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The Causes of Punitiveness

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James Forman Jr., [Locking Up Our Own: Crime and Punishment in Black America](#) (2017).

Locking Up Our Own: Crime and Punishment in Black America is a look at the recent history of African-American attitudes toward crime. In many ways the book is a codicil to Michelle Alexander's well-known work, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, and to the writing of people like Glenn Loury and Ian Haney Lopez. Alexander, Loury and Lopez argue that today's hyper-incarceration and long sentences result from a white-dominated legal system bent on removing blacks from the streets, using the "war on drugs" as a cover, and imply that things would be different if blacks had been in control of the system. *Locking Up Our Own* contests those views.

Making Forman's case is difficult, because largely white legislatures were and still are in charge of criminal justice in most jurisdictions. But Forman's focus is on Washington, D.C., where, from the mid-1970s through the end of the twentieth century (the period covered by the first five chapters in his book) African-Americans were in power. Not only were that city's chiefs of police black (as was the case in many major cities), but the municipal council—the body effectively in charge of crime definition and sentencing in D.C., given Congress' acquiescence in matters of criminal justice—was usually majority African-American as well. Yet the criminal justice policies in that city were at least as punitive as those in other jurisdictions.

Forman demonstrates this point by cataloguing the city's refusal to de-criminalize marijuana possession, its willingness to significantly enhance the penalties for drug possession and gun-usage-during-a-crime, and its acquiescence toward brutality and racial profiling by African-American police. Forman points out that these developments were fueled by exploding crime rates, drug epidemics, and the rise of gangs, ostensibly the same concerns that led to tough-on-crime policies elsewhere. He also notes that, as in other jurisdictions, the tougher policies were favored by the (black) middle and upper class, while visiting most of their impact on the poor. Black politicians and newspapers in D.C. decried the ravages of drugs on youth, with addiction to heroin, PCP and crack called the "new slavery." They also bemoaned the huge spikes in violent crime (Forman notes that the spike in the 60s and 70s was the highest recorded in U.S. history), and the so-called "revolving door" of justice that led to quick release of criminals. The result was a black-led movement to expand criminal liability and increase sentencing maxima.

Forman is careful to point out that many D.C. policymakers also criticized the debilitating, criminogenic effects of racism and the need for addressing "root causes." But they were usually unable to resist the quicker, more dramatic crime control solution. In part, Forman shows, that was due to strong public sentiment favoring that approach. For instance, in the early 1980s, the D.C. Council, bucking its typical tendencies and with the support of the federal government, refused to pass stiff mandatory minimum sentences for possession of drugs with intent to sell. Yet the public overwhelmingly voted for an initiative overriding the decision.

The overall picture Forman paints provides a counterweight to Alexander's *New Jim Crow* story. Does he overdo it? Forman's footnotes come from numerous primary sources (mostly newspapers and hearing transcripts). Where he can, Forman cites data from other cities that support his thesis. He notes, for instance, the strong support among the black community for the notorious Rockefeller drug laws in New York, and the widespread support among black police chiefs for law enforcement techniques like D.C.'s Operation Clean Sweep that resulted in one arrest for every 14 D.C. residents. He also emphasizes, and convincingly shows, the step-by-step, almost accidental manner in which our current highly punitive sentencing policies developed over a number of years, suggesting that hyper-incarceration is

not part of a masterplan on the part of either whites or blacks.

At the same time, Forman stresses at several points that African-Americans are still imprisoned at a higher rate than whites, despite similar involvement with drugs, and that the structural causes of crime and drug influxes are intimately related to institutional racism. He also describes in some detail the impact of racial profiling, albeit by black as well as white cops. In this respect, his book differs from Michael Fortner's recent publication, *The Black Silent Majority: The Rockefeller Laws and the Politics of Punishment*. While Fortner also documents vigorous black support for tough-on-crime policies during the 60s and 70s, particularly in New York, he is less attentive to the effects on criminal justice policy of white resistance to racial equality.

In the last chapter of the book Forman very briefly updates the story through the present. It turns out that in 2014 the D.C. Council passed the same type of marijuana decriminalization bill that foundered in 1975, at least in part because crime rates had dropped and the populace no longer associated marijuana use with violent crime. But Forman also criticizes the lack of willpower to reduce punitive responses toward more serious crime. Here and elsewhere he broaches the idea of treating drug- and gang-related crimes as a public health problem rather than a criminal one. One of the best lines in the book comes in his description of negotiations with a prosecutor who refused to grant leniency to one of Forman's clients because the client had not responded well to treatment in the past. Forman replied, in effect, "Why don't courts ever reject prison on the ground that *it* hasn't worked in the past?"

I would have liked the final chapter to include more nuanced observations about the strategies policymakers could muster when confronted with the inevitable next crime wave and the resulting push for more imprisonment. But the lack of detail can be excused in part because, as Forman points out, just as mass incarceration occurred through many small steps, its rollback will probably only be accomplished in the same way. In providing a diagnosis of how we got where we are, *Locking Up Our Own* can help move us in the opposite direction.

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