The New Jim Crow

Mass Incarceration in the Age of Colorblindness

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Preface

This book is not for everyone. I have a specific audience in mind—people who care deeply about racial justice but who, for any number of reasons, do not yet appreciate the magnitude of the crisis faced by communities of color as a result of mass incarceration. In other words, I am writing this book for people like me—the person I was ten years ago. I am also writing it for another audience—those who have been struggling to persuade their friends, neighbors, relatives, teachers, co-workers, or political representatives that something is eerily familiar about the way our criminal justice system operates, something that looks and feels a lot like an era we supposedly left behind, but have lacked the facts and data to back up their claims. It is my hope and prayer that this book empowers you and allows you to speak your truth with greater conviction, credibility, and courage. Last, but definitely not least, I am writing this book for all those trapped within America’s latest caste system. You may be locked up or locked out of mainstream society, but you are not forgotten.
It was no ordinary Sunday morning when presidential candidate Barack Obama stepped to the podium at the Apostolic Church of God in Chicago. It was Father’s Day. Hundreds of enthusiastic congregants packed the pews at the overwhelmingly black church eager to hear what the first black Democratic nominee for president of the United States had to say.

The message was a familiar one: black men should be better fathers. Too many are absent from their homes. For those in the audience, Obama’s speech was an old tune sung by an exciting new performer. His message of personal responsibility, particularly as it relates to fatherhood, was anything but new; it had been delivered countless times by black ministers in churches across America. The message had also been delivered on a national stage by celebrities such as Bill Cosby and Sidney Poitier. And the message had been delivered with great passion by Louis Farrakhan, who more than a decade earlier summoned one million black men to Washington, D.C., for a day of “atonement” and recommitment to their families and communities.

The mainstream media, however, treated the event as big news, and many pundits seemed surprised that the black congregants actually applauded the message. For them, it was remarkable that black people nodded in approval when Obama said: ‘If we are honest with ourselves, we’ll admit that too many fathers are missing—missing from too many lives and too many homes. Too many fathers are MIA. Too many fathers are AWOL. They have abandoned their responsibilities. They’re acting like boys instead of men. And the foundations of our families are weaker because of it. You and I know this is true
everywhere, but nowhere is this more true than in the African American community.”

The media did not ask—and Obama did not tell—where the missing fathers might be found.

The following day, social critic and sociologist Michael Eric Dyson published a critique of Obama’s speech in Time magazine. He pointed out that the stereotype of black men being poor fathers may well be false. Research by Boston College social psychologist Rebekah Levine Coley found that black fathers not living at home are more likely to keep in contact with their children than fathers of any other ethnic or racial group. Dyson chided Obama for evoking a black stereotype for political gain, pointing out that “Obama’s words may have been spoken to black folk, but they were aimed at those whites still on the fence about whom to send to the White House.”

Dyson’s critique was a fair one, but like other media commentators, he remained silent about where all the absent black fathers could be found. He identified numerous social problems plaguing black families, such as high levels of unemployment, discriminatory mortgage practices, and the gutting of early-childhood learning programs. Not a word was said about prisons.

The public discourse regarding “missing black fathers” closely parallels the debate about the lack of eligible black men for marriage. The majority of black women are unmarried today, including 70 percent of professional black women. “Where have all the black men gone?” is a common refrain heard among black women frustrated in their efforts to find life partners.

The sense that black men have disappeared is rooted in reality. The U.S. Census Bureau reported in 2002 that there are nearly 3 million more black adult women than men in black communities across the United States, a gender gap of 26 percent. In many urban areas, the gap is far worse, rising to more than 37 percent in places like New York City. The comparable disparity for whites in the United States is 8 percent. Although a million black men can be found in prisons and jails, public acknowledgment of the fact that the criminal justice system in “disappearing” black men is surprisingly rare. Even in the black media—which is generally more willing to raise and tackle issues related to criminal justice—an eerie silence can often be found.

Ebony magazine, for example, ran an article in December 2006 entitled “Where Have the Black Men Gone?” The author posed the popular question but never answered it. He suggested we will find our black men when we rediscover God, family, and self-respect. A more cynical approach was taken by Tyra Banks, the popular talk show host, who devoted a show in May 2008 to the recurring question, “Where Have All the Good Black Men Gone?” She wondered aloud whether black women are unable to find “good black men” because too many of them are gay or dating white women. No mention was made of the War on Drugs or mass incarceration.

