



THE NEW JIM CROW by Michelle Alexander

CHAPTER 5

The New Jim Crow

Mapping the Parallels

The United States has almost always had a racial undercaste—a group defined wholly or largely by race that is permanently locked out of mainstream, white society by law, custom, and practice. What is most striking about the design of the current caste system, though, is how closely it resembles its predecessor. [T]here is a profound sense of déjà vu. There is a familiar stigma and shame. There is an elaborate system of control, complete with political disenfranchisement and legalized discrimination in every major realm of economic and social life. And there is the production of racial meaning and racial boundaries.

BOOK
EXCERPT

Historical parallels. Jim Crow and mass incarceration have similar political origins. [B]oth caste systems were born, in part, due to a desire among white elites to exploit the resentments, vulnerabilities, and racial biases of poor and working-class whites for political or economic gain. Segregation laws were proposed as part of a deliberate and strategic effort to deflect anger and hostility that had been brewing against the white elite away from them and toward African Americans. The birth of mass incarceration can be traced to a similar political dynamic. Conservatives in the 1970s and 1980s sought to appeal to the racial biases and economic vulnerabilities of poor and working-class whites through racially coded rhetoric on crime and welfare. In both cases, the racial opportunists offered few, if any, economic reforms to address the legitimate economic anxieties of poor and working-class whites, proposing instead a crackdown on the racially defined “others.”

Legalized discrimination. The most obvious parallel between Jim Crow and mass incarceration is legalized discrimination. During Black History Month, Americans congratulate themselves for having put an end to discrimination against African Americans in employment, housing, public benefits, and public accommodations. Schoolchildren wonder out loud how discrimination could ever have been legal in this great land of ours. Rarely are they told that it is *still* legal. Many of the forms of discrimination that relegated African Americans to an inferior caste during Jim Crow continue to apply to huge segments of the black population today—provided they are first labeled felons.

Political disenfranchisement. During the Jim Crow era, African Americans were denied the right to vote through poll taxes, literacy tests, grandfather clauses, and felon disenfranchisement laws, even though the Fifteenth Amendment to the U.S. Constitution specifically provides that “the right of citizens of the United States to vote shall not be denied ... on

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account of race, color, or previous condition of servitude.” Formally race-neutral devices were adopted to achieve the goal of an all-white electorate without violating the terms of the Fifteenth Amendment.

Following the collapse of Jim Crow, all of the race-neutral devices for excluding blacks from the electorate were eliminated through litigation or legislation, except felon disenfranchisement laws. The failure of our legal system to eradicate all of the tactics adopted during the Jim Crow era to suppress the black vote has major implications today. Less than two decades after the War on Drugs began, one in seven black men nationally had lost the right to vote, and as many as one in four in those states with the highest African American disenfranchisement rate.¹

Exclusion from juries. One hallmark of the Jim Crow era was all-white juries trying black defendants in the South. Today defendants face a situation highly similar to the one they faced a century ago. [T]he [U.S. Supreme] Court has tolerated the systematic exclusion of blacks from juries by allowing lower courts to accept “silly” and even “superstitious” reasons for striking black jurors.² To make matters worse, a large percentage of black men (about 30 percent) are automatically excluded from jury service because they have been labeled felons.³ The combined effect ... has put black defendants in a familiar place—in a courtroom in shackles, facing an all-white jury.

Closing the courthouse doors. The parallels between mass incarceration and Jim Crow extend all the way to the U.S. Supreme Court. In *Dred Scott v. Sanford*, the Supreme Court immunized the institution of slavery from legal challenge on the grounds that African Americans were not citizens, and in *Plessy v. Ferguson*, the Court established the doctrine of “separate but equal”—a legal fiction that protected the Jim Crow system from judicial scrutiny for racial bias.

Currently, *McCleskey v. Kemp* and its progeny serve much the same function as *Dred Scott* and *Plessy*. Mass incarceration is now off-limits to challenges on the grounds of racial bias, much as its predecessors were in their time. The new racial caste system operates unimpeded by the Fourteenth Amendment and federal civil rights legislation—laws designed to topple earlier systems of control.

