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In this paper, I expand upon Elizabeth Anderson's analysis of segregation and racial inequality as it applies to American carceral trends in the closing decades of the twentieth century. Although her non-ideal account of race relations in the United States briefly covers the relationship between race and crime, it omits a



practices most closely associated with the rise of widespread imprisonment disproportionately impact and target low-education black men. The pressing concern is to identify and understand the relationship between the prison boom and deepening racial inequalities in the closing decades of the twentieth century. To do so, it will be useful to take a closer look at the degree to which African Americans have been differentially punished.

There is a consensus among those who study crime that blacks have been differentially and more punitively policed, prosecuted, and sentenced, as compared to their white counterparts.¹¹ A brief statistical analysis of the trend of carceral expansion in the United States seemingly strengthens the above claim. Even though African Americans only represent 13 percent of the U.S. population, by 2012 they constituted nearly 40 percent of those in prisons and jails.¹² At the close of the twentieth century, 21 percent of poor blacks with less than 12 years of schooling were in state or federal prisons, compared to just 2.9 percent of their white counterparts who also dropped out of high school.¹³ “Incarceration rates for blacks are about 8 times higher than those for whites.”¹⁴ Considering the highly-racialized reality of mass incarceration, it seems reasonable to include the effects of mass incarceration on black disadvantage to fully understand the dynamics of race relations in America, and to appropriately formulate a justified normative

lower than those who have never been detained.¹⁶ Western conducted a study in which he observed that differential incarceration accounts for 10 percent of the mean difference in wages across racial groups. Furthermore, he found that the low wages earned by ex-inmates are associated with further crime after release from prison. Western's analysis concludes that "incarceration adds to an accumulation of disadvantage."¹⁷

vital than ever for those dwelling in the lower regions of social space.”²¹ Laws deny welfare payments, veterans benefits, and food stamps for anyone legally detained more than 60 days. They also restrict eligibility for public housing benefits (like Section 8 vouchers) and frequently prohibit the receipt of Medicaid.²² Lastly, but as importantly, the formerly incarcerated - particularly those with felony convictions have, in various ways and to varying degrees, been denied their right to political participation (Price & Wacquant).

Ex-felons are currently denied the right to vote in 14 states, and by the late 1990’s, one in seven black men had lost the right to vote. Furthermore, in seven states, more than 25 percent of black men have been banned from voting.²³ Research by the Sentencing Project indicates that by 2015, more than 5.5 million Americans had lost the right to vote. Over seven percent of African Americans, as compared to just 2.5 percent of whites were stripped of that right by 2010.²⁴ The disenfranchisement rule, commonly referred to as voter dilution, also serves to silence the voices of densely populated communities that are disproportionately impacted by hyper carceral trends. According to these laws, incarcerated individuals are not allowed to vote in their area, and instead must vote in the region in which they are detained (often non-urban areas where their voices become meaningless and outnumbered).²⁵ Importantly, this weakens the voices of innocent blacks whose political preferences may concur with inmates’ preferences. The political influence of those who agree with inmates, are weakened by the removal of large numbers of black men from their communities.

Price explains at length the ways in which the “no-fraternization rule” infringes on freedom of assembly by prohibiting convicted felons from associating with one another. The strict implementation of this rule inhibits the emergence of legitimate grassroots movement, which may well enjoy a consensus among formerly incarcerated individuals. This could reasonably be considered a violation of their right to freedom of assembly.²⁶ This also further harms the strengthening of familial ties that may already be tenuous. Parents and relatives may have to make the painful decision which child can still live in their house (if both children have felony records).²⁷ According to lifelong anti-poverty advocate Peter Edelman, “the growth in the number of female headed families with children is a significant cause of the increase in child poverty.” In the first-year statistics accounted for race, (1971) 37.1 percent of African American families with children were headed by women - by 2009 that number had reached 52.7 percent.”

