Close your eyes and picture an illegal drug user. What kind of person are you envisioning?

Imagine you're at dinner with friends and someone tells you: "we really need to do something about the problem of white crime." What's your reaction?

You probably know about the war on drugs. What's your reaction to the idea that black people are disproportionately targeted for drug crime?

What if you were told that rates of illegal drug use are actually equal between white and black populations?

The New Jim Crow: Mass Incarceration in the Age of Colorblindness unpacks these popular conceptions about drug crime. In this New York Times bestseller, Michelle Alexander argues that the war on drugs has created a new racial caste system, disproportionately punishing black people.

A powerfully interlocking system of laws and policies targets black people for drug crime, punishes them more severely than white criminals, and makes life as an ex-felon extremely difficult. The result is effectively racial subjugation and disenfranchisement.

In this New Jim Crow summary, you'll learn:
how the war on drugs followed a pattern of implementation consistent with slavery and Jim Crow
how financial incentives and legal protection allow selective targeting of black males for drug crimes
why it's so difficult for drug convicts to reintegrate into society
why remarkable black achievers like President Obama are deceptive indicators of black progress, and may actually perpetuate the New Jim Crow

Disclaimers: Depending on your political and social beliefs, this *New Jim Crow* book summary may be controversial. So I offer these disclaimers:

- I use the terms "blacks," "whites," "poor whites," "white elites," "felons," as shorthand to represent different groups, the way the author does in the book. They are not meant to be dismissive or reductionist labels.
- There are potentially controversial arguments around intent and degree of conscious/subconscious bias; as in all of my summaries, I primarily communicate the author’s points as in the book. Where I offer my own opinions, I label them explicitly or with brackets [].
- Every nonfiction book I’ve read - whether about management, diet, sociology - cherry-picks the strongest data to confirm the main point, without fully addressing contradictory data. The truth is always more complicated than what any single viewpoint espouses. If you strive for rationality and truth, then you’d do well to compile a variety of viewpoints and data, especially those you disagree with. This is true whether you agree with this book or not.

**Overall Summary**

- Important prison statistics
  - In 30 years, the US penal population increased from 300k to 2MM, with drug convictions accounting for the majority of increase. The US rate of incarceration is 750 per 100k, vs 161 in the US in 1972 and 93 in Germany today.
  - **Blacks make up 13% of the US population, but 40% of the US incarcerated population. A third of black men will have served time in prison**, based on 2001 rates.
  - Since 1980, the growth in number of arrests for black Americans has been concentrated in drug crimes - arrests for property and violent crimes have decreased.
  - **Drugs offenses make up 46% of inmates in federal prisons and 16% in state prisons.**
    - Michelle Alexander argues these underestimate the impact of drug laws - drug offenses receive half the sentence length as violent crime, so they flow out of prison more quickly. **Drug crimes account for 31% of total federal and state prison admissions**, but these have grown over time.
One might think racial differences in drug prison admissions are due to differences in crime rates, but within drug crime, this isn’t true. **Blacks are no more likely than whites to sell and consume drugs** [albeit according to survey data, which could be biased]. Despite this, blacks are searched and arrested at higher rates and receive more severe punishment for the same crime.

- **The war on drugs and incarceration is the latest instantiation of centuries-old racial discrimination against black people.**
  - It avoids the overt racism of the slavery and Jim Crow methods by using terms like “tough on crime,” but it began in conscious racial motivation.
  - **Starting in the 60s with Barry Goldwater and rising with Nixon**, there was deliberate maneuvering by politicians to subtly exploit the vulnerabilities of Southern whites, who were concerned with the Civil Rights campaign.
    - Said Nixon’s chief of staff: “you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognized this while not appearing to.”
  - Like slavery and Jim Crow before it, the New Jim Crow was instituted by appealing to the vulnerability and racism of lower-class whites, who felt threatened economically and socially by black progress, and who wanted to ensure they weren’t at the bottom of the American social ladder. [Protecting social status seems to be a basic human instinct.]

- **What began with a political agenda rapidly proliferated to many stakeholders, all incentivized to maximize the war on drugs and mass incarceration without being consciously racially biased.**
  - This includes law enforcement, who receive federal grants for drug arrests; the media, which sensationalizes drug crime for views and has stereotyped black people as mainly responsible for drug crime; politicians who appeal to scared constituents and one-up each other on being tough on crime (including Clinton and Obama); private prisons (which account for **8% of inmates**).
  - No stakeholder has necessarily seen the big picture of the institution they supported; they were merely safeguarding their own interests and participating in the zeitgeist.

- **To be clear, Michelle Alexander is not accusing law enforcement and other stakeholders of explicit and conscious racism.** Rather, the system has created a public consensus image of criminals as being black males, and **people cannot help acting along subconscious biases.**

- **Here is how the New Jim Crow works:**
  - Use the War on Drugs to arrest large numbers of black men. Promote this through 1) strong financial incentives to stakeholders and 2) legal protection of discretion in law enforcement and prosecution.
    - **Generally, as long as racial discrimination is not explicitly stated, actions biased by race are allowable.**
    - Race is allowed to be a factor in stopping vehicles as long as it’s not the **sole** factor; probable cause is sufficient to justify stop and searches, regardless of intent of the officer; lawyers can strike jurors on arbitrary peremptory challenges as long as it’s not explicitly racist.
    - In essence, black men are **made** criminals at higher rates than white men, despite not having significantly higher rates of drug crime.
  - Hand down disproportionately harsh sentences to black men and limit effective legal representation for them.
As one example, before 2010, 5g of crack cocaine (associated with white people) and 500g of powder cocaine (associated with black people) earned the same 5-year minimum sentence - a literal 1:100 ratio. **Analysis of risk of arrest.**

- Impose sanctions on ex-criminals outside of prison - like removing access to public housing, welfare, job opportunities, and the right to vote.
- This prevents reintegration, encourages recidivism, and may actively promote crime.
- As a result, people are forced into the system and sucked into it; their children are heavily disadvantaged as a result and similarly forced into the system; and so the cycle perpetuates.

