

The New Jim Crow
A sermon by Rev. Fred Small
First Parish in Cambridge, Unitarian Universalist
March 24, 2013

Maybe you saw the story in the Boston Globe about a month ago.

[Headline:] Ex-Chelsea housing chief admits guilt in hiding big salary. Federal deal may mean little or no prison time . . . [February 20, 2013] Former Chelsea public housing chief Michael E. McLaughlin could face little, if any, prison time under Tuesday's plea agreement with federal prosecutors McLaughlin pleaded guilty to four felony counts of concealing his inflated salary from federal officials. . . . [He] admitted that for at least four years he intentionally understated his actual salary by about \$140,000 annually out of fear that disclosure would trigger a federal investigation into his activities at the Chelsea Housing Authority, which provides housing for elderly and low income people. His \$360,000 salary was among the highest of any public housing official in the United States.

You know, I might not have paid much attention to that story.

The City of Chelsea and the Commonwealth of Massachusetts have a dismal history of fraud and mismanagement. Another corruption scandal—another guy let off with a slap on the wrist.

But when I read the article I happened to be in the middle of Michelle Alexander's book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, which is the Unitarian Universalist Association's Common Read this year.

And so I had no choice but to read McLaughlin's story through the lens of not just criminal justice, but racial justice. And to compare his treatment to somebody else's.

"Imagine," Michelle Alexander writes:

Imagine you are Emma Faye Stewart, a thirty-year-old, single African-American mother of two who was arrested as part of a drug sweep in Hearne, Texas. All but one of those people arrested were African-American. You are innocent. After a week in jail, you have no one to care for your two small children and are eager to get home. Your court-appointed attorney urges you to plead guilty to a drug distribution charge, saying the prosecutor has offered probation. You refuse, steadfastly proclaiming your innocence. Finally, after almost a month in jail, you decide to plead guilty so you can return home to your children. Unwilling to risk a trial and years of imprisonment, you are sentenced to ten years' probation and ordered to pay \$1,000 in fines, as well as court and probation costs. You are also now branded a drug felon. You are no longer eligible for food stamps; you may be discriminated against in employment; you cannot vote for at least twelve years;

and you are about to be evicted from public housing. Once homeless, your children will be taken away from you and put in foster care.

That's not the end of the story.

A judge eventually dismisses all cases against the defendants who did not plead guilty. At trial, the judge finds that the entire sweep was based on the testimony of a single informant who lied to the prosecution. You, however, are still a drug felon, homeless, and desperate to regain custody of your children.

When I was a child, every school day morning I recited a pledge of allegiance “to the flag of the United States of America and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.”

Now, by the time we’re adults most of us have figured out that the promise of “liberty and justice for all” is something between an aspiration and a lie.

The genius and the challenge of Michelle Alexander’s book is that it shows just how far away are “liberty and justice for all.”

Alexander’s thesis is simple and heartbreakingly true.

The American criminal justice system is so suffused with racism that it effectively recreates the racial caste system known as Jim Crow. Although explicit bias is no longer acceptable, the system operates to label black men criminals and then condemns them *as criminals* to perfectly legal, race-neutral discrimination in employment, housing, education, public assistance, and voting rights.

“[M]ass incarceration, Alexander writes, “operates with stunning efficiency to sweep people of color off the streets, lock them in cages, and then release them into an inferior second-class status.”

While well aware that racism operates in many different ways in the criminal justice system, Alexander focuses on its impact on black men.

No country in the world incarcerates a greater proportion of its racial or ethnic minorities than the United States. A higher percentage of our black population is in prison than was the black population of South Africa at the height of apartheid. More than half of young black men in our big cities are under the control of the justice system or have criminal records; in some cities, it’s 80 percent. Rather than rehabilitating and reintegrating convicts into society, the justice system is a forced march into a netherworld of racial stigma and permanent marginalization.

“We have not ended racial caste in America;” Alexander charges, “we have merely redesigned it.”

Meanwhile, the illusion of a colorblind or post-racial society veils the discrimination we would otherwise see clearly. While Beyoncé sings at the Super Bowl and the first African-American president holds the White House, a vast black underclass labeled “convicts” staggers under oppression’s yoke.

Historically, Alexander argues, mass incarceration represents the triumph of a backlash against the Civil Rights Movement that began even as that movement was celebrating its greatest achievements. Just as the Black Codes undid Reconstruction and reinstated de facto slavery in the South, mass incarceration reinstated de facto Jim Crow—this time throughout the country.

According to his own chief of staff H. R. Haldeman, President Richard Nixon believed “the whole problem is really the blacks. . . . The key is to devise a system that recognizes this while not really appearing to.” Inflamed by the law-and-order rhetoric of Nixon, Spiro Agnew, George Wallace, and Boston’s own Louise Day Hicks, by 1968 81 percent of Americans believed that “law and order ha[d] broken down,” and most blamed “Negroes who start riots” and “Communists.” Conservatives used race to shatter forever the transracial New Deal coalition of poor and working class voters.

