The United States is long heralded as the home of opportunity and personal liberty, despite its troublesome history of racial inequality. African Americans in the United States started out as slaves—viewed as less than human by many—and although much progress has been made, the same racial attitudes that enabled slavery still manifest today. While the oppressive systems of slavery and Jim Crow laws have been defeated, the cause of racial discrimination itself lives on. Today, a great, disproportionate number of African-American people are thrown into the criminal justice system and returned to society as lesser members—as criminals. Racial bias affects the enforcement and creation of the criminal law, creating a justice system that unreasonably targets black members of society. This system of mass incarceration rises from the ashes of previous racial institutions, such as slavery and Jim Crow. While the idea of a racially biased criminal justice system is difficult to grasp, it is what Michelle Alexander intends to prove in her book, “The New Jim Crow: Mass Incarceration in the Age of Colorblindness”. In her book, Alexander explains how the criminal justice system and the over-reaching laws, practices, and policies connected to criminal treatment, both in and out of prison, have formed a racial system of control in the United States (Alexander, 13). Alexander believes that the system of mass incarceration transformed into a system of racial control that not only disproportionately affects African-Americans, but locks them into a criminal social status. In this paper, I will summarize her claims and the evidence she provides for the existence of a system of racial control in the United States, and then I will examine the role of stigma in the system of mass incarceration. Alexander believes that stigma plays a vital role in the system of mass incarceration, but I will argue that stigma is an even more important issue than she claims. The criminal stigma attached to African-Americans in the United States not only adds to the disproportionate criminalization of black Americans, it also greatly enables the injustice of the system. Stigma follows every member of the African-American race in the United States, despite their abilities and behaviors, and I plan to show its harmful effects and far-reaching consequences with the evidence of social science studies relating to racial bias.

In “The New Jim Crow”, Alexander aims to show how the system of mass incarceration creates a racial under caste in the United States. Mass incarceration is the combination of laws, practices, and policies that have led to the criminalization and criminal treatment of many African-Americans over the past few decades (13). Alexander compares the system of mass incarceration to slavery and Jim Crow, previous systems of racial control that were dismantled in the United States (21). The system of mass incarceration, she believes, is based on racial control with several factors that disproportionately affect African-Americans, such as police discretion, social stigma, prosecutorial discretion and the treatment of felons post-conviction (141).

The first part of Alexander’s argument presents the historical context of “The New Jim Crow”. After explaining the progression and defeat of both slavery and Jim Crow, she goes on to show how the political climate of the Civil Rights Movement would fuel the problem of mass incarceration (55). During the 1960s, many southern politicians took advantage of unusually high crime rates, associating them with desegregation and placing blame on the African-American community (44). While the Civil Rights Movement would continue to make great progress despite the efforts of those politicians, their rhetoric would begin to further the harmful stereotype that African-Americans are criminals.

However, what really solidified that idea was The War on Drugs, initiated during the 1980s. Media covered The War on Drugs as a struggle in the poor black communities (54). Propaganda for The War on Drugs featured mostly poor communities of color, convincing the public that black people were most likely to be drug criminals. Furthermore, the stereotypes spread by the media coverage of The War on Drugs would go on to shape the perceptions that new generations develop about African-Americans. The media imagery from the
War on Drugs not only reinforced the lower-class stigma attached to blacks, it created an impression that they were irresponsible and dangerous.

Declaring The War on Drugs was not enough to create the system of mass incarceration, but fighting it certainly would be. In 1980, only a few hundred thousand Americans were in prison, but by 2001 that number had risen to over two million people (93). This is mainly due to The War on Drugs and politicians’ motivations to be “tougher on crime”. During The War on Drugs, much changed in the enforcement and conviction of drug criminals: police were incentivized to generate more and more drug arrests, and they were financed and armed heavily for that purpose (77). The more arrests that a police department generated for The War on Drugs, the more they were rewarded by the federal government in the form of property forfeiture laws, arms and federal money.

