Book Review: The New Jim Crow: Mass Incarceration in the Age of Colorblindness

Nick J. Sciullo, *Georgia State University*
Many in the legal academy have heard of Michelle Alexander’s new book, *The New Jim Crow: Mass Incarceration in an Age of Colorblindness*. It has been making waves. One need only attend any number of legal conferences in the past year or so, or read through the footnotes in recent law review articles. Furthermore, this book has been reviewed in journals from a number of academic fields, suggesting Alexander has provided a text with profound insights across the university and public spheres. While I will briefly talk about the book as a book, I will spend the majority of this essay discussing the book’s contribution to the larger discussion of the role penal
institutions have in society. To do this, I will consider what contributions Alexander makes in light of Michel Foucault’s *Discipline and Punish: The Birth of the Prison*[^4] and Loïc Wacquant’s writings on prisons.[^5] My references to these texts will not be extensive given the space restraints of this forum, but I hope to open a discussion about the relevance of Alexander’s text to broader critical interpretations of prison history.

Michelle Alexander combines legal, historical, and social science research to write a compelling narrative about the nature of the prison-industrial complex and the exacting toll it has exerted on people of color. This book is part manifesto, part catharsis, and part academic study. Alexander writes of her specific mission with which she hopes to task readers that “[n]o task is more urgent for racial justice advocates today than ensuring that America’s current racial caste system is its last.”[^6] This being her goal, her book succeeds in arousing the passions of, at the very least, this racial justice advocate.

Alexander takes the reader through an introduction and six chapters (The Rebirth Caste, The Lockdown, The Color of Justice, The Cruel Hand, The New Jim Crow, The Fire This Time). The chapters are roughly the same length (about 20-40 pages), each unpacking a new piece of her argument. The book is supplemented by the Preface, Notes, and Index. Before discussing the tremendous merits of this text, I want to call attention to several problems that may confound readers and researchers.

While readers will find the extensive notes and index helpful, one way to have made this text stronger would have been to add a section that lists the relevant case law and statutes that are pertinent to Alexander’s study. This information is contained in the notes and index, but legal researchers may desire an easier way to make quick reference to Alexander’s enlightened and extensive discussion of case and common law. While the book is intended for an educated audience[^7] and not solely the legal academy, such additions would be helpful.

---


[^6]: ALEXANDER, supra note 1, at 19.

Other criticisms may be raised. Historians will find the work wanting. While Alexander marshals an extensive knowledge of law and public policy, she is not a historian. Many of her notes refer to secondary sources, not primary source material.\(^8\) One may wonder if she is making too much of others’ arguments and not advancing her own original thought. She does, however, rely on secondary sources from a number of disciplines,\(^9\) which ought to increase the book’s appeal to readers of many intellectual and activist traditions and give her reliance on secondary sources added validity. She also fails to include information about resistance to the “new” Jim Crow, for which at least one reviewer has called her to task.\(^10\) This criticism, however valid, ignores what seems to be Alexander’s larger point—the question is not one of change but of permanence. Alexander is attempting to articulate the reasons for the “racial caste” system she sees, not describe the history of challenges to that system.\(^11\) To be sure, including more of the latter would have made the text more complete, but not including this discussion does no serious harm. While she seeks to inspire activists to challenge the system of mass incarceration, she must first establish the importance of her study, the permanence of the forms of discourse that maintain mass incarceration and the prison-industrial complex, and the appropriateness of her analogy to Jim Crow. She succeeds on these counts.

As previously indicated, one may also wonder if invoking the sobriquet of Jim Crow is appropriate. Such debates have raged about the use of terms like genocide\(^12\) and ghetto.\(^13\) Although there is far from a consensus about when these terms are appropriate, one must wonder if the “new” Jim Crow is perhaps too simple or historically insensitive because it reduces the

---

8. See, e.g., ALEXANDER, supra note 1, at 20–26, 251 (relying on secondary sources for the first ten footnotes of the first chapter).
9. Id. (citing prominent legal scholars, sociologists, and historians).
10. See Joseph D. Osel, Black Out: Michelle Alexander’s Operational Whitewash: “The New Jim Crow” Reviewed, 1 INT’L J. RADICAL CRITIQUE 1, 3 (2012) (“Although Alexander offers some insightful analysis about the American drug war, policy making and various other things, the entire contextual frame of her work can be characterized by two words: bizarre omission.”).
11. See generally, ALEXANDER, supra note 1, at 217–27 (focusing more on what can be done now and in the future to challenge the new caste system and focusing less on failed challenges of the past).
12. See Henry H. Huttenbach, From the Editor: uniqueness (redux): trivialization by any name, 3 J. GENOCIDE RESEARCH 185, 185–86 (2001) (“What the advocates of uniqueness-by-any-other-name must recognize is that they are contributing to the distortion of historical reality, and, in the long run, they are doing a disservice to the individual genocide whose memory they wish to promote.”).
13. The word “ghetto” has Italian origins deriving from borghetto and was used to describe a cluster of homes where Jews and others lived, often outside the city. The term was not pejorative. A more modern etymological distinction would refer people to the Warsaw ghetto where Jews were segregated during World War II. The argument about the misappropriation of the term ghetto centers around the historical legacy of the Jewish condition, particularly during the early- and mid-twentieth century. See MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 527 (11th ed. 2003).
importance of, or somehow diminishes, the harm of the “old” Jim Crow. This, however, does not make her argument less sound or the book less readable and thought-provoking. Loïc Wacquant defines Jim Crow as “legally enforced discrimination and segregation from cradle to grave,” occurring from 1865–1965. This definition, which is almost universally accepted, provides the specific context Alexander is hoping to invoke, yet the lingering question remains about the appropriateness of invoking this era. It is only a minor sticking point that will cause some, particularly those who study rhetoric, philosophy, or history to pause before advancing through her well-written text.

