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Stars and Bars

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[from the August 27, 2007 issue]

How can you tell when a democracy is dead? When concentration camps spring up and everyone shivers in fear? Or is it when concentration camps spring up and no one shivers in fear because everyone knows they're not for "people like us" (in Woody Allen's marvelous phrase) but for the others, the troublemakers, the ones you can tell are guilty merely by the color of their skin, the shape of their nose or their social class?

Questions like these are unavoidable in the face of America's homegrown gulag archipelago, a vast network of jails, prisons and "supermax" tombs for the living dead that, without anyone quite noticing, has metastasized into the largest detention system in the advanced industrial world. The proportion of the US population languishing in such facilities now stands at 737 per 100,000, the highest rate on earth and some five to twelve times that of Britain, France and other Western European countries or Japan. With 5 percent of the world's population, the United States has close to a quarter of the world's prisoners, which, curiously enough, is the same as its annual contribution to global warming. With 2.2 million people behind bars and another 5 million on probation or parole, it has approximately 3.2 percent of the adult population under some form of criminal-justice supervision, which is to say one person in thirty-two. For African-Americans, the numbers are even more astonishing. By the mid-1990s, 7 percent of black males were behind bars, while the rate of imprisonment for black males between the ages of 25 and 29 now stands at one in eight. While conservatives have spent the past three or four decades bemoaning the growth of single-parent families, there is a very simple reason some 1.5 million American children are fatherless or (less often) motherless: Their parents are locked up. Because they are confined for the most part in distant rural prisons, moreover, only about one child in five gets to visit them as often as once a month.

What's that you say? Who cares whether a bunch of "rapists, murderers, robbers, and even terrorists and spies," as Republican Senator Mitch McConnell once characterized America's prison population, get to see their kids? In fact, surprisingly few denizens of the American gulag have been sent away for violent crimes. In 2002 just 19 percent of the felony sentences handed down at the state level were for violent offenses, and of those only about 5 percent were for murder. Nonviolent drug offenses involving trafficking or possession (the modern equivalent of rum-running or getting caught with a bottle of bathtub gin) accounted for 31 percent of the total, while purely economic crimes such as burglary and fraud made up an additional 32 percent. If the incarceration rate continues to rise and violent crime continues to drop, we can expect the nonviolent sector of the prison population to expand accordingly. A

normal society might lighten up in such circumstances. After all, if violence is under control, isn't it time to come up with a more humane way of dealing with a dwindling number of miscreants? But America is not a normal country and only grows more punitive.

It has also been extremely reluctant to face up to the cancer in its midst. Several of the leading Democratic candidates, for example, have recently come out against the infamous 100-to-1 ratio that subjects someone carrying ten grams of crack to the same penalty as someone caught with a kilo of powdered cocaine. Senator Joe Biden has actually introduced legislation to eliminate the disparity--without, however, acknowledging his role as a leading drug warrior back in the 1980s, when he sponsored the bill that set it in stone in the first place. At a recent forum at Howard University, Hillary Clinton promised to "deal" with the disparity as well, although it would have been nice if she had done so back in the '90s, when, during the first Clinton Administration, the prison population was soaring by some 50 percent. Although he is not running this time around, Jesse Jackson recently castigated Dems for their hesitancy in addressing "failed, wasteful, and unfair drug policies" that have sent "so many young African-Americans" to jail. Yet Jackson forgot to mention his own drug-war past when, as a leading hardliner, he specifically called for "stiffer prison sentences" for black drug users and "wartime consequences" for smugglers. "Since the flow of drugs into the US is an act of terrorism, antiterrorist policies must be applied," he declared in a 1989 interview, a textbook example of how the antidrug rhetoric of the late twentieth century helped pave the way for the "global war on terror" of the early twenty-first.

