

Jim Crow in Prison¹

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Did you know that the United States imprisons a larger percentage of its black population than South Africa did at the height of Apartheid?

Did you know that in Washington DC, three out of four young black men, and nearly all those in the poorest neighborhoods, can expect to serve time in prison?

Did you know that in some states, African Americans make up to 90 percent of drug prisoners and are up to 57 times more likely to be incarcerated for drug crimes than whites?²

As Unitarian Universalists we care deeply about racial justice. It is built into our basic principles, as we affirm "justice, equity and compassion" for all people. Many among our number were on the front lines of the civil rights movement, and worked hard to promote equality and justice for people of color in the United States. We look back and celebrate the great strides that were made through people of all races coming together to end legal segregation and discrimination based on race.

We have come so far, that some people might not be familiar with the reference in the sermon title to "Jim Crow." "Jim Crow" is a short-hand way to refer to the entire system of enforced legal segregation in the South between the late 1800's and the 1960's. It included the so-called "separate but equal" status for African Americans in public schools, restrooms, transportation and more. Discrimination was legal in housing, employment, and all spheres of public life, including maneuvers such as poll taxes and literacy tests that prevented black people from voting. The civil rights movement ended Jim Crow segregation through a massive struggle of protests, marches, civil disobedience, and legal challenges culminating in the Civil Rights Act and Voting Rights Act of 1965. We have come so far that we have even elected a black man as president of the United States.

But legal scholar Michelle Alexander argues, in her book, *The New Jim Crow*³, that we have not ended racial caste in America—we have simply redesigned it. A new and insidious form of Jim Crow has been created through the "war on drugs" and the mass incarceration of young black men. It is insidious because the war on drugs formally adheres to the principle of color-blindness; but despite this, it functions as an effective system of racial control. Alexander hopes to open the eyes of people who care about racial justice, to this new assault on human dignity that has undermined the gains that we thought we had made, and created a new racial underclass in our society.

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2 http://www.thenewpress.com/index.php?option=com_title&task=view_title&metaproductid=1617

3 Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, The New Press, 2010.

The war on drugs was officially created in 1982 by President Ronald Reagan at a time when drug crime was actually on the decline.⁴ Alexander argues that “the drug war was part of a conservative political strategy designed to appeal to poor and working class whites who were anxious about busing, desegregation, and affirmative action.”

Beginning in the 1960's, segregationists and conservative politicians could successfully appeal to racial resentments, without appearing to be racist, by using rhetoric about getting tough on crime, and restoring law and order. H. R. Haldeman, one of Nixon's key advisors, documents that Nixon deliberately pursued this racial strategy.⁵ Ronald Reagan perfected it in his 1980 campaign, raising up the image of the “welfare queen” and criminal “predators,” and vowing to fight crime in our cities. When he was successful, many liberal politicians began to join in, trying to win back the white swing voters by proving their own crime fighting credentials. The war on drugs was intensified after Bill Clinton was elected president in 1992.

In 1980, an estimated 41,100 people were in prison or jail for a drug offense. Today, the number is about half a million, an increase of 1,100 percent.⁶ Drug crimes account for the largest amount of the overall increases in prison numbers. In 1972, fewer than 350,000 people were in prisons or jails nationwide for any offense. Today, there are more than 2 million.⁷

But some might argue, aren't drugs a bad thing? Aren't we trying to protect communities from dangerous dealers and a whole host of evils connected to drug trafficking? There are a couple of levels at which we might explore this question. Prior to the war on drugs, drug use was primarily approached as an individual and public health issue. Addiction can be a problem, yes, and many people advocate for greater access to drug abuse treatment. But the occasional use of drugs is actually widespread in our culture. It is estimated that the majority of adults have violated drug laws at some time in their life, and one in ten Americans violate drug laws in any given year.⁸

I am not going to ask anyone to incriminate themselves, but think about this question. Have you or members of your family ever used illegal substances? Studies show that the percent of people using drugs is fairly consistent across racial lines, and perhaps the largest percent of drug use may actually occur among white professionals. So I am guessing that Unitarian Universalists may be well represented in that number.

4 “Throwing Away the Key: Michelle Alexander On How Prisons Have Become The New Jim Crow,” an interview by Arnie Cooper in *The Sun*, February 2011, p. 6.

5 *The New Jim Crow*, pp. 42-57. I am using a lot of citations in this sermon—just because these facts are so unbelievable at times, that it seems important to document where they came from.

6 *Ibid.*, p. 59.

7 *Ibid.*, p. 8.

8 *Ibid.*, p.101.

