

The New Jim Crow

Mass Incarceration in the
Age of Colorblindness

Revised Edition

MICHELLE ALEXANDER



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For Nicole, Jonathan, and Corinne

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

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. The arguments and rationalizations that have been trotted out in support of racial exclusion and discrimination in its various forms have changed and evolved, but the outcome has remained largely the same. 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.

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 it. 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. Once you're labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, 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.

I reached the conclusions presented in this book reluctantly. Ten years ago, I would have argued strenuously against the central claim made here—namely, that something akin to a racial caste system currently exists in the United States. Indeed, if Barack Obama had been elected president back then, I would have argued that his election marked the nation's triumph over racial caste—the final nail in the coffin of Jim Crow. My elation would have been tempered by the distance yet to be traveled to reach the promised land of racial justice in America, but my conviction that nothing remotely similar to Jim Crow exists in this country would have been steadfast.

Today my elation over Obama's election is tempered by a far more sobering awareness. As an African American woman, with three young children who will never know a world in which a black man could not be president of the United States, I was beyond thrilled on election night. Yet when I walked out of the election night party, full of hope and enthusiasm, I was immediately reminded of the harsh realities of the New Jim Crow. A black man was on his knees in the gutter, hands cuffed behind his back, as several police officers stood around him talking, joking, and ignoring his human existence. People poured out of the building; many stared for a moment at the black

man cowering in the street, and then averted their gaze. What did the election of Barack Obama mean for him?

Like many civil rights lawyers, I was inspired to attend law school by the civil rights victories of the 1950s and 1960s. Even in the face of growing social and political opposition to remedial policies such as affirmative action, I clung to the notion that the evils of Jim Crow are behind us and that, while we have a long way to go to fulfill the dream of an egalitarian, multiracial democracy, we have made real progress and are now struggling to hold on to the gains of the past. I thought my job as a civil rights lawyer was to join with the allies of racial progress to resist attacks on affirmative action and to eliminate the vestiges of Jim Crow segregation, including our still separate and unequal system of education. I understood the problems plaguing poor communities of color, including problems associated with crime and rising incarceration rates, to be a function of poverty and lack of access to quality education—the continuing legacy of slavery and Jim Crow. Never did I seriously consider the possibility that a new racial caste system was operating in this country. The new system had been developed and implemented swiftly, and it was largely invisible, even to people, like me, who spent most of their waking hours fighting for justice.

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 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. I was familiar with the challenges associated with reforming institutions in which racial stratification is thought to be normal—the natural consequence of differences in education, culture, motivation, and, some still believe, innate ability. While at the ACLU, I shifted my focus from employment discrimination to criminal justice reform and dedicated myself to the task of working with others to identify and eliminate racial bias whenever and wherever it reared its ugly head.

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.

Those of us who have viewed that world from a comfortable distance—yet sympathize with the plight of the so-called underclass—tend to interpret the experience of those caught up in the criminal justice system primarily through the lens of popularized social science, attributing the staggering increase in incarceration rates in communities of color to the predictable, though unfortunate, consequences of poverty, racial segregation, unequal

educational opportunities, and the presumed realities of the drug market, including the mistaken belief that most drug dealers are black or brown. Occasionally, in the course of my work, someone would make a remark suggesting that perhaps the War on Drugs is a racist conspiracy to put blacks back in their place. This type of remark was invariably accompanied by nervous laughter, intended to convey the impression that although the idea had crossed their minds, it was not an idea a reasonable person would take seriously.

Most people assume the War on Drugs was launched in response to the crisis caused by crack cocaine in inner-city neighborhoods. This view holds that the racial disparities in drug convictions and sentences, as well as the rapid explosion of the prison population, reflect nothing more than the government's zealous—but benign—efforts to address rampant drug crime in poor, minority neighborhoods. This view, while understandable, given the sensational media coverage of crack in the 1980s and 1990s, is simply wrong.

