

Introduction

Higher Ground

I wasn't prepared to meet a condemned man. In 1983, I was a twenty-three-year-old student at Harvard Law School working in Georgia on an internship, eager and inexperienced and worried that I was in over my head. I had never seen the inside of a maximum-security prison—and had certainly never been to death row. When I learned that I would be visiting this prisoner alone, with no lawyer accompanying me, I tried not to let my panic show.

Georgia's death row is in a prison outside of Jackson, a remote town in a rural part of the state. I drove there by myself, heading south on I-75 from Atlanta, my heart pounding harder the closer I got. I didn't really know anything about capital punishment and hadn't even taken a class in criminal procedure yet. I didn't have a basic grasp of the complex appeals process that shaped death penalty litigation, a process that would in time become as familiar to me as the back of my hand. When I signed up for this internship, I hadn't given much thought to the fact that I would actually be meeting condemned prisoners. To be honest, I didn't even know if I wanted to be a lawyer. As the miles ticked by on those rural roads, the more convinced I became that this man was going to be very disappointed to see me.

I studied philosophy in college and didn't realize until my senior year that no one would pay me to philosophize when I graduated. My frantic search for a "post-graduation plan" led me to law school mostly because other graduate programs required you to know something about your field of study to enroll; law schools, it seemed, didn't require you to know anything. At Harvard, I could study law while pursuing a graduate degree in public policy at the Kennedy School of Government, which appealed to me. I was uncertain about what I wanted to do with my life, but I knew it would have something to do with the lives of the poor, America's history of racial inequality, and the struggle to be equitable and fair with one another. It would have something to do with the things I'd already seen in life so far and wondered about, but I couldn't really put it together in a way that made a career path clear.

Not long after I started classes at Harvard I began to worry I'd made the wrong choice. Coming from a small college in Pennsylvania, I felt very fortunate to have been admitted, but by the end of my first year I'd grown disillusioned. At the time, Harvard Law School was a pretty intimidating place, especially for a twenty-one-year-old. Many of the professors used the Socratic method—direct, repetitive, and adversarial questioning—which had the incidental effect of humiliating unprepared students. The courses seemed esoteric and disconnected from the race and poverty issues that had motivated me to consider the law in the first place.

Many of the students already had advanced degrees or had worked as paralegals with prestigious law firms. I had none of those credentials. I felt vastly less experienced and worldly than my fellow students. When law firms showed up on campus and began interviewing students a month after classes started, my classmates put on expensive suits and signed up so that they could receive "fly-outs" to New York, Los Angeles, San Francisco, or Washington, D.C. It was a complete

mystery to me what exactly we were all busily preparing ourselves to do. I had never even met a lawyer before starting law school.

I spent the summer after my first year in law school working with a juvenile justice project in Philadelphia and taking advanced calculus courses at night to prepare for my next year at the Kennedy School. After I started the public policy program in September, I still felt disconnected. The curriculum was extremely quantitative, focused on figuring out how to maximize benefits and minimize costs, without much concern for what those benefits achieved and the costs created. While intellectually stimulating, decision theory, econometrics, and similar courses left me feeling adrift. But then, suddenly, everything came into focus.

I discovered that the law school offered an unusual one-month intensive course on race and poverty litigation taught by Betsy Bartholet, a law professor who had worked as an attorney with the NAACP Legal Defense Fund. Unlike most courses, this one took students off campus, requiring them to spend the month with an organization doing social justice work. I eagerly signed up, and so in December 1983 I found myself on a plane to Atlanta, Georgia, where I was scheduled to spend a few weeks working with the Southern Prisoners Defense Committee (SPDC).

I hadn't been able to afford a direct flight to Atlanta, so I had to change planes in Charlotte, North Carolina, and that's where I met Steve Bright, the director of the SPDC, who was flying back to Atlanta after the holidays. Steve was in his mid-thirties and had a passion and certainty that seemed the direct opposite of my ambivalence. He'd grown up on a farm in Kentucky and ended up in Washington, D.C., after finishing law school. He was a brilliant trial lawyer at the Public Defender Service for the District of Columbia and had just been recruited to take over the SPDC, whose mission was to assist condemned people on death row in Georgia. He showed none of the disconnect between what he did and what he believed that I'd seen in so many of my law professors. When we met he warmly wrapped me in a full-

body hug, and then we started talking. We didn't stop till we'd reached Atlanta.

