Thug Life: Hip Hop's Curious Relationship with Criminal Justice

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Thug Life: Hip Hop’s Curious Relationship with Criminal Justice

Essay

by

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I. Introduction

Hip hop music and culture profoundly influences attitudes toward and perceptions about criminal justice in the United States. At base, hip hop lyrics and their cultural accoutrements turn U.S. punishment philosophy upon its head, effectively defeating the foundational purposes of American crime and punishment. Prison and punishment philosophy in the U.S. is based on clear principles of retribution and incapacitation, where prison time for crime should serve to deter individuals from engaging in criminal behavior. In addition, the stigma that attaches to imprisonment should dissuade criminals from recidivism. Hip hop culture denounces crime and punishment in the United States in a way that essentially defies the underlying penal philosophy that has been adopted and championed by U.S. legislators for decades. Since the inception of hip hop as a musical genre, hip hop artists have rhymed in a narrative format that starkly informs listeners and fans that the entire fundamental regime of prison for crime in the United States is suspect, illegitimate and profane.

As U.S. criminal law and punishment is profane and illegitimate to many, as hip hop artists historically and fiercely argue,¹ then two of the primary foundational

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¹ Professor of Law, West Virginia University College of Law. J.D., Howard University School of Law. This essay was prepared for presentation at “The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture” a symposium held at the West Virginia University College of Law on February 12-13, 2009. Proceedings can be viewed at http://law.wvu.edu/streetknowledge. For terrific research assistance, I am grateful to Kim Matras, West Virginia University College of Law, class of 2009. For providing critical feedback, I am grateful to Lavinia Mann Cummings and Jo Davies. For reading and commenting on various versions of this essay I am grateful to Professor D. Aaron Lacy, Southern Methodist University Dedman School of Law and Professor Anne Marie Lofaso, West Virginia University College of Law. This article draws extensively from the writings of Professor Paul Butler and I must acknowledge his influential role in leading a legal academic exploration of hip hop and its legitimately important place in legal thought and process. Of course, as usual, the politics and errata of this essay belong exclusively to me.
underpinnings of the criminal justice system are lost on the hip hop generation, those of deterrence and stigma. “When . . . incarceration is not sufficiently stigmatized, it loses its value as deterrence.”

Professor Paul Butler powerfully noted in his groundbreaking 2004 Stanford Law Review article, “Much Respect: Toward a Hip Hop Theory of Punishment,” that despite the apparent divide between socially conscious rap and gangsta rap, the hip hop artists and culture agree profoundly on one thing: that in dramatic ways, overwhelming inequities permeate the criminal justice system in the United States. And hip hop harshly critiques crime and punishment inequality in the U.S. Because, as hip hop aggressively describes, crime and punishment in the U.S. is fundamentally unfair, inequitable and biased against people of color and the poor, then punishment for committing certain crimes in America is viewed by the hip hop nation as illegitimate and imprisonment for committing suspect crimes is unaffecting. Hip hop culture has engendered in the global hip hop generation a tradition of exposing racial inequality and social injustice, particularly within the United States.

This essay will begin by exploring the global ascent that hip hop music has traveled by examining just how hip hop has influenced an entire generation toward a profound distrust of the criminal justice system in the U.S., to the point that imprisonment is respected, if not lauded, and deterrence has lost any realistic value for those that engage in “criminal” behavior. After examining hip hop “lessons” through rhyme and baseline, the essay will focus on early rap artists’ very political agenda that included clear messages of defiance and deep disrespect for a criminal justice regime that systematically targeted young

1 See infra Part IV and IV.A.


3 See Butler, supra note 2, at 986.

4 See id.

5 See infra Part III and IV.

6 See infra Part IV.

7 See infra Part IV.A.
African American and urban youth. Then, this piece explores what it means for a “hip hop generation”\(^8\) to come of age while retaining chasm-like perspective differences from the traditional majority on crime and punishment in the U.S., and how this development will impact punishment and justice in America going forward.

II. A Global Footprint

Hip hop music and culture has “conquered” the world.\(^9\) Since hip hop’s humble beginnings in the streets and parks of the Bronx in New York City it has, in thirtysomething years, become a United States phenomenon and a global cultural and entertainment movement.\(^10\) Hip hop artists regularly top the United States and international record sales charts.\(^11\) Motion pictures with hip hop

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\(^8\) See Bakari Kitwana, The Hip Hop Generation: Young Blacks and the Crisis in African American Culture 4 (2003) (defining the hip hop generation as “those young African Americans born between 1965 and 1984 who came of age in the eighties and nineties and who share a specific set of values and attitudes. At the core are our thoughts about family, relationships, child rearing, career, racial identity, race relations and politics. Collectively, these views make up a complex worldview that has not been concretely defined.”); see also Butler, supra note 2, at 986 (“The hip-hop nation is gaining political power, and seems more inclined to use it than has historically been the case with youth or artists.”).

\(^9\) See And You Don’t Stop: 30 Years of Hip Hop, Episode 1, Back in the Day (VH-1, June 2005) (“These young kids came from poverty and desolation and conquered the world.”) (citing Bill Adler, DefJam Records, 1984-90); see also Andre Smith, Other People’s Property: Hip-Hop’s Inherent Clashes With Property Laws And Its Ascendance As Global Counter Culture, 7 VA. SPORTS & ENT. L.J. 59, 68 (2007) (citing Cf. Tricia Rose, Black Noise: Rap Music and Black Culture in Contemporary America, 2 at 19 (1994)) (“Globally, hip-hop art and culture have been adopted by poor youths around the world, who rely on hip-hop to express their visions of the future and frustrations with the present.”).

\(^10\) See Press Release, Nielsen Soundscan, 2008 U.S. Music Purchases Exceed 1.5 Billion; Growth in Overall Music Purchases Exceeds 10%, Dec. 31, 2008, available at http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20081231005304&newsLang=en (last visited March 1, 2009) (Describing top ten album sales in 2008 where Tha Carter III, by Lil’ Wayne ranks first; Paper Trail, by T.I. ranks eighth; and I Am...Sasha Fierce, by Beyonce ranks tenth); see also Smith, supra note 9, at 67 (citing JEFF CHANG, CAN’T STOP WON’T STOP: A HISTORY OF THE HIP-HOP GENERATION at 418 (2005)) (“[m]usic industry executives began signing talent from other continents, such as Africa and Europe.”); see also id. at 59 (“young Palestinian and Brazilian youths have embraced hip-hop as their way of expressing dissatisfaction with their social order . . . .”).
themes chart regularly on box office reports, both in the U.S. and internationally. Hip hop artists have become record moguls, international movie stars, clothing line designers, stars of reality television programming.


and world renowned collaborators. Hip hop studies programs have sprung up throughout the Academy and a burgeoning body of literature has documented this global ascent. In a relatively short period of time, hip hop has become a dominant cultural force in the world and in many ways has become the voice of a generation.

