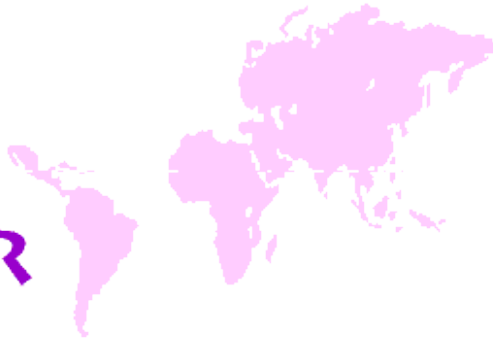


THIRD WORLD TRAVELER



Drug Busts = Jim Crow

by Ira Glasser

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I was born in 1938, grew up on the working-class, immigrant streets of East Flatbush in Brooklyn during World War II, and came to political consciousness during the postwar years. As children, we were told that World War II was a war fought against racism, against the idea that a whole class of people could be separated, subjugated and even murdered because of their race or religion. But back home in the United States, racial separation and subjugation remained entrenched by law in the Deep South and by custom nearly everywhere else.

This moral contradiction between what America said it stood for and the way it was actually organized was largely unrecognized by the American public as World War II drew to a close. The first major postwar event that challenged this contradiction and made it unavoidable was the coming of Jackie Robinson to the Brooklyn Dodgers in 1947. It engaged people, including children, in a drama of racial integration, and it created what may have been the first racially integrated public accommodation--at Ebbets Field, where the Dodgers played. The following year President Harry Truman issued an executive order desegregating the armed forces. In 1950 Brown v. Board of Education was filed, signaling the start of the modern civil rights era. Four years later a surprisingly unanimous Supreme Court struck down legally enforced racial separation in public schools, and seventeen months after that, Rosa Parks refused to give her seat to a white man on a Montgomery, Alabama, bus. Nine years later, after countless protests, marches, sit-ins and freedom rides, as well as murders and beatings of civil rights workers, the Civil Rights Act of 1964 was passed, outlawing racial discrimination in public accommodations, employment and education. A year later the Voting Rights Act of 1965 outlawed racial discrimination in voting, and three years after that, the Fair Housing Act of 1968 outlawed racial discrimination in the purchase and rental of homes. By 1968 the legal infrastructure of Jim Crow

subjugation had been destroyed and a new legal infrastructure of federal civil rights enforcement was erected in its place. America had, for the first time, abolished legalized racial discrimination and replaced it with a system of formal legal equality.

As it turned out, actual equality of opportunity did not follow automatically, easily or quickly from legal equality. But over the succeeding decades it has been assumed that at the very least, no legalized racial discrimination remains, and certainly no new forms of legalized skin-color subjugation have arisen. This is true, with one substantial exception: the system of drug prohibition and its enforcement, which is the major, and still insufficiently recognized, civil rights issue of our day.

In the late 1960s, at the peak of the civil rights movement, there were fewer than 200,000 people in state and federal prisons for all criminal offenses; by 2004 there were over 1.4 million. Another 700,000-plus in local jails brought the total to 2.2 million. This explosion of incarceration has been heavily due to nonviolent drug offenses--mostly possession and petty sales, not involving guns or violence--resulting from the exponential escalation of the "war on drugs," beginning in 1968 and accelerating again after 1980.

Since 1980 drug arrests have tripled, to 1.6 million annually--nearly half for marijuana, 88 percent of those for possession, not sale or manufacture. Since 1980 the proportion of all state prisoners who are in for drug offenses increased from 6 percent to 21 percent. Since 1980 the proportion of all federal prisoners who are in for drug offenses increased from 25 percent to 57 percent.

At the same time, the racial disparity of arrests, convictions and imprisonment for these offenses has become pronounced. According to federal statistics gathered by the Sentencing Project, only 13 percent of monthly drug users of all illegal drugs--defined as those who use a drug at least once a month on a regular basis--are black, about their proportion of the population. But 37 percent of drug-offense arrests are black; 53 percent of convictions are black; and 67 percent of all people imprisoned for drug offenses are black. Adding in Latinos, about 22 percent of all monthly drug users are black or Latino, but 80 percent of people in prison for drug offenses are black or Latino. Even in presumptively liberal New York State, 92 percent of all inmates who are there for drug offenses are black or Latino.

