

BEYOND THE TRIANGLE OF EMANCIPATION:
TUPAC'S HIP HOP THEORY OF CRIMINAL
(IN)JUSTICE, THE POPE'S PLAYLIST, AND THE
PROPHETIC IMAGINATION

*For Tupac Shakur, 1971-1996,
my brother, Matthew Benjamin Ehrlich, 1974-1999,
Trayvon Martin, 1995-2012, Afeni Shakur-Davis and
Maria Reyes and the Freedom Writers*

“All my songs deal with the pain I’ve felt from my childhood.”
2Pac/Tupac Amaru Shakur, Tupac, *Resurrection*

“Hip hop is blues filtered through a century of experience and a
thousand miles of asphalt.”
William Jelani Cobb, *To the Break of Dawn:
A Freestyle on the Hip Hop Aesthetic*

“The need to let suffering speak is the condition of all truth.”
Theodor Adorno, *Negative Dialectics*

“Only for the sake of the hopeless ones have we been given hope.”
Walter Benjamin, *Selected Writings: Volume I*

“We must first of all rid ourselves of the illusion that penalty is
above all (if not exclusively) a means of reducing crime.... We must
analyze rather the ‘concrete systems of punishment’...in which the
punishment of crime is not the sole element...but...linked to a
whole series of positive and useful effects which it is their task to
support.”

Michel Foucault, *Discipline and Punish: The Birth of the Prison*

“The police force is arguably the most powerful organization in
society because officers of all ranks are imbued with the power to
infringe upon the civil liberties of society’s citizens. Therefore, the

racist misconduct or power abuse of white officers entangles their victims in the criminal justice system. Corrupt police conduct has...far-reaching, long term and life altering detrimental effects... because police...have immense social and institutional power.”

Derrick Bell, “The Strange Career of Randall Kennedy”

“Yet a word on the origin and purpose of punishment — two problems that are separate, or ought to be separate: unfortunately, they are usually confounded. How have previous genealogists of morals set about solving these problems? Naively, as has always been their way: they seek out some “purpose” in punishment, for example, revenge or deterrence, then guilelessly place this purpose at the beginning as *causa fiendi* of punishment, and — have done. The “purpose” of the law,” however, is absolutely the last thing to employ in the history of the origin of the law...the cause of the origin of a thing and its eventual utility, its actual employment and places in a system of purposes, lie worlds apart; whatever exists, having somehow come into being, is again and again reinterpreted to new ends, taken over, transformed...Thus one also imagined that punishment was devised for punishing. But purposes and utilities are only signs that a will to power has become master of something less powerful and imposed upon it the character of a function....If we consider those millennia before the history of man, we may unhesitatingly assert that it was precisely through punishment that the development of the feeling of guilt was most powerfully hindered — at least in the victims upon whom the punitive force was vented. For we must not underrate the extent to which the sight of the judicial and executive procedures prevents the criminal from considering his deed, the type of his action as such, reprehensible: for he sees exactly the same kind of actions practiced in the service of justice and approved of and practiced with good conscience: spying, deception, bribery, setting traps, the whole cunning and underhand art of police and prosecution, plus robbery, violence, defamation, imprisonment, torture, murder, practiced as a matter of principle and without even emotion to excuse them.”

Freidrich Nietzsche, *On the Genealogy of Morals*

INTRODUCTION

Some years ago, I was listening to a radio documentary on Tupac Shakur about how his mother, Afeni Shakur, formerly a Black Panther, had succumbed to the crack cocaine addiction that came to plague the Black community before she turned her life around and got clean (Guy 2004). Despite my close identification with Tupac — he was born in Harlem and I in Spanish Harlem — I had forgotten this important detail. When I was reminded, totally unexpectedly and spontaneously, I burst into tears. My own parents had been long time heroin addicts and alcoholics, and my growing up, including being abandoned by them at 18 months, was complicated and difficult. Whenever I feel down, Tupac’s music uplifts me over and over, as I listen to songs like “Better Days,” “Keep Ya Head Up,” or “Unconditional Love.” Tupac, like my own kid brother, Matthew Benjamin Ehrlich, died too young, at 25 years old, both after leading lives that momentarily sparked and uplifted those in their presence during their good times. This coincidence has always made me feel an affinity with Tupac, especially since, as Michael Eric Dyson has argued, Tupac poignantly expressed both the hope and hopelessness of his generation (Dyson 2006).

The quotes that open up this article show the uncanny resonance of two of the leading figures of the Jewish and African diasporas respectively, Theodor Adorno, one of the critical theorists of the Frankfurt School, and hip hop’s Tupac Shakur. Not surprisingly, given the unique experiences of Jews and Blacks historically and in the modern world-system in particular, both Adorno and Tupac proclaimed in their own ways the “ethical message” “that the need to let suffering speak is

the condition of all truth.”¹ In a landmark article published in a special edition of *Race and Class* commemorating the 150th anniversary of the abolition of slavery in the English-speaking Caribbean, Jan Pieterse posited the possibility of a “triangle of emancipation” that might serve to “redress the historical balance of the triangular trade,” going onto acknowledge that the reality is at once “much less and much more than this. Much less because many in the African diaspora exist as a vast underclass....Much more because the people of Africa have joined a stream that is far wider than the waters of the Middle Passage, and have carried it further” (Pieterse 1988).

December 2009 revealed dramatic evidence of this overflowing of the Black freedom struggle into the wider global stream. As the New Year approached, hip hop’s arguably greatest-ever artist was featured on the Vatican’s MySpace Page (2012) as part of the Pope’s playlist, which by March of 2012 had over 5 million plays. The hip hop artist was none other than Tupac Shakur, a product of the “long black 1960s.” Tupac, who talked about how he wanted to be “an angel for God,” and “be of some help,” skyrocketed to super stardom with records sales today reportedly in excess of 100 million and listened to by youth around the world. And as his recent April 2012 hologram appearance with Snoop Dog at the Coachella Music Festival indicated, Tupac still has, as Michael Eric Dyson once pointed out, the culture in a headlock (Dyson 2006: 15).

Tupac’s songs such as “Ghetto Gospel” reflected his religious inspiration and astonishing prophetic imagination, most especially in relationship to his and hip hop’s larger critique of the criminal (in)justice system and related politics of punishment, with its dogma and practice of harsh retribution,

assumptions of deterrence, and embrace of so-called zero tolerance order maintenance policing. This policing strategy argues that there should be zero tolerance for even the pettiest of crimes, and that unless police stop and arrest people even for misdemeanors, that crime will spiral upwards. These ideologies and practices, despite voluminous evidence countering their assumptions and empirical validity, are at the heart of racially biased policing and hyperincarceration, disproportionately affecting young Black and Brown males (Harcourt 2001).²

Friedrich Nietzsche, as quoted in the introductory part of this article, wrote about the system of punishment in 1887 noting little relationship between the ostensible purposes of punishment and its actual real world functions, effects and long-term consequences. In addition, mistreatment and harsh punishment by the police and in the rest of the criminal (in) justice system, by undermining people's basic sense of fairness in treatment, delegitimize the law and law enforcement; among no group is this arguably more true than in the eyes of young men of color who are the primary victims of these practices, which arguably lead to greater law breaking. For as a host of studies have shown, obedience to the law is more a function of its perceived legitimacy than deterrence (Meares 2011; Tyler 2006, 2011; Meares, Kahan, and Katyal 2004; Rios 2011; Bobo and Thompson 2006). Thus, procedural and substantive fairness in the justice system is not only morally right, it is also arguably essential to reducing the crime, notably violent crimes, and especially lethal criminal violence, including against women, that as notable scholars have argued, is the real problem in US society, rather than crime as such (Zimring and Hawkins 1997).

George Kateb points out, in a passage that stands out all the more in the context of the recent exoneration of those US soldiers responsible for the 2005 Haditha, Iraq massacre of some two dozen civilians, including women and children, not to mention the invasion and occupation of that country, the Abu Ghraib torture scandal, and the simultaneous prosecution of Bradley Manning for exposing such war crimes today:

much of American politics...is often criminally violent and coercive (in its imperialist foreign policy and its violation of human rights abroad, including the rights pertaining to the criminal law); criminally negligent in its failure to deal in earnest with the suffering and diminishment caused by poverty and discrimination at home; and criminally corrupt in encouraging the use of various kinds of hidden but subtle bribery in campaigns and everyday policy-making. Rarely are any of these criminal undertakings subject to criminal punishment....The whole political system runs on crimes and near-crimes, on force and fraud abroad and by fraud at home, yet it wants to administer severe punishments as if it were cut off from ordinary criminals as one species is cut off from another....Next, I would point to the regularity of criminality and near criminality that infects the economic system (Kateb 2007: 282).

This article explores the significance of Tupac's prophetic imagination and his hip hop theory of criminal (in)justice in light of his making the Pope's playlist and the related challenges of the 21st century. As Michael Eric Dyson and the film *Tupac, Resurrection* reveal, Tupac was a complex and contradictory figure, at times tragically caught up in and sometimes glorifying the very ghetto violence, scapegoating, and misogyny that he also poignantly critiqued. Here, though, Tupac's

voice is highlighted, viewed from the vantage point of redemption. Much of Tupac's critique, and that of hip hop more generally, has overlap with the 2000 statement of the US Conference of Catholic Bishops, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice*, and related critiques of contemporary practices of punishment in the US (Logan 2008). The analysis put forward here is also informed by my personal experience as a survivor of domestic violence, torture, and abuse as a child, and as a former runaway and hopeless youth on the streets who became, for a time, caught up in the criminal (in)justice system. From the age of two or three I was labeled by a host of institutional actors, as a juvenile delinquent, and reading the literature in the field is like reading my own biography (Laub and Sampson 1991, 2003; Sampson and Laub 1993; Wikstrom and Sampson 2003; Keenan and Shaw 2003; Feld and Bishop 2012). I once attended a school for hardcore truants, replete with mandatory informal probation, and largely skipped junior high school, from which I was once expelled, attending only one year of high school. My involvement with the movement in its various incarnations, and school, literally saved my life, in tragic contrast to my classmates, many of whom I assume ended up in the prisons from which they were coming and going as juveniles, or worse, ended up dead.³ The questions explored herein are considered in the context of moving beyond the triangle of emancipation, as the prophetic imagination of the Black freedom struggle, from Harriet Tubman to Touissant Louverture, Ella Baker, Reverend King, Malcolm X, and Tupac, Michael Eric Dyson, Tupac's biographer, finds an increasingly resonant chord across the time and space of the global system, with hip hop now arguably the dominant form of youth culture.

“OUT OF THE FRYING PAN AND INTO ANOTHER FORM OF SLAVERY”

Orlando Patterson began his book *Slavery and Social Death: A Comparative Study* by noting that “All human relationships are structured and defined by the relative power of the interacting persons,” going on to point out that slavery is at the extreme end of such relations of power and inequality. Patterson then offers his definition of slavery, which for Blacks started with their capture and transport during the middle passage in the hulls of slave ships as “*the permanent, violent domination of natively alienated and generally dishonored persons*” (Patterson 1982: 1, 13). Here the experience of the triangular trade and the later making of the triangle of emancipation and beyond were both crucial in the world-historical creation of the modern world-system and in the remaking of this global system on new and enlarged social foundations. This remaking stems from the original rebellion of slaves, to the Haitian Revolution, to the first and second Black Reconstructions in the late 19th and 20th centuries in the US respectively, and to their subsequent defeats, as the consolidation of Jim Crow, the riots of the 1960s, the 1992 LA riots, Hurricane Katrina and the subsequent Gulf oil spill so dramatically revealed (James 1963).

Here is where Tupac Shakur's unique contributions come through — much of which are captured in his own words in the posthumous film about his life, *Tupac, Resurrection* and Michael Eric Dyson's biography of him. In Tupac's song “Ghetto Gospel,” he sings “Out of the frying pan and into another form of slavery,” indicating as Wacquant has shown, the extent to which the contemporary ghetto has become more

and more like a prison, while prisons, with their demographic transformation from primarily majority White to now largely Black and Brown, have come more and more to resemble the ghetto (Wacquant 2002). With this structural fusion of the Black ghetto and prison today, living in a prison cell or ghetto hell are arguably similar to the features Orlando Patterson highlighted as the key characteristic of chattel slavery, with similar aspects of confinement, degradation, dishonor, control over bodies and their freedom of movement, and ultimately a new form of social death (Foucault 1979).

Especially significant in these developments has been the role of the Thirteenth, Fourteenth and Fifteenth Amendments to the US Constitution passed during the period of Black Reconstruction. These Amendments helped make Black slave emancipation, at least for a time, a reality, providing for the abolition of Black slavery, citizenship rights, including the right to vote for Black men, and equal protection. Yet there were major loopholes and vulnerabilities in these newly enacted Constitutional rights, in both coverage and implementation, especially with the defeat of Black Reconstruction in 1876/1877 (DuBois 1969). Of particular significance, here, was the Thirteenth Amendment's carving out a major exception to protection against reenslavement, stating: "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" (emphasis added). Ramona Brokett discusses present day realities:

Constitutional interpretation, policing strategies, and get-tough-on-crime initiatives have resulted in the reenslave-

ment of the African American through the punitive measures of social control that are legally condoned by the Thirteenth Amendment...African Americans are trapped by a Constitution that allows their existence to be plagued by the constant threat of punishment, incarceration, and subsequent reenslavement (Brockett 2001: 121).

Increasingly, this awareness of the tragic trajectory of African Americans, from slavery, to freedom, to prison has become an increasingly resonant cultural theme among African American artists, activists and intellectuals today, affecting not just hip hop but also contemporary jazz, as in the work of Wynton Marsalis, with his album and song of the same name, *From the Plantation to the Penitentiary* (Marsalis 2007).

The late 19th century passage of the Fourteenth and Fifteenth Amendments guaranteed citizenship rights for African Americans and ostensibly provided protection against their abridgement for any reason. Yet today, criminal convictions, a burgeoning prison population, and related policies of felony disenfranchisement currently affecting over five million persons, not to mention other formal and informal negations of rights that accompany the mark of a criminal conviction, have effectively undone many of these constitutionally guaranteed rights, not to mention prospects for employment. This holds true for a growing number of Black and Brown males, and increasingly for females. For example, many US localities count prison inmates as part of the general population for purposes of voting, and this, combined with felony disenfranchisement gives many Republican districts and states extra weight in the political system, similar to when slaves were counted as two-thirds of a person for purposes of voting. During the days of

slavery this constitutional arrangement gave slave masters extra power in the political system, as did Jim Crow long after, especially by shoring up the power of the South in Congress, where seniority on Congressional committees played a critical role in shaping legislative power and public policy (Pager 2007).

Tupac's redemptive theology expressed in songs such as "Ghetto Gospel," with its roots in the biblical story of the exodus of slaves from bondage, African Americans own passage through slavery and search for the promised land, and the Black church — which Aldon Morris referred to as an "agency-laden institution" — was what arguably and fittingly led to the placement of his song "Changes" on the Pope's playlist (Morris 2000). Yet, in other ways, Tupac's contributions, though unique, formed a critical part of the larger constellation of the collective black radical imagination. Here is a theological critique from the standpoint of redemption, with resonance in the prophetic witness and activism of people like Ella Baker, Martin Luther King, Jr., Malcolm X, Sweet Honey and the Rock, and the Black freedom struggle as a whole. The trends discussed here are what Mike Davis has called "The War Against the Cities," most starkly revealed in Hurricane Katrina hitting New Orleans in 2005, in arguably the most prophesized disaster in the history of the world, to which we now turn (Davis 2002).

"THE DROWNED & THE SAVED": US MILITARISM, ENVIRONMENTAL RACISM AND HURRICANE KATRINA⁴

Though in the prophetic imagination we often think of rain as part of nature's renewal, a washing away or a cleansing, Hurricane Katrina dramatically revealed to the world what Eric

Foner referred to as America's "unfinished revolution" of Reconstruction. Hurricane Katrina, which brought winds so powerful that some associated them with the apocalyptic wrath of God, generated an explosive energy. The rains touched down in a US that for decades has been spending ever increasing resources on debt-financed wars abroad — not to mention the "war on drugs" and "war on crime" at home — to the great detriment of urban areas, persons of color, environmental protection and disaster preparedness (other than terrorism) at home and abroad.

Despite decades of warnings about the need to restore the levees and address the glaring increase in inequalities in New Orleans and America's inner cities as a whole, the Bush administration sought instead what commentators called a "Gucci and guns budget." Here was the President and Republican Congress's answer to the Johnson administration's program of Guns and Butter. It is important to remember here that for Johnson, it was on the battlefields of Indochina that the hopes of the Great Society and the War on Poverty were ultimately buried and the seeds of the New Right planted, as the President presented Congress with numerous spending requests for war (Davis 1986). Martin Luther King Jr.'s prophetic words during this period, especially his famous April 4, 1967 speech at the Riverside Church, "Beyond Vietnam: A Time to Break the Silence," exactly a year before his assassination, came at a time when his efforts to replicate the successes of the Civil Rights Movement in the South through desegregating Northern cities, such as Chicago, and beyond, were being viciously defeated (Walker and Bagwell 2005). The fate of the Civil Rights Movement and related efforts to combine peace with social

justice could have been foretold from the little known fact that the War on Poverty was officially declared on August 20, 1964, the same day as the US Congress passed the Gulf of Tonkin Resolution, a blank check for the Presidential war against Indochina (Hayden 2005: 365). In the last decade, another round of bills for Presidential wars in Iraq and Afghanistan has and continues to lead to drastic devaluations of citizenship in the US, primarily among low-income urban communities of color. Once again, the bombs, as Martin Luther King, Jr. argued in the case of Vietnam, are exploding in the ghettos of the US, or you could say, in the fallen levees of the Gulf Coast and the abandoned inner city ghettos of America.

