

**The New Jim Crow:
Mass Incarceration in an Age of Colorblindness**

The Rev. Dr. J. Carl Gregg

10 February 2013

Unitarian Universalist Congregation of Frederick, Maryland

frederickuu.org

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.

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.

Now place yourself in the shoes of Clifford Runoalds, another African-American victim of the Hearne drug bust. You returned home to Bryan, Texas, to attend the funeral of your eighteen-month-old daughter. Before the funeral services begin, the police show up and handcuff you. You beg the officers to let you take one last look at your daughter before she is buried. The police refuse. You are told by prosecutors that you are needed to testify against one of the defendants in a recent drug bust. You deny witnessing any drug transaction; you don't know what they are talking about. Because of your refusal to cooperate, you are indicted on felony charges. After a month of being held in jail, the charges against you are dropped. You are technically free, but as a result of your arrest and period of incarceration, you lose your job, your apartment, your furniture, and your car. Not to mention the chance to say good-bye to your baby girl.

This is the War on Drugs.

--Michelle Alexander, *The New Jim Crow*, 97-98

In 1970, a Brazilian educator and activist named Paulo Freire published a landmark book titled *Pedagogy of the Oppressed*. In the opening pages, he coined the term **conscientization** (*conscientização* in Portuguese), which is also sometimes translated from the original Portuguese as “consciousness raising” or “critical consciousness.” Freire writes that the term is about **“learning to perceive social, political, and economic contradictions, and to take action**

against the oppressive elements of reality.” Conscientization seeks to raise awareness of social systems that perpetuate inequalities as a step toward transforming institutionalized forms of discrimination.

As a case in point, when Michelle Alexander talks about her motivations for writing her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, she writes in the Preface that,

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.

Many Unitarian Universalists may be in Alexander’s target audience, which helps explain why her book was chosen as this year’s **Unitarian Universalist Association “Common Read”** — that is, a book chosen annually for all UUUs to study, discuss, and act upon.¹ And even if you haven’t read Alexander’s book, I invite you to come back this evening at 5:00 p.m. for a congregation-wide discussion of this book.

There are at least three claims being made in the book’s title alone: (1) that our society is recapitulating the atrocities of the original Jim Crow laws, which enforced racial segregation on the false premise of “separate but equal,” (2) that we have a systemic problem of rising mass incarceration in this country, and (3) that our alleged “colorblind” age prevents many people from seeing or admitting that there are racist implications behind our high rates of mass incarceration.

Let me start with the second and arguably least controversial of these claims: that we have a *mass incarceration problem*. Consider this fact: **“In 1972, fewer than 350,000 people were being held in prisons and jails nationwide, compared with more than 2 million people today”** (8). The short answer for how this shift happened is the War on Drugs: “The percentage of drug arrests that result in prison sentences (rather than dismissal, community service, or

¹ For more resources related to Alexander’s book and the UUA Common Read program, including past selections, visit <http://www.uua.org/re/multigenerational/read/>.

probation) has quadrupled, resulting in a prison-building boom the likes of which the world has never seen” (60).

At this point, *colorblindness* comes into play. The perception that justice is blind — and the belief that in our advanced society laws are applied evenhandedly without regard to age, sex, class or race — can block us from seeing that: **“No other country in the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid”** (6) To bring these statistics closer to home, “In Washington, D.C. ... it is estimated that three out of four young black men (and nearly all those in the poorest neighborhoods) can expect to serve time in prison (7).” Tragically, those lopsided incarceration rates are mirrored across our country.

One explanation for this disparity could be that African-Americans commit more crimes, especially drug-related crimes. If that were the case, then the Drug War would understandably have affected African Americans disproportionately. However, studies do not support these claims. A 2001 study by the U.S. Department of Health and Human Services found that, “6.4% of whites, 6.4 percent of blacks, and 5.3% of Hispanics were current users of illegal drugs.” A subsequent DHHS study in 2003 also found **“nearly identical rates of illegal drug use among whites and blacks, only a single percentage point between them.”** Again in 2007, we see “essentially the same findings.” A 2006 report from the U.S. Department of Justice found that “white youth are *more likely* than black youth to engage in illegal drug sales.” And a 2007 multi-decade longitudinal study showed that “African American 12th graders have consistently shown *lower* usage rates than White 12th graders for most drugs, both licit and illicit” (264).