In other words, cowardice and hypocrisy abound. Fortunately, a small number of academics and at least one journalist have begun training an eye on America's growing prison crisis. Since there is more than enough injustice to go around, each has zeroed in on different aspects of the phenomenon--on the political and economic consequences of stigmatizing so many young people for life, on the racial consequences of disproportionately punishing young black males and on the sheer moral horror of needlessly locking away real, live human beings in supermax prisons that are little more than high-tech dungeons. Their findings, to make a long story short, are that the damage cannot be reduced to a simple matter of so many person-years of lost time. To the contrary, the effects promise to multiply for years to come. In *American Furies* Sasha Abramsky, a Sacramento-based journalist and longtime *Nation* contributor, convincingly argues that the best way to understand US prison policies is to think of them as a GI Bill in reverse. Just as the original GI Bill laid the basis for a major social advance by making college available to millions of veterans, mass incarceration is laying the basis for an enormous social regression by stigmatizing and brutalizing millions of young people and "de-skilling" them by removing them from the workforce. America will be feeling the effects for generations.

Bruce Western, a Princeton sociologist, offers the best overview. He notes in his new study, *Punishment and Inequality in America*, that mass imprisonment is actually a novel development. For much of the twentieth century, the US incarceration rate held steady at around 100 per 100,000, which would put it in the same ballpark as Western Europe today. But after a slight dip following the liberal reforms of the 1960s, the curve reversed direction in the mid-'70s and then rose more steeply in the '80s and '90s. Considering that Germany, Sweden, Denmark and Austria succeeded in reducing or holding their incarceration rates steady during this period, the US pattern was highly exceptional. But so are US crime rates. Between 1980 and 1991, US homicides hovered at between 7.9 and 10.2 per 100,000, as much as ten times the European average. (The rate has since fallen to around 5.7.) Combined with the crack wave that also exploded in the 1980s, the result was a deepening sense of panic that peaked in mid-1986 with the death of basketball star Len Bias from a cocaine overdose. Although there was no evidence that crack had anything to do with Bias's death--police found only powdered cocaine in his car--the incident somehow confirmed crack as the new devil substance, "the most addictive drug known to man," in the words of *Newsweek*, and a threat comparable to the "medieval plagues," in the considered opinion of *U.S. News and World Report* (which would have meant that the country was facing an imminent

population loss of up to 33 percent). Within a matter of months, Joe Biden had helped shepherd through to victory the Anti-Drug Abuse Act of 1986, an unusually horrendous piece of legislation that etched in stone the 100-to-1 penalty ratio for crack.

Still, it is always interesting to consider which deaths fill people with horror and which ones don't. The year before Bias's death not only saw 19,000 homicides in the United States but nearly 46,000 highway fatalities too, and yet Congress somehow refrained from criminalizing motor vehicles. Crack's status as the drug du jour of a certain class of inner-city blacks should have been the giveaway. What had Congress in a tizzy was not cocaine consumption so much as *black* cocaine consumption, which is why the subsequent repression was bound to be far harder on African-Americans than on whites. Although there is no evidence that blacks use drugs more than whites and indeed some evidence that they use them less, Western notes that black users are now twice as likely to be arrested for drugs and, once arrested, more likely to go to prison or jail. None of this is necessarily racist, at least not in the crudely explicit way we associate with men in white sheets. The reason the police concentrate their efforts in black inner-city neighborhoods, Western notes, is that users congregate there in large numbers, and buying, selling and using tend to take place in public. (It's harder to make arrests behind the closed doors of some suburban McMansion.) If a judge is more inclined to send a poor black defendant to prison, similarly, it is not necessarily because he or she enjoys punishing someone with dark skin but because the judge, according to Western, may "see poor defendants as having fewer prospects and social supports, thus as having less potential for rehabilitation." If your weeping parents can afford to send you to private rehab, you're excused. If not, it's off to the state pen.

Racial and class biases are thus built into the very structure of the drug war. Western is particularly effective on the economic consequences of such grossly disproportionate policies. The standard account of American economic development since the 1970s, told and retold in countless undergraduate classrooms, is that economic deregulation and growth have done much to narrow the once-yawning wage gap between white and black workers. To quote the *New York Times*: "Unemployment rates among blacks and Hispanic people...are at or near record lows. Joblessness among high school dropouts has fallen to about half the rate in 1992. And wages for the lowest paid are rising faster than inflation for the first time in decades." A rising tide lifts all boats, whereas all that labor-market rigidity has done for "Old Europe" is to saddle it with persistently high levels of unemployment, an alienated underclass and riots in the *banlieues*. But as *Punishment and Inequality in America* points out, if US economic policies look good, it is only because the country's enormous prison population is not factored into the equation. If workers behind bars are counted, then it quickly becomes apparent "that young black men have experienced virtually no real economic gains on young whites" and that the real black unemployment rate is up to 20 percent greater than official statistics indicate. Rather than freeing up the markets, Western writes, the United States has "adopted policies that massively and coercively regulated the poor." Where the Danes provide their unemployed with up to 80 percent of their previous salary and the Germans provide them with 60 percent, America has deregulated the rich while throwing a growing portion of its working class in jail.

