

## Chapter 10: Punishment, Bryan Stevenson

- I. The numbers picture of incarceration in America today
  - A. America 4 % of world's population, 20% of world's imprisoned
  - B. Vast increase in numbers of prisoners, like 350,000 to 2.3 million with double that on parole or probation.
  - C. The race of the victims of murder is the greatest predictor of whether someone gets the death penalty.
  - D. Stevenson's organization the Equal Justice Initiative defends children, especially those whose sentences are so long that they will die in prison.
  - E. The Graham decision and a 2012 case, Miller v. Alabama, which banned imposing mandatory sentences of life without parole on children, created the possibility of release for thousands of imprisoned people who had been condemned as minors.
    1. Parole or release was not guaranteed because appeals would have to persuade judges and parole boards.
  - F. Once convicted incarcerated people have no right to counsel in most states.
- II. The incarceration problem in all its uniqueness in the US is one of slavery's legacies.
  - A. From the beginning of European settlement in what is now the USA, there developed a racial caste system.
    1. Maryland, saw slavery as "for life" and would cut up, quarter, enslaved people for disobedience
    2. South Carolina, 1740, enacted restrictions for the cruelest tortures accorded to enslaved people
    3. Free Black people were presumed to be slaves, or runaways, in the North. Some northern states banned immigration of manumitted slaves.
    4. American slavery evolved into a perverse regime that denied the humanity of Black people while criminalizing their actions.
  - B. Racial difference and White Supremacy
    1. Alabama 1861 regarded Blacks as things rather than humans
    2. The 13<sup>th</sup> Amendment could abolish chattel slavery, but not the racism that deemed Blacks inferior.
    3. After the Civil War, Blacks moved from being viewed as slaves into being viewed as criminals.
      - a Activities like loitering were criminalized to capture and enslave Blacks.
      - b They were then jailed and "leased" to businesses and farms, where they labored under brutal conditions.
      - c Book: Blackmon [Slavery by Another Name](#)
      - d Book: Oshinsky: [Worse Than Slavery](#)
      - e Anything Black people did to challenge the racial hierarchy could be seen as a crime, punished either by the law or by lawless lynchings,

f In 1916, a white mob lynched Anthony Crawford in South Carolina for being successful enough to refuse a low price for his cotton.

g The American proclivity towards harsh, violent punishments had its start in the violence vented on Blacks in the post-reconstruction era.

4. Mass Incarceration

a As it became impossible to justify such violence, Americans moved on to mass incarceration.

b The war on drugs, mandatory minimum sentences, three-strikes laws, children tried as adults, “broken windows” policing replaced the violence of the plantation and Jim Crow

c Today, it is Black and other nonwhite people who are disproportionately targeted, stopped, suspected, arrested, incarcerated, and shot by the police or prosecuted in courts.

d In schools, Black children are suspended and expelled at rates that vastly exceed the punishment of white children for the same behavior.

5. What can be done?

a Lawyers need to understand the cultural tendency to treat Blacks as criminal and guilty. Failing to do this may endanger the client’s life. (p. 282)

b Advocacy for incarcerated and imprisoned Blacks must see the unbroken thread between slavery, Black codes, Jim Crow and lynching, and mass incarceration.

c Lynching and slavery museum in Montgomery

Summary: Chapter 10: Punishment, Bryon Stevenson

This essay traces the American historical habit of viewing Blacks as criminals. During the colonial period a two tiered system emerged that treated Blacks differently than Whites. First, slavery was a permanent status tied to African descent. As African descent people emerged from chattel slavery White southern society expended great effort to press them back into new kinds of bondage. Following the seeming loophole in the 13<sup>th</sup> amendment, which allows enslavement of incarcerated persons, the former confederacy concocted a number of ways to attach criminal status to formerly enslaved persons.