

2011

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Recommended Citation

Penn, Gigi (2011) "The New Jim Crow by Michelle Alexander: A Book Review," *Law Raza*: Vol. 2: Iss. 1, Article 4.
Available at: <http://open.mitchellhamline.edu/lawraza/vol2/iss1/4>

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The William Mitchell Law Raza Journal

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THE NEW JIM CROW BY MICHELLE ALEXANDER

A BOOK REVIEW

Gigi Penn

The criminal justice system is the New Jim Crow and it purports to be colorblind.

In her book, *The New Jim Crow*, Michelle Alexander presents the social disease of racial discrimination in a new light. Her central theme is that mass incarceration in the U.S. constitutes a racial caste system and she takes the reader on a historical and painstaking journey on how this came about. The author backs up her arguments with plenty of references to statistics and reasoned theories from other thoughtful writers.

In the past, racial discrimination was legal and sanctioned by the government in the form of slavery and the old Jim Crow laws. At present, however, a majority of Americans do not believe they racially discriminate. Today, a majority of Americans reject racial inequality and blatant white supremacist notions. In fact, a majority of Americans believe they are colorblind when it comes to race and tolerate, and actually support, mass incarceration as colorblind. To them, the mostly Black and brown men who were caught up in law enforcement's zealous War on Drugs are simply "raceless men" who did not play by the rules.

According to the author, this "callous colorblindness" has "proved catastrophic for African Americans," who are more likely to be rounded up for drug crimes than whites, even as statistics show that whites are more likely to commit drug crimes. The author then points out that the present criminal justice system created this new kind of racial undercaste, made up mostly of African-Americans and Latinos, with a few whites as "collateral casualties," dragged in by the net of the War on Drugs. This is the New Jim Crow.

The author argues that "race has always influenced the criminal justice system." Despite government data that reveal blacks were no more likely to be guilty of drug crimes than whites, the War on Drugs is waged mainly against African-Americans in the ghettos, based on the unspoken and unacknowledged assumption that poor black males are dangerous criminals and

drug users or dealers. As a result, blacks are more likely to be arrested, overcharged, convicted, or imprisoned while whites are set free, plea-bargained to lesser charges or given probation. At the end of 2004, 12.6% of black males ages 25 to 29 were imprisoned compared to 3.6% of Hispanic males and only 1.7% of white males in the same age group.¹

African-Americans with felony convictions are “caught up in [a] new system of control” that created this new racial caste after they leave prison. A criminal freed from prison finds the world outside it more challenging and designed for him to fail at every turn. He quickly finds out that the government has basically eliminated his basic human rights and any opportunity he hoped to have for “re-entry” into mainstream society. Once locked up, he is also “locked out.” He usually ends up back in jail.

He cannot qualify for subsidized housing because of his prior conviction or probation status. Housing and Urban Development (HUD) policies exclude people with arrest records, regardless of whether they result in convictions, from receiving housing assistance. Because police target African-Americans and Latinos in the War on Drugs, the policies “guarantee highly discriminatory results.”

He cannot receive federally-funded public assistance because the law requires states to permanently bar him from getting it. He is ineligible for food stamps for the rest of his life.

He cannot get a job because employers ask about arrest records and once an applicant checks “the box,” the employer is less likely to proceed further with his application. Many states actually prevent him from working as they bar him from getting an occupational license because of his ex-offender status. Depending on the crime, an ex-offender may be ineligible for federal student loans, greatly limiting his educational and economic opportunities.

¹ Peter Wagner, *Incarceration Is Not An Equal Opportunity Punishment*, June 28, 2005, available at <http://www.prisonpolicy.org/articles/notequal.html>, (last visited Sep. 28, 2010).

He cannot vote while he is in prison or on probation. In most states, he cannot vote while on parole. Some states deny him the right to vote for several years after his release or for the rest of his life. All of them have developed a “bureaucratic maze” of procedures and fines designed to make it impractical, if not impossible, to restore his voting rights.

Because these “colorblind” policies disproportionately affect blacks, they are the modern-day equivalent of poll taxes and literacy tests – the New Jim Crow.

How did all this come about? The author points to a lot of players coming together in a kind of “perfect storm.”

She points to the Reagan Administration, which initiated the War on Drugs three years before the country even heard of crack cocaine and when the country was more concerned with addressing poverty. Drug use was actually on the decline when the War on Drugs began. She accuses the Reagan Administration of orchestrating this War on Drugs in order to create a subtle and colorblind way to continue the discrimination against the African-Americans.

She points to law enforcement, corrupted by federal grant money and the drug-war forfeiture laws. Police prioritized drug enforcement activities because they were “bribed” with grants and weapons, even military equipment: “tanks, bazookas, anything [they] wanted.” Law enforcement agencies are allowed to keep seized assets allegedly used in illegal drug activity for their own use, even without charging anyone with a crime. Consequently, police conduct “fishing expeditions for drugs... with nothing more than a hunch,” which is their euphemism for racial profiling. Police can legally “engage in a wholesale roundup of nonviolent drug offenders.” Prosecutors have almost unfettered discretion to plea-bargain with or pile up the charges against a defendant, who usually would opt to plea to a lesser charge, regardless of guilt, in order to avoid the more severe penalties listed in the mandatory sentencing program for the

other charges. Ms. Alexander shares statistics that show prosecutors give white drug offenders better plea-bargaining deals than African-Americans for the same or lesser offenses.

She points to the US Supreme Court, which, in the last fifty years, systematically took away our constitutional protections under the Fourth, Fifth and Sixth Amendments by rulings based on the Court's "twisted logic," "archaic legal fiction" and a lot of deference to law enforcement, which inevitably led to this abuse of power. Finally, with its ruling in *Alexander v. Sandoval*, 532 U.S. 275 (2001), the Court has effectively "closed the courthouse doors" to claims of racial bias by holding that ordinary citizens have no private right of action for discrimination under the Civil Rights Act.

