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The New Jim Crow

Mass Incarceration in the Age of Colorblindness

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WITH A NEW FOREWORD BY CORNEL WEST

never used), but the document was built upon a compromise regarding the prevailing racial caste system. Federalism—the division of power between the states and the federal government—was the device employed to protect the institution of slavery and the political power of slaveholding states. Even the method for determining proportional representation in Congress and identifying the winner of a presidential election (the electoral college) were specifically developed with the interest of slaveholders in mind. Under the terms of our country's founding document, slaves were defined as three-fifths of a man, not a real, whole human being. Upon this racist fiction rests the entire structure of American democracy.

The Death of Slavery

The history of racial caste in the United States would end with the Civil War if the idea of race and racial difference had died when the institution of slavery was put to rest. But during the four centuries in which slavery flourished, the idea of race flourished as well. Indeed, the notion of racial difference—specifically the notion of white supremacy—proved far more durable than the institution that gave birth to it.

White supremacy, over time, became a religion of sorts. Faith in the idea that people of the African race were bestial, that whites were inherently superior, and that slavery was, in fact, for blacks' own good, served to alleviate the white conscience and reconcile the tension between slavery and the democratic ideals espoused by whites in the so-called New World. There was no contradiction in the bold claim made by Thomas Jefferson in the Declaration of Independence that "all men are created equal" if Africans were not really people. Racism operated as a deeply held belief system based on "truths" beyond question or doubt. This deep faith in white supremacy not only justified an economic and political system in which plantation owners acquired land and great wealth through the brutality, torture, and coercion of other human beings; it also endured, like most articles of faith, long after the historical circumstances that gave rise to the religion passed away. In Wacquant's words: "Racial division was a consequence, not a precondition of slavery, but once it was instituted it became detached from its initial function and acquired a social potency all its own."¹⁰ After the death of slavery, the idea of race lived on.

One of the most compelling accounts of the postemancipation period is *The Strange Career of Jim Crow*, written by C. Vann Woodward in 1955.¹¹ The book continues to be the focal point of study and debate by scholars and was once described by Martin Luther King Jr. as the "historical bible of the Civil Rights Movement." As Woodward tells the story, the end of slavery created an extraordinary dilemma for Southern white society. Without the labor of former slaves, the region's economy would surely collapse, and without the institution of slavery, there was no longer a formal mechanism for maintaining racial hierarchy and preventing "amalgamation" with a group of people considered intrinsically inferior and vile. This state of affairs produced a temporary anarchy and a state of mind bordering on hysteria, particularly among the planter elite. But even among poor whites, the collapse of slavery was a bitter pill. In the antebellum South, the lowliest white person at least possessed his or her white skin—a badge of superiority over even the most skilled slave or prosperous free African American.

While Southern whites—poor and rich alike—were utterly outraged by emancipation, there was no obvious solution to the dilemma they faced. Following the Civil War, the economic and political infrastructure of the South was in shambles. Plantation owners were suddenly destitute, and state governments, shackled by war debt, were penniless. Large amounts of real estate and other property had been destroyed in the war, industry was disorganized, and hundreds of thousands of men had been killed or maimed. With all of this went the demoralizing effect of an unsuccessful war and the extraordinary challenges associated with rebuilding new state and local governments. Add to all this the sudden presence of 4 million newly freed slaves, and the picture becomes even more complicated. Southern whites, Woodward explains, strongly believed that a new system of racial control was clearly required, but it was not immediately obvious what form it should take.

Under slavery, the racial order was most effectively maintained by a large degree of contact between slave owners and slaves, thus maximizing opportunities for supervision and discipline, and minimizing the potential for active resistance or rebellion. Strict separation of the races would have threatened slaveholders' immediate interests and was, in any event, wholly unnecessary as a means of creating social distance or establishing the inferior status of slaves.

Following the Civil War, it was unclear what institutions, laws, or customs would be necessary to maintain white control now that slavery was gone.

