



# American Delusions

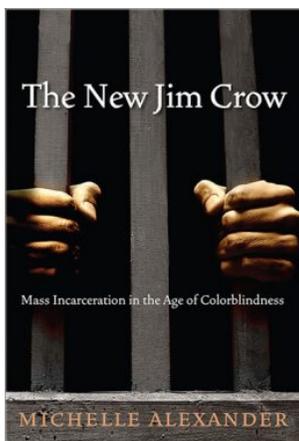
*delusion – fixed false belief that is resistant to reason or confrontation with actual fact*

justice/jails, racism

Mass Incarceration – The New Jim Crow – Michelle Alexander

March 7, 2018

## Mass Incarceration – The New Jim Crow – Michelle Alexander



It is well known and frequently cited that the US leads the world in jailing its citizens. In this case we win this standing not by a nose but by a mile. Within this world are the facts of the jailing of black and brown people at rates far higher than their proportion of the population. In 2012 Michelle Alexander published her *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* which to this day stands as a seminal work on the topic of incarceration and the racism of the judicial system.<sup>1</sup>

### How the System Works

Ms. Alexander provides this summary of her argument in Chapter Five of *The New Jim Crow*:

*"This, in brief, is how the system works: The War on Drugs is the vehicle through which extraordinary numbers of black men are forced into the cage. The entrapment occurs in three distinct phases, each of which has been explored earlier, but a brief review is useful here. **The first stage is the roundup** (emphasizes added here and below). Vast numbers of people are swept into the criminal justice system by the police, who conduct drug operations primarily in poor communities of color. They are rewarded in cash—through drug forfeiture laws and federal grant programs—for rounding up as many people as possible, and they operate unconstrained by constitutional rules of procedure that once*

were considered inviolate. Police can stop, interrogate, and search anyone they choose for drug investigations, provided they get “consent.” Because there is no meaningful check on the exercise of police discretion, racial biases are granted free reign. In fact, police are allowed to rely on race as a factor in selecting whom to stop and search (even though people of color are no more likely to be guilty of drug crimes than whites)—effectively guaranteeing that those who are swept into the system are primarily black and brown.

The conviction marks the beginning of **the second phase: the period of formal control**. Once arrested, defendants are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias.

Once convicted, due to the drug war’s harsh sentencing laws, drug offenders in the United States spend more time under the criminal justice system’s formal control—in jail or prison, on probation or parole—than drug offenders anywhere else in the world. While under formal control, virtually every aspect of one’s life is regulated and monitored by the system, and any form of resistance or disobedience is subject to swift sanction. This period of control may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released. They are transferred from their prison cells to a much larger, invisible cage.

**The final stage** has been dubbed by some advocates as **the period of invisible punishment**. This term, first coined by Jeremy Travis, is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework. These sanctions are imposed by operation of law rather than decisions of a sentencing judge, yet they often have a greater impact on one’s life course than the months or years one actually spends behind bars. These laws operate collectively to ensure that the vast majority of convicted offenders will never integrate into mainstream, white society. They will be discriminated against, legally, for the rest of their lives—denied employment, housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality.<sup>2</sup>

Though there was an upward trend in US crime rates underway in the 1960s, US crime rates were broadly typical for a developed country. What really drove the creation of a new regime of crime and punishment was the need of the Republican Party to win elections and specifically capture the South from the Democrats who had embraced civil rights. Thus, Nixon began the War on Drugs. John Ehrlichman, Nixon's domestic policy advisor, stated in a 1994 interview:

*"The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did."<sup>3</sup>*

Every President since then and every Congress, Democrats and Republicans alike, have embraced and mostly expanded these policies. Governors and state legislatures rushed in to join the party and participate in the flood of Federal dollars. Our present system of incarceration and its post-jail regime of oversight, impoverishment and re-incarceration is not the result of high crime rates. The crime rate in the US has fallen dramatically over the last 30 years, though it has always been unremarkable amidst our developed country peers, excepting of course crimes committed with guns where we star. Our present system is the direct result of our policies to create an incarcerated population to keep white voters voting.

## The Roundup

Alexander details how the War on Drugs became policy. To focus on just a few key developments, the Fourth and Fifth Amendments were radically re-interpreted by the courts to provide the police with many tools to stop, interrogate and search people in a manner that was expressly denied them under earlier interpretations. Police could rely on a person's "consent" to a search rather than the judicial process of obtaining a search warrant. Thus the original principle that the police must be constrained in their exercise of power was swept away during the War on Drugs.