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20 See Folami, supra note 19, at 253 (“Despite its commercial successes and commodification, gangsta rap must continue to be contextualized within its hip hop origins, as it still gives voice to what would otherwise be an invisible and marginalized group of Black and Latino male youth.”); see also M.K. ASANTE JR., IT’S BIGGER THAN HIP HOP: THE RISE OF THE POST-HIP-HOP GENERATION (2008); CHANG & D.J. KOOL HERC, supra note 19, at Introduction (“Hip-hop is the voice of this generation. Even if you didn’t grow up in the Bronx in the ’70s, hip-hop is there for you. It has
This global movement, however, sprung from very humble roots. Rap music and hip hop culture was dismissed at its inception as a fad and was widely panned by critics and the majority public as an unimportant “flash in the pan” musical movement. The general public seemed content to ignore hip hop and its accoutrements (i.e., break dancing, graffiti, deejaying, etc.) when the movement was confined to the inner city of major U.S. metropolises. Thus, when the 1970s and 1980s saw The Sugar Hill Gang release “Rapper’s Delight,” Africa Bambaata release “Planet Rock,” Kurtis Blow release “Basketball” and “If I Ruled the World,” and Whodini release “Five Minutes of Funk,” legislators and law enforcement paid little heed to this nascent movement.

However, when in the 1980s, hip hop began creeping into the cassette players and minds of white American suburban youth, particularly with aggressive, violent and counter culture lyrics, the U.S. general public and its legislators and law enforcement, began to take urgent notice. When Public Enemy released “It

become a powerful force. Hip-hop binds all of these people, all of these nationalities, all over the world together.”)


Hip-hop words from what was once an underclass subculture are now common parlance among America’s youth. . . . Hip-hop, as the culture of rap is called, originated among young blacks in the Bronx in the 1970’s. Instead of fading like many previous fads, rap’s energy has become increasingly irresistible to an international audience of teenagers and pre-teens. As in other subcultural trends that have matured into mass phenomena, rap language and style are entering older, more racially diverse, middle-class and suburban communities. . . . ‘The mainstream always hoped it would be a fad that would die,’ Mr. Bambaataa said. But instead, he maintained, the distinctive hip-hop vocabulary, clothes and culture has been important in empowering and giving status to an impoverished and isolated generation of urban young people that society found threatening.

Id.
Takes a Nation of Millions to Hold us Back” and “Fear of a Black Planet,” featuring “Don’t Believe the Hype,” “Black Steel in the Hour of Chaos,” “Fight the Power” and “911 is a Joke,” when NWA released “Straight Outta Compton,” featuring “F**k the Police” and “Gangsta Gangsta,” when Boogie Down Productions and KRS-One released “Criminal Minded” and “By All Means Necessary,” and when Ice-T released singles “6 in the Morning” and “Cop Killer,” hip hop suddenly became a lightning rod of attention and criticism. This new-found status as controversial lightning rod came to be, not just because of the explicit political and violent counter culture messages, but because these messages were being heard and received widely by inner city youth and also by white suburban youth across the country. In addition, as Professor Andre

23 See Collins, supra note 22 (“Like early rock-and-roll, rap’s tough sound and aggressive esthetic can be abrasive and anti-authoritarian, raising concern among some parents and critics about hip-hop’s sexual explicitness, macho swaggering and association with violence. . . . ‘The cultural police are always threatened by new movements, and greet them unfailingly with hysteria.’”).


The most significant response to New York hip-hop, though, came from Los Angeles, beginning in 1989 with N.W.A.’s dynamic album Straight Outta Compton. N.W.A. (N****z With Attitude) and former members of that group—Ice Cube, Eazy E, and producer Dr. Dre—led the way as West Coast rap grew in prominence in the early 1990s. Their graphic, frequently violent tales of real life in the inner city, as well as those of Los Angeles rappers such as Ice-T (remembered for his 1992 single Cop Killer) and Snoop Doggy Dogg and of East Coast counterparts such as Schoolly D, gave rise to the genre known as gangsta rap.

Id.; PUBLIC ENEMY, IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam Records 1988); PUBLIC ENEMY, FEAR OF A BLACK PLANET (Def Jam Records 1990); NWA, STRAIGHT OUTTA COMPTON (Ruthless Records 1988); BOOGIE DOWN PRODUCTIONS, CRIMINAL MINDED (B-Boy Records 1987); BOOGIE DOWN PRODUCTIONS, BY ALL MEANS NECESSARY (Jive Records 1988); ICE T., 6 In The Mornin’, on DOG ‘N THE WAX (YA DON’T QUIT-PART II) (Techno Hop Records 1986); ICE T., Cop Killer, on BODY COUNT (Sire/ Warner Bros. Records 1992).

Smith argues, hip hop openly defied traditional property laws across the board, including intellectual property and municipal property codes.26

Despite a period of intense criticism and attempts to discredit and eradicate hip hop music, including aggressive attacks made by the FBI,27 CIA, local law enforcement across the United States,28 Tipper Gore29 and Dolores Tucker,30 hip

(declaring that “[m]arket studies indicate that about seventy-five percent of people who buy hip-hop music are non-black.”).

26 See Smith, supra note 9, at 69 (discussing early hip hop’s civil disobedience in the form of house parties and park performances held without required permits or paying for electricity, unlicensed radio stations known as “pirate stations” playing hip-hop across the country, music sampling, and illegal production and distribution of records and tapes.)


28 See James LeMoyne, Linelight Nothing New for Sheriff in Rap Case, N.Y. TIMES, Jun. 26, 1990, available at http://query.nytimes.com/gst/fullpage.html?res=9C0CE5D81638F935A1575SC0A966958260&n=Top%2FReference%2FTimes%20Topics%2FSubject%2FPornography%20and%20Obscenity (last visited Mar. 13, 2009) (discussing Broward County Sheriff Nick Navarro’s “successful effort to have 2 Live Crew’s sexually explicit record album ‘As Nasty as They Wanna Be’ declared the first legally obscene record in America.”); see also The Internet Movie Database, Biography for Ice-T, available at http://www.imdb.com/name/nm0001384/bio (last visited Mar. 2, 2009) (“[Ice-T’s] most infamous song, the heavy metal ‘Cop Killer,’ was one of the major battles in the cultural wars of the 1990s, in which cultural conservatives enlisted the Moses of the right wing, Charlton Heston, to get Ice-T dropped from his then-label, Sire/Warner Bros.”).

29 See EMMETT PRICE, HIP HOP CULTURE 74-75 (ABC-CLIO 2006) (discussing the Tipper Gore led formation of Parents’ Music Resource Center and its goal of banning explicit material on recordings in rap, rock, and heavy metal music and the RIAA’s introduction of a uniform labeling system for records with explicit content reading “Parental Advisory – Explicit Lyrics.”).

30 See RUSSELL A. POTTER, SPECTACULAR VERNACULARS: HIP-HOP AND THE POLITICS OF POSTMODERNISM, 95 (SUNY Press 1995) (“In 1994, the reaction against this particular genre
hop has not just survived, but has influenced and dominated a generation—the hip hop generation. Hip-Hop has assumed a central role in molding the destinies of a whole generation of young people.

Simply stated, hip hop music and its counter culture exploded upon U.S. and global consciousness. From the 1980s through 2009, hip hop culture has grown in its power and influence. Mighty debate has raged during these three decades as to whether hip hop’s influence has been a positive force or a destructive mechanism, but few still believe or argue that hip hop will fade as a mere cultural footnote.

The genuine power and robust influence of hip hop and its generation was on clear display during the 2008 United States Presidential election cycle. President Barack Obama was fueled to victory in the historic 2008 election by many various supporting constituencies; one of the most important, that drove Obama to the most powerful position in the world, was the hip hop generation.