While it is true that the publicity surrounding crack cocaine led to a dramatic increase in funding for the drug war (as well as to sentencing policies that greatly exacerbated racial disparities in incarceration rates), there is no truth to the notion that the War on Drugs was launched in response to crack cocaine. 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 timing of the crack crisis helped to fuel conspiracy theories and general speculation in poor black communities that the War on Drugs was part of a genocidal plan by the government to destroy black people in the United States. From the outset, stories circulated on the street that crack and other drugs were being brought into black neighborhoods by the CIA. Eventually,

even the Urban League came to take the claims of genocide seriously. In its 1990 report "The State of Black America," it stated: "There is at least one concept that must be recognized if one is to see the pervasive and insidious nature of the drug problem for the African American community. Though difficult to accept, that is the concept of genocide."⁴ While the conspiracy theories were initially dismissed as far-fetched, if not downright loony, the word on the street turned out to be right, at least to a point. The CIA admitted in 1998 that guerrilla armies it actively supported in Nicaragua were smuggling illegal drugs into the United States—drugs that were making their way onto the streets of inner-city black neighborhoods in the form of crack cocaine. The CIA also admitted that, in the midst of the War on Drugs, it blocked law enforcement efforts to investigate illegal drug networks that were helping to fund its covert war in Nicaragua.⁵

It bears emphasis that the CIA never admitted (nor has any evidence been revealed to support the claim) that it intentionally sought the destruction of the black community by allowing illegal drugs to be smuggled into the United States. Nonetheless, conspiracy theorists surely must be forgiven for their bold accusation of genocide, in light of the devastation wrought by crack cocaine and the drug war, and the odd coincidence that an illegal drug crisis suddenly appeared in the black community after—not before—a drug war had been declared. In fact, the War on Drugs began at a time when illegal drug use was on the decline.⁶ During this same time period, however, a war was declared, causing arrests and convictions for drug offenses to skyrocket, especially among people of color.

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.⁷ 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 100,000.⁸

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.⁹ 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.¹⁰ 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.¹¹ 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. In some states, black men have been admitted to prison on drug charges at rates twenty to fifty times greater than those of white men.¹² And in major cities wracked by the drug war, as many as 80 percent of young African American men now have criminal records and are thus subject to legalized discrimination for the rest of their lives.¹³ These young men are part of a growing undercaste, permanently locked up and locked out of mainstream society.

It may be surprising to some that drug crime was declining, not rising, when a drug war was declared. From a historical perspective, however, the lack of correlation between crime and punishment is nothing new. Sociologists have frequently observed that governments use punishment primarily as a tool of social control, and thus the extent or severity of punishment is often unrelated to actual crime patterns. Michael Tonry explains in *Thinking About Crime*: "Governments decide how much punishment they want, and these decisions are in no simple way related to crime rates."¹⁴ This fact, he points out, can be seen most clearly by putting crime and punishment in comparative perspective. Although crime rates in the United States have not been markedly higher than those of other Western countries, the rate of incarceration has soared in the United States while it has remained stable or declined in other countries. Between 1960 and 1990, for example, official crime rates in Finland, Germany, and the United States were close to identical. Yet the U.S. incarceration rate quadrupled, the Finnish rate fell by 60 percent, and the German rate was stable in that period.¹⁵ Despite similar crime rates, each government chose to impose different levels of punishment.

Today, due to recent declines, U.S. crime rates have dipped below the international norm. Nevertheless, the United States now boasts an incarceration

rate that is six to ten times greater than that of other industrialized nations¹⁶—a development directly traceable to the drug war. The only country in the world that even comes close to the American rate of incarceration is Russia, and no other country in the world incarcerates such an astonishing percentage of its racial or ethnic minorities.

