



THE NEW JIM CROW by Michelle Alexander

Introduction

Jarvious Cotton cannot vote. Like his father, grandfather, great-grandfather, and great-great-grandfather, he has been denied the right to participate in our electoral democracy. Cotton's family tree tells the story of several generations of black men who were born in the United States but who were denied the most basic freedom that democracy promises—the freedom to vote for those who will make the rules and laws that govern one's life. Cotton's great-great-grandfather could not vote as a slave. His great-grandfather was beaten to death by the Ku Klux Klan for attempting to vote. His grandfather was prevented from voting by Klan intimidation. His father was barred from voting by poll taxes and literacy tests. Today, Jarvious Cotton cannot vote because he, like many black men in the United States, has been labeled a felon and is currently on parole.¹

BOOK
EXCERPT

Cotton's story illustrates, in many respects, the old adage "The more things change, the more they remain the same." In each generation, new tactics have been used for achieving the same goals—goals shared by the Founding Fathers. Denying African Americans citizenship was deemed essential to the formation of the original union. Hundreds of years later, America is still not an egalitarian democracy. An extraordinary percentage of black men in the United States are legally barred from voting today, just as they have been throughout most of American history. They are also subject to legalized discrimination in employment, housing, education, public benefits, and jury service, just as their parents, grandparents, and great-grandparents once were.

In the era of colorblindness, it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don't. Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind. Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it.

I first encountered the idea of a new racial caste system more than a decade ago, when a bright orange poster caught my eye. I was rushing to catch the bus, and I noticed a sign stapled to a telephone pole that screamed in large bold print: The Drug War Is the New Jim Crow. I paused for a moment and skimmed the text of the flyer. Some radical group was holding a community meeting about police brutality, the new three-strikes law in California, and the expansion of America's prison system. The meeting was being held at a small community church a few blocks away; it had seating capacity for no more than fifty people. I sighed, and muttered to myself something like, "Yeah, the criminal justice system is racist

Abridged excerpt
from *The New Jim
Crow: Mass Incar-
ceration in the Age
of Colorblindness* —
Copyright © 2010,
2012 by Michelle
Alexander. Reprinted
by permission of
The New Press.
thenewpress.com

in many ways, but it really doesn't help to make such an absurd comparison. People will just think you're crazy." I then crossed the street and hopped on the bus. I was headed to my new job, director of the Racial Justice Project of the American Civil Liberties Union (ACLU) in Northern California.

When I began my work at the ACLU, I assumed that the criminal justice system had problems of racial bias, much in the same way that all major institutions in our society are plagued with problems associated with conscious and unconscious bias. As a lawyer who had litigated numerous class-action employment-discrimination cases, I understood well the many ways in which racial stereotyping can permeate subjective decision-making processes at all levels of an organization, with devastating consequences.

By the time I left the ACLU, I had come to suspect that I was wrong about the criminal justice system. It was not just another institution infected with racial bias but rather a different beast entirely. The activists who posted the sign on the telephone pole were not crazy; nor were the smattering of lawyers and advocates around the country who were beginning to connect the dots between our current system of mass incarceration and earlier forms of social control. Quite belatedly, I came to see that mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.

In my experience, people who have been incarcerated rarely have difficulty identifying the parallels between these systems of social control. Once they are released, they are often denied the right to vote, excluded from juries, and relegated to a racially segregated and subordinated existence. Through a web of laws, regulations, and informal rules, all of which are powerfully reinforced by social stigma, they are confined to the margins of mainstream society and denied access to the mainstream economy. They are legally denied the ability to obtain employment, housing, and public benefits—much as African Americans were once forced into a segregated, second-class citizenship in the Jim Crow era.

• • •

President Ronald Reagan officially announced the current drug war in 1982, before crack became an issue in the media or a crisis in poor black neighborhoods. A few years after the drug war was declared, crack began to spread rapidly in the poor black neighborhoods of Los Angeles and later emerged in cities across the country.² The Reagan administration hired staff to publicize the emergence of crack cocaine in 1985 as part of a strategic effort to build public and legislative support for the war.³ The media campaign was an extraordinary success. Almost overnight, the media was saturated with images of black “crack whores,” “crack dealers,” and “crack babies”—images that seemed to confirm the worst negative racial stereotypes about impoverished inner-city residents. The media bonanza surrounding the “new demon drug” helped to catapult the War on Drugs from an ambitious federal policy to an actual war.