Socially reached a crisis point in the form of congressional hearings instigated by Dr. C. Delores Tucker. Dr. Tucker . . . took offense to ‘gangsta rap’ lyrics, and organized a series of protests in the Washington, D.C. area. . . . Unlike Tipper Gore and her dormant Parents’ Music Resource Center, Tucker wanted more than warning labels; she demanded an outright ban on ‘gangsta’ rap records.”).

31 See KITWANA, supra note 8, at 4 (defining the hip hop generation); see also Butler, supra note 2, at 986 (discussing the “hip-hop nation”).


conscious rapper Talib Kweli backed and campaigned for President Obama, and referred to him as not just the first black President, but the first hip hop President.\(^{34}\)

Rappers like Lil’ Wayne, Young Jeezy, Jay-Z and Nas rallied their fans behind President-elect Barack Obama’s campaign. And like their hip-hop forefathers, the kings and queens of rap preached about social justice, the economy and the power of democracy.\(^{35}\)

Dr. Cornel West, when reflecting upon the historic campaign waged by Barack Obama for the presidency of the United States, recently mused:

I would go as far as to suggest that there is a good chance that there wouldn’t even be an ‘Age of Obama’ without hip hop, given the fundamental role that young people played in galvanizing the whole campaign. I was there in Iowa when there was just a few of us. . . . Disproportionately young, disproportionately white and


The challenge that Barack Obama had was really to be able to wink to the hip-hop community and say, “I really can’t acknowledge you in the mainstream, but understand that I’m hearing what your critique is, I’m hearing what your concerns are, and you now have a wide-open space in the so-called underground . . . to talk about why my candidacy is important.” [Professor Mark Anthony] Neal says. And I think many of the rappers, particularly the very visible mainstream rappers, understood that strategy, because it’s a strategy that they employ all the time, also. There’s a version of, for instance, Snoop Dogg that sells records, but that’s a very different version of Snoop Dogg that’s sitting with Larry King talking about the election.

Id.
when we stole away they were all listening to hip hop. And I am not talking about just Eminem. . . . Hip hop doing what? Opening young people to the humanity of other young black people whose conditions have been overlooked.  

At bottom, as hip hop has become the voice of a generation, and recognizing the sizeable global footprint that hip hop has created, two things seem clear: first, as the hip hop generation grows up, some of its members will become future leaders, including legislators, educators, lawyers, scholars and philosophers; and second, these leaders and educators will bring with them into their leadership roles the images, lessons and stark critiques that accompany all authentic members of this generation. As hip hop is truly impacting an emerging generation of leaders and scholars, then society should pay very close attention to the messages and lessons that hip hop has taught and continues to teach its generation.

Particular awareness should be paid to the one lesson upon which all of hip hop seems to agree, both “gangsta” and “socially conscious”: that the United States system of crime and punishment is inequitable, unfairly administered and purposely aimed to disempower people of color and the voiceless.

III. “The Educational Level I’m Giving the People”

While many different iterations exists in the world of hip hop music and culture, a common division often cited is that between socially conscious hip hop and the hip hop that focuses on violence, misogyny and gaining riches (“bling” or “gangsta rap”), which permeates much of what is released for public consumption these days. While too simplistic, many commentators agree that

36 Dr. Cornel West, Professor, Princeton University, Keynote Address at the West Virginia University College of Law, Symposium, The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture (Feb. 13, 2009) (transcript on file with author) (describing hip hop “at its best” as a movement that inspires and affects listeners based on its authenticity and willingness to deal with the reality of pain, inequality and disappointment in life, when most Americans avoid dealing with difficult U.S. issues of racism, sexism inequality, poverty and powerlessness).

37 See And You Don’t Stop: 30 Years of Hip Hop, Episode 1, Back in the Day (VH-1, June 2005) (Interview with Ice-T).

some type of divide exists in hip hop between that which is positive and uplifts the black and inner city community (socially conscious rap) and that which is negative and serves to degrade women, perpetuate violence, maintain stereotypes and injure the black and inner city community (bling or gangsta rap). One reason that this characterization is too simple, is because many "gangsta" rappers release records that could be characterized as positive and uplifting, while many "socially conscious" rappers, release music that could be characterized as misogynistic or violent. As Professor Pamela Bridgewater has noted, hip hop refuses to apologize for the many and often complex inconsistencies that it portrays.

Still, very early on, both socially conscious hip hop artists and gangsta rappers began to understand the power of influence that they could wield in "molding the destinies" of its fans and adherents. In the 1980s, "socially conscious" rap stars KRS-One and Public Enemy began speaking clear messages to the public/fans, with albums like "Edutainment" and songs like "Fight the
Hip hop stars became keenly aware of their burgeoning influence and many took it upon themselves to educate the hip hop generation.

Hip hop legend Tupac Shakur recognized this influence when he boldly stated:

“I guarantee that I will spark the brain that will change the world.”
– Tupac Shakur, Interview for VH-1

Gangsta rap pioneer Ice-T described this burgeoning influence in particularly savvy terms when responding to critics of his stark realist hip hop lyrics by boldly proclaiming that the hip hop stars of the 1980s and 1990s would truly influence a nation:

They are not really after me for that, they [law enforcement and critics are] after me because of the educational level I’m giving the people. And I’m telling them, I am giving them the guts to say, “F**k ‘em.” See, this is what scares them. They are scared of one brother yelling out “the system can ’kiss my a**.” This could cause a problem.

They are also afraid of the fact that kids that go to law schools, Harvard and all these are listening to my album, think its dope and these kids are the next ones that are going to be sitting on the Supreme Court. Next, what you are going to have in five years is that the Supreme Court is going to be wearing Too Short, Ice-T, Yo-Yo, Ice Cube t-shirts. The country will be f**ked, as far as they’re concerned. I think it will be a great place.
– Ice-T, Interview for VH-1

/publicenemy/fightthepower, on DO THE RIGHT THING – SOUNDTRACK (Tamla 1989); see also PUBLIC ENEMY, Fight the Power, on FEAR OF A BLACK PLANET (Def Jam/Columbia Records 1990); Public Enemy: Fight the Power video, YOUTUBE, available at http://www.youtube.com/watch?v=SRpdij3GVo (last visited Feb. 26, 2009).

See And You Don’t Stop: 30 Years of Hip Hop, Episode 1, Back in the Day (VH-1, June 2005) (Interview with Tupac Shakur).

See See And You Don’t Stop: 30 Years of Hip Hop, Episode 1, Back in the Day (VH-1, June 2005) (Interview with Ice-T).
Professor Smith not only recognizes the influence that hip hop artists have in educating America’s hip hop generation, he also opines that these artists have influenced the perspectives of listeners across the world:

For many of the world’s poor and non-propertied, the emergence of hip-hop culture has represented a powerful movement against the propertied and the social order maintaining their wealth. Surely, Public Enemy’s song “Fight the Power” promoted hip-hop globally as an art form capable and worthy of adoption by those struggling for economic or social justice. . . .

[I]t is not surprising that, for example, young Palestinian and Brazilian youths have embraced hip-hop as their way of expressing dissatisfaction with their social order, as do rebellious suburban teenagers in the U.S.46

As hip hop has roared to an ever increasing apex in connection with its power, influence and global impact, and as hip hop artists recognize this influence and impact, then it behooves the traditional majority to sit up and recognize what this global genre is saying about crime, punishment, inequality and imprisonment in the United States and across the world.