But police are usually not beating down the doors in white suburbs. The vast preponderance of drug arrests, prosecutions and convictions are happening in inner-city neighborhoods among African American young men. A study was done in 1995 asking people to imagine a drug abuser, and describe that person. Ninety-five percent of people described a black person.⁹ (For a reality check, only about 15 % of drug users are black.)

This is not to say that white people have been untouched by the war on drugs. People of all colors have been caught up in it with devastating effects on their lives. Here is what might occur, if it were to happen to you: first of all, the most likely scenario is that you would be arrested for simple possession of marijuana. In 2005, four out of five drug arrests were for simple possession of drugs; only one out of five arrests are for sales. And contrary to the myth that this war on drugs is mostly about hard drugs, almost half of all drug arrests are related to marijuana.¹⁰

You should know that even if you are innocent, your house, car and possessions can be seized by drug enforcement officers. Even if someone uses illegal drugs in your house without your knowledge, the house can be considered guilty of abetting, and confiscated. Police departments are allowed to use property they confiscate to add to their own budgets.¹¹

Once you have been arrested, it is up to the prosecutor to decide whether to charge you and what charges will be brought. Most of those who are arrested do not have the money for a lawyer, and most end up in plea bargains. Alexander writes that tens of thousands of poor people go to jail every year without ever talking to a lawyer, or meeting for only a few minutes to discuss choices that will affect the rest of their lives.¹² Prosecutors may pile on extra charges to encourage plea bargains, or offer lower sentences in exchange for information. "The typical mandatory sentence for a first-time drug offense in federal court is five or ten years."

In contrast, in other developed countries around the world, a drug offender may face up to six months, if any time at all, in jail.¹³ The elimination of judicial discretion, through mandatory sentencing laws, has forced judges to impose sentences for drug crimes that are often longer than violent criminals receive.¹⁴

Another comparison might be made with how we deal with alcohol related crime. If you are convicted of drunk driving, numerous states now have mandatory minimums that mean you may face two days in jail for a first offense, and 2-10 days for a second offense. On the other hand, possession of a tiny amount of crack cocaine means a mandatory five years in prison. Yet in terms of the costs to society, drunk driving kills 22,000 people a year, and overall alcohol related deaths climb to 100,000 a year, a much greater number than the 21,000 deaths a year

9 *Ibid.*, p. 103.

10 *Ibid.*, p. 59.

11 *Ibid.*, p. 79-83.

12 *Ibid.*, p. 83.

13 *Ibid.*, p. 86.

14 *Ibid.*, p. 88-91.

due to all causes related to illegal drugs. But Alexander points out that people charged with drunk driving are predominately white and male, while people charged with drug offenses are disproportionately poor people of color.¹⁵

The most horrible consequence you may face in the war on drugs will likely not be mentioned during plea bargaining or sentencing. Even after you have served your time, you will be relegated to a permanent status as a felon, and kept outside the mainstream of American life by multiple forms of legal discrimination and exclusion. You will be barred from many professions that require licensing, and when you try to find employment, on every job application you fill out, you will have to check "yes" in the box, "have you ever been convicted of a felony?"

You will become ineligible to live in federally subsidized housing, to receive food stamps, or education benefits. You will not be able to enlist in the military, and if you are not a citizen, you can be deported. You may be ineligible to serve on a jury. In the majority of states you will no longer be able to vote, though thankfully this is not true here in Maine. You will be subject to surveillance and control, and can be sent back to prison for a myriad of small failures, including being unable to find work, missing an appointment with your parole officer, or hanging out with anyone who is also a felon. This second class status carries with it severe stigma and shame, and will last for the rest of your life.¹⁶

All this can happen to you. But if you are white and middle class, it is much less likely that it will. Although the majority of drug users and dealers are white, three fourths of all people imprisoned for drug offenses have been black or Latino.¹⁷ Police and prosecutors have complete discretion in how they will pursue offenders, so the system is fraught with both conscious and subconscious bias.

So for example, let me tell you the story of one young man who is white. This nephew of a friend of mine was caught with drugs while he was a college student several years ago. He got "lucky." He was let off without being charged, so he went on to graduate from college and pursue his chosen career. Among youth who have never been sent to a juvenile prison, African American youth were more than six times as likely as whites to be sentenced to prison for identical crimes.¹⁸ Here in Maine, African American men make up 7% of the prison population, even though they make up only .07% of the state's population.¹⁹

15 *Ibid.*, p. 201.

16 *Ibid.*, p. 92-94.

17 *Ibid.*, p. 96-97.

18 *Ibid.*, p. 115.

