

Victimizing Offenders and Criminalizing Victimhood: Narratives of Mass Incarceration in a “Post-Racial” Era

Sarah E. Ochs & Kristin Reed

Abstract

Much conflict resolution literature largely views crime in domestic, American, “conflict free” communities as a problem somewhat outside its scope of intervention or analysis. Scholars often fail to question normative assumptions about criminality and victimhood, and their work reflects narratives of the “criminal” as an independent actor and the “crime” as an act of unidirectional harm. To address crime, the United States has chosen mass incarceration, out of many possible approaches, which has severe implications for the social and self-perception of both victims and offenders. In this paper we argue that much conflict literature on crime and mass incarceration fails to identify these lasting perceptions and their effect on policy and law. Using narrative analysis, we show that mass incarceration is a product of a protracted latent conflict, clearly sustained by structural and cultural violence, and held in place by generations of public narratives. Our argument illustrates how mass incarceration falls outside common conceptualizations of conflict, often victimizing criminals, criminalizing victimhood, and complicating the victim/offender dichotomy. We use Virginia’s parole reinstatement review process, initiated by Virginia Governor Terry McAuliffe in June 2014, as the site of our analysis. Our methods are applicable on a larger scale across the United States, and the implications of our findings are nationally relevant. “Crime,” as usually figured in the U.S., is reliant on victimhood, just as it is reliant on an identifiable offender. Rethinking crime as a product of conflict allows for flexible interpretation, with less defined roles for those participating in and affected by criminal events. Rethinking narrative framing of crime illustrates the deep impact narrative-as-intervention can have for conflict resolution practitioners and theorists, as well as the personal experiences and legal outcomes of all participants. Conceptualizing crime in this way and integrating it into conflict analysis frameworks has profound consequences: It offers analysts and practitioners better tools for identifying and responding to the nuances of crime in American environments. It also allows us new perspectives on race and class as the politics of crime and victimhood emerge.

Key Words

race; mass incarceration; conflict resolution; victimhood; narrative; narrative analysis

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Introduction

The United States is now facing a very difficult revision of its narratives on the criminal justice system. Across the country, from the debates about sentencing reform to increasing news coverage of police shootings, the nation has been examining its relationship to criminality and race.¹ While other disciplines address criminality, mass incarceration, and the social and cultural structures that contribute to the two, the field of conflict analysis and resolution (CAR) has remained oddly silent.² Even when these issues are addressed by scholars within the field, they often fail to challenge – and therefore reproduce – time-worn narratives about race and crime advanced throughout American history. Put simply, these narratives insist that African Americans and other people of color are, as a group, inherently criminal. Not a mere abstraction – these pervasive narratives are borne out through policies and laws which create real structural disadvantage to their recipients. We will explore the fundamental dysfunction of this narrative and the obstacles it presents to policy reform that might alter incarceration trends in the United States. That our criminal justice policies bear as much (if not more) of a relationship to the history of American race relations than they do to our actual crime rates is increasingly accepted as fact by a number of scholars from a variety of disciplines, political activists, and politicians. The relative silence upon this matter by CAR is surprising, as we believe the forces at work in the current American state of hyper-incarceration clearly indicate the makings of a widespread social conflict worthy of attention by conflict resolution practitioners and theorists.

We assert that crime in the United States has a much more political nature than CAR typically acknowledges, and that crime narratives influence how we understand victims, offenders, and race. While there are many kinds of crimes committed in the United States, we limit ourselves to the types of crime³ that reach the judicial system. In this paper, we employ narrative analysis to understand the making of America's current state of incarceration, and to envision a narrative that would assist in the unraveling of status quo narratives on race, criminality, and victimhood. Simultaneously, we show how a re-narrativizing of CAR's disciplinary self-perception could further assist with that unraveling. We suggest that without

¹ This paper was largely written before the shootings of Alton Sterling in Baton Rouge, LA and Philando Castile outside of Minneapolis, MN, and the shootings and death of five police officers in Dallas, TX. Needless to say, the issues discussed in this paper are perceived as reaching heightened urgency, though we insist the issue of racial bias in criminal justice has always been urgent.

² There are notable exceptions to this gap, specifically with respect to police brutality. Needless to say, much of the field is concerned with conflict and peacebuilding on an international scale.

³ The crimes we do not discuss here include unreported crimes of all types, and ignored, unnoticed, or under-prosecuted crimes, such as corporate/industrial crimes.

understanding “the social processes surrounding the production and consumption of [these] stories” (Elliott, 2005, p. 37), we will insufficiently conceptualize why and how some are sent to jail in droves and others are not. This analysis takes us to a place where power, policy, law, politics, and media intersect with history to construct a story about crime in America that is founded upon racial biases centuries deep. In this paper, we blend narrative analysis with the theories of Edward Azar, Johan Galtung, Michelle Alexander, and other scholars of race, law, and political science, to demonstrate how the processes behind mass incarceration in the U.S. constitute the kind of protracted conflict that, even while latent, continues widespread, historical damage in American society.

Narrowing our scope from crime writ large to mass incarceration still leaves a tremendously wide berth for analysis. The complexities of victim/offender narrative building can be seen everywhere: from the reinstatement of imprisonment for debt accrual, to the arrest of rape victims for legally arcane reasons. To avoid constructing our analysis on policies that can vary across local, state, and federal jurisdictions, we have narrowed our focus further to look at the Commonwealth of Virginia, which in 2015 underwent substantial policy review. Initiated by Governor Terry McAuliffe, Virginia evaluated the public social and economic impact of the loss of parole after two decades of its abolishment. We attended all but one of the monthly meetings of the Commonwealth of Virginia Commission on Parole Review, commencing July 2015 and ending November 2015, five in total. The Commission’s findings, culminating in a Final Report and Recommendations, did not result in the re-establishment of discretionary parole for incarcerated individuals (Commonwealth of Virginia 2015a). Each meeting presented an opportunity for members of the general public to speak, as well as various state agencies and departments representing those in favor of the reinstatement of parole, and those not in favor. As a site of analysis, we specifically address these discussions, and analyze their history and the debate on all sides of the issue.

Methods

Narrative analysis has become increasingly popular in social research as a way to understand meaning in a given social milieu. Its approach is not to determine certainty or to predict events or action, but to explore human perspective and sense-making in the social world. Narratives are enormously flexible yet have common elements; they are chronological, meaningful, and social (Elliott, 2005), and comprise much of the means by which people organize their understanding. Narratives also bring human experience to the fore. The areas of critical race theory (CRT) and critical legal studies (CLS) increasingly

utilize narrative analysis, and more often, storytelling, to both understand and chip away at the marginality of groups (Delgado & Stefancic, 2012). Overlapping work has been done under the nomenclature counter-storytelling, a practice employed in CRT as a method for redefining the context and power of public narrative building. Like narrative analysis, counter-storytelling upsets stock narratives through critical re-examination of their foundations and applicability. Human systems are incredibly dynamic and contain a high degree of subjectivity. A method of analysis which identifies and addresses meaning, change over time, and the construction of stories, is critical in gaining perspective on how people make decisions and why they behave the way they do. Or, as Sonia Ospina and Jennifer Dodge put it, “[f]or researchers of social life, narratives not only help to explore issues such as personal identity, life-course development, and the cultural and historical worlds of narrators, they also help to explore specific phenomena...and how they are experienced by social actors” (2005, p. 143).

In addition to tracking meaning, narrative analysis is an excellent lens to consider both the teller and his or her audience along with that which is told (Elliott, 2005). Narratives convey meaning and deliver messages, simultaneously created by and creating the cultural surroundings out of which they emerge. In other words, narrative analysis looks at every element that drives the construction of stories. Jane Elliott states, “...there is the growing recognition among sociologists of the importance of the temporal dimensions of understanding the interrelation between individual lives and social contexts” (2005, p. 4). Ospina and Dodge (2005) have studied narrative inquiry in public administration and related fields. They insist that in spite of the relatively recent embrace of narrative inquiry, public contexts and policy are prime locales for this kind of methodology and have “contributed to the theoretical and methodological development of the field by encouraging scholars to explore and highlight the multidimensional aspects of public institutions and their administrative and policy problems” (p. 144).

Virginia’s Commission on Parole Review’s decision is a microcosm of American narratives on race and crime. The status quo narrative we mention above – that African Americans are inherent criminals, untrustworthy, in need of reining in – has found expression in this particularly punitive addendum to an existing punishment. How Virginians have come to grapple with crime and race is enormously complex, and has changed over time, but it has generally followed nationwide trends in increase of incarceration, especially for African American men, and has included other stringent approaches toward crime. While the Commission purports to deal in fact, the perspectives of the attendant parties are rife with all

the meaning and contradiction inherent in public narratives. Quoting the executive summary, the Commission rues the time allotted to confront their task, “interrelated and complex issues (including incomplete data)... made this issue difficult to address in the time period allowed” (2015a, p. 5). While quantifying racism is a task numerous scholars have rightfully taken on, we argue that the means by which identity, fear, trust, and the like are adopted, cannot and must not be simplified as mere “data”. The Commission’s meetings were far from a parade of facts to be analyzed. We assert that such a scenario is best comprehended as one part theatre and one part debate – it was a space where parties expressed, challenged, and refined those experiences, which had impact on how they have come to see themselves and the state of crime, punishment, and redemption in Virginia.

In an expansion of Elliott’s (2005) framework, Ospina and Dodge (2005) suggest narratives have at least five essential components, including “accounts of characters and selective events occurring over time, with a beginning, a middle, and an end...interpretations of sequential events from a certain point of view...[a] focus on human intention and action...are part of the process of constructing identity...[and] are coauthored by narrator and audience” (p. 145). There are numerous “tellers” and audiences in the parole commission meetings: those recording and summarizing the meetings for the Commission; journalists covering the proceedings; the attending public who then return home to speak with neighbors, family, and friends about the events; the various departments, organizations, and agencies who create their own reports, policy decisions, and ad campaigns; and researchers pursuing a question, or perhaps, an agenda, to name just a few. Using these guidelines, we tell the story of the development of mass incarceration and parole in Virginia, as well as the changing public opinion on these subjects. In doing so we will identify the critical characters, the events identified as important, and the narrators, audiences, and those omitted in the narrative’s construction and consumption. Lastly, we draw your attention to the use of the word “identity” above (Ospina & Dodge, 2005), and point out that an understanding of identity construction is somehow incomplete without narrative.

