

## Chapter Four

### **Beyond the Pale: Reflections on the Vulnerability of Black Life in the U.S.**

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#### ***Introduction***

The trope “beyond the pale” seems mostly identified with ghettoization of Jews in Imperial Russia. However, it originated from 17<sup>th</sup> Century British pale settlements in occupied Ireland to keep the Irish rebels out. It denotes a transgression of decency standards, namely the proper place of living for Christian (Anglo or Russian) citizens. What does this trope mean to a colonized, enslaved people, to subjects—not citizens (cf. Mamdani, 1996)? Interrogating the trope of “beyond the pale,” the chapter brings into conversation criminological considerations with philosophical ones by focusing on the constructions of normalcy and deviance within the U.S. Examples draw on the enduring presence of white supremacy and its intersections with age, gender, sexual orientation, and gender non-conformity. Of particular interest is an elaboration of the fragility of Black life given the specter of mass incarceration. Finally, abolitionist alternatives to the carceral society are explored.

In utilizing the metaphor of *Beyond the Pale*, I want to highlight the endurance of social control ideologies in particular those in the name of white ethnocentric patriotism. They make it possible that some ethnic groups become national scapegoats, usually following a political crisis or war. Some of the worst excesses of casting the subaltern beyond the pale have been the residential schools imposed on American Indians (cf.

Andrea Smith, 2005 and Richie's documentary film *Our Spirits Don't Speak English*, 2008), on African-Americans (think slavery, Jim Crow and mass incarceration), on Chicanos who endured the Catholic Church's repressive mission system, and on Japanese Americans who were interned in concentration camps during World War II (cf. Takaki, 1995). More recently, it has affected Muslim and Arab boys and men who were disappeared in federal and local prisons and jails in the aftermath of September 11, 2001. Many of them were eventually deported and thousands of families left "voluntarily" to Canada (Barlas, 2004). The world over, others, too, are catapulted beyond the pale who defy social ideologies of heterosexism, ableism, and sexual mores such as sex workers, GLBTQQI persons, disability activists, people living with AIDS, persons engaged in interracial relationships undermining the de facto policy of anti-miscegenation. Being conferred a status beyond the pale may result in imprisonment or social/spatial dislocation for the crime of transgressing the social norm.

As I have done elsewhere (2008) with the trope of diaspora, I wish to deploy "beyond the pale" specifically to discuss anti-Black racism in the United States. In order to understand the fragility of Black life in the U.S., the notion of "pale" is significant in several ways. First, it is a fitting metaphor for the acute color consciousness in the U.S. dating back to chattel slavery, i.e., the division of labor in the fields and in the master's house according to one's hue; and even today economic, juridical and psychological rewards come with joining the "pale" complexion of those deemed "white" or "light-skinned" (e.g., Viglione et al., 2011). Secondly, the device of the pale is a stake used for fencing. Marking the binaries and borders Kipling's tale "Beyond the Pale" advocates:

A man should, whatever happens, keep to his own caste, race and breed.

Let the White go to the White and the Black to the Black. Then, whatever trouble falls is in the ordinary course of things—neither sudden, alien, nor unexpected (1888).

This leads to (thirdly) the expectation of normalcy. Whites live within the pale, a place of decency (white supremacy, settler colonialism and concomitant systems of oppression of heteropatriarchy and ableism) shrouded in the myth of belonging and attaining merit: “I deserve to live in peace even if it’s at the expense of others who will live in permanent insecurity or war.” The pale then no longer only signifies an object but a place of “possessive investment in whiteness” (Lipsitz, 1998), which purchases security and tranquility—a gated community. In the color scheme of things the pale functions in opposition to blackness, as imperial writer Kipling bluntly asserts, never shall Black (female) bodies meet romantically with white men. In his short story, Blackness signifies both Indian and “going native.” Kipling’s Anglo male protagonist finds allure in the Indian girl who is in turn brutally mutilated by her own male family members upon discovery of the shameful miscegenation of the races. In the US, Blackness is usually reserved for descendants of enslaved populations or self-chosen immigrants from Africa and the African Diaspora. Herbert Gans (2005) points out that dark skinned Indians may get honorific white status, not afforded to U.S. born light skinned African Americans. As Andrea Smith (2011) has put it, anti-Black racism is an expression of *property relations*. Chattel slavery has left its symbolic—and legal—markers in the sense that those who are clearly living “beyond the pale” in the US are those who pass as people descending from Africa. It is then not surprising that Black Americans are overpoliced and criminalized as

“deviants.” “Existence in Black” (cf. Lewis Gordon, 1996) means to be imprisoned rather than to flourish in schools and colleges, to be on death row and “slow death row” (life imprisonment) rather than making decisions on corporate boardrooms, on think tanks and other pinnacles of white, juridical, capitalist institutions.

