

What Will America Be? Mass Incarceration and the Threat to the American Experiment

BY MICHELLE ALEXANDER



ifteen years ago, a young black man walked into my office and forever changed the way I viewed not only our criminal justice system but also how I viewed myself as a civil rights lawyer and advocate. I wish I had known then what I know now.

At the time, I was the director of the Racial Justice Project of the ACLU of Northern California. We had launched a major campaign against racial profiling by law enforcement, known as the “Driving While Black or Brown Campaign.” We were planning to sue a number of police departments that were employing discriminatory stop-and-search tactics. I was looking for the perfect plaintiff—the poster boy for

our litigation challenging racial profiling by the Oakland Police Department.

One day, this young man walked into my office carrying a stack of papers about three inches thick and almost immediately I realized that he might be the one. The papers he was carrying included detailed notes of his encounters with the police over a nine-month period of time. It was an extraordinary amount of documentation and detail. But as we were poring over his notes, he said something that made me pause. I interrupted him and said, “What did you just say? Did you just say that you’re a drug felon?”

We had been screening people with prior criminal records. We believed we could not represent

someone with a felony record as a named plaintiff in a racial profiling case, because we knew he would be cross-examined about his prior criminal history, thus undermining his credibility and distracting the jury's attention away from the discriminatory police conduct.

Finally, this young man said, "Yeah, yeah, I'm a felon—a drug felon—but the police planted drugs on me and then they beat up me and my friend. I can tell you all about it. I got names, I got..."

I cut him off. I tried to explain why I couldn't represent him and he kept trying to give me more details. I cut him off again and explained once more that there was nothing I could do for him. He kept begging and pleading, and then he snapped: "You're no better than the police! The minute I tell you I'm a felon, you just stop listening. What's to become of me? What am I supposed to do? I can't get a job anywhere because of my felony record—*anywhere*. I can't even get into public housing because of my record. I have to sleep in my grandmother's basement at night, because nowhere else will take me in. How am I supposed to feed myself? I can't even get food stamps—not even food—because of my drug felony. What's to become of me? How am I supposed to take care of myself as a man?"

As he shouted, he was ripping up his notes. All of the notes he had taken over the past nine months were torn into bits. As he walked out, he said over his shoulder, "You're no better than the police. I can't believe I trusted you."

Several months later, I learned he was telling the truth. I opened my newspaper and the Oakland Riders police scandal was front-page news. A gang of Oakland police officers, otherwise known as a drug task force, had been stopping, frisking, searching, and planting drugs on people—often while beating them up. It was only then that the light bulb finally went on for me.

In that moment, I realized that he was right about me. I was no better than the Oakland police. The minute that young man told me that he was a felon, I stopped listening. That moment of realization was the beginning of asking myself and others a lot of hard questions. I began to do an enormous amount of research, and what I learned through that process blew my mind.



I learned there are more African American adults under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850. In many large urban areas, more than half of working-age African American men now have criminal records and are thus subject to legalized discrimination for the rest of their lives in employment, housing, access to education, and public benefits. The rate of Latino imprisonment is astronomical as well. Women of color are now the fastest-growing segment of the prison system.

I also learned that who is behind bars is only part of the story. Of the 7.3 million people who are under correctional control, fewer than 2 million are in prison. The rest are in jail or on probation or parole, and millions more are trapped in a parallel social universe—a permanent second-class status that strips people of the very rights supposedly won in the civil rights movement. The War on Drugs and the “get tough on crime” movement gave birth to this vast, new racial undercaste and both political parties are responsible.

Above all, though, I learned that I made a tragic mistake during my encounter with that young man years ago. My error was not simply failing to represent an innocent man. My crime was imagining there was some path to racial and social justice that did not include those we view as *guilty*.

We stand at a critical moment in our history. Given the momentous demographic shifts that our country is experiencing, we cannot continue to travel

this road. If diversity is to be our strength, we cannot write off entire communities defined by race and class. Our workforce needs all hands on deck; our families need parents who can provide both economic and emotional support. It was always immoral and indefensible to write off the incarcerated population—now it is not only wrong, but it also endangers the future and promise of America.

Research suggests that the most punitive nations in the world are the most diverse, while the most homogeneous nations are the most compassionate. It seems that human beings reflexively condemn and punish those who seem different. Given our nation’s racial history, mass incarceration may present the ultimate test of whether the American experiment can succeed. Can we—despite long odds—become a nation where “liberty and justice for all” is more than a slogan, but a genuine expression of the American creed? Can we learn to overcome the punitive impulse toward “others” and extend care and concern to all of us, even the millions we’ve labeled as guilty—the so-called criminals?

I believe the answer is yes. The road that leads to that higher ground is not well traveled, but the direction we must go is no mystery. If we are serious about ending mass incarceration in America, we must commit ourselves to building a movement for racial and social justice. Mere tinkering with the machine through piecemeal policy reform is not enough. This system of mass incarceration is now so deeply entrenched in our social, political, and economic structure that is not going to just fade away.

Its dismantling is going to require a major shift in public consciousness.

But this need not overwhelm us. What is required is clear. We must end the War on Drugs once and for all. The time has come to shift to a public health model for dealing with drug addiction and drug abuse. We must also end legal discrimination against people released from prison—discrimination that denies them basic human rights to work, shelter, education, and food. Last but not least, we must shift from a purely punitive approach to dealing with all forms of crime—including violent crime—to a more restorative and rehabilitative approach, one that takes

seriously the experience of the victim, the offender, and the community as a whole.

We have a lot of work to do. We need a human rights movement for quality education, not cycles of incarceration. We need jobs not jails, compassion not contempt. People must be afforded health care and drug treatment on demand, rather than being sentenced to hard time. We need a movement that resists the punitive impulse, a movement that is fully committed to justice for each and every one of us—justice for all. Then, and only then, to borrow the great poet Langston Hughes's words, “will America be what it must become.” ■