Nonetheless, as numerous historians have shown, the development of a new racial order became the consuming passion for most white Southerners. Rumors of a great insurrection terrified whites, and blacks increasingly came to be viewed as menacing and dangerous. In fact, the current stereotypes of black men as aggressive, unruly predators can be traced to this period, when whites feared that an angry mass of black men might rise up and attack them or rape their women.

Equally worrisome was the state of the economy. Former slaves literally walked away from their plantations, causing panic and outrage among plantation owners. Large numbers of former slaves roamed the highways in the early years after the war. Some converged on towns and cities; others joined the federal militia. Most white people believed African Americans lacked the proper motivation to work, prompting the provisional Southern legislatures to adopt the notorious black codes. As expressed by one Alabama planter: "We have the power to pass stringent police laws to govern the Negroes—this is a blessing—for they must be controlled in some way or white people cannot live among them."¹² While some of these codes were intended to establish systems of peonage resembling slavery, others foreshadowed Jim Crow laws by prohibiting, among other things, interracial seating in the first-class sections of railroad cars and by segregating schools.

Although the convict laws enacted during this period are rarely seen as part of the black codes, that is a mistake. As explained by historian William Cohen, "the main purpose of the codes was to control the freedmen, and the question of how to handle convicted black law breakers was very much at the center of the control issue."¹³ Nine Southern states adopted vagrancy laws—which essentially made it a criminal offense not to work and were applied selectively to blacks—and eight of those states enacted convict laws allowing for the hiring-out of county prisoners to plantation owners and private companies. Prisoners were forced to work for little or no pay. One vagrancy act specifically provided that "all free negroes and mulattoes over the age of eighteen" must have written proof of a job at the beginning of every year. Those found with no lawful employment were deemed vagrants and convicted. Clearly, the purpose of the black codes in general and the vagrancy laws in particular was to establish another system of forced labor. In W.E.B. Du Bois's words: "The Codes spoke for themselves. . . . No open-minded student can read them without being convinced they meant nothing more nor less than slavery in daily toil."¹⁴

Ultimately, the black codes were overturned, and a slew of federal civil rights legislation protecting the newly freed slaves was passed during the relatively brief but extraordinary period of black advancement known as the Reconstruction Era. The impressive legislative achievements of this period include the Thirteenth Amendment, abolishing slavery; the Civil Rights Act of 1866, bestowing full citizenship upon African Americans; the Fourteenth Amendment, prohibiting states from denying citizens due process and "equal protection of the laws"; the Fifteenth Amendment, providing that the right to vote should not be denied on account of race; and the Ku Klux Klan Acts, which, among other things, declared interference with voting a federal offense and the violent infringement of civil rights a crime. The new legislation also provided for federal supervision of voting and authorized the president to send the army and suspend the writ of habeas corpus in districts declared to be in a state of insurrection against the federal government.

In addition to federal civil rights legislation, the Reconstruction Era brought the expansion of the Freedmen's Bureau, the agency charged with the responsibility of providing food, clothing, fuel, and other forms of assistance to destitute former slaves. A public education system emerged in the South, which afforded many blacks (and poor whites) their first opportunity to learn to read and write.

While the Reconstruction Era was fraught with corruption and arguably doomed by the lack of land reform, the sweeping economic and political developments in that period did appear, at least for a time, to have the potential to seriously undermine, if not completely eradicate, the racial caste system in the South. With the protection of federal troops, African Americans began to vote in large numbers and seize control, in some areas, of the local political apparatus. Literacy rates climbed, and educated blacks began to populate legislatures, open schools, and initiate successful businesses. In 1867, at the dawn of the Reconstruction Era, no black man held political office in the South, yet three years later, at least 15 percent of all Southern elected officials were black. This is particularly extraordinary in light of the fact that fifteen years after the passage of the Voting Rights Act of 1965—the high water mark of the Civil Rights Movement—fewer than 8 percent of all Southern elected officials were black.¹⁵