*Beyond the pale* then is my way of referencing a void in the language of oppression. After all, the (abnormal) fear of women, gynophobia, can turn into the hatred of women, misogyny. Homophobia commonly is thought of as the fear and hatred of those who are perceived to fall outside heterosexual normativity (cf. Pharr, 1988). What of Afrophobia and miso-negritude? The attitude of contempt and fear towards Black people is clearly overdetermined by socio-economic and geographic origin markers—one’s “Black” heritage has to be traced to Africa, preferably via the transatlantic slave route. A dark-skinned South Asian may not face the anti-Black racism in the same way that an American of African descent does. Despite an increase in articles and books, the term negrophobia has not established itself within the U.S. (Armour, 1997; Bauerlein, 2002; Head Roc, 2007; and James, 1993). Some have identified racial domination in terms of white supremacy (bell hooks and others), African-American exceptionalism (Gans, 2005), or white racial framing (Feagin, 2010). Even though it is important to highlight the ideology of whiteness that is clearly not captured by the concept of racism, either white supremacy or white racial framing, while accurate in depiction racist structures and meanings, do not evoke the emotional power of *beyond the pale*, namely, of incredulity, moral outrage, horror, fear and contempt of the Other, which all lead to moral judgment, dismissal, and denying a people recognition, respect, humanity, security, and safety.

In *Bowling for Columbine*, Michael Moore (2002) shows a fictitious clip mocking the *COPS* TV show: a white business man in a suit being stripped and spread eagled—clearly, the image of an oxymoron. I vividly remember that the cinema audience laughed at this mockery because to them, it wasn't credible; such act of dehumanization is plainly absurd. Contrast this with the daily act of “assuming the position” by Black male youth (“walking while black”) when confronted with a roving police officer in anytown USA suspecting them of gang activity (Alexander, 2010). White men cannot be thought of as “property” to be disposed of at the owner's leisure—yes, as workers they are exploited and occasionally killed due to workplace “benign neglect” of safety features, etc.—but they are not brutalized and living beyond the pale in the way the Black subaltern subject has been for centuries. Moore's liberal critique does not escape from the logic of racism either. In her incisive critique, Kyla Schuller (2003) argues that Moore reinscribes rather than mocks white supremacy:

[W]hen taken with Moore's subsequent pitching of a show entitled “Corporate Cops” that hunts down corporate criminals, Moore himself seems to be acting the role of a cop tracking down pollution. This self-positioning with the state, or even of replacing the state with his own surveillance, reinforces that the Americans who matter to Moore are those who possess and enforce political power. It further constructs the residents of South Central as shadowy, underground figures who serve only to solidify the authority of white liberal hegemony.

This essay then is a modest attempt to put into relief those shadowy, underground figures who transgress the established white supremacist settler order. Are they marooned outlaws who have nothing to lose but their chains?

### **The Worth of Black Life in the U.S.**

Let me begin with the state of white supremacy during Obama's presidency, focusing on a single case that just surfaced nationally in February 2011. In 2010, Chad Holley, a 15 year-old got attacked by a police car (might this be considered a deadly weapon?) and then surviving the hit, gets further brutalized by Houston's police, including being kicked in the head. Tuning in to blogs, whether it is CNN or another mainstream press, which shows the video footage of the young man being treated as a football, one gets the impression that the near act of lynching was provoked by proper moral outrage: the cops did what they have to do to teach a youngster, who was on the run, a lesson. This was not unlike the sentiments we heard when the police chased down Rodney King; that he was almost killed by deadly blows to his head was not noteworthy because he should have just pulled over instead of risking officer's lives chasing him down. Consider the demonic kicking and blackjacking of defenseless journalist Mumia Abu-Jamal, found near a crime scene of slain police officer Daniel Faulkner in 1981. Abu-Jamal (1995) writes as a marooned abolitionist on Pennsylvania's death-row, "confessing" to be thankful to the nameless white undercover cop who kicked him straight into the Black Panther Party when Abu-Jamal was 15 years old. Repression always engenders resistance.

