Theorizing Mass Incarceration: Augmenting Foucault
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The United States penal system has experienced an exponential and irrefutable expansion, marked by prison construction and an increase in the amount of people imprisoned. While society as a whole has been affected, black and brown males have disproportionately assumed the face of those behind bars. This paper seeks to theorize mass incarceration through a Foucauldian lens, using Michel Foucault’s theories of bio-politics, state racism, panopticism, as a theoretical framework to aid in conceptualizing mass incarceration. Race plays a critical factor in conceptualizing this phenomenon because black and brown male bodies are the site at which the penal system and the state have focused its mechanisms of power. However, this is not new, black and brown males have a long and complex history with the American penal system. For this same reason, this paper heavily draws from Michelle Alexander’s *The New Jim Crow* and Angela Y. Davis’ *Are Prisons Obsolete?* to trace a genealogy of racial caste systems and the prison in the United States in order to ascertain where these specific historic sites and events merge to form what Michelle Alexander terms a new racial caste system. Finally, the last strain of analysis is how polemical discourse’ works to conceal and normalize mass incarceration.

Although this paper employs a Foucauldian lens and uses many of his treatise’ as a framework, it sharply diverges in intent. As a postmodern philosopher and historian, Foucault is less concerned with causes and subjects—he is not invested in the “who” portion of the problematic of mass incarceration, but more focused on the how. In contrast, this paper asserts that the examination of “who” is vital to understanding the how in the problematic of mass
incarceration. To this end, I employ Foucault’s methodology of the genealogy of panopticism and juxtapose this to the genealogy of racial caste systems in the United States.

The spike in imprisonment is consequential for many. Mass incarceration casts a net so widespread that all those in minority and underprivileged communities are adversely impacted socially, economically and politically. However, because this is such a broad scope I focus primarily on black males, which is not to say, that Native Americans, Latinos, East Asian, Pacific Islanders, black women, white women, or Latina women, or disabled people are not adversely affected by mass incarceration. Unlike previous forms of racial domination, mass incarceration not only adversely affects minorities, but also poor whites.

Mass incarceration is the latest version of a racial caste system that subjects and imprisons black male bodies. The interplay of certain institutions and private industries with the penal system actively constructs inequality and categories of subjectivity.\(^1\) The continuity of state racism has surreptitiously contributed to the phenomenon of mass incarceration.\(^2\) The persistence of racism negates claims that we are in a post-racial society in which racism is largely viewed as anachronistic. It behooves me to dispel claims of the nature of American society as post-racial because race and racism are important considerations for the ascension and maintenance of the phenomenon of mass incarceration. ‘Post-racial’ or ‘colorblindness’ are rhetorical devices that seek to conceal the role of race and erase the culpability of society in the wholesale imprisonment of a large portion of the nation.

In their work *Empire*, Hardt and Negri describe contemporary racism as ‘imperial racism’. Contrary to claims that racism is a relic of the past, they assert that it has intensified. They

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\(^2\) Angela Davis, *Are Prisons Obsolete* (Seven Stories Press, 2011) 1-20
juxtapose the characteristics of postmodern ‘imperial racism’ with that of modern racism. Whereas modern racism is predicated on biological determinism, postmodern racism is based on cultural differences. According to Hardt and Negri imperial racist logic is intended to segregate and differentiate, rather than securing a racial hierarchy.\(^3\) They assert that the dichotomy of outside and inside, which includes some at the exclusion of others, has faded and a racism based on cultural differences has supplanted modern racism. “Imperial racism, or differential racism, integrates others within its order and then orchestrates those differences in a system of control.”\(^4\) In short, they assert that although racism has taken a different form and employs different strategies it continues to persist. As opposed to the tactic of exclusion, ‘Imperial racism’ incorporates the other into the institutions and structures and manages groups differently based on cultural differences. Thus, subjects become created through a defensive/regulatory penal system that differentiates between caste groups.

**Genealogy of the penal system**

The defensive and regulatory penal system of the 21\(^{st}\) century actively protects the population body against the constructed pathology of blackness. The penal systems mechanisms of power are defensive and regulative in the sense that its correlative is primarily the aberration—the pathological black male. It is not the act that is the marker of the black man’s infraction, but rather his blackness. This is a biological claim that suggests that black males are synonymous with criminality, formidable threats to the body of the population, and the deviations from the norm. However, the penal system has undergone several mutations before arriving at its current mechanisms of defense.