The impact of the drug war has been astounding. In less than thirty years, the U.S. penal population exploded from around 300,000 to more than 2 million, with drug convictions

accounting for the majority of the increase.⁴ The United States now has the highest rate of incarceration in the world, dwarfing the rates of nearly every developed country, even surpassing those in highly repressive regimes like Russia, China, and Iran. In Germany, 93 people are in prison for every 100,000 adults and children. In the United States, the rate is roughly eight times that, or 750 per 100,000.⁵

The racial dimension of mass incarceration is its most striking feature. No other country in the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid. In Washington, D.C., our nation's capitol, it is estimated that three out of four young black men (and nearly all those in the poorest neighborhoods) can expect to serve time in prison.⁶ Similar rates of incarceration can be found in black communities across America.

These stark racial disparities cannot be explained by rates of drug crime. Studies show that people of all colors *use* and *sell* illegal drugs at remarkably similar rates.⁷ If there are significant differences in the surveys to be found, they frequently suggest that whites, particularly white youth, are more likely to engage in drug crime than people of color.⁸ That is not what one would guess, however, when entering our nation's prisons and jails, which are overflowing with black and brown drug offenders.

The stark and sobering reality is that, for reasons largely unrelated to actual crime trends, the American penal system has emerged as a system of social control unparalleled in world history. And while the size of the system alone might suggest that it would touch the lives of most Americans, the primary targets of its control can be defined largely by race. This is an astonishing development, especially given that as recently as the mid-1970s, the most well-respected criminologists were predicting that the prison system would soon fade away. The growing consensus among experts was perhaps best reflected by the National Advisory Commission on Criminal Justice Standards and Goals, which issued a recommendation in 1973 that “no new institutions for adults should be built and existing institutions for juveniles should be closed.”⁹ This recommendation was based on their finding that “the prison, the reformatory and the jail have achieved only a shocking record of failure. There is overwhelming evidence that these institutions create crime rather than prevent it.”¹⁰

[D]espite the unprecedented levels of incarceration in the African American community, the civil rights community is oddly quiet. One in three young African American men will serve time in prison if current trends continue, and in some cities more than half of all young adult black men are currently under correctional control—in prison or jail, on probation or parole.¹¹ Yet mass incarceration tends to be categorized as a criminal justice issue as opposed to a racial justice or civil rights issue (or crisis).

The elected leaders of the African American community have a much broader mandate than civil rights groups, but they, too, frequently overlook criminal justice. In January 2009, for example, the Congressional Black Caucus sent a letter to hundreds of community and organization leaders who have worked with the caucus over the years, soliciting general information about them and requesting that they identify their priorities. More than thirty-five topics were listed as areas of potential special interest, including taxes, defense,

immigration, agriculture, housing, banking, higher education, multimedia, transportation and infrastructure, women, seniors, nutrition, faith initiatives, civil rights, census, economic security, and emerging leaders. No mention was made of criminal justice. “Re-entry” was listed, but a community leader who was interested in criminal justice reform had to check the box labeled “other.”

Imagine if civil rights organizations and African American leaders in the 1940s had not placed Jim Crow segregation at the forefront of their racial justice agenda. It would have seemed absurd, given that racial segregation was the primary vehicle of racialized social control in the United States during that period. This book argues that mass incarceration is, metaphorically, the New Jim Crow and that all those who care about social justice should fully commit themselves to dismantling this new racial caste system. Mass incarceration—not attacks on affirmative action or lax civil rights enforcement—is the most damaging manifestation of the backlash against the Civil Rights Movement. The popular narrative that emphasizes the death of slavery and Jim Crow and celebrates the nation’s “triumph over race” with the election of Barack Obama, is dangerously misguided. The colorblind public consensus that prevails in America today—i.e., the widespread belief that race no longer matters—has blinded us to the realities of race in our society and facilitated the emergence of a new caste system.

For some, the characterization of mass incarceration as a “racial caste system” may seem like a gross exaggeration, if not hyperbole. Yes, we may have “classes” in the United States—vaguely defined upper, middle, and lower classes—and we may even have an “underclass” (a group so estranged from mainstream society that it is no longer in reach of the mythical ladder of opportunity), but we do not, many will insist, have anything in this country that resembles a “caste.”

