

Review of *Locking Up Our Own: Crime and Punishment in Black America*

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SOC 743

James Forman Jr.'s *Locking Up Our Own: Crime and Punishment in Black America* presents a little-considered dimension in the African American community's complicated relationship with criminality and criminal justice: the endorsement of extreme policing and punishment by powerful black¹ leaders. The text argues that "Mass incarceration is the result of small, distinct steps, each of whose significance becomes more apparent over time, and only when considered in light of later events" (45). Contrary to what may be common belief, however, Forman Jr. asserts that from the rise of the heroin epidemic in the 1960s to the end of the twentieth century, key portions of the black community advocated for a tough-on-crime stance that established and perpetuated the legal system's distinctively harsh treatment of the black community.

It is important to note the nuance with which Forman Jr. approaches the topic. He clarifies early and often that African American attitudes towards crime and incarceration were and continue to be mediated by racism, intergroup power dynamics, and the practice of differentially applying the law to minority populations. Forman Jr. argues that this historical advocacy of a punitive approach is one of a limited range of options for African Americans determined to better their communities. He expresses this plainly in writing: "These pages reveal the myriad ways in which American racism narrowed the options available to black citizens and elected officials in their fight against crime" (12). This nuance is important in understanding the theoretical lens of this work.

¹ The lower-case "black" is used throughout this review to match Forman Jr.'s capitalization choice.

Locking Up Our Own presents a history of black involvement in criminal justice politics and policy. It begins by relating the detrimental effects of the War on Drugs on African American communities and asking, “Why would black people ever have supported the drug war?” (18). This is the point of departure from which Forman Jr. goes back in American history to the establishment of the first major cohort of black mayors and other elected officials in the 1960s and their role in the mass incarceration of black people. Again, Forman Jr. argues that this role was not undertaken with the intent of subjugating African Americans in the justice system for generations to come. Instead, black mayors and elected officials played this role because they had little other recourse, if any, in their efforts to curb crime in the face of extreme violence and drug use. A major reason for this is that root-cause solutions (the establishment of a job market in which African Americans are fairly considered for employment, for example) were not considered pragmatic responses to crime because they did not attack crime rates directly. At the same time, the heroin, cocaine, and gun violence epidemics that began shaking America’s cities in the 1960s made it a moral imperative to act swiftly and effectively.

This was the backdrop against which African Americans began to be elected into political offices in significant numbers. The first black mayors, police officers, prosecutors, etc. had something to prove. With black citizens using drugs and losing their lives to violence in record numbers, black political leaders absolutely needed to make an impact. They saw gun violence and drug addiction as civil rights issues disproportionately affecting black communities in general and poor black communities in particular. They were elected into office specifically to combat these issues. All of these factors aligned in such a way that black leaders adopted tough-on-crime measures—especially harsh sentencing—as the most efficient solution to crime. Some leaders tempered this punitive attitude with continued calls for root-cause solutions, but the

underlying desire to punish African Americans who sold drugs or owned guns dominated criminal justice strategy for white and black politicians alike, though frequently for different reasons.

Forman Jr. moves into describing the harsh realities that four decades of increasingly punitive criminal justice have created. He relates accounts of clients he worked with personally in the Public Defender Service office in Washington, D.C. One such client is Ms. Sandra Dozier, who lost her job at FedEx because of her arrest record for marijuana possession, despite the fact that there was no conviction in her case. The arrest for marijuana came from a pretext stop, a police practice of stopping cars that “uses the traffic laws to uncover more serious crime” (188). Forman Jr. goes on to elaborate that “Such stops (and subsequent searches) exploded in popularity during the 1990s as a part of police efforts to target drugs and guns” (188) and that they occurred almost exclusively in poor black neighborhoods. Ms. Dozier had about 20 dollars’ worth of marijuana in her glove compartment but ran the risk and acquiesced to a search after being stopped. Forman Jr. is not surprised; he writes, “studies showed most people—90 percent or more—did eventually give consent” (188). He concludes, “When I asked my clients about why they allowed police to search their cars, . . . most had a . . . basic reason: the didn’t think they *could* refuse” (188-89; emphasis in original).

