

## The New Jim Crow

Michelle Alexander

A caste is a rigid system of stratification within a society. One of the most well-known caste systems is that associated with the Hindu religion, where belief in reincarnation shapes beliefs about how society should be organized. Children inherit the exact same position in society as their parents, without the opportunity for social mobility except in the case of Karma. Options for education, work, friendship, and romantic partners are controlled by strict social sanctions that ensure the members of each caste stay “in their place.”

The concept of a caste system is the antithesis to what is commonly referred to as the American Dream—that there is equal opportunity for all Americans and that how far you go in life and where you wind up on the socioeconomic ladder is a reflection of individual ability and effort. The saying “pull yourself up by your bootstraps” is a colloquial way of referring to the idea behind the American Dream.

In a caste system, some segments of the population are not allowed to have bootstraps, or for that matter—boots. The ability to move up (or down) the socioeconomic ladder in a society is, by design, not available to them. In this article, legal scholar Michelle Alexander argues that the American criminal justice system has created a caste system based on race, recreating the overt legal and social barriers faced by African Americans in the Jim Crow era from 1896 to 1965. The problem today is subtler—politicians and those working in the criminal justice system tend to vociferously deny that race plays any role in arrests, incarceration rates, or treatment of criminals after they have served their time. Alexander shows that there are clear statistical and anecdotal biases based on race, and that even the laws surrounding how charges of racial bias can be brought to courts for consideration has contributed to the systematic discrimination and disenfranchisement of blacks in American society. The end result is a racial caste system that is quite the opposite of the American Dream.

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## How Mass Incarceration Turns People of Color Into Permanent Second-Class Citizens

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The first time I encountered the idea that our criminal justice system functions much like a racial caste system, I dismissed the notion. It was more than 10 years ago in Oakland when I was rushing to catch the bus and spotted a bright orange sign stapled to a telephone pole. It screamed in large, bold print: “The Drug War is the New Jim Crow.” I scanned the text of the flyer and then muttered something like, “Yeah, the criminal justice system is racist in many ways, but making such an absurd comparison doesn’t help. People will just think you’re crazy.” I then hopped on the bus and headed to my new job as director of the Racial Justice Project for the American Civil Liberties Union of Northern California.

What a difference a decade makes. After years of working on issues of racial profiling, police brutality, and drug-law enforcement in poor communities of color as well as working with former inmates struggling to reenter a society that never seemed to have much use for them, I began to suspect that I was wrong about the criminal-justice system. It was not just another institution infected with racial bias but 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 racial control. Quite belatedly, I came to see that mass incarceration in the United States has, in fact, emerged as a comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.

What has changed since the collapse of Jim Crow has less to do with the basic structure of our society than with the language we use to justify severe inequality. In the era of colorblindness, it is no longer socially permissible to use race, explicitly, as justification for discrimination, exclusion, or social contempt. Rather, we use our criminal justice system to associate criminality with people of color and then engage in the prejudiced practices we supposedly left behind. Today, it is legal to discriminate against ex-offenders in ways it was once legal to discriminate against African Americans. Once you’re labeled a felon, depending on the state you’re in, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, and exclusion from jury service—are suddenly legal. 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.

More than two million African Americans are currently under the control of the criminal-justice system—in prison or jail, on probation or parole. During the past few decades, millions more have cycled in and out

of the system; indeed, nearly 70 percent of people released from prison are rearrested within three years. Most people appreciate that millions of African Americans were locked into a second-class status during slavery and Jim Crow, and that these earlier systems of racial control created a legacy of political, social, and economic inequality that our nation is still struggling to overcome. Relatively few, however, seem to appreciate that millions of African Americans are subject to a new system of control—mass incarceration—which also has a devastating effect on families and communities. The harm is greatly intensified when prisoners are released. As criminologist Jeremy Travis has observed, “In this brave new world, punishment for the original offense is no longer enough; one’s debt to society is never paid.”

The scale of incarceration-related discrimination is astonishing. Ex-offenders are routinely stripped of essential rights. Current felon-disenfranchisement laws bar 13 percent of African American men from casting a vote, thus making mass incarceration an effective tool of voter suppression—one reminiscent of the poll taxes and literacy tests of the Jim Crow era. Employers routinely discriminate against an applicant based on criminal history, as do landlords. In most states, it is also legal to make ex-drug offenders ineligible for food stamps. In some major urban areas, if you take into account prisoners—who are excluded from poverty and unemployment statistics, thus masking the severity of black disadvantage—more than half of working-age African American men have criminal records and are thus subject to legalized discrimination for the rest of their lives. In Chicago, for instance, nearly 80 percent of working-age African American men had criminal records in 2002. These men are permanently locked into an inferior, second-class status, or caste, by law and custom.

The official explanation for this is crime rates. Our prison population increased sevenfold in less than 30 years, going from about 300,000 to more than 2 million, supposedly due to rising crime in poor communities of color.