19 From Rachel Talbot Ross.

Alexander contends that the war on drugs has created a new racial caste system. One in three young African American men is currently under the control of the criminal justice system—in prison, in jails, on probation, or on parole.²⁰ The percentage is much higher in large urban areas. More African Americans are under correctional control today than were enslaved in 1850, a decade before the civil war began.²¹ Nationally, one in seven black men has lost the right to vote.²² Alexander writes, the criminal justice system becomes “a gateway into a much larger system of racial stigmatization and permanent marginalization.”

This new system of racial control is harder to fight because it maintains the appearance of being color blind. There are no “whites only” signs to point to. Most people assume that racism is based on overt prejudicial attitudes. But contemporary attitudes among most white people support equality for all races. This system of racial caste is not dependent on widespread feelings of racial hatred or prejudice. It is imbedded in the basic structures of society.

I don't have the time in a twenty minute sermon to lay out all the evidence that Alexander presents to support her claims. If you are feeling skeptical, I encourage you to read the book—*The New Jim Crow*—and then decide for yourself. If we accept her thesis, which I do, the outlook is discouraging. Particularly depressing is how the courts have cut off all avenue of appeal for those who are caught up in this mess. Even if it can be proved that the effects of the war on drugs are harming African Americans disproportionately to whites, the courts have consistently refused to intervene unless specific racist intentions are proven. And that is virtually impossible, since the oppression hides under the guise of being “color-blind.”

But if we care about racial justice, what might we do? There are two areas that suggest a way forward. First of all, Alexander invites us to bring those who have been labeled as criminals back into the circle of human care and compassion.

“Criminal” is the new “N” word. Criminals have become the group it is permissible to hate. Remember, the person we see as a criminal may have done nothing more illegal than you or your children or the president of the United States may have done. We need to see the human underneath the label, the person trapped inside the stereotype. No one should be excluded from fairness and kindness. Michelle Alexander says, “We could choose to be a nation that extends care, compassion, and concern to those who are locked up and locked out.”²³

Secondly, she says we need a re-commitment to a broad scale movement to fight against this new form of racial caste. The laws will never change until the national consensus changes. That can only happen when large numbers of people who care about justice and equality are willing to educate and act and organize, and work together for change. And this time, it needs to include people of all races in a struggle for human rights for everyone.

20 *Ibid.*, p. 9.

21 *Ibid.*, p. 175.

22 *Ibid.*, p. 188.

23 *Ibid.*, p. 206.

A system of social control which oppresses black people on the bottom in this country, also can be used to oppress all people in this country. The war on drugs has undermined basic human rights and civil liberties for everyone. One of the particular ways that racist structures in America have been consistently re-invented over time is to pit poor and working class white people against poor and working class black people.

For example, before the start of chattel slavery, in an effort to stave off multi-racial rebellions, white indentured servants were given a better set of chances than black indentured servants. Later on, affirmative action and school busing directly affected the prospects of working class white people, leaving them resentful and suspicious, while leaving untouched the powerful white elite.

As Martin Luther King, Junior, was beginning to say near the end of his life, we need to recognize that a society in which any persons are left hungry, or homeless, or without employment or health care or possibility—that society is fundamental unjust. We need, not just cosmetic reforms, but deep-seated transformation. King said, "We are called upon to raise certain basic questions about the whole society."²⁴

The worst thing we can do is cling to naivety and so-called innocence. Alexander closes her book with a quote from James Baldwin, published in 1962:

"This is the crime of which I accuse my country and my countrymen, and for which neither I nor time nor history will ever forgive them, that they have destroyed and are destroying hundreds of thousands of lives and do not know it and do not want to know it. It is their innocence which constitutes the crime."²⁵

Let us not be guilty of that innocence. Perhaps someday, future generations will look back in amazement that we took for normal the incarceration of so many of our African American fellow citizens for such a thing as using drugs. Just as we look back in amazement at how so many people could adjust to the normalcy of slavery and segregation. Let us begin to wake up. We owe it to our selves, we owe it to our values, and we owe it to our children, all of our children.

On the local front, if you are interested in learning more, or taking action with others from our church in support of prisoners and ex-prisoners, Sally Breen will be sitting at a table in the foyer where you can have a further conversation and sign up to get more involved.

Our values call us to justice, equity, and compassion in human relations. Let us remember that all people are members of one human family.

In the words of Martin Luther King, Junior,
"Injustice anywhere is a threat to justice everywhere.
There are some things in our social system to which all of us ought to be maladjusted."

24 Quoted in *The New Jim Crow*, p. 246.

25 *Ibid.*, p. 248.