

## **There but for Fortune**

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The phrase, “There but for fortune, may go you or I,” invites us to narrow the distance between ourselves and those our society judges, punishes, or rejects. It calls us to open our hearts to the common humanity we share with all who struggle with the burdens and risks of life.

It asks us to identify with those whom society insists we reject as flawed, broken, less than fit to live among us. The observation that “It could have been me,” replaces “That worthless idiot,” or “they got what they deserved.”

It could have been me, we tell ourselves. We say, “I remember the time I was tempted to something when no one was looking, that time when I was so angry I almost punched the guy who insulted my wife, or the time when I lied to protect myself from embarrassment. I could have done any or all of those things and still be me. I could have done them and not gotten caught. Or I could have done one of them and gotten caught, found guilty and sent to prison.”

Or the homeless person on the street, poor in cash but rich with the redolence of the unwashed, can call us to remember the times when we’ve been a paycheck or two away from the street but managed to find our way to relative security. It could have been us.

Or the drunk incapacitated by his excesses – there are few among us who haven’t had at least a glimpse of how that could happen – a disappointment, a tragedy, one weekend too many spent seeking the consolation of the bottle – and we, too, could find common ground with those who have stumbled and failed to clear the hurdle of temptation.

I have my own “there but for fortune” moments in my life. One stands out for me. It was in the month of May 1970. As college closed that year, my girlfriend and I decided to hitchhike out west and spend the summer camping in the high peaks of the Colorado Rockies.

Our first ride took us to my old home town of Utica, New York, where I still had many friends. Since we had camping gear, we found a nice place in the woods by a stream to pitch our tent. At least we thought we were out in the woods. Actually, we were almost in someone's back yard. That night, about a dozen people shared our campfire and, being naïve college students in 1970, we shared our marijuana.

The next morning I awoke to the sight of an impossibly shiny black shoe outside the flap of the tent. Leading upward from that shoe was an equally impossibly crisp crease on a pair of pants that led to the shiny badge of a New York State Trooper. There were two of them, and they told us we were under arrest.

They waited patiently as we dressed and packed up our tent and then helped us carry our gear to their car. At the police station we were separated, fingerprinted, photographed, and interrogated. And, before we knew it, we were in a courtroom in front of a judge who told us that he thought that our kind of people were worse than murderers and he wished he could lock us up and throw away the key.

But it turned out that the law under which we had been charged had a clause that gave the arresting officers a considerable amount of influence in the proceedings. They spoke on our behalf and insisted that the charges be dropped. Annoyed as he was, the judge gave us 24 hours to get out of the county.

There but for fortune. It was our good fortune that we were white kids in a white middle-class county arrested by white officers. It was our good fortune that we knew how to behave in the presence of authority. We didn't curse, talk back, or resist. We were polite, and this won the sympathy of the troopers, if not the judge.

It was our good fortune that we weren't arrested in an inner city neighborhood and thrown in jail right away. It was our good fortune that our skin wasn't black or brown. It was our good fortune that we fit people's stereotypes of how nice young people should look and behave.

It was good fortune. It could have been otherwise. I could have spent years in prison for the same offense, followed by even more years on probation, labeled forever as an "ex-con." I could have lost the right to vote. I could have had to

check “yes” on job application forms that asked if I’d ever been convicted of a felony, an answer that would have barred me from most of the better jobs in America. I could have lost access to all government aid and assistance programs, including welfare and college scholarships and loans.

But it was otherwise. When I came down with serious cancer less than a year later, I was poor and unable to work, but the welfare system covered my medical and living expenses, which it wouldn’t have done if I’d been convicted of a felony. But for fortune, it could have been otherwise.

How did all this come to pass? Why was I safe when others weren’t so fortunate? The history of law and order in America is truly amazing. I certainly can’t cover it all, nor can I begin to address the complex problems and issues besetting our system of what we call justice, but I can begin.

I can begin with the story of a woman named Susan Burton, as told by the author, Michelle Alexander, whose book, *The New Jim Crow*, provides some background to the issue and I’ll be drawing on her work this morning. Susan’s 5-year-old son was run over and killed by a police car in Los Angeles. Consumed with grief and without access to therapy or antidepressant medications, Susan became addicted to crack cocaine. She lived in an impoverished black community under siege in the “war on drugs,” and it was but a matter of time before she was arrested and offered the first of many plea deals that left her behind bars for a series of drug-related offenses. Every time she was released, she found herself trapped in an under-caste, subject to legal discrimination in employment and housing.

