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The Dysfunctional and the Disappearing: Democracy, Race and Imprisonment

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In present-day Western civilization 'democracy' has become ... a war cry of both the capitalists and the proletariat in their struggle for power. And yet quite frequently the public is at a loss about the meaning of democracy.

(Cox, 1948)

Introduction: Dysfunctional Democracy

Without attempting to define democracy, we can note its significant characteristics: elected political leadership; a natural equality among the citizenry; the right to political dissent; the right to private property (in a bourgeois democracy); and a degree of personal individuality and individual rights which do not conflict with or inflict harm on the collective good. (Of course, Social Darwinism and the capitalist ethos make this somewhat of an oxymoron.) We should also note its absence in certain sectors of US society; and where democracy does not exist, or exists only in part, the contradictions and crises that mark a diminished freedom invariably are accompanied by human rights abuses. Three key phenomena undermine US democracy: the denial of community in attempts to further racial/ethnic segregation; the denial of political rights (including in some states the vote) to racially configured peoples because of economic and racial bias in policing and sentencing prisoners and felons who are disproportionately poor people and people of colour; and the institutionalisation of torture, abuse, and repression in the US penal system.¹

Since its inception, the United States has quested for a democracy complicit in, conflicted with, and in almost every sense tormented, if not crippled, by racial inequality and racist demagoguery. The history of US racism is intricately linked to its economic system and acquisition of material wealth. John Locke's *The Second Treatise on Civil Government* extols the virtues of private property as an inherent right in a democracy (Locke, 1986). Written in the late seventeenth century, it would influence the ideology of eighteenth-century founding fathers and provide a rationale for slavery property rights as integral to a fledging democracy. In the nineteenth century, the Civil War, fought in part for economic reasons, allegedly vanquished the great antithesis of democracy — slavery. The Thirteenth Amendment to the Constitution theoretically freed the slaves, however, it codified slavery by legalising 'involuntary

servitude' for those convicted of a crime in a court of law. Following the war, race rhetoric and economic profiteering in the post-bellum era fuelled the rise of lynchings and the convict lease system, both targeting African Americans. W.E.B. Du Bois notes in *Black Reconstruction* that Southern planters began to rely solely on convict labour because of the profit margins as African Americans became imprisoned for minor infractions of the law or for simply being in the wrong place at the wrong time (Du Bois, 1962). Neo-slavery, the new antithesis to democracy, focused on males but did not exempt females. In the late nineteenth century, black women laboured alongside black men in the same stockade, often yoked together during the work day. Economic motivations which produced burgeoning prison populations also led to the same gender parity in labour exploitation and brutality that had existed under slavery (see Davis, 1998). Considered expendable or disposable property when owned by the state, black freemen and women died at faster rates, worked to death in prisons such as Louisiana's Angola, than they had labouring on plantations as slaves.

Vulnerable to hyper-exploitation and abuse, US prisoners have fared even worse in private institutions. Common in the United States from the mid-nineteenth to the early twentieth century, private prisons were largely abolished in 1925, when newspaper exposes brought public attention to brutal beatings, malnourished prisoners and labour exploitation, coupled with complaints from labour and business about unfair competition. Private prisons grew in the mid-1980s, when Corrections Corporation of America was retained by the federal government to run a detention centre for immigrants in Houston, Texas (Muwakkil, 1996). Since 1990, 30 states have made it legal to contract prison labour out to private companies; Corrections Corporation of America and Wackenhut Corrections Corporation run over 90 minimum- and medium-security facilities. In 1995 *Forbes* magazine cited Wackenhut as one of the '200 Best Small Companies', given its decade of growth.²

Contemporary democrats have inherited a legacy of democracy in the US of a racist, imperial, and capitalist state, one shaped by (neo-)slavery, ethnic chauvinism, and patriarchal culture. In conventional political and social discourse, this legacy is occasionally referenced. Yet most conventional race and democratic rhetoric not only obscure the past but also deny the current resurgence of racist and economic segregation. The inalienable right to property has a racial aspect: historically people of African descent were legally considered property, sources of capital through labour exploitation and a commodities market. Ownership belonged first to private entrepreneurs in the antebellum years and later to the state in the post-bellum years as governments imprisoned blacks to sell them to corporations.