IV. What Hip Hop Teaches About Crime, Punishment and Imprisonment

Recently, superstar hip hop artist Lil’ Wayne released the following song/critique of the U.S. system of punishment:

I’m just a soul whose intentions are good;
Oh Lord, please don’t let me be misunderstood.

I was watching T.V. the other day right;
Got this white guy up there talking about black guys;
Talking about how young black guys are targeted;
Targeted by who? America

You see one in every 100 Americans are locked up;
One in every 9 black Americans are locked up;

46 See Smith, supra note 9, at 60.
And see what the white guy was trying to stress was that the money we spend on sending a mothaf**ka to jail, A young mothaf**ka to jail;
   Would be less to send his or her young a** to college;

   See, and another thing the white guy was stressin’ was that our jails are populated with drug dealers, you know crack cocaine stuff like that;
   Meaning due to the laws we have on crack cocaine and regular cocaine;
   Police are only, I don’t want to say only right, but sh*t, only logic by riding around in the ‘hood all day;
And not in the suburbs, because crack cocaine is mostly found in the ‘hood, you know where I’m going;
   But why bring a mothaf**ka to jail if it’s not goin’ to stand up in court;
Cause, this drug ain’t that drug, you know, level 3, level 4 drug, sh*t like that;
   I guess it’s all a misunderstanding;

   I sit back and think, you know us young mothaf**kas you know, that 1 in 9;
   We probably only selling the crack cocaine because we in the ‘hood;
   And its not like in the suburbs, we don’t have what you have;
   Why? I really don’t want to know the answer;
   I guess we just misunderstood, huh

   You know, we don’t have room in the jails now for the real mothaf**kas;
   The real criminals, sex offenders, rapists, serial killers, sh*t like that.47

   – Lil’ Wayne, Don’tGetIt48

In 2008, Lil’ Wayne fans either learn or are reminded about both the excruciatingly unfair crack versus cocaine sentencing laws in the United States, as well as the inequitable prison sentencing numbers that continue to destroy the inner city. When Lil’ Wayne rhymes about “1 in 100 Americans being locked up” but “1 in 9 Black Americans being locked up,” he reminds hip hop aficionados and teaches amateur hip hop listeners about the incomprehensible incarceration bias against African Americans in the United States.49


48 LIL’ WAYNE, Don’tGetIt, on THA CARTER III (Cash Money/Universal Motown 2008).

49 See infra note 59 and accompanying text.
on the cocaine versus crack sentencing disparity, he reminds the hip hop enlightened and teaches budding hip hop fans that the United States Congress has for twenty years perpetuated a racist and biased sentencing disparity between drug users and dealers that traffic cocaine (typically white suburban users—punished lightly) versus crack cocaine (typically minority inner city users—punished severely).  

Lil’ Wayne in Don’t Get It simply perpetuates the hip hop tradition of using lyric and wide audience appeal to educate the hip hop generation. Harshly critiquing the inequities in the criminal justice system and police brutality was on early display in N.W.A’s 1989 F**k the Police:

F**k the police comin’ straight from the underground;
  A young n**** got it bad ‘cause I’m brown;
  I’m not the other color, So police think;
  They have the authority to kill a minority;
  F**k that shit ‘cause I ain’t the one;
For a punk mother**ker with a badge and a gun;
  To be beaten on and thrown in jail;
We can go toe to toe in the middle of a cell;
  F**kin’ with me ‘cause I’m a teenager;
  With a little bit of gold and a pager;
Searchin’ my car, lookin’ for the product;
  Thinkin’ every n**** is sellin’ narcotics;
  You’d rather see me in the pen;
Than me and Lorenzo rollin’ in a Benz-o;

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And on the other hand, Without a gun, they can’t get none
  But don’t let it be a black and white one;
  ’Cause they’ll slam ya down to the street top;
Black police showin’ out for the white cop;
  Ice Cube will swarm;
On any mother**ker in a blue uniform;
  Just ‘cause I’m from the CPT;
Punk police are afraid of me, huh;

30 See infra notes 60, 62 and accompanying text.
A young n**** on the warpath;
And when I finish, it's gonna be a bloodbath;
Of cops dyin' in L.A.;
Yo, Dre, I got something to say.

– N.W.A., F**k the Police

Like in 2008 with Lil’ Wayne and Don’tGetIt, when N.W.A. released the furiously defiant “F**k The Police” in 1989, a generation of young people were instructed that law enforcement routinely targets minority youth expecting most to be involved in drug trafficking and that the criminal justice system often prefers that young African American youth be installed in jails and prisons, whether guilty of crime or not. At that time, the 1980s, this exposed notion of targeting, profiling and preferred imprisonment of inner city youth for soft crime, and the clarion call for defiance in response to this unjust system, was audacious and stunning in its raw, stark realized exposé. And law enforcement, together with the traditional majority, reacted swiftly in an attempt to stifle and silence this critique.


52 See generally andré douglas pond cummings, Just Another Gang: “When the Cops are Crooks Who Can You Trust?” 41 HOW. L.J. 383 (1998) (describing the “siege mentality” that permeates most large, urban police departments and discussing the “War on Drugs” as a war on small scale, inner city drug dealers rather than a war against the source countries and cartels).


54 See supra notes 27-30; see also Robert Levine, The Thawing of Ice Cube, N.Y. TIMES, Feb. 1, 2004, available at http://query.nytimes.com/gst/fullpage.html?res=9A00E3D1538F932A357510A9629C8B63&scp=2&sq=fbi%20letter%20to%20NWA%20record%20label&st=cse (last visited Feb. 28, 2009) (“N.W.A., which in the late 80’s defined West Coast hip-hop with layered beats and brutal lyrics, probably offended more people before breakfast than most artists do all day; the F.B.I. sent the group’s record label a letter expressing its disapproval of the song “[Expletive] Tha Police.””); Jon Parellles, Critic’s Notebook; Public Enemy, Loud and
A. Hip Hop Lessons

Beginning in the 1980s with Public Enemy, KRS One, NWA and Ice-T amongst many others, hip hop artists began describing in stark rhymes and narratives, a United States criminal justice system that is inequitable and unfair, a system that targets and profiles African American and inner city youth, and those artists’ descriptions became, in Chuck D’s words “the Black CNN.” As discussed above, these rap artists knew that they were the Black CNN and were influencing and molding a generation. Hip hop’s musical tradition is to be, in many instances, black America’s first response to current inequities and discriminations. “Whether it’s Katrina three years ago, the L.A. riots in 1992, Jesse Jackson’s run in 1984, you know, hip-hop was seen as black America’s first response.”

In Much Respect, Professor Butler wrote “At the same time that an art form created by African American and Latino men dominates popular culture, African American and Latino men dominate American prisons. Unsurprisingly then, angry, is far from its own best friend. The New York Times, detailing the swirling controversy that always surrounded Public Enemy in the 1990s, reported:

The rap group Public Enemy has a knack for shooting itself in the foot. Its response to a controversy last summer over anti-Semitic statements by its ‘minister of information’ has now appeared in lyrics from its new single, ‘Welcome to the Terrordome,’ that also seem to cross the line into anti-Semitism. . . . Public Enemy has been in rap’s musical and political vanguard since 1987, when the group revolutionized the sound of rap with its dense, jarring, propulsive sonic collages. The booming voice of Carlton (Chuck D.) Ridenhour quickly became synonymous with a commitment to militant black self-determination.