Insidiously, **because the current system does not have explicit racial bias, it’s assumed to be colorblind.** Exceptional black achievers like President Obama and Oprah imply that a racial caste no longer exists. This causes consensus that criminals choose a life of crime and are not being systematically discriminated against.

- Confounding this is **black support for the war on drugs.**

Michelle Alexander argues that ending the New Jim Crow requires **broad public consensus** that the war on drugs has produced a racial caste and must be dismantled entirely. She doesn’t offer how technically do achieve it, but she does argue that solitary battles like on affirmative action will not win the war.

**Chapter 1: The Rebirth of Caste**

The three major waves of racial discrimination in the United States - slavery, Jim Crow, and the war on drugs - show a pattern of genesis and implementation:

- White elites committed to racial hierarchy worry about a threat to the social order.
- They devise a new method of enforcing racialized social control.
- They collapse resistance across the political spectrum, largely by appealing to the vulnerability of lower-class whites.
- The system becomes institutionalized and pervasive, as stakeholders pursue their own incentives and rationalize their behavior.

Let’s follow the pattern:

**Slavery in the American Colonies**

- **White elites committed to racial hierarchy worry about a threat to the social order.**
  - The ideals of freedom in the colonies contradict chattel slavery and the extermination of American Indians.
  - Stereotyping American Indians as a savage lesser race offers less of a moral problem when eliminating them to expand land.
  - In Virginia in 1675, Nathaniel Bacon is denied militia support by the planter elite for seizing Native American lands. He organizes a rebellion, allying poor whites, indentured
servants, and slaves, united in condemnation of the rich’s oppression. The rebellion is ended by force, but word of it spreads wide. The idea of whites and blacks uniting to overthrow the elites is terrifying.

- They devise a new method of enforcing racialized social control.
  - They lessen their reliance on white indentured servants and import more slaves from Africa who are less likely to form alliances.
  - Stereotyping Africans as a lesser race, lacking in intelligence and laudable qualities, rationalized the enslavement and allowed consistency with the new American ideals of liberty.
  - Racism is built into the constitution - slaves are defined as ? of a man. Federalism protects states’ rights to slavery.

- They collapse resistance across the political spectrum, largely by appealing to the vulnerability of lower-class whites.
  - The planter class extends special privileges to poor whites to distinguish them from black slaves. Privileges include greater access to Native American lands and allowing policing of slaves.

- The system becomes institutionalized and pervasive, as stakeholders pursue their own incentives and rationalize their behavior.
  - Due to the “racial bribes,” poor whites now have a personal stake in the maintenance of a race-based system of slavery.
  - The planter elites obviously have deep incentives to maintain their low labor costs.
  - White supremacy becomes a religion of sorts - whites are superior to blacks, and slavery is for the blacks’ own goods. Cognitive dissonance reinforces these beliefs - if I’m a slave owner, and yet I also believe in American liberty, then African inferiority must be true.

Jim Crow and Racial Segregation

- White elites committed to racial hierarchy worry about a threat to the social order.
  - Freed black people provoke fears of danger, and amalgamation with beings considered inferior and vile.
  - Poor whites are frightened of losing their social status accorded by skin color.
  - The Populist Party accuses the privileged classes at conspiring to keep poor whites and blacks locked into subjugation. “You are made to hate each other” for “financial despotism that enslaves you both.” Racial integration and class-based unity is a centerpiece. The Populists achieve political success.

- They devise a new method of enforcing racialized social control.
  - Mainly this: Segregation laws are proposed to split poor whites and African Americans. Segregation leads poor whites to retain a sense of superiority over blacks, making alliances unlikely.
  - A system of veiled slavery is enacted. 1) States enact convict laws allowing for hiring out-of-county prisoners for little pay. 2) Very tough vagrancy laws (like requiring jobs for all freed black people) create lots of convicts. Treatment is possibly worse than slavery, given that employers are merely temporary, unlike plantation owners. This fades out gradually in the early 20th century.
States impose poll taxes, literacy tests, and other barriers to prevent black voting. The Ku Klux Klan enacts terrorist campaigns against Reconstruction governments and leaders.

- **They collapse resistance across the political spectrum, largely by appealing to the vulnerability of lower-class whites.**
  - Conservatives implement campaigns of white supremacy, directing poor white hatred at blacks instead of white elites. This shields elites from a mass uprising from the poor.
  - The agricultural depression promotes “permission to hate” and scapegoats blacks.

- **The system becomes institutionalized and pervasive, as stakeholders pursue their own incentives and rationalize their behavior.**
  - Politicians compete with each other by proposing more stringent and oppressive legislation (like prohibiting blacks and whites from playing chess).

The War on Drugs and the New Jim Crow

- **White elites committed to racial hierarchy worry about a threat to the social order.**
  - World War II highlights a contradiction between opposition of Nazi racial persecution and continued racial segregation in the US.
  - There is also concern that blacks without equality would become susceptible to communist ideals.
  - In 1954 *Brown vs Board of Education* abolishes “separate but equal,” to much outrage in the South.
  - The Civil Rights Movement in the 60s leads to the Civil Rights Act of 1964 and Voting Rights Act of 1965, which reduce discrimination in employment, education, and voting.
  - Realizing the depth of the poverty trap, civil rights activists attack discrimination in economic opportunities, looping in poor working-class whites.

- **They devise a new method of enforcing racialized social control.**
  - Whatever the method was, it now has to be race-neutral and cannot involve explicit racial discrimination.
  - The solution is “law and order” and “cracking down on crime” - rhetoric started in the 1950s condemning actions of the more militant civil rights activists. Racial integration is cast as condoning lawlessness. Riots, eg following the assassination of MLK, fuel this image.
  - Incidentally, the FBI reports increases in crime in the 1960s. The author argues this is due in large part to the baby boom generation, since most crimes are committed by the 15-24 age group.
  - The rhetoric has clear racial undertones - says WV senator, “if [blacks] conduct themselves in an orderly way, they will not have to worry about police brutality.”