"Bryan," he said at some point during our short flight, "capital punishment means 'them without the capital get the punishment.' We can't help people on death row without help from people like you."

I was taken aback by his immediate belief that I had something to offer. He broke down the issues with the death penalty simply but persuasively, and I hung on every word, completely engaged by his dedication and charisma.

"I just hope you're not expecting anything too fancy while you're here," he said.

"Oh, no," I assured him. "I'm grateful for the opportunity to work with you."

"Well, 'opportunity' isn't necessarily the first word people think of when they think about doing work with us. We live kind of simply, and the hours are pretty intense."

"That's no problem for me."

"Well, actually, we might even be described as living less than simply. More like living poorly—maybe even barely living, struggling to hang on, surviving on the kindness of strangers, scraping by day by day, uncertain of the future."

I let slip a concerned look, and he laughed.

"I'm just kidding . . . kind of."

He moved on to other subjects, but it was clear that his heart and his mind were aligned with the plight of the condemned and those facing unjust treatment in jails and prisons. It was deeply affirming to meet someone whose work so powerfully animated his life.

There were just a few attorneys working at the SPDC when I arrived that winter. Most of them were former criminal defense lawyers from Washington who had come to Georgia in response to a growing crisis: Death row prisoners couldn't get lawyers. In their thirties, men and women, black and white, these lawyers were comfortable with one another in a way that reflected a shared mission, shared hope, and shared stress about the challenges they faced.

After years of prohibition and delay, executions were again taking place in the Deep South, and most of the people crowded on death row had no lawyers and no right to counsel. There was a growing fear that people would soon be killed without ever having their cases reviewed by skilled counsel. We were getting frantic calls every day from people who had no legal assistance but whose dates of execution were on the calendar and approaching fast. I'd never heard voices so desperate.

When I started my internship, everyone was extremely kind to me, and I felt immediately at home. The SPDC was located in downtown Atlanta in the Healey Building, a sixteen-story Gothic Revival structure built in the early 1900s that was in considerable decline and losing tenants. I worked in a cramped circle of desks with two lawyers and did clerical work, answering phones and researching legal questions for staff. I was just getting settled into my office routine when Steve asked me to go to death row to meet with a condemned man whom no one else had time to visit. He explained that the man had been on the row for over two years and that they didn't yet have a lawyer to take his case; my job was to convey to this man one simple message: *You will not be killed in the next year.*

I drove through farmland and wooded areas of rural Georgia, rehearsing what I would say when I met this man. I practiced my introduction over and over.

"Hello, my name is Bryan. I'm a student with the . . ." No. "I'm a law student with . . ." No. "My name is Bryan Stevenson. I'm a legal intern with the Southern Prisoners Defense Committee, and I've been instructed to inform you that you will not be executed soon." "You can't be executed soon." "You are not at risk of execution anytime soon." No.

I continued practicing my presentation until I pulled up to the intimidating barbed-wire fence and white guard tower of the Georgia Diagnostic and Classification Center. Around the office we just called

it “Jackson,” so seeing the facility’s actual name on a sign was jarring—it sounded clinical, even therapeutic. I parked and found my way to the prison entrance and walked inside the main building with its dark corridors and gated hallways, where metal bars barricaded every access point. The interior eliminated any doubt that this was a hard place.

I walked down a tunneled corridor to the legal visitation area, each step echoing ominously across the spotless tiled floor. When I told the visitation officer that I was a paralegal sent to meet with a death row prisoner, he looked at me suspiciously. I was wearing the only suit I owned, and we could both see that it had seen better days. The officer’s eyes seemed to linger long and hard over my driver’s license before he tilted his head toward me to speak.

“You’re not local.”