There is, though, another dimension of racial ownership in this nation: whiteness functions as a form of property. Historically, those with the existential capital of racial privilege have deployed rhetoric, legal and military strategies and policies to maintain and protect this wealth. Policing, setting borders for those worthy and unworthy of participating fully in US-style democracy, manifests as the racial endeavour of segregation, functioning on two levels: to contain blackness (whether it is associated with African, Latino/

Chicano, Native, Arab or Asian Americans); and to protect whiteness, the mythological racial purity of Europeans. The justification for policing is that it offers protection: protection from criminality and political extremism. Marketed to the citizen-consumer, today the selling and buying of protection or insurance — moral, physical, psychological, and political — exists in most racial containment (re-segregation) discourse, whether through advocacy for prisons or opposition to affirmative action.

Segregated Communities: Disappearing Diversity

Affirmative action emerged in the 1960s and 1970s as a key strategy in desegregating US economic, political, social, and educational structures. It was, and is, in fact a mechanism to free first blacks, then other people of colour and disenfranchised groups such as women, gays/lesbians/bi-and transsexuals, as well as differently-abled people, from confinement, from disappearance from powerful and influential social, political and economic sites.

Those who believe that affirmative action is the key anti-racist measure and litmus test for racial progressivism often do not analyse it alongside incarceration as the re-segregation of the disenfranchised for the racially privileged. Affirmative action, vilified as racial or group preferences, is debated most often within the areas of employment and education, not in the areas of incarceration and execution. In a conservative political climate, increased competition for jobs and educational slots as well as a counter-cultural movement to the civil rights gains of previous decades, have fostered advocacy for the resurgence of segregation. Despite economic and educational abundance in the United States, economic and educational access has proven to be elusive for many (black) Americans. The demand for egalitarian economic and educational access has been destabilised by race rhetoric that obscures the relationship between racial-sexual disenfranchisement and corporate capitalism. Consequently, the political manipulation of racial and economic fears continues to reify racialised communities and fuel new forms of segregation. This segregation ranges from gated communities for the wealthy to prisons, which former political prisoner and Black Panther Dhoruba bin Wahad has described as black communities. These so-called communities are linked to disproportionate access to wealth and resources.

Much has been said about affirmative action, particularly within the academy where affirmative action has become the dominant discourse on racial inequality and a measuring standard for determining racist or anti-racist attitudes.³ Affirmative action is embraced as the promise of moral protection against racism; consequently, it is protection from reverse racism that anti-affirmative action advocates claim they seek, advocating fairness in a popularised vision of a visually impaired or colour-blind American society. Both the proponents and opponents of affirmative action engage in advocacy that is problematic because it takes little account of the conservative origins of affirmative action and its liberal intent. Given its origins, simplistic characterisations constructing those who advocate(d) affirmative action as anti-racist are

untenable. For, as Berkeley sociologist Troy Duster notes, former president Richard Nixon supported affirmative action (Duster, 1996).⁴

Affirmative action gains are overwhelmingly attributed to blacks in national racial rhetoric and imagery even though quantitatively the greatest beneficiaries have been white women, and increasingly other people of colour. This attests to the endurance of the black/white binary in the American mind, and to the complementary racialisation of the deserving industrious sector as 'white' and the parasitic sector as 'black'. But the concept of white group victimisation and the need for (white) group racial redress appears even when there is no mention of race. Consider the anti-affirmative action rhetoric of Louisiana Governor Mike Foster who in 1997 labelled law students at Tulane's law clinic 'vigilantes' for litigating in behalf of a local black neighbourhood which, having suffered from toxic waste dumping in the past, opposed a chemical company locating a plant in their neighbourhood. Foster threatened to revoke the University's tax breaks and revenues, while leaders of Chemical Consortium of Corporations vowed not to provide financial gifts to the school. The policing of students seeking to expand democratic power to impoverished and racially configured segments of the population became a function of the university.

In the new segregation, universities are becoming increasingly white while prisons are becoming increasingly black or brown as 'racial preferences' followed the imagined desires of ethnic majorities for safety as racial purity (although the vast majority of criminal assaults are intra-ethnic). Students are not the only racially configured performers under affirmative action. Non-students function as performers in the penal economy. Racial group preferences, denounced in education and employment, are not equally condemned by conservatives and liberals. Affirmative action for prisons does not seem to agitate the national American conscience, or inspire as much debate in *The Chronicle of Higher Education* or President Bill Clinton's national conversation on race, as does affirmative action in education and employment.

The proliferation of prisons, described as the prison-industrial-complex by some human rights advocates and academics, is enmeshed in both educational and racial policies. For instance, in 1997, California had the largest prison population with more of the state's general fund going to prisons than to higher education. California prisons house twice the number of African Americans as its four-year universities enroll.