So, if illegal drug sales and illegal drug use are approximately the same across racial lines, why are so many more African-American convicted of drug crimes? The answer seems to be that **drug laws are enforced in a racially discriminatory manner to the extent that “In some states, black men have been admitted to prison on drug charges at rates twenty to fifty times greater than those of white men”** (7). To give another example closer to home, in studies done here in Maryland, “African Americans comprised only 17% of drivers along a stretch of I-95 outside of Baltimore, yet they were 70% of those who were stopped and searched” (133). This phenomenon is known as being guilty of “driving while black.”

With this ground laid, perhaps we are ready to begin to consider Alexander’s insight that we live in an era of a New Jim Crow. The crux of her charge is regarding the high numbers of African Americans who have been *disproportionately* convicted of drug crimes is that,

One you’re labeled a felon, the old forms of discrimination — employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service — are suddenly legal. **As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow.**

Alexander then drives her point home that, “We have not ended racial caste in America; we have merely redesigned it” (2).

As Alexander tells her own story, she readily confesses that as recently as ten years ago, she would have been deeply skeptical about the claims she herself is making in her book. And she freely admits that she was “beyond thrilled” at the election of our first black President (2). But the more she learned about our criminal justice system the more she became convinced that the result was a *de facto* New Jim Crow that “permanently locks a huge percentage of the African American community out of the mainstream society and economy” (13).

The reason I mentioned Alexander’s own initial skepticism about a revitalized racial caste system in the U.S. as well as her celebration of President Obama’s election is because I don’t want any sense of overreaching — any sense that Alexander may be overstating the case for a New Jim Crow — to cause anyone to dismiss this work without wrestling with it seriously. I began by noting the sharply increased rates of mass incarceration because perhaps large segments of our society can at least agree that such high rates of incarceration are a trend that needs to be reversed — although the troubling privatization of prisons complicates any proposed reversals. As Paul Krugman has written in the *New York Times*, **“Privatized prisons save money by employing fewer guards and other workers, and by paying them badly. And then we get**

horror stories about how these prisons are run. What a surprise!”² To remind you of the raw numbers, “In 1972, fewer than 350,000 people were being held in prisons and jails nationwide, compared with more than 2 million people today.” So perhaps step one is simply raising awareness of this marked shift and calling for ways of drastically lowering our prison population.

The next step is raising awareness about the racially biased nature of how our legal system sometimes operates. To address the so-called “colorblindness” that has blocked many parts of our society from seeing racial bias in criminal convictions, I would like to share with you one of my first experiences with Anti-Racism work. I first attended a multi-day intensive workshop on “Dismantling Racism” a little more than a decade ago. Part of what still stands out to me from that training was a claim that, “There has been *no progress* in working against racism in this country.” Although I found most of the workshop compelling and challenging, I was completely incredulous about that claim that “There has been no progress in working against racism in this country.” Admittedly, in the early 2000s, you still occasionally heard commentators say with a straight face that Bill Clinton was our country’s first black president. But I just couldn’t accept that someone could be aware of historical events such as the adoption of the 13th Amendment in 1865, the ruling of *Brown vs. the Board of Education* in 1954, and the passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 — how could you be aware of those sea changes — and continue to claim that, “There has been no progress in working against racism in this country” (38)? But the facilitator would not back down from this claim despite my protests. I was willing to accept his counterpoint that racism had become more insidious, but I remained unconvinced that progress had not been made for racial justice.