Or there’s the story of Clinton Drake, a fifty-five-year-old African American man in Montgomery, Alabama, who was arrested in 1988 for possession of marijuana. Five years later, he was arrested again, this time for having about \$10 worth of the drug on him. Facing between ten and twenty years in prison as a repeat offender, Drake, a Vietnam veteran and, at the time, a cook on a local air force base, took his public defender’s advice and accepted a plea bargain, where he would only have to spend five years behind bars.

Once released, Drake found he was forbidden by law from voting until he paid his \$900 in court costs – an impossible task, given that he was now

unemployed and the low-wage jobs he might conceivably find would never allow him to accumulate hundreds of dollars in savings.

How did this come to be? A bit of research reveals that it has more to do with people like Clinton Drake than with me, part of the reason the system treated us so differently.

It started in the South after the Civil War. Freed slaves began to take part in community life, voting in large numbers. Literacy rates climbed, and educated blacks began to populate legislatures, open schools and successful businesses. The number of black elected officials grew from zero in 1867, to fifteen percent by 1870. But the backlash following the Reconstruction Era was as devastating as it was thorough.

The southern states adopted vagrancy laws which essentially made it a criminal offense not to work – and were applied selectively to blacks – and they also adopted laws allowing for the hiring-out of county prisoners to plantation owners and private companies. This established a new system of forced labor.

Convicts had no meaningful legal rights at the time. They were understood, quite literally, to be slaves of the state. Slavery had been abolished with one major exception: slavery remained appropriate as punishment for a crime. A landmark decision by the Virginia Supreme Court actually said that a prisoner is “in a state of penal servitude to the State. . . . He is for the time being a slave of the State.”

During this period, prisoners became younger and blacker, and the length of their sentences soared. The criminal justice system was strategically employed to force African Americans back into a system of extreme repression and control.

What is really fascinating is the character of the national debate concerning these changes at that time. Three factions emerged which still color our debates today.

There were the liberals who emphasized the stigma of segregation and the hypocrisy of a government that celebrates freedom and equality yet denies both on account of race.

There was the conservative philosophy that blamed the liberals for pushing blacks ahead of their proper station in life and into positions they were unprepared to fill, which naturally would lead to their downfall. Their

compassionate solution was to help blacks to know their place and keep them there.

Then there was a third perspective, the radical philosophy, which viewed the privileged classes as conspiring to keep poor whites and blacks locked into a subordinate political and economic position. This populist approach preached the kinship of a common grievance against a common oppressor. It achieved some significant success in finding common ground, but this radical populist perspective was threatening to both the liberals and conservatives.

After a period of tension and upheaval, fueled by an agricultural depression, Northern and Southern whites, liberal and conservative, poor and elite, conspired to produce a system of laws that disenfranchised blacks and discriminated against them in virtually every sphere of life. This new order, known as Jim Crow, was regarded as the “final settlement,” and the “return to sanity.”

This system was stable well into the twentieth century but began to crumble following World War II and the northern migration of many Southern blacks. *Brown v. the Board of Education* in 1954, the Civil Rights Act of 1964, and the Voting Rights Act of 1965 removed many of the legal barriers to full participation by African Americans.

When Martin Luther King began speaking directly of social and economic, rather than purely racial, justice in 1968, the foundations of the new order began to tremble. Historian Gerald McKnight observed that, “King was proposing nothing less than a radical transformation of the Civil Rights Movement into a populist crusade calling for redistribution of economic and political power. America’s only civil rights leader was now focusing on class issues and was planning to descend on Washington with an army of poor to shake the foundations of the power structure and force the government to respond to the needs of the ignored underclass.”

The threat of King’s leadership toward a renewed radical populism required an entirely new response by the power elites of America. Conservative whites began to search for a new racial order that would conform to the needs and constraints of the time. They found they could install a new racial caste system without violating the law or the new limits of acceptable political

discourse, by demanding replacing the cry of “segregation forever” with the demand for “law and order.”

Civil rights demonstrations were characterized as illegal activity, and urban crime was emphasized to underscore the emerging prejudice. Inner city riots further helped to make the conservatives’ case. A coalition emerged which united the powerful with the frightened, which equated civil rights with criminal behavior. In the 1968 presidential campaign, Richard Nixon’s “Southern Strategy” emphasized “that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognize this while not appearing to,” which was summarized as “we’ll go after the racist vote.”

