

## Roundtable on the Future of Justice Policy

Examining Justice Reform and the Social Contract in the United States: Implications for Justice Policy and Practice

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### “Maximum Feasible Participation:”

#### A Precedent for Social Change in the Twenty-First Century

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As policymakers, scholars, and the public are increasingly recognizing, a transformation of the prevailing domestic policies will be necessary to evolve from our current mass incarceration society. The real—and perhaps the only—long-term solution requires a major infusion of resources and strategies that would empower residents in overpoliced and underprotected communities to transform their own conditions on their own terms. The most marginalized among us must have a more meaningful role in shaping the domestic programs that directly impact their everyday lives, and legislation providing the necessary funding must be enacted to support those initiatives.

Fortunately, the question of how to move beyond a criminal justice system that perpetuates racism and poverty is entering national conversations in unprecedented ways. Coverage of police misconduct and brutality against people of color can be found in the pages of major news outlets on a daily basis. Social movements for equal justice continue to gain momentum. And across political and ideological lines, many Americans are outraged by the brutal social and economic costs of maintaining the largest prison system on the planet. There is a growing mandate to support policies that will rid the nation of the moral and fiscal burden of mass criminalization.

We have not seen this level of commitment to egalitarian values since the Kennedy and Johnson administrations, when federal policymakers made combating racial discrimination and poverty a central goal of domestic policy. The New Frontier and the Great Society established critical reforms that are still with us, such as the Head Start pre-kindergarten program. Yet the policies John F. Kennedy and Lyndon Johnson introduced during the 1960s favored equal opportunity, manpower training, and “self help” programs that would change the behavior of “antisocial” and “alienated” citizens who suffered from racial discrimination in order to inspire them to become more “productive” citizens. Unfortunately, the strategy of fighting the effects of inequality rather than its root causes failed to address the larger structural issues of failing school systems, mass unemployment, and substandard housing.

To capitalize on the current momentum in our national discourse, policymakers and activists alike must not fall into the logical trap that ultimately undermined the work of Kennedy and Johnson. The social programs of the 1960s placed the onus on low-income African Americans themselves to “fix” the problem of racism as they experienced it, rather than to transform the institutions that reproduce racism themselves. In practice, the equal opportunity programs of the War on Poverty translated to “helping the disadvantaged help himself,” in the words of Lyndon Johnson’s attorney general, Ramsey Clark.<sup>1</sup> Thus, instead of identifying larger historical and systemic

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<sup>1</sup> September 17, 1965, “Report of the President’s Task Force on the Los Angeles Riots, August 11–15, 1965” (Revised Master), folder “Califano: Los Angeles Riots, Ramsey Clark Report,” box 47, Office Files of Joseph A. Califano, 1, Lyndon Baines Johnson Presidential Library.

patterns or working to combat the destructive pathology of *white* American racism, policymakers expected black citizens to cope with their own experiences of marginalization.

The inclination on the part of lawmakers and officials to remove themselves from accountability for limited housing options, job prospects, and violence in low-income communities and to blame black citizens themselves for the consequences of institutional racism is alive and well today. Take, for example, Democratic presidential hopeful Pete Buttigieg's response to a question he received during a debate in February 2020. During Buttigieg's tenure as mayor of South Bend, Indiana, arrests of black residents for marijuana possession were four times higher than that of their white counterparts. While moderating the debate, ABC News Live anchor Linsey Davis pressed Buttigieg on his role in exacerbating the criminalization and incarceration of black youth. "One of the strategies that our community adopted was to target when there were cases where there was gun violence and gang violence," Buttigieg explained from the stage, "which was slaughtering so many in our community, burying teenagers, disproportionately black teenagers."<sup>2</sup> These comments are squarely within a much longer history of the tendency of policymakers and officials to blame African Americans themselves for the consequences of racism, as those consequences manifest through institutional racism in the form of housing options, job prospects, and harm in low-income communities.

In effect, Buttigieg suggested that ultimately the central issue was not racial profiling and increased criminal justice supervision. Instead, Buttigieg ultimately blamed the harm citizens living in already vulnerable neighborhoods inflict on one another for socioeconomic problems and disparate arrest rates. Until Mayor Buttigieg and others are willing to fully confront the impact of white racism, and the ways they have benefitted from the systematic exclusion, exploitation, and extraction from people of color, the "blame the victim" approach to solving the racial problems that have marred this country since its founding will remain.

