protect blacks from lynching.

Racial Ideology, Social Darwinism, and Positive Criminology

We have no proof that actual differences between races extend any farther than certain matters of bodily form, structure, color, and dimensions. Yet in the world in which we live there is now a powerful belief that race is a hidden and decisive force lurking, tigerlike, in the essential makeup of the man above, the man below, or the man outside Unfounded as the apprehensions may be, they are active forces in national and international policies. They are sentiments and emotional echoes stirred into being by wars, migrations, enslavements, exploitations, revolts, competitions, cultural clashes, and doctrines emanating from a few intellectuals In most cases, attitudes did not first arise and bring on certain clashes, but the clashes have produced the attitudes. At the same time it is quite possible that the attitudes now existing may produce more hostilities in the future. Frederick G. Detweiler[227]

In the last chapter, we examined the criminal justice system of the 19th century and found that its guiding lights were a cluster of liberal ideas collectively called the "classical school," primarily known by the work of Beccaria and Bentham. Although this system of thought was concerned primarily with establishing a rational basis for criminal justice policy and procedure, it operated with a theory of crime in mind, more precisely a theory of human nature, one that ostensibly focused on the criminal act and the moral reform of the criminal actor. This theory corresponded with the Enlightenment philosophy of its day; attendant to capitalism, it emphasized free will

---

Dan Steible, "Race and the Reception of Jack Johnson Fight Films," in *The Birth of Whiteness. Race and the Emergence of U S Cinema*, ed Daniel Bernardi (New Brunswick, NJ. Rutgers University Press, 1996).

[227] Frederick G. Detweiler, "The Rise of Modern Race Antagonisms," *American Journal of Sociology*, 37 (1932), 747

and the social contract. From the perspective of the classical school, everybody was potentially criminal; indeed, there were no theoretical differences between criminals and non-criminals (although this assumption generally only applied to white people).

In the latter third of the 19th century, changing beliefs about the nature of crime began to develop a very different basis for theorizing.[228] The "new" theories assumed that crime was the result of something about the *offender*: the criminal was just different from the non-criminal. The theories ranged from innate biological defects to the aftermath of psychological trauma. These new views were part of the rise of positive science, and hence they have become collectively known as "positivist" or "positive" criminology. Although its proponents claimed a radical new vision, positivist criminology neither transcended nor negated the classical school, but rather took its place alongside the earlier theory. The social practices the new criminology sought to legitimate and advance were associated with the emergence of industrial society and the scientific management of production and labor in contrast to the classical school, which was attendant to a capitalism based on small competitive firms.

One of the core features of the new science of crime was a racial conception of humankind. Racial thinking pervaded the trans-Atlantic world. Almost without exception, even those who believed in political and even social equality among the races treated race as an objective category. Blacks and whites were different — it was self-evident. And their differences were not judged to be just differences, but indicated a definite natural order in the world. Invariably this order was whites on top, blacks

---

[228] With the exception of rational choice models, based on Skinnerian (or Watsonian) and exchange theoretical models.

on the bottom, and a range of races in between. Applying evolutionary principles, racists were building a seemingly impenetrable argument. If social inferiority was the result of biological inferiority, then the existence of the former, proved the latter. Some went so far, such as Nathaniel Shaler (a Harvard professor) in 1884, as to argue that blacks were trending towards extinction. This movement — social Darwinism — would have a profound impact on the lives of the "inferior races."

I elaborate on this topic in a moment. But we should note that not all racial ideology developed in this period revolved around scientific conceptions of race. In the post-Reconstruction period ideological development was also dedicated to constructing a white myth: one that simultaneously made the southern man a hero and a victim. Pro-South propagandists manufactured an image of Reconstruction as a northern plot — with scalawags exploiting Negro dupes — to rob the South of their cultural heritage, and to "Africanize" its citizens, as president Johnson put it. "The Scheme of Reconstruction," wrote James Floyd Rhodes, "pandered to ignorant negroes, the knavish white natives, and the vulturous adventurers from the North."[229] But the heroic southern man stood against their interventions and reclaimed the South (and one day, he assured the world, "the South shall rise again"). In support of the myth, whether intentional or not, historians of the post-Reconstruction era were almost uniformly critical of Northern intervention.

---

[229] Rhodes, *History of the United States* vol. 7 (New York, 1906), quoted in John Hope Franklin, "Mirror for Americans: A Century of Reconstruction History," *The American Historical Review*, 85 (1980).

There were contemporary critics of the racist historiography, like there were, we will see, critics of social Darwinism, but mainstream scholarship rolled on. The pro-South historian successfully stamped Reconstruction as a criminal act and was able to openly condemn enfranchisement of blacks.[230] In the electoral process, the pro-South propagandists claimed, the Republican Party was using blacks to embarrass white southerners. In fact, white Republicans in the South voted for southern Democrats to keep blacks from winning elections. One of the propagandists, Joseph G. de Roulhac Hamilton, criticized the Republicans for being too concerned with obtaining the black vote in the South. Had they treated the South fairly, sought out white sympathies, they would have been able to count among their number disaffected Democrats.

This was not only an academic affair. The southern myth was propounded in the popular fiction of the day. Thomas Dixon's novel *The Clansman*, written in 1905, was part of a trilogy that glorified those trying to hold on to their "heritage."[231] Dixon's book was dramatized in *Birth of a Nation* (1915), by D. W. Griffith, at the same moment the Klan was re-emerging and whites in the nation were at the height of their nativist sentiments.[232] Between 1915 (the year of its reorganization) and 1925 some five million

---

[230] As Franklin notes, books of this sort were being written decades later. For example, a 1960s college textbook (one of the most widely used), characterized freedmen as "simple-minded," and described how they "insolently jostled the whites off the sidewalks into the gutter," Thomas A. Bailey, *The American Pageant: A History of the Republic* (Boston, 1961).

[231] The full trilogy was *The Leopard's Spots: A Romance of the White Man's Burden* (New York, 1902), *The Clansman An Historical Romance of the Ku Klux Klan* (New York, 1905), and *The Traitor· A Story of the Rise and Fall of the Invisible Empire* (New York, 1907). Dixon's novels were based on the Rhodes' historiography

[232] "How Terrorism Won in America," part II, "White Protestant Nation," NPR. In the last weeks of December, 1999, the Director's Guild of America finally decided to remove D. W Griffith's name from the D W Griffith Award for life-time achievement.

people joined the Klan.[233] Resurgent white supremacy was boosted by "non-fiction" popular history books, such as Claude Bower's *The Tragic Era.*[234]

The myths manufactured during this period continue to reverberate throughout the South today, coding belligerent color prejudice in a rhetoric of "heritage," or more transparently, "white pride."[235] The Dixiecrats would use the myth in the 1940s to weaken the Democratic party coalition. George Wallace would use it to break the Democratic party wide open in the 1960s, and virtually hand disaffected southerners to the Republican party. The politics of the Republican of today is the politics of the southern Democrat of yesterday.[236] The Republicans eventually got Joseph G. de Roulhac Hamilton's message.

This is important, and in the next chapter the ramifications of the myth will be seen when indeed the "South rises again" to keep the Constitution on track. But I am concerned in this section to show how the authority of science was used during this time to oppress blacks (and other minorities) in the United States. I investigate the character of criminal anthropology and social Darwinism to reveal the collective consciousness of intellectuals and policymakers that fostered the repressive crime

---

[233] Frank Bohn, "The Ku Klux Klan Interpreted," *American Journal of Sociology*, 30 (1925) Each member paid 16 dollars to be a member, which was in this period quite a lot of money, especially for the many poor white farmers who joined. The Klan had not only a great mass of foot soldiers, but also a lot of money and enthusiasm Bahn credits the Klan with determining the presidential votes in several midwestern and western states

[234] Claude G Bower, *The Tragic Era. The Revolution after Lincoln* (New York. Houghton Mifflin Company, 1929)

[235] As I write this dissertation there is a major legislative struggle in South Carolina to remove the Confederate battle flag from the state court house, where it was raised in protest over the "Second Reconstruction," during the 1960s. It is the only statehouse still flying the flag, however the state of Mississippi incorporated the battle flag into their state flag

[236] Dan T Carter, *From George Wallace to Newt Gingrich. Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge, LA· Louisiana State University Press, 1996).

control orientation in the post-slavery period. We find that biological races are assumed to be objective realities. As noted, there is a clear hierarchy of races, with blacks and Indians at the bottom and those of English descent at the top. The latter are "true Americans."

One of the discourses that pervades this period is the problematic of "Americanization," the project to assimilate certain ethnonational groups into white society and exclude others. European groups were Americanized; but others remained outside the "prized" racial order. There is also a shift in language that occurs in the late 1930s-early 1940s, when the frequency of the term "race-prejudice" diminishes and the term "racism" emerges.[237] At first, the term racism is used in academic journals to describe the genocidal program of the Nazis (which applied to blacks, as well, although little reported[238]). Only later is racism seen as a problematic in US academic discourse, and then it is typically reduced to attitudes.

---

[237] The term "racism" does not appear in the two leading sociology journals until the 1940s, at the height of WWII. The first article to use the term is Louis Wirth, "Morale and Minority Groups," published in the *American Journal of Sociology*, 47 (1941). The article is concerned that the ethnic diversity of the US impedes the development of patriotism. The second article was published in the *American Sociology Review*, 10 (1945), titled "The Bio-Social Basis of Thought in the Third Reich " Here, Morris Edward Opler takes up the character of Nazi regime.

[238] Blacks living in Europe during the Third Reich and captured US soldiers and airmen were selected for eradication. "Even though their losses were minimal compared to other groups, their torment and suffering were no different," Robert W. Kesting, "Forgotten Victims. Blacks in the Holocaust," *Journal of Negro History*, 77 (1992), 30. Blacks were relegated to the lowest anthropological order in the German mind A German racial scientist, after discussing the importance of suppressing and eliminating alien racial elements, remarked, "I do not characterize every Jew, as Negroes, and I do not underestimate the greatest enemy with whom we have to fight," quoted in Kesting, 34 Kesting notes the viewpoint that black soldiers should not be consider Holocaust victims since they were paid to die, but emphasizes the racial character of their torture and executions Although putting numbers to death runs the risk of quantifying death, the numbers of blacks killed by the Nazis was not insignificant.

As noted, the origins of positivist criminology as a specific line of thinking date to the last half of the 19th century. In the 19th century, the term typically used to describe the field was "criminal anthropology," i.e., the study of crime in man. Criminal anthropology finds its institutional roots in 1885, when the First International Congress of Criminal Anthropology was organized in Rome. Cesare Lombroso was at the center of the new science. In the mid-1870s, serving as an Italian army physician, Lombroso developed the science of "anthropometry," or "man measuring." As a precursor to the congress, Paul Broca had organized criminal anthropology as a branch of his anthropological society in Paris, 1859.[239] But it was the Italian school that represented the first dedicated professional association and their theories were highly influential in the United States. The broader intellectual context that influenced criminal anthropology included the thinking of B. A. Morel,[240] Charles Darwin,[241]

---

[239] Paul Broca, a leading craniologist, desired to measure heads to determine the "intellectual values of the various human races," Broca, quoted in Gould, *The Mismeasure of Man* (New York: W.W Norton and Company, 1981), 80 He believed blacks were inferior to whites· "A prognathous face, more or less black color of the skin, woolly hair and intellectual and social inferiority are often associated, while more or less white skin, straight hair and an orthognathous face are the ordinary equipment of the highest groups in the human series," Broca quoted in Gould, 83-84 In fact, "A group with black skin, woolly hair and a prognathous face has never been able to raise itself spontaneously to civilization," Broca quoted in Gould, 84 Broca not only used head size, but brain organization to back up his arguments. He argued, falsely, that the brain case closes prematurely in blacks; this is a common argument of the day Also, "Negroes . . . have a simpler brain than ours, and the relative poverty of their convolutions can be found primarily on their frontal lobes," Broca quoted Gould, 97. Broca and his disciples ranked blacks between whites and apes

[240] J B. Morel, *Traité des Dégénérescenes, Physiques, Intellectuelles et Morales de l'Espece Humaine et des Causes qui Produisent ces Vearietés Maladives* (Paris. JB Bailliére, 1957). A later work in this vein was Max Nordau's *Degeneration* (New York D. Appleton, 1892)

[241] Charles Darwin, *The Origin of the Species by Means of Natural Selection: or The Preservation of Favored Races in the Struggle for Life* There are numerous editions. The original was published in 1859

Herbert Spencer,[242] Despines,[243] and Henry Maudsley.[244] Another principal criminal anthropologist of this era was Enrico Ferri, who oversaw experimental penal colonies in the Horn of Africa during Italian imperialism in the region.[245]

The Lomborosians suffered from a "preoccupation . . . with anatomy and with Darwinian concepts."[246] Using the techniques of "physiognomy" and "craniology" (which led the French to accuse the Italians of launching "a revival of the empiric science of phrenology"[247]), Lombroso published his *Criminal Man* in 1867 and he and his colleagues established the "Italian school" of criminology.[248] The Italian school viewed crime as the result of two types of people, the "born criminal" (criminal types) and the "occasional" criminal (or non-criminal types).[249] They viewed criminals as

---

[242] Spencer was prolific He produced books on philosophy, biology, psychology, and sociology. *First Principles of a new System of Philosophy* (New York. D. Appleton and company, 1864); *The Principles of Biology* (New York D Appleton and company, 1866-67); *The Principles of Sociology* (New York: D. Appleton, 1896-97)

[243] Prosper Despine, *De la contagion morale* (1859); *Psychologie Naturelle* (1868).

[244] Henry Maudsley, *Responsibility in Mental Disease* (New York· D Appleton, 1875), *The Pathology of Mind, A Study of the Distempers, Deformities, and Disorders* (London: Macmillan, 1895).

[245] Ferri's most influential work was *Criminal Sociology* (Boston· Little Brown, 1917). Ferri was a deputy of the Italian Parliament, and in 1890 he successfully lobbied the Italian government to set up experimental penal colonies in Italy's African dependencies, especially "Erythrea."

[246] Alfred Lindesmith and Yale Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, 42 (1937)

[247] Quoted in Kellor, Francis Alice Kellor, "Criminal Anthropology in Its Relation to Criminal Jurisprudence I," *American Journal of Sociology*, 4 (1899), 518.

[248] The competing school was the French school that emphasized psychic and social forces (often a mix of the two). This school was more progressive than the Italian school, rejecting the thesis of the "criminal type " Similar to Quetelet's comment quoted in the preface to this dissertation, a leading member of the French school, Lacassagne, wrote, "Every society has the criminals that it deserves, and there is something radically wrong in the organization of the state," quoted in Kellor, "Criminal Jurisprudence, I," 518

[249] Cf. Terrie E Moffit, "Adolescence-Limited and Life-Course-Persistent Offending. A Complementary Pair of Development Theories," in *Developmental Theories of Crime and Delinquency*, ed. Terence P Thornberry (New Brunswick Transaction Publishers, 1997). Adolphe Quetelet in the 1840s, anticipating Lombroso by several years, linking physical

degenerates, people who were left behind in the rapid progression of civilized life (arrested development). "What Lombroso did was to reverse the method of explanation that had been current since the time of Guerry and Quetelet and, instead of maintaining that institutions and traditions determined the nature of the criminal, he held that the nature of the criminal determined the character of institutions and traditions."[250]

Predictably, given that Lombroso was positing the born criminal as an evolutionary throwback, many of the traits (or stigmata) Lombroso identified were apish in character. Given the widespread comparison of blacks with apes at the time, blacks would naturally be reckoned as possessing more "atavistic" features and therefore more prone to criminal behavior. Lombroso identified his biological criminal type with features such as low cranial capacity, receding foreheads, highly developed frontal sinuses, darker skin, and thicker, curly hair.[251] These were all features either falsely attributed to or accentuated in populations racialized as "Negroid." Thus it was no coincident that a belief in the link between degeneracy and race became widespread. Even when the criminal anthropologist was not talking about race he was talking about race.

---

differences with crime by contrasting the normal morally-upright person with vagrants, vagabonds, gypsies, inferior classes and races He believed that such people were biologically defective. He theorized a contagious "pestilential germ" that had hereditary roots See Adolphe Queletet, *Du systéme social et des lois qui le régissent* (Paris Guillaumin, 1848), see also *A Treatise on Man and the Development of his Faculties* (Gainesville, FL Scholars' Facsimiles and Reprints, 1969).

[250] Lindesmith and Levin, "Lombrosian Myth," 661. Yet, as is revealed in the previous note, the authors whitewash Quetelet's work with this statement

[251] Cesare Lombroso, *L'uomo delinquente* (Milan Hoepli, 1876); *Crime, Its Causes and Remedies* (Boston, Little, Brown, and company, 1911), Raffaele Barone Garofalo, *Criminology* (Boston, Little, Brown and company, 1914). Gould, *Mismeasure of Man*

Criminal anthropology was readily accepted in the United States, for example in Francis Alice Kellor's two-part essay, "Criminal Anthropology in Its Relation to Criminal Jurisprudence," published in the *American Journal of Sociology* in 1899. Her essay, from which the disciplinary history presented above was largely drawn (for theoretical purposes),[252] was constructed to herald a "new way" in the study of crime and law, a scientific criminology befitting a criminal law system on the cusp of change and indeed aimed to force that change; the law had only to be freed of its classical shackles and permitted to blossom. As noted in the last chapter, criminal law philosophy cycled through three emphases: retribution, deterrence, and reform. Rodman noted a fourth emphasis, namely incapacitation, but this did not predominate in the 19th century.[253] Incapacitation is not concerned with justice (retribution), frightening the public (deterrence), or with returning the criminal to society (reform). Incapacitation was simply about eliminating the criminal element. Kellor would find in the philosophy of incapacitation the holy grail of positive criminology and criminal jurisprudence.

In the first essay, she reviewed the emergence of criminal jurisprudence in uncritical fashion, as a natural development. The reigning developmental theory of the day, the result of the Spencerian influence, was one where social formations were

---

[252] Cf. Lindesmith and Levin, "Lombrosian Myth." They locate the origins of scientific study of crime in the 1830s with Guerry, Quetelet, and Mayhew and cite a great deal of work from the period between 1800 and 1900 Guerry and Quetelet prioneered the use of statistics and the "cartographic method." Bonger, in his *Criminality and Economic Conditions*, also surveys this earlier work. Guerry's most famous work was *A statistique morale de l'Angleterre comparée avec la statustuque morale de la France* (1860) Lindesmith and Levin believe that the notion of Lombroso as the "father of modern criminology" is an American invention

[253] Barbee-Sue Rodman, "Bentham and the Paradox of Penal Reform," *Journal of the History of Ideas*, 29 (1968), 200.

explained by their specialized function in a progressively differentiated social system. The system of law developed, according to this view, because the advance of civilization had complicated things. Systems of criminal jurisprudence emerged as an organ to maintain "peace and harmony" in the social organism, to secure the public order and transgressions against public safety. The current system of criminal law differed from previous systems as they were based on revenge, repression, and reform. Punishments of the old system were "death and mutilation" — "warfare and bloodfeuds were the rule." Furthermore, "Moral rights were unrecognized, and force was the only method of offense or defense."[254] All of this became "impractical" with the rise of complicated society. Vengeance gave way to repression, and then to reform, as the prison system was constructed, alongside asylums, workhouses, and reformatories. Now, at the dawn of the 20th century, reform appeared to be giving way to crime control as prophylactic. This was the natural evolution of the social system to perfection.

"Prevention differs from reformation in this," Kellor asserts: "the object is the good of society, the individual being but slightly considered in the former. In the latter society is coincided, but the individual also is an important element. If society is best benefited by reforming the criminal, this is the better method; but if incapable of reform, then permanent incarceration or extermination — which is prevention." Kellor reverses the priority of the ideal liberal order, where instead of the individual being protected from societal reaction, society is protected from the incorrigible individual

---

[254] Kellor, "Criminal Jurisprudence I," 520

being. She strikes a tone of moderation, holding out hope that some (the "occasional" criminal) can be reformed. But for those who cannot, i.e., the "criminal type," a rational society would eliminate them in one way or another. "Whatever the causes," she writes, "*he* [the criminal] must not be permitted to continue a *probable* career of crime or beget a family of paupers, idiots, or criminals."[255] Here she indicates an assumption, one seen running throughout dominant thought in this period, that crime, poverty, and idiocy were hereditable diseases.[256] Incapacitation yields not only an immediate benefit, but it is a long-term investment in societal security. "A system of scientific jurisprudence is essential to any prevention of crime," she continues, articulating the central premise of positive criminology: "The basis of the preventive system is a consideration of the *individual* rather than of his act."[257]

That criminal anthropology was being organized specifically as an arm of the government, rather than isolating itself from political influence, is more than suggested in Kellor's article; and a survey of the field makes this symbiosis certain. The research of the criminal anthropologist was funded by the governments of the US and Europe and the fruits were in turn used to develop and justify repressive state policy. Kellor, articulating the instrumentalism of her time (what has often been called "American pragmatism"), contends that criminal anthropology "is wholly dependent" upon jurisprudence, and that it "can be of but minor practical service, except through

---

[255] Kellor, "Criminal Jurisprudence, I," 523

[256] This point of view was not hegemonic, however James Devon reacted to the suggestion that criminals pass on their genes by remarking, "To say that as wolves breed wolves, criminals breed criminals is nonsense and mischievous nonsense As canaries breed canaries, do poets breed poets?" *The Criminal and the Community*, quoted in Erville B Woods, "Heredity and Opportunity," *American Journal of Sociology*, 26 (1920)

[257] Kellor, "Criminal Jurisprudence, I," 523. My emphasis.

the channels of legislation and the courts of justice." It is the law, she writes that "determines who shall constitute the criminal class upon the theory of the protection of society, and criminal anthropology, accepting this definition, attempts to determine the causes of crime, and the methods best adapted for its repression and prevention."[258] She explicitly links criminology with "the administration of justice." They thus constitute a dialectic: "Biological and anthropological studies are indispensable for placing penal legislation upon a solid foundation."[259]

The theory of "unreformability" (requiring incapacitation) in a "scientific" program closely tied to the machinery of the state dovetailed with the racism of US society, and European societies generally, at the turn of the century. The theory that criminals were better "harmonized" with "primitive" societies was consonant with ideas projected by the imperialist order. The colonial mind viewed the world in hierarchical terms. One of the scientific justifications for this ordering was the theory of "recapitulation," which posited that inferior races were reflections of earlier stages of the superior race's maturational development (i.e., blacks are comparable to white children).[260] Spencer articulated this view when he stated, "The intellectual traits of the uncivilized . . . are traits recurring in the children of the civilized."[261]

---

[258] Kellor, "Criminal Jurisprudence, I," 515.

[259] Kellor, "Criminal Jurisprudence, I," 526.

[260] Stephen Jay Gould, *Ontogeny and Phylogeny* (Harvard University Press, 1977). Chief advocates of this view were Ernst Haeckel, E.d Cope, and D. G Brinton. This gives rise to the language of "developed" and "un/underdeveloped" nations (when not use in a critical sense).

[261] Quoted in Gould, *Mismeasure of Man*, 117 In a somewhat similar vein, John Haydon Down, for whom Down's syndrome is named, theorized that the features of various congenital conditions in European children corresponded to features found in lower races. He identified an "Ethiopian" variety, a "Mongolian" variety, etc. See Gould, *Mismeasure of Man*, 134.

In this world, criminality, by definition street criminality, was attributed to the "inferior races." Since those groups so labeled were thrust into the more street-criminogenic conditions, a self-fulfilling prophecy resulted. There is a lesson in this: It follows logically that any theory rooting crime in biology in a racist/classist system will automatically yield racist/classist explanations, since the majority of criminals, determined by the criminal laws, are from minority groups and the working class. This is as true today as it was a century ago, only social scientists have found more sophisticated ways of putting their ideas forward. As Du Bois pointed out, since the end of slavery, blacks had become overrepresented in crime statistics, especially in the Northern cities. Along with blacks were various immigrant groups entering the central cities of the United States. The various European groups would eventually be able redefine themselves as white and move into the privileged caste, but until they had accomplished this, they were, like blacks, viewed as having a greater criminal propensity than "natives" and overall degenerate character. Newspapers regularly reinforced this idea. For example, in mid-1870s-80s Chicago several newspapers concentrated racialist sentiments: The *Tribune* depicted immigrants as "not reasoning creatures." The *Post-Mail* claimed that certain immigrant groups were "depraved beasts, harpies, decayed physically and spiritually, mentally and morally, thievish and licentious." The *Times* wrote that Slavs were descended from the "eaters of raw animal food, fond of drinking the blood of their enemies whom they slew in battle, and . . . who preserved as trophies the scalps and skins of enemies they overthrew." The *Times*

proposed that Chicago either send the Slavs back to Europe or "exterminate them."[262] A symmetry was detected between crime and non-whiteness, and this association, whether interpreted as the result of bad blood or cultural inferiority, would germinate repressive social policy. Kellor's essay is not an academic exercise.

In the second installment of Kellor's thoughts (important enough to get her lengthy two-part essay published in back-to-back issues of the *American Journal of Sociology*), she advocates several specific reforms to improve the criminal justice system. Incapacitation lies at the core of her recommendations. One of her policy ideas was recently instituted in several states in the US as the so-called "three-strikes-you're-out" law. "The greatest number of criminals are known to be recidivists," she writes, "and it is from this class that the greatest number of dangerous criminals are recruited." This group of habitual offenders required special legislation: "after the third sequestration imprisonment should be indefinite, pending the decision of certain designated officials."[263] There were two benefits to such a policy, according to Kellor. First, a specific deterrence effect: "cutting short a probable career of crime." This much is given as the reason for contemporary versions of the "three-strikes" measure. The second, "preventing the birth of a family of paupers or criminals," is missing from more recent formulations, as formal programs of eugenics have fallen into disrepute. Also echoing current elite sentiment, she criticizes those prohibitions on prison labor

---

[262] All quotes from Gutman, "Work, Culture, and Society," 584.

[263] Francis Alice Kellor, "Criminal Anthropology in Its Relation to Criminal Jurisprudence II," *American Journal of Sociology*, 4 (1899). She notes several states that passed habitual criminal statutes, including California, Massachusetts, Missouri, Illinois, Virginia, Ohio, and Connecticut.

on the assumption that "becoming proficient in trades" will increase the ability of the criminal to join society upon release (she still has a little faith in reform).

The most striking feature of the second article is its racial character. "The negro element of population, which presents such a large class of citizens out of harmony with the advanced civilization existing in the greater part of the United States, is responsible for no small degree of criminality, and has given the United States the preeminence which it enjoys as the exponent of lynch law."[264] It is true, as we have noted, that blacks were then, as they are today, overrepresented in street crime, but we have already seen why this is so, and it has nothing to do with blacks themselves but with the conditions of their lives caused by whites. What is of interest to us here, however, are her comments that the "negro element" is "out of harmony" with "advanced civilization," i.e., white society, and that it is black criminality that is the reason for the great number of lynchings in the US. She records that in 1890 there were twice as many lynchings as there were "*legal* executions."[265] She then notes the excessive criminality of immigrants. "No country which receives the convicts and outcasts of other countries," she writes, "can expect a decrease of crime by an improved system of law while the influx continues."[266] These ideas are representative.

Kellor's concern over immigration was a harbinger of things to come. In the first decades of the twentieth century the US state, pressured by a concern from the

---

[264] Kellor, "Criminal Jurisprudence, II," 644.

[265] Kellor, "Criminal Jurisprudence, II," 644 My emphasis. Lester F Ward, a major figure in early sociology, advanced a sociobiological theory of lynching. Black men were driven by nature to advance their race through amalgamation with white women. Blacks were so instinctively driven that they would risk lynch law. See Carol M. Taylor, "W.E.B Du Bois' Challenge to Scientific Racism," *Journal of Black Studies*, 11 (1981), 449.

[266] Kellor, "Criminal Jurisprudence, II," 645

white masses, began to move towards severe restrictions on immigration. These sentiments had long been advanced. For instance, in 1870s, the *Chicago Democratic Times* wrote that "the cess-pool of Europe under the pretense that [the United States] is the asylum of the poor" was being transferred to America.[267] In 1901, Edward A. Ross, speaking before the American Academy of Political and Social Science in Philadelphia, proclaimed that the United States, by allowing immigrants into the country, was subjecting itself to "race suicide." "The phrase 'race suicide' was immediately taken up and echoed throughout the civilized world."[268] Theodore Roosevelt, Lester Ward notes, peppered his speeches with the term. The press habitually produced stories about race suicide. A nativist movement emerged and the push for immigration restrictions burgeoned.

The American Immigration Restriction Act of 1924 curtailed the transporting of non-Anglo-Saxon populations into the country.[269] They did so for racist reasons. White Americans feared a process the scientists were calling "dysgenesis," or the reversal of

---

[267] Quoted in Gutman, "Work, Culture, and Society," 584.

[268] Lester F. Ward, "Eugenics, Euthenics, and Eudemics," *The American Journal of Sociology*, 18 (1913), 751. The law of population causing the proliferation of the "undesirables" not only "applies to the uncivilized races," Ward writes, but "no less applies to the lower classes of civilized society." These lower classes "furnish the *proles*, and constitute the proletariat," 752 Ward, something of a lone voice at the time, contends that the wealthy's fear that the bulk of the population derives from the lower classes is based on the error of assuming that the working class is inferior to the middle and wealth classes. Ward even includes the "denizens of the slums," as positive for the development of the human race. See also Woods, who, in "Heredity and Opportunity," explains that the fact that the masses reproduce as a much greater pace than the wealth threatens "racial values "

[269] Some of the empirical evidence that convinced Congress was constructed by Robert M. Yerkes via intelligence testing of army men The work found that blacks and immigrants from southern Europe had, on average, lower IQs that whites. C C. Brigham at Princeton popularized Yerkes' statistical data in *A Study of American Intelligence* published in 1923 See Gould, *Mismeasure of Man*, 197

the evolutionary process, specifically, the racial degeneration of white America by the proliferation of non-aryan European and other racialized foreign groups judged to be inferior. The popular term for this was "mongrelization." The top scientists and pundits of the day spoke openly for the white majority. Harry H. Laughlin, a member of the Eugenics Record Office at the Carnegie Institution of Washington, DC, testified before the House of Representatives' Committee on Immigration and Naturalization.[270] Harry Lothrop Stoddard, the author of *The Rising Tide of Color Against White-World-Supremacy* and *The Revolt Against Civilization*,[271] testified before the House Immigration Committee in 1924. A US official no less than the stature of president Herbert Hoover praised Stoddard's testimony. Stoddard was highly influential in the development of the Harding administration's immigration policies.[272] Their argument was that certain immigrant groups were of inferior stock and/or carried diseases.[273]

In 1929, W.E.B. Du Bois and Stoddard debated before a crowd of several hundred people in North Hall in Chicago. The proposition was: "Should the Negro Be Encouraged to Cultural Equality?" Stoddard stated bluntly:

> To-day, as never before, we possess a clear appreciation of racial realties . . We know that *our* America is a *White* America . And the overwhelming weight of both historical and scientific evidence shows that only so long as the American people remain white will its institutions, ideas and culture continue to fit the temperament of its inhabitants — and hence continue to endure [274]

---

[270] Joseph M. Gillman, "Statistics and the Immigration Problem," *American Journal of Sociology*, 30 (1924).

[271] *The Rising Tide of Color Against White-World-Supremacy* (New York: Charles Scribner's Sons, 1920), *he Revolt Against Civilization* (New York Charles Scribner's Sons, 1922).

[272] Stephen Kuhl, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (New York Oxford University Press, 1994).

[273] This argument was also used on blacks, such as Frederick L. Hoffman's *Race Traits and Tendencies of the American Negro*, published in 1896

[274] Quoted in Taylor, "Du Bois' Challenge," 449.

Carol Taylor notes that Stoddard was not a lone voice in the wilderness on this score: "His concept of race as a determining factor in human affairs was supported with virtual unanimity by the leading figures in American social science."[275]

The fear of, and hatred for, nonwhites manifested itself in more than limiting immigration; the racial hygiene movement also expressed itself in eugenics programs. Eugenics, meaning "breeding for good genes," applied widely, including the mentally retarded, the physically handicapped, alcoholics, economic dependents, and racial groups.[276] The term was invented by Francis Galton in 1883.[277] As early as 1873, he had used the concept of "hereditary improvement."[278] As Lester Ward put it, the idea "has

---

[275] Taylor, "Du Bois' Challenge," 449. Nor Was Du Bois a lone African American voice in challenging racialist thinking. Decades earlier, in 1885, the Haitian statesman and intellectual Anténor Firmin produced *The Equality of the Human Races* (New York: Garland Publishing, 1999) in response to de Gorbineau's *The Inequality of the Human Races* (see part 2, chapter 3).

[276] For definitive treatments of the history of eugenics and related issues in addition to Kuhl's work see Pat Shipman, *The Evolution of Racism: Human Differences and Use and Abuse of Science* (New York: Simon and Shuster, 1994) and Stephen J. Gould, *The Mismeasure of Man* (New York Norton, 1981); William H. Tucker, *The Politics of Racial Research* (Chicago: University of Illinois Press, 1994).

[277] Inquiries into *Human Faculty and Its Development* (1883). Galton and other eugenicists were influenced by Darwin's discussions of "artificial selection" in *Origin of the Species* (1859) and *Variations of Animals and Plants Under Domestication* (1868). D. Collin Wells, in his early 20th century essay, "Social Darwinism," published in the *American Journal of Sociology*, 12 (1907), acknowledges Galton, Karl Pearson, Steinmetz, Shallmayer, and others as the fathers of "social biology." According to Wells, this science is concerned with how social forces impact biological ones. Wells distinguishes this view from the racial theories that attempt to explain culture by reference racial character, a view he attributes to the various theories of Voerkandt, Fouillé, Lapouge, Ammon, Chamberlain, Wilser, and Woltmann However, Wells discusses on the problematics of social biology is the impact that social institutions have on natural selection, specifically in the preservation and consequential multiplication of what many in this period call the "subnormal" or "defective" portion of the population. Thus, Wells' desired approach leads inevitably to the same conclusion

[278] Francis Galton, "Hereditary Improvement," *Fraser Magazine*, January 1873 Evidently, he used several different terms before settling on eugenics, including "stirpiculture" and "viriculture." Galton advanced the argument in 1869 that black IQ was "two grades" below that of whites. See Taylor, "Du Bois' Challenge."

almost set the world on fire, and now seems to engross the attention of all classes."[279] Galton was a geneticist who, along with others, gave intellectual voice to the desire by the British to rejuvenate the empire through the "race betterment" of its people. There are two types of eugenics: the "positive" type, which promotes procreation of the "capable" and "worthy," and the "negative" type, which sterilizes the "inferior," the "degenerate," and the "unworthy." Typically, it is the negative type that is emphasized. Ward explained that the reason for this is that while "Society is the master of its defectives," "normal people are their own masters."[280] Eugenics societies emerged in American, Britain, Sweden, and elsewhere, and a trans-Atlantic association was established that shared knowledge about racial science and eugenics.[281] There is nothing out of the ordinary about these developments. Nor were these views held by a small number of racist zealots. Eugenics was consistent with the general body of positive sociology of that time, the same well-spring of social Darwinism where criminologists, like Enrico Ferri, who were also on the front-line of the racial hygiene movement, drew their ideas.

Although he appeared to oppose positive eugenics and chided the wealthy for their fear of the laboring masses, Lester Ward, a major figure in the history of sociology, stated in a lecture given before the Federation of Child Study in New York in 1913 that "as the defectives are the wards of society, society has somewhat the same

---

[279] Ward, "Eugenics, Euthenics," 738

[280] Ward, "Eugenics, Euthenics," 740

[281] Francis Galton, *Hereditary Genius* (London Macmillan, 1869); *Inquiries into Human Faculty* (London· Macmillian, 1883), Natural Inheritance (London Macmillan, 1889) Find that piece on Swedish sterilization. Incidentally, Karl Pearson was Galton's disciple Pearson developed the correlation statistics and furthered the development of the normal distribution, or bell curve

control over them as intelligent men have over the vegetable and animal kingdoms, and there is no good reason why it should not act in the same way with regard to them, and eliminate as completely and as rapidly as possible the worthless elements in the population."[282] So sure of himself in this position that he followed this remark up with "anything but an inexcusable indifference, due to general ignorance and the half-conscious state of society, prevents this being done."[283] Ward also held racial views. He "believed that organized society had originated in the conquest of one race by another, and that subsequent racial conflict represented the continual striving of society to improve itself through competition."[284]

What are the deeper currents of this intellectual movement and what effect did they have on people? As noted, the evolution in criminal anthropology occurred during the industrial revolution in Europe, which occurred a little later in the United States, though it much more enthusiastically embraced social Darwinian ideas when it did. Sociology had by this time achieved a break with economics to become its own discipline. Classical political economy, based on the labor theory of value, was also undergoing a great change, as subjectivists, desiring a more ideologically-tight justification for class oppression, sought to explain economic development according

---

[282] Ward, "Eugenics, Euthenics," 738. Ward had over a decade earlier advocated a program of "rigid selection" to "stamp out of the future all the wholly unworthy elements." He then asserted that failing to do this was criminal. "Neo-Darwinism and Neo-Lamarckism," annual address of the president of the Biological Society of Washington, 1891, quoted in Ward, 739. Woods, in "Heredity and Opportunity," also advances this view with respect to "defectives." He explains in his 1920 article that there was no or very little difference of opinion on the subject of reducing the numbers of the mentally and physically disabled.

[283] Ward, "Eugenics, Euthenics," 738-739

[284] Taylor, "Du Bois' Challenge," 451.

to mental factors, such as individual consumer preference.[285] Decoupled from economics, and with economics reduced to psychology, the path was cleared for the application of organicist conceptions to the study of societal "function" and "dysfunction."

However, sociology so configured remained too limited to help accomplish the larger ideological goals of the bourgeoisie. What was required was not a science that pointed to the dysfunctions of the capitalist system in a way that encouraged the oppressed or progressives to demand change in their circumstances, but rather an ideology that naturalized the dysfunctions of societal development and blamed the individual for social pathology. This desire is expressed in Kellor's hope to move the focus of the law and explanation of crime from off of the act and onto the *actor*. Lukacs explains: "In the last quarter of the nineteenth century, bourgeois ideology entered a new phase of capitalist apologetics. Both the harmonist doctrine of popular economics and the theory of organic growth in quasi-biological sociology were proving inadequate, particularly with regard to the struggle against socialist ideas." What science and society required was the manufacture of bad people: "whereas capitalist apologetics had hitherto denied the 'bad aspects' of this system, it was precisely thence that the new apologetic proceeded." [286]

---

[285] For example, William Stanley Jevons and "marginal utility theory." In his paper, "Brief Account of a General Mathematical Theory of Political Economy," *Journal of the Royal Statistical Society*, 29 (June 1866), he reduces economic activity to the pleasure and pain of individual actors and finds value in exchange The Austrians also develop aspects of subjectivist economies Ward, in "Biological and Social Struggles" contends that the biosocial approach also emanates from this same intellectual milieu.

[286] Georg Lukács, *The Destruction of Reason* (Atlantic Highlands, NJ. Humanities Press, 1981), 685

Positivist sociologists and psychologists thus developed social Darwinism. Social Darwinism is the view that the order of social life is a natural occurrence.[287] It moreover leads to the conclusion that there are among humans those who would, if but for social programs and the (ill-advised) compassionate "assaults of modern humanitarianism," to borrow Woods' phrase, be selected by nature for extinction. Social Darwinists were asking at the start of the twentieth century:

> We are expending upon the defectives and dependents vast sums, which must be earned by the more capable and thrifty, and constitute a serious financial burden. Are we in this multiplying the unfit and increasing their proportion in the community? We dismiss from our insane asylums twenty thousand persons every year, and allow them to re-enter family life We trained deaf-mutes and the blind to become self-supporting, and able to marry We care for the chronic inebriate and pauper, periodically, and let them out to become, periodically, fathers and mothers We shield those of criminal disposition by every device known to law, until we are the most criminal people on the face of the earth [288]

Lukacs explains that Darwin's naturalism provided the perfect point at which to begin the development of a superior scientistic approach (and ideological development generally, as was seen with Nietzsche's appropriation of Darwinian language). Social Darwinism allowed for social inequality to be rooted in a natural-scientific explanation. Social Darwinism flipped Darwin's historical explanation of natural forms over and changed it into a pseudo-naturalist explanation of what were really historical forms. This permitted the social explanation of the history of economic classes to be reconfigured as a racial struggle for life. Inequalities that existed were

---

[287] Never mind that, as Woods pointed out in 1920, "It was apparently overlooked by some of those who glorified the struggle for existence that a genuine re-enactment of Nature's plan, far from confirming satisfied classes in their hereditary possessions and privileges, would cancel at a stroke all of the rules of civilized competition, overthrow private property and stable matrimony (for neither may be said to be precisely natural in a biological sense), and bring back Chaos and old Night," "Heredity and Opportunity, 3

[288] Wells, "Social Darwinism," 701

explained away as "facts of life" and "laws of nature." "Thus all the frightful products of capitalism were justified as being 'in accordance with nature'."[289]

Lukacs observes that "a sociology based on 'natural laws' led men to acquiesce in a capitalist destiny." The class function of the perspective is found explicitly expressed in D. Collin's article "Social Darwinism" in his concern that "socialism, as well as of trade-unionism in some of its aberrant, and it is to be hoped temporary, manifestations," will "tend to afford an equal chance of survival and of parenthood to the incapable and weak, to discourage the energetic and ambitious."[290] Or as Flinders Petrie put it, "The ideals of the present time: equality of wages, maintenance of the incapable by the capable, equal opportunities of life for children of bad stock as well as good stock, and the exclusion of the more economical labor, are the surest means of national extinction." Petrie immediately linked this to the immigration of "less capable races."[291] This view, by appealing to the laws of nature, presented itself as an objective science lying beyond politics — a view especially important because it stood in direct opposition to socialism.[292] That all of these developments contributed to the ideology of Nazism is probably obvious, but it should be just as clear that it legitimated capitalism and colonialism generally. And the United States represented the optimal context for the flourishing of this worldview.

---

[289] Georg Lukács, *The Destruction of Reason* (Atlantic Highlands, NJ: Humanities Press, 1981).

[290] Wells, "Social Darwinism," 702 He goes on to blame "heavy taxation" for the decline of the race Wells' essay drew a sharp response from Lester Ward, who, characterizing it as an "oligocentric world-view," stated, "It is trying to polish up the guilded pinnacles of the social temple so as to make them shine a little more brightly, while utterly neglecting the great, coarse foundation stones upon which it rests," Wells, 702

[291] Quoted in Wells, "Social Darwinism," 702-703

[292] Lukács, *Destruction of Reason*, 685-686

The German line of development surveyed by Lukacs is important because it demonstrates that the evolution of racial thinking was a trans-Atlantic phenomenon and social Darwinism was a product of the European world-system. As noted, these trends would lead to a cross-fertilization of eugenical ideas in several countries, primarily in the United States, England, and Germany, but also in Scandinavia and other places. In Europe, social Darwinism was advanced most conspicuously by Ludwig Gumplowicz who published *Race and State* in 1875.[293] In this work he contended that class struggles were actually racial struggles. His disciple, Ratzenhofer, took the thesis further, contending that blacks were naturally born slaves. The community of scholars developed a deep commitment to their collective project. When in 1883, in *The Racial Struggle*, Gumplowicz dropped the anthropological construction of race, Woltmann, who had worked with Gumplowicz previously, criticized his comrade for deviating from his earlier racialist stance. Woltmann combined the more racialist features of Gumplowicz work and synthesized it with Gorbineau. For Woltmann, the social division of labor was determined by biological attributes. Whites were the "master race." Blacks and Indians were meant to serve whites. As noted in the last chapter, American Samuel George Morton's *Crania Americana* and *Crania Aegyptiaca* also claimed that Indians and blacks were at the bottom of the hierarchy of the species. "The Nordic race is the born carrier of global civilization,"[294] wrote Woltmann. Because of the "mongrelized" state of the race, Woltmann introduced the

---

[293] See also *The Outlines of Sociology* (1899). Philadelphia, American Academy of Political and Social Science, 1899) Lester Ward objects to the suggestion that this tendency is social Darwinism See "Social and Biological Struggles," *The American Journal of Sociology*, 8 (1907).

[294] Quoted in Lukács, *Destruction of Reason*, 695

concept of "de-miscegenation," which if practiced could extract the ideal racial types from the mongrel types. Hitler and Rosenberg adopted this idea and it became the basis for the race purification movement in the United States. It is perhaps remarkable that given that there were few blacks in Europe that German social scientists and historians should be so preoccupied with blacks; but the matter is not so mysterious when we give up the notion that nation-states are isolated from one another.

Although social Darwinian theory enjoyed wide currency throughout Europe and the United States, it was not a universally held view. Critical minds like Karl Marx saw through the social Darwinian facade early in its development. Having agreed with Engels in a 1860 letter concerning Darwin's *Origin of the Species* that "This book, although developed in the blunt English fashion, is the one that contains the natural-historical basis for our view,"[295] Marx wrote a damning 1970 letter to Kugelmann about a social Darwinist named Lange.

> Herr Lange has made a great discovery All history is to be subsumed under a single great law of nature This law of nature is the *cliché* (for as used here, the Darwinian term becomes a mere *cliché*) "struggle for life," and its substance is the Malthusian law of population or rather over-population Thus instead of analyzing the 'struggle for life' as it presents itself historically in various specified forms of society, all one must do is to convert that concrete struggle into a catchphrase "struggle for life," and the latter into the Malthusian "population fantasy " You must admit that this is a very searching method — as far as stuck-up, pseudo-scientific, high-flown ignorance and mental laziness are concerned.[296]

There were other opponents, such as Du Bois. Yet critics of this view were very few in number.

Again, these ideas were not confined to the academic universe. States acted on this "information." The desire for the purification of the white race in the United States

---

[295] Quoted in Lukács, *Destruction of Reason*, 683
[296] Quoted in Lukács, *Destruction of Reason*, 683-684

is evident, for example, in the proliferation of laws against inter-marriage. Six states incorporated such laws into their constitutions. Alabama amended its constitution to forbid the passage of any law that legalized marriage between whites and Negroes or persons of negro descent in 1901.[297] Florida's constitution stated, "All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation, inclusive, are hereby forever prohibited."[298] Mississippi's constitution required one of the persons to be married to have less than one-eighth "negro blood."[299] North Carolina restricted marriage to the third generation black.[300] South Carolina made "unlawful and void" any "marriage of white persons with negroes, mulattos, or persons of mixed blood, descended from a negro to the third generation."[301] Tennessee's ban was similar to South Carolina's.[302]

Additionally, most states had laws banning interracial marriage: Alabama (1896), Arizona (1901), Arkansas (1904), California (1906), Colorado (1891), Delaware (1893), Florida (1905), George (1895), Idaho (1908), Indiana (1908), Kentucky, Louisiana (1908), Maryland (1904), Mississippi (1906), Missouri (1906), Nebraska (1913), Nevada (1912), North Carolina (1905), North Dakota (1913), Oklahoma (1910), Oregon (1902), South Carolina (1902), South Dakota (1913), Tennessee (1896), Texas (1906), Utah (1898), Virginia (1904), and West Virginia (1906). These statutes all used language similar to the language of the constitutions already noted with a few relevant

---

[297] Sec 102 of amended 1901 constitution There was no law against inter-marriage between 1875 and 1901 in Alabama.

[298] Constitution of 1892, Art. 16, sec. 24.

[299] Constitution of 1906, Art. 14, sec 263

[300] Constitution of 1883, Art 14, sec 8

[301] Constitution of 1895, Art 3, sec. 33

[302] Constitution of 1896, Art 11, sec. 14

differences. The western states had some additional concerns because of Chinese immigrants. Utah also banned marriage "between a Mongolian and a white person." South Dakota banned "intermarriage or illicit cohabitation of any persons belonging to the African, Corean, Malayan or Mongolian race, with any person of the opposite sex, belonging to the Caucasian or white race." South Carolina banned marriages between whites and "Indian or negro races, or any mulatto, mestizo or half-breed." Oregon banned marriages between whites and people with "Chinese or Kanaka blood." These bans were typically felonies and carried considerable penalty. North Dakota, for example, carried a ten year term in the state penitentiary.

Looking over the dates, a pattern emerges: all the laws were passed in a ten year period. This is indicative of a collective consciousness about the undesirability of intermarriages between whites and other racialized groups that moved most of the country to make it a felony. The sentiment extended beyond these 28 states. Of the twenty states that did not ban interracial marriages, ten of them tried and failed to pass legislation that would make it illegal (these measures failed in large part due to the work of the NAACP). The other interesting thing about the laws is the lack of much uniformity about what defines a "negro." The threshold of "negro blood" varies from state to state. Some states try to avoid defining what a negro is, for example Louisiana, and make unions between whites and "persons of color."[303] While there may not be much uniformity across their racial definitions there is a near uniformity in

[303] Albert Ernest Jenks, "The Legal Status of Negro-White Amalgamation in the United States," *American Journal of Sociology*, 21 (1916)

their desire to maintain a color line, and this indicates a widespread racial consciousness among white lawmakers.

Barton Bernstein argues that the US Supreme Court based the *Plessy* decision on social Darwinian ideas and thus it "wrote conservative theory and the prevailing social science 'truths' into law."[304] He contends that the court used the conservative sociology of William Graham Sumner and Herbert Spencer to rationalize the "separate but equal" doctrine because they could not find legal precedent for it. Conservative sociology permitted the court to argue that racial segregation was a custom (a folkway), that these customs were immune from the force of the law. Justice Brown, for example, stated that "legislation is powerless to eradicate racial instincts." The law should be consistent with custom; it is unreasonable otherwise, they claimed. Moreover, after stating the separate facilities do not imply inferiority, Justice Brown asserted, "If one race be inferior to the other socially, the Constitution of the United States cannot put them on the same plane." Berstein theorizes that these opinions were influenced most directly by the social theories of people like Franklin Henry Giddings, who claimed that human beings possessed a "consciousness of kind" and these naturally arising sentiments lay at the heart of segregation.[305] Thus a sociological

---

[304] See Barton J. Berstein, "Plessy v Ferguson Conservative Sociological Jurisprudence," *Journal of Negro History*, 48 (1963), 198 Cf Bishop, "Reinterpretation." Berstein is correct in noting the influence of social Darwinism in conditioning the form of the Court's decision. Bishop argues that there were legal precedents that lay outside Supreme Court doctrine that were marshaled by the court in legitimating their decision and that *Plessy v. Ferguson* was not really about the equality of the races My analysis of the decision, especially the opinion of Justice Harlan, indicates that the matter of the inequalities of the races was central to the debate, thus supporting Berstein However, the decision was also based on precedent and flows from the basic logic of the Constitution

[305] Berstein, in "Conservative Sociological Jurisprudence," makes an excellent point when he notes that an argument based on the instinct to maintain separate races, if real, should not

"theory of 'racial instincts,' requiring the separation of the races, provided the 'scientific' means for justifying the southern system of white supremacy which had been threatened by the abolition of slavery." Berstein also links these theories to the theories of Joseph Gobineau. "Biologists and anthropologists readily confirmed Negro inferiority," Berstein writes; "The Negro's skull was weighed and his brain measured. Elaborate scientific studies were said to demonstrate that in brain size, pelvic expanse, and a great variety of physiological and psychological traits Negroes were inferior to whites. Comparative disease rates and criminality percentages, always favored whites, 'scientifically' established this superiority."[306]

Long before the draconian immigration restrictions in the 1920s the United States developed a body of eugenical practices. Forced sterilization laws were first passed in Indiana in 1907. California and Connecticut followed Indiana in passing similar laws two years later. In 1911, Nevada, Iowa, and New Jersey passes sterilization laws. In 1912, New York did. In 1913, Kansas, Michigan, North Dakota, and Oregon. The United States was the first country to impose mandatory sterilization laws. In 1916, and again in 1927, the United State Supreme court legitimated compulsory sterilization. In a more frank tone than Kellor's, Oliver Windell Holmes stated the opinion of the court in unambiguous words: "It is better for all the world if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing

---

require any law. Same with miscegenation. Racial instinct, or "consciousness of kind," ought to work naturally to cleave the races.

[306] Berstein, "Conservative Sociological Jurisprudence," 202, 203

their kind. The principle that sustained compulsory vaccination is broad enough to cover the cutting of the Fallopian tubes."[307] The assumption here, and it pervades the body of knowledge in early twentieth century US, was that the myriad social problems that beset industrial society were the result of genetic pathologies.

As the ideology developed, social Darwinian theories began to concentrate less on naturalizing the inequalities of capitalist society, and increasingly zeroed in on the individual "pathological" organism. The social sciences in the US, led by prominent figures such as Charles Goring, Laughlin,[308] Charles B. Davenport,[309] Henry Herbert Goddard[310] and a host of others, were organized around theories of inferior genetic types. Numerous studies were produced showing how the descendants of "degenerates" cost society money and put the white racial future at risk.[311] Laughlin

---

[307] Oliver Wendell Holmes, quoted in Kuhl, *Nazi Connection*, 38. Originally quoted in Ellsworth Huntington, *Tomorrow's Children. The Goal of Eugenics* (New York: John Wiley, 1935), 43.

[308] Laughlin was the assistant director of the Cold Spring Harbor Laboratories. Not all prominent social scientist supported these ideas. Franz Boas, for instance, was a leader in opposing racial science and eugenics Others challenged Laughlin on his turf. Gillman wrote in "Immigration Problem" that "tests by the methods of correlation not only further prove the unreliability of Dr Laughlin's data, they also remove any possible support for his assumption that social inadequacies are racially inborn values," 29.

[309] Davenport was the director of the Station for Experimental Evolution at the Carnegie Institute. He believed that high infant mortality among the poor was a "beneficent agent." See Woods, "Heredity and Opportunity " At the same time, Woods wrote that with respect to those infants with "defective inheritance," "Let us be fair and credit that much to the barbarous social conditions which often prevail in industrial and sometimes in agricultural communities They do weed out a certain number of hereditarily weak individuals," 19

[310] Goddard would go or send accomplices to Ellis Island, round up "defective" immigrants and give them IQ tests See Gould, *Mismeasure of Man.*

[311] William L Dugdale, a prison reformer, produced one of the earliest studies, the Jukes family But Goddard produced the most famous, *The Kallikak Family· A Study in the Heredity of Feeble-Mindedness* (New York· Macmillan, 1912) See also *Feeble-Mindedness: Its causes and Consequences* (New York: Macmillan, 1914); *Psychology of the Normal and Subnormal* (New York· Dodd, Mead and Company, 1919), *School Training of Defective Children* (Yonkers-on-Hudson, NY: World Book Co., 1914), and *The Criminal Imbecile* (New York· The Macmillan Company, 1915) The Supreme Court referenced the Kallikak study in handing down their 1927 decision

wrote that "it has been proven that sterilization is necessary to the well being of the state."[312] The eugenics societies were in turn bolstered by the passage of sterilization and immigration laws based on their science. The law gave their vision of racially clean society a considerable blanket of legitimacy. A string of studies followed on the heels of the anti-amalgamation and sterilization laws. The Supreme Court upheld the laws and the movement.

It might have dawned on the reader that the sterilization laws start to appear at the roughly the same moment in history as the so-called "anti-amalgamation" laws appear, thus indicating the close connection between the two. The association is understood against the backdrop of the social Darwinian worldview. Mandatory sterilization laws, and "voluntary" sterilizations, were used on a wide assortment of people. The laws primarily impacted the poor, who were manifestly "unfit," from the perspective of that day. Since blacks were disproportionately poor, they were, beyond racial reasons, targeted for sterilization. That the US was at this time codifying through law an emerging formulation of the rigid caste system that underpinned slavery is also significant. Abolition required a new set of laws and a new ideology to legitimate those laws. Racial segregation had already emerged, as we have seen, but a comprehensive formal strategy could develop only over time. The movement gained momentum finally moving the state to restrict immigration. When blacks migrated to

---

upholding mandatory sterilization policies Wells' article "Social Darwinism" is interesting as it was written when these studies were in the formative period. Wells expresses great interest in the findings of these studies

[312] Harry Laughlin, quoted in Kühl, *Nazi Connection*, 24-25

the North, a virtually uniform racial ideology, based in "scientific truth," awaited them; they would not escape the caste system by escaping the South.

Criminology then, as now, provided a key outlet for sociobiological theories that logically implied sterilization and incapacitation as proper public policy. As I noted at the top of this section, modern scientific theories of race and crime began with the positivist revolution in social science, with Lombroso's work influencing the developing field of criminal anthropology and giving legitimacy to the overall field. Lombroso's continuing influence, despite the obvious flaws in his work, attests to the ideological importance of this line of scholarship. And when the errors of the Lombrosian school accumulated until the science was in jeopardy, biocriminology received another advance in the second decade of the 20th century by Goring who, drawing from the science of psychometry, published *The English Convict* in 1913. This book, while criticizing the Lombrosian school for its biometrical approach, rooted intelligence in the genes.[313] This had the advantage of effectively removing the source of criminality from alleged empirically observable features (the shape of heads, fingers, etc.) to unobservable theoretical construction, such as IQ.

German scientists would join in these efforts to systematize racial science in the study of crime. During the Third Reich, German intellectuals pioneered the method of twins research to study of the alleged link between crime and genetics. Their research

---

[313] Charles B. Goring, *The English Convict: A Statistical Study* (Montclair, NJ, Patterson Smith, 1972) In the essays I surveyed in the first third of the 20th century, Goring is credited with "demolishing" Lombroso's work, but there is no criticisms of his own theories or of the hereditary school of crime. Thus while Lombroso is rejected for his crude science, the spirit of the argument is appreciated in its more sophisticated form

compared rates of criminal concordance among monozyotic and dizygotic twins. Johannes Lange in 1929 published a study comparing Bavarian twins that concluded that genetic factors contributed to crime. Research by Stempfl and Kranz showed similar findings.[314] Twins studies remain an important line of research in present-day biocriminology.

It is of note that the Nazis modeled their eugenics programs on the US program. The California sterilization law and Harry Laughlin's "Model Eugenic Sterilization Law" (developed in 1922) were used by the Germans in developed their "Law on Preventing Hereditarily Ill Progeny," which was passed in 1933, the same year Germany passed "The Law against Dangerous Habitual Criminals," which permitted the sterilization and castration of criminals. However, the Germans were concerned that they could not live up to the enthusiasm of the US project (which they considered radical).[315] Robert Gaupp of the University of Tübingen doubted that widespread sterilization project could be founded in Germany given that in contrast to the United, Germany was "the country of freedom." The "right to self-determination" observed in German society made mandatory sterilization a difficult prospect. [316]

With all of this intellectual force at it back, racially and ethnically restrictive US immigration policy carried out its eugenic goals. Leading eugenicists desired that those allowed into the country be judged on racially-selective criteria. Those who were

---

[314] See Piers Beirne and James Messerschmidt, *Criminology*, 2nd ed. (Fort Worth, TX· Harcourt Brace, 1995), for a lengthy review of the literature

[315] Articles linking physical and mental characteristics to crime appeared through this period in the US, e g , L. D. Zeleny, "Feeble-Mindedness and Criminal Conduct," *American Journal of Sociology*, 38 (1933)

[316] Robert Gaupp, quoted in Kühl, *Nazi Connection*, 24

preferred were the Nordic and Germanic peoples (Homo *europaeus*).[317] Eugencist Charles Woodruff wrote, "It is clear that the types of human beings from northwest Europe are our best citizens and have therefore, to be conserved." This went hand in hand with marriage restrictions in the United States, especially in the South between blacks and whites. There was also considerable worry, a concern that contemporaries like Ben Wattenberg express, that Anglo-American women, the "hereditarily worthy," were failing to reproduce at a fast enough rate to keep up with the prolific breeding of the inferior races. Laughlin regarded it as essential that educational programs be instituted and that there be a "prohibition on procreation for certain members of degenerate tribes."

To demonstrate the degree of influence the eugenical policies of the United States had on the German mind, Stephen Kuhl surveys German medical dissertations during the period finds that almost every one of them reference the United States as the pioneer of eugenics. "One explanation given for the United States' leading role in eugenics was that racial conflicts in the United States had forced the white population early on to employ a systematic program of race improvement."[318] Racial hygiene in the United States was lauded in Germany. Hans F. K. Günther appreciated America's exclusion of whole ethnic groups (he also once remarked that he was surprised that

---

[317] Racial theory at that time was dividing Europeans into three races Homo *europaeus* ("dolichocephalic blond," or "Aryan" race). They were alleged to be "in pure strain" tall, fair skinned, light colored hair and eyes, and have a long head and face. Homo *Alpinus* ("brachycephalic," "Celtic" or "Celtic-Slav" race) was more "round-heard," darker, and shorter. Mediterraneans ("dolichocephalic brown race") were said to have long heads, short statures, dark skin, hair, and eyes. These different racial types indicated different psychological sociological characters Carlos C. Closson, "The Hierarchy of European Races," *American Journal of Sociology*, 3 (1897)

[318] Kuhl, *Nazi Connection*, 17, 25.

America, which claimed to be the liberal country in the world would be so enthusiastically eugencist). In *Mein Kampf,* Adolf Hitler singled out the Immigration Restriction Act of 1924 for merit.

It was during the tail end of this period, in 1937, that the Pioneer Fund was founded. The pioneer fund has been the bastion of racist-eugencist thought down to the present. The work they have funded has been fundamental to contemporary biocriminological and race-intelligence research. Well-respected scholars such as Hans Eysenck, Roger Pearson, Raymond Cattell, and J. Philippe Rushton are among those scholars who have been funded by Pioneer Fund and continued its racialist project.[319] I shall have more to say about these figures and the Fund in the next chapter. The publication record of racist science in the top scientific journals in the United States remains unbroken since this time.[320] The point to make here in closing is summed up by Taylor: "Utilizing both professional and popular channels, biologists, psychologists, and sociologists proclaimed with one voice the inherent and immutable inferiority of the black race."[321]

Conclusion

Consistent with the approach I have adopted in this dissertation, to understand phenomena such as why northern whites reacted in the way they did to blacks

---

[319] J. Philippe Rushton *Race, Evolution, and Behavior: A Life History Perspective* (New Brunswick NJ Transaction Publishers, 1995), Hans Eysenck, *Race Intelligence and Education* (London Smith, 1971), and *The Inequality of Man* (London. Smith, 1973); Roger Pearson, *Race, Intelligence and Bias in Academe* (Washington: Scott-Townsend, 1991), Raymond B Cattell, *The Fight for Our National Intelligence* (London King and Sons, 1937), and *Intelligence and National Achievement* (Washington, DC: Institute for the Study of Man, 1983).

[320] See bibliography to Richard J Herrnstein and Charles Murray, *The Bell Curve* (New York Free Press, 1994)

[321] Taylor, "Du Bois' Challenge," 449

migrating into their neighborhoods and their workplaces, or why blacks would want to leave the South in the first place, the analysis required confrontation with the larger question of the development and transformation of the racial caste system in North America. The racial sentiments and actions of whites that segregated blacks did not develop overnight in the North. Rather, as we have seen, they developed over the entire course of US history and prehistory, as colonization, and then racial slavery, entrenched the power and privilege of whites of European descent. To relate these concepts to the theme of the dissertation, I explored patterns of crime during this period, the criminal justice response, and consensual and coercive strategies of racial control. I was concerned to document how a system of apartheid was developed after the dismantling of slavery to show that these have been, at least in part, intentional acts backed up by public policy and the law, including criminal law.

In the next chapter, I show that during the 1950s and 1960s southern apartheid in its de jure elements were removed, leaving in place a de facto system of residential and occupational segregation. Since the 1960s, elites have maintained, and a majority of citizens (mostly white) continue to believe, that the racial divide is no longer maintained by a system of racial segregation, but rather that two cultures, one white and one black, induce individuals to stay within their racial group and within their neighborhoods. We will see that this is a false reckoning of the situation blacks confront in America. This fiction is what in part leads whites to oppose interventions that might move US society in the direction of substantive racial equity, not because they see such interventions as failing to solve the problem of racial segregation but

because such measures, they believe, racially privilege African-Americans. Thus we will find a society after 1964 confronted with a situation where race-neutrality permits whites to continue to protect their privileges as before, only this time without the moral burden of de jure apartheid or explicit participation in reproducing ghetto conditions in the North. Racial domination was secured by redefining the black struggle against white supremacy as a matter of "law and order." This was borne not only of a desire to continue race repression to maintain black disadvantage, but more from the need to develop and impose a regime of racial oppression to preserve white privilege, even if this is for many white workers only a psychological privilege. Once the Civil Rights Act of 1964 became law, the majority of whites got behind the new racial hegemony — a racial hegemony based not on obvious system of racial caste, but a racial caste system legitimated by race-neutral policy.

CHAPTER 5

PREPARING A "TOMB [FOR] THE LIVING"[1]: DISSIMULATION AND PRISONIZATION 1965-2000

In the aftermath of World War II, and somewhat in the period before that, internal and external pressures pushed powerful whites into reluctantly dismantling formal aspects of racial apartheid. Congress debated various laws against lynching and a few members promoted aspects of civil rights. Whether their interests in civil rights were genuinely humanitarian is questionable; Republicans often advanced anti-lynching legislation to embarrass Democrats,[2] but the bills were debated, and this raised consciousness over the issue. Most advances occured in the Supreme Court. The court struck down (usually only in part) some of the tools of white supremacy, such as the white primary,[3] racial gerrymandering,[4] jury duty exclusion,[5] and racially restrictive covenants.[6] It also upheld the right of blacks to vote.[7]

---

[1] The modified quote is from Enrico Ferri, *Criminal Sociology* (New York: D. Appleton, 1909). Ferri was expressing his general impression of prisons, what he called "tombs of the living," hoping for some other way of dealing with the problem of crime.