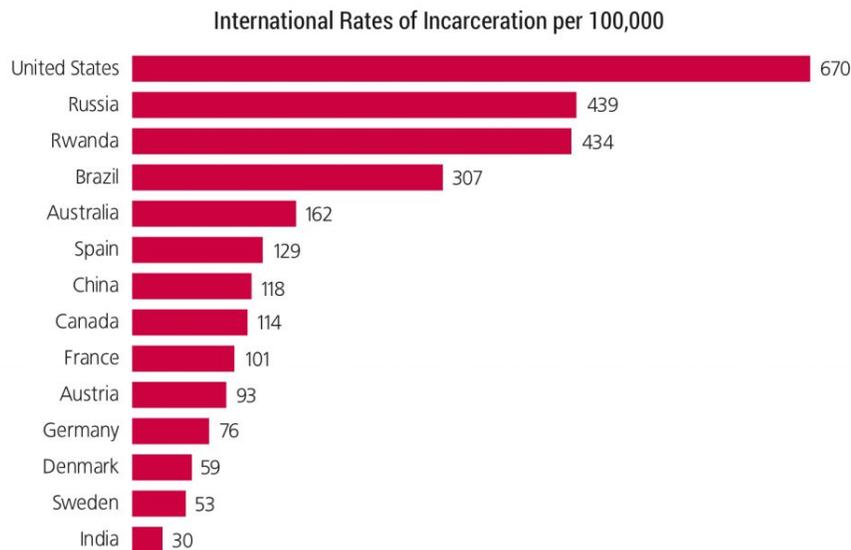
Combining these with the false notions that black and brown people are more likely to use and sell drugs than whites guaranteed that many more were

disproportionately arrested and brought into the justice system's processes. Alexander cites as an example the study of police stops on the NJ Turnpike that demonstrated that brown and black people were stopped at a rate far higher than their proportion on the road. "In New Jersey, the data showed that only 15 percent of all drivers on the New Jersey Turnpike were racial minorities, yet 42 percent of all stops and 73 percent of all arrests were of black motorists—despite the fact that blacks and whites violated traffic laws at almost exactly the same rate."<sup>4</sup>

## The Great Fraud of the Justice System

Alexander's second phase, The Period of Formal Control, after arrest reveals that our justice system is a complete fraud. One might think that effective legal representation is guaranteed by the Sixth Amendment, but nowhere in the whole US, whether in local, state, or Federal courts, is money budgeted to produce anything more than a sham appearance of legal counsel. This means that defendants are forced into the plea bargaining process without any hope of a trial. In the Federal courts 98 percent of all cases are plea bargained. The record in state courts is similar.<sup>5</sup> This environment places great power in the hands of prosecuting attorneys with no oversight of their activities. To make matters worse the War on Drugs ratcheted up the length of sentences drastically. This has produced the enormous increase of over 500% in the number of people incarcerated in the US since 1970.





Source: Walmsley, R. (2016). World Prison Brief. London: Institute for Criminal Policy Research. Available online: <http://www.prisonstudies.org/world-prison-brief>

From the [sentencingproject.org](http://sentencingproject.org)

## A Special Note about the Bail System

Of the 630,000 people locked up in state and local prisons, 440,000 have not been found guilty of anything, they are waiting for a trial. They wait in prison because our money bail system effectively criminalizes being middle class or poor and unable to pay up. The Marshall Project reported in 2015:

*In 1994, 24 percent of defendants were released on a commercial bail bond. By 2004, that number was [42 percent](#). Average bail amounts for those detained pretrial on felony charges more than doubled between [1992](#) and [2006](#), from \$40,000 to \$90,000. It's estimated that bail bonds are a \$14 BILLION INDUSTRY.<sup>6</sup>*

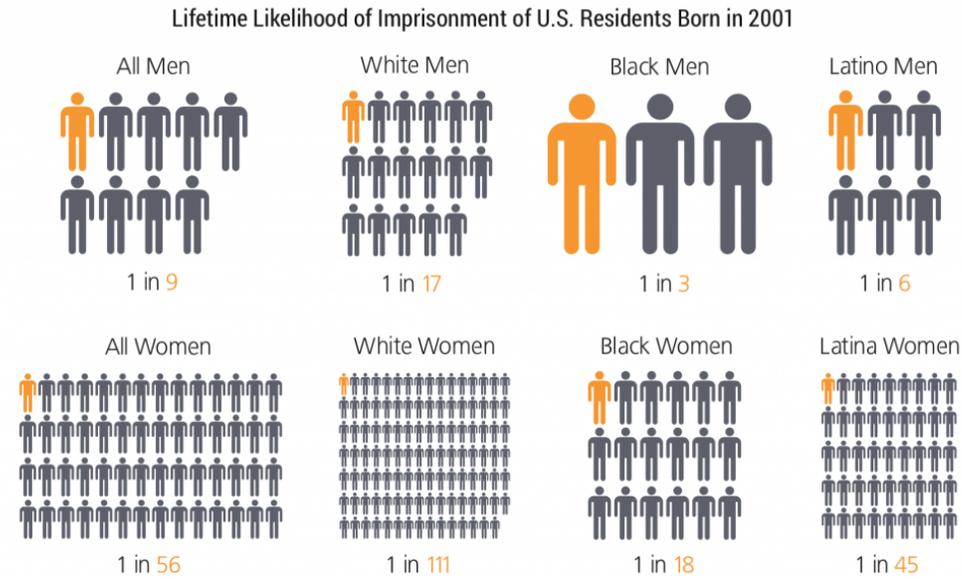
The bail system deserves its own examination.