There are many good examples of specific narrative analytical styles to follow, but among scholars there is as yet no set, agreed upon list of methods. In fact, due to the high-context, complex, and dynamic nature of narratives it has been argued by some that a prescribed methodology is not recommended (Elliott, 2005). In that spirit, we employ a number of approaches. First, we identify the implied causality in the American mass incarceration story, because criminal causality is the driving rationale for decades worth of policy changes and legislative decisions. Second, a prominent feature of the juridical process

is its near-lack of context; very little background of the accused and their act makes it through in criminal trials. Narrative analysis pursues the opposite, and many methods request of the analyst a deep, full description of events that are not beholden to one narrative over others. This approach we employ here. Third, we discuss genre. The American mass incarceration story has been simplified to encompass clear villains and protagonists, and these genres have not only shaped public opinion, but also can be indicative of dominant American values and culture. Fourth, we address how these narratives have helped create social group identities, which have helped fuel cultural violence and prolonged negative attitudes. Lastly, we look at the performance of these very public stories and analyze the impact the performance has on the stories themselves.

Racial Inequality as Protracted Social Conflict

Given the scarcity of literature on crime in the United States in peace and conflict publications, one could understandably assume the field largely views crime in American, “conflict free” communities as a problem somewhat outside its scope of intervention or analysis. Indeed, the majority of scholarly work on domestic crime rests within criminological studies. CAR can and does lend its methods to the resolution or understanding of crime, addressing mainly interpersonal conflicts through resolution methods such as mediation, restorative justice, victim-offender conferencing, and other small-scale, approaches (Umbreit, Coates & Robert, 2000). In scholarly work on American criminality and conflict involving greater numbers of people – what we here call large-system conflicts – these topics are addressed primarily in the context of schools and the U.S. education system (Garrard & Lipsey, 2007; Prutzman, 1994; or Haas, 1988), or they are addressed as homegrown domestic terrorist activity (Gruenewald et al., 2013; Chermak et al., 2010; or Hirsch-Hoefler & Mudde, 2014). Otherwise, there is very little published scholarly work by CAR practitioners or academics on American crime. We arrive at the question of “why?” a little later on, but first we suggest that not categorizing domestic crime as conflict is a mistake. By not doing so, CAR may be guilty of upholding an American status quo that is altogether too eager to relegate some groups of people to the status of criminal, based on the social and political construction of their race.

Some fields – criminology, law, history, urban development, and political science – do focus on domestic crime. However, their scholars question normative assumptions unevenly, and in many cases their work largely reflects narratives of the “criminal” as an independent actor and the “crime” as an act of unidirectional harm (Lammers et al., 2015 or

Campbell et al., 2015).⁴ In these works, crime may be addressed from a structural standpoint (Rengifo & Stemmen, 2015), or as a combination of factors both structural and behavioral (Sampson & Laub, 2005). Crime in these contexts is merely a problem to solve rather than a subject for meta-analysis, thereby ensuring that inherited social dynamics are unquestioningly maintained in place. Here we find the hinge of our argument: in the U.S., crime narratives imply that crime-actors are neither depicted as having group status, nor broader group interests or motives, only personal ones. These motives and interests are often depicted in crime narratives as material (e.g. property crime) or immoral (e.g. violent crime),⁵ and bypass the need to critically question how some behavior is considered a crime in the first place. These depictions underscore the presumed inhumanity of the actors. Oversimplification of context or motive fails to fully capture what is at stake when illegal actions occur, as does an uncritical regard of how crime and criminality are defined in the U.S.

Other fields – African American Studies, Gender Studies, Critical Legal Studies, and Sociology – have made more progress in unpacking the narrative framing of crime, especially as it relates to race.⁶ Scholars who do study the normative assumptions that form our understanding of domestic crime note that these assumptions prevent us from comprehending inherited patterns in our conceptions of criminality. We know from these scholars that African Americans (among many groups targeted as part of the social construction of their race) are frequently associated with crime to an extent that presumption of guilt occurs before any activity could actually occur. Scholarly research here abounds, but our analysis below will focus on Alexander (2010), Crenshaw (1988), Dilts (2012; 2014), Eberhardt (2005), Freeman (1978), Plous and Williams (1995), Stevenson and Friedman (1994), and Weaver (2007). We suggest that CAR (whose role is to clarify that which is “conflict” from that which is not) fails to exert disciplinary might with respect to domestic crime. Instead, it is constrained – and perhaps threatens to be alienated – by unexamined narratives. American crime is too often presumed to have neither political context nor political underpinning, and

⁴ Scholarly norms in African American studies and the sociology of race, for example, differ tremendously from common practices in the fields of domestic security and law where existing progressive work is not yet indicative of the norm. See Angela Harris's introduction to *Critical Race Theory's* second edition (2012) for her assessment of the legal field's slow willingness to embrace critical race theory and critical legal studies, despite the impact these bodies of work have had on disciplines such as sociology and gender studies.

⁵ Most notably, drug crime, a central focus of the policies that led to mass incarceration, can be used to depict motives in both categories.

⁶ Alternately, some scholars explore American race relations as a form of protracted conflict, but without a focus on crime as an outgrowth of this conflict. Edna Bonacich (1972) develops a theory of American race relations as protracted conflict that “first germinates in a labor market split along ethnic lines” (549) wherein price differentials are tied to ethnicity. Expanding her work to address crime would offer potentially valuable insights into the labor implications of incarceration as a source of underpaid, free, or coerced labor with profits in sectors traditionally viewed as “unrelated” to incarceration.

is thus regarded uncritically as a space outside of the arena of political power. The weight of CAR is put behind understanding large human systems, where individuals typically act on behalf of others within their own identity, political, or other grouping, leaving no space for typical American crime narratives. We assert that CAR's absence from this discourse encourages a disciplinary self-deception, which ultimately contributes to the maintenance of an unjust system.

Part of the issue may be that, while there are certainly locations of conflict within the U.S., the country is considered relatively free of conflict writ large (Council on Foreign Relations Global Conflict Tracker 2015,⁷ Vision of Humanity Global Peace Index⁸). In a simplified sense, conflicts may be understood to occur when people within a specific identity group act to change the status quo on a large-scale, such as the civil rights movement. This is not the traditional American crime story. In a field whose language on conflict includes "values, status, power, and resources" (Coser, 1956) and "interests and incompatible aspirations" (Pruitt & Kim, 1986), the narrative of the "common criminal" does not relate or apply: narratives of small-scale criminal activity are simply inconsistent with traditional emphasis on conflict parties.⁹ In large-system conflicts, as generally discussed by scholars of the field, parties are aware of the fact they are in conflict and their interests or goals have a prominent place in the minds of these conflict parties. Following this logic, when crime occurs it is contained within a "conflict-free" environment and is thus presumed irrelevant to the field of CAR. Perhaps consequently, CAR often addresses crime only when international in scope, such as domestic terrorism, crimes against humanity, or war crimes (for example in UN Security Council Resolution 1820). We argue for a closer look at crime in the U.S. using the lens of conflict analysis. For this purpose, Galtung's discussion of structural violence is useful, which we explore at length below, for he points us in the direction of types of violence which may not have a clear target or agent. We show that the targeted treatment African Americans receive when suspected or found guilty of criminal activity is tantamount to the same kind of targeted (mis)treatment other oppressed or minority groups suffer in the most "textbook" of conflicts.

In spite of the asserted individual nature of many unlawful actions, the U.S. legal system acts in such a way to ensure the social and economic isolation of its African American

⁷ Council on Foreign Relations Global Conflict Tracker <http://www.cfr.org/global/global-conflict-tracker/p32137#/>

⁸ Institute for Economics and Peace, Vision of Humanity Global Peace Index. <http://www.visionofhumanity.org/#/page/indexes/global-peace-index>

⁹ We would also add here that the broad silencing of people who are caught up in judicial processes prevents researchers from hearing much from them directly about perceived individual/group identity or motive as it relates to larger social forces.

citizenry, a form of what Michelle Alexander (2010) calls “social control”. An American legacy of this sort of social control has both advanced and reified historical difference and grievance along racial lines, preserving a latent conflict that often goes unrecognized in American public discourse. The status quo narrative is hidden behind talk of proper response to crime, policy, and politics. The concept of the protracted social conflict, developed by Edward Azar (1990), gives us a point of entry for solid, analytical consideration of domestic, U.S. crime as a modern-day conflict. Developed as a response to crumbling ideological hegemony of *realpolitik*, the concept of protracted social conflict captured ongoing, domestic, and latent social conflicts in a way scholars previously had failed to do (Ramsbotham et al., 2012). Until that time, in theory and analysis, there persisted conceptual divisions between external and internal social conflicts. In his earlier writings on protracted social conflicts, Azar (1978) had been researching overt, violent interstate conflicts and civil wars. Scholars at that time stratified various “levels of analysis”, and tended to discount non-violent or latent conflicts (Ramsbotham et al., 2012). In an academic field accustomed to prioritizing international, violent conflict, Azar shifted focus. He emphasized the blurred lines between “internal and external sources and actors...multiple causal factors and dynamics ...changing goals, actors, and targets [with no] clear starting and terminating points” (Ramsbotham et al., 2012). Azar’s new conceptual framework emphasized that conflicts can and do occur outside of the purview of international affairs (i.e. outside of traditional seats of power), and within the boundaries of states (Ramsbotham et al., 2012). He focused on the enormous complexity of conflicts as mediated not just by superpowers, but also by an internal status quo (Azar 1978). This is precisely where we find our issue of domestic crime-as-conflict.

With some updating,¹⁰ Azar’s concept of protracted social conflict captures social and political dynamics between crime, race, and the American State. We believe the concept encapsulates what Azar (1990) termed “the disarticulation between the State and society as a whole,” a phenomenon we see occurring in the United States today. Azar developed his research on protracted social conflicts during a time of newly postcolonial and developing landscapes not representative of present-day American social, economic, or political reality. Initially faced with civil wars, international wars, or a combination of the two, Azar, along with Paul Jureidini and Ronald McLaurin (1978), determined that a different conception of war and conflict was needed. After all, Azar (1978) wrote, “Protracted conflicts...are not

¹⁰ It is worth noting that an entire paper, if not more, could be devoted to the implication and politics of “updating” Azar and “revisiting” Galtung, as we do in this paper. Two examples of such current manipulations of their work can be seen in Dilts, et al., 2012, and Ramsbotham, et al., 2012

specific events or even clusters of events at a point in time; they are processes” (p. 50), and processes as embedded in social structures are our focus here. In this particular conflict we are not thinking of war, but rather the types of violence that, while often direct in the Galtungian (1969) sense, do not constitute “violent conflict” by most traditional measures. Thus, we use the term “latent” conflict for our purposes. Three of the four elements in protracted social conflict theory are relevant here and presented below.