- **They collapse resistance across the political spectrum, largely by appealing to the vulnerability of lower-class whites.**
  - Lower-class whites bear a larger cost of integration since they compete with blacks for jobs and status. (The wealthy white liberals are “often sheltered” from the costs of integration and are criticized as out of touch.) They oppose integration, are frustrated with the Democratic party’s support of civil rights, and flock to the Republican party.
  - Brief history lesson: after the Civil War, the South is Democratic and the North is Republican. The Great Depression leads to widespread economic support in the
New Deal, by Democrat FDR. This gets support among urban ethnic groups and white South into the 1960s.
- With resentment among poor whites for racial reform, conservative Republican strategists see an opportunity to create a “new majority” among the white South and blue-collar whites in cities. Nixon’s chief of staff apparently says, “the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.” Nixon appeals to the anti-black voters with cracking down on crime.
- The Republicans want to stir a racially polarized environment and a black Democratic party, which will drive anti-black whites into the Republicans. Ironically, they thus even support some civil rights efforts.
- Conservative rhetoric creates stereotypes of “welfare queens” and accuses black people of only having themselves to blame for poverty.
- Thus political disagreements shift from economic grounds in the 50s to racial grounds in the 70s, breaking up the Democratic coalition of white and black voters.
  - Even black activists join the call for “law and order,” shielding conservatives from accusations of racial discrimination - “if we have black support, we can’t possibly be racist.”
  - Reagan continues the rhetoric on criminal “predators” and “welfare queens,” all in implicitly racial language.
- **The system becomes institutionalized and pervasive, as stakeholders pursue their own incentives and rationalize their behavior.**
  - In 1982, Reagan starts the War on Drugs, even though <2% of the American public view drugs as the most important issue. In 1989, this has risen to 64%.
    - Crack cocaine reaches its height in 1985, ravaging urban neighborhoods affected by outsourcing of manufacturing jobs.
    - Federal antidrug funding grows by a literal 10x in the FBI, DoD, and DEA over a decade, while funding for substance abuse counseling is cut.
  - The DEA supports media campaigns for the crack epidemic. The media are happy to oblige since this is the “hottest combat reporting...since the end of the Vietnam War.”
    - Racially coded language about “crack whores” and “gangbangers” reinforce stereotypes of lazy welfare queens and black criminal predators.
  - Politicians campaign on promises of being tough on crime and drugs, motivated by the desire to win and appealing to constituents.
    - With the media rage, few politicians dare to stand against “cracking down on crime.” Instead they scramble over each other to seem the harshest against crime. (Recall how this occurred during Jim Crow with some proposing legislation against integrated chess playing.)
    - With the Anti-Drug Abuse Act of 1986, mandatory minimum sentences are passed. Punishments are more severe for crack (associated with blacks), requiring 5g of possession, vs 500g of powder cocaine (associated with whites). More civil penalties are passed.
    - George Bush Sr employs the famous Willie Horton ad with a black man who escaped on a work furlough and raped and murdered a white woman. He continues rhetoric of drug use as “the most pressing problem.”
    - Democrats want to take back voters.
In 1992 Bill Clinton vows no Republican will be as tough on crime as he. He passes the “three strikes and you’re out” law, mobilizes $30 billion in anti-crime funding, eliminates welfare and federal public housing for drug felons, and increases funding for state prisons.

- Ironically Bill Clinton is famously popular among black voters, despite passing laws that will ultimately harm black communities.
  - Obama expands funding for anti-drug programs for economist stimulus and appoints staff members (Biden, Emanuel) who are tough on drugs.
    - This could be political maneuvering for bigger personal goals, like Obamacare.
  - Concerns about crime and drugs are weakly correlated with actual crime rates, and more strongly correlated with political campaigns.
    - White voters are given a forum to express hostility to black progress without being accused of racism. Also, spurred by media sensationalism and political campaigns, fear drives support for tough policies.
    - Once given a healthy dose of funding, prisons (public and private) and federal agencies (DEA, FBI) are reluctant to regress. They continue the lobbying and rhetoric to reinforce the feeling of danger.
    - Judges and the Supreme Court uphold legality of police activities like pretext stops and barring evidence of discrimination from being considered in court (eg McCleskey v Kemp). These are likely primarily out of case precedent and not explicitly politically biased.
      - [But it’s hard not to think they were at least a little influenced by the zeitgeist of the day, the government mandate for war on crime.]
      - Lower courts then have to follow the case law and strike down attempts to claim discrimination in court.

Chapter 2: The Lockdown

Increased harshness of punitive laws have increased the number of drug arrests and convictions. First, the statistics:

- 500k people are in prison today for a drug offense today, compared to 41k in 1980.
- ? drug arrests are for possession, and ? for sales - so drug laws aren’t cracking down on kingpins, as commonly bandied, as much as users.
- Marijuana arrests accounted for 80% of growth in drug arrests in the 1990s

A bevy of changes made it easier to arrest and convict people for drug offenses:

- The Fourth Amendment protects against unreasonable searches and seizures by police. The courts loosened this by:
  - Condoning mandatory drug testing without warrants in the interest of public safety
and student safety
- Lowering the degree of suspicion required for a warrantless search in public
- Arguing that average people should know not to give consent for suspicionless police searches.
  - They argued it’s impractical to require police to explain to every suspect his right to refuse consent to a search.
  - In reality many people feel intimidated by police and don’t know they have the option of saying “No, you may not search my bag.”
- Upholding ability of police to stop drivers for any traffic offense.
- Allowing discretionary arrests for fine-only misdemeanors because requiring police to know details of penalty schemes on the spot was unreasonable.
- Allowing use of drug-courier profiles in justifying searches. There are no national standards for profiles, and they can be so vague as to be generally applicable.
  - Empowered by this latitude, police conducted more liberal searches.
  - Consent searches pressure people to comply, despite people not knowing they could refuse.
    - “May I speak to you? Will you put your arms up and stand against the wall for a search?” Compliance is interpreted as consent.
  - Pretext stops use minor traffic violations as a pretext to search for drugs, despite no evidence that drug laws are being violated.
    - Argument: There are so many minor laws that are commonly broken that virtually everyone can be stopped as pretext for drug searches.
  - Bringing drug-sniffing dogs to traffic stops or in public gives probable cause to search without consent.
  - Additional likelihood of being arrested for misdemeanors may increase willingness to provide consent.
- Federal agencies supported local law enforcement to participate.
  - Because local and state officials buckle under federal authority, the fed knew it had to build a consensus that the drug war should be the top priority.
  - Cash grants, intelligence, and military equipment were made available to agencies that increased drug arrests. Police departments expand, and keeping jobs become dependent on arrests.
  - The DEA launched a campaign to train tens of thousands of police officers on the search tactics above.
- Police departments became invigorated to increase drug arrests:
  - The militarization of police led to no-knock drug raids.
  - Civil forfeiture laws allow law enforcement (federal, state, and local) to keep cash and assets seized from people merely suspected of wrongdoing, without necessarily charging them of wrongdoing. The incentives are heavily in favor of more arrests.
    - The minimal requirement is that there is a “preponderance of evidence” that the asset was involved in a crime. A woman who knew that her husband smoked pot and drove her car could lose her car.
    - The owner had no right of counsel unless charged with a crime, and so the poor could not afford the court costs to retake their assets. Thus most forfeiture cases are not challenged. (If you lose $1000, would you pay $5000 for a lawyer to get it back, and risk the gov’t pressing charges?)
Investigations show that those who have more assets to forfeit are given more lenient punishments.