[2] Harvard Sitkoff, "Harry Truman and the Election of 1948: The Coming of Age of Civil Rights in American Politics," *The Journal of Southern History*, 37 (1971).

[3] *United States v. Classic* (1941) and *Smith v. Allwright* 321 US 1944, and *Terry v Adams* 345 US 1953.

[4] *Gomillion v. Lightfoot* (1960)

[5] *Norris v. Alabama* 294 US 1935. In 1940 and 1950 the court continued to chip away at jury exclusion by interpreting in a very limited way the several decade failure to seat blacks in some states as *prime facia* evidence of race discrimination See *Smith v. Texas* 311 US 1940, *Patton v. Mississippi* 322 US 1947, *Cassell v Texas* 339 US 1950

[6] *Shelley v. Kraemer* 334 US 1948. The Supreme Court ruled similarly in two other decisions, *Hurd v Hodges* (1948) and in *Barrows v. Jackson* (1953) See Wendy Plotkin *Deeds of Mistrust: Race, Housing, and Restrictive Covenants in Chicago, 1900-1953* (Ph D. dissertation, University of Chicago, 1999).

[7] *Rice v Elmore* (1948), *Baskin v Brown* (1949) and *Terry v. Adams* (1953)

Mainstream history records that this struggle was made by a few dedicated progressive blacks and liberals, with the moral support of fair-minded Americans, against backwards and ignorant whites resistant to change. But the progressive force was only one among many, and its character has been misrepresented and idealized. The character of the resistance is also mischaracterized; true, they were racists, but racism is neither backwards nor issues from ignorance. On the other hand, many of the same domestic and geopolitical forces created a context where hegemonic elites found self-serving ideological, political, and economic benefit in permitting a degree of formal racial justice. So, for instance, when experience with the racial states of Europe during WWII raised race consciousness among blacks in the United States, the Supreme Court found a way to change laws that more obviously negatively targeted blacks thus improving the image of American democracy. Whites resisted where they could and gave in where it enriched them. What was required, then, was the deft execution of a balancing act, a strategy that would re-secure the racial order -- indeed, strengthen it -- while granting generally limited formal justice to historically oppressed and disadvantaged minorities. In other words, the caste-class structure was changed to preserve it.

The consensual side of this strategy was often more de facto and universal than collectively conscious and unified in purpose. The overall racial interest is only clearly seen when one steps back from historical detail and looks at the sweep of history. Nevertheless, it was intentional at the levels where contradictions appear, and somehow through all the ideological muddle and fractional interests the central vision

materialized: a new historical bloc was founded, one appropriate to the higher level attained by capitalism's uneven career. The bloc, what might be labeled by the political program that initiated it, the "New Deal," would build momentum towards the total dissimulation of caste relations, reaching its zenith in the "Great Society," Lyndon Johnson's name for the liberal ideal: the enriched and inclusive society. Dismantling the formal machinery of apartheid in 1964, many blacks and almost all whites would claim they had achieved, allowing for minor imperfections, equality of opportunity, never questioning whether equality of opportunity was the proper measure of justice or whether its operation would achieve racial equity over time.[8]

The dissembling of white supremacy is only half the story. Throughout the contest over civil rights, a rhetoric was fashioned that characterized the black struggle as an aberrant tear in the social fabric. The characterization translated racial oppression as an imperative of law-and-order. Black interests were represented as running counter to the traditional needs of whites to control the distribution of wealth and privilege. To be certain, the black struggle *was* aberrant from the whites' perspective. It ran against white people's material interests. It stood as a repudiation of the legitimacy of the white social order, even when blacks desired only to be a part of that order. Whites would invent many myths about the black struggle for freedom, but they did not invent the struggle. The challenge for whites was to shape it to their ends.

Especially in the milieu of the cold war was the black struggle seen and portrayed as a danger to the internal and external security of the United States. Anti-

---

[8] Sidney M. Willhelm, "Black-White Equality An Economic Doctrine for White Supremacy, Part I," *Journal of Black Studies*, 12 (1981)

communism was fundamental to redefining of the racial order in this period: it provided the elements and the context elites would use to invent a conspiracy behind civil rights — communist agents and disloyal Americans agitated African Americans to challenge US democracy. This provided the rationalization for bridling the struggle for racial equality. Simultaneously, anti-communism became the impetus to reconfigure aspects of white domination to gain advantage in the global propaganda contest between Christ and Marx, as Joseph Goebbels put it. Anti-communism also forged an alliance between white Americans and the global fascist movement.

The policy change in this period, rather then representing the adoption of a completely different strategy of control, represented instead an elaboration of the emphases of the control dialectic: consensus/coercion. On the one hand, state elites, through the Civil Rights Act, engineered a facially race-neutral consensus, one that is being perfected by the rollback of minimalist reparations programs like those grouped under the rubric of affirmative action (note, for instance, the recent action of Florida Governor Jeb Bush[9]). On the other hand, government officials greatly expanded the state repressive apparatus; the post-Civil Rights era has been marked by increased police force levels, comprehensive crime legislation, expanded criminal courts, and the enlargement and reorganization of the penitentiary system.[10]

---

[9] Among other things, Bush's initiative eliminates consideration of race and ethnicity in university admissions, and racial set-asides and race price preferences in state contracting. Eric Ray, "Racism in the Sunshine States Bush's 'One Florida' Initiative," *Political Affairs* April 2000.

[10] Steven Donziger, ed , *The Real War on Crime· The Report of the National Criminal Justice Commission* (New York Harper Perennial, 1996)

These needs of the ruling class intersected, for instance, in the ideological program directed at obtaining popular consent for new levels of repressive force, what may be called the *authoritarian consensus*. Through this mechanism, elites accomplished legitimacy for the coercive turn in state policy over the long-term by cultivating an authoritarian mentality among influential intellectuals and key segments of the public.[11] The fruits of their efforts are evident everywhere today: a majority of Americans endorse, or at least tolerate, continual expansion of the US police state. Crime control has become an article of faith; just as presidents cannot advocate drastic cuts in military spending without losing national elections, politicians recommend backing away from repressive criminal justice policy at their peril.

Perhaps paradoxically, crucial to obtaining compliance for the new levels of coercive state intrusion into private lives has been the tactic of *ostensible de-racialization* of criminal justice policy. This is where, through various techniques, such as bounding the causal chain, it is claimed that racial disparity in criminal justice outcomes cannot be attributed to systemic racism. This has been possible with the greater development of the race-neutral illusion. Although it has not yet been perfected, especially with the recent public relations disasters at the LAPD and NYPD, ostensible de-racialization does not require seemlessness to be effective. In fact, the efficacy of race-neutrality is probably enhanced by the "occasional" opportunity to contrast revelations of racism

---

[11] M. Stanton Evans and Margaret Moore, *The Lawbreakers* (New Rochelle, NY. Arlington House, 1968); James Q Wilson, *Thinking About Crime* (New York· Basic Books, 1975), Van den Haag, Ernest, *Punishing Criminals· Concerning a Very Old and Painful Question* (New York: Basic Books, 1975). For a critical analysis see Tony Platt and Paul Takagi, "Intellectuals for Law and Order. A Critique of the New 'Realists'," *Crime and Social Justice*, 7 (1977) Cf. Stanley Cohen, *Visions of Social Control* (Cambridge, MA· Polity Press, 1984)

among law enforcement officials as isolated and anomalous moments against a backdrop of color-blind normalcy. Mark Furman was surely a bad apple. Maybe LAPD has serious problems. But law enforcement as an institution? The nation's approach to the crime problem? If anything, politicians worry too much about racism in our public institutions.

In the 1960s, the "need" for repression in the new racial order pushed back progressive theories that posited structural conditions as the ultimate cause of street crime and violence. Crime is now almost universally believed to be a failure of control. This shifts the emphasis from due process to crime control. Critical thinking about what Richard Quinney calls the "social reality of crime,"[12] that is, the social process of criminal definitions arising from competing interests embedded in a system of asymmetrical power relations, let alone moral considerations about which behaviors and consequences should constitute crime and how society ought to regard rule breakers, has been nearly completely evacuated from the public discourse. The authoritarian consensus is attended by a reactionary reflex. The recoding of racial struggle as "law and order" combined racial hatred with hatred for lawlessness to magnify the public ire. Crime control makes racial hate respectable, even necessary, while race-neutrality permits racial hatred not be identified as such.

Ideology has played a central role in all this. Ideological constructions are never pulled from thin air. They are refractions of the social order in which they appear and the historical system from which they emerge. They contain both truth and

---

[12] Quinney, *The Social Reality of Crime* (Boston, Little, Brown, 1970).

fiction, but the real is warped and fuses with the ideal and the unreal to distort the images that reach the mind. Ideologies link present consciousness to the past. Propaganda is usually ineffective at the mass level lacking some basis in a widely-shared worldview. Just as expressive discriminatory collective brutality is not possible absent system-wide social devaluation of intended targets,[13] the logic of the racialized social order permits an inversion of the actual dynamic of power and increases the acceptance of facially race-neutral social policy that treats instances of racism as exceptional rather than exemplary. This strategy works against the historic backdrop of more open ethnonational repression and objective racialized sociocultural and socioeconomic structures, both because these provide the foundation for the strategy and the necessary contrast for its dissimulation.

In the end, none of the progressive legal and policy changes either contemplated or implemented during the "New Deal" historic bloc were intended to challenge the basis of the racial caste-social class structure of America. Where laws and policies were changed here and there in a progressive direction, racist practices and the structure of American society denied the full measure of their promise. At best, their character was designed to remove some feature or features of "affirmative" discrimination rather than to impose upon white society affirmative racial justice. The debate always revolved around how giving blacks rights would upset the normality of

---

[13] Lynching is a prime example of this (see chapter 8). A more recent instance of collective brutality of socially devalued targets is horrible display of male aggression in Central Park during Father's Day weekend June, 2000. Gangs of drunken men surrounded women, doused them with beer and water, stripped off their clothes, and even digitally penetrated their bodies When women and bystanders came to NYPD officers for help, many of the officers ignored them

white society. In other words, the debate was usually about the comfort of whites and not the anguish of blacks, even if it did not always present with this language (usually it did not). Furthermore, as we saw in the last chapter, the government was pursuing at the same time an explicitly white middle class agenda with suburbanization and capital disinvestment at its core, concentrating blacks in the central cities, with high rates of joblessness and crime and violence.[14] Suburbanization and disinvestment would have long-range political-ideological benefit for the ruling class, as whites became increasingly removed from immediate concerns about central city conditions, leading to the white backlash against social welfare from the late 1960s on, especially after AFDC and other social programs became designated "black" programs, and hardening their hearts over the crisis of black prisonization

Even the Supreme Court, the place where blacks have gained significant advances in freedom (and many more setbacks), carefully interpreted the law to stymie substantive justice gains while granting measured formal justice. The ruling in *Shelley v. Kraemer* barring restrictive covenants, for example, did not really bar the use of such covenants. Rather, the high court ruled that US government agencies and courts could not enforce such covenants. The court was constitutionally constrained in how much it could interfere with the private preference of the homeowner (one of the hallmarks of continued support for segregation is the belief that homeowners have the right to sell their property to whom they choose). And while the attack on racially

---

[14] Douglas Massey and Nancy A Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993), Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth. A New Perspective on Racial Inequality* (New York Routledge, 1995)

exclusive jury seating, beginning with *Norris v. Alabama* in 1935, indicated a shift in the burden of proof from the defendant having to show discrimination in jury selection to the state having to explain why blacks were not seated on juries,[15] the court was still reluctant to find evidence of discrimination in the mere fact of racial exclusion. Reluctance to give full weight to racial exclusion (or overrepresentation) as *prime facia* discrimination has been a common course of the court and the state generally and it is one of the primary ways that white supremacy is maintained. To clarify what the court intended by these decisions, in *Washington v. Davis* (1976) the court ruled that plaintiffs who challenge facially neutral law and administration on constitutional grounds bear the burden to prove that there is a purpose to racially discriminate. The court knew that it is almost impossible for the victim of racism to prove purpose in racially discriminatory practices, since disparate outcomes are usually the result of anonymous social forces. By refusing to adopt a disproportionate impact standard the court articulated a doctrine that only *conscious* racism was injurious. More incredibly, they argued that "an impact test would be inconsistent with equal protection values,

---

[15] *Norris v. Alabama* 294 US 587 (1935) If the state could give no compelling reason for excluding potential jury members then grounds may be established for throwing the conviction out This case was brought in part because nine black youngsters, one as young as thirteen, had been convicted and sentenced to death for raping two white women on a freight train in Alabama in an outrageous trial in which the Supreme Court cited several egregious violations of the fourteenth amendment The case was most probably a fraud, and this was probably obvious to everyone involved, especially since one of the "victims" recanted her allegations and testified for the defense! Nevertheless, the defendants were convicted and sentenced to death *two more times*, and four of the defendants were tried and convicted in a fourth trial. *Norris v. Alabama* was in fact the second Supreme Court intervention — this was the third trial, the trial judge having annulled convictions in the second trial because the "victim's" testimony was too incredible. The first intervention was on the grounds that they were denied the right to counsel, see *Powell v Alabama*, 287 U.S 45 (1932) See Dan T Carter, *Scottsboro: A Tragedy of the American South* (Baton Rouge Louisiana State University Press, 1979), Randall Kennedy, *Race, Crime, and the Law* (New York. Vintage Books, 1991)

because the judicial decisionmaker would have to explicitly consider race."[16] Such logic recalls the 1935 ruling of the Mississippi Supreme Court that upheld the confessions of three black farmhands who had been tortured by arguing that throwing out their convictions would represent racially preferential treatment![17]

What we find in history is a clear pattern of behavior by politicians and policymakers: the rollback of legal or formal apartheid is steered to reconfigure white supremacy rather than eliminate it. This is, in part, because politicians and policymakers, recognizing the depth of racism among the majority of Americans, must appease the white electorate. It is also partly because the politicians and policymakers are racist themselves, upholding the racial creed. Finally, it is because the legal structure of the United States, created under conditions of racial segregation, carries with it inherently the logic of racial injustice.[18] The last point refers to the structural forces of a social formation in reproducing the broad outlines of that system, despite what contingencies impinge on it.

The most brutal aspect of all this is the prisonization of the African American community, primarily blacks men. The key to making the new system work required transferring the punishment of blacks from racialized coercive and violent spaces, such as slavery and apartheid, to ostensibly de-racialized spaces where coercion and

---

[16] Charles R Lawrence, "The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism," *Critical Race Theory: The Key Writings that Formed the Movement*, eds Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995), 236

[17] *Brown v. State* 173 Miss 542 (1935). The ruling was overturned by the Supreme Court in 297 US 278 (1936) See Richard C. Cortner, *A "Scottsboro" Case in Mississippi: The Supreme Court and* Brown v Mississippi (Jackson: University of Mississippi, 1986)

[18] Neil Gotanda, "'Our Constitution is Color-Blind'," in *Key Writings*, 257

violence can continue take place, namely the penitentiary cell. The Civil Rights Act of 1964 was the pivot upon which the race-neutrality myth, essential to claiming de-racialized criminal justice policy, was manufactured. In this way, the Civil Rights Act represents for white people an ideal solution to the "Negro question" that emerged in the post-WWII context. For blacks, the race-neutrality doctrine diminishes their capacity to show that the ills they suffer, even when these ills involve the violent incapacitation of their youth, are the result of the persisting caste system.

A New Deal? WWII and the Fascist Mirror

Many countries, linked by the world capitalist economy and Western political-legal culture, responded similarly to the global economic crisis manifest in the United States as the "Great Depression." Like the Nazi's program of "national socialism," the United States used state-directed economic planning and corporatist politics to restructure capitalism under a state monopolist paradigm (what was called "industrial recovery"). Later, both countries pursued massive armaments build-ups, which resulted in the deaths of some 50 million human beings.[19] But unlike the Nazis, who destroyed liberal democracy, the Roosevelt administration, promising the nation a "New Deal," pursued an ostensibly inclusive-democratic program of capitalist reform and minimalist reform of the caste system. Liberal elites and the emerging state industrialist order managed to pull together a broad coalition of groups, including labor, farmers, and urban ethnic groups, and fuse them with leading fractions of the

---

[19] John A Garraty, "The New Deal, National Socialism, and the Great Depression," *The American Historical Review*, 78 (1973)

capitalist class to construct something analogous to Gramsci's "historical bloc,"[20] which is to say that the New Deal was something more than just a coalition of leading political forces. The New Deal was a political structure attendant to a new stage in the development of capitalism, what Mandel called "late capitalism."[21]

The New Deal, despite the high level of human agency involved, provides the best evidence for the structuralist point of view.[22] To save capitalism from itself, Roosevelt pursued programs opposed by key fractions of the capitalist class. This movement away from the instrumentalism of the Guilded Age was perhaps most exemplified Roosevelt's Federal Employment Act (passed after Roosevelt's death in 1946). "It pledged the full backing of the state for maintaining and financially supporting the highest level of economic activity through the policy of full employment, rationalizing and legitimating the audacity of state intervention in the idealized 'free enterprise system' by insisting that in an age of 'technological disruption' it was necessary to 'supplement' the market system by political action, so as to secure the 'rational allocation' of resources and the 'satisfaction of public need.'"[23]

---

[20] Antonio Gramsci, *The Antonio Gramsci Reader Selected Writings 1816-1935*, ed. David Forgacs (New York: New York University Press, 2000).

[21] Ernest Mandel, *Late Capitalism* (New York: Verso, 1975).

[22] Nicos Poulantzas, *Political Power and Social Classes* (London: New Left Books, 1973).

[23] István Mészáros, *The Power of Ideology* (Washington Square, NY New York University Press, 1989), 205 By contrast, the degree of state autonomy has lessened greatly with the recent right turn in U S politics, after the mid-1970s or so, though it is a different sort of instrumentalism than the instrumentalism of the period before the Great Depression. See Leo Panitch, "Rethinking the Role of the State," in *Globalization. Critical Reflections*, ed. James H. Mittelman (Boulder: Lynne Reinner, 1997). For example, lobbyists for major polluters, lobbying directly or through organizations like Chemical Manufacturers Association, are increasingly involved in formulating federal and state legislation. Andrew Austin, "Advancing Accumulation and Managing Its Discontents Theorizing the U.S Anti-Environmental Countermovement," unpublished manuscript.

Such policies, expressly beneficial to the working class, were geared to the long-term survival of capitalism.

Similar to its intrusion into the private sanctuary of industrial capitalist reproduction, the New Deal would have a profound impact on a South ravaged by the chaos of capitalist crisis. The economic of the South had basically collapsed. There, the federal government, often over the stern objections of southerners, set in motion dynamics that would mechanize the South, dismantle the labor-intensive sharecropping system, and complete the transition to wage-labor. The objective was to incorporate the South more fully into the national economy and culture. For instance, central to the full proletarianization of southern labor was the elimination of persisting forms of involuntary servitude, excepting prison labor. There had been many attempts before Roosevelt to eliminate peonage.[24] In 1867, a statute made holding a person in debt a federal offense. In 1905, the Supreme Court upheld this law in *Clyatt v. United States.*[25] The court struck down coercive labor laws in Alabama in 1911 and 1914.[26] The court again struck such laws during WWII.[27] But each time the Supreme Court made their ruling, states took advantage of ambiguous language and judicial ambivalence to refashion the laws. Finally, in *Pollack v. William* (1944), the court worded their decision precisely and effectively ended the peonage system.[28] The effect of this was to diminish the rural population dramatically as labor was freed from the land and lured

---

[24] For an overview of this system see William Cohen, "Negro Involuntary Servitude in the South, 1865-1940 A Preliminary Analysis," *The Journal of Southern History,* 42 (1976).

[25] *Clyatt v United States,* 197 US 207 (1905).

[26] *Baily v. Alabama* 219 US 219 (1911), *United States v Reynolds* 235 US 133 (1914).

[27] *Taylor v Georgia* 315 US 25 (1942)

[28] *Pollock v Williams,* 322 US 4 (1944).

to the cities by industry. Between 1940 and 1960 the population of 12 southern states would decline by almost 8 million. This led to a transformation of consciousness. New Deal ideology, carried in by massive federal intervention, and galvanized by global war, reached deep into rural pockets such that "by the end of World War II corporate values gained a victory over the Jeffersonian ideal."[29] Thus two major impediments to further capitalist development — the South's archaic labor system and its rural attitude —were either eliminated or greatly diminished. This would in the long-run raise black consciousness in the South.[30]

Among the ethnic groups the New Dealers incorporated into the bloc were African Americans, though to a lesser extent than other ethnic groups. The black vote had been solidly Republican in 1932; but by the 1936 election it had become almost altogether Democrat.[31] Black migration had created for the northeastern liberal establishment an opportunity to increase their electoral base in the North. In the long-run, the Hoover administration's failure to do much for those hit hardest by the depression, in contrast to the New Deal successful effort in creating the perception of inclusion and opportunity, tarnished the Republican party's image. The New Deal, by promising (albeit meager) employment opportunities for inner city blacks through programs like the Works Projects Administration (WPA), hoped to secure the black voter's loyalty for more election cycles. Since Jim Crow had disfranchised southern

---

[29] Pete Daniel, "Going among Strangers: Southern Reactions to World War II," *The Journal of American History*, 77 (1990), 887.

[30] Benjamin P. Bowser, "Race Relations in the 1980s: The Case of the United States," *Journal of Black Studies*, 15 (1985)

[31] Joe Feagin, "Slavery Unwilling to Die: The Background of black Oppression in the 1980s," *Journal of Black Studies*, 17 (1986)

blacks, the New Dealers were less in a rush to do something about their circumstances. However, the desire of white liberals to tap the rising black consciousness led some New Dealers to openly advocate racial equality, much to the chagrin of white supremacists.[32] In reality, whites had little to worry about; on the whole, the administration's strategy was to secure black allegiance by doing as little as possible for the African American community.

Because of these efforts, and because of the increasing African American challenge to the conditions of segregation and exclusion, the public discourse on race began to change in the 1940s. Minor adjustments were made to caste arrangements. By executive order (8802) Roosevelt introduced into government defense contracts a non-discriminatory clause in 1941; and he created the Fair Employment Practices Committee (FEPC) to enforce the order.[33] But the president was, in back of his minimalist civil rights posturing, strengthening the ghetto walls around blacks and increasing the privileges of whites. He aimed his relief programs primarily at white workers and farmers. In instance after instance, the priority of whites in employment policy was evident. After the FEPC promised to hire blacks into skilled position, they instead hired white women.[34] In the post-WWII drawdown, blacks were the first to be laid off. As we have seen, Roosevelt's housing policy was mainly a vehicle for increasing the collective wealth of whites through home ownership and enhancing

---

[32] Sitkoff, "The Coming of Age."

[33] This order was continued by Truman and Eisenhower. Later the Congress later renamed it the Equal Employment Opportunity Commission (EEOC)

[34] Daniel, "Southern Reactions "

their sense of ethnic security via the development of white suburb life.[35] Domestic restructuring would complicate the situation of blacks. The capitalist class, largely with Roosevelt's assistance, would redouble their disinvestment efforts following WWII, as industry made its way out of the northern city to locations where labor was unorganized and labor was cheap.[36] Consequently, blacks would become increasingly isolated and concentrated in abandoned central cities of the North. (Anxieties arising over this situation were typically ameliorated by social scientific theories that ethnic groups entering central city zones would eventually assimilate with dominant culture.[37]) Although this was largely beyond his control, that Roosevelt presided over the largest expansion in the use of the death penalty in US history, especially for blacks alleged to have raped white women, says something about the repressive atmosphere

---

[35] Melvin L Oliver and Thomas M Shapiro, *Black Wealth/White Wealth. A New Perspective on Racial Inequality* (New York Routledge, 1995), Douglas S Massey, and Nancy A. Denton, *American Apartheid Segregation and the Making of the Underclass* (Cambridge. Harvard University Press, 1993); Steve Valocchi, "The Racial Basis of Capitalism and the State, and the Impact of the New Deal on African-Americans," *Social Problems*, 41 (1994); Kenneth Jackson, *Crabgrass Frontier The Suburbanization of the United States* (New York· Oxford University Press, 1985)

[36] Don Wallace and Drew Humphries, "Urban Crime and Capitalist Accumulation, 1950-1971," in *Crime and Capitalism. Readings in Marxist Criminology*, ed David Greenberg (Philadelphia Temple University, 1993).

[37] The theories were primarily generated by intellectuals at the so-called "Chicago school" at the University of Chicago. The groundwork was laid by Robert E Park, Ernest W. Burgess, Roderick D McKenzie, and Louis Wirth, *The City* (Chicago. The University of Chicago Press, 1925) and Park and Burgess, *Introduction to the Science of Sociology* (Chicago. The University of Chicago press, 1921). These books developed the "concentric zone theory," that organized the structure of urban into a series of concentric zones emanating from the center of the city Park, in *Race and Culture* (Glencoe, IL Free Press, 1950), presented a more complete assimilation theory. Applying this theory to the crime problem in the cities were Clifford Shaw, Henry McKay and others. See Shaw's *Delinquency Areas* (Chicago The University of Chicago Press, 1929), and especially Shaw and McKay's, *Juvenile Delinquency and Urban Areas* (Chicago: The University of Chicago Press, 1942), an exemplary work in sociological cartography. There was a limit, though, to how effective exploiting social science theory was in convincing people that over time things would even out A sociologists writing in the late 1930s noted, "We may ask the student to learn the 'race relations cycle,' but he puzzles over why the South denounces

that accompanied industrial recovery and the restructuring of the southern economy.[38] The fact is that Roosevelt never supported civil rights legislation and never really challenged states over their treatment of blacks. He rationalized his refusal to support anti-lynching legislation by stating that "I did not choose the tools with which I must work."[39] Quite a remarkable statement given that Roosevelt invented more tools with which to work than any president before him.

WWII focused African American grievances and raised race consciousness among blacks. African Americans found that racial segregation was much the same in the army as it was in civilian life. This was especially true of northern black service men, who, while experiencing racism in the North, were unaccustomed to the frank racial attitude of southerners.[40] Blacks and whites were separated to such an extent in the military that the Red Cross refused to accept black blood donors. The Surgeon General explained it was inadvisable "to collect and mix Caucasian and Negro blood indiscriminately."[41] Black and white service men clashed in violent race riots.[42] When blacks returned home they were attacked and killed by white mobs. "During the war, friction along the color line exploded into violence. Six civilian riots, over twenty military riots and mutinies, and between forty and seventy-five lynching were the

---

lynching and at the same time kills a federal anti-lynching bill," Richard C Fuller, "The Problem of Teaching Social Problems," *American Journal of Sociology*, 44 (1938), 418

[38] U S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 1995*, NCJ-163916 (Washington, DC: U S. Department of Justice, 1997), Table 7.26

[39] Doris Kearns Goodwin, *No Ordinary Time* (New York Simon and Schuster, 1994), 163.

[40] Daniel, "Southern Reactions."

[41] General James G. Magee, Surgeon General, to Assistant Secretary of War, John J McCloy, September 3, 1941, quoted in Richard M. Dalfiume, "The 'Forgotten Years' if the Negro Revolution," *Journal of American History*, 55 (1968), 92

[42] Warren Schaich, "A Relationship between Collective Racial Violence and War," *Journal of Black Studies*, 5 (1974).

most visible manifestations of such strain."[43] In 1943, it is estimated that 242 racial battles raged in 47 US cities.[44]

Despite this, the fresh horror of the Holocaust and the sacrifice blacks made on the battlefields of Europe and in the Pacific raised hope for a real change of conscience among the nation's white majority.[45] It was morally difficult — or at least it should have been — for white people to justify political and ideological aspects of US apartheid after having confronted blatantly racial states like Nazi Germany and fascist Italy. Cutting through the patriotism engendered by the war was a mirror that reflected an image of America.[46] The American ghettos, peopled by African Americas, and the German ghettos, peopled by Jews, comprised an obvious semblance. Roosevelt's executive order interning more than 110,000 Japanese immigrants (Issei) and Japanese Americans (Nisei) in concentration camps in 1942 polished the mirror.[47]

---

[43] Daniel, "Southern Reactions." See also Harvard Sitkoff, "Racial Militancy and Interracial Violence in the Second World War," *Journal of American History*, 58 (1971)

[44] Daniel, "Southern Reactions," 893-894

[45] A few scholars have characterized the war as a turning point in US race relations. Gunnar Myrdal in 1944 that the war would redefine the status of blacks in America. See *An American Dilemma. The Negro Problem and Modern Democracy* (New York, 1944). See also J. Milton Yinger, *A Minority Group in American Society* (New York, 1965), William Brink and Louis Harris, *The Negro Revolution in America* (New York, 1964); Charles E. Siberman, *Crisis in Blacks and White* (New York, 1964).

[46] Concern for racial unity was discussed and promoted The most prestigious sociology journal contributed to the discussion. See Louis Wirth, "Morale and Minority Groups," published in the *American Journal of Sociology*, 47 (1941)

[47] Two-thirds of those interned were US citizens. The Supreme Court upheld Roosevelt's order in 1944. The camps did not close until 1946. Reparations were eventually made to Japanese Americans. In 1988, Congress recommended the issuance of an official apology and each 20,000 dollars to be paid to each surviving internee. Payments began being made in 1990. Although those interned lost some 400 million dollars, thus impoverishing their future children, the descendants of those interned did not receive compensation Robert S Chang, "Toward an Asian American Legal Scholarship· Critical Race Theory, Post-Structuralism, and Narrative Space," *Critical Race Theory The Cutting Edge*, ed Richard Delgado (Philadelphia: Temple University Press, 1995)

(Although this probably did not enter the consciousness of but a few Americans, and those who knew profited from it, the Roosevelt administration also developed labor camps in the US that specialized in exploiting the labor-power of POWs.[48]) If the Holocaust and Japanese American internment did not make the masses uncomfortable, the possibility that it might greatly affected elite thinking.

Although racism pervaded America, it was the South that received the most attention when it came to the race problem. "World War II encouraged expressions of national solidarity and unanimity of purpose, but the racial and ideological contradictions raised by the war, as well as the economic and demographic upheaval that it induced or accelerated, soon contributed to renewed pressure to bring the South into the American mainstream."[49] Embarrassing to American elites, the parallels between the US South and Nazi Germany had not been lost on German propagandists. In the period before the war, they desired to reach German-Americans in the US, many of whom lived in the South, to raise interest in the German-American Bund, a large domestic movement of patriotic émigrés.[50] One of their tactics was to raise the matter of US racial hypocrisy.

---

[48] Daniel, "Southern Reactions." Farmers in Texas and Louisiana valued their POWs and aggressively sought to government to supply prisoners even after the war.

[49] James C. Cobb, "Does Mind No Longer Matter? The South, the Nation, and the Mind of the South, 1941-1991," *The Journal of Southern History*, 57 (1991), 685-686

[50] For a comprehensive account of the Bund and the activities of the Germans in the United States see Robert E Herzstein, *Roosevelt and Hitler: Prelude to War* (New York. John Wiley and Sons, 1989). Japanese-Americans were interned in concentration camps in the United States on the grounds that they were a threat to the internal security of the country. However, German-Americans, even though there was considerable organizing between the nazis in Germany and the German-American Bund (as well as with the Ku Klux Klan), were not seen as a threat to the internal security of the United States sufficient to intern them. This disparity is a clear indicator of the level of racialization in the United States at that time towards those of Asian descent.

German efforts to organize the Bundists troubled US elites, but more troubling perhaps was that the propaganda Germans were developing was sure to reach the larger European audience. The *Preussische Zeitung* in 1937 explained to German readers that marriage between blacks and whites was forbidden in thirty US states, that much of America observed a strict separation of the races, and that Germans, unlike Americans, did not participate in the grotesque practice of lynching.[51] In 1939, the *Nationalsozialistische Partei Korrespondenz* pointed to the failure of anti-lynching legislation in the US Senate as a clear instance of American hypocrisy on the race question. The *Berliner Börsenzeitung* revealed America's double standard: "The Nigger would well be surprised that the white American becomes outraged at the elimination of Jews from German universities, while they do not even consider the exclusion of Negroes from many American universities."[52] At a time when the US government was trying to figure out what to do (or more exactly how to not do anything) about European racial states, Germany was already beating them in the propaganda war, undermining their moral authority to criticize German racial practices.

The problem must have been especially upsetting to elites given that only ten years earlier Americans had no public quarrel with leading fascists on a number of key

---

[51] Other German writers were not so condemning In *Amerikanische Weltherrschaft?* Alexander Graf Brockdorff wrote "one may protest against the terrible brutality the Yankee exhibits towards the Negro The Yankee is, however, inspired by a sound racial instinct; for his people it is a hundred times better, if exaggerated racial hatred leads to a hundred lynchings per year than if each year 50,000 mulatto children are born," quoted in Johnpeter Horst Grill and Robert L Jenkins, "The Nazis and the American South in the 1930s A Mirror Image?" *The Journal of Southern History*, 58 (1992), 674

[52] Quoted in Stefan Kuhl, *The Nazi Connection. Eugenics, American Racism, and German National Socialism* (New York: Oxford University Press, 1994), 98-99. See also Grill and Jenkins, "A Mirror Image?"

issues. For one thing, fascists were anti-Bolshevik and violently repressed communists and anarchists. Anti-communism was running high in the United States, too, and, like the Italian brownshirts, US police violently repressed radicals with widespread popular support. Following WWI, between 1919-20, J. Edgar Hoover organized the "Palmer raids" for A. Mitchell Palmer, attorney general under Woodrow Wilson. Hundreds of federal agents combed American cities, rounding up suspected Bolsheviks and sympathizers, carting them off to jail or deporting them. When it was all over thousands of people had been arrested and over two hundred were thrown out of the country, many of them US citizens.

Palmer justified the raids in a dramatic essay, "The Case Against the 'Reds.'" He explained that his goal had been "to tear out the radical seeds that have entangled American ideas in their poisonous theories." The "theories" had been hatched in "criminal minds" advocating the "overthrow [of] the decencies of private life, to usurp property that they have not earned, [and] to disrupt the present order of life."[53] In truth, repressing radicals served a function much like lynching: it was meant as a deterrent to organizing workers against capitalism. Among the deported were prominent US anarchists Emma Goldman and Alexander Berkman. Before being thrown out of the country, they were interned along with other alleged radicals at Ellis Island. Berkman wrote of his experience, "Like shadows we passed through the yard toward the ferry, stumbling on the uneven ground. We did not speak; the prison keepers also were quiet. But the detectives laughed boisterously, and swore and

---

[53] A. Mitchell Palmer, "The Case Against the 'Reds,'" *Forum*, 63 (1920). 173- 185.

sneered at the silent line. 'Don't like this country, damn you! Now you'll get out, ye sons of b– – – – – – –.'"[54]

Palmer's activities were not exceptional in the US context of this period. The "red peril" gripped the nation. Palmer had been emboldened by Congress' refusal to seat Victor Berger, a duly elected Wisconsin socialist. Indeed, Americans were so concerned about the spread of socialism that in 1918 the US contributed 13,000 troops to a multinational military adventure into the Soviet Union. The invasion force was composed of troops from Great Britain, the United States, France, Japan, and many other capitalist countries. They joined with the counter-revolutionary "White Army" to put down the Bolshevik government. Winston Churchill, who was minister of war for England at the time, played the central role in prosecuting the effort to "strangle at its birth" the world communist movement. The war lasted two years and left thousands of people dead or wounded.[55] The Palmer Raids represented the domestic side of that war, and although the US invasion of the Soviet Union in 1918 is largely forgotten, it reflected the high level of consciousness among capitalist elites about the threat communism posed to their way of life. Nor were the Palmer raids the end of anti-communist repression. The Smith Act, passed in 1940, basically made membership to the Communist Party a crime punishable by ten years in prison and a $10,000 dollar fine.

---

[54] Alexander Berkman, "On Board the U S T 'Buford,'" December 23 1919, in *Life of an Anarchist: The Alexander Berkman Reader*, ed Gene Fellner New York Four Walls Eight Windows, 1992)

[55] William Blum, *Killing Hope: U.S. Military and CIA Interventions Since World War II* (Monroe, MN Common Courage, 1995).

For another thing, the fascists were nativist in orientation. In 1928, Mussolini wrote that "the whole White race, the Western race can be submerged by other coloured races which are multiplying at a rate unknown in our race." He asked, echoing US nativist fears and prejudices, "Are the black and yellow races at the gates, then? Yes, they are at the gates, and not just because of their fertility, but because of the keen awareness they have of their race and its future place in the world." He used the United States as exemplary of the problem whites faced: "while the Whites in the USA have a miserable birth-rate — which would be even more so if it were not for the injection of more fertile races such as the Irish, the Jews and the Italians — the Negroes are extremely fertile, and already number an impressive 14 million, which is a sixth of the population of the country." Neither ignorant of popular racial perceptions nor the work of Italian criminologists, Mussolini hooked all this up with crime. "There is a large quarter of New York populated exclusively by Negroes. A serious revolt of Negroes which broke out last July was only quelled after a night of bloody street battles with police who found themselves confronted by serried ranks of Negroes."[56] Mussolini's rhetoric fit well with the social Darwinism pervading US culture-ideology.

But now, with the Great Depression having shaken faith in the "natural" hierarchies of industrial capitalism and fascists becoming increasingly bellicose, things were different, at least for elites. In the US, southern newspapers began condemning

---

[56] "The Strength in Numbers," excerpted in *Fascism*, ed. Roger Griffin (New York: Oxford University Press, 1995), 59 Cf Benito Mussolini "The Vital Need for Empire," in *Fascism*, 74-75, written during the Italo-Ethiopian conflict in 1935, where Mussolini denies that Italian fascism is opposed to other races, such as Negroes, and in any case, he notes, Ethiopians consider themselves to be Semites, not Negroes It has often been claimed that Italy, while fascist, was not a racial state prior to its coalition with the Nazis The inference being that fascism is not an inherently racialist ideology Both notions are false

Nazism, especially for its racism. At the same time, they denied any similarity between Nazi policies and the practice of apartheid in the South.[57] Noting the hypocrisy, Grill and Jenkins write, "It is remarkable how often editorials in southern papers attacked German racism and prejudice while defending white supremacy and segregation in the South."[58] This contradiction could not have escaped a significant portion of the southern population. Certainly black newspapers did not hesitate to point out the obvious: southern blacks were living under Nuremberg laws.[59]

Although the connection between fascism and racism may have registered in the minds of many in the South, it did not appear to trouble them much. During the 1930s and 1940s, the Gallup poll regularly found widespread and deep support for segregation there.[60] This presented some problems for the Roosevelt Administration. Highly race-conscious whites, who profited from Roosevelt's defense contracts and farm programs, were at the same time suspicious that federal intervention in the South during WWII was a ploy to alter their way of life. This belief was reinforced by the failure of many northerners who were settling in the South to respect southern traditions. Southerners openly denounced the New Deal intervention. "Roosevelt may

---

[57] Grill and Jenkins, "A Mirror Image?" It was not only southern newspapers that on the one hand criticized the nazis yet on the other ignored the problem at home. "The Washington Post, hardly a champion of black causes, condemned the Nazis' treatment of African-American athletes in the 1936 Olympics at a time when black faced more racial barriers in the South than they did in Berlin," 669

[58] Grill and Jenkins, "A Mirror Image?" 688

[59] Black journalists and scholars began making the comparisons as early as 1933, W E.B Du Bois most obviously See Grill and Jenkins For an extensive account of the press at that time on this and several other issues see Dalfiume. He quotes several prominent blacks who expressed an isolationist and anti-colonial view on the "white man's war " They did not see a clear moral distinction between America and Germany One columnist wrote, "Our war is not against Hitler in Europe, but against the Hitlers in America," George Schuyler, quoted in Dalfiume, 94

[60] Grill and Jenkins, "A Mirror Image?" 669

have boasted that he had saved capitalism; to his enemies, he had destroyed the good old order, and paved the way for 'socialism,' if not for dictatorship or even communism."[61] It appears, though, that the attention the South was receiving did alter their behavior in some respects. "Lynchings which had often been public spectacles, became more clandestine and were tagged 'streamlined' lynchings."[62]

But it was not only southerners who supported racial segregation. Polls in the early 1940s showed that more than half of northeastern whites supported segregation, too. Six out of ten whites believed blacks were content with their situation and that they were getting all the opportunities due them.[63] Perhaps, as Bertal Ollman in indicating the depth of indoctrination astutely observed, it is one thing to alert people to the facts of race and class oppression, but it is quite another to convince them that race and class oppression are wrong and, more crucially, circumstances to be rectified. Moreover, the North was itself capable of remarkable racial belligerence. Much of this was directed at the president. The FDR persona, much as the presence of Bill Clinton infuriated right wing elites during the 1990s, generated intense hatred among segments of the population. William Randolph Hearst, whose media monopoly gave his ideas entre to the minds of millions of people, was joined by other powerful media giants in denouncing Roosevelt, labeling him, among other things, "Bolshevik." There were rumors that Roosevelt was secretly Jewish (his real name was "Roosenstein," the rumor claimed). The constant pairing of race with bolshevism testified to the intimate

---

[61] Herzstein, *Prelude to War*, 84

[62] Daniel, "Southern Reactions," 894.

[63] Dalfiume, "'Forgotten Years'," 103.

connection between race and capital basic to the ideology of New Deal critics — this reaction was intrinsic to the national character, not an isolated southern peculiarity.

But while assumptions about class and race were virtually universal, *conscious* racial politics were not so hegemonic and the stark contrasts between the realities of depression America and global racial tensions and the ideals of the US liberal democratic culture did serve to raise the spectre of apparent contradiction in the thoughts of many white elites. This concern would have an impact, and though the impact would be minimal, it is still significant that elites were sufficiently moved to modify racism. More important, perhaps, is that minimalist approaches to racial injustice are themselves indicative of the prevailing racial order.

The impact of the war can be gauged by examining its effects on the behavior of state institutions, since they possess the organized and legitimated power to actually affect things. Recall from the previous chapter that one of the main groups targeted by eugenicists for mandatory sterilization was the so-called "criminal class." Because of the prevailing biocriminological influence, crime was believed by most authorities not to be the result of social forces but of heredity. Given the premise, sterilization became a logical way of dealing with the problem. Yet the practice had clear caste-class effects. Poor and minority offenders were always victims of the laws. Affluent white criminals, the few there were, were never forced to undergo sterilization. These race/class effects were hardly the unintended consequences of sterilization policies. In Oklahoma, a law called for the sterilization of a "habitual criminal," defined as any individual being convicted of two or more felonies with

three crucial exceptions: the law specifically excluded those convicted of revenue offenses (e.g., tax evasion), embezzlement, and political crime (such as bribery).[64] The poor and the minority, especially in Oklahoma in the 1940s, were not in a position to embezzle or defraud the tax collector, and they hardly had income to tax. The disparity was dramatic enough to move the Supreme Court to hear the case.

The court, citing the equal protection clause of the Constitution (in the Fourteenth Amendment), struck down the Oklahoma law. There was some question whether the equal protection clause actually applied in the decision, since arguably qualitatively different crimes should carry qualitatively different punishments. But even those who disagreed with the logic of the argument agreed with the ruling. The court in handing down the decision cited the vital role procreation plays in perpetuating the race. "The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects," the justices argued. "In evil or reckless hands, it can cause races or types which are inimical to the dominant group to wither and disappear."[65] Only a decade and a half earlier the High Court had enthusiastically endorsed sterilization largely based on strengthening the white race; now it was overturning a law because it portended race-eugenical policy.

We should be cautious about reading humanitarian concern into the Court's decision. Given the evidence of the legal sanction of eugenics policies and its

---

[64] Habitual Criminal Sterilization Act Oklahoma Statutes Annotated Title 57, ∞ 171, et seq.; L. 1935, 94 et seq. In a decision striking down the law the high court referenced the formal inequalities in the act, i e , what is the difference between larceny and embezzlement? Their example, comparing a chicken thief with a bank clerk, said it all.

[65] *Skinner v Oklahoma ex rel. Williamson,* 316 U.S. 535 (1942)

widespread practice in the United States during the court's deliberations, it is clear that sterilization policies had fallen into disrepute mainly not because Nazi Germany had carried them to their logical conclusion — as disturbing as this was, the US was the pioneer in sterilization — but because of the intersection of these policies with the overbearing racism of Nazi Germany created a public relations problem. Moreover, the law struck down was for the sterilization of habitual criminals. Sterilizations of the mentally retarded and other categories continued. As a result of the narrow decision and a complete failure to advance any policy of affirmative prevention of involuntary sterilizations, the *explicit* use of the practice declined in the United States while de facto discriminatory sterilization continues to be widely practiced.[66]

We should also emphasize that this was the age of consensus theory in the academy and functionalist scholars played a major role in recoding racism. Elites began an intellectual shift from the social Darwinian struggle of survival of the fittest attendant to the liberal industrial capitalist order, to a communitarian philosophy appropriate to the corporate capitalist order. Through this modification, the preservation of the dominance of the white race and the privileges of the affluent classes was reconfigured as a contest over cultural values rather than as a struggle over social resources. The language of class and especially class conflict was cleaned up and replaced by the myths of the broad middle class and shared culture. The realities of racial struggle were re-conceived as temporary conflict between ethnic

---

[66] See Margaret L. Anderson, *Thinking About Women: Sociological Perspectives on Sex and Gender*, 3rd ed. (New York: Macmillan, 1993); Diana Scully, *Men Who Control Women's Heath. The Miseducation of Obstetrician-Gynecologists* (Boston Houghton Mifflin, 1980).

groups. The theme of identifying Americanism with normalcy was not new, of course; but it was increasingly perfected in the period following the Great Depression.

Solutions to the global depression had put the imperialist nations on a path to war, which smashed the national socialist alternative and led to the reconfiguration of the world along bi-polar lines of capitalism vs. communism, or, as state elites framed it, "democracy vs. totalitarianism." In this struggle, the United States, along with Great Britain and France, dissembled their imperialist systems, adopting the less overtly militaristic political-economic strategy of neo-colonialism. The UN sanctioned this modification by granting nationhood to dozens of dominant ethnonational groupings in the periphery. Control would be exercised through economic coercion, client regimes, and secret agencies (assassinating leaders, destablizing governments, engineering elections, etc.). However, military intervention was often required and the level of interstate violence would actually increase in this period. This transformation was organized under the rubric of the "cold war."

Cold War and Cold Warriors – Anti-Communism and American Race Relations

Like the experience with Nazi Germany, only much more dramatically, the cold war and the question of US imperialism raised the spectre of contradiction. US historians, with their rhetoric of "isolationism," had constructed an image of the United States as disengaged from the world until being forced by the rise of fascism, and then afterwards by the evil of communism, to change its policy to "internationalism." The evidence that can be marshaled for this point is extensive, since this was pivotal to policy elite discourse at the time, but we may go no further

than President Roosevelt, who characterized the United States as a "lone island in a world dominated by a philosophy of force." Given this, Roosevelt said, America must become the "arsenal of democracy."[67] America was re-conceived as a "reluctant warrior" for democracy and freedom. Unfortunately for policymakers, outside the United States the recipients of the reluctant warrior's "big stick" were immune to the myth and US planners knew this.

During the war, when the US needed Russia, a massive propaganda campaign had persuaded Americans to trust the Soviets. *Life* magazine in 1943 ran a glowing story about Russian accomplishments, even calling Lenin "perhaps the greatest man of modern times."[68] Now that fascism was defeated, there was no reason to talk of Russia's accomplishments. Truman had no love for the Soviet Union. The day after the Nazis reneged on the Soviet-German non-aggression pact of 1939 Truman stated, "If we see that Germany is winning, we ought to help Russia, and if Russia is winning, we ought to help Germany, and that way let them kill as many as possible."[69] With the end of the war, the Truman administration, with his "Campaign of Truth" strategy, waged a psychological war against the consciousness of America. As quickly as the Russian bear had been de-fanged, US propagandists re-fanged her . . . and them some.

---

[67] Roosevelt, quoted in Daniel C Thompson, "The Role of the Federal Courts in the Changing Status of Negroes Since World War II," *Journal of Negro Education* 30 (1961), 100. This characterization functions to blind us to the reality that the United States throughout its "isolationist" period was one of the leading imperialist nations and that the US always dominated the world under a philosophy of force. For a history of US "intervention" around the world, see Appendix II "Instances of Use of United States Armed Forces Abroad, 1798-1945," of Blum, *Killing Hope*

[68] Quoted in Blum, *Killing Hope*, 11 In the first red scare a man was jailed for six weeks for saying almost the same thing (according to his accusers)

[69] Harry S Truman, quoted in Blum, *Killing Hope*, 11.

There was great concern among US elites that the Soviet Union was exploiting America's racial history to make propaganda gains in the arena of the international class struggle. This was affecting US imperial interests in the capitalist periphery. White Americans were faced with a dilemma: "On one hand, the United States claimed that democracy was superior to communism as a form of government, particularly in its protection of individual rights and liberties; on the other hand, the nation practiced pervasive race discrimination."[70] To Soviet totalitarianism the US propagandist counterpoised democracy, especially the power to popularly elect leaders. Woodward wrote the post-WWII America "presented herself to the world as a model for how democracy, power, opulence, and virtue could be combined under one flag."[71] Yet blacks in the South could not vote, nor did they share in the power and opulence Woodward talked about. Many countries, not just state socialist societies, were taking note of these and other repugnant US social facts, such as lynching and anti-amalgamation laws. In 1945-46, the Soviet Press did indeed begin publishing articles about the US race problem. That what the Soviets were reporting was true was probably all the more distressing to elites throughout the capitalist alliance — not just the US was concerned; other capitalist countries had an interest in the US image, too.

In 1947, *Public Opinion Quarterly*, "long regarded as among the most prestigious mainstream academic journals of communication research,"[72] published a "study" by

---

[70] Mary Dudziak, "Josephine Baker, Racial Protest, and the Cold War," *The Journal of American History*, 81 (1994), 544

[71] C Vann Woodward, *Thinking Back The Perils of Writing History* (Baton Rouge, 1986), 102.

[72] Christopher Simpson, *Science of Coercion: Communication Research and Psychological Warfare 1945-1960* (New York Oxford University Press, 1994), 13 Between 1945 and 1960 the three leading social science journals — the *American Journal of Sociology, American Psychologist,*

Alexander Dallin titled "America Through Soviet Eyes."[73] Dallin surveyed several Soviet publications (*Pravda, New Times, Trud, World Economics and World Politics*, etc.) and abstracted four categories of anti-American propaganda: (1) critique of militarism and imperialism; (2) pro-Soviet statements uttered by Americans; (3) identification of US reactionaries, i.e., fascists, racists, and red-baiters; and (4) demonstrations of economic strife (unemployment, inflation, etc.). The most remarkable aspect of Dallin's article is how accurate the Soviet's criticisms of American social life were (although I would not have been allowed to say this in 1947).

Examples of Soviet propaganda: During the post-WWII military drawdown "[w]omen and Negroes are the first to be discharged" from their jobs (*New Times* 1945). The "the real masters of the US [are] several dozen financial and industrial magnates" (*New Times* 1946). The American Federation of Labor (AFL) consists of "servants of American reaction [whose purpose is] to bring about a maximum weakening of organized labor in the United States and throughout the world" (*Pravda* 1946). American elites grew rich in the war and would "greet a new war as a means of escaping the necessity of solving complicated economic problems having to do with re-conversion, unemployment, and the struggle for markets" (*Pravda* 1946), consequently the US is "employing all its forces for military industry" (*World Economics and World Politics* 1946). American life is harmonized with the "typical American business attitude even in such affairs as love" (*Pravda* 1946). In other articles,

---

and *Public Opinion Quarterly* — were basically in the service of the US military-industrial complex, although these three journals have always been bastions of American patriotism.

[73] Alexander Dallin, "America Through Soviet Eyes," *Public Opinion Quarterly*, 11 (1947).

Soviet analysts pointed to the ties between US politicians and the Third Reich (*Pravda* 1946), the reactionary position of the United States to Greece (*New Times* 1946), and that the fact that "the minds of many Americas are poisoned by racism" (*Pravda* 1946). Soviet criticism of US policy towards Cuba painted a stark reality: "prostitution and marihuana . . . are inseparable features of Cuba's social and economic order . . . In the center [of Havana] adults and children can be seen searching for edible scraps of garbage outside the mansions of the wealthy" (*New Times* 1945).[74]

All pretty damning stuff. The article paradoxically reveals the depth of indoctrination of elites and those they thought would be reading Dallin's piece (mainly other elites). Most Americans would probably only ever get to read Soviet propaganda if they happened to catch Dallin's study. That this fact was not particularly bothersome to elites reveals their confidence in the ideological hegemony they were manufacturing. Who would believe Soviet propaganda anyway? This paradox is found everywhere, for example in Truman's speeches where he characterized "communist propaganda" as being "so false, so crude, so blatant, that we wonder how men can be swayed by it. We forget that most of the people to whom it is directed did not have free access to accurate information. We forget that they do not hear our broadcast or read impartial newspapers." The reasonable question to ask, as Mark Crispin Miller observes in referencing this passage, if propaganda is all these

---

[74] Dallin, "Through Soviet Eyes," 31-37 One of the more creative criticisms of United States culture (though no less true) was what the Soviets referred to as "an atomic psychosis," i.e , America's obsession with the atom bomb In 1946, *Pravda* wrote, "In the stores you can buy atomic ties, in the restaurants they serve you atomic cocktails, on the stages of variety shows you see atomic blondes. America is in a state of atomic dizziness," Dallin, 34

things, why were elites worried about it at all? The answer, at least as far as racial matters were concerned, is that the propaganda was true. The other reassuring fact was no doubt the limited circulation of *Public Opinion Quarterly* in 1947 and the narrow range of interested readers. Chomsky is probably correct that it is the top ten percent of the population who are the most deeply indoctrinated.[75]

Therefore, their personal belief in the ineffectiveness of Soviet propaganda notwithstanding, elite's did believe it would have an effect on the "average man," perhaps testifying to their belief in "average man's" stupidity, and concern over the damage caused by Soviet propaganda not only to capitalism's prestige but to the racial order led to open repression of critics of the United States. A period not unlike the Palmer raids emerged and spread across the nation; only this time dissidents were not deported but contained, thus reflecting a shift in concern from not only the domestic racial scene, but to America's interests in the capitalist periphery. As Bowner puts it, "World War II internationalized race. Racial segregation was no longer simply a domestic affair. Caste segregation virtually disqualified the American system in its competition with the Socialist world for influence within a world community that began to compete for influence over independent African and Asian states."[76]

Prominent black critics like Du Bois, Paul Robeson, and William Patterson of the Civil Rights Congress, had their passports confiscated. Robeson's comparison of US policy to that of Hitler and Goebbels and his friendliness towards the Soviet Union

---

[75] *Manufacturing Consent: Noam Chomsky and the Media*, prods./dirs. Mark Achbar and Peter Wintonick, prod Adam Symansky, Necessary Illusions in co-production with National Film Board of Canada (New York: Zeitgeist Films Ltd , 1994)

[76] Bowser, "Race Relations," 310.

especially raised reactionary fury. The State Department stated its reasons for invalidating Robeson's passport: "Robeson's travel abroad at this time would be contrary to the best interests of the United States .... [His] frequent criticisms of the treatment of blacks in the United States should not be aired in foreign countries."[77] Others, such as Josephine Baker, whose criticisms of US race relations were equally anti-communist, were the target of defamation campaigns (even as she was praised by the virulent anti-communist magazine *Counterattack*). She had the gall to draw a semblance between the lynching of blacks and the state execution of blacks (that parallel was drawn again on June 22, 2000, when Gary Graham, just before receiving a lethal dose of poison in "the Walls" in Huntsville, Texas, observed that he was being lynched). Black politicians subservient to the state, such as Adam Clayton Powell, condemned Baker's "anti-Americanism."[78]

Sometimes there was tolerance for demands for racial equality but only as long as it was accompanied by the statement that the United States was better able to secure this equality and had been making progress in race relations; otherwise, critics were

---

[77] Quoted in Dudziak, "Josephine Baker."

[78] "There is something essentially absurd about a Negro politician in racist/capitalist America," Marable writes, "The instance that the Black politician accepts the legitimacy of the State, the rules of the game, his/her critical faculties are destroyed permanently, and all that follows are absurdities," *How Capitalism Underdeveloped Black America: Problems in Race, Political Economy and Society* (Boston, MA: South End Press, 1983), 170 Though the point is overstated, it does carry in it a kernel of truth. Marable is right that the political apparatus is designed and certainly functions to exclude blacks. Even when blacks are present, their ideas are excluded from serious consideration This forces them into compromise, which is necessarily compromise with a racist/capitalist order What Marable misses, I think, is the importance of staying engaged and keeping issues alive in a public forum This can bring some benefit to suffering people and may have a long-range impact One should not commit her/himself to only revolution or reform. Both have a role to play, and the latter comes with entering the system. The challenge is to remain dedicated to social transformation and not be co-opted

"misrepresenting" and "distorting" race relations in the United States. But staunch anti-communists, like FBI director J. Edgar Hoover, understood that criticism of racism automatically entailed criticism of capitalism no matter how it was coded, and therefore critics were to branded "un-American" and spied upon and repressed.[79] Others, like Senator Joseph McCarthy, chairman of the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, saw the communist octopus lurking behind everything, its tentacles reaching into everyone, a "comic-strip vision of the world," where "American supermen [were] fighting communist evil everywhere." In either case, the far right cold warrior was unable to think beyond the narrow provincialism that marked his thought to find a non-authoritarian solution to the problem. For him, critics of America had to be neutralized in some fashion. A "comic-strip vision," as Blum describes it, "graduated from a cynical propaganda exercise to a moral imperative of US foreign policy."[80] It graduated to a moral imperative in US domestic policy, as well.

Thus during the 1950s, the government aggressively persecuted groups and individuals who held views contrary to the ideological line of the United States.[81] Politicians, such as Richard Nixon and McCarthy, claimed that communists had infiltrated key levels of government, and held dramatic show trials in the House and

---

[79] African American organizations also exploited fear of communism, for instance calling on J Edgar Hoover to denounce segregation as playing into the hands of communism, but Hoover refused to involve himself.

[80] Blum, *Killing Hope*, 12

[81] The witch hunts were legitimated under the Internal Security (McCarran) Act of 1950 which articulated a theory that there was a communist conspiracy to take over the world. Feeling no shame over the Japanese internment experience, Title II of the act, which remained in the law until 1971, made provisions for the establishment of concentration camps The act established the Subversive Activities Control Board that stood from 1950 to 1976.

Senate to flush the reds out.[82] It might have made for great theatre had it not destroyed so many good people. Those who remained were required to take loyalty oaths pledging their allegiance to the United States. Leftists struggling to save their careers were compelled to "rat out" their comrades (many in renouncing their communist sympathies enthusiastically carried out the demand). A wave of fear issued, a crime wave not unlike the "witch hysteria" of the *ancien régime*. The government tightened controls over who entered the country through the Immigration and Nationality (McCarran-Walter) Act in 1952. The act reduced immigration from nonwhite countries, removed deportation proceedings from courts to special review boards (thus disabling due process), and permitted the deportation of "subversives."[83] Similar to Goebbels' conception of the Jew as having "the same function as a poisonous bacillus . . . in the human organism: to mobilize the resistance of healthy forces or ensure that a living being whose days are numbered dies more quickly and more peacefully,"[84] the diabolical image of the communist interloper created for cold warriors the "forced" choice of either total quarantine and eradication of the virus or mutually assured destruction through the proliferation of nuclear weapons.[85]

Organizations in civil society followed the lead of the government and repressed and expelled members suspected of being "reds." Communists were said to

---

[82] Griffin Fariello, *Red Scare: Memories of the American Inquisition* (New York W.W Norton, 1995)

[83] Fariello, *Red Scare*, 18-19

[84] Griffin, *Fascism*, 120

[85] It is sobering to pause and reckon the collective paranoia that led elites to produce enough atomic devices to destroy the only living world in the solar system

have "penetrated" labor unions, civic associations, and public schools.[86] In response to the "red peril," the AFL-CIO, pulled into the coalition with capital, purged the unions of leftists.[87] The purges were coordinated with the state through the Taft-Hartley Act of 1947, Section 9 of which required yearly affidavits swearing they were not members of the Communist Party and imprisonment on perjury charges if they were deceptive in submitting to their oaths.[88] The NAACP, also incorporated in the coalition, secured the internal security of their organization for the sake of the nation. Future Supreme Court justice Thurgood Marshall, then lead attorney for the NAACP, bragged that he did more to purge communists from the organization than did executive secretary Walter White, a noted anti-communist.[89] The nation's university system, under pressure from the House Committee on Un-American Activities, was purged of professors who appeared to teach theories consistent with Marxism (which was anything to the left of Keynes). Harvard, MIT, Columbia, and UCLA, all purged their campuses of "subversives."[90] The universities had other reasons to comply with the

---

[86] See J. Edgar Hoover, *Masters of Deceit: The Story of Communism in America and How to Fight it* (New York: Holt, 1958)

[87] Jim Smith, "Lane Kirkland — The AFL-CIO's Last Cold Warrior," *Z Magazine*, July/August, 1995.

[88] The law was largely authored by the National Association of Manufactures. See Fariello, *Red Scare.*

[89] Juan Williams, *Thurgood Marshall. American Revolutionary* (Times Books, 1997). See also Wilson Record, *Race and Radicalism. The NAACP and the Communist Party in Conflict* (Ithaca, 1964) Hoover, *Masters of Deceit*, goes into considerable detail on the efforts of communists to "infiltrate" the NAACP.

[90] Simpson, *Science of Coercion* The persecutions were carried out under various pieces of legislation. One law, the Ober Anti-Communist Act, while eventually struck down by the Supreme Court, was the model law and was adopted by several states

state's desires: their departments were being built by governmental organization of the intelligence and propaganda apparatus of the Cold War United States.[91]

More sophisticated political thinkers of both parties, but primarily the Democratic party, would devise another strategy, one that exploited liberal idealism. Secretary of State Dean Acheson expressed the concern of many cold war liberals when he wrote, "The existence of discrimination against minority groups in this country has an adverse effect upon our relations with other countries." He referenced not only Soviet propaganda, but the general attitude of other countries to the United States. "We are reminded over and over by some foreign newspapers and spokesmen, that our treatment of various minorities leaves much to be desired .... Frequently we find it next to impossible to formulate a satisfactory answer to out critics in other countries."[92] He continued, "An atmosphere of suspicion and resentment in a country over the way a minority is being treated in the United States is a formidable obstacle to the development of mutual understanding and trust between the two countries." He then called for something to be done about race relations in the United States to improve international intercourse: "We will have better international relations when these reasons for suspicion and resentment have been removed."[93] Dudziak, who has produced comprehensive studies on this subject, writes, "Concern about the impact of

---

[91] See André Schiffrin, ed , *The Cold War and the University: Toward an Intellectual History of the Postwar Years* (New York The New Press, 1997) Articles written by Noam Chomsky, Immanuel Wallerstein, Howard Zinn, and many others, detail various facets of the intellectual structure of the cold war and its institutional linkages. See also Christopher Simpson, *Science of Coercion· Communication Research and Psychological Warfare 1945-1960* (New York Oxford University Press, 1994), Paul Diesing, *How Does Social Science Work? Reflections on Practice* (Pittsburgh· University of Pittsburgh Press, 1991).

[92] Dudziak, "Josephine Baker," 544-545.

[93] Quoted in Dudziak, "Josephine Baker," 545-546

race discrimination on foreign relations permeated government-sponsored civil rights efforts in the late 1940s and early 1950s."[94] For instance, the Truman administration argued before the Supreme Court that recognizing the civil rights movement was vital to world peace and national security. Dudziak observes, "As was true in so many other contexts during the Cold War era, anti-communist ideology was so pervasive that it set the terms of the debate on all sides of the civil rights issue."[95]

However, it must be emphasized that liberals could not pursue a path completely independent of the anti-communist spectacle, even if they wanted to — those subjects who questioned the Inquisitor's faith in the new *Malleus Maleficarum* came under suspicion themselves. To convince the witch-hunters of their anti-communist bona fides those in Truman's administration, such as his attorney general, J. Howard McGrath, stated, "There are today many Communists in America. They are everywhere — in factories, offices, butcher stores, on street corners, in private businesses. And each carries in himself the germ of death for society."[96] Liberals to the left of Truman on civil rights, such as Hubert Humphrey, would sponsor legislation like the Communist Control Act of 1954.