## The Final Phase – Punishment Forever

As if all of the forgoing is not enough, once a person leaves the prison system they find themselves trapped in a formal and informal system of endless oppression. Most are introduced to probation and parole where they will remain under supervision by officers of the government for years. Under this regime, many will transgress the myriad rules and regulations and end up re-incarcerated. In addition, laws are in place that effectively prevent the freed person from finding a job, accessing housing, education and food supports. They have no path to integrate into what we would call normal day-to-day life.

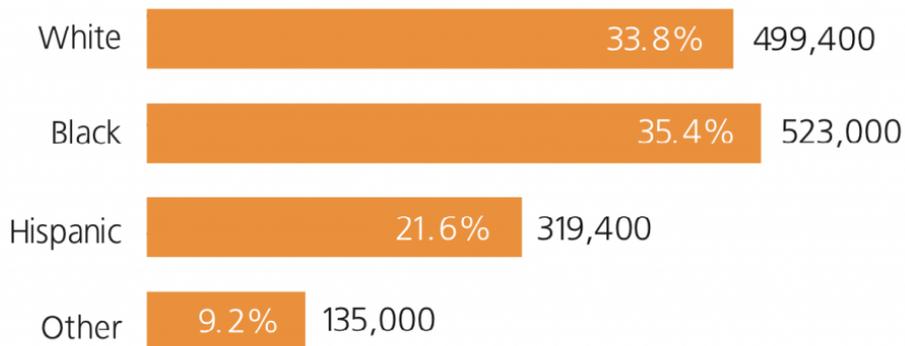
# The New Jim Crow – The Data and Limits of the Analogy

Alexander’s central argument is that this system of mass incarceration is a New Jim Crow, a new system of oppression of African Americans. Certainly the numbers demonstrate that black and brown people are incarcerated at rates far exceeding their proportions in the population. Here is the data:<sup>2</sup>



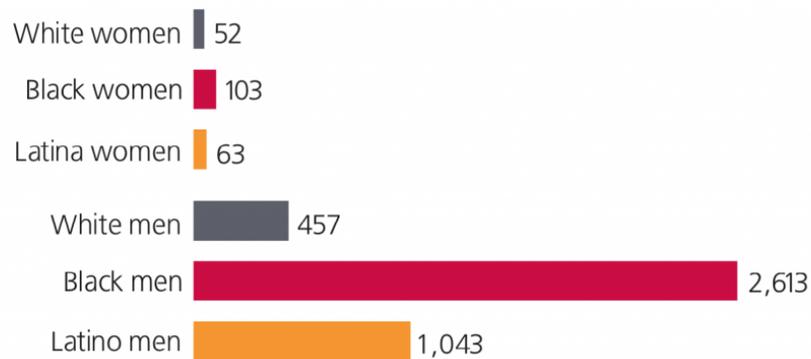
Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, DC: Bureau of Justice Statistics.

## People in State and Federal Prisons, by Race and Ethnicity, 2015



Source: Carson, E.A. and Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics.

## Rate of Imprisonment per 100,000, by Gender, Race, and Ethnicity, 2015



Source: Carson, E.A. and Anderson, E. (2016). *Prisoners in 2015*. Washington, DC: Bureau of Justice Statistics.

Alexander is at some pains to explore the limits of the New Jim Crow analogy. In the end these quibbles are laid to rest by the following:

*“Economist Glenn Loury made this observation in his book *The Anatomy of Racial Inequality*. He noted that it is nearly impossible to imagine anything remotely similar to mass incarceration happening to young white men. Can we envision a system that would enforce drug laws almost exclusively among young white men and largely ignore drug crime among young black men? Can we imagine large majorities of young white men being rounded up for minor drug offenses, placed under the control of the criminal justice system, labeled felons, and then subjected to a lifetime of discrimination, scorn, and exclusion? Can we imagine this happening while most black men landed decent jobs or trotted off to college? No, we cannot.”*<sup>8</sup>

A hint about how true it is to imagine government reactions to bad things happening to white people can be found in the current opioid drug crisis. It is precisely because so many white people have fallen victim that government is now talking about prevention and treatment instead of arrest and jail.

