

Race, Incarceration, and Racial Disparities

A quick glance at the statistics makes it clear that America's mass incarceration system is not color-blind.

- One in every 106 white men age 18 or older in America is incarcerated.
- One in every 36 Hispanic men age 18 or older in America is incarcerated.
- One in every 15 black men age 18 or older in America is incarcerated.³²

• The figures for women are only slightly better and have the same approximate breakdown by race.³³

This might lead us to assume that racial minorities commit more crimes than white

Americans, but this is not necessarily so. For example, blacks are more than three times more likely to be arrested for drug crimes, even though whites use drugs at equal or slightly higher rates.^{34, 35}

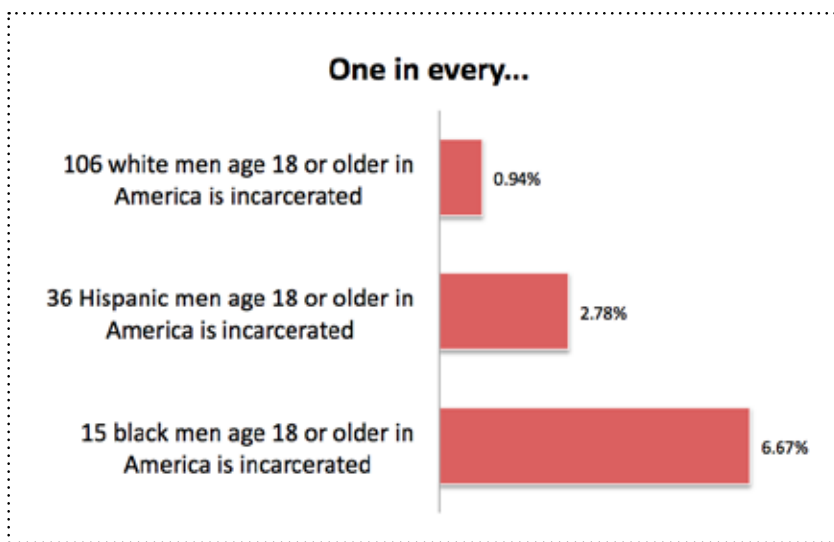
Poverty and related social issues also contribute to mass incarceration, in a way that is often entangled with race. The Baltimore Sun, in an editorial published in the wake of Freddie Gray's death in police custody on April 12, 2015, had this to say about the lived experience of poor, black, urban communities:

The neighborhood where [Gray] lived, Sandtown-Winchester, recently made news as the census tract that is home to more inmates in the Maryland correctional system than any other. But that is not the only way in which it is exceptional. Four years ago, the Baltimore Health Department issued a community profile of that neighborhood, and even in a city where poverty is widespread, it stands out. The unemployment rate there is about double the citywide average, and so is the poverty rate. Similarly, there are about twice as many liquor stores and tobacco outlets per capita in Sandtown-Winchester as in the city as a whole. Fully a

quarter of juveniles in that neighborhood had been arrested between 2005 and 2009. It had the worst domestic violence rate of any of the neighborhoods the health department analyzed and among the worst rates for non-fatal shootings and homicides. A quarter of the buildings are vacant, and the lead paint violation rate is triple

the city average. (Gray and his sisters suffered from lead paint poisoning as children.) The only metric the health department analyzed in which Sandtown-Winchester was the best in the city was in the density of fast food restaurants. Perhaps it's too poor to have any.³⁶

The cause of racial disparities in mass incarceration, however, is up for some debate.



³² <https://www.aclu.org/infographic-combating-mass-incarceration-facts>

³³ http://www.sentencingproject.org/doc/publications/cc_incarcerated_women_factsheet_sep24sp.pdf

³⁴ http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html, based on 2011 data from the Substance Abuse and Mental Health Services Administration.

³⁵ http://www.huffingtonpost.com/2013/09/17/racial-disparity-drug-use_n_3941346.html, based on 2009 data from Human

³⁶ <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-freddie-gray-20150425-story.html>

Michelle Alexander, in her book *The New Jim Crow*, makes the case that the mass incarceration system, with its sharp uptick in incarceration beginning in the early 1970's, was intentionally designed to replace the Jim Crow laws that had been finally struck down in the South. She writes in her introduction:

*To put the matter starkly: The current system of control permanently locks a huge percentage of the African-American community out of the mainstream society and economy. The system operates through our criminal justice institutions, but it functions more like a caste system than a system of crime control... Skepticism about the claims made here is warranted. There are important differences, to be sure, among mass incarceration, Jim Crow, and slavery... Many of the differences are not as dramatic as they initially appear, however; others serve to illustrate the ways in which systems of racialized social control have managed to morph, evolve, and adapt to changes in the political, social, and legal context over time... What this book is intended to do—the only thing it is intended to do—is to stimulate a much-needed conversation about the role of the criminal justice system in creating and perpetuating racial hierarchy in the United States.*³⁷

This argument has compelled and motivated many an activist since its publication in 2010. And it has had her

desired effect. To offer one small example, Alexander points out that the NAACP's website, as recently as May 2008, barely mentioned prisons; today, prisons appear in the first sentence under the Advocacy heading "Justice."