\(^3\) Michael Hardt and Antonio Negri, *Empire* (Boston: Harvard University Press, 2009), 183
\(^4\) Ibid., 195.
Imprisonment didn’t gain its dominance as a mode of punishment until the 18th century in Europe and the 19th century in the United States. Over time and in specific regions, the prison experienced mutations in the mechanisms of power used as well as the intent of incarceration. The initial European penal system of the 18th century was largely punitive. The 18th century penal system was unprecedented in the carnage it inflicted on transgressors by the sovereign. The punishment was inflicted on the body of the transgressor and made into a spectacle for the purposes of deterring crime and quelling civil disorder.

I. From Punishment to Panopticism

Foucault cites the theoretical reforms proposed by Cesare de Beccaria, Jeremy Bentham, and J.P. Brissot de Warville that facilitated the shift away from the punitive penal system towards the disciplinary system. Respectively, these theorists asserted that a transgression has ethico-religious implications and didn’t represent the political authority or the penal code that was in violation. They asserted the need for a clear definition of a crime but in political terms—as something that is harmful for society or a violation of the social contract. Consequently, the penal system shifted from a punitive system that punishes the transgressor to one that incarcerates those of whom violate the law through the commission of infractions. Thus, the prison system that was forged in the fires of reform began to evolve into a system of discipline that Michel Foucault, terms panopticism. Whereas, the objective of the punitive phase of the penal system was to punish to the point of annihilation, the subsequent phase of the 18th century

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5 Angela Davis, *Are Prisons Obsolete* (Seven Stories Press, 2011) 42.
6 Ibid., 41.
English disciplinary penal codes was predicated on rendering bodies useful and docile.\(^8\) Foucault lists the Army, Schools, and Hospitals, as institutions that applied these tactics through controlling and correcting the operation of the body. Bodies were surveilled, constrained, and regulated to gain knowledge of the subject in order to more effectively dominate them. In contrast to the brutal punitive mechanisms previously employed, panopticism was palatable because it was regarded as more humane.\(^9\) During the 18\(^{th}\) to 19\(^{th}\) century the role of panopticism became one of ‘transforming individuals’.\(^10\) He likens the prison to institutions whose intent is to instruct when he writes “The prison is like a rather disciplined barracks, a strict school, a dark workshop, but not qualitatively different.”\(^11\)

The panopticism receives its namesake from social reformer and utilitarian, Jeremy Bentham whose ideal prison was a circular shaped structure that is built for maximum surveillance and security at all times. The idea of the panopticon is that its structure would allow for the perpetual monitoring of behavior and movements of prisoners, while simultaneously instilling the psychological trepidation of constantly being watched.\(^12\) What Foucault termed social orthopedics, panopticism was based on rehabilitation. The main difference between discipline and punish are the intent and methods of power that were used in the two carceral systems. The disciplinary mode of the penal system was focused on inculcating bodies with catechisms, lessons, and manual labor in an attempt to reform the individual. This was done through rigid manipulation of time and normalization. In this case, the individual was viewed as having the capacity to depart from his or her criminal ways. The defensive and regulatory incarceration

\(^8\) Michel Foucault, *Discipline & punish*. (Canada: Random House of Canada, 1977), 207.
\(^9\) Ibid., 216.
\(^10\) Ibid.
\(^11\) Ibid.
\(^12\) Ibid., 217.
system dictates that criminals are beyond rehabilitation. How do we arrive at a contemporary system that views certain groups as inherently criminal, from a carceral system that took as its subject of crime and not the individual? Well, in order to answer this question it is necessary to assess the subjects that have been labeled as inherently criminal and the implications of state racism. Foucault’s methodological approach of tracing genealogies with a lens towards the subject and state racism will demonstrate that the contemporary defensive penal system is a useful way of theorizing the mass incarceration of black males.

**Bio-politics & State Racism**

Governmentality emerged from the sovereign’s inability to effectively govern the economic and political body of a society that was undergoing both a demographic explosion and industrialization. Governmentality’s end is the effective management of the population through employing new modes of power. He terms these modes of power as bio-power. To Foucault Bio-powers deals with the population as a scientific and biological problem, which explains his use of physiological terms to explicate issues created by industrialization and urbanization? I find Foucault’s theory of state racism pertinent to theorizing mass incarceration of black males. How does Foucault make the theoretical transition from management of the population to state racism?