Racial segregation. Although the parallels listed above should be enough to give anyone pause, there are a number of other, less obvious, similarities between mass incarceration and Jim Crow The creation and maintenance of racial segregation is one example. As we know, Jim Crow laws mandated residential segregation, and blacks were relegated to the worst parts of town. Roads literally stopped at the border of many black neighborhoods, shifting from pavement to dirt. Water, sewer systems, and other public services that supported the white areas of town frequently did not extend to the black areas. Racial segregation rendered black experience largely invisible to whites, making it easier for whites to maintain racial stereotypes about black values and culture. It also made it easier to deny or ignore their suffering.

Mass incarceration functions similarly. It achieves racial segregation by segregating prisoners—the majority of whom are black and brown—from mainstream society. Prisoners are kept behind bars, typically more than a hundred miles from home.⁴ Even prisons—the actual buildings—are a rare sight for many Americans, as they are often located far from population centers. Although rural counties contain only 20 percent of the U.S. population, 60 percent of new prison construction occurs there.⁵ Prisoners are thus hidden from public view—out of sight, out of mind.

Prisons, however, are not the only vehicle for racial segregation. Segregation is also created and perpetuated by the flood of prisoners who return to ghetto communities each year. Because the drug war has been waged almost exclusively in poor communities of color, when drug offenders are released, they are generally returned to racially segregated ghetto communities—the places they call home.

Symbolic production of race. Arguably the most important parallel between mass incarceration and Jim Crow is that both have served to define the meaning and significance of race in America. Indeed, a primary function of any racial caste system is to define the meaning of race in its time. Slavery defined what it meant to be black (a slave), and Jim Crow defined what it meant to be black (a second-class citizen). Today mass incarceration defines the meaning of blackness in America: black people, especially black men, are criminals. That is what it means to be black.

[T]he conflation of blackness with crime did not happen organically; rather, it was constructed by political and media elites as part of the broad project known as the War on Drugs. In the era of colorblindness, it is no longer permissible to hate blacks, but we can hate criminals. Indeed, we are encouraged to do so.

Just as African Americans in the North were stigmatized by the Jim Crow system even if they were not subject to its formal control, black men today are stigmatized by mass incarceration ... whether they have ever been to prison or not. For those who have been branded, the branding serves to intensify and deepen the racial stigma, as they are constantly reminded in virtually every contact they have with public agencies, as well as with private employers and landlords, that they are the new “untouchables.”

The Limits of the Analogy

Just as Jim Crow, as a system of racial control, was dramatically different from slavery, mass incarceration is different from its predecessor. If we fail to appreciate the differences, we will be hindered in our ability to meet the challenges created by the current moment.

Listing all of the differences here is impractical; so instead we will focus on a few of the major differences that are most frequently cited in defense of mass incarceration ...

Absence of racial hostility. First, let’s consider the absence of overt racial hostility among politicians who support harsh drug laws and the law enforcement officials charged with enforcing them. The absence of overt racial hostility is a significant difference from Jim Crow, but it can be exaggerated. [R]acial hostility and racial violence have not altogether disap-

peared, given that complaints of racial slurs and brutality by the police and prison guards are fairly common. Racial violence has been rationalized, legitimated, and channeled through our criminal justice system; it is expressed as police brutality, solitary confinement, and the discriminatory and arbitrary imposition of the death penalty.⁶

White victims of racial caste. Whites never had to sit at the back of the bus during Jim Crow, but today a white man may find himself in prison for a drug offense, sharing a cell with a black man. The direct harm caused to whites caused by mass incarceration seems to distinguish it from Jim Crow; yet, like many of the other differences, this one requires some qualification.