But most of this was symbolism over substance. A pamphlet, *The Negro in American Life*, translated into several different languages and distributed throughout the world, depicted happy, contented blacks in racially-mixed housing projects, schools (with African-American teachers), and workplaces.[97] Prominent African

---

[94] Dudziak, "Josephine Baker," 546
[95] Dudziak, "Cold War Imperative," 111
[96] Quoted in Fariello, *Red Scare*, 27.
[97] Dudziak, "Josephine Baker," 567

Americans were carefully selected by the State Department and sent on high-profile speaking tours touting America's progressive stance on race relations (when Louis Armstrong refused to go the FBI branded him a communist). The government only offered up "acceptable activists," such as NAACP executive secretary Walter White and attorney Edith Sampson. Still, compared to the bludgeon of the FBI and the congressional committees like House Committee on Un-American Activities (HUAC),[98] cold war liberalism would prove to be much more successful. "Through limited social change, advertised through American propaganda, there was possibility of bolstering American prestige and credibility."[99] This promise would put the nation on a course to Supreme Court decisions and legislation favorable to blacks.

At the same time that US propagandists were conniving to project an image of the United States as racially progressive, the Truman Administration was developing a vast security net across Europe. The military infrastructure for this was authorized by the National Security Act and the funding came from the multi-billion dollar Marshall Plan.[100] De-nazification was quickly abandoned (as early as 1945) and an extensive neofascist network supplied many of the operatives for the security net.[101] American elites resurrected the Gehlen spy network on the eastern European front to carry out

---

[98] The HUAC would exist between 1938-1975. It had an earlier history as the Dies Committee. Between 1945-1857 the committee would hold some 230 meetings and hear testimony from thousands of people. Fariello, *Red Scare*.

[99] Dudziak, "Josephine Baker," 570

[100] The National Security Council was established by the National Security Act of 1947 (PL 235 - 61 Stat 496, U.S C 402). Two years later the NSA was amended by the National Security Act Amendments of 1949 (63 Stat. 579, 50 U S C 401 et seq). That year the Council was placed in the Executive Office of the President

[101] Christopher Simpson, *Blowback* (Weidenfeld and Nicolson, 1988); Russ Bellant, *Old Nazis, the New Right, and the Republican Party* (Boston, MA· South End Press, 1991).

surveillance of Soviet activities.[102] "Instead of destroying the Nazi infrastructure as promised, U.S. policy makers opted to retain a crucial part of its for use against the Soviet Union."[103] The AFL-CIO with CIA money set up capitalist-front unions to counter "socialist" and "communist" unions.[104] The US manipulated elections in Italy in 1947 to elect the Christian Democrats and destabilized Greece in the last 1940s to secure a client-state — all part of the "Truman Doctrine." The government recruited and dispersed former Nazi party members, German military and intelligence officers to points throughout the Americas. Weapons designers were smuggled into the United States. Former SS officers and other Nazis and fascists, such as Klaus Barbie, became military advisors to US-supported third world police states. These figures, along with US citizens and citizens from other countries, became drug dealers, weapons merchants, and terrorists. They specialized in teaching Latin Americans, organized into death squads, the techniques of torture developed by the Gestapo.[105] Thus as the

---

[102] Reinhard Gehlen had headed Nazi military intelligence on the Eastern Front. The network was reconstructed under US direction in 1949 George Kennan, who headed up the State Department planning staff until 1950, along with Allen Dulles, director of the CIA, set up the Gehlen network.

[103] Martin A. Lee, *The Beast Reawakens* (Boston Little, Brown and Company, 1997), 35. Lee writes, "The ink had barely dried on the Yalta agreements . . . when Gehlin and three of his top assistants where at Fort Hunt, Virginia, wining and dining with U.S. officials, whose appetite for Cold War gossip has fast become gluttonous," 33.

[104] *Inside the CIA· On Company Business*, 3 vols , dir. Allan Francovich (MPI Home Video, 1980)

[105] Noam Chomsky, *Keeping the Rabble in Line* (Monroe, ME: Common Courage, 1994). See also Noam Chomsky and Edward S. Herman, *The Washington Connection and Third World Fascism* (Boston South End Press, 1979); A J Langguth, *Hidden Terrors* (Pantheon, 1978). It should be emphasized that former Nazis participated in this Some of the most notorious figures, like Dan Mitrione, were not Nazis Mitrione, who taught torture techniques in Brazil and Uraguay was given a hero's burial in the US when he died. When alive, he would pick beggars and urchins off the street at random and use them as demonstration subjects for his students The vice-president attended his funeral.

US cultivated an image of anti-racism abroad, they cultivated a vast fascist network that reached across the globe, as well as at home.

Why would the United States turn to fascists and Nazis right after they had just finished going to war against them? First, as we have seen, the United States has a deep legacy of right wing thinking and practice. America has been the leader among Western nations in developing the machinery of racial control, from ghettoization to sterilization. It was probably only natural that the US would join with its pre-WWII allies (this point has been undertheorized in the literature on the US-fascist alliance). Second, both countries were capitalist and had established an intricate economic relationship long before the war.[106] The United States protected US companies operating in Nazi Germany during the war, even reimbursing the companies for collateral damage.[107] Third, after the war, a much greater threat loomed: *communism.* Fascism, a capitalist social formation, albeit an extremely pugnacious one, was only a problem when it caused problems for the world capitalist order — Japan, Italy, and Germany were tolerated, even adulated, until they began attacking other capitalist countries. Communism, on the other hand, was by definition a constant threat to capitalism since it sought to overthrow it (if only in rhetoric).

George Kennan, a major figure in the US State Department in the 1940s, laid out the long-range policy framework for the US in the post-war future. After noting that the US has "about 50% of the world's wealth, but only 6.3% of its population," he

---

[106] Charles Higham, Trading with the Enemy (Dell, 1983), Daniel Guerin, *Fascism and Big Business* (New York: Pathfinder, 1973); Dayer and Botting, *Nazi Gold* (Grove Press, 1984)

[107] Michael Parenti, "Fascism, The False Revolution"

concluded that "we cannot fail to be the object of envy and resentment. Our real task in the coming period is to devise a pattern of relationships which permit us to maintain this position of disparity." The frankness of Kennan's comments indicates his audience, namely other policy elites. The patterns of relationships Kennan had in mind took time to develop, but one thing was clear in his eyes: democracy had to be thwarted at home as well as abroad. He writes, "we will have to dispense with all sentimentality and day-dreaming .... We should cease to talk about vague and ... unreal objectives such as human rights, the raising of living standards, and democratization. The day is not far off when we are going to have to deal in straight power concepts. The less we are then hampered by idealistic slogans, the better." He followed this line of reasoning to its logical and authoritarian conclusion: "The final answer might be an unpleasant one, but ... we should not hesitate before police repression by the local government." To soothe the concerns of those who respected freedom and human rights, Kennan reassured them that they had moral authority on their side. "This [repression] is not shameful since the Communist are essentially traitors," he writes; "it is better to have a strong regime in power than a liberal government if it is indulgent and relaxed and penetrated by Communists."[108]

The network of state domination set up by the United States following WWII, along with corporate and private and public universities, developed consensual

---

[108] Policy Planning Study 23 (PPS 23, Kennan 1948) Kennan now expresses regret at not clarifying his rhetoric in key documents. In the famous X-article (published in the Council of Foreign Relations journal *Foreign Affairs*, July 1947), he failed to note Russia's weakness and to specify that in "containment" he was talking about *political* containment, not a military containment. George Kennan, *Memoirs 1925-1950* (New York. Pantheon Books, 1967).

methods of domination, including polyarchic forms of political development, psychological operations, etc.,[109] to accompany its repressive presence. US state agencies, such as the State Department, Agency for International Development, the National Security Council and its intelligence agency, the Central Intelligence Agency, and organizations created by corporate leaders and other elites, such as the Council of Foreign Relations and the Trilateral Commission, all joined to secure racial and capitalist interests globally.[110] These techniques were all turned inward with the rise of the black struggle.[111]

National Security Council 68, written by Paul Nitze, set forth key ideological elements that would accompany the concrete strategy the United States would pursue within the cold war framework, and in doing so he projected the United States as a society that had already achieving substantive racial equity. He stated that "the cold war is in fact a real war in which the survival of the free world is at stake." The Soviet Union was portrayed as an evil empire which by nature is required to destroy freedom wherever it found it. In contrast, the United States was painted as the bastion of liberty and justice, seeking to preserve the spark of freedom and importance in every living

---

[109] Simpson, *Science of Coercion*. James A Smith, *The Idea Brokers. Think Tanks and the Rise of the New Policy Elite* (New York The Free Press, 1991); *Paul Diesing, How Does Social Science Work? Reflections on Practice* (Pittsburgh, PA University of Pittsburgh Press, 1991) The strategy of polyarchy, Robinson argues, had become central to achieving post-Cold War consensus around capitalism. See William I. Robinson, *Promoting Polyarchy: Globalization, US Intervention, and Hegemony* (New York Cambridge University Press, 1996). For a summary of these ideas, see Robinson's "Globalization, the World System, and 'Democracy Promotion' in U.S. Foreign Policy," *Theory and Society* 25 (1997)

[110] Holly Sklar, ed , *Trilateralism. The Trilateral Commission and Elite Planning for World Management* (Boston· South End Press, 1980)

[111] For a general overview of the national security state to 1976, see David Wise, *The American Police State* (Random House, 1976).

person. Nitze wrote that the role of the United States was "to assure the integrity and vitality of our free society, which is founded upon the dignity and worth of the individual." In describing the United States in April, 1950, he used such incredible words as "marvelous diversity," "deep tolerance," and a desire "to create and maintain an environment in which every individual has the opportunity to realize his creative powers."[112]

The parallel of Department of State rhetoric and Goebbels' famous contest of "Christ and Marx" is inescapable save the cynical dissembling on race (Nazis, like US southerners, were usually honest about the racism that lay behind their policies).[113] The goal and the result of pitching the struggle as between good and evil was to achieve mobilization for concerted action. Even those elites who later came to fear the military-industrial complex that the cold war rhetoric was justifying -- such as Eisenhower in his farewell address to the American people (and in his burying of commission reports recommending increased military spending[114]) -- still held that it was a "necessary evil" in securing the "Grand Area." Just as blacks were the cause of racism, communists were to blame for US military belligerency. Even though it was

---

[112] "NSC 68: United States Objectives and Programs for National Security," *Naval War College Review*, 27 (May-June, 1975): 51-108 Published earlier by US Department of State, *Foreign Relations of the United States*, Vol I (1950)

[113] Goebbels, Joseph, "Christ-Socialism," in *Fascism*, ed. Roger Griffen (New York: Oxford University Press, 1995), 120.

[114] Eisenhower buried the Gaither Committee report that advocated a conventional military build-up The contents of the report were leaked and the Democrats used the report to attack the Eisenhower administration for being weak on national defense Anna Kasten Nelson, "President Kennedy's National Security Policy. A Reconsideration," *Reviews in American History*, 19 (1991). Herman and Chomsky note in 1979 that "the liberal intelligentsia were as critical of Eisenhower for his insufficient militancy as many of them are now of Carter for his vacillation in the face of threats to U S. interests. Noam Chomsky and Edward S. Herman, *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology* (Boston: South End Press, 1979), 20.

acknowledged that the Soviet Union was on its knees following WWII, having lost 23 million of its citizens to Nazi terror and their infrastructure destroyed, the threat of "godless communism" could only be met by pursuing an expensive military-political program of "rollback."[115] The best defense was a strong offense (the "realist" posture among theories of "diplomacy"). In this way capitalist encirclement was elaborated.

Nitze's vision was suited to cold war liberal ideology. Communists had come to power in China in 1949 and Maoism threatened to sweep the West's Asian colonial dependencies. The war in Korea, prosecuted by the Truman to "contain Soviet expansionism," deepened the commitment of Democratic party leaders to NSC 68. Their hardening cold war stance was galvanized by the constant pressure from the Republican right who were steadfastly holding to the line that the Democrats were "soft on communism." The Democratic party, even more so than many Republicans (especially Dwight D. Eisenhower) supported big military budgets. Their control of the Congress (except for a brief two year period) ensured heavy defense spending. In 1950, the US budget was around 40 billion dollars with about 30 percent dedicated to defense spending. Five years later the defense budget would be 40 billion dollars comprising 65 percent of the federal budget. In 1996 dollars, this represents an increase from 133 billion to 344.5 billion dollars.[116]

Anti-communism and the cold war fundamentally determined the lives of people around the world. The goals of post-war planners were carried out at a

---

[115] The Soviet Union's capability have always been exaggerated to justify US military expenditures See Tom Gervasi, *The Myth of Soviet Military Supremacy* (Harper and Row, 1986)

[116] Martin Calhoun, "U S Military Spending, 1945-1996," The Center for Defense Information, 1779 Massachusetts Avenue, N.W. Washington D.C. 20036, July 9, 1996

tremendous cost to human lives and freedoms everywhere.[117] Almost all of us who are alive today were pawns in the global chess match and everybody is effected by it. That the public could be so quickly and completely indoctrinated in a central idea about the world, and that this idea could structure our lives for so long and in such profound ways, demonstrates the power of ideology to determine core features of reality.[118] But more important, it shows how American culture carries within it the deeper foundation that made cold war hysteria possible. While Americans are not easily motivated to act for a good cause, the historical record indicates that they are predisposed to panic and will support tyranny — as long as that tyranny it is not directed at them or they do not recognize at the outset the boomerang. Reflexive pro-capitalism and white supremacy are the grounds for the authoritarian consensus.

The culture-ideological structure of anti-communism would have four long term effects.[119] The first I am just now mentioning, but it needs to be in the causal mix.

---

[117] Just US actions alone in prosecuting the Cold War are unparalleled compared to pre-20th century history. "In the pursuit of counterrevolution and in the name of freedom, U.S forces or U.S -supported surrogate forces slaughtered 2,000,000 North Koreans in a three-year war, 3,000,000 Vietnamese; over 500,000 in aerial wars over Laos and Cambodia; over 1,500,000 million in Angola; over 1,000,000 in Mozambique; over 500,000 in Afghanistan; 500,000 to 1,000,000 in Indonesia, 200,000 in East Timor, 100,000 in Nicaragua . . . , over 100,000 in Guatemala . . , over 700,000 in Iraq; over 60,000 in El Salvador; 30,000 in the 'dirty war' of Argentina . . ; 35,000 in Chile; and many thousands in Haiti, Panama, Grenada, Brazil, South Africa, Western Sahara, Zaire, Turkey, and dozens of other countries, in what amounts to a free-market world holocaust," Michael Parenti, *Blackshirts and Reds. Rational Fascism and the Overthrow of Communism* (City Lights Books San Francisco, 1997), 25. See also William Blum, *Killing Hope US Military and CIA Intervention Since World War II* (Monroe, ME Common Courage Press, 1995).

[118] One would scarcely think this would need to be emphasized, except that there are so many theoretical perspectives that treat ideology as a superficiality

[119] The depth and quickness with which the public was indoctrinated with anti-communist ideology, as well as consumerism, which was also developed and disseminated at this time, are instructive for social-psychological theories. For a study of the development of corporate consumerism see Roland Marchand, *Creating the Corporate Soul· The Rise of Public Relations and*

Anti-communism, at one level a struggle against atheism, allowed fundamentalist Christianity to worm its way more deeply into the fabric of US institutions, revitalizing the Puritan roots of the US social formation. This accomplishment involved in part the construction of a revisionist history. Contrary to the claim of fundamentalist Christians that "God was taken out of the public square in the 1950s and 1960s," pregnant bulbs of evangelical Christianity sprouted and burst open everywhere in the 1950s-60s, their growth fostered by government policy.[120] Anti-communism and Christian fundamentalism went hand-in-hand. The conservative Christian movement, portraying their members as an oppressed minority under siege by a pervasive communist-inspired secular humanism, allowed the entrenchment of racist ideology and provided a counterpoint to the Christian-based civil rights organizations (especially liberation theology, i.e., left-wing Christian socialists).

Second, the cover of anti-communism allowed the US to reconstruct the global fascist-racist network to route people's movements in capitalist periphery, including the domestic periphery, which posed a much greater threat to capitalist ambitions than Soviet expansion. The US injected itself into every nook and cranny in the world-system, manipulating elections in Europe and elsewhere and overthrowing governments from Asia to the Middle East to the Americas.[121] The behavior of the

---

Corporate Imagery in American Big Business (Berkeley, CA. The University of California Press, 1998)

[120] "In God We Trust" was ordered to be stamped on US coins by Congress in 1955. The phrase "under God" was inserted in the Pledge of Allegiance (which was, incidentally, written by a socialist) by an act of Congress in 1954 See *World Almanac and Book of Facts* (Mahwah, NJ: Funk and Wagnalls, 1995) For a general discussion on the rise of the religious right see William Martin, *With God on Our Side* (New York Broadway Books, 1996).

[121] Italy (1947-1948), Greece (1947-early 1950s), the Philippines (1940s and 1950s), Korea (1945-1953), Albania (1949-1953), etc

United States overseas was replicated at home, as the FBI took over the domestic agenda that the CIA was prosecuting world-wide, infiltrating leftwing and civil rights organizations and deploying the tactics of destabilization and neutralization. Thus the cold war apparatus supplied an important piece of the infrastructure that was used to suppress the black movement. The authoritarian character of the cold war and the climate of suspicion it germinated colored black and white relations just as it colored virtually all human relations in this period.

Third, anti-communism performed an essential function in securing for the military-industrial complex a steady subsidy from the US taxpayer. Funding the cold war apparatus in fact subsidized corporate America. The instability of capitalism in the 1930s gave elites all the proof they needed that the circuit of capital was not automatic. Keynesian economics were employed by elites, and Keynes and his disciples through Bretton Woods financial structure institutionalized a reconstituted the global economy.[122] The Keynesian strategy required the development of state capitalism, where the state took a primary role completing the circuit of capital, stepping up the cycle of scientific revolutions, and compressing the rhythms of capitalist reproduction.[123] The structure through which this was achieved in the United

---

[122] Michel Aglietta, *A Theory of Capitalist Regulation: The US Experience* (London: New Left, 1979); David M Kotz, Terrence McDonough, and Michael Reich (eds), *Social Structures of Accumulation. The Political Economy of Growth and Crisis* (Cambridge. Cambridge University Press, 1994); Alain Lipietz, *Mirages and Miracles. The Crisis in Global Fordism* (London: Verso, 1987)

[123] Mandel, *Late Capitalism*

States was the military-industrial complex, and because of its central role, those associated with it gained considerable power and status in the US hierarchy.[124]

Fourth, and this is the central argument of this section, anti-communism shaped the development of the civil rights movement in two very direct ways: (1) National security concerns led to the characterization of aspects of the civil rights movement as threats to the continued existence of American capitalism, and on these grounds the government felt obliged to suppress radical elements of the black movement. (2) The contest to frame international public images caused the government to permit a degree of racial justice to enhance the prestige of the United States as a model democracy.

During World War II, the number of prison inmates declined drastically. After the war, with soldiers returning home, prison populations began to increase again. By the end of the Korean War, the national incarceration rate was 112 per 100,000. The US prison population reached 185,780. The represented, by 1960, something of a return to the trends seen after WWI, when prison admissions climbed dramatically. See figure 2.5.1. Thus it would be more accurate to argue that the dip in prison populations was anomalous, the product of wartime conditions.

The outstanding character of prisons in this period is the increasing racial disparity in admissions. The post-war prison increase featured a declining proportion of whites, while the proportion of blacks, Latinos, and American Indians increased.

---

[124] C Wright Mills, *The Power Elite* (New York Oxford, 1956) For an analysis of the post-cold war military-industrial complex see William Greider, *Fortress America. The American Military and the Consequence of Peace* (New York· Public Affairs, 1998).

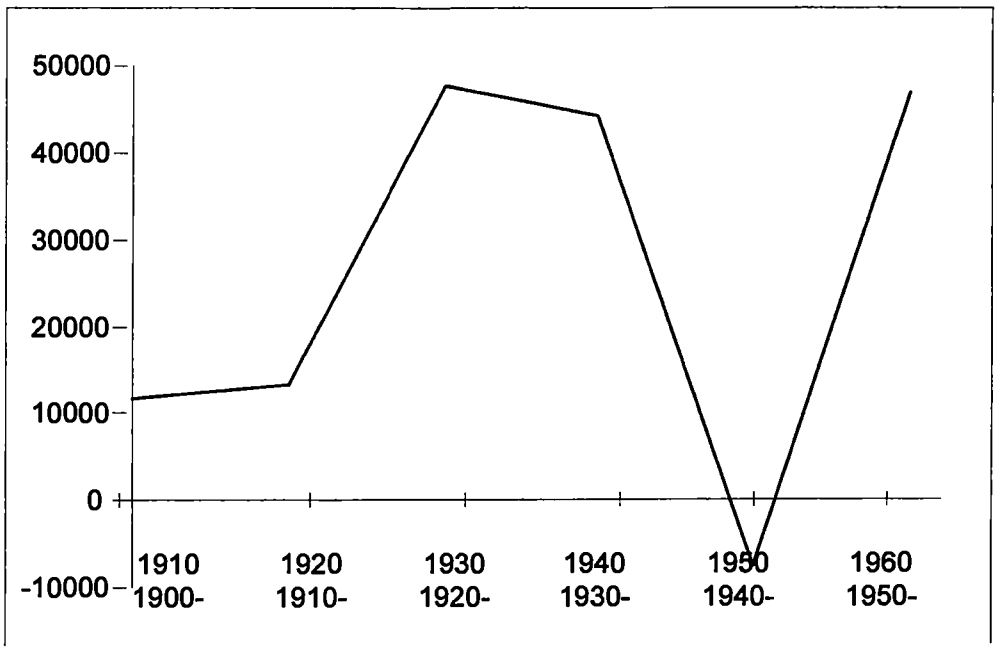


Figure 2 5 1
Change in Prison Population Each Decade 1910-1960[125]

Blacks were especially affected by racial disparity in imprisonment. For example, in 1950 in Michigan, where blacks comprised only 7 percent of the population, they represented 40 percent of Michigan's convicts.[126]

In the previous chapter, I discussed the rise of the drug control regime and its racial effects. After WWII, rising drug use, especially in the ghetto, exacerbated the effects of drug criminalization. Blacks were far more likely than whites to be arrested for drug possession. In 1950, for example, the FBI reported that throughout the United States 3,939 whites and 4,262 blacks had been arrested for drug offenses, even though

---

[125] Vincent Schiraldi and Jason Ziedenberg, "The Punishing Decade: Prison and Jail Estimates at the Millennium" (1999) Document available at Justice policy Institute, 2208 Martin Luther King, Jr. Ave. SE Washington, DC 20020, 2

[126] Scott Christianson, *With Liberty for Some: 500 Years of Imprisonment in America* (Boston Northeastern University Press, 1998).

blacks comprised less than one-sixth of the population and were no more likely than whites to abuse substances. "The 1950s were full of horror stories about the brutal and often racist way that the drug laws were administered . . . . Blacks everywhere were much more likely than whites to be nabbed on drug charges, and they invariably drew longer sentences."[127]

While blacks, Latinos, and American Indians were overrepresented among the convict population, they were being controlled by whites. Nearly all correctional officers and administrators were white. The segregation of the larger society was thus reflected in prison society. "Inmates were housed and fed in separate sections, and Negroes typically enjoyed fewer privileges in program opportunities, work assignments, and recreational activities. Most American prisons remained racially segregated well after the Supreme Court ordered the integration of the public schools."[128] Attempts to integrate prisons through the courts were met with legal arguments that denied a parallel existed between prisons and institutions under orders to integrate.

Increasing use of prisons following WWII, at least until the 1960s, did not reflect a crime threat. Crime was relatively low during the 1940s and 1950s. Academics (sociologists and criminologists) were confident that crime was at its lowest ebb possibly in US history. There may have been a trend towards higher levels of crime, but it was not dramatic and at the time it was imperceptible. Crime rates certainly did not appear to necessitate the level of carceral response. But at the same time these

---

[127] Christianson, *With Liberty for Some*, 250-251
[128] Christianson, *With Liberty for Some*, 253.

prison population levels must be put into historic context. While the numbers of people in prison between the end of WWII and 1970 were greater than in the period before, they were not significantly greater, and prison populations were over the long-haul fairly level (refer back to figure 1.2.1). This was occurring at the same time that the population was growing, so in relative terms the increases were even less significant. Thus the period between the end of WWII and the early 1970s represents a lull in the upward carceral trend. Again, what was significant during this period was the continuing shift in racial composition in the penitentiary: the prison populations were becoming increasingly disproportionately African American.

Civil Rights and the Right to be Uncivil

There were among the Democrats less "lofty" motivations than the cold war for flirting with the civil rights discourse. Concern for the black vote motivated Truman to include a moderate civil rights package in his agenda and press the Democratic Party to include civil rights in the party platform. Truman established The President's Committee on Civil Rights in 1946. Truman supported making the FEPC permanent, but there was little support for this in Congress. His stance included, most famously, desegregating the US military by executive order in 1948, which was conditioned by the nation's experience with Nazi Germany.[129] Truman's integration of the military is typically held up as the exemplar of the ultimately triumphal sense of American racial fairness, embodied in the image "Give 'em Hell Harry." This is ideologically-driven

[129] Executive Order 9981 (1948), *Federal Register* 13 (1948): 4313. Truman issued the order after the civil rights bill he sent to Congress failed. He also gave go-ahead to Justice Department attorneys to file briefs along with the NAACP in the Supreme Court challenging aspects of segregation

historical revisionism. Truman was not a very popular president nor was he seen as particularly courageous in his day.[130] Truman-the-icon is used by liberal historians to bolster the image of Truman the democratic visionary.[131] Truman, despite emotional anecdotes of standing nose-to-nose with the Ku Klux Klan, continued Roosevelt's program of moving whites out of the central cities into a middle-class lifestyle through the GI Bill and FHA loans. Truman failed to fight for appropriations for the FEPC. He did not even enforce the Supreme Court's ruling against white primaries.[132]

Behind the push for desegregating the military and other civil rights measures was a cynical political strategy. In 1947, Clark Clifford presented the president with a lengthy confidential memo setting out the president 's 1948 election strategy. Therein he warned Truman that unless the president pushed for civil rights measures "the Negro bloc . . . will go Republican."[133] He told Truman that the bolder were his

---

[130] Left out of the history are the blacks who pushed for desegregation — blacks are often recorded as passive actors in the granting of civil liberties, especially prior to the 1960s. For example, A Philip Randolph had pressured FDR in the early 1940s to desegregate the military. See Dalfiume In 1948, he pressured Truman by threatening to organize extensive protests.

[131] There are among historians critics of Truman. "I think it wasn't so courageous . . . Truman said that he was sickened when he heard about black troops who had fought heroically in Europe, came back to Mississippi, they were dumped off an army truck, and then beaten . . . . , but he didn't do very much . . [E]ven at the Democratic convention of 1948 . . there was a plank that was for a very fast desegregation of the armed forces proposed by . . . Humphrey . . . Truman opposed it. Truman said we should do it more slowly. He said, I am for legal equality; I'm not for social equality. The plank was passed against his opposition, and it was only because . . . Truman needed that black vote, that he finally came around to this achievement that belatedly he did," Michael R Beschloss, from an interview with Phil Ponce, "Military Integration One Nation, One Army," *NewsHour*, PBS, July 31, 1998.

[132] Barton J. Berstein, "The Ambiguous Legacy. The Truman Administration and Civil Rights," in *Politics and Policies of the Truman Administration*, ed Bernstein (Chicago, 1970), Sitkoff, "Coming of Age."

[133] Clark M. Clifford, "The Politics of 1948," confidential memorandum to President, November 19, 1947, quoted in Sitkoff, "Coming of Age," 597. Truman was competing with Henry A Wallace, who was sympathetic to civil rights, and Thomas E Dewey, who was garnering the black vote. There was considerable evidence that in the late 1930s and through the

promises of civil rights the better his chances would be to keep blacks in the fold. The administration could assume, the memo asserted, that "it will get no major part of its program approved. Its tactic must, therefore, be entirely different than if it there were any real point to bargaining and compromise. Its recommendations . . . must be tailored for the voter, not the Congressman; they must display a label which reads 'no compromises.'" Truman was concerned that playing to the black electorate would estrange him from southern Democrats. To reassure Truman that this would not jeopardize the white southern voting bloc Clifford wrote, "As always, the South can be considered safely Democratic . . . and in formulating national policy, it can be safely ignored."[134]

Truman was receptive to the Clifford plan. A rash of racially-motivated murders in the South in 1946, about which Soviet press made considerable mention, troubled the administration deeply. In response, Truman formed a Committee on Civil Rights (CCR). The charge of the committee was to examine the law enforcement policies and procedures to find out why blacks were not being protected by local police. He asked the committee to present to him recommendations on how the government could better protect minorities' civil rights.[135] Truman appeared at a rally organized by the NAACP in 1947 in Washington and spoke vaguely of civil rights legislation. That year, the CCR presented their findings to Truman. The report went far beyond what he had anticipated, not only calling for extensive civil rights legislation,

---

second world war that blacks had been switching to the Republican party Dewey in 1942 and 1946 enjoyed a significant black vote

[134] Clark, quoted in Sitkoff, "Coming of Age," 597.

[135] Sitkoff, "Coming of Age," 599

but also explaining why blacks found themselves in such a degraded position: the continuing legacy of racism and structural deprivation. The report was particularly critical of the South. Truman avoided acting on the report, clinging "to the belief that, like FDR, he could keep urban liberals and Negroes in the party's ranks by public gestures without precipitating an open revolt by the South."[136]

In 1948, Truman sent to Congress a message on civil rights. Therein he requested legislation that addressed issues such as the poll tax, employment discrimination, segregation in interstate commerce, and lynching. He also requested that Congress establish a Joint Congressional Committee on Civil Rights and sought legislating allowing him to establish a civil rights division at the Department of Justice. The message sounded dramatic, but it was carefully designed to achieve a dual purpose. The surface message was aimed at blacks: 'Look at our bold initiative to help you.' The deeper message Truman directed at the white majority. First, the president stressed to Congress that nothing in the message was going to be pushed by the executive branch. It was up to Congress to fashion the legislation. Second, Truman excluded from the message key components of the Civil Rights Report, namely, the recommendation that the government punish states that practiced discrimination by withholding federal grants and ban segregation in the District of Columbia. "Despite such limitations," Sitkoff writes, "most Negro leaders and columnists hailed the President's program as 'Lincolnesque,' the greatest freedom document since the Emancipation Proclamation."[137] Of course, as we have seen, this is Lincoln-the-icon.

---

[136] Sitkoff, "Coming of Age," 600
[137] Sitkoff, "Coming of Age," 601

While Truman's ploy went over well among black leaders, it did not go over very well with southern whites. It seems that neither side got the intended message. Southern Democrats still represented a crucial partner in the New Dealer's — or the "Fair Dealer's" as they now could be called — broad coalition (in retrospect more crucial than people then realized, given the political realignment of the country that followed the 1964 Civil Rights Act). Clifford had seriously misjudged the party loyalty of the southern Democrat. This fissure became especially acute after urban liberals and black Democrats, over the objections of Truman, engineered a plank favoring civil rights legislation at the 1948 national convention.[138] Senator James O. Eastland declared that Truman desired to "Harlemize" the nation. Five days after Truman's message to Congress, the Southern Governors Conference was reorganized to plan what to do about Truman. They passed a resolution stating that the president had insulted the South.

Dramatically, Truman's civil rights package and the civil rights plank led southern Democrats to break away from the party and organize the Dixiecrat party. Truman's popularity plunged in the South (one poll showed that southerners opposed his civil rights measures 9 to 1). Truman was not solely the cause of the split, which made the situation worse. "Since 1936 growing numbers of southerners had come to fear that the Democratic party was becoming an instrument of urban liberalism."[139] The Dixiecrats' goal was to deny a majority of electoral votes to either the Democrat or

---

[138] The Republican Party had a strong civil rights plank in their 1944 convention, and many Democrat Party leaders believed that their lack of a strong civil rights program (there was a weak civil rights plank in the 1944 convention) lay behind their losing the black vote.

[139] Sitkoff, "Coming of Age," 604

Republican Party hoping to throw the election into the Congress.[140] Strom Thurmond, then governor of South Carolina, was selected as the presidential candidate. Although they lost the election, the Dixiecrats won 39 electoral votes (Louisiana, South Carolina, Alabama, and Mississippi) and 22.5 percent of the popular vote in the South.[141] Their challenge represented a harbinger of things to come.

The Dixiecrat challenge to Democrat Party power convinced party officials to court southern whites in the 1952 and 1956 elections.[142] But appeasement of southern racism, both for political reasons and because many white liberals were, along with southern Democrats, racist, disaffected blacks, increasing the percentage of African Americans for the Republican Party from 21 percent in 1952 to 39 percent in 1956. Blacks were also lured to the Republicans because of their stronger civil rights positions. The Democrats found themselves in a difficult position; their desire to secure support from two diametrically opposed groups — the white southerner and the urban black — fractured the party.

---

[140] They had a bold scheme. See Sitkoff, "Coming of Age," for a detailed historical narrative of this moment. He also covers the struggle within the Northern urban wing of the party between anti-communist liberals and the elements of the Popular Front coalition The Americans for Democratic Action, an anti-communist liberal group, exploited civil rights to simultaneously lure blacks away from the Communist Party (and other left groups), keep the party left of the southern Democrat sentiment, and to prevent blacks from bolting to either Dewey or Wallace's Progressive Party. The Progressive Party was supported by W.E B Du Bois and Paul Robeson, who would be especially persecuted by cold warriors

[141] Alan Ware, *The Breakdown of Democratic Party Organization, 1940-1980* (New York. Oxford University Press, 1985); William D Barnard, *Dixiecrats and Democrats: Alabama Politics 1942-1950* (University of Alabama Press, 1974), Robert A Garson, *The Democratic Party and the Politics of Sectionalism, 1941-1948* (Baton Rouge, LA Louisiana State University Press, 1974), Dewey W. Grantham, *The Democratic South* (New York Norton, 1963)

[142] Kevin Phillips, *The Emerging Republican Majority* (New York: Arlingron House, 1969).

The contradictions where heightened when in 1953 the NAACP, represented by Thurgood Marshall, successfully challenged school segregation in the Supreme Court. In 1954, the court, in handing down their decision in *Brown versus Board of Education of Topeka, Kansas*, reversed *Plessy v. Ferguson* (1896), which had established the doctrine of "separate but equal," and moved against school desegregation and the narrow interpretation that the fourteenth amendment as guaranteeing only political rights and not social ones.[143] The following year the court instructed the states to desegregate schools with "all deliberate speed." Despite the fact that several states continued to segregate black and white students, Brown represented the most serious rollback of the formal machinery of apartheid since Reconstruction, initiating at the governmental level a swell of legal and policy changes that eventually culminated in the 1964 Civil Rights Act and the 1965 Voting Rights Act. It emboldened blacks to push for more freedoms.

Southern whites had a different take on the matter. In the 102 Congress in 1956, 102 white southern congressmen signed the so-called "Southern Manifesto" that accused the Supreme Court of overstepping its authority and intruding upon states' rights. The document complained, incredibly, that the Supreme Court and liberal reformers were "destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races. It has planted hatred and suspicion where there has been heretofore friendship

---

[143] There were earlier laws that attempted to weaken the doctrine. *Missouri ex re. Gaines v. Canada* 305 US 337 (1938), *Sipuel v Oklahoma* 332 US 631 (1948); *Sweatt v. Painter* 339 US 629 (1950), *McLaurin v. Oklahoma State Regents* 339 US 638 (1950).

and understanding."[144] Southern "friendship and understanding" were underscored the previous year by the murder of Emmet Till, a fourteen year old African American boy who, on a dare, had whistled at a white woman. The murderers were acquitted.

The *Brown* decision was quickly exploited by the Eisenhower administration for propaganda purposes. Although the president had been reluctant to push the civil rights issue, after *Brown* the Republican National Committee (RNC) issued a statement claiming that the Court's decision "falls appropriately within the Eisenhower Administration's many-fronted attack on global Communism." The RNC added: "Human equality at home is a weapon of freedom abroad."[145] US newspapers joined the Republicans in celebrating Brown as a "blow to communism." They characterized it as "a vindication of American democratic principle."[146] Yet by 1963, barely more that one percent of black children attended school with white children in those states that had comprised the Confederacy.[147] It was not until the 1970s that a systematic efforts was made to put *Brown* into practice through busing, and this turned out to be one of the most controversial civil rights policies of the 1970s.

Democrats, who controlled Congress, sought to win blacks back. They passed civil rights legislation in 1957. Eisenhower opposed the bill. He believed that liberals were pushing civil rights too fast. Over Eisenhower's objections the bill became law. This measure was the first significant piece of civil rights legislation of the 20th

---

[144] The "Southern Manifesto," 102 Cong. Rec. 4515-16 (1956).

[145] Quoted in Mary L Dudziak "Desegregation as a Cold War Imperative," in *Critical Race Theory: The Cutting Edge*, ed Richard Delgado (Philadelphia: Temple University Press, 1995) See also Doug McAdam, *Political Process and the Development of Black Insurgency 1930-1970* (1982)

[146] Quoted in Dudziak, "Cold War Imperative," 111

[147] John A. Andrew, *Lyndon Johnson and the Great Society* (Chicago: Ivan R. Dee, 1998), 24.

century, establishing the Civil Rights Commission, though its power was nominal,[148] and empowering the Justice Department to pursue cases where blacks were denied the vote. The law inspired racial violence in Montgomery, Alabama and Little Rock, Arkansas. In a high-profile stand-off and a blow to the cause of state's rights Eisenhower was forced to send federal troops into Little Rock to integrate the schools (the first time federal troops were used in this capacity since 1877). Eisenhower expressed his displeasure at having to intervene, but he did not want to be seen as not enforcing the law.

Democrats were re-building black support. They prepared for the 1960 election by passing the 1960 civil rights law that gave federal authorities the power to register voters. The bill refined and built on the 1957 legislation. Still, Democrats did not enthusiastically get behind civil rights. John F. Kennedy, who emerged as a leading presidential contender in the 1960 election, was of two minds on the subject of civil rights. He campaigned on a civil rights platform, but once in office he neglected the matter until the televised horror of belligerent whites in Birmingham, Alabama in 1963, forced him to do something (by elite standards) drastic.

The political terrain at this point in history, because of civil rights, was fraught with obstacles and hazards. But at the same time something had to be done; there was too much commotion, too much violence, and too much hypocrisy. The danger in supporting the black struggle was clear: civil rights movement was held by many to be a communist conspiracy, upsetting the traditional and consensual relations between

---

[148] Clifford M Lytle, "The History of the Civil Rights Bill of 1964," *Journal of Negro History*, 51 (1966).

blacks and whites. Groups like the John Birch Society and the Ku Klux Klan distributed information at the grassroots that showed a vast communist plot to overthrow white Christian society. They held that the civil rights movement was central to an atheistic plot to disrupt the proper order of things.[149] When they were not seeing communists under every bed, they were employing the principle of federalism, charging that the national government was making a power grab in violation of the constitution. The South represented the pivot in the electoral college. But the danger in failing to appear not to do something was a blow to the US image, and although it would not endanger the party's liberal constituents, it would estrange those who continue to suffer under apartheid and those who had sympathy for them. Thus emerged the curious paradox of anti-communism: it was simultaneously an impediment to civil rights and a requirement that the government do something about apartheid. The trick was to figure out what that something would be.

Kennedy thus came to the presidency under these conditions: an entrenched racial ordering and an entrenched cold war mentality. The latter mentality was no problem for Kennedy; he, along with liberal cold warriors had long ago embraced the titanic struggle between capitalism and communism. Kennedy would become the leading cold warrior in the country by combining anti-communism with idealism. Kennedy's youthful vigor and his slogans of a "New Frontier" inspired Americans to

---

[149] This view was expressed as late as 1984 on the Senate floor by the chair of the Foreign Relations Committee, Jesse Helms of North Carolina, who claimed, quoting Congressman John M Ashbrook, who, on the floor of the House of Representatives in October of 1967 stated that "King has consistently worked with Communists and has helped give them a respectability they do not deserve" and "I believe he has done more for the Communist Party than any other person of this decade "

feel good about America again. But the former matter, that of racism, presented a more thorny problem for Kennedy. The South had bolted the party once and they might do it again. Kennedy came with his problems. He was on shaky ground for his religious heritage (he was the first Catholic elected to the office). Moreover, the election had been razor thin, and was pretty obviously crooked, and it was only because of Nixon's desire to look like a noble loser that the election was not challenged.[150] Kennedy got points for being a cold warrior and having put Lyndon B. Johnson on the ticket, but an anti-communist posture and a tall Texan could only carry him so far (after all, being an anti-communist was a given).

Kennedy's top priorities entering the White House were increasing the size and scope of the military-industrial complex and expanding the economy, objectives he saw as mutually reinforcing; Kennedy advocated a principle of peace through strength. He assigned Paul Nitze, the author of NSC 68, to his task force on security policy. The administration propaganda mill under Nitze began to crank out fake numbers indicating a "missile gap" between the US and the Soviet Union.[151] Kennedy used the heightened fear to obtain large increases in the military budget. With these he laid the foundation for the conflict in southeast Asia. On the domestic economic front, Kennedy launched a fiscal plan similar in broad outlines to the one Reagan would advance in 1980s: "Convinced that only a strong domestic economy could assure the continuation of international economic hegemony, he promoted economic growth

---

[150] Stephen E Ambrose, *Nixon: The Education of a Politician 1913-1962* (Touchstone Press, 1988).

[151] Secretary of Defense John McNamara admitted that there was no missile gap Nelson, "Kennedy's National Security Policy " See also Gervasi, *Myth of Soviet Military Supremacy.*

without inflation by supporting rapid tax write-offs to spur investment, wage-price guidelines, a tax reduction to stimulate a full employment economy, and the 'open door' approach to world trade." One hallmark of his administration was the Trade Expansion Act of 1962. His imperialist goals were ambitious. He sought to clothe his imperial activities in an image of "American exceptionalism." Bold programs, like the Alliance for Progress in Latin America, were designed to increase hemispheric security against Soviet advances. He aggressively supported the nationalist movements around the world, as the US furthered the shift from colonialism to neo-colonialism, although Kennedy was not above reversion back to more imperialistic interventions (such as in his 1962 bombing of Cambodia).

Civil rights was quickly put on the back burner. However, the president found ways to reach the black voter anyway. During his Senate tenure, Kennedy had reluctantly agreed to chair the Senate Subcommittee on Africa. In 1960, Africa became an issue in the campaign. Kennedy would mention Africa 479 times in his campaign speeches. Nelson argues that "Kennedy could use African issues to appeal to the liberal and black vote without alienating the South by actually supporting the civil rights movement."[152] Bill Clinton would use African in this way during the 1990s. Africa also helped make Kennedy appear knowledgeable on foreign policy issues, which was necessary given Nixon's reputation for this knowledge. This emphasis intersected with Kennedy's cold war aims and was given immediacy by Khrushchev's

---

[152] Nelson, "Kennedy's National Security Policy," 8

1961 speech wherein he identified the capitalist periphery as the site of the new cold war struggles.

As noted, civil rights had not advanced much between *Brown* and 1963. Frustrated with the slow pace of change, the black freedom movement elevated their attack against apartheid. In 1963, in the "March on Washington," prominent black Americans raised the stakes in the nation's capitol. The black movement had been changing attitudes for some time. Led by Martin Luther King, Jr., the movement had pursued a course of non-violent direct-action protests which were viewed by some Americans as representing the American tradition of civil disobedience. The movement found sympathy among many northerners if only because the rhetoric was usually contained within pro-American, pro-liberal, and pro-capitalist parameters, and because the movement was based in the black church, thus appealing to some white Americans' religious sentiments. The black movement was a moral crusade that some white liberal Americans could identify with.

On the other hand, because civil rights activities were often pursued beyond the law, this because black Americans were outsiders to the system, blacks were subject to charges, typically made by Southern politicians and law enforcement, that they were engaging in "criminal" activities. Civil rights workers were labeled "Lawbreakers," "street mobs," "agitators," and hoodlums." Retired Supreme Court Justice Charles Whittaker characterized organizers of the protests as "self-appointed Negro leaders who, while professing a philosophy of nonviolence, actually tell large groups of poor and uneducated Negroes . . . , who they have harangued, aroused and

inflamed to a high pitch of tensions, that they should go forth and force the whites to grant them their rights."[153] This white supremacist tactic not only accomplished redefining the civil rights movement as a criminal movement — one that signaled a breakdown in "law and order," thus making crime rhetoric a main feature of the racial discourse — but the tactic also robbed, or at least attempted to rob, the civil rights movement of their moral legitimacy to operate beyond unjust law. This strategy, although backfiring from time to time, stalled civil rights. It also occurred at the same time White Citizens Councils advocated defiance of the law to preserve white supremacy.[154]

Southern politicians were joined by rightwing Republicans, such as former vice president Richard Nixon who argued that the actions of civil rights protesters and the "corrosive doctrine that every citizen possess an inherent right to decide for himself which laws to obey and when to disobey them" where causing a "deterioration of respect for the rule of law."[155] By reducing the struggle to individuals choosing which rules to obey and disobey — in short turning the civil rights protester into a vulgar caricature of an anarchist — Nixon denied the substance of the collective struggle that was the basis of the civil rights movement.

There were other barriers to meaningful social reform. The South controlled the committee chairmanships in both houses of Congress. James O. Eastland chaired the

---

[153] Quoted in Katherine Beckett and Theodore Sasson, *The Politics of Injustice. Crime and Punishment in America* (Thousand Oaks. Pine Forge Press, 2000), 49.

[154] C. Vann Woodward, "Look Away, Look Away," *The Journal of Southern History* 59 (1993).

[155] Richard Nixon, "If Mob Rule Takes Hold in the US A Warning from Richard Nixon," *US News and World Report*, August 15 1956, quoted in Beckett and Sasson, *Politics of Injustice*

Judiciary Committee in the Senate. Eastland was opposed to civil rights. Opponents of civil rights also had the filibuster, so they could talk a civil rights bill to death. A filibuster could be ended by cloture (two-thirds vote to end debate), but this had only occured five times since cloture was adopted as a strategy in 1917, four years after passage of the constitutional amendment that gave the people the right to directly elect their senators.[156] In the House, southerners controlled the House Rules Committee through Howard Smith, a Democrat from Virginia. Since the committee on rules determined which bills were brought to the floor for debate, Smith's chairmanship represented an almost certain bottleneck. Southern political control and the institutional constraints of US government had generally seen to it that "Congress, instead of being the birthplace of civil rights legislation, has constituted its graveyard."[157]

The leading political force in America at the time, the northeastern liberal establishment designed to present themselves as the moderate course of action. The liberal character of the civil rights movement was maintained through careful maneuvering on the part of white political elites to control interest groups pressing for change, groups such as the NAACP, Urban League, American Jewish Congress, ACLU, and the Southern Christian Leadership Council. Some of the more "subversive" organizations, such as the Student Non-Violent Co-ordinating Committee (SNCC) and the Congress of Racial Equality (which was established in 1942 to fight racial oppression), were paid special attention to. Through their control,

---

[156] Seventeenth Amendment of the US Constitution, adopted in 1913

[157] Lytle, "Civil Rights Bill, 277

the Kennedy administration was successful in persuading the leaders of the 1963 march on Washington to eliminate from the speaker pool radicals who were critical of the United State political economic system, and several of the speakers cleaned up their speeches and softened their rhetoric.[158] SNCC's John Lewis, for instance, tempered his speech at the request of the Kennedy Administration.[159] The government clearly pursued compromise so they could subvert the movement from within, containing civil rights within parameters beneficial to capital.[160] During the 1963 deliberations on the civil rights bill, attorney Robert Kennedy was dispatched to the Congress to "tone down" the bill that a coalition of liberal Republicans and Democrats were fashioning.[161] However, Republicans and Southern Democrats continued to attack the administration, calling his civil rights approach "rewarding lawbreakers."[162]

President Kennedy's assassination played an important role in the passage of the 1963 Civil Rights Bill. Until Kennedy's death, the bill had languished in Congress. Kennedy's successor, Lyndon Johnson, saw in Kennedy's death the opportunity to bring the matter of civil rights to a head and so he made the Civil Rights Bill the legislative priority. Within a week of Kennedy's death, Johnson was arguing before a joint session of Congress: "No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil

---

[158] Howard Zinn, *A Peoples History of the United States: 1492--Present* (New York HarperCollins, 1995)

[159] Andrew, *Lyndon Johnson*, 24 Nevertheless, Lewis' speech did articulate dissatisfaction with the Kennedy administration, asking, "Where is the political party that will make it unnecessary to march on Washington" He then wondered, "which side is the Federal Government on?"

[160] Zinn, *People's History.*

[161] Lytle, "Civil Rights Bill," 286.

[162] Beckett and Sasson, *Politics of Injustice*

rights bills for which he fought so long." Other events in 1963 spurred taking the bill up. George Wallace, governor of Alabama, blocked the entrance to a public school building to prevent racial integration. NAACP leader Medgar Evers was murdered in Mississippi by white supremacists. The images of blacks being savaged by law enforcement officials with dogs and water cannons in Birmingham, Alabama. A few months later in Birmingham a church bomb killed four little girls. Organizations, e.g., the Leadership Conference on Civil Rights, NAACP, and National Council of Churches, urged Congress to pass the legislation. Seemingly with these events in back of him, Johnson put civil rights at the center of his "Great Society." Later it would become obvious that Johnson desired to get the matter of civil rights out of the way so that he could put into motion the rest of the grand agenda. White liberals in Washington believed, or at least hoped, that the passage of the Civil Rights Bill would be the end of racial turmoil, primarily by pacifying blacks. In fact, this was one of the main arguments liberals advanced in Congress: pass the bill and blacks will be satisfied and go away.

The bill sparked furious debate. In the House, there were dire predictions made by the opposition. O. C. Fisher (Texas) warned, "One of these days some of the white folks may get tired of this sort of carrying on. One of these days the white folks may decide they have taken enough. And that warning applies to both parties to this coalition. These white folks may decide they need somebody to speak up for their rights — that is, what is left of their rights after the politicians get through carving them up." Playing the states' rights card, Armistead Selden, Jr. (Alabama), proclaimed

that the bill sowed "the seeds of an American totalitarianism."[163] Race had long been coded in states' rights language, its proponents arguing attempts to break down segregation represented an oppressive reach by the federal government. Outside groups opposed to the bill, such as the Co-ordinating Committee for Fundamental American Freedoms and the Mississippi State Sovereignty Commission, brought pressure on the House to withstand the progressive forces. But for still mysterious reasons, Howard W. Smith reported the bill out of his committee without a fight.[164] The bill passed 290 to 130.

Debate in the House was minor compared to the Senate battle. The debate there lasted several weeks, and produced the longest filibuster on record, led by Richard Russell (Georgia) and former Klansman Robert Byrd (West Virginia). "Russell, who had been in charge of past civil rights battles, was well experienced in the art of parliamentary delay."[165] During the debate John Stennis (Mississippi) stated that the "blessings of eternal and universal brotherhood are a beautiful ideal and a worthy objective, but if they cannot be obtained in the natural process of human behavior they cannot be obtained by the forces of law." Eastland contended that "segregation is not discrimination."[166] (Legislators had managed to get around Eastland's judiciary committee.) Sam Ervin (North Carolina) said it was a "thought-control bill." Texas Republican John Tower argued that the bill violated the "prerogatives of all Americans to live their own private lives and to conduct their own private businesses in

---

[163] Quoted in Andrew, *Lyndon Johnson*, 25
[164] Lytle, "Civil Rights Bill," 290
[165] Lytle, "Civil Rights Bill," 294
[166] All quotes from Andrew, *Lyndon Johnson*, 25.

accordance with their own individual wishes and desires." Long said that "every man of white Caucasian heritage has a perfect right to protect those institutions in his society which allow him the freedom to associate with people of his race." Richard Russell argued that the law would "turn our social order upside down. It would have a tremendous impact on what we have called, in happier times, the American way of life."[167] The public in the South agreed with these politicians. Polls during that time showed that around three-fourths of southerners believed Johnson was pushing civil rights too fast.[168]

The senators uttered some 6 million words during the three month filibuster. In the end the filibuster worked to the reformers' advantage, since it gave them time to acquire votes and work out the finer points of the compromise. Once they had enough votes to invoke cloture, they knew the bill would pass. Cloture was invoked after a vote of 71-29. Although over four-fifths of Republicans voted to end the debate, only 62 percent of Democrats did, showing the deep divide in the Democratic party on the issue of race. The bill was passed by a vote of 73-27, very close to the cloture vote. Upon passage of the bill, Senator Strom Thurmond remarked, "This is a tragic day for America, when Negro agitators, spurred on by communist enticements to promote racial strife, can cause the United States Senate to be steamrollered into passing the worst, most unreasonable and unconstitutional legislation that has ever been considered by the Congress." Alabama governor George Wallace said the bill was a "fraud, a sham and a hoax." "We must destroy the power to dictate, to forbid, to

---

[167] All quotes from Andrew, *Lyndon Johnson*, 25
[168] Horowitz, "White Southerners' Alienation."

require, to demand, to distribute, to edict." Suggesting the government was run by communists, he predicted that the bill would "live in infamy."[169]

These quotations are not presented merely to show the racist opposition to civil rights; it is generally understood that Southern politicians vehemently opposed civil rights legislation. More relevant to this analysis is that the Congressional Record shows the ideological bedrock that existed in Congress for the development of the repressive legal regime that was to emerge and, moreover, the sentiments that existed in US society, which would grow and become dominant in the 1970s, however cloaked in euphemisms these positions would be. Moreover, while liberals pushed for the passage of the bill, the general tone of the Congress was to the right of Johnson, who was no left-winger, and they would often push legislation and lines of policy that represented other forms of racism, especially crime control.

The compromises to the bill indicate the racial character of the debate. For example, the bill's passage in the Senate was secured by allowing an amendment offered by Everett Dirkson (Illinois) to be attached to the bill. The Mansfield-Dirksen-Humphrey-Kuchel amendment accomplished two things. First, the amendment qualified Title VI of the Civil Rights Act by limiting "the cutoff of federal funds to affected school districts and not to entire states." This allowed states with discriminating institutions to continue receiving taxpayer subsidy. Second, it conceived "the Equal Employment Opportunity Commission as a device to limit Justice Department intervention, provided for local agencies to handle job

---

[169] All quotes from Andrew, *Lyndon Johnson*, 25

discrimination complaints before calling in the federal government."[170] This qualification on Title VII effectively created the basis for whitewashing discriminatory practices of public and private state institutions.

The 1964 Civil Rights Act was landmark legislation for several reasons.[171] First, it represented the strength of the civil rights movement in forcing the government to make changes in the political, legal, and, to a lesser extent, economic structure of the United States. Second, it represented the continuation of the liberal strategy to develop a far-reaching consensus about the legitimacy of post war historical bloc. This coalition emphasized symbolic inclusion, especially of subaltern groups. Third, the act, one of several overtures to blacks, reflected the growing strength of blacks in electoral politics of the North (a result of the period of migration). Fourth, it signaled the coming of an extensive transformation in racial hegemony, where the liberal ideology of equality and fairness would be able to achieve greater legitimacy, while dissembling racial oppression and to a real extent inoculating white society from further attacks on their privileges. Fifth, the Civil Rights Act would play a key role in bringing about the end of the New Deal coalition and opening up the system to the conservative Republican, who would over the course of the 1970s build a new consensus and gain formal political power in 1980.

---

[170] Andrew, *Lyndon Johnson*, 26 The EEOC grew out of a commission established by Kennedy by executive order.

[171] The Civil Rights Act contains several sections listed as titles Titles covered voting rights, access to public accommodations, racial discrimination These titles were, however, limited in one way or another

Even though Johnson would lose the Southern vote in the 1964 election, the Civil Rights Act strengthened his administration in the short-term by securing widespread liberal and popular support for his presidency. Moreover, the law delivered the black vote to the Democrat Party for years to follow. The effect of this was to free Republicans from having to court blacks. Johnson beat Barry Goldwater, who had voted against the bill, in one of the largest electoral landslides in US political history. In 1965, the Democrat Party enjoyed its first clear majority since the mid-1930s.[172] This was exactly what Johnson desired; now he could push through the myriad policies he had been advancing. The short-term impact reflected the disconnect between northern and southern political societies. The South still largely remained outside the political mainstream, at least within the New Deal historical bloc then, and although the Democrats were concerned about disaffection among white Southern voters, they would not feel an immediate impact.

Yet open racism persisted. For example, laws making a felony of marriage between a white person and a black person, so-called "anti-amalgamation," "anti-fusion," or "anti-miscegenation" laws, remained on the books in over a third of US states. These laws were nearly identical to the Nuremberg Laws of Nazi Germany, probably because the German laws were based on them.[173] Maryland would quickly repeal its prohibition against interracial marriage when the Supreme Court agreed to

---

[172] Andrew, *Lyndon Johnson* , 32.

[173] Grill and Jenkins, "A Mirror Image?" report that Germans who made tours of the South returned to Germany advocating a "southern solution" to Germany's racial problems.

take an anti-miscegenation case in *Loving v. Virginia* (395 US 1967).[174] Prior to Maryland's action, fourteen States also repealed laws outlawing interracial marriages over a fifteen year period: Arizona, California, Colorado, Idaho, Indiana, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming. California had been the first to strike down the laws in *Perez v. Sharp* (1948). But as of 1967, Virginia and 15 other States still had on the book and were enforcing statutes outlawing interracial marriage. Many of these states reaffirmed their anti-miscegenation laws after 1947.[175] The purpose of the laws were clear: The Supreme Court of Appeals of Virginia, in upholding a verdict of conviction against a white man and a black woman, referenced a 1965 decision wherein the court concluded that the state had a legitimate purpose "to preserve the racial integrity of its citizens,"[176] to prevent "the corruption of blood" and the rise of "a mongrel breed of citizens," that would lead to "the obliteration of racial pride."[177] That such laws would be on the

---

[174] The trial judge in sentencing Mildred Jeter, a black woman, and Richard Loving, a white man, declared. "Almighty God created the races white, black, yellow, Malay and red, and he placed them on separate continents. And, but for the interference with his arrangement, there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix," quoted in *Loving v Virginia* (395 US 1967). He banished them from Virginia for a period of 25 years

[175] To wit, Alabama, Ala Const , Art 4, § 102, Ala Code, Tit. 14, § 360 (1958); Arkansas, Ark Stat Ann. § 55-104 (1947), Delaware, Del. Code Ann , Tit 13, § 101 (1953); Florida, Fla Const., Art 16, § 24, Fla Stat. § 741 11 (1965), Georgia, Ga. Code Ann. § 53-106 (1961); Kentucky, Ky Rev Stat. Ann § 402 020 (Supp. 1966), Louisiana, La Rev Stat § 14:79 (1950), Mississippi, Miss.Const., Art 14, § 263, Miss.Code Ann. § 459 (1956), Missouri, Mo Rev. Stat. § 451.020 (Supp. 1966); North Carolina, N.C. Const., Art XIV, § 8, N.C Gen. Stat. § 14-181 (1953), Oklahoma, Okla Stat , Tit 43, § 12 (Supp 1965); South Carolina, S.C. Const , Art 3, § 33, S.C. Code Ann § 20-7 (1962), Tennessee, Tenn Const , Art 11, § 14, Tenn. Code Ann. § 36-402 (1955); Texas, Tex. Pen Code, Art. 492 (1952), West Virginia, W Va. Code Ann § 4697 (1961)

[176] Similar concerns lay behind Virginia's segregation laws. See William C. Burris, *Duty and the Law* (Bessemer, AL Colonial Press, 1987)

[177] 197 Va. 80, 87 S E 2d 749 It might be objected that this is a racist law by noting the law's formally equal imposition on blacks and whites. This was the argument made by the Virginia Supreme Court of Appeals argued before the US Supreme Court in 1967. However, the high

books of over 33 percent of the 48 contiguous states late into Johnson's presidency and would have remained there but for the Supreme Court demonstrates how little the racial order was being transformed.

The anti-amalgamation laws had deep roots in racial mores. As Dan Carter notes, George Wallace's "defense of segregation did not symbolize the larger issues of states' rights; racial purity lay at the very core of southern defiance."[178] Wallace linked the push to do away with anti-amalgamation laws as a product of communist theory. At his gubernatorial inaugural in 1962 Wallace called the principle behind abolition of anti-miscegenation laws as the "false doctrine of communistic amalgamation." "[I]f we amalgamate into the one unit as advocated by these communist philosophers," he warned, "the enrichment of our lives . . . the freedom of our development . . . is gone forever. We become, therefore, a mongrel unit of one under a single, all powerful government."[179] One might read this rhetoric and wonder how such extremism is relevant for understanding the situation blacks face in America. Yet Wallace was

---

court, citing *Brown v. Board of Education* (1954), repeated its position that (a) the debates in the 39th Congress or in the state legislatures surrounding the eventual ratification of the Fourteenth Amendment did not advance the principle that penal laws based on racial classification satisfied the principle of equal protection so long as black and white defendants were similarly punished; and (b) the law is living and should conform to the prevailing spirit of the times, not to legislation appropriate to the defunct slave code.

[178] Dan T. Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge Louisiana State University Press, 1996), 3. Wallace's rhetoric was designed by speech writer Asa Carter, a leader of a violent Klan cell. It was Asa Carter's men who saw to it that Autherine Lucy was expelled from the University of Alabama Asa Carter's men also selected a black man at random and castrated him as a warning to civil rights protesters in the area

[179] Wallace, quoted in Carter, *Counterrevolution*, 3. In that same speech Wallace admitted the wrong of Hitler subjecting a minority to the terror of national racism, but what about subjecting the "white minority" to the "international racism of the liberals"? This is what the internationalism of the liberal establishment would bring

speaking for millions when he uttered these words. There was no state legislature prepared to change the laws; only a bold action by a liberal federal court would see an end to such laws. Wallace's thinking on this and other race matters would pave the way for a re-alignment of politics in America. Wallace's feelings about race were spreading to the rest of America. When Lyndon Johnson became president, 31 percent of Americans believed that the government was pushing integration too fast. By 1968, over 50 percent of Americans believed the government was moving too fast.[180]

Extremism cut both ways. Part of Johnson's success as president was thanks to the character of his opposition and the persisting racial order. Senator Goldwater was unpopular for his rightist stance. Wallace was unpopular for his racism. Yet what made both unpopular in the mid-1960s would become a strength for Republicans within four years of Goldwater's defeat. Goldwater was a conservative visionary, building ties with Southern segregationists and right-wing fringe groups. By taking an explicitly right-wing position, Goldwater began the process of rebuilding the Republican Party around core conservative principles. In the short-term, Goldwater's rhetoric alienated many voters. Liberals were anti-communists and pro-order, but they saw in Goldwater's speech an American fascism.

Even southerners were uncomfortable with Goldwater's ideas at first. Especially on the issue of crime; Southerners were conflicted on this issue. As noted in the part 2, chapter 4, southern whites supported national crime control legislation where it could be used to oppress blacks (the Mann Act), but opposed it where it

---

[180] Carter, *Counterrevolution*, 9

would be used to protect blacks (anti-lynching legislation). They were taken aback by the nationalization of crime control message explicit in Goldwater's speeches. Beneath their cherry-picking of federal laws, there was a contradiction in defending segregation on the basis of "states' rights" and advocating a national crime control regime. Still, it was not so much that southerner's defended states rights on principle; rather the civil rights movement heightened their awareness of federal intervention.

It was the symbol of a strident Goldwater and a conservatism with conviction that had the long-term impact. Southerners would come around to Goldwater's ideas. They already had. Perhaps it is more accurate to say that the Republican Party was coming around to the idea of the South. In the long-run, a reconstituted Republican Party would orchestrate a realignment of US political society by bringing southern conservative Democrats to the Republican party very much based on Goldwater's contribution to the redefinition of racism as law and order. Nixon would play an instrumental role in this, especially after the self-destruction of George Wallace, in delivering the South to the Republican Party. It was seeing all this in front of him that Johnson could understand the long-term consequences of passing the Civil Rights Act (Johnson's political instincts were superlative). After signing the bill he turned to one of his aides, Bill Moyers, and said, "I think we delivered the South to the Republican Party for your lifetime and mine."

The public reaction to the Civil Rights Act divided along racial lines. Liberal whites felt that a long struggle had finally ended. Both those whites who desired the passage of the bill and many of those who bitterly opposed it appeared ready to put

the history of racism behind them and move on. The majority of whites "remained optimistic that the nation's conscience would assert itself, convinced that the United States was a nation of laws. Voluntary compliance remained the goal."[181] Southern whites were ready to give up the struggle, and they promised to challenge the implementation of the bill every step of the way.[182] Blacks, on the other hand, read the law quite differently, seeing it as a step forward but by no means the final step. It was seen by many blacks as the first significant piece of civil-rights legislation in the 20th century (the 1857 and 1960s law turned out to be largely ineffective). As such, it could only be a beginning. Blacks understood that the Act did little to change their substantive existence. The bill, for example, did not define desegregation as changing the racial balance in public schools; in fact, it stated the opposite: Title IV did not mean a racial balance.[183] And there was the matter of enforcement; if the past were any indication, blacks had little confidence that the Act would be enforced. Based on their understanding of civil rights, black Americans organized to put further pressure on US institutions to obtain greater levels of freedom.