The fact that so many people arrested, convicted and imprisoned for drug offenses are black or Latino is not because they are mostly the ones doing the crime; it is because they are mostly the ones being targeted. This is not a phenomenon of the Deep South. It is nationwide. And it is not accidental. As the racial profiling scandals a few years ago showed, blacks are disproportionately targeted while driving cars on the highway; for example, in a lawsuit challenging this practice, it was revealed that although only 17 percent of drivers on a stretch of I-95 in Maryland were black, 73 percent of all the cars stopped and searched for drugs were driven by blacks. Nor was this an isolated example. In Florida blacks were seventy-five times more likely than whites to be stopped and searched for drugs while driving. And it turned out that these racially targeted stops were the explicit result of a Drug Enforcement Administration program begun in 1986, called Operation Pipeline, that "trained" 27,000 state troopers in forty-eight states to spot cars that might contain drugs. Most

of the cars spotted were driven by blacks. And this happened even though three-quarters of monthly drug users are white!

Similar statistics show that blacks and Latinos are also disproportionately stopped and frisked on the street and disproportionately singled out for body searches at customs points--two-thirds in both cases. The huge majority of these searches are fruitless. In New York City during the late 1990s, eight of nine recorded street frisks did not result in a conviction; in the customs searches, during the same period, 96 percent of the body searches turned up nothing. This shows two things: first, that there was no evidentiary basis for the stops and, second, that there is a comprehensive practice, if not policy, of selecting targets by skin color.

Despite these patterns of racial targeting, it has not been fashionable among liberals to see drug prohibition as a massive civil rights problem of racial discrimination. Perhaps it would be easier if we examined the way racially targeted drug-war incarceration has damaged the right to vote, a right quintessentially part of the rights we thought we had won in the 1960s with the demise of Jim Crow laws.

Until recently (there have been some changes in the past few years in some states), every state but two barred felons from voting--some permanently, some in a way that allowed, theoretically but often not as a practical matter, for the restoration of voting rights. Because of the explosion of incarceration driven by drug prohibition, more than 5 million people are now barred from voting. The United States is the only industrial democracy that does this. And the origin of most of these laws--no surprise--is the post-Reconstruction period after slavery was abolished. Felony disenfranchisement laws, like poll taxes and literacy tests, were historically part of the system that arose after slavery to bar blacks from exercising equal rights and, in particular, equal voting rights. Felony disenfranchisement laws were, to a large extent, part of a replacement system for subjugating blacks after slavery was abolished.

If you want to contemplate what this means, consider the state of Florida in the 2000 presidential election, where 200,000 black Floridians were barred from voting because of prior felonies in an election in which the presidency was determined by 537 disputed votes. If even one-third of these people had actually voted--say, 70,000--and if they voted in the usual proportions that blacks vote for the Democratic candidate--say, 80 percent, probably a low estimate--those 70,000 voters would have produced a 42,000 net gain for Al Gore.

This is a dramatic example, but hardly unique. A 2002 study in the American Sociological Review concluded that John Tower would never have been elected to the US Senate from Texas in 1978 but for racially disproportionate felony disenfranchisement; that John Warner for the same reason wouldn't have been elected in 1978 from Virginia; and that despite the apparent rise in conservative Republican voting, the Senate would have remained under Democratic control every year between 1984 and 2003 if former felons had been allowed to vote. Indeed, if the same degree of racially disparate felony disenfranchisement that exists now had existed in 1960, Richard Nixon might well have defeated John F. Kennedy.

The kicker for all this is that all these black citizens who were disproportionately targeted for arrest and incarceration and then barred from voting are nonetheless counted as citizens for the purpose of determining how many Congressional seats and how many electoral votes states have. During slavery, three-fifths of the number of slaves were similarly counted by the slave states, even though slaves were not in any way members of the civil polity. This is worse. In the states of the Deep South, 30 percent of all black men are barred from voting because of felony convictions, but all of them are counted to determine Congressional representation and Electoral College votes. If one wants to wonder why the South is so solidly white, Republican and arch-conservative, one need look no further.

The fact is, just as Jim Crow laws were a successor system to slavery, so drug prohibition has been a successor to Jim Crow laws in targeting blacks, removing them from civil society and then denying them the right to vote while using their bodies to enhance white political power. Drug prohibition is now the last significant instance of legalized racial discrimination in America.

That many liberals have been at best timid in opposing the drug war and at worst accomplices to its continued escalation is, in light of the racial politics of drug prohibition, a special outrage. It is also politically self-destructive, serving to keep in power white conservatives opposed to everything liberals stand for. Liberals especially, therefore, need to consider attacking the premises upon which this edifice of racial subjugation is based. If they do not, who will?

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