In *Marked*, Devah Pager, who also teaches sociology at Princeton, uses a simple technique to show how mass incarceration has undone the small amount of racial progress achieved in the 1960s and '70s. Working with two pairs of male college students in Milwaukee, one white and the other black, she drilled them on how to present themselves and answer questions. Then, arming them with phony résumés, she sent them out to apply for entry-level jobs. The résumés were identical in all respects but one. Where one member of each team had nothing indicating a criminal record, the other's résumé showed an eighteen-month sentence for drugs. To help insure that the results were uniform, the résumés were then rotated back and forth among the testers.

The results? The white applicant with a prison record was half as likely to be called back for a second

interview as the white applicant without. But the black applicant without a criminal record was no more likely to be called back than the white applicant with a record, while the black applicant with a record was two-thirds less likely to be called back than the black applicant without. The black applicant with a record therefore wound up doubly penalized--as a black man and as an ex-con. With the chances of a call-back reduced to just 5 percent, the overall effect, Pager writes, was "almost total exclusion from this labor market." Considering that there are as many as 12 million ex-felons in the United States, a major portion of them black, the result has been to create a huge pool of the semipermanently unemployed where one might otherwise not exist. This is not to disprove sociologist William Julius Wilson, whose study *The Declining Significance of Race* caused an uproar when it was published in 1978. Wilson may have been right: The significance of race may well have been declining by the late '70s. But thanks to a government policy of mass stigmatization, it has come roaring back.

This is not only bad news for those arrested but bad news for those who have to foot the bill for their incarceration and for dealing with the social problems that labor-market exclusion on this scale helps generate. But there are other costs too. In *Locked Out*, Jeff Manza and Christopher Uggen, professors of sociology at Northwestern and the University of Minnesota, respectively, point out that only two states, Maine and Vermont, permit felons to vote while incarcerated, that most limit felons' voting rights after they complete their terms and that, even if not legally disenfranchised, some 600,000 jail inmates and pretrial detainees are effectively prevented from voting as well. All told, this means that 6 million Americans were unable to vote on election day in 2004. This is not peanuts. Nationwide, one black man in seven has been disenfranchised as a consequence, while in Florida, the state with the most sweeping disenfranchisement laws, the number of those prevented from voting now exceeds 1.1 million.

From a right-wing perspective, this is nothing short of brilliant. After all, what could be better than disenfranchising an unfriendly racial group while persuading the rest of the nation that the group deserves it because its ranks are filled with violent criminals? Since felons and ex-felons tend to be poor and members of oppressed racial minorities, they tend to vote Democratic. Even though the poor are less likely to vote than those higher up on the socioeconomic ladder, Manza and Uggen say there is little doubt that, had the disenfranchisement laws not existed in Florida in November 2000, the extra votes would have provided Al Gore with a margin of victory so comfortable that not even the Republican state legislature could have taken it away. If the ranks of prison inmates and hence of disenfranchised ex-inmates had not multiplied since the '70s, much of the wind would also have been taken out of the sails of the great GOP offensive. Americans have not gone right, in other words. Rather, by taking control of the criminal-justice issue, the right wing has winnowed down the electorate so as to artificially boost the power of the conservative minority.

But how did the right gain control of this all-important issue in the first place? This is the problem that Marie Gottschalk, a professor of political science at the University of Pennsylvania, wrestles with in *The Prison and the Gallows*, an eccentric but compelling study of mass incarceration's ideological origins. While taking aim at the usual right-wing villains, *The Prison and the Gallows* also goes after various liberals and radicals who, inadvertently or not, also contributed to the construction of "the carceral state." Bill Clinton, for example, not only embraced the drug war and capital punishment--he interrupted his 1992 presidential campaign to fly back to Arkansas and sign the death warrant for a mentally disabled prisoner named Rickey Ray Rector--but also endorsed what Gottschalk calls "a virulently punitive victims' rights movement," going so far as to call for a constitutional amendment in 1996 as "the only way to give victims equal and due consideration."