New Orleans, second only to Harlem in importance in terms of African American culture and music, revealed during Hurricane Katrina:

a legacy of race and class discrimination that had literally corralled and trapped African Americans and the poor into ecologically and economically vulnerable spaces from which many were unable to escape...in one post-Katrina study, 55 percent of the respondents who did not evacuate said that one of the main reasons they did not was that they did not have a car or other way to leave.⁵

As far as “acts of nature” are concerned, a growing number of scientists have come to believe that the intensity and duration of hurricanes since the 1970s are increasing due to global warming by as much as fifty percent, a condition stemming from human induced climate change as a result of greenhouse gas emissions. The dangers here have not been helped by the refusal of the US (by far the largest greenhouse gas polluter in terms of pollution per capita, responsible for 25% of all such

gases in the atmosphere) to join the Kyoto Protocol to the United Nations Framework Convention on Climate Change, a widely adhered to international treaty on global warming (Davis 2010). And then of course there is the devaluing of citizenship in the US urban areas, as money flowed away from these areas and instead went into White suburbs and edge cities (Somers 2008).

And in New Orleans, as Louisiana State University geologist Craig Colten notes, “money flows away from water,” as wealthier citizens take the higher ground and leave the poor trapped in the face of approaching hurricanes. As to the continuing need for adequate preparations for New Orleans and the Gulf Coast against future hurricanes, while the Army Corps of Engineers is currently fixing the levees up to standards they were supposed to meet pre-Katrina, they could be protected from storm surges ten times greater than Katrina for under \$10 billion. As cofounder and deputy director of the Louisiana State University Hurricane Center Ivon van Heerden, who recently lost his job for speaking out on this issue: “If we had the will and one month’s money from Iraq [or Afghanistan today], we could do all the levees and restore the coast.”⁶

TUPAC'S HIP HOP THEORY OF CRIMINAL (IN)JUSTICE AND THE PROPHETIC IMAGINATION⁷

Tupac, despite his tragically early death, is arguably one of the most significant rap artists that have ever lived. His songs reveal a critique of contemporary punishment and the criminal (in)justice system. At his best, 2Pac echoed Dr. King in his critique of apocalyptic violence and harkened toward a future

society that overcame what King called the triple interrelated evils: racism, economic exploitation and militarism. As King once noted, and as Tupac seemed to intuitively understand, “you can’t really get rid of one without the other.” The trajectory of King’s witness here reflected his growing radicalism as he moved from civil rights to human rights (Jackson 2007).

King’s theology, prophetic witness and related social critique finds expression today in unlikely places, namely those voices whom Imani Perry calls *The Prophets of the Hood*, most especially Tupac, who sometimes imagined himself as the hood’s Ambassador to the world (Perry 2004). Tupac’s lyrics from “Keep Ya Head Up,” “got money for war but can’t feed the poor; say there ain’t no hope for the youth and the truth is it ain’t no hope for the future,” chronicled America’s trajectory away from the progressive social reform of the 1960s to the new post-liberal, post-civil rights America. Tupac’s critique of the criminal (in)justice system, starting with his debut album, *2Pacalyse Now*, in which he noted “tells the story of the young Black male,” shared an elective affinity not only with King’s message but also with the burgeoning scholarly literature critiquing the current politics of cruel and unusual punishment in the US (Spohn 2009; Miller 1996; Tonry 2011a; Provine 2007; Gray 2001).

Today’s punitive politics of crime and punishment stretch back to the 1960s and 1970s, when elites successfully reframed political debates during this epoch of change, progressive social movements, and rising crime in terms of law and order politics and get tough on crime rhetoric, beginning with Republican Presidential candidates Barry Goldwater, George Wallace and successive Southern strategies thereafter (Perlstein 2009).

Following the heroic years of the Civil Rights Movement in the 1950s, most especially with the passage of the landmark *Brown v. Board of Education*, Whites fled the cities to protect their material monopolies over education, jobs, wealth, and status. Subsequently, the 1960s saw a combination of hundreds of urban uprisings and riots in the Black ghettos, and a nationwide crime wave, with crime rates rising sharply in US cities, reaching new heights and fluctuating at relatively high levels through much of the 1970s and 1980s. These developments, in turn, fueled further outmigration from urban areas, thus exacerbating existing trends toward the development of two societies, separate and unequal. This growing racial and spatial divide in turn help facilitate the rise of the issue of race and the racialized politics of crime, as wedge issues that facilitated the break-up of the New Deal coalition and the rise of the New Right (Flamm 2005).

The current politics of punishment, penal populism, law and order politics, and related moral panics over crime in the US all reflect these changes and the nation's concomitant turn away from dreams of *Brown v. Board of Education*, the Great Society and the War on Poverty. The hopes of this period were summarily buried by the escalating costs of the Vietnam War, the related defeat of the Black freedom struggle, and the second Reconstruction in the late 1960s, halting the movement's earlier gains. Closely associated with all these developments was the rise of the New Right, which dramatically reshaped both the political and legal-judicial sphere, most notably by exploiting the racialized politics of crime and punishment (Davis 1986). Especially notable here is that it is in the 1970s when the growing divergence in terms of the politics of punishment

and incarceration between the US and Europe really began, with America's present day incarceration regime becoming the latest and one of the most troubling elements of the new American exceptionalism.

In order to explain how the US, with only 5% of the world's population, now has 25% of the world's prisoners, scholars most often point to the differences between Europe's criminal (in)justice system, where appointed civil servants, judges and bureaucrats effectively manage the system, and the US. In the US, almost uniquely, many of those in the legal-judicial sphere actually run for office, thus allowing for a nominally democratic and populist politics of crime and punishment, issues that have been easily manipulated by the New Right and their allies (Davis 1986). Ironically, it appears that Europe's staving off of the harsh politics of punishment, at least for a time (as other advanced capitalist democracies now appearing to move closer to the US model), is due to Weber's iron cage, with bureaucratically managed systems staffed by career civil servants and bureaucrats less vulnerable to the type of nominally democratic penal populism and related moral panics in the US (Whitman 2007).

**"IT AIN'T NO SECRET, DON'T CONCEAL THE
FACT, THE PENITENTIARY'S PACKED & IT'S
FILLED WITH BLACKS"**

Even more significant than the incarceration boom in the US per say, has been its racialized demographic composition of predominantly poor young Black males, most of whom are high school dropouts. Yet before becoming incarcerated, young Black males have to come into contact with the law, and

that's where the police come in. The statistics on racially biased policing across the nation are as staggering as they are overwhelming, and all instrumental to the massive rise in incarceration, as the recent collection, *Race, Ethnicity and Policing* compellingly reveals. And yet, there are a host of analysts who have spent decades aiming to deny the reality that contemporary law and order politics and the American legal system has a color. Among these color-blind analysts, perhaps no voice has been more salient than African American Harvard Law Professor Randall Kennedy, in a body of works, notably his 1998 *Race, Crime, and the Law*, and more recently his 2011 piece, "Race and the Administration of Criminal Justice in the United States."

Over a decade ago Derrick Bell and Paul Butler — roundly refuted Kennedy's assertions in their critique of his book. Kennedy, who is a major supporter of the over-policing of poor communities of color and the zero tolerance model of policing — neglects the massive amount of data on racial bias throughout the entire criminal (in)justice system in the present day, according to Bell and Butler (see Stewart 1997-1998). There are a few exceptions to Kennedy's general reluctance to cite actual data on this score, notably one short quote from Glenn Loury on relative incarceration rates, and a related mention of the ratio of Blacks in prison; and this despite the fact that Kennedy cites some of the leading studies on the subject of racial bias throughout the system, the contents of which, however, he rarely reveals.

As for alluding to the current demographics of Blacks in prison, this was probably hard to avoid mentioning for a second time, as Kennedy's book, which was released in April

1998, was followed soon after by the arrival of Tupac's all-time bestselling song "Changes." Though recorded way back in 1992, "Changes" only came out years after Tupac's death. (It was the only posthumous song ever nominated for a Grammy.) One of "Changes" most memorable lines is: "It ain't a secret, don't conceal the fact, the penitentiary's packed and it's filled with blacks." In fact, Paul Butler, in his *Harvard Law Review* article, took Kennedy to task for exactly this, concealing these facts, citing statistics that endure to the present:

Reading *Race, Crime, and the Law*, which the white legal establishment has hailed as the seminal work on race and crime, it would be hard to understand why many African Americans believe they live in a police state. Even upon careful examination of the book's 538 pages, one finds no citation to the extraordinary evidence: half of prison inmates are black, almost half of the women in state prison are black; nationally, nearly one-third of young black men are either in prison, on probation or parole or awaiting trial; more young black men are in prison than in college (Butler 1998: 127).

In his most recent work on the subject Kennedy does cite some of the leading scholars of Tupac and Butler's hard to conceal facts, along with a few studies arguing for the utility of racial profiling. Yet Kennedy deals with the question of the disproportionate incarceration of persons of color under the subheading of "Punishment and the Allegation of Racial Discrimination," to which he devotes one page, albeit one bereft of the massive array of statistics indicating the extent of realities to which Tupac spoke and that of the hip hop nation as a whole, and leading scholars so often refer (Hess 2010;

Rabaka 2011; Forman and Neil 2011; Chang 2005). For Kennedy, the structural features of racism and racial bias throughout the criminal (in)justice system are not facts, but merely allegations, apparently with equally plausible alternative explanations.

Take for example, the question of driving while black (DWB), on which there is a massive array of data from a wide variety of reputable sources. An overwhelming majority of methodologically sophisticated studies from independent scholars to police departments cite that police are estimated to stop some 19-20 million persons driving annually, with Black and Brown people disproportionately stopped, searched and arrested (Rice and White 2010). The results of these rigorous studies as well as the actual statistics rarely appear in Kennedy's chapter, but what he does cite are studies skeptical of widespread racial profiling and extended counterfactual explanations exploring non-race factors Kennedy then proceeds to provide what he believes are equally or more compelling alternative non-racial explanations for the targeting of Blacks and Latinos on behalf of the (in)justice system (cf. Harcourt 2007a).

Some of Kennedy's conclusions, to paraphrase, are as follows:

- The perception that racial discrimination in policing is widespread is a social phenomenon with important consequences;
- Claims that racial profiling is widespread, ineffective, and unfair have been influential; and

- Charges of racial discrimination have also been aimed at virtually every aspect of the war on drugs (Kennedy 2011: 242, 244, 251).

The one example Kennedy actually does explore is a classic police bias regarding open air drug markets plausibly thought to over-represent persons of color. Even here Kennedy offers an alternative non-racial interpretation, involving considerations not of race, but instead “*considerations of cost.*” Yet among the many problems with such a non-racial argument here is that similarly racially disproportionate statistics hold in other realms, such as the serving of narcotic search warrants in San Diego, California. In Professor Laurence A. Benner’s random sample of warrants issued in 1998 in the most urbanized area in the US, the San Diego, California Judicial District (population 1.2 million), then majority White, the most frequently searched zip codes were between 78-95% non-White, with Blacks or Latinos the targets of the search in 96% of the cases. And yet, the searches, though disproportionately targeting persons of color, came up empty the vast majority of times they were served against Blacks and Latinos, and were most successful against the least targeted racial group, Whites (Benner 2002: 1993). Two years later, the San Diego Police’s Vehicle Stop Study showed that chances of Blacks and Latinos being stopped for a traffic violation were one in four, versus one in ten for Whites, similar to nationwide statistics (Benner 2002: 201).

The essential message of Kennedy’s work is clear, and seemingly immune to the mountain of facts hip hop artists, and scholars such as Michelle Alexander, Paul Butler, Loic Wacquant, Michael Tonry, James Miller and Robert Sampson have assembled. For Kennedy, charges of racial bias in the criminal (in)

justice system have other equally plausible explanations and thus do not enter the realm of what Emile Durkheim, called social facts (Durkheim 1982). The reality of racial bias is thus barely acknowledged, if at all, and then only grudgingly, passed off, like the Abu Ghraib torture scandal, as a few bad apples rather than structural characteristics of a system of interlocking racial inequality affecting US society and the criminal (in)justice system as a whole.

In Kennedy's view, racial disparities at every level of the criminal (in)justice system in the present are systematically ignored or underplayed. What is important for Kennedy, are not the astonishing realities of the criminal (in)justice system as a uniquely American form of racial inequality and stratification, but instead the perception in the minds of some that racial bias is real (Kennedy 1998, 2011). As for the actual empirical realities, Kennedy assures us, as with the other charges and allegations he discusses, that the question of claimed structural bias throughout the system continue to be hotly and widely disputed, from which we are to infer that no firm conclusions can be drawn (Kennedy 2011: 241-242).

In terms of one of the most widely and comprehensively studied phenomena on which there is generally overwhelming agreement in the scholarly and professional literature, racially biased policing and DWB, to counter these studies, Kennedy cites a number of analysts, but only two in great detail, those of Greg Ridgeway and Jeffrey Grogger, focusing on two of their studies (Kennedy 2011: 244-245). Kennedy relies primarily on Ridgeway and Grogger, a fairly small sample in the context of a burgeoning literature, largely to probe alternative explanations of racial disproportionality in policing, notwith-

standing the massive scholarly evidence on the subject (Kennedy 2011). Kennedy does cite a number of the most important studies on racial profiling, but with little or no allusion to the quality and quantity of data. For example, Kennedy cites the massive study by one of the world's leading law and economics scholars, Yale Law School's Ian Ayres (Kennedy 2011: 243). Yet we are not told of either the extent or content of Ayres's study. Kennedy also cites Bernard Harcourt's paper, "Henry Louis Gates and Racial Profiling: What's the Problem?," but without revealing the paper's summary of the extent of the data Ayres analyzed — namely data gathered from 810,000 field data reports that the LAPD itself collected from June 1 2003 to June 30 2004 — or Ayres conclusions (Harcourt 2009). Here is Harcourt's summary of Ayres's key findings:

Professor Ayres found that there were more than 4,500 stops per 10,000 African American residents, whereas there were only 1,750 stops per 10,000 white residents. In two neighborhoods, Central and Hollywood, Professor Ayres actually found that "there were more stops of African Americans in one year than there were African American residents, meaning that the average number of stops per resident was greater than one." Professor Ayres controlled his findings for variables such as the rate of violent and property crime, and found that the disparity was not the result of different crime rates in different areas — the stop rate per 10,000 residents was 3,400 stops higher for Blacks than Whites, and more than 350 stops higher for Hispanics than Whites. Once stopped, Blacks were 29% more likely to get arrested than Whites, and Hispanics were 32% more likely. Police were 127% more likely to frisk or pat down stopped Blacks than stopped Whites, and 43% more likely

to do so for Hispanics. While minorities were more likely to be stopped and then searched once stopped, the result of those searches were less productive than comparable searches with white residents. Searched Blacks were 37% less likely to be found with weapons than searched Whites, 24% less likely to be found with drugs, and 25% less likely to be found with other contraband. Similarly, searched Hispanics were 33% less likely to be found with weapons, 34% less likely to be found with drugs, and 12% less likely to be found with other contraband. The race of the stopping officer also mattered — the disparities found decreased when the officer was of the same race as the person who was stopped (Harcourt 2009).

**“CAN BARELY WALK THE CITY STREETS,
WITHOUT A COP HARASSING ME, SEARCHING
ME, THEN ASKING MY IDENTITY”**

On the question of racial profiling and DWB, the two studies Kennedy cites in detail are the two contrarian studies by the same analysts, one a ten-page article by Jeffrey Grogger and Grey Ridgeway published in the 2006 *Journal of the American Statistical Association* and Ridgeway's 2007 RAND Report, *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices*, sponsored by the New York City Police Foundation, the latter of which I shall focus on (Kennedy 2011: 244; Ridgeway 2007). Upon careful examination, the assumptions and conclusions in the study are quite problematic, as have been pointed out by other authors, especially in their neglect of structurally disadvantaged neighborhood contexts. Yet, even in this study, many of the statistics arguably add to the armory of evidence on racially biased polic-

ing (Noguera 2008: xiv; Fagan et al. 2010: Sampson 2012: Sampson and Loeffler 2010; Massey 2012).

Kennedy, apparently referring to these authors and their supporters, summarizes the issues and the evidence in Ridgeway's study:

There are students of racial profiling...who criticize on methodological grounds the literature that portrays racial profiling as a major phenomenon....They contend that the studies which purport to discover large amounts of racial profiling fail to consider adequately explanations for racial disproportionality other than racial discrimination by the police. They also argue that when variables other than police racial discrimination are satisfactorily assimilated into comprehensive analyses, what appear at first to be ominous signs of illicit racial selectivity are shown, upon reflection, to be the outgrowth of other factors, such as increased exposure to the police and increased levels of criminality by racial minorities. In 2006 in New York City, for example, 55 percent of the pedestrian stops by police involved blacks, a figure twice the representation of blacks in the local population, according to the 2000 US Census. Greg Ridgeway concluded, however, that upon deeper scrutiny the disproportionality was mainly attributable to racial differences in criminal, or at least suspicious activity. He noted the striking racial disproportionality of crime-suspect descriptions — descriptions generated not by police but by civilians. According to Ridgeway, the percentage of descriptions featuring blacks far exceeded the percentage of blacks subjected to pedestrian stops. Indeed, according to his calculations, black pedestrians were stopped at a rate that was 20 to 30 percent *lower* than their representations in crime suspect descriptions.

Ridgeway did not contend that racial profiling was wholly absent in New York...[finding] a few officers stopped notably larger percentages of black pedestrians than their peers. This anomaly, he argued, signaled a potential problem, since the discrepancy could not be attributed to significant differences in the time, place, or the context of the law enforcement activities in question. Even if the officers were engaged in racial profiling, however, Ridgeway's main point is that they were few in numbers, the proverbial "bad apples" and did not represent the norm (Kennedy 2011: 244).

What Kennedy doesn't reveal from the study are the arguably important and related statistics, once again conveniently summarized in the same paper by Harcourt mentioned above, which again Kennedy cites but does not quote from or even explore, despite its succinct summary of relevant statistical evidence:

[I]n 2007...the RAND Corporation had issued a report on racial disparities in the stop, question, and frisk practices of the New York City Police Department. Using data on street encounters between NYPD officers and pedestrians in 2006, the RAND Corporation found that officers frisked whites less than they frisked similarly situated nonwhites (29% of stops, compared to 33% of stops). Although search rates were roughly the same across races, at 6% to 7% (the study notes that in Staten Island, the search rates of minorities was significantly greater), officers successfully recovered contraband less from minorities than similarly situated whites. Specifically, the success rate for Blacks was 5.7%, 5.4% for Hispanics, and 6.4% for whites (Harcourt 2009: 2-3).