The aim of this book is not to venture into the long-running, vigorous debate in the scholarly literature regarding what does and does not constitute a caste system. I use the term racial caste in this book the way it is used in common parlance to denote a stigmatized racial group locked into an inferior position by law and custom. Jim Crow and slavery were caste systems. So is our current system of mass incarceration.

It may be helpful, in attempting to understand the basic nature of the new caste system, to think of the criminal justice system—the entire collection of institutions and practices that comprise it—not as an independent system but rather as a *gateway* into a much larger system of racial stigmatization and permanent marginalization. The term *mass incarceration* refers not only to the criminal justice system but also to the larger web of laws, rules, policies, and customs that control those labeled criminals both in and out of prison. Once released, former prisoners enter a hidden underworld of legalized discrimination and permanent social exclusion. They are members of America’s new undercaste.

The language of caste may well seem foreign or unfamiliar to some. Public discussions about racial caste in America are relatively rare. We avoid talking about caste in our society because we are ashamed of our racial history. We also avoid talking about race. We even avoid talking about class. Conversations about class are resisted in part because there is a

tendency to imagine that one's class reflects upon one's character. What is key to America's understanding of class is the persistent belief—despite all evidence to the contrary—that anyone, with the proper discipline and drive, can move from a lower class to a higher class. We recognize that mobility may be difficult, but the key to our collective self-image is the assumption that mobility is always possible, so failure to move up reflects on one's character. By extension, the failure of a race or ethnic group to move up reflects very poorly on the group as a whole.

What is completely missed in the rare public debates today about the plight of African Americans is that a huge percentage of them are not free to move up at all. It is not just that they lack opportunity, attend poor schools, or are plagued by poverty. They are barred by law from doing so. And the major institutions with which they come into contact are designed to prevent their mobility. To put the matter starkly: The current system of control permanently locks a huge percentage of the African American community out of the mainstream society and economy. The system operates through our criminal justice institutions, but it functions more like a caste system than a system of crime control. Viewed from this perspective, the so-called underclass is better understood as an *undercaste*—a lower caste of individuals who are permanently barred by law and custom from mainstream society. Although this new system of racialized social control purports to be colorblind, it creates and maintains racial hierarchy much as earlier systems of control did. Like Jim Crow (and slavery), mass incarceration operates as a tightly networked system of laws, policies, customs, and institutions that operate collectively to ensure the subordinate status of a group defined largely by race.

There are important differences, to be sure, among mass incarceration, Jim Crow, and slavery—the three major racialized systems of control adopted in the United States to date. Failure to acknowledge the relevant differences, as well as their implications, would be a disservice to racial justice discourse. Many of the differences are not as dramatic as they initially appear, however; others serve to illustrate the ways in which systems of racialized social control have managed to morph, evolve, and adapt to changes in the political, social, and legal context over time. Ultimately, I believe that the similarities between these systems of control overwhelm the differences and that mass incarceration, like its predecessors, has been largely immunized from legal challenge.

With the benefit of hindsight, surely we can see that piecemeal policy reform or litigation alone would have been a futile approach to dismantling Jim Crow segregation. While those strategies certainly had their place, the Civil Rights Act of 1964 and the concomitant cultural shift would never have occurred without the cultivation of a critical political consciousness in the African American community and the widespread, strategic activism that flowed from it. Likewise, the notion that the *New Jim Crow* can ever be dismantled through traditional litigation and policy-reform strategies that are wholly disconnected from a major social movement seems fundamentally misguided.

A new social consensus must be forged about race and the role of race in defining the basic structure of our society, if we hope ever to abolish the *New Jim Crow*. This new consensus must begin with dialogue, a conversation that fosters a critical consciousness, a key pre-

requisite to effective social action. This book is an attempt to ensure that the conversation does not end with nervous laughter.

What this book is intended to do—the only thing it is intended to do—is to stimulate a much-needed conversation about the role of the criminal justice system in creating and perpetuating racial hierarchy in the United States. The fate of millions of people—indeed the future of the black community itself—may depend on the willingness of those who care about racial justice to re-examine their basic assumptions about the role of the criminal justice system in our society.