To begin, Azar first noted the *social identity of groups* as a significant element in protracted social conflicts, and which he theorized are “...[most] likely to be mobilized by political interests” (Ramsbotham et al., 2012). In the U.S. legal system, crime narratives assert a lone actor who acts with over-simplified motives and is often presented without context.¹¹ In reality, bias in criminal justice processes have made courtrooms, jails, and prisons into spaces that are predominantly occupied by people subject to historical disenfranchisement. We agree with scholars that there is no coincidence between the social identity of crime-actors and their very incarceration.¹² These individuals largely come from poor socio-economic backgrounds and are often African American – two confining and conspicuous social identities in the lived American experience. Michael Omi and Howard Winant (2015) assert that “...in the United States, *race is a master category* – a fundamental concept that has profoundly shaped, and continues to shape, [its] history, polity, economic structure, and culture...” (emphasis theirs, p. 106). While the criminal justice system may claim to be “blind”, it is in fact not. It would appear impossible for race not to play a prominent role in such a system.

The second and third aspects of Azar’s theory of protracted social conflict – *human needs* and the *role of the state [sic] or government*, respectively, are best taken together. According to Azar, “‘ontological’ and non-negotiable...” human needs are mediated and experienced through one’s identity, and are also often a salient factor in conflict processes (Ramsbotham et al., 2012). Azar (1990) theorized that when human needs are continuously unsatisfied for particular social-identity groups, the makings of a protracted social conflict are ripe. While the specific needs of any given identity group are both variable and flexible, Azar states that 1) humans universally need to belong to a social identity group, and 2) no matter which specific needs are unmet, their deprivation is likely to be intensely experienced

¹¹ In popular media, this narrative is translated to add “context” for dramatic purposes, supplying motive in a manner that dehumanizes or debases the individual (often cast as the antagonist). Alexander (2010) makes reference to the prevalence of these limiting depictions of African Americans, noting that the perspective from which these stories are told is regularly told from the point of view of law enforcement (p. 70).

¹² See Alexander (2010), Coates (2015), Delgado and Stefancic (2012), Russell (1998), Stevenson (1994), Wacquant (2002), and Weaver (2007).

(Ramsbotham et al., 2012). In a protracted social conflict, the State is not serving the needs of the various social groups entrusted in its care, demonstrably the case in the U.S. with respect to its minority populations. Azar did not include most Western countries, including the United States, in his purview. Ironically, he asserted that:

...in a world in which the state has been ‘endowed with authority to govern and use force where necessary to regulate society, to protect citizens, and to provide collective goods’, Azar cited ‘governance and the state’s role’ as the critical factor in the satisfaction or frustration of individual and identity group needs: ‘Most states which experience protracted social conflict tend to be characterised by incompetent, parochial, fragile, and authoritarian governments that fail to satisfy basic human needs’. (Ramsbotham 2005, p. 116)

The United States may not have been the case study Azar envisioned when developing his theoretical frame, certainly there plenty of states which are “parochial, fragile, and authoritarian” fitting this description. However, we see the need to insist that even democratic governments can fail miserably in their efforts to “regulate society...protect citizens, and... provide collective goods.” Azar discussed the State as creating conflict *with* specific social identity groups in his theory of protracted social conflict. We add that the State – through its laws, policies, and enforcement – has a role in shaping the identities of its constituents. This is a perspective Azar did not take into account. It is advanced by some scholars (e.g. Eberhardt, 2005; Govier, 2015; and Weaver, 2007), and is one we build upon here. Omi and Winant (2015), specifically, discuss the construction of race vis-à-vis the State in their book, *Racial Formation in the United States*. Race has always been subject to manipulations by the State. From its earliest days, the government decided who belonged to which racial categories, which has been, in turn contested or confirmed by various scientific fields and social groups. Racial categories, far from being objective or fixed, have morphed based on the expediencies of the day, and have long been used as a “...template for the subordination and oppression of different social groups” (Omi & Winant, 2015, p. 108). This is problematic because “the very act of defining racial groups is a process fraught with confusion, contradiction, and unintended consequences” (Omi & Winant, 2015, p. 105). The implication this has for our theory of American racism-as-protracted social conflict is this: the State not only draws itself into conflict with social groups through unjust or overly punitive social structures, but also through the ways it constructs and narrates blackness. The effect of this treatment by the State spreads very wide. Jennifer Eberhardt (2005), a social psychologist at

Stanford University, has built upon research which measures the impact race has on social response, finding that people are more likely to associate criminality with blackness.¹³ Fascinatingly, she writes, “researchers now treat race as a concept that can trigger a set of physical states within the self rather than as a concept that simply describes the physical traits of others” (p. 187). This means that the imposed, constricted, and maligned social categories-of-color are not just subjected to a tougher criminal justice system (among other institutions), but also a depreciated regard by their fellow citizens.

The Myth of Equality Before the Law

Azar’s assessment of human needs is an excellent complement to scholarly work that seeks to disrupt the American presumption of established equality before the law. The right to legal equality is presumed by many to have been established during the legal reforms of the American civil rights era, a period that shifted away from widespread public acceptance of legal segregation, and sought to recognize the damage wrought by institutionalized white supremacy. This shift in public narrative “equality,” vaguely writ, supplanted segregation as an accepted moral good among power groups. Since this era, the courts and political discourse have become sites of an ongoing debate: What constitutes equality, and how will we know it has been achieved? Decades of perceived victories in public policy and the Supreme Court have lent themselves to a popular public narrative of civil rights successes, a narrative reinforced through many of the avenues through which cultures write public history (monuments, textbooks, holidays, etc.). Scholars in CRT and CLS (Coates, 2015; Crenshaw, 1988; and Freeman, 1978) have noted that this narrative of civil rights successes, set in light of real-world economic and social disparities along racial lines, falls flat. What may be as simple a goal as successfully re-entering society after a period of incarceration, can be at odds with excessively high restitution payments or an inability to find work due to a criminal history. Using qualitative analysis focused on human needs, Alan Freeman (1978) has argued that Supreme Court rulings, purportedly in favor of civil rights, have ultimately made true equality (comparable outcomes in terms of standards of living) nearly impossible to achieve. Of the failed promises of civil rights era legal reform he writes:

In its heyday, the fundamental right doctrine seemed to be the vehicle by which the Court would usher in an era of distributive justice. Now that the

¹³ Eberhardt’s work tackles many ways that conflation of race and criminality impact public policy and law. For a selected list of her publications, including her work on race and acceptance of punitive policies, see: <http://web.stanford.edu/~eberhard/publications.html>

smoke has cleared, however, all that happened was the affirmation of some formal, procedural rights. Explicitly rejected as fundamental were those rights having more to do with the substantive conditions of life: education, housing, welfare payments, the right to obtain an abortion (as opposed to the right not to be prevented from going out and paying for one), and even the right to the blessings of federal bankruptcy law. (Freeman, 1978, p. 1060)

These qualitative assessments of civil rights progress, in Freeman's analysis, are the substantive goal of civil rights advocacy, a goal supplanted by a far reduced goal of technical equality of legal processes: a formally "colorblind" legal system. These two understandings of what "civil rights" might mean as a legal and cultural goal are redefined by Kimberlé Crenshaw (1988) as "expansive" and "restrictive" views of anti-discrimination advocacy:

The expansive view stresses equality as a result, and looks to real consequences for African-Americans. It interprets the objective of antidiscrimination law as the eradication of the substantive conditions of Black subordination and attempts to enlist the power of the courts to further the national goal of eradicating the effects of racial oppression. The restrictive vision, which exists side by side with this expansive view, treats equality as a process, downplaying the significance of actual outcomes. The primary goal of antidiscrimination law, according to this vision, is to prevent future wrongdoing rather than to redress present manifestations of past injustice. (p. 1341-1342)

In Crenshaw's analysis, the expansive view would use qualitative assessment of outcomes as a measure of legal and social equality, with the goal of eliminating the "substantive conditions of black subordination." The restrictive view, by contrast, would focus solely on policy, "downplaying the significance of actual outcomes" and taking the prevention of future wrongdoing (i.e. crime) as its central motivation.

Crenshaw and Freeman's work reveal profound gaps in civil rights and antidiscrimination legal reform, raising valuable questions about public and political willingness to memorialize civil rights figures, while averting our gaze from persistent social and economic inequalities. Crenshaw's work recognizes that our court system, focused as it is on individual experience, has failed to truly address the role identity groups play in the American judicial system:

‘Wrongdoing,’ moreover, is seen primarily as isolated actions against individuals rather than as a society policy against an entire group. Nor does the restrictive view contemplate the courts playing a role in redressing harms from America’s racist past, as opposed to merely policing society to eliminate a narrow set of proscribed discriminatory practices. Moreover, even when injustice is found, efforts to redress it must be balanced against, and limited by, competing interests of white workers – even when those interests were actually created by the subordination of Blacks. The innocence of whites weighs more heavily than do the past wrongs committed upon Blacks and the benefits that whites derived from those wrongs. (p. 1342)

Latent conflict, in this analysis, is a profound obstacle to true civil rights progress. The competing interests of two groups cannot receive equal treatment before the law when the law reflects the interests of an existing power group. In these circumstances, even “equality” will be read in favor of the empowered majority.

Certainly, the U.S. legal system is built out of a racialized social and legal caste system whose foundation was laid in slavery. In his landmark essay “The Case for Reparations,” Ta-Nehisi Coates (2014) carefully outlines the systematic construction of a culture and legal system rooted in the treatment of African Americans as subject to judicial and extrajudicial policing not for actions, but for their very identity. Coates’s analysis is backed by scholarship tracing racialized narratives recounting the danger of African Americans (particularly black men) as possessing a combination of extreme physical prowess and social degeneration (Plous & Williams 1995). Thus, the narrative was a generationally-inherited story born of black men as super-villains, possessed of exceptional strength without the moral core to wield it. Despite a widely accepted myth that America has achieved a post-civil rights society of equality and colorblindness, these narratives survive today and have tremendous implications for public policy (Plous & Williams, 1995; Hurwitz & Peffley, 1997).