Well, first he claims that state racism is a form of governmentality or social management. If the basic function of power in governmentality is to improve life, then how does state racism justify the death (social and physical of groups of peoples)? He claims that power is viewed by modern states as zero sum. Foucault states that the aim of state racism is to create categories of those who must die as in order for the body social to thrive. The only way for the population,
which is now a collective living organism to thrive, the group that is antithetical to collective survival must die.\textsuperscript{13} Whereas the old power of the sovereign was the power to make individuals die, the power of the state is to intervene in order to maximize life. This is done by managerial tactics that aim to rectify or eradicate deficiencies, accidents, or imbalances in the social body.\textsuperscript{14} In contrast disciplinary modes of power center on manipulating the individuals body in order to render it to a docile position, whereas regulatory/defensive modes of power in state racism focus on the society as a collective unit and tries to achieve homeostasis that protects the security of the unity from threats.\textsuperscript{15} Discipline was marked by training and surveillance, while defensive modes of power prefer to isolate and relocate the threat. This begs the question of how the group antithetical to the social body’s survival is decided. In order to answer that question a genealogy of the historical development of categories of subjectivity must be traced. It is here that we will arrive at the construction of categories of subjectivity and how this intersects with the development of the penal system in the United States.

\textbf{The Genealogy of the relationship of racial caste systems & the penal system}

The commonalities between the institution of slavery, the Jim Crow period, and the current penal system type make the description mass incarceration seem a misnomer for what is essentially the latest system of racial domination. Michelle Alexander would suggest that mass incarceration is \textit{The New Jim Crow: Mass Incarceration in the Age of Color Blindness}, a government sanctioned racial caste system that is concealed by the post racial ethos of our

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\textsuperscript{14} Ibid., 248.

\textsuperscript{15} Ibid., 249.
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society. Similarly, Angela Davis challenges the extent to which penal systems have become embedded in our social consciousness while exploring the commonalities between the penitentiary and the slave plantations in her book *Are Prisons Obsolete?*. I find that Angela Davis’s genealogy of the intersections of racial caste systems and the American penal system are compatible with Foucault. Not only does she borrow his methodology of constructing genealogies, she borrows heavily from his work *Discipline and Punish*. In contrast, where Foucault is much more vague on race and its application in theorizing the carceral system, Davis is forthright with her assertion that race, gender, and military industrial complex are central to the development of the regulatory/defensive character of the penal system which is responsible for the mass incarceration of a profuse amount of black and brown bodies, and the construction of the black pathogen.

Ira Berlin presents a typology of distinct slave systems that existed in the 17th and 18th century in his article *Time, Space, and the Evolution of Afro-American Society on British Mainland North America*. The northern non-plantation system, the Carolina and Georgia low country plantation system, and the Chesapeake Bay plantation system were designed according to demography, geography, and economy. Although Davis doesn’t make the distinction it bears consideration that similar to the evolution of the penitentiary in the United States, slavery was a nuanced institution that varied according to time, space, and political economy. In reference to her comparison between mechanisms of power on the plantation and that of the early American penitentiary, she is exclusively referring to the Carolina and Georgia low country plantation system.

Davis foremost assertion is that the racialized history of the United States has significantly affected the development of the United States defensive and regulatory penal system. Primarily because Foucault did not think it necessary to perform a genealogy on racism, I find Davis’ exposition pertinent and useful for creating a framework to theorize mass incarceration in new ways. I use her treatise as a starting point for tracing the genealogy of the black male experiences with the penal system.

The peculiar institution of slavery was so pervasive because it was lucrative, and because it was legitimated both by scientific racism, biblical justifications, and the state. Davis finds that the characteristic of normalization in the disciplinary mode of power that Foucault describes in Discipline and Punish was also operating in the institution of slavery. Slavery was normalized to the point that the abolitionist movement was considered radical and counterintuitive, much in the same way that discourse advocating for the abolition of prisons today are considered radical and contrary to common sense.