This extends to planting drugs and falsifying reports to establish probable cause for cash seizures.

- Reports of increased drug arrests gave the public a heightened sense of danger, rather than recognition of the effect of incentives.

**The legal system was stacked against those arrested for drugs.**

- Public defenders may have over 100 clients at a time and may meet with a lawyer for only a few minutes.
- Some states deny representation for people who earn over a certain income limit.
- **Nearly all cases are resolved through a plea bargain.** The full drug penalties are so severe - eg 20 years in prison for possession; in some cases life imprisonment - that when prosecutors offer “just 3 years,” it seems foolhardy not to take it. This transfers substantial power from judges to prosecutors and encourages prosecutors to overcharge.
- The Supreme Court upheld draconian laws like California’s three strikes law, which mandates 25 to life sentences for a third charge of a felony. Not 3 separate cases - 3 charges in a single case could qualify as 3 strikes.
- Many prisoners are released on parole and sent back due to technical violations (missed appointment, became unemployed, failed drug test).

Chapter 3: The Color of Justice

The previous chapter in this New Jim Crow summary laid the groundwork for understanding the loosening requirements around arrests, and the incentives driving drug arrests to a frenzy. This chapter examines not just the racial bias inherent in these drug arrests but also the legal difficulty of proving racial discrimination.

First, the numbers. Data show that the percentage of illegal drug use is roughly the same between white and black populations. And, because white people far outnumber other ethnicities (roughly 75% white to 25% minority), there are far more white drug users than black drug users. Other data show that white youth may possibly use illegal drugs at greater rates than black youth.

However, black arrests for drug crime far outpaced white arrests. Between 1983 and 2000, the rate of growth of prison admissions for black and Latino was 3x that of white admissions. 75% of all people imprisoned for drug offenses have been black or Latino.

And these rates are not explainable by differences in violent crime, which occur too low of a rate to explain the growth in incarceration. Homicides account for 0.4% of the past decade’s growth in prisoner population, compared to 61% attributable to drug offenders. (Deceptively, because, violent offenders receive longer sentences, they appear to make up a greater % of prison population, but by count of admissions, drug offenses outnumber violent crime.)

Therefore, unlike what the media may present, higher rates of drug use are not to blame for increased
rates of black arrests.

What, then, is to blame? Michelle Alexander argues it’s primarily granting discretion for law enforcement in who to arrest, fueled by conscious and unconscious racial bias.

Drug enforcement faces oddities in crime: 1) drug use is consensual, and so unlike robberies or murders, drug crime is not usually reported. 2) drug use is widespread, and law enforcement can’t possibly identify and detain every drug criminal, for reasons of resource constraints and politics.

So the criminal justice system faces a question - if we are to wage this war, how can we get the most success? And given that incentives push toward number of arrests and convictions, how do we maximize these metrics?

The answer, it seems, was to use the flexibility of discretion in ways that heavily disadvantaged black people.

- The media supported the idea of crack being the predominant drug problem, and the imagery associated crack with black people. So a public consensus formed that drug criminals were predominantly black.
- This widespread bias inevitably affected law enforcement as well, especially among those who do NOT consciously identify as racists.
- The bar for being arrested for crack, a “black” drug, was far lower than powder cocaine, a “white” drug - 5g vs 500g, respectively, a literal 1:100 ratio. This was motivated by testimony that crack was far more addictive and dangerous to society (which has since been debunked). Clearly this makes it easier to arrest and convict a crack user than a cocaine user.
- Police concentrated drug arrests in poor urban mostly black areas, rather than wealthier white neighborhoods, where militant action might induce political backlash.
  - This was supposedly justified by higher rates of violent crime in these neighborhoods and ease of policing open areas, but this has since been debunked - the amount of police attention focused on black areas and crack was disproportionate to the # of crime reports and hospitalizations.
  - So common are drug searches that black youth may automatically “assume the position” when approached by police. It’s normal life to both.
- Whites are stopped far less frequently than black people, but are more likely to have committed a crime.
  - In one study, black motorists made up 17% of drivers but 70% of searches. But whites were twice as likely to be carrying illegal drugs.
  - [Note this is a deceptive conclusion - because the bar for stopping a white driver was higher, they’re naturally more likely to be committing a crime. If you stopped and searched races proportionately, this rate of crime might even out.]
- Because of selective targeting, black people were mechanically more likely to be suspected and later convicted.
  - Arrests lead to fingerprinting and entering in criminal databases, which increases likelihood of conviction and strength of punishment later. This reinforces more arrests, causing a vicious cycle (more on these later).
- Prosecutors have immense discretion in whether to press charges, how many to press, and to
dismiss a case. Analysis showed that throughout the court process, whites were far more successful than colored people, receiving more lenient sentences for identical crimes.