Even in the context of a Civil Rights Movement with an asserted goal of achieving new levels of equality, these narratives have proved impossible to avoid recreating. Vesla Weaver (2007) describes white majority resentment of the Civil Rights Movement, especially as it manifests in our criminal justice system, as “frontlash”. She writes,

What the literature usually treats as independent trajectories – liberalizing civil rights and more and more repressive social control in criminal justice – were

part of the same political streams and the actors and incentives were components in an unfolding political drama that would alter significantly the federal government's role in crime policy and, more importantly, race in post-civil rights America. (p. 231).

For Weaver, social and political power concentrated in the hands of whites conflated the constitutionally-protected Civil Rights Movement with black militancy, the riots of the mid-1960s, and everyday street crime. The bitter assertion, "all blacks look alike" has perhaps found political confirmation in this legal turn: majoritarian America and American media consistently fail to distinguish between organized political resistance and disorganized domestic crime.

Michelle Alexander (2010) describes a similar cycle of backlash and re-criminalization in *The New Jim Crow*. Alexander traces this backlash¹⁴ to reconstruction, during which a public myth of African American emancipation and civil rights evolved in concert with rhetorical shifts designed to preserve white supremacy. The backlash against reconstruction and the ensuing civil rights movements took the form of a new judicial vocabulary. The first incarnation of this backlash is a system of legal reforms we know now as Jim Crow laws. Today, rather than explicitly policing race, the U.S. judicial system has evolved a purportedly race-neutral method to continue to target African American communities for exploitatively high rates of policing and other methods of judicial interference.¹⁵ There exists a wealth of evidence in support of Alexander's claim that our new system fundamentally rehashes the old system. Andrew Dilts (2014), in his extensive writing on depriving felons of their civil liberties, most especially that of the right to vote, observes that "In the United States today, felons appear analogous to the 'three fifths of all other Persons' counted in addition to 'free persons' in the antebellum period" (p. xiii).¹⁶ Dilts also writes that restricting the rights of felons does as much to disenfranchise them as it does to establish white identity and white political power. Both Dilts and Weaver recognize there is a politics to who is labeled a criminal and who is not. In other words, they do not ask, "What

¹⁴ Alexander uses the term "backlash" to describe policy shifts designed to reassert disenfranchisement of African Americans after the civil rights movement, but we will note here that what she describes as backlash Weaver (in an effort to recognize the deliberate design of these policies) terms "frontlash."

¹⁵ Alexander traces the range of judicial interference in the lives of black individuals through its legal, social, and financial impacts. She cites a devastating range of areas of impact, including housing discrimination, unchecked wealth loss, voter disenfranchisement, social discrimination, family disruption, and near-total erosion of basic civil liberties. For her analysis tying these legal frameworks to the legacy of Jim Crow, see her introduction and chapter 1 "The Rebirth of Caste."

¹⁶ In the state of Virginia, felony disenfranchisement is not simply analogous to antebellum policy, it is directly tied to the postbellum attempts to reconstruct the white supremacist social order of the antebellum south. For a recent survey of these ties, see Matt Ford's (2016) "The Racist Roots of Virginia's Felon Disenfranchisement," from *The Atlantic*.

makes a criminal?” and then assume the answer lies somewhere within that individual. Instead they investigate the ones making the assertion.

Scholarship today must contend with this tightly interwoven tapestry of inherited and mutually dependent narratives: the persistent stereotyping of African Americans, the narcissistic undertones of a general public that asserts their individual post-racial status,¹⁷ and the policies that buoy these myths. Johan Galtung’s conflict frameworks are incredibly useful here in understanding how the narratives around our legal system, the problem of mass incarceration, and policies supporting the former, get put into action. Galtung wrote extensively on violence (e.g. 1969; 1996), but rather than confine himself to the most obvious forms of violence, he directed readers’ attention to other forms of violence that tend to remain hidden. His definitions, then, of structural, cultural, and direct violence, together form a typology of violence (Galtung, 1969) that summarily broaden what the U.S. legal system typically defines as “violent”. We will discuss the word “hidden” in short order, but suffice it to say Galtung’s framework answers questions about the scope and occurrence of various levels of violence. Andrew Dilts (2012, p. 191) summarizes the impact of Galtung’s work vis-à-vis global society today, “...we are reminded that the distinction between violence and nonviolence is itself contestable and far from self-evident in the character of actions (or actors) alone.” Writing for the same symposium as Dilts, “Revisiting Galtung’s Concept of Structural Violence”, Yves Winter (2012) criticizes an intellectual overdependence on the visibility of violence and its agents, and adds a profound specificity to Galtung’s “broad and vague” definition of structural violence (p. 195). Winter (2012) has theorized that “it is not invisibility that allows [structural] violence to be reproduced but that repetition and reproduction make violence invisible” (p. 202). But why is calling this “violence” important? Winter (2012) reminds us that “we need the term ‘structural violence,’ despite its problems and insufficiencies, to designate forms of injury inflicted in ways that do not meet the criteria of the spectacle and that therefore do not register as violence” (p. 202).

We have selected mass incarceration as the site of our analysis because, in the American story, it is one of the ways in which crime is not just addressed but also expressed. It is an urgent site of abuse, the reform of which is met with tremendous obstacles. Local, state, and federal policy building are actions of both narrative response to historical social narratives, as well as narrative construction in and of itself. In them, we can read larger narrative trends that frame and redefine actions codified as “crime.” In Virginia, as in the

¹⁷ For more on the problems with combating a legacy of racism through individual goodwill, see Freeman (1978) on victim and perpetrator perspectives on resolving discrimination (p. 1049-1057).

nation, the vast majority of incarcerated individuals are arrested, prosecuted, and incarcerated along demographic lines, making their group membership and association with criminality and incarceration a defining aspect of their social identities. According to social identity theory, one need not be the direct recipient of violence to feel the impact of that violence. Co-membership in the same identity grouping will suffice (Ellemers & Haslam, 2011). Thus, friends and family of incarcerated individuals are likely to experience a similar oppression, because they share the same racial background as the incarcerated. According to social identity theory the same is true for others sharing that same background, regardless of whether or not they will ever come to know that incarcerated individual (Ellemers & Haslam, 2011). Not only has the State failed to protect these citizens, but in fact has contributed to their disadvantage, representing very real direct violence and conflictual behavior, to employ Galtung's framework. Perhaps the most critical component of this latent conflict is widespread cultural acceptance of this practice. Merging the work of Alexander and Galtung, this acceptance of the uneven and hyper-incarceration of massive numbers of American citizens is indicative of conflictual attitudes within American society.

American Crime Narrative Tropes and Present Day Mass Incarceration

As of 2015, the United States incarcerates the largest population of people in the world,¹⁸ and a tremendous volume of literature already exists on the disproportionate presence of America's minority populations in our prisons.¹⁹ For our own narrative framing, we will quote Michelle Alexander (2010) here: "No other country in the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid." Alexander's words advance the central claim of *The New Jim Crow*: that incarceration is not a response to crime, but rather an advanced form of social control – the reinvented Azarian "disarticulation" of African Americans in U.S. public life. Certainly, use of the criminal justice system for the control of minority communities has an established history in the United States. The

¹⁸ This is true if you examine the data as percent population (roughly 1% nationally) or in raw numbers (about 2.4 million people total). For a comprehensive rundown of a turning point in this data see The Pew Charitable Trust's report *One in 100* (2008).

¹⁹ The works of Michelle Alexander and Loïc Wacquant offer a good starting point on the subject. We would like to note here that minorities across the board are disproportionately represented in our prisons, and that there is a need for literature that further explores the incarceration rates of Hispanic and Native Americans. For the purposes of this paper we will focus on over-incarceration of African Americans as it is so deeply tied to Virginia's history as a capital of trade for enslaved people.

magnitude of mass incarceration, however, and the underlying assumptions about crime that it reflects illustrate prolonged trends in public conversations about race and criminality.²⁰

In the early 1970s there was support among American criminologists and policy specialists for the de-incarceration of the country's fewer than 400,000 inmates.²¹ Crime, they argued, was best addressed in other ways. Ten years later American prisons had begun an unprecedented climb in population. Devah Pager (2008, qtd. in Coates, 2015) cites a now frequently-quoted passage from a Justice Department report that directly rejects the recommendations of specialists: "Ask many politicians, newspaper editors, or criminal justice 'experts' about our prisons, and you will hear that our problem is that we put too many people in prison. The truth, however, is to the contrary; we are incarcerating too *few* criminals, and the public is suffering as a result." This sentiment reflects the evolving narrative trope of late twentieth-century American criminal justice policy: that punitive methods were the preferred response to crime in our communities. It also reflects a profound othering of the accused, which divorces them from a social pact which promises well-being for its members. The logic that incarceration should serve primarily as a means of punishment is a narrative premise that distinguishes the latter half of the twentieth century; the first half perceived incarceration as a method of rehabilitation. George Pettinico's 1994 survey of Gallup data illustrates this shift: as late as 1971 the nation was largely convinced that incarceration represented a rehabilitative effort on behalf of the State. That year only 15% of survey respondents felt the purpose of prison was punishment; 76% of respondents identified rehabilitation as the "primary task of prisons." By 1993, those numbers had almost reversed: only 25% of respondents identified rehabilitation as the primary task of prisons; 61% selected punishment.

Pettinico's analysis cites "twenty years of rising violence and lawlessness" as the source of this shift. His language, however, reflects an evolving narrative that is far more complex than a simple correlation between rising crime rates and shifting ideas about the best response.²² "Violence and lawlessness" is less the vocabulary of data-driven analysis and more that of a Western: a narrative that rewrites crime from a sociological phenomenon with

²⁰ Valuable research exists here as to whether the slave trade constitutes an ancestor to our current prison network. See Wacquant's "From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the U.S." (2010). For the purposes of our analysis we will focus solely on the 20th and 21st century prison systems.

²¹ Some coverage of this can be seen in Pettinico (1994), but for full data see National Advisory Commission on Criminal Justice Standards and Goals, Task Force Report on Corrections (Washington, DC: Government Printing Office, 1973), 358. (qtd. Alexander 2010).