Id.

55 See Laura Barton, Rap is Elitist, The Guardian, May 7, 2003, available at http://www.guardian.co.uk/music/2003/may/07/artsfeatures.popandrock (last visited March 1, 2009) (“Chuck D rapped about the problems blighting the black community, and memorably described hip-hop as ‘the black CNN.’”).

justice—especially criminal justice—has been a preoccupation of the hip-hop nation. The culture contains a strong descriptive and normative analysis of punishment by the people who know it best.\textsuperscript{57} Thus, a movement that was beginning to dominate a generation combined with artists that understood the potential dominance and that lived on the front lines of the crime and punishment system in the United States, came together in a perfect storm of platform, audience and defiance. The hip hop generation was going to learn, in no uncertain terms, about the inequities, injustices and discriminations in the U.S. criminal justice system.

Hip-hop exposes the current punishment regime as profoundly unfair. It demonstrates this view by, if not glorifying law breakers, at least not viewing all criminals with disgust which the law seeks to attach to them. Hip-hop points out the incoherence of the law’s construct of crime, and it attacks the legitimacy of the system. Its message has the potential to transform justice in the United States.\textsuperscript{58}

In the 1980’s and 1990’s hip hop stars were describing, to their eager audiences (including millions of suburban white youth), the inequities in criminal law and punishment, including (a) the specific targeting of inner city communities (revealed by the now well known huge prison population disparity (50% of imprisoned men are African American, while only 12% of the total U.S. population is black));\textsuperscript{59} (b) the egregiously unfair imprisonment of inner city crack dealers versus suburban cocaine dealers (revealed by the well known crack vs. cocaine sentencing disparity (prison time for a crack seller or taker is 100 times greater than prison time for a cocaine seller or taker));\textsuperscript{60} (c) the American

\textsuperscript{57} See Butler, \textit{supra} note 2, at 986.

\textsuperscript{58} See Butler, \textit{supra} note 2, at 985.

\textsuperscript{59} See Timothy Egan, \textit{War on Crack Retreats, Still Taking Prisoners}, N.Y. TIMES, Feb. 28, 1999, available at http://query.nytimes.com/gst/fullpage.html?res=950CE0DC123CF93BA15751C0A96F958260&sec=&spon=&pagewanted=5 (last visited Feb. 26, 2009) (“In state prisons, blacks make up nearly 60 percent of the people serving time on drug offenses, according to Justice Department figures, though they are only 12 percent of the general population and 15 percent of regular drug users.”); \textit{see also infra} notes 63-77 (detailing hip hop lyrics that discuss the inequities and biases in criminal law and punishment).

\textsuperscript{60} See David A. Sklansky, \textit{Cocaine, Race, and Equal Protection}, 47 STAN. L. REV. 1283, 1290-98 at 1296 (1995)) (“[Congress] instituted a mandatory sentence for possession of crack cocaine, but not
epidemic of police brutality inspired by the “siege mentality” that infests most large police forces (revealed by the well known brutalizations of Rodney King, Abner Louima, Sean Bell, etc.) and (d) the flooding of inner city communities with law enforcement officers, through the “War on Drugs,” the “War on Gangs” and the “War on Crime,” while suburban crime and white collar crime continued seemingly unhindered and unabated.\footnote{See Rodney King Testifies About Night of Beating, N.Y. TIMES, Jan. 22, 1993, available at http://query.nytimes.com/gst/fullpage.html?res=9F0CE1DD1039F931A15752C0A96598260 (describing Rodney King’s harrowing testimony of the infamous police brutality incident); see also Cummings, supra note 52 (describing the “siege mentality” that infects most metropolitan police forces across the United States); Sewell Chan, The Abner Louima Case, 10 Years Later, N.Y. TIMES, Aug. 9, 2007, available at http://cityroom.blogs.nytimes.com/2007/08/09/the-abner-louima-case-10-years-later/?scp=1&sq=%20Abner%20Louima&st=cse (last visited Mar. 20, 2009) (“Ten years ago today, a 30-year-old Haitian immigrant named Abner Louima was arrested and sodomized with a broomstick inside a restroom in the 70th Precinct station house in Brooklyn. The case became a national symbol of police brutality and fed perceptions that New York City police officers were harassing or abusing young black men as part a citywide crackdown on crime.”); Robert D. McFadden, Police Kill Man After a Queens Bachelor Party, N.Y. TIMES, Nov. 26, 2006, available at http://www.nytimes.com/2006/11/26/nyregion/26cops.html?scp=8&sq=sean%20bell&st=cse (discussing the death of Sean Bell who was killed when police officers fired 50 rounds of bullets into Bell’s car following his bachelor’s party the evening before his wedding).}

powder cocaine. The punishment for sellers was especially harsh. To receive the same sentence as a crack distributor, a powder distributor must possess one hundred times the quantity of cocaine.”); see also Egan, supra note 59 (“As the war on drugs set up special penalties on crack, however, law enforcement focused on the highly visible, often violent crack trade in city neighborhoods, rather than the larger traffic in cocaine going on behind closed doors across the country. The result: Nearly 90 percent of the people locked up for crack under Federal drug laws are black . . . .”); supra notes 47-50; infra notes 63-77 (detailing hip hop lyrics that discuss the inequities and biases in criminal law and punishment).

\footnote{See Ben Wallace-Wells, How America Lost the War on Drugs, ROLLING STONE, Dec. 13, 2007, available at http://www.rollingstone.com/politics/story/17438347/how_america_lost_the_war_on_drugs/1 (last visited Feb. 28, 2009) (detailing the failed efforts of the Reagan era “War on Drugs.”); see also William J. Stuntz, Unequal Justice, 121 HARV. L. REV. 1969, 1970 (2008) (“Inequality is a core feature of American criminal justice. . . . The effects of both the fall of criminal punishment and its subsequent rise were disproportionately felt in urban black neighborhoods.”); John A. Powell, Hostage to the Drug War: The National Purge, The Constitution and The Black Community, 24 U.C. DAVIS L. REV. 557, 558-559 (1991) (“[i]t is clear that the war on drugs has not extinguished the drug trade. Rather, the real victims of this war are the minority poor and the Bill of Rights. While the war against drugs potentially compromises the rights of all Americans, it has a particularly devastating impact upon the recently gained rights of minorities. In fact, the war on drugs could more aptly be called a war on the minority populations.”).}
In educating the hip hop generation Grandmaster Flash and the Furious Five recorded and released “The Message”; Public Enemy famously recorded “Fight the Power,” “Don’t Believe the Hype,” “Black Steel in the Hour of Chaos.”

You grow in the ghetto, living second rate/ And your eyes will sing a song of deep hate/ The places you play and where you stay/ Looks like one great big alley way/ You’ll admire all the number book takers/ Thugs, pimps, pushers and the big money makers/ Driving big cars, spending twenties and tens/ And you wanna grow up to be just like them/ Smugglers, scrambles, burglars, gamblers/ Pickpockets, peddlers and even pan-handlers/ You say I’m cool, I’m no fool/ But then you wind up dropping out of high school/ Now you’re unemployed, all null n void/ Walking around like you’re Pretty Boy Floyd/ Turned stickup kid, look what you done did/ Got send up for a eight year bid.