If 100 percent of the people arrested and convicted for drug offenses were African American, the situation would provoke outrage among the majority of Americans who consider themselves nonracist and who know very well that Latinos, Asian Americans, and whites also commit drug crimes. We, as a nation, seem comfortable with 90 percent of the people arrested and convicted of drug offenses in some states being African American, but if the figure were 100 percent, the veil of colorblindness would be lost. [T]he inclusion of some whites in the system of control is essential to preserving the image of a colorblind criminal justice system and maintaining our self-image as fair and unbiased people. Because most Americans, including those within law enforcement, want to believe they are nonracist, the suffering in the drug war crosses the color line.

White drug “criminals” are collateral damage in the War on Drugs because they have been harmed by a war declared with blacks in mind. While this circumstance is horribly unfortunate for them, it does create important opportunities for a multiracial, bottom-up resistance movement, one in which people of all races can claim a clear stake. For the first time in our nation’s history, it may become readily apparent to whites how they, too, can be harmed by anti-black racism—a fact that, until now, has been difficult for many to grasp.

Black support for “get tough” policies. Yet another notable difference between Jim Crow and mass incarceration is that many African Americans seem to support the current system of control, while most believe the same could not be said of Jim Crow. It is frequently argued in defense of mass incarceration that African Americans want more police and more prisons because crime is so bad in some ghetto communities.

[I]t is inaccurate to say that black people “support” mass incarceration or “get tough” policies. The fact that some black people endorse harsh responses to crime is best understood as a form of *complicity* with mass incarceration—not support for it. This complicity is perfectly understandable, for the threat posed by crime—particularly violent crime—is real, not imagined. Although African Americans do not engage in drug crime at significantly higher rates than whites, black men do have much higher rates of violent crime, and violent crime is concentrated in ghetto communities. Studies have shown that joblessness—not race or black culture—explains the high rates of violent crime in poor black communities. Regardless, the reality for poor blacks trapped in ghettos remains the same: they must live in a state of perpetual insecurity and fear. It is perfectly understandable, then, that some African Americans would be complicit with the system of mass incarceration, even if they

oppose, as a matter of social policy, the creation of racially isolated ghettos and the subsequent transfer of black youth from underfunded, crumbling schools to brand-new, high-tech prisons.

The predicament African Americans find themselves in today is not altogether different from the situation they faced during Jim Crow. Jim Crow, as oppressive as it was, offered a measure of security for blacks who were willing to play by its rules. Those who flouted the rules or resisted them risked the terror of the Klan. Cooperation with the Jim Crow system often seemed far more likely to increase or maintain one's security than any alternative. [I]t is understandable why some blacks believed their immediate safety and security could best be protected by cooperation with the prevailing caste system.

Disagreements within the African American community about how best to respond to systems of control—and even disagreements about what is, and is not, discriminatory—have a long history. The notion that black people have always been united in opposition to American caste systems is sheer myth. Following slavery, for example, there were some African Americans who supported disenfranchisement because they believed that black people were not yet “ready” for the vote. Former slaves, it was argued, were too illiterate to exercise the vote responsibly, and were ill-prepared for the duties of public office. This sentiment could even be found among black politicians such as Isaiah T. Montgomery, who argued in 1890 that voting rights should be denied to black people because enfranchisement should only be extended to literate men. In the same vein, a fierce debate raged between Booker T. Washington and W.E.B. Du Bois about whether—and to what extent—racial bias and discrimination were responsible for the plight of the Negro and ought to be challenged. Du Bois praised and embraced Washington's emphasis on “thrift, patience, and industrial training for the masses,” but sharply disagreed with his public acceptance of segregation, disenfranchisement, and legalized discrimination. In Du Bois's view, Washington's public statements arguing that poor education and bad choices were responsible for the plight of former slaves ignored the damage wrought by caste and threatened to rationalize the entire system.

Today, a similar debate rages in black communities about the underlying causes of mass incarceration. While some argue that it is attributable primarily to racial bias and discrimination, others maintain that it is due to poor education, unraveling morals, and a lack of thrift and perseverance among the urban poor. [A]rguments can be heard from black people across the political spectrum who believe that reform efforts should be focused on moral uplift and education for ghetto dwellers, rather than challenging the system of mass incarceration itself.