The fact that Barack Obama can give a speech on Father’s Day dedicated to the subject of fathers who are “AWOL” without ever acknowledging that the majority of young black men in many large urban areas are currently under the control of the criminal justice system is disturbing, to say the least. What is more problematic, though, is that hardly anyone in the mainstream media noticed the oversight. One might not expect serious analysis from Tyra Banks, but shouldn’t we expect a bit more from the New York Times and CNN? Hundreds of thousands of black men are unable to be good fathers for their children, not because of a lack of commitment or desire but because they are warehoused in prisons, locked in cages. They did not walk out on their families voluntarily; they were taken away in handcuffs, often due to a massive federal program known as the War on Drugs.

More African American adults are under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850, a decade before the Civil War began. The mass incarceration of people of color is a big part of the reason that a black child born today is less likely to be raised by both parents than a black child born during slavery. The absence of black fathers from families across America is not simply a function of laziness, immaturity, or too much time watching SportsCenter. Thousands of black men have disappeared into prisons and jails, locked away for drug crimes that are largely ignored when committed by whites.

The clock has been turned back on racial progress in America, though scarcely anyone seems to notice. All eyes are fixed on people like Barack Obama and Oprah Winfrey, who have defied the odds and risen to power, fame, and fortune. For those left behind, especially those within prison walls, the celebration of racial triumph in America must seem a tad premature. More black men are imprisoned today than at any other moment in our nation’s history. More are disenfranchised today than in 1870, the year the Fifteenth Amendment was ratified prohibiting laws that explicitly deny the right to vote on the basis of race. Young black men today may be just as likely to suffer discrimination in employment, housing, public benefits, and
forms of human suffering have occurred or are occurring. Criminologist Stanley Cohen wrote perhaps the most important book on the subject, _States of Denial_. The book examines how individuals and institutions—victims, perpetrators, and bystanders—know about yet deny the occurrence of oppressive acts. They see only what they want to see and wear blinders to avoid seeing the rest. This has been true about slavery, genocide, torture, and every form of systemic oppression.

Cohen emphasizes that denial, though deplorable, is complicated. It is not simply a matter of refusing to acknowledge an obvious, though uncomfortable, truth. Many people “know” and “not-know” the truth about human suffering at the same time. In his words, "Denial may be neither a matter of telling the truth nor intentionally telling a lie. There seem to be states of mind, or even whole cultures, in which we know and don’t know at the same time.”

Today, most Americans know and don’t know the truth about mass incarceration. For more than three decades, images of black men in handcuffs have been a regular staple of the evening news. We know that large numbers of black men have been locked in cages. In fact, it is precisely because we know that black and brown people are far more likely to be imprisoned that we, as a nation, have not cared too much about it. We tell ourselves they “deserve” their fate, even though we know—and don’t know—that whites are just as likely to commit many crimes, especially drug crimes. We know that people released from prison face a lifetime of discrimination, scorn, and exclusion, and yet we claim not to know that an underclass exists. We know and we don’t know at the same time.

Upon reflection, it is relatively easy to understand how Americans come to deny the evils of mass incarceration. Denial is facilitated by persistent racial segregation in housing and schools, by political demagoguery, by racialized media imagery, and by the ease of changing one’s perception of reality simply by changing television channels. There is little reason to doubt the prevailing “common sense” that black and brown men have been locked up en masse merely in response to crime rates when one’s sources of information are mainstream media outlets. In many respects, the reality of mass incarceration is easier to avoid knowing than the injustices and sufferings associated with slavery or Jim Crow. Those confined to prisons are out of sight and out of mind; once released, they are typically confined in ghettos.
Most Americans only come to "know" about the people cycling in and out of prisons through fictional police dramas, music videos, gangsta rap, and "true" accounts of ghetto experience on the evening news. These racialized narratives tend to confirm and reinforce the prevailing public consensus that we need not care about "those people"; they deserve what they get.

Of all the reasons that we fail to know the truth about mass incarceration, though, one stands out: a profound misunderstanding regarding how racial oppression actually works. If someone were to visit the United States from another country (or another planet) and ask: Is the U.S. criminal justice system some kind of tool of racial control? Most Americans would swiftly deny it. Numerous reasons would leap to mind why that could not possibly be the case. The visitor would be told that crime rates, black culture, or bad schools were to blame. "The system is not run by a bunch of racists," the apologist would explain. "It's run by people who are trying to fight crime." That response is predictable because most people assume that racism, and racial systems generally, are fundamentally a function of attitudes. Because mass incarceration is officially colorblind, it seems inconceivable that the system could function much like a racial caste system. The widespread and mistaken belief that racial animus is necessary for the creation and maintenance of racialized systems of social control is the most important reason that we, as a nation, have remained in deep denial.