Yet, what Kennedy fails to consider are the host of studies that show the link between perceptions of race, disorder and criminality. For example, in one of the most significant explorations of this question it was found that:

Observed disorder predicts perceived disorder, but racial and economic context matter more. As the concentration of minority groups and poverty increases, residents of all races perceive heightened disorder even after we account for an extensive array of personal characteristics and independently observed neighborhood conditions. Seeing disorder appears to be imbued with social meanings that go well beyond what essentialist theories imply, generating self-reinforcing processes that may help account for the perpetuation of urban racial inequality (Sampson and Raudenbush 2004: 319).

Here we see clearly revealed the intersection of race and class in the policing of spatially concentrated disadvantaged neighborhood communities, characterized by a host of problems, including structural unemployment, poverty, poor schools and correspondingly higher rates of violent crime and incarceration. As various analysts have pointed out, these disadvantaged neighborhood contexts — Sampson’s “neighborhood effect” — shaping policing are exactly those contextual variables that scholars such as Kennedy and Ridgeway ignore or decontextualize, rather than incorporating them into a holistic research and identification strategy (Fagan et al. 2010; Sampson 2012). Of particular importance is the work of Robert Sampson and Charles Loeffler, showing *much higher rates of incarceration* for disadvantaged minority neighborhoods than neighborhoods with roughly equivalent crime rates (Sampson and

Loeffler 2010). This relates in turn to the consistently high poverty rates in Black ghettos, durable categorical racial inequalities that are persistent even over four to five decades (Sampson 2012). These factors, namely the intersection of race, space and (punishments) place tragically came together in the February 2012 murder of Trayvon Martin by a Neighborhood Watch volunteer, George Zimmerman, in which racialized perceptions of Black criminality appears to have played a salient role. Here, the proliferation of Stand Your Ground laws in Florida and other states has combined with racialized perceptions of criminality that lead to significant spikes in the so-called justifiable homicide rate. Sampson's work with Stephen W. Raudenbush, "Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows," read as if they were writing about the Martin case, a tragedy foretold). Sampson comments:

Literally thousands of neighborhoods nationwide transitioned from white to black, *but in the entire U.S., out of some sixty-five thousand tracks, only about ten from over 60 percent black to substantially (60 percent or more) percent white.* Two did in Chicago, but the base is less than one thousand tracks. Overall, then, racial stratification is profoundly stable in terms of relative positioning, as is concentrated poverty. And Chicago is hardly unique — a general nationwide process is at work, and the picture of stability and change largely identical....Another example of stability amid change can be revealed by the incidence of crime.... [Despite a nationwide violent crime decline in the 1990s and 2000s] high violence areas persist and low violence areas remain so (Sampson 2012: 109-111).

The new study by one of the nation's top crime experts, Franklin Zimring and the work of Queens, CUNY Sociologist, Harry Levine on disproportionate marijuana arrests of Blacks and Latinos in various US states, underscores the indisputable reality of racially biased policing, and disproportionate stops of persons of color and related arrests in disadvantaged neighborhoods, especially in terms of the war on drugs and marijuana, that Kennedy and the studies he cites are reluctant to admit (Zimring 2012). When these scholars do admit to racial profiling, it is generally with assurances that these are either a thing of the past, or that, as quoted above, upon closer examination they either aren't indicative of racial profiling at all, or are justified by higher rates of criminality (cf. Harcourt 2007a). But facts are stubborn things as they say, and the continued statistical data on racially biased policing, DWB, stop and frisk practices, and related marijuana arrests don't lie. In light of overwhelming evidence, the controversy about the issue of "alleged" bias throughout the criminal (in)justice system Kennedy refers to and which Tupac's music interrogates, is a bit like the controversy among scientists on global warming, with some small fraction of scientists disagreeing with the massive amount of evidence agreed upon by the vast majority, albeit in this case, primarily legal scholars and social scientists.

Not surprisingly, Kennedy's piece was published in the joint book edited by James Q. Wilson (originator of the broken windows theory of policing), and Joan Petersilia, one of the nation's most respected criminologists, and was the first time that the collection carried an article on race (Wilson and Petersilia 2011). While the volume is quite uneven (e.g., because of Kennedy's chapter), it does contain some excellent

contributions from leading figures in the field. And yet, even one of the authors that Kennedy cites, Greg Ridgeway, recently wrote with coauthor Nelson Lim the following:

President Obama called the arrest of his friend Professor Henry Gates a “teachable moment.” This is a moment to learn the facts of race and policing these days. The President put it this way: “There is a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately. That’s just a fact.” Racial profiling has indeed been an ugly reality for many years. But our research in several large cities finds little evidence that it continues to be a major problem.... It’s true that minorities continue to be stopped disproportionately to their representation in the population. But this information says nothing about whether police are racial profiling (Ridgeway and Lim 2009).

Ironically, this frank admission of racial profiling in recent times by Ridgeway and Lim, “as an ugly reality for many years,” is in fact far stronger than any of Kennedy’s statements on the subject. Moreover, there are still an overwhelming number of studies and a general consensus in the scholarly literature that point to the historical extent of racial profiling, racial bias, and disproportionate minority contact in the criminal (in)justice system. Many conclude these practices constituting a uniquely US system of race-class stratification and concomitant durable categorical inequalities of race (Zimring 2012). One of America’s preeminent scholars of policing, Jeremy Skolnick quotes James Baldwin’s famous words, written some fifty years ago, which is also echoed in the songs of Tupac and the hip hop nation:

The only way to police a ghetto is to be oppressive...Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children. They represent the force of the white world...to keep the black man corralled up here, in his place (Skolnick 1966, 2011: 45).

Today's police forces, of course, are not passing out gumdrops to children, and arrests for DWB or driving while Brown continues unabated. Add to this new anti-immigrant laws being passed across the nation, basically anybody followed for any length of time can be legally pulled over on the pretext of a misdemeanor traffic violation (Zimring 2012: 118-119). Those stopped can then be arrested for minor misdemeanor violations at the discretion of the police and, now in an increasing number of states, asked for proof of citizenship and detained and or deported if they are unable to produce proper documentation. Many of these practices have been upheld in a series of court decisions, reaching up to the Supreme Court (Rice and White 2010).

Criminologists today have advanced many cogent proposals designed to minimize the wide array of discretion given to police under current Fourth Amendment interpretation, so as to curb racially biased policing and improve the role and legitimacy of the police in fighting serious crime, including random searches (Harcourt 2010). Yet all these practices continue, despite the fact that racial profiling and racially biased policing, as Bernard Harcourt has demonstrated, arguably *increases* crime, at least under certain conditions related to what he calls the question of the comparative elasticity of offending (Harcourt 2007a, 2007b).

A recent scandal comes from the New York Police Department's widespread intense racial profiling and detailed surveillance and cataloging of a wide variety of data on the Muslims in the US after the September 11, 2001 terrorist attacks. These practices have included the use of police spies and informants infiltrating Muslim American communities and internet websites across New York City and the Northeast, including Muslim student associations on college campuses, replete in some instances with documenting how many times they prayed at various outings. Though these practices have been condemned by Muslims and other citizens and civil liberties groups who have called for an investigation by the US federal government and its Civil Rights Division, they have been staunchly defended by New York's current chief of police and Mayor, while at the same time often denying the reality and the extent of the surveillance (Martin 2012).

CRIMINALIZING BLACKNESS, PRESUMPTION OF GUILT, AND THE WHITE COLLAR CRIME WAVE

There are other disturbing similarities between past and present racial practices in the US. For example, in the Central Park jogger case in late spring 1989, Black youths were arguably subject to a legal lynching, violently coerced into confessing to and serving time for the rape of a White female Wall Street investment banker, a crime it was later revealed that they did not commit (and now is the subject of a forthcoming documentary by Ken Burns) (Burns 2011). The case captured the imagination of the nation and was a nation-wide story for some time. The consequences of this conviction of innocents, in addition to devastating the lives of Black and Brown youths

and their families, was that the actual perpetrator ran free and raped four more women in the summer of 1989 and murdered one of them, who was pregnant at the time, until he was caught. The serial rapist and murderer later confessed to the Central Park jogger rape while doing time in prison for the other rapes and murder, but only over a decade later, after the statute of limitations had expired, and after which the former convictions of the young men were finally vacated in 2002 (Shipler 2012: 60-62). This incident was followed a few years later in the 1991 savage LAPD beating of Black motorist Rodney King and the initial exoneration of the police in that incident by an all-White jury, in a verdict that prompted the LA multiracial riots/uprising in 1992 (Davis 2002).

In this same period in which the notion of Black and Brown criminality became resurgent, notably with President George Bush's infamous Willie Horton ad during the 1989 Presidential campaign — the world had witnessed arguably the largest White-collar crime wave in world history (Mendelberg 2001). It began with the savings and loan and insider trading scandals in the 1980s and culminated in the Wall Street crash and subprime mortgage housing super bubble finally burst and taxpayer bailout in 2008. To date there have been few prosecutions for those at the heart of the Wall Street speculative boom, despite the massive fraud, abuse, and criminality characterizing all aspects of these far-reaching, horrendous crimes (Morgenson and Louise 2011). As for criminalization of Black males on the other hand, by the early 1990s, things had gotten so bad that in response to an attack on and burglary of an elderly White female, who said she had been accosted by a Black man, the city of Oneonta, New York rounded up all the town's Black males,

including those attending SUNY Oneonta, and one Black female, for search and seizure. Incredibly, this practice was upheld in *Brown, et al. v City of Oneonta*, by the US Supreme Court, which on October 1 2001, declined *certiorari*, with the police and the courts saying that since the suspect had given the description of a Black man, that it wasn't an instance of racial profiling by law enforcement authorities (Jones-Brown and Maule 2010: 148-149, 161, 166).

Thus, while educated white collar criminals from Enron to Wall Street, often with Ivy League educations, and whose ranks have filled the past few Presidential administrations, and who are more often than not were themselves White, generally ran free; poor and largely uneducated racial and ethnic minorities groups continue to be subjected to criminal prosecution for petty crimes or arrested, prosecuted and incarcerated even if they were innocent. Indeed, in recent years, with minimum, mandatory and truth in sentencing laws that have removed much of the ability of judges to decide sentences and put sentencing power increasingly in the hands of prosecutors, prosecutorial discretion has reached new heights. Today, plea bargains settle the vast majority of cases, with fewer trials, more punishment and less justice, in a system of racial stratification and social control that has reached unheard of proportions in both world-historical and comparative terms (Gerber 2001).

Especially revealing is the recent story about a successful African American young man on his way to accepting an Ivy League football scholarship who was framed for murder. After serving a long prison sentence, this man was released after his conviction was overturned, and the case against the prosecution team which appears to have framed him was working its

way up to the Supreme Court. Amazingly, the prosecution in the case argued there was no constitutional right not to be framed, a position supported by many states and the Obama administration, and an argument reflective of prosecutors' near absolute immunity from any liability, placing the upholders of the law in effect above the law (Totenberg 2009). Revealed here too, is that it can be easier to convict an innocent Black person than to successfully prosecute a guilty White person, despite the fact that this both ruins the lives of innocent persons and allows criminals who rape women or use lethal violence to roam free and commit new violent crimes (Garrett 2011). In fact, the Supreme Court held explicitly in its decision in *Herrera v. Collins* 1993 that: "Herrera's claim of actual innocence does not entitle him to federal habeas relief"; as later expressed in the words of Supreme Court Justice Scalia,

[t]his Court has *never* held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is 'actually' innocent (quoted in Livett 2010: 1650).

"FIRST SHIP 'EM DOPE & LET 'EM DEAL TO BROTHERS, GIVE 'EM GUNS, STEP BACK & WATCH 'EM KILL EACH OTHER"

Among the most significant aspects of this hyperincarceration of poor Black and Brown males has been the so-called war on crime and drugs. On the one hand, relatively harmless drugs such as marijuana and harder drugs have been one of the few equal opportunity employers in the ghetto and the basis for most of the war on Blacks and Latinos, under the cover of the war on drugs. Yet as Black comedians such as Chris Rock and

scholarly experts note, legal drugs, notably tobacco and alcohol, which obviously cause much greater social harm than relatively harmless drugs such as marijuana, continue to be used with both dire consequences and little to no federal regulation. In addition, the readily available guns that fuel violent crime and lethal violence are also increasingly unregulated (Nunn 2002). All of these policy choices have predictable enough consequences, including the furthering of incarceration, impoverishment and lethal violence that plagues poor communities of color. And then of course there are the ravages of legal drugs such as tobacco and alcohol, with the latter implicated in much crime and violence (Tonry 1995).

Guns are now increasingly unregulated due to two recent Supreme Court decisions in 2008 and 2010 respectively — *District of Columbia v. Heller* and *McDonald v. Chicago*. Here, in two controversial 5 to 4 split decisions, the Court curbed firearms regulation by overturning local limitations on handguns and then extended this more broadly. These decisions were made, notwithstanding the fact that guns were used in half a million robberies and assaults in 2006 and have been responsible for over 28,000 deaths in the US annually since 1972. Guns are the weapon of choice in the vast majority of homicides, including the Black on Black male violence that was the subject of many of Tupac's songs (Cook, Braga, and Moore 2011). Especially troubling here is that despite the 2000 statement of the US Conference of Catholic Bishops on Criminal Justice, in which they explicitly supported strong regulation of handguns and their eventual elimination from society, with only minor exceptions such as for the police and the military, it was the same five Catholic Supreme Court justices, Roberts,

Thomas, Alito, Kennedy, and Scalia, who supported the loosening of the regulation of handguns in both cases, though the most recently appointed Justice, Sonia Sotomayor, also Catholic, dissented in the second case (Cook 2011: 100).

This combination of the war on illegal drugs and easily available guns fueling arrests and violent crime in the ghetto, simultaneous with legal tobacco's killing of nearly a half million people annually has led to some brilliant satire from comedy artists such as Chris Rock, notably in his segment "It's all Right Because It's All White." Here, Rock addresses these disparities of legal and illegal drugs in terms of their radically contrasting health effects, relating the seeming paradox to the racial structure of power and related politics of White supremacy in the US. And while one shouldn't make light of the oftentimes inexcusable promotion of violence in gangster rap, one of Rock's telling lines is, "White man makes guns, no problem; Black rappers say guns, Congressional hearing!"

As his best, Tupac rapped eloquently about these themes: the war on drugs, the hyperincarceration of poor youth of color, and violence in the ghetto. In songs such as "Life Goes On," he sang "How many brothers fell victim to the streets, rest in peace young nigga, there's a heaven for a G." In "Lord Knows," Tupac grappled with the hard facts of Blacks being both disproportionately incarcerated and heavily overrepresented among victims of gun violence and homicide.

Even excluding Blacks, the US gun homicide rate is still well over three times the rate of homicide for many other advanced capitalist democracies. Zimring and Hawkins com-

ment in their book on the subject, *Crime is Not the Problem: Lethal Violence in America*:

Life-threatening violence is more concentrated among African-Americans than among any other major population group in the United States....Violence is not just a black problem, but it is an American problem that has the largest proportional impact by far among African Americans (Zimring and Hawkins 1997: 87).

Thus, there are some significant differences between lethal violence among Blacks, Whites and other racial groups, as both Tupac's music and the statistics bear out. Despite dramatic declines in Black homicides coincident with the simultaneous and arguably interrelated upturn in labor market employment prospects for Black youth and the decline of the crack cocaine epidemic in the 1990s, lethal violence and high incarceration rates still affect poor African American communities disproportionately (Bogazianos 2012). In fact, it was in the 1990s, in the context of a nationwide crime decline, that incarceration levels began to peak and reach their current levels (Sampson 2012: 102-120). Despite the steep decline in crime and violent homicide, the 2007 homicide rate via guns for Black males 18 to 29 stood at 94 per 100,000 and was primarily the tragic result of Black on Black violence; this astonishingly high homicide rate, is 21 times higher than the comparable rates for White males. While overall rates of homicide continues to decline, gun homicides for Black males over roughly the last decade across the country, especially among Black teenagers, appears to have been going up. These trends have coincided with severe retrenchments in federal support for youth violence prevention programs (Kennedy 2011:12). These statistics are compelling

illustrations of the extent to which lethal gun violence, and not crime per say, is arguably still among the most crucial issue facing Americans, especially for those in the Black community (Cook 2011: 95).

Tupac's song, "Changes," which still dominates the Vatican MySpace page and the Pope's playlist in terms of the numbers of times it has been listened to, addressed this lethal combination of drugs and guns in the era of the crack cocaine epidemic affecting the Black community in the 1980s, as did the hip hop nation more generally (Odom 2004). Also touched upon by Tupac was the US federal government and local police forces' wars in the 1960s on the Civil Rights Movement, and the Black Panthers that contributed to the destruction of the Panther's organization and the rise of gangs in their wake (Davis 2002). As with much of Tupac's other music, he often tells his stories as seen from the perspective of the poor young Black males and sometimes poor Black females living in the ghetto, as in "Trapped" and "Brenda's Got a Baby." In "Changes," one can also hear 2Pac's own struggle with despair and hope, replete with moving calls for change in the Black community and larger society (Bradley and DuBois 2010: 511-524).

I see no changes. Wake up in the morning and I ask myself
Is life worth living? Should I blast myself?
I'm tired of being poor and even worse, I'm black
My stomach hurts, so I'm lookin for a purse to snatch.
Cops give a damn about a Negro
Pull the trigga, kill a nigga, he's a hero
Give the crack to the kids, who the hell cares?
One less hungry mouth on the welfare

First ship 'em dope and let 'em death to brothers
Give 'em guns, step back, watch 'em kill each other.
It's time to fight back, that's what Huey said,
Two shots in the dark, now Huey's dead....
We gotta start making changes
Learn to see me as a brother 'stead of two distant strangers
And that's how it's supposed to be
How can the devil take a brother if he's close to me?
...And the only time we chill is when we kill each other
It takes skill to be real, time to heal each other
...Try to show another way but you staying in the dope game
...You gotta operate the easy way
(“I made a G today”) But you made it in a sleazy way
Selling crack to the kids (“I gotta get paid”)
Well, hey, well, that's the way it is

We gotta make a change. It's time for us as a people to start making some
Changes. Let's change the way...we live, and let's change the way we treat
each other. You see, the old way wasn't workin so it's on us to do what we
gotta do to survive.