It was more of a statement than a question.

“No, sir. Well, I’m working in Atlanta.” After calling the warden’s office to confirm that my visit had been properly scheduled, he finally admitted me, brusquely directing me to the small room where the visit would take place. “Don’t get lost in here; we don’t promise to come and find you,” he warned.

The visitation room was twenty feet square with a few stools bolted to the floor. Everything in the room was made of metal and secured. In front of the stools, wire mesh ran from a small ledge up to a ceiling twelve feet high. The room was an empty cage until I walked into it. For family visits, inmates and visitors had to be on opposite sides of the mesh interior wall; they spoke to one another through the wires of the mesh. Legal visits, on the other hand, were “contact visits”—the two of us would be on the same side of the room to permit more privacy. The room was small and, although I knew it couldn’t be true, it felt like it was getting smaller by the second. I began worrying again about my lack of preparation. I’d scheduled to meet with the client for one hour, but I wasn’t sure how I’d fill even fifteen minutes with what I knew. I sat down on one of the stools and waited. After fifteen min-

utes of growing anxiety, I finally heard the clanging of chains on the other side of the door.

The man who walked in seemed even more nervous than I was. He glanced at me, his face screwed up in a worried wince, and he quickly averted his gaze when I looked back. He didn't move far from the room's entrance, as if he didn't really want to enter the visitation room. He was a young, neatly groomed African American man with short hair—clean-shaven, medium frame and build—wearing bright, clean prison whites. He looked immediately familiar to me, like everyone I'd grown up with, friends from school, people I played sports or music with, someone I'd talk to on the street about the weather. The guard slowly unchained him, removing his handcuffs and the shackles around his ankles, and then locked eyes with me and told me I had one hour. The officer seemed to sense that both the prisoner and I were nervous and to take some pleasure in our discomfort, grinning at me before turning on his heel and leaving the room. The metal door banged loudly behind him and reverberated through the small space.

The condemned man didn't come any closer, and I didn't know what else to do, so I walked over and offered him my hand. He shook it cautiously. We sat down and he spoke first.

"I'm Henry," he said.

"I'm very sorry" were the first words I blurted out. Despite all my preparations and rehearsed remarks, I couldn't stop myself from apologizing repeatedly.

"I'm really sorry, I'm really sorry, uh, okay, I don't really know, uh, I'm just a law student, I'm not a real lawyer. . . . I'm so sorry I can't tell you very much, but I don't know very much."

The man looked at me worriedly. "Is everything all right with my case?"

"Oh, yes, sir. The lawyers at SPDC sent me down to tell you that they don't have a lawyer yet. . . . I mean, we don't have a lawyer for you yet, but you're not at risk of execution anytime in the next year. . . . We're working on finding you a lawyer, a real lawyer, and we

hope the lawyer will be down to see you in the next few months. I'm just a law student. I'm really happy to help, I mean, if there's something I can do."

The man interrupted my chatter by quickly grabbing my hands.

"I'm not going to have an execution date anytime in the next year?"

"No, sir. They said it would be at least a year before you get an execution date." Those words didn't sound very comforting to me. But Henry just squeezed my hands tighter and tighter.

"Thank you, man. I mean, really, thank you! This is great news." His shoulders unhunched, and he looked at me with intense relief in his eyes.

"You are the first person I've met in over two years after coming to death row who is not another death row prisoner or a death row guard. I'm so glad you're here, and I'm so glad to get this news." He exhaled loudly and seemed to relax.

"I've been talking to my wife on the phone, but I haven't wanted her to come and visit me or bring the kids because I was afraid they'd show up and I'd have an execution date. I just don't want them here like that. Now I'm going to tell them they can come and visit. Thank you!"

I was astonished that he was so happy. I relaxed, too, and we began to talk. It turned out that we were exactly the same age. Henry asked me questions about myself, and I asked him about his life. Within an hour we were both lost in conversation. We talked about everything. He told me about his family, and he told me about his trial. He asked me about law school and my family. We talked about music, we talked about prison, we talked about what's important in life and what's not. I was completely absorbed in our conversation. We laughed at times, and there were moments when he was very emotional and sad. We kept talking and talking, and it was only when I heard a loud bang on the door that I realized I'd stayed way past my allotted time for the legal visit. I looked at my watch. I'd been there three hours.