Pretext stops and their subsequent consequences, including this perceived inability to refuse, are just two examples of the repercussions of decisions made cumulatively by white and black legislators alike over forty years. It is the decisions of black legislators that are the main focus of this work.

In the final pages, Forman Jr. turns to the story of Dante, a juvenile arrested for armed robbery with a bleak outlook in the justice system. In this case, Forman Jr. is able to win a

victory for his client, but only because of the intervention of Dante's victim in court on his behalf. Forman Jr. extends Dante's request for forgiveness to the man he robbed, who responds, "I can try" (235). Forman Jr. closes the work by turning to the policy implications of the widespread adoption of this rehabilitative justice, which "requires accountability, but not vengeance" and "[strives] for compassion, for mercy, for forgiveness" (236).

There are a few different theories of criminology supported by Forman Jr.'s analysis. The one most strongly aligned with the work is pluralist conflict theory, first explicated by Akers in 1985 (Akers et al. 213). This theory states that the tension between the competing interests of different groups in society leads to the strongest groups having the power to legislate. The key feature of pluralist conflict that distinguishes it from other conflict theories is the idea that

"Although some groups or alliances maintain considerable power over a period of time and on many issues, no single group or interest is all-powerful. There are social, economic, and political elites that may have overlapping interests but do not constitute a monolithic, supreme class that perpetually gets its way in the law, economy, and society" (Akers et al. 213).

The range of conflicts presented throughout the text provides a rich foundation for analysis of this theory. Forman Jr. asserts that the tension between the categories of "white" and "black" is the underlying conflict framework, but there are other equally important intergroup conflicts operating here, specifically: liberal vs. conservative; upper and middle class African Americans vs. poor African Americans; black police officers vs. poor black citizens; black police officers vs. black politicians; and black newspapers vs. black police officers.

Liberal vs. conservative: The conflict between these political ideologies directly resulted in a "bipartisan bidding war to raise the penalties [for drugs and crime] ever higher" (164) in the second half of the twentieth century. This is because all legislators agreed something needed to be done about crime and drug use, and most thought of harsher sentences as an "easy sell" that

would have bipartisan support. Thus the conflict between liberal and conservative led to more punitive policing and sentencing regardless of which group dominated.

Upper and middle class vs. poor African Americans: The conflict between these socioeconomic groups had complex consequences. One, for example, is the fact that those with the most financial means could “navigate their way around the drug war’s harshest consequences” (176) by finding safer options for buying drugs. Those who could not do so and were left to purchase drugs on the street were disproportionately arrested. The gulf between upper and middle class and lower class African Americans was also reflected in the negative attitudes and rhetoric expressed by affluent blacks towards their poor counterparts. This is expressed by Forman Jr. as “an established pattern of middle-class blacks chastising poor blacks for their moral failings” (146). The conflict between these groups ensures that wealthier African Americans are more likely to have their interests represented than poor African Americans. Forman Jr. elaborates, writing,

“...class divisions...explain, for example, why black elected officials have been much more likely to speak out against racial profiling (which harms African Americans of all classes) than against unconscionable prison conditions (which have little direct impact on middle-class or elite blacks)” (13).

Black police officers vs. poor black citizens: The most common demonstration of conflict between these two groups in the text can be found in the defensiveness of black police officers. For example, Charles Ramsey, D.C.’s police chief starting in 1998, said in response to the concept of “driving while black,”² “I drive while black—I’m black. I sleep while black too. It’s victimology” (204). The most poignant example, however, is perhaps that of the students at

² Per Mark Davis’ *Concise Dictionary of Crime and Justice*, “driving while black” is “a derogatory expression used to describe the practice by law enforcement officers of pulling over Black motorists where there is no violation of the law” (Davis, 2016: 92).

Forman Jr.'s Maya Angelou Public Charter School and the police officers who patrol the school's vicinity. In a town hall meeting between the two groups, in response to the students' request that they no longer be searched simply for standing outside the school building, one black police officer suggested: "“Maybe you could have your students wear large student IDs...Then we will know who your kids are and we can leave them alone”" (181). The casual delivery of this suggestion does not hide the fact that it essentially proposes to forego the presumption of innocence that the students deserve "as free citizens" (181). This treatment led to one of Forman Jr.'s students asking, "“How can you tell us we can be anything if they treat us like we're nothing?”" (182), which further shows the disparate power structures between these groups. Forman Jr. pushes this further later with Spartanburg³, writing, "Spartanburg residents were clear-eyed about why the police could treat them like this: they were poor and black, living in a neighborhood that was poor and black. These facts were more powerful than shared racial identity with the city's black political establishment" (210).