Such is the response to police brutality by a white incredulous audience: unlike Kipling's white man going in drag (as native woman) and being horrified at the level of the "natives" brutality meted out against his lover, no significant moral outrage occurs when U.S. whites view—and expressly condone—crass terror directed against the unpaled outlawed humans. It is just normal to witness "police misconduct" of Black male and female bodies, before they get thrown into jail, only to be accused of "resisting arrest," or "assaulting an officer" in addition to any other charge real or imagined. It is a variation on a theme, explored in Fanon's *Black Skin, White Masks* (1967). As Lewis Gordon notes "Frantz Fanon had argued, that the West had no coherent notion of what it means to be normal and black. The former was defined as not black, and the latter was defined as normal only through being abnormal" (2011, p. 126). Black people (especially in a country under the enduring legacy of chattel slavery) are naturalized as deviant and therefore, it is perfectly normal to treat Blacks qua suspects "abnormally." Thus, we note the paradoxical finding: Black citizens who attempt to desert the status of living "beyond the pale" by suing for the right of dignity and integrity of personhood deserve no "legal standing." In the time-honored racist tradition of landmark decisions, namely *Dred Scott v. Sanford* (1857) confirming chattel status and *Plessy v. Ferguson* (1896) reiterating it as neo-chattel status, i.e. Jim Crow, Black plaintiffs are painfully reminded of their tenuous citizenship status. A century later, in the era of the New Jim Crow, the U.S. Supreme Court denied relief to plaintiff Adolph Lyons who petitioned for his safety and human rights by challenging the chokehold practice of the Los Angeles Police Department, which traumatized him; instead "Lyons would have to show that he was highly likely to be subject to a chokehold again," a practice which had already killed twelve Black men

(Alexander, 2010, p. 126). With tortured logic, the Court qualified the meaning of standing:

Lyons would have had not only to allege that he would have another encounter with the police but also to make the incredible assertion either (1) that all police officers in Los Angeles always choke any citizen with whom they have an encounter, whether for the purpose of arrest, issuing a citation or for questioning, or (2) that the City ordered or authorized the police to act in such a matter (*City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983), cited in Alexander, 2010, p.127).

Justifiable anguish and fear of police encounters are thrown into the theatre of the absurd (again, what to an African American is the meaning of living *within the pale*?) by the U.S. Supreme Court's careful argumentation to defend the colorblind status quo ante. It did so again in the *McCleskey* death penalty case, even in the face of vast credible scientific evidence of the embarrassing fact of anti-black racism. Named after then law professor David Baldus, his extensive study of over 2000 capital punishment sentences (CP, hereafter) in Georgia concluded the following:

Defendants who kill whites get CP in 11% of cases

Defendants who kill Blacks get CP in 1% of cases

CP in 22% cases of Black defendant, white victim

CP in 8% cases of white defendant and white victim

CP in 1% of cases of Black defendant and Black victim

CP in 3% of cases of white defendant and Black victim



So Black defendants who kill whites have greatest chance of getting CP (Baldus et al., 1990, p. 315, cited in Duncan, n.d.)

Justice Powell, writing for the majority, never explains why *McCleskey's* Eighth Amendment claim based on the statistical evidence failed to “demonstrate ‘a constitutionally significant risk of racial bias.’ Rather, Justice Powell’s rejection of statistical evidence of discrimination in the death-sentencing context bespeaks an unwillingness to destabilize the capital-sentencing process in any fundamental respect, *regardless of such evidence*” (Baldus, et al., 1990, p. 380; emphasis MN).

Abu-Jamal’s (1995) cites Justice Powell: “‘McCleskey’s claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system.’” And Abu-Jamal’s rejoinder? “How true. *McCleskey* can’t be correct, or else the whole system is incorrect” (ibid, pp. 77-8). Thus, the criminal justice system is put on trial—the ruse of fairness, justice, and impartiality is indeed that—a ruse; and this death penalty case shows vividly the criminal injustice machinations of the system. Let’s not forget that prisoner McCleskey was put to death. After his retirement from the bench, Justice Powell noted that he erred in the *McCleskey* case (Dow, 2011). It is noteworthy that today, thanks to the Innocence Project, over a hundred people have been freed, and 70% of them are wrongfully convicted African Americans; in rape cases which involved white women as victims, 75% Black men have been found innocent (Smith et al., 2011). Ida B. Wells (Greaves, 1989) and Angela Davis’s (1981) analyses of the myth of the Black rapist, in the 19<sup>th</sup> and 20<sup>th</sup> Century respectively, still holds true today. African Americans are just not as valuable human beings as any other ethnic group in America, and they may be found guilty, before any use of DNA, etc., will find them truly innocent

of all charges. Even where they are not criminalized, Blacks in America face economic disadvantages and severe discrimination in the workforce. Even during boom times, unemployment in the Black community remains in the double digits.

During the recent recession, the term “toxic asset,” characterizing subprime loans, became common knowledge. Social critic Sasha Abramsky (2010) has suggested that it’s not too far fetched to suggest that this term can be used to showcase the ugliness of white supremacy, namely, that some people in the polity are just beyond redemption—they are “toxic persons” and their status condemns the future generation to a similar level of destitution. In the aftermath of the 2008 financial meltdown, they also bore the brunt of housing foreclosures and unemployment. However, because they are Black and poor, their victimhood on account of the violence of racism and poverty will never be acknowledged—or it will be trivialized as we have seen with numerous police acquittals (witness police assaults on King, Louima, and Diallo). Yet the media will always accentuate Black suspects’ perpetrator status. Let us recall how O.J. Simpson’s mug shot on the cover of *Time* was altered—his hue was darkened. Skin tone matters. Black women perceived to have light skin saw their prison sentence reduced by 12% and their time served by 11%, according to a study involving over 12,000 North Carolinian Black women (Viglionone et al., 2011).

