



The New Jim Crow

Studies consistently show that people of all colors violate drug laws at remarkably similar rates. Yet in some states black men are as much as 50 times more likely than white men to be sent to prison on drug charges. In her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010), Michelle Alexander, an associate professor of law at Ohio State University, says that this skewed justice continues to be the hallmark of our 30-year war on drugs—even after the election of Barack Obama. She also argues that by branding so many blacks as felons, this war has, in effect, perpetuated a race-based caste system that picked up where the old Jim Crow left off. In April, Alexander spoke with *California Lawyer* editor Martin Lasden.



Michelle Alexander

For the full videotaped interview, go to callawyer.com.

Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

Q. Last year the Drug Policy Alliance released a report showing arrest rates for marijuana possession in California's largest cities to be four to twelve times higher for blacks than for whites. Yet last November when a measure appeared on the state ballot that would have legalized the recreational use of marijuana, only 47 percent of black voters voted for it. What do you make of that?

It's complicated. African Americans have no doubt suffered the most as a result of the drug war, but many people in the black community are also very concerned about the harms associated with illegal drugs. ... And I think too there was a lot of confusion about what exactly the ballot measure would mean. Would it mean that marijuana would be sold in grocery stores, that it would be available anytime, anywhere? And so I think in the future ... it's going to be very important to help people understand that it is possible to put into place regulatory regimes that treat drugs as a public health problem rather than a crime, but at the same time address the legitimate concerns people have about making drugs more available.

How do you do that?

The organization Law Enforcement

Against Prohibition has done a tremendous amount of excellent work showing that the drugs that we think are bad are actually more readily available to young people when they are criminalized, because the control of that market rests entirely with the criminals themselves. But even for those folks who have a difficult time at this stage entertaining the idea of ending drug prohibition in the United States, we can at least end the drug war. You know, most people assume that [President] Ronald Reagan declared the war on drugs in response to the emergence of crack cocaine and the related violence. But that's not true. He declared the war on drugs in response to racial politics ... at a time when drug crime was actually on the decline.

You mention Ronald Reagan. But Bill Clinton when he was president pumped \$9.9 billion into prison construction. Mario Cuomo when he was governor of New York also presided over a dramatic increase in prison construction. And when Ann Richards was governor of Texas, the rate of incarceration in her state increased more quickly than when George W. Bush was governor. So this isn't a conservative-liberal thing, is it?

Well, it certainly hasn't become one. ... When President Reagan declared the war on drugs he was attempting to make good on campaign promises to get tough on a group of people who have been defined by race, and it was the political success of that effort that persuaded Democrats to compete with Republicans to prove that they could be even tougher.

You have some rather negative things to say in your book about affirmative action. In fact, you raise the question whether affirmative action has "functioned more like a racial bribe than a tool for racial justice." What do you mean by that?

At the time of his death, Martin Luther King Jr. was committed to building a movement on behalf of poor people of all colors for basic human rights. But after his death, civil rights leaders largely abandoned his commitment to movement-building for economic justice and instead began pursuing civil rights remedies in the courts and embracing with great zeal affirmative action programs, which I believe amounts to a sort of trickle down theory of justice. The idea was that if you could sprinkle enough folks of color in

elite institutions and places of power, somehow justice will trickle down to those at the bottom. And that was an approach that Dr. King had real questions about.

Is it fair to say that Barack Obama has annoyed you from time to time—especially when he talks about black men not living up to their responsibility? I believe it was as a candidate for president back in 2008 he said that too many young black men act more like children than adults.

Yeah, I didn't like that speech. I have to say I was a fanatic Obama supporter when he was running for office. ... [But] I've been somewhat disillusioned by some of the things he has said and done. And in that speech, which I quote in my book, he used Father's Day as an opportunity to chastise black men for acting like boys instead of men and being AWOL while never acknowledging that there was a drug war raging and that hundreds of thousands of black men have been taken from their families and their children not voluntarily but because they were rounded up for committing these nonviolent, relatively minor drug offenses that go ignored on the other side of town.

Has the election of Barack Obama set back the cause of racial justice, if only because it makes the illusion of dramatic progress on race so much more compelling?

Well, some have argued that the election of Obama could prove to be a net loss for the African-American community given that Obama has not been inclined to talk about race, and also because the black community in its zeal to protect Obama from political criticism has demobilized.

Some? Are you one of those "some"?

I'm reserving judgment on that one. I wouldn't say today that it's a net loss. But I think that there's risk that he could prove to be a net loss for African Americans if we remain silent. 🗣️

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