²² Note here increasing recognition that rising crime rates were not unique to the U.S., though the response of mass incarceration is (Coates 2015).

complex context to a simplified story of villains and victims. Weaver (2007) has argued that far from being a response to crime, the massive increase in imprisonment was a dominant-majority response to the Civil Rights Movement. After the Civil Rights Act of 1964 and the Voting Rights Act of 1965 the public knew they crossed a Rubicon of public race relations, but stomaching the successes of the Movement was not an option. Instead, criminalizing African Americans, whether engaged in lawful protesting, or outright unlawful activities, was consciously or not, the next best step. In fact, the United States already had a history of engaging in this sort of “frontlash”, per Weaver, from decades before. To further our understanding of the State’s response to crime from a narrative perspective, Samantha Hardy’s (2008) work using genre as an analytical frame, is helpful to advance our understanding of how the narrative device of melodrama can reveal discursive dynamics in the legal response(s) to moral and physical injury. She writes, “when people confront conflict, they have a ready-made and culturally acceptable narrative structure with which to explain and tell it, although this choice is likely not a conscious one” (Hardy, 2008, p. 252). Here we would like to extend her methodology to better understand the full context and implication of American mass incarceration.

Pervasive public narratives about crime, victimhood, and appropriate social response, frame the construction of public policy today in a way that makes incarceration reduction incredibly challenging. Hardy’s narrative frame applies not only to individual cases, but to the culture of mass incarceration itself. This narrative shift in the mid-20th century, from a rehabilitationist to a punitive approach, illustrates the way public perception shapes the development of policy. Quoting Schramm and Neisser, Ospina and Dodge (2005) write, “[w]hat are public policies but stories narrating our relations...in politically selective ways?” (p. 147). They go on to state that the public understands societal problems through story, which in turn is reflected in the crafting of public policy. Pettinico (1994) recognized this public narrative shift as driven by media and by electoral cycles. He writes, “The media’s extensive coverage of crime, especially the most brutal and horrific cases, have [sic] heightened the public’s fear and anger over this issue to a near frenzy” (Pettinico, 1994, p. 29). American media at that time reflected an increasing public concern about crime, focusing on the most extreme of cases. By 1994, 68% of respondents to Gallup’s survey

reported seeing violent crime coverage in the media “daily.” Here “the public” reads as a white majority, with disproportionate representation in government.²³

Along with the late 20th century’s increasing fear of violence came a corollary preoccupation with victimization, a fixation that held profound legal consequences. So intense was the desire to reflect the position of victims within the court that the Supreme Court in 1991 reversed its 1987 ruling limiting the presence of Victim’s Impact Statements (VIS) in sentencing. In *Booth v. Maryland*²⁴ (1987) the Court had found that VIS were likely to unduly sway sentencing based on “the character and reputation of the victim and the effect on the family...on the perception that the victims as a sterling member of the community rather than someone of questionable character.” In so ruling, *Booth v. Maryland* reinforced an appealing tendency in trials to insist upon a “perfect” victim, painting defendants as flat villains. The purpose of the court after establishing guilt was to focus on the offender, taking into consideration their individual context before imposing sentencing. In part, *Booth v. Maryland* recognized bias as potentially too great when considering the emotionally charged language of victims and their surviving family members (though this ruling also recognized that the presence of a VIS could amount to a “mini-trial” of the victim, disadvantaging victims seen as unappealing by a jury). *Payne v. Tennessee* (1991) was an explicit reconsideration of the ruling in *Booth v. Maryland* and an analogous ruling in *South Carolina v. Gathers*. The majority decision of the court in *Payne v. Tennessee*, delivered by Justice Rehnquist, devotes two pages to the particulars of the crime, focusing on the details of the wounds, on damage done to children, and on particularly dehumanizing descriptions of the accused, Pervis Tyrone Payne, quoting a witness who described him as “foaming at the mouth.” In what the dissenting judges would describe as an unprecedented reversal, Justice Rehnquist dismissed the concern that a VIS might unduly sway a jury, arguing instead that mitigating circumstances surrounding the defendant (in this case Payne’s low IQ), might unduly sway a jury way from a sentence that responds justly to particular violence.

In his dissenting opinion of this 1991 reversal, Justice Marshall noted, “This truncation of the Court’s duty to stand by its own precedents is astonishing” (*Payne v.*

²³ In such a system it is implicitly accepted that the will of this kind of power majority translates to the will of the government. Therefore, when laws are retributive as opposed to rehabilitationist, especially toward minority groups, it is easy to infer that this power majority accepts this approach as deeply justified. Framed with a conflict lens, this is (Galtungian) cultural acceptance of a State-driven deprivation of an isolated group’s human needs. It is also a social conflict, protracted over generations, which Azar unknowingly foresaw as he watched states shift their standing from the world stage to domestic affairs.

²⁴ Oral arguments in this case are of particular interest to those studying race and narrative building around violent crime. Much of the debate is centered on the ability of the court to evaluate “the blackness” of “the soul” of a hypothetical violent offender.

Tennessee 1991). The ruling, however, had been set, and had created space on a national level for increased attention to victim, family, and community impact in cases of violent crime. Elected officials, Pettinico (1994) writes, scrambled to keep up with public demand for increasing awareness of victim impact, followed by increasingly punitive responses. Respond they did; politicians embraced “tough on crime” platforms and reinforced the media’s tendency to focus only on the most horrific crimes. The most famous example of this has become the Willie Horton advertisement, a 1988 attack ad from George Bush’s presidential campaign that set the standard for accusations that a candidate was “soft on crime.”²⁵ The ad represents offender characterization in the age of “tough on crime” legislation: Horton’s crimes were multiple, violent, and seemingly preventable. As the *Baltimore Sun* wrote in 1990: “Willie Horton was a killer, a rapist, a torturer, a kidnapper, brute. In other words, he was perfect.” Horton is African American, allowing politicians to play on public racial prejudice implicitly, framing the “lawlessness” of the 1980s with menacing language that allowed viewers and listeners to interpret the most extreme cases as the norm. Politicians could not afford to ignore public fears, and the public was primed to fear criminals, most especially black men. These men were given a face by Horton, became a specter for a purportedly pervasive criminality that threatened any individual, any home.

The Horton ad is the story of an evolving American narrative of crime that was reliant on an inhuman or sadistic offender, or (in Hardy’s framework) the villain. This character is meaningless, however, without an important corollary: a victim. Tata and Hutton (2002) draw an interesting parallel between the development of civil-rights awareness in the United States and an evolving women’s rights movement that was particularly focused on victims’ rights. Increased concern for dissatisfaction of victims with the criminal justice system,²⁶ especially in cases of domestic or sexual assault, drew public focus to the role of women in the courts, where their needs were not being met. This conversation converged with the narratives of criminality wrought by the Horton ad, which featured a violent rape at its center. Where the ad cast a black man as the prototypical offender, the campaign treated his victims, Angela Miller and Clifford Barnes, as a “perfect” fit to traditional depictions of victims: they were young, middle class, about to be married, and perhaps most importantly, white.

²⁵ For full details of the ad, its political context, and Horton’s prison term, see The Marshall Project’s “Willie Horton Revisited” (2015). The text includes a strong analysis of narrative framing in the ad itself, down to the careful selection of a photo of Horton taken after an extended stay in solitary confinement.

²⁶ See Kunst et al. (2014), “Victim satisfaction with the criminal justice system and emotional recovery: A systematic and critical review of the literature.”

The shift in public attitude that followed converged with pre-existing narratives of criminality, gender, and race in American life that failed to address the complexities of Horton's life, the impact of this event on the couple's lives, or the relative rarity of this kind of assault as compared to other crimes. For the media and for the Bush campaign, the Horton crime became a fable that reflected an era in which fear of violence was at its peak. This anxiety about violence was closely tied to evolving narratives of both crime and African American identity. Katheryn Russell (1998) summarizes the media representations of Blackness in the late nineties as directed in part by a rise in media asserting to document "reality," most notably talk shows, police programming, and the news. In reality shows alone, she argues, Blackness is limited to depictions of African Americans as "amoral buffoons, sassy single mothers, arrogant absent fathers, and unfaithful friends." In both police reality programming (i.e. *Cops*) and the news, these stereotypes laid the foundation for a perception of pervasive immorality and criminal behavior.

These perceived connections between race and violence are a reflection of a protracted social conflict that runs centuries deep. The stereotypes of violent criminality and underdeveloped social mores can be tied directly to religious, political, and pseudo-scientific thought that sought to justify slavery through a racial hierarchy of the superiority of the white race (see again Plous & Williams, 1995). In the 1990s fear of violence reinvented these inherited narratives, giving birth to an unprecedented sweep of criminal justice reforms in the U.S. that linked a decades-old fear of blackness to policy which made the same assumptions. The rape of a white woman by a black man resonated with deeply-rooted American beliefs about violence and race; these beliefs held legal sway in the form of decades of criminal justice policy and dominant social norms which treated black men first as (at least potentially) criminal. This narrative ensures a painful circular logic which associates "crime" with "violence" and "blackness" – implying a narrative causality which further sequestered African American social identity. After the civil rights era, instead of moving forward out of years of structural, cultural, and direct violence and injustice, the country found a way back to a place where African Americans were not victims, but in fact a social group to regard with suspicion.

In the media coverage that ensued, victimization extended beyond individual experience to become public specter. Jeffery and Candea (2006) write that this use of victimhood in the public sphere has tremendous emotional and psychological sway over its audience: reliance on victimhood becomes the ultimate political act as it asserts total de-

politicization. As Jeffery and Candeia (2006) wrote in their introduction to *History and Anthropology's* "Politics of Victimhood" issue:

Victimhood can be a prime way of suspending or attempting to suspend the political through an appeal to something non-agentive and "beyond" or "before" politics, such as poverty or suffering... [V]ictimhood establishes a space for a specific kind of politics; but it clears the ground, it poses itself as the neutral or indisputable starting point from which discussion, debates, and action—in a word, politics—can and must proceed.

In this manner, as Govier (2015) posits, victimhood attains an authority in public discourse that potentially silences other voices.²⁷

The Horton ad had precisely this effect: as The Marshall Project (2015) remembers it, "[t]he name [Horton] is enough to make a politician blanch. Ever since 1988, when the George H. W. Bush presidential campaign machine wielded the Horton horror story against his Democratic rival, the threat of being "Willie Horton'ed" has shaped the politics of crime and punishment." What followed was a perfect storm: a single crime seemed to validate long held racial prejudice at just the moment that civil-rights oriented activists were focused on the victimization of women and the election cycle had produced a tough-on-crime candidate. The right and the left converged quickly, resulting in the U.S. Violent Crime Control and Law Enforcement Act of 1994.