One caution is that eliminating the mass incarceration will not end the segregation of American society. The contemporary system of segregation is built on a number of elements that require much deeper action:

- endemic white racism
- government action and inaction in laws and regulations
- private actions by white dominated corporate and social organizations
- a political system which uses racist rhetoric and calls to action to divide people along racial lines and
- hierarchies of favoritism, influence, and social knowledge embedded in the social lives of individuals of all races and classes. Daria Roithmayr describes this phenomenon as “feedback loops” in her **Reproducing**

## What to Do?

Alexander sees the mass incarceration system in its complexities. Here are her recommendations for ending the drug war:

*“Ending the drug war is no simple task, however. It cannot be accomplished through a landmark court decision, an executive order, or single stroke of the presidential pen. Since 1982, the war has raged like a forest fire set with a few matches and a gallon of gasoline. What began as an audacious federal program, has spread to every state in the nation and nearly every city. It has infected law enforcement activities on roads, sidewalks, highways, train stations, airports, and the nation’s border. The war has effectively shredded portions of the U.S. Constitution—eliminating Fourth Amendment protections once deemed inviolate—and it has militarized policing practices in inner cities across America. Racially targeted drug-law enforcement practices taken together with laws that specifically discriminate against drug offenders in employment, housing, and public benefits have relegated the majority of black men in urban areas across the United States to a permanent second-class status.*

*If we hope to end this system of control, we cannot be satisfied with a handful of reforms. All of the financial incentives granted to law enforcement to arrest poor black and brown people for drug offenses must be revoked. Federal grant money for drug enforcement must end; drug forfeiture laws must be stripped from the books; racial profiling must be eradicated; the concentration of drug busts in poor communities of color must cease; and the transfer of military equipment and aid to local law enforcement agencies waging the drug war must come to a screeching halt. And that’s just for starters.*

*Equally important, there must be a change within the culture of law enforcement. Black and brown people in ghetto communities must no longer be viewed as the designated enemy, and ghetto communities must no longer be treated like occupied zones. Law enforcement must adopt a compassionate, humane approach to the problems of the urban poor—an approach that goes beyond the rhetoric of “community policing” to a method of engagement that promotes trust, healing, and genuine partnership. Data collection for police and prosecutors should be mandated nationwide to ensure that selective enforcement is no longer taking place. Racial impact statements that assess the racial and*

*ethnic impact of criminal justice legislation must be adopted. Public defender offices should be funded at the same level as prosecutor's offices to eliminate the unfair advantage afforded the incarceration machine. The list goes on: Mandatory drug sentencing laws must be rescinded. Marijuana ought to be legalized (and perhaps other drugs as well). Meaningful re-entry programs must be adopted—programs that provide a pathway not just to dead-end, minimum-wage jobs, but also training and education so those labeled criminals can realistically reach for high-paying jobs and viable, rewarding career paths. Prison workers should be retrained for jobs and careers that do not involve caging human beings. Drug treatment on demand must be provided for all Americans, a far better investment of taxpayer money than prison cells for drug offenders. Barriers to re-entry, specifically the myriad laws that operate to discriminate against drug offenders for the rest of their lives in every aspect of their social, economic, and political life, must be eliminated.”<sup>10</sup>*

But all of this is dependent on changing white racial attitudes. Then eliminate the myriad of laws, government policies and practices with their supporting caste of private and corporate actors that are enabled by white racism.

The way forward will require mass mobilization to force the politicians and government to reverse the War on Drugs and replace it with a justice system focused on positive policies and action.

[Read more about this topic here.](#)

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#### Footnotes

1. I recently re-read this book as part of our local Hudson Area Library Non-Fiction Reading Group. The discussion was vigorous and useful. [↩](#)
2. pp. 185-188, Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2012. [↩](#)
3. Baum, Dan. “[Report] | Legalize It All,.” *Harper’s Magazine*, Apr. 2016, <https://harpers.org/archive/2016/04/legalize-it-all/>. [↩](#)
4. p. 133 Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2012. [↩](#)
5. *Why Innocent People Plead Guilty* by Jed S. Rakoff November 20, 2014 New York Review of Books <http://www.nybooks.com/articles/2014/11/20/why->

[innocent-people-plead-guilty/](#) accessed 3/6/2018 ↵

6. "When Freedom Isn't Free." *The Marshall Project*, 23 Feb. 2015, <https://www.themarshallproject.org/2015/02/23/buying-time> accessed 3/7/18 ↵
7. all charts from **The Sentencing Project's** current report, "Trends in US Corrections" <https://www.sentencingproject.org/wp-content/uploads/2016/01/Trends-in-US-Corrections.pdf> accessed 03/05/2018 ↵
8. p. 205 Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2012. ↵
9. Roithmayr, Daria. *Reproducing Racism: How Everyday Choices Lock in White Advantage*. New York Univ. Press, 2014. ↵
10. pp. 232-233 Alexander, Michelle. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2012. ↵

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