Policing and Imprisonment: the Disappeared

Most of the attention on inequities and abuses in policing and sentencing focuses on males (although later more will be said about incarcerated women). Class and racial inequalities have created conditions where one of three black males are tied to the criminal justice system (and potentially cannot vote); where blacks are eight times more likely to be sentenced to prison than are whites if convicted of the same or similar crime. The most barbaric forms of inequitable and racially manifest treatment include prison beatings and torture, as well as the reappearance of chain-gangs. When progressives successfully

brought law-suits to ban chain-gangs as cruel and unusual punishment, wardens devised outdoor hitching posts where prisoners were tied all day, including in inclement weather, for offences such as refusing to work (at times at hazardous labour or for wages as low as 20 cents an hour). The most repressive forms of segregation continue to mirror America's punishments of enslaved Africans.

Although today some radicals refer to the United States as the united prison states, and others identify as postmodern abolitionists, the economic incentives and profiteering around prison slavery rarely enter mainstream discussions about race and American democracy. There are now nearly two million people behind bars in US prisons, jails, and detention centres, three times the number documented for 1980, some 70 per cent of them African, Latino/Chicano, Native or Asian American. In 1995, African Americans comprised 12.5 per cent of the US general population and 50 per cent of the US prison population, as documented by the Washington, DC-based Sentencing Project. According to the Bureau of Justice Statistics, from 1994 to 1995 saw the largest annual increase in US history in the number of prison inmates (which grew by nearly 90,000). In 1995, the imprisoned population in the United States equalled or exceeded the populations of thirteen states and many major US cities. Nearly one in every 25 adults in the United States goes to jail each year.

Noting the disparities in policing, members of the Congressional Black Caucus have satirised police patrol pullovers of motorists targeting African Americans and Latinos as an infraction known as 'DWB' — driving while black or brown. The racist bias reflected in sentencing has created a society in which one is eight times more likely if one is black to be sentenced to prison for committing an offence similar to that committed by a white person. Defendants receive 100 times the sentencing for use of the sale of crack cocaine, considered a black urban drug, as opposed to powder cocaine, which is considered a white suburban indulgence. Although the majority of drug (cocaine) offenders are whites, most defendants sentenced to prison for drug use and sale are African American and Latino. The war on drugs has legitimised draconian forms of racially predicated policing that inevitably affect the national population. High profile cases of police brutality or excessive use of deadly force have caught the national attention, such as the 1998 slayings of African-American Tyesha Miller in Riverside, California and African Amadou Diallo in New York, as well as the torture and rape of Haitian-American Abner Louima in New York the previous year. Yet, a mass movement for the abolition of police and prison torture, excessive use of force, and a halt to expanding state police powers has not materialised in order to preserve and expand an increasingly threatened democracy.

Discussions around race and human rights abuses within penal systems tend to overlook the conditions of women, the last group legally to be granted the vote in the US. A small percentage of the imprisoned, women recently have seen their incarceration rates increase by 386 per cent as compared with a 214 per cent increase for men. Between 1930 and 1950, two or three prisons were built or established per decade for women; in the 1960s seven more were built; in the 1970s 17 were created; in the 1980s 34 were open to house women. In

1994, black women represented 82 per cent of women sentenced for crack cocaine offences; for drug offences overall, they were 50 per cent. Female offenders are mostly young women who ran away from home; a quarter have attempted suicide; more than half have been abused physically, with 36 per cent abused sexually (Flanders, 1994).

The Prison Activist Resource Center, based in Berkeley, California, notes significant facts about imprisoned US women: tens of thousands are incarcerated, the majority for economic, non-violent crimes, such as cheque forgery or illegal credit card use. Eighty per cent of women in prison report annual incomes of less than \$2,000 in the year prior to their arrest; 92 per cent report incomes below \$10,000. Of the women incarcerated for violent crimes, most are convicted for defending themselves or their children from abuse. In 1997, California prisons incarcerated six hundred women for killing their abusers in self-defence (on average, prison terms are twice as long for killing husbands as for killing wives). Women are increasingly facing the punitive powers of the state (Amnesty International, 1999, pp. 15–16).⁵ Most of the women incarcerated in the United States are non-violent offenders convicted of economic crimes or drug use. Eighty per cent are mothers, 80 per cent are poor; and the majority are women of colour. The less common violent offences are generally connected to domestic violence. Serving time, caged women find themselves subject to new forms of physical and sexual abuse; and, although the Convention Against Torture, which the United States ratified in 1994, defines rape of women in custody by a correctional officer as torture, the United States government has virtually no monitoring of the human rights conditions of imprisoned women.⁶ Ninety per cent of incarcerated women are single mothers; there are 167,000 children in the US who have been separated from their incarcerated mothers, sometimes the loss of contact is permanent. The average age of women in prison is 29 years old; 58 per cent have not finished high school.