In “Resist the Temptation,” Tupac wrote:
the children pay the biggest price.
Never gets the chance to grow up with a happy life.
Blame it on the rock, but we know that's a bunch of crap,
someone from the top supplying us with plenty crack.
Keep em in a daze, don't let them see the other way...

See they never got a breath of the sunshine...
We're destined to be dead as a nation
Don't let it come to this, resist the temptation.

The suffering of poor Blacks as a whole with which Tupac so touchingly identified, and the unfinished business of the two Black Reconstructions, was dramatically revealed to the world during Hurricane Katrina in 2005 and captured in Spike Lee's film *When the Levees Break* along with the album *A Tale of God's Will: A Requiem for Katrina* by New Orleans native jazz trumpeter, Terence Blanchard. These images and music are what keeps Tupac's songs relevant today, in what might be thought of as our soundtrack of the challenges of the 21st century. Tupac's legacy was also seen in recent years in the omnipresence of his music at the recent Hollywood film, based on a true story of the *Freedom Writers*, a group of kids from the tough gang-ridden streets and failing schools of Long Beach, California after the 1992 Los Angeles riots (LaGravanesse 2007).

**"WAR ON THE STREETS & THE WAR IN THE
MIDDLE EAST; INSTEAD OF A WAR ON POVERTY;
YOU GOT A WAR ON DRUGS SO THE POLICE CAN
BOTHER ME"**

Reflected, too, in many of Tupac's songs is the ongoing counter-revolution against the Movement from the heyday of the Civil Rights Movement right up to the present. Here, Whites reacted to the victories of *Brown v. Board of Education* and the Civil Rights Movement by redoubling their efforts (to draw on Loïc Wacquant's synthesis of Marx, Weber, and Bourdieu) to protect their material monopolies and symbolic

cultural capital as esteemed status-honor groups. They did this by sealing themselves into job rich suburban areas while simultaneously trapping persons of color in the ghetto, which Loïc Wacquant defines as a sort of “ethno-racial prison,” with the “hyperghetto” serving the “*negative economic function of storage of a surplus population* devoid of market utility, in which respect it also increasingly resembles the prison system” (Wacquant 2002: 51; 2001: 105).

But what exactly is the ghetto, a term first used to refer to the Jews of Venice and later to the Nazi programs of concentration and destruction? (Hutchinson and Hays 2012) Wacquant offers a sophisticated and cogent analysis of a ghetto:

[a] sociospatial device that enables a dominant status group in an urban setting simultaneously to ostracize and exploit a “subordinate group” endowed with negative symbolic... [or cultural capital, as in] ...Weber’s...“negative estimation of honor.” Put differently, it is a relation of ethnoracial control and closure built out of four elements: (i) stigma (ii) constraint (iii) territorial confinement (iv) institutional encasement. The resulting formation is a distinct *space*, containing an ethnically homogenous *population*....The ghetto, in short, operates as an *ethnoracial prison*: it engages a dishonoured category and severely *curtails the life chances* of its members in support of the “monopolization of ideal and material goods or opportunities” by the dominant status group dwelling on its outskirts (Wacquant 2002: 50-51 quoting Weber 1978: 935).

Elsewhere Wacquant elucidates another view of ghettoes:

homologies with the prison conceptualized as a *judicial ghetto*: a jail or penitentiary is in effect a reserved *space*

which serves to forcibly confine a legally denigrated *population*...[with a] sullied identity...formed of same four fundamental...[features]...stigma, coercion, physical enclosure and organizational parallelism and insulation — that make up a ghetto, and for similar purposes (Wacquant 2002: 51).

As the walls of the ghetto shook and began to crumble during and after the urban uprisings of the mid to late 1960s, and the walls of the prison were correspondingly extended, enlarged and fortified (Wacquant 2002: 52). As Eva noted in *The Freedom Writers*, the “ghetto is like a prison,” (LaGravanes 2007), including public schools, and, likewise, the prison, as Wacquant has written, is becoming ever more like the ghetto, demographically speaking (Wacquant 2002). Here, then, is the cultural and autobiographical context for understanding Tupac’s life and music and the emergence of hip hop and gangster rap more generally (Dyson 2006). Michelle Alexander calls the mass incarceration of poor Blacks the new Jim Crow, arguing that “the American penal system has emerged as a system of social control unparalleled in world history,” with more Blacks now under carceral supervision than there were slaves in the US in 1850 (Alexander 2012: 8, 175). Though factors vary, from the push for tougher sentences and building more prisons from California to Pennsylvania, the effect is the same: an incarceration bubble, which though pricked during the recent recession, has arguably yet to fully pop, and this, despite successive nationwide crime declines beginning in the 1990s (Simon 2010).

Part of the deep structure of the contemporary criminal (in)justice system, as Tupac understood and continuously underscored, stems from the entwined residential/educational

segregation and related incarceration of African Americans and Latinos. Here, separate and unequal policies combine to create what Douglas Massey and Nancy Denton call an *American Apartheid*, with failing schools increasingly providing a pipeline to prisons (Massey and Denton 1993). A major aspect of this pipeline is the disproportionate punishment of Blacks and Latinos via zero tolerance policies in the schools and related referrals to law enforcement agencies. Here, students are kicked out of underfunded schools and pushed into the criminal (in)justice system, as newly released data from the Department of Education and the Civil Rights Data Collection statistics, just recently announced by the US Secretary of Education, and chronicled in a host of recently released and related studies make abundantly clear (Logan 2011). Here, differential federal policies provide tax breaks, capital and jobs to the suburbs and edge cities, while older suburbs, cities and their schools face exclusion and disinvestment (Davis 1998).

Yet another significant but often unmentioned part of US fiscal priorities which have dramatically affected domestic inequalities are the trillions of dollars used to bail out Wall Street and the additional trillions spent for wars abroad — what Mike Davis some time ago referred to as the fiscal equivalent of several New Deals, originally financed by the most regressive means possible — concomitant with the so-called “war on crime and drugs” at home, in reality a war against the cities and low-income communities of color more generally (Davis 2002, 2006). Estimates by Demetrios Caraley and others indicate that cutbacks of 64% in federal aid cost cities an average \$26 billion annually from 1980-1990 (in constant 1990 dollars); during part of this same period, from 1979 to 1985; deficit-financed

military spending rose from some \$150 to \$300 billion annually, through tax-cuts for the rich and overseas borrowing.⁸ Davis explains:

Spent on cities and human resources, these immense sums would have remade urban America into the Land of Oz instead of the urban wasteland it has become.

The social burden of servicing this deficit may be measured by comparison to the annual combined budgets of the United States' fifty largest cities. In 1980 the interest payments on the federal debt were twice as large as the aggregate big-city budgets; today they are six times larger. Alternately, the \$300 billion 1990 deficit was simply equal to the annual interest costs on a federal debt soaring toward \$5 trillion [and now estimated at anywhere between 16 to 20 trillion, with future interest payments for the next decade expected to top \$3 trillion] (Davis 2002).⁹

Tupac's songs continuously pointed out the underlying structural character of America's misplaced social and fiscal priorities, which has led directly to the decline of social and racial justice in the US, the worsening of ghetto conditions, and the simultaneous burgeoning of the US criminal (in)justice system that predictably accompanied the so-called war on crime and drugs (Tonry 1995). 2Pac sang out: "you've got a war in the streets, and a war in the Middle East; instead of a war on poverty, they got a war on drugs so the police can bother me." Presently, the US, while accounting for only 5% of the world's population, has some 25% of its prisoners, with roughly 2.2 million in federal, state, and county facilities in the US, or more than one out of every 100 US adult residents, or 1% of the total US adult population is now in prison, with per capita rates of

incarceration some eight times higher than that of continental Europe. This incarceration boom represents an increase in imprisonment of 500% from the late 1970s (PEW 2008). As many scholars point out, not only do these numbers dwarf those elsewhere, a significant number of persons languishing in US prisons wouldn't be in prison in Europe at all (Whitman 2003).

In the US, prisoners languish in conditions that violate basic human dignity, for which there are no substantive protections in US law, emphasizing as it does procedural versus substantive rights, again in stark contrast to continental Europe (Whitman 2003, 2007: 253). Notable here are the number of prisoners put in solitary confinement for days, weeks, months, years, or decades, with estimates ranging at some 25,000 persons, though there may be as many as tens of thousands more than this (Goode 2012). James Whitman critiques what he calls the sociology of undifferentiated modernity in failing to understand the growing divergence between the criminal (in)justice systems of Europe and the US since the 1970s, yet he falls into this same trap by minimizing the influence of race, an explanation he critiques, because he says racism exists worldwide (Whitman 2007). To be sure, racism is a global reality, but this is where Whitman's critique of the sociology of undifferentiated modernity becomes increasingly relevant. What is critical to underscore in explaining the hyperincarceration boom in the US, is its pronounced demographic characteristics, affecting primarily poor young Black males with little formal education and coming from the nation's most disadvantaged and impoverished ghetto neighborhoods. The present police harassment and incarceration of young men of color thus has a strong rela-

tionship with America's unique racial history, most especially its centuries of Black slavery, the political and educational disenfranchisement of African Americans via the Jim Crow regime thereafter, and the ghettoization and subsequent collapse of the industrial manufacturing base of the nation's cities, that created a new pool of Black surplus criminality (Nunn 2002). These factors, and the related polarization of wealth and income in the US beginning in the 1970s, were what served to bring together the structural fusion of the ghetto and the prison. Both are highlighted in Hollywood movies like *Bullworth* and the *Freedom Writers*, and in the writings of Mike Davis and Loïc Wacquant, among others (Davis 2002; Wacquant 2002; Reifer 2007).

“NIGGAS DOIN’ FIFTY & SIXTY YEARS & SHIT; I FEEL YA NIGGA, TRUST ME, I FEEL YA”

Today, some 7.3 million persons, or more than one out of every 32 US adult residents, is now either behind bars — the vast majority high school dropouts — or otherwise under the control of the “criminal (in)justice” system, with some two-thirds, or 5.1 million on probation and parole, greater than all the numbers in Stalin Gulags, including fully 33% of all African American young men age 20-29. Today the US imprisons more Blacks than South Africa did during Apartheid's peak. African Americans and Latinos account for some 60% or more of those in prison. In a 1996 report it was noted that, although African Americans represented only 12% of the population and only 13% of drug users, they represented 35% of those arrested for drug possession, 55% of those convicted for drug possession and 74% of those serving sentences for drug possession.¹⁰

Roughly half of those in state prisons in 2006 were incarcerated for nonviolent criminal offenses, a substantial amount drug-related (Reiman 2011: 20). James Jacobs notes:

The best example of enhanced enforcement of long-standing crimes is in the so-called drug war that has produced hundreds of thousands of jail and prison inmates. Indeed, much of the current incarceration crisis is the consequence of the war on drugs. Try this thought experiment. Remove all drug offenders (possession, purchase, sale, importation) from the jails and prisons and consider how different the punishment scene would look. (More than 20 percent of state prison inmates and more than 50 percent of federal prison inmates are serving time for drug offenses) (Jacobs 2007: 350).

While Tupac wrote primarily of the incarceration of Blacks, today Latinos — some 50 million, or roughly 16% of the US population of roughly 300 million, and the fastest growing demographic group both in the country as a whole and in the US workforce — including undocumented immigrants, form the most rapidly growing sector of the prison population. Experts now worry that the imprisonment of Latinos may soon make incarceration as central in the life cycle of Latino males as it is for poor young African American men (PEW 3/24/11). Despite the overwhelmingly male composition of the prison system, female incarceration for drug-related offenses, historically low, increased from 1986-1999 by some 888%, surpassing even the incarceration of men imprisoned for these crimes, now with some 1 million women in jail or under the control of the criminal justice system (ACLU 2004).¹¹

Today's trends stretching back decades, and mapped perhaps most vividly early on in accounts of the LAPD's war on drugs, gangs and poor communities of color by Mike Davis in *City of Quartz*, *Ecology of Fear* and *Dead Cities*, were predicted over 40 years ago. In 1967, socioeconometrician Alfred Blumstein prophetically warned that if the then current trajectory continued, the chance that Black men in the cities would be arrested in the near future could be "as high as 90%," over 50% for felonies. Already, since the mid-1970s and continuing to the present, in states such as California, some two-thirds of all young Black males were arrested and jailed before they were 29, over 40% for felonies. Nonwhite males had a lifetime risk of arrest of over 85%, with the lifetime risk of arrest and imprisonment in Washington D.C. somewhere between 75% and 90%. As a whole, the US penal population skyrocketed from 300,000 to over 2 million in recent decades (Miller 1996: 5-7).¹²

The crisis has become so dramatic that Human Rights Watch, whose focus is normally overseas, recently published a report entitled *Targeting Blacks: Drug Law Enforcement and Race in the United States* (Human Rights Watch 2008). Eight year earlier, Human Rights Watch reported that in seven US states, the percentage of African Americans out of all drug offenders sent to prison ranged from 80 to 90% (Alexander 2012: 96). In Los Angeles alone, with the help of gang injunctions, nearly half a million (450,000) minors have been arrested in the past decade, while between the Watts and Rodney King riots of 1965 and 1992, gangs exploded in numbers in exactly those areas which saw the loss of tens of thousands of industrial jobs to cheap foreign competition from US allies in East Asia. The developments have led to calls, notably in the gang epicen-

ter of the US, Los Angeles, for a Marshall Plan to end gang violence, an area where the work of Jesuit priest Greg Boyle and Homeboy Industries has shown just how much can be done to address these questions (Lovato 1997: 22). Yet the pressing needs of today's impoverished cities and poor suburbs, which call out for the type of federal bailout given to Wall Street, continue to be ignored (Simon 2010). Thus today, as in past decades, the continuing widespread criminalization of Black youth, as in apartheid South Africa, fuels the popularity of gangs "and their poets laureate[s]," with "gangster rappers" like NWA, Ice Cube, Killer Mike, and Tupac still seen today as "the heroes of an outlaw generation" (Davis 1999, 2002: 232).

With its unique combination of the war on crime and drugs, mandatory minimum, determinate, and truth in sentencing laws, as well as new aggressive styles of racially biased zero tolerance policing, the influence of powerful prison guard unions and systematic racial bias throughout the criminal (in) justice system, and the politicized quasi-democratic nature of the US criminal (in)justice system with its policies of penal populism, the US incarcerates more persons per capita than any other nation on earth (Harcourt 2001, 2007). This US "zero tolerance" model of crime, law enforcement, and imprisonment is today being exported across the globe, so that the divergence between the US and other advanced capitalist states that has made America's experiment in punishment and criminal (in)justice system the latest and one of the most troubling aspects of American exceptionalism, now appears to be declining, at least in part. Michael Jacobson reports the data from around the world "from 1992 to 1998, the prison systems of Germany grew by 37%, Spain by 27%, the Netherlands by 80%,

Australia by 32%, and South Africa by 27%,” while from 1983 to 1997 the prison growth of the “Netherlands increased by 240%, Spain by 192% and Portugal by 240%” all part of a new regime that has been labeled “neoliberal penalty” (Jacobson 2005: 13-15; Wacquant 2009b).

Earlier in this essay, I touched on the role of broken windows policing in the burgeoning of the US criminal (in)justice system and prison society with no parallel in human history; here I extend that analysis further. The arrest and mass or hyper-incarceration regime has been justified intellectually by economic models of crime and punishment, notably Gary Becker’s, and related philosophies of deterrence, retribution, and broken windows/zero tolerance/order maintenance theory of policing, despite the dubious empirical evidence for all of these propositions, and the existence of economical alternatives to incarceration and crime reduction (Tonry 2007; Donohue 2007; Tyler 2006, 2011; Meares, Kahan, Katyal 2004; Meares 2011). In essence, broken windows/zero tolerance models of policing argue that visible signs of disorder and criminality have the potential to spiral out of control; the distant analogy is that broken windows, if left unfixed, will contribute to crime and disorder. Thus it is important in order to deter crime, for police to crack down on even the smallest of offenses, including misdemeanor violations.

The broken window theory was developed by James Q. Wilson, of Boston College. In the wake of Wilson’s recent death in March 2012, many mainstream US papers and even NPR, have referred to this theory with little or no reference to the fact that it has deeply rooted racial and class biases, and was based merely on speculation — as Wilson himself admitted.

Despite a plethora of studies which assume or aim to provide support for its explanatory power, the theory has never been validated empirically, and arguably has been falsified in a series of important studies (Harcourt and Ludwig 2006; Harcourt 2007b; Cerda, et al. 2009; Jacobson 2005; Zimrin 2010, 2012; Chauhan et al. 2011; Sampson 2012).

Wilson brought the so-called broken windows theory to prominence with his 1982 *Atlantic* article, apparently the most downloaded in the magazine's history, co-authored with George Kelling. The article's clarion call for order maintenance, and zero tolerance policing became widely adopted by police forces across the country. For his efforts in "understanding and fighting crime," Wilson was awarded the Presidential Medal of Freedom by President George W. Bush in 2003. Generally speaking, the recent obituaries for Wilson didn't really explain the true social implications of the theory of broken windows (which is based on a leap of faith from Philip Zimbardo's original experiment and has almost nothing to do with broken windows.

The broken windows theory nevertheless became the pseudo-scientific intellectual basis for the arrest of millions of mostly poor Brown and Black youth with little formal education, and locking up substantial numbers of them, despite serious questions about the theory (Harcourt 2001).

Take for example the gang ordinances passed by the City of Chicago that basically criminalized youth of color for standing together on the street. The Chicago ordinance led to some 89,000 orders to disperse and the arrest of some 42,000 persons from 1993-1995, until it was finally thrown out as uncon-

stitutional by the Illinois Supreme Court in the 1999 case *City of Chicago v. Morales*, in a decision later upheld by the Supreme Court that same year, in one of the few major civil rights victories for persons of color in recent decades (Roberts 1999). Harcourt dealt with some of the biases of the theory in his book, *Illusion of Order: The False Promises of Broken Windows Policing*:

A teenager hanging out on a street corner late at night, especially one dressed in an eccentric manner, a Negro wearing a “conk rag”...or interracial couples — all of these are seen by many *police officers as persons displaying unconventional and improper behavior* (Harcourt 2001: 16; quoting Wilson 1968: 39-40).