### **Whose Violence?**

It’s interesting to see how the state’s violence morphs effortlessly into “ghetto violence.” Here’s what Frederic Goodwin said a week after the opening of white police officers trial who participated in the brutal beating of Rodney King:

If you look, for example, at male monkeys, especially in the wild, roughly half of them survive to adulthood. The other half die by violence. That is the natural way it is for males, to knock each other off and in fact, there are some interesting evolutionary implications of that because the same hyper-aggressive monkeys who kill each other are also hypersexual, so they copulate more to offset the fact that more of them are dying. Now, one could say that if some of the loss of social structure in this society, and particularly within the high impact inner-city areas, has removed some of the civilizing evolutionary things that we have built up and that may be it isn't just the careless use of the word when people call certain areas of certain cities jungles, that we may have gone back to what might be more natural, without all the social controls that we have imposed upon ourselves as a civilization over thousands of years in our evolution (Goodwin, 1992, cited in Feder, 2007, pp. 73-4).

Goodwin's infamous "Violence Initiative" (a curious framing by someone living "within the pale") was thought to be short lived for its brash eugenics and Social Darwinist ideology, after all he was forced to resign as director from one government agency (Alcohol, Drug Abuse, and Mental Health Administration) only to be rewarded with the directorship of National Institute for Mental Health shortly thereafter, encouraged by Senator Orrin Hatch (Feder, 2007, p. 75). And he continued to enforce his message by giving drugs such as Ritalin to misbehaving, unruly children, disproportionately singling out urban kids in his studies under the guise of a zealous

missionary rescue: if they receive serotonin-enhancing medicine in their youth for their defective genes, they are unlikely to grow up to become delinquents and criminals. A Binghamton University student shared with me that in 1993, his second grade class was indeed subject to such “study” in his school in the Bronx: all students were declared ADHD patients and sent home with a standard letter suggesting to their parents that they may administer Ritalin to their children to curb the affects of ADHD. No testing was done on the students whether they in fact showed any medical symptoms. He credits his mother for challenging the school administration and opting out of the “treatment.”

I argue that a “colorblind” version of this “Violence Initiative” has become the G.W. Bush era’s intensification of “Zero Tolerance Policy” (started in schools in the late 1980s with drug education programs), and Ritalin administered to young bodies has become so pervasive across the U.S. that it has recently become the subject of mockery (Robinson, 2010). Furthermore, the unspoken theme of the “Violence Initiative” is a continuation of a theme to hound and mock Black women who are cast as uncaring, absentee mothers and matriarchs.

This theme goes back to Senator Daniel Patrick Moynihan’s infamous “Report on the Negro Family” (1965), which he penned to President Johnson at the height of the Civil Rights Movement. Moynihan opined: “In essence, the Negro community has been forced into a matriarchal structure which, because it is to out of line with the rest of the American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well” (1965). In response to such inflammatory rhetoric, Ryan (1976) coined the term “blaming the victim” because some of Moynihan’s analysis lent itself to castigating

women in particular for the putative moral failures of the Black community (i.e. out of wedlock births, low marriage rates, etc.) rather than systemic oppression. By the 1980s, the image of the welfare queen was indelibly fixed onto the Black family, even though more whites were means-tested recipients (61 percent) than Blacks (33 percent), according to statistics of the 1990s Census Bureau. Feder notes that even though “welfare queen” and “violent youth” appeared in the media, they were rarely linked in an explicit fashion. However, a family that is deemed pathological (i.e. beyond the pale), vis-à-vis the normative patriarchal white family, sprouts “violent predators” and the root cause of these ills lies with Black mothers. Lee Daniel’s film *Precious* (2009, based on Sapphire’s novel *Push*) could be read as reinforcing the myth of the matriarchal mother who is depicted as grotesque and monstrous. White patriarchal (“All in the Family”) values signify order, tranquility, and safety.

As Megan Sweeny points out prior to the Civil War “criminal women of all races have been deemed more depraved than criminal men and beyond hope of redemption. Moreover, African American and immigrant women, who could never be restored to the white, middle-class standard of ‘true womanhood,’ constituted a disproportionately large percentage of women incarcerated” (2010, p. 24). Moynihan’s depictions of Black mothers as overbearing matriarchs thus cements the enduring legacy that Blacks in America are out of step with standard family values (i.e. white, patriarchal values) and not redeemable; they ought to be treated with “benign neglect” (cf. Davis, 1981).