The black critique created considerable anxiety among liberals who had fought for the Civil Rights Act because they believed it would quiet the nation and strengthen the legitimacy of the New Liberal historical bloc. During the Senate debate, Hubert Humphrey had argued: "The question is, are we going to decide the issue with due

---

[181] Andrew, *Lyndon Johnson*, 31

[182] Andrew, *Lyndon Johnson*, 30

[183] The Supreme Court did at times interpret the act in a proactive manner. For instance, in 1971 the Court endorsed the practice of busing But such interventions were minimal, controversial, and bitterly resisted

process of law, or will it be decided in the streets and back alleys with clubs and violence?" Passage of the bill, he believed, would take civil rights "off the streets and put it into the legislative assembly and into the courts." Edmund Muske (Maine) agreed: passage would counter the "seething restlessness" that was evident among the oppressed in America.[184] The restructuring of racial hegemony was to be accomplished by the whites in power, in white institutions that did not challenge to a substantial degree white privilege. But the passage of the act had the opposite effect.

The intensification of the black struggle required constant intervention by white liberals to shape the movement. This was becoming increasingly difficult both because the "mainstream" wing of the movement was becoming recalcitrant, and the message of the radical wing of the movement was capturing black youth. For example, the Mississippi Freedom Democratic Party (MFDP) challenged the Mississippi delegation, which was racially segregated. The murder of three civil rights workers in Mississippi focused national attention on the state. MFDP made a dramatic journey to Atlantic City to demand they be seated as delegates. President Johnson quickly directed Humphrey and Mondale to give "the MFDP delegate . . . two at large seats, with a promise that their grievances would be addressed before the 1968 convention." But the MFDP declined. And when the leader of the MFDP, Fannie Lou Hamer, testified before the credentials committee, "Johnson hastily called a news conference to preempt her televised testimony and preclude a rush of popular sentiment to the

---

[184] Andrew, *Lyndon Johnson* , 27-28.

MFDP."[185] In the end, Johnson accomplished his goals, but not without convincing many blacks that a more radical solution was in order.

There were other pieces of civil rights legislation. The Voting Rights Act of 1965, for example, had immediate and dramatic results in two respects. First, the number of blacks registered to vote grew dramatically, increasing almost one million between 1964 and 1968. Roughly 75 percent of growth in black registration occurred in six states—Alabama, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina—doubling the number of register voters in those states. In Alabama between 1964 and 1967, blacks registered to vote grew from 23 to 52 percent. In Mississippi during that period, black registration leaped from 7 percent to 60 percent (rising to 67 percent by 1969). Second, the number of black elected officials grew. In 1969, the number of elected black officials in eleven southern states was around 400, where four years before it had been around 70 (by 1981 there would be around 2,500).[186]

During the political wrangling over civil rights the domestic economy, led by world-capitalist developments, had undergone a dramatic restructuring. These changes were reorienting material interests, and Leiman contends that monopoly sectors of the US economy began to view race discrimination differently than did competitive sector industries. As Horowitz explains, corporate America begin "to view racial process as an antidote to instability and regional backwardness."[187] This explains liberal support for marginal civil rights legislation in this period. Leiman contends that

---

[185] Andrew, *Lyndon Johnson*, 33

[186] Steven Vago, *Law and Society*, 5th ed (Upper Saddle River, NJ Prentice Hall, 1997), 291

[187] David Alan Horowitz, "White Southerners' Alienation and Civil Rights The Response of Corporate Liberalism, 1956-1965," *The Journal of Southern History*, 54 (1988), 199

the shift from competitive to monopoly capitalism created a different set of needs for ascending fractions of the capitalist class and that this contributed to some measure of racial justice. "Studies have established a strong link between the extent of industrial concentration and the capital intensiveness of the production process," he writes. "High capital to labor ratios in the monopolistic sector suggests high labor productivity and relative high wages, which in theory suggests a high proportion of skilled to unskilled labor. By reducing the size of the skilled labor pool, racism raised the wage costs for monopoly capital."[188] The relative costs of labor-power lay behind their motivation: since an educated and skilled black could be had for less than an educated skilled white, there were potentially considerable advantages. US Commerce Department data consistently show that blacks of equal educational and skill make on average around three-fifths the comparable white salary. Thus what had proven so useful to labor-intensive industries in maximizing surplus value — a large pool of marginalized labor — was constrained in the oligopolic sector. Thus, coupled with the tremendous expansion of the economy during this time, fueled by the US engineering of the post-WWII global economic economy, the shift in the balance between competitive and monopoly capitalism, and the shift in the labor input mix (skilled-unskilled), created a situation where "a significant divergence of economic interests developed between the monopoly and competitive sectors on the issue of racial discrimination. The economic and short-run political dysfunction of discrimination for the monopoly sector temporarily overrode their long-run political need for using

[188] Melvin Leiman, *The Political Economy of Race. A History* (London: Pluto Press, 1993), 171.

racism to politically divide the working class. Profit maximization demanded a change in racial policy."[189]

At the same time that domestic changes in industry and the expanding state sector created a potential opportunity for educated and skilled blacks, the rising organic composition of capital, led by a series of technological "revolutions" during the post war years, spurred in part by government coordination of research and development through the military-industrial complex, transformed racialized labor markets, enlarging the structurally unemployed strata of the economy. By 1950, the proportion of unskilled laborers in the US work force had declined to 20 percent. By 1962, the proportion of unskilled labor was down to 5 percent. Technological change impacts demand for different kinds and grades of labor, differentially affecting groups embedded in racialized labor markets. Since blacks were concentrated in competitive labor markets in the labor-intensive industrial sectors dependent on unskilled labor, the effects were devastating for them.[190] At the end of the Great Depression, black unemployment was only a little greater than white unemployment. By the 1960s, the black unemployment rate rose to more than double the white rate, and was frequently triple that of whites.[191] This development would stimulate the need for control strategy based on penal incapacitation in the 1970s-on.

---

[189] Leiman, *Political Economy of Race*, 171-172. However, the programs that were eventually implemented did not lead to the dissolution of the split labor market, as Wilson, *Declining Significance of Race*, has supposed.

[190] Paul Baran and Paul Sweezy, *Monopoly Capital* (London Monthly Review, 1966)

[191] Sidney Wilhelm, "The Economic Demise of Blacks in America. A Prelude to Genocide?" *Journal of Black Studies*, 17 (1986)

Rising organic composition of capital was occurring side-by-side with capital migration from inner cities to the suburbs[192] and from the "Snowbelt" to the "Sunbelt."[193] Disinvestment was accomplished — beyond more organic push and pull factors — by federal, state, and local authorities rewarding businessmen who relocated firms out of the central cities with tax breaks, subsidized loans, and assistance in organization and infrastructure. This created a "Rustbelt," which contained at its core an abandoned and impoverished peripheral zone with high rates of joblessness and job instability. Segregation in the central cities, i.e., the ghettoization of blacks, set the foundation for the deplorable conditions that would result.

As a consequence of these forces — the changing needs of capital, expanding racialized structural unemployment, and domestic regional macroeconomic reorganization — and the legacy of ghettoization and white flight from the cities, the black community was fragmented between a small stratum of relatively affluent, professional blacks, created in part by the New Deal,[194] and the mass of working class blacks. As a consequence, impoverished black communities would become even more isolated, as a small elite sector of affluent blacks were incorporated into the US hegemonic structure.[195] Whites in their suburban dwellings would become cut off from the plight of the city, and would turn against programs that might benefit urban areas, as these programs had no economic benefit for whites. All of these forces combined to

---

[192] Myron H Ross, "Prices, Segregation, and Racial Harmony," *Journal of Black Studies*, 2 (1971).

[193] Wallace and Humphries, "Urban Crime"

[194] Feagin, "Slavery Unwilling to Die"

[195] Marable characterizes the leadership for the middle class black stratum as "Black brahmins Sitkoff presents a more positive image of the African American middle class and the role they played in civil rights struggle.

off-set the gains that might have been made on the political and legal front. They would also combine to produce the white backlash that would during the 1960s, especially after the passage of the Civil Rights Act, cause an explosion in the numbers of blacks in the penitentiary system.

"Second Reconstruction": From Civil Rights to Crime War

Popular forces were in open rebellion in the 1960s. Student, feminist, black power, and a myriad other movements were challenging the structure of power and privilege. Their enthusiasm attracted fellow travelers. There was widespread opposition to the Vietnam War. There was growing consciousness about the inequalities in American society. Blacks were increasingly dissatisfied with the pace and scope of civil rights reform. Radicals questioned, and thereby threatened, the legitimacy of capitalist practice and the moral right of the US state to secure its far-flung colonial empire for the world capitalist class. Cold war liberalism was collapsing with the Vietnam War. The South successfully used repressive and legal controls to prevent the blacks movement from achieving many successes in the South.[196]

Struggle frequently reached the level of open and even cataclysmic violence. In the Summer of 1967, race riots erupted in several major cities. By the mid-1960s it had become clear to most black leaders — certainly to those struggling on the ground — that the political liberties granted by the Supreme Court and federal legislative

---

[196] Steven E Barkan, "Legal Control of the Southern Civil Rights Movement," *American Sociological Review*, 49 (1984). See also Isaac Balbus, *The Dialectics of Legal Control* (New York: Sage, 1973), Barkan, "Criminal Prosecutions in the Southern civil rights and Vietnam antiwar movements Repression and Dissent in Political Trials," in *Research in Law and Sociology*, vol 3, ed. Steven Spitzer (New York. JAI Press, 1980)

measures, the 1964 Civil Rights Act and the 1965 Voting Rights Act, were insufficient to address the deep social and economic inequalities that had grown up under conditions of slavery and apartheid. Black leaders like Martin Luther King, formerly regarded by the white establishment as moderate and controllable, began attacking the political and economic structure of inequality. More radical figures, like Malcolm X, were beyond the pale.[197] The militant black liberation movement was gaining strength and support. Under the provision of the United Nations Universal Declaration of Human Rights recognizing the right of colonized people to wage armed struggle against the colonizing power,[198] some black nationalists began arming themselves and calling for revolution, e.g., the Black Panther Party and the Black Liberation Army.[199]

Sixteen days after the Civil Rights Act was signed into law a rebellion broke out in New York. An off-duty New York city police officer shot a fifteen year old African American boy. Blacks organized and marched on the police department demanding the officer be fired. Rebellions soon erupted in other cities. O'Reilly notes that the riots caught political elites off-guard. They expected violence in the South, but not in the North (their naïveté perhaps reflected their inability to see racism as fundamental to all regions of the country). Although liberals were distressed by these

---

[197] Asafa Jalata, "African American Nationalism, Development, Afrocentricity: Implications for the 21st Century," in *Molefi Kete Asante and Afrocentricity*, ed. Dhyna Ziegler (Winston Publishing, 1997).

[198] The United Nations, largely rhetorical emphasis on human rights, and the struggle for national independence in the periphery, was also a theme in the 1940s. See Sitkoff, "Coming of Age."

[199] Dhoruba Bin Wahad, "Still Black, Still Strong Survivors of the US War Against Black Revolutionaries," *In Brotherman. The Odyssey of Black Men in America – An Anthology*, ed Herb Boyd and Robert L Allen (New York· One World 1995)

developments, conservatives saw them as proof that their opposition to civil rights was correct. They had predicted that passing the law would disrupt the social order.

Against popular opinion, which did not feel crime was much of an issue at the time, Goldwater campaigned on cleaning the streets of crime: "The abuse of law and order in this country is going to be an issue — at least I'm going to make it one because I think the responsibility has to start some place."[200] He argued: "Security from domestic violence, no less than from foreign aggression, is the most elementary form and fundamental purpose of government, and a government that cannot fulfill this purpose is one that cannot command the loyalty of its citizens. History shows us that nothing prepares the way for tyranny more than the failure of public officials to keep the streets safe from bullies and marauders." The conservatives were the natural choice of the voters who shared their concerns. "We Republicans seek a government that attends to its fiscal climate, encouraging a free and competitive economy and enforcing law and order."[201] FBI director Hoover was especially optimistic about the impact the riots would have on permitting him to shape the world he wanted. "He welcomed the law-and-order climate of opinion that developed in the wake of rioting in New York in 1964, Los Angeles in 1965, and especially Newark and Detroit in 1967."[202]

---

[200] Goldwater, quoted in Caplan, "Reflection on the Nationalization of Crime, 1964-68," 585 Beckett and Sasson, *Politics of Injustice*, 50

[201] Beckett and Sasson, *Politics of Injustice*, 50. Goldwater's Acceptance Speech," A9

[202] Kenneth O'Reilly, "The FBI and the Politics of the Riots, 1964-1968," *The Journal of American History*, 75 (1988), 91 I draw heavily from O'Reilly's work in this section because his use of primary documents provides a wealth of evidence that is either not found elsewhere or found elsewhere only incompletely My interpretation of the evidence O'Reilly marshals differs considerably from his I have decided not to write about the FBI's war on black America in any

Goldwater conservatives forced Johnson to the right on the issue of crime control (although Johnson was inclined to be forced on the issue). They argued that Johnson's anti-poverty programs and civil rights agenda created a climate of permissiveness that generated lawlessness. "In their view black Americans, perhaps the largest group of citizens who stood to gain from the Great Society, would not earn anything. They would simply be granted things -- money, food, jobs, scholarships, affirmative action promises -- with predictable results. The work ethic would die. Disrespect for law, laziness, and criminality would emerge as the new values."[203]

Johnson saw through the language of the right. He understood that the law and order rhetoric coming from the Republican Party was designed to "mobilize the 'white backlash' vote." It was part of Goldwater's "Southern Strategy." Johnson's White House Special Counsel Harry McPherson wrote that Johnson believes that the rhetoric of "law and order" was a set of "code words for racism."[204] Yet Johnson himself would adopt the law and order strategy, and not only for politically opportune reasons. As US imperialism in Vietnam intensified and Johnson came under increasing fire for his military judgment, Johnson came to believe that the black struggle was being organized by illegitimate subversives. Johnson's paranoia is perhaps understandable. Sitting in the Oval Office, watching the images of central city riots, southern cross burnings, summary executions and napalm attacks in southeast Asia, body bags being hauled off of C-130 cargo planes, and then on top of this criticisms from all directions

---

detail because to do so requires a chapter-length treatment See O'Reilly's *Racial Matters The FBI's Secret File on Black America, 1960-1972* (New York: The Free Press, 1989).

[203] O'Reilly, "Politics of the Riots," 93.

[204] O'Reilly, "Politics of the Riots," 91

in the political establishment — Johnson felt the walls closing in on him. In the end the pressure would be so great he would withdraw from the 1968 political campaign. But in the meantime, Johnson would construct the post-Civil Rights criminal justice order.

With these pressures at his back, Johnson was compelled to do something to make his image harmonize with his opponents to deprive Goldwater of his strongest issue. That would be one less difference between them and him. At the same time, he had to find a solution consistent with his Great Society vision, which, operating on liberal-structural premises, assumed that social problems were solved by patching up the flaws in capitalism (for the conservative, there were no flaws to patch up — what liberals saw as "flaws" were in conservatives' eyes virtues). To accomplish this balancing act, Johnson engineered a report to counter Goldwater's southern strategy. The report was written by J. Edgar Hoover and Thomas E. Dewey, both law-and-order conservatives highly respected among the right wing. These figures would give the report its tough-on-crime veneer. The contents of the report, however, would support Johnson's Great Society vision. Hoover knew this, and seeking to use Johnson to expand the police bureaucracy reigned in Dewey's conspiracy theories and produced a report palpable to the Johnson liberals. After some editing by Johnson and his aides (mainly Bill Moyers), Johnson instructed Hoover to release the report, which was issued as a Department of Justice study. The report stated that the riots were the result of structural conditions not black lawlessness. Consistently with what many black radicals were arguing, the riots stemmed from flaws in American capitalism. The report suggested that the best solution to the problem was just the sort of liberal-

structural vision Johnson was advocating. Although many conservatives were concerned with what appeared to be Hoover's capitulation to liberal solutions to the crime problem, Hoover knew exactly what he was doing. The *quid pro quo* he arranged with Johnson was an expansion in the FBI's surveillance capabilities. He knew the report was a political tool Johnson intended to use against Goldwater. There would be plenty of time to re-establish his conservative credentials.

A rebellion broke out in Watts in 1965. The images streaming across the television horrified Americans. Roy Wilkins was sent by the president to investigate the causes of the violence. Wilkins concluded that the main cause was the brutal practices of the Los Angeles Police Department. The LAPD killed probably thirty blacks and beat hundreds badly with their "nigger sticks," as the police called their batons. Johnson was shocked. Things could not be so wrong with America that blacks would behave in such a lawless fashion. He called the FBI in to search for organization behind the riots and to engage in counterinsurgency activities. The FBI began releasing semi-monthly reports with names like "General Racial Conditions," that analyzed the various cities where blacks were concentrated, assessed the political climate, the level of organization, and attempted to predict if and when riots would occur and if possible infiltrate organizations and destabilize them.

J. Edgar Hoover's self-serving vindication of Johnson's approach to social problems waned in the years after the election. Racial violence continued to escalate; in 1967, there were around 150 disorders. When was the Great Society going to solve these problems? Conservatives stepped up the law and order rhetoric. Johnson began

to grow convinced that his suspicions that the rebellions were centrally organized were true. There were two many riots in too many cities. After the Detroit riot, he called Hoover into his office for a meeting with Defense Secretary Robert McNamara, top military advisors, a Supreme Court justice, and the attorney general (Clark). Johnson wanted to know who was behind the riots. After Hoover gave him a few possibilities, like Marion Barry of SNCC, and then later presented showed the president the files on Stokely Carmichael and H. Rap Brown's efforts in Atlanta, Nashville, and Cambridge, Johnson had made up his mind: he was going to make the civil rights movement responsible for the violence and he was going to use the FBI to get the proof.

The theory that the organized left was behind the riots was not confined to the White House and the FBI. The HUAC held televised hearings 1966 on suspected left-wing involvement in the riots. Johnson had requested that Hoover appear before the committee and identify radicals. But FBI had very little evidence with which to testify and ignored the president's requests. The president again requested Hoover participate in 1967 hearings and identify Carmichael (SNCC) and Floyd McKissick (CORE) as responsible for many of the riots and for creating a rebellious atmosphere. Again, the FBI declined to participate. That year, cabinet secretary Robert Kitner proposed that the Administration develop a report showing that the riots were organized by the same groups and then have the report delivered by a respectable leader (one who could not be branded a McCarthyite). Again, FBI contributions to the project were insufficient. With the FBI of little help, the president's foreign policy

adviser, W.W. Rostow, the famous modernizationist theorist, arranged an investigation into the possibility that foreign elements were organizing the riots.

In 1965, President Johnson established the President's Commission on Law Enforcement and the Administration of Justice. The commission published its findings in 1967 in a report titled *The Challenge of Crime in a Free Society*. The report attributed the rise in crime to four causes: urbanization, a restless youth, decline in parental authority, and degradation of moral standards. The report argued that the justice system was inadequate to address the crime problem and recommended the state increase the size and scope of the police state in terms of manpower, equipment, and facilities, as well as the level of training for law enforcement personnel.[205] That year widespread urban rioting and rising crime rates had created the perception among politicians and the public (seen in public opinion surveys) that the state needed to do something to protect the American society from crime.

Congress was ahead of Johnson on the issue of crime and always to right of Johnson. During the 1950s, Congress had focused legislation on the District of Columbia. The bills indicated the desire for a coercive turn among many politicians. A 1967 crime bill signed into law by Johnson (he had vetoed an earlier version) "authorized warrantless arrests and investigative detention, added penalties for inciting riots, increased mandatory minimum sentences, labeled obstruction of justice

---

[205] There were also studies of police brutality. See William A Geller and Hans Toch, eds., *Police Violence: Understanding and Controlling Police Abuse of Force* (New Haven. Yale University Press, 1996) Among the findings were poor agreement on what actually constituted brutality among researchers and a very low proportion of complaints of excessive force being sustained by review boards

a crime, and toughened obscenity laws," according to Andrew. That year, the Johnson administration proposed its own crime legislation: the Omnibus Crime Control and Safe Streets Act (known as the Law Enforcement and Criminal Justice Act).

Johnson, aware of the transformation in public consciousness, organized the Kerner Commission (National Advisory Commission on Civil Disorders), so named for being chaired by Governor Otto Kerner of Illinois. Hoover testified at length before the commission. He was long on rhetoric but short of facts and the commission rejected his conclusions and recommended 30 billion dollars more than was being spent in the "war on poverty."[206] They focused instead on social problems. They appeared to recognize that the trends put in motion during Roosevelt's presidency were deepening the racial divide. They admitted that there were "deepening racial trends" in America. The nation was becoming two nations, one black and one white, they proclaimed, and this dual society was unequal. Given such a broad problem they recommended a broad solution, one that focused on social programs and crime control. The commission's report was immediately attacked by conservatives, including Ernest van den Haag.[207] The Johnson administration, increasingly focusing on the authoritarian solution and constrained by the costs of imperial commitments, particularly in Vietnam, rejected most of the report. However, he embraced the recommendations on crime control.[208]

---

[206] Iwan W Morgan, *Deficit Government. Taxing and Spending in Modern America* (Chicago. Ivan R Dee, 1995) The previous quote is from Andrew, *Lyndon Johnson*, 181.

[207] Ernest van den Haag, "How Not to Prevent Civil Disorders," *National Review* 20, (March 26, 1968) See George H Nash, *The Conservative Intellectual Movement in America, since 1945*, Wilmington Intercollegiate Studies Institute, 1996).

[208] O'Reilly, "Politics of the Riots "

Johnson sought to raise the law and order issue because he desired to break the conservative stranglehold on the issue (Bill Clinton would do the same when he flew back to Arkansas in the middle of the 1992 presidential campaign to put a man with half a brain to death). It might be supposed then that political opportunism explains Johnson's turn from social welfare to crime control. But Johnson was also adept at racial politics. He had expressed great sympathy for blacks. With the knowledge Johnson possessed about black America, he knew who the targets of increased law enforcement would be. He went into his authoritarian phase with eyes wide open. His policy therefore cannot be regarded as mere political opportunism — it was a racial policy. Rather than condemn conservatives for coding race in law and order terms, Johnson embraced the law and order coding of racism.

Johnson's change in emphasis was based on an overall shift in the thinking of liberal policy elites. When the mid-1960s saw the shift in the black critique from attacking the legacy of segregation to attacking the fundamental structure of political and economic power — racist state capitalism — a serious problem loomed. This was beyond the limits they had set for racial justice. Particularly disturbing was the connection blacks in the US were making to imperialism's victims in the Third World. Popular forces were gaining knowledge of the capitalist world system, using alternative intellectual frameworks (for example a resurgent Marxian critique) to open up the world to thinking about radical change and this directly threatened white imperialist fortunes everywhere in the world.[209] Johnson was trying to carry out a war

---

[209] Jalata, "African American Nationalism", Zinn, *People's History*

against communism. Thus the same cold war motives that led to the white establishment to entertain civil rights brought the coercive side of the cold war home to the US and down upon the black nationalist.

Buried in an appendix to the Kerner Commission report was a recommendation to develop local police intelligence units around the country that would engage in surveillance. Although, as O'Reilly notes, the commission had something rather mild in mind, Johnson conceived of these intelligence units as counter-insurgency cells. Before releasing the report, he passed the recommendation on to police departments throughout the country and encouraged them to develop such intelligence units. The units would be supplied with information the FBI "gathered" on "subversive" activities and an overarching game-plan for handling dissidents. Through this mechanism the vision of the FBI was reproduced throughout the country. In turn, the intelligence units would report back the FBI any information they gathered, again, within the framework of the FBI.

President Johnson, unhappy with the conclusions of the Kerner Commission's report, organized yet another crime commission in 1968. The National Commission on the Causes and Prevention of Violence (NCCPV) was chaired by Eisenhower's brother Milton. Eisenhower had criticized the Johnson administration for hamstringing the FBI, so the selection of chairman was obvious politics. Johnson adopted more than Eisenhower's brother, however. The commission was engineered to avoid what Hoover believed was an undue emphasis on "white racism." Hoover testified before the commission that SNCC was probably "a black Klan" and that the black movement

had been linked to "Moscow-directed revolutionaries."[210] Hoover was by now re-establishing his authoritarian bona fides and were eager to appear before commissions and committees, but only if they were the right ones.

In 1967, John McClellan, Democrat from Arkansas, headed the subcommittee once chaired by McCarthy, the Permanent Subcommittee of Investigations. Hoover desired very much to work with this committee. Edwin Willis, Democrat from Louisiana, chairman of the HUAC attempted to prevent this from happening and bring Hoover over to his side of the Capitol, but Hoover refused. McClellan had promised he would focus on law and order issues. The Senate subcommittee was dedicated to proving the civil rights movement was bogus. It launched a three-year investigation into the cause of the riots, piecing together evidence in such a way that the chain of causality routed through "communist controlled" civil rights workers and terminated in Johnson's War on Poverty programs, especially the Office of Economic Opportunity (OEO). McClellan and Hoover worked closely together. Working through the Subcommittee on Criminal Law and Procedures, the Senate Government Operations Committee organized to shape legislation stemming from the Crime Control Act, especially recommendations to expand the FBI. McClellan requested the FBI write a law and order speech for him promoting their agenda. McClellan in turn gave the FBI draft legislation of the Omnibus Crime Control bill and requested the FBI modify the text to fit their needs. The administration desired to develop an in-house

---

[210] The FBI was so concerned that these commissions were absolving blacks of instigating the riots that officials at one of the field offices suggested that a poll be published (it specified either a true or a false poll) showing most Americans believing the riots were caused by "Negro rioters." See O'Reilly, "Politics of the Riots."

national police bureaucracy. Headed by deputy attorney general Warren Christopher, they were able to secure a provision in the Omnibus Crime Control and Safe Streets Act (1968) to construct such a unit, named the Law Enforcement Assistance Administration (LEAA). O'Reilly notes that McClellan was the listed principle author of the legislation, but it is more likely that Hoover wrote the bill. The law "provided a way for the FBI to expand in size and to spread its ideology about racial matters and subversives." The law "provided a law-and-order alternative to the social, cultural, and economic prescriptions of the Kerner Commission."[211]

As noted, always in back of Johnson, pushing him towards the authoritarian solution, was the rhetoric of authoritarians. Like the Goldwater Republicans, George Wallace used the law and order rhetoric to code racism, but at the same time he used uncoded racial politics. This double rhetoric explicitly paired race and law-and-order making it clear to those who were redefining political discourse what the foundational assumptions of conservative politics were: blacks were deviants if only because they stood outside the normality of the white order. "I am a conservative," Wallace would proudly proclaim on the campaign stump. Wallace's message had considerable play beyond the South; he had strong showings in places like Indiana and Wisconsin, especially in white enclaves that butted up against neighborhoods with concentrations of blacks.[212] During the time, many were writing about the "peculiarity" of the South.[213] Yet Wallace's popularity outside the South indicated that the South may be

---

[211] O'Reilly, "Politics of the Riots," 113

[212] Carter, *Counterrevolution*

[213] Most famously Wilbur J Cash, *The Mind of the South* (New York: Alfred A. Knopf, 1941).

everywhere. A reporter who accompanied Wallace during the 1968 presidential campaign (Wallace was a candidate for the American Independent Party), wrote,

> It is as if somewhere, sometime a while back, George Wallace had been awakened by a white, blinding vision they all hate black people, all of them. They're all afraid, all of them. Great God! That's it! They're all Southern! The whole United States is Southern! Anybody who travels with Wallace these days on his presidential campaign finds it hard to resist arriving at the same conclusion.[214]

In 1968, Wallace would build on the reputation he cultivated in trips to the North during his challenge of Johnson in 1964 Democratic primary. Much of the groundwork had been laid by a single event: the nationally televised image of him standing in front of a school doorway in 1963 to prevent Alabama public schools from being integrated. This picture transformed Wallace into an icon and projected him into mainstream American consciousness. The racist images from the 1968 campaign — which, as Kirby has pointed out,[215] failed to reveal much dissimilarity between the North and the South — did not, as one might expect assuming northern whites were basically anti-racists, play into liberal Democrat hands. The existence and popularity of Wallace indicated that the assumptions were all wrong. Nixon, seeing this, and running on a law and order campaign that thinly veiled race, would win the 1968 election even with Wallace pulling votes from the Republicans.[216] Although Wallace's

---

[214] Douglas Kiker, quoted in Cobb, "Mind of the South, 1941-1991," 710.

[215] Jack T. Kirby, *Media-Made Dixie: The South in the American Imagination* (Athens, GA, 1986).

[216] Many southern politicians, recognizing the support the Republican party was building in the South and the danger of Wallace to Nixon's aspirations, told their constituents that a vote for Wallace was a vote for Humphries. See Nadine Cohodas, *Strom Thurmond and the Politics of Southern Change* (New York Simon & Schuster, 1993). In the end many Wallace supporters, fearing they would throw their vote away, voted for Nixon. See Richard F. Bensel and M Elizabeth Sanders, "The Effect of Electoral Rules on Voting Behavior The Electoral College and Shift Voting," *Public Choice*, 34 (1979) 69-85

power would be felt in 1968, he was a force to be reckoned with in 1964, and Johnson and other politicians paid attention.

Also pushing Johnson was the public. Public opinion polls in 1968 show that, "for the first time since the start of scientific public opinion polling in the 1930s, Americans rated crime as the country's top domestic problem."[217] That year "81 percent of those surveyed said they thought the nation's law enforcement had 'broken down.'"[218] A majority of them said they believed that crime was the result of "Negroes who start riots" and "communists."[219]

Johnson had made civil rights the centerpiece of his 1964 state of the union address. Although he probably did not have it in his mind to drop out of the presidential race at the time, Johnson last state of the union address would make his war on crime the centerpiece - "There is no more urgent business before this Congress than to pass the Safe Streets Act this year." "We, at every level of the government, state, local, federal, know that the American people have had enough of rising crime and lawlessness in this country." Crime and lawlessness as referenced were two separate issues, the first referring to street crime and the second to the rebelliousness caused by structural conditions; Johnson distinguished the two because he desired to link them. After reassuring the South that he understood crime control was primarily a state and local issue, and that he did not desire to establish "a national police force, he asserted that "the National Government can and the National Government should

---

[217] Scott Christianson, *With Liberty for Some. 500 Years of Imprisonment in America* (Boston: Northeastern University Press, 1998) 276.

[218] Christianson, *With Liberty for Some*, 276

[219] Katherine Beckett, *Making Crime Pay* (Oxford: Oxford University Press, 1997)

help the cities and the States in their war on crime to the full extent of its resources and its constitutional authority. And this we shall do." The help the federal government planned to supply would be to "to develop State and local master plans to combat crime" and "to bring the most advanced technology to the war on crime in every city and every county in America."

He promised to "propose a Drug Control Act to provide stricter penalties for those who traffic in LSD and other dangerous drugs with our people. I will ask for more vigorous enforcement of all of our drug laws by increasing the number of Federal drug and narcotics control officials by more than 30 percent." The president lamented the shortage of United States attorneys. He promised to hire more "throughout the land to help prosecute our criminal laws." He noted that the government had increased the judiciary by 40 percent and prosecutors by 16 percent. "The dockets are full of cases because we don't have assistant district attorneys to go before the Federal judge and handle them." Clearly the president's emphasis on the problem of crime had shifted. He was now pushing the crime control model.

He then discredited the black struggle for freedom. "I spoke of despair and frustrated hopes in the cities where the fires of disorder burned last summer," he said in deep passionate tones; "We can – and in time we will – change that despair into confidence, and change those frustrations into achievements. But violence will never bring progress. We can make progress only by attacking the causes of violence and only where there is civil order founded on justice." *Who* was causing the violence was clear to law and order types around the country. It was not the police turning dogs

and water cannons on black America. It was not the Klan burning crosses in the front yards of black homes. It was not the whites who lynched blacks in the South. "Today we are helping local officials improve their capacity to deal promptly with disorders," Johnson said; "Those who preach disorder and those who preach violence must know that local authorities are able to resist them swiftly, to resist them sternly, and to resist them decisively."

Elements of Johnson's bill were opposed by the Congress for being "too soft on crime." For instance, despite the clear adoption of a conservative approach to the issue of crime, Johnson wanted to strengthen citizen's rights by limiting the ability of law enforcement agencies to invade privacy; such an emphasis on civil liberties would hobble the emerging crime control regime. Besides, conservatives knew that law-abiding white folks would have nothing to fear from the government. That year, Johnson's bill was passed into law, but it would be without Johnson's proposed restriction on electronic surveillance. Congress even attempted to reverse Supreme Court judgments that increased the rights of defendants, but their efforts failed (at least in the short-run). The new law was focused on controlling civil disorders and coordinating law enforcement.[220]

Thus to fight the domestic front in the cold war, Johnson and the Congress raised the police state to qualitatively new levels in the 1960s. The state inaugurated its "war on crime" with the passage of the Safe Streets and Crime Control Act of 1967. They followed this the next year with the Omnibus Crime Control and Safe Streets Act

---

[220] Anderson , *Lyndon Johnson*, 180-182

of 1968. The 1968 Crime Control Act created the LEAA, which coordinated federal criminal justice policy with academic production in social science departments (primarily criminology, criminal justice, sociology, and political science). The LEAA would grow dramatically in the years that followed, from 300 million in 1968 to 1.25 billion in 1974. Grants permitted the development of better reporting of crime and rates skyrocketed, which in turn justified increasing the war on crime.[221] Even the 1968 Civil Rights Act, passed in response to the black riots of 1967, would be designed as a crime control measure. Under cover of what appeared to be an expansion of the 1964 Civil Rights Act, the 1968 Act criminalized movement activities, such as protesting. A provision increased the penalties for anybody committing violence against blacks, this in response to lynching and other violent acts in the South. There were key exemptions. The Act reads: "The provisions of this section shall not apply to acts of omissions on the part of law enforcement officers, members of the National Guard . . . or members of the Armed Forces of the United States, who are engaged in suppressing a riot or civil disturbance."[222]

The LEAA provision in the 1968 Crime Control Act that provided the infrastructure wherein intellectuals and politicians engineered a shift in thinking about crime facilitated the government's efforts to legitimate the turn to coercion. Academics like Ernest van den Haag and James Q. Wilson, their research heavily funded by the government, would call on the state to crack down on criminals, expand prisons, and

---

[221] Marc Mauer, *Race to Incarcerate* (New York The New Press, 1999); Donziger, *Real War on Crime*.

[222] Quoted in Zinn, *People's History*, 453

return to harsh punishment, such as the death penalty. Most accounts focus on work produced by these scholars in the mid-1970s; ignorance of their earlier work permits the claim that the shift in criminal justice policy towards coercion did not begin until the late 1970s. But Van den Haag had a very public history of supporting racist and even eugenicist policies. Van den Haag was an unabashed segregationist. He testified in school desegregation cases in 1964 *Evers v. Jackson* and related cases. Earlier, he had attacked the testimony Kenneth Clark presented in the 1954 *Brown* decision.[223] He believed that integrating schools would harm white children. The new direction in criminology and criminal justice theory legitimated the emerging new right social logic vis-à-vis race and crime, sensitizing the public to police state tactics that would later be embodied in "zero tolerance," "three-strikes-you're-out," and a host of similar repressive measures.[224]

An overall structure of ideology-cum-science developed about blacks. In the late 1960s, the nascent stratum of neoconservative academics, the emerging organic intellectual structure for leading bourgeois fractions, began blaming persistent poverty and other social ills on the black family and "pathological" black culture. Through this filter mainstream social scientists, such as Harvard's Daniel Patrick Moynihan in his 1965 book *The Negro Family,* gave scientific racist discourse liberal cover. This academic mode of cultural racism "softened" the harsh scientific rhetoric of biological racism

---

[223] See Ernest van den Haag, "Social Science Testimony in the Desegregation cases — a Reply to Professor Kenneth Clark," *Villanova Law Review*, 6 (1960)

[224] Susan Caringella-MacDonald, "State Crisis and the Crackdown on Crime Under Reagan," *Contemporary Crisis*, 14 (1990).; Tony Platt, "U S Criminal Justice in the Reagan Era An Assessment," *Crime and Social Justice*, 29 (1988) and "The Politics of Law and Order," *Social Justice*, 21 (1995)

that was emerging from other academic quarters (rather re-emerging). Before Moynihan's "study" was released, Johnson's speech writers had read it, and at the 1965 commencement address at Howard University, Johnson delivered an address that contained passages lifted from the book. The contents of the books were leaked to the press, and then the book was released to the public and highly publicized by the media during the Watts riots.[225] In 1969, Arthur Jenson published a widely read study in that claimed that researchers could explain 80 percent of the 15 point difference between black and white IQ scores by biology alone. Because of innate black inferiority, social programs designed to enrich black children's environment were said to be relatively useless, since there was only 20 percent of their IQ development left to work with. This view was disseminate popularly by Richard Herrnstein in his article, "I.Q." in *Atlantic Monthly*, September 1971.

The point of both elite tacks however was the same: blame the victim. That is, blame blacks for their misfortunes and not white society. These works were in effect writs of absolution for white people. Against the black nationalist movement, the work of organic intellectuals blaming the black family or black genetics helped justify the existing political and economic order. Blaming blacks for their troubles inoculated the white establishment against the black nationalist critique that inequality was the fault of repressive social structure. The emerging new right organic intellectual legitimated the state response that emerged with the breakdown of consensual machinery. These arguments persist to this day and they have moved closer together. We can find both

---

[225] John Ehrman, *The Rise of Neoconservatism Intellectuals and Foreign Affairs 1945-1994* (New Haven: Yale University Press, 1995).

arguments in the work of the same individual. Murray and Herrnstein's *Bell Curve*, published in 1994, widely read and favorably reviewed, represents the latest in scientific racist fashion. Ten years earlier, Murray's *Losing Ground* (1984) blamed society's problems on the black woman. Almost twenty years before that, in similar fashion, Moynihan blamed the black family. Accompanying the changes in criminal justice rationale was an intellectual shift in notions of crime causation to the right.[226]

In the 1968 presidential election, Nixon promised "law and order" at home, continuing the construction of an expanded police state. Nixon criticized Johnson for not being "tough enough" on crime. "Under the stewardship of the present Administration," Nixon asserted, "crime and violence . . . have increased ten times faster than population. Now, by way of excuse, the present Administration places the blame on poverty." Nixon had some factual basis to make this claim. The violent crime rate did rise during the 1960s and it would continue rising through the early 1970s. In 1963 the crime rate was 190 per 100,000. By 1968 it had climbed to 298 per 100,000. In 1971 reached 396 per 100,000. By 1972 it was more than double what it had been in the 1960s.[227] Nixon dismissed the liberal structuralist explanation for crime (even though Johnson was not longer really advancing the theory) and blamed the crime trends on "liberal judges" who made it "safe to break the law." "Today all across the land guilty men walk free from hundreds of courtrooms. Something has gone terribly wrong in America."[228] Nixon resurrected Goldwater's southern strategy and, like Wallace,

---

[226] Platt and Takagi, "Intellectuals for Law and Order"
[227] Christianson, *With Liberty for Some*, 276
[228] Quoted in Christianson, *With Liberty for Some*, 276.

masterfully deployed the politics of resentment. Unlike Wallace, Nixon would avoid publically appealing to racism.

At the Republican National Convention of 1968, the leading delegate for Wisconsin (the state where Wallace had such a strong showing), proclaimed that "When . . . the nation with the greatest tradition of the rule of law is plagued by unprecedented lawlessness, when a nation that's been known for a century for equality of opportunity is torn by unprecedented racial violence, then it's time for new leadership for the United States of America."[229] The delegate was saying several things in this short statement that have become central to the post-Civil War social order: (1) the United States has a tradition of law and order, this tradition is the greatest in history and it is central to the American way of life; (2) equality of opportunity not equality of outcome is the measure of justice; (3) since the abolition of slavery, the United States has been a land of equal opportunity there are neither legitimate grounds for claiming social injustice nor a social obligation to alter the structure of society; (4) since those who are claiming social injustice have no legitimate grounds to make such a claim they stand against the good order of the US; (5) therefore, it is the duty of a country based on law and order and having achieved equal opportunity to use coercion to control those who make such a claim and to select repressive control over structural change.

Nixon hammered his theme home in stump speeches and television commercials. "This is a nation of laws," he said, and then added, in words that would

---

[229] *Nixon*, Part Three: "The Fall, "prod. and dir Marilyn H. Mellowes (WGBH Educational Foundation, 1997)

come back to haunt him: "as Abraham Lincoln has said, 'No one is above the law, no one is below the law,' and we're going to enforce the law and Americans should remember that if we're going to have law and order." In a famous television commercial during the campaign, Nixon addressed the nation with these words: "In recent years, crime in this country has grown nine times as fast as population. At the current rate, the crimes of violence in America will double by 1972. We cannot accept that kind of future for America. We owe it to the decent and law-abiding citizens of America to take the offensive against the criminal forces that threaten their peace and their security and to rebuild respect for law across this country." And then this: "The new voice that is being heard across America today. It is not the voice of a single person, it's the voice of a majority of Americans who have not been the protesters, who have not been the shouters. The great majority finally have become angry, not angry with hate, but angry, my friends, because they love America and they don't like what has been happening to America for the last four years."[230]

The text of these speeches was essential to Nixon's success and future popularity (he would in 1972 win re-election in one of the biggest landslides in US history, surpassed only by Johnson squashing of Goldwater in 1964). Nixon was drawing a bi-polar world. On one side were "decent and law-abiding citizens" who "love America." On the other side were "the protesters," "the shouters," and the "criminal element." Since so many of the protesters were either blacks struggling for racial justice or people of all stripes struggling for economic justice and an end to

---

[230] *Nixon*, "The Fall"

imperialism, Nixon was identifying *real Americans* as their opposite: white middle and capitalist class people who did not oppose imperialism. Many mocked Nixon over his "silent majority," but he was right: the majority of Americans were with him, and they would be with Ronald Reagan in the 1980s.

The Nixon Administration, followed Goldwater's lead, and, with the support of a "silent majority," continued expanding the role of the federal government in crime control. Blacks became explicitly the target. Dhoruba Bin Wahad notes that "political prisoners became a matter of government policy in 1971 as a consequence of a militant black liberation movement."[231] The government aimed its counterintelligence program (COINTELPRO) particularly at blacks, the majority of whom were from the Black Panther Party and the Black Liberation Army. But elites targeted other minorities in struggle, for example, Puerto Rican nationals, white anti-imperialists, and the American Indian Movement. Many of the hundreds of political prisoners currently in US prisons were incarcerated during the 1970s.[232] Bin Wahad concludes that "the development of political repression in the United States is reflective of the co-optation and the neutralization of legitimate movements for social change, whether it's the anti-war movement that arose out of the Vietnam War, the Black civil rights or Black

---

[231] Wahad, "Against Black Revolutionaries," 441.

[232] Political prisoners and the potential effect they may have on other revolutionaries trouble elites. In 1973-74, elites developed Operation PRISAC to monitor prison activist whom the government's Counterintelligence Program had sent to prison The government believed that political prisoners were particularly dangerous. PRISAC thus served to isolate black activist once the government had moved them from the streets to prison A string of prison murders are associated with PRISAC between 1973 and 1976

liberation movement, or the Puerto Rican nationalist movement, the US has carried out a policy of repression."[233]

The first decades of the post-WWII era, the rehabilitative ideal in corrections reached their zenith. Kellor's dream of a system that emphasized incapacitation did not emerge. Between 1940 and 1950 the number of people in prison declined. It rose again between 1950 and 1960, as I noted, but the rise was not part of the pattern of steady increase following the Civil War. During the decade of the 1960s, the use of prisons was declining sharply. In the late 1960s, polls showed that half the public believed rehabilitation was the primary purpose of prisons and over 70 percent believed it should be.[234] Whereas by 1935 there were nearly 200 executions annually, by the 1950s, there were half as many, and by the mid 1960s, a quarter as many. In 1966, only 42 percent of the public supported the death penalty. Legal challenges to state executions mounted and in 1972, in *Furman v. Georgia*, the court ruled that Georgia's capital statute "cruel and unusual" in its application. Their decision invalidated the death penalty in all states (in 1976, the court would rule that states could use the death penalty if they tightened their laws). In 1970, the US Congress voted to abolish nearly all federal mandatory minimum sentences for drug offenders. This move was the result of concern about the injustice of mandatory minimums. There had been trends towards the view that drug abuse was a public-health problem rather than a matter for the criminal court. Key states began to reduce their prison populations. By the close of the 1960s, for example, New York state has reduced their

---

[233] Wahad, "Against Black Revolutionaries," 442

[234] Mauer, *Race to Incarcerate*

prison populations to the 1950s level (in 1973, in a complete reversal, New York would become the leader of the mandatory minimum for drug possession). By 1972, California had reduced their prison populations by one fourth over the 1963 level. The Federal Bureau of Prisons had plans to close several large federal penitentiaries. The changing vision of prisons was part of an overall deinstitutionalization push, where the public and intellectuals increasingly came to see prisons, mental asylums, and other institutional constraints on individual liberty as barbaric.

There were several reasons for the leveling off of the carceral trend in the years after WWII. The economy grew rapidly after 1950 and crime rates were relatively low during the first couple of decades of that period. The new liberalism that prevailed in government, especially in the judiciary, the same courts that supported civil rights, tended to support the Bill of Rights in protecting defendants. The model that was aspired to was the due process model. Of course, as we have seen, the model was more true for whites than for blacks. And compared to other "developed" countries, the United States was still the more repressive. But compared to itself over time, the criminal justice system in the post-WWII period was relatively mild.

In the 1960s, crimes rates began to climb, especially violent crime rates. The first big jump in crime occurred in 1963. Conservative social scientists, like political scientists James Q. Wilson blamed the rise on liberalism. "But despite some common assertions that lawlessness was shooting up in response to growing social 'permissiveness' (a.k.a. civil rights for Negroes), the crime upsurge then probably was due more to demographics, since the postwar baby boomers were starting to come of

an age that was at higher risk for crime, and a greater percentage of them lived in the more crime-prone cities."[235] Blacks were especially vulnerable to demographic changes. As I have emphasized throughout the last two chapters, there was a great movement of blacks from rural areas into urban areas. By 1965, eighty percent of blacks lived in urban settings. American inner cities became mostly black. Thus the crime associated with the inner city disproportionately involved blacks. With inner city conditions deteriorating, the problem was exacerbated. This coincided with an increase in the number of males in the "crime-prone" age cohort of 20 to 29 and rising black unemployment. For example, between 1960-1963, official rates of unemployment for those between 16 and 19 years increase 28 percent for blacks. "Jobless, uneducated, poor, and increasingly addicted to alcohol and other drugs, these young black males were prime candidates for arrest and imprisonment."[236]

As indicated by figure 1.2.2, since 1970, crime rates in the US have risen sharply, peaking four times: 1971, 1975, 1980, and 1991.[237] Despite fluctuating, the crime rate remained high throughout this period. Embedded in the structure of socioeconomic inequality is the inherent instability of the capitalist mode of production, a tendency towards crisis that results in recurrent high rates of unemployment and other social problems.[238] Numerous studies have causally linked

---

[235] Christianson, *With Liberty for Some*, 275

[236] Christianson, *With Liberty for Some*, 275-276.

[237] After World War Two, crime rates increased in most of the Western industrial capitalist countries. Ted R. Gurr, "Contemporary Crime." The increase in crime was especially notable in the United States Alvin L Jacobson, "Crime Tends."

[238] Wallace and Humphries, "Urban Crime."

overall crime rates to unemployment.[239] Other studies have linked property crime to underemployment and low wages.[240] A social system with relatively few social supports, such as the United States, amplifies this effect by failing to provide a buffer against the discontents of economic insecurity.[241] Looking at unemployment in the larger context of recurrent business crisis, the relationship is even more visible and a clear pattern emerges (see figure 2.5.2).

The peak crime rates identified in figure 1.2.2, correspond closely to the four post-1960s recessions, namely, 1970, 1973-75, 1979-82, and 1990-92. Moreover, the rise in crime during the early years of the 1960s also corresponds to the high unemployment rate in the early 1960s. The higher overall level of crime after the 1960s complicates the relationship between business cycles and crime, though in no way obviates it. Wallace and Humphries argue that studies that "view crime as systematically tied to economic crises in the form of depressions or recessions, overlooks the possibility that economic *expansion* may also generate high rates of crime."[242] They suggest a more subtle understanding that involves examining the temporal and geographical movement of capital. Firms shifting investment to other regions create criminogenic conditions in central cities abandoned by capital. The historic shift in investment from the industrial North (the Snowbelt) to the Southern

---

[239] See Theodore G. Chiricos, "Rates of Crime and Unemployment. An Analysis of Aggregate Research Evidence." *Social Problems*, 34 (1987)

[240] Emilie A. Allan and Darrell J Steffensmeier, "Youth Underemployment, and Property Crime: Differential Effects of Job Availability and Job Quality on Juvenile and Young Adult Arrest Rates," *American Sociological Review*, 54 (1989).

[241] Lance Hannon and James DeFronzo, "The Truly Disadvantaged, Public Assistance, and Crime" *Social Problems* 45 (1998).

[242] Wallace and Humphries, "Urban Crime," 194.

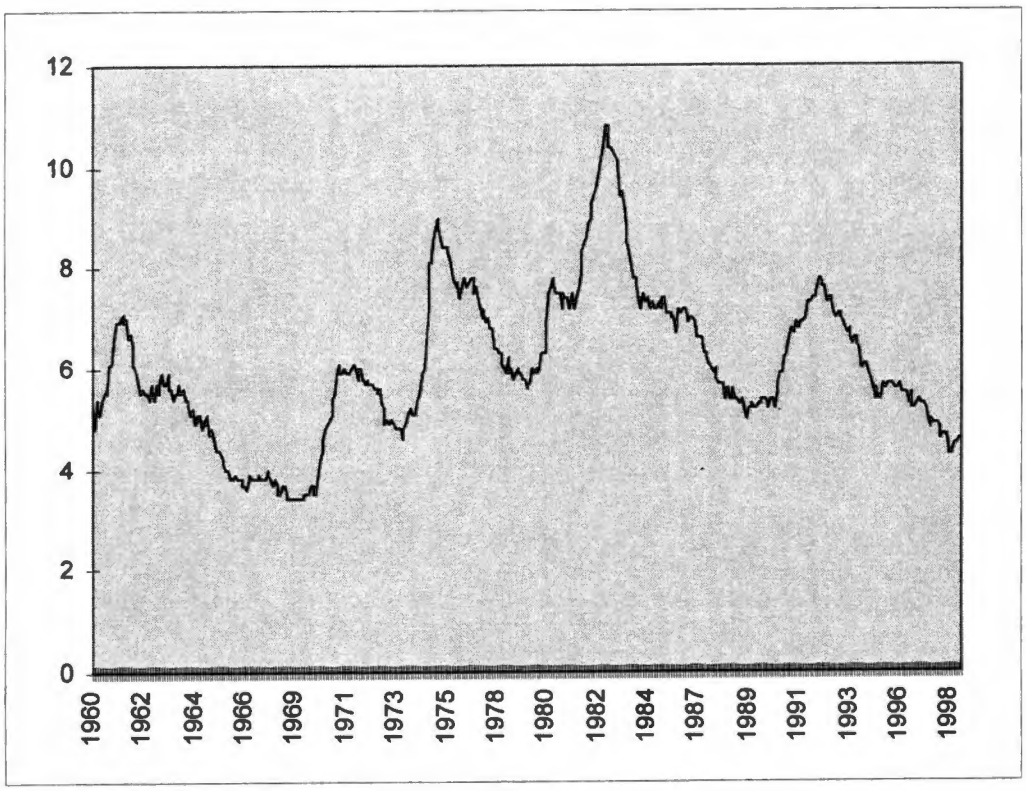


Figure 2.5.2
Unemployment Rate 1960-1998[243]

United States (the Sunbelt) in the post-WWII period has contributed to the overall higher level of crime. Thus the link between the business cycle and crime rates is embedded in a long-term transformation in the composition of the national economy. This long-term transformation coincides, or is, in part, constitutive of, the post-World War II long-wave. Thus, macroeconomic trends produce and reproduce criminogenic conditions generally, and exacerbate conditions for certain populations, namely racial-ethnic minorities, at the same time business cycles are the cause of shorter-term variations of the effects.

---

[243] Adapted from Table 59, Civilian Unemployment Rates, Approximating U.S. Concepts, 10 Countries, 1959-1998, Department of Labor Statistics, Washington DC (1998), 210.

But whatever the real cause of rising crime, the public and politicians blamed liberal permissiveness and African Americans and they began their attack not during the periods of high unemployment, but in the period of prosperity between 1961-1971. It was during the 1960s that rehabilitation came under attack and conservatives began their assault on indeterminate sentencing and judicial discretion. In 1968, a book was published titled *The Lawbreakers* that defined the new attitude elites were taking towards crime.[244] The book claimed that crime would be halved if convicted offenders served their full terms. It maintained that rehabilitation was not the goal of prisons. Crucially, the call for states and the federal government to standardize punishments was a call for the transfer of power from the judiciary to the legislature. Unhappy with the courts' emphasis on due process, politicians desired to remove a barrier to the greater implementation of the crime control model. By 1973, the federal government and state governments had fully recommitted to the use of prisons.

What changed in the 1960s? There was no economic calamity; the 1960s were economic boom years. By 1970, poverty and unemployment were at their lowest national levels of the twentieth century. The serious macroeconomic disturbances of the 1970s would not be felt at the grassroots until *after* 1974-75. The recession of 1971 was mild and short, nothing extraordinary. Americans were accustomed to the normal rhythms of capitalism. And although crime was rising in the 1960s, in part the result of increasing levels of unemployment among blacks, crime as an issue was not on the public's radar screen until *after* 1964, and it became an issue then only because hyper-

---

[244] Evans and Moore, *The Lawbreakers*

mediated race riots and calculating politicians were drawing an explicit link between race and lawlessness. Fear of crime was certainly not due to any real increase in white crime victimization. Whites were much less likely to be the victims of violence, especially inter-racial violence For some reason other than real experience, "it is whites who have historically been more supportive of punitive anticrime measures," Beckett explains; "White punitiveness in particular seems to be largely inexplicable in terms of one's 'risk profile.'"[245] Yet between 1966 and 1976 spending stood at five times what it was the previous decade.[246]

What *does* explain the shift in policy is the dramatic change in the status – both real and perceived – of the relationship between blacks and whites. As Winant observes, the old racial project fell apart.[247] Johnson and Nixon's wars on crime were popular because they represented mainstream American values, specifically racial values, and they represented a new program to reclaim white dominance (although whites never really lost this dominance). Black liberation was okay with white Americans only so long as it benefited them. White Americans have always tolerated blacks when they profited from their tolerance. But if justice meant sacrifice, then cries of injustice were to be ignored and demands for social change were to be rejected. And if blacks pushed, whites pushed back, and given the asymmetry of power in the shoving match, blacks were easily pushed to the ground. Civil rights provided the

---

[245] Katherine Beckett, *Making Crime Pay* (Oxford: Oxford University Press, 1997), 26.
[246] Tony Platt, "The Politics of Law and Order," *Social Justice*, 21 (1995)
[247] Howard Winant, "Behind Blue Eyes: Whiteness and Contemporary US Racial Politics," *New Left Review*, 225 (1997)

ostensible race-neutral context for the oppression of blacks to become redefined as law and order.

And the whole time, the South was down there waiting for white America to come back around to her senses. When George Wallace connected the black struggle to crime by pointing out that "the same Supreme Court that ordered integration and encouraged civil rights legislation" was now "bending over backwards to help criminals,"[248] millions of Americans agreed, and impressed with the messenger, they sought the source of the message. James Cobb argues that the widespread disillusionments of Watergate and then Vietnam caused many Americans to cast their gaze southward. Perhaps the South could provide some guidance. Marc Mauer observes: "Thus were the seeds sown for a movement that would ultimately get so 'tough' on crime that it would result in world record rates of incarceration."

In the end, the North and the South which had grown apart after 1789, had grown together by 1964. Howard Zinn crystallized this in his book, *The Southern Mystique*, when he wrote that "far from being utterly different . . . [the South is] the essence of the nation." He went on to note that the South was "racist, violent, nationalistic, conservative, and it harbors extreme poverty in the midst of ostentatious wealth," which, of course, "embodies all [the] same qualities" of "the United States as a civilization."[249] This indicates, as Cobb points out, not so much Egerton's "Americanization of Dixie/southernization of America" thesis but rather "the

---

[248] Beckett, *Making Crime Pay*, 53

[249] Howard Zinn, *The Southern Mystique* (New York, 1964). The passages are in Cobb, "Mind of the South, 1941-1991," 716-717. Previous quote, Mauer, *Race to Incarcerate*, 53

discovery of the southernness of America."[250] In any case, the boundaries of Dixie are increasingly contested, Cobb contends, as its "most negative traits are either neutralized or nationalized."

The evidence shows that the inception of the post-civil rights police state represents the emergence of the coercive side of the government response not only to popular and revolutionary movements, but the changed structure of white supremacy. The strategy of race-neutrality necessitated a change in social control mechanisms as previous control mechanisms were undermined by greater racial inclusion. The show of repressive force reveals the full technical complement of hegemonic weaponry. Gramsci argues that although the unique feature of hegemony is the manufacture of consensus, the ruling coalition retains its more traditional features of coercion, such as the right to the legitimate use of violence. When consensual mechanisms of domination break down, elites rapidly deploy coercive means. It is in this period that we see the reconfiguration and expansion of the prison-industrial complex. The exercise of hegemony under the post-civil rights era rests on this two-pronged mode of domination. This becomes even more clear when we consider the consensual side of hegemony in the period before reaction.

One of the keys to victory was the simultaneous ostensible de-racialization of the criminal justice system and the criminalization of the racial struggle. During the 1960s, when whites throughout the South, both officially through police action or unofficially through racial terror, often led by the Ku Klux Klan, were engaging in

---

[250] Cobb, "Mind of the South, 1941-1991," 717. See John Egerton, *The Americanization of Dixie. The Southernization of America* (New York, 1974).

open violence against blacks (beatings and lynchings), presidents and presidential candidates, journalists and opinion makers, and law enforcement, were turning the picture over, characterizing blacks as law-breakers and the enemies of change rather than identifying their oppressors as the problem.

At whatever level it takes place, the criminalization of the black movement represents one of the most profound mechanisms of racial domination ever devised by the white establishment. It is one of the primary causes among many underlying African American prisonization. Crucially, it legitimates racial control ostensibly resting on a different basis, such as the structural generation of street crime. Far from being the consequence of anonymous structural forces alone, crime and punishment became the basis for legitimating open repression of blacks struggling for liberation. This represents a double strategy, one that, on the one hand, grants African Americans' formal equality, ending legal apartheid and playing lip service to diversity, while on the other hand criminalizes blacks and moves them from one state of bondage to another.

The combined result of the dissimulation of race and law and order may be seen in a certain revisionist history that has grown up in the 1990s. We get a sanitized version of the civil rights struggle in today's media and history books. Martin Luther King, Jr., along with Malcolm X, one of few black images permitted from the sixties, is memorialized as somebody whom all of America, except a few backward white segregationists, looked upon in admiration. In fact at the time King and his followers, their acts of civil disobedience, were law-breakers in the eyes of tens of millions of

white Americans. As Zangrando and Zangrando put it, "Black protest represents a devastating threat to the image most white Americans have of their society and their roles in it."[251] Blacks were targets of law enforcement at the highest levels of the US state.[252]

It was much easier to characterize as unlawful inner-city rebellions by black youth, and these were used by the media and politicians in the 1960s to frighten white America. The image of the "dangerous classes," particularly when they are black, ever has currency among the affluent and racially privileged. Nineteen-sixties rebellions against impoverished inner-city conditions were characterized as "riots" and sometimes "race riots," irrational outbursts of mob behavior where blacks inexplicably "burned their own homes" (although blacks often did not own their homes). The media manufactured and perpetuated myths about the rebellions, such as that they were the result of "long hot summers" and that the "communists" were "stirring up the Negro" (as if the Negro needed stirring up).

The structural forces and deprivations that led to black rebellion and to militant organizing were not reckoned. They could not be. The reality of policemen as troops occupying enemy territory as an analog to the concurrent occupation of Vietnam could not be allowed to dawn on the white mind. When white elites would appeal to the speech of "mainstream" civil rights leaders who desired an end to "rioting" and

---

[251] Joanna Schneider Zangrando and Robert L. Zangrando, "Black Protest: A Rejection of the American Dream," *Journal of Black Studies*, 1 (1970), 141.

[252] The direction King struck out on in the latter 1960s —when he called for a radical redistribution of economic and political power in 1967 — caused his speeches after 1963 to be omitted from the popular historical record

"looting," they would omit that the same civil rights leaders understood and even publically stated that it was white backlash and the structural conditions of the ghetto that caused rebellions, not African American lawlessness.

In fact, much of the rebellious activity of young African Americans came long after the criminalization of the black movement began. The criminalization of civil rights struggle began with repressing those who were brave enough to sit in seats reserved for whites on public transportation, or those who marched or rode buses for freedom ("freedom riders"), or those organized by CORE and SNCC to sit at lunch counters beginning in 1960-61. The urban rebellions in the North and Midwest began in the mid-1960s, yet King was first targeted by the FBI in 1962. We may go back further than this, for as early as 1918, future FBI director J. Edgar Hoover, working as a counter-radical for the Wilson administration, plotted to destroy black nationalist leader Marcus Garvey.[253]

This dissertation is about class antagonisms, if only because they are intimately linked to the racial conflicts. During the period covered in this chapter, American capitalism took on the primary role of waging the global class struggle against international communism (or, more accurately, "siege socialism"[254]). After the destruction of Germany, and with the sun setting on the British Empire, the task of organizing the capitalist encirclement of the Soviet Union (and within a few years

---

[253] Ward Churchill and Jim Vander Wall, *The COINTELPRO Papers Documents from the FBI's Secret Wars Against Dissent in the United States* (South End Press)

[254] Michael Parenti, *Blackshirts and Reds. Rational Fascism and the Overthrow of Communism* (City Lights Books· San Francisco, 1997)

China) fell to the United States.[255] The United States government and industry funded the reconstruction of Europe and Japan and enthusiastically joined with right wing forces throughout the world to suppress the worker movement and steer the rise of democratic socialist governments in the wake of fascism towards corporatist configurations rather than genuinely socialist ones. The massive increase in world intervention, military expenditures, and increased domestic surveillance was legitimated by the cold war. But it became more than this. The cold war was an organic phenomenon. Using the metaphor of a cancer, Blum put it this way: "By the end of the Second World War, every American past the age of 40 had been subjected to some 25 years of anti-communist radiation, the average incubation period needed to produce a malignancy. Anti-communism had developed a life of its own, independent of its capitalist father."[256] And much as the shift in the contingencies of control in the post-WWII world caused American elites to raise the military-industrial complex, the transformation of control parameters following the Civil Rights Act caused elites to raise the prison-industrial complex.

All these political-ideological and political-practical threads fold into a great world-historic transformation and are in part constitutive of this change. In the period following the Great Depression and WWII, the US state and leading capitalist fractions secured the Fordist-Keynesian accumulation regime. High productivity, capital-labor

---

[255] It took capitalist countries two centuries to raise the level of productive forces achieved by the Soviet Union in a couple of decades. By the 1950s, the Soviet Union had become second only to the United States in technological and industrial development and surpassed most locations in the capitalist world economy in quality of life and wealth equality. See Shirley Cereseto, "Socialism, Capitalism, and Inequality," *Insurgent Sociologist*, 11 (1982).

[256] Blum, *Killing Hope*, 12.

cooperation, commitment to social welfare, and high levels of consumption mark this regime.[257] This development was, in part, driven by military imperatives emerging from the global struggle with communism; in turn foreign policy objectives provided cover for the greater degree of state-capital cooperation required by the solution of the global economic crisis of the preceding historical phase.[258] During this period, the United States enjoyed hegemonic status globally. Hegemonic rise coincided with the A-phase of the post war Kondratieff cycle.[259] Corresponding to this movement was an extensive and stable period of economic growth, a steady reduction in poverty levels, and the emergence of a widespread consumer culture. It was under these conditions that some elite strata and certain segments of African-American society dismantled apartheid, transformed racial ideology, and blacks enjoyed a relative advancement in their living standards and political status.[260]

At the same time the civil rights movement was marching to curbed victories against white supremacy, and progressive elements in the Democratic Party had been carefully shaping the path of social transformation in the 1940s-60s to maintain dissemble the racial order, civil rights reforms were fought tooth and nail by the forces

---

[257] Philip Armstrong, Andrew Glyn, and John Harrison, *Capitalism Since 1945*, 2nd ed. (Cambridge: Blackwell, 1991) Baran and Sweezy, *Monopoly Capital.*

[258] Robert A. Pollard, *Economic Security and the Origins of the Cold War*, 1945-1950 (New York: Columbia University Press, 1985). Larry J. Griffin, Joel Devine, and Michael L Wallace, "Monopoly Capital, Organized Labor and Military Expenditures Military Keynesianism in the United States, 1949-1976," in *Marxist Inquiries Studies of Labor, Capital and The State*, eds Michael Burowoy and Theda Skocpol (Chicago University of Chicago Press, 1982)

[259] Immanuel Wallerstein, "Peace, Stability, and Legitimacy, 1990-2025/2050," in *The Fall of Great Powers Peace, Stability, and Legitimacy*, ed. Geir Lundestand (New York. Oxford University Press, 1994)

[260] Howard Winant, *Racial Conditions: Politics, Theory, Comparisons* (Minneapolis: University of Minnesota Press, 1994); Leiman, *Political Economy of Race*

of reaction, most obviously southern Democrats and the Republican Party. This intersection of racial concerns among Republicans and disaffected southern Democrats was a harbinger of things to come. The Republican Party had undergone a sea change since the era of Reconstruction: the party had tossed most the radicals out and the progressives had either converted or left and joined with other progressives in broadening the Democratic coalition (though raising intra-party antagonisms in the latter party). Republicans — the "party of Lincoln" (though, as we have seen, this does not mean what it means to imply) — had been moving further rightward for decades, and were now, as bona fide anti-communists with conservative Christian conviction at their backs, opposed to the progress of African Americans and were developing a strategy to fold the South into a new political coalition that sought to resurrect an atavistic racial pride (though this pride had never really gone away). The Republicans coupled this with a plan to diminish the power of the northeastern liberal establishment, including members of their own party. The social conservative movement took what was, from their vantage-point, a principled stand against civil rights that, while harming their political fortunes at the polls in the mid-1960s, appealed to a majority of white Americans by the late 1960s. By the mid-1970s, the nation's ideological center of gravity had definitely shifted far rightward.[261] Republicans lost the battle (the 1964 presidential election) but won the war (the conservative "revolution" of the 1980s-90s).