Forms of punishment, and prison regulations during that period were quite similar to that of slave codes.\(^{17}\) Punishment during this time was in the form was hard labor, however labor were already routine for slaves. There was little difference from punishment and low country plantation style slavery. In Stephanie Camp’s article “I Could not Stay There: Enslaved Women, Truancy and the Geography of Everyday Forms of Resistance in the Antebellum Plantation South”, she describes antebellum planters carefully delineating the boundaries on their property so as to control where and when their property was located. She writes:

\(^{17}\) Angela Davis, Are Prisons Obsolete (Seven Stories Press, 2011). 27.
“Like many other antebellum planters, Sallie Smith’s Louisiana owner hoped to control his labour force and to affirm his position as head of the plantation household by limiting the movement of enslaved people around and, especially, off his property. Accordingly, he forbade his bondpeople from leaving his plantation without a pass. When his enslaved people broke the rules that determined where they ought to be – in the field, in the yard, in their quarters – and when they ought to be there, Smith’s owner punished them violently, as was his prerogative.”

I. The Nascent Black Pathogen

Race played critical role in simultaneously constructing criminality and categories of subjectivity. The circumvention of the reconstruction amendments and enactment of slave codes denotes the persistence of white supremacy beyond the demise of the ‘peculiar institution’. Slave codes were laws that were enacted to constrain the behavior and bodies of blacks.

Angela Davis highlights the broad language of the 13th amendment of the United States as providing the legal backing for the continued servitude of blacks, she writes: “In the wording of the amendment, slavery and involuntary servitude were abolished ‘except as a punishment for crime, whereof the party shall have been duly convicted.’ According to the Black Codes, there were crimes defined by state law for which only black people could be “duly convicted.” Upon the passage of slave codes blacks were only nominally free. Slave codes penalized everything


19 Angela Davis, Are Prisons Obsolete (Seven Stories Press, 2011). 28
from gestures, vagrancy, neglect, speech and to conduct.\textsuperscript{20} As a result of the Slave Codes, convicts in the south were became predominantly black.\textsuperscript{21} This marked the inception of the racialization of criminality, the emergence of Black as a pathological threat to the body social.

Both convict leasing and chain gangs were labor intensive group oriented conviction sentences based on exploitation and rigid colonization of the black male body.\textsuperscript{22} Chain gangs were groups of convicts bound together by chains forced to work on such tasks as road construction, ditch digging, or farming, each task invariably performed under the surveillance of a prison guard.\textsuperscript{23} From 1867 to 1876 convict lease systems were the private leasing of black convicts to private citizens. The brutal conditions of the leasing program resulted in the reported deaths of sixteen prisoners during the first year working for private entities.\textsuperscript{24} Both convict leasing and chain gangs were labor intensive group oriented conviction sentences based on exploitation and rigid colonization of the black male body.\textsuperscript{25} Subsequently, the southern criminal justice system transmuted into a proxy for mechanism of control of black labor and black bodies. Moreover, the slave codes ingrained into the social psyche the belief that black was delinquent, pathological. This refrain that still echoes today. Similar to the disciplinary mechanism of power that focuses not on the act, but rather on the predisposed character, behavior, and tendencies of the criminal. The logic of state racism follows that if black is criminal, then blacks are prone to commit crimes and must be prosecuted to the fullest extent of the law in order to maintain balance and order in society. As a result of this logic, the subjects (black males) are constructed

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\item \textsuperscript{20} Ibid., 29.
\item \textsuperscript{21} Ibid., 29.
\item \textsuperscript{22} Ibid., 32-33
\item \textsuperscript{24} New Georgia Encyclopedia, “Convict Lease System,” accessed November 17, 2013, http://www.georgiaencyclopedia.org/articles/history-archaeology/convict-lease-system
\item \textsuperscript{25} Davis., 32-33
\end{itemize}
to be unruly, inherently criminal, and least we forget lecherous. These characteristics justify policies of surveillance, exclusion, and relocation in the body social.\textsuperscript{26}

During the late 19\textsuperscript{th} century, a penal system that mimics the mechanisms of power of the disciplinarian system as far as surveillance, and rigid control and constraint of the power. However, this system diverges from the disciplinary mode in the intent of labor as exploitative rather than rehabilitative. On the one hand remnants of the disciplinary mode of incarceration from England remain, but on the other hand a new racialized system, unique to the United States history is crystallizing. This coincides with Foucault’s theory of power, as multifarious and not monolithic. The modes of power that were characteristic of the regime of sovereign punishment did not entirely cease when the disciplinary modes of power came into fruition. There are palpable continuities of the mode of punishment, although panopticism emerged as the dominant form at this time. For instance, the institution of slavery, in which brutal force was inflicted on the bodies of bondspeople to subjugate them to a docile position. Often, this brutality was made into a public spectacle. Referring to the public burning of a slave who committed arson to his slave owner’s property, Marshall writes, “In the minds of slaveholders, forcing their human chattels to observe public executions was a part of the business or politics of slavery.”\textsuperscript{27} In short, one mode of power doesn’t supplant the next, rather new modes of power are superimposed on the former. The antebellum period penal mode of power is disciplinary, and yet it exhibited vestiges of the mode of punishment.