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. Prison did not deter crime significantly, many experts concluded. Those who had meaningful economic and social opportunities were unlikely to commit crimes regardless of the penalty, while those who went to prison were far more likely to commit crimes again in the future. 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.”¹⁷ 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.”¹⁸

These days, activists who advocate “a world without prisons” are often dismissed as quacks, but only a few decades ago, the notion that our society would be much better off without prisons—and that the end of prisons was more or less inevitable—not only dominated mainstream academic discourse in the field of criminology but also inspired a national campaign by reformers demanding a moratorium on prison construction. Marc Mauer, the executive director of the Sentencing Project, notes that what is most remarkable about the moratorium campaign in retrospect is the context of imprisonment at the time. In 1972, fewer than 350,000 people were being held in prisons and jails nationwide, compared with more than 2 million people today. The rate of incarceration in 1972 was at a level so low that it no longer seems in the realm of possibility, but for moratorium supporters,

that magnitude of imprisonment was egregiously high. “Supporters of the moratorium effort can be forgiven for being so naïve,” Mauer suggests, “since the prison expansion that was about to take place was unprecedented in human history.”¹⁹ No one imagined that the prison population would more than quintuple in their lifetime. It seemed far more likely that prisons would fade away.

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Clearly, much has changed in my thinking about the criminal justice system since I passed that bright orange poster stapled to a telephone pole ten years ago. For me, the new caste system is now as obvious as my own face in the mirror. Like an optical illusion—one in which the embedded image is impossible to see until its outline is identified—the new caste system lurks invisibly within the maze of rationalizations we have developed for persistent racial inequality. It is possible—quite easy, in fact—never to see the embedded reality. Only after years of working on criminal justice reform did my own focus finally shift, and then the rigid caste system slowly came into view. Eventually it became obvious. Now it seems odd that I could not see it before.

Knowing as I do the difficulty of seeing what most everyone insists does not exist, I anticipate that this book will be met with skepticism or something worse. 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. This larger system, referred to here as mass incarceration, is a system that locks people not only behind actual bars in actual prisons, but also behind virtual bars and virtual walls—walls that are invisible to the naked eye but function nearly as effectively as Jim Crow laws

once did at locking people of color into a permanent second-class citizenship. 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.

This argument may be particularly hard to swallow given the election of Barack Obama. Many will wonder how a nation that just elected its first black president could possibly have a racial caste system. It's a fair question. But as discussed in chapter 6, there is no inconsistency whatsoever between the election of Barack Obama to the highest office in the land and the existence of a racial caste system in the era of colorblindness. The current system of control depends on black exceptionalism; it is not disproved or undermined by it. Others may wonder how a racial caste system could exist when most Americans—of all colors—oppose race discrimination and endorse colorblindness. Yet as we shall see in the pages that follow, racial caste systems do not require racial hostility or overt bigotry to thrive. They need only racial indifference, as Martin Luther King Jr. warned more than forty-five years ago.

The recent decisions by some state legislatures, most notably New York's, to repeal or reduce mandatory drug sentencing laws have led some to believe that the system of racial control described in this book is already fading away. Such a conclusion, I believe, is a serious mistake. Many of the states that have reconsidered their harsh sentencing schemes have done so not out of concern for the lives and families that have been destroyed by these laws or the racial dimensions of the drug war, but out of concern for bursting state budgets in a time of economic recession. In other words, the racial ideology that gave rise to these laws remains largely undisturbed. Changing economic conditions or rising crime rates could easily result in a reversal of fortunes for those who commit drug crimes, particularly if the drug criminals are perceived to be black and brown. Equally important to understand is this: Merely reducing sentence length, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.

Skepticism about the claims made here is warranted. 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. If this claim is substantially correct, the implications for racial justice advocacy are profound.

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.

Such a movement is impossible, though, if those most committed to abolishing racial hierarchy continue to talk and behave as if a state-sponsored racial caste system no longer exists. If we continue to tell ourselves the popular myths about racial progress or, worse yet, if we say to ourselves that the problem of mass incarceration is just too big, too daunting for us to do anything about and that we should instead direct our energies to battles that might be more easily won, history will judge us harshly. A human rights nightmare is occurring on our watch.

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

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