Perhaps Goodwin and Moynihan’s “initiatives” also bear some responsibility for the euphemistically named Adoption and Safe Families Act (ASFA, 1997), which has hugely impacted incarcerated parents (see Lee et al., 2005, and below), particularly the

Black community. As Feder reports Goodwin was greatly interested in the primatology research of Stephen Suomi (hence the connection of “monkeys” with “urban jungle”) who hypothesized that infant monkeys separated from the biological mothers and raised in “foster care” had “poor early attachment,” low levels of serotonin and thus were prone to violence (Feder, *ibid*, p. 82). By extension, clearly, delinquent mothers are to blame for young male “superpredators.” ASFA then suggests a bucolic retreat from jungle life by insuring that children in foster care get adopted out as soon as possible—even and especially in cases where the parent’s “abandonment” is a state-sponsored measure rather than due to a parent’s own volition, namely being subjected to imprisonment in distant places or diasporic sites (Nagel, 2008).

Distance matters, in geographical and psychic terms. Children’s visitation of their parent in a distant prison across states, ocean (in the case of Hawai’i) or counties is thus often made impossible due to material, temporal or other constraints such as a state agency’s denial of visitation requests. The ASFA law is a haunting reminder of the endurance of slavery –that has never gone away—and its devastating effect on families, especially Black and Latino families, who are facing the brunt of the incarceration frenzy (cf. Nagel, 2008). New York’s 2010 ASFA reform bill suggests that discretion can be used in parental termination cases. Yet in some jurisdictions, parental termination has actually increased since the passage of the reform act, and after review of a few cases, I come to the conclusion that it can only be ascribed to administrative punitive enforcement and blatant (illegal) disregard of the interests of both children and incarcerated parents. ASFA has facilitated the “sale” of children to more deserving foster parents who are also coerced into adoption. Each successful placement awards the

Department of Social Services with cash. Adoptions are also popular with foster parents, because they will receive child support till the child's 21<sup>st</sup> birthday. What remains of discretion in an era of "incentives" given over to the foster care cum adoption services-industrial complex that trump parent-child unification? It is important to be suspicious of so-called reform laws and understand their unintended consequences, which might derail the decarceration process. Once the child is adopted, it is virtually impossible for the incarcerated parent to trace the whereabouts of the child unless the adult child tries to begin the arduous process of reestablishing contact with the biological parent(s).

Arguably, Alexander's description of the era of mass incarceration as "New Jim Crow" could be more aptly named "neo-slavery" given a multitude of policies, laws, and policing methods, which are mutually reinforcing each other to keep Black people, and increasingly Latinos, beyond the pale. However, slavery has not been eliminated with the passage of the thirteenth amendment, rather this very amendment allowed for the codification of slavery where freed persons (and others) were found duly convicted of a crime. Thus imprisonment gave rise to the idea of a prisoner being a "slave of the state" lacking any constitutional rights (*Ruffin v. Commonwealth* 1871). If being within the pale constitutes order and safety for the subject, the prison complex clearly signifies the penultimate place of indecency for the outlawed subject. Death row as well as prolonged segregation into a tomb-like cell catapults the outlaw into the ultimate abyss, being deprived of the possibility of tainting humanity or ever reclaiming her own humanity.

### **Transgendered Afrophobia**

While Audre Lorde implores us not to engage in an "oppression Olympics," it is difficult to ignore the social identities of gender non-conforming people. Transphobia,

especially faced by persons of color, again, in particular by Black trans persons, has been noted as contributing to extreme violation of their human rights—in and outside prisons. The vulnerability, especially for trans women, is exacerbated for those who due to the criminalized activities are incarcerated as shown in the salient film *Cruel and Unusual* (Baus et al, 2006). It follows the life of five trans women who are humiliated, subjected to ridicule and rape in men's prisons; furthermore, one of them who is denied hormonal treatment takes matters into her own hands and survives a self-inflicted penectomy. Furthermore, the film showcases the highly problematic policy of incarcerating trans women in men's prisons, violating the trans person's human rights and sense of gender identity (cf. Grant et al., 2011). Transphobia in schools and homes leads to disproportionate homelessness among trans youth and the acute discrimination continues to follow them into shelters and prisons that assign gender segregation according to birth sex (Ray, 2006). Transphobia is exacerbated by racism, high levels of unemployment and poverty (Mogul, et al., 2011). An expansive survey of 6450 transgender and gender non-conforming participants highlights enormous challenges they face in terms of individual as well as institutional forms of oppression:

Discrimination was pervasive throughout the entire sample, yet the combination of anti-transgender bias and persistent, structural racism was especially devastating. People of color in general fare worse than white participants across the board, with African American transgender respondents faring far worse than all others in most areas examined (Grant et al., 2011, p. 8).