Inequities in sentencing due to racism and economic discrimination linked to sexism are common. Racial bias in sentencing means that women of colour will increasingly make up the growing population of incarcerated females. Black women are twice as likely to be convicted of killing their abusive husbands as are white women. Fifty-four per cent of women in prison are women of colour. Black women, on average, receive longer jail time and higher fines than white women do for the same crimes.

Twenty-five per cent of US political prisoners are women. The numbers of women in prison have increased 138 per cent in the last ten years, partly due to working class and poor women's worsening economic conditions and partly due to increased arrest rates in the wars on crime and drugs. Women prisoners spend an average of 17 hours a day in their cells, with one hour outside for exercise, compared to male prisoners who spend on average 15 hours a day in their cells, with 1.5 hours outside.

State Executions

State executions, whether in Colorado or Texas or Florida, offer an opportunity

for many people to reflect on the role of rehabilitation and deterrence in state punishment and killings. However, most public reflections and conversations do not adequately address the racist nature of US policing. According to the Death Penalty Information Center, about 50 per cent of those now on death row are people of colour, from minority groups representing a total of only 20 per cent of the US population. Nearly 40 per cent of those executed since 1976 have been black although African Americans are only 12 per cent of the US population. From 1977 to 1986, 90 per cent of prisoners executed were convicted of killing whites, although the number of black victims was approximately equal. Over 65 per cent of juvenile offenders sentenced to death since the reinstatement of the death penalty in 1976 have been either black or latino. One of the few democratic nations to execute minors, the United States has executed more youths than any other country (Sklar, 1998, p. 5).

In nearly every death penalty case, the race of the victim is white; in fact, one is four times more likely to be sentenced to death for being convicted of killing a white person than for killing a black person. At the time of writing, of the 229 executions since the reinstatement of the death penalty, only one involved a white defendant for the murder of a black person. The American Bar Association has called for a moratorium on executions given the racial bias in death sentences; however, nationwide, from Colorado to Texas to Missouri, state killings are increasing. Perhaps the most eloquent spokesman on incarceration and state executions is death-row inmate, black political prisoner, Mumia Abu-Jamal. Abu-Jamal writes in *Live from Death Row*:

Mix in solitary confinement, around-the-clock lock-in, no-contact visits, no prison jobs, no educational programs by which to grow, psychiatric treatment facilities designed only to drug you into a coma; ladle in hostile, overtly racist prison guards and staff; add the weight of the falling away of family ties, and you have all the fixings for a stressful psychic stew designed to deteriorate, to erode one's humanity designed, that is, by the state, with full knowledge of its effects. (Abu-Jamal, 1995)

In a democratic state strongly shaped by racial politics, one sees visceral forms of contemporary violence exposed by 'prison intellectuals' and prisoner rights advocates. The brilliance of Abu-Jamal's *Live From Death Row* is its dissection of the most violent places in US prisons, which are also administered by the state. The religious, pacifist community, the Bruderhoffs, smuggled Abu-Jamal's *Death Blossoms* out of Pennsylvania's prison, SCI Green, for which Abu-Jamal was punished (Abu-Jamal, 1997). In his Foreword for Abu-Jamal's *Death Blossoms* and his Pacifica radio introductions to Mumia's commentaries, Cornel West notes state-corporate policies destroying poor/working-class, black communities and the rising incarceration of exploited or unemployed people. The liberal American Bar Association issued a public report in 1997 expressing strong reservations about the death penalty because of its racist application, among other things. Political leaders are aware that the application of the death penalty is class- and race-biased: most of those on death-row are poor people of colour. Convictions in the case of killing whites means a greater possibility of being executed.

Conclusion: Diminishing Rights

In theory, human rights protections exist for prisoners and non-prisoners in the United States under the International Covenant on Civil and Political Rights and international conventions ban on racial discrimination, torture and ill-treatment. In 1998, the United States continued to exempt itself from international human rights obligations that granted protections to US residents and citizens currently not available under US law; and in so doing it places itself in a sense above the law. Even after ratification of key human rights treaties (generally the state weakens such treaties with reservations), the United States fails to acknowledge human rights law.

