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Of Color, Crime and Punishment

Like when you guys put somebody in the car and you're protecting their head, you know, the way you put their hand over? Like, don't hit their head and they've just killed somebody—don't hit their head. I said, you can take the hand away, O.K.?

– Donald Trump on police brutality

If you're going to shoot him, you got to shoot to kill. And that requires an overwhelming majority of a bipartisan kind. Otherwise, you're just going to nick the guy and make him feel empowered and vindicated.

– Lawrence Tribe on a Trump impeachment

Seventeen investigations in and an undissipated miasma of suspicion continues to envelop Donald J. Trump. And yet, if his defenders are to be believed, the actions which prompted those investigations are neither technically crimes nor even impeachable offenses. Meanwhile, a U.S. district judge has condemned Michael Flynn's behavior as "treasonous" and Michael Cohen has been sentenced to three years in prison, but their boss remains free to stalk the halls of power unimpeded, as America hurtles from one "constitutional crisis" to another.

One wonders what fruit, if any, Robert Mueller's much-vaunted investigation will eventually bear. Like most investigations of the powerful, its conclusions may prove edifying if not sufficiently punitive. If the Snowden case taught us anything, it is that the power elite lie with impunity: the fact a poker-faced James Clapper, the former Director of National Intelligence, could deny under oath that the NSA mined metadata on millions of American citizens in his 2013 Senate testimony and not be charged with perjury is the

most salient recent example of the reluctance of this elite to police themselves. Adding insult to injury, when interviewed about his testimony by NBC's Andrea Mitchell, Clapper claimed he had "responded in what I thought was the most truthful, or least untruthful manner by saying no," a literal parsing of the truth that apparently has allowed him to evade a perjury charge, assuming, of course, that there was a political will to hold him accountable for those "untruths" once they became known, as indeed, they did, by his own admission. Yet Clapper has not been hauled off to prison despite the fact that the oath he swore required him to "tell the truth, the whole truth, and nothing but the truth, so help you God – not ass-covering, measured "untruths." But Trump, who has not been sworn to truthfulness, has sworn to uphold the Constitution, though he has spent virtually every day in office conspiring to assault it, without facing any real political or legal consequences, because he knows that in Washington, as in Hollywood, Wall Street, and Silicon Valley, "when you're a star, they let you do it. You can do anything."

In this, Trump is not alone and joins a notorious roster of deceptive oligarchs, including George W. Bush, Dick Cheney, and Colin Powell whose deluded search for WMDs in Iraq not only misled the American people but destabilized an entire region and resulted in the deaths of tens of thousands of innocent civilians, yet none of them has faced jail time in a nation renowned for its carceral zeal. Indeed, in America, the worst possible fate that awaits wayward autocrats (political, entrepreneurial, or both) is to autograph waterboarding bottles or have a star-studded Hollywood film made about their vices, for the nation seems to prefer parody to imprisonment when confronted with its unrepentantly corrupt.

Despite the evidence against them, we bestow upon these scoundrels the benefit of our doubts, the accrued interest of our credulity and flaccid impotence of our political will. There is a crawl to judgment, no shooting from the hip; instead, we ask them a thousand meticulously crafted questions first, withholding our fire even when their answers would otherwise justify indictment had they not the pedigree of power that protects them. We allow them the option of pre-screening our questions and leisurely poring over them with legal experts who carefully craft their responses, any potential face-to-face encounters with their inquisitors as negotiable as the rarely realized democratic principle of "equality under the law."

This is the same America where Jazmine Headley, a Brooklyn mother who stood in line for four hours with her one-year-old son in tow, has her child ripped from her arms by several self-described "peace officers" (a better term might be "escalators," though the

term is already used to describe a similarly mindless, mechanical device) who, like they automatons that they are, respond to a complaint from an equally empathy-deprived Human Resources Administration official (“Human Resources Harriet?”) by handcuffing, arresting, and sending her to Rikers Island, where she spends five days on the charge (subsequently dismissed) of “obstructing a hallway” and causing a public disturbance. Given the current circumstances of our republic, Ms. Headley would have fared far better had she obstructed justice and advanced disruptive national policies that stripped children from their mothers, policies the icy officers involved in her arrest appear eager to enforce, albeit on an American (second-class) citizen.

Such excesses highlight the vile absurdity of criminal justice in America. Over the last year, police have been called to harass and arrest black people and other people of color for napping in dormitory lounges of colleges in which they are enrolled, babysitting white children, mowing their lawns, placing their feet up in classrooms, and simply talking on cell phones in lounges of hotels in which they were paying guests. None of these actions are remotely criminal, and certainly none is as serious as anything of which Trump and cronies stand accused.

Some of these individuals, like Headley, have been detained and even jailed (I suppose we should be grateful they survived the encounter), including a distraught woman whom Roswell, Georgia police reportedly decided to arrest after they used to cellphone coin-toss app to decide whether to arrest her. Yet anyone waiting for Trump to be perp-walked in handcuffs out of the White House and into a federal prison – even after his term in office – is bound to be disappointed. Sadly, there is little chance we will see Trump escorted to the passenger side of a patrol car with the hand of his arresting officer protecting his strategically coiffed pate from the car’s door frame so as not to cause damage to his “excellent, big brain.” In fact, Trump’s lawyers, media pundits, and some legal scholars tell us that a sitting president cannot be indicted, although Harvard law professor Lawrence Tribe strongly argues otherwise, suggesting that if holding the president to the rule of law is the goal, it cannot be achieved through tentative, half measures.

Let this sink in for moment. Everyday black people are harassed and arrested for little more than displaying “a bad attitude” toward police when they detain them on the slightest pretext. Meanwhile our preadolescent president is given free rein to vent his destructive impulses, which run the gamut from multiple alleged sexual assaults, campaign finance violations, misuse of inauguration funding, numerous tax schemes, violations of the emoluments clause of the Constitution, to, yes, obstruction of justice.

Nonetheless, if the past is our judge, it evident that Trump will not be held accountable for his transgressions. Yes, he may resign; he may even be successfully impeached, but it is unlikely he will see the inside of a prison cell, and not because he has not earned the view. Why? As before, a deficit of political will, couched in the rhetoric of jaded pragmatism and opportunistic magnanimity. The argument has already been made that any legal/ethical pursuit of Trump would only further fracture an already divided nation, invite a backlash from his fervent base, or that a fitful, intransigent Trump would unleash a scorched earth policy that would wreak havoc and further erode the republic. It is more productive and less damaging, they maintain, to move on and not dwell on the past, a view that totally ignores the fact that a future in which Trump remains free sends a dispiriting message to anyone naïve enough to still embrace the notion that the rule of law should apply to everyone, and that our reluctance to confront that past will only delay the inevitability of a future reckoning whose chilling effect on democracy will outweigh the charred remains left in the wake of any all-consuming Trumpian vengeance. Holding out hope may seem a bit like grasping at loose straws – or hanging chads – and we are still paying the consequences of our inaction on the latter.

One is left to wonder what in fact would happen if Trump shot someone on Fifth Avenue (complete with viral cellphone coverage of the incident). Investigation 18? That and little else. For it is not as if Trump does not already have the blood of innocents on his hands, but apparently the deaths of immigrant children don't count. As for everybody else: Don't obstruct those hallways!