Wilson was intellectually mentored and then became a colleague and collaborator of noted sociologist Edward Banfield. Harcourt quotes from Banfield’s book, *The Unheavenly City Revisited*, to underscore the hidden race and class bias of Wilson’s later theorizing:

[T]he indifference (“apathy” if one prefers) of the lower-class person is such that he seldom makes even the simplest repairs to the place that he lives in. He is not troubled by dirt and dilapidation and he does not mind the inadequacy of public facilities such as schools, parks, hospital and libraries; indeed, where such things exist he may destroy them by carelessness or even by vandalism.... In the slum, one can beat one’s children, lie drunk in the gutter, or go to jail without attracting any special notice; these are things that most of the neighbors themselves have done and that they consider quite normal (Harcourt 2001: 29).

“FROM THE START I FELT THE RACISM ‘CAUSE I’M DARK”

To its credit, the *Los Angeles Times* obituary was one of the very few to note some of the social consequences of the broken window theory, citing Harcourt's *The Illusion of Order*, and further noting the racial theorizing expressed in Wilson's book, *Crime and Human Nature*, co-authored with Richard Herrnstein, Professor of Psychology at Harvard University, in 1988, the latter widely known for his 1994 bestselling book with Charles Murray, *The Bell Curve*, which argued for the genetic intellectual inferiority of African Americans as an explanation for their subordinate race/class position in American life. A leading expert on genetics, Stanford professor Luigi Luca Cavalli-Sforza, pointed out the ridiculousness and racism of the claim, but the book enjoyed a wide popular success (Cavalli-Sforza 1995).

Though neither the *Los Angeles Times* nor any of the other major obituaries reported the connection between Wilson's co-author and *The Bell Curve* book, the *LA Times* did mention Wilson and Herrnstein's co-authored book *Crime and Human Nature: The Definitive Study of the Causes of Crime*. As the *LA Times* reporter wrote “Even to allude to the possibility that races may differ in the distribution of those constitutional factors that are associated with criminality will strike some people as factually, ethically or prudentially wrong, they wrote. ‘We disagree’” (Wilson and Herrnstein 1985: 468). Wilson and Herrnstein are actually part of a long, albeit unfortunate tradition in sociology and criminology, going back to esteemed sociologist Ernest Burgess and others, who pioneered a variety of theories and methods, including actuarial methods for pre-

dicting criminality, that, while like the broken windows theory were laced with race and class bias, continue to influence much racial profiling and criminal risk assessment (Harcourt 2007a, 2007b).

Other scholars, like Dorothy Roberts, have also shown the hidden role of race in shaping the broken windows policing strategy in both theory and practice (Roberts 1999). In one recent study of New York City, the authors found that although as a result of the broken windows policing strategy:

more than twice as many nonfelony arrests were made in 1999 as in 1989....A key element of the broken-windows hypothesis — that misdemeanor policing reduces homicides through a decrease in physical disorder—is not supported in our analyses. An increase in misdemeanor policing was actually associated with an increase in physical disorder. However, this physical disorder had no association with homicide (Cerda et al. 2009: 539).

Notwithstanding its speculative nature and basis in a leap of faith from the original broken windows experiment, the theory continues to provide the intellectual justification for the criminalization of African American and Latino youth in the cities. The success of the theory has been widely touted, and its implementation and ostensible success in New York under Chief of Police Willie Bratton, was part of the basis for his recruitment as Los Angeles's Chief of Police — where he denied the racial profiling revealed in Ian Ayers' 2008 study — until his recent retirement. Indeed, in a recent study of New York City, examining the period stretching from the late 1990s to the first decades of the 2000s, researchers found that traffic stops of citizens have increased by 500%, while their "hit rate"

efficiency in detecting criminal activity leading to arrests correspondingly declined by 50%. Stops were disproportionately concentrated in the poorest communities of color in the city, especially poor Black neighborhoods. These statistics are consistent with order maintenance policing's spatially differentiated focus on neighborhoods of highly concentrated disadvantage where poor Blacks and Latinos in underfunded schools with little formal education are concentrated. This new research demonstrates that these practices of racially biased policing in disadvantaged neighborhoods continues even in the face of major crime declines, and declining returns to police in terms of discoveries of contraband and the like, not to mention criticisms and nominally successfully legal challenges bringing injunctive relief and oversight against and over these practices via private legal groups (Fagan et al. 2010: 337-339).

These ongoing practices are of particular significance because as Sampson and Loeffler note, in a critique of the mass incarceration literature, many neighborhoods of concentrated disadvantage and large Black and Brown populations have massively high incarceration rates, while the inhabitants of many affluent white neighborhoods in the same cities have virtually no incarceration.

[Some] communities experience incarceration as a disturbingly common occurrence, for most other communities and most other Americans incarceration is quite rare. This spatial inequality in punishment helps explain the widespread invisibility of mass incarceration to the average American (Sampson and Loeffler 2010: 20).

As indicated above and as Fagan and his co-authors note: "The preference for neighborhood selection for intensified

stops seems to be inelastic to changes in crime rates or to the limited payoffs in arrest efficiencies from marginal increases in stops,” albeit with search and frisk practices that continue even in the face of declining returns (Fagan 2010: 337-338). All of this seems to represent, at least in part, a Weberian formal means-ends instrumental rationality gone mad, with police measuring productivity in terms of stops, searches and arrests. In similar fashion, the drive for higher drug bust rates apparently helped lead to the recent New York City police scandal of cops planting drugs on persons to meet drug arrest quotas, in a case which made the front page of the *New York Times* (Rashbaum, Goldstein, and Baker 2011). But even this can’t be the whole explanation for these practices, because as demonstrated earlier in a variety of instances, police often find more contraband when they stop Whites than for Blacks or Latinos. The reasons for this are beyond the scope of this article, but it is significant that even measured by its own problematic criteria, racially biased policing most often fails to deliver (see also Harcourt 2007a, 2007b, 2009).

Take, too, the following illuminating albeit little known comparative example of different styles of policing in relationship to crime rates. While both New York, using a zero tolerance model, and San Diego, using a community policing model, saw dramatic drops in crime from 1993-2001, this happened at a time when New York’s misdemeanor arrests increased by 50% while San Diego’s actually went down by 1%, thereby providing caution to those who attribute New York’s supposed “success” to broken windows policing (Jacobsen 2005: 125-127). The attribution of lower crime rates to broken windows policing in New York, represents the most com-

mon mistake that newly enrolled college students learn in any basic social science class, namely the difference between correlation and causation.

“PRISON AIN’T WHAT WE NEED”

One of the nation’s top crime experts, Frank Zimring points out that New York City’s crime decline, beginning in the early 1990s, which he argues is actually the largest on record, happened simultaneously with the shift toward decarceration in the city beginning in the late 1990s, in stark contrast to rising national averages which saw the imprisonment rate increase by 65% during this same period running from 1990 to 2008, while New York City’s decreased by 28% (Zimring 2012: 73-75). Another aspect of this decline was that while police eliminated many public drug markets and related violence, with drug killings going down by 90%, drug usage rates remained either relatively stable or even went up slightly. So, expanding on his previous work on the subject, once again Zimring demonstrates the extent to which lethal violence, in this case associated with drugs, is a major problem, albeit one that can be solved with the help of specific programs and policing policies, such as tackling open air drug markets, but without either reducing illegal drug use as a whole or by resorting to increased mass incarceration (Zimring 2010). Had we heeded this decades ago, Zimring argues, hundreds of thousands of non-violent drug offenders might have been spared long prison spells. More importantly, New York City, the one substantially sized place that has gone against the national trend of hyperincarceration and has instead decarcerated in the last twenty years, with some 10,000 less prisoners in 2008 than it had in 1990, has seen the greatest success in fighting crime, though

virtually no one, Zimring points out to his great chagrin, seems to have noticed.

Zimring hypothesizes if New York's incarceration rate had not gone down by some 10,000 persons in the past few decades, but up by the nationwide figure of 65%, some 58,000 persons more would have been sent to New York City's prisons and jails than are there today 200. Zimring believes that social science has proven the potential effectiveness of good policing strategies in reducing crime, most especially violent crime, focusing on things like crime hot spots and increased police presence; yet he also asserts that there is no evidence to date that indicates that New York City's aggressive broken windows zero tolerance stop and frisk policies, with some 684,000 annual stop and frisks in 2011, 87% of those Black and Latinos, and thus among the most aggressive ever practiced in the nation, played any role in the crime decline (Zimring 2010: 144-149).

Given the evidence we have of the enormous costs of these policies for disadvantaged neighborhoods with concentrations of poor persons of color, and the corresponding lack of evidence of the effectiveness of these techniques in reducing crime, Zimring flatly states that "to institutionalize a continuation of this kind of policy without a rigorous test of its value cannot be justified" (Zimring 2012: 149-150). And yet both Zimring and Fagan report that no such evaluations of such continuing practices of aggressive zero tolerance policing seems to be on the agenda, despite the declines in crime and the rates of return and efficiency of these practices (Zimring 2012: 149-150). Hence the dangers of the widespread praise of the zero tolerance strategy across the country on the occasion of James

Wilson's death, and the attribution of the dramatic drops in crime over the past two decades.

**"HANDS UP, THROW ME UP AGAINST THE WALL,
DIDN'T DO A THING AT ALL"**

Changing pseudo-scientific intellectual theories alone, of course, have not been the only factor affecting policing and racial bias in policing and the criminal justice system. Of particular importance, too, in the growing harassment and incarceration of African American males, has been the emergence of what scholar Amy Ronner calls the new "Fourth Amendment apartheid" (Ronner 2001). In a series of cases, the Supreme Court decided that, for example in the 1996 *Whren v. U.S.*, that a police officer's "subjective motivations for a stop were irrelevant to Fourth Amendment analysis" (Jones-Brown and Maule 2010: 155). In *Illinois v. Wardlow*, the Supreme Court ruled that the flight of a middle aged black man from police constituted reasonable grounds for suspicion, the court essentially arguing, "In the majority's view, African Americans have no legitimate reason to flee the police. Thus, the Court, in essence, established a per se rule that flight equals reasonable suspicion" (Nunn 2002: 403). These decisions are all but one part of a larger war on victimless "crimes," which have thoroughly transformed the US criminal (in)justice system (Dubber 2006).

Tupac, in his song "Trapped," part of his debut album, *2Pacalypse Now*, that he said told the story of the young Black male, captured the essential features of the new Fourth Amendment apartheid.

You know they got me trapped in this prison of seclusion
Happiness, living on tha streets is a delusion
Even a smooth criminal one day must get caught
Shot up or shot down with tha bullet that he bought
Nine millimeter kickin' thinking about what tha streets do to me
Cause they never talk peace in the black community
All we know is violence, do tha job in silence...
Too many brothers daily heading for tha big pen
Niggas commin' out worse off than when they went in...
If one more cop harasses me I might go psycho....

They got me trapped
Can barely walk tha city streets
Without a copy harassing me, searching me
Then asking my identity
Hands up, throw me up against the wall,
Didn't do a thing at all
tellen you one day these suckers gotta fall
Cuffed up throw me on tha concrete
Coppers try to kill me
But they didn't know this was tha wrong street
Bang bang, down another casualty
But it's a cop, who's shot, there's brutality
Who do you blame?
It's a shame because the man's slain
He got caught in the chains of his own game
How can I feel guilty after all the things they did to me
Sweated me, hunted me
Trapped in my own community
One day I'm gonna bust
Blow up on this society

Why did ya lie to me?
I couldn't find a trace of equality...
Uh uh, they can't keep the black man down...
What do I do, live my life in a prison cell
I'd rather be trapped in a living hell

A major aspect of the new Fourth Amendment apartheid and daily harassment, arrest and hyperincarceration of youth of color has been the war on drugs. Over the past 40 years some 44 million drug related arrests have cost some trillion and a half dollars. To a considerable extent the war on drugs has been a war on marijuana, one of the least harmful of drugs according to the latest and most up to date scientific studies in the peer-reviewed literature. Yet over 13 million persons have been arrested for marijuana since Nixon's National Commission on Marijuana recommended legalization in 1972. Indeed, for some time now, roughly half of the 1.5 million persons arrested for drugs each year were busted for pot, 80% for possession, in a figure that appears to be rising exponentially (King and Mauer 2006). And all this goes on, despite the fact that marijuana is relatively harmless, or minimally is among the least harmful of drugs when compared to many others, most especially legal drugs such as alcohol and tobacco, with there being no recorded instances of death from smoking pot in its 5,000-year history (Gerber 2001, 2008). And there are many simple solutions to existing policies on both legal and illegal drugs that could substantially reduce the harms of these drugs and the drug wars (Kleiman, Caulkins, and Hawken 2012).

**“TOO MANY BROTHERS DAILY HEADING FOR
THE BIG PEN, NIGGA’S COMIN’ OUT WORSE OFF
THAN WHEN THEY WENT IN”**

The year 2010 saw the highest numbers for marijuana related arrests in the US in recorded history, at some 858,838, with over half of all drug arrests annually now involving marijuana (Armentano 2011). Since the re-declaration of the war on drugs in the early 1980s, over 31 million persons have been arrested for drug offenses, with many of America’s largest cities seeing increases in drug arrests from 1980-2003 ranging from 500% to almost 900%. Arrests and imprisonment are radically disproportionate for African Americans and Latinos versus White males; with admission to prison rates for Blacks in the 34 states studied by the Sentencing Project, 256.2 per 100,000 adult Black residents versus 24.3 per 100,000 White adults, with the highest disparity for Illinois, with rates of admission of 613.89 for Blacks and 26.0 for Whites (King 2008: 2; Human Rights Watch 2008: esp. 16-20).

Recent studies of California and New York have revealed just how disproportionate are marijuana arrests of Blacks and Latinos, relative to Whites, and this despite the larger usage rates of the latter. In New York City alone, marijuana arrests have increased for their seventh year in a row, totaling over 50,000, more arrests annually all the way up to the present than during the 19 years from 1978 to 1996, with the vast majority of those arrested again being Black and Latino. From some 1,851 arrests in 1994, the year before New York City’s zero tolerance/broken windows police strategy was implemented, arrests rose to 51,267 in 2000, an increase of 2,670% (see Levine et al. 2010a, 2010b, 2011). These statistics did

made the news, with a small article appearing on page A18 of the *New York Times* in February 2012. To use a mental experiment, one can only wonder what the coverage might be like if the statistics were reversed, and instead of Whites using marijuana more than Blacks, it was the other way around, but with Whites getting arrested disproportionately; it's hard to imagine that there wouldn't be a massive outcry with the news making the front page of the *New York Times*, rather than buried deep within the paper, and not a major topic of public policy discussion or debate. Then again, the same could be said in terms of the *lack* of attention to lethal violence, with over ten thousand mostly young people being killed by lethal violence over the last few last decades in the nation's epicenter of gangs, Los Angeles, California (Hayden 2005: 1-17). As Tupac put it in "Life Goes On," "How many brothers fell victim to the streets, rest in peace young nigga, there's a heaven for a g; be a lie if I told ya that I never thought of death; niggas, we the last one's left, but life goes on."¹³

Of great significance here is the little known fact that this marijuana and larger drug arrest craze has been financed by new federally funded programs, notably the Federal Grant Program, set up by the 1988 Anti-Drug Abuse Act under President Reagan as part of the war on drugs. In Tulia, Texas, the funds were seen as a virtual gold mine when they were awarded to the county in the 1990s, and helped facilitate one of the most blatant instances of wholesale civil rights violations at century's turn (Blakesee 2005: 204). This federally funded program directly facilitated the arrest of over 10% of the total Black population of Tulia, Texas, on trumped up drug charges made by a single racist and corrupt White detective, Tom

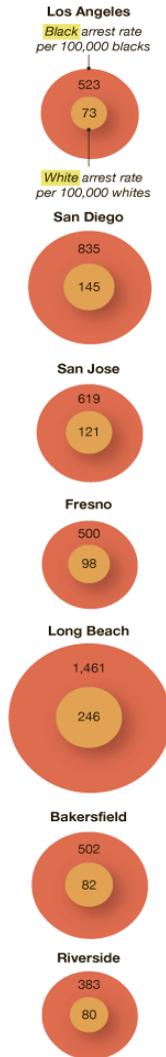
Coleman, based almost solely on samples of the drugs (ostensibly procured from the suspects), and the detective's own uncorroborated testimony, with no wires or electronic recordings. The conviction and incarceration of many of the earliest arrestees, with sentences ranging from sixty to three hundred years, led to widespread plea bargaining by the other accused persons thereafter, the vast majority of whom were Black. And yet, despite the fact that this was one of the most egregious examples of civil rights violations and concomitant injustice in the US since the 1960s, detective Coleman was not given any actual jail time but was instead sentenced to only ten years' probation (Jones-Brown and Maule 2010: 150-151, 170-172). What's even more astounding, though, is that the Byrne Grant program has refused to die, and after some initial cuts under President George W. Bush, was vastly expanded, and this time under the incoming Democratic administration, which had pledged during the Presidential campaign to restore the lost funding.

Thus, while President George W. Bush reduced money for the Byrne Grant program to only \$170 million during his Presidency, and despite the program's prominent role in the Tulia scandal, in response to the Bush cuts, some 56 Senators, overwhelmingly Democratic, signed a letter calling for the restoration of some \$500 million to the program (Blow 2010). President Obama's 2009 stimulus package eventually restored and vastly expanded the program's funding, giving some \$2 billion to the program to be awarded by September 2010, a 12-fold increase in the program's overall funding. *New York Times* visual editor Charles Blow, who has highlighted the painstaking scholarship of Queens, CUNY Sociologist Harry

Beyond the Triangle of Emancipation: Tupac's Hip-Hop Theory of Criminal (In)justice, the Pope's Playlist, & the Prophetic Imagination

Imbalance in Arrests

Marjuana possession arrest rates in some of California's largest cities, 2006-08.