At the same time, however, many of the new civil rights laws were proving largely symbolic.¹⁶ Notably absent from the Fifteenth Amendment, for example, was language prohibiting the states from imposing educational,

residential, or other qualifications for voting, thus leaving the door open to the states to impose poll taxes, literacy tests, and other devices to prevent blacks from voting. Other laws revealed themselves as more an assertion of principle than direct federal intervention into Southern affairs, because enforcement required African Americans to take their cases to federal courts, a costly and time-consuming procedure that was a practical impossibility for the vast majority of those who had claims. Most blacks were too poor to sue to enforce their civil rights, and no organization like the NAACP yet existed to spread the risks and costs of litigation. Moreover, the threat of violence often deterred blacks from pressing legitimate claims, making the "civil rights" of former slaves largely illusory—existing on paper but rarely to be found in real life.

Meanwhile, the separation of the races had begun to emerge as a comprehensive pattern throughout the South, driven in large part by the rhetoric of the planter elite, who hoped to reestablish a system of control that would ensure a low-paid, submissive labor force. Racial segregation had actually begun years earlier in the North, as an effort to prevent race-mixing and preserve racial hierarchy following the abolition of Northern slavery. It had never developed, however, into a comprehensive system—operating instead largely as a matter of custom, enforced with varying degrees of consistency. Even among those most hostile to Reconstruction, few would have predicted that racial segregation would soon evolve into a new racial caste system as stunningly comprehensive and repressive as the one that came to be known simply as Jim Crow.

The Birth of Jim Crow

The backlash against the gains of African Americans in the Reconstruction Era was swift and severe. As African Americans obtained political power and began the long march toward greater social and economic equality, whites reacted with panic and outrage. Southern conservatives vowed to reverse Reconstruction and sought the "abolition of the Freedmen's Bureau and all political instrumentalities designed to secure Negro supremacy."¹⁷ Their campaign to "redeem" the South was reinforced by a resurgent Ku Klux Klan, which fought a terrorist campaign against Reconstruction governments and local leaders, complete with bombings, lynchings, and mob violence.

The terrorist campaign proved highly successful. "Redemption" resulted in the withdrawal of federal troops from the South and the effective abandonment of African Americans and all those who had fought for or supported an egalitarian racial order. The federal government no longer made any effort to enforce federal civil rights legislation, and funding for the Freedmen's Bureau was slashed to such a degree that the agency became virtually defunct.

Once again, vagrancy laws and other laws defining activities such as "mischief" and "insulting gestures" as crimes were enforced vigorously against blacks. The aggressive enforcement of these criminal offenses opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder. Douglas Blackmon, in *Slavery by Another Name*, describes how tens of thousands of African Americans were arbitrarily arrested during this period, many of them hit with court costs and fines, which had to be worked off in order to secure their release.¹⁸ With no means to pay off their "debts," prisoners were sold as forced laborers to lumber camps, brickyards, railroads, farms, plantations, and dozens of corporations throughout the South. Death rates were shockingly high, for the private contractors had no interest in the health and well-being of their laborers, unlike the earlier slave-owners who needed their slaves, at a minimum, to be healthy enough to survive hard labor. Laborers were subject to almost continual lashing by long horse whips, and those who collapsed due to injuries or exhaustion were often left to die.

Convicts had no meaningful legal rights at this time and no effective redress. They were understood, quite literally, to be slaves of the state. The Thirteenth Amendment to the U.S. Constitution had abolished slavery but allowed one major exception: slavery remained appropriate as punishment for a crime. In a landmark decision by the Virginia Supreme Court, *Ruffin v. Commonwealth*, issued at the height of Southern Redemption, the court put to rest any notion that convicts were legally distinguishable from slaves:

For a time, during his service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is *civilter mortuus*; and his estate, if he has any, is administered like that of a dead man.¹⁹