---

[261] Winant, "Behind Blue Eyes."

Yet Republican unpopularity in the mid-1960s did not appear to hamper the party's ability to resist progressive change. Reactionary forces, although losing high profile contests, were able to keep intact much of the caste structure. Along with white liberals, they made sure that laws and policies were written in such a way so as not to disturb the privilege and wealth of affluent whites. They deftly used their defeats as weapons to forge, enlarge, and galvanize the conservative coalition. They played off fractions within the coalition, the far right drawing in the militantly dedicated and keeping the right ideologically invigorated at the same time permitting these "extreme" elements of rightwing thought to be separable from the "mainstream" movement thus providing cover for the fascism of the party.[262] They were building a future, and stopping the movement towards racial equality was (and still is) central to that future.

With liberals pushing measures so carefully managing the restructuring of racial hegemony without its overthrow, the courts well-satisfied with the basic racial arrangements of US society, and the Republican Party and southern whites holding the line on racial pride, conditions worked together to prevent the dismantling of racial caste in America. It is from these dynamics that the post-1960s civil rights period emerge. In retrospect, the African American community and their supporters never stood a chance. Systematic unwillingness to drastically change the substantive circumstances of blacks purposely and effectively left basically whole the system of

---

[262] Chip Berlet, "Following the Threads," *Unraveling the Right. The New Conservatism in American Thought and Politics*, ed Amy E. Ansell (Boulder, Co: Westview Press, 1998), Sara Diamond, *Roads to Dominion: Right-Wing Movements and Political Power in the United States* (New York: The Guilford Press, 1995).

racial caste, however much the federal government expressed its desire that the nation's business be conducted in a race-neutral fashion — indeed, it was through the rhetorical weapon of colorblindness and the legal machinery of race neutrality that the reconstructed racial hegemony entrenched.

Democratic politicians are credited by many historians with having not only been receptive to the cause of civil rights, but actually taking up the struggle and seeing to it that blacks are treated fairly. Those heaping accolades upon Democrats contrast the party with the efforts of conservatives to hold black people back. Many analysts begin their narrative of racial struggles with the Reagan administration, who expanded the criminal justice system greatly, especially enlarging the drug war. Their beginning point is at once efficient and political: the efficiency comes from ready-at-hand knowledge about, and a first-hand experience among the liberal community with, Reagan's tactics (or more exactly the tactics of his officers); it is political because liberals do not like conservatives, and Reagan has become the obvious and most ideologically-untroubling target. If they begin earlier, they begin with Nixon, and the same judgment applies.

This interpretation of history keeps many from seeing that it was a liberal administration that prosecuted the first major war on crime in the post-civil rights era — a war that would be blatantly racist in effect, if not always in intent. For it was Lyndon Johnson, a liberal Democrat, who played the principal part in creating the legal, philosophical, and administrative foundation for the expansion of the prison-industrial complex in the post-Watergate era. His efforts were based squarely on the

Democratic tradition of pursuing civil rights not out of moral concerns but as a political tool. Liberals are particularly apt to miss this because of the favorable historical memory of Johnson's Great Society and his efforts in civil rights. After all, more progressive legislation was passed under Johnson's presidency than during the tenure of any other executive save the possible exception of Roosevelt. The historical record should be made especially clear, so there are no illusions, that not only did Democrats support minimalist civil rights for both opportunistic political reasons and to preserve and advance the cause of American capitalism, but liberal Democrats played the central role in restructuring the racial hegemony of the United States to preserve a racial order of America, an order where whites are dominant. What liberal Democratic racism reveals is the double movement that is comprised by the political party subservience to dominant ethnonational forces, on the one hand, and, on the other hand, their efforts to organize those forces to perpetuate racism in America.

The Character of the Present Epoch

Having noted the problem with beginning critical analyses of reactionism with the Reagan administration, one cannot leave the character of last thirty years untouched. I documented the carceral archipelago, greatly expanded under the Reagan, Bush, and Clinton administrations, in part 1, chapter 2. In that chapter I cited studies projecting prison populations into the future. There has been some speculation why, given that patterns of incarceration correspond to some extent to the rhythms of capitalism, the prison populations continue to expand even while the US economy experiences the longest period of economic expansion in the nation's history. I have

argued that qualitative changes in the structure of racial caste explain, at least to a significant degree, shifts in imprisonment patterns. However, caste and economics are not independent of one another and the continuous expansion in the prison population in the current period reflects, along with the dynamic of racialization, other key factors.[263] First, prisons function to achieve certain macroeconomic imperatives. With full employment threatening, which in elite policy circles indicate rising wage pressures cutting into their profits, there is a need to find ways to enhance labor market competition. There are many forces already at work to achieve this end. The Federal Reserve, as part of its official policy, raises interest rates to increase the size of the reserve army. However, rising interest rates affect assets of the wealthy, so the Fed is constrained in how far it can pursue this strategy. Globalization of labor markets and the near-destruction of labor unions have kept wages in check, but the nervous system of the finance capitalist remains peaked. Given the close connection between bourgeois needs and crime control policy, captive labor populations play a crucial role in pre-empting upward wage pressure and in driving down wages.

Second, there are profits to be made. Prisoners, like welfare recipients, represent to the capitalist class a massive underutilized, taxpayer subsidized, superexploitable labor source. The prison-industrial complex has become big business and prisoners have become the raw materials for this burgeoning industry.[264] The crime control industry at this point in its development is an organic phenomenon with

---

[263] Eve Goldberg and Linda Evans, *The Prison Industrial Complex and the Global Economy.* Prison Activist Resource Center PO Box 339 Berkeley CA 94701, 1998.

[264] Nils Christie, *Crime Control as Industry Towards Gulags Western Style?* (New York Routledge, 1993)

appetites. It feeds on fear of crime among the masses. Racial fears, stirred up and amplified by New Right intellectuals, politicians, and the corporate media, fuel the crime control machine. Business and government

> *profit financially [and] politically when fear is high.* The more fear can be inflamed, the more intense public passion about crime becomes and the easier it is to gain votes by proposing harsher sentences and more prisons. It is also easier for private companies to get new business, for retailers to expand the market for home security devices, and for unions of correctional officers to increase their salaries And through it all, this fear can be used to get additional "raw materials" to feed the growth of jails and prisons.[265]

There is considerable empirical evidence to support an economic analysis of forced labor. We often see the future of the United States in the present-day activities of the state of California. California has been a leader in defining reactionary racist policy for the capitalist polity. Recently the state repealed affirmative action policies, cutting black enrollment in the state's higher educational facilities by over half, and implemented sophisticated immigrant labor controls, for example, permitting Californian industries to use immigrants as "guest workers," that is, subproletarians who are superexploited with maximum externalization of labor costs. California is trail blazing prison labor. California has the highest incarceration rate in the world. During the Reagan-Bush years (1980 and 1993), California increased its prison population by 400 percent. Blacks and Latinos are disproportionately incarcerated. Two-thirds of nonwhite males between 18 and 30 have been arrested in California. Like the rest of the nation, most prisoners in the California system are there for non-violent offenses.[266]

---

[265] Steven Donziger, ed., *The Real War on Crime: The Report of the National Criminal Justice Commission* (New York: HarperPerennial, 1996), 98

[266] Willie Wisely, "The Bottom Line California's Prison Industry Authority," *California Prisoner and Prison Legal News* (1998) The top ten charges for which Californians are now entering prison are possession of a controlled substance, possession of a controlled substance for sale, robbery, sale of a controlled substance, second degree burglary, assault with a deadly

This massive captive population and the shift in economic needs have transformed prison authorities into employment agencies. California's prison industries program, the Prison Industry Authority (PIA), is becoming the model for the country. It operates with little overhead, and the state does not require the prison authority to recognize state and federal laws regulating workplace safety. Other prison labor programs are Florida's Prison Rehabilitative Industries and Diversified Enterprises (or PRIDE) program and Texas' Industries Division. Florida and Texas are leading figures in the reactionary turn in criminal justice policy.[267] Jeffrey Reiman, one of the foremost critics of inequality in criminal justice, writes that "the economic powers that be in America have sufficient power to end or drastically reduce racist bias in the criminal justice system. To the extent that they allow it to exist, it is not unreasonable to assume that it furthers their economic interests."[268]

Critical researchers have theorized that racism in this context provides cover for these economic policies.[269] However, one must be careful not to simplify the dynamic of prison-industrial complex by reducing racism to an ideological cover. The long-term (ghettoization, wage inequality, poverty, etc.) and short-term (racial profiling, biased judges and juries, the drug war etc.) effects of racism reproduce the prison industrial complex by providing it with its primary commodities: human

---

weapon, driving under the influence, first degree burglary, petty theft with a prior, and vehicle theft. All but two of these are non-violent offenses. Note that of the top four offenses, three are drug related, a measure of the success of the drug war

[267] Wisely, "Bottom Line."

[268] Jeffrey Reiman, *. . . and the Poor Get Prison: Economic Bias in American Criminal Justice* (Boston, MA: Allyn and Bacon, 1996), 95

[269] Pem Davidson Buck, "*Arbeit Macht Frei*: Racism and Bound, Concentrated Labor in U S Prisons," *Urban Anthropology and Studies of Cultural Systems and World Economic Development*, 23 (1994).

beings. At the same time, the origins of the current crime control regime are found in the crisis of white supremacy in the 1960s. This adds to a materialist analysis of the prison-industrial complex the need to study the broad cultural-ideological climate of late twentieth century United States. I have examined in detail the fundamental matter of liberal race neutrality — this is the main point of the argument developed in this chapter. But something must be said of recent phase of fascisization of US political society, because the post-Civil Rights era has a double character: on the one hand, liberal race-neutrality; on the other, a resurgent white ethnic belligerency.

Arguably no other figure over the past twenty years contributed more to the transformation of American consciousness than Ronald Reagan. It is significant (and shocking, even knowing racial politics for what they are) that Reagan kicked off his 1980 presidential bid in Neshoba County, Mississippi, where, in 1964, three civil rights workers were slain by white supremacists (a movie many years later glorified the FBI's role in that incident failing to note that at the time one of every four Klan members was an FBI agent). Reagan in his speech neither mentioned their deaths nor the racial situation in the United States. Instead, he "defiantly proclaimed his belief in 'states' rights' and promised to 'restore to states and local governments the powers that properly belong to them.'"[270] Reagan would during his presidency openly and often in dramatic fashion support the cause of global fascism, most famously in his May 1985 state visit to Bitburg cemetery where SS soldiers were buried. The ceremony was to commemorate the 40th anniversary of the end of World War II in Europe, a war where

---

[270] Ronald Reagan, quoted in James C Cobb, "Does Mind No Longer Matter? The South, the Nation, and the Mind of the South, 1941-1991," *The Journal of Southern History*, 57 (1991), 712.

tens of millions of people were killed for being "different" from "Aryans."[271] Reagan claimed that his visit was an official "gesture of reconciliation" with Germany' nazi past. When asked by the press if he intended a similar gesture at the death camps, he said, no. Why? Because Germans "have a guilt feeling that's been imposed upon them and I just don't think it's necessary."[272]

One characterization of Reagan's visit to Bitburg is that it was a public relations blunder. Such a characterization stems from an ignorance that includes most Americans on the subject of domestic fascism. Bitburg was a highly calculated event with both immediate and long-term meaning. Reagan was repaying the domestic and international fascist/racist network that put him in power, for example, the World Anti-Communist League (WACL) who provided for the president logistical support for the "freedom fighters" (a.k.a. rightwing death squads), who kept order in the capitalist periphery. Reagan made frequent use of these forces in his nefarious campaigns abroad America. In 1984, Reagan sent a letter to the WACL endorsing their convention. In that letter he wrote, "The World Anti-Communist League has long played a leadership role in drawing attention to the gallant struggle now being waged by the true freedom fighters of our day."[273]

Reagan's fascism extended to the racialist community whose studies were used in constructing *The Bell Curve*, a book touting race inferiority manufactured by

---

[271] Richard Evans, *In Hitler's Shadow. West German Historians and the Attempt to Escape from the Nazi Past* (New York Pantheon, 1989).

[272] Quoted in Evans, *In Hitler's Shadow*

[273] Quoted in Russ Bellant, *Old Nazis, the Republican Party, and the New Right* (Boston South End Press, 1991), 68

Harvard psychologist Richard Herrnstein and favorably reviewed by *The New York Times*. One of the principle figures organizing the body of "data" on the inferiority of blacks is a white supremacist named Roger Pearson. In an official letter, typed on White House stationary, Reagan wrote to Pearson, a former leader of the WACL, "You are performing a valuable service in bringing to a wide audience the work of leading scholars who are supportive of a free enterprise economy . . . . Your substantial contributions to promoting and upholding those ideals and principles that we value at home . . . are greatly appreciated."[274] In his book, *Race and Civilization*, based on the work of Hans F. K. Günther, Pearson writes, "If a nation with a more advanced, more specialized, or in any way superior set of genes mingles with, instead of exterminating, an inferior tribe, then it commits racial suicide."[275] When Pearson's views were made public in a *Wall Street Journal* article — wherein Pearson is quoted as saying, "I'm not ashamed of anything I've said or written" — the White House declined to repudiate Pearson, and Pearson, who served on the editorial board of *Policy Review*, the policy journal of the Heritage Foundation (the same Heritage Foundation whose *Agenda for America* helped Reagan steer the country through the 1980s), continued to work closely with advisers to the administration, such as Ernest van den Haag, an editor for *Policy Review* and *National Review*.

---

[274] Quoted in Bellant, *Old Nazis*, 61

[275] Quoted in Bellant, *Old Nazis*, 60 Pearson's writings paraphrase the writings of Adolf Hitler. Compare, for instance, this passage from Hitler: "There are numberless examples in history, showing with terrible clarity how each time Aryan blood has become mixed with that of inferior peoples the result has been an end of the culture-sustaining race," quoted in *Twentieth Century Political Theory*, ed. Stephen Eric Bronner (New York Routledge, 1997), 197

Fascist and racists enjoy considerable mainstream legitimacy among the US political stratum and move freely and openly in the Republican party. Russ Bellant, who infiltrated the Republican National Committee for four years and published his findings in the largely ignored *Old Nazis, the Republican Party, and the New Right*, found Republicans shamelessly expressing racist and pro-fascist views at party functions.[276] Unlike McCarthy's phantom communists in the State Department, the proof of Republican party fascism/racism is incontrovertible. The National Republican Heritage Groups (Nationalities) Council (NRHGC), for example, is an umbrella organization for various ethnic Republican clubs operating under the auspices of the Republican National Committee (RNC). The NRHGC has actively recruited its members and leaders from an Eastern European émigré network that includes fascists and former nazis.[277] One of the member groups of the NRHGC is the Croatian GOP. This organization engages in apologetics for the Croatian Ustashi's WWII alliance with the German Nazis. A dinner held to honor what the RNC calls "Croatian Independence Day," one of the "Captive Nations" celebrations that glorify pro-fascist leaders who have been ousted by more democratic forces, featured guest speaker Jane Kirkpatrick and was attended by Newt Gingrich, Jesse Helms, Orrin Hatch, Strom

---

[276] I used to believe that if people read Bellant's book that they could never again support the Republican party I am now convinced that it does not matter whether they know about the book or not. Indeed, for some it enhances the attractiveness of the party.

[277] "The Nazis conspired with the Ustashi to create the Croatian split from Yugoslavia. When the Vatican-backed Ustashi took power in 1941, they began liquidating Orthodox Serbians, Jews, and Gypsies. Even the Nazis were taken aback by the barbarity of Ustashi concentration camps and the liquidation of whole villages Huge ovens as Jasenovac . . . burned people alive . . . An estimated 750,000 people, mostly Serbians, were killed by the Ustashi in the crucible which forged Croatian independence," Bellant, *Old Nazis* See also Andrew Austin, "The US and NATO in the Balkans," *New Interventions* 9 (2, 1999) The 1984 *Guide to Nationality*

Thurmond, Pete Wilson, Robert Dornan, and other prominent conservatives, who served on the Honorary Committee. "There are no Black or Jewish Republican Federations" in the NRHGC. "Republican leaders say that Black and Jewish relations are 'special' and are dealt with in separate units of the GOP."[278] Fascist organizations have a long history in the United States. As noted earlier, the alliance was organized during the cold war, mainly by liberal cold warriors. They did not go away with the cold war liberals. To take one example, the American Security Council (ASC), also know also as the "Cold War Campus" and the "Heart of the Military-Industrial Complex," was designed to carry out ideological indoctrination of US military officers. It has been led by CEOs of major corporations, retired senior military officers, and the largest defense contractors.[279] Pearson edited the ASC's *Journal of International Relations*. The key outreach arm of the ASC is the Coalition for Peace Through Strength instrumental in bringing Ronald Reagan to power.

These right wing organizations have been busy re-engineering the prison-industrial complex. The Heritage Foundation report "Crime," written by organic intellectuals Fagan and Moffit, is exemplary of the racist form and content of right wing Republican policy formation. The report, published as chapter 8 in Heritage's *Issues '96. The Candidate's Briefing Book* and distributed to politicians running for public office, singled out the black family as *the* cause of crime in the black community.

Observances, published by the RNC, states: "Lack of Western support and Axis occupation forced the new state into an unfortunate association with the Axis powers."

[278] Bellant, *Old Nazis*, 20

[279] The ASC cosponsored a series of annual meeting from 1955 to 1961 called national Military-Industrial Conferences, in which elements of the Pentagon, National Security Council, and organizations linked to the CIA discussed cold war strategy with leaders of many large corporations, such as United Fruit, Standard Oil, Honeywell, US Steel, and Sears Roebuck

Neither poverty nor racism has any bearing on black crime, the authors argue. Rather, the cause of crime is found in family breakdown, lack of parental supervision, permissive childrearing, criminal parents, and other black cultural and institutional deficiencies — in short, the black community is to blame for their troubles. Fagan and Moffit write that there is a "higher rate of crime among blacks *only* because black communities have higher rates of illegitimacy and family breakup."[280]

The "evidence" they accumulated, according to the authors, undoes the "liberal" argument that alleges that white flight and corporate flight, the economic deterioration of the inner city, poor schools, and every other social ill plaguing poor black people are behind the high rates of violent crime. The authors turn the explanation on its head: "Neighborhood workers lose jobs when businesses and investors are scared away by fear of crime. Children lose the opportunity to learn when their schools are dominated by gangs and drug dealers who make it impossible to maintain a learning environment. Governments lose tax revenue when sales, businesses, jobs, and property values decline in crime-ridden areas."[281] It is the criminal black man who caused white corporate flight, economic deterioration, and poor educational outcomes. The root cause of the social problems that plague the black community is to be found in the pathologies of blackness and nowhere else.[282] To curb

---

[280] Patrick F Fagan and Robert E Moffitt, "Crime," *Issues '96. The Candidate's Briefing Book* (Washing, DC. Heritage Foundation, 1996), 235.

[281] Fagan and Moffitt, "Crime," 244.

[282] Fagan and Moffitt even assigns blame for the failure of criminal justice system on minorities· "The most egregious failures in police effectiveness invariably have been failures of personnel management: the deliberate imposition of lower intellectual and physical standards in recruitment and hiring, reduced background screening, the substitution of 'politically correct' racial or ethnic or gender 'diversity' for strict standards of competence or merit, poor

crime, Fagan and Moffit recommended that the Clinton Administration and Congress end social programs that exacerbate the dysfunctional black family, such as the AFDC program for poor children (which they did). There is nothing the government can do to help blacks, they claim, because the plight of the black community is an endogenous phenomenon. Since whites did not cause the problem, they cannot solve it. Fagan and Moffit did not invent this line of discourse, as we have seen; Fagan and Moffit's new right attack on the black family obviously echoes elements of Moynihan's old right attack on the black family thirty-five years before. But Moynihan was not an original thinker, either; he simply tapped the same racist ideology that Thomas Jefferson used to legitimate social inequity in the 1780s.

These groups are also actively resurrecting and articulating eugenicist ideology. Earlier I noted that while the Supreme Court restricted types of sterilization, discriminatory sterilization did not decline after WWII. However, racist sterilization, especially in the southern United States, is still widely practiced. According to Anderson, 36 percent of African American women of childbearing age were sterilized in the 1990s, compared to 21 percent of white women. In East Harlem, 43 percent of women were surgically sterilized, either by hysterectomy or tubal ligation. The rate of hysterectomy for never-married black women is three to four times higher than for never-married white women.[283] The effects of chemical sterilization (Depo-Provera,

---

supervision of officers in the field, and a lack of attention to moral character in the selection of police," "Crime," 242

[283] See Margaret L. Anderson, *Thinking About Women: Sociological Perspectives on Sex and Gender*, 3rd ed. (New York: Macmillan, 1993); Diana Scully, *Men Who Control Women's Heath: The Miseducation of Obstetrician-Gynecologists* (Boston: Houghton Mifflin, 1980). There is class bias in sterilization, as well: women on AFDC (when the program was active) were much more likely to be sterilized (about 50 percent of AFDC recipients were sterilized in the 1990s).

Norplant, etc.) probably surpass the results of surgical sterilization.[284] Even the authors of a standard college textbook in criminology have identified these patterns as racist.[285] I am not suggesting that there is a "conspiracy" to sterilize blacks women, but rather pointing to a racist pattern of sterilization.

Given that black women are approximately seven percent of the population these patterns of sterilization (especially combined with the prisonization of black males) greatly reduces the number of black children born in the United States, a fact recently celebrated by conservative intellectuals. For example, Ben Wattenberg, a scholar for the American Enterprise Institute, a leading right wing think tank, gleefully notes that the "total fertility rate (TFR) fell from 2.48 children per black woman in 1991 to 2.15 in mid-1996, a decrease of 13 percent to the lowest rate for blacks ever recorded." He characterizes this as a "great leap forward." "The decline in fertility rates among black women should have mostly positive effects on blacks and on America as a whole." Why? Blacks are more likely to be poor, ergo fewer blacks means fewer poor people. Blacks are more likely to be involved in street crime, therefore, fewer blacks, fewer street criminals. Wattenberg even goes to the trouble of comparing

---

[284] "In several states, judges have given women convicted of child abuse or drug use during pregnancy a 'choice' between using Norplant or serving time in jail. In 1991, 1992, and 1993, legislators in more than a dozen states introduced measures that, had they passed, would have coerced women to use Norplant. Some of these bills would have offered financial incentives to women on welfare to induce them to use Norplant. Other legislation would have required women receiving public assistance either to use Norplant or lose their benefits. Some bills would have forced women convicted of child abuse or drug use during pregnancy to have Norplant implanted," from "Norplant. A New Contraceptive with the Potential for Abuse," The American Civil Liberties Union (1994). See also "Exposing Inequity," The Center for Reproductive Law and Policy, March 8, 1995.

[285] See Piers Beirne and James Messerschmidt, *Criminology*, third edition (Boulder, Co: Westview, 2000)

the present fertility rate with past rates. "By contrast," he writes, "back in 1980 the difference between white and black fertility was not 7 percent, but 20 percent. A decade earlier, the differential was 25 percent." After acknowledging white fears of "differential fertility" and "dysgenesis," i.e., that less intelligent races will overpopulate America, Wattenberg assures whites that "the percentage of blacks in the American population today (12 percent) is much lower than it was in 1850." But Wattenberg is himself fearful. The fertility rate among affluent white women is "way too low," he writes, echoing Mussolini's concerns about white fertility in the 1920s.[286] Reading this essay one is struck by how oblivious Wattenberg seems to be to the racist character of his rhetoric. This is because in the policy community he moves in such rhetoric is normal. To take another example, van den Haag, a prominent sociologist who has from the 1960s-on called for a harsher criminal justice response, has in the past openly proposed for a return to organized sterilization programs. That his intentions were racist is revealed by the body of his work.[287] In the 1950s and 1960s, van den Haag argued that desegregation is wrong because blacks are mentally inferior to whites. To mix students of different races would bring down the white students. He suggested that we sort students by intelligence which would mean sorting them by race (he drew the equation, not me).[288] He has continued to maintain this position over

---

[286] Ben J. Wattenberg, "Birth Rates Close to Racial Parity," *On the Issues* (August 1997). A version of this article appeared in the *Washington Times*, July 31, 1997 The document is available at http://www.aei.org/oti/oti7961.htm, which is where I found it.

[287] Ernest van den Haag, "Intelligence or Prejudice?" *National Review*, December 1, 1964, 1059-63, *Washington Post*, May 21, 1964, A8.

[288] See Bellant, *Old Nazis*

the past thirty years, advising the Reagan administration on crime and race policy. In 1984, van den Haag endorsed William Shockley's sterilization proposals.

Reagan's persona tapped a latent racial consciousness in millions of white Americans. Goldwater and Wallace articulated openly fascist/racist beliefs, though with mixed results; and Nixon used law and order rhetoric to power his way to office in 1968 and then squash his "leftist" rival in 1972, but he also expanded affirmative action and proposed a guaranteed basic income for poor people (though it was more symbolism than substance). Nevertheless, Goldwater, Wallace, and Nixon played major parts in resurrecting white ethnic belligerency, as I have documented. However, it was Reagan who raised racial politics to a higher level within the new race-neutral regime. Reagan finished off the New Deal historic bloc and set up the Republican take-over of Congress. Reagan combined racism and fascism with national purpose and a confident, grandfatherly smile. Reagan's "morning in America," was more akin to Kennedy's optimistic "New Frontier" than it was to Goldwater's strident anti-communism. Reagan was the one who pulled Democrats to the right (many have supposed the similarity in Bush and Clinton policy reflects Bush's liberalism, the opposite is true). Lyndon Johnson and the liberals created the infrastructure for the oppression of blacks; Reagan understood how to capitalize on the opportunity. Playing on the rigged roulette table of street and drug crime, Reagan parlayed the new justice machinery into the largest prison population in the world. And there has emerged with all this a public admiration for white politicians and intellectuals who

stand up against liberal "political correctness" and openly proclaim the legitimacy of their ethnicity and their right to assert it.

Reagan's racial strategy has continued to prove effective in securing political office for Republicans. They call it "playing the race card," and it is a much celebrated tool of campaign managers and political action committees. The Bush campaign used race deftly in 1988. In office, Bush repaid his supporters by vetoing the 1990 Civil Rights Act. Jesse Helms used affirmative action to defeat Harvey Gant in 1990 in North Carolina senate race. Later, on the Larry King Show, a grinning Helms accepted a complement from a viewer who thought the senator ought to get a Nobel Peace Prize for "keeping down the niggers." And then there was the campaign of Ku Klux Klan Grand Dragon David Duke's for the Louisiana state legislature and his strong showing in a contest for the Senate in 1990. Duke's success drew considerable legitimacy from Pat Buchanan's suggestion that the Republican party commit to Duke's agenda. Buchanan had organized Reagan's visit to Bitburg in 1985. Still more recently, George W. Bush, the son of the former president, appeared before Bob Jones University in South Carolina to reassure white Americans that he was prepared to withstand the criticisms of white liberals and prominent blacks and Jews to become the president of the "real America."

Students of the history of fascism recognize the affinity between present-day conservatism and the fascism of the past. William Bennett, who prosecuted the drug war under Bush, coquettes with Goebbels' manner of rhetoric when he states, "Our common culture serves as a kind of immunological system, destroying the values and

attitudes promulgated by an adversary culture that can infect out body politic." David Horowitz strikes a similar tone. "[T]he radical left," he contends, "is a fascist force with a human face, the carrier of an ideological virus as deadly as AIDS."[289] Knowing William Bennett's ideological proclivities, it is clear the values and attitudes he regards as threatening the nation. It is a coincidence that Bennett is regarded as the one of the nation's premier moralists? Is it remarkable that his *Book of Virtues* appears as a cartoon on the Public Broadcasting System?

Conclusion

The Civil Rights movement, its successes and failures, cannot be understood without reckoning the Cold War context. This in turn is key to understanding how the double movement of hegemony played out to disproportionately locate African Americans in the prison-industrial complex. Other dramatic changes help us understand how African Americans fell under repressive control, for instance their submersion in the industrial reserve and the deteriorating and ultimately street-criminogenic conditions of the central city. The domination of blacks is more difficult to see today because of the complexity of structures of power that have come to prevail. It was easier to see when blacks were slaves (although we should not underplay the complexity of that time). And Jim Crow segregation, despite the subtle nature of so much of its restriction on human freedom, was obvious by the laws that legitimated its existence. Today, slavery has been abolished. There are no laws against racial intermarriage. Yet blacks still suffer from the badges of slavery. Blacks are still

---

[289] These quotes are from John K Wilson, *The Myth of Political Correctness: The Conservative Attack on Higher Education* (Durham, NC Duke University Press, 1995), 23.

subjected to more violence and control. Black labor is still superexploited (when black labor is exploited at all).

CHAPTER 6

THE PERSISTENT DOMINUS: CASTE-CLASS SEGMENTATION OF CRIME AND PUNISHMENT IN HISTORICAL PERSPECTIVE

Discrimination, subordination, and control by race are still a vital part of American institutional life What has changed are the ways in which historic subordination by race has been maintained [1]

This dissertation investigates how the dominant ethnonational group ("white" European descendants) and privileged social classes (merchant, planter and industrialist capitalists, professional-managerial, and some farmers and working class fractions) oppress racialized minorities in the United States of America. The primary focus is on African Americans both for theoretical clarity and because of the unique circumstances blacks have faced and continue to face in the United States. One of the primary ways the oppressor ethnoclass achieves economic and racial supremacy is through the selective application of criminal law and targeting by law enforcement, and one of the primary theoretical questions taken up in my work is why the criminal justice eye has become increasingly trained on African Americans. However, I stress throughout that race formation itself is a mode of social control,[2] hence the larger structure of oppression is theorized. The basic thesis of my dissertation is that understanding the changing relationship of blacks vis-à-vis the criminal justice system requires understanding the changing status of African Americans in history.

---

[1] Benjamin P Bowser, "Race Relations in the 1980s The Case of the United States," *Journal of Black Studies* 15 (1985).

[2] Michael Omi and Howard Winant, *Racial Formation in the United States* (New York· Routledge, 1986) Faye V. Harrison, "The Persistent Power of 'Race' in the Cultural and Political Economy of Racism," *Annual Review of Anthropology* 24 (1995).

In *The Shape of European History,* William H. McNeill speaks eloquently on the importance of taking the *longue durée* on historical matters. "It is a matter of some importance to link teaching and research, even very detailed research, to an acceptable architectonic vision of the whole. Without such connections, detail becomes mere antiquarianism. Yet while history without detail is inconceivable, without an organizing vision it quickly become incomprehensible."[3] The central methodological polemic of this dissertation is that taking narrowly circumscribed historical periods in themselves (not to mention ahistorical cross-sections of society) leads to a historical blindness when it comes to recognizing the force of racial interests in determining the fate of black Americans.[4]

Adopting a perspective that synthesizes critical political economy,[5] legal studies,[6] race theory,[7] and political sociology,[8] and drawing from a diverse set of

---

[3] McNeill, *The Shape of European History* (New York, 1974, 4-5). I must acknowledge John B Kirby's article "An Uncertain Context: America and Black Americans in the Twentieth Century," for alerting me to this quote. Kirby's article appears in *The Journal of Southern History,* 46 (1980).

[4] In telling the story of this aspect of the African American experience, I have assembled evidence that is usually neglected in the literature on black prisonization. To be sure, the authors of the historical subjects so assembled delved deep into the subject matter; but their careful descriptions tightly circumscribed the empirical materials. What is novel in my work is the dialectical reorganization of these materials to produce a meaningful account of the American experience that permits a new understanding of the circumstances blacks face and the social forces impinging on their lives Of course, while I have demonstrated that many explanatory attempts are inadequate, I have not invalidated the myriad other explanatory factors researchers are using to answer these questions The history I am presenting is meant to supplement the on-going discussion critical scholars are having with history about this subject matter. If I have any issues with this body of scholarship as a whole, it is that they fail to emphasize both change and continuity and that they frequently put material factors over ideological ones or vice-versa in an exclusive fashion.

[5] Robert W. Cox, "Critical Political Economy," in *International Political Economy: Understanding Global Disorder,* ed. Bjorn Hettare (New Jersey Zed Books, 1996), see also Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy,* trans. Martin Nicolaus (New

primary and secondary sources,[9] I take a broad view of the African American experience and theorize that the organization of US society rests upon a foundation of racial segregation and capitalist accumulation and that ideological racism pervades American culture and psyche and is native to it.[10] This theoretical project is composed of two research objectives, one general and one specific. The general objective is to demonstrate that black Americans have existed throughout their experience in the United States in a diminished position of freedom relative to whites. This might be

---

York: Penguin, 1993) and *Capital: A Critique of Political Economy*, vols 1-3 (New York: Penguin Books, 1990-92)

[6] Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977) and *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (New York. Oxford Univ. Press, 1992), Roberto M. Unger, *The Critical Legal Studies Movement* (Cambridge, MA Harvard University Press 1986); Robert W. Gordon, "Unfreezing Legal Reality Critical Approaches to Law," Florida State Law Review 15 (1987), "Critical Legal Histories" in Critical Legal Studies, ed. A.C. Hutchinson (Totowa, Rowan and Littlefield, 1989), 82-83, "The Past as Authority and as Social Critic: Stabilizing and Destabilizing Functions of History in Legal Argument," in *The Historic Turn in the Human Sciences*, ed Terrence J McDonald (Ann Arbor University of Michigan Press, 1996), 339-378; Duncan Kennedy, "Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940," *Research in Law and Sociology*, 3 (1980): 3-24, *A Critique of Adjudication* (Cambrige, MA. Harvard University Press, 1998) See also William W. Fisher, Morton J Horwitz, and Thomas A. Reed, eds., *American Legal Realism* (Oxford, NY: Oxford University Press, 1993)

[7] Two collections of writings were very important in formulating my ideas in this area, and while these ideas were not always explicit, they did train my vision to pick up certain important features of legal formation: Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas, eds., *Critical Race Theory The Key Writings that Formed the Movement* (New York: The New York Press, 1995) and Richard Delgado, ed., *Critical Race Theory: The Cutting Edge* (Philadelphia, PA Temple University Press, 1995)

[8] Primarily the perspective of Antonio Gramsci; see *Selections from the Prison Notebooks* (New York: International Publishers, 1971) and *The Antonio Gramsci Reader Selected Writings 1816-1935*, ed. David Forgacs (New York: New York University Press, 2000)

[9] Primary sources included legal and policy documents and documents produced by organic intellectuals (e.g. journal articles). Detailed historiographies found in journals such as *Journal of Southern History*, *Journal of Negro History*, and *Journal of American History* provided the secondary sources for dialectical reorganization

[10] For an analysis of the psychic field of racism see Franz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1967) By "native" I do not mean inherent in "white" people, but rather inherent in Western culture.

labeled the "continuity proposition," since it examines the tenacity of racialized oppression. The more specific objective, which dissolves into several "hypotheses" used to make the continuity proposition plain, provides a configurational-historiographical analysis of successive historical "stages" showing how each is dependent on the other for their existence and their causal force in the next "stage" of history, and how each transition to a new level forced a change in the concrete structure of social control. This might be called the "change proposition." I seek to find in many concrete forms of racialized group oppression — slavery, apartheid, and prisonization — the limited transhistorical structure and dynamic of racism that lies beneath them.[11] Thus the processes operating behind the racial struggles and harsh punishments that have marked the history and prehistory of the United States are shown to derive from a constant: the *caste-class structure-dynamic* of America.

I identify two problems social scientists face in explaining and understanding crime and punishment in the racialized and classed context of the United States (see part 1, chapter 4 for details). First, analysts usually treat race and class as either separate phenomena and try to determine the independent effects of each or they

---

[11] By "limited transhistorical structure and and dynamic of racism," I mean to indicate that racism is reproduced across several historical phases within the same historical system. I do not mean that racism is transhistorical in the sense that it is essential to human organization, i.e., it transcends history or is "suprahistorical." Racism is indeed historical, and the historical is in the present. However, I fear that identifying racism as historical may lead the reader to believe that racism is something in our collective past. Since it is the persistence of racism in US society (and in the world society) that I want to impart to the reader, the term "transhistorical" is used here to indicate persistence.

rejoin them in ahistorical statistical constructions.[12] While this sometimes yields useful results, I argue that racial caste and social class, while admitting relatively independent effects, are concretely part of a system differentiating the nation, working through mechanisms of racialization and accumulation; and, furthermore, I contend that this system is best investigated through qualitative historical analysis. Second, mainstream social scientists abstract crime and punishment from their historical circumstances, seeing punishment as the response and a deterrent to crime (figure 2.6.1).[13] In contrast, I argue that crime and punishment operate relatively autonomous of one another and that they are more crucially products of the historical system in which they appear (figure 2.6.2). Race and labor controls and political needs are among the forces behind laws that require punishment and criminalize behavior. These forces originate in the larger historical system.[14] The material deprivations,

---

[12] See for example, Erik Olin Wright, "Race, Class, and Income Inequality," *American Journal of Sociology*, 83 (1978).

[13] For a critique of this line of thinking see Michael J. Lynch, "Beating a Dead Horse: Is There any Basic Empirical Evidence for the Deterrent Effect of Imprisonment?" *Crime, Law and Social Change*, 31 (1999)

[14] Richard Quinney, *Class, State, and Crime* (New York: Longman, 1980) and *Critique of the Legal Order: Crime Control in Capitalist Society* (Boston, MA. Little, Brown, 1974); Jeffrey Reiman, *The Rich Get Richer and the Poor Get Prison. Economic Bias in American Criminal Justice* (Boston Allyn and Bacon, 1996); Steven Donziger, ed., *The Real War on Crime. The Report of the National Criminal Justice Commission* (New York HarperPerennial, 1996); Eve Goldberg and Linda Evans, *The Prison Industrial Complex and the Global Economy.* Prison Activist Resource Center PO Box 339 Berkeley CA 94701, 1988, Christopher Adamson, "Towards a Marxian Penology. Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (1984) and "Punishment after Slavery: Southern State Penal Systems 1865-1890," *Social Problems*, 30 (1983); Mark Colvin, *Penitentiaries, Reformatories and Chain Gangs. Social Theory and the History of Punishment* (New York· St Martin's Press, 1997); Katherine Beckett and Theodore Sasson, *The Politics of Injustice. Crime and Punishment in America* (Thousand Oaks, CA. Pine Forge Press, 2000); David Cole, *No Equal Justice: Race and Class in the American Justice System* (New York: The New Press, 1999); Elliot Currie, *Crime and Punishment in America* (New York: Owl Books, 1998), Marc Mauer, *Race to Incarcerate* (New York The New Press, 1999); Michael Tonry, *Malign Neglect — Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995).

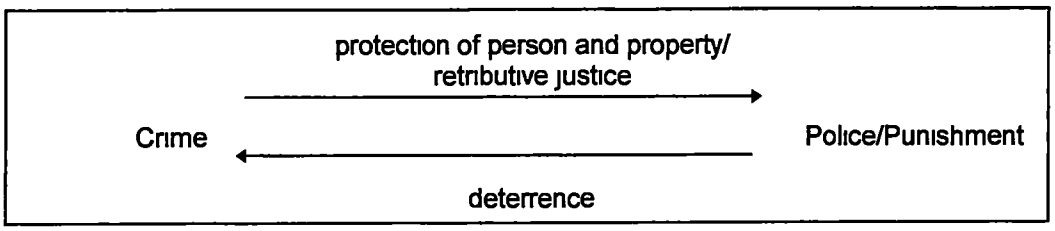


Figure 2 6 1
Traditional Conception of the
Relationships of Crime and Police/Punishment

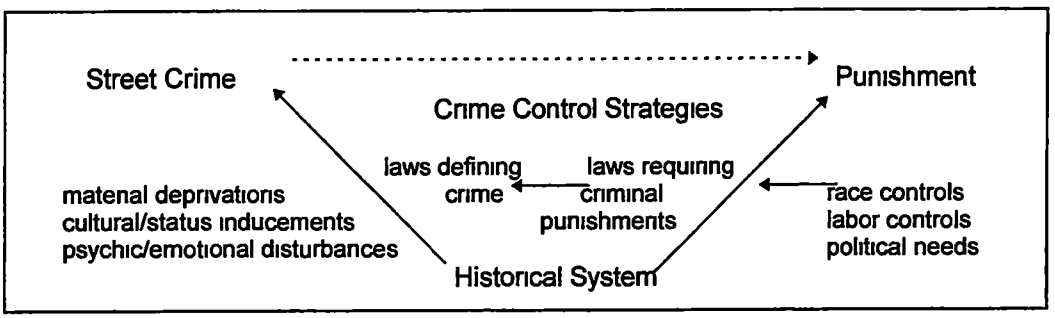


Figure 2 6 2
Actual Historical Relationship of Crime and Punishment

cultural and status pulls, and the psychological and emotional convulsions caused by capitalist relations — manifest in conditions of alienation, anomie, and nihilism — produce the objective behavior that is criminalized and subsequently controlled. These forces also originate in the larger historical system.[15] Therefore, the greater societal and

---

[15] Michael J. Lynch, W. Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime. A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994); Willem Adriaan Bonger, *Criminality and Economic Conditions* (Boston. Little, 1916); Frederick Engels, *The Condition of the Working-Class in England in 1844* (London: Sonnenschein, 1892); Steven F. Messner and Richard Rosenfeld, *Crime and the American Dream* (Belmont· Wadsworth, 1994); Cornel West, *Race Matters* (New York· Vintage, 1994); Charles Derber in the *Wilding of America: How Greed and Violence are Eroding Our Nation's Character* (New York St. Martin's Press, 1996), Robert Crutchfield, "Labor Stratification and Violent Crime," *Social Forces*, 68 (1989); Kenneth Land, P McCall, and Lawrence Cohen, "Structural Co-variates of Homicide Rates: Are There Any Invariances Across Time and Space?" *American Journal of Sociology*, 95 (1990); Theodore G. Chiricos, "Rates of Crime and Unemployment. An Analysis of Aggregate Research Evidence," *Social Problems*, 34 (1987), Emilie A Allan and Darrell J. Steffensmeier, "Youth Underemployment, and Property Crime

cultural-ideological context must always be analyzed if one wishes to produce comprehensive explanations and understandings of oppressive control. This involves exploring many layers of social reality, including labor markets, legal-political developments, and racist ideology.

To reveal the long standing program of race formation I compare several phases in the development of the European world-system with increasing focus on North American and the United States. By comparing these phases with structures and processes of law and order and the larger state apparatus I am able to show that criminal definitions, incarceration, and incapacitation are but historically specific manifestations in a succession of more general forms of social controls and injustices that target blacks in white capitalist society — blacks are being moved through "analogous conditions of unfreedom." In every period in US history (and prehistory), I invariably find two things: First, a racialized socioeconomic structure differentiates crime as it differentiates almost everything else in capitalist society: rich and poor, white and black, criminally offend in ways appropriate to their social location, with the poor and black offenders overrepresented in street crime (including drug and public order offenses), and the rich and white offender overrepresented in affluent

---

Differential Effects of Job Availability and Job Quality on Juvenile and Young Adult Arrest Rates," *American Sociological Review*, 54 (1989). David Cantor and Kenneth C. Land, "Unemployment and Crime Rates in the Post-World War II United States. A Theoretical and Empirical Analysis," *American Sociological Review*, 50 (1985), Elliot Currie, *Confronting Crime: An American Challenge* (New York Pantheon, 1985) and *Crime and Punishment in America* (New York· Owl Books, 1998), Judith R Blau and Peter M. Blau, "The Cost of Inequality. Metropolitan Structure and Violent Crime," *American Sociological Review*, 47 (1982), Steven F Messner and Reid Golden, "Racial Inequality and Racially Disaggregated Homicide Rates. An Assessment of Alternative Theoretical Explanations," *Criminology*, 30 (1992); James Balkwell, "Ethnic Inequality and the Rate of Homicide," *Social Forces*, 69 (1990).

crimes (when their activities are defined as criminal). Second, the criminal justice system correspondingly takes on a tiered shape: which tier of justice a person experiences is dependent on racial designation and class location. While the affluent enjoy a marginally enforced, internally administered, restitutive system of civil justice, through their control over dominant institutions they control poor and working class offenders via a repressive criminal justice system focused on police enforcement and retributive justice.

Taking as my thematic the current black prison crisis and public ambivalence to it (see part 1, chapter 2), I develop an argument that through various forms of racial segregation and the criminalization of African Americans the dominant ethnoclasses in US society build material wealth, political power, and racial privilege. I emphasize that criminalization encompasses not only the enactment of legislation, but the deployment of law-enforcement strategies targeting and controlling situations, conditions, and identities, as well as social behavior. I show that this is not a simple matter of anonymous structural emergence, and I dismiss functionalist explanations for the origins of racism; rather white supremacy, along with the systemic reproduction of the structure of race and class, is maintained through the conscious action and inaction of groups and individuals in positions of power and ordinary whites, the latter who not only accede to elite policy but through residential and industrial segregation themselves take the initiative to oppress blacks and other minorities. Through internal and external comparisons of historical phases, I demonstrate that contemporary analysts are mistaken to treat recent trends in African

American prisonization as a novel occurrence in US society. That the control of blacks has been shifted increasingly to the criminal justice system is an indication of the transformation in the *methods* of racial hierarchy. At each moment that a degree of freedom is achieved by African Americans, the state enlarges its public role to take up the slack left by the dismantling of other racial control systems.

I organize the dissertation into two parts. In part 1, I present a systematic way to think about the race-class segmentation of crime and punishment in the United States. In the four chapters there I define terms and concepts, present various models to organize historical materials, and explain the more difficult logics of structural and institutional racism and internal colonialism. Because I am interested to reveal the conscious and intentional actions of whites in oppressing and exploiting African Americans I want the reader to be aware of the anonymous structural processes even when I am not directly focusing on it. In part 2, I engage the historical materials, tracing the evolution of the system I identify in part 1.

The Caste-Class System

I now focus on the caste-class model, presented in part 1, chapter 4, and connect it to the historical periods presented in part 2. In my model (refer to figure 1.4.2), I detail two relatively distinct regions of existence created by the combination of race and class-based systems: (a) The *enrichment/inclusion* region is the zone of economic, political, and cultural privilege. This region is disproportionately white, especially among the more affluent sectors. (b) The *impoverishment/exclusion* region includes groups defined and structured as non-white and is the zone of economic,

political, and cultural deprivation and exclusion. As I have explained, both crime and punishment are differentiated by these zones. In the following paragraphs, I summarize the topics, synopsize the narratives, and highlight major historical changes covered in each of the chapters presented in part 2.

(1) *"Prehistory" of race, class, and "modern" punishment, 1450-1618* (part 2, chapter 1), analyzes the capitalist class structures in the European world-system, the evolution of punishment from the late Middle Ages to the early North American colonial period, European colonialization of the Atlantic world, the creation of racial slavery, and the incorporation of what I call a "prehistory" of racism into the European world-system.

In the mid-1450s, European merchants were trading Africans for money.[16] The Africans became slave-laborers in a European world-system based on capitalist economics.[17] There existed then widespread anti-black prejudice.[18] It was believed by many Europeans that blacks were a different race of people and that they were inferior to other races. The system of racism that exists today would begin with the amalgamation of "old world" prejudices (including oppressor nationalisms and aspects of Judeo-Christian religions) with the capitalist economy emerging in Europe, reaching its highest stage of development in the "new world." The *history* of racism as a *system* of group domination thus properly begins with the expansion of the European

---

[16] Joseph E. Harris, *Africans and Their History*, second edition (New York. Meridian, 1998)

[17] Edna Bonacich, "United States Capitalist Development: A Background to Asian Immigration," in *Labor Immigration Under Capitalism*, eds. Lucie Cheng and E. Bonacich (Berkeley University of California Press, 1984); Karl Marx, *Capital*, vol 1 (New York. Penguin Books, 1990); Christopher Chase-Dunn, in *Global Formation: Structures of the World-Economy* (Cambridge, MA: Basil Blackwell, 1989)

[18] Nicholas P. Canny, "The Ideology of English Colonization· From Ireland to America," *William and Mary Quarterly*, 30 (1973), Harris, *Africans*, Winthrop Jordan, *White over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina, 1968)

world-system in 1450.[19] In Europe, mobilized to secure private property and to control labor, the emerging capitalist class and increasingly centralized state apparatuses consolidated and transformed the criminal law.[20]

(2) *Constructing racial slavery and dissolving white unfreedom, 1619-1789* (part 2, chapter 2), explores the establishment of capitalism in North America, where a caste-class system was fashioned and white supremacy was achieved. This period covers the introduction of African labor into Virginia, through the war of national independence that founded the United States.

In the 16th century, the English began colonizing North America.[21] They encountered Indians, began exterminating them, reducing their numbers from an estimated 10-14 million to under three hundred thousand by the end of the 19th century, and took their land.[22] In the 17th century, English capitalists established slavery in their North American colonies, primarily using captive African labor.[23] Like the Irish, whom the English conquered and exploited for centuries before their trans-

---

[19] There is much confusion among scholars and laypersons alike concerning what racism is. This is understandable because of the mistaken tendency to reduce racism to attitudes and then, seeing analogs to race prejudice in "prehistory," believing that racism has always existed (see part 1, chapter 3).

[20] Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939); Scott Christianson, *With Liberty for Some. 500 Years of Imprisonment in America* (Boston: Northeastern University Press, 1998).

[21] Herbert Aptheker, *The Colonial Era* (New York: International Publishers, 1959).

[22] Colin G. Galloway, *New Worlds for All: Indians, Europeans, and the Remaking of Early America* (Baltimore, MD. Johns Hopkins University, 1997); Marvin T. Smith, "Aboriginal Depopulation in the Postcontact Southeast," in *The Forgotten Centuries. Indians and Europeans in the American South, 1521-1704*, eds Charles Hudson and Carmen Chaves Tesser (Athens, GA. The University of Georgia Press, 1994); Henry Dobyns, *Their Number Become Thinned: Native American Population Dynamics in Eastern North America* (Knoxville, TN: University of Tennessee Press, 1983); Russell Thornton, *American Indian Holocaust and Survival. A Population History since 1492* (Norman, OK: University of Oklahoma Press, 1987) .

[23] Timothy H Breen, "A Changing Labor Force and Race Relations in Virginia," *Journal of Social History*, 7 (1973), Edmund S Morgan, "Slavery and Freedom: The American Paradox," *Journal of American History* 59 (1972); Howard Zinn, *A People's History of the United States 1492-Present* (New York: Present HarperPerennial, 1995)

Atlantic ventures, Indians and Africans were believed to possess characteristics that justified their repression, such as laziness, licentiousness, inherent criminality, stupidity, and ugliness. Blacks suffered an extra stigma because of the English practice of worshipping whiteness and denigrating the color black. Although other European groups often had to redefine themselves as white, the British have, since the dawn of the European world-system identified themselves with whiteness.

The caste-class structure became set by the mid-1600s (figure 2.6.3).[24] At the top of society, comprising the capitalist class, were the planter, merchant, and banker class fractions. These affluent white settlers, primarily English and their descendants, represented the companies colonizing North America.[25] These companies, along with the English state, controlled the political economic system and extracted from the colonies resources to boost national wealth (within a mercantilist system of nationalist antagonism).[26] There was also established artisan/crafts classes. Wage-labor, slave-labor (chattel slavery), as well as various other forms of unfreedom, for example, indentured servitude, were primarily controlled through private oppression, what might be called a "third tier justice" system.[27] The labor forced was composed of, besides African labor, displaced

---

[24] Paul Kalra, *The American Class System: Divide and Rule* (Pleasant Hill Antenna Publishing, 1995); Edward Pessen, *Riches, Class, and Power Before the Civil War* (Lexington, Mass., D. C Heath, 1973), Jackson Turner Main, *The Social Structure of Revolutionary America* (Princeton, NJ Princeton University Press, 1969).

[25] Aptheker, *Colonial Era*

[26] Jeremy Atack and Peter Passell, *A New Economic View of American History from Colonialism Times to 1940*, 2nd ed. (New York. W.W. Norton and Company, 1994).

[27] Randall Kennedy, *Race, Crime, and the Law* (New York· Vintage Books, 1991), Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993); Karen

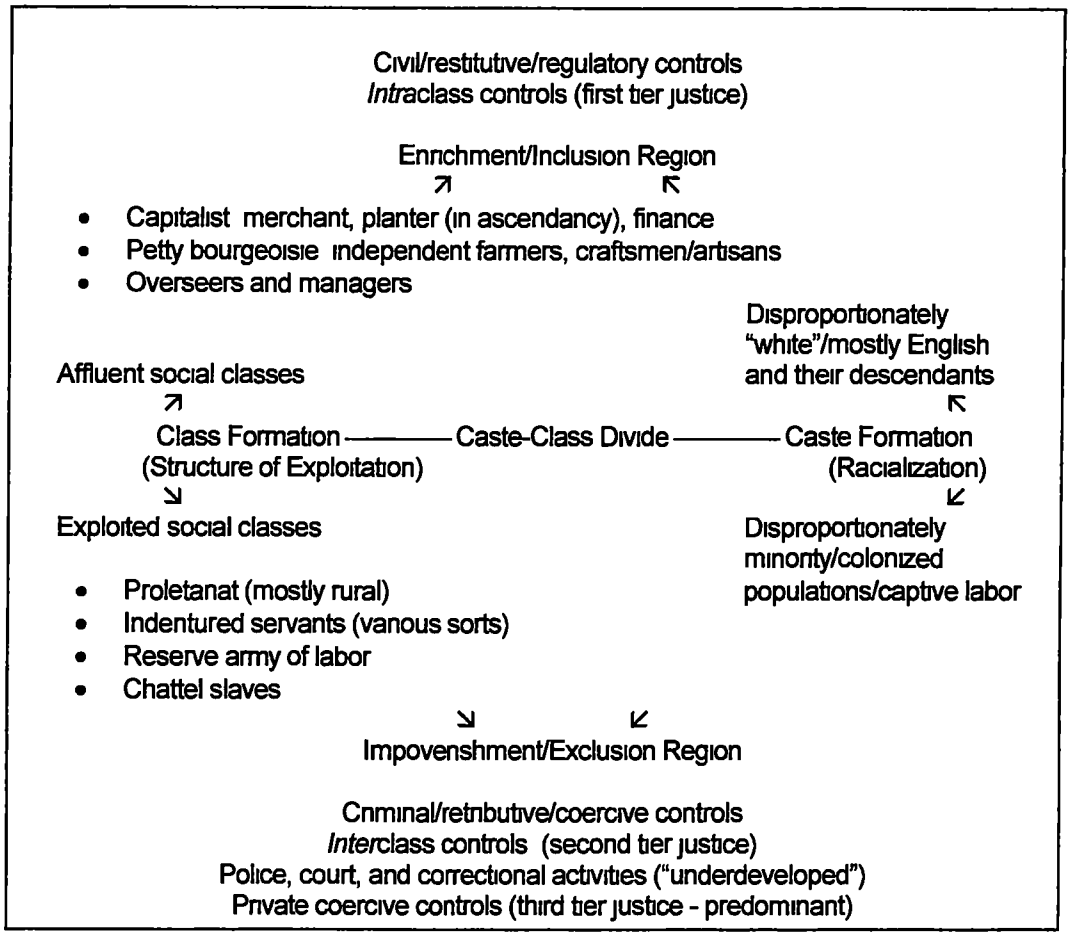


Figure 2.6 3
The Caste-Class Segmentation of Crime and Punishment, 1619-1789

European labor, convicts, orphaned and kidnapped children, and American Indians.[28] Because of the "underdevelopment" of police, court, and correctional institutions, private controls predominated. The public system of law supported a private system of domination.

(3) *Building the "enlightened white republic," 1790-1865* (part 2, chapter 3), investigates the post-"Revolutionary War" period, during which the regionalization of wage-labor and slavery became fixed, the penitentiary

---

Ordahl Kupperman, "Apathy and Death in Early Jamestown," *Journal of American History*, 66 (June 1979)

[28] Christianson, *With Liberty for Some*

system was developed, and leading intellectuals constructed an ideology of racialist scientism.

Over the last third of the 18th century, white settlers struggled against England and eventually established an independent nation-state, the United States of America. The dual character of the former colonies developed further after independence (see figure 2.6.4). Exploitation of the North became predominantly based on wage-labor and slave-labor was almost exclusively based in the South. The domestic industrial bourgeoisie emerged and was in ascendancy by the mid-19th century. Law and order likewise differentiated. The North developed the penitentiary system and began "modernizing" the police force.[29] Although private controls still remained in the wage-labor market, controls over this labor force were increasingly handled through the public apparatus. The scope and character of the wage-labor system corresponded with the rhythms of world capitalism. Although this relationship is complex (see part 2, chapter 3, for details), the general pattern was that during business contractions, when labor-power became less valuable and labor was viewed as a threat, the punishment system expanded and grew crueler.[30] The state and the factory system used convict labor to undermine the craftsmen and artisan classes, eliminating competition by proletarianizing those strata.[31] Criminalized behavior rose with the intensification of capitalist relations and then (after 1840) with industrialization. Early

---

[29] Michael Sherman and Gordon Hawkins, *Imprisonment in America: Choosing the Future* (Chicago. University of Chicago Press, 1981).

[30] Adamson, "Captive Criminal Populations"; Colvin, *Penitentiaries* This history confirms Rusche and Kirchheimer's thesis in *Punishment and Social Structure* At the same time Foucault's history is undermined Cf Michael Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995)

[31] Adamson, "Captive Criminal Populations."

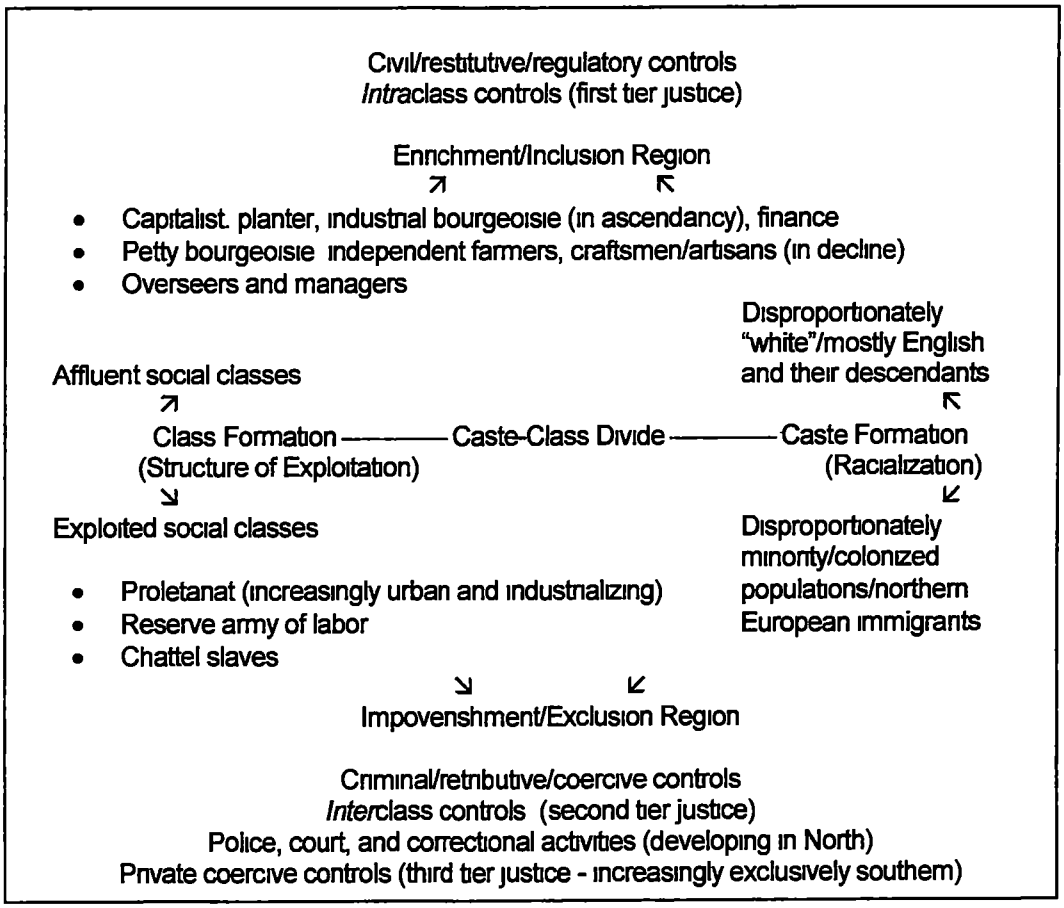


Figure 2 6 4
The Caste-Class Segmentation of Crime and Punishment, 1790-1865

waves of immigration (primarily from northern Europe) increased the control of industrialists over the labor force.[32] Blacks, overwhelmingly slaves, the vast majority in the South, endured private forms of repression backed by government institutions. The state supported private controls by failing to protect blacks from harsh treatments

---

[32] Herbert Gutman, "Work, Culture, and Society in Industrializing America, 1815-1919," *The American Historical Review*, 78 (1973).

that would have been illegal had that labor been white. The South developed as one giant slave labor camp.[33]

At several points in history white elites and workers have reconfigured the caste-class system, either because of pressure or benefit.[34] A major finding of my study is that the more dramatic changes have occurred on the caste side of the system. These changes would lead to critical qualitative changes in the system of social control. The two major adaptations of white racial hegemony happened in the 1860s and the 1960s.

(4) *"First reconstruction": re-"normalizing" racial caste, 1866-1964* (part 2, chapter 4), analyzes the abolition of slavery, the development of apartheid in the South and racial segregation in the North, and the increasing disproportion of blacks in the criminal justice system.

In the 1860s, blacks were freed from chattel slavery (figure 2.6.5). Whites responded by constructing a regionally differentiated apartheid system. In the southern United States, blacks were controlled through Jim Crow segregation and racial terrorism.[35] The penitentiary system began to build in the South, playing a more

---

[33] Stanley Elkins and Eric McKitrick, "Institutions and the Law of Slavery. Slave in Capitalist and Non-Capitalist Cultures," *American Quarterly*, 9 (1957); Kennedy, *Race, Crime, and Law*

[34] Michael Les Benedict, "Preserving the Constitution. The Conservative Basis of Radical Reconstruction," *The Journal of American History*, 61 (1974).

[35] Kenneth M Stampp, *The Era of Reconstruction 1865-1877* (New York: Knopf, 1965); Benjamin B Ringer, *"We the People" and Others: Duality and America's Treatment of its Racial Minorities* (New York: Tavistock Publications, 1983); Eric Foner, *Reconstruction: America's Unfinished Revolution* 1863-1877 (New York Harper and Row, 1988); George Fredrickson, *White Supremacy: A Comparative Study in American and South African History* (New York: Oxford University Press, 1981), Joe Feagin, "Slavery Unwilling to Die: The Background of Black Oppression in the 1980s," *Journal of Black Studies*, 17 (1986); Manning Marable, *How Capitalism Underdeveloped Black America* (Boston South End Press, 1983)

direct role in securing the economic order through convict leasing and the chain gang, especially while apartheid was formed and normalized.[36] Blacks were moved from slavery to debt peonage where they were controlled largely through private means.[37] The state regularly failed to protect blacks from white violence, for instance, lynching, which increased dramatically after Reconstruction.[38] Throughout the rest of the United States and in the cities of the South, blacks were controlled through ghettoization and industrial segmentation and the repressive criminal justice apparatus.[39] The criminal justice structure greatly enlarged in the North because of capitalist needs to control free-labor. In the North, waves of immigrants (first from southern and eastern Europe, then from Asia and Mexico), including African Americans, fell under harsh carceral controls. The widening swings of the economy, increasing labor organizing, waves of strikes, required more repressive controls.[40] These developments also exacerbated criminogenic conditions in the cities and crime rate roses.[41] In the 1920s immigration was tightly restricted and millions of southern blacks were induced to migrate North,

---

[36] Matthew J. Mancini, "Race, Economics, and the Abandonment of Convict Leasing," *Journal of Negro History*, 63 (1978), Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict is a Slave'," *The Journal of Southern History*, 59 (1993).

[37] William Cohen, "Negro Involuntary Servitude in the South, 1865-1940 A Preliminary Analysis," *The Journal of Southern History*, 42 (1976).