Rather than march through chapter by chapter, it seems more important to place Alexander’s text in context, specifically in the context of significant writings about prison. Her most important contribution is not that she has produced a readable text, nor that she has sounded an alarm that needed to resound across intellectual and activist traditions. And, it is not that she has provided insightful historical and legal analysis, which she certainly has. Rather, her most important contribution to the ongoing discussion about the prison-industrial complex’s disparate and deleterious effects on people of color, which has resulted in mass incarceration, is that she exposes and critically engages the flaws in this discursive formation. By “discursive formation,” I have in mind Michel Foucault’s use of the phrase in Artéchoy of Knowledge, where he describes it as a series of organized statements that constitute a particular system of knowledge. Discursive formations help to legitimize knowledge, establish order, and distinguish appropriate argumentative strategies.

Alexander’s concern is, it seems, the discursive formation of the prison-industrial complex. Alexander presents readers with pieces of the

14. Wacquant, From Slavery to Mass Incarceration, supra note 5, at 41.
15. Id. at 42, 45.
18. Id. at 41 (“[W]henever, between objects, types of statement, concepts, or thematic choices, one can define a regularity (an order, correlations, positions and functionings, transformations), we will say, for the sake of convenience, that we are dealing with a discursive formation . . . .”).
19. See ALEXANDER, supra note 1, at 211–17 (describing the discursive formation of the prison-industrial complex and the problems it presents).
formation including, but not limited to, hollow hope in the court system, the immediate effect and lingering legacy of *McCleskey v. Kemp*, the Ronald Reagan presidency, and the move to the “racial agenda” of welfare reform as evidenced by President Bill Clinton’s Personal Responsibility and Work Opportunity Reconciliation Act. She writes, tellingly, “Those of us in the civil rights community are not immune to the racial stereotypes that pervade media imagery and political rhetoric; nor do we operate outside of the political context. Like most people, we tend to resist believing that we might be part of the problem.” Here, Alexander is describing the ways in which the discursive nature of the prison-industrial complex through statutes, court cases, public statements by officials, white papers, various lobbying groups, and others have erected a system of knowledge that is so pervasive, so dominate, that it effects even those who are steadfastly opposed to the formation. Even if advocates oppose the system, they cannot escape it.

Foucault described the birth of the prison in words that sound eerily as if they were written yesterday:

> It became necessary to define a strategy and techniques of punishment in which an economy of continuity and permanence would replace that of expenditure and excess. In short, penal reform was born at the point of junction between the struggle against the super-power of the sovereign and that against the infra-power of acquired and tolerated illegalities. And if penal reform was anything more than the temporary result of a purely circumstantial encounter, it was because, between this super-power and this infra-power, a whole network of relations was being formed.

What Foucault is getting at is the notion that prisons were about defining strategies of punishment as well as strategies of permanence. The prison-industrial complex not only has efficiency and punishment as a goal, but also permanence, or the ability to remain extant despite assaults on its discursive nature. There is always relational space, where power exists, between reformers and the old guard, between prisoners and corrections staff, between lobbyists and lawmakers. Foucault and Alexander, then, sound a similar note. Both are concerned with the historical process, the results of changes in public policy, and the ways in which the prison is maintained discursively, that is to say, in the permanence of this most troubling discursive formation. Significantly, Alexander makes an important

---

20. *Id.* at 213–15.
21. *Id.* at 106–09.
22. *Id.* at 47–53.
23. *Id.* at 56.
24. *Id.* at 212.
contribution that goes well beyond Foucault’s monumental work. She adds race to the equation.

Alexander is not the first to consider the prison-industrial complex as an extension of racism of the past.26 What she does is explore, more deeply and systematically than the work of Loïc Wacquant,27 the carceral apparatus as an outgrowth, not of an historical trajectory, but of a particular historical epoch. Wacquant traces the era of mass incarceration to slavery through Jim Crow to “ghettoization.”28 Alexander focuses solely on Jim Crow. Both approaches are valid, but Alexander’s offers more depth. The New Jim Crow may be seen as a specific application of Wacquant’s more general approach, complementing his work, not challenging it. Seen as an appropriate extension of previous work, Alexander’s text is a necessary contribution to the too often whitewashed version of prison history.

Alexander’s text is a valuable contribution to our understanding of the prison-industrial complex, mass incarceration, and racism. She builds upon the work of pioneering authors and provides a deeply moving, intellectually vigorous, and passionately argued account. The New Jim Crow is not a book for everyone. Alexander writes in the preface, “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.”29 Readers may fault her activism, which is clear in her writing. They may fault her for an incomplete history of the penal system or even an incomplete history of the “old” Jim Crow. But for those in her audience, as well as those who may not have thought critically about race and the prison-industrial complex, this book is indispensable as a resource. Alexander provides a clarion call for action to challenge the war on people of color waged by the racial undertones of the modern prison-industrial complex. Quite simply, this text is highly recommended.

26. See Wacquant, From Slavery to Mass Incarceration, supra note 5, at 41 (arguing that “slavery and mass imprisonment are genealogically linked”).
27. See generally Wacquant, PUNISHING THE POOR, supra note 5 (discussing the racism of the prison system in the U.S. and abroad).
28. Wacquant, From Slavery to Mass Incarceration, supra note 5, at 44–49.
29. ALEXANDER, supra note 1, at xiii.