The state of Mississippi eventually moved from hiring convict labor to organizing its own convict labor camp, known as Parchman Farm. It was not alone. During the decade following Redemption, the convict population grew ten times faster than the general population: "Prisoners became younger and blacker, and the length of their sentences soared."²⁰ It was the nation's first prison boom and, as they are today, the prisoners were disproportionately black. After a brief period of progress during Reconstruction, African Americans found themselves, once again, virtually defenseless. The criminal justice system was strategically employed to force African Americans back into a system of extreme repression and control, a tactic that would continue to prove successful for generations to come. Even as convict leasing faded away, strategic forms of exploitation and repression emerged anew. As Blackmon notes: "The apparent demise . . . of leasing prisoners seemed a harbinger of a new day. But the harsher reality of the South was that the new post-Civil War neoslavery was evolving—not disappearing."²¹

Redemption marked a turning point in the quest by dominant whites for a new racial equilibrium, a racial order that would protect their economic, political, and social interests in a world without slavery. Yet a clear consensus among whites about what the new racial order should be was still lacking. The Redeemers who overthrew Reconstruction were inclined to retain such segregation practices as had already emerged, but they displayed no apparent disposition to expand or universalize the system.

Three alternative philosophies of race relations were put forward to compete for the region's support, all of which rejected the doctrines of extreme racism espoused by some Redeemers: liberalism, conservatism, and radicalism.²² The liberal philosophy of race relations emphasized the stigma of segregation and the hypocrisy of a government that celebrates freedom and equality yet denies both on account of race. This philosophy, born in the North, never gained much traction among Southern whites or blacks.

The conservative philosophy, by contrast, attracted wide support and was implemented in various contexts over a considerable period of time. Conservatives blamed liberals for pushing blacks ahead of their proper station in life and placing blacks in positions they were unprepared to fill, a circumstance that had allegedly contributed to their downfall. They warned blacks that some Redeemers were not satisfied with having decimated Reconstruction, and were prepared to wage an aggressive war against blacks throughout

victories throughout the region. Alarmed by the success of the Populists and the apparent potency of the alliance between poor and working-class whites and African Americans, the conservatives raised the cry of white supremacy and resorted to the tactics they had employed in their quest for Redemption, including fraud, intimidation, bribery, and terror.

Segregation laws were proposed as part of a deliberate effort to drive a wedge between poor whites and African Americans. These discriminatory barriers were designed to encourage lower-class whites to retain a sense of superiority over blacks, making it far less likely that they would sustain interracial political alliances aimed at toppling the white elite. The laws were, in effect, another racial bribe. As William Julius Wilson has noted, "As long as poor whites directed their hatred and frustration against the black competitor, the planters were relieved of class hostility directed against them."²⁶ Indeed, in order to overcome the well-founded suspicions of poor and illiterate whites that they, as well as blacks, were in danger of losing the right to vote, the leaders of the movement pursued an aggressive campaign of white supremacy in every state prior to black disenfranchisement.

Ultimately, the Populists caved to the pressure and abandoned their former allies. "While the [Populist] movement was at the peak of zeal," Woodward observed, "the two races had surprised each other and astonished their opponents by the harmony they achieved and the good will with which they co-operated."²⁷ But when it became clear that the conservatives would stop at nothing to decimate their alliance, the biracial partnership dissolved, and Populist leaders re-aligned themselves with conservatives. Even Tom Watson, who had been among the most forceful advocates for an interracial alliance of farmers, concluded that Populist principles could never be fully embraced by the South until blacks were eliminated from politics.

The agricultural depression, taken together with a series of failed reforms and broken political promises, had pyramided to a climax of social tensions. Dominant whites concluded that it was in their political and economic interest to scapegoat blacks, and "permission to hate" came from sources that had formerly denied it, including Northern liberals eager to reconcile with the South, Southern conservatives who had once promised blacks protection from racial extremism, and Populists, who cast aside their dark-skinned allies when the partnership fell under siege.²⁸

History seemed to repeat itself. Just as the white elite had successfully driven a wedge between poor whites and blacks following Bacon's Rebellion

by creating the institution of black slavery, another racial caste system was emerging nearly two centuries later, in part due to efforts by white elites to decimate a multiracial alliance of poor people. By the turn of the twentieth century, every state in the South had laws on the books that disenfranchised blacks and discriminated against them in virtually every sphere of life, lending sanction to a racial ostracism that extended to schools, churches, housing, jobs, restrooms, hotels, restaurants, hospitals, orphanages, prisons, funeral homes, morgues, and cemeteries. Politicians competed with each other by proposing and passing ever more stringent, oppressive, and downright ridiculous legislation (such as laws specifically prohibiting blacks and whites from playing chess together). The public symbols and constant reminders of black subjugation were supported by whites across the political spectrum, though the plight of poor whites remained largely unchanged. For them, the racial bribe was primarily psychological.