As the police departments became more incentivized toward drug convictions, they often became less concerned with citizens’ constitutional rights and more concerned with searching and arresting as many people as possible. Alexander details several examples of how the fourth amendment’s protection against unreasonable search and seizure has been eroded since The War on Drugs began. For example, the precedent of “reasonable suspicion” as set by Terry v. Ohio (1968) for stop-and-frisk searches has been completely abused since The War on Drugs began. While the Terry Stop is supposed to be applied only when a police officer believes himself or others are in immediate danger, police officers often use reasonable suspicion as an excuse to search a person or their property without a warrant, circumventing the fourth amendment and allowing themselves more opportunities for drug convictions (63). Police discretion has also been harmful in the form of racial profiling, as people of color are significantly more likely to be searched when they are pulled over for a traffic violation (133). Police discretion has also been harmful in the form of racial profiling, as people of color are significantly more likely to be searched when they are pulled over for a traffic violation (133). Allowing police misconduct in the form of searches and seizures, as well as a lack of information on one's rights, gives too much discretion to the police as far as how they stop, search, and whether they arrest someone. Police also decide where they look for criminal activity, tending to target poor communities of color due to the association between black people and drug crimes (125). These practices lead to more arrests and criminalization of black people, despite the fact that African-Americans are statistically no more likely than whites to commit crimes (139).

As police are disproportionately targeting African-Americans, the courts also have a hand in the unequal treatment of African-Americans in the criminal justice system. Since The War on Drugs, there have been much harsher penalties for drug crimes, such as mandatory minimum sentencing and harsher penalties for drugs that are more likely to be used by African-Americans, like crack-cocaine. Along with this, African-Americans are more likely to be economically disadvantaged, making them more susceptible to stack-charging and likely unable to afford legal representation or court costs. These issues come in addition to the fact that the courts do not provide adequate remedy to a suspect’s claims of racial discrimination or misconduct, enabling the police to continue unjust practices.

Once a person becomes a convicted a felon, he or she is permanently pushed into a lower-class status in the United States: public-service programs and employers are legally allowed to treat them as lesser members of society. The convicted felons also lose fundamental rights such as voting and possessing a firearm (141). Alexander believes this is one of the most troublesome features of the system of mass incarceration. The people affected by the system of mass incarceration often do not have a job or a home when they are released from incarceration (144). And to make matters worse, in many states, social safety-net programs—such as public housing and food-stamps—are often denied to applicants who have a felony, despite their level of need (148). Without government assistance, it can be very hard for former criminals to return to a life of stability, and many of them will likely be swept back into the criminal justice system again. Alexander notes that this is more likely to be a problem for African-Americans, as they usually do not have the social support or financial stability prior to criminalization to help them get back on their feet (157). Another hardship faced by those given a felony conviction is the struggle for employment. While the government has disallowed considering a criminal record as part of an employment decision unless that criminal record affects one’s ability to perform the job, most employers do not feel comfortable hiring felons (154). Since in many states the disclosure of one’s criminal record is required on employment applications, the odds are automatically against felons in their job search.
In explaining all of these components, Alexander clearly states how each one has disproportionately affected African-Americans in the United States; however, she does not believe that any one of these factors is responsible for mass incarceration. There is one more element that ties together all of the practices and policies that she discusses: racial stigma. The stigma not only exists for those who have become felons, in fact its harmful effects reach every single member of the African-American community. In relation to this, Alexander says, “...The stigma of race has become the stigma of criminality, young + black + male is equated with reasonable suspicion...” (199). The stigma operates even before an African-American is incarcerated, and it may in fact lead to incarceration in many cases. The stigma is a tool for police in deciding where to look for criminals and who they want to stop or search (135). It also affects the behavior and self-esteem of young African-Americans, whom are treated as potential criminals by authority figures such as community members and teachers. The stigma of criminality that is attached to black people in the United States is also harmful because it enables the system of mass incarceration. If the belief is that African-Americans are inherently more likely to be criminals and that the problem is not with the criminal justice system but within the black community, then the victims are the only ones to blame. Alexander refers to this as the 'personal responsibility narrative', which is placing the blame on the absence of black men who are incarcerated and their personal failings rather than the unfair circumstances of their imprisonment (214). This distracts from the problem of mass incarceration and, further, it reinforces the harmful stereotype that African-Americans are more likely to commit crimes.

All of these components individually are not enough to create the system of control that Alexander is concerned with, but together they undeniably create an intricate web capable of locking African Americans into a criminal racial under caste. Racial bias furthers these practices, from suspicion and arrest to the harsh treatment of those with a felony record. As more African-Americans are arrested, the stereotype that African-Americans are criminals will be reinforced, furthering the effects of mass incarceration and allowing the people of the United States to continuously ignore the race issue that has disguised itself as crime control. Understanding the role of racial bias and criminal stigma in the system of mass incarceration is critical, as it is such an important element at every step of the process. In discussing racial bias in mass incarceration, Michelle Alexander refers to structural racism. This is the idea that racism is not explicit or only expressed individually, it is a part of the country’s social structures (184). The stigma attached to African-Americans would not be quite as harmful in the United States if it did not permeate the legal and institutional structures of society. One of the most dangerous aspects of the system of mass incarceration is that it is largely due to government practices and therefore supported by the law (62). Structural racism is not only dangerous on the legal level; it may also be a contributory cause of criminal behavior. African-American children are often negatively affected by the racial stigma and treated differently by teachers, principals and peers because of their race. While Alexander does recognize the importance of stigma in the system of mass incarceration, she fails to elaborate on just how deep-rooted racial biases are and how much they can affect the expectations and behaviors of all those involved.