This was important because the victims' rights movement represented an effort to inject a dose of vengeance into the judicial process and thereby blur the distinction between the private interest of the victim and the public's interest in maintaining order and justice. In Europe, reformers were also concerned with victims' rights. But "extending a hand to victims was seen from the start as primarily an

extension of the welfare state," Gottschalk observes, whereas in America, where welfare is a dirty word, it was seen as a way of steering criminal justice in a more punitive direction.

Gottschalk's assault on '70s feminism is sure to raise the most eyebrows. She argues that the women's movement helped facilitate the carceral state by promoting a punitive approach to sexual violence that was unmitigated by any larger political considerations. This single-minded focus led to what *The Prison and the Gallows* describes as unsavory coalitions with tough-on-crime types. In the State of Washington, women's groups successfully marketed rape reform as a law-and-order issue so that, when the measure finally passed in 1975, it was "in part by riding on the coattails of a new death penalty statute."

In California a new rape shield became known as the Robbins Rape Evidence Law, in honor of one of its legislative sponsors, a conservative Republican named Alan Robbins. In pressing for limits on the cross-examination of alleged rape victims, feminists "generally did not consider what effect such measures would have on a defendant's right to due process," Gottschalk adds, even though due process at the time was under assault from a growing war on crime. More radical elements, meanwhile, strayed into outright vigilantism. In Berkeley, antirape activists picketed an accused rapist's home. In East Lansing in 1973, they "reportedly scrawled Rapist on a suspect's car, spray-painted the word across a front porch and made warning telephone calls late at night." In Los Angeles, a self-styled "antirape squad" vowed to shave rapists' heads, cover them with dye and then photograph them for posters reading, This Man Rapes Women. A feminist publication called *Aegis* ran a notorious cover showing a gun with the warning, "You can't rape a .38; we will defend ourselves."

The National Rifle Association was no doubt delighted. Gottschalk contends that such activists wound up "profoundly co-opted," since "by framing the rape issue around 'horror stories,' they fed into the victims' movement's compelling image of a society held hostage to a growing number of depraved, marauding criminals." She notes that feminists threw themselves into the battle for the Violence Against Women Act, which passed in 1994 as part of an omnibus anticrime bill that "allocated nearly \$10 billion for new prison construction, expanded the death penalty to cover more than fifty federal crimes, and added a 'three strikes and you're out' provision mandating life imprisonment for federal offenders convicted of three violent offenses." Yet feminists' involvement was relatively modest two years later when a few liberals tried to rally opposition to Clinton's plan to abolish Aid to Families With Dependent Children, which heavily benefited poor women. Like their nineteenth-century forebears, who advocated bringing back the whipping post to deal with wife beaters, late-twentieth-century feminists got more excited about punishment than defending the welfare state.

Gottschalk is more than a bit brave in pointing this out. Still, her choice of historical examples to explain the growth of an increasingly vindictive national mood seems incomplete. As much damage as radical feminists may have done in undermining due process, they seem less important than certain antidrug activists--in particular, certain black Democratic antidrug activists--whose efforts ran on parallel tracks. This means not just Jesse Jackson, who backed vigilante-style antidrug patrols by the Nation of Islam ("As long as this type of solution is within the law, it should be encouraged") but also Congressman Charles Rangel, the Manhattan Democrat who, as head of the House Select Committee on Narcotics Abuse, spent much of the '80s baiting Reagan for being soft on drugs. "I haven't seen a national drug policy since Nixon was in office," Rangel lamented at one point. "So far, the Administration hasn't given it any priority." This is as clear a case of an ostensible liberal cheering on the forces of right-wing reaction as one could hope to find. US prisons are not bulging with rapists and wife beaters, but they are filled with drug offenders, some 458,000 as of 2000, which makes the brief space that Gottschalk allots to the drug war somewhat hard to fathom. It's like discussing Al Capone without mentioning Prohibition.