The guard came in and he was angry. He snarled at me, "You should have been done a long time ago. You have to leave."

He began handcuffing Henry, pulling his hands together behind his back and locking them there. Then he roughly shackled Henry's ankles. The guard was so angry he put the cuffs on too tight. I could see Henry grimacing with pain.

I said, "I think those cuffs are on too tight. Can you loosen them, please?"

"I told you: You need to leave. You don't tell me how to do my job."

Henry gave me a smile and said, "It's okay, Bryan. Don't worry about this. Just come back and see me again, okay?" I could see him wince with each click of the chains being tightened around his waist.

I must have looked pretty distraught. Henry kept saying, "Don't worry, Bryan, don't worry. Come back, okay?"

As the officer pushed him toward the door, Henry turned back to look at me.

I started mumbling, "I'm really sorry. I'm really sor—"

"Don't worry about this, Bryan," he said, cutting me off. "Just come back."

I looked at him and struggled to say something appropriate, something reassuring, something that expressed my gratitude to him for being so patient with me. But I couldn't think of anything to say. Henry looked at me and smiled. The guard was shoving him toward the door roughly. I didn't like the way Henry was being treated, but he continued to smile until, just before the guard could push him fully out of the room, he planted his feet to resist the officer's shoving. He looked so calm. Then he did something completely unexpected. I watched him close his eyes and tilt his head back. I was confused by what he was doing, but then he opened his mouth and I understood. He began to sing. He had a tremendous baritone voice that was strong and clear. It startled both me and the guard, who stopped his pushing.

*I'm pressing on, the upward way
New heights I'm gaining, every day
Still praying as, I'm onward bound
Lord, plant my feet on Higher Ground.*

It was an old hymn they used to sing all the time in the church where I grew up. I hadn't heard it in years. Henry sang slowly and with great sincerity and conviction. It took a moment before the officer recovered and resumed pushing him out the door. Because his ankles were shackled and his hands were locked behind his back, Henry almost stumbled when the guard shoved him forward. He had to waddle to keep his balance, but he kept on singing. I could hear him as he went down the hall:

*Lord lift me up, and let me stand
By faith on Heaven's tableland
A higher plane, that I have found
Lord, plant my feet on Higher Ground.*

I sat down, completely stunned. Henry's voice was filled with desire. I experienced his song as a precious gift. I had come into the prison with such anxiety and fear about his willingness to tolerate my inadequacy. I didn't expect him to be compassionate or generous. I had no right to expect anything from a condemned man on death row. Yet he gave me an astonishing measure of his humanity. In that moment, Henry altered something in my understanding of human potential, redemption, and hopefulness.

I finished my internship committed to helping the death row prisoners I had met that month. Proximity to the condemned and incarcerated made the question of each person's humanity more urgent and meaningful, including my own. I went back to law school with an intense desire to understand the laws and doctrines that sanctioned the death penalty and extreme punishments. I piled up courses on constitutional law, litigation, appellate procedure, federal courts, and collateral remedies. I did extra work to broaden my understanding of how constitutional theory shapes criminal procedure. I plunged deeply into the law and the sociology of race, poverty, and power. Law school had seemed abstract and disconnected before, but after meet-

ing the desperate and imprisoned, it all became relevant and critically important. Even my studies at the Kennedy School took on a new significance. Developing the skills to quantify and deconstruct the discrimination and inequality I saw became urgent and meaningful.

My short time on death row revealed that there was something missing in the way we treat people in our judicial system, that maybe we judge some people unfairly. The more I reflected on the experience, the more I recognized that I had been struggling my whole life with the question of how and why people are judged unfairly.