- Part of the issue is unconscious bias and differences in empathy. The same drug user might be considered a dangerous gang banger with inherent disrespect for the law, or merely a kid experimenting with drugs who had a rough childhood. This might change based on race. And everyone involved - police officers, prosecutors, judges, the public - may be subject to this bias.

- During voir dire (jury selection), lawyers are able to strike jurors with peremptory challenges. Lawyers are unable to strike jurors on grounds of race.
  - However, it becomes trivial to concoct non-racial reasons to remove jurors of a particular race - clothing worn, hairstyles, age, education, poverty, etc. Thus achieving an all-white jury is easy, especially because few minorities are in the jury pool.
  - As explained later, aggravating this discretion is the fact that 1) black people (especially felons) are less likely to be registered voters or own cars, thus not being part of the jury pool, 2) because black people are targeted for crime, a substantial fraction of all black people have had personal indirect experience with criminal justice, which can be grounds for dismissal.

So racial bias was likely affecting drug arrest targeting. Shouldn’t this be resolvable in the courts? Unfortunately, the courts have made it difficult to challenge racial bias.

- As explained in Chapter 2, the courts allowed stops, even racially biased ones, as long as there was probable cause for some reason other than explicit race.
- In McCleskey v. Kemp, the Supreme Court ruled that statistical evidence of bias was insufficient for discrimination - there needed to be clear evidence of conscious racial bias.
  - In this case in particular, the court believed that studying 2,500 cases with different personnel, officials, judges, and jurors did not present a clear enough explicit common mechanism.
  - However, rules bar litigants from obtaining information on prosecution motives and jury deliberations. Ironically, the catch-22 became: to prove their case, the litigant needed evidence that is only obtainable upon winning a case. Without the evidence, the litigant loses the case, which prevents them from gaining the evidence.

- Part of the motivation was the reluctance to question the integrity of the entire system. If drug war was shown to be racially biased, it might open up contests in the death penalty, life sentences, and other deeply embedded issues. Questioning prosecutorial discretion would upend countless cases. [A “too big to fail” system.]
- The Supreme Court ruled that the state is immune from federal suits for damages; city police can’t be sued for damages unless a specific explicit policy supports illegal practice.
- In US vs Brignoni-Ponce, the Supreme Court ruled that race could not be the sole factor in police stop and searches, but that it could be a relevant factor as long as it’s not the only one.
  - Thus one could stop and search for any factor correlated with race - clothing, age, and location.
  - Even something as seemingly impartial as prior criminal record is not race-neutral - since blacks are so much more likely to have criminal records.

- Title VI prohibits federally funded programs, like police departments, from discriminating on race. However, in Alexander v. Sandoval, the Supreme Court ruled that private citizens and groups
cannot sue on Title VI grounds - only the federal government could sue. Thus racial profiling challenges have disappeared.
- Each Supreme Court decision obviously has trickle-down effects on federal and appellate courts.

### Chapter 4: The Cruel Hand

In the last chapter of this New Jim Crow summary, we saw how black people were systematically targeted in the criminal justice system, and the courts made litigation on racial discrimination extremely difficult.

This alone is massively destructive, but the penalties imposed on felons entrenched the New Jim Crow system. By making housing and finances difficult for convicted felons, they became far more likely to reoffend, and their ability to correct the system was neutralized by voting or serving on juries.

As Michelle Alexander repeats throughout the book, felons have important civil rights stripped away. These were likely well-reasoned laws passed to disincentivize drug use, but they have a crippling effect on the ability of the subjugated to buck the system. Furthermore, when accepting a plea bargain, offenders may not be aware of the rights they’re giving up.

Here is a summary of the penalties that ex-felons face:

- **Housing**
  - Housing increases the rate of employment and decreases recidivism.
  - Public housing can evict not only felons, but also any tenant even believed to be engaged in criminal activity or having prior arrests, regardless of convictions.
    - Obviously this is aggravated by the greater rate of arrests of colored people.
    - Agency ratings and funding consider effectiveness of applicant screening as a factor.
    - Tenants are held liable for behavior of their children and guests, even without knowledge of the activity.
      - For instance, grandmothers can be evicted if their grandchildren smoke weed in the parking lot.
  - All this makes families reluctant to allow their criminal relatives to stay with them, which pushes criminals into homelessness.
    - 30-50% of people under parole in SF/LA were homeless.

- **Employment**
  - Criminals are already disadvantaged in finding employment, with most dropping out of high school and being illiterate.
  - 40 states require parolees to maintain employment, or possibly be sent back to prison.
  - But almost all states allow private employers to discriminate on past criminal convictions or arrests. Licensing for many professions prohibits felons.
  - The professions that are less customer facing and most willing to hire felons - construction, manufacturing - are disappearing due to outsourcing.
Felons may have their driver’s licenses expired or suspended, which exacerbates the job search and depletes the number of reasonably accessible jobs. They might spend more money getting to work than they earn.

- **Over 33% of young black men in the US are unemployed**: 65% of young black male dropouts are unemployed.
  - Keep in mind poverty and unemployment statistics usually don’t include incarcerated people, so the true jobless rates may be underestimating by 20%.
  - Ironically, activism to remove questions about criminal history from job applications may backfire. Without this explicit information, employers may discriminate against non-criminal black people using proxies for criminality, like receipt of public assistance, gaps in work history - or effectively treat all black men as though they have criminal records.

**Finances**

- **Even if felons do land a job, they’re saddled with mandatory fees**, such as jail booking fees, jail per diems, public defender application fees, payments to probation departments, drug testing fees. They may also be subject to child support.
- In addition, late fees and payment plan fees but people further into the hole.
- In addition, many states suspend driving privileges for missed debt payments, which further complicates employment.
- In addition, Clinton signed a 5-year limit on welfare and a permanent bar on drug-related felony convictions.
- Thus, workers can have 100% of their paychecks garnished.
- Perversely, in some jurisdictions, people may choose to go to jail to reduce their debt burdens.
- Perversely, inmates work in prison, and the government and employers benefit from their low-paid labor, recalling the antebellum practice of imprisoning former slaves to work off their debts.
- Naturally, to escape the financial trap, many turn to crime.