Alexander's argument has also generated controversy. Ta-Nehisi Coates, in a series of articles for *The Atlantic*, offers the following mixture of praise and criticism for Alexander's book:

"What's the public really scared of? If it's only crime, we could get out of this mess quickly. This is about race, this is about class, and we have to tackle those issues. The way you do that is by changing the way the public thinks about who is or was in prison."³⁸

- Glenn E. Martin, founder of Just Leadership USA

INTENDED VS. UNINTENDED CONSEQUENCES

Jewish law establishes a category known as *p'sik reisha*—unintended but predictable consequences. The name of this area of law comes from the example of a person who cuts off the head of a chicken on Shabbat in order to use the head for some purpose—but without wanting to kill the chicken. Obviously, though, the person could have predicted that cutting off the head would result in the death of the chicken.

The racial effects of policing could be viewed as unpredictable, unintended consequences, or as a case of *p'sik reisha*, where the consequences should have been obvious. How would you apply this teaching to the questions of race and policing?

*I think Alexander's insistence on pushing the envelope on actual racism is one of the book's most striking features. Liberals have largely retreated on this front. We prefer to talk about "inadvertent," or "unintentional" racial effects. Alexander is arguing for actual racism as a factor in every stage of the criminal-justice process.*³⁹

I still feel uncomfortable with the idea that masses of incarcerated white people are merely collateral damage on the way to controlling black people. I suspect something more nuanced at work. I use these words "suspect" and "unconvinced"

³⁷ Pp. 13-16.

³⁸ <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent>

³⁹ <http://www.theatlantic.com/politics/archive/2014/09/books-for-the-horde-the-new-jim-crow-chapters-3-and-4/380712/>

intentionally, for even as I write this, I am not so sure that Alexander is wrong. A brief historical note will explain why. In the '40s and '50s, African Americans and advocates of fair housing understood that some network of discrimination was at work. But they did not understand how far the network actually went until the discovery of redlining maps, which made it painfully clear that what they were seeing was not random mindless bias but federal policy.... I would not be shocked if one day [historians] discover the evidence that I found wanting in this book—evidence of intentionality, of direction, which shows that the carceral state really was, at its roots, an attempt to control black people... 40

Bits and pieces of new evidence are bubbling up in support of Alexander's claim. For instance, a 2005 study of drug arrests in Seattle found that racial bias drove policing and arrests; "in short, racial disparities might not be simply an unfortunate by-product of drug wars, but rather might be a constitutive component of those campaigns." 41 Of course, the truth likely reflects a combination of these perspectives, with some policymakers acting with obvious

racist intent and others reacting out of ignorance or political expediency or inertia or bad science or media hype. Regardless of intent, the effect is cumulative.

WHAT'S WORKING: RACIAL IMPACT STATEMENTS

When local, state, or federal governments plan new programs, independent assessors must prepare financial and environmental impact statements. Three states—Connecticut, Iowa, and Oregon—have adopted laws requiring racial impact statements as well. These statements look at the effect of a given new policy on racial disparities.⁴³ As then-Governor Chet Culver of Iowa explained in 2008, the new law would provide lawmakers more information about how many people might end up in jail as a result of a new criminal statute, for how long, and according to what racial distribution.⁴⁴ At the time, 2% of Iowa's population was black, compared to 24% of its prison population. In addition to preventing the implementation of programs and policies that would have adverse effects on people of color, this practice places racial equality on par with budgets and environmental protection.

Pirkei Avot 4:27

Rabbi Meir says: do not look at the flask but what is in it. There are new flasks filled with old wine and old flasks which do not even contain new wine.

How is race in America a case of old wine in new flasks?

Reporter Arienne Thompson writes,

We are exhausted. We are tired. We can't breathe. We can no longer bear the weight of seeing our men, our Americans, our husbands, fathers, brothers, uncles and cousins humiliated, profiled, emasculated, choked, dragged and shot, day in and day out..... Being Black in America is like walking through an ice storm: It's cold, isolating, and exhausting. You're not sure if you're gonna make it and you can't see what's coming for you.⁴²

This is the lived experience that mass incarceration, with its racial disparities, creates.

In the "Take Action" section of this handbook, you'll find suggestions for opening up the conversation about race within your community.

40 <http://www.theatlantic.com/politics/archive/2014/10/books-for-the-horde-the-new-jim-crow-chapter-6/381330>

41 http://www.thestranger.com/images/blogimages/2010/10/28/1288284278-beckett_social_problems.pdf

42 <http://www.usatoday.com/story/life/people/2014/12/04/the-exhausting-task-of-being-black-in-america/19894223/>

43 http://www.sentencingproject.org/detail/publication.cfm?publication_id=570&id=

44 <http://www.npr.org/templates/story/story.php?storyId=90102924>