For example, 60 percent of Black transgender participants report harassment and assault by the police in comparison to 24 percent of white respondents (ibid, p. 6). Returning to our indicators, above, gender non-conformity contributes to higher criminalization and incarceration rates, and those rates are even higher for those who are socially disconnected (e.g., lack of accepting family members), people of color, and poor—many experience poverty as a direct result of gender transitioning.

### **The School-to-Prison Pipeline and its Gendered and Racialized Dimensions**

The world over, when it comes to sentencing and incarceration, the focus inevitably is on boys and men. The much touted horrible statistics of one in three Black men in the US will find himself behind bars in his lifetime is exasperated with respect to those youth who drop out of school: over sixty percent of Black young men who don't finish schooling wind up in the criminal justice system (Western et al., 2010). Black women have faced an astronomical rise in incarceration rates since the beginning of the War on Drugs. “In 2006, one in every 279 African American women was behind bars, compared to one in every 1,064 white women” (Barry, 2010, p. 75). Black women’s and girls’ rate of imprisonment has outpaced that of men and boys, which has led to a massive expansion of state and federal prison construction, unparalleled in the rest of the world (cf. NCCD, 2010). Thus the United States is in the unenviable position of being the world’s foremost prison nation: constituting five percent of the world’s population, it incarcerates 25% of the world’s prisoners (Webb, 2009). Even more astonishing is the fact that while Black persons making up 13 percent of the US “free” population, once imprisoned, they constitute the majority of prisoners and death row candidates. Some

jurisdictions have even worse rates of criminalization of Black male youth: Madison, WI, which is in Dane County, has a Black population of eight percent, yet fifty percent of folks arrested a year are Black. A 2009 taskforce “found that at any given time, nearly half of the county's black men between 24 and 29 are in prison, jail or under some form of state supervision. By comparison, about 3 percent of white men in that same age group are under some type of state correctional control” (Hall, 2011).

However, we see in the US that younger defendants, including girls, are targeted by the criminal justice system. Black girls receive the brunt of the policing attention. Much of the criminalization aspects of youth starts with school suspensions especially given the “Zero Tolerance” policies that have accelerated veritable repression across the US school systems. According to a recent study (Losen and Skiba, 2010), Black girls “were suspended at four times the rate of white girls” in middle schools. The “racial threat hypothesis” has also found renewed attention vis-à-vis school sanctions. A nation-wide study of 294 public schools notes an increase of punitive measures such as suspension and expulsion where there is a proportionate increase of Black students in relation to white students. Black students then tend not to receive more benign sanctions such as parent-teacher conferences or guidance counseling (Payne and Welch, 2010). This is echoed in a recent study “Education Interrupted” by New York Civil Liberties Union (2011):

Students with disabilities are four times more likely to be suspended than students without disabilities.

Black students, who comprise 33 percent of the student body, served 53 percent of suspensions over the past 10 years. Black students with

disabilities represent more than 50 percent of suspended students with disabilities.

Black students also served longer suspensions on average and were more likely to be suspended for subjective misconduct, like profanity and insubordination (NYCLU, 2011, p. 8).

Black girls who talk back are singled out for repressive punishment, and much evidence has surfaced that school suspensions are correlated to a higher likelihood of school dropouts and spells of imprisonment.

Queer girls also find themselves at peril of facing sanctions in schools, even at a higher rate than queer boys. Their consensual sexual practices “more often trigger punishments than equivalent opposite-sex behaviors.” Furthermore, “[a]necdotal reports have suggested that nonheterosexual girls may be particularly overrepresented in the juvenile-justice system. Scholars have suggested that the overrepresentation of nonheterosexual girls may relate to the historical role of the juvenile-justice system in policing girls’ sexuality, as well as a heightened juvenile-justice system and media opprobrium directed at girls with ‘aggressive’ or ‘masculine’ gender presentations” (Himmelstein & Brückner, 2010). This study does not highlight the intersection of perceived sexuality and race/ethnicity, yet from Dewey’s studies of Illinois reformatories (2010) we know that Black lesbians faced harsher punishment than white lesbian prisoners. Historically and ideologically speaking, girls and women have been sanctioned for status crimes (prostitution, running away) and within prisons for “talking back” when such “crimes” have been of little significance for “free” and incarcerated boys and men. The white middle-class heterosexist ideology of the Cult of True Womanhood, invented

around 1820s, continues to hold persons perceived to be girls or women to standards of passivity, domesticity, and Christian virtues which are enforced in public patriarchal institutional settings (schools, courts, prisons, workplaces, etc.). Clearly, gender non-conform persons will find themselves othered and face marginalization in myriad ways, unless they find ways to resist the repression.