**Voting**

- **Nearly all states prohibit felons from voting while incarcerated. Most states withhold right to vote to parolees.** In 9 states, ex-felons must apply to have voting rights restored, typically after they pay all fines.
  - In contrast, half of Europe allow all prisoners to vote.
  - Furthermore, ex-offenders may be reluctant to vote because of fear of attracting attention with the government.
  - Others are told by parole officers that they’re not allowed to vote.
  - Naturally, many ex-felons never regain the right to vote.
  - Theoretically, these votes may have influenced very close elections.
- Insidiously, new prisons occur in mostly white, rural areas, which benefit from inflated population totals and thus representation in state government.

**Other permissions barred**

- Possess a firearm
- Enlist in military

**Psychology and stigma**

- Ex-offenders may never escape the prison label, face social exile, and feel constantly like the system is weighed against them. This can weigh on them and eventually deplete all hope.
Young black people may be told “you’ll amount to nothing, just like your father,” which implies a deep inherited weakness. “If nothing is expected of a people, that people will find it difficult to contradict that expectation.”

To avoid shame, people affected by incarceration (eg family members) stay silent, avoiding social discussion. Thus they underestimate the extent of incarceration, deepen the isolation of ex-offenders, and limit healing and mobilization of social action.

Naturally, ex-offenders may seek those who understand them - other criminals - and join gangs.

Yet if black people really feel shame, why is gangsta culture celebrated?

Michelle Alexander argues that when people feel hopelessly stigmatized, they embrace the identity as the only viable route to self-esteem. Like “black is beautiful,” this neutralizes the sting and neutralizes the offense.

This is an act of rebellion. “I’m seen as a criminal...so I’m gonna treat you like I am one. I’m gonna make you shake.”

In popular media, gangsta life is celebrated by black people partially because they’re excited to see their own on TV.. Unfortunately it perpetuates racial stereotypes for both black and non-black viewers. Draw an analogy to black minstrel shows.

Unfortunately, unlike “black is beautiful,” celebrating criminality is self-defeating and perpetuates a disadvantaged position.

Chapter 5: The New Jim Crow

Michelle Alexander argues that the public is in denial about the magnitude of the New Jim Crow problem. Obama lectures on too many black fathers missing, and black women complain about not finding good black men, but they rarely point to a major cause - mass incarceration.

Even worse, the war on drugs and mass incarceration is now a fact of life, and racial stereotypes are now embraced broadly, even by some black people. Possibly to resolve cognitive dissonance, people argue that criminals chose to commit criminal actions, and they deserve the punishment. “The criminal justice system is colorblind, so any correlation with race must highlight intrinsic behavior traits, not systematic racial bias.”

Draw an analogy to a birdcage, wherein if you think about racism by examining only one wire of the cage, it’s difficult to understand why the bird is trapped. The New Jim Crow is a birdcage, a set of structural arrangements that subjugates a race politically, socially, and economically.

In summary, the New Jim Crow:

1. Uses the War on Drugs to arrest large numbers of black men, through strong financial incentives and legal protection of discretion that may be racially biased.
   1. In essence, black men are made criminals at higher rates than white men, despite not having significantly higher rates of drug crime.
2. Hands down disproportionately harsh sentences to black men and limits effective legal representation.
3. Imposes sanctions on ex-criminals outside of prison that prevent reintegration and encourage recidivism.
4. [Allen added] This environment (absent fathers, racial stigma) disadvantages black youth and adds them back into the cycle.

The New Jim Crow bears many similarities to the old Jim Crow - the desire of white elites to exploit the vulnerabilities of poor whites; legalized discrimination; political disenfranchisement. Here are less obvious parallels to Jim Crow:

- **Racial segregation**
  - During Jim Crow, segregation compartmentalized black experience from whites, making it easier to maintain racial stereotypes and deny suffering.
  - Some historians argue concentration of blacks in urban neighborhoods is a consequence of deliberate government policies meant to perpetuate segregation.
  - Mass incarceration does the same, stuffing black men in prisons out of sight, even further away than Jim Crow segregation did.
  - Prisoners returning home concentrate further in poor neighborhoods, which have limited resources.

- **Symbolic production of race**
  - Slavery defined being black as being a slave. Jim Crow defined being black as being a second-class citizen. **Mass incarceration defines being black as being criminal.**
  - Experiment: react to this statement: “we really need to do something about the problem of white crime.”
  - What it means to be a criminal has become conflated with what it means to be black.
  - A black person’s first time of being arrested or searched hammers home: “this is what it means to be black.”

Here are differences from the old Jim Crow, with commentary on why some may use this as justification for why the New Jim Crow isn't a serious problem:

- **Racial stigma defeating racial solidarity**
  - Stigma of black criminality has turned the black community against itself, in contrast to solidarity during the civil rights era.

- **Absence of racial hostility**
  - Things have improved in many respects - a majority of Americans oppose racial discrimination. There are no longer signs of “whites only” schools.
  - Some may use this to claim that things are fine as is. But just because there isn’t overt racial hostility doesn’t mean the current system isn’t racially biased. It would be impossible to imagine mass incarceration of young white men.

- **White victims of racial caste**
  - Some reject the problem based on the idea that whites are also harmed by the war on drugs and incarceration, as opposed to clear white superiority in Jim Crow times. This makes it easier to see the criminal justice system as colorblind.
  - Michelle Alexander argues that white people are collateral damage in the concerted
racialization of crime in politics and media.

- Black support for “get tough” policies
  - Some argue: in contrast to Jim Crow, many blacks seem to support the current system, wanting more police and order in their crime-ridden neighborhoods. In fact, ignoring crime in poor urban communities would be racial discrimination.
  - The truth isn’t so simple, but black communities are torn between loving their own and abhorring gangs and violence.
  - Furthermore, black people have little to gain and much to lose by countering the rules of the establishment, which can make their complicity deceptive. This has been true of black elites in the Jim Crow era.

Chapter 6: The Fire This Time

Michelle Alexander ends *The New Jim Crow* with her perspective on why the system cannot be dismantled piece by piece through litigation or narrow policies like affirmative action - people must recognize the enormity of the current system and overthrow it wholesale.