I would still be willing today that there has been progress in this country toward dismantling racism, but I think what my workshop facilitator was missing was a book like Michelle Alexander’s *The New Jim Crow*, which wasn’t published until 2010. **I wonder if I would have been forced to rethink my conviction that there has been clear racial progress if my facilitator had confronted me with the fact that “Today there are more African-**

² Paul Krugman, “Prisons, Privatization, Patronage” (June 21, 2012), available at <http://www.nytimes.com/2012/06/22/opinion/krugman-prisons-privatization-patronage.html>. See also, Richard Oppel, “Private Prisons Found to Offer Little in Savings” (May 18, 2011), *The New York Times*, available at <http://www.nytimes.com/2011/05/19/us/19prisons.html?pagewanted=all>.

American adults under correctional control — in prison or jail, on probation or parole — than were enslaved in 1850, a decade before the Civil War began.”³ Does that fact give you the same pause that it does me? Are we too quick in our assurance that there has been progress in dismantling racism when we realize that “Today there are more African-American adults under correctional control — in prison or jail, on probation or parole — than were enslaved in 1850, a decade before the Civil War began”?

A few weeks ago on the eve of Martin Luther King, Jr. Day, I talked about King’s use of the Rip Van Winkle story to caution us against sleeping through a revolution. But Dr. King had in mind a revolution toward *fulfilling* his dream of racial equality. Michelle Alexander is warning about an insidious “Counter-Revolution”: that the racially discriminatory way in which our laws are enforced is **“the most damaging manifestation of the backlash against the Civil Rights Movement”** (11). From another angle, Cornel West goes one step further in the Foreword to Alexander’s book, writing, **“if young white people were incarcerated at the same rates as young black people, the issue would be a national emergency”** (x).

One response to this dire situation could be despair. My own response when reading Alexander’s book oscillated somewhere between deep sadness and righteous anger. But the first step in transforming our Prison-Industrial Complex is raising awareness that there is even a problem, that the situation is much more complex than “getting tough on crime,” and that colorblindness may more a part of the problem than the solution. To again quote Cornel West from the Foreword of Alexander’s book, the lesson West takes from MLK’s dream is that **we are not called to be “colorblind toward each other”; rather, we are called to be “lovestruck with each other”** (x).

As Unitarian Universalists, our First Principle is “The inherent worth and dignity of every person.” That includes prisoners, the poor, and the vulnerable. Our Second Principle is “Justice, equity and compassion in human relations,” and that includes a need to make our Criminal Justice System a more humane, just, and compassionate — that those who move through our

³ “*Today there are more African-American adults under correctional control — in prison or jail, on probation or parole — than were enslaved in 1850, a decade before the Civil War began.*” — Charles Blow, “Escaping Slavery,” available at <http://www.nytimes.com/2013/01/05/opinion/blow-escaping-slavery.html>.

Criminal Justice System emerge on the other side equipped to be responsible citizens. I could continue to correlate each of our UU Principles with the need for prison reform, and I would encourage you — regarding any social justice issue for which you are passionate — to consider how that social justice work can be informed and strengthened through a reflection on our UU Principles and Sources.⁴ And for who would like to explore this present issue further, in the version of this sermon posted on our website I will include a link to the many different Unitarian Universalist Statements of Conscience that have been made over the years related to reforming our Criminal Justice System and our nation’s drug policy.⁵ We do not have to start from ground zero in the work. We can partner with those individuals and groups who have been working for many years to change the system.

And at least in my opinion, a commitment to principles such as “The inherent worth and dignity of every person” and “Justice, equity and compassion in human relations” requires working for a **shift from a Criminal Justice System primarily characterized by Punitive Justice to one primarily characterized by Restorative Justice** — that is, a focus less on punishment than on rehabilitation, restoring right relationship for all concerned, and on repairing the problems that contribute to crimes being committed in the first place. For example, in the U.S., we spend “more on prisons than police,” but those numbers were reversed before the rise of the Prison-Industrial Complex began in this country. And communities such as New York City have been able in recent years to decrease prison populations and crime rates through increased police work, although those statistics are complicated by use of “stop and frisk rules” that disproportionately stop and frisk people of color.⁶

We relatedly need to do a much better job about teaching, promoting, and protecting our Fourth Amendment rights: “The right of the people to be secure in their

⁴ Read the UU Principles and Sources at <http://www.uua.org/beliefs/principles/>.