Many black people are confused—and the black community itself is divided—about how best to understand and respond to mass incarceration. A seemingly colorblind system has emerged that locks millions of African Americans into a permanent undercaste, and it appears that those who are trapped within it could have avoided it simply by not committing crimes. Isn't the answer not to challenge the system but to try to avoid it? Shouldn't the focus be on improving ourselves, rather than challenging a biased system? Familiar questions are asked decades after the end of the old Jim Crow.

The genius of the current caste system, and what most distinguishes it from its predecessors, is that it appears voluntary. People choose to commit crimes, and that's why they are locked up or locked out, we are told. This feature makes the politics of responsibility particularly tempting, as it appears the system can be avoided with good behavior. But herein lies the trap. All people make mistakes. All of us are sinners. All of us are criminals. All of us violate the law at some point in our lives.

The notion that a vast gulf exists between “criminals” and those of us who have never served time in prison is a fiction created by the racial ideology that birthed mass incarceration, namely that there is something fundamentally wrong and morally inferior about “them.” The reality, though, is that all of us have done wrong. Yet only some of us will be arrested, charged, convicted of a crime, branded a criminal or felon, and ushered into a permanent undercaste.

Urging the urban poor—or anyone—to live up to their highest ideals and values is a good thing, as it demonstrates confidence in the ability of all people to stretch, grow, and evolve. Even in the most dire circumstances, we all have power and agency, the ability to choose what we think and how we respond to the circumstances of our lives. The intuition underlying moral-uplift strategies is fundamentally sound: our communities will never thrive if we fail to respect ourselves and one another.

As a liberation strategy, however, the politics of responsibility is doomed to fail—not because there is something especially wrong with those locked in ghettos or prisons today, but because there is nothing special about them. They are merely human. They will continue to make mistakes and break the law for reasons that may or may not be justified; and as long as they do so, this system of mass incarceration will continue to function well. Generations of black men will continue to be lost—rounded up for crimes that go ignored on the other side of town and ushered into a permanent second-class status. It may seem at first blush that cooperating with the system while urging good behavior is the only option available, but in reality it is not a liberation strategy at all.

Fork in the Road

Our nation declared a war on people trapped in racially segregated ghettos—just at the moment their economies had collapsed—rather than providing community investment, quality education, and job training when work disappeared. Of course those communities are suffering from serious crime and dysfunction today. Did we expect otherwise? Did we think that, miraculously, they would thrive? And now, having waged this war for decades, we claim some blacks “support” mass incarceration, as though they would rather have their young men warehoused in prison than going off to college. Clearly a much better set of options could be provided to African Americans—and poor people of all colors—today. As historian Lerone Bennett Jr. eloquently reminds us, “a nation is a choice.” We could choose to be a nation that extends care, compassion, and concern to those who are locked up and locked out or headed for prison before they are old enough to vote. We could seek for them the same opportunities we seek for our own children; we could treat them like one

of “us.” We could do that. Or we can choose to be a nation that shames and blames its most vulnerable, affixes badges of dishonor upon them at young ages, and then relegates them to a permanent second-class status for life.

Endnotes

- 1 See Jamie Fellner and Marc Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (Washington, DC: Sentencing Project, 1998).
- 2 See *Purkett v. Elm*, 514 U.S. 765 discussed in chapter 3, p. 150.
- 3 Brian Kalt, “The Exclusion of Felons from Jury Service,” *American University Law Review* 53 (2003): 65.
- 4 Jeremy Travis, *But They All Come Back: Facing the Challenges of Prisoner Reentry* (Washington, DC: Urban Institute Press, 2002), 32, citing Bureau of Justice Statistics.
- 5 Peter Wagner, “Prisoners of the Census”; for more information, see www.prisonersofthecensus.org.
- 6 See, e.g., Charles Oglethorpe and Austin Sarat, eds., *From Lynch Mobs to the Killing State: Race and the Death Penalty in America* (New York: New York University Press, 2006); and Joy James, *The New Abolitionists: (Neo) Slave Narratives and Contemporary Prison Writings* (New York: State University of New York Press, 2005).