



*THE NEW JIM CROW* by