Ronald Reagan adapted Nixon’s rhetoric with an actor’s finesse, condemning “welfare queens” and criminal “predators” and letting racial stereotypes do the rest. Reagan slashed funding to prosecute white-collar crime and shifted it to the rapidly escalating War on Drugs.

Instead of responding to drug use with treatment and prevention, the Reagan administration launched a paramilitary campaign targeting drug users as the enemy against whom any tactic was justified. Congress cooperated by legislating draconian mandatory minimum sentences for drug use and distribution—penalizing crack, associated with blacks, far more severely than powder cocaine, associated with whites.

Learning from Reagan, Bill Clinton vowed never to be out-toughed by a Republican. On the eve of the 1992 New Hampshire primary, Clinton flew home to Arkansas for the execution of Ricky Ray Rector, a black man so mentally impaired that he asked that the dessert from his last meal be saved for the next morning.

After the execution, Clinton commented, “[N]o one can say I’m soft on crime.”

His administration saw the largest increases in state and federal prison populations in American history.

The War on Drugs has failed miserably to curtail drug use, but it has succeeded spectacularly in building prisons and filling them with young men of color.

The War on Drugs is the single most important cause of the incarceration explosion in the United States: from 300,000 in 1980 to more than 7 million today—one in 31 adults—behind bars, on probation, or on parole. Nationwide, although most drug users and dealers are white, three-fourths of those imprisoned on drug charges are black or Latino. The drug war has become a cash cow for police departments, whether through seizure of assets or federal grants, and for the

prison-industrial complex. It has diluted constitutional protections against police and prosecutorial abuse.

Tens of thousands of indigent defendants go to jail every year without even talking to a lawyer, and those who do are minimally “represented” by counsel who has only minutes to skim the file because they are simultaneously “representing” scores of other defendants. Funding for public defenders is the first to be slashed to balance budgets, and how many politicians will stand up for the legal rights of drug users?

By overcharging—that is, piling on more serious offenses than could ever be proven—prosecutors bully defendants into pleading guilty to “lesser” charges that still carry prison time or a felony record.

Once you’re a felon, you’re branded for life.

You can’t find work. You can’t get federally subsidized housing. You can’t get food stamps. You can’t vote. You can’t serve on a jury.

What’s race got to do with it?

Every fork in the road, every pivot-point of discretion—by police, by prosecutors, by your own lawyer (if you’re lucky enough to have one), by the judge, by the jury, by the correctional officer, by the parole board, by the parole officer—is infected by racism, almost always unconscious. But the Supreme Court of the United States has systematically excluded race as a basis for challenging stops, arrests, prosecutions, or sentences unless it’s explicit. Statistical proof of racism is inadmissible. So unless some fool is both self-aware enough and stupid enough to admit they went after you because you’re black, you’re out of luck.

What’s race got to do with it?

If white kids were being locked away at the rate black kids are today, it would be a national scandal. Rush Limbaugh and Rachel Maddow would be linking arms and singing “We Shall Overcome” at the National Mall. If the weapons and tactics of the drug war were deployed to lock down white neighborhoods in Belmont or Wellesley as brutally as in black neighborhoods in Dorchester or Roxbury, Scott Brown and Elizabeth Warren would handcuff themselves together to the gates of the State House.

But the victims of these weapons and tactics are overwhelmingly young black men and their families. So the rest of us go on our way with maybe a sad sidelong glance or maybe even a tear—but no resolve to demand change.

What’s race got to do with it?

When our Ministerial Intern Kenny Wiley was running near Harvard Square last summer, this guy calls out to him, “Bro, you running from the cops or something?” And a woman shouts,

“What’d you steal this time?” And when Kenny turns, incredulous, they explain, “We saw a black guy running at night, so why wouldn’t we say that?”

Why wouldn’t we say that?

Welcome to the New Jim Crow.

Just as it took a broad-based, courageous, indefatigable mass movement to end the old Jim Crow, it will take just such a movement to end the new one.

We must be willing to do what many liberals and civil rights advocates have been reluctant to do: advocate on behalf of criminals.

We must abandon the politics of respectability that says that people of color must look, sound, and act like middle-class white people to deserve our support and our solidarity.

We must end the misbegotten war on drugs, replacing criminal enforcement with regulation, prevention, and treatment.

We must treat the convict and the former convict not as an “other” to be feared and despised but as our neighbor equally endowed with inherent worth and dignity.

Michelle Alexander writes:

We could choose to be a nation that extends care, compassion, and concern to those who are locked up and locked out or headed for prison before they are old enough to vote. We could seek for them the same opportunities we seek for our own children; we could treat them like one of “us.”

We could do that.

Or we can choose to be a nation that shames and blames its most vulnerable, affixes badges of dishonor upon them at young ages, and then relegates them to a permanent second-class status for life.

That is the path we have chosen, and it leads to a familiar place.

Let us choose a different path: the path of justice. The path of compassion. The path of love.

Amen and Blessed Be.

Benediction

By Desmond Tutu

People of religion have no choice in the matter.
Where there is injustice and oppression,
where people are treated as if they were less than who they are—
those created in the image of God—
we have no choice but to oppose,
and oppose vehemently
and oppose with all the force that we have in our being,
that injustice and oppression.