Source: "Arresting Blacks for Marijuana in California: Possession Arrests in 25 Cities, 2006-08"

Levine and the ACLU's and NAACP's findings on the racial disproportionality in marijuana arrests across the US in stark visual form, explained the twisted political logic at work here, under a Democratic Administration headed by President Obama and Attorney General Eric Holder, both African Americans (see his "Imbalance in Arrests" visual from his "Smoke and Mirrors") (Blow 2010).

Why would the Democrats support a program that has such a deleterious effect on their most loyal constituencies? It is, in part, callous political calculus. It's an easy and relatively cheap way for them to buy a tough-on-crime badge while simultaneously pleasing police unions. The fact that they are ruining the lives of hundreds of thousands of black and Hispanic men and, by extension, the communities they belong to barely seems to register.

This is outrageous and immoral and the Democrat's complicity is unconscionable, particularly for a party that likes to promote its social justice bonafides (USDOJ 2012).

And yet while the war against relatively harmless drugs continues and gathers speed, with untold damage, direct and collateral, on the lives of poor Black and Brown youth and their families and communities, the toll from legal drugs, the subject of many of Tupac's rap songs, continues unabated. As Tupac put it in "My Block," "alcohol will make a lazy nigga slip and fall." And indeed, according to the one of the most comprehensive recent studies by the Center for Disease Control and Prevention, excessive consumption of alcohol in the US kills some 79,000 persons annually, and leads to some 2.3 million in additional years of potential lost life, though simple regulations could substantially reduce these and a host of other harms

associated with the drink (CDC 2011a, 2011b). In addition, alcohol is associated with up to two-thirds of the incidents of intimate domestic partner violence, crimes largely against women that are of epidemic proportions, with one in three women affected.

Alcohol abuse is also a leading factor in child abuse, and responsible for as much as half of all traffic accidents and criminal violence; with some 15.5 million Americans abusing or dependent on alcohol, and tens of thousands of sexual assaults and acquaintance rape being alcohol related, especially on college campuses, where rape rates are substantially higher than in the general population. Rates of sexual violence, though, it should be underscored, are also higher than the general population for African American women in high-risk urban neighborhoods of concentrated disadvantage, according to recent studies. Crime rates and violent crimes, including against women, are also higher on reservations, with murder rates for Native American women relative to other Americans ten times as high. These communities, of course, are also generally among the poorest and most disadvantaged communities in the US (Donohue, Ewing, and Peloquin 2011).

Tupac weighed in on the questions here surrounding respect for females and male violence against women, which also disproportionately affects poor African American women in the hood, in songs such as “Brenda Had a Baby,” “Dear Mama,” and “Keep Ya Head Up” (Tupac 1998):

...I give my holler to my sisters on welfare, Tupac cares,
If don't nobody else care,
...And since we all came from a woman

Got our name from a woman and our game from a woman
I wonder why we take from our women
Why we rape our women, do we hate our women?
...Time to heal our women, be real to our women
And if we don't we'll have a race of babies
That will hate the ladies that make the babies
And since a man can't make one
He has no right to tell a woman when and where to create one
So will the real men get up
I know you're fed up ladies, but keep your head up¹⁴

(Oooh ooh, child, things are gonna get easier
Oooh, ooh child, things will get brighter)

“IT’S ALL RIGHT BECAUSE IT’S ALL WHITE”

Then there is the astonishing case of tobacco. As one of the leading historians of science who studies tobacco, Robert Proctor notes, six trillion cigarettes are smoked every year.

Six trillion — that’s 6,000,000,000,000—are smoked every year, enough to make a continuous chain from the earth to the sun and back, with enough left over for a couple of round trips to Mars (Proctor 2012: 3).

Many people in the US assume that marijuana must be worse for you than tobacco, because pot is illegal and tobacco legal, not to mention almost wholly unregulated. Yet today, cigarettes kill some 6 million persons per year, or one Holocaust annually, with the World Health Organization estimating 10 million people will be dying each year from cigarette smoking by 2020 (Proctor 2011: 2; 2006). Some 100 million people were killed by tobacco in the 20th century, with forecasts of the

predicted death toll in the 21st century estimated at 1 billion, a topic covered by Robert Proctor in his chapter “Globalizing Death.” Some 443,000 Americans are killed every year as a direct result of smoking, or one of five deaths in the US annually, and there are 50,000 additional deaths annually from second hand smoke, thus exceeding the combined death toll of handguns, alcohol, AIDS, traffic accidents, homicides and suicides in the US (Proctor 2012: 1-11). According to the latest statistics from the American Cancer Society, roughly 1 in 13 men, and 1 in 16 women in the US, will be diagnosed with lung cancer sometime in their lifetime (American Cancer Society 2012).

And all this is largely the result of a vast ongoing criminal corporate conspiracy by tobacco firms, and their highly placed political allies, in what Allan Brandt calls the “crime of the century,” replete with the perjury of CEO’s from all the big US tobacco companies some years back. When called before Congress, these CEO’s swore that to the best of their knowledge tobacco and nicotine were not addictive. To be sure, this ongoing criminal conspiracy eventually did lead to the federal prosecution of big tobacco under the RICO Act, a statute usually reserved for targeting organized crime (Proctor 2012). Yet cigarettes didn’t even become subject to FDA regulation until 2009, despite being among the most addictive and destructive drug known to humankind. Though tobacco is now nominally regulated by the FDA, in fact, cigarettes are still in effect unregulated. It is the worst of all possible worlds: an almost totally unregulated product that people believe is being regulated, and most failing to understand the distinction between

being legally subject to FDA regulation and the actual passing of any regulations.

A recent example reveals this reality in a powerful way. In March 2009, tobacco companies sued the FDA to stop new regulations on tobacco. Then, in a summary judgment, a federal judge blocked a proposed FDA regulation requiring graphic warning labels on cigarettes including pictures of diseased lungs and a body on an autopsy table, under the dubious guise of First Amendment protection of freedom of speech. To date, the FDA has not successfully passed a single regulatory measure. This most recent ruling, announced in March 2012, which would have been the biggest change to cigarette warning labels in over two decades, will make it nearly impossible for the FDA to move ahead with the regulations as planned by September of 2013 (Esterl 2012).

This ruling combines with the recent 5-4 *Citizens United* Supreme Court decision upholding the idea that money and commercial advertising is speech and therefore entitled to First Amendment protection. So now, tobacco and other corporations are free to unleash untold amounts of money from their corporate coffers to buy influence from politicians running for office. This brazen decision by a deeply divided Supreme Court, serves as an illustration of John Stuart Mill's maxim that "government is always either in the hands, or passing into the hands of whatever is the strongest power in society," and [that] "the distribution of constitutional power cannot long continue very different from real power without a convulsion" (Mill, quoted in Ashcraft 1998: 171). The *Citizens United* ruling provides perhaps the clearest indication to date of the shift in the Supreme Court from civil rights to corporate rights that has

characterized the era from the victory of *Brown vs Board of Education* in 1954 to the present.

A new almost 900-page report from the US Surgeon General released in March 2012, shows that smoking is actually increasing today among under-age minors and reaching new epidemic levels, with some 3 million US high school students smoking; 3,800 trying their first cigarette every day; and 1,000 becoming addicted daily. Almost one in four high-school seniors smoke, as does one in three young adults under 26, and this at a time where some 1,200 die in the US from tobacco daily. These statistics show the success of the \$10 billion tobacco companies spend annually on advertising, including to underage youth, though they deny targeting this population, which is critical to ensuring the continued demand for their product. Studies have repeatedly shown that cigarettes are far more addictive for younger users than older ones, so it's critical to get young people smoking at an early age. And 80% of all US adults who smoke today, they became addicted by age 18; 99% by age 26 (USSG 2012: i, iii). Yet, instead of seeing drug use as a whole as a public health problem, the US continues to criminalize a wide range of drugs, including marijuana, despite the substantially smaller harm to society than legally and largely unregulated drugs such as alcohol and tobacco. The radically different policies and disparities of harm and concomitant racial disparities in regard to legal versus illegal drugs, have been the subject of hilarious albeit tragicomic jokes and criticisms in Chris Rock's satirical "It's All Right Because It's All White," in his video *Never Scared* (Rock 2004). Here, Rock tries to imagine the reaction in the White community if African Americans were heading up a drug industry that killed half a million per-

sons in the US annually, including 50,000 that don't even use the drug directly.

Leaving some deadly drugs legal and targeting minority drug users of marijuana, despite their lower ratios of use relative to Whites, has contributed to massive death and destruction from legal drugs, such as tobacco and alcohol. In turn, the war on crime and illegal drugs has played a critical role in the right turn in US politics. Here we have seen the rise of tough on crime law and order politics against crime in the streets, albeit not White collar crime in the suites, which has largely escaped prosecution (Hagan 2010). And once again, it was the Sunbelt states of the Southwest — the region Mike Davis once referred to as the “land of Sunshine and the Open Shop” — that led the pace here, notably the centers of the carceral universe, Arizona, Texas, and California, with overburdened justice systems now increasingly assuming innocence instead of guilt (Lynch 2010). Here, as Vesla Weaver and others have argued, the racialized politics of crime were an elite strategy central to the mobilization of a broad New Right targeting the gains of the black freedom struggle and related movements of the 1960s, from the Free Speech Movement, to the Watts uprising to the rebellions of 1968 (Weaver 2007). On the heels of the Free Speech Movement and the Watts rebellion came the ascendance of Ronald Reagan, first as governor of California and then as US President in 1980, leading to the re-announcement of a new and improved, “War on Drugs” (Tonry 1995).

“TAKE A RIDE TO MY BLOCK”: POLICING RACE, SPACE, & (PUNISHMENT’S) PLACE

The racial and spatial polarization of US society during what John Simon calls the move from New Deal to Carceral State (Simon 1997), found eloquent expression in Tupac’s song “My Block”:

Take a ride to my block...
Shedding tears, reminiscing on my past years...
It appears that I’ve been marked for death
...the underlying cause of my arrest, my life is stress
And no rest forever weary, my eyes stay teary
for all the brothers that I buried in the cemetery
Shit is scary, how black on black crime legendary
But at times unnecessary, I’m getting worried
Teardrops and closed caskets, the three strikes law is drastic
And certain death for us ghetto bastards
What can we do when we’re arrested, but open fire,
Life in the pen ain’t for me, cause I’d rather die
But don’t cry through your despair,
I wonder if the Lord still cares for us niggas on welfare,
And who cares if we survive
The only time they notice a nigga is when he’s clutching on a
four-five
My neighborhood ain’t the same...
And I swear it’s like a trap
But I ain’t given up on the hood, it’s all good when I go back...
...on my block...never fails to be gunshots
Can’t explain a mother’s pain, when her son drops
Black males living in hell, when will we prevail?
Fearing jail but crack sales got me living well

In a sense I'm suicidal with this thug's life
Staying strapped forever trapped in this drug life
God help me, cause I'm starving, can't get a job,
So I resort to violent robberies, my life is hard...
Misled from childhood where I went astray
Till this day I still pray for a better way
Can't help but feel hopeless and heartbroke
From the start I felt the racism cause I'm dark...

And I can't help wonder why so many young kids had to die

Caught strays from Ak's and the driveby
Swollen pride and homicide, don't coincide
Brothers cry for broken lives...cause our block is filled with danger

Used to be a close knit community but now we're all cold strangers

Time changes us to stone, them crack pipes

All up and down the block exterminating black life...

Alcohol will make a lazy nigga slip and fall, miss his call...

Growing up in this world where everything is scandalous...

Can't explain just what attracts me to this dirty game,

Gold chains, some extra change, and the street fame,

And what's strange is everybody know my name,

Swear they all know me, and lots of cash make a nigga change...

Feeling pain for all the niggas I lost to the game...

Rest in peace to all...that passed away

From all the blocks that I'm from...New York, Uptown...
Baltimore,

my block, that's right

...Los Angeles, haha, that's my block too

Oakland, can't forget Oaktown, that's my block for sure
And all the other blocks...Houston, Florida, St. Louis, Tennessee,
Miami, Chicago...
Represent the...block

Here, Tupac lyrically captures the move toward two societies, separate and unequal, Black and White, that were warned of by the 1968 National Advisory Commission on Civil Disorders, or the Presidential Kenner Commission, reporting in the wake of the urban riots that shook hundreds of US cities in the late 1960s. All the elements chronicled and forewarned of in this important study are present in Tupac's hip hop theology of criminal (in)justice, expressed in "My Block" and related songs: the intersection of spatially concentrated urban inequality, drug dealing and addiction, violence and disadvantage. These realities, so poignantly put to music and poetic rhyme, have been recently captured in a series of scholarly works, perhaps none with more acuity, insight and theoretical rigor than Robert Sampson's *Great American City: Chicago and the Enduring Neighborhood Effect* (Sampson 2012). Indeed, Sampson, along with Douglas Massey and Nancy Denton, Loïc Wacquant, Michelle Alexander, Ruth D. Peterson and Lauren J. Kirvo, Stephen Graham, Edward Soja, Carl Nightengale, William Julius Wilson, and Saskia Sassen have collectively produced what are some of the best informed empirical studies that illustrate in scholarly form Tupac's hip hop theory of punishment and criminal (in)justice since the work of Mike Davis. Davis, it should be remembered, in a series of articles beginning in the 1980s, starting with his "Los Angeles: Civil Liberties Between the Hammer and the Rock," the first in a number of pieces later incorporated into his book on Los

Angeles, *City of Quartz*, was one of the earliest writers on the scene to document the war against urban youth of color in the cities during the days of the crack cocaine epidemic (Sampson and Loeffler 2010).

Ironically, as Sampson points out, Davis's *City of Quartz* came out just as the nationwide crime decline began, stretching from 1990 to 2006, with another massive drop at the end of the decade (Sampson 2012: 442). But what is most significant here, is that this massive drop in crime was associated with an equally massive increase in incarceration, and the criminal (in) justice apparatus in the US as a whole, across the entire nation. In one of the most careful and thorough of recent studies examining the criminal (in)justice system and its context in the "hood," using both national and local data from sources such as the Circuit Court of Cook County in Chicago, the US Census Bureau, and the US Department of Justice, it was actually found that

the beginning of the crime drop in the 1990s corresponds to a rapid rise in incarceration....Over the longer term of 1990 to 2006...crime decreased steadily as the imprisonment rate increased and then maintained, more or less, a high rate....[Moreover] communities that experienced high disadvantage experienced incarceration rates *more than three times higher* than communities with a similar crime rate (Sampson and Loeffler 2010: 22, 27).

This shouldn't come as a surprise especially as zero tolerance policing focuses exactly on categorizing neighborhood communities of color with concentrated disadvantage, criminalizing races in these particular spaces, replete with gang injunctions and massive police brutality and unjustified police

homicides. All these intersecting inequalities help to create “punishment’s place,” or what Sampson and Loeffler call the local or spatially concentrated places of mass incarceration (Sampson and Loeffler 2010). In April 1988 during the gang-busting actions of the LAPD in the era of the crack cocaine epidemic, the LAPD’s “Operation HAMMER,” brought out a thousand patrolmen to arrest more Black males in Los Angeles than at any time since the 1965 Watts rebellion. These operations were characterized in Los Angeles and elsewhere by widespread police brutality and a host of “accidental,” unjustified homicides of innocent civilians of color by the police (Davis 1993: 29-33). Between 1987 and 1990, the LAPD’s sweeps netted some 50,000 “suspects,” in a pattern that resulted in the Rodney King incident and the LA riots after the acquittal of the police who savagely beat him (Davis 1993 and 2002: 231). These gang injunctions and related sweeps, inspired by the zero tolerance model of policing then proliferated across the US and spread across the world, and have played a key role in the criminalization of a whole generation of Black and Brown youth in disadvantaged ghetto neighborhoods. Hundreds of thousands, if not millions, of ghetto youth have been caught up in the net and entered into gang databases, where they are then subjected to lengthy enhanced punishments and jail terms for crimes if they are identified as gang members. These happen under the auspices of California’s new Street Terrorism Education and Prevention (STEP) Act. Many of these youngsters are simultaneously deprived of many of their constitutional rights (Caldwell 2010).

Cross-national studies of communities as different as Stockholm and Chicago show too that despite radical differ-

ences in social structure and levels of violence, concentrated neighborhood disadvantage is spatially correlated with lower collective efficacy rates, elevated perceptions of urban disorder, and correspondingly higher levels of criminal violence. Understated here is also the critical role of educational and job opportunities, especially given the massive White flight in response to the Supreme Court's passage of *Brown v. Board of Education* (see Baum 2010; Reifer 2007; Klarman 2006). This white flight had dire implications for those neighborhoods where work and educational opportunities, all related to individual and collective senses of agency and efficacy, disappeared, and helped lead to rising crime rates in 1965. High crime and incarceration rates in turn also appear to help produce concentrated disadvantage, in a vicious cycle, with poverty in many Black communities amazingly persistent over periods of 40 years or more; all of which brings us back to the enduring message of Tupac's hip hop critique of the criminal (in)justice system and its continuing relevance today (Sampson and Loeffler 2010: 27).

Tupac's songs continue to resonate today because they are voices ringing out to the 68% of young Black males high school dropouts born since the mid-1970s who end up in prison at some point in their lives. Poverty, lack of education and attendant durable categorical racial inequalities are all correlated with high rates of incarceration, inequalities that are increasingly cumulative and intergenerational, with the mark of a prison record now much more common for the young Black male than a college degree, something which may soon become true for Latinos as well (Western and Pettit 2010: 11). Many other young Black males are even less fortunate, like Tupac,

born in 1971, shot down and victims of gun violence even with the significant drops in violent homicide since the 1990s and beyond (Cook 2011).

Despite the work of some globalization theorists who argue that place and space no longer matter, Tupac's songs, and the related work of leading analysts mentioned above, resonate strongly today because they capture the continuing interlocking factors of spatially concentrated neighborhood disadvantage, drugs, violence, and incarceration that have reshaped inner city ghettos into what Tupac called a "living hell," akin to being locked up in a prison cell. With a host of formal and informal consequences and penalties resulting from a criminal conviction, the prospects for rehabilitation, going straight and community reintegration and reentry for former convicted prisoners are often slim, as Tupac so poignantly wrote in his song "Trapped". This is the one of the best kept dirty little secrets of the current criminal (in)justice system, namely that as Jeremy Travis notes, "they all come back," with roughly three quarters of a million prisoners now released from jail annually (Travis 2005). Yet concentrated neighborhood disadvantage and the hyperincarceration to which it is intimately related profoundly interrupts the normal life course cycle for young Black and Brown youth. This in turn reinforces the criminogenic effects of imprisonment and its revolving door, replete with back-end sentencing and all the resultant devastating consequences for inner-city urban communities of color, all themes echoed in Tupac's songs from "My Block," to "Trapped," to "Changes."