First, one should consider the role of racial bias in the growth of the system of mass incarceration. The fact that most Americans automatically associate African-Americans with criminal behavior means that they do not question the system. If people are correct in their beliefs about the criminality of black people, then there is no reason for them to think that the disproportionate criminalization of African-Americans is unjust; this public acceptance of mass incarceration is as harmful as mass incarceration itself. The attachment of criminality to African-Americans is also dangerous because it enables racial discrimination and allows it to take a new form. Discriminating against criminals is considered socially acceptable, while overt racism has been widely condemned in the United States. The stigma of criminality has transformed the appearance of racism and made it something more acceptable and defensible.

Racial bias today usually comes in the form of attitudes, which are usually unconscious and automatic processes. Generally, people in the United States are no longer explicitly racist, but they may hold implicit racial biases against African-Americans. For example, many people automatically find young African-American men suspicious due to the criminal stereotype associated with them. People would probably explain that suspicion as a “gut-feeling” because it is an automatic response and may not attribute it to their own racial biases. An implicit bias is not something that people usually recognize in themselves, but almost everyone carries them. This
unfortunately includes police officers, judges, attorneys and many other public servants that are involved in the criminal justice system. Even those people who have sworn to dedicate their lives to justice and fairness carry these implicit biases, and those biases likely impact how they perform their duties. For example, implicit bias is definitely a contributing factor to improper police conduct like racial profiling. It is not, however, something that most people are aware of, which makes it particularly difficult for law enforcement to evade racially-motivated stops or searches.

Implicit biases can be particularly dangerous when they are acted upon by police officers or other law enforcement because of how the officers perceive danger and decide whether to use force. For example, several studies have shown that people are more likely to perceive African-Americans as dangerous. In a 2001 study, both black and white study participants were more likely to perceive that a black man was armed than a white man when they were forced to use automatic processing. This is particularly troubling considering that the recognition of whether someone is armed and dangerous is one way that police officers may decide whether to use force or not (107).

The dangers of implicit bias go further than discerning whether a suspect is armed—they can also affect how a suspect behaves toward the officer. For example, another social psychology study, which has been replicated many times since it was conducted in 1978, is Snyder and Swann's study on confirmation bias. In their study, the researchers had three participants in each group, and the first participant was asked to have a conversation with the second (target participant) (Snyder, 1204). The first participant, referred to as the perceiver, was told by the experimenters that the target participant was hostile. The target participant was not actually hostile when speaking with the first participant, but the first participant's belief that the target participant was hostile did have an effect. Next, the third participant was asked to talk to the target participant and not told whether he was hostile. The third participant, when asked to rate the hostility of the target participant, rated it high. This was because the target participant would alter their behavior based on how the first participant treated them. This study is helpful to understand how implicit biases may affect the interactions between police and African-Americans. If police officers already treat African-Americans like criminals because of their implicit biases, then it is understandable that when a person is treated like a criminal they may engage in behavior that makes the police suspicious. This is called behavioral confirmation bias, which would mean that because the police officer expects criminal or suspect behavior from an African-American, the person is more likely to act in a way that would confirm their suspicions.

Further, there has been extensive neuroscience research upon racial biases over the last thirty years. Many studies concerning the relationship between in-groups and out-groups have found that racial biases have a neurological component. Research has shown that when a person sees a member of their out-group, the part of their brain called the amygdala is activated (Desmond-Harris). The amygdala is the part of the brain that is responsible for fear, aggression, and has a role in the body's fight or flight response. Unfortunately, many studies have reported that this amygdala response may be generalized to African Americans regardless of a person's perceived member group, meaning that even members of the African-American race may have this neurological response to other members of their own race (Desmond-Harris).