²¹ Wacquant, Loic. "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh." *Mass Imprisonment: Social Causes and Consequences* (n.d.): 82-120. Web. pp. 119.

²² *Ibid.*, pp. 120.

²³ *Ibid.*, pp. 100-120.

²⁴ <http://sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf>

²⁵ Price, Joshua M. *Prison and Social Death*. New Brunswick: Rutgers UP, 2015. Print.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ “Children tend to do better when two parents are under one roof, and two wage earners do make things easier.” ²⁹

Thus far, we have established the following: African Americans are differentially impacted by the criminal justice system and; those who experience incarceration have diminished life prospects and are socio-economically and politically burdened by their time spent behind bars. It intuitively follows that “the

family income on the Upper East Side). These radically different policing patterns are also true for the 20 neighborhoods with the lowest rates of marijuana possession arrests, and for the 20 neighborhoods with the highest rates of marijuana possession arrests.”³²

Consideration of the higher usage rates and lower arrest rates among relatively affluent whites, strongly suggests that one’s likelihood of being arrested and incarcerated has little to do with the rate at which one participates in criminal activity as compared to others. However, regardless of one’s assessment of the justness of the imposition of these harms on convicted parties, an important and pressing question remains: is the exhibition of differential treatment of African Americans on the stated level a wrong of distributive justice?

Below, I address this question and suggest that blacks who have never been incarcerated have even stronger grounds for complaint against the social

should we think that 'bystanders', let alone the convicted parties, have a right to complain?

As I shall argue, the striking and distinctive wrong at issue is the race

On a smaller scale, like in the case of the DA, discretionary punishment serves to disadvantage the offender (and perhaps even his family and those who

reinforced the linkages between blackness and crime.”⁴⁰ Mass incarceration and the public discourse surrounding and feeding it have compounded all three

same behaviors across racial groups in a differential fashion. The magnitude and nature of these responses constitute a unique harm in that blacks are subjected to systematically induced, life altering, stigmatic consequences and constant efforts to criminalize and target them during their daily lives.

Blacks are subjected to these biased evaluations many

The differential character of mass incarceration causes stigmatization by increasing the commonality, noticeability and default status of blacks as criminal. It propagates the reputational injuries endured by all (and often innocent) blacks. It imposes harms on blacks as a group, not just the individual offenders. The imposition of this harm is often a result of public stigmatization not private convictions. Penal expansion has concretized the century old portrayals of blacks as deviant and dangerous beings. Its rise has hardened unconscious, biased depictions of blacks as criminals, and of criminals as black. Innocent men are searched and harassed at will and suffer reputational injuries as a result. Americans, particularly White Americans, are more likely to contribute to, or be complicit in the production of the downward mobility of law-abiding Blacks. They are also more likely to justify black circumstance with the surplus of stereotypical and stigmatic ammunition provided to them by the systematic imposition of racialized carceral differences.

To cope with the reality and consequences of these pervasive stigmatic wrongs, African American women have been forced to assume the role of “caregivers” in their communities. “In the era of mass incarceration, women must assume new burdens of community caregivers”, a title that refers to “the constant work they are required to do to keep their family members from the long reaches of the criminal justice system.”⁴⁷ Here we can see the imposition of a burden on women who have done nothing wrong. They must bear the negative costs of carceral expansion and shield their loved ones from the processes of criminalization and the punitive tendencies of the state.

Nicholas Peart, a young African American man from New York City, writing in a New York Times opinion piece, expressed his hope that police practices will change; that when he eventually has children, he will not have to pass along his mother’s advice never to try to stand up for his rights when dealing with the police. Peart has been stopped and frisked in NYC plenty of times in his life, and each time, he was cooperative and found innocent. Regardless of how tempting deviating from his mother’s advice may have been, Mr. Peart always decided against attempting to exercise his rights.⁴⁸

Racially disproportionate responses to certain crimes have increased the ubiquity and

propagating stigmatic stereotypes which underlie unjust political dist