The role of racial profiling and racially biased policing briefly came to the media's attention with the arrest of Henry

Louis Gates, the W.E.B. DuBois Professor and Chair of Afro-American Studies Department at Harvard University. There was, however, little discussion of the realities of life for poor Black males not fortunate enough to be Ivy League professors (Harcourt 2009). Nevertheless, revealed here was the criminalization of blackness, with roots going back to the late 19th century South after the defeat of Black Reconstruction. During this period, Black life was criminalized so as to exploit Black labor for Southern industrialization (Grashaw 2008). Today, the criminalization of Blackness lives on, with driving, standing, walking, fleeing, and now breaking into one's own home while Black.

“CALIFORNIA LOVE” AND THE CHALLENGES OF THE 21ST CENTURY: EDUCATION OR INCARCERATION

In songs such as “California Love,” and “To Live and Die in LA,” Tupac expressed his love for the Sunshine State, rapping that “California...it's the only place for me.” In a related song, “Unconditional Love,” Tupac sang,

Prisons ain't what we need, no longer stuck in greed, my family's gotta eat...sending love out to my block, the struggle never stops...my mission is to be more than just a rap musician, the elevation of today's generation if I could make 'em listen.

California's record at the dawn of the 21st century is particularly noteworthy, and perhaps in no other state is the elevation (to education rather than prison) of today's generation more desperately needed. The Golden State, has seen the arrest of some two-thirds of all young Black males since 1974; nearly

500 felonies have been written on the books since 1998, there has been an increase of over 400 criminal penalties along with 1,000 crime bills in recent decades. All this has happened in a state that enforces the “Three Strikes Law” — the nation’s most draconian punishment that has sent men to prison forever for a third felony offense. In one instance stealing a piece of pizza landed a man in jail for life (though in this instance, fortunately, the sentence was eventually reduced to six years) (Davis 2006: 288). Tupac wrote in “Changes,” “the three strikes law is drastic, and certain death for us ghetto bastards.”

These laws, most notably in California, are part of a larger turn in the criminal (in)justice system toward longer and harsher sentences, with an increasing number of persons now doing life without the possibility of parole, or facing death, with costs exponentially increasing (Ogletree and Sarat 2012). Tupac said in “Life Goes On” “I got the word as hell, ya blew trial and the judge gave you 25 with an L, time to prepare to do fed time, won’t see parole, imagine life as a convict that’s getting old.” California now warehouses the nation’s most crowded prisons, currently at some 180% to 200% of their design capacity. Conditions are so deplorable that it led to a 2011 Supreme Court decision holding that California was violating prisoners’ constitutional rights against cruel and unusual punishment, and mandating that the state substantially reduce its state prison population to comply with these rights.

Yet all California prisoners released have for some time been on supervised parole — a unique statewide policy that has only recently been slightly changed with the new state law that entered into effect in January 2010 for nonviolent offenders — contributing to the nation’s worse recidivism rates often for

minor parole violations, at 70% (Petersilia 2008b: 341). Joan Petersilia, one of America's top criminologists and a leading expert on parole, prisoner rehabilitation and reentry, recently stated:

Having made this detailed analysis of parole and prisoner reentry in the United States, one must conclude that we could not have designed a more ineffective system had we set out to do so (Petersilia 2009: 250-251).

With continued cuts for money for rehabilitation and reentry, the likelihood of real reductions in California's prison population at the moment appears to be slim, despite widespread beliefs that the incarceration boom is over, not only in California but across the country (*Criminology and Public Policy* 2012).

A key aspect of making this prison society has been the effective dismantling of *Brown v. Board of Education*, the 1954 Supreme Court decision declaring that separate schools as inherently unequal. While for a time the decision, for all its trials and tribulations, led to considerable progress in school integration, a series of later court decisions and developments going all the way up to the Supreme Court declared suburbs virtually off limits to busing and integration. This in turn helped lead, in conjunction with other factors, to the restoration of apartheid schooling across the nation, but nowhere more apparent than in the California public school system (Kozol 2009). This reversal and silent death of *Brown v. Board of Education* serves to reproduce the vast race and class inequalities that have led to astonishingly elevated high school dropout rates and correspondingly low rates of college attendance,

especially for Blacks, Latinos and working-class Whites, all of which fuels the criminalization of youth and related incarceration boom (Duncan and Murnane 2011).

California, the most populous and diverse state in the nation, with the largest number of Latinos, who now make up the majority of public school students, is also along with Texas and other Sunbelt states the epicenter of the criminal (in)justice complex. Registered here is the vast demographic transformation of the US, with Latinos now numbering 50 million persons, in a demographic upsurge that is transforming cities and urban areas across the US. These changes have the potential to remake the US on broader and more socially just multiracial foundations, as the nation becomes a majority multicultural society (Davis 2001). While Arizona has grabbed national attention for the criminalization of immigration and the shutting down of the nation's only and highly successful K through 12 Mexican American Ethnic Studies Program, despite (or perhaps because of) the program's success, with some of the highest graduation and college attendance rates for low income minority youth in the country, it is California that has the dubious distinction of having the most segregated school system in the country (Valencia 2008). As painstakingly documented by the UCLA based Civil Rights Project, California's schools are triply segregated by race, class, and language, with many students attending school with over 90% students of color, most of whom are poor, mirroring rampant racially and class segregated schools across the country. At LA Unified, the largest school district in the state and one of the nation's largest, where the majority of students are Latinos and other students of color, graduation rates are a woefully low 40.6% (Douglass

2011: 27). In Southern California's public school system, where the new Latino student majority comprises a fifth of all Latinos in the country, triple segregation is also rampant (Civil Rights Project 2011).

With failing schools, high drop-out rates, and the classroom-to-prison pipeline, the most powerful prison guards union in the country, and the state's leading lobbyist, California spends over \$10 billion on prisons annually, roughly 11% of the state's budget (out of some \$60 billion for prisons and over \$200 billion for the US criminal (in)justice system as a whole nationwide). California also has the notorious distinction of being the only large state that spends more on incarceration than on higher education. This fiscal regime was a reality *before* the state cut over a billion dollars to education in 2009-2010. Expenditures on prisons in California in the past three decades have increased by more than 1,000% (Grattet, Petersilia, et al. 2009: 1). In California's 2011-12 state budget, the total for Corrections and Rehabilitation was \$10.1 billion, a 2.3% rise from 2010-11, an increase of nearly a quarter of a million dollars. California's Legislative Analyst Office recently released figures on the state's finances, projecting a deficit of \$13 billion for 2012, and a more immediate revenue shortfall of \$3.7 billion. This shortfall is expected to trigger billions of dollars in new cuts, including a \$1.35 billion mid-year cut to K-12 public schools, unless California citizens vote to approve new tax increases. Hundreds of millions of dollars more in cuts may thus come to public higher education system already reeling under the impact of cuts and tuition increases, while San Diego County's public school system, one of the nation's largest, is teetering on the edge of bankruptcy. In April 2012 the state

put out a plan to radically change the correctional system and save billions, but efforts at decarceration in California and across the nation still face tremendous hurdles (California Department of Corrections and Rehabilitation 2012; *Criminology and Public Policy* 2011; Californians United for a Responsible Budget 2012).

This wholesale attack on and destruction of public education in California — which was once one of the nation's and the world's best, notwithstanding its racially segregated character — including online schools that are failing most of their students but generating huge profits on Wall Street, has ominous implications for the future of California's youth and the state and nation as a whole (Saul 2011). Increasingly scholars are coming to realize that 20th century investments in education were the one welfare state measure where the US was truly exceptional in a positive way, and led, rather than lagged, in the American Century (Garfinkel et al. 2010). This emphasis on universal public education across lines of class and gender — albeit not race — arguably played a major part in America's economic success in the 20th century. Here, the stratification of persons of color subject to separate and unequal schools, along with related policies of tracking, or the placing of students in different classes on the basis of perceived ability, often a code for racial segregation within schools, played a major role in the subordinate position of racial and ethnic minorities in the US, most especially Blacks and Latinos. And as scholars are increasingly recognizing, poor educational provision, most especially affecting racial minorities and poor and working class students in publicly segregated school systems, via formal or informal mechanisms, is often a ticket toward low-wage work,

unemployment, incarceration, or even an early death, fueling high rates of high school drop out and thus low rates of college attendance and upward mobility.

One of the most comprehensive studies of Mexican-Americans in the US, is argued by Edward E. Telles and Vilma Ortiz:

Sorting into the lower ranks of American society is mostly through public education. Moreover, persistently poor education over several generations-since-immigration largely accounts for the slow or interrupted assimilation of Mexican-Americans in socioeconomic, cultural, residential, and other dimensions of life. Thus, poor educational opportunities, more than any other factor, exclude many Mexican-Americans from successful integration into American Society (Telles and Ortiz 2008: 16).

And yet, today, California continues to prioritize incarceration over education, with sharp attacks on both elementary and higher education, including the community college system which which is the first choice of study for millions of students, a vast majority of them Black and Latinos. California stands at the bottom of national rankings of students who complete high school and go on to get a college degree, raising the prospect of a largely uneducated future workforce, with stark implications for the future of the California economy, one of the nation's and sixth in the world (Civil Rights Project 2012). While education continues to receive savage cuts, prison spending continues to rise. In 2007 the California Legislature passed AB 900, raising \$7.7 billion in lease revenue bonds to fund the construction of tens of thousands of new prisoner beds, at a projected future annual cost of billions of additional dollars,

continuing the trend of building more prison cells than classrooms (Harris 2011).

The 2012 state budget proposal saw reductions in the overall amount for corrections, but this was largely a shell game, where prisoners are moved from state facilities to local jails nominally complying with the Supreme Court's decision to reduce the state prison population. This allowed the state to reduce prison costs coming from the general fund by shifting costs to localities, while not actually letting any prisoners, even non-violent offenders and those responsible for victimless crimes, out of jail. With costs per prisoner at well over \$50,000 per year and over \$70,000 for juveniles, California incarcerates its youth at rates that could fully pay for an expensive private education. Black residents of California are now more likely to go to state prison than college, with African American men as a whole going to prison at two times the rate they enter college (Loury 2008: 23). But despite the recent nationwide crime decline, the question is, if prison costs continue to rob education, what then? As Andrew Sum et al. noted, "[t]he incarceration rate of 18-24 year old male dropouts exceeded that of four-year college graduates by a multiple of 31....A young Black, male high school dropout was 60 times more likely than a Bachelor degree holder to be incarcerated in 2000" (Sum et al. 2007: 18-20). In the late 1990s, for Blacks in their thirties, they were almost twice as likely to have prison records than a BA degree. Among Black male high school dropouts born in the late 1960s some 60% had criminal records by the time they reached their early 30s, with about a third of all young Black high school dropouts in prison or jail (Holleman et al. 2009: 13).

Exacerbating these trends is the current war against undocumented immigrants. The criminalization of immigration includes initiatives to make immigrants ineligible for education and health care; English only laws, and various forms of racial profiling. More recently there has been a widespread criminalization of Latinos, the most rapidly increasing segment of the imprisoned population — with hundreds of thousands rounded up, detained, and deported, and many now serving lengthy jail sentences in federal prisons, where they now make up the majority of prisoners. The Obama administration secured the cooperation of local law enforcement nationwide by asserting they were only going to detain and deport immigrants who had violated criminal laws. Instead, driven by a target number of annual arrests the net was cast wide and immigration agents set that new record. Families have been broken apart by the deportations of mothers and fathers — actions widely condemned by many humanitarian, legal, and religious groups. New research studies indicates that such immigrant deportations, by disrupting existing communities and family networks, may in fact increase, and not decrease violent crime, at least in some local contexts.

The new Arizona state law and the more recent one in Alabama criminalizing undocumented immigrants — akin to Germany's banning Jews from public places during the Nazi era — demonstrated that the war against migrants continues to escalate, as does the resistance, as seen for examples in the massive May Day demonstrations against criminalization and deportation since 2006 (Chacon and Davis 2006).¹⁵ While the myth of immigrant criminality and arguments about an immigrant invasion feeds the continued criminalization of immi-

grants, it has also led to the resurgence of the Chicano and Latino movements (Montejano 1989). A substantial body of research indicates that immigration into big cities by Latinos and others correlates with lower crime rates and is inversely related to crime. A new wave of theoretically informed empirical studies are leading to a growing scholarly consensus that immigration may be playing an important role in crime reduction, as well as violent crime (Sampson 2007). In keeping with the theme of Tupac's and the Pope's playlist, the 2003 pastoral letter on migration from the Catholic bishops of Mexico and the US, "Strangers No Longer: Together on the Journey of Hope," called for the embrace of migrants, and love for the other, not hostility and criminalization (Benhabib 2004).

"HOW LONG SHALL THEY KILL OUR PROPHETS?": THE PROPHETIC IMAGINATION IN THE 21ST CENTURY AND THE STANDPOINT OF REDEMPTION¹⁶

There is quite an elective affinity between Theodor Adorno and the Frankfurts School's critique of modernity and punishment and Tupac Shakur's hip hop critique of the contemporary criminal (in)justice system. These critical voices, representing the African and Jewish diasporas respectively — and others such as W.E.B. DuBois and Paul Gilroy — the latter who coined the term "Black Atlantic" — represent alternative dissonant chords of modernity, something musically expressed in blues, gospel, jazz and hip hop, from the fields of the Mississippi Delta to the streets of Chicago and LA. Here too we can see Tupac's prophetic hip *hope* sociology and theology plus the related critique of contemporary punishment. Like the old

spirituals, the music of Tupac and the hip hop nation give comfort and respect to suffering human beings, with their shout outs and acknowledgments, most especially to all the homies in the ghetto and the pen, those left behind, and all the victims and survivors of poverty, violent crime, gang and domestic violence, torture, sexual assault and molestation, and drug and alcohol addiction. While letting suffering speak, Tupac and contemporary hip hop harken to a brighter future as a form of social critique or theological index, setting a standard, that of redemption or the ideal to which we aspire, against which the fallen reality of the present might be measured (Bell 1995). Not surprisingly, this focus on theological concepts of redemption can be found among both the critical theorists of the Frankfurt School, with their Jewish diaspora background, and leading figures of the African diaspora, including King, Dyson, Marley, Tupac, and other race theorists more generally.

Tupac hoped his words would inspire, “the elevation of today’s generation if I can make ‘em listen.” Similar to Marley’s call to “emancipate yourselves from mental slavery,” part of Tupac’s conviction was that he would “inspire the spark that will change the world,” and his hope and intention “to lay out the real map on the world.” All this was related to Tupac’s (in at least his “Better Days”) empathy, affection, identification, and alliance with the hopeless and his desire to speak on their behalf, including his shout outs to Black women in “Keep Ya Head Up,” and to his homies in the hood and pens, a welcome change from some of his misogynistic songs and lyrics, or those that sometimes embraced the very violence that at his best he fought against and from which he struggled to escape. Tupac’s views here, expressed so eloquently in songs like “Changes,”

the piece which made the Pope's playlist, share affinity with John Dewey's belief

that democracy as an ethical ideal calls upon men and women to build communities in which the necessary opportunities and resources are available for every individual to realize fully his or her...capacities and powers through participation in political, social and culture life (Westbrook 1993: xv).

something most recently expressed in the May Day demonstrations for immigrant rights and against the criminalization of immigrants and the Latino community as a whole, and more recently in the Arab Spring and related Occupy Wall Street movement which spread across North Africa, the Middle East, the US and eventually the globe.

The current war on street crime and drugs, most especially marijuana, of course, does the opposite of this, reflecting the continued priorities of incarceration over education, and racial, ethnic and class stratification over education and human liberation. Thus, as Tupac himself recognized, the hip hop nation's struggle for liberation today will necessarily have to call not only for a more equitable distribution of wealth and power, but also for the egalitarian distribution of knowledge and education. Today, the hip hop nation, representing the 99%, are being told by the 1% and their political representatives that the US can no longer afford money for public education, even as trillions of dollars go to wars abroad and for Wall Street tycoons bailed out at home. One is reminded of Dewey's guiding words again:

Nothing in the history of education is more touching than to hear some successful leaders denounce as undemocratic to attempts to give all the children at public expense the fuller education that their own children enjoy as a matter of course....the price that democratic societies will have to pay for their continuing health is the elimination of an oligarchy — the most exclusive and dangerous of all — that attempts to monopolize the benefit of intelligence and of the best methods for the profit of a few privileged ones, while practical labor, requiring less spiritual effort and less initiative remains the lot of the great majority (Dewey 1993: 173).

Yet today, the war on crime, drugs, poor youth of color, and their communities continues, as if it were part of the natural order, like the free market neoliberal ideology to which it is intimately related (Harcourt 2011). Bernard Harcourt argues

The great illusion is that all we are doing is fighting crime. That crime is out there, that we know what it is, that we simply go after it. This is the deepest fallacy. The fact is, we *make crime*. We decide what to criminalize and enforce, and in the very process, we allow other forms of deviance to flourish (Harcourt 2004: 1213, emphasis added).

Herbert Blumer offers a similar view in his classic article over 40 years ago, “Social Problems as Collective Behavior,” where he put forth a symbolic interactionist conflict perspective: “social problems are fundamentally products of a process of collective definition instead of existing independently as an objective set of social arrangements with an intrinsic makeup” (Blumer 1971). Crime, in other words, is a social construction.