This response is particularly dangerous because the automatic response from the amygdala is rooted in fear or anxiety, which may make a violent encounter more likely (Sayeed). Implicit racial biases—while they may sound trivial—can actually create seriously harmful situations. While Alexander does mention some findings similar to these in her assessment of the system of mass incarceration, I do not think she gave implicit bias quite as much attention as it warranted, considering its dangerous effects.

Implicit biases do not only contribute to the criminalization of African-Americans as adults though, they also contribute to the development of self-esteem and behaviors in African-American children. The racial stigma that has attached criminality to African-Americans has manifested itself not only in the way people treat African-American adults, but in what people expect from African-Americans in general. The criminal stigma gives school administrators and teachers the perception that conduct issues in black children are not correctable, but rather a sign of their impending criminal behavior. Children who are not expected to behave well or improve, and who are given no encouragement to improve their behavior, may not correct their conduct problems, which may lead to future arrests and convictions.
One social science experiment that explains this well is the Pygmalion Effect, or the Rosenthal study. In this study, teachers were told that a certain group of their students were “spurters” despite those students having average intellectual abilities (Rosenthal, 17). Researchers then studied how the teachers treated the “spurters” in relation to the rest of their classes and found that they gave much more attention to the “spurters”. This study shows how expectations can affect behavior, considering that for the sake of fair instruction, there should have been no difference in treatment between the two groups of children. The teachers had higher expectations of the “spurter” group, and for that reason they performed better in class. The stigma that is attached to African-Americans generally means that educators do not have high expectations for African-American students. The criminal stigma effects African-Americans from the day they are born in the United States because they are automatically given lower expectations based on their race. To be clear, people make these evaluations subconsciously. They are not explicitly racist and their behavior is not intended to disenfranchise any student, but these expectations are so deeply rooted in our culture that they go unchecked and unnoticed, and that is a problem.

The criminal stigma also goes on to effect African-Americans who have never been convicted of a felony in their daily lives. Even if they do not have a criminal record, African-Americans are less likely to be hired than white felons. This is because the criminal stigma and implicit biases that are attached to the African-American race in American society give the impression of criminality even in the absence of criminal wrong-doing. Even so, if an African-American happens to fall into the trap of the system of mass incarceration and become branded a criminal, they are not afforded any mercy or second chances. If an African-American becomes a criminal, they not only carry the criminal stigma, they legitimize it, despite the fact that the criminal justice system has stacked the odds against them. By becoming a criminal, the African-American members are discriminated against not only by employers and public-assistance programs, but by members of their own communities. This is one reason that mass incarceration is such a difficult system to combat; fighting it means standing up for the mistreatment of criminals, a group that many people do not have much sympathy for.

“The New Jim Crow” was released in 2010, four years before the fatal shooting of Michael Brown engulfed the nation and brought the issues of police brutality and racist police practices to the forefront of American politics once again. Since Brown’s death, dozens of unarmed black men have been killed at the hands of police, opening up public discourse on the deep web of ails that Alexander documents. According to the Washington Post’s Fatal Force database, 36 unarmed black men were killed by police in 2015 and according to Newsweek, 16 in 2016. Alexander offers little attention to fatal police shootings, mentioning only briefly the death of Amadou Diallo in 1999, an African immigrant shot 19 times on his doorstep after reaching for his wallet, which officers mistook for a weapon. The deaths of Michael Brown, Tamir Rice, Eric Garner, and Alton Sterling have brought the issues of the New Jim Crow into the public eye. Mass incarceration cannot be stopped in the dark. All of the laws in the world could not effectively prevent our criminal justice system from being racially biased. The only way that we can combat this problem is to understand it thoroughly and openly.

In order to dismantle the system of mass incarceration and prevent the growth of a similar system of racial control, there will need to be a shift in the racial attitudes of the American people. Throughout the history of the United States, racial discrimination has been battled without ever being sure that the most dangerous culprit was defeated: structural racism. These racially biased cognitions and responses must be remedied in order for African-Americans in the United States to ever receive equal treatment in society. Michelle Alexander’s book is instrumental in explaining just how intricate and important the problem of mass incarceration is. Her argument is inciting; it provokes a response that demands quick attention to the injustices she describes. One should not be misled, though, to think that the system of mass incarceration can be defeated in one swift and powerful movement because there is much scientific evidence to support that racial bias is far more embedded in American society than anyone would like to believe. Fighting mass incarceration will be a long struggle, and it will be made complicated because of the social and cognitive restructuring that is required to eliminate racial bias. It can be done though, and Alexander’s “The New Jim Crow” offers a convincing and impressive framework through which to begin the movement to end racial hierarchy in the United States.
Works Cited


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