This 1994 crime bill redefined criminal justice policy in favor of the public perception that the purpose of prison is to punish. Tata and Hutton (2002) recognized that the rehabilitationist philosophy of the seventies was "wed to sentencing indeterminacy".²⁸ If prison offered rehabilitation, then release would be a moral imperative – one that is presumably unpredictable in timing depending on the needs of the individual offender. Indeed, Pettinico (1994) cites the death of parole as rooted in the "intense disillusionment with this central tenet of rehabilitation." The narrative had changed: crime was committed by criminals, habitual offenders without hope for rehabilitation. Inherent in this narrative is the implication that if criminality is tied to race, and one cannot change one's race, then it follows there is no hope for the criminal. To return to Galtung, historical conflictual attitudes

²⁷ Victimhood narratives also have the potential to be profoundly silencing for the victims themselves, who become subject to a system of simultaneous excess attention (particularly to selective testimony) and neglect (to their very real psychological and economic needs).

²⁸ Sentencing indeterminacy is a prison sentence consisting of a range of years (such as "five to 10" years). The state parole board holds hearings that determine when, during that range, the convicted person will be eligible for parole. https://www.law.cornell.edu/wex/indeterminate_sentence

found fertile ground in this new narrative, and easily gave way to the structural violence which ensued. Among other things, the crime bill enacted sex-offender registration policies, granted victims the right to speak at sentencing hearings, offered financial incentives for truth-in-sentencing,²⁹ expanded the use of the death penalty, and provided early models for “three strikes” sentencing. The act was met with widespread support across political lines.

Here we would like to revisit Alexander’s analysis through the lens of conflict theory. Desegregation, as often narrated in media, public monuments, commemorative stamps, and other spaces where the story of history is written, united two groups involved in centuries of conflict. Criminal justice reform, as Alexander understands it, allows the American public to persist with the myth of civil rights success in a landscape of reinforced Jim Crow. Put more simply: criminal justice reform allowed Americans to preserve an old conflict, including many of its divisive narratives, while simultaneously persisting with the myth of unification. In this respect, the general public is given a means of proceeding as if American society were running justly, able to celebrate the success of the Civil Rights Movement, as well as the success of the legal system. In the Galtungian sense, this is the way in which cultural acceptance of the structural, and at times direct, violence of the American carceral state is brought about. The Azarian perspective is that in this current scenario, a certain segment of society is being overrepresented in jails, their most basic human needs are divested of them, and the State is directly responsible. To be clear, Azar wrote of wars and the most overt sorts of conflict. We insist that given the enormity of the range of violence of the carceral state, and given that this violence is affected with the same dynamics of Azar’s “communal” or “intra-state” wars (Azar 1990), scholars might shift their preoccupation from the types of conflict that grab front page headlines to the kinds that remain largely silenced.

“Tough on Crime” in Virginia

Virginia’s prison system is closely tied to an amorphous national carceral state, and it would be impossible to tackle parole reform in Virginia outside of the context of the national-level evolution of a carceral state. The “Tough on Crime” movement was very popular in

²⁹ In common usage, “truth-in-sentencing” refers to judicial reforms that aimed to abolish or weaken parole structures, thus mandating that people convicted of a crime serve the full term to which they are sentenced. It is worth noting here that part of the narrative framing of “truth-in-sentencing” reforms asserted that these changes would render the judicial system more honest and less discriminatory (by reducing discretion in sentencing guidelines). In practice discrimination remained as it existed in the judicial process prior to sentencing. In Virginia “truth” is a complicated notion in sentencing processes. In some cases juries were not informed parole had been abolished, and in these cases appear to have handed sentences under the assumption that the individual would be permitted to seek parole years in advance of reality (see the Governor’s Commission on Parole Review *Final Report and Recommendations*, 2015).

Virginia, and there is no better illustration of the quick success of “tough on crime” narratives than the gubernatorial campaign of George Allen. When running for election in 1994, the central focus of his campaign was a brand of criminal justice reform that borrowed language and policy from Bush’s campaign methodologies. Allen invited controversy by reportedly keeping a small noose in his law office. While he attempted to dissuade criticism by redefining the object as a “lasso,” the rhetoric of both his campaign and his term as governor reflected a deep appreciation for judicial process based on retribution. Once in office Allen adopted truth-in-sentencing laws, mandating all people incarcerated after 1995 serve up to 85% of their term (a policy known both as truth-in-sentencing and as parole abolition for its effective elimination of parole as practiced pre-1995). In an article titled “Throwing Away the Key” for the Heritage Foundation’s journal *Policy Review* (1995), Allen affirmed that “[a]lthough preventing criminals from committing further acts of violence was the primary goal [of parole abolition], the increases had to reflect the notion of retribution.”

These policies, combined with existing legislation,³⁰ have also made Virginia one of the strictest in the Nation with regard to its incarceration trends. 2015 marked the 20th anniversary of sentencing reform in the State, and scholars and politicians alike used the anniversary to assess the successes and failures of the campaign.³¹ According to the Justice Policy Institute (2013), at the time of review, Virginia had the eight highest incarceration rate nationally for jails and local facilities and the 14th highest state incarceration rate in the U.S. Despite Governor Allen’s emphasis on violent crime as the target for “tough on crime” legislation, the State’s arrests for drug-related offenses grew, and people of color bore the brunt of these new policies. Despite some claims that reform would reduce disparities in sentencing across racial lines, the new system failed to recognize that racial disparities are present in Virginia’s criminal justice system long before a case reaches sentencing. The Virginia legislature acted on pre-established narratives that, not being overtly racist, presented themselves as being the right thing to do with regards to crime control. In so doing,

³⁰ While there is not room to detail the full scope of Virginia’s draconian judicial practices here, a practice of particular note that converges with the State’s sentencing laws is the now notorious “21-day rule” prohibiting the introduction of evidence on the 22nd day after conviction. This has gained particular attention of Peter Neufeld, founder of the Innocence Project, who has tackled cases in Virginia where DNA testing has proven the innocence of incarcerated Virginians. That testing was deemed inadmissible as it followed the 21-day limit, leaving the incarcerated individuals at the mercy of a gubernatorial pardon. In a 2013 lecture at Virginia Commonwealth University, Neufeld described the scope of the policy thusly: “If you were convicted of murder and on the 22nd day the deceased came walking into town, you couldn’t go back into a court to be exonerated.”

³¹ We will note that while on paper truth-in-sentencing laws have reduced some disparities in post-conviction sentencing, they have done little to reduce disparities in all areas of the judicial system that lie before post-sentencing conviction, for example parity in arrest rates, legal access, plea bargaining, etc. We will also note that while sentencing reform correlates to lowered crime rates, these crime rates reflect a national trend and can be found in locations where parole access has remained the same or even increased.

African Americans continued to be overrepresented at every stage of the criminal justice process. Today in Virginia, African Americans comprise roughly 20% of the adult population, almost 48% of all arrests, and over 60% of state prison inmates.

Despite these changes, an inherited rhetoric of villainy and victimization, learned from slavery and retrenched through the political climate of the 1980s, remains in Virginia's public discourse. George Allen's public comment on crime in the State continues to reflect the deeply entrenched belief that decarceration would unleash a wave of violent criminals on the public. In a response to Governor McAuliffe's order to convene a commission to revisit the impact of parole abolition on the State's rising incarceration rates, Allen (2015) posted a lengthy statement to his Facebook account, reminding readers that imminent peril was the impetus behind Virginia's original abolition, "We knew that Virginians at that time did not feel secure in their own neighborhoods with so many crimes being committed by repeat offenders, including a woman raped by an early released rapist and a police officer killed on Father's Day by a criminal on parole." The former governor goes on to warn that "[b]ecause of our prioritization of concern for protecting law-abiding citizens and their communities, probably tens of thousands of Virginians are NOT victims of rape, murder or other violence to their loved ones." The characters Allen depicts perfectly encompass narrative roles of pure goodness and evil – an inherent victim (the woman), a man sacrificing himself for his family and community (a father and a cop), both pitted against criminals who lack the self-restraint to keep their delinquent natures at bay.

McAuliffe's parole Commission convened first in the summer of 2015, and their ongoing public meetings have reopened an intense reexamination of the State's attitudes toward incarcerated people. The monthly open-forum meetings have brought in a lengthy list of statewide agencies to report on their work in a state without parole. Many of the presentations reflect a deeply felt tension: that a punitive approach to an antisocial offender population is "just," but that this approach also fails to work. This word "just" is important to note. Were it not for the tremendous cultural and historical facility with assigning the status of criminal to some groups of people over others, there would not be this particular moral overtone to Virginia's assessment of parole. The State, it seems, has become politically and morally locked in position. Alternate narratives, representing their own form of intervention, proceed cautiously. For instance, in some cases, speakers, members of the public, and members of the Commission are stepping forward in small ways to explore the possibility that mass incarceration represents its own method of victimization of a captive group. Perhaps no public record illustrates this as clearly as Virginia Department of Corrections'

(VADOC) own presentation on reentry services. Delivered by David Robinson in the Commission's September 2015 meeting, the "Reentry System" presentation reflects a painful inability to reconcile the assumed narrative of violent criminal offenders, with the harsh realities of long-term incarceration and unsupported reentry. This conflict is present throughout the document, but is perhaps most clear in slide 14, "Administrative Segregation Step Down Program" (inset left).