Here are barriers to bucking the New Jim Crow:

- Civil rights movements used to be about grassroots organizing and gathering critical mass of public opinion. However, of late, civil rights organizations became professionalized, heavily centered on lawyers and litigation, and distanced from the communities they were supposed to represent.
  - **Lawyers focus on problems that can be solved with litigation.** But mass incarceration isn’t that problem, especially given the Supreme Court’s barriers on litigation in this area, described above.
  - Plus, small policy changes, like lightening drug crime sentences, have little effect - it’s entering the system itself that is a huge disadvantage.

- **Advocates are loath to petition on behalf of criminals.**
  - Advocates have found that “respectable” people who defy racial stereotypes get the most success.
    - In the civil rights movement, Rosa Parks wasn’t the first civil protester of segregation, but she was a model citizen, as opposed to the teenager who got pregnant.
  - Perhaps it’s easier to draw attention to model citizens, such as for affirmative action.

- **Rigid financial incentives are in place to perpetuate the system.**
  - If prisons closed and the war in crime ended, over a million jobs would be in jeopardy (prison employees, police, workers in the legal system). Federal grants for drug enforcement would be revoked.
  - Employers who use prison labor would be inconvenienced.
  - Phone companies that charge families high rates to call in; gun manufacturers for police; stakeholders of builders of new prisons in white rural communities all have skin in the game.
Data seem to suggest the lowest crime rates in history.
  ∘ However, some suggest imprisonment creates far more crime than it prevents, and we could have even less crime today.

People are increasingly loath to talk about race and fearful of violating racial etiquette.
  ∘ People want colorblindness for different reasons. Conservatives believe in individualism and the idea that race is a private matter. Liberals believe in racial equality and the unloading of significance on race. Others prefer colorblindness because it seems that the only practical way to accept racial differences is to not see them.
  ∘ This has entrenched an insistence that systems are colorblind and just, and personal responsibility and morals are to blame for arrests. If we are colorblind, we ignore inherent real racial biases and racial divisions.
  ∘ Michelle Alexander argues people must recognize race and show care for others, fully cognizant of possible racial differences. Seeing race is not the problem; refusing to care for the people we see is the problem.
  ∘ Not coming to terms with race risks the same strategy as before - that race becomes a lever to pit racial groups against each other when it becomes politically convenient.

Affirmative action may be more of a racial bribe than a potent force.
  ∘ It provides cosmetic racial diversity while masking the new caste system.
  ∘ It has perpetuated the myth that anyone can make it if they try, and ignores deep disadvantages from birth.
  ∘ It distracts as the main battlefront in race issues.

Model black citizens deceptively signal that race no longer matters.
  ∘ “If black people can succeed, then surely discrimination does not exist, and thus people commit crimes out of free will!”
    ▪ [Unfortunately, the same argument has probably applied to female CEOs and heads of state.]
  ∘ A few black CEOs and black graduates from Harvard seem like we’ve made a lot of progress, when the bulk data show blacks are no better off than 50 years ago.
  ∘ These examples are dissonant with the existence of a caste system - how can Obama be president when a caste is in place? Michelle Alexander urges to remember that even in slavery, free black men did exist and were the exceptions.
  ∘ It’s not that race no longer matters, it just matters a little less than it used to.

The exceptional black achievers are incentivized to fit into the system, rather than fight to change it.
  ∘ They give the appearance of racial equity without fundamentally altering the structures.
  ∘ Newcomers play by the old rules to survive. Minority police officers may engage in as much racial profiling as white officers.

Black people are loath to disagree and pull down black leaders.
  ∘ They’re hesitant to trigger the downfall of one of their own.
  ∘ Thus black leaders who uphold the racial caste may be given more latitude than white leaders.

Michelle Alexander’s recommendations on what must change understandably invert all the critical pieces holding the New Jim Crow in place:

  ∘ Most importantly, there must be public consensus that the way we approach drug crime produces
a racial caste and must be dismantled. Indifference cannot reign.
  - Similarly, Brown v. Board did not cause sweeping changes - it was public support 10 years later that caused the action.
- All financial incentives to arrest poor black people for drug offenses must be revoked. Those with jobs in jeopardy must be retrained.
- A seismic culture shift must happen in law enforcement - black people must no longer be viewed as the enemy. Data must be collected to prohibit selective enforcement.
- Public defender offices must be funded at the same level as prosecutor’s offices.
- Drug sentence laws and re-entry laws stripping away civil rights must be rescinded or dampened.
- Proper drug treatment and re-entry programs must be instituted.
- White people must be included in black movements to create an economic and class-based coalition based on all human rights. They should be given a stake in integration.
  - This would require whites to give up their racial privilege.

**Allen’s Notes**

To wrap up this *New Jim Crow* summary, I contribute my personal notes on 1) research into arrest data, 2) the vicious cycles locking the current system in place, and 3) open questions (that may be controversial) that are worth considering.

**More data on arrests**

When examining data, it’s important to distinguish between arrests, prison admissions (influenced by conviction rate), and current prison population (influenced by sentencing time).

Drug crime accounts for 31% of prison admissions; violent and property crimes for 53%. So drug crime is still a minority of prison admissions overall.

We now look at changes in arrests from 1980 to 2014, separated by race and crime type. From DOJ data and population data, I create my own chart:
The black population has grown faster than white population over the same time, so % by total population is more insightful than total # of arrests.

- The ratio of the rate of arrests between black and white groups has stayed about the same.
  - In 1980, 9.55 / 4.11 = 232%
  - In 2014, 7.34 / 3.13 = 235%
- Total arrests as % of population have decreased for all races.
  - Naturally this can be because of higher incarceration rates - if you're in jail, you can't be arrested.
- As a % of population, drug arrests have increased disproportionately for blacks than for whites. Again, this is contextualized with data showing rates of illegal drug use being similar between whites and blacks.
- Total # of arrests have grown for blacks since 1980 and decreased for whites. Most of the growth in arrests for blacks comes from drug crime and “all other offenses,” which is not broken out but includes parole violation, failure to appear, trespassing, harassment.
- I can’t speak to changes in rates of any other type of crime than drugs.