### **Beyond Reform: Resisting and Abolitionist Politics**

How do we dismantle white supremacy and its multiple ways of reinforcing racism through other systems of oppression? In the “prison of slavery,” as Angela Y. Davis (1998) has put it, Black people experience “natal alienation and social death” (cf. Patterson, 1982), and according to Noelle Chaddock Paley, they increasingly face “pre-natal alienation” due to the horrendous conditions of jails and prisons, inimical to the well-being of pregnant women (2010). The specter of the 13<sup>th</sup> Amendment still looms large in its twisted logic of setting enslaved people free, at the same time deeming them people with abstract rights but depriving them of such rights once entering the prison milieu. What gives? To date, the United States is the only country in the world that sanctions indentured servitude and slavery through the exception clause of the 13<sup>th</sup> Amendment. Abolitionists of prisons have capitalized on this fact, and we ought to be vigilant till the last vestiges of slavery or the new Jim Crow have been dismantled. If we simply focus on reforms, as NAACP’s report on prisons and the education-to-prison pipeline does (April 2011), it will, at best, ameliorate dangerous conditions in jails, prisons, detention centers, camps, secret sites run in collusion with the CIA worldwide, etc., but do little to contribute to decarceration. However, it is important that Black civil rights organizations begin to develop a focused vision to roll back the attack on the Black

community. Yet, NAACP's report uses the polite term "over incarceration" in its subtitle rather than the more politically charged term of "mass incarceration."

Women of color have been particularly active in coalitional work with the trans community in critiquing the rapidly increasing rate of criminalization of girls and women of color as well as trans people of color in the U.S. Justice Now, the National Network for Women in Prisons and Incite! Women of Color against Violence have been in the forefront of advocacy. The group Incite! joined the anti prison group Critical Resistance in a manifesto that underscores the penal abolition emphasis in working to end state violence and interpersonal conflicts. They critique liberal feminist collusions with the state and show the state actors' contempt for the rule of law vis-à-vis people of color and trans people and/or two spirit people. What tends not to get theorized by these groups is a focus on disability activism, as youth who have disabilities also get stigmatized and targeted for social control, and even labeled as terrorist (Nocella, 2011).

Instead of tinkering with reform measures, it is abolitionist principles that are urgently needed, if we want to start believing in the children and assisting them in fulfilling their dreams of a better future. If not, we could be stuck in a vicious cycle, where the upstate New York (white) child wishes to be a prison guard of Black and Brown people, and the Black male child defers his wish by first going to prison "to put that behind me, so that I then can go to college when I am grown up" (actual conversation with a 6 year-old). That child has already internalized the logic of targeted mass incarceration, namely that prison is both a certain destination and home for so many of his Black male relatives, and he might as well join them in a rite of passage to manhood, while counting his blessings for not having been shot to death before adulthood.

“Welcome home, brother” is indeed a common greeting for the nervous, first arrival who walks through the prison gate in upstate, rural prisons; and he will not be surprised to see so many familiar faces from his neighborhood in downstate New York (cf. Elijah, 2007; Nagel, 2008). Nevertheless, the person marked as felon is stigmatized by his community, as Alexander (2010) movingly describes. I would add that Black women have to endure an even greater burden of shame, especially when dealing with loss of parental rights, since they are considered the cultural bearers and pillar of the community (Johnson, 2004). Shame and guilt are debilitating emotions; instead, the formerly incarcerated along with families of incarcerated as well as community organizations, especially religious and educational institutions have to build a new civil rights movement to counter the despair of living beyond the pale. Much could be learnt from the Latino spearheaded immigration movement, which has also seen many of their people go to jail and secret federal detention sites where they languish before being deported to Mexico or other countries in the Global South. Their demand of ending racial profiling and arrests of immigrants without papers has turned into a victory when the Department of Homeland Security announced in August 2011 that immigrants without criminal histories will no longer face the threat of immediate deportation but instead might be eligible for work permits. Even more impressive is the coalition of Latinos and Blacks united for immigration reform in Mississippi that had the effect of killing all thirty-three anti-immigration bills in the State Senate thanks to the tireless efforts of Black lawmakers (Eaton, 2011). Such large-scale coalitions that combine immigration, civil rights with workers’ rights are needed to tackle the behemoth of the criminal justice system. It can begin with simple small-scale acts of protest. In 2003, I interviewed a Malian Department of Justice chief administrator (in

2003) who was shunned along with his children by people in the streets. They told his children that “your father is a thief—he is stealing people,” i.e. putting them into jail with long prison sentences. He shared that he since hearing their protest, he had a change of heart and is more interested in abolitionist practices than ever before.