I grew up in a poor, rural, racially segregated settlement on the eastern shore of the Delmarva Peninsula, in Delaware, where the racial history of this country casts a long shadow. The coastal communities that stretched from Virginia and eastern Maryland to lower Delaware were unapologetically Southern. Many people in the region insisted on a racialized hierarchy that required symbols, markers, and constant reinforcement, in part because of the area's proximity to the North. Confederate flags were proudly displayed throughout the region, boldly and defiantly marking the cultural, social, and political landscape.

African Americans lived in racially segregated ghettos isolated by railroad tracks within small towns or in "colored sections" in the country. I grew up in a country settlement where some people lived in tiny shacks; families without indoor plumbing had to use outhouses. We shared our outdoor play space with chickens and pigs.

The black people around me were strong and determined but marginalized and excluded. The poultry plant bus came each day to pick up adults and take them to the factory where they would daily pluck, hack, and process thousands of chickens. My father left the area as a teenager because there was no local high school for black children. He returned with my mother and found work in a food factory; on weekends he did domestic work at beach cottages and rentals. My mother

had a civilian job at an Air Force base. It seemed that we were all cloaked in an unwelcome garment of racial difference that constrained, confined, and restricted us.

My relatives worked hard all the time but never seemed to prosper. My grandfather was murdered when I was a teenager, but it didn't seem to matter much to the world outside our family.

My grandmother was the daughter of people who were enslaved in Caroline County, Virginia. She was born in the 1880s, her parents in the 1840s. Her father talked to her all the time about growing up in slavery and how he learned to read and write but kept it a secret. He hid the things he knew—until Emancipation. The legacy of slavery very much shaped my grandmother and the way she raised her nine children. It influenced the way she talked to me, the way she constantly told me to “Keep close.”

When I visited her, she would hug me so tightly I could barely breathe. After a little while, she would ask me, “Bryan, do you still feel me hugging you?” If I said yes, she'd let me be; if I said no, she would assault me again. I said no a lot because it made me happy to be wrapped in her formidable arms. She never tired of pulling me to her.

“You can't understand most of the important things from a distance, Bryan. You have to get close,” she told me all the time.

The distance I experienced in my first year of law school made me feel lost. Proximity to the condemned, to people unfairly judged; that was what guided me back to something that felt like home.

This book is about getting closer to mass incarceration and extreme punishment in America. It is about how easily we condemn people in this country and the injustice we create when we allow fear, anger, and distance to shape the way we treat the most vulnerable among us. It's also about a dramatic period in our recent history, a period that indelibly marked the lives of millions of Americans—of all races, ages, and sexes—and the American psyche as a whole.

When I first went to death row in December 1983, America was in

the early stages of a radical transformation that would turn us into an unprecedentedly harsh and punitive nation and result in mass imprisonment that has no historical parallel. Today we have the highest rate of incarceration in the world. The prison population has increased from 300,000 people in the early 1970s to 2.3 million people today. There are nearly six million people on probation or on parole. One in every fifteen people born in the United States in 2001 is expected to go to jail or prison; one in every three black male babies born in this century is expected to be incarcerated.

We have shot, hanged, gassed, electrocuted, and lethally injected hundreds of people to carry out legally sanctioned executions. Thousands more await their execution on death row. Some states have no minimum age for prosecuting children as adults; we've sent a quarter million kids to adult jails and prisons to serve long prison terms, some under the age of twelve. For years, we've been the only country in the world that condemns children to life imprisonment without parole; nearly three thousand juveniles have been sentenced to die in prison.

Hundreds of thousands of nonviolent offenders have been forced to spend decades in prison. We've created laws that make writing a bad check or committing a petty theft or minor property crime an offense that can result in life imprisonment. We have declared a costly war on people with substance abuse problems. There are more than a half-million people in state or federal prisons for drug offenses today, up from just 41,000 in 1980.

We have abolished parole in many states. We have invented slogans like "Three strikes and you're out" to communicate our toughness. We've given up on rehabilitation, education, and services for the imprisoned because providing assistance to the incarcerated is apparently too kind and compassionate. We've institutionalized policies that reduce people to their worst acts and permanently label them "criminal," "murderer," "rapist," "thief," "drug dealer," "sex offender," "felon"—identities they cannot change regardless of the circumstances of their crimes or any improvements they might make in their lives.