[38] Leon F. Litwack, "Hellhounds," ed James Allen, This estimate is almost certainly too low See James Allen, ed., *Without Sanctuary* (Santa Fe, NM: Twin Palms, 2000)

[39] Douglas S. Massey, and Nancy A. Denton, *American Apartheid. Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993); Melvin L. Oliver and Thomas M Shapiro, *Black Wealth/White Wealth. A New Perspective on Racial Inequality* (New York Routledge, 1995)

[40] Gutman, "Work, Culture, and Society."

[41] John Hagan, "Crime and Capitalization Toward a Developmental Theory of Street Crime in America," in *Developmental Theories of Crime and Delinquency*, ed Terence P. Thornberry (New Brunswick: Transaction Publishers, 1997); Cyril D. Robinson, "The Production of Black Violence in Chicago," in *Crime and Capitalism: Readings in Marxist Criminology*, ed. David F. Greenberg (Philadelphia Temple University Press, 1993).

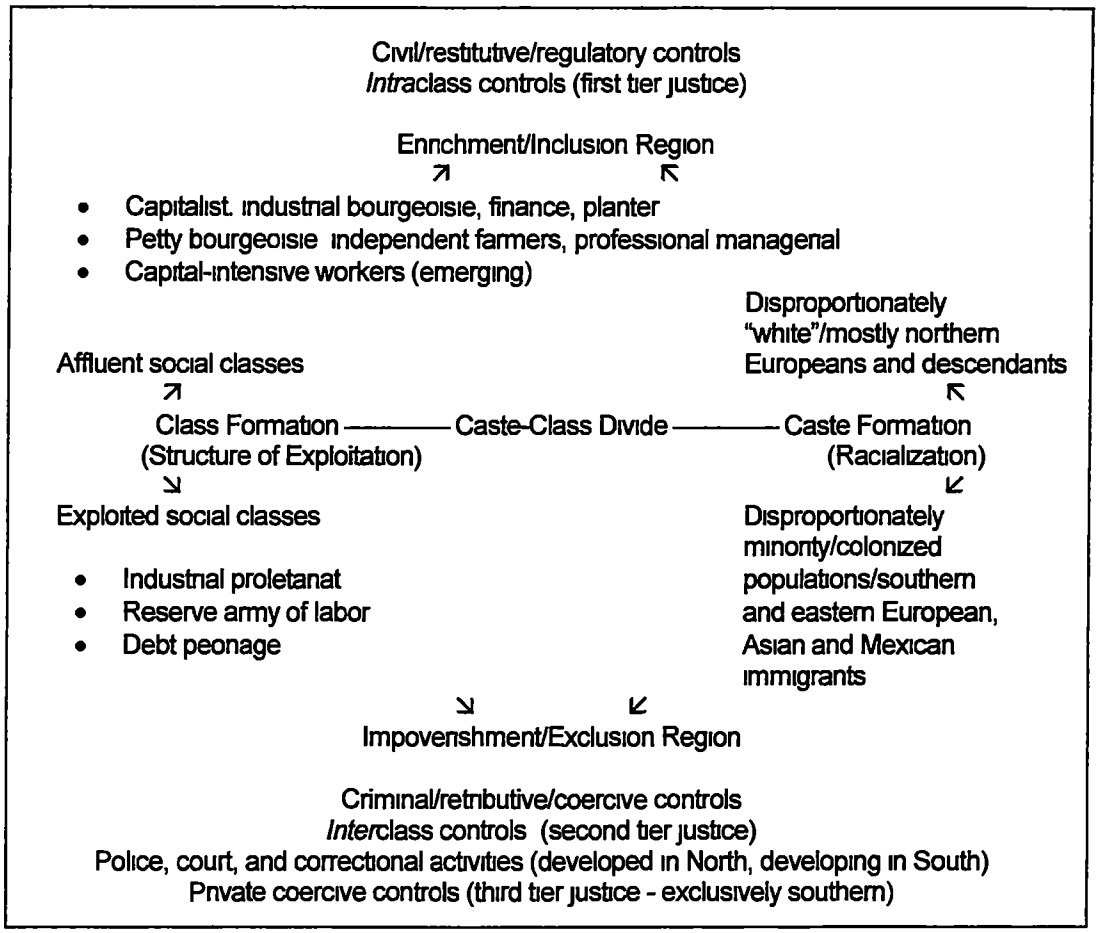


Figure 2 6 5
The Caste-Class Segmentation of Crime and Punishment, 1866-1964

where they fell under the controls of the northern penitentiary system.[42] Prison populations increased steadily throughout this period, leveling off in 1940 and remaining relatively stable throughout the remainder of the period (see figures 2.4.2 and 1.2.1). Crucially, the proportion of blacks in prisons increased relative to whites during this period, especially after WWII. However, in South, with its regime of status

---

[42] Nicolas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York: Vintage Books, 1992); Carole Marks "Black Labor Migration 1910-1920," *Insurgent Sociologist*, 12 (1985); Florette Henri, *Black Migration: Movement North, 1900-1920* (Garden City, NY. Anchor Press, 1975)

offenses and character of analogous house arrest, still controlled blacks largely without resort to prisons. The South still lagged behind the North in penitentiary development. The South did resort to capital punishment far more than did other regions of the country, and the death penalty fell disproportionately on blacks (following a pattern similar to lynchings – compare figure 2.4.1, and table 2.4.1). This period saw the overthrow of the hegemony of the planter fraction of the capitalist class and its replacement by the industrial bourgeoisie. During this period the capital-intensive working class fraction emerged, which structurally divided the working class.

(5) *"Second reconstruction": dissimulation and prisonization, 1965-2000* (part 2, chapter 5), the abolition of formal apartheid, its replacement by color-blind racial hegemony, and the expansion of the prison-industrial complex.

In the 1960s, the legal aspects of apartheid were dismantled and a uniform federal approach was adopted that dissembled the racial hierarchy through the construction of a race-neutral juridical order (figure 2.6.6). At the same time, the criminal justice apparatus expanded exponentially. A dramatic transformation occurred in the thinking of liberals, with political rhetoric and action moving from civil rights in 1964 to crime war in 1968, a philosophical shift from due process to crime control that began to take hold after 1968, the development of federal coordination of not only state crime policy but in the reorganization of the university system to support repressive crime control ideology.[43] These developments combined with the structural unemployment of African Americans, caused by residential and

---

[43] Beckett and Sasson, *Politics of Injustice*; Mauer, *Race to Incarcerate*, Kenneth O'Reilly, "The FBI and the Politics of the Riots, 1964-1968," *The Journal of American History*, 75 (1988)

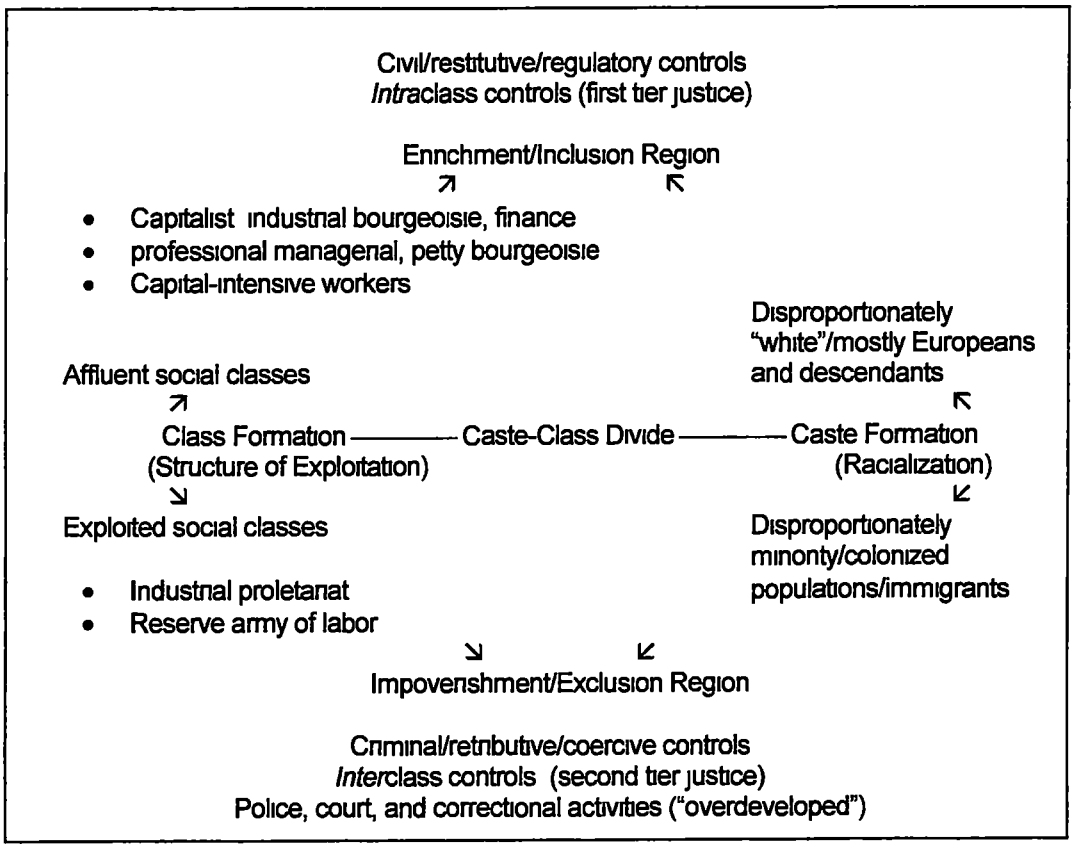


Figure 2 6 6
The Caste-Class Segmentation of Crime and Punishment, 1965-2000

industrial segmentation and capital migration. On top of this came the macroeconomic instability of the mid-1970s, which by the early 1980s was a crisis. The result was that the next decade saw a dramatic increase in prisoners, more than twice that of any previous decade and then an explosion in the 1980s (see figure 1.2.1). Crucially, the composition shifted even more towards black males. Whereas thirty-nine percent of inmates were non-white (mostly black) in 1960, by the mid-1970s, 47 percent were black. Today, blacks have the largest prison presence of any ethnonational group — half of all inmates in prisons and jails are blacks.

Much of my analysis of the situations blacks have faced down through history focuses on the state. This material can be organized in basic Marxian categories to clarify the matter. My study may then be used to increase the precision of Marxian categories. The late and brilliant Trotskyist scholar Ernest Mandel abstracted three main functions of the state: First, the state secures for the dominant class those general conditions of production that cannot be assured through private activity. This is the state's *productive function*. Second, the state represses threats to the mode of production from the subjected classes and from particular fractions of the dominant class through coercive institutions, including the police, the military, and carceral institutions. This is the state's *repressive function*. Third, the state secures the integration of the subjected classes by ensuring that the ideology of the ruling class is the ruling ideology (Marx and Engels' maxim). This requires that the subjected classes accept the conditions of their subjection. This is the state's *integrative function*.[44]

This dissertation has approached the question of the caste-class segmentation of crime control in a way that demonstrates the interlocking nature of these three functions. However, my analysis adds to Mandel's abstractions a social interest beyond the class-materialist one, namely, the *white racial interest*. The racial interest is not, as we have seen, exclusive of the class-materialist interest. The Mississippi legislature understood this when they observed that the labor they bound by the "institution of slavery" was of "the greatest material interest of the world, "because it "supplies the product which constitutes by far the largest and most important portions

---

[44] Ernest Mandel, *Late Capitalism* (New York Verso, 1975), 475.

of commerce of the earth." Black slavery was for this reason central to "commerce and civilization." Not only was the United States of America built on the backs of *labor*, but much of it *black* labor. However, the racial interest expressed by the state cannot be reduced to a productive function, as the events of the 1960s attest to. Contrary to the orthodox Marxist program, racism must be understood as standing in a relatively autonomous fashion from economics and social class. The shift in emphasis from class to race is critical: workers struggle *within racialized categories*. Racial classifications are *presupposed* in a racialized division of labor. Thus a strength of my study is that I move (or at least attempt to move) the discourse beyond class-dialectical language to address the larger totality in which social class is transformed. However, social class dynamics clearly play a central role in social transformation, and thus the shift in emphasis is to correct the neglect of race in historical materialism, rather than an attempt to reduce class to race.

We must think in more holistic terms. Mandel's categories can be articulated in a fashion more closely resembling Manning Marable's notions of the "racist/classist" society.[45] The state, in performing its function in securing the long-term interests of the dominant ethnic economic group (white capitalists), must secure the reproduction of racist/capitalist society. The state fulfills its function not only controlling labor generally but by maintaining, with considerable consent from key elements of privileged subaltern groups (and even from the underprivileged masses), the racial division of labor and the class division of ethnonational groups, what I have labeled in

---

[45] Marable, *Capitalism Underdeveloped Black America.*

this dissertation the *caste-class system*. This system, composed of both material and ideological elements, lies at the heart of American "democracy," and it is, despite historical variability in its surface form, a structural constant.

At the same time, the state cannot be our only focus. Marx's argument that "legal relations such as forms of state are to be grasped neither in themselves nor from the so-called general development of the human mind, but rather have their roots in the material conditions of life,"[46] still orients critical realist scholarship. Because the caste-class system operates beyond the state's capacity to completely determine it, analysis must recognize the private ways oppression is formed and maintained. But this analysis must of course be made in conjunction with the analysis of the state because the state and society exist in a dialectical relationship, each reinforcing the other's distinctive racial and class character.[47] We see the dialectic in the way the state permits private oppression, whether it is in permitting the slaveowner to beat a slave to death, or an educational institution to design tests that systematically exclude blacks from opportunities to acquire knowledge, or corporations to recover from slander but putting hate speech out of the courts' jurisdiction, or failing to compel those whose

---

[46] Karl Marx, *The Portable Karl Marx*, ed Eugene Kamenka (New York Penguin, 1983), 159. Marx is not here saying ideology and culture do not matter. Rather he is pointing to the objective totality from which history emerges And while he downplays ideological elements in his earlier work, his method does not preclude them and he increasingly came to incorporate the mind in his analysis. See *Capital* vol. 1 (New York: Penguin Books, 1990), 284

[47] Gramsci makes this point in his analytic of the "extended state," where key elements of political and civil societies are brought into relations with on another as a unified hegemonic apparatus. See various works. Antonio Gramsci, *Selections from the Prison Notebooks* (New York· International Publishers, 1971), *Prison Notebooks* vols 1-2 (New York· Columbia University Press, 1992-1996)., *The Antonio Gramsci Reader. Selected Writings 1816-1935*, ed David Forgacs (New York New York University Press, 2000)

current elevated status is the result of unpaid labor to reimburse those whose current degraded status is the result of that exploitation, and so on. With these mechanisms of non-intervention the law maintains the racial status quo.

Maintaining the social conditions of capitalist production and white privilege has required most obviously systematic repression, what Marable calls the "iron fist of force." We have clear evidence of the repressive function in the presence and operation of coercive institutions in the United States and before national independence during colonial development. That the coercive institutions have a class character is seen in the way they are imposed upon the working class, especially that stratum of the working class Marx called the "army of the industrial reserve." The racial character of coercive institution is seen in the fact that blacks are treated differently in US society than are whites of *all* social classes. Controls imposed on blacks in every historical period investigated in this dissertation are differentiated from controls of whites both qualitatively and quantitatively: punishment is harsher for blacks and there is a lot more of it. The criminal justice system is engineered to oppress the poor and minority; seen by its systematic failure to either define elite deviance as crime or to pursue and prosecute white collar offenders (which is not to suggest the state never goes after affluent individuals or corporations). Moreover, the state underprotects blacks from violence, refusing to change the circumstances that guarantee the reproduction of violent street crime. Ethically, when people have the power to prevent violence but consciously fail to do so they are effective participants in that violence.

However, as Mandel observes, "class domination based solely on repression would be tantamount to an untenable state of permanent civil war."[48] Ideological domination is at some level required for the stable reproduction of a social system. The prevailing American ideology has many simultaneous forms. National myths, such as that the United States is "the land of equal opportunity," a "classless society," and a basically harmonious collection of hyphenated ethnic groups — these and many other lies provide the basis for inter-group cohesion. Central to American ideology is a series of racial myths, tied to oppressor nationalist ideology, which secure the loyalty of the dominant ethnic group, i.e., the white majority. Dominant American ideology judges all racialized groups according to a white standard, a standard whites need not strive to live up to and that nonwhites can never live up to. Whites believe that blacks are "lazy," "violent," and "complainers." As the nation has evolved, these ideological controls have become strengthened, but they have not supplanted coercion; rather the loyalty of the white working class is more likely to be secured through consensual means and black compliance is more likely to be secured through repression. Even the consensus/coercion dialectic is caste-stratified.

The Character of Caste and Crime and Punishment in American Society and the Radical Solution to Caste-Class Oppression

Democracy means the power and the freedom of those controlled by law to change the law, according to agreed-upon rule — and even to change these rules, but more than that, it means some kind of collective self-control over the structural mechanics of history itself[49]

---

[48] Mandel, *Late Capitalism*, 475.

[49] C. Wright Mills, *The Sociological Imagination* (New York: Oxford University Press, 1958).

Social scientists are not robots. They have a role to play in determining the fate of people in white capitalist society. To attempt neutrality on issues of human affairs is to take a position in favor of the repressive social order. Social scientists are in a position to know about the injustices that white capitalist society spawns. What do we know about racism and what can we do about it? Race has no reality beyond social reality. Racism is not a matter of individual attitudes. It does not reduce to race prejudice. It is a social and historical system. Racism is not "primordial." Racism becomes a system with the emergence of the European world-system, a system based on capitalism. Racism is therefore of historically recent origin. The tendency of people socialized in the bourgeois historical system to racialize is not "instinctive." Social groups do not naturally racialize one another. Children naturally see brown skin and blue eyes, but children must be socialized to see race. It is because racism is an objective social structure fundamental to the system of world capitalism that race appears natural and racism appears instinctive. Racism is not "backwards" or "irrational." It does not disappear with "modernization," although it has undergone a dissimulative process similar to class exploitation under state monopoly capitalism, which is to say that *its structure* has moved towards invisibility (colorblindness). Racism is not a problem of nation-states, rather the world economy links all nation-states in a geopolitical system that has at its core a racialized division of labor. Racism is not a capitalist plot to subjugate the working class, although it may function to enrich the dominant class and divide the working class. Racism is a product of European culture and capitalism, and as such it can affect minds in all social

standings. Under capitalism, white workers benefit from racism as do their class oppressors.[50] The Enlightenment is not a failed project of human equality but is a racist ideology created to legitimate social inequality. The claim of inherent equality falsely naturalizes a political and social construction: equality (or inequality) has no meaning in nature.

These points are instructive in developing a praxis for struggling against racism. Since race is not biological and racialization is neither instinctive nor primordial, racism is not intrinsic to human life and therefore a society can be constructed without racial inequities. Because racism is a social system, racism cannot be eliminated by changing people's attitudes about race; what is required is systemic change. Since racism and capitalism are intrinsic to the European world-system and thus to America, America stands as a barrier to substantive social justice. The struggle against racism must be a struggle against capitalism and vice versa. Because whiteness benefits white workers, they must conceptualize its overthrow as a moral imperative rather than in purely class-interested terms. Contradictions in the Enlightenment project make elements of it serviceable to advance human freedom, but the project itself should be scrapped and replaced by a new anti-essentialist humanist ethic and a democratic socialist society. This struggle must take place at the nation-state and the global levels. Central to the democratic socialist project is radical multi-cultural

---

[50] Although whites benefit from racism, they are also harmed by it For example, racism prevents the working class from achieving greater solidarity and struggling against their common class oppressor. But "[w]hile racism may damage the lives of whites, its most costly effects are exacted by the minds and bodies of those it most oppresses," Stephen Pfohl, *Images of Deviance and Social Control. A Sociological History*, 2nd ed (New York: McGraw-Hill, 1994), 457.

theorizing. Stephen Pfohl summarizes four emphases in this mode of theorizing: "(1) the historical materiality of racial formations as modalities of social control; (2) the role of theory in struggling against and healing the violence of racism; (3) the racialized standpoint of white culture; and (4) an affirmation of nonracialized cultural difference."[51] The present study has been concerned with these emphases.

What about crime and punishment? In the 1400s, capitalism emerged in Europe and criminal law was consolidated and transformed. Capitalism rests on private land ownership and the appropriation of labor-surplus. Capitalism creates a reserve army of labor who suffer material and spiritual deprivation and often turn to crime. As the state has grown up with capitalism and political power has concentrated the capitalist class has erected an extensive system of criminal law to protect property and control labor. Capitalism makes criminals of those who appropriate nature's bounty and the products of their labor and those who are forced to suffer a meaningless existence. This system is class stratified with the bottom layers of the working class suffering harsh physical punishments. These features and their consequences have existed for hundreds of years and are growing worse over time.

Several general points may be made about crime and punishment. There is no behavior that is inherently criminal. Crime is created by criminal law. Although there is no crime independent of criminalization, there are moral transgressions and social injuries independent of law. Criminal law is created by actors able to make law to secure their interests. These interests may be material

---

[51] Pfohl, *Images of Deviance*, 455 Italicized in the original

(property, for instance) or nonmaterial (e.g., investment in whiteness). In a society that is divided by class and race, it is dominant classes and racial groups who are able to make law. Exploitation and oppression benefiting these classes and groups are usually not criminalized. Laws against theft make criminals of those who appropriate property owned by others, even if the existence of that property is through their activity. Therefore, much crime under capitalism is caused by laws that make it illegal for those who produce surplus to appropriate that surplus for their consumption (employee theft). Much crime is caused by the criminalization of behavior that is perceived to threaten the productive capacity of the capitalist economy (public order crimes). Much crime is caused by the push/pull of structural deprivation combined with ideologies that translate consumption into social status (street crime). Racist, classist, and sexist social formations systematically generate violence by dehumanizing and devaluing human beings. The United States is one of the more violent societies in the European world-system. Street crime is not the result of individual choice; even though individuals at some point make a series of choices that transgress the law, they do so under conditions not of their choosing. Therefore, independent of whether they should be held accountable for their actions (and in many cases they should), their choice to commit crime is not the cause of crime and punishing them will not reduce crime.

These points help us adumbrate a non-classist/non-racist justice policy. Such a policy could of course only be possible in a radically different social system, but at the same time transforming the law would be an essential component in any program geared to achieve a better society. Since what is criminal is created by criminal law,

then the criminalized subject is arbitrarily designated. There is no objective rule of law, but only the rule of one ethnoclass over another. A substantively just social policy would eliminate the ethnoclass character of the law, which would require the elimination of ethnoclass domination and the system that makes this possible. Law formation could then be made by all people in a democratic process under conditions of substantive legal, political, and socioeconomic equality. Such conditions would be created by fairly distributing resources and production. Crime would be reconceptualized as socially injurious action. Examples of crime would be any person or group attempting to establish a system where some are compelled to labor for others, or where one group attempts to oppress another group based on ethnic/racial designations. Along with redefining what crime is, the construction of a just society would remove most of the causes of crime, especially those rooted in alienation, nihilism, and anomie. The transformation of society towards democratic socialist goals would cause and require a transformation in human character. The shift would be away from individually-focused possessiveness and towards a personality appropriate to a moral community grounded in values of sympathy and solidarity.

William Robinson writes that theorizing "is very much a form of social action," and, moreover, it inevitably takes a position in favor of one set of interests over another. "The question is: for *whom* are we doing the thinking?"[52] Is it to be for the ethnoclass oppressor? Or for the oppressed? Or as Ignazio Silone put it: "Do we side

---

[52] William I. Robinson, *Promoting Polyarchy. Globalization, US Intervention, and Hegemony* (New York: Cambridge University Press, 1996), 385

with the inmates of the slave-labor camps or with their jailers? This we can no longer evade, because the executioners themselves are forcing it on us. Threateningly they demand: 'Are you with us or against us?'"[53] I think it is time we answer their challenge with Zinn's paraphrase of Camus' simple moral principle that "in a world of victims and executioners, it is the job of thinking people . . . not to be on the side of the executioners."[54] Morality grows out of the objective fact of necessary collective existence (this is sociality). We cannot escape our responsibility to humanity.

---

[53] Ignazio Silone, "The Choice of Comrades," *Legacy of Dissent*, ed. Nicolaus Mills (New York Simon and Schuster, 1994), 60

[54] Zinn, *People's History*, 10

BIBLIOGRAPHY

SELECTED BIBLIOGRAPHY

Books, Book Chapters, and Articles

Aaron, David H., "Early Rabbinic Exegesis on Noah's Son Ham and the So-Called Hamitic Myth," *Journal of the American Academy of Religion*, 63 (1995): 721-759.

Abu-Lughod, Janet, *Before European Hegemony: The World-System A.D. 1250-1350* (Oxford, NY: Oxford University Press, 1989).

_____, "On the Remaking of History: How to Reinvent the Past," in *Remaking History*, eds. Barbara Kruger and Phil Mariani (Seattle, WA: Bay Press, 1989), 111-130.

Adamson, Christopher, "Punishment after Slavery: Southern State Penal Systems 1865-1890," *Social Problems*, 30 (1983): 555-569.

_____, "Towards a Marxian Penology: Captive Criminal Populations as Economic Threats and Resources," *Social Problems*, 31 (4, 1984): 435-458.

Adler, Freda, *Sisters in Crime: The Rise of the New Female Offender* (New York: McGraw-Hill, 1975).

_____, "The Interaction Between Women's Emancipation and Female Criminality: A Cross-Cultural Perspective," *International Journal of Criminology and Penology*, 5 (1, 1977): 101-112.

Adler, H. G., "Ideas Toward a Sociology of the Concentration Camp," *American Journal of Sociology*, 63 (5, 1958): 513-522.

Aglietta, Michel, *A Theory of Capitalist Regulation: The US Experience* (London, Eng: New Left, 1979).

Alexander, Adele Logan, "She's No Lady, She's a Nigger': Abuses, Stereotypes, and Realities from the Middle Passage to Capitol (and Anita) Hill," in *Race, Gender, and Power in America: The Legacy of the Hill-Thomas Hearing*, eds. Anita Faye Hill and Emma Coleman Jordan (Oxford, NY: Oxford University Press, 1995).

Alier, Juan Martínez, "Ecological Economics and Ecosocialism," in *Is Capitalism Sustainable?* ed. Martin O'Connor (New York: The Guildford Press, 1994), 23-36

Allan, Emilie A. and Darrell J. Steffensmeier, "Youth Underemployment, and Property Crime: Differential Effects of Job Availability and Job Quality on Juvenile and Young Adult Arrest Rates," *American Sociological Review*, 54 (1, 1989): 107-123.

Allen, James, ed., *Without Sanctuary: Lynching Photography in America* (Santa Fe, NM: Twin Palms, 2000).

Allen, Theodore W., *The Invention of the White Race* (New York: Verso, 1994).

Althusser, Louis, and Étienne Balibar, *Reading Capital* (New York: Verso, 1970).

Ambrose, Stephen E., *Nixon: The Education of a Politician 1913-1962* (New York: Touchstone Press, 1988).

Amin, Samir, *Accumulation on a World Scale: A Critique of the Theory of Underdevelopment*, vols 1-2 (New York: Monthly Review Press, 1974).

_____, *Unequal Development: An Essay on the Social Formations of Peripheral Capitalism* (New York: Monthly Review Press, 1976).

_____, *Imperialism and Unequal Development* (New York: Monthly Review Press, 1977).

Anderson, Elijah, *Street Wise: Race, Class, and Change in an Urban Community* (Chicago, IL: University of Chicago Press, 1990).

Anderson, Margaret L., *Thinking About Women: Sociological Perspectives on Sex and Gender*, 3rd ed. (New York: Macmillan, 1993).

Anderson, Perry, *Passages from Antiquity to Feudalism* (Atlantic Highlands, NJ: Humanities Press, 1974).

Andrew, John A. III, *Lyndon Johnson and the Great Society* (Chicago, IL: Ivan R. Dee, 1998).

Ansell, Amy E., ed., *Unraveling the Right: The New Conservatism in American Thought and Politics* (Boulder, Co: Westview Press, 1998).

Aptheker, Herbert, ed., *A Documentary History of the Negro People in the United States from Colonial Times Through the Civil War* (New York: The Citadel Press, 1951).

_____, *Afro-American History: The Modern Era* (New York: Citadel, 1971).

_____, *The Colonial Era: A History of the American People* (New York: International Publishers, 1959).

_____, *Early Years of the Republic: From the End of the Revolution to the First Administration of Washington, 1783-1793* (New York: International Publishers, 1976).

_____, *The Unfolding Drama: Studies in US History*, ed. Bettina Aptheker (New York: International Publishers, 1978).

Ariès, Philippe, *Centuries of Childhood: A Social History of Family Life* (New York: Random House, 1962).

Armstrong, Philip, Andrew Glyn, and John Harrison, *Capitalism Since 1945*, 2nd ed. (Cambridge, MA: Basil Blackwell, 1991).

Atack, Jeremy, "Economies of Scale and Efficiency Gains in the Rise of the Factory in America, 1820-1900," in *Quantity and Quiddity: Essays in U.S. Economic History*, ed. Peter Kilby (Middletown, CT: Wesleyan University Press, 1987), 286-335.

Atack, Jeremy and Peter Passell, *A New Economic View of American History from Colonialism Times to 1940*, 2nd ed. (New York: W.W. Norton, 1994).

Auerbach, Jerold S., "New Deal, Old Deal, or Raw Deal: Some Thoughts on the New Left Historiography," *Journal of Southern History*, 35 (1, 1969): 18-30.

Auletta, Ken, *The Underclass* (Woodstock, NY: Overlook, 1999).

Austin, Andrew, "White Male Victimology," *Nature, Society, and Thought*, 9 (1, 1996): 116-120.

_____, "The US and NATO in the Balkans," *New Interventions* 9 (2, 1999): 11-15.

Avineri, Shlomo, *The Social and Political Thought of Karl Marx* (New York: Cambridge University Press, 1968).

Ayers, Edward L., *Vengeance and Justice: Crime and Punishment in the 19th Century American South* (Oxford, NY: Oxford University Press, 1984).

Ayers, Ian and Frederick E. Vars, "When Does Private Discrimination Justify Public Affirmative Action?" *Columbia Law Review*, 98 (7, 1998): 1577-1641.

Bachman, Ronet, Alexander Alvarez, Craig Perkins, "Discriminatory Imposition of the Law: Does it Affect Sentencing Outcomes for America," *Native Americans, Crime, and Justice*, eds. Marianne Q. Nelson and Robert A. Silverman, eds. (Boulder, Co: Westview Press, 1996), 197-208.

Baer, Werner, "The Economics of Prebisch and ECLA," in *Latin America: Problems in Economic Development*, ed. Charles Nisbet (New York: Free Press, 1969), 203-218.

Bagú, Sergio, *Economía de la sociedad colonial. ensayo de historia comparada de América Latina* (Buenos Aires, El Ateneo, 1949).

Bailey, Thomas A., *The American Pageant: A History of the Republic*, 2nd ed. (Boston, MA: Heath, 1961).

Bailyn, Bernard, "The Apologia of Robert Keayne," *William and Mary Quarterly*, 7 (4, 1950): 568-587.

_____, *The Ideological Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1967).

Bailyn, Bernard and Barbara DeWolfe, *Voyagers to the West: A Passage in the Peopling of America on the Eve of the Revolution* (New York: Knopf, 1986).

Baily, Conner, Charles E. Faupel and James H. Gundlach, "Environmental Politics in Alabama's Blackbelt," in *Confronting Environmental Racism: Voices from the Grassroots*, ed. Robert Bullard (Boston, MA: South End Press, 1993), 107-122.

Balandier, Georges, "The Colonial Situation: A Theoretical Approach," in *Social Change: The Colonial Situation*, ed. Immanuel Wallerstein (New York: Wiley, 1966).

Balbus, Isaac, "The Concept of Interests in Pluralist and Marxian Analysis," in *The Politics and Society Reader*, ed. Ira Katznelson (New York: McKay, 1970), 278-304.

_____, *The Dialectics of Legal Control* (New York: Sage, 1973).

Balibar, Étienne, "The Basic Concepts of Historical Materialism," in *Reading Capital*, Louis Althusser and É. Balibar (New York: Verso, 1970), 199-308.

Balkwell, James, "Ethnic Inequality and the Rate of Homicide," *Social Forces*, 69 (1, 1990): 53-70.

Ball, Duane and Gary M. Walton, "Agricultural Productivity Change in Eighteenth Century Pennsylvania," *Journal of Economic History*, 36 (1, 1976): 102-117.

Ball, Howard, *Justice Downwind: America's Atomic Testing in the 1950s* (New York: Oxford University Press, 1986.

Ball, Richard, "An Empirical Exploration of Neutralization Theory," *Criminology*, 4 (2, 1966): 22-32.

Ballagh, James C., *A History of Slavery in Virginia* (New York: Johnson, 1968).

_____, *White Servitude in the Colony of Virginia* (Baltimore, MD: John Hopkins Press, 1985).

_____, *White Servitude in Virginia: A Study of the System of Indentured Labor in the American Colonies* (Baltimore, MD: John Hopkins Press, 1895).

Banfield, Edward C., *The Unheavenly City: The Nature and Future of Our Urban Crisis* (Boston, MA: Little, Brown, 1968).

Baran, Paul and Paul Sweezy, *Monopoly Capital: An Essay on the American Economic and Social Order* (New York: Monthly Review Press, 1966).

Barash, David P., *Sociobiology and Behavior* (New York: Elsevier, 1977).

Barkan, Steven E., "Criminal Prosecutions in the Southern civil rights and Vietnam antiwar movements: Repression and Dissent in Political Trials," in *Research in Law and Sociology*, vol. 3, ed. Steven Spitzer (New York: JAI Press, 1980).

_____, "Legal Control of the Southern Civil Rights Movement," *American Sociological Review*, 49 (4, 1984): 552-565.

Barker, Anthony, *The African Link: British Attitudes to the Negro in the Era of the Atlantic Slave Trade, 1550-1807* (London, Eng: Frank Cass, 1978).

Barlow, David E., Melissa H. Barlow, and Theodore G. Chiricos, "Long Economic Cycles and the Criminal Justice System in the US" *Crime, Law and Social Change*, 19 (2, 1993): 143-169.

Barlow, David E. and Melissa H. Barlow, "Federal Criminal Justice Legislation and the Post-World War II Social Structure of Accumulation in the United States," *Crime, Law, and Social Change*, 22 (3, 1995): 239-267.

Barnard, William D., *Dixiecrats and Democrats: Alabama Politics 1942-1950* (Tuscaloosa, AL: University of Alabama Press, 1974).

Barnett, Harold C., "Wealth, Crime and Capital Accumulation," *Crime and Capitalism: Readings in Marxist Criminology*, ed. David F. Greenberg (Philadelphia, PA: Temple University, 1993), 258-264

_____, *Toxic Debts and the Superfund Dilemma* (Chapel Hill, NC: University of North Carolina, 1994).

Barnett, Richard J. and John Cavanagh, *Global Dreams: Imperial Corporations and the New World Order* (New York: Simon and Schuster, 1994).

Barry, Brian, *Theories of Justice* (Berkeley, CA: University of California, 1989).

Bartl, Renate, "Native American Tribes and Their African Slaves," in *Slave Cultures and the Cultures of Slavery*, ed. Stephan Palmié (Knoxville, TN: The University of Tennessee Press, 1995), 162-175.

Basler, Roy, ed., *The Collected Works of Abraham Lincoln* vol. 3 (New Brunswick, NJ: Rutgers University Press, 1953).

_____, *The Lincoln Legend: A Study in Changing Conditions* (New York: Octagon, 1969).

Bateman, Fred and Thomas Weiss, "Comparative Regional Development in Antebellum Manufacturing," *Journal of Economic History*, 35 (1, 1975): 182-208.

Baudrillard, Jean, *Simulacra and Simulation* (Ann Arbor, MI: University of Michigan Press, 1994).

Beard, Charles A., *An Economic Interpretation of the Constitution of the United States* (New York: Macmillian, 1962)

Beard, Charles and Mary Beard, *The Rise of American Civilization* (New York: Macmillan, 1930).

Beccaria, Cesare, *Of Crimes and Punishments* (Indianapolis, IN: Bobbs-Merrill, 1963).

Beck, E. M., James L. Massey, and Stewart E. Tolnay, "The Gallows, The Mob, The Vote: Lethal Sanctioning of Blacks in North Carolina and Georgia, 1882-1930," *Law and Society Review*, 23 (2, 1989): 317-331.

Beck, E. M., and Stewart E. Tolnay, "The Killing Fields of the Deep South: The Market for Cotton and the Lynching of Blacks, 1882-1930," *American Sociological Review*, 55 (4, 1990): 526-539.

Beckett, Katherine, *Making Crime Pay: Law and Order in Contemporary* (New York: Oxford University Press, 1997).

Beckett, Katherine and Bruce Western, "How Unregulated is the US Labor Market? The Penal System as a Labor Market Institution." Paper presented at the American Sociological Association meetings, Toronto 1997.

Beckett, Katherine and Theodore Sasson, *The Politics of Injustice: Crime and Punishment in America* (Thousand Oaks, CA: Pine Forge Press, 2000).

Beckwith, Francis J. and Todd E. Jones, eds., *Affirmative Action: Social Justice or Reverse Discrimination?* (Amherst, NY: Prometheus, 1997).

Beirne, Piers and James Messerschmidt, *Criminology*, 2nd ed. (Fort Worth, TX: Harcourt Brace, 1995).

_____, *Criminology*, 3rd, ed (Boulder, Co: Westview, 2000).

Bell, Derrick, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: BasicBooks, 1992).

_____, "Racial Realism — After We're Gone: Prudent Speculations on America in a Post-Racial Epoch," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia, PA: Temple University Press, 1995), 1-8.

Bellant, Russ, *Old Nazis, the New Right, and the Republican Party* (Boston, MA: South End Press, 1991).

Belz, Herman, "Changing Conceptions of Constitutionalism in the Era of World War II and the Cold War," *The Journal of American History*, 59 (3, 1972): 640-669.

Bendix, Reinhard, *Nation-building and Citizenship: Studies of Our Changing Social Order* (Berkeley, CA: University of California Press, 1977).

Bennett, David H., *The Party of Fear: From Nativist Movements to the New Right in American History* (Chapel Hill, NC: University of North Carolina Press, 1988).

Bennett, Jr., Lerone, *Forced into Glory: Abraham Lincoln's White Dream* (Chicago, IL: Johnson Publishing Company, 2000).

Bensel, Richard F. and M. Elizabeth Sanders, "The Effect of Electoral Rules on Voting Behavior: The Electoral College and Shift Voting," *Public Choice*, 34 (1, 1979): 69-85.

Benson, Michael L. and Francis T. Cullen, *Combating Corporate Crime* (Boston, MA: Northeastern University Press, 1998).

Bentham, Jeremy, *Introduction to the Principles of Morals and Legislation* (New York: Hafner Press, 1973),

Bequai, August, *White-Collar Crime: A 20th-Century Crisis* (Lexington, MA: Lexington Books, 1978).

Berberoglu, Berch, *Political Sociology: A Comparative Historical Approach* (New York: General Hall, 1990).

Berger, Suzanne and Michael Piore, *Dualism and Discontinuity in Industrial Societies* (New York: Cambridge University Press, 1980).

Bergmann, Barbara, *In Defense of Affirmative Action* (New York: Basic Books, 1996).

Berkman, *Life of an Anarchist: The Alexander Berkman Reader*, ed. Gene Fellner (New York: Four Walls Eight Windows, 1992).

Berlet, Chip, "Following the Threads," *Unraveling the Right: The New Conservatism in American Thought and Politics*, ed. Amy E. Ansell (Boulder, Co: Westview Press, 1998), 17-40.

Berlin, Ira, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Oxford University Press, 1981).

_____, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA: Harvard University Press, 1998).

Berlin, Ira, Marc Fauvreau, and Steven F. Miller, eds. *Remembering Slavery* (New York: The New Press, 1998)

Berman, Daniel M. *Death on the Job: Occupational Health and Safety Struggles in the United States* (New York: Monthly Review Press, 1978).

Bernstein, Barton J., "Plessy v. Ferguson: Conservative Sociological Jurisprudence," *Journal of Negro History*, 48 (3, 1963): 196-205.

_____, "The New Deal: The Conservative Achievements of Liberal Reform," in *Towards a New Past: Dissenting Essays in American History*, ed. Barton J. Berstein (New York: Pantheon Books, 1968): 263-288.

_____, "The Ambiguous Legacy: The Truman Administration and Civil Rights," in *Politics and Policies of the Truman Administration*, ed. B. J. Bernstein (Chicago, IL: Quadrangle Books, 1970).

Bernstein, Harry, "Sociology of Underdevelopment vs. Sociology of Development?" in *Development Theory: Four Critical Essays*, ed. David Lehman (London, Eng: Frank Cass, 1979), 77-106.

Bettenson, Henry, ed., *Documents of the Christian Church*, (London, Eng: Oxford University Press, 1943).

Bhaskar, Roy, *A Realist Theory of Science* (New York: Verso, 1975).

Bidwell, Percy Wells and John I. Falconer, *History of Agriculture in the Northern United States, 1620-1860* (New York: P. Smith, 1941).

Bishop, David W., "Plessy v. Ferguson: A Reinterpretation," *Journal of Negro History*, 62 (2, 1977): 125-133.

Black, Donald J. "Production of Crime Rates," *American Sociological Review*, 35 (4, 1970): 733-748.

Blackiston, Harry S., "Lincoln's Emancipation Plan," *Journal of Negro History*, 7 (3, 1922): 257-277.

Blassingam, John W., *Black New Orleans: 1860-1880* (Chicago, IL: University of Chicago Press, 1973).

Blau, Judith and Peter Blau, "The Cost of Inequality: Metropolitan Structure and Violent Crime," *American Sociological Review*, 47 (1, 1982): 114-129.

Blauner, Robert, *Racial Oppression in America* (New York: Monthly Review Press, 1972).

Blaut, James, *The Colonizer's Model of the World: Geographical Diffusionism and Eurocentric History* (New York: Guliford Press, 1993).

Bleaney, Michael F., *Underconsumption Theories: A History and Critical Analysis* (New York: International Publishers, 1976).

Bloch, Marc, *Feudal Society* (Chicago, IL: University of Chicago Press, 1961).

_____, *Slavery and Serfdom in the Middle Ages* (Berkeley, CA: University of California Press, 1975).

Blum, William, *Killing Hope: US Military and CIA Intervention Since World War II* (Monroe, ME: Common Courage Press, 1995).

Blum, Jerome, "The Rise of Serfdom in Eastern Europe," *The American Historical Review* 62 (4, 1957): 807-836.

Blumstein, Alfred, J. Cohen, and Harold Miller, "Demographically Disaggregated Projections of Prison Populations," *Journal of Criminal Justice*, 8 (January, 1980): 1-26.

Blumstein, Alfred, "On the Racial Disproportionality of United States Prison Populations," *Journal of Law and Criminology*, 73 (3, 1982): 1259-1281.

_____, "Prisons," in *Crime*, eds. James Q. Wilson and Joan Petersilia (San Francisco, CA: ICS Press, 1995), 387-420.

Bluestone, Barry, William M. Murphy, and Mary Stevenson, *Low Wages and the Working Poor* (Ann Arbor, MI: University of Michigan, 1973).

Bluestone, Barry, and Bennett Harrison, *The Deindustrialization of America: Plant Closings, Community Abandonment, and the Dismantling of Basic Industry* (New York: Basic Books, 1982).

Bohn, Frank, "The Ku Klux Klan Interpreted," *American Journal of Sociology*, 30 (4, 1925): 385-407.

Bolick, Clint, *The Affirmative Action Fraud: Can We Restore the American Civil Rights Vision?* (Washington, DC: Cato Institute, 1996).

Bonacich, Edna, "A Theory of Ethnic Antagonism: The Split Labor Market," *American Sociological Review*, 37 (5, 1972): 547-559.

_____, "Abolition, the Extension of Slavery, and the Position of Free Blacks: A Study of Split Labor Market in the United States, 1830-1863," *American Journal of Sociology*, 81 (3, 1975): 601-628.

_____, "Advanced Capitalism and Black/White Race Relation in the United States: Split Labor Market Interpretation," *American Sociological Review*, 41 (1, 1976): 34-51.

_____, "Class Approaches to Ethnicity and Race," *Insurgent Sociologist*, 10 (2, 1980): 9-24.

_____, "United States Capitalist Development: A Background to Asian Immigration," in *Labor Immigration Under Capitalism*, ed. Lucie Cheng and E. Bonacich (Berkeley, CA: University of California Press, 1984).

Bonger, Willem Adriaan, *Criminality and Economic Conditions*, trans. Henry P. Horton (Boston, MA: Little, Brown, 1916).

Bonnassie, Pierre, *From Slavery to Feudalism in South Western Europe* (New York: Cambridge University Press, 1991).

Boswell, John E., "*Expositio* and *Oblatio*: The Abandonment of Children and the Ancient and Medieval Family," *American Historical Review*, 89 (1, 1984): 10-33.

Bower, Claude G., *The Tragic Era: The Revolution after Lincoln* (New York: Houghton Mifflin Company, 1929).

Bowser, Benjamin P., "Race Relations in the 1980s: The Case of the United States," *Journal of Black Studies*, 15 (3, 1985) 307-324.

Box, Steven, *Power, Crime and Mystification* (New York: Tavistock, 1983).

Brackman, Harold, *The Ebb and Flow of Conflict: The History of Black-Jewish Relations Through 1900* (Los Angeles: University of California, 1977).

_____, *Ministry of Lies: The Truth Behind the Nation of Islam's The Secret Relationship Between Blacks and Jews* (New York: Four Walls, Eight Windows, 1994).

Bradley, Patricia, *Slavery, Propaganda, and the American Revolution* (Jackson, MS: University Press of Mississippi, 1998).

Braithwaite, John, "Transnational Corporations and Corruption: Towards Some International Solutions," *International Journal of the Sociology of Law*, 7 (2, 1979): 125-142.

_____, *Corporate Crime in the Pharmaceutical Industry* (Boston, MA: Routledge and Kegan Paul, 1984).

Braude, Benjamin, "The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods," *William and Mary Quarterly*, 54 (1997), 103-142.

Braudel, Fernand, *The Mediterranean and the Mediterranean World in the Age of Philip II*, trans. Siân Reynolds (New York: Harper and Row, 1973).

_____, *A History of Civilizations*, trans. Richard Mayne (New York: Penguin, 1994).

Braverman, Harry, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974).

Breen, Timothy H. "A Changing Labor Force and Race Relations in Virginia," *Journal of Social History*, 7 (1, 1973): 3-25.

_____, "Narrative of Commercial Life: Consumption, Ideology, and Community on the Eve of the American Revolution," *William and Mary Quarterly*, 50 (3, 1993): 471-501.

Breen, Timothy H. and Steven Innes, *Myne Owne Ground: Race and Freedom on Virginia's Eastern Shore, 1640-1675* (New York: Oxford University Press, 1980).

Brenner, Robert, "The Origins of Capitalist Development: A Critique of Neo-Smithian Marxism," *New Left Review*, 104 (1977): 25-93.

Brewer, Anthony, *Marxist Theories of Imperialism* (London, Eng: Routledge, 1980).

Bridges, George and Robert Crutchfield, "Law, Social Standing and Racial Disparities in Imprisonment," *Social Forces* 66 (3, 1988): 699-724.

Brigham, Carl C., *A Study of American Intelligence* (Princeton, NJ: Princeton University Press, 1923).

Brink, William, and Louis Harris, *The Negro Revolution in America: Why and How They are Fighting, Whom they Support, What Whites Think of Them and Their Demands* (New York: Simon and Schuster, 1964).

Bronner, Stephen Eric, ed., *Twentieth Century Political Theory* (New York: Routledge, 1997).

Brown, Michael Barratt, *Essays on Imperialism* (Nottingham, Eng: Bertrand Russell Peace Foundation, 1972).

Brownlow, W. G., *Ought American Slavery to be Perpetuated* (Philadelphia, PA: J.B. Lippincott and co., 1858)

Brownmiller, Susan, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975).

Bruce, Phillip A., *Institutional History of Virginia in the Seventeenth Century* vols 1-2 (New York: G. P. Putnam, 1910).

Pem Davidson Buck, "*Arbeit Macht Frei*: Racism and Bound, Concentrated Labor in U.S. Prisons," *Urban Anthropology and Studies of Cultural Systems and World Economic Development*, 23 (1994): 331-72.

Buck, William C., *The Slavery Question* (Louisville, 1849)

Bukharin, Nikolai, *Imperialism and World Economy* (New York: Monthly Review Press, 1929).

Burawoy, Michael, "Marxism as Science: Historical Challenges and Theoretical Growth," *American Sociological Review*, 55 (6, 1990): 775-793.

Burleigh, Michael and Wolfgang Wipperman, *The Racial State: Germany 1933-1945* (New York: Cambridge University Press, 1991).

Burns, William C., *Duty and the Law* (Bessemer, AL: Colonial Press, 1987).

Burski, Robert, "Political Decisionmaking and Ecological Models of Delinquency: Conflict and Consensus," in *Theoretical Integration in the Study of Deviance and Crime* , eds. S. Messner, M. Krohn, and A. Liska (Albany, NY: State University of New York Press, 1989).

_____, "Economic Deprivation and Neighborhood Crime Rates, 1960-1980," *Law and Society Review*, 27 (1993): 263-284.

Busia, Abena, "And This is What We've Decided to Tell You After Everything We've Shared," in *Theorizing Black Feminisms: The Visionary Pragmatism of Black Women*, ed. Stanlie M. James and P. A. Abena (New York: Routledge, 1993).

Cabana, Donald A., *Death at Midnight: The Confession of an Executioner* (Boston: Northeastern University Press, 1996).

Calvita, Kitty, Henry N. Pontell, and Robert H. Tillman, *Big Money: Fraud and Politics in the Savings and Loan Crisis* (Berkeley, CA: University of California Press, 1997).

Cameron, Kenneth Neill, *Humanity and Society: A World History* (New York: Monthly Review Press, 1977).

Campbell, John, *Negro Mania. Being an Examination of the Falsely Assumed Equality of the Races of Mankind* (Philadelphia, PA: Campbell and Powers, 1851)

Canny, Nicholas P., "The Ideology of English Colonization: From Ireland to America," *William and Mary Quarterly*, 30 (4, 1973): 575-598.

Cantor, David and Kenneth C, Land, "Unemployment and Crime Rates in the Post-World War II United States: A Theoretical and Empirical Analysis," *American Sociological Review*, 50 (3, 1985): 317-332.

Caringella-MacDonald, Susan, "State Crisis and the Crackdown on Crime Under Reagan," *Contemporary Crisis*, 14 (2, 1990): 91-118.

Carter, Dan T., *Scottsboro: A Tragedy of the American South*, rev. ed. (Baton Rouge: Louisiana State University Press, 1979).

_____, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge, LA: Louisiana State University Press, 1996).

Cash, Wilbur J., *The Mind of the South* (New York: Alfred A. Knopf, 1941).

Cattell, Raymond B., *The Fight for Our National Intelligence* (London, Eng: King and Sons, 1937).

_____, *Intelligence and National Achievement* (Washington, DC: Institute for the Study of Man, 1983).

Cavalli-Sforza, Luca, Paolo Menozzi and Alberto Piazza, *The History and Geography of Human Genes* (Princeton, NJ: Princeton University Press, 1994).

Cave, Roy C. and Herbert H. Coulson, ed., *A Source Book for Medieval Economic History* (New York: Biblo and Tannen, 1965).

Cereseto, Shirley, "Socialism, Capitalism, and Inequality," *Insurgent Sociologist*, 11 (2, 1982): 5-29.

Chambliss, William J. and Robert Seidman, *Law, Order, and Power* (Reading, MA: Addison-Wesley, 1982).

Chambliss, William J., "A Sociological Analysis of the Law and Vagrancy," *Social Problems*, 12 (1, 1964): 67-77.

_____, "Functional and Conflict Theories of Crime: The Heritage of Emile Durkheim and Karl Marx," in *Whose Law? Whose Order? A Conflict Approach to Criminology*, eds. W. J. Chambliss and Milton Mankoff (New York: John Wiley, 1976), 1-28.

Chamlers, David, *Hooded Americanism: The History of the Ku Klux Klan*, 3rd, ed. (New York: New Viewpoints, 1976).

Chang, Robert S., "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space," *Critical Race Theory: The Cutting Edge*, ed Richard Delgado (Philadelphia, PA: Temple University Press, 1995), 322-336.

Chazman, Robert, "Medieval Anti-Semitism," in *History and Hate: The Dimensions of Anti-Semitism*, ed. David Berger (Philadelphia, PA: Jewish Publication Society, 1986). 45-65.

Charleton, James H., Robert G. Ferris, and Mary C. Ryan, eds., *Framers of the Constitution*, rev. ed. (Washington, DC: National Archives and Records Administration, 1986).

Chase-Dunn, Christopher, in *Global Formation: Structures of the World-Economy* (Cambridge, MA: Basil Blackwell, 1989).

Chesteen, Richard D., "Bibliographical Essay: The Legal Validity of Jim Crow," *Journal of Negro History*, 56 (4, 1971): 284-293.

Chilcote, Ronald H., *Theories of Development and Underdevelopment* (Boulder, Co: Westview Press, 1984).

Chiricos, Theodore G., "Rates of Crime and Unemployment: An Analysis of Aggregate Research Evidence," *Social Problems*, 34 (2, 1987): 187-212.

Chiricos, Theodore G. and Miriam A. Delone, "Labor Surplus and Punishment: A Review and Assessment of Theory and Evidence," *Social Problems*, 39 (4, 1992): 421-446.

Chirot, Daniel, *Social Change in the Modern Era* (New York: Harcourt Brace, 1986).

Chomsky, Noam, *Keeping the Rabble in Line* (Monroe, ME: Common Courage, 1994).

_____, *Manufacturing Consent: Noam Chomsky and the Media*, prods./dirs. Mark Achbar and Peter Wintonick, prod. Adam Symansky, Necessary Illusions in co-production with National Film Board of Canada (New York: Zeitgeist Films Ltd., 1994).

_____, *Deterring Democracy* (New York: Hill and Wang, 1992).

Chomsky, Noam and Edward S. Herman, *The Washington Connection and Third World Fascism* (Boston, MA: South End Press, 1979).

_____, *After the Cataclysm: Postwar Indochina and the Reconstruction of Imperial Ideology* (Boston, MA: South End Press, 1979).

Christianson, Scott, "Our Black Prisons," *Crime and Delinquency*, 27 (1981): 364-375.

_____, *With Liberty for Some: 500 Years of Imprisonment in America* (Boston, MA: Northeastern University Press, 1998).

Christie, Nils, *Crime Control as Industry: Towards Gulags Western Style?* (New York: Routledge, 1993).

Churchill, Ward and Jim Vander Wall, *The COINTELPRO Papers Documents from the FBI's Secret Wars Against Dissent in the United States* (Boston, MA: South End Press, 1991).

Clairmont, Donald, "The Development of a Deviance Service Center," in *Decency and Deviance*, eds. Jack Haas and Bill Shafir (Toronto, Canada: McClelland, 1974).

Clark, Charles E., *The Eastern Frontier: The Settlement of Northern New England, 1610-1763* (New York: Knopf, 1970).

Clinard, Marshall B. and Richard Quinney, *Criminal Behavior Systems* (New York: Holt, Rinehart and Winston, 1973).

Clinard, Marshall B. and Peter C. Yeager, *Corporate Crime* (New York: Free Press, 1980).

Clinton, Catherine, "With a Whip in His Hand: Rape, Memory, and African-American Women," in *History and Memory in African American Culture*, eds. Geneviève Fabre and Robert O'Meally (New York: Oxford University Press, 1994).

Closson, Carlos C., "The Hierarchy of European Races," *American Journal of Sociology*, 3 (3, 1897): 314-327.

Cobb, James C., "Does Mind No Longer Matter? The South, the Nation, and the Mind of the South, 1941-1991," *The Journal of Southern History*, 57 (4, 1991): 681-718.

Cobb, Thomas R., *An Inquiry into the Law of Negro Slavery in the United States of America* (New York, Negro Universities Press, 1968).

Cohen, Carl, *Naked Racial Preference* (New York: Madison Books, 1995).

Cohen, Jacqueline and Jose A. Canela-Cacho, "Incarceration and Violent Crime — 1965-1988," in *Understanding and Preventing Violence: Consequences and Control*, vol. 4, eds. Albert J. Reiss, Jr. and Jeffrey A. Roth (Washington, DC: National Academy of Science, 1994).

Cohen, Stanley, *Visions of Social Control* (Cambridge, MA: Polity Press, 1984).

Cohen, William, "Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis," *The Journal of Southern History*, 42 (1, 1976): 31-60.

Cohodas, Nadine, *Strom Thurmond and the Politics of Southern Change* (New York: Simon and Schuster, 1993).

Cole, David, *No Equal Justice: Race and Class in the American Justice System* (New York: The New Press, 1999).

Coleman, James W., *The Criminal Elite*, 3rd. ed. (New York: St. Martin's Press, 1994).

_____, *The Criminal Elite: Understanding White-Collar Crime*, 4th ed. (New York: St. Martin's Press, 1998).

Colvin, Mark, *Penitentiaries, Reformatories and Chain Gangs: Social Theory and the History of Punishment: Social Theory and the History of Punishment in Nineteenth-Century America* (New York: St. Martin's Press, 1997).

Comer, Michael J., *Corporate Fraud* (New York: McGraw-Hill, 1977).

Conrad, Alfred, and John Meyer, "The Economics of Slavery in the Antebellum South," *Journal of Political Economy*, 66 (1958),: 95-130

Copleston, Frederick, *A History of Philosophy*, vol. 7 (New York: Doubleday, 1994).

Cortner, Richard C., *A "Scottsboro" Case in Mississippi: The Supreme Court and* Brown v. Mississippi (Jackson: University of Mississippi, 1986).

Corzine, Jay, James Creech, and Lin Corzine, "Black Concentration and Lynching in the South: Testing Blalock's Power-Threat Hypothesis," *Social Forces*, 61 (3, 1983): 774-796.

_____, "The Tenant Labor Market and Lynching in the South: A Test of Split Labor Market Theory," *Sociological Inquiry*, 58 (3, 1988): 261-278.

Cover, Robert M., *Justice Accused: Antislavery and the Judicial Process* (New Haven, CT: Yale University Press, 1975).

Cox, Oliver Cromwell, *Caste, Class, and Race* (Garden City, NY: Doubleday, 1948).

Cox, Robert W., "Critical Political Economy," in *International Political Economy: Understanding Global Disorder*, ed. Björn Hettne, (New Jersey: Zed Books, 1996), 31-45.

Cross, Theodore, *The Black Power Imperative: Racial Inequality and the politics of Nonviolence* (New York: Faulkner, 1984).

Crow, Jeffrey J., "Slave Rebelliousness and Social Conflict in North Carolina, 1775-1802," *William and Mary Quarterly*, 37 (1, 1980): 79-102.

Crutchfield, Robert, "Labor Stratification and Violent Crime," *Social Forces*, 68 (2, 1989): 489-512.

Cullen, Francis T., William J. Maakestade, and Gray Cavender, *Corporate Crime Under Attack* (Cincinnati, OH: Anderson, 1987).

Current, Leonard N., *The Lincoln Nobody Knows* (New York: Greenwood Press, 1958).

Currie, Elliot, *Confronting Crime: An American Challenge* (New York: Pantheon, 1985).

_____, *Crime and Punishment in America* (New York: Owl Books, 1998).

Curry, George E., ed., *The Affirmative Action Debate* (Reading, MA: Addison-Wesley, 1996).

Curtin, Philip D., *The Atlantic Slave Trade: A Census* (Madison, WI, University of Wisconsin Press, 1969).

Dalfiume, Richard M., "The 'Forgotten Years' if the Negro Revolution," *Journal of American History*, 55 (1, 1968): 90-106.

Dallin, Alexander, "America Through Soviet Eyes," *Public Opinion Quarterly*, 11 (1, 1947): 26-39.

Dandeker, Christopher, *Surveillance, Power and Modernity: Bureaucracy and Discipline from 1700 to the Present Day* (New York: St. Martin's Press, 1990).

Daniel, Pete, *The Shadow of Slavery: Peonage in the South, 1901-1969* (Urbana, IL: University of Illinois Press, 1972).

_____, "Going among Strangers: Southern Reactions to World War II," *The Journal of American History*, 77 (3, 1990): 886-911.

Darwin, Charles, *The Descent of Man*, 2nd ed. (New York, H. M. Caldwell, 1874).

_____, *The Variation of Animals and Plants Under Domestication* (New York, D. Appleton, 1900).

_____, *The Origins of Species: By Means of Natural Selection or the Preservation of Favoured Races in the Struggle for Life* (New York: Penguin, 1958).

Davidson, Basil, *The African Slave Trade. Precolonial History 1450-1850* (Boston, MA: Little, Brown, 1961).

Davies, Kenneth G., *The Royal African Company* (New York: Atheneum, 1970).

Davis, Allison, Burleigh B. Gardner, and Mary R. Gardner, *Deep South: A Social Anthropological Study of Caste and Class* (Chicago, IL: The University of Chicago Press, 1941).

Davis, David Brion, *Slavery and Human Progress* (Oxford, NY: Oxford University Press, 1984).

_____, *The Problem of Slavery in the Age of Revolution 1770-1823* (New York: Oxford University Press, 1989).

_____, "The Culmination of Racial Polarities and Prejudice," *Journal of the Early Republic* 19 (4, 1999): 757-775

_____, "Today's Hatreds Still Bear the Imprint of the History of Slavery and Racism," www.wiesenthal.com/resource/today.html, 2000.

Davis, John P., "A Survey of the Problems of the Negro Under the New Deal," *Journal of Negro Education*, 5 (1, 1936): 3-12.

Davis, Kingsley and Wilbert Moore, "Some Principles of Stratification (in Social Theory)," *American Sociological Review*, 10 (2, 1945): 242-249.

Dayton, Cornelia Hughes, "Turning Points and the Relevance of Colonial Legal History," *The William and Mary Quarterly*, 50 (1, 1993): 7-17.

Deane, Phyllis and W. A. Cole, *British Economic Growth 1688-1959. Trends and Structure* (London, Eng: Cambridge University Press, 1967).

Dearborn, Walter F., and Howard H. Long, "The Physical and Mental Abilities of the American Negro: A Critical Summary," *Journal of Negro Education*, 3 (3, 1934): 530-547.

Decker, Scott H., ed., *Juvenile Justice Policy: Analyzing Trends and Outcomes* (Beverly Hills, CA: Sage, 1984).

De Gobineau, Joseph Arthur comte, *The Moral and Intellectual Diversity of Races* (Philadelphia, PA: Lippincott, 1856).

_____, *The Inequality of Human Races* (New York: Putnam, 1915).

Delgado, Richard, *The Coming Race War?* (New York: New York University Press, 1996).

Delgado, Richard and Jean Stefancic, eds., *Critical White Studies: Looking Behind the Mirror* (Philadelphia, PA: Temple University Press, 1997).

DeMause, Lloyd, "The Evolution of Childhood," in *The History of Childhood* (New York: Psychohistory Press, 1974), 1-73.

Denzin, Norman K., *The Research Act: A Theoretical Introduction to Sociological Methods*, 2nd ed. (New York: McGraw-Hill, 1978).

Derber, Charles Derber in the *Wilding of America: How Greed and Violence are Eroding Our Nation's Character* (New York: St. Martin's Press, 1996).

Detweiler, Frederick G., "The Rise of Modern Race Antagonisms," *American Journal of Sociology*, 37 (5, 1932): 738-747.

Dew, Thomas R. *A Review of the Debate on the Abolition of Slavery in the Virginia Legislature, 1831-1832* (Richmond: T. W. White, 1832).

Diamond, Sara, *Roads to Dominion: Right-Wing Movements and Political Power in the United States* (New York: The Guilford Press, 1995).

Diesing, Paul, *How Does Social Science Work? Reflections on Practice* (Pittsburgh, PA: University of Pittsburgh Press, 1991).

Ditton, Jason, "Perks, Pilferage, and the Fiddle: The Historical Structure of Invisible Wages," *Theory and Society*, 4 (1, 1977): 39-71.

Dobb, Maurice H., *Studies in the Development of Capitalism* (New York: International Publishers, 1963).

Dobyns, Henry, *Their Number Become Thinned: Native American Population Dynamics in Eastern North America* (Knoxville, TN: University of Tennessee Press, 1983).

Doeringer, Peter B. and Michael J. Piore, *Internal Labor Markets, Technological Change, and Labor Force Adjustment* (Cambridge, MA: Cambridge University Press, 1966).

_____, *Internal Labor Markets and Manpower Analysis* (Lexington, MA: Heath, 1971).

Dollard, John, *Caste and Class in a Southern Town* (New York: Harper and Row, 1949).

Donald, Henderson H., "Causes of the Recent Negro Migration," *Journal of Negro History*, 6 (4, 1921): 410-420.

Donziger, Steven, ed., *The Real War on Crime: The Report of the National Criminal Justice Commission* (New York: HarperPerennial, 1996).

Douglass, Frederick, "The Claims of the Negro Ethnologically Considered," in *The Life and Writings of Frederick Douglass*, ed. Philip Foner (New York, International Publishers, 1950).