\footnotesize{\textsuperscript{26} Bernard E. Harcourt, \textit{Illusion of order: The false promise of broken windows policing}. (Boston: Harvard University Press, 2001), 162.}

It would seem that this defensive penal system which renders blacks as pathological and prone to criminality is circumscribed to the south and not wholly reflective of the United States. However, as elaborated in the previous section, industrialization and urbanization were catalysts to the new form of governmentality whose focus is the effective maintenance of the population. The condition of forced labor buttressed by the southern criminal system enabled the south to rapidly industrialize.\textsuperscript{28} It is important to note that southern industrialized urban areas materialized under conditions of servitude tantamount to slavery.

II. First Line of Defense

The horror of the nadir period and the tyrannical policies of Jim Crow were major push factors to migrate to the north with the offer of more political and social autonomy. In turn, this internal Diaspora known as the Great Migration led to demographical shifts in northern urban areas. Thus, a greater response to the metastasized black pathogen was required in order to maintain balance in the body social.

The Fair Housing Center of Greater Boston cites that during the period of 1920-1948 racially restrictive covenants was a nationally pervasive phenomenon. Racial covenants are contracts or agreements used to prevent blacks from buying homes in white neighborhoods. The Fair Housing Center cites that these mutual contracts were not only legal binding but were legitimated after the U.S. Supreme Court decision, Corrigan v. Buckley, permitted their use.\textsuperscript{29} During the period of 1934-1968 the practice of redlining became popularized. Similar to racial

\textsuperscript{28} Angela Davis, \textit{Are Prisons Obsolete} (Seven Stories Press, 2011). 35.
covenants, redlining is the practice of precluding, limiting, or over-charging financial services to people from certain neighborhoods, predominantly people of color. The red lines on housing maps that carefully delineated and separated the affluent white neighborhoods from the poor white and black neighborhoods were significant; these policies represented the herald of the defensive response against the black pathogen. The Home Owner’s Loan Corporation, the Federal Housing Administration, the banking industry, and the insurance industry referred to these maps as the criteria for lending decisions, thereby institutionalizing segregation. One of the newest modes of housing discrimination that succeed redlining emerged in the 70’s continue to this day, exclusionary zoning. Local ordinances stipulate zoning requirements and create standards for buildings or developers. These zoning policies are sometimes used to exclude the poor and people of color from moving to the suburbs.

Racial covenants, redlining, and exclusionary zoning are discriminatory tactics whose goal is to isolate and confine the black pathogen from the wealth, resources, and neighborhoods that whites previously monopolized. Redlining and other institutionalized and de facto discrimination were essentially managerial tactics whose aim was to isolate and neutralize the pathogen. The policies and actions that made government agencies, industries, economists, and individuals complicit in the maintenance of defensive tactics reaffirm the multipronged nature of power and reinforce the narrative of the black pathogen.

The major implication of the physical and spatial separation of blacks is the creation of neighborhoods that confine blacks to spaces with little opportunity for upward mobility and create inequality. Redlining, racial covenants, and exclusionary zoning create a wealth gap. Unlike slavery where wealth was extracted and the penal system was heavily exploitative, this system is based on isolating blacks from opportunity to achieve wealth. Again, the black
pathogen was perceived as a threat to property values, to racial purity, to civil order—the balance of the social body. The body’s natural first line of defense is to erect chemical and physical barriers to isolate the pathogen.