As a first step in moving toward transforming the justice system, we must revisit the principles of community representation and grassroots empowerment that guided the early development of Great Society programs. Congress enshrined its commitment to fostering community involvement as "maximum feasible participation" in the Economic Opportunity Act of 1964—the inaugural legislation of the War on Poverty. Based on the Saul Alinsky method for organizing, the idea of maximum feasible participation emphasized that only the widespread participation of local people, working with local agencies supported by the federal government, could change unequal circumstances. As officials in the Office of Economic Opportunity (OEO) saw it, maximum feasible participation meant that the federal government had a responsibility to "assist the poor in developing autonomous and self-managed organizations which are competent to exert political influence on behalf of their own self-interest."<sup>3</sup> The Johnson administration and Congress charged the OEO with ending the systematic exclusion of poor people from urban social welfare programs and assisting them in developing their own solutions to cure and prevent the systems of poverty. Unlike the "blame the victim" approach later adopted by Buttigieg and others, during the 1960s national policymakers recognized the devastating impact of historical discrimination and sought to use national resources to end racial inequality by empowering marginalized communities.

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<sup>2</sup> Ella Torres, "Pete Buttigieg Pressured at New Hampshire Debate Over Marijuana Arrests of Black People as Mayor," *ABC News* 7 Feb, 2020. Available at:

<https://abcnews.go.com/Politics/pete-buttigieg-faces-pressure-marijuana-arrests-black-people/story?id=68842579>

<sup>3</sup> As defined in the *Community Action Program Workbook* the OEO distributed to local agencies in March 1965. Quoted in Stephen M. David, "Leadership of the Poor in Poverty Programs," *Proceedings of the Academy of Political Science* 29, Urban Riots: Violence and Social Change (1968): 86–100, 93, 91.

For activists, organizers, and residents of segregated low-income neighborhoods throughout the United States, maximum feasible participation opened the door for radical approaches for disrupting existing racial hierarchies and exercising the claims to self-determination demanded by mainstream civil rights leaders in the mid-1960s. For instance, with support from the OEO, the Mobilization for Youth program in Manhattan's Lower East Side confronted public school administrators, the New York City Department of Welfare, and the police department. And in Chicago, the Woodlawn Organization received a \$1 million development grant to work with youth gang members. It was the first—and only—time that grassroots organizations received direct federal funding to address social problems in their communities on their own terms.<sup>4</sup>

The efforts of the program in New York, Chicago, and other major American cities changed the lives of many of the most marginalized and isolated citizens in important ways. In Syracuse, the Community Development Corporation sought to assist low-income residents in improving their immediate conditions. Federal funding enabled various neighborhood organizations to demand lower rents from unresponsive slum landlords so that parents had enough disposable income to adequately feed themselves and their children. Protests at city hall fostered critical changes in public housing eviction policies to prevent needy families from sleeping on the streets. Sit-ins eventually led to the establishment of public recreational facilities, providing children with places to play after school and on weekends. And calls for proper garbage disposal led to a more humane environment in deprived neighborhoods overall.<sup>5</sup>

The tragedy of the Great Society—and, arguably, every other domestic social program of the twentieth century—is that the most promising principles of community representation and grassroots empowerment were never given a chance to work. The “blame the victim” approach to urban policy quickly overtook more transformative notions of liberal reform. Although the principle of maximum feasible participation did not cause much debate in Congress initially, it created power struggles over the administration and control of the War on Poverty. The approach also tested President Johnson's commitment to his own rhetoric about equal opportunity. With federal funds supporting campaigns against mayoral administrations and protests against local police departments, municipal officials bristled. Syracuse Mayor William Walsh asserted that maximum feasible participation was “fostering class struggle.”<sup>6</sup> Congressional Republicans worried that federal funds would be used to build radical bases in low-income areas, fueling a major voter registration drive for the Democratic Party.

As criticism of maximum feasible participation mounted among local officials like Mayor Walsh, who saw early Great Society programs as working against their self-interest, the possibility that the War on Poverty would lead to fundamental social transformations brought about by citizens themselves diminished. Johnson had pledged in his first State of the Union address of 1964 to “not only relieve the symptom of poverty but to cure it, and, above all, prevent it.”<sup>7</sup> In reality, the vast majority of War on Poverty programs offered a more cautious approach to relieving American poverty, committing to vocational training and remedial education programs in the absence of job creation measures or an overhaul of urban public schools. Despite the administration's rhetorical gestures,

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<sup>4</sup> See Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016), Chapter 1; Alice O'Connor, *Poverty Knowledge: Social Science, Social Policy, and the Poor in Twentieth-Century U.S. History* (Princeton, NJ: Princeton University Press, 2001), 171.