Endnotes

1 Jarvious Cotton was a plaintiff in *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998), which held that Mississippi’s felon disenfranchisement provision had lost its racially discriminatory taint. The information regarding Cotton’s family tree was obtained by Emily Bolton on March 29, 1999, when she interviewed Cotton at Mississippi State Prison. Jarvious Cotton was released on parole in Mississippi, a state that denies voting rights to parolees.

2 The *New York Times* made the national media’s first specific reference to crack in a story published in late 1985. Crack became known in a few impoverished neighborhoods in Los Angeles, New York, and Miami in early 1986. See Craig Reinerman and Harry Levine, “The Crack Attack: America’s Latest Drug Scare, 1986–1992,” in *Images of Issues: Typifying Contemporary Social Problems* (New York: Aldine De Gruyter, 1995), 152.

3 The Reagan administration’s decision to publicize crack “horror stories” is discussed in more depth in chapter 1.

4 Marc Mauer, *Race to Incarcerate*, rev. ed. (New York: The New Press, 2006), 33.

5 PEW Center on the States, *One in 100: Behind Bars in America 2008* (Washington, DC: PEW Charitable Trusts, 2008), 5.

6 Donald Braman, *Doing Time on the Outside: Incarceration and Family Life in Urban America* (Ann Arbor: University of Michigan Press, 2004), 3, citing D.C. Department of Corrections data for 2000.

7 See, e.g., U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Summary of Findings from the 2000 National Household Survey on Drug Abuse*, NHSDA series H-13, DHHS pub. no. SMA 01-3549 (Rockville, MD: 2001), reporting that 6.4 percent of whites, 6.4 percent of blacks, and 5.3 percent of Hispanics were current users of illegal drugs in 2000; *Results from the 2002 National Survey on Drug Use and Health: National Findings*, NHSDA series H-22, DHHS pub. no. SMA 03-3836 (2003), revealing nearly identical rates of illegal drug use among whites and blacks, only a single percentage point between them; and *Results from the 2007 National Survey on Drug Use and Health: National Findings*, NSDUH series H-34, DHHS pub. no. SMA 08-4343 (2007), showing essentially the same finding. See also Marc Mauer and Ryan S. King, *A 25-Year Quagmire: The “War on Drugs” and Its Impact on American Society* (Washington, DC: Sentencing Project, 2007), 19, citing a study suggesting that African Americans have slightly higher rates of illegal drug use than whites.

8 See, e.g., Howard N. Snyder and Melissa Sickman, *Juvenile Offenders and Victims: 2006 National Report*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (Washington, DC: U.S. Department of Justice, 2006), reporting that white youth are more likely than black youth to engage in illegal drug sales. See also Lloyd D. Johnson, Patrick M. O’Malley, Jerald G. Bachman, and John E. Schulenberg, *Monitoring the Future, National Survey Results on Drug Use, 1975–2006*, vol. 1, *Secondary School Students*, U.S. Department of Health and Human Services, National Institute on Drug Abuse, NIH pub. no. 07-6205 (Bethesda, MD: 2007), 32, “African American 12th graders have consistently shown lower usage rates than White 12th graders for most drugs, both licit and illicit”; and Lloyd D. Johnston, Patrick M. O’Malley, and Jerald G. Bachman, *Monitoring the Future: National Results on Adolescent Drug Use: Overview of Key Findings 2002*, U.S. Department of Health and Human Services, National Institute on Drug Abuse, NIH pub. no. 03-5374

(Bethesda, MD: 2003), presenting data showing that African American adolescents have slightly lower rates of illicit drug use than their white counterparts.

9 National Advisory Commission on Criminal Justice Standards and Goals, *Task Force Report on Corrections* (Washington, DC: Government Printing Office, 1973), 358.

10 *Ibid.*, 597.

11 The estimate that one in three black men will go to prison during their lifetime is drawn from Thomas P. Bonczar, "Prevalence of Imprisonment in the U.S. Population, 1974–2001," U.S. Department of Justice, Bureau of Justice Statistics, August 2003. In Baltimore, like many large urban areas, the majority of young African American men are currently under correctional supervision. See Eric Lotke and Jason Ziedenberg, "Tipping Point: Maryland's Overuse of Incarceration and the Impact on Community Safety," Justice Policy Institute, March 2005, 3.