Black police officers vs. black politicians: When black politicians began making a concerted effort to add more black officers to the police force, they did so with the hope that a more representative force would be more fair to black citizens. The conflict between these groups arose, in Forman Jr.'s words, because

“As the recruitment effort took root, evidence emerged that black officers might have a more limited impact than [black politicians] had hoped. The most important reason for the disappointment was this: blacks who joined police departments had a far more complicated set of attitudes, motivations, and incentives than those pushing for black police had assumed. The case for black police had always been premised on the unquestioned assumption of racial solidarity between black citizens and black officers” (106-107).

³ As Forman Jr. explains, Spartanburg is an alias for a lower-class black neighborhood in Washington, D.C. This designation comes from a 1996 and 1997 study conducted by sociologist Ronald Weitzer (209).

For many of the African American men who first began to join the police force, the primary motivation was the prospect of having a steady, respectable, and well-paid job, not policy change. Thus, more black representation on the police force did not forcibly lead to less punitive attitudes towards African Americans or even towards more fair policing of white and black communities, as black police officers were subjugated to a racial hierarchy that did not allow them, in many cases, to police white people (86).

Black newspapers v. black police officers: After Lieutenant Tilmon O’Bryant opposed efforts in 1963 explicitly calling for more black police officers—arguing that police departments should “reject favoritism” (99), the *Washington Afro-American* newspaper responded: “Our advice to Lieut. O’Bryant is to stick to police work and leave the race relations business to the experts” (100). This condescension is a quintessential feature of the conflict between black police officers and black newspapers. Forman Jr. draws parallels between the *Afro*’s response and the rhetoric common to paternalistic white supremacists, asserting that both sources would say “O’Bryant needed to shut up and stay in his place” (100). This language served to belittle O’Bryant and subjugate him under a subjective hierarchy of expertise—the *Afro* knows what it’s talking about; O’Bryant does not and his opinion should not be considered or even given in the first place.

These sources of conflict among diverse subgroups of the larger African American community exemplify the idea of shifting power dynamics presented by pluralist conflict theory. The theory argues that laws and the conception of the criminal are generated through the competition of different interests in society and is specifically predicated on the idea that there is no one group perpetually in power. The dynamic nature of this theory aligns well with the various subgroups described above and their relative role in constructing law and the criminal at different points in time.

A second criminological theory that is strongly supported by *Locking Up Our Own* is Robert Agnew's general strain theory. Agnew conceptualized this theory in 1992 and focused on individual criminality at the micro-level (as opposed to the macro-level focus of Messner and Rosenfeld's institutional-anomie theory) (Akers et al. 1993). Strain theory, in its original form, identified the discrepancy between societal values and achievements and legitimate ways of attaining those values and achievements as the source of crime. Agnew's adaptation identified "three major types of deviance-producing strain: the failure to achieve an individual's goals, the removal of positive or desired stimuli from the individual, and the confrontation of the individual with negative stimuli" (Akers et al. 1996). There are examples of all three sources of strain and their effects on the individuals who experience them in this work.

Failure to achieve goals: Forman Jr. describes several clients who are frustrated in their efforts to achieve legitimate goals. The most notable of these is Ms. Tasha Willis, who, he explains, "...had already served one mandatory prison sentence, with no treatment, and had gone back to using and small-time selling as soon as she got out" (123). Ms. Willis' inability to stay clean, coupled with her inability to escape police detection, pushed her into a cycle of drug selling and increasingly punitive sentences. Arguably, most of the drug sellers described in the book turn to selling because of a failure to attain money in legitimate ways. In many cases like Ms. Willis', legitimate means of making money are virtually nonexistent.