Douthwaite, Richard, *The Growth Illusion* (Gabriola Island, B.C.: New Society Publishers, 1999).

Doyle, Bertram D., *The Etiquette of Race Relations in the South: A Study in Social Control* (Port Washington, NY: Kennikat Press, 1968).

Drake, Avon W. and Robert D. Holsworth, *Affirmative Action and the Stalled Quest for Black Progress* (Urbana, IL: University of Illinois Press, 1996).

Drake, St. Clair, *Black Folk Here and There: An Essay in History and Anthropology* (Los Angeles: University of California, 1990).

Drescher, Seymour, *Capitalism and Antislavery: British Mobilization in Comparative Perspective* (New York: Oxford University Press, 1987).

_____, *From Slavery to Freedom: Comparative Studies in the Rise and Fall of Atlantic Slavery* (1999).

Du Bois, William E. B., "Is Man Free?" *Scientific Monthly* 66 (May 1948): 432-434.

_____, *The Suppression of the African Slave Trade to the United States of America, 1638-1870* (New York: Schocken Books, 1969).

_____, *Black Reconstruction in the United States, 1860-1880* (New York, 1977).

_____, *The Souls of Black Folk* (New York: Dover Publications, 1994).

Duby, Georges, *The Early Growth of the European Economy: Warriors and Peasants from the Seventh to the Twelfth Century* (Ithaca, NY, Cornell University Press, 1974).

_____, *The Three Orders· Feudal Society Imagined* (Chicago: University of Chicago Press, 1980).

_____, *Rural Economy and Country Life in the Medieval West* (Columbia, SC: University of South Carolina Press, 1968).

_____, *The Making of the Christian West, 980-1140* (Geneva: Skira, 1967).

_____, *The Chivalrous Society* (Berkeley, LA: University of California Press, 1977).

Dudziak, Mary L., "Josephine Baker, Racial Protest, and the Cold War," *The Journal of American History*, 81 (2, 1994): 543-570.

_____, "Desegregation as a Cold War Imperative," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia, PA: Temple University Press, 1995).

Dugdale, William L., *The Kallikak Family: A Study in the Heredity of Feeble-Mindedness* (New York: Macmillan, 1912).

_____, *Feeble-Mindedness: Its causes and Consequences* (New York: Macmillan, 1914).

_____, *School Training of Defective Children* (Yonkers-on-Hudson, NY: World Book Co., 1914).

_____, *The Criminal Imbecile* (New York: The Macmillan Company, 1915).

_____, *Psychology of the Normal and Subnormal* (New York: Dodd, Mead and Company, 1919).

Durkheim, Émile, *The Division of Labor in Society*, trans. George Simpson (New York: Free Press, 1984).

_____, "Two Laws of Penal Evolution," in *Durkheim and the Law*, eds. Steven Lukes and Andrew Scull, trans. T. Anthony Jones and Andrew Scull (New York: St. Martin's Press, 1983), 102-132.

Dye, Thomas, *Who's Running America? The Conservative Years*, 4th ed. (Engelwood Cliffs: Prentice-Hall, 1986).

_____, *Who's Running America? The Clinton Years*, 6th ed. (Engelwood Cliffs: Prentice-Hall, 1995).

Eastland, Terry, *Ending Affirmative Action: The Case for Colorblind Justice* (New York: Basic Books, 1996).

Edelstein, Michael R., *Contaminated Communities: The Social and Psychological Impacts of Residential Toxic Exposure* (Boulder: Westview Press. Edelstein, 1988).

Egerton, John, *The Americanization of Dixie: The Southernization of America* (New York, 1974).

Ehrman, John, *The Rise of Neoconservatism: Intellectuals and Foreign Affairs 1945-1994* (New Haven: Yale University Press, 1995).

Elkins, Stanley and Erik McKitrick, "Institutions and the Law of Slavery: The Dynamics of Unopposed Capitalism," *American Quarterly*, 9 (1, 1957): 3-21.

Elliot, Delbert S. and Suzanne S. Ageton, "Reconciling Race and Class Differences in Self-Reported and Official Estimates of Delinquency," *American Sociological Review*, 45 (1, 1980): 95-110.

Elliot, E. N., *Cotton Is King and Pro-Slavery Arguments* (Augusta, GA: Pritchard, Abbott, and Loomis, 1860).

Eltis, David, "Europeans and the Rise and Fall of African Slavery in the America: An Interpretation," *American Historical Review*, 98 (5, 1993): 1399-1423

_____, "Labour and Coercion in the English Atlantic World from the Seventeenth to the Early Twentieth Century," in *The Wages of slavery: From Chattel Slavery to Wage Labour in Africa, the Caribbean and England*, ed., Michael Twaddle (London: Frank Class, 1993).

Eltis, David and Lawrence C. Jennings, "Trade Between Western Africa and the Atlantic World in the Pre-Colonial Era," *American Historical Review*, 93 (4, 1988): 936-959.

Emmanuel, Arghiri, "White-Settler Colonialism and the Myth of Investment Imperialism," in *Introduction to the Sociology of "Developing Societies,"* eds. Hamza Alavi and Teodor Shanin (New York: Monthly Review Press, 1982), 88-106.

Empey, LaMar T., "Juvenile Justice Reform: Diversion, Due Process, and Deinstitutionalization," in *Prisoners in America*, ed., Lloyd E. Ohlin (Englewood Cliffs, NJ, Prentice-Hall, 1973).

Engal, Marc, "The Economic Development of the Thirteen Continental Colonies, 1720 to 1775," *William and Mary Quarterly*, 32 (2, 1975): 191-222.

Engels, Frederick, *The Condition of the Working-Class in England in 1844*, trans. Florence Kelley Wischnewtzky (London: Sonnenschein, 1892).

Erikson, Kai T., *Wayward Puritans. A Study in the Sociology of Deviance* (New York: Wiley, 1966).

Ermann, David M. and Richard J. Lundman, *Corporate and Governmental Deviance*, 4th edition (New York: Oxford University Press, 1992).

Estes, Matthew, *A Defense of Negro Slavery as it Exists in the United States* (Montgomery, 1846).

Evan, Richard, *In Hitler's Shadow: West German Historians and the Attempt to Escape from the Nazi Past* (New York: Pantheon, 1989).

Evans, M. Stanton and Margaret Moore, *The Lawbreakers* (New Rochelle, NY: Arlington House, 1968).

Hans Eysenck, *Race Intelligence and Education* (London: Smith, 1971).

_____, *The Inequality of Man* (London: Smith, 1973).

Faber, Eli, *Jews, Slaves, and the Slave Trade: Setting the Record Straight* (New York: New York University Press, 1998).

Fagan, Jeffrey, "Drug Selling and Elicit Income in Distressed Neighborhoods: The Economic Lives of Street-Level Drug Users and Dealers," in *Drugs, Crime and Social Isolation*, eds. A. Harrell and G. Peterson (Washington, DC: Urban Institute Press, 1993): 99-146.

Fage, John D., "Slavery and the Slave Trade in the Context of West African History," *Journal of African History*, 10 (1969): 393-404.

Fanon, Franz, *Black Skin, White Masks*, trans. Charles Lam Markmann (New York: Grove Press, 1967).

_____, *The Wretched of the Earth*, trans. Constance Farrington. (New York: Grove Press, 1968).

Farley, Reynolds and William H. Frey, "Changes in the Segregation of Whites from Blacks During the 1980s: Small Steps Toward a More Integrated Society," *American Sociology Review*, 59 (1, 1994): 23-45.

Farr, Richard, "'So Vile and Miserable an Estate' — The Problem of Slavery in Locke's Political Thought," *Political Theory* 14 (1986).

Fausz, J. Frederick, "Fighting 'Fire' with Firearms: The Anglo-Powhatan Arms Race in Early Virginia," *American Indian Culture and Research Journal*, 3 (4, 1979): 33 -50

Fay, Brian and J. Donald Moon, "What Would an Adequate Philosophy of Social Science Look Like?" in *Introductory Readings in Philosophy of Science*, 3rd ed., eds. E.D. Klemke, Robert Hollinger, and David Wyss Rudge (Amherst, NY: Prometheus Books, 1998), 171-189.

Feagin, Joe R., "Slavery Unwilling to Die: The Background of Black Oppression in the 1980s," *Journal of Black Studies*, 17 (2, 1986): 173-200.

_____, "The Continuing Significance of Race: Antiblack Discrimination in Public Places," *American Sociological Review*, 56 (1, 1991): 101-116.

Feagin, Joe R. and Aaron Porter, "White Racism: Bibliographic Essay," *Choice*, 33 (February 1996): 903-914.

Feagin, Joe R. and Clairece Booher Feagin, *Racial and Ethnic Relations*, 6th ed. (New Jersey: Prentice Hall, 1999).

Fede, Andrew, *People without Rights: An Interpretation of the Fundamentals of the Law of Slavery in the U.S. South* (New York: Garland Pub., 1992).

Felsenstein, Frank, *Anti-Semitic Stereotypes: A Paradigm of Otherness in English Popular Culture, 1660-1830* (Baltimore, MD: John Hopkins University Press, 1995).

Fenoaltea, Stefano, "The Rise and Fall of a Theoretical Model: The Manorial System," *Journal of Economic History*, 35 (2, 1975): 386-409.

Ferber, Abby L., *White Man Falling: Race, Gender, and White Supremacy* (Landham, MD: Rowman and Littlefield, 1998).

Ferlin, John E., *A Wilderness of Miseries: War and Warriors in Early America* (Westport, CT: Greenwood Press, 1980).

Ferrand, Max, *The Records of the Federal Convention of 1787*, vol. 1-4, rev. ed. (New Haven, CT: Yale University Press, 1966).

Ferri, Enrico, *Criminal Sociology* (New York: D. Appleton, 1909).

Fields, Barbara, "Ideology and Race in American History," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, eds. J. Morgan Kousser and James M. McPherson (New York: Oxford University Press, 1982).

Finkelman, Paul, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY: ME Sharpe, 1996).

Finley, Moses, "Slavery," in *A Dictionary of Marxist Thought*, 2nd. ed., ed. Tom Bottomore (Cambridge, MA: Basil Blackwell, 1991), 496-497.

Firmin, Anténor produced *The Equality of the Human Races*, ed. Carolyn Fluehr-Lobban, trans. Asselin Charles (New York: Garland Publishing, 1999).

Fish, Stanley, "Reverse Racism, or How the Pot Got to Call the Kettle Black," in *Affirmative Action: Social Justice of Reverse Discrimination*, eds. Francis J. Beckwith and Todd E. Jones (Amherst, NY: Prometheus Books, 1997), 142-151.

Fishel, Jr., Leslie H. and Benjamin Quarles, *The Negro American: A Documentary History* (Glenview, IL: Scott, Foresman and Company, 1967).

Fisher, Sidney George, *The Laws of Race as Connected with Slavery* (Philadelphia, 1860).

Fisher, William W., Morton J. Horwitz, and Thomas A. Reed, eds., *American Legal Realism* (Oxford, NY: Oxford University Press, 1993).

Fishman, Mark, "Crime Wave as Ideology," *Social Problems*, 25 (1978): 531-543.

Fitzhugh, George, *Sociology for the South: Or the Failure of Free Society* (Richmond, VA: A. Morris, 1854).

_____, "Southern Thought — Its New and Important Manifestations," *DeBow's Review, Agricultural, Commercial, Industrial Progress and Resources*, 23 (4, 1857): 337-349 and 23 (5, 1857): 449-462.

_____, *Cannibals All! Or Slaves Without Masters* (Cambridge, MA: Harvard University Press, 1960 [1857]).

Flanigan, Daniel J., *The Criminal Law of Slavery and Freedom 1800-1868* (New York: Garland Pub, 1987).

_____, "Criminal Procedure in Slave Trials in the Antebellum South," *The Law of American Slavery*, ed. Kermit L. Hall (New York: Garland Pub., 1987).

Fletcher, John, *Studies on Slavery in Easy Lessons* (Philadelphia, PA: Thomas, Copperthwait, 1952)

Fligstein, Neil, *Going North: Migration of Blacks and Whites from the South, 1900-1950* (New York: Academic Press, 1981).

Fogel, Robert William Fogel and Stanley L., *Time on the Cross* (Boston, MA: Little, Brown, 1974).

Foner, Philip S., *Organized Labor and the Black Worker 1619-1973* (New York: International Publishers, 1974).

_____, *The History of Black Americans: From Africa to the Emergence of the Cotton Kingdom* (Westport, CT: Greenwood Press, 1975).

_____, *Reconstruction: America's Unfinished Revolution* 1863-1877 (New York: Harper and Row, 1988).

Ford, Richard Thompson, "The Boundaries of Race: Political Geography in Legal Analysis," in *Critical Race Theory: The Key Writings that Formed the Movement*, eds. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995), 449-465.

Foster, Stephen, *Their Solitary Way: The Puritans Social Ethic in the First Century of Settlement in New England* (New Haven, CT: Yale University Press, 1971).

Foucault, Michel, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Pantheon, 1977).

Fox, John C., *The History of Contempt of Court, the Form and the Mode of Punishment* (Oxford, NY: Clarendon Press, 1927).

Francovich, Allan, dir., *Inside the CIA: On Company Business*, 3 vols. (Oak Forest, IL: MPI Home Video, 1980).

Frank, André Gunder, "The Development of Underdevelopment," *Monthly Review*, 18 (September, 1966): 17-31.

_____, *Capitalism and Underdevelopment in Latin America* (New York: Monthly Review Press, 1967).

_____, *Sociology of Development and Underdevelopment of Sociology* (London, Eng: Pluto, 1971).

_____, *World Accumulation, 1492-1789* (New York: Monthly Review Press, 1978).

_____, *World Accumulation and Underdevelopment* (New York: Monthly Review Press, 1978).

_____, "The Modern World-System Revisited: Rereading Braudel and Wallerstein," in *Civilizations and World Systems: Studying World-Historical Change*, ed. Stephen K. Sanderson (Walnut Creek, CA: Altamira, 1995), 163-194.

Frank, Nancy K., *Crimes Against Worker Health and Safety* (San Francisco, CA: Sierra Club Books, 1985).

Frank, Nancy K. and Michael J. Lynch, *Corporate Crime, Corporate Violence* (Albany, NY: Harrow and Heston, 1992).

Frankenberg, Ruth, ed., *Displacing Whiteness: Essays in Social and Cultural Criticism* (Durham, NC: Duke University Press, 1997).

Franklin, H. Bruce, ed., *Prison Writing in 20th-century America* (New York: Penguin Books, 1998).

Franklin, John Hope, *From Slavery to Freedom: A History of American Negroes* 5th edition (New York: Knopf, 1980).

_____, "Mirror for Americans: A Century of Reconstruction History," *The American Historical Review*, 85 (1, 1980): 1-14.

_____, "Slavery Left America with a Weak Moral Foundation," in *Slavery: Opposing Viewpoints*, ed. William Dudley (San Diego, CA: Greenhaven Press, 1992), 270-279.

Franklin, John Hope and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of African Americans* (New York: McGraw-Hill, 1994).

Fraser, Antonia, *Cromwell, the Lord Protector* (New York: Knopf, 1973).

Freedman, Paul, *Images of the Medieval Peasant* (Stanford, CA: Stanford University Press, 1999).

Freeman, Alan David, "Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," *Critical Race Theory: The Key Writings that Formed the Movement*, eds. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995), 29-46.

Friedman, Milton and Rose Friedman, *Free to Choose* (New York: Harcourt Brace, 1980).

Friedman, Lawrence M., *Crime and Punishment in American History* (New York: Basic Books, 1993).

Friedrichs, David O., *Trusted Criminals: White-Collar Crime in Contemporary America* (Belmont, CA: Wadsworth, 1996)

Fredrickson, George, *The Black Image in the White Mind: the Debate on Afro-American Character and Destiny, 1817-1914* (New York: Harper and Row, 1971).

_____, *White Supremacy: A Comparative Study in American and South African History* (New York: Oxford University Press, 1981).

Fuller, Richard C., "The Problem of Teaching Social Problems," *American Journal of Sociology*, 44 (3, 1938): 415-435.

Furnivall, John S., *Colonial Policy and Practice: A Comparative Study of Burma and Netherlands India* (New York: New York University Press, 1956).

_____, *Netherlands India: A Study of Plural Economy* (London, Eng: Cambridge University Press, 1967).

Gallie, W. B., "Essentially Contested Concepts," *Aristotelian Society*, 56 (1956): 167-198.

Galloway, Colin G., *New Worlds for All: Indians, Europeans, and the Remaking of Early America* (Baltimore, MD: John Hopkins University Press, 1997).

Galton, Francis, *Hereditary Genius* (London, Eng: Macmillan, 1869)

_____, *Inquiries into Human Faculty and Its Development* (London, Eng: Macmillan, 1883).

_____, *Natural Inheritance* (London, Eng: Macmillan, 1889).

Carofalo, Raffaele Barone, *Criminology* (Boston, MA: Little, Brown, 1914).

Garraty, John A., "The New Deal, National Socialism, and the Great Depression," *The American Historical Review*, 78 (4, 1973): 907-944.

Garson, Robert A., *The Democratic Party and the Politics of Sectionalism, 1941-1948* (Baton Rouge, LA: Louisiana State University Press, 1974).

Geller, William A. and Hans Toch, eds., *Police Violence: Understanding and Controlling Police Abuse of Force* (New Haven, CT: Yale University Press, 1996).

Gelles, Edith Belle, *First Thoughts: Life and Letters of Abigail Adams* (New York: Twayne Publishers, 1998).

Genovese, Eugene D., *Roll, Jordan, Roll: The World the Slaves Made* (New York, Pantheon Books, 1974).

Gervasi, Tom, *The Myth of Soviet Military Supremacy* (New York: Harper and Row, 1986).

Giddens, Anthony, *The Nation-State and Violence* (Berkeley, CA: University of California Press, 1987).

Gillis, John R., *Youth and History* (New York: Academic Press, 1974).

Gillman, Joseph M., "Statistics and the Immigration Problem," *American Journal of Sociology*, 30 (1, 1924): 29-48.

Gimenez, Martha, "Minorities in the World-System: Theoretical and Political Implications of Internationalization," in *Racism, Sexism and the World-System*, ed. Joan Smith et al. (Westport, CT: Greenwood, 1988), 39-56.

Glass, Bernard, *Anti-Semitic Stereotypes Without Jews: Images of the Jews in England, 1290-1700* (Detroit, MI: Wayne State University Press, 1975).

Goebel, Jr., Julius, *Felony and Misdemeanor* (Philadelphia, PA: University of Pennsylvania Press, 1987).

Goldenberg, David M., "The Curse of Ham: A Case of Rabbinic Racism?" in *Struggles in the Promised Land. Toward a History of Black-Jewish Relations in the United States*, eds. Jack Salzman and Cornel West (New York, Oxford University Press, 1997), 21-52.

Goldberg, Eve and Linda Evans, *The Prison Industrial Complex and the Global Economy.* Prison Activist Resource Center PO Box 339 Berkeley CA 94701, 1988.

Goldhagen, Daniel Jonah, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust* (New York: Alfred A. Knopf, 1996).

Goldin, Claudia, and Kenneth Sokoloff, "Women, Children, and Industrialization in the Early Republic: Evidence from the Manufacturing Census," *Journal of Economic History*, 42 (4, 1982): 741-774.

Gonzalez Casanova, Pablo, "Internal Colonialism and National Development," in *Latin American Radicalism: A Documentary Report on Left and Nationalist Movements*, eds. Irving Horowitz, Josu de Castro, and John Gerassi (New York: Random House, 1969).

_____, *Democracy in Mexico* (New York: Oxford University Press, 1970).

Goodell, William, *The American Slave Code in Theory and Practice: Its Distinctive Features Shown by Its Statutes, Judicial Decisions, and Illustrative Facts* (New York, Negro Universities Press, 1968).

Goodwin, Doris Kearns, *No Ordinary Time. Franklin and Eleanor Roosevelt: The Home Front in World War II* (New York: Simon and Schuster, 1994).

Goodwin, Jeff and Theda Skocpol, "Explaining Revolutions in the Contemporary Third World," in *Social Revolutions in the Modern World*, ed. Theda Skocpol (New York: University of Cambridge Press, 1994), 259-278.

Gordon, David M., *Theories of Poverty and Underemployment: Orthodox, Radical, and Dual Labor Market Perspectives* (Lexington, MA: Lexington Books, 1972).

Gordon, Milton M., *Social Class in American Sociology* (New York : McGraw-Hill, 1963).

_____, *Assimilation in American Life* (New York: Oxford University Press, 1964).

Gordon, Robert W., "Unfreezing Legal Reality: Critical Approaches to Law," *Florida State Law Review*, 15 (2, 1987): 195-220.

_____, "Critical Legal Histories" in *Critical Legal Studies*, ed. Alan C. Hutchinson (Totowa, NJ: Rowan and Littlefield, 1989), 82-83.

_____, "The Past as Authority and as Social Critic: Stabilizing and Destabilizing Functions of History in Legal Argument," in *The Historic Turn in the Human Sciences*, ed. Terrence J. McDonald (Ann Arbor: University of Michigan Press, 1996), 339-78.

Goring, Charles B., *The English Convict: A Statistical Study* (Montclair, NJ, Patterson Smith, 1972).

Gotanda Neil, "A Critique of 'Our Constitution is Color-Blind'," *Critical Race Theory: The Key Writings that Formed the Movement*, eds. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995), 257-275.

Gottfredson, Michael R. and Travis Hirschi, *The General Theory of Crime* (Stanford, CA: Stanford University Press, 1990).

Gould, Stephen Jay, *Ontogeny and Phylogeny* (Cambridge, MA: Harvard University Press, 1977).

_____, *The Mismeasure of Man* (New York: Norton, 1981).

Gramsci, Antonio, *Selections from the Prison Notebooks*, ed. and trans. by Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971).

_____, *Prison Notebooks*, vols. 1-2, ed. Joseph A. Buttigieg, trans. J. A. Buttigieg and Antonio Callari (vol. 1) edited and trans. J. A. Buttigieg (vol. 2) (New York: Columbia University Press, 1992-1996) (New York: Columbia University Press, 1992, 1996).

_____, *The Antonio Gramsci Reader: Selected Writings 1916-1935*, ed. David Forgacs (New York: New York University Press, 2000).

Grantham, Dewey W., *The Democratic South* (New York: Norton, 1963).

_____, *Southern Progressivism: The Reconciliation of Progress and Tradition* (Knoxville, TN: University of Tennessee Press, 1983).

Graves, Robert and Raphael Patai, *Hebrew Myths* (New York: McGraw Hill, 1964).

Gray, Lewis Cecil, *History of Agriculture in the Southern United States to 1860*, 2 vols. (Washington, DC: The Carnegie Institution of Washington, 1933).

Grayson, William J., *Slavery in the South: A Review of Hammond's and Fuller's Letters, and Chancellor Harper's Memoir on the Subject* (Charleston: Walker and Burke, 1845).

Green, Edward, "Race, Social Status, and Criminal Arrest," *American Sociological Review*, 35 (3, 1970): 476-490.

Green, Fletcher M., "Some Aspects of the Convict Lease System in the Southern States," *Essays in Southern History* (Chapel Hill, NC: Greenwood Press, 1949).

Green, Mark, Beverly C. Moore, and Bruce Wasserstein, *The Closed Enterprise System* (New York: Bantam Books, 1972).

Greenberg, David F., "Delinquency and the Age Structure of Society," *Contemporary Crises*, 1 (2, 1977): 189-224.

_____, ed., *Crime and Capitalism: Readings in Marxist Criminology* (Philadelphia, PA: Temple University, 1993).

Greenberg, Jerald, "The STEAL Motive: Managing the Social Determinants of Employee Theft," in *Antisocial Behavior in Organizations*, eds. Robert A. Giacalone and Jerald Greenberg (Thousand Oaks, CA: Sage, 1997), 85-108.

Greenfeld, Liah, *Nationalism: Five Roads to Modernity* (Cambridge, MA: Harvard University Press, 1992).

Greene, Lorenzo Johnston, *The Negro in Colonial New England 1620-1776* (New York: Atheneum, 1968).

Greider, William, *Fortress America: The American Military and the Consequence of Peace* (New York: Public Affairs, 1998).

Griffin Fariello, *Red Scare: Memories of the American Inquisition* (New York: W.W. Norton, 1995).

Griffin, Larry J., Joel Devine, and Michael L. Wallace, "Monopoly Capital, Organized Labor and Military Expenditures: Military Keynesianism in the United States, 1949-1976," in *Marxist Inquiries: Studies of Labor, Capital and the State*, eds. Michael Burowoy and Theda Skocpol (Chicago, IL: University of Chicago Press, 1982), 113-53.

Griffin, Roger, ed., *Fascism* (New York: Oxford University Press, 1995).

Grill, Johnpeter Horst, and Robert L. Jenkins, "The Nazis and the American South in the 1930s: A Mirror Image?" *The Journal of Southern History* 58 (4, 1992): 667-694.

Grimshaw, Allen D., "Lawlessness and Violence in America and their Special Manifestations in Changing Negro-White Relationships," *Journal of Negro History*, 44 (1, 1959): 52-72.

_____, "Actions of Police and the Military on American Race Riots," *Phylon*, 24 (Fall, 1963): 271-289.

Gronowicz, Anthony, *Race and Class Politics in New York City Before the Civil War* (Boston, MA: Northeastern University Press, 1998).

Guerin, Daniel, *Fascism and Big Business* (New York: Pathfinder, 1973).

Gumplowicz, Ludwig, *The Outlines of Sociology* (Philadelphia, PA: American Academy of Political and Social Science, 1899).

Gurr, Ted Robert, "Contemporary Crime in Historical Perspective: A Comparative Study of London, Stockholm, and Sydney," *Annals of the American Academy of Political and Social Science*, 434 (1977): 114-136.

Gutman, Herbert, "Work, Culture, and Society in Industrializing America, 1815-1919," *The American Historical Review*, 78 (3, 1973): 531-588.

_____, "The World Two Cliometricians Made: A Review Essay," *Journal of Negro History*, 60 (1, 1975): 215-227.

Hagan, John, *Structural Criminology* (New Brunswick, NJ: Rutgers University Press, 1989).

_____, "Crime and Capitalization: Toward a Developmental Theory of Street Crime in America," in *Developmental Theories of Crime and Delinquency*, ed. Terence P. Thornberry (New Brunswick, NJ: Transaction Publishers, 1997), 287-308.

Hahn, Steven, *The Roots of Southern Populism: Yeomen Farmers and the Transformation of the Georgia Upcountry, 1850-1890* (New York: Oxford University Press, 1983).

Hall, Edwin L. and Albert A. Simkus, "Inequality in the Types of Sentences Received by Native Americans and Whites," *Criminology*, 13 (1975): 199-222.

Hall, Jerome, *Theft, Law and Society*, 2nd ed. (Indianapolis, IN: Bobbs-Merrill, 1952).

Hall, John A., *Powers and Liberties: The Causes and Consequences of the Rise of the West* (Oxford, MA: Basil Blackwell, 1985).

Halliburton, Jr., Richard, "Origins of Black Slavery among the Cherokees," *Chronicles of Oklahoma*, 52 (1974/75): 483-96.

_____, "Black Slave Control in the Cherokee Nation," *Journal of Ethnic Studies*, 3 (3, 1975): 23-35.

Hamlin, John E., "The Misplaced Role of Rational Choice in Neutralization Theory," *Criminology*, 26 (3, 1988): 425-438

Hampe, T., *Crime and Punishment in Germany, as illustrated by the Nuremberg Malefactors Books* (London, Eng: George Routledge & Sons, 1929).

Hanawalt, Barbara A., "The Female Felon in Fourteenth Century England," in *Women in Medieval Society*, ed. S. M. Stuard (Philadelphia, PA: University of Pennsylvania Press, 1976), 125-140.

Handlin, Oscar and Mary F. Handlin, "Origins of the Southern Labor System," *William and Mary Quarterly*, 7 (2, 1950): 199-222.

Hannon, Lance and James DeFronzo, "The Truly Disadvantaged, Public Assistance, and Crime" *Social Problems*, 45 (3, 1998): 383-392.

Hanokh, Dagan, *Unjust Enrichment: A Study of Private Law and Public Values* (New York: Cambridge University Press, 1997).

Harding, Sandra ed., "After the Neutrality Ideal: Science, Politics, and 'Strong Objectivity,'" *Social Research*, 59 (3, 1992): 567-87

_____, *The "Racial" Economy of Science: Toward a Democratic Future*, (Bloomington, IN: Indiana University Press, 1993).

Harding, Vincent, *There is a River: The Black Struggle for Freedom in America* (New York: Harcourt Brace Jovanovich, 1981).

Harper, William, "Memoir on Slavery," in *The Pro-Slavery Argument* (Charleston, SC: Walker, Richards, 1852).

Harris, Anthony R. and Lisa R. Meidinger, "Criminal Behavior: Race and Class," in *Criminology: A Contemporary Handbook*, 2nd ed., ed. Joseph F. Sheley (New York: Wadsworth, 1995), 114-143.

Harris, Cheryl I., "Whiteness as Property," *Harvard Law Review*, 106 (8, 1993): 1709-1791.

Harris, Cole, "Voices of Disaster: Smallpox around the Strait of Georgia in 1782," *Ethnohistory*, 41 (4, 1994): 591-626.

Harris, Joseph E., *Africans and Their History*, second edition (New York: Meridian, 1998).

Harris, Marvin, *Patterns of Race in the Americas* (New York: Walker and Co., 1964).

Harrison, Faye V., "The Persistent Power of 'Race' in the Cultural and Political Economy of Racism," *Annual Review of Anthropology*, 24 (1995): 47-74.

Hart, Herbert L. A., *The Concept of Law* (Oxford, NY: Claredon Press, 1961).

Hartmann, ed., *From Children to Citizens* (New York: Springer-Verlag, 1987).

Hartwell, R. M., ed., *The Causes of the Industrial Revolution in England* (London, Eng: Methuen, 1967).

Hawkins Darnell F., "Trends in Black-White Imprisonment: Changing Conceptions of Race or Changing Patterns of Social Control?" *Crime and Social Justice*, 24 (1985): 187-209.

Helper, Hinton Rowan, *Negroes in Negroland* (New York, 1868).

_____, *The Impending Crisis of the South: How to Meet It*, ed., George Fredrickson (Cambridge, MA: Harvard University Press, 1968).

_____, *La Nojoque: A Question for a Continent* (New York: G. D. Carleton and Co, 1867)

Hening, William Waller, ed., *The Statutes at Large: Being a Collection of All the laws of Virginia, from the First Session of the Legislature, in the Year 1619* (Richmond, VA: Samuel Pleasants, 1809-23).

Henri, Florette, *Black Migration: Movement North, 1900-1920* (Garden City, NY: Anchor Press, 1975),

Henry, Stuart, *The Hidden Economy: The Context and Control of Borderline Crime* (London, Eng: Robertson, 1978).

_____, "The Political Economy of Informal Economies," *Annals of the American Academy of Political and Social Science*, 493 (1987): 137-153.

Henry, Stuart, and Gerald Mars, "Crime at Work: The Social Construction of Amateur Property Theft," *Sociology*, 12 (1978): 245-263.

Herrnstein, Richard J. and Charles Murray, *The Bell Curve* (New York: Free Press, 1994).

Herzstein, Robert E., *Roosevelt and Hitler: Prelude to War* (New York: John Wiley and Sons, 1989).

Hesse, Mary, "Theory and Value in the Social Science" in *Action and Interpretation*, eds. Christopher Hookway and Philip Pettit (Cambridge, MA: Cambridge University Press, 1978).

Higham, Charles, *Trading with the Enemy: The Nazi-American Plot, 1933-1949* (New York: Barnes and Nobel, 1983).

Hill, Christopher, *Century of Revolution, 1603-1714* (New York: Norton, 1966).

Hill, Mike, ed., *Whiteness: A Critical Reader*, (New York: New York University Press, 1997).

Hill, Richard Child, "Race, Class and the State: The Metropolitan Enclave System in the United States," *The Insurgent Sociologist*, 10 (2, Fall 1980): 45-59.

Hills, Stuart L., *Corporate Violence* (Totowa, NJ: Rowman, 1987).

Hilton, Rodney H., *Bond Men Made Free: Medieval Peasant Movements and the English Rising of 1381* (London, Eng: Temple Smith, 1973).

_____, *The Decline of Serfdom in Medieval England* (New York: St. Martin's Press, 1982).

Hilferding, Rudolf, *Das Finanzkapital: Eine Studie Über die Jüngste Entwicklung des Kapitalismus* (Berlin, Germany: Dietz Verlag, 1955).

Hindelang, Michael J., "The Commitment of Delinquents to Their Misdeeds: Do Delinquents Drift?" *Social Problems*, 17 (4, 1970): 502-509.

_____, "Race and Involvement in Common Law Personal Crimes," *American Sociological Review*, 43 (1, 1978): 93-109.

_____, "Variations in Sex-Race-Age Specific Incidence Rates of Offending," *American Sociological Review*, 46 (4, 1981): 461-474.

Hindus, Michael Stephen, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill, NC: University of North Carolina Press, 1980).

Hirschi, Travis, *Causes of Delinquency* (Berkeley, CA: University of California Press, 1969).

_____, "The Family," in *Crime*, eds. James Q. Wilson and Joan Petersilia (San Francisco, CA: ICS Press, 1995), 121-141.

Hobson, John A., *Imperialism* (London, Eng: G. Allen & Unwin ltd., 1938).

Hochstedler, Ellen, *Corporations as Criminals* (Beverly Hills, CA: Sage, 1984).

Hoffman, Frederick L., *Race Traits and Tendencies of the American Negro* (New York: Macmillan, 1896).

Hofstadter, Richard, *The American Political Tradition and the Men Who Made It* (New York: Knopf, 1973).

Holdsworth, William Searle, *A History of English Law* (Boston, MA: Little, Brown, 1922-1972).

Hollinger, Richard C. and John P. Clark, *Theft by Employees* (Lexington, MA: Lexington Books, 1983).

Hollinger, Richard C., "Acts Against the Workplace: Social Bonding and Employee Deviance," *Deviant Behavior*, 7 (1, 1986): 53-75.

Hollister, C. Warren, *Medieval Europe: A Short History* (New York: McGraw-Hill, Inc., 1994).

hooks, bell, *Ain't I a Woman Black Women and Feminism* (Boston, MA: South End Press, 1981).

Hoover, J. Edgar Hoover, *Masters of Deceit: The Story of Communism in America and How to Fight it* (New York: Holt, 1958).

Hopkins, Terry, I. Wallerstein and associates, "Cyclical Rhythms and Secular Trends of the Capitalist World-Economy: Some Premises, Hypotheses, and Questions," in World-System Analysis: Theory and Methodology, ed. T. Hopkins, I. Wallerstein, Robert Bach, Christopher Chase-Dunn, and Ramkrishna Mukherjee (Beverly Hills, CA: Sage, 1982)

Horowitz, David Alan, "White Southerners' Alienation and Civil Rights: The Response of Corporate Liberalism, 1956-1965," *The Journal of Southern History*, 54 (2, 1988): 173-200.

Horwitz, Morton J., *The Transformation of American Law, 1780-1860* (Cambridge: Harvard University Press, 1977).

_____, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* (New York: Oxford Univ. Press, 1992).

_____, "The Constitution of Change: Legal Fundamentality without Fundamentalism," *Harvard Law Review*, 107 (1, 1993): 30-117.

_____, "Morton Horwitz: Law and Civility," interview with Kim Ann Savelson, *Appendix*, 3 (1997), http://www.appendx.org/issue3/savelson/index1.htm.

Horsmanded, Daniel, *The New-York Conspiracy: or, A history of the Negro Plot, with the Journal of the Proceedings Against the Conspirators at New-York in the Years 1741-2*, 2nd. ed. (New York: Negro Universities Press, 1969).

Horton, Lois E., "From Class to Race in Early America: Northern Post-Emancipation Racial Reconstruction," *Journal of the Early Republic*, 19 (4, 1999): 629-649.

Hounshell, David, *From American System to Mass Production* (Baltimore, MD: John Hopkins University Press, 1986).

Huizinga, David and Delbert S. Elliot, "Juvenile Offenders: Prevalence, Offender Incidence, and Arrest Rates by Race," *Crime and Delinquency*, 33 (2, 1987): 206-23.

Huizinga, Johan, *The Waning of the Middle Ages: A Study of the Forms of Life, Thought and Art in France and the Netherlands in the XIV and XV centuries* (Garden City, NY: Doubleday, 1954).

Humpries, Drew and David Greenberg, "The Dialectics of Crime Control," *Crime and Capitalism: Readings in Marxist Criminology*, ed. David Greenberg (Philadelphia, PA: Temple University, 1993), 463-508.

Hunt, Michael H., *Ideology and U.S. Foreign Policy* (New Haven, CT: Yale University Press, 1987).

Huntington, Ellsworth, *Tomorrow's Children: The Goal of Eugenics* (New York: John Wiley, 1935).

Huntington, Samuel P., *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968).

Hymer, Stephen, "The Multinational Corporation and the Law of Uneven Development," *Economics and World Order from the 1970s to the 1990s*, ed. Jagdish N. Bhagwati (London: Macmillan, 1972), 113-140.

Ibbetson, David, *A Historical Introduction to the Law of Obligations* (New York: Oxford University Press, 2000).

Ignatiev, Noel, *How the Irish Became White* (New York: Routledge, 1995).

Ingersoll, Thomas N., "'Riches and Honour were Rejected by Them as Loathsome Vomit': The Fear of Leveling in New England," in *Inequality in Early America*, eds. Carla Gardina Pestana and Sharon V. Salinger (Hanover: University Press of New England, 1999), 46-66.

Inikori, Joseph E., ed., *Forced Migration* (New York: African Publishing Company, 1982).

Inverity, James M., "Populism and Lynching in Louisiana 1889-1896: A Test of Erickson's Theory of the Relationship Between Boundary Crisis and Repressive Justice," *American Sociological Review*, 41 (2, 1976): 262-280.

Isaac, Larry W. and Kevin T. Leicht, "Regimes of Power and the Power of Analytic Regimes: Explaining US Military Procurement Keynesianism as Historical Process," *Historical Methods*, 30 (1997):28-45

Isaac, Ephraim, "Genesis, Judaism, and the 'Sons of Ham'," *Slavery and Abolition*, 1 (1, 1980): 1-17.

_____, "The Talmud Does Not Teach Racism," afterword to Harold Brackman, *Ministry of Lies: The Truth Behind the Nation of Islam's The Secret Relationship Between Blacks and Jews* (New York: Four Walls, Eight Windows, 1994).

Jackson, Kenneth, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985).

Jacobs, David, "Inequality and Police Strength: Conflict Theory and Coercive Control in Metropolitan Areas," *American Sociological Review*, 44 (6, 1979): 913-925.

Jacobson, Alvin L., "Crime Tends in Southern and Nonsouthern Cities: A Twenty-Year Perspective," *Social Forces*, 54 (1, 1975): 226-42.

Jalata, Asafa, "African American Nationalism, Development, Afrocentricity: Implications for the 21st Century," in *Molefi Kete Asante and Afrocentricity*, ed. Dhyna Ziegler (Nashville, TN: James C. Winston Publishing, 1995), 153-173.

_____, "The Impact of a Racist U.S. Foreign Policy on Oromo National Struggle," *The Journal of Oromo Studies*, 6 (1, 1999): 49-89.

James, John A., "Structural Change in American Manufacturing, 1850-1890," *Journal of Economic History*, 43 (2, 1983): 433-459.

Jankovic, Ivan, "Labor Market and Imprisonment," *Crime and Social Justice*, 8 (1977): 17-31.

Jaspan, Norman, *Mind Your Own Business* (Englewood Cliffs, NJ: Prentice-Hall, 1974).

Jefferson, Thomas, *Notes on the State of Virginia*, ed. William Peden (Chapel Hill, NC: University of North Carolina Press, 1995).

Jennings, Francis, *The Invasion of America: Indians, Colonialism, and the Cant of Conquest* (Chapel Hill, NC: University of North Carolina Press, 1975).

Jenks, Albert Ernest, "The Legal Status of Negro-White Amalgamation in the United States," *American Journal of Sociology*, 21 (5, 1916): 666-678.

Jernegan, Marcus Wilson, *Laboring and Dependent Classes in Colonial America, 1607-1783* (New York: Ungar, 1965).

Jesilow, Paul D., Henry N. Pontell, and Gilbert Geis, "Medical Criminals: Physicians and White-Collar Offenses," *Justice Quarterly*, 2 (1985): 149-58.

Jessop, Bob, *Nicos Poulantzas: Marxist Theory and Political Strategy* (New York: St. Martin's Press, 1985).

Jevons, William Stanley, "Brief Account of a General Mathematical Theory of Political Economy," *Journal of the Royal Statistical Society*, London, 29 (June 1866).

Jones, E. L., "Agriculture and Economic Growth in England, 1660-1750: Agricultural Change," *Journal of Economic History*, 25 (1, 1965): 1-18.

Jones, Jacqueline, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York: Basic Books, 1985).

Jones, James H., *Bad Blood: The Tuskegee Syphilis Experiment* (New York: Free Press, 1993).

Jordan, Winthrop, *White over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill, NC: The University of North Carolina Press, 1968).

_____, *The White Man's Burden: Historical Origins of Racism in the United States* (New York, Oxford University Press, 1974).

Kaczorowski, Robert J., "To Begin the Nation Anew: Congress, Citizenship, and Civil Rights after the Civil War," *The American Historical Review*, 92 (1, 1987): 45-68.

Kaeuper, Richard W., "Law and Order in Fourteenth Century England: The Evidence of Special Commission of Oyer and Terminer," *Speculum*, 54 (4, 1979): 734-784.

Kalra, Paul, *The American Class System: Divide and Rule* (Pleasant Hill, CA: Antenna Publishing, 1995).

Kammen, Michael G., *Empire and Interest: The American Colonies and the Politics of Mercantilism* (Philadelphia, PA: Lippincott, 1970).

_____, *People of Paradox: An Inquiry Concerning the Origins of American Civilization* (New York: Knopf, 1972).

_____, *Politics and Society in Colonial America: Democracy or Deference?* 2nd ed. (Hinsdale, IL: Dryden Press, 1973).

_____, *Colonial New York: A History* (New York: Scribner, 1975).

_____, *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: Alfred A. Knopf, 1961).

Kates, Jr., Don B., "Abolition, Deportation, Integration: Attitudes Toward Slavery in the Early," *Journal of Negro History*, 53 (1, 1968): 33-47.

Katz, Michael, *In the Shadows of the Poor House: A Social History of Welfare in America* (New York: Basic Books, 1986).

Katz, Stanley N., "The Strange Birth and Unlikely History of Constitutional Equality," *The Journal of American History*, 75 (3, 1988): 747-762.

Katz, William Loren, *Black Indians: A Hidden Heritage* (New York: Atheneum, 1985).

Kaulzlarich, David and Ronald C. Kramer, *Crimes of the Nuclear State: At Home and Abroad* (Boston, MA: Northeastern University Press, 1998).

Keller, Rosemary Skinner, *Patriotism and the Female Sex: Abigail Adams and the American Revolution* (New York: Carlson Pub., 1994).

Kellor, Francis Alice, "Criminal Anthropology in Its Relation to Criminal Jurisprudence I," *American Journal of Sociology*, 4 (4, 1899): 515-527.

_____, "Criminal Anthropology in its Relation to Criminal Jurisprudence II," *American Journal of Sociology*, 4 (5, 1899): 630-648.

Kennan, George, *Memoirs 1925-1950* (New York: Pantheon Books, 1967).

Kennedy, Duncan, "Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850-1940," *Research in Law and Sociology*, 3 (1980): 3-24

_____, *A Critique of Adjudication* (Cambridge, MA: Harvard University Press, 1998).

Kennedy, Randall, "McCleskey v. Kemp: Race, Capital Punishment, and the Supreme Court," *Harvard Law Review*, 101 (7, 1988): 1388-1443.

_____, *Race, Crime, and the Law* (New York: Vintage Books, 1997).

Kesting, Robert W., "Forgotten Victims: Blacks in the Holocaust," *Journal of Negro History*, 77 (1, 1992): 30-36.

Khaldun, Ibn, *The Mugaddimah* (Princeton, NJ: Princeton University Press, 1967).

Kincheloe, Joe L., Shirley R. Steinberg, and Ronald E. Chennault eds., *White Reign. Deploying Whiteness in America* (New York: St. Martins Press, 1998).

Kirby, Jack T., *Media-Made Dixie: The South in the American Imagination* (Baton Rouge, LA: Louisiana State University Press, 1978).

Kirby, John B., "An Uncertain Context: America and Black Americans in the Twentieth Century," *The Journal of Southern History*, 46 (4, 1980): 571-586.

Klein, Martin and Paul E. Lovejoy, "Slavery in West Africa," in *The Uncommon Market*, eds. Henry A. Gemery and Jan S. Hogendorn (New York: Academic Press, 1979).

Klein, Stephen, Joan Petersilia, and Susan Turner, "Race and Imprisonment Decisions in California," *Science*, 247 (1990): 812-816.

Klockers, Carl B., *The Professional Fence* (New York: Free Press, 1974).

Kluegel, James R. and Eliot R. Smith, *Beliefs Amount Inequality: America's Views of What Is and What Ought to Be* (Hawthorne, NY: Aldine de Gruyter, 1986).

Kirkpatrick, Sale, *The Conquest of Paradise* (New York: Knopf, 1990).

Kitsuse, John I. and Andrew V. Cicourel, "A Note on the Uses of Official Statistics," *Social Problems*, 11 (2, 1963): 208-215.

Kleck, Gary, "Racial Discrimination in Criminal Sentencing: A Critical Evaluation of the Evidence with Additional Evidence on the Death Penalty," *American Sociological Review*, 46 (6, 1981): 783-805.

Klemke, Lloyd W., *The Sociology of Shoplifting: Boosters and Snitches Today* (Westport, CT.: Praeger, 1992).

Kohn, Melvin L., *Class and Conformity: A Study in Values*, 2nd. ed. (Homewood, IL: Dorsey Press, 1977).

Kopytoof, Igor and Suzanne Miers, "Introduction: African 'Slavery' as an Institution of Marginality," *Slavery in Africa: Historical and Anthropological Perspectives*, eds. Suzanne Miers and Igor Kopytoff (Madison, WI: University of Wisconsin Press, 1977).

Kors, Alan and Edward Peters, *Witchcraft in Europe, 1100-1700: A Documentary History* (Philadelphia, PA: University of Pennsylvania Press, 1972).

Kotz, David M., Terrence McDonough, and Michael Reich (eds.), *Social Structures of Accumulation: The Political Economy of Growth and Crisis* (Cambridge, MA: Cambridge University Press, 1994).

Kousser, J. Morgan, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South 1880-1910* (New Haven, CT: Yale University Press, 1974).

Kramer, Heinrich and James Sprenger, *Malleus Maleficarum* (London, Eng: Hogarth Press, 1928).

Kühl, Stefan, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (New York: Oxford University Press, 1994).

Kupperman, Karen Ordahl "Apathy and Death in Early Jamestown," *Journal of American History*, 66 (1, 1979): 24-40.

Labaree, Leonard Woods, ed., *Royal Instructions to British Colonial Governments, 1670-1776*, vol. 2 (New York: D. Appleton-Century Company, 1935).

LaFree, Gary D., *Rape and Criminal Justice: The Social Construction of Sexual Assault* (Belmont, CA: Wadsworth Pub. Co., 1989).

Land, Kenneth, P. McCall, and Lawrence Cohen, "Structural Co-variates of Homicide Rates: Are There Any Invariances Across Time and Space?" *American Journal of Sociology*, 95 (4, 1990): 922-963.

Langan, Patrick A., "America's Soaring Prison Population," *Science*, 251 (March 29, 1991): 1568-1576.

Langbein, John H., *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago, IL: University of Chicago Press, 1977).

Lauber, Almon W., *Indian Slavery in Colonial Times within the Present Limits of the United States* (New York: Columbia University, Press, 1953).

Lawrence, Charles R., "The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism," *Critical Race Theory: The Key Writings that Formed the Movement*, eds. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995), 235-256.

Lazare, Daniel, *The Frozen Republic: How the Constitution is Paralyzing Democracy* (New York: Harcourt Brace, 1996),

Lea, Henry Charles, *A History of the Inquisition of the Middle Ages* (New York: Russell and Russell, 1955).

Leach, Douglas E., *Arms for Empire: A Military History of the British Colonies in North America, 1607-1763* (New York: Macmillan, 1973).

Lee, Martin A., *The Beast Reawakens* (Boston, MA: Little, Brown, 1997).

Leiber, Michael J., "A Comparison of Juvenile Court Outcomes for Native Americans, African Americans and Whites," *Justice Quarterly*, 11 (2, 1994): 257-279.

Leiman, Melvin, *The Political Economy of Race* (London, Eng: Pluto Press, 1993).

Lemann, Nicolas, *The Promised Land: The Great Black Migration and How it Changed America* (New York: Vintage Books, 1992).

Lemon, James, *The Best Poor Man's Country: A Geographical Study of Early Southeastern Pennsylvania* (Baltimore, MD: John Hopkins University Press, 1972).

Lenin, Vladimir I., "Imperialism: The Highest Stages of Capitalism," in *The Lenin Anthology*, ed. Robert C. Tucker (New York: W.W. Norton, 1975), 204-274.

Les Benedict, Michael, "Preserving the Constitution: The Conservative Basis of Radical Reconstruction," *The Journal of American History*, 61 (1974): 65-90.

Lessan, Gloria T., "Macro-Economic Determinants of Penal Policy: Estimating the Unemployment and Inflation Influences on Imprisonment Rate Changes in the United States, 1948-1985," *Crime, Law and Social Change*, 16 (1991): 177-198.

Levy, Leonard, ed., *The Encyclopedia of the American Constitution* (New York: Macmillan Co., 1986).

Lewis, Barnard, *Race and Slavery in the Middle East: An Historical Enquiry* (Oxford, NY: Oxford University Press, 1990).

Lewis, Orlando F., *The Development of American Prisons and Prison Customs, 1776-1845, with Special Reference to Early Institutions in the State of New York* (Montclair, NJ: P. Smith, 1967).

Lewis, Ronald L., "From Peasant to Proletarian: The Migration of Southern Blacks to the Central Appalachian Coalfields," *The Journal of Southern History*, 55 (1, 1989): 77-102.

Lewis, W. David, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Itaca, NY: Cornell University Press, 1965).

Lichtenstein, Alex, "Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict is a Slave," *The Journal of Southern History*, 59 (1, 1993): 85-110.

Light, Ivan, "The Ethnic Vice Industry, 1880-1944," *American Sociological Review*, 42 (3, 1977): 464-479.

Lindesmith, Alfred, and Yale Levin, "The Lombrosian Myth in Criminology," *American Journal of Sociology*, 42 (5, 1937): 653-671.

Lipietz, Alain, *Mirages and Miracles: The Crisis in Global Fordism.* (London, Eng: Verso, 1987).

Lipsitz, George, "The Possessive Investment in Whiteness: Racialized Social Democracy and the 'White' Problem in American Studies," *American Quarterly*, 47 (3, 1995): 369-387.

_____, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia, PA: Temple University Press, 1997)

Littlefield, Daniel F. and Lonnie E. Underhill, "Slave 'Revolt' in the Cherokee Nation, 1842," *American Indian Quarterly*, 3 (1977): 121-131.

Litwack, Leon F., *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago, IL: University of Chicago Press, 1961).

Livingston, Frank B., "On the Nonexistence of Human race," in *The "Racial" Economy of Science: Toward a Democratic Future*, ed. Sandra Harding (Bloomington, IN: Indiana University Press, 1993), 133-141.

Lombroso, Cesare, *L'uomo delinquente* (Milan, Italy: Hoepli, 1876).

_____, *Crime, Its Causes and Remedies* (Boston, Little, Brown, and company, 1911).

López, Ian F. Haney, "White by Law," *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado (Philadelphia, PA: Temple University Press, 1995), 542-550.

_____, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996).

Lott, Tommy L., *Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy* (Lanham, MD: Rowman and Littlefield Publishers, 1998).

Love, Joseph L., "Raúl Prebisch and the Origins of Unequal Exchange," *Latin American Research Review*, 15 (3, 1980): 45-72.

Lukács, Georg, *The Destruction of Reason* (Atlantic Highlands, NJ: Humanities Press, 1981).

Luxemberg, Rosa, *The Accumulation of Capital*, trans. Agnes Schwarzchild (New York, Monthly Review Press, 1968).

Lynch, Michael J., "The Extraction of Surplus Value, Crime and Punishment: A Preliminary Examination," *Contemporary Crisis*, 12 (1999): 329-344.

_____, "Beating a Dead Horse: Is There any Basic Empirical Evidence for the Deterrent Effect of Imprisonment?" *Crime, Law and Social Change*, 31 (1999): 347–362.

Lynch, Michael J., W. Byron Groves, and Alan Lizotte, "The Rate of Surplus Value and Crime. A Theoretical and Empirical Examination of Marxian Economic Theory and Criminology," *Crime, Law, and Social Change*, 21 (1994): 15-48.

Lynd, Staughton, "Rethinking Slavery and Reconstruction," *Journal of Negro History*, 50 (3, 1965): 198-209.

Lyon, Bryce, *The Origins of the Middle Ages. Pirenne's Challenge to Gibbon* (New York: Norton, 1972).

_____, *Studies of West European Medieval Institutions* (London, Eng: Variorum Reprints, 1978).

_____, *A Constitutional and Legal History of Medieval England* (New York: Norton, 1980).

Lytle, Clifford M., "The History of the Civil Rights Bill of 1964," *Journal of Negro History*, 51 (4, 1966): 275-296.

MacKinnon, Catharine A., *Feminism Unmodified: Discourses On Life And Law* (Cambridge, MA: Harvard University Press, 1987).

Macleod, William C., *The American Indian Frontier* (New York: Alfred A. Knopf, 1928).

McManus, Edgar J., *Black Bondage in the North* (Syracuse, NY: Syracuse University Press, 1973).

Madhumbiti, Haki, *Enemies: The Clash of Races* (Chicago, IL: Third World Press, 1978).

Madison, James, Alexander Hamilton, and John Jay, *The Federalist Papers*, eds., Willmoore Kendall and George W. Carey (New Rochelle, NY: Arlington House, 1966).

Madison, James, *Letters and other Writings of James Madison*, vol. 1 (Philadelphia, PA: J.B. Lippincott, 1865).

_____, *The Debates in the Federal Convention of 1787 which Framed the Constitution of the United States of America*, eds. Gaillard Hunt and James B. Scott (Buffalo, NY: Prometheus Books, 1987).

_____, "The Federalist No. 10," in *The Heath Anthology of American Literature*, vol. I, 2nd ed., ed. Paul Lauter (Lexington, MA: D.C. Heath and Company, 1994), 1201-1205.

Magdoff, Harry, "Imperialism: A Historical Survey," in *Introduction to the Sociology of "Developing Societies,"* eds. Hamza Alavi and Teodor Shanin (New York: Monthly Review Press, 1982), 11-28.

Main, Jackson Turner, *The Social Structure of Revolutionary America* (Princeton, NJ: Princeton University Press, 1969).

Maine, Henry, *Ancient Law Its Connection with the Early History of Society and its Relation to Modern Ideas* (Gloucester, MA: P. Smith, 1970).

Malik, Kenan, in *The Meaning of Race: Race, History and Culture in Western Society* (New York: New York University Press, 1996).

Mallam, William D., "Lincoln and Conservatives," *The Journal of Southern History*, 28 (1, 1962): 31-45.

Mancini, Matthew J., "Race, Economics, and The Abandonment of Convict Leasing," *Journal of Negro History*, 63 (4, 1978): 339-352.

Mandel, Ernest, *Late Capitalism*, trans. Joris De Bres (New York: Verso, 1978).

Mann, Michael, *The Sources of Social Power, Vol. 1: A History of Power from the Beginning to AD 1760* (Cambridge, MA: Cambridge University Press, 1986).

_____, *The Sources of Social Power, Vol. 2: The Rise of Classes and Nation-states, 1760-1914* (Cambridge, MA: Cambridge University Press, 1993).

Manning, Patrick, *Slavery and African Life: Occidental, Oriental and African Slave Trades* (Cambridge, MA: Cambridge University Press, 1990).

Marable, Manning, *How Capitalism Underdeveloped Black America* (Boston, MA: South End Press, 1983).

Marchand, Roland, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Berkeley, CA: The University of California Press, 1998).

Marcus, Jacob, *The Jew in the Medieval World: a Source Book* (Cincinnati, OH: Hebrew Union Press, 1990).

Marcuse, Herbert, *One-Dimensional Man* (Boston, MA: Beacon, 1969).

Marks, Carol, "Black Labor Migration: 1910-1920," *Insurgent Sociologist*, 12 (1985).

Marquart, James W. and Jonathan R. Sorensen, eds., *Correctional Contexts: Contemporary and Classical Readings* (Los Angeles: Roxbury Publishing, 1997).

Marshall, Gloria, "Racial Classifications," in *The "Racial" Economy of Science: Toward a Democratic Future*, ed., Sandra Harding (Bloomington: Indiana University Press, 1993), 116-127.

Martin, William, *With God on Our Side: The Rise of the Religious Right in America* (New York: Broadway Books, 1996).

Martindale, Don, *The Nature and Types of Sociological Theory*, 2nd ed. (Boston, MA: Houghton Mifflin, 1981).

Marvick, Elizabeth W., *The History of Childhood* (New York: Psychohistory Press, 1974), 259-301.

Marx, Karl, *Preface and Introduction to a Contribution to a Critique of Political Economy* (Peking, China: Foreign Language, 1976).

_____, *The Portable Karl Marx*, ed. Eugene Kamenka (New York: Penguin, 1983).

_____, *Economic and Philosophic Manuscripts of 1844*, trans. Martin Milligan (Buffalo, MY: Prometheus, 1987).

_____, *Capital: A Critique of Political Economy*, vols. 1-3 Karl Marx, *Capital: A Critique of Political Economy*, vols. 1-3, trans. Ben Fowkes (vol. 1) and David Fernbach (vols. 2 and 3) (New York: Penguin Books, 1990-92).

_____, *Grundrisse: Foundations of the Critique of Political Economy*, trans. Martin Nicolaus (New York: Penguin, 1993).

Marx, Karl and Frederick Engels, *The Communist Manifesto* (New York: Verso, 1998).

_____, *The German Ideology*, part 1 (New York: International Publishers, 1995).

Mason, Tim, *Nazism, Fascism and the Working Class* (New York: Cambridge University Press, 1995).

Massey, Douglas S., "American Apartheid: Segregation and the Making of the Underclass," *American Journal of Sociology*, 96 (2, 1990): 329-57.

Massey, Douglas S. and Mitchell L. Eggers, "The Ecology of Inequality: Minorities and the Concentration of Poverty, 1970-1980," *American Journal of Sociology*, 95 (5, 1990): 1153-1188.

Massey, Douglas S. and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, MA: Harvard University Press, 1993).

Massey, Douglas S., Andrew B. Gross, Kumiko Shibuya, "Migration, Segregation, and the Geographic Concentration of Poverty," *American Sociological Review*, 59 (3, 1994): 425-445.

Matsuda, Mari, "Looking to the Bottom: Critical Legal Studies and Reparations," *Critical Race Theory: The Key Writings that Formed the Movement*, eds. Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas (New York: The New York Press, 1995), 63-79.

Matza, David, *Delinquency and Drift* (New York: John Wiley, 1964).

Maudsley, Henry, *Responsibility in Mental Disease* (New York: D. Appleton, 1875).

_____, *The Pathology of Mind: A Study of the Distempers, Deformities, and Disorders* (London, Eng: Macmillan, 1895).

Mauer, Marc, *Race to Incarcerate* (New York: The New Press, 1999).

McAdam, Doug, *Political Process and the Development of Black Insurgency 1930-1970* (Chicago, IL: University of Chicago Press, 1982).

McIntosh, Peggy, Working Paper 189: "White Privilege and Male Privilege: A Personal Account of Coming To See Correspondences through Work in Women's

Studies" (1988). Paper may be obtained by writing Wellesley College Center for Research on Women, Wellesley MA 02181.

McCarthy, Kevin F. and Georges Vernez, *Immigration in a Changing Economy: California's Experience* (Washington, DC: Rand, 1997).

McKelvey, Blake, "A Half Century of Southern Penal Exploitation," *Social Forces*, 13 (1934): 112-123.

_____, "Penal Slavery and Southern Reconstruction," *Journal of Negro History*, 20 (1935): 153-179

_____, *American Prisons* (Montclair, NJ: Patterson Smith, 1967).

McLoughlin, William G., "Red Indians, Black Slavery and White Racism: America's Slaveholding Indians," *American Quarterly*, 26 (4, 1974): 367-385.

McMaster, Bach and Frederick Stone, eds., *Pennsylvania and the Federal Constitution*, vol. 1, 1787-88 (Historical Society of Pennsylvania, 1970).

McNeill, John T. and Helena M. Gamer, *Medieval Handbooks of Penance* (New York, Columbia University Press, 1938).

McNeill, William H., *The Shape of European History* (New York: Oxford University Press, 1974).

McNickle, D'Arcy, *The Indian Tribes of the United States* (London, Eng: Oxford University Press, 1962).

McPherson, James M., *The Struggle for Equality: Abolitionists and the Negro in the Civil War and Reconstruction* (Princeton, NJ: Princeton University Press, 1964).

_____, "Abolitionists and the Civil Rights Act of 1875," *The Journal of American History*, 52 (3, 1965): 493-510.

Mead, George Herbert, *George Herbert Mead on Social Psychology: Selected Papers*, ed. Anselm. Stauss (Chicago, IL: University of Chicago, 1977).

Meier, August, "Negroes in the First and Second Reconstructions of the South," *Civil War History*, 13 (1967).

Meierhoefer, Barbara S., *The General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed* (Washington DC: Federal Judicial Center, 1992).

Megalli, Mark, "The High Priests of the Black Academic Right," *Journal of Blacks in Higher Education*, 9 (1995): 71-77.

Mellowes, Marilyn H., prod./dir. *Nixon*, Part Three: "The Fall " (WGBH Educational Foundation, 1997).

Merton, Robert K., *Social Theory and Social Structure* (London, Eng: The Free Press, 1957).

_____, *The Sociology of Science: Theoretical and Empirical Investigations*, ed. Norman W. Storer (Chicago, IL: The University of Chicago Press, 1973).

Messner, Steven F. and Reid Golden, "Racial Inequality and Racially Disaggregated Homicide Rates: An Assessment of Alternative Theoretical Explanations," *Criminology*, 30 (1992): 421-47.

Messner, Steven F. and Richard Rosenfeld, *Crime and the American Dream* (Belmont, CA: Wadsworth, 1994).

Mészáros, István, *The Power of Ideology* (Washington Square, NY: New York University Press, 1989).

Midelfort, Erick H. C., *Witchhunting in Southwestern Germany 1562-1684: The Social and Intellectual Foundations* (Stanford, CA: Stanford University Press, 1972).

_____, *A History of Madness in Sixteenth-Century Germany History* (Stanford, CA: Stanford University Press, 1999).

Miliband, Ralph, *The State in Capitalist Society* (London, Eng: Weidenfeld and Nicolson, 1969).

_____, *Marxism and Politics* (Oxford, NY: Oxford University Press, 1977).

Miller, Marilyn and Marian Faux, *American History Desk Reference* (New York: Macmillan, 1997).

Miller, Walter, "Lower Class Culture as a Generating Milieu of Gang Delinquency," *Journal of Social Issues*, 14 (3, 1958): 5-19.

Miller, William Lee, *Arguing About Slavery: The Great Battle in the United States Congress* (New York: Knopf, 1996).

Mills, C. Wright, *The Power Elite* (Oxford, NY: Oxford University Press, 1956).

_____, *The Sociological Imagination* (Oxford, NY: Oxford University Press, 1959).

_____, *The Marxists* (New York: Dell, 1962).

Mills, Nicolaus, ed., *Debating Affirmative Action: Race, Gender, Ethnicity and the Politics of Inclusion* (New York: Delta Trade, 1996).

Mishel, Lawrence, Jared Bernstein, and John Schmitt, *The State of Working America 1996-1997* (Armonk, NY: M.E. Sharpe, 1997).

Mittelman, James H., ed., *Globalization: Critical Reflections* (Boulder, Co: Lynne Reinner, 1996).

Moffit, Terrie E., "Adolescence-Limited and Life-Course-Persistent Offending: A Complementary Pair of Development Theories," in *Developmental Theories of Crime and Delinquency*, ed. Terence P. Thornberry (New Brunswick, NJ: Transaction Publishers, 1997), 11-54.

Mohai, Paul and Bunyan Bryant, "Demographic Studies Reveal a Pattern of Environmental Injustice," in *Environmental Justice*, ed. Jonathan S. Petrikin (San Diego, CA: Greenhaven Press, 1995), 10-23.

Mokhiber, Russell, *Corporate Crime and Violence* (San Francisco, CA: Sierra Club, 1988).

Monaghan, Frank, *John Jay* (New York: Bobbs-Merril, 1935).

Montag, Warren, "The Universalization of Whiteness: Racism and Enlightenment," *Whiteness: A Critical Reader*, ed. Mike Hill (New York: New York University Press, 1997).

