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UNDERNEATH THE MASKS: ESSAYS FROM THREE OF THE MILLIONS OF PEOPLE WE IMPRISON

BY RITCHIE EPPINK*

The United States has stained itself with a mass incarceration system unprecedented in world history. We imprison more people, and a greater percentage of people, than any other nation in the world. By far.

Among the judges, lawyers, law enforcement officers, and even the scholars and critics that our shameful mass incarceration system depends upon for its persistence, almost none have ever been imprisoned themselves. The number of judges in this country who served a prison term before sentencing other people to them is virtually zero.

Instead, one of the main things our mass incarceration system does is atomize, isolate, and make invisible the people we imprison. Even in the court system itself, we seldom hear directly from those in our cages or bound for them. Reginald Dwayne Betts, poet and lawyer and one of so many Black men our society has incarcerated, wrote that those court proceedings are “where the / state turns men, women, children into / numbers.”¹

There is a video of Björk, the many-medium artist, taking apart her old-school cathode ray tube TV. She explains how these televisions work: by shooting electron beams at phosphors coating the inside of the screen. “This is millions and millions of little screens, who send light on you.” You have to “calculate, and put it all together into one picture. And then, because you’re so busy doing that, you don’t watch very carefully . . . so you become hypnotized.” And then “you stop judging if it’s right or not.”²

Our criminal legal system employs the same effect. Where the legal system and people intersect, rules conceal the person. The late Ninth Circuit judge John Noonan explained this phenomenon as the “masks of the law”: “By masks in this context I mean ways of classifying individual human beings so that their humanity is hidden and disavowed. . . . By masks I mean a legal construct suppressing the humanity of a participant in the process.”³

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1. Reginald Dwayne Betts, *For a Bail Denied*, FELON: POEMS 11–12 (2019).

2. *Bjork Takes apart Her TV*, YOUTUBE (Aug. 30, 2010), <https://youtu.be/DDvi-GIKdng>.

3. JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW 19–20 (Paperback ed. 2002).

Almost never do we see underneath those masks, especially in the official academic record of a law review. The authors of the three essays that follow are imprisoned by the Idaho Department of Correction. Having lived our mass incarceration system though every week, hour, and minute—for years—they write with more experience and expertise on mass incarceration than any other author in this Symposium Edition.