Removal of positive or desired stimuli: Ms. Dozier, who lost her job at FedEx, serves as the prime example of the removal of positive stimuli. She lost her job due to a minor marijuana possession arrest, one that did not lead to a conviction and was even "no papered"⁴ (190). She lost her source of income, lost her clean record, and in the end she left Forman Jr.'s office

⁴ As Forman Jr. explains, "no papered" is "D.C. court lingo meaning that the prosecutor's office had decided not to bring charges" (190).

without her letter of recommendation and her high school diploma, losing those as well. Forman Jr. elaborates on the significance of this final loss: "[The documents] were her armor, her stereotype busters, her proof to the world that she was one of the good ones" (193). Though Ms. Dozier's account in the book ends when she walks out the Public Defender Service's door, the strain she experiences affects her deeply and can easily lead her down a path of deviance.

Confrontation of individual with negative stimuli: Pretext stops, described above, are one of the most pervasive and destructive negative stimuli that African Americans experience disproportionately to this day. Forman Jr. shares some incredible facts, including that "black women are more likely to be pulled over for pretext stops than are white men, despite the fact that white men carry guns and commit violent crimes at much higher rates than black women do" (213). He explains, in Ms. Dozier's case, "...before she even told me where she was driving, I had already started to imagine likely locations" (209). Pretext stops are not only a strain-producing negative stimuli; they directly criminalize individuals and contribute greatly to official crime and incarceration rates. The experience of the students at Forman Jr.'s school with being asked to wear large student IDs is an additional example of the confrontation with negative stimuli. One of the students makes this clear in saying, "We can be perfect, perfect doing everything right, and they still treat us like dogs" (181-82).

It is important to point out as well the significance of deterrence theory, which posits that if the punishment for crime is severe, certain, and swift enough (Cullen et al. 353), criminals and would-be criminals will be deterred directly and/or indirectly from committing crime. Though much of the empirical evidence amassed since deterrence theory's conception has discredited it, this is the framework in which many black leaders were operating in the second half of the

twentieth century. This is clear throughout the book and especially in portions that consider how “...America became the world’s greatest jailer” (148).

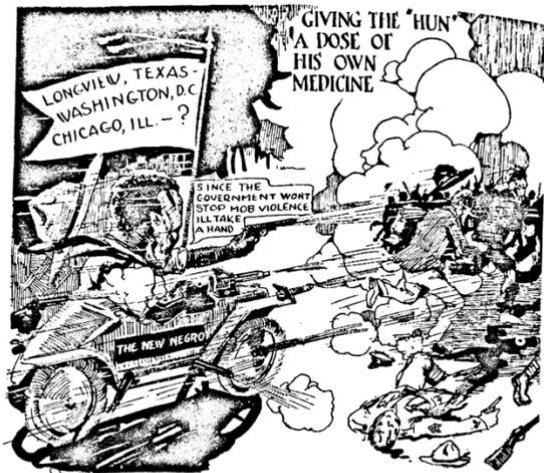
Forman Jr. contends, “When an urgent problem required a short-term solution, law enforcement was regarded as the only answer” (148). This is how the United States got to a point where nonviolent criminals like Ms. Willis face mandatory prison sentences of five years (123) or more. Tough-on-crime rhetoric used by black mayors like Marion Barry, who said, “We are not going to let any absence of jail space be any deterrent to us locking people up” (177) reinforced the belief by most members of the African American community in the twentieth century that punishment does deter crime. This, in turn, normalized increasingly punitive criminal justice practices, which became “...the bricks that built our prison nation” (148).

The arguments of Forman Jr.’s work are highlighted by images from black newspapers from the twentieth century. Of particular interest are the editorial cartoons, of which there are 11; Forman Jr. uses these to weave visual criminology with historical criminology and archival research. The result is a unique and compelling study of the wide range of African American attitudes towards crime and criminal justice over time.

In their most recent work on visual criminology, Brown and Carrabine explain its advantages thus:

“In pursuing the work that images do, the field of visual criminology expresses unique possibilities for a kind of critical criminology that can better illustrate the social relations that cause harm—not just in the conventional sense of legal categories of crime, but of processes that produce criminalization and interpersonal, legal, state and structural violence” (193).