Moore, G. H., *Notes on the History of Slavery in Massachusetts* (New York: D. Appleton, 1866).

Moore, R. I., *The Formation of a Persecuting Society* (Oxford, NY: Basil Blackwell, 1990).

Morel, J. B., *Traité des Dégénérescenes, Physiques, Intellectuelles et Morales de l'Espece Humaine et des Causes qui Produisent ces Vearietés Maladives* (Paris, France: JB Bailliére, 1957).

Morgan, Iwan W., *Deficit Government: Taxing and Spending in Modern America* (Chicago: Ivan R. Dee, 1995).

Morias, Herbert M, *The Struggle for American Freedom* (New York: International Publishers, 1944).

Morais, Vamberto, *A Short History of Anti-Semitism* (New York: Norton, 1976).

Morgan, Edmund S., "Slavery and Freedom: The American Paradox," *Journal of American History*, 59 (1, 1972): 5-29.

_____, *American Slavery – American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975).

_____, *The Challenge of the American Revolution* (New York: Norton, 1978).

Morris, Thomas D., *Southern Slavery and the Law* (Chapel Hill, NC: University of North Carolina Press, 1996).

Mosca, Gaetano, in *The Ruling Class* (New York: McGraw-Hill, 1939),

Mosley, Albert G. and Nicholas Capaldi, *Affirmative Action: Social Justice Or Unfair preference?* (Lanham, MD: Rowman & Littlefield Publishers, 1996).

Murray, Charles, *Losing Ground. American Social Policy, 1950-1980* (New York: Basic Books, 1985).

Musto, David F., *The American Disease: Origins of Narcotic Control* (Oxford, NY: Oxford University Press, 1987).

_____, "Opium, Cocaine, and Marijuana in American History," *Drugs: Should We Legalize, Decriminalize or Deregulate?* ed. Jeffrey A. Schaler (Amherst, NY: Prometheus, 1998), 17-28.

Myler, Patrick, *A Century of Boxing Greats Inside the Ring with the Hundred Best Boxers* (Oakwest, NY: Robson Books, 1998).

Myrdal, Gunnar, *An American Dilemma* (New York: Harper and Row, 1944).

Myres, John L., *The Influence of Anthropology on the Course of Political Science* (Berkeley, CA: University of California, 1916).

Nash, Gary, *The Urban Crucible: Social Change, Political Consciousness and the Origins of the American Revolution* (Cambridge, MA: Harvard University Press, 1979).

Nash, George H., *The Conservative Intellectual Movement in America, since 1945,* Wilmington, DE: Intercollegiate Studies Institute, 1996).

Nash, June, "Cultural Parameters of Sexism and Racism in the International Division of Labor," in *Racism, Sexism and the World-System,* ed. Joan Smith et al. (Westport, CT: Greenwood, 1988), 11-38.

Nelson, Anna Kasten, "President Kennedy's National Security Policy: A Reconsideration," *Reviews in American History,* 19 (1, 1991): 1-14.

Nelson, Marianne Q. and Robert A. Silverman, eds., *Native Americans, Crime, and Justice* (Boulder, Co: Westview Press, 1996).

Nettels, Curtis P., *The Roots of American Civilization: A History of American Colonial Life* (New York: Appleton-Century-Crofts, 1963).

Newman, Graeme, *The Punishment Response* (Philadelphia, PA: J.B. Lippincott Company, 1978).

Nicholls, William, *Christian Antisemitism: A History of Hate* (Northvale, NJ: J. Aronson, 1993).

Nisbet, Richard, *Slavery Not Forbidden by Scripture* (Philadelphia, 1773).

Nordau, Max, *Degeneration* (New York: D. Appleton, 1892).

North, Douglas and Robert Thomas," The Rise and Fall of the Manorial System: A Theoretical model," *Journal of Economic History*, 31 (4, 1971): 777-803.

North, Douglass Cecil, *The Economic Growth of the United States, 1790-1860* (Englewood Cliffs, NJ: Prentice-Hall, 1961).

_____, Economic Development in Historical Perspective: The Western World," in *The Wealth of Nations in the Twentieth Century: The Policies and Institutional Determinants of Economic Development*, ed. Ramon H. Myers (Stanford, CA: Hoover Institution, 1996), 39-53.

Nott, Joshia C., "The Mulatto a Hybrid — Probable Extermination of the Two Race if the Whites and Blacks are Allowed to Intermarry," *American Journal of the Medical Sciences*, 6 (1843), 252-256.

_____, *Two Lectures on the Natural History of the Caucasian and Negro Races* (Mobile, AL: Dade and Thompson, 1844).

_____, *The Indigenous Races of the Earth, or, New Chapters of Ethnological Enquiry* (Philadelphia: Lippincott, 1857).

_____, "The Negro Race," *Popular Magazine of Anthropology*, 3 (1866), 102-108.

Nott, Joshia C. and George R. Gliddon, *Types of Mankind: or, Ethnological Researches* (London, Eng: Trübner, 1854).

Novak, Daniel A., *The Wheel of Servitude: Black Forced Labor After Slavery* (Lexington, KY: University Press of Kentucky, 1978).

Okoye, Nwabueze F., "Chattel Slavery as the Nightmare of the American Revolutionaries," *William and Mary Quarterly*, 37 (1, 1980): 3-28.

O'Connor, James, "Is Sustainable Capitalism Possible?" In *Is Capitalism Sustainable?* ed. Martin O'Connor (New York: The Guildford Press, 1994), 152-175.

Olasky, Marvin, *The Tragedy of American Compassion* (Washington DC: Regency, 1992).

Olivas, Michael A., "The Chronicles, My Grandfather's Stories, and Immigration Law: The Slave Traders Chronicle as Racial History," *Critical Race Theory: The Cutting*

Edge, ed. Richard Delgado (Philadelphia, PA: Temple University Press, 1995), 9-20.

Oliver, Melvin L. and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York: Routledge, 1995).

Ollman, Bertell and Jonathan Birnbaum, eds., *The United States Constitution: 200 Years of Anti-Federalist, Abolitionist, Feminist, Muckraking, Progressive, and Especially Socialist Criticism* (New York: New York University Press, 1990).

_____, "Labor Unrest, Immigration, and Ethnic Conflict in Urban America, 1880-1914," *American Journal of Sociology*, 94 (6, 1989): 1303-1333.

Olzak, Susan, "The Political Context of Competition: Lynching and Urban Racial Violence 1882-1914," *Social Forces*, 69 (2, 1990): 395-421.

Omi, Michael and Howard Winant, *Racial Formation in the United States* (New York: Routledge, 1986).

Opler, Morris Edward, "The Bio-Social Basis of Thought in the Third Reich," *American Sociology Review*, 10 (6, 1945): 776-786.

O'Reilly, Kenneth, "A New Deal for the FBI: The Roosevelt Administration, Crime Control, and National Security," *The Journal of American History*, 69 (3, 1982): 638-658.

_____, "The FBI and the Politics of the Riots, 1964-1968," *The Journal of American History*, 75 (1, 1988): 91-114.

_____, *Racial Matters: The FBI's Secret File on Black America, 1960-1972* (New York: The Free Press, 1989)

Osgood, Herbert L., *The American Colonies in the Seventeenth Century*, vol 1. (Gloucester, MA: Peter Smith, 1957).

Padilla, Felix, *The Gang as an American Enterprise* (New Brunswick, NJ: Rutgers University Press, 1992).

Palmié, Stephan, ed., *Slave Cultures and the Cultures of Slavery* (Knoxville, TN: The University of Tennessee Press, 1995).

Panati, Charles, *Extraordinary Origins of Everyday Things* (New York: HarperCollins, 1989).

Panitch, Leo, "Rethinking the Role of the State," in *Globalization: Critical Reflections*, ed. James H. Mittelman (Boulder, Co: Lynne Reinner, 1997), 83-113.

Parenti, Michael, *Democracy for the Few,* 4th ed. (New York: St. Martin's Press, 1983).

Pareto, Vilfredo, *The Mind and Society: A Treatise on General Sociology* (New York: Dover, 1963).

_____, *Democracy for the Few,* 5th ed (New York: St. Martins Press, 1988).

_____, *Dirty Truths* (San Francisco, CA: City Lights, 1995).

_____, *Blackshirts and Reds: Rational Fascism and the Overthrow of Communism* (San Francisco, CA: City Lights Books, 1997).

Park, Robert E., *Race and Culture* (Glencoe, IL: The Free Press, 1950).

Park, Robert E., and Ernest W. Burgess, *Introduction to the Science of Sociology* (Chicago, IL: The University of Chicago press, 1921).

Park, Robert E., Ernest W. Burgess, Roderick D. McKenzie, and Louis Wirth, *The City* (Chicago, IL: The University of Chicago Press, 1925).

Parkinson, C. Northcote, *Parkinson's Law* (Cambridge, MA: Houghton Mifflin Co., 1957).

Parrington, Vernon Louis, *Main Currents in American Thought* (New York: Harcourt Brace, and World, 1958).

Parsons, Sharon, William Simmons, Frankie Shinhoster, and John Kilburn, "A Test of the Grapevine: An Empirical Examination of Conspiracy Theories Among African Americans," *Sociological Spectrum,* 19 (2, 1999): 201-222.

Parsons, Talcott, *The Social System* (Glencoe, Ill., Free Press, 1951).

Patterson, Orlando, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982).

_____, "For Whom the Bell Curves," *The Bell Curve Wars: Race, Intelligence, and the Future of America,* ed. Steven Fraser (New York: Basic Books, 1995), 187-213.

Pearce, Frank, *Crimes of the Powerful* (London, Eng: Pluto Press, 1976).

Pearce, Frank, and Laureen Snider, *Corporate Crime: Contemporary Debates* (Buffalo, NY: University of Toronto Press, 1995).

Pearson, Roger, *Race, Intelligence and Bias in Academe* (Washington, DC: Scott-Townsend, 1991).

Pepinsky, Harold E. and Paul Jesilow, *Myths that Cause Crime* (Washington DC: Seven Locks Press, 1992).

Perlo, Victor, *Economics of Racism, U.S.A.* (New York: New Internal, 1975).

Pessen, Edward, *Riches, Class, and Power Before the Civil War* (Lexington, MA., D. C. Heath, 1973).

Petchesky, Rosalind P., "At Hard Labor: Penal Confinement and Production in Nineteenth-Century America," in *Crime and Capitalism: Readings in Marxist Criminology*, ed. David F. Greenberg (Philadelphia, PA: Temple University Press, 1993), 595-611.

Petersilia, Joan, *Racial Disparities in the Criminal Justice System* (Santa Monica, CA: Rand, 1983).

Pfohl, Stephen, *Images of Deviance and Social Control: A Sociological History*, 2nd. ed. (New York: McGraw-Hill, 1994).

Phillips, Kevin, *The Emerging Republican Majority* (New York: Arlingron House, 1969).

Pierson, Christopher, *The Modern State* (New York: Routledge, 1996).

Platt, Tony, "U.S. Criminal Justice in the Reagan Era: An Assessment," *Crime and Social Justice*, 29 (1988): 58-69.

_____, "The Politics of Law and Order," *Social Justice*, 21 (3, 1995): 3-13.

Platt, Tony and Paul Takagi, "Intellectuals for Law and Order: A Critique of the New 'Realists'," *Crime and Social Justice*, 7 (Fall/Winter, 1977): 1-16.

Plotkin, Wendy, *Deeds of Mistrust: Race, Housing, and Restrictive Covenants in Chicago, 1900-1953* (Ph.D. dissertation, University of Chicago, 1999).

Plumb, J. H., *England in the Eighteenth Century* (Baltimore, MD: Penguin Books, 1963).

Plunckett, Theodore F. T., *A Concise History of the Common Law*, 5th ed. (Boston, MA: Little, Brown, 1956).

Polanyi, Karl, *The Great Transformation* (Boston, MA: Beacon Press, 1957).

Pole, J. R., ed., *The American Constitution: For and Against: The Federalist and Anti-Federalist Papers* (New York: Hill and Wang, 1987)

Pollard, Robert A., *Economic Security and the Origins of the Cold War*, 1945-1950 (New York: Columbia University Press, 1985).

Pomeroy, William J., *American Neo-Colonialism: Its Emergence in the Philippines and Asia* (New York: International Publishers, 1970).

Pope, Whitney, and Charles Ragin, "Mechanical Solidarity, Repressive Justice, and Lynchings in Louisiana," *American Sociological Review*, 42 (2, 1977): 363-369.

Postan, M. M., *Fact and Relevance: Essays on Historical Method* (Cambridge, MA: Cambridge University Press, 1971).

Postone, Moishe, *Time Labor, and Social Domination: A Reinterpretation of Marx's Critical Theory* (Cambridge, MA: Cambridge University, 1996).

Poulantzas, Nicos, The Problem of the Capitalist State," *New Left Review*, 58 (1969).

_____, *Political Power and Social Classes* (London, Eng: New Left Books, 1973).

Prado, Caio, *The Colonial Background of Modern Brazil* (Berkeley, CA: University of California Press, 1967).

Prebisch, Raúl, "The Dynamics of Peripheral Capitalism," in *Democracy and Development in Latin America*, No 1 (Toronto, Canada: Studies on the Political Economy, 1980): 21-27.

Priest, Josiah, *Slavery, as it Relates to the Negro or African Race* (Albany: C. van Benthuysen, 1843).

Puzzo, Dante A., "Racism in the Western Tradition," *Journal of the History of Ideas*, 25 (4, 1964): 579-586.

Quetelet, Adolphe, *Du systéme social et des lois qui le régissent* (Paris, France: Guillaumin, 1848)

_____, *A Treatise on Man and the Development of his Faculties* (Gainesville, FL: Scholars' Facsimiles and Reprints, 1969).

_____, *Research on the Propensity for Crime at Different Ages*, trans. Sawyer F. Sylvester (Cincinnati, OH: Anderson, 1984).

Quinney, Richard, *The Social Reality of Crime* (Boston, MA: Little, Brown, 1970).

_____, *Critique of the Legal Order: Crime Control in Capitalist Society* (Boston, MA: Little, Brown, 1974).

_____, *Criminology: Analysis and Critique of Crime in America* (Boston, MA: Little, Brown, 1975).

_____, *Class, State, and Crime* (New York: Longman, 1980).

Rabinowitz, Howard N., "From Exclusion to Segregation: Southern Race Relations, 1865-1890," *The Journal of American History*, 63 (2, 1976): 325-350.

Randall, James G., *Mr. Lincoln*, ed. Richard N. Current (New York: Dodd, Mead, 1957).

Raper, Arthur, *The Tragedy of Lynching* (Chapel Hill, NC: University of North Carolina Press, 1933).

Rawls, John, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

Record, Wilson, *Race and Radicalism: The NAACP and the Communist Party in Conflict* (Ithaca, NY: Cornell University Press, 1964).

Rector, Milton G., "Are More Prisons Need Now?" in ed. Matthew Matlin, *Should We Build More Prisons?* (Hackensack, NJ: National Council on Crime and Delinquency, 1977): 17-18.

Reed, John, Gail E. Doss, and Jeanne S. Hulbert, "Too Good to be False: An Essay in the Folklore of Social Science," *Sociological Inquiry*, 57 (1987): 1-11.

Reich, Michael, "The Economics of Racism," in *The Capitalist System*, eds. Richard C. Edwards, Michael Reich, and Thomas E. Weisskopf (Englewood Cliffs, N.J.: Prentice-Hall, 1972), 309-321.

_____, "Economic Theories of Racism," in *School in a Corporate Society*, ed. Martin Carnoy (New York: David McKay, 1972), 80-92.

Reiman, Jeffrey, . . . *and the Poor Get Prison: Economic Bias in American Criminal Justice* (Boston, MA: Allyn and Bacon, 1996).

Rex, John, *Race Relations in Sociological Theory*, 2nd. ed. (Boston, MA: Routledge, 1983).

Rice, Roger L., "Residential Segregation by Law, 1910-1917," *The Journal of Southern History*, 34 (2, 1968): 179-199.

Richardson, James D., ed., *The Constitution of the Confederate States of America*, in *A Compilation of the Messages and Papers of the Confederacy Including the Diplomatic Correspondence 1861-1865* (Nashville, TN: United States Publishing Company, 1905).

Rifkin, Jeremy, *The End of Work: The Decline of the Global Labor Force and the Dawn of the Post-Market Era* (New York: Tarcher/Putnam, 1996).

Ringer, Benjamin, *"We the People" and Others: Duality and America's Treatment of its Racial Minorities* (New York: Tavistock Publications, 1983).

Ringer, Benjamin B. and Elinor R. Lawless, *Race-Ethnicity and Society* (New York: Routledge, 1989).

Roberts, J. M., *History of the World* (New York: Penguin, 1995).

Robinson, Cyril D., "The Production of Black Violence in Chicago," in *Crime and Capitalism: Readings in Marxist Criminology*, ed. David F. Greenberg (Philadelphia, PA: Temple University Press, 1993), 279-334.

Robinson, William I., *Promoting Polyarchy: Globalization, US Intervention, and Hegemony* (Cambridge, MA: Cambridge University Press, 1996).

_____, "Globalization, the World System, and 'Democracy Promotion' in U.S. Foreign Policy," *Theory and Society* 25 (1997): 615-665.

Rodman, Barbee-Sue, "Bentham and the Paradox of Penal Reform," *Journal of the History of Ideas*, 29 (2, 1968): 197-210.

Rodney, Walter, "African Slavery and Other Forms of Social Oppression on the Upper Guinea Coast in the Context of the Atlantic Slave Trade," *Journal of African History* 8 (1966): 431-443.

_____, *How Europe Underdeveloped Africa* (London: Bogle-L'Ouverture Publications, 1972).

Rodgers, Jr., Harrell R., "Civil Rights and Myths of Popular Sovereignty," *Journal of Black Studies*, 12 (1, 1981): 53-70.

Roediger, David R., *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso, 1991).

_____, *Towards the Abolition of Whiteness* (New York: Verso, 1994).

Rogers, Joel A., *Sex and Race: Negro-Caucasian Mixing in all Ages and Lands*, volumes 1-3 (New York: J. A. Rogers Publications, 1940-72).

Romans, Bernard, *A Concise and Natural History of East and West Florida*, ed. Kathyrn E. Holland Braud (Tuscaloosa, AL: University of Alabama Press, 1999).

Rosoff, Stephen M., Henry N. Pontell, and Robert H. Tillman, *Profit Without Honor: White-Collar Crime and the Looting of America* (Upper Saddle River, NJ: Prentice-Hall, 1998).

Ross, Myron H., "Prices, Segregation, and Racial Harmony," *Journal of Black Studies*, 2 (2, 1971): 225-243.

Ross, Richard J., "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," *The William and Mary Quarterly*, 50 (1, 1993): 28-41.

Rostow, Walter W., *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge, Eng: Cambridge University Press, 1960).

Roundtree, Helen C., *The Powhatan Indians of Virginia: Their Traditional Culture* (Norman, OK: University of Oklahoma Press, 1989).

Rusche, Georg, "Thoughts on the Sociology of Criminal Justice," *Crime and Social Justice*, 10 (1978): 2-8.

Rusche, Georg and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939).

Ruse, Michael, *Sociobiology, Sense and Nonsense* (Boston, MA: Reidel, 1979)

Rushton, J. Philippe, *Race, Evolution, and Behavior: A Life-History Perspective* (New Brunswick, NJ: Transaction, 1996).

Rutland, Robert A., ed., *The Papers of George Mason: 1725-1792* (Chapel Hill, NC: University of North Carolina Press, 1970).

Ryan, William, *Blaming the Victim* (New York: Random House, 1971).

Sampson, Robert J., "Urban Black Violence: The Effect of Male Joblessness and Family Disruption," *American Journal of Sociology*, 93 (2, 1987): 348-382.

Saint-Paul, Gilles, *Dual Labor Markets: A Macroeconomic Perspective* (Cambridge, MA: MIT Press, 1996).

Sakamoto, Yoshikazu, ed., *Global Transformation: Challenge to the State System* (Tokyo, Japan: United Nations University Press, 1995).

Sanderson, Stephen K. and Thomas D. Hall, "World System Approaches to World-Historical Change," in *Civilizations and World Systems: Studying World-Historical Change*, ed. Stephen K. Sanderson (Walnut Creek, CA: AltaMira Press, 1995), 95-108.

Sankowski, Edward T., "Justice," in *The Oxford Companion to Philosophy*, ed. Ted Honderich (Oxford, NY: Oxford University Press, 1995), 433-434.

Savitch, H. V., "Black Cities/White Suburbs: Domestic Colonialism as an Interpretive Idea," *Annals of the American Academy of Political and Social Science*, 439 (1978): 118-139.

Sayer, Ian and Douglas Botting, *Nazi Gold*: The Story of the World's Greatest Robbery—and its Aftermath (New York: St. Martin's Press, 1984).

Schaich, Warren, "A Relationship Between Collective Racial Violence and War," *Journal of Black Studies*, 5 (4, 1975): 374-394.

Schiffin, André, ed., *The Cold War and the University: Toward an Intellectual History of the Postwar Years* (New York: The New Press, 1997).

Schmookler, Andrew Bard, *The Illusion of Choice: How the Market Economy Shapes Our Destiny* (Albany, NY: State University of New York Press, 1993).

Schnaiberg, Allan, *The Environment: From Surplus to Scarcity* (Oxford, NY: Oxford University Press, 1980).

Schnaiberg, Allan and Kenneth Alan Gould, *Environment and Society: The Enduring Conflict* (New York: St. Martin's Press, 1994).

Schneider, Anne L., "Divesting Status Offenses from Juvenile Court Jurisdiction," *Crime and Delinquency*, 30 (1984): 347-370.

Schwarz, Philip J., *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge, LA: Louisiana State University Press, 1988).

Scott, George R., *The History of Torture throughout the Ages* (London, Eng: Luxor Press, 1938).

Scully, Diana, *Men Who Control Women's Heath: The Miseducation of Obstetrician-Gynecologists* (Boston, MA: Houghton Mifflin, 1980).

Seliger, M., "Locke, Liberalism and Nationalism," in *John Locke: Problems and Perspectives*, ed. John W. Yolton (Cambridge, MA: Cambridge University Press, 1969).

Sellin, Thorsten, "Race Prejudice in the Administration of Justice," *American Journal of Sociology*, 41 (2, 1935): 212-217.

_____, *Slavery and the Penal System* (New York: Elsevier, 1976).

Sewall, Samuel, *The Selling of Joseph: A Memorial*, ed., Sidney Kaplin (Amherst, NY: University of Massachusetts Press, 1969).

Sewell, William, "Ideologies and Social Revolution: Reflections on the French Case," in *Social Revolutions in the Modern World*, ed. Theda Skocpol (New York: University of Cambridge Press, 1994).

Shannon, Thomas R., *An Introduction to the World-System Perspective* (Boulder, Co: Westview Press, 1989).

Shaw, Clifford, *Delinquency Areas* (Chicago, IL: The University of Chicago Press, 1929).

Shaw, Clifford and Henry McKay, *Juvenile Delinquency and Urban Areas* (Chicago, IL: University of Chicago Press, 1942).

Shepard, James E. and Gary M. Walton, *Shipping, Maritime Trade and the Economic Development of Colonial North America* (Cambridge, Eng: Cambridge University Press, 1972)

Sherman, Michael and Gordon Hawkins, *Imprisonment in America: Choosing the Future* (Chicago, IL: University of Chicago Press, 1981).

Shipman, Pat, *The Evolution of Racism: Human Differences and Use and Abuse of Science* (New York: Simon and Shuster, 1994).

Shover, Neal and James Inverarity, "Adult Segregative Confinement," in *Criminology: A Contemporary Handbook*, 2nd. ed., ed. Joseph F. Sheley (New York: Wadsworth, 1995), 429-451.

Siberman, Charles E., *Crisis in Black and White* (New York: Random House, 1964).

Sidanius, Jim, "Race and Sentence Severity: The Case of American Justice," *Journal of Black Studies* 18 (3, 1988): 273-281.

Silone, Ignazio, "The Choice of Comrades," *Legacy of Dissent*, ed. Nicolaus Mills (New York: Simon and Schuster, 1994).

Simon, David R., *Elite Deviance* (Boston, MA: Allyn and Bacon, 1999).

Simpson, Christopher, *Blowback: America's recruitment of Nazis and its effects on the Cold War* (New York: Weidenfeld and Nicolson, 1988).

_____, *Science of Coercion: Communication Research and Psychological Warfare 1945-1960* (Oxford, NY: Oxford University Press, 1994).

Sitkoff, Harvard, "Harry Truman and the Election of 1948: The Coming of Age of Civil Rights in American Politics," *The Journal of Southern History*, 37 (4, 1971): 597-616.

_____, "Racial Militancy and Interracial Violence in the Second World War," *Journal of American History*, 58 (3, 1971): 661-681.

Sklar, Holly, ed., *Trilaterialism: The Trilateral Commission and Elite Planning for World Management* (Boston, MA: South End Press, 1980).

Skocpol, Theda, *Social Revolutions in the Modern World* (New York: University of Cambridge Press, 1994).

_____, "Wallerstein's World Capitalist System: A Theoretical and Historical Critique," in *Social Revolutions in the Modern World* (New York: Cambridge University Press, 1994), 55-71.

Skogan, Wesley, "Fear of Crime and Neighborhood Change," in *Communities and Crime* , eds. A.J. Reiss and M. Ronry (Chicago, IL: University of Chicago Press, 1986).

Skrentny, John David, *The Ironies Of Affirmative Action: Politics, Culture, And Justice In America* (Chicago, IL: University of Chicago Press, 1996).

Smith, Abbot Emerson, *Colonists in Bondage: White Servitude and Convict Labor in America. 1607-1776* (Gloucester, MA: P. Smith, 1965).

Smith, Adam, *The Wealth of Nations* (New York: Modern Library, 1937).

Smith, Anthony D., "State-Making and Nation-Building," in *States in History*, ed. John A. Hall (Oxford, NY: Basil Blackwell, 1986), 228-263.

_____, *The Ethnic Origins of Nations* (Oxford, NY: Basil Blackwell, 1986).

_____, *National Identity* (Reno, NV: University of Nevada Press, 1991).

Smith, Bruce D. "Origins of Agriculture in Eastern North America," *Science* 24 (1989): 1566-1571.

_____, *Rivers of Change, Essays on Early Agriculture in Eastern North America* (Washington, DC: Smithsonian Institution Press, 1993).

Smith, John David, *The Biblical and "Scientific" Defense of Slavery* (New York: Garland Pub, 1993).

Smith, James A., *The Idea Brokers: Think Tanks and the Rise of the New Policy Elite* (New York: The Free Press, 1991).

Smith, Marvin T., "Aboriginal Depopulation in the Postcontact Southeast," in *The Forgotten Centuries: Indians and Europeans in the American South, 1521-1704*, eds. Charles Hudson and Carmen Chaves Tesser (Athens, GA: The University of Georgia Press, 1994).

Smith, Michael Garfield, *The Plural Society in the British West Indies* (Berkeley, CA: University of California Press, 1965).

Snipp, C. Matthew, *American Indians: The First of This land* (New York: Russell Sage Foundation, 1989).

Smith, Samuel Stanhope, *An Essay on the Causes of the Variety of Complexion and Figure in the Human Species*, ed. Winthrop D. Jordan (Cambridge, MA: Harvard University Press, 1965).

Snyder, H. and M. Sickmund, *Juvenile Offenders and Victims: 1999 National Report* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1999).

So, Alvin Y., *Social Change and Development: Modernization, Dependency, and World-System Theories* (Newbury Park, CA: Sage, 1990).

Sowell, Thomas, *Race and Economics* (New York: Longman, 1975).

Spanier, John, *American Foreign Policy Since World War II*, 12th ed. (New York: Congressional Quarterly Press, 1991).

Sparks, Richard F., "Surveys of Victimization: An Optimistic Assessment," *Crime and Justice: An Annual Review of Research*, 3 (1981): 1-60.

Spencer, Herbert, *First Principles of a new System of Philosophy* (New York: D. Appleton and company, 1864)

_____, *The Principles of Biology* (New York: D. Appleton and company, 1866-67)

_____, *The Principles of Sociology* (New York: D. Appleton, 1896-97).

Spencer, Robert and Jesse D. Jennings, *The Native Americans* (New York: Harper and Row, 1965).

Spicer, Edward H., *Cycles of Conquest* (Tuscon, AZ: University of Arizona Press, 1962).

Stampp, Kenneth M., *The Era of Reconstruction 1865-1877* (New York: Knopf, 1965).

_____, *The Causes of the Civil War* (Englewood Cliffs, NJ: Prentice-Hall, 1974).

_____, ed., *The Imperiled Union. Essays on the Background of the Civil War* (New York: Oxford University Press, 1980).

Steele, Ian K., *Warpaths: Invasions of North America* (Oxford, NY: Oxford University Press 1994).

Steible, Dan, "Race and the Reception of Jack Johnson Fight Films," in *The Birth of Whiteness: Race and the Emergence of U.S. Cinema*, ed. Daniel Bernardi (New Brunswick, NJ: Rutgers University Press, 1996).

Stephenson, Carl, *Medieval Feudalism* (Ithaca, NY: Cornell University Press, 1956)

_____, *Medieval History: Europe from the Second to the Sixteenth Century* (New York: Harper and Row, 1962).

Stern, Vivian, *A Sin Against the Future: Imprisonment in the World* (Boston, MA: Northeastern University Press, 1998).

Stewart, Jeffrey C., *1001 Things Everyone Should Know About African American History* (New York: Doubleday, 1996).

Stoddard, Harry Lothrop, *The Rising Tide of Color Against White-World-Supremacy* (New York: Charles Scribner's Sons, 1920)

_____, *The Revolt Against Civilization* (New York: Charles Scribner's Sons, 1922).

Stolzman, James and Herbert Gamberg, in "Marxist Class Analysis Versus Stratification Analysis as General Approaches to Social Inequality," *Berkeley Journal of Sociology*, 18 (1979): 105-125.

Stone, Christopher D., *Where the Law Ends: The Social Control of Corporate Behavior* (Chicago, IL: University of Chicago Press, 1987).

Storing, Herbert J., ed., *The Complete Anti-Federalist* (Chicago, IL: University of Chicago Press, 1981).

_____, "America's Founders Recognized the Dilemma of Slavery," in *Slavery: Opposing Viewpoints*, ed. William Dudley (San Diego, CA: Greenhaven Press, 1992), 280-289.

Stow, Kenneth, *Alienated Minority: The Jews of Medieval Latin Europe* (Cambridge, MA: Harvard University Press, 1992).

Streifford, David M., "The American Colonization Society: An Application of Republican Ideology," *The Journal of Southern History*, 45 (2, 1979): 201-220.

Sullivan, Mercer, *Getting Paid: Youth Crime and Work in the Inner City* (Ithaca, NY: Cornell University Press, 1989).

Sundstrom, William A., "The Color Line: Racial Norms and Discrimination in Urban Labor Markets, 1910-1950," *Journal of Economic History*, 54 (2, 1994): 382-396.

Sutherland, Edwin, "White-Collar Criminality," *American Sociological Review*, 5 (1, 1940): 1-12.

_____, "Is 'White collar Crime' Crime?" *American Sociological Review*, 10 (2, 1945): 132-139.

Sutton, John R., "Doing Time: Dynamics of Imprisonment in the Reformist State," *American Sociological Review*, 52 (5, 1987): 612-630.

Sweet, James H., "The Iberian Roots of American Racist Thought," *William and Mary Quarterly*, 54 (1997).

Sweezy, Paul, "Karl Marx and the Industrial Revolution," in *Modern Capitalism and Other Essays* (New York: Monthly Review Press, 1972), 127-146.

Sykes, Gresham M. and David Matza, "Techniques of Neutralization: A Theory of Delinquency," *American Sociological Review*, 22 (6, 1957): 664-670.

Szasz, Thomas, *The Myth of Mental Illness: Foundations of a Theory of Personal Conduct* (New York: Harper and Row, 1974).

Szasz, Andrew and Michael Meuser, "Environmental Inequalities: Literature Review and Proposals for New Directions in Research and Theory," *Current Sociology*, 45 (3, 1997): 99-120.

Szasz, Andrew, *Ecopopulism: Toxic Waste and the Movement for Environmental Justice* (Minneapolis, MN: University of Minnesota Press, 1994).

Takaki, Ronald T., *Strangers from a Different Shore: A history of Asian Americans* (Boston, MA: Little, Brown, 1989).

Tallmer, Matt, "Chemical Dumping as a Corporate Way of Life," in *Corporate Violence*, ed. Stuart L. Hills (Totowa, NJ: Rowman, 1987), 111-120.

Taylor, Carol M., "W.E.B. DuBois' Challenge to Scientific Racism," *Journal of Black Studies*, 11 (4, 1981): 449-460.

Tawney, Richard H., *Religion and the Rise of Capitalism: A Historical Story* (Gloucester, MA: P. Smith, 1962).

The New York Public Library American History Desk Reference (New York: Macmillan, 1997).

Thio, Alex, "Class Bias in the Sociology of Deviance," *The American Sociologist*, 8 (1973): 1-12.

Thomas, Laurence, "American Slavery and the Holocaust," in *Subjugation and Bondage. Critical Essays on Slavery and Social Philosophy*, ed. Tommy L. Lott (Lanham, MD: Rowman and Littlefield Publishers), 255-280.

Thompson, Daniel C. "The Role of the Federal Courts in the Changing Status of Negroes Since World War II," *Journal of Negro Education*, 30 (2, 1961): 94-101.

Thompson, Edward P., *The Making of the English Working Class* (New York: Pantheon Books, 1963).

_____, "Time, Work-Discipline, and Industrial Capitalism," *Past and Present*, 37 (1967).

Thompson, Richard H., *Theories of Ethnicity: A Critical Appraisal* (New York: Greenwood Press, 1989).

Thornton, John K., *African and Africans in the Making of the Atlantic World, 1400-1680* (New York: Random House, 1992).

Thornton, Russell, *American Indian Holocaust and Survival* (Norman, OK: University of Oklahoma Press, 1987).

Thorpe, Francis Newton, ed., *The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* (Washington, DC: Government Printing Office, 1909).

Tindall, George, *South Carolina Negroes, 1877-1900* (Columbia, SC: University of South Carolina Press, 1952).

_____, *The Emergence of the New South, 1913-1945* (Baton Rouge, LA: Louisiana State University, 1967).

Titus, A. Costandina, *Bombs in the Backyard: Atomic Testing and American Politics* (Reno, NV: University of Nevada Press, 1986).

Tivan, Edward, *The Moral Imagination: Confronting the Ethical Issues of Our Day* (New York: Simon and Schuster, 1995).

Tolnay, Stewart Emory, *A Festival of Violence : An Analysis of the Lynching of African-Americans in the American South, 1882-1930* (Urbana, IL: University of Illinois Press, 1995).

Tomalin, Claire, *The Life and Death of Mary Wollstonecraft* (New York: Harcourt Brace Jovanovich, 1974).

Tomasson, Richard F., Faye J. Crosby, and Sharon D. Herzberger, *Affirmative Action: The Pros And Cons Of Policy And Practice* (Washington, D.C.: American University Press, 1996).

Tonry, Michael, *Malign Neglect — Race, Crime, and Punishment in America* (New York: Oxford University Press, 1995).

Trachtenberg, Joshua, *The Devil and the Jews: The Medieval Conception of the Jew and its Relation to Modern Antisemitism* (New Haven, CT: Yale University Press, 1943).

Tucker, William H., *The Politics of Racial Research* (Chicago, IL: University of Illinois Press, 1994).

Turner, Jonathan H., *The Structure of Sociological Theory*, 5th ed. (Belmont, CA: Wadsworth, 1991).

Tushnet, Mark V., *The American Law of Slavery 1810-1860: Considerations of Humanity and Interest* (Princeton, NJ: Princeton University Press, 1981).

Uhlman, Thomas M., *Racial Justice: Black Judges and Defendants in an Urban Trial Court* (Lexington, MA: D.C. Heath, 1979).

Unger, Irwin, "The 'New Left' and American History: Some Recent Trends in United States Historiography," *American Historical Review*, 72 (4, 1967): 1237-1263.

Unger, Roberto M., *The Critical Legal Studies Movement* (Cambridge, MA: Harvard University Press 1986).

Usner, Jr., Daniel H., "Indian-Black Relations in Colonial and Antebellum Louisiana," in *Slave Cultures and the Cultures of Slavery*, ed. Stephan Palmié (Knoxville, TN: The University of Tennessee Press, 1995), 145-161.

Usher, Roland G., "Primitive Law and the Negro," *Journal of Negro History*, 4 (1, 1919): 1-6.

Uzgaliz, William, "'. . . The Same Tyrannical Principle': Locke's Legacy on Slavery," in *Subjugation and Bondage: Critical Essays on Slavery and Social Philosophy*, ed. Tommy L. Lott (Lanham, MD: Rowman and Littlefield Publishers, 1998), 49-78.

Vago, Steven, *Law and Society*, 5th ed. (Upper Saddle River, NJ: Prentice Hall, 1997).

Valocchi, Steve, "The Racial Basis of Capitalism and the State, and the Impact of the New Deal on African-Americans," *Social Problems*, 41 (1994): 347-362.

Van den Berghe, Pierre L., "Caste," in *Dictionary of Race and Ethnic Relations*, 4th edition, ed. Ellis Cashmore (New York: Routledge, 1996), 66-68.

Van den Haag, Ernest, "Social Science Testimony in the Desegregation cases - a Reply to Professor Kenneth Clark," *Villanova Law Review*, 6 (1960).

_____, "How Not to Prevent Civil Disorders," *National Review*, 20 (March 26, 1968).

_____, *Punishing Criminals: Concerning a Very Old and Painful Question* (New York: Basic Books, 1975).

Vásárhelyi, István, *Restitution in International Law*, rev. Gy. Haraszti, trans. I. Szászy (Budapest, Hungary: House of the Hungarian Academy of Sciences, 1964).

Virgo, Graham, *The Principles of the Law of Restitution* (Oxford, NY: Oxford University Press, 1999).

Von Bar, Carl. L., *A History of the Continental Criminal Law* (Boston, MA: Little, Brown, and Company, 1916).

Von Hayek Friedrich, *The Road to Serfdom* (Chicago, IL: University of Chicago Press, 1944).

Von Hentig, Hans, *Punishment: its Origin, Purpose and Psychology* (Montclair, NJ: Patterson Smith, 1973).

Vontress, Clemmon E., "Patterns of Segregation and Discrimination: Contributing Factors to Crime Among Negroes," *Journal of Negro Education*, 31 (2, 1962): 108-116.

Von Wright, Georg H., *Explanation and Understanding* (Ithaca, NY: Cornel University Press, 1971).

Wacquant, Loïc J. D. and William Julius Wilson, "The Costs of Racial and Class Exclusive in the Inner City," *Annals of the American Academy of Political and Social Science*, 501 (1989): 8-25.

Wahad, Dhoruba Bin, "Still Black, Still Strong: Survivors of the US War Against Black Revolutionaries," in *Brotherman: The Odyssey of Black Men in America — An Anthology*, eds. Herb Boyd and Robert L. Allen (New York: One World, 1995), 441-447.

Wallace, Don, "The Political Economy of Incarceration trends in late US Capitalism: 1971-1977," *Insurgent Sociologist*, 9 (1980): 59-65.

Wallace, Don and Drew Humphries 1993 "Urban Crime and Capitalist Accumulation, 1950-1971," in *Crime and Capitalism: Readings in Marxist Criminology*, ed. David Greenberg *Crime and Capitalism* (Philadelphia, PA: Temple University, 1993), 194-210.

Wallerstein, Immanuel, *The Modern World-System I: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York: Academic Press, 1974).

_____, "The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis," *Comparative Studies in History and Society*, 16 (1974): 387-415.

_____, *The Modern World-System II: Mercantilism and the Consolidation of the European World-Economy, 1600-1750* (New York: Academic Press, 1980).

_____, *Geopolitics and Geoculture* (New York: Cambridge University, 1991).

_____, "Europocentrism and its Avatars: The Dilemmas of Social Science," *New Left Review*, 226 (1997): 93-107.

_____, "The Ideological Tensions of Capitalism: Universalism Versus Racism and Sexism," *Racism, Sexism and the World-System*, (Westport, CT: Greenwood, 1988), 3-9.

_____, "Peace, Stability, and Legitimacy, 1990-2025/2050," in *The Fall of Great Powers: Peace, Stability, and Legitimacy*, ed. Geir Lundestand (Oxford, NY: Oxford University Press, 1994), 331-349.

_____, "Social Science and the Quest for a Just Society," *American Journal of Sociology*, 102 (1997): 1241-1257.

Walsh, Edward, Rex Warland, and D. Clayton Smith, "Backyards, NIMBYs and Incinerator Sitings: Implications for Social Movement Theory," *Social Problems*, 40 (1993): 24-38.

Walters, Ronald G., *American Reformers 1815-1860* (New York: Hill and Wang, 1978).

Walton and Shepherd, *The Economic Rise of Early America* (New York: Cambridge University Press, 1979).

Walzer, Michael, "A Theory of Revolution," *Marxist Perspectives* 5 (Spring 1979).

_____, *Spheres of Justice* (Oxford, NY: Basil Blackwell, 1985).

Ward, Lester F., "Social and Biological Struggles," *The American Journal of Sociology*, 13 (3, 1907): 289-299.

_____, "Eugenics, Euthenics, and Eudemics," *The American Journal of Sociology*, 18 (6, 1913): 737-754.

Ware, Alan, *The Breakdown of Democratic Party Organization, 1940-1980* (Oxford, NY: Oxford University Press, 1985)

Warner, W. Lloyd, "Introduction," in ed. Allison Davis, *Deep South* (Chicago, IL: University of Chicago Press, 1941), 4-6.

Warner, W. Lloyd and Leo Srole, *The Social Systems of American Ethnic Groups* (New Haven, CT: Yale University Press, 1945).

Warren, Bill, *Pioneer of Capitalism* (London: New Left Books, 1980).

Watt, John A., *The Church and the Two Nations in Medieval Ireland* (Cambridge, Eng: Cambridge University Press, 1970).

Weber, Max, *Economy and Society: An Outline of Interpretive Sociology*, vol. 1-2, eds. Guenther Roth and Claus Wittich, (Berkeley, CA: University of California Press, 1968).

_____, *The Protestant Ethic and the Spirit of Capitalism* (Gloucester, MA : P. Smith, 1988).

Wells, D. Collin, "Social Darwinism," *American Journal of Sociology*, 12 (5, 1907): 695-716.

Werner, Baer, Werner, "The Economics of Prebisch and the ECLA," *Economic Development and Cultural Change*, 10 (2, 1961/62): 69-82.

West, Cornel, *Keeping Faith: Philosophy and Race in America* (New York: Routledge, 1993).

_____, *Race Matters* (New York: Vintage, 1994).

Wesley, Charles H., "Lincoln's Plan to Colonize the Emancipated Slaves," *Journal of Negro History*, 4 (1, 1919): 7-21.

_____, "The Concept of Negro Inferiority in American Thought," *Journal of Negro History*, 25 (4, 1940): 540-560.

Wharton, Vernon Lane, *The Negro in Mississippi, 1865-1890* (Chapel Hill, NC: University of North Carolina Press, 1947).

Wheeler, Stanton, David Weisburd, and Nancy Bode's article, "Sentencing the White-Collar Offender: Rhetoric and Reality," *American Sociological Review*, 47 (5, 1982): 641-659.

Wheeler, Stanton, Kenneth Mann, and Austin Sarat, *Sitting in Judgment: The Sentencing of White-Collar Criminals* (New Haven, CT: Yale University Press, 1988).

White, Lynn, *Medieval Technology and Social Change* (Oxford, NY: Clarendon, 1962).

White, Terence de Vere, *Ireland*,(London: Thames and Hudson, 1968).

Whitefield, Stephen J., *A Death in the Delta: The Story of Emmett Till* (Baltimore, MD: John Hopkins University, 1991)

Wilbanks, William, *The Myth of a Racist Criminal Justice System* (Monterey, CA: Brooks/Cole, 1987).

Wildavsky, Aaron, "Doing better and Feeling Worse: The Political Pathology of Health Policy," *Daedalus* (Winter, 1977): 105-124.

Wildman, Stephanie, Trina Grillo, and Adrienne D. Davis, *Privilege Revealed: How Invisible Preference Undermines America* (New York: New York Univerity Press, 1996).

Wiecek, William M., "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *William and Mary Quarterly*, 34 (2, 1977): 258-280.

Wiley, Brad, "The Myth of New Deal Reform," in *Up Against the American Myth*, eds. Tom Chistoffel, David Finkelhor, and Dan Gilbard (New York: Holt Rinehart Winston, 1970).

Willhelm, Sidney M., *Who Needs the Negro?* (Cambridge, MA: Schenkman, 1970).

_____, "Can Marxism Explain America's Racism?" *Social Problems*, 28 (2, December 1980): 98-112.

_____, "Black-White Equality: An Economic Doctrine for White Supremacy, Part I," *Journal of Black Studies*, 12 (2, 1981): 142-165.

_____, "The Economic Demise of Blacks in America: A Prelude to Genocide?" *Journal of Black Studies*, 17 (2, 1986): 201-254.

William, Kirk, *The Cocaine Kids* (New York: Addison-Wesley, 1989).

Williams, Juan, *Thurgood Marshall: American Revolutionary* (New York: Times Books, 1998).

Williams, Eric, *Capitalism and Slavery* (Chapel Hill, NC: University of North Carolina Press, 1944).

Williams, Patricia, *The Alchemy of Race and Rights* (Cambridge, MA: Harvard University Press, 1991).

Williamson, Joel, *The Crucible of Race: Black-White Relations in the American South Since Emancipation* (Oxford, NY: Oxford University Press, 1984).

Wilson, Edward O., *On Human Nature* (Cambridge, MA: Harvard University Press, 1978).

Wilson, James Q., *Thinking About Crime* (New York: Basic Books, 1975).

_____, "Foreword," *The Essential Neoconservative Reader* (Reading, PA: Addison-Wesley, 1996)

Wilson, James Q. and Richard J. Herrnstein, *Crime and Human Nature* (New York: Simon, 1985).

Wilson, John K., *The Myth of Political Correctness: The Conservative Attack on Higher Education* (Durham, NC: Duke University Press, 1995).

Wilson, William Julius, *The Declining Significance of Race: Blacks and Changing American Institutions* (Chicago, IL: University of Chicago Press, 1980).

_____, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago, IL: University of Chicago Press, 1990).

_____, *The Ghetto Underclass: Social Science Perspectives* (Newbury Park, CA: Sage Publications, 1993).

_____, *When Work Disappears: The World of the New Urban Poor* (New York: Knopf, 1996).

Winant, Howard, *Racial Conditions: Politics, Theory, Comparisons* (Minneapolis, MN: University of Minnesota, 1994).

_____, "Behind Blue Eyes: Whiteness and Contemporary US Racial Politics," *New Left Review*, 225 (1997): 73-88.

Wines, Enoch Cobb, *The State of Prisons and of Child-Saving Institutions in the Civilized World* (Montclair, N.J., Patterson Smith, 1968).

Wirth, Louis, "Morale and Minority Groups," published in the *American Journal of Sociology*, 47 (3, 1941): 415-433.

Wise, David, *The American Police State: The Government Against the People* (New York: Random House, 1976).

Wisely, Willie, "The Bottom Line: California's Prison Industry Authority," *California Prisoner and Prison Legal News* (1998)

Wolf, Eric, *Europe and the People Without History* (Berkeley, CA: University of California Press, 1982).

Wollstonecraft, Mary, *A Vindication of the Rights of Woman, with Strictures on Political and Moral Subjects*, ed. Charles W. Hagelman, Jr. (New York, Norton, 1967).

Wolpe, Harold, "The Theory of Internal Colonialism: the South African Case," *Beyond the Sociology of Development: Economy and Society in Latin America and Africa*, eds. Ivar Oxaal, Tony Barnett and David Booth (Boston, MA: Routledge and Kegan Paul, 1975).

Wood, Arthur Evans, "Crime," *American Journal of Sociology*, 35 (6, 1930): 1027-1041.

_____, "Crime and Penology," *American Journal of Sociology*, 36 (6, 1931): 1017-1029.

Wood, Forrest G., "On Revising Reconstruction History: Negro Suffrage, White Disfranchisement, and Common Sense," *Journal of Negro History*, 51 (2, 1966): 98-113.

Wood, Peter H., "Slave Labor Camps in Early America: Overcoming Denial and Discovering the Gulag," in *Inequality in Early America*, eds. Carla Gardina Pestana and Sharon V. Salinger (Hanover, NH: University Press of New England, 1999), 222-238.

Woods, Erville B., "Heredity and Opportunity," *American Journal of Sociology*, 26 (2, 1920): 146-161.

Woodward, C. Vann, "Tom Watson and the Negro in Agrarian Politics," *The Journal of Southern History*, 4 (1938).

_____, *Tom Watson: Agrarian Rebel* (Oxford, NY: Oxford University Press, 1938).

_____, *The Strange Career of Jim Crow*, 3rd ed. (Oxford, NY: Oxford University Press, 1974).

_____, *Thinking Back: The Perils of Writing History* (Baton Rouge, LA: Louisiana State University Press, 1986).

_____, "Look Away, Look Away," *The Journal of Southern History* 59 (3, 1993): 487-504.

Work, Monroe N., "Crime Among the Negroes in Chicago: A Social Study," *American Journal of Sociology*, 6 (2, 1900): 204-223.

Wright, Erik Olin, *Classes* (New York: Verso, 1975).

_____, "Race, Class, and Income Inequality," *American Journal of Sociology*, 83 (6, 1978): 1368-1397.

_____, *Class Counts: Comparative Studies in Class Analysis* (New York: Verso, 1998).

Wright, Gavin, *Old South, New South. Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986).

Yinger, J. Milton, *A Minority Group in American Society* (New York: McGraw Hill, 1965).

Young, Robert J. C., *Colonial Desire: Hybridity in Theory, Culture and Race* (New York: Routledge, 1995).

Zacour, Norman, *An Introduction to Medieval Institutions* (New York: St. Martin's Press, 1969).

Zangrando, Joanna Schneider and Robert L. Zangrando, "Black Protest: A Rejection of the American Dream," *Journal of Black Studies*, 1 (2, 1970): 141-159.

Zatz, Majorie S., "Chicano Youth Gangs and Crime: The Creation of a Moral Panic," *Contemporary Crises*, 11 (1987).

Zeleny, L. D., "Feeble-Mindedness and Criminal Conduct," *American Journal of Sociology*, 38 (4, 1933): 564-576.

Zelizer, Viviana A., *Pricing the Priceless Child: The Changing Social Value of Children* (New York: Basic Books, 1985).

Zimmerman, Jane, "The Penal Reform Movement in the South During the Progressive Era, 1890-1917," *Journal of Southern History*, 17 (4, 1951): 462-492.

Zinn, Howard, *The Southern Mystique* (New York, Knopf, 1964).

_____, ed., *New Deal Thought* (Indianapolis, IN: (Bobbs-Merrill, 1966).

_____, *A People's History of the United States 1492-Present* (New York: HarperPerennial, 1995).

<u>*Government Documents and Court Cases*</u>

Alabama Const., Art. 4, § 102 (1901).

Ala. Code, Tit. 14, § 360 (1958).

Arkansas Stat. Ann. § 55-104 (1947).

Baily v. Alabama, 219 US (1911).

Barrows v. Jackson, 346 U.S 249 (1953).

Baskin v. Brown 174 F. 2d 391, 4th Cir. (1949).

Brown v. Board of Education, 347 U.S. 483 (1954).

Brown v. State 173 Miss. 542 (1935).

Brzonkala v. Virginia Polytechnic Institute, Virginia 169 F. 3d 820 (1999).

Cassell v. Texas, 339 US 282 (1950).

Conyers, John, "Conyers Supports Equitable Sentencing Guidelines for Crack Cocaine Offenders," from the office of Representative John Conyers, Jr., 14th District, Michigan, 25 March 1999.

Correctional Populations in the United States, 1996 (Washington, DC: Bureau of Justice Statistics, 1996).

Clyatt v. United States, 197 US 207 (1905).

Delaware, Del. Code Ann., Tit. 13, § 101 (1953)

Dred Scott v. Sanford, 60 U.S. 691 (1857).

Executive Order 9981, *Federal Register* 13 (1948): 4313.

Federal Bureau of Investigation, *Crime in the United States 1998* (Washington, D.C.: United States Department of Justice, 1999).

_____, *Uniform Crime Reports, Index of Crimes, United States, 1960-1995* (Washington, DC: Government Printing Office, 1998).

Florida Const., Art. 16, § 24 (1892).

Fla. Stat. § 741.11 (1965).

George (a slave) v. The State, 37 Miss. Rep. 316 (1859).

Georgia Code Ann. § 53-106 (1961)

Gomillion v. Lightfoot, 364 U.S. 339 (1960).

Gray v. State 4 Ohio 354.

Helms, Jesse (Sen-NC), "The King Holiday and Its Meaning," *Congressional Record*, October 3, 1983, 129 (130): S 13452 through S 13461.

Historical Corrections Statistics in the United States, 1850-1984 (Washington, DC: Bureau of Justice Statistics, 1986).

Hudgins v Wrights Virginia, 11 Va. (1 Hen. & M.) 134 (1806).

Hurd v. Hodges (1948).

Jones v. Commonwealth, 80 Virginia 538.

Jordan v. Smith, 14 Ohio 199 (1846).

Kennan, George, "NSC 68: United States Objectives and Programs for National Security," *Naval War College Review,* 27 (May-June, 1975): 51-108.

Kentucky Rev. Stat. Ann. § 402.020 (Supp. 1966)

Louisiana Rev. Stat. § 14:79 (1950).

Louisiana, Laws, Act. No. 215 (1854).

Loving v. Virginia , 395 US 1 (1967).

Luke v. State, 5 Fla. 185 (1853).

McLaurin v Oklahoma State Regents , 339 US 638 (1950).

Mississippi Const. Art. 14, § 263. (1906)

Miss. Code Ann. § 459 (1956).

Missouri, Mo. Rev. Stat. § 451.020 (Supp. 1966).

Missouri ex re. Gaines v Canada 305 US 337 (1938).

Naim v. Naim, 197 Va. 80, 87 S. E. 2d 749 (1955).

National Product Safety Commission, *Annual Report* (Washington, DC: Government Printing Office, 1993).

National Security Act of 1947 (PL 235 - 61 Stat. 496; U.S.C. 402).

National Security Act Amendments of 1949 (63 Stat. 579; 50 U.S.C. 401).

Norris v. Alabama, 294 US 587 (1935).

North Carolina Const. Art. 14, § 8 (1883).

North Carolina Gen. Stat. § 14-181 (1953).

Oklahoma Stat. Ann. Tit. 57, ∞ 171 (Habitual Criminal Sterilization Act of 1935).

Oklahoma Stat., Tit. 43, § 12 (Supp. 1965).

Patton v. Mississippi, 322 US 463 (1947).

People v. Hall, 4 Cal. 399 (1854).

People v. Dean, 14 Michigan 406.

Plessy v. Ferguson, 163 US 537 (1896).

Pollock v. Williams, 322 US 4 (1944).

Population Estimates Program, Population Division, US Census Bureau, Washington, D.C. 20233.

Powell v. Alabama, 287 U.S. 45 (1932)

Prisoners in 1996, (Washington, DC: Bureau of Justice Statistics, 1997).

Prisoners in 1998 (Washington, DC: Bureau of Justice Statistics, 1999).

Rice v. Elmore, 165 F. 2d 387 (4th Cir. 1947).

Rice v Elmore, 333 US 875 (1948).

Shelley v. Kraemer, 334 US 1 (1948).

Sipuel v Oklahoma, 332 US 631 (1948).

Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942).

Smith v Allwright, 321 US 649 (1944).

Smith v. Texas, 311 US 128 (1940)

The "Southern Manifesto," 102 Cong. Rec. 4515-16 (1956).

South Carolina, SC Const., Art. 3, § 33 (1895).

South Carolina, SC Code Ann § 20-7 (1962).

South Carolina, Acts & Resolutions, General Assembly (1830).

Sweatt v Painter, 339 US 629 (1950).

State v Abram, 10 Ala. 928 (1847) .

State v Caesar, a slave, 9 NC 391 (1849)

State v. Chavers, 5 NC 1 (1848).

State v. Mann, 12 NC 263 (1829).

State v. Tackett, 8 NC 395 (1839).

Taylor v. Georgia, 315 US 25 (1942).

Tennessee, Tenn. Const., Art. 11, § 14 (1896).

Tenn. Code Ann. § 36-402 (1955).

Terry v. Adams, 345 US 461 (1953).

Texas, Tex. Pen. Code, Art. 492 (1952).

The Civil Rights Cases, 109 US 3 (1883).

The Sourcebook of Criminal Justice Statistics (Washington, DC: Bureau of Justice Statistics, 1997).

The United Declaration of the Thirteen United States of America, in George Brown Tindall, *America: A Narrative History*, vol. 1, 3rd ed. (New York: W.W. Norton, 1992), A16.

U.S. Department of Labor, *The Glass Ceiling Report* (1990).

U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, DC: U.S. Government Printing Office, 1975).

US Department of Justice, *Survey of State Prison Inmates, 1991* (Washington, DC: Bureau of Justice Statistics, 1993).

U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 1995*, NCJ-163916 (Washington, DC: U.S. Department of Justice, 1997).

United States v. Classic, 313 U.S. 299 (1941).

United States v. Reynolds, 235 US 133 (1914).

US Department of State, Policy Planning Study 23 (PPS 23; Kennan 1948).

Vardaman, James V. (Sen-Miss), *Congressional Record*, 63rd Cong. 2nd Sess (Feb. 6, 1914).

West Virginia, W.Va. Code Ann. § 4697 (1961).

Think Tank, Study Group, Activist Organization Reports, and Non-Governmental Databases

American Civil Liberties Union, "Norplant: A New Contraceptive with the Potential for Abuse" (1994).

Amnesty International, *Amnesty International Report*, www.amnesty.org, 1998

_____, "United States of America: Rights for All," Amnesty International Publications, New York, October 1998.

Calhoun, Martin, "U.S. Military Spending, 1945-1996," The Center for Defense Information, 1779 Massachusetts Avenue, N.W. Washington D.C. 20036, July 9, 1996.

Center for Reproductive Law and Policy, "Exposing Inequity," March 8, 1995.

Fagan, Patrick F. and Robert E. Moffitt, "Crime," *Issues '96: The Candidate's Briefing Book* (Washington, DC: Heritage Foundation, 1996), 227-260.

Mauer, Marc and Jamie Fellner, "Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States," Human Rights Watch, 350 Fifth Avenue, 34th Floor, New York, NY 10018.

Mauer, Marc, "Americans Behind Bars: US and International Use of Incarceration, 1995" (1997). Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004.

_____, "Intended and Unintended Consequences: State Racial Disparities in Imprisonment." Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004.

National Opinion Research Center, University of Chicago, 1155 East 60th Street, Chicago, Illinois 60637.

Schiraldi, Vincent and Jason Ziedenberg, "The Punishing Decade: Prison and Jail Estimates at the Millennium" (1999). Document available at Justice policy Institute, 2208 Martin Luther King, Jr. Ave. SE Washington, DC 20020.

The Prison Activist Resource Center, *Update: California's Expanding Prison-Industrial Complex*, www.igc.org/prisons, 1998.

The Sentencing Project, "Prison Populations, 'Projections and Analysis'," Briefing/Fact Sheet #1040 (1999). Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004.

The Sentencing Project, "Facts About Prisons and Prisoners," April 2000. Document available at The Sentencing Project, 514 10th Street, NW Suite 1000 Washington, DC 20004.

The Sentencing Project, *New Justice Department Figures Mark a Quarter Century of Prison Building*. www.sproject.com, 1998.

Print and Electronic Media (Newspapers, Magazines, Newsletters, Bulletins, and Television)

Alston, Dana, "Transforming a Movement: People of Color Unite at Summit Against Environmental Racism," *Sojourners* 21 (Jan. 1992), 30-31.

APA Monitor, "King's Challenge to the Nation's Social Scientists," 30 (January 1999).

Associated Press, "Crack vs. Cocaine," *Newsday*, 23 July 1997.

Baker, Peter, "Clinton Would Cut Disparity In Some Cocaine Sentences," *Washington Post*, 23 July 1997, A2.

Beschloss, Michael R., interview with Phil Ponce, "Military Integration: One Nation, One Army," *NewsHour*, PPS, July 31, 1998.

Cannon, Angie and Jodi Enda, "Clinton: Ease disparity on crack, powder cocaine," *Philadelphia Inquirer*, 23 July 1997, A1.

Chomsky, Noam, "You Say You Want a Devolution," *The Progressive*, March 1996.

Clark, Kenneth B., "The Role of Race," *The New York Times*, 5 October 1980, sec. 6, 25.

Dolny, Michael, "The Think Tank Spectrum: For the Media, Some Thinkers Are More Equal Than Others," *Extra!* May/June, 1996.

Galton, Francis, "Hereditary Improvement," *Fraser Magazine*, January 1873.

Gates, Jr., Henry Louis "Black Demagogues and Pseudo-Scholars," *New York Times*, 20 July 1992, A13, 15.

Heise, Lori, "Global War Against Women," *Utne Reader* (Nov-Dec, 1989): 40-45.

Heller, Jean, "Syphilis Victims in the U.S. Study Went Untreated for 40 Years," *The New York Times*, 26 July 1972.

Holmes, Steven, "Black Lawmakers Criticize Clinton Over Cocaine Sentencing," *New York Times*, 24 July 1997, A, 15.

When Terrorism Won in America. Part I: "How the South (or Perhaps White Supremacy) Won the War." Part II: "White Protestant Nation." Public Radio from Indiana (WFIU), in Bloomington, 7 p.m., Feb. 20 and 27, 2000.

Marx, Deirdre Guthrie, "Environmental Racism on Montana Reservation," *Z Magazine*, 1997.

Marx, Karl, "Capital Punishment," *New York Daily Tribune*, Feb. 18, 1853.

_____, "Population, Crime and Pauperism," *New York Daily Tribute*, Sept. 16, 1859.

"If Mob Rule Takes Hold in the US: A Warning from Richard Nixon," *US News and World Report*, August 15 1956.

Ostrow, Ronald J., "Reno, McCaffrey Urge Revised Drug Sentences," *Los Angeles Times* (Washington Edition), 22 July 1997, A8.

Palmer, A. Mitchell, "The Case Against the 'Reds,'" *Forum*, 63 (1920): 173- 185.

Ray, Eri, "Racism in the Sunshine States: Bush's 'One Florida' Initiative," *Political Affairs* April 2000.

Smith, Jim, "Lane Kirkland – The AFL-CIO's Last Cold Warrior," *Z Magazine*, July/August, 1995.

Soloman, Norman, "The Media's Favorite Think Tank: How the Heritage Foundation Turns Money into Media," *Extra!* July/August, 1996.

Strong, Catherine, "U.S. Senate Adopts Michigan Senator's Measure to Reduce Cocaine Sentence Disparity," AP Wire, 10 November 1999.

Subramanian, Sribala, "The Story in Our Genes," *Time*, 16 January 1995.

Suro, Roberto, "Officials Draft Plan to Reduce Cocaine Sentencing Disparities," *Washington Post*, 22 July 1997, A2.

Swanton, John R., "The Indians of the Southeastern United States," *Smithsonian Institution Bureau of American Ethnology*, Bulletin 137 (1970).

The Guardian, "Racism: Capitalism's indispensable prop," January 1978.

Van den Haag, Ernest, *Washington Post*, May 21, 1964, A8.

_____, "Intelligence or Prejudice?" *National Review*, December 1, 1964, 1059-1063.

Wattenberg, Ben J., "Birth Rates Close to Racial Parity," *Washington Times*, July 31, 1997.

_____, "Birth Rates Close to Racial Parity," *On the Issues* (August 1997).

Wren, Christopher S., "Reno and Top Drug Official Urge Smaller Gap in Cocaine Sentences," *New York Times*, 22 July 1997, A1.

Vita

Andrew Wayne Austin lived in Murfreesboro, Tennessee until 1982 when he moved to South Florida and met Mona Elisabet Wetterstrom. Andrew and Mona returned to Middle Tennessee in 1988, married, and entered college. Andrew made his living as a professional musician until he entered the graduate program in sociology at Middle Tennessee State University. After completion of a Master of Arts degree, Andrew accepted an adjunct teaching position in the MTSU Department of Sociology and an instructor position in the Department of Criminal Justice Administration. Mona and Andrew's son, Nikolas Alexander, was born in July, 1995. In the Fall of 1996, Andrew entered the doctoral program in Sociology at the University of Tennessee where he studied political economy and criminology. While a doctoral student, he taught in the day and evening schools at UT and held an adjunct faculty position at Pellissippi State Technical-Community College. Andrew was awarded recognition as the Outstanding Graduate Student in Sociology in 2000. The same year, he accepted a tenure-track assistant professor position in the department of Social Change and Development at the University of Wisconsin-Green Bay. Andrew's areas of interests are political economy, crime and justice issues, race and ethnicity, environmental sociology, and political sociology. Andrew has published in peer-review journals and has chaired, presented, or had papers read at more than a dozen professional conferences.