All this set the stage for the even more insidious political culture which blames the poor for being poor, as though poverty was a crime in and of itself. Black “welfare cheats” and their dangerous offspring emerged, for the first time, in the political discourse.

Just as it had at the turn of the 20th century, race became a powerful wedge between what had been a solid liberal coalition based on shared economic interests of the poor and the working and lower-middle classes. The issue of welfare was subtly framed as a contest between hardworking blue-collar whites and poor blacks who were too lazy to work. It was at this time that the phrase “war on drugs” began to be used, along with “welfare queens”.

When President Reagan declared his war on drugs, less than two percent of the American public viewed drugs as the most important issue. He cut enforcement of white collar crime in half and shifted resources to street crime, especially drugs. Funding for drug enforcement soared even as funds for treatment, prevention and education were dramatically reduced.

This was joined by a radical shift in inner city economics. In 1970, more than 70 percent of all blacks working in metropolitan areas held blue-collar jobs. By 1987, when the drug war hit high gear, that number had dropped to 28 percent. Inner city factories had closed, moving to the suburbs where inner city poor couldn’t reach. This radical drop in legitimate employment increased incentives to sell drugs, which led to the crack epidemic. Joblessness and crack swept inner cities precisely at the moment that a fierce backlash against the Civil Rights Movement was manifesting itself through the War on Drugs.

President George Bush Sr. stayed on message, opposing affirmative action and civil rights enforcement while embracing the drug war with great enthusiasm, calling it “the most pressing problem facing the nation,” despite any increase in illegal drug activity to support the claim. A new racial caste system was taking hold based on mass incarceration. Even liberals joined in the discourse of fear leading to support of strict enforcement and mandatory sentences.

Alexander points out that, “Of all parole violators returned to prison in 2000, only one-third were returned for a new conviction; two-thirds were returned for a technical violation such as missing appointments with a parole officer, failing to maintain employment, or failing a drug test. In this system of control, failing to cope well with one’s exile status is treated like a crime. If you fail, after being released from prison with a criminal record, to remain drug free, or if you fail to get a job against all the odds, or if you get depressed and miss an appointment with your parole officer (or if you cannot afford the bus fare to take you there, you can be sent right back to prison – where society apparently thinks millions of Americans belong.”

Are Americans really more criminal than people in other countries? The numbers would suggest that they are. Americans imprison about 740 people per hundred thousand of the population. According to Adam Gopnik in the January 30 *New Yorker* magazine, most developed countries imprison around a hundred per hundred thousand people. It seems that one in every thousand once in a while does a truly bad thing. All things being equal, he suggests, the point of a justice system should be to identify that thousandth guy, find a way to keep him from harming other people, and give everyone else a break.

I thought I was on the cutting edge when I planned this sermon. But last week I was scooped by Pat Robertson, host of the ultra-conservative Christian 700 Club. He said, “I think it’s shocking how many of these young people wind up in prison and they get turned into hardcore criminals because they had a possession of a very small amount of a controlled substance. The whole thing is crazy. . . . I believe we should treat marijuana the way we treat beverage alcohol. If people can go into a liquor store and buy a bottle of alcohol and drink it at

home legally, then why do we say that the use of this other substance is somehow criminal?”

The answer, of course, lies in issues of racial social control more than the risk posed by a drug that is demonstrably less dangerous than either alcohol or tobacco, both of which are legal.

When we focus on the crime associated with drugs, we tend to forget the lessons of prohibition. Eliot Ness and the Untouchables fought the bootleggers but they didn't win the war. Repeal of prohibition put the criminals out of business. Decriminalizing drugs would accomplish the same thing.

I know there is a great deal of information that I've been unable to include this morning, but I hope I've raised the issue. I believe our American war on drugs is dishonest and immoral. It betrays our highest values in the service of our most shameful fears. Our prison system has become the fastest growing private industry in the nation.

The Corrections Corporation of America, which spends millions lobbying legislators to build prisons, advised its investors that “Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. . . . The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them.”

Gopnik calls it what it is: a capitalist enterprise that feeds on the misery of man trying as hard as it can to be sure that nothing is done to decrease that misery.

I believe that our values call us to do otherwise.