Forman Jr.’s use of editorial cartoons from black newspapers helps illustrate how certain segments of the black community were able to dominate the judicial decision-making process at different points in time as well as construct the idea of the criminal. For example, an early editorial cartoon from *The Messenger* from 1919 depicts a black man in a car chasing down



THE "NEW CROWD NEGRO" MAKING AMERICA SAFE FOR HIMSELF
 (The Messenger, 1919)

Foran Jr., p. 68

white supremacists with his gun. As he does so, he says, "Since the government won't stop mob violence I'll take a hand." This depiction aligns with the sentiment at the beginning of the twentieth century that gun ownership was a noble form of self-protection against racial violence. As gun violence and especially black-on-black gun violence took deeper root, editorial cartoons began to express outrage at the rampant violence rocking American

cities. A cartoon from *Ebony Magazine* from 1973 turns the image of the "black tradition of arms" (69) on its head, depicting a black man with a gun robbing another black man. The two characters are drawn so similarly they could even

be brothers—which the artist pushes further by having his robber call the victim "brotherman." The idea here is that while guns were initially used by African Americans to save black lives, they began to be used to end black lives disproportionately as various drug epidemics ravaged black communities in the twentieth century. Although black leaders like Ida B. Wells and Malcolm X once endorsed guns and hailed the arrival of the "New Negro" (68) who owned



"Right on, brotherman. Now if you'll just quietly raise that other arm . . ."

(Ebony magazine, July 1973)

Foran Jr., p. 58

them as a hero, these and other key figures changed their rhetoric when they saw the devastation wrought upon the black community from the inside.

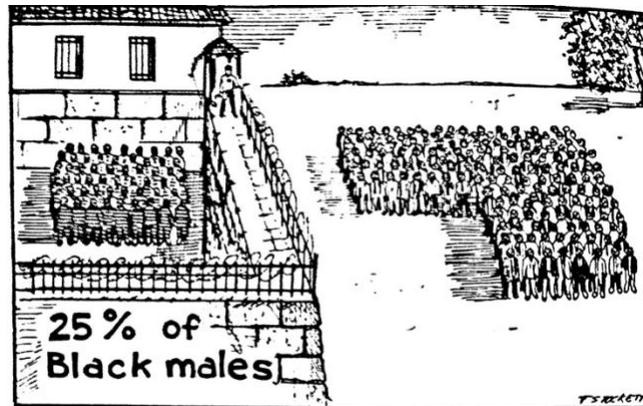
Another interesting example of the domination and reversal of public opinion by powerful black leaders can be found in the two cartoons below:



'We must make it so crime doesn't pay'

(The Washington Afro-American, January 18, 1975)

Forman Jr., p. 52



(The Washington Afro-American, March 3, 1990)

Forman Jr., p. 206

These two cartoons both come from the *Washington Afro-American* newspaper and were drawn with only a 15 year window between them, but the tone and message they convey are diametrically opposed.

Locking Up Our Own presents new variables in a criminal justice issue that has pervaded America's history for centuries—the unequitable treatment of African Americans by the law at every step of the justice system. This work thus complements much of the scholarship that has come before it in relation to judicial inequality between black and whites and provides a deeper understanding of the complex processes that constructed our present penal system.

Understanding the underlying causes of mass incarceration can help contemporary and future activists understand how to dismantle it. Forman Jr. touches on this in writing, “I have described mass incarceration as the result of a series of *small decisions*, made over time, by a disparate

group of actors. If that is correct, mass incarceration will likely have to be undone in the same way” (229; emphasis added). He suggests some very real policy implications that individually may be small decisions, but collectively would help alleviate the justice system’s injustices. This addition balances the book with a hopeful tone.

The break that Dante, above, caught in relation to his charge of armed robbery helped to establish a foundation for his future. In the intervening fifteen-plus years (238) since Forman Jr. had last seen Dante before their chance encounter at a construction site where Dante was working, Dante had made a series of small decisions that built on this foundation and led him to success bit by bit. He earned his high school diploma and landed steady employment in construction. Dante had not been arrested or charged for any crime since Forman Jr. had last seen him. The recounting of Dante’s journey to success parallels the large-scale episodic dismantling of punitive justice that Forman Jr. envisions while centering Dante’s narrative and personal triumph. In doing so, Forman Jr. leaves his audience feeling simultaneously daunted by the prospect of slowly undoing the behemoth of mass incarceration and hopeful that this undoing is within our grasp as long as we continue to make small decisions in the right direction.

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