Sasha Abramsky is less interested in the ideological currents that helped pave the way for mass incarceration, although in *American Furies* he does spotlight the fascinating role played by a Berkeley-educated sociologist named Robert Martinson, who, after several years investigating the cornucopia of rehabilitation programs offered at the time by the New York State prison system, summed up his findings in a sensational 1974 article titled "What Works?" His answer: nothing. Martinson's frustration is understandable to anyone who has ever suffered through an encounter group. Yet his conclusions, published in the neoconservative journal *Public Interest*, were grossly one-sided: While many programs do not work, some clearly have a positive effect.

In short order, Martinson's article became the bible of the vengeance-and-punishment set, which seized on it as proof that rehabilitation was a lost cause and that the only purpose of prison was to penalize wrongdoers. Once this ideological impediment was removed, the criminal-justice system slid downhill with remarkable speed. If punishment was good, then more punishment was better. In short order, Massachusetts Governor William Weld was declaring that life in prison should be "akin to a walk through hell," while right-wing Senator Phil Gramm was promising "to string barbed wire on every military base in America" to contain all the criminals he wanted to round up. In Maricopa County, Arizona, which includes Phoenix, a colorful local character named Joe Arpaio got himself re-elected sheriff time and again by parading his inmates about on chain gangs, dressing the men among them in fluorescent pink underwear and serving prisoners food that, as he cheerfully admits, costs less than what he gives to his cats and dogs. "Voters like it everywhere," Abramsky quotes Arpaio as saying of such policies. "I'm on thousands of talk shows. I never get a negative. I get letters from all over the world--and I answer every one. They say, 'Come up here and be our sheriff.'" What makes this all the more repellent is that the people subjected to such humiliation and abuse are rarely killers or rapists but alcoholics, vagrants and other small fry doing time for such misdemeanors as possession and shoplifting.

Amazing how much damage a single article can do, eh? Yet when a conscience-stricken Martinson published a *mea culpa* in the *Hofstra Law Review* five years later ("contrary to my previous position, some treatment programs *do* have an appreciable effect on recidivism"), the media yawned. No big shots interviewed him on TV, and no politicians called to solicit his views. No one wanted to hear that rehabilitation programs work, only that they don't. Beset by personal troubles, professional setbacks and perhaps the realization of how grievously he had allowed himself to be misused, Martinson committed suicide by throwing himself out of a ninth-floor Manhattan apartment in 1980. *American Furies* provides us with a vivid account of the horrors that have followed--the low-level pot dealers and shoplifters sentenced to life in prison in California, Oklahoma, Alabama and other states where various "three strikes" or other habitual-offender laws pertain; the supermax prisoners condemned to spend twenty-three hours a day in barren concrete cells the size of walk-in closets; the epidemics of suicide and self-mutilation; and the stubbornly high levels of violence between and among prisoners and guards--which law-and-order advocates seize upon as reason to build yet more supermax facilities. US prison policy is like a computer program that is designed to spit out the same answers no matter what data are fed into it: Arrest more people, put more of them in prison, build more cells to accommodate them.

Where will it end? As Martinson's story shows, American mass incarceration is not what social scientists call "evidence based." It is not a policy designed to achieve certain practical, utilitarian ends that can then be weighed and evaluated from time to time to determine if it is performing as intended. Rather, it is a moral policy whose purpose is to satisfy certain passions that have grown more and more brutal over the years. The important thing about moralism of this sort is that it is its own justification. For true believers, it is something that everyone should endorse regardless of the consequences. As right-wing political scientist James Q. Wilson once remarked, "Drug use is wrong because it is immoral," a comment that not only sums up the tautological nature of US drug policies but also shows

how they are structured to render irrelevant questions about wasted dollars and blighted lives. Moralism of this sort is neither rational nor democratic, and the fact that it has triumphed so completely is an indication of how deeply the United States has sunk into authoritarianism since the 1980s. With the prison population continuing to rise at a 2.7 percent annual clip, there is no reason to think there will be a turnaround soon. Indeed, Gottschalk writes that mass incarceration is so taken for granted nowadays that "it seems almost unimaginable that the country will veer off in a new direction and begin to empty and board up its prisons." Still, she ends on a quasi-optimistic note by quoting Norwegian sociologist Thomas Mathiesen to the effect that "major repressive systems have succeeded in looking extremely stable almost until the day they have collapsed." Indeed, repression is itself often a sign of instability bubbling up from below. This is not much to pin one's hopes on, but it will have to do.