III. Discarded from the social body

Another phenomenon that significantly contributed to the fruition of the regulatory and defensive carceral system that preys on black male bodies was the transition of the economy from industrial to an information service economy. Blacks disproportionately suffered from this transition, which left many communities with unemployed residents. This created a strain in the social safety net and gave rise to increased drug use. As Davis rightly points out, “Because the economic base of these communities is destroyed, education and other surviving social services are profoundly affected. This process turns the men, women, and children who live in these damaged communities into perfect candidates for prison”30

Both Angela Davis, Loic Wacquant argue that prison is the storage site of the mass of unemployed black working class. In other words, the carceral system is a waste bin for those who bog down the social safety net, mostly black men. Davis writes: “There are thus real and often quite complicated connections between the deindustrialization of the economy—a process that reached its peak during the 1980’s—and the rise of mass imprisonment, which also began to spiral during the Regan-Bush era”.31 The massive prison construction undergone during this period was justified by the supposed rise in crimes, as well as discourses that concealed and normalized the operation of the modes of power that underpinned mass incarceration. These modes of power include surveillance via the over-policing of black neighborhoods, stringent

30 Angela Davis, Are Prisons Obsolete (Seven Stories Press, 2011). 16.
31 Angela Davis, Are Prisons Obsolete (Seven Stories Press, 2011). 17.
drug laws, gentrification and exclusionary zoning. As the black pathogen metastasized, the objective to maintain equilibrium was diffused. In other words, the government was not the single entity reinforcing the narrative of black as criminal, aberration, and deviant, but also agents of the state such as police, and non-state agents such as private industries, real estate agents, and land developers. At this point, there is little semblance of the disciplinary technology of power. There is nothing didactic, pastoral, or rehabilitative of the defensive and regulatory penal system. A counterargument to claims of rehabilitation is the wholesale divestment of grants available to prisoners and convicts by a clause in the Higher Education Act of 1998 that prohibits students convicted of a drug related offence from receiving any public grant, loan, or work assistance.\footnote{Loïc Wacquant, “Race as a Civic Felony”\textit{ International Social Science Journal} 57, no. 183, (2005): 130.} Although, the defensive system is not rehabilitative or reformative, it continues to employ the panoptic method of surveillance and the method of normalizes power.

\textbf{The veil of Discourse}

Among the many inroads of the Civil Rights Movement was exposing state racism and securing the passage of legislation that sought to counteract it. State racism was no longer palatable in the eyes of society. But by this time the construction of the black pathogen was ingrained in the social imagination. The new dilemma was how to conceal new modes of power whose target was the black pathogen in a social body where conspicuous state racism was no longer tolerable. Political rhetoric of law and order was the new cry coming from southern governors and law enforcement officials by 1950. The purpose of this rhetoric was to incite white opposition to the Civil Rights Movement.\footnote{Michelle Alexander. \textit{The New Jim Crow: Mass incarceration in the Age of Colorblindness}. (New York City: The New Press, 2012) 40.} Instead of hailing the virtues of segregation
they modified their message to warning against the dangers of those out of order. Michelle Alexander describes the rise of law and order talk in her book *The New Jim Crow: Mass Incarceration in the age of Colorblindness*, she writes: “Positions taken on crime policies typically cohered along lines of racial ideology.” While Nixon did racialize crime through his firm stance on law and order and while it must be noted that the rapid and intense expansion of prison construction occurred during Regan’s tenure as president, use of this discourse is not partisan. The prison population continued to expand during Clinton’s tenure as president, demonstrating that both democrats and republicans adopted the rhetoric of law and order to justify mass incarceration and conceal the modes of power operating therein.

The Negro Family and the Case for National Action published in 1965 by then Assistant Secretary of Labor and sociologist Daniel Patrick Moynihan is demonstrative of the managerial style of governmentality. The title clearly is suggestive of his motive to make an argument for action, but first he attempts to understand the subject. In order to effectively maintain the population—the social body, one must fully comprehend the threat. Moynihan’s claim is that the central role of the matriarch in the black family structure weakens the family structure and sends the family members on an endless ‘tangle of pathology’. Moynihan explains:

“Nonetheless, at the center of the tangle of pathology is the weakness of the family structure. Once or twice removed, it will be found to be the principal source of most of the aberrant, inadequate, or antisocial behavior that did not establish, but now serves to perpetuate the cycle of poverty and deprivation.”

He continues to explain why black families are doomed for the spin on the tangle of pathology:

34 Ibid., 43.
“Ours is a society which presumes male leadership in private and public affairs. The arrangements of society facilitate such leadership and reward it. A subculture, such as that of the Negro American, in which this is not the pattern, is placed at a distinct disadvantage.”