These policies of our fallen world and fallen angels, even thug angels like Tupac — as seen from this standpoint of

redemption — are neither natural nor preordained. Instead, public policy is made by human communities of unequal power, wealth, and education and thus can in principle be changed by them. The solutions are clear and evident: investments in early childhood education and education in general; less social stratification; the ending of segregation and hyperincarceration in poor communities; and the creation of an equal opportunity society without massive inequalities of wealth, power, and status. These investments will save us from paying the costs of incarcerating a lost generation of youth tomorrow, not to mention all the violence and pain suffered by so many (Dohoune and Siegelman 1998).¹⁷

Yet to solve these problems, scholars and activists must radically challenge the present structure of power and the trajectories of public and private policies. Now more than ever, scholars and activists need to point out the inseparable links between militarism, racism, and economic exploitation — and at the same time delineate the close links between education, incarceration and the criminal (in)justice system. Martin Luther King, Jr once referred to the latter as the three triple interrelated evils underlying one of the worst forms of violence, namely poverty. Amartya Sen and Martha Nussbaum refer to them as capability deprivation (Sen 2011; Nussbaum 2001). In the film *Tupac, Resurrection*, TuPac said that if he hated one thing in the world, it was poverty. He went on to talk fondly of how he grew in knowledge and ability at the Baltimore School for the Performing Arts, while in his homies schools, it wasn't like that. He further mused they didn't know why Shakespeare was dope, or had the chance to be exposed to the world of culture and arts, as he did.

In an address to the Southern Christian Leadership Conference retreat in 1967, “To Charter Our Course for the Future,” King laid out a vision that would ring consonant with Tupac’s hip hop theology:

Human rights phase income, housing, education: integration as shared power and radical redistribution. Beyond constitutional civil rights to human rights of adequate income and decent hous[ing], quality education. Integration not in a romantic and esthetic sense, which “may easily be a system that merely adds color to a still predominantly white power structure....It must be seen in political terms. Integration in its true dimensions is shared power. “Genuine equality, whites who supported early phase never “intended us to live next door to them. They never intended to lift the Negro out of poverty...to make adequate, quality, integrated education a reality.” Genuine equality calls for “radical redistribution of political and economic power.” Last 12 years was a reform movement, after selma a “revolutionary movement,” when “we are called upon to raise some questions about the house itself. Where we must ask the house to change its rules, because the rules themselves don’t go far enough.” Beggars and the edifice. Revolution of values and “racism, economic exploitation and militarism are all tied together. And you really can’t get rid of one without getting rid of the other.” Nicodemus and born again. (King 1967, emphasis added).¹⁸

In the context of the secularization of the world and an age of greed, rampant militarism, and violence, many might think these critiques of our contemporary criminal (in)justice system, and entwined militarized domestic and foreign policy priorities,

such as those by hip hop's ghetto street warriors, have no place. But in fact, now more than ever, we need these voices able to reach the places and spaces from the hood to the Pope's playlist that enable a critique of our fallen present as well as to articulate what Rebecca Solnit has eloquently called "hope in the dark" (Solnit 2003). Theodor Adorno, inspired by Walter Benjamin's "Theses on the Philosophy of History," and his reflections on Paul Klee's "Angelus Novus" (see picture on page 99), described the solution this way:

The only philosophy which can be responsibly practiced in the face of despair is the attempt to contemplate all things as they would present themselves from the standpoint of redemption. Knowledge has no light but that shed on the world by redemption: all else in reconstruction, mere technique. Perspectives must be fashioned that displace and estrange the world, reveal it to be, with its rifts and crevices, as indigent and distorted as it will appear one day in the messianic light (Adorno 1989: 247).¹⁹

Adorno's words echo Tupac's "Ghetto Gospel": "The world looks dreary when your eyes are seeing clearly." Revealing the world as indigent and distorted in the messianic light, not only is at the heart of both Adorno and Tupac's philosophies, sociologies, and theologies of redemption, they were also central to the work of the late legendary civil rights scholar-activist Derrick Bell's imaginations. Bell one of the originators of Critical Race Theory, used theology, fiction, and biblical parables to disrupt existing narratives of progress and instead force a recognition of the permanence of racism in US society. Bell believed that if we could admit the hard cold realities of racism and what he called the faces at the bottom of the well, we

might be able to glimpse, if only for a fleeting moment, what a redeemed world might look like, via the reconciliation of differences of which Adorno and Tupac so eloquently spoke and rapped. Bell provided brilliant critiques of the dominant legal ideologies of consensus-based liberalism, that the law is color-blind and neutral in US society, arguing instead that the law has long had and still has, a color, in American society, as does the US criminal (in)justice system (Bell 1995).

Bell's scholarly activism inspired many by his willingness to confront authority, and forfeit prestige and power in the service of diversity, inclusion and social and economic justice. This rare combination of scholarship, activism and ethics was exemplified perhaps most notably in his teaching strike designed to pressure Harvard Law School to hire and tenure its first Black female law professor in the 1990s, a move that also inspired many, including a young Black Harvard Law School student, Barack Obama. Obama, too, spoke out at these protests for diversity and inclusion in the early 1990s. One can only ponder the possibilities for future transformations hoped for by King, Bell, Adorno, Tupac and the hip hop nation, if this inspired activism was used by President Obama or some successor to transform the US and the world in more democratic and egalitarian and less punitive and more just directions. Most recently, on this very point, Dr. Cornell West has raised these urgent unfinished tasks of Dr. Martin Luther King's mission, calling on the US citizenry to challenge the interests of Wall Street and military-corporate complex with the revolution of values that King called for.

In closing, it is important to address not only the words of our fallen prophets, like Tupac Shakur, but also the questions

surrounding their lives. Tupac at times embraced the violence, (anti-Asian) racism, and misogyny that at his best he fought so eloquently against. How can flawed prophets speak to us? King, whose revolutionary nonviolence has much to teach the hip hop and gangster rap generation, and US and world society more generally, of course noted that he had seen the promised land. Right before his death, King told the Memphis garbage workers and their allies that “I may not get there with you but I know that as a people, we will get to the promised land” (Honey 2007). Dyson’s book on Tupac, *Holler if You Hear Me*, provides an inspirational answer to his prophetic voice, focusing on his message of hope and redemption. But in the face of despair and the killing of some of our most gifted prophetic voices, it is ultimately Tupac himself, in the autobiographical film about his life, *Tupac, Resurrection*, much of it told through his own voice, deserves the last word. In that film Tupac asserted that you should judge a [person] by [his or her] whole life. Tupac, a young ghetto warrior, “without the sound of violence,” in seeking a space beyond the contemporary criminal (in)justice system, and beyond the politics of punishment, apocalyptic violence and war, from the war in the streets to the war in the Middle East, fittingly, showed the centrality of resurrection and rebirth. Tupac’s theological imagination, at the end of the film closes with these poignant words: “I’m not saying I will change the world. But I guarantee that I will spark the brain that will change the world. So keep your head up. Do what you gotta do, and then inside of you, I’ll be reborn.”

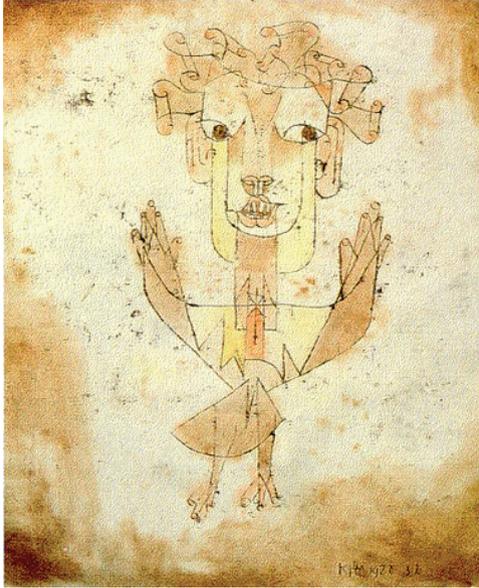


Fig. 2 Paul Klee, "Angelus Novus". See <http://users.manchester.edu/fac-staff/ssnaragon/naragon/misc/Klee.html>

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The inspiration for this title comes from Jan Pieterse's article "Slavery and the Triangle of Emancipation." The notion of Tupac's hip-hop theory of criminal (in)justice is inspired by Paul Butler's piece "Much Respect: Toward a Hip-Hop Theory of Punishment" first outlined in the *Stanford Law Review* (2004), and later elaborated on his wonderful book, *Let's Get Free: A Hip-Hop Theory of Justice*. The original inspiration for the Foucault and Nietzsche quotes come from Harcourt's "Postmodern Meditations on Punishment." All the unidentified subject headings are from Tupac's songs, which I've transcribed from listening, while also consulting existing online

versions, with the exception of those cited from book collections.

I also benefitted from the presentations and discussions from the panel I chaired and organized, “The Reassertion of Race, Space and (Punishment’s) Place in Urban Sociology and Critical Criminology: A Panel Symposium on Robert J. Sampson’s (Chicago: University of Chicago Press, 2012), *Great American City: Chicago and the Enduring Neighborhood Effect*, and the Challenges of the 21st Century,” March 23, 2012, with Yanet Lopez-Cardenas, Martin Franco, Michael King, Mychal Odom, Pacific Sociological Association Meetings, San Diego, California, and a related panel at the International Studies Association in April 2012, in which I participated with Mike Davis, honoring his lifetime of scholarship and activism. Thanks also to Robert J. Sampson, Murray Forman’s *The Hood Comes First: Race, Space, and Place in Rap and Hip-Hop* and the work of Ana Muniz on gang injunctions and the work of Eric Wilson and Ana Zablah (2006).

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Notes

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- 1 For the best analysis of “The Ethical Message of Negative Dialectics,” see Drucilla Cornell, *The Philosophy of the Limit* (New York: Routledge, 1992), 13-38.
- 2 The term the “long black 1960s” is taken from Michael O. West, William G. Martin and Fanon Che Wilkins, *From Toussaint to Tupac: The Black International Since the Age of Revolution* (Chapel Hill: University of North Carolina Press, 2009). On the range of hip hop, see the collection, Adam Bradley and Andrew DuBois, eds., *The Anthology of Rap* (New Haven, CT: Yale University Press, 2011); and Mickey Hess’s two edited volumes, *Hip Hop in America: A Regional Guide, Volume 1: East Coast and West Coast*, and *Hip Hop in America: A Regional Guide, Volume 2: The Midwest, the South, and Beyond* (Santa Barbara, CA: Greenwood Press, 2010). See also the upcoming First Annual Tupac Amaru Shakur Collection Conference: “Hip Hop, Education, and Expanding the Archival Imagination,” to take place in Atlanta, GA, September 28-29, 2012, sponsored by the Atlanta University Center Robert W. Woodruff Library and Tupac Amaru Shakur Foundation, <http://www.tasf.org/> which also inaugurates the opening of the largest archive on Tupac in the world, and thus promises to provide great resources for continued scholarship and activism on Tupac and the themes which found such eloquent expression in his poetic rhyme and lyrics.
- 3 For some personal reflections, on my journey, and the inspiration I found in Dorothy Day, Peter Maurin, and Ammon Hennacy’s Catholic Worker, see *San Diego Reader*, Christmas issue, December 24 2009. <http://www.sandiegoreader.com/news/2009/dec/23/cover-christmas-damn-it-what-happened/>. See also Tom Reifer, “Connections That Keep Fires Burning,” in “1968 — Remembering and Pondering After Three Decades.” *Peacework: Global Thought and Local Action for Nonviolent Social Change* 284 (1998): 8-9, special issue. On the consequences of domestic violence and child abuse, and the resulting complex post-trau-

matic stress disorder, which also affects soldiers, see Judith Herman, *Trauma and Recovery: the Aftermath of Violence — From Domestic Abuse to Political Terror* (New York: Basic Books, 1997). See also Geraldine Van Bueren, ed., *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman, and Degrading Treatment and Punishment* (UK: Ashgate, 1998), 139-154; see also Sottas in the Van Bueren collection. As for my own trajectory, I eventually got off the streets and into school, went on to graduate studies at SUNY Binghamton, where I went on to earn a Ph.D. in sociology.

- 4 *The Drowned and the Saved* is the title of Primo Levi's memoir of his experience at Auschwitz. See also Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive* (New York: Zone, 2002).
- 5 Manuel Pastor, Robert D. Bullard, James K. Boyce, Alice Fothergill, Rachel Morello-French and Beverly Wright, *In the Wake of the Storm: Environment, Disaster, and Race After Katrina* (New York: Russell Sage Foundation 2006), 32-33; <http://www.racialequitytools.org/resource-files/pastor2.pdf>.
- 6 The quote from Ivor van Heerden is from Mark Hosenball, "It's Cheaper to Go Dutch," *Newsweek*, September 4, 2006, 36. See also Peter Eisler, "146 U.S. Levees May Fail in Flood: Bad Maintenance Heightens Danger," *USA Today*, January 29 2007; <http://news.aol.com/topnews/articles/a/146-us-levees-may-fail-in-flood/20070129095709990001?ncid=NWS00010000000001> On governmental failures during Hurricane Katrina and the current state of unreadiness, see U.S. Senate, Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared*, 2006; <http://hsgac.senate.gov/index.cfm?Fuseaction=Links.Katrina>.
- 7 On crime and punishment and the criminal (in)justice system more generally, see Victor Hugo, *Les Misérables* (New York: Signet Classics, subsidiary of Penguin, 1987); the special issue of *Daedalus* 139, no. 3 (2010), "On Mass Incarceration," and the special summer 2007 issue of *Social Research* entitled "Punishment: The US Record." See also Tracey L. Meares, Dan M. Kahan, and Neil Katyal, "Updating the Study of Punishment," *Stanford Law Review* 56 (2004): 1171-1210, especially their critique of the ideology of deterrence in the current punishment bubble. See also the review by Judge Rudolph J. Gerber, "On Dispensing

- Injustice,” *Arizona Law Review* 43, no. 1 (2001): 135-172; and Michael Tonry, ed., *Retributivism Has a Past: Has it A Future?* (New York: Oxford University Press, 2011).
- 8 Demetrios Caraley, “Washington Abandons the City,” *Political Science Quarterly* 107, no. 1 (1992): 8-11, cited in Mike Davis, *Dead Cities* (New York: New Press, 2002), 247. See also Demetrios Caraley, “Dismantling the Federal Safety Net: Fictions Versus Realities,” *Political Science Quarterly* 111, no. 2 (1995): 225-58.
 - 9 Mike Davis, *Dead Cities* (New York: New Press 2002), 259, 253, and 239-73. The more recent estimates of the deficit are from Linda Bilmes and Joseph Stiglitz, “The Ten Trillion Dollar Hangover,” *Harper's* (January 2009); <http://kelsocartography.com/blog/?p=1320>.
 - 10 These figures are from various papers available from the Sentencing Project, notably Marc Mauer, *Race to Incarcerate* (New York: New Press, 2006), as well as the study from the PEW Charitable Trusts, *Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011* 2007: 1, 3; Ryan S. King and Marc Mauer, “The War on Marijuana: The Transformation of the War on Drugs in the 1990s,” *Harm Reduction Journal* 3, no. 6 (2006): 3-6; <http://www.harmreductionjournal.com/content/pdf/1477-7517-3-6.pdf>; Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2009). See also Michelle Alexander, *The New Jim Crow* (New York: New Press, 2012). Michael Tonry, “Explanations of American Punishment Policies: A National History,” *Punishment and Society* 11, no. 3 (2009): 377-394; Michael Tonry, *Punishing Race* (New York: Oxford University Press, 2011). For the most recent state of the art survey of the question of crime, see Philip J. Cook, Jens Ludwig and Justin McCrary, eds., *Controlling Crime: Strategies and Tradeoffs*, National Bureau of Economic Research (Chicago: University of Chicago Press, 2011).
 - 11 See also Jodie Lawston and Ashley Lucas, eds., *National Women's Studies Journal* 20, no. 2 (2008), special issue: “Women, the Criminal Justice System, and Incarceration: Processes of Power, Silence and Resistance.” On the turn towards mass incarceration, see William J. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Cambridge: Harvard University Press, 2011).

- 12 Jerome Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (Cambridge, MA: Cambridge University Press, 1996): “In 1987, Robert Tillman, a criminologist assigned to the California Attorney General’s Office....Drawing upon a 1974 ‘cohort’ of 18-year-old-males of all races, Tillman traced their arrest records between 1974 and 1986, when they turned thirty. At least one out of three had been arrested. When he broke the percentages down by race, however, he discovered that *two-thirds of the nonwhite adult males has been arrested and jailed before completing their 29th year (41% for a felony)*. Tillman did not include juvenile arrests or arrests after age 30. Had he done so, the lifetime risk of arrest would likely have surpassed 85%” (p. 6).
- 13 The critical questions regarding gangs, and the relationship between youth gangs, Tupac, and hip hop is beyond the scope of this paper. See bibliography entries for Mike Davis, John M. Hagedorn, James Diego Vigil, David C. Brotherton and Luis Barrios, Elana Zilberg, Jorja Leap, and Rebecca Solnit. See also the documentary on the evolution of the Latin Kings by Richie Perez and LA’s gangs, *Bastards of the Party*, <http://documentaryheaven.com/bastards-of-the-party/>.
- 14 In the final verse, Tupac alludes to another critically important question that has been the subject of great national controversy lately — women’s health and reproductive rights, including recent statements by the Pope indicating what appears to be an increasing flexibility in the Vatican’s position on contraception.
- 15 See Gail Perez, “Challenging Deportation Nation,” <http://tni.org/article/challenging-deportation-nations>.
- 16 The quote is from Bob Marley’s song, “Redemption.”
- 17 Tupac’s “Thug Life,” is an acronym for “The Hate U Give Little Infants Fucks Everyone.” NIGGA stood for “Never Ignorant (About) Getting Goals Accomplished.”
- 18 Thanks to Thomas F. Jackson for providing me with the full reference: Thomas F. Jackson, *From Civil Rights to Human Rights: Martin Luther King., Jr., and the Struggle for Economic Justice* (Philadelphia: University of Pennsylvania Press 2007), 331.

- 19 Walter Benjamin, an extraordinary thinker, elucidated a version of hope against all odds that borrowed from the Jewish messianic prophetic tradition. Pursued by the Nazi's in occupied France, he failed to get permission to cross the border into Spain and died. Rebecca Solnit said of him: "Benjamin was extraordinary in his life. But in his death, he was ordinary, another refugee denied refuge." Rebecca Solnit, *Storming the Gates of Paradise: Landscapes for Politics* (Berkeley: University of California Press, 2007).

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Beyond the Triangle of Emancipation: Tupac's Hip-Hop Theory of Criminal (In)justice, the Pope's Playlist, & the Prophetic Imagination

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