The new racial order, known as Jim Crow—a term apparently derived from a minstrel show character—was regarded as the “final settlement,” the “return to sanity,” and “the permanent system.”²⁹ Of course, the earlier system of racialized social control—slavery—had also been regarded as final, sane, and permanent by its supporters. Like the earlier system, Jim Crow seemed “natural,” and it became difficult to remember that alternative paths were not only available at one time, but nearly embraced.

The Death of Jim Crow

Scholars have long debated the beginning and end of Reconstruction, as well as exactly when Jim Crow ended and the Civil Rights Movement or “Second Reconstruction” began. Reconstruction is most typically described as stretching from 1863 when the North freed the slaves to 1877, when it abandoned them and withdrew federal troops from the South. There is much less certainty regarding the beginning of the end of Jim Crow.

The general public typically traces the death of Jim Crow to *Brown v. Board of Education*, although the institution was showing signs of weakness years before. By 1945, a growing number of whites in the North had concluded that the Jim Crow system would have to be modified, if not entirely overthrown. This consensus was due to a number of factors, including the increased political power of blacks due to migration to the North and the

growing membership and influence of the NAACP, particularly its highly successful legal campaign challenging Jim Crow laws in federal courts. Far more important in the view of many scholars, however, is the influence of World War II. The blatant contradiction between the country's opposition to the crimes of the Third Reich against European Jews and the continued existence of a racial caste system in the United States was proving embarrassing, severely damaging the nation's credibility as leader of the "free world." There was also increased concern that, without greater equality for African Americans, blacks would become susceptible to communist influence, given Russia's commitment to both racial and economic equality. In Gunnar Myrdal's highly influential book *An American Dilemma*, published in 1944, Myrdal made a passionate plea for integration based on the theory that the inherent contradiction between the "American Creed" of freedom and equality and the treatment of African Americans was not only immoral and profoundly unjust, but was also against the economic and foreign-policy interests of the United States.³⁰

The Supreme Court seemed to agree. In 1944, in *Smith v. Allwright*, the Supreme Court ended the use of the all-white primary election; and in 1946, the Court ruled that state laws requiring segregation on interstate buses were unconstitutional. Two years later, the Court voided any real estate agreements that racially discriminated against purchasers, and in 1949 the Court ruled that Texas's segregated law school for blacks was inherently unequal and inferior in every respect to its law school for whites. In 1950, in *McLaurin v. Oklahoma*, it declared that Oklahoma had to desegregate its law school. Thus, even before *Brown*, the Supreme Court had already begun to set in motion a striking pattern of desegregation.

Brown v. Board of Education was unique, however. It signaled the end of "home rule" in the South with respect to racial affairs. Earlier decisions had chipped away at the "separate but equal" doctrine, yet Jim Crow had managed to adapt to the changing legal environment, and most Southerners had remained confident that the institution would survive. *Brown* threatened not only to abolish segregation in public schools, but also, by implication, the entire system of legalized discrimination in the South. After more than fifty years of nearly complete deference to Southern states and noninterference in their racial affairs, *Brown* suggested a reversal in course.

A mood of outrage and defiance swept the South, not unlike the reaction to emancipation and Reconstruction following the Civil War. Again, racial

equality was being forced upon the South by the federal government, and by 1956 Southern white opposition to desegregation mushroomed into a vicious backlash. In Congress, North Carolina senator Sam Ervin Jr. drafted a racist polemic, "the Southern Manifesto," which vowed to fight to maintain Jim Crow by all legal means. Ervin succeeded in obtaining the support of 101 out of 128 members of Congress from the eleven original Confederate states.