The government offers more commentary here.

Given the higher black population growth, I suspect the black community skews younger in age, which also increases crime (since most crime is committed by people < age 30).

But these are just arrests. Importantly, incarceration rate for black men with no HS diploma is 4x that of white men with no HS diploma, likely disproportionally higher than the arrest rate.

All this is to say that the situation is quite complicated, and any single dataset presents just a partial view of the situation.

Vicious cycles at play
Positive feedback loops are incredibly powerful and can lead to lock-in of situations like the New Jim Crow.

Here are vicious cycles possibly at play that make changes to the status quo difficult:

- A higher absolute # of black people being arrested increases public perception of black crime, which increases # of black people being locked up.
- Higher rates of searching black people leads police to find more drugs on them by absolute count, which reinforces higher search rates and higher absolute counts. For instance, if you search 80 black people and 20 white people, and you find 10 black drug offenders and 5 white offenders, it’ll seem as though the black drug problem is far worse, if you don’t think about the statistics hard enough. “Most people being jailed are black - so they must be more likely to have drugs.”
- In general, confirmation bias is a powerful feedback loop, wherein people select the data that confirms their beliefs and rejects other data, thus further entrenching their beliefs.
- Police target black drug users and not white drug users partially because of the decreased political risk. Putting more black people in jail, and reducing their civic involvement, makes them even less likely to protest the system, which makes targeting black drug users easier.
- Because blacks are locked up in large %, it’s likely that any black person has had indirect experience with criminal justice system. Thus even innocent blacks can be more likely barred from jury, which limits their voice in the legal process, which increases black conviction rate.
- Because of the higher rate of arrests, blacks are more likely to be seen as repeat offenders and get harsher treatments. In other words, some people may face more of a binary 3 strikes or 0 strikes, rather than a linear progression from 0 to 1 to 2 strikes.
- Concentrated police action in black ghettos makes further concentration more likely, since whites don’t want police intervention in their neighborhoods and ex-offenders return to their neighborhoods.
- The psychology of being a victim presents more probable cause reasons for non-racial targeting, like appearing nervous around police or running away. Thus, stories about black people being arrested may make black people even more fearful, and thus more likely to be arrested.
- As a defensive mechanism, embracing the stigma of criminalism as gangsta love is self-destructive and leads to more criminalism, which further reinforces cultural acceptance of criminalism.

When powerful positive feedback loops are at play, strong interventions (like affirmative action or social programs) can perturb the system and disrupt the feedback loop.

- For instance, having more black prosecutors and police officers may allow more empathy for black offenders that white offenders have enjoyed (the point above about how a drug user can be seen either as a criminal or as a wayward youth who fell off the path).
- However, Michelle Alexander is skeptical of the power of single interventions like affirmative action, saying that black achievers are encouraged to play with the system, not challenge it.
Open (Perhaps Controversial) Questions

1) Why are prisons private in the US? The incentives seem warped toward incarceration. Can the incentives be shifted toward the desired end metrics - crime prevention and recidivism - much like with US healthcare?

   - Also, it appears this issue is slightly overblown, given that 8% of inmates nationwide are in private prisons, albeit with rates above 20% in some states.

2) Those tough on crime may argue that the campaign worked - that violent crime rates have decreased, and that harsh post-release laws, like bars on welfare, have a suppressive effect on drug crime. So to invert the question - how would one show that mass incarceration has had a positive influence on suppressing drugs? Consider the counterfactual - without the war on drugs, how problematic would the drug problem be today?

3) It appears that a pattern in history is poor whites and blacks being driven apart by “racial bribes” to whites. Will a situation arise in the future that leads to less racial competition? Maybe the rise of a universal basic income, spurred by automation obviating many jobs?

4) Humans seem to have an innate evolved desire for social status. This has fueled fear of black progress and upending of the traditional social ladder. What will get us over this innate desire for social status?

5) If history repeats itself, one would expect mass incarceration to end, and another form of social control constructed by elites to reappear. What might this system be?

Here are some ideas:

   - Education credentialing: graduating from college is now a must in most employment searches, and it appears meritocratic and racially blind. But there will continue to be structural barriers for some racial groups to achieve the same educational outcomes as whites.
   - A rise in nonlinear effects to wealth: a situation may arise where a person with 2x more wealth isn’t just 2x better off, she ends up being 20x better. This might be caused by technology, where a relatively unaffordable technology (say, an AI implant, or genetic alterations) amplifies wealth accumulation, which further affords new opportunities. It becomes difficult for a poor person to ever catch up.
   - Addiction to passive media consumption: Companies like Facebook and Netflix become ever more powerful at servicing your dopamine circuits (using data and AI), such that I believe people become literally addicted to passive consumption of media. One can get so addicted to this consumption that they’ll actually fight for the companies’ right to exist.
   - Reinforcement of ideas of meritocracy: Through any mechanism, the belief in a primarily meritocratic society will likely persist. Similar to how criminals are dismissed as having freely chosen to commit crime, the poor will be cast as “lazy” and people who simply didn’t work hard enough. This enables blindness to structural disadvantages that society should probably feel guilty about.
6) (Without having done thorough research on this, I could be speaking nonsense) With the heroin epidemic, it appears the reaction is more sympathetic, focused on support and blaming components in the system like doctor overprescriptions. **Compared to the crack epidemic, why is this the case?**

A bevy of possible reasons:

- Heroin users are seen as accidental addicts, exposed through medical treatment. Whereas crack users willingly made a choice to use an illegal drug.
- It’s not as clear that heroin is associated with crime (more with death), whereas crack was portrayed as fueling rise in crime.
- The war on drugs has already received bipartisan criticism, so cracking down on heroin would be politically unpopular.
- The heroin epidemic affects more white people than the crack epidemic did. Thus predominantly white politicians and media find it *easier to empathize with sufferers*.
- As a society we have learned our lesson on how to respond to drug use, and we have become more empathetic overall. If the heroin epidemic affected black people disproportionately, then we would have the same response. (intuitively this seems difficult to believe)