Crime rates, however, actually have little to do with incarceration rates. Crime rates have fluctuated during the past 30 years and today are at historical lows, but incarceration rates have consistently soared. Most sociologists and criminologists today will acknowledge that crime rates and incarceration rates have moved independently of each other; incarceration rates have skyrocketed regardless of whether crime has gone up or down in any particular community or in the nation as a whole.

What caused the unprecedented explosion in our prison population? It turns out that the activists who posted the sign on the telephone pole were right: The *war on drugs* is the single greatest contributor to mass incarceration in the United States. Drug convictions accounted for about two-thirds of the increase in the federal prison system and more than half of the increase in the state prison system between 1985 and 2000—the period of the U.S. penal system’s most dramatic expansion.

Contrary to popular belief, the goal of this war is not to root out violent offenders or drug kingpins. In 2005, for example, four out of five drug arrests were for possession, while only one out five were for sales. A 2007 report from Sentencing Project found that most people in state prison for drug offenses had no history of violence or significant selling activity. Nearly 80 percent of the increase in drug arrests in the 1990s, when the drug war peaked, could be attributed to possession of marijuana, a substance less harmful than alcohol or tobacco and at least as prevalent in middle-class white communities and on college campuses as in poor communities of color.

The drug war, though, has been waged almost exclusively in poor communities of color, despite the fact that studies consistently indicate that people of all races use and sell illegal drugs at remarkably similar rates. This is not what one would guess by peeking inside our nation's prisons and jails, which are overflowing with black and brown drug offenders. In 2000, African Americans made up 80 percent to 90 percent of imprisoned drug offenders in some states.

The extraordinary racial disparities in our criminal justice system would not exist today but for the complicity of the United States Supreme Court. In the failed war on drugs, our Fourth Amendment protections against unreasonable searches and seizures have been eviscerated. Stop-and-frisk operations in poor communities of color are now routine; the arbitrary and discriminatory police practices the framers aimed to prevent are now commonplace. Justice Thurgood Marshall, in a strident dissent in the 1989 case of *Skinner v. Railway Labor Executive Association*, felt compelled to remind the Court that there is *no drug exception* to the Fourth Amendment. His reminder was in vain. The Supreme Court had begun steadily unraveling Fourth Amendment protections against stops, interrogations, and seizures in bus stops, train stations, schools, workplaces, airports, and on sidewalks in a series of cases starting in the early 1980s. These aggressive sweep tactics in poor communities of color are now as accepted as separate water fountains were several decades ago.

If the system is as rife with conscious and unconscious bias, many people often ask, why aren't more lawsuits filed? Why not file class-action lawsuits challenging bias by the police or prosecutors? Doesn't the 14th Amendment guarantee equal protection of the law?

What many don't realize is that the Supreme Court has ruled that in the absence of conscious, intentional bias—tantamount to an admission or a racial slur—you can't present allegations of race discrimination in the criminal justice system. These rulings have created a nearly insurmountable hurdle, as law enforcement officials know better than to admit racial bias out loud, and much of the discrimination that pervades this system is rooted in unconscious racial stereotypes, or *hunches* about certain types of people that

come down to race. Because these biases operate unconsciously, the only proof of bias is in the outcomes: how people of different races are treated. The Supreme Court, however, has ruled that no matter how severe the racial disparities, and no matter how overwhelming or compelling the statistical evidence may be, you must have proof of conscious, intentional bias to present a credible case of discrimination. In this way, the system of mass incarceration is now immunized from judicial scrutiny for racial bias, much as slavery and Jim Crow laws were once protected from constitutional challenge.

As a nation, we have managed to create a massive system of control that locks a significant percentage of our population—a group defined largely by race—into a permanent, second-class status. This is not the fault of one political party. It is not merely the fault of biased police, prosecutors, or judges. We have all been complicit in the emergence of mass incarceration in the United States. In the so-called era of colorblindness, we have become blind not so much to race as to the re-emergence of caste in America. We have turned away from those labeled *criminals*, viewing them as *others* unworthy of our concern. Some of us have been complicit by remaining silent, even as we have a sneaking suspicion that something has gone horribly wrong. We must break that silence and awaken to the human rights nightmare that is occurring on our watch.

We, as a nation, can do better than this.

## DISCUSSION QUESTIONS

1. What role does language play in allowing the striking racial disparities in the criminal justice system to cause little concern in wider American society?
2. After those convicted of a crime serve their sentences, what additional obstacles do they face? What are the arguments for and against keeping these additional sanctions?
3. How are crime rates and rates of incarceration related? What explains this relationship?
4. What role has the *war on drugs* played in the mass incarceration of African Americans?
5. If the criminal justice system has such widespread racial disparities, why don't activists and lawyers simply bring their evidence to the courts to try to change the system?