Like much recently revised Virginia Department of Corrections language (using "residents" instead of "inmates" and "care" instead of "detention"), the slide attempts to adopt a narrative of sensitivity and security: "segregation step down,"

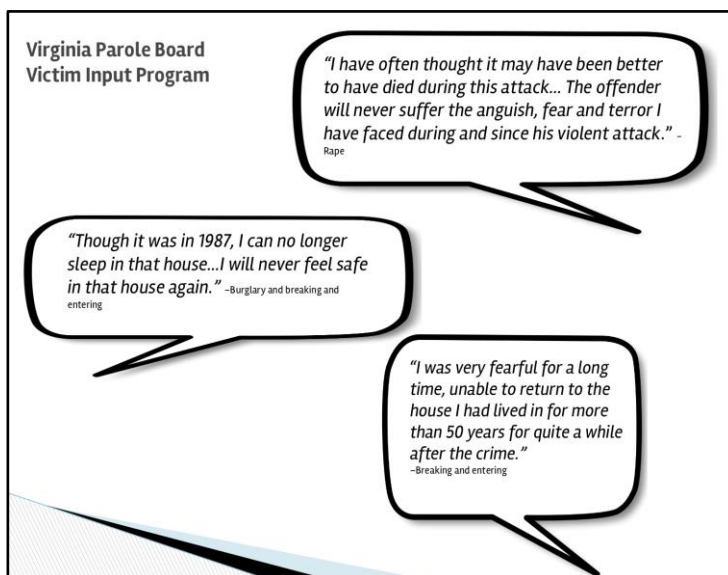
"therapeutic modules," "out of cell...programming," and "unrestrained." The images, however, counter this narrative. The first, a reflection of high-security educational practices, shows three men standing in cells roughly three feet by seven. They stand behind a dense wire grate. Their "teacher" stands in front of the row of cells, wearing latex gloves.³² The second image shows inmates shackled to desks. Their hands are secured at the top of the desk with traditional handcuffs, supposedly in preparation for an unrestrained classroom setting. This preparatory environment certainly provides enough restraint to hinder writing, but also represent a literal lack of fluidity in the educational setting. Inmates are to *receive* learning, and not engage, it would seem. The images reveal a profound contradiction in the rhetoric surrounding and the realities confronting these inmates. They are nearing reentry, and thus seen as in need of education and opportunities for advancement; this is preparation for release. The exceptional level of restraint, however, could only be thought to be appropriate for the most violent offender, the most untrustworthy individual. An individual so untrustworthy that he must be caged individually in class, that he must have both hands shackled for safety, should not be nearing release. That there are two separate moral systems

³² The gloves raise some questions about the process represented. They may imply cavity searches before inmates are relocated to this "classroom" setting, though this raises some questions about why they are still on the deputy's hands. Gloves may simply be standard practice in some higher-security facilities.

and sets of expectations between the incarcerated and the “free” is not surprising. Nonetheless, one cannot help but wonder what form this “preparation for release” would take had we as a country retained our rehabilitationist attitude from years before.

Presentations before the Commission have walked a similarly narrow line: one that divides a deep reliance on an instinctive placement of “offenders” into the narrative trope of a traditional villain, and one that is slowly awaking to the role of the State in victimizing already marginalized groups. There was no lack of space in the Commission's many meetings dedicated to the devastation of re-entry after the harsh reality of long-term incarceration. The financial hardship, lack of jobs, stark social realities, etc., have been present in the Commission’s discussion to a degree (Commonwealth of Virginia Commission on Parole Review 2015a and 2015b). Why, then, do these policy discussions fail to address the realities of a discriminatory and overreaching punitive judicial system? Why do tough-on-crime laws retain popularity in a context where they have produced a globally criticized system of incarceration? How can it be, as it was at the October 26th session, that delegate Dave Albo can say definitively “[w]e will not reinstate parole” because of its widespread unpopularity?

One possible explanation was observed at that same October 26th meeting, where space was allotted for victims and victims’ services groups to speak. It is clear, from this event, that victim testimony frames policy decisions in very complex and powerful ways.



This can be seen in quotations taken from the first slide presented by the Virginia Parole Board Victim Input Program, presented as part of several slides intended to give testimony for victims who were not present (inset left). The first quote presented came from an eighty-one year old woman raped in her home. This is a remarkably affecting statement made about an

experience to which few can relate. Such testimony alone carries tremendous weight before such a commission. This quotation is placed in context with two others, each of which suggest home invasion and extreme victimization. They are, however, profoundly different in one significant way: the second two quotes describe burglaries for which the victims were not present, and thus suffered no physical harm. In presenting these quotations to the

Commission, the Victim's Input Program representatives cautioned the Commission to remember this: that victims of property crime suffer the same trauma as victims of violent crime. This is not a coincident narrative: some property crimes in Virginia law are treated as violent crimes. With some critical distance, this claim is incredible and trivializes the experiences of those who have suffered real physical harm. Burglary in the absence of a homeowner is not analogous to home invasion and rape. Rarely could the trauma of property damage reasonably be equated to the experience of surviving physical violence.

This slide illustrates the tremendous power that victimhood narratives have in the public conversation about sentencing policy in Virginia, particularly when divorced from a nuanced description of the victims' experiences. Here we must tread carefully in our analysis: the testimony of victims has power, but that does not mean victims are truly heard, or that their needs are met by policy. Rather, victims are given power only where they reinforce accepted narratives about crime and victimization. Stories that assert overcoming self-perceived victimhood or forgiving and befriending an attacker, for instance, would have no space in traditional victim narratives. Furthermore, the testimony of victims before the court, those who spoke in person as opposed to being represented by victim's services, revealed tremendous long-term traumatization by both the crime itself *and* by their interactions with the State. Or, as R.E. Mackay puts it, "The political rhetoric of support for the victim may mask other agendas such as law and order policies which may in fact not be beneficial to victims at all" (1996, p. 185).

The message of victims' rights groups and Victim's Input Services was unequivocal: Virginia needs longer sentences, tougher reforms, less parole, including cases eligible for geriatric release. One victim spoke adamantly about her long legal battle to prevent a dying prisoner from being released into home hospice care. These messages, buoyed by the VADOC, wholly redefined victim care as an issue of offender punishment. As the woman who argued against geriatric release (above), only a slow death in a prison bed would meet her needs as a victim. This offers tremendous insight into the State's approach to meeting the needs of victims of violent crime, and its subsequent failure to do so. Rather than offering services that help victims to move forward, the VADOC shifted responsibility for victims to the hands of the Parole Commission, asserting that only a more punitive approach would meet victims' needs. This claim, however, is belied by the struggles of victims in spite of 20 years of harsh sentencing laws. Even within a context of rapidly increasing incarceration rates and lengthy sentences, victims of violent crime struggle to move forward after trauma.

Victims' needs, in fact, change over time and depend on the individual, the crime, the aftermath, and a myriad of other factors that do not necessarily dictate a clear policy path. An example of this complexity in victims' needs is the Code of Virginia (1995; 2010), which offers provisions for the establishment of victim offender reconciliation programs (§19.2-11.4), a process often referred to as restorative justice.³³ The Victim Input Program slideshow looked closely at Virginia Code with regard to victims' rights, but it failed to address this very important portion of Virginia's code. The purpose of restorative justice, according to Trudy Govier (2015) is to "give [victims] a larger role, meet their need for information, allow them to be heard, and assist them in getting back to the independence and power that the crime may have taken away from them" (p. 16). A valuable part of this process is meeting a victim's needs for information about the offender, from whom they are kept isolated during legal process, about whom they have tremendous anxiety, and about whose motivations and thought processes they may have many questions. This offers, in part, a process of (at best) humanization of people who commit violent acts and (at most practical) some understanding of how they came to be the object of harm, allowing victims to reaffirm agency moving forward with their lives.

The Victim Input Program focused on a very different form of victim/offender contact: total segregation of the individuals with the possibility of victim notification should the offender's status undergo any changes (transfer, name change, work release, escape, parole, etc.).³⁴ This notification system accomplishes much the opposite of reconciliation procedures: rather than putting the victim in an active and controlled role, it puts the victim in a passive place of receiving potentially threatening information. In short, this gives the victim a perception of total offender empowerment, even during incarceration. Showcasing victim experience before the parole commission instead demands increased punitive measures rather than policies that would meet the needs of victims more meaningfully. This acts in the best interest not of victims, but rather of incarceration units by allowing them a larger degree of control over the post-crime process: VADOC gains increased control of offenders after harm occurs and retains emotional control of victims by making them reliant on the Department for any information regarding the ongoing status of the person who harmed them. Another way to frame our question, then: Is the "Tough On Crime" narrative working to serve the needs

³³ Restorative justice has enjoyed increased popularity nationally since the 1970s, perhaps in part, as a response to increasingly punitive policies on the part of the State. For a sense of range in how restorative justice is practiced (especially with regard to site-specific practices and in the context of racially discriminatory policies) see the works of Howard Zehr, Dominic Barter, and Fania Davis.

³⁴ See VADOC, "Victims Input Services" (2015) for a full list and victim registration data.

Virginia's historically most disenfranchised populations? Of all Virginians, rather than just a few? How does or should the State account for broader victimization at the hands of its own policies?

Ultimately, framing the final meeting of the Parole Commission through Victims' Services units has another potentially harmful outcome: it orients the conversation about incarceration entirely around violent crime, much as the Willie Horton ad did two decades earlier. In fact, crime in Virginia is not dominated by violent harm. The Virginia Department of Criminal Justice Services (2012) shows not only a consistently dropping rate of violent crime (and crime overall), but that total violent crime rates (including all robberies, assaults, murders, and rapes) as occurring at less than half the rate of drug arrests alone; total rates of violent crimes are less than one tenth property crimes in the State.³⁵ In reality, a large portion of Virginia's crime landscape consists of drug crimes (where the State is positioned as the victim³⁶) or property crimes, where individuals or corporate entities are indirectly victimized through property damage. The tendency of victims' services units to treat individuals as direct recipients of harm when property is damaged allows the State to make the same leap as the Victim's Input Services slide show: it rewrites a huge percentage of crime in the state as violent. Reframing crime as largely violent increases the tendency of political entities to write policy with violent crime in mind, thus treating individuals engaged in drug use and property theft or damage as actually or potentially violent. In the case of the October 26th meeting of the Parole Commission, this narrative construction was very challenging to divorce from race, as each individual there to speak on behalf of victims (including state employees) was white, whereas a large majority of those who had spoken on behalf of the incarcerated (over each meeting) were African American.

Mass Incarceration and the Problem of Victimhood

Here we must return to where we began our exploration of deeply racialized notions of offender identity in the U.S. with the analysis of Alexander, Crenshaw, Dilts, Freeman, and Weaver. Public narratives of crime have indulged a very dangerous set of contradictions with regard to individual identity, especially "victim" or "offender" statuses. Crenshaw writes that "the innocence of whites weights more heavily than do the past wrongs committed upon Blacks and the benefits that whites derived from those wrongs" (p. 1342). Indeed, public

³⁵ Here we use 2010 data over 2014 as the 2010 data has been reinterpreted as a clear crime index, measured per capita for every 100,000 individuals. The full range of data for the year 2014 is consistent with the 2012 research of 2010 data, and can be found online here: http://www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2014.pdf

³⁶ See Nils Christie's excellent assessment of State victimhood in "Conflicts as Property" (1977).

narratives of crime allow white victimhood to be read through the experience of an individual, whose trauma takes precedence over their race as context. People of color – in particular black men – however, bear the weight of both individual and group identity. They are racialized through generational conflation of crime with blackness, a weight that translates into a rhetoric of individual responsibility in answering for crimes committed. In other words, their guilt is framed by their group membership, but they are sentenced as individuals.