The misunderstanding is not surprising. As a society, our collective understanding of racism has been powerfully influenced by the shocking images of the Jim Crow era and the struggle for civil rights. When we think of racism we think of Governor Wallace of Alabama blocking the schoolhouse door; we think of water hoses, lynchings, racial epithets, and "whites only" signs. These images make it easy to forget that many wonderful, good-hearted white people who were generous to others, respectful of their neighbors, and even kind to their black maids, gardeners, or shoe shiners—and wished them well—nevertheless went to the polls and voted for racial segregation. Many whites who supported Jim Crow justified it on paternalist grounds, actually believing they were doing blacks a favor or believing the time was not yet "right" for equality. The disturbing images from the Jim Crow era also make it easy to forget that many African Americans were complicit in the Jim Crow system, profiting from it directly or indirectly or keeping their objections quiet out of fear of the repercussions. Our understanding of racism is therefore shaped by the most extreme expressions of individual bigotry, not by the way in which it functions naturally, almost invisibly (and sometimes with genuinely benign intent), when it is embedded in the structure of a social system.

The unfortunate reality we must face is that racism manifests itself not only in individual attitudes and stereotypes, but also in the basic structure of society. Academics have developed complicated theories and obscure jargon in an effort to describe what is now referred to as structural racism, yet the concept is fairly straightforward. One theorist, Iris Marion Young, relying on a famous "birdcage" metaphor, explains it this way: If one thinks about racism by examining only one wire of the cage, or one form of disadvantage, it is difficult to understand how and why the bird is trapped. Only a large number of wires arranged in a specific way, and connected to one another, serve to enclose the bird and to ensure that it cannot escape.

What is particularly important to keep in mind is that any given wire of the cage may or may not be specifically developed for the purpose of trapping the bird, yet it still operates (together with the other wires) to restrict its freedom. By the same token, not every aspect of a racial caste system needs to be developed for the specific purpose of controlling black people in order for it to operate (together with other laws, institutions, and practices) to trap them at the bottom of a racial hierarchy. In the system of mass incarceration, a wide variety of laws, institutions, and practices—ranging from racial profiling to biased sentencing policies, political disenfranchisement, and legalized employment discrimination—trap African Americans in a virtual (and literal) cage.

Fortunately, as Marilyn Frye has noted, every birdcage has a door, and every birdcage can be broken and can corrode. What is most concerning about the new racial caste system, however, is that it may prove to be more durable than its predecessors. Because this new system is not explicitly based on race, it is easier to defend on seemingly neutral grounds. And while all previous methods of control have blamed the victim in one way or another, the current system invites observers to imagine that those who are trapped in the system were free to avoid second-class status or permanent banishment from society simply by choosing not to commit crimes. It is far more convenient to imagine that a majority of young African American men in urban areas freely chose a life of crime than to accept the real possibility that their lives were structured in a way that virtually guaranteed their early admission into a system from which they can never escape. Most people are
willing to acknowledge the existence of the cage but insist that a door has been left open.

One way of understanding our current system of mass incarceration is to think of it as a birdcage with a locked door. It is a set of structural arrangements that locks a racially distinct group into a subordinate political, social, and economic position, effectively creating a second-class citizenship. Those trapped within the system are not merely disadvantaged, in the sense that they are competing on an unequal playing field or face additional hurdles to political or economic success; rather, the system itself is structured to lock them into a subordinate position.

How It Works

Precisely how the system of mass incarceration works to trap African Americans in a virtual (and literal) cage can best be understood by viewing the system as a whole. In earlier chapters, we considered various wires of the cage in isolation; here, we put the pieces together, step back, and view the cage in its entirety. Only when we view the cage from a distance can we disengage from the maze of rationalizations that are offered for each wire and see how the entire apparatus operates to keep African Americans perpetually trapped.

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. 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 rein. 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.11 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.

In recent years, advocates and politicians have called for greater resources devoted to the problem of “prisoner re-entry,” in view of the unprecedented numbers of people who are released from prison and returned to their communities every year. While the terminology is well intentioned, it utterly fails to convey the gravity of the situation facing prisoners upon their release. People who have been convicted of felonies almost never truly re-enter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to anyone else.
else. They became members of an undercaste—an enormous population of predominantly black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status. This is the final phase, and there is no going back.