A fresh wave of white terror was hurled at those who supported the dismantling of Jim Crow. White Citizens' Councils were formed in almost every Southern city and backwater town, comprised primarily of middle- to upper-middle-class whites in business and the clergy. Just as Southern legislatures had passed the black codes in response to the early steps of Reconstruction, in the years immediately following *Brown v. Board*, five Southern legislatures passed nearly fifty new Jim Crow laws. In the streets, resistance turned violent. The Ku Klux Klan reasserted itself as a powerful terrorist organization, committing castrations, killings, and the bombing of black homes and churches. NAACP leaders were beaten, pistol-whipped, and shot. As quickly as it began, desegregation across the South ground to a halt. In 1958, thirteen school systems were desegregated; in 1960, only seventeen.³¹

In the absence of a massive, grassroots movement directly challenging the racial caste system, Jim Crow might be alive and well today. Yet in the 1950s, a civil rights movement was brewing, emboldened by the Supreme Court's decisions and a shifting domestic and international political environment. With extraordinary bravery, civil rights leaders, activists, and progressive clergy launched boycotts, marches, and sit-ins protesting the Jim Crow system. They endured fire hoses, police dogs, bombings, and beatings by white mobs, as well as by the police. Once again, federal troops were sent to the South to provide protection for blacks attempting to exercise their civil rights, and the violent reaction of white racists was met with horror in the North.

The dramatic high point of the Civil Rights Movement occurred in 1963. The Southern struggle had grown from a modest group of black students demonstrating peacefully at one lunch counter to the largest mass movement for racial reform and civil rights in the twentieth century. Between autumn 1961 and the spring of 1963, twenty thousand men, women, and children had been arrested. In 1963 alone, another fifteen thousand were imprisoned, and one thousand desegregation protests occurred across the region, in more than one hundred cities.³²

On June 12, 1963, President Kennedy announced that he would deliver

to Congress a strong civil rights bill, a declaration that transformed him into a widely recognized ally of the Civil Rights Movement. Following Kennedy's assassination, President Johnson professed his commitment to the goal of "the full assimilation of more than twenty million Negroes into American life," and ensured the passage of comprehensive civil rights legislation. The Civil Rights Act of 1964 formally dismantled the Jim Crow system of discrimination in public accommodations, employment, voting, education, and federally financed activities. The Voting Rights Act of 1965 arguably had even greater scope, as it rendered illegal numerous discriminatory barriers to effective political participation by African Americans and mandated federal review of all new voting regulations so that it would be possible to determine whether their use would perpetuate voting discrimination.

Within five years, the effects of the civil rights revolution were undeniable. Between 1964 and 1969, the percentage of African American adults registered to vote in the South soared. In Alabama the rate leaped from 19.3 percent to 61.3 percent; in Georgia, 27.4 percent to 60.4 percent; in Louisiana, 31.6 percent to 60.8 percent; and in Mississippi, 6.7 percent to 66.5 percent.³³ Suddenly black children could shop in department stores, eat at restaurants, drink from water fountains, and go to amusement parks that were once off-limits. Miscegenation laws were declared unconstitutional, and the rate of interracial marriage climbed.

While dramatic progress was apparent in the political and social realms, civil rights activists became increasingly concerned that, without major economic reforms, the vast majority of blacks would remain locked in poverty. Thus at the peak of the Civil Rights Movement, activists and others began to turn their attention to economic problems, arguing that socioeconomic inequality interacted with racism to produce crippling poverty and related social problems. Economic issues emerged as a major focus of discontent. As political scientists Frances Fox Piven and Richard Cloward have described, "blacks became more indignant over their condition—not only as an oppressed racial minority in a white society but as poor people in an affluent one."³⁴ Activists organized boycotts, picket lines, and demonstrations to attack discrimination in access to jobs and the denial of economic opportunity.