Recent legislation prohibits prisoners from granting interviews in some seven states, including Pennsylvania and California. Consequently, it is increasingly difficult for political prisoners to be able to express their views publicly. This is particularly the case for the more than one hundred prisoners which Amnesty International documents in the United States (a significant number are incarcerated for militant organising for black or Puerto Rican liberation). Consequently, certain ideas disappear from conventional democratic culture. These are some of the most controversial and incisive analyses of political resistance and state dominance. Yet, within this dysfunctional democracy, intellectuals and activists must battle to hear or read their words. In the quest for a non-racialised, non-penal democracy, political testimonies from family members, lawyers, religious leaders and journalists with access to the incarcerated contest the increasing censorship of prison intellectuals.⁷

Prisons are self-perpetuating, according to Angela Davis, because reform campaigns assume that the prison is the only effective strategy for countering crime and consequently propose it as the remedy for its own failure. Davis contends that the failure of the prison combined with the inability to conceptualise penal strategies that [serve as an alternative] reflect the assumption that as brutal as prisons may appear, public order will always depend upon the existence of prisons, whether they are represented as places of rehabilitation, deterrence, or retribution.⁸

With such dependency, the diminishment of democratic space and practice seems assured, as does the rise of race and class-based incarceration and human rights abuses. The isolation, exploitation and abuse of incarcerated children, women, and men strain notions of conventional community and create new meanings of democracy as dysfunctional and destine all of its citizenry to a mirage of freedom, and some to the hellish conditions of torture and enslavement.

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Notes

1. States often enforce laws that penalise poor and working class people while virtually ignoring white-collar crimes, although the estimated annual cost of corporate crime runs between \$174 and \$231 billion, while the economic cost of 'street crimes' (burglary and robbery) is estimated at \$3 to 4 billion.
2. For additional information on the privatization of prisons, see Gragg (1996).
3. Title VII of the 1964 Civil Rights Act defined employment decisions based on race, colour, religion, sex and national origin as unjust. Later, unjust discrimination was expanded to include age (1967), pregnancy (1978) and disability (1992). In the 1990s, white men made up 33 per cent of the US population but comprised 85 per cent of tenured professors and law partners; 80 per cent of the members of the US House of Representatives; 90 per cent of the US Senate; 95 per cent of Fortune 500 CEOs; and, 100 per cent of US presidents. See Jaggar (1997).
4. John F. Kennedy issued the initially limited executive orders in 1963; Lyndon Johnson manoeuvred through Congress the 1964 civil rights legislation mandating selected forms in the workplace. But Nixon required corporate America to institute affirmative action programs. Duster argues that Nixon's support for affirmative action in employment was based on a shrewd cynicism and insight that this would be the wedge issue or divisive plank in the Democratic Party, splintering its coalitions of labour, blacks and Jews. According to Duster, group interests would reincarnate in the disguise of claims to individual fairness. In the 1970s, the majority of whites asserted themselves as a group, with collective interests, both in opposition to affirmative action and other civil rights initiatives, hence the largely white male flight from the Democratic Party.
5. In March 1999, Amnesty International Rights for All campaign issued a report, documenting the abuses of women in US prisons and jails. By June 1997, there were 138,000 women incarcerated in the United States; three times the number since 1985 and ten times the number of women imprisoned in other western democracies combined — Spain, England, France, Scotland, Germany, and Italy. Amnesty documents that these European countries combined have a population of 150 million women as compared to 120 million women in the United States.
6. The United States was to submit a report on its compliance with the Convention Against Torture in 1995 but no report to date has been released. In response, a coalition of over 60 non-governmental organisations (NGOs) issued a report in October 1998 titled *Torture in the United States: The Status of Compliance by the US Government with the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. See Sklar (1998). The report notes that the major areas of non-compliance in the United States centre on the death penalty, prison conditions, and the treatment of refugee detainees; physical and sexual abuse of women in prisons; the return of refugees to situations of torture and persecution and their long-term detention under abusive conditions. Other violations include US shelter for torturers who worked with the

- Central Intelligence Agency or were trained at the School of the Americas; lack of adequate domestic implementation of the 1996 Illegal Immigration and Immigrant Responsibility Act; and arms sales that support torture in foreign countries.
7. In 1996, National Public Radio cancelled Abu-Jamal's commentaries after it was intimidated by the Fraternal Order of the Police and conservative officials such as former Senator Bob Dole. In 1997, the President of Temple University barred its radio station from airing 'Democracy Now', produced by journalist Amy Goodman, because it featured Abu-Jamal's radio commentary. Community Radio, not Public Radio, airs controversial commentaries as Pacifica affiliates (WBAI in New York and KGNU in Boulder) bring to their listeners (or web browsers) critical analyses censored from mainstream and noncommercial radio.
 8. Angela Davis, proposal for Critical Resistance: Beyond the Prison Industrial Complex conference, author's papers.

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