⁵ An archive of UU resolutions that “recognize racial and economic disparities in sentencing within our legal system” are available at <http://www.uua.org/liberty/criminaljustice/124024.shtml>.

⁶ “*more on prisons than police*” — “Prison Population Can Shrink When Police Crowd Streets,” available at <http://www.nytimes.com/2013/01/26/nyregion/police-have-done-more-than-prisons-to-cut-crime-in-new-york.html?pagewanted=all>.

persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause....” Disturbingly the trend in recent years has been many court rulings that seem to many to undermine the Fourth Amendment and encourage unreasonable search — including rampant racial profiling, contributing to a disproportionately high rate of incarceration for racial minorities (63-64, 69).

To name one further possibly response to The New Jim Crow, as some of you know, many decades ago this congregation became a lifetime member of the NAACP, “The National Association for the Advancement of Colored People.” I know that some of you have been involved at various points in working with the NAACP. And we have invited the President of the local branch of the NAACP to our discussion this evening. My understanding is that he plans to attend, and that he has spread the word as well to some of his contacts. I do not know whether other members of the NAACP will attend, but **if this congregation were to become serious about anti-racist work, a strong first step might be for some of us to start attending NAACP meetings** to hear from people of color directly about their stories, their struggles, and their ongoing work for racial justice.⁷

Along these lines, Mark Morrison-Reed has written a book titled, *[Black Pioneers in a White Denomination](#)* about the experience of African-American ministers in Unitarian Universalism. Morrison-Reed describes himself as “a black-born, Unitarian-bred minister of the liberal faith.” His studies show that, “In 1968 when black involvement in [Unitarian Universalism] was at a high point, blacks numbered 1,500 of the denomination’s 180,000 members, less than 1%....” And, “Only 23 black men and women have been received into ministerial fellowship since 1889” (xii-xiii). Looking at the few Unitarian Universalist

⁷ For more ideas similar to white people joining the NAACP, see Jonathan Wilson-Hartgrove, “Nonviolence for White People,” available at <http://www.redletterchristians.org/nonviolence-for-white-people/>.

congregation that have been more racially integrated, he notes that **“the most successful were those visibly active in race relations in their communities”** (144).⁸

I will conclude here for now. But this sermon has been primarily intended as the beginning of a conversation. I hope that many of you will be able to join us at 5:00 p.m. this evening to continue the conversation about how this congregation can partner with other Unitarian Universalists as well as other groups in working to make the New Jim Crow as much as relic of history as the old Jim Crow.⁹ We'll begin with a reception at 5:00 p.m. in the atrium, then begin the program here in the sanctuary at 5:30 p.m. We plan to conclude by 7:00 p.m. For now, as we continue to hold all these struggles against racial injustice in our heart and in our mind, I invite you to rise in body or spirit as we prepare to sing together.

⁸ Morrison-Reed notes that other frequent factors seen in successful racial integration in congregations include “large urban areas,” “a large black middle class,” “intentionality,” and “time.” He continues that, “To distill this still further, it requires opportunity and commitment” (203-205). And on the frequently cited disjunction between liberal theology in UU congregations and more traditional Christian theology in many black churches, Morrison-Reed says that, “Despite the black church’s reputation for other-worldliness, it has met the needs of the present, Child care, food and shelter, funerary matters, the cause of civil rights, and voter registration are all concerns to which the black church has responded” (171).

⁹ For a related article and resources to those found in *The New Jim Crow*, see Diana Aubourg Millner, “Dismantling the Cradle to Prison Pipeline,” available at http://www.huffingtonpost.com/diana-aubourg-millner/dismantling-the-cradle-to-prison-pipeline_b_1885048.html.