### **Moving beyond “beyond the pale”**

Wilson (2011) points out that given the devolution of factory jobs and the shift towards suburban service jobs, Black women now have a greater chance of attaining employment than Black men, since “low-skilled black males are perceived as dangerous or threatening” and thus not suitable to be in front-line customer service roles (pp. 18-19). William Julius Wilson’s agenda includes job creation, urban renewal benefiting Black people, better public education and strengthening unions. This is all well and good, but it is a myopic proposal, especially in light of his own research, namely that Black people, and Black men in particular, are considered a threat in and outside urban America. Judges give out higher bail and harsher sentences to Black defendants than whites (Abrams et al, 2011), and probation officers tend to deny leniency and diversion programming to Black youth (Leiber et al, 2011). When young men are accustomed to “assume the position” when they walk their streets and are frisked by police (Parsons-Pollard, 2011), and this continues to be the case while a bi-racial man resides in the White House, there is little hope that things shift dramatically, even if there is a concerted economic and educational revitalization plan in place in multiracial or Black cities.

It is time for a reconsideration of an amnesty proposal first raised by the Black Panther Party’s Ten Point Program *before* the advent of mass incarceration of Black

people. The program tackled comprehensively the police, military, jobs, education, land and housing. Today, reforms are occasioned in a toned-down piece-meal approach. “Amnesty” and “reparations” are fighting words of the past, which demand legal redress. The more genteel terms used by lawmakers are “racial threat hypothesis,” “racial impact study” or “cross-race identification” that make note of the school-to-prison pipeline or life-on the-installment plan (considering the high rate of recidivism). Politicians have started to look at a witness’s often-faulty identification of a suspect in a line-up. For instance, New Jersey’s decided to solve the cross-race identification problem by giving a statement to the jury:

You may consider the fact that an identifying witness is not of the same race as the defendant and whether that fact might have had an impact on the accuracy of the witness’ original perception and the subsequent identification. You should consider that in ordinary human experience, people may have greater difficulty in identifying members of a different race (cited in Deters, 2008).

However, as of Summer 2011, we see a backlash in many jurisdictions that wish to curtail racial impact legislation and New Jersey’s jury instructions may be repealed as well. To address racial inequalities in death sentences, North Carolina’s Racial Justice Act (1998) prohibits exclusion of death-qualified African American jurors. As of 2010, the updated law also requires that courts reverse death penalties for litigants who enter a life sentence for any death row defendant who proves that race was a factor in the imposition of the death sentence. They would be resentenced for life imprisonment (ACLU, 2010). What underlies all these reform-minded legal discussions is a civil



libertarian concern about anti-Black perceptions. Will it be enough to undo “the new Jim Crow”—a racial caste system? Even though various alternatives to incarceration reforms have occurred, especially vis-à-vis all youth, “DMC [disproportionate minority contact] rates have not decreased and in some jurisdictions they have worsened” (Coleman, 2011, p. 22). New York City is a case in point. Its police force continues to engage in arbitrary harassment of Blacks: “New York City’s African American population is approximately 23%, but African Americans make up 50.6% of persons in stop-and-frisk encounters” (Sentencing Project, 2011).

Interestingly, Mumia Abu-Jamal notes in his book on jailhouse lawyering that these “street lawyers” who acquire unconventional legal skills while imprisoned are at risk of more harassment, brutalization and facing contempt from the prison staff than Black prisoners, political prisoners and others. I postulate that those who are Black and also jailhouse lawyers would bear the brunt of (solitary) punishment—displaced within the ultimate “beyond the pale.” Putting Abu-Jamal’s analysis in context of “Jim Crow” or, as I prefer, the enduring legacy of slavery sanctioned by the 13<sup>th</sup> Amendment of the US constitution, it makes sense that jailhouse lawyers pose a great threat to the establishment; they are the new conductors on the underground railroad who champion the freedom cry—with equal amounts of courage and with greater idealism given the retaliation and the unlikely returns of freedom from oppression faced on the outside; there is no “up North” to go to these days. As Assata Shakur notes in her autobiography, “I don’t have the faintest idea of how it feels to be free” (1987, p. 60).

While legal concepts are couched in neutral terms of “race,” putatively addressing concerns of all racial identity groups, I contend that when it comes to police line ups,

police arrests, bail, indictments, witness errors, (death penalty) sentencing, (perceived) felony status, and impetuous teachers, in the US the human drama has been played out on the backs of Black, marooned bodies—and I have not been able to comment on redlining, nor morbidity, mortality, unemployment, and the enduring intergenerational stress of incarceration. It is time to challenge the pale; just as feminists have declared that women's rights are human rights, it must hold that Blacks' rights are human rights. It follows that Black life deserves to be considered human life—the world over, and especially in the United States.

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