<sup>5</sup> Ibid.

<sup>6</sup> Walsh quoted in Susan Abrams Beck, “The Limits of Presidential Activism: Lyndon Johnson and the Implementation of the Community Action Program,” *Presidential Studies Quarterly* 17, Bicentennial Considerations and the Eisenhower and L. B. Johnson Presidencies (1987): 541–557, 546.

<sup>7</sup> Lyndon B. Johnson, State of the Union Address, January 8, 1964, American Presidency Project, available at <http://www.presidency.ucsb.edu/ws/?pid=26787>.

the antipoverty programs focused more on fighting the effects of inequality than on combating its root causes. Promising initiatives that had been designed by grassroots organizations and that received federal funding directly during the first year of the War on Poverty were increasingly required to include public officials and municipal authorities in top-level positions.

In addition to divesting from grassroots initiatives, policymakers and officials consistently dismissed the concerns and ideas for change that emerged within marginalized communities. Shortly after Lyndon Johnson declared the “War on Crime” in 1965, he convened a Presidential Task Force to study the nature of the problem and to assist the administration in developing a blueprint for an unprecedented national law enforcement intervention. Even though national policymakers targeted their investment in low-income black urban communities, the Crime Commission refused the suggestion of one of its members to hold town hall meetings soliciting the views of the African American residents who lived in the communities where an influx of police patrol and surveillance technologies were to be most energetically implemented.<sup>8</sup>

Seven years later, in December 1972, 60 young black gang members disrupted a conference on the problem of youth violence attended by seven hundred people, from Girl Scouts representatives to law enforcement professionals, that the Los Angeles Human Relations Commission had convened. Apparently the youth were upset they had been excluded from the discussion and wanted to share their firsthand perspective. They called upon city officials and administrators to grant them “black control of black community life in all aspects including police, schools, and business” and demanded educational resources, access to employment and job opportunities, and the freedom to move about public space without coming into contact with police or some form of surveillance equipment. The youth wanted to be treated with decency by the forces that were ostensibly intended to keep them safe. They wanted places to play, and to not have to fear police. After 20 minutes of back-and-forth, the young people walked out of the convention center—perhaps because they were fed up with the unresponsiveness of the commission members or because they feared they would be arrested.<sup>9</sup>

Following larger historical patterns, the youth were ignored. The Los Angeles Police Captain found it “outrageous” that “these thugs [made] their so-called demands” in front of a room full of elected representatives.<sup>10</sup> Meanwhile, the panel on police-community relations included an officer reading a prepared statement that did not engage the audience.<sup>11</sup> The recommendations that came out of the program included after school programs, the diversification of police departments, and job training programs. In the face of these notable reforms, the major thrust of public investment in the problem of youth gang violence in the city arrived a year later, in the form of the Total Resources Against Street Hoodlums (TRASH) squad (later, Community Resources Against Street Hoodlums, or CRASH) that was inaugurated out of the 77<sup>th</sup> Los Angeles Police Department precinct in Watts and quickly gained a reputation for widespread harassment, surveillance, and arrest of black youth.<sup>12</sup>

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<sup>8</sup> February 24, 1966 memorandum to James Vorenberg from Bruce J. Terris, subj.: “The Members of the Commission and Poverty,” folder, “Series 12: Task Force on Assessment,” box 214, Records of the President’s Commission on Law Enforcement and the Administration of Justice, Lyndon Baines Johnson Presidential Library.

<sup>9</sup> Quoted in Narda Z. Trout, “Gang Violence Parley Called Nonproductive,” *Los Angeles Times*, December 24, 1972, pg. B1; “Violence in L.A. Schools Comes Under Fire From 3 Directions,” *Los Angeles Times*, December 15, 1972, pg. A1.

<sup>10</sup> Quoted in Jack V. Fox, “Atmosphere of Fear Was So Thick You Could Cut it,” *Los Angeles Sentinel*, January 25, 1973, pg. A9.