The data on our incarceration rates is quite clear: at local, state, and federal levels, people of color are disproportionately targeted by the policies and legal reforms that have produced our unprecedented incarceration rates (Sadkala, 2014). In Alexander's (2010) analysis, the impact of discriminatory judicial practice on the African American population amounts to a re-appropriation of existing practices, a new Jim Crow. Moreover, Alexander details how incarceration becomes a cycle of disenfranchisement with exponentially increasing impact on individuals. For an individual already disproportionately subject to policing, reentry presents incredibly high stakes. Loss of housing, transport, and employability create economically and socially precarious circumstances (Alexander, 2010, p. 156-170). Systems like probation, court fines, and restitution payments all manufacture opportunities for re-arrest, and any subsequent arrest or conviction carries the additional weight of a conviction with "priors" (Alexander, 2010, p. 110-111). Alexander makes a compelling case not solely for the extensive rebranding of a legal system commonly believed to be conquered in the civil rights era, but for an extensive cycle of multidirectional victimization of African Americans at the hands of government.

While her book reflects a new high water mark in public conversation about the impact of the criminal justice system on targeted populations, it sadly does not reflect a shift away from widespread associations between race and criminality, nor does it reflect a more successful public understanding of African Americans as victimized by the State. To the contrary, we have seen an increasing tendency among white Americans to overestimate violent crime, to over-identify with victim roles, and to approve of increasingly punitive responses to crimes committed by African Americans. The Pew Research Center (Kohut, 2015) reports that despite a near 50% reduction of violent crime nationally in the 1990s, Americans have consistently reported a belief that violent crime has increased, correlating to an increase in public support for gun ownership as a means for personal protection. The Sentencing Project (2014) reports white Americans overestimate the rate at which people of color commit crimes, by up to 30%, and rated African Americans and Hispanics more likely

to be “prone to violence.” Even those whites surveyed who “explicitly disavowed prejudice, were shown to have statistically significant associations between race and crime” (p. 13-17). These associations also correlated to support more punitive policies in response to crime. Rather than recognizing the judicial system as a source of discriminatory action, a system that victimizes people of color, popular opinion supports these policies.

This persistent refusal of the public to confront victimization of people of color at the hands of the judicial system correlates to a growing trend among white Americans to imagine themselves as victims of public policy. For the first time since the 1950s, in the mid-1990s more white Americans began to report a belief in anti-white bias than in bias against African Americans (Norton & Sommers, 2011). This identification with the role of the victim is an unsurprising manifestation of post-civil rights backlash. A power group, long-accustomed to its dominant role in a landscape of racial conflict resists, despite every evidence to the contrary, an understanding of American racial history that would give that group offender status. The moral framings of public debate about historical disenfranchisement of African American’s would have granted victims of discrimination a voice. Desiring to be heard and seeing victim status as a newly powerful tool, white Americans have flipped the narrative, placing themselves in the role of the victim. In an era of large-scale incarceration, where the cost of “guilt” is tremendously high, victim status has become a very real commodity.

This pervasive feeling of victimization in white Americans converges well with the narrative tropes of mass incarceration, wherein traditional narrative framing presupposes a black offender and a white victim. The truth of generational disenfranchisement of African Americans gets lost in serial presentations of individual crimes that fulfill audience expectation of race and role. To return to Hardy’s (2008) framework, it is tempting to adopt narrative structures wherein acceptance of the part necessitates acceptance of a whole. Our increasing understanding of the disenfranchisement of women within the criminal justice system demands more care in hearing their testimony; often, however, this testimony validates deeply held beliefs about a defendant's offender identity. When this happens and violent crime converges with long-held social narratives about race, our understanding of the full landscape of crime, violent and nonviolent, can be absorbed into exceptional cases. In many cases, the full context of a crime is far more baffling than our common understanding of crime and criminality. A large percentage of crimes position the State as the victim, without an individual who has sustained direct harm as the result of an action (as is the case in many drug arrests), a confusing proposition when we rely on a strict victim/offender pairing. In these instances, media depictions of single mothers, neglected children, dissolving

communities, stand in well for victimhood. Jamelle Bouie (2013) has been an outspoken critic of the notion of “black-on-black” crime as a rhetorical method used to “justify universal suspicion of black men, and young black men, in particular.” This narrative posits even in its basic phrasing that African Americans are particularly prone to self-victimization, wholly overlooking internalized violence in other racial groups, and erasing any violence directed at African Americans by the judicial system itself.

These narratives are profoundly othering, and reinforce victim/offender dichotomization by denying any rights to the public power of victim testimony by the target group. Trudy Govier (2015) asks:

In what sense and to what extent must a person be innocent of wrongdoing to qualify as a victim? Victims seem to have a certain kind of authority over their own stories. But what sort of authority is that? What are its foundations and what are its limits? If we feel an obligation to show respect for victims, what should that respect amount to? Should it extend so far as deference to their testimony? (p. xxi)

These questions frame the central problem of the victim/offender dichotomy. Victimhood always equates to innocence. This disallows any recognition that, on a micro level, many people who commit violent acts may be, in other areas, recipients of similar acts, or that African Americans have been victimized by a range of destructive social and economic policies during slavery and after.³⁷ If, as Govier suggests, victimhood status is denied to those who are not socially deemed innocent, and if victimhood carries a weight of narrative authority in public discourse, then there is little hope for the reform of a system that categorically denies any claim to innocence by those it targets.

Conclusion

The problem of criminal justice reform in the age of mass incarceration is fundamentally a convergence of two core issues: the latent and protracted social conflict surrounding race relations in the wake of slavery and the Jim Crow era, and the fundamental assumptions of the victim/offender judicial dichotomy. These ingrained narratives tying race to violent crime, and an increasing oversimplification of American crime as largely violent,

³⁷ Ta-Nehisi Coates's “The Case for Reparations” stands as an exceptional and timely study of inherited economic disenfranchisement by African Americans at the hands of public policy and his work, “The Black Family in the Age of Mass Incarceration” builds upon this analysis.

drive public unrest with regard to personal feelings of safety, but ironically, feelings of comfort with regard to high rates of incarceration. If instinctive inherited feelings about criminality are true, the American public has less of an impetus to worry about police shootings or high rates of incarceration. In fact, high rates of arrest and incarceration can validate the perceived need for these systems. When examined closely, these instinctive feelings about criminality warrant little faith. They are the products of very old and very rigid narratives.

There is a dissonance between the stories we as a country tell ourselves about crime, and the swiftly mounting evidence condemning the speed and quantity with which we send already disenfranchised groups to prison. Caught in the vicious cycle between what is admissible and what is equitable in public opinion and policy, these narratives reflect a deep cultural divide (in the Galtungian sense) between support for direct violence as delivered through our punitive structures, and the recipients of that violence. These narratives, taken alongside inherited racial categorization, invite prejudicial implementation of punitive policies which target groups overburdened by historical judicial social control. In this paper we have argued that African Americans come with their own "context" (i.e., narrative) which serves to their disadvantage when facing the criminal justice system. This is ironic because the judicial system actively removes much context from legal proceedings, and ultimately presents a very real infringement on their human needs and their civil rights. This dissonance is the reason why beliefs about the legal system can be considered "just", concurrently with a deep reexamination of these policies and laws. In this context, reframing the narrative is both an intervention and political action.

Many of Azar's examples of locations of protracted latent conflict are in places with few to no democratic institutions, where the structural inequalities so advanced by these governments may not have been accepted by any significant percentage of the population. In the U.S., where the accepted narrative is of democratic representation of the majority of the populace, there is a particular sting to the fact this structural violence is roundly supported and desired. This challenges "Western liberal theory [in which] the State 'is an aggregate of individuals entrusted to govern effectively and to act as an impartial arbiter of conflicts among the constituent parts', treating all members of the political community as legally equal citizens" (Ramsbotham 2005, p. 116). We insist that the government's implementation of this narrative, sanctioned as it is by the majority and directed at African Americans (among other distinct groups, such as the poor, other minority groups, and people of color) is a protracted social conflict in the true Azarian sense.

Reframing conversations about crime and criminal justice reform efforts within the disciplinary practices of CAR can begin to alleviate the damage wrought by victim/offender dichotomization and institutional racism. For example, reframed as a component of protracted social conflict, policing takes on new characterizations. Also, the inherited economic hardships of families affected by incarceration can be seen more clearly to perpetuate inequalities that predate mass incarceration. The policies that founded these inequalities can be seen as designed within a context of intergenerational conflict drawn consistently along racial lines. CAR as a framework for reexamining policy and practice within the context of mass incarceration can shift our understanding of community-police interaction, of militarization of police forces, and of deep overlays between judicial action and financial interest. Delgado and Stefancic (2012) leave us with a particularly optimistic take, which we elaborate, "...if race [and conceptions of victims and offenders are]...not real or objective, but constructed, [they]...should be capable of deconstruction; the pernicious beliefs and categories are, after all, our own" (p. 49).

We argue that policy-makers of all stripes ought to think critically about the impetus and history behind the most common U.S. crime narratives. Persistence of victim/offender dichotomization and inherited racial categorization is a tremendous obstacle to criminal justice reform. The criminal justice system, the prison system, and even our notions of criminality and victimhood, are held literally and metaphorically captive, which is a powerful argument for re-examining the narratives that structure these systems before undertaking a re-examination of policy. We do not suggest here that individuals are not responsible for choices or for harm they inflict on others, or that they should not face responsibility for these actions. Rather, we suggest that these actions happen within a complex contextual web, for which the criminal justice system is often ill-equipped to respond. Part of that structure is public sector narrative building. We suggest that these narratives prevent us from properly addressing our rates and methods of incarceration, what we define as "criminal" and what we do not, our prison system, our treatment of the accused when released, and a humane conception of the nuances of victimhood.

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