The collateral consequences of mass incarceration have been equally profound. We ban poor women and, inevitably, their children from receiving food stamps and public housing if they have prior drug convictions. We have created a new caste system that forces thousands of people into homelessness, bans them from living with their families and in their communities, and renders them virtually unemployable. Some states permanently strip people with criminal convictions of the right to vote; as a result, in several Southern states disenfranchisement among African American men has reached levels unseen since before the Voting Rights Act of 1965.

We also make terrible mistakes. Scores of innocent people have been exonerated after being sentenced to death and nearly executed. Hundreds more have been released after being proved innocent of noncapital crimes through DNA testing. Presumptions of guilt, poverty, racial bias, and a host of other social, structural, and political dynamics have created a system that is defined by error, a system in which thousands of innocent people now suffer in prison.

Finally, we spend lots of money. Spending on jails and prisons by state and federal governments has risen from \$6.9 billion in 1980 to nearly \$80 billion today. Private prison builders and prison service companies have spent millions of dollars to persuade state and local governments to create new crimes, impose harsher sentences, and keep more people locked up so that they can earn more profits. Private profit has corrupted incentives to improve public safety, reduce the costs of mass incarceration, and most significantly, promote rehabilitation of the incarcerated. State governments have been forced to shift funds from public services, education, health, and welfare to pay for incarceration, and they now face unprecedented economic crises as a result. The privatization of prison health care, prison commerce, and a range of services has made mass incarceration a money-making windfall for a few and a costly nightmare for the rest of us.

After graduating from law school, I went back to the Deep South to represent the poor, the incarcerated, and the condemned. In the last thirty years, I've gotten close to people who have been wrongly convicted and sent to death row, people like Walter McMillian. In this book you will learn the story of Walter's case, which taught me about our system's disturbing indifference to inaccurate or unreliable verdicts, our comfort with bias, and our tolerance of unfair prosecutions and convictions. Walter's experience taught me how our system traumatizes and victimizes people when we exercise our power to convict and condemn irresponsibly—not just the accused but also their families, their communities, and even the victims of crime. But Walter's case also taught me something else: that there is light within this darkness.

Walter's story is one of many that I tell in the following chapters. I've represented abused and neglected children who were prosecuted as adults and suffered more abuse and mistreatment after being placed in adult facilities. I've represented women, whose numbers in prison have increased 640 percent in the last thirty years, and seen how our hysteria about drug addiction and our hostility to the poor have made us quick to criminalize and prosecute poor women when a pregnancy goes wrong. I've represented mentally disabled people whose illnesses have often landed them in prison for decades. I've gotten close to victims of violent crime and their families and witnessed how even many of the custodians of mass imprisonment—prison staff—have been made less healthy, more violent and angry, and less just and merciful.

I've also represented people who have committed terrible crimes but nonetheless struggle to recover and to find redemption. I have discovered, deep in the hearts of many condemned and incarcerated people, the scattered traces of hope and humanity—seeds of restoration that come to astonishing life when nurtured by very simple interventions.

Proximity has taught me some basic and humbling truths, including this vital lesson: *Each of us is more than the worst thing we've ever*

done. My work with the poor and the incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice. Finally, I've come to believe that the true measure of our commitment to justice, the character of our society, our commitment to the rule of law, fairness, and equality cannot be measured by how we treat the rich, the powerful, the privileged, and the respected among us. The true measure of our character is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned.

We are all implicated when we allow other people to be mistreated. An absence of compassion can corrupt the decency of a community, a state, a nation. Fear and anger can make us vindictive and abusive, unjust and unfair, until we all suffer from the absence of mercy and we condemn ourselves as much as we victimize others. The closer we get to mass incarceration and extreme levels of punishment, the more I believe it's necessary to recognize that we all need mercy, we all need justice, and—perhaps—we all need some measure of unmerited grace.