She points to the mandatory sentencing guidelines, which require long sentences for crack cocaine convictions (affecting mainly African-Americans), while giving far more lenient sentences for powder cocaine convictions (affecting mainly whites). "Mandatory minimum sentences are unjust" and "harsh sentencing is the primary cause of the prison explosion."

She points to Bill Clinton, who ran a "tough on crime" campaign and continued this policy by escalating the War on Drugs. Clinton signed the federal "three strikes, you're out" law, which created mandatory life sentences for three-time offenders and increased funding for local police forces and state prisons. His administration's policies resulted in the "largest increases in ... prison inmates of any president in American history" and implemented the HUD policies that made public housing unavailable to drug offenders.

She points to the Black Congressional Caucus for going along, even endorsing the War on Drugs. She points to the African-Americans who bought into the tough-on-crime rhetoric and joined in the "general attitude of 'toughness.'" She even points to Barack Obama, who remorselessly admitted he violated the drug laws and got away with it, while a lot more African-

American men are in jail for the same thing. Obama noted that “[t]oo many [African-American] fathers are AWOL” today but failed to ask where they might be found. They might be found in prison, “locked away for drug crimes that are largely ignored when committed by whites.”

She points to the civil rights and criminal justice reform groups that have remained silent, reluctant to come to the defense of “criminals.” They have largely become ineffective and their strategy for reform outdated because, according to her, the mass incarceration of people of color cannot be solved through litigation.

Ms. Alexander warns that this book is “not for everyone.” For those who would read it, those “people who care deeply about racial justice,” she challenges them to talk about race while “resisting the temptation for colorblind advocacy.” Colorblindness is “actually the problem.” She suggests that advocates work to end mass incarceration as a system of social control, not crime control.

As a practical matter, she limits her discourse to the African-American experience but leaves it open for discussion and application to the other minorities: Asians-Americans, Latinos, women, gays and immigrants. The author suggests that reform requires a revived civil rights movement, involving “all of us” (including “the white man”) following a human rights approach.

Epilogue

Recent news and events back up Ms. Alexander’s assertions. On September 18, 2010, AP News reported that a famous person, who is white, got a one-year suspended sentence and avoided a felony drug charge after pleading guilty to two misdemeanor charges related to a cocaine drug bust last month.² Two days later, the Minnesota Public Radio broadcast a news

² Cristina Silva, *Paris Hilton Pleads In Vegas Arrest, Avoids Jail*, ASSOCIATED PRESS, Sep. 18, 2010, http://hosted.ap.org/dynamic/stories/U/US_PARIS_HILTON_ARREST?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT.

segment on voter disenfranchisement in Minnesota among felons on probation.³ The reporter generally echoes Ms. Alexander's numbers: about 10 percent of voting-age African Americans and 7 percent of American Indians but only 1 percent of whites in Minnesota cannot vote because they are in prison or on probation. In Minneapolis, the Guthrie Theater recently presented a CLE panel discussion panel on racial bias and justice following its presentation of the off-Broadway musical, *The Scottsboro Boys*.⁴

In late July 2010, Congress passed the Fair Sentencing Act, which lowers the federal sentencing guidelines for some crack cocaine-related convictions.⁵ The sentencing disparities between crack cocaine and powder cocaine convictions is now 18 to 1, reduced from 100 to 1. Despite the disparities being still "too wide,"⁶ President Obama signed the bill into law on August 3. Editorials that followed generally praised the bill.⁷ Ms. Alexander's book is a wake-up call to advocates and these opinions indicate that they are listening.

This book was published in January 2010. Ms. Alexander has an [official web site](#): www.newjimcrow.com.

³ [Rupa Shenoy](#), *Group Fighting To Restore Voting Rights To Felons On Probation*, MINNESOTA PUBLIC RADIO, Sep. 20, 2010, available at <http://minnesota.publicradio.org/display/web/2010/09/20/felony-voting/> (last visited Sep. 22, 2010).

⁴ Attorney Night for THE SCOTTSBORO BOYS, Thursday, September 16, 2010, available at http://www.guthrietheater.org/media_room/releases/guthrie_westlegaled_offer_scottsboro_boys_attorney_night_sep_t_16, (last visited Sep. 22, 2010).

⁵ Jim Abrams, *Congress Passes Bill to Reduce Disparity in Crack, Powder Cocaine Sentencing*, ASSOCIATED PRESS, July 29, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/28/AR2010072802969.html>.

⁶ See e.g., Star-Telegram Editorial, *Cocaine-Sentencing Gap Still Too Wide*, Jul. 29, 2010, available at <http://www.star-telegram.com/2010/07/29/2371695/cocaine-sentencing-gap-still-too.html>, (last visited Sep. 22, 2010).

⁷ See e.g., Los Angeles Times Editorial, *The Fair Sentencing Act of 2010: It's about time*, July 31, 2010, available at <http://articles.latimes.com/2010/jul/31/opinion/la-ed-sentencing-20100731>, last visited Sep. 22, 2010; The Washington Post Editorial, *The Fair Sentencing Act Corrects a Long-Time Wrong In Cocaine Cases*, August 3, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/02/AR2010080204360.html>, (last visited Sep. 22, 2010); Julie Stewart, *Well Done Congress, Now Make Fair Sentencing Act Retroactive*, August 4, 2010, available at http://www.huffingtonpost.com/julie-stewart/well-done-congress-now-ma_b_671008.html, (last visited Sep. 22, 2010).