<sup>11</sup> *Ibid.*

<sup>12</sup> For a discussion of CRASH, see Max Felker-Kantor, *Policing Los Angeles: Race, Resistance, and the Rise of the LAPD* (Chapel Hill: University of North Carolina Press, 2018); Donna Murch, “Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs.” *Journal of American History* 102, no. 1 (2015): 162-73.

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What might the United States look like today had federal policymakers mobilized behind the principle of maximum feasible participation that steered the early programs of the War on Poverty with the same level and length of commitment as they gave to the War on Crime? Before community action programs were given a chance to work on a wider level and for entire communities rather than for individuals, federal policymakers decided to defund them and switch course.

Imagine if public institutions responded to the request for jobs, recreational facilities, and improved schools and housing that the 60 gang leaders suggested to the Los Angeles Human Relations Commission. Thereafter, the majority of federal grants for low-income youth focused on juvenile detention facilities, security hardware, and social programs staffed by police officers rather than the employment and educational opportunities the youth wanted. Instead, policymakers at all levels of government chose to invest in and support the growth of police forces, court systems, and prisons after Johnson launched his national crime control program. Law enforcement officials quickly assumed a more prominent role in urban life and in social services in low-income neighborhoods as the federal government disinvested from equal opportunity, education, and other social welfare provisions during the Nixon administration and beyond. As a result, aggressive policing practices and mass incarceration have become the foremost civil rights issues of our time.

Due to its own shared set of assumptions about race and its unwillingness to disrupt the racial hierarchies that have defined the social, political, and economic relations of the United States historically, the bipartisan consensus that launched the War on Crime and, later, the War on Drugs, did not believe that black people were capable of governing themselves. Nixon expressed this sentiment overtly to his chief of staff Harry Haldeman. “There has never in history been an adequate black nation,” the president said, “and they are the only race of which this is true.”<sup>13</sup> In a less conspicuous form, Jimmy Carter stressed grassroots participation as a critical component of his administration’s punitive urban program. Yet authorities refused to fund citizen groups such as the League to Improve the Community in Chicago’s Robert Taylor Homes, which advocated strategies that were very much in line with the stated commitments of the administration but sought to implement those strategies without oversight from police and public housing authorities.<sup>14</sup> When Ronald Reagan took office, the rhetoric of community involvement vanished from the domestic policy arena. Stemming from the punitive shift in urban social programs during the previous decade, over the course of the 1980s, law enforcement officers came to provide the primary (and in some areas the *only*) public social services to residents.

The long-term consequences of this misguided policy path can still be felt today—in black youth knowing the insides of jail cells before they go on their first dates, in the millions of disenfranchised felons who have already served their time but will not vote in the 2020 election, in the lessons parents tell their kids about how to comport oneself when the inevitable “fitting the description” police stop happens.

For the first time since federal policymakers introduced the principle of maximum feasible participation in domestic social policy, we are beginning to reckon with the way racism structures our society. In terms of criminal justice reform, we must embrace a vision that includes, but goes well beyond, simply ending the “War on Drugs,” setting free those imprisoned for non-violent offenses, and offering re-entry programs in the failed mold of so many Great Society initiatives. In addition to traditional job training and remedial education programs, the formerly incarcerated need concrete routes to actual and stable employment. This will require significant job

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<sup>13</sup> H. R. Haldeman, *The Haldeman Diaries: Inside the Nixon White House* (New York: G. P. Putnam and Sons, 1994), 66.

<sup>14</sup> Hinton, Chapter 8.

creation programs, access to secondary education within prisons, and an end to restrictions preventing incarcerated citizens from receiving federally funded scholarships for college. Finally, lifting restrictions on access to public services for those with criminal records will begin to reverse the ongoing criminalization of social welfare programs and poor citizens.

Now is the time, and the public and political support exists, to transition from a mass incarceration nation that disproportionately ensnares black and brown people towards a more complete and vibrant democracy. Instead of embracing the misguided politics of “law and order,” we should look back to the unrealized promises of the Great Society. Returning to maximum feasible participation as a guiding domestic policy principle will open an opportunity to confront finally the persistence of racism and inequality in America. For if we are to achieve lasting and meaningful change, instead of being criminalized, low-income citizens—especially those who are deprived of access to clean water, adequate food, sanitation facilities, and basic public services—must be entrusted to lead the effort to rebuild their communities and to be fully integrated into public institutions at all levels.