Perhaps the most famous demonstration in support of economic justice is the March on Washington for Jobs and Economic Freedom in August 1963. The wave of activism associated with economic justice helped to focus President Kennedy's attention on poverty and black unemployment. In the

summer of 1963, he initiated a series of staff studies on those subjects. By the end of the summer, he declared his intention to make the eradication of poverty a key legislative objective in 1964.³⁵ Following Kennedy's assassination, President Lyndon Johnson embraced the antipoverty rhetoric with great passion, calling for an "unconditional war on poverty," in his State of the Union Address in January 1964. Weeks later he proposed to Congress the Economic Opportunities Bill of 1964.

The shift in focus served to align the goals of the Civil Rights Movement with key political goals of poor and working-class whites, who were also demanding economic reforms. As the Civil Rights Movement began to evolve into a "Poor People's Movement," it promised to address not only black poverty, but white poverty as well—thus raising the specter of a poor and working-class movement that cut across racial lines. Martin Luther King Jr. and other civil rights leaders made it clear that they viewed the eradication of economic inequality as the next front in the "human rights movement" and made great efforts to build multiracial coalitions that sought economic justice for all. Genuine equality for black people, King reasoned, demanded a radical restructuring of society, one that would address the needs of the black and white poor throughout the country. Shortly before his assassination, he envisioned bringing to Washington, D.C., thousands of the nation's disadvantaged in an interracial alliance that embraced rural and ghetto blacks, Appalachian whites, Mexican Americans, Puerto Ricans, and Native Americans to demand jobs and income—the right to live. In a speech delivered in 1968, King acknowledged there had been some progress for blacks since the passage of the Civil Rights Act of 1964, but insisted that the current challenges required even greater resolve and that the entire nation must be transformed for economic justice to be more than a dream for poor people of all colors. As historian Gerald McKnight observes, "King was proposing nothing less than a radical transformation of the Civil Rights Movement into a populist crusade calling for redistribution of economic and political power. America's only civil rights leader was now focusing on class issues and was planning to descend on Washington with an army of poor to shake the foundations of the power structure and force the government to respond to the needs of the ignored underclass."³⁶

With the success of the Civil Rights Movement and the launching of the Poor People's Movement, it was apparent to all that a major disruption in the nation's racial equilibrium had occurred. Yet as we shall see below, Negroes

stood only a "brief moment in the sun." Conservative whites began, once again, to search for a new racial order that would conform to the needs and constraints of the time. This process took place with the understanding that whatever the new order would be, it would have to be formally race-neutral—it could not involve explicit or clearly intentional race discrimination. A similar phenomenon had followed slavery and Reconstruction, as white elites struggled to define a new racial order with the understanding that whatever the new order would be, it could not include slavery. Jim Crow eventually replaced slavery, but now it too had died, and it was unclear what might take its place. Barred by law from invoking race explicitly, those committed to racial hierarchy were forced to search for new means of achieving their goals according to the new rules of American democracy.

History reveals that the seeds of the new system of control were planted well before the end of the Civil Rights Movement. A new race-neutral language was developed for appealing to old racist sentiments, a language accompanied by a political movement that succeeded in putting the vast majority of blacks back in their place. Proponents of racial hierarchy found they could install a new racial caste system without violating the law or the new limits of acceptable political discourse, by demanding "law and order" rather than "segregation forever."

The Birth of Mass Incarceration

The rhetoric of "law and order" was first mobilized in the late 1950s as Southern governors and law enforcement officials attempted to generate and mobilize white opposition to the Civil Rights Movement. In the years following *Brown v. Board of Education*, civil rights activists used direct-action tactics in an effort to force reluctant Southern states to desegregate public facilities. Southern governors and law enforcement officials often characterized these tactics as criminal and argued that the rise of the Civil Rights Movement was indicative of a breakdown of law and order. Support of civil rights legislation was derided by Southern conservatives as merely "rewarding lawbreakers."

For more than a decade—from the mid-1950s until the late 1960s—conservatives systematically and strategically linked opposition to civil