To revolutionize make a change nothin’s strange/ People, people we are the same/ No we’re not the same/ Cause we don’t know the game/ What we need is awareness, we can’t get careless/ You say what is this?/ My beloved let’s get down to business/ Mental self defensive fitness. . . . Fight the Power.

Turn up the radio/ They claim that I’m a criminal/ By now I wonder how/ Some people never know/ The enemy could be their friend, guardian/ I’m not a hooligan/ I rock the party and clear all the madness/ I’m not a racist/ Preach to teach to all/ ‘Cause some they never had this.
and “911 is a Joke”; N.W.A. notoriously released “F**k the Police,” and “100 Miles and Running”; Tupac Shakur released “Brenda’s Got a Baby,” “Keep Ya Head Up,” and “To Live and Die in L.A.”. Ice Cube released the explosive

I got a letter from the government, The other day/ I opened and read it/ It said they were suckers/ They wanted me for their army or whatever/ Picture me given a damn - I said never/ Here is a land that never gave a damn/ About a brother like me and myself/ Because they never did/ I wasn’t wit’ it, but just that very minute/ It occurred to me/ The suckers had authority.

Id.

67 See Lyrics.com, Public Enemy – 911 is a Joke Lyrics, available at http://www.lyrics.com/index.php/artists/lyric/public-enemy-lyrics-911-is-a-joke-t-8244400 (last visited Feb. 28, 2009) (“911 is a joke we don’t want ’em/ I call a cab ’cause a cab will come quicker/ The doctors huddle up and call a flea flicker/ The reason that I say that ‘cause they Flick you off like fleas/ They be laughin’ at ya while you’re crawlin’ on your knees.”).

68 See Lyricsdepot.com, N.W.A. – F**k the Police Lyrics, available at http://www.lyricsdepot.com/nw-a/fuck-tha-police.html (last visited Feb. 25, 2009). (“F**k the police comin’ straight from the underground/ A bad brotha got it bad ‘cause I’m brown/ I’m not the other color so police think/ They have the authority to kill a minority.”).


Runnin’ like a n**** I hate to lose/ Show me on the news but I hate to be abused/ I know it was a set-up, So now I’m gonna get up/ Even if the FBI wants me to shut up/ But I’ve got 10,000 n****s strong/ They got everybody singin’ my “F*** Tha Police” song./ And while they treat my group like dirt/ Their whole f**kin’ family is wearing our T-shirts.

Id.

70 See Lyrics.com, Tupac Shakur – Brenda’s Got a Baby Lyrics, available at http://www.lyrics.com/index.php/artists/lyric/2pac-lyrics-brendas-got-a-baby (last visited Feb. 28, 2009) (“Cause I bet Brenda doesn’t even know/ Just cause your in the ghetto doesn’t mean you can’t grow/ But oh, that’s a thought, my own revelation/ Do whatever it takes to resist the temptation.”).


And since we all came from a woman/ Got our name from a woman and our game from a woman/ I wonder why we take from our women/ Why we rape our women, do we hate our women?/ I think it’s time to kill for our women/ Time to heal our women, be real to our women.
"AmeriKKKas Most Wanted" featuring "Endangered Species (Tales from the Darkside)" and later "Dead Homiez"; KRS One released an entire album he styled "Edutainment" featuring "Love's Gonna Getcha." Each release was an

Id.


It's the city of angels and constant danger/ South Central LA—can't get no stranger/ Full of drama like a soap opera/ On the curb watching the ghetto bird helicopters/ I observe—so many n****z/ Gettin 3 strikes—tossed in jail/ Swear the Pen's right across from hell/ I can't cry—cause it's home now/ I'm just a n**** on his own now.

Id.

73 ICE CUBE, AMERIKKKAS MOST WANTED (Priority 1990).


Every cop killer goes ignored/ They just send another n**** to the morgue/ A point scored—they could give a f**k about us/ They rather catch us with guns and white powder/ If I was old, they'd probably be a friend to me/ Since I'm young, they consider me the enemy/ They kill ten of me to get the job correct/ To serve, protect, and break a n****s neck.

Id.


Another homie got murdered on a shakedown/ And his mother is at the funeral, havin' a nervous breakdown/ Two shots hit him in the face when they blasted/ A framed picture and a closed casket/ A single file line about 50 cars long/ All drivin' slow with they lights on/ He got a lot of flowers and a big wreath/ What good is that when you're six feet deep?/ I look at that s**t and gotta think to myself/ And thank God for my health/ 'Cause nobody really ever know/ When it's gonna be they family on the front row/ So I take everything slow, go with the flow/ And shut my mother**kin' mouth if I don't know/ 'Cause that's what Pops told me/ But I wish he could have said it, to my dead homiez.

Id.

76 KRS-ONE, EDUTAINMENT (Jive/RCA Records 1990).
effort on the part of the hip hop artist to educate and enlighten the hip hop generation, particularly to the inequities and discriminations inherent in a criminal justice system that systematically targets minority and urban youth.

Carrying the Black CNN torch lit by early hip hop street reporters today in 2009 are Mos Def, Common, Talib Kweli and Kanye West amongst others, who continue to capture the disaffect that black American and urban youth have with a criminal justice system that remains a profiling, targeting, law enforcement versus the enemy construct.

In hearing and feeling these lessons dropped by hip hop educators, an entire hip hop nation learned and continues to learn a much different system of criminal justice than that what was taught to them in grade school, high school, college and graduate school, including law school. More than any other lesson learned, perhaps the most striking was that the entire foundational principle of prison for crime in the United States is suspect, illegitimate and profane.

B. United States Philosophy of Punishment and Imprisonment

While varying philosophical underpinnings for punishment and imprisonment are debated worldwide, the prevailing view of imprisonment in the United States has been referred to as the “conservative approach” to imprisonment. 78

Id.


But there’s no dollars for nothing else/ I got beans, rice and bread on my shelf/ Every day I see my mother struggling/ Now it’s time I’ve got to do something/ I look for work I get dissed like a jerk/ I do odd jobs and come home like a slob/ So here comes Rob [drug dealer]/ His gold is shimmery/ He gives me two hundred for a quick delivery/ I do it once, I do it twice/ Now there’s steak with the beans and rice/ My mother’s nervous but she knows the deal/ My sister’s gear now has sex appeal/ My brothers’ my partner and we’re getting paper/ Three months later we run our own caper/ My family’s happy everything is new/ Now tell me what the f**k am I supposed to do?/ Chorus: That’s why love’s gonna get you/ Love’s gonna get you/ You fall in love with your chain/ You fall in love with your car/ Love’s gonna sneak up and snuff you from behind/ So I want you to check out the story as we go down the line.

Id.
This “conservatism: deterrence and incapacitation” prizes the philosophy that casting criminals into prison will deter individuals from acting in ways that lead to prison. “Prison life should be uncomfortable—even painful—and rational people will be deterred from committing crime to avoid being sent there again.” While some attempts have been made in U.S. history toward imprisonment for purposes of rehabilitation, the prevailing view in the U.S. is that prison will act to deter criminals and the stigma of having been imprisoned will act to inspire those inclined to crime to avoid criminal behavior so as to avoid stigma and to be deterred from returning. Deterrence and stigma then, serve in many ways as the foundational principles for imprisonment in the United States.

Perhaps one of the greatest weaknesses in the current regime of U.S. crime and punishment, and most criticized, is that incarceration and retributivism is fundamentally based on a system that has always been developed from the top down. More plainly stated, the U.S. system of criminal justice has been developed and refined, from inception, by the privileged and the powerful, those individuals who have little to no experience or first-hand knowledge of poverty, despair, voicelessness and victimization. Hip hop argues, even

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78 See Joycelyn M. Pollock, Prisons: Today and Tomorrow 11-12 (1997); see also Rutherford, supra note 32, at 305 (“Legal scholars have long proferred the idea that the criminal law is effective, and justified, part, because of its deterrent effects. The common notion is that punishment rendered by the criminal legal system, as well as the moral condemnation and stigma associated with a criminal record, will serve to counter-act the compulsion individuals have to commit anti-social behavior.”).

79 See Pollock, supra note 78, at 12.

80 See Pollock, supra note 78, at 12.

81 See Butler, supra note 2, at 1000.

82 See generally Reginald Leamon Robinson, Race, Myth, and Narrative in the Social Construction of the Black Self, 40 HOW. L. J. 1, 7 (1996) (“Today, few law professors are willing to acknowledge that a white male perspective has shaped legal academe in a manner which stills invades, wounds, and destroys their colleagues of color.”); see also andré douglas pond cummings, Grutter v. Bollinger, Clarence Thomas, Affirmative Action and the Treachery of Originalism: “The Sun Don’t Shine Here In This Part of Town,” 21 HARV. BLACKLETTER L. J. 1 (2005).

83 See generally Robinson, supra note 82; cummings, supra note 82; Michele H. Kalstein et al., Calculating Injustice: The Fixation of Punishment as Crime Control, 27 HARV. C.R.-C.L. L. REV. 575, 588 (1992) (“We the people’ is misleading because it claims to speak for everyone when it is actually the voice of ‘a political faction trying to constitute itself as a unit of many disparate voices; its power lasts only as long as the contradictory voices remain silenced.’ . . . It enables those in
philosophizes, about a system of punishment that can and should be developed from the bottom-up.84 “Thousands of hip-hop songs consider crime and punishment. These voices are worth listening to—they evaluate criminal justice from the bottom up. . . . We might punish better if the ghetto philosophers and the classic philosophers met. They address many of the same issues in punishment, including causation, harm responsibility, excuse and justification.”85 Speaking in broad brush strokes, typically those that favor imprisonment as a means of deterrent punishment and retribution are those that have inhabited the rare air of the privileged. Those that favor rehabilitation as a means of punishment and imprisonment are typically those who know first-hand, that life is messy, seedy and rarely as perfect as it is for the privileged.86

Because of the top-down approach of crime and punishment in the United States, our prisons are literally teeming with minority convicts who are incarcerated for soft drug crimes,87 will be imprisoned for decades because of skewed sentencing guidelines,88 and will share the same cells inhabited by murderers, rapists, pedophiles and hardened career criminals.89

power to create ‘apparently neutral and universal rules which in effect burden or exclude anyone who does not share the characteristics of privileged, white, Christian, able-bodied, heterosexual, adult men for whom those rules were actually written.’”).

84 See Butler, supra note 2, at 1000-01.

85 Butler, supra note 2, at 1000.

86 See generally Dr. Cornel West, Professor, Princeton University, Keynote Address at the West Virginia University College of Law, The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture (Feb. 13, 2009) (transcript on file with author) (discussing frankly the inequities in the criminal justice system and the need for rehabilitative principles in punishment regimes, particularly for soft drug crime offenders).

87 See Larry E. Walker, Law and More Disorder! The Disparate Impact of Federal Mandatory Sentencing for Drug Related Offense on the Black Community, 10 J. SUFFOLK ACAD. L. 97, 119 (1995) (“The majority of the arrests made are of young black males who are addicted to and in possession of small quantities of drugs or who are low-level distributors. The facts seem to indicate that the war on drugs can easily be perceived as a war on the black community.”); see also John A. Powell & Eileen B. Hershenov, Symposium on Legalization of Drugs, Hostage to the Drug War: The National Purse, The Constitution and the Black Community, 24 U.C. DAVIS L. REV. 557, 568 (1991) (“while blacks makeup approximately 12 percent of the United States population, over 80 percent of all those arrested for drug related offenses are black.”).

This top-down approach of determining which activity will count as criminal and which will not (i.e., marijuana sale and use—a crime; alcohol and tobacco sale and use—not a crime); this top-down approach of determining which crimes will be severely punished and which will not (i.e., peddling soft drugs and crack—harshly punished; bankrupting corporations and destroying capital markets—not harshly punished (but in fact, bailed out with taxpayers money)); this top-down approach favoring harsh imprisonment with little directed rehabilitative effort; has ALL been recognized in hip hop music and culture as illegitimate and profane.

C. The Curious Relationship Between Hip Hop and Imprisonment

As described above, to many in the hip hop generation, U.S. criminal law is profane and illegitimate, as forcefully argued by hip hop artists from its birth in the Bronx through today. As such deterrence, stigma and incarceration is primarily lost on the hip hop nation. As U.S. criminal law is profane and illegitimate, then many in the hip hop generation recognize that imprisonment, arrest and charges of criminal activity are little more than politically motivated, incoherent, inefficient and unworthy directives. Because imprisonment for various crimes is political, incoherent, inefficient and unworthy, then much of the U.S. crime and punishment regime is shown no respect by hip hop culture. Therefore, for many members of the hip hop nation, prison has come to be viewed as a “rite of passage” and a legitimating activity in the hip hop hustle.

Over and over, hip hop artists “shout out” their brothers and sisters in prison, recognizing them as human and worthy of respect and attention. Most know sentencing guidelines and mandatory minimum sentences of five years for distributing 5 grams of crack compared to distributing 500 grams of cocaine); David A. Sklansky, Cocaine, Race, and Equal Protection, 47 STAN. L. REV. 1283 (1995) (discussing the differences in sentencing for crack cocaine and powder cocaine as a constitutional violation of the Equal Protection Clause).

See Chuck Colson & Pat Nolan, Symposium on Criminal Punishment Essays: Prescription for Safer Communities, 18 NOTRE DAME J. L. ETHICS & PUB. POL’Y 387, 389 (2004) (“Offenders are often sentenced for years to overcrowded prisons where they are exposed to the horrors of violence including homosexual rape, isolation from family and friends, and despair. Instead of working on the outside to repay their victims and support their families, many non-dangerous offenders are idle in prison. . . . Prisons are, indeed, graduate schools of crime.”).

See supra Part III and IV.A.
that in the eyes of those that matter to them, that the “brother behind bars” is most probably illegitimately incarcerated.

Shout to my N****z that’s locked up in jail/ P.O.W’s that still in the war for real/ . . . . But if he’s locked in the penitentiary, send him some energy/ They all winners to me.

– Jay-Z\textsuperscript{91}

If you doin’ 25 to life, stay up homie/ I got your money on ice, so stay up homie/ If you locked in the box, keep makin’ it through/ Do your time, Do your time, Do not let your time do you.