In other words, he is asserting that the matriarchal structure stymies the progress of the group because of the patriarchal structure of society. Interestingly, Moynihan states that blacks and whites merely have familial arrangements that diverge—one is not better than the other. However, it is the black family whose arrangement is viewed as anomalous, a deviation from the sexual politics and the nuclear family structure of whites. It is safe to say that Moynihan was merely seriously probing at the root of black conditions in the United States (he too uses the genealogical approach starting from slavery). And yet, it is telling that he utilized a language that monolithically renders blacks as pathological in the social consciousness. To his benefit, he acknowledges the ways that blacks have involuntarily been subjected to racial domination and segregation that has resulted in the inversion of roles of the male and females; however, he also has to be credited with solidifying the black pathogen narrative. Moynihan and the political rhetoric of law and order are just a few examples of how discourse has been used as a mode to conceal and justify the inequalities produced by the mass incarceration of black and brown bodies.

**Constructing Inequality**

Although I have writing on mass incarceration in abstract terms, it is truly far more nefarious than I have alluded to. The Sentencing Project.org cites that more than 60% of the people currently in prison are now racial and ethnic minorities. They also cite the statistic of one

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36 Ibid.
in every ten black males in their thirties will be in prison on any given day. The ACLU recently released a report that centers on nonviolent offenders who have been sentenced to life in prison without the possibility of parole. The report states that in the federal system, Blacks were sentenced to life without the possibility for parole for nonviolent crimes at twenty times the rate of whites.  

These extreme sentences are emblematic of the ways in which the interplay of institutions seeks to expel and neutralize the black pathogen for as long as possible—often times till death. Unlike the panoptic system where transgressors of the law were reformed through subjection to catechisms or rigorous manual labor, the defensive/regulatory carceral system does not operate with the intention of reintegrating the offender into society precisely because black’s perceived character or genetic makeup is beyond behavioral or psychological modification. Another factor is the increasing profitability of prison. The mistreatment and neglect experienced by many offenders, often in the form of excessive time spent in solitary confinement is worth noting because it psychologically deteriorates the subject. People are literally languishing to death in prison cells. If convicts or detainees are not subjected to physical death in prison, their presence in the defensive system guarantees their social death. By this I mean the mass incarceration of black male bodies is extremely consequential.

Loïc Wacquant expounds on the consequences of incarceration for blacks in his article, “Race as a Civic Felony”. These consequences include the prohibition of felons from voting in most states, exclusion from welfare assistance, disability funds, and disqualify from receiving housing subsidies and even government employment. Wacquant writes: The penal alienation of today’s convicts makes them social similes if not legal replicas of antebellum slaves in yet
another respect. Michelle Alexander echoes this thought in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, in which she firmly asserts that mass incarceration is a racial caste system because of its similar effects of Jim Crow in terms of disenfranchisement and discrimination. In the same vein, Davis claims that the exploitation of black labor in prisons and the profiteering of black bodies in certain spaces bear uncanny resemblance to the exploitative nature of the convict leasing system and chain gangs.

The far reaching implications of this phenomenon are precisely why we need broader and more radical theoretical approaches to conceptualizing mass incarceration. Approaches that probe at the root of the problems while recognizing the centrality of the subject in this phenomenon are required. However, at the same time, approaches that discard the primacy of the subject, for example Foucault’s theories, maintain value. While I find myself concurring with Jonathan Simon in his article “Beyond the Panopticsim” when he states that, “clinging to Foucauldian panoptic lens obscures the disappearance of disciplinary nature of the penal system”, I still maintain that some of the technologies of power that were used in the disciplinary penal system have persisted to the defensive/regulatory penal system. This is precisely the reason why I don’t discount the relevance in employing a Foucaudian lens to theorize the mass incarceration of black male bodies, but rather, find that it lends itself to be supplemented by other voices that are more forthright on the issue of race. I also found that Foucault’s theory of governmentality and state racism prove more fruitful in producing broader ways to theorize mass incarceration. Foucault characterizes state racism as a form of governmentality. In

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39 Ibid., 137
Comprehending the managerial tactics of governmentality we create the possibility of new strategies, new ways to address these problems. Perhaps a new form of governmentality prompted by political change, demographic shifts, or radical calls to mobilization will deconstruct the myth of the black pathogen and other events that underpinned the phenomenon of mass incarceration.