– Ludacris\textsuperscript{92}

The time’ll do itself, all you gotta do is show up/ Keep layin’ down wakin’ up/ And thankin’ the Lord/ And ‘fore you know it they gonna open the doors/ . . . . I know the times seem long/ Just try and keep strong/ Put on your headphones and rewind this song/ Remember you ain’t missin’ nothin’ homes/ I promise you ain’t missin’ nothin’ homes.

– T.I.\textsuperscript{93}

Many in the hip hop generation believe, by and large, that the United States has abdicated its responsibility to the poor and those in the ‘hood, as evidenced by poverty, lack of opportunity and joblessness. So much so, that the stigma of being imprisoned for theft, drug crimes or some violence is simply absent.\textsuperscript{94} One

\textsuperscript{91} JAY-Z, A Ballad for the Fallen Soldier, on THE BLUEPRINT 2: THE GIFT & THE CURSE (Def Jam/Island Def Jam 2002).

\textsuperscript{92} LUDACRIS FEAT. BEANIE SIEGEL, Do Your Time, on RELEASE THERAPY (Def Jam South/ Distrubing Tha Peace 2006); see also MetroLyrics.com, Do Your Time Lyrics, available at http://www.metrolyrics.com/do-your-time-lyrics-ludacris.html (last visited Mar. 4, 2009).

commentator writes “If imprisonment is no longer viewed primarily as a substantial loss of one’s freedom and liberty to be avoided, but rather a rite of passage resulting in increased social respect, can we really expect individuals to fear or respect the law?” As imprisonment in the U.S. is viewed by many as a rite of passage and the prisoner is viewed with respect and admiration, and as the value of deterrence is diluted and stigma is lost on the hip hop generation, then shouldn’t a new American theory of crime, punishment and imprisonment be considered?

Crime and punishment in the United States is predicated on deterrence, incapacitation and stigmatization, and the hip hop generation recognizes none as truly legitimate. The system of crime and punishment in the United States has lost its way. The criminal justice system in the U.S. is disrespected and dismissed by a wide swath of American citizens. This should be a chilling and sobering thought to U.S. legislators and lawmakers.

This is not to say that hip hop ignores law-breaking or does not believe in some type of retributive consequence for engaging in immoral crimes. Hip hop recognizes the need for imprisonment for legitimate crime and seeks community retribution for crimes like murder, rape, child abuse, and so forth. But as for the illegitimate or inequitable punishment for crimes, including drug crimes and sentencing, the three-strikes laws, the loitering and petty theft crimes, these are all viewed as skewed against people of color and imprisonment for these crimes are ignored, dismissed as illegitimate and disavowed. Hip hop culture recognizes that in many instances, crime is justified by lack of opportunity. “Hip-hop culture emphasizes the role of environment in determining conduct, whereas classic retributivist theory focuses on individual choice. In essence, hip-hop culture discounts responsibility when criminal conduct has been shaped by a substandard environment.”

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94 See Butler, supra note 2, at 998 (“Breaking the law is seen as a form of rebelling against the oppressive status quo. Rappers who brag about doing time are like old soldiers who boast of war wounds.”).

95 See Rutherford, supra note 32, at 305.

96 See Butler, supra note 2.

97 See id.

98 See Butler, supra note 2, at 1005.
The question I am most interested in seeing answered is this: Will the emerging leaders of the hip hop generation, including lawyers, scholars, legislators, economists, etc., radically change the broken system of crime, imprisonment and punishment in the United States?

One scholar has started on this path already by suggesting six ways that hip hop can assist in producing legitimate standards of crime and punishment in the U.S., a regime that respects the individual, protects the community and imprisons only those that society needs protection from. For the hip hop generation legislator or policy maker, Professor Butler offers a starting place for a more humane, more bottom-up approach to crime and punishment in the United States, from a hip hop perspective:

First, the purpose of punishment should be retribution. Second, punishment should be limited (but not determined) by utilitarian concerns, especially the effect of punishment on people other than the lawbreaker. Third, punishment should be designed to “catch” the harm caused by rich people more than poor people. Fourth, people probably should not be punished for using or selling intoxicants. Fifth, punishment should be imposed only by people within a community, not outsiders. Sixth, prison should be used sparingly as an instrument of punishment.99

Will those emerging leaders from within the hip hop nation respond?

V. Conclusion

Hip hop teaches that the U.S. system of crime and punishment is inequitable, and does so primarily by exposing in stark lyric and behavior that the poor are punished more harshly than the rich and that drug offenders are punished more harshly than white collar criminals. An amazing perspective chasm exists between the hip hop generation and the traditional majority. Hip hop asks who the true criminals are: young inner city youth selling drugs with no prospects for work or petty thieves stealing to eat OR the 2008 Corporate Executives at AIG, Lehman Brothers and Bear Stearns, who recklessly torpedoed the U.S. economy

99 See Butler, supra note 2, at 1001.
and rather than facing jail, received U.S. government bailout money exceeding $800 billion dollars. Hip hop adjudges this system of prioritizing crime in this way as obscene.

As respected scholars are arguing today that hip hop offers a legitimate alternative theory of justice, that hip hop’s bold trespass into traditional copyright and property law is a form of civil disobedience, that hip hop has influenced a generation of law students and young lawyers to proactively seek radical means of justice, that hip hop comfortably debates and exposes the “dark side” of American society and inequality, that gangsta rappers stake an important place in the black public sphere while still providing seeds of political expression amidst the violence and misogyny, that criminal prosecution of mix-tape DJs is an improper use of police power in an ever changing copyright dynamic, that hip hop did not create the violence and misogyny rampant within it but merely contextualized it for the black community and that hip hop profoundly influences political discourse, then it seems time for U.S.

100 See andré douglas pond cummings, Post-Racialism and the Financial Market Meltdown, AALS Annual Meeting Hot Topics Panel Presentation, Jan. 9, 2009 (unpublished manuscript on file with author).

101 See Butler, supra note 2.

102 See Smith, supra note 9.

103 See Carla Pratt, Professor of Law, Texas Wesleyan School of Law, From the Corner to the Corner Office: Hip Hop’s Impact on Corporate Culture and Law, Symposium, The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture (Feb. 13, 2009), available at http://lawmediasite.wvu.edu/mediasite/catalog/.

104 Dr. Cornel West, Professor, Princeton University, Keynote Address at the West Virginia University College of Law, The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture (Feb. 13, 2009) (transcript on file with author).

105 See Folami, supra note 19.


legislators and policy makers to reexamine the fundamental underpinnings of crime and punishment in the United States. It simply does not work for the hip hop generation.

Hip hop erases the stigma of imprisonment. Hip hop refuses to acknowledge the deterrent power of the U.S. prison system as it recognizes the many illegitimate and profane uses of the law to subjugate people of color and punish the poor and powerless while ignoring the criminal behavior of the wealthy and privileged. While hip hop does not say much about actual life in prison, it certainly respects the imprisoned and welcomes the convicted back into society openly.

If in fact, American society is NO longer fine with its prisons overflowing with petty criminals and grossly disproportionate imprisonment of minorities and if American citizens are NO longer fine with spending billions of dollars on building prisons while cutting billions of dollars from education, then perhaps a new nascent movement is afoot—one that will radically alter the course of crime and punishment in the United States.


109 See C-SPAN, Tavis Smiley’s State of the Black Union, February 28, 2009 (elected representatives discussing the budget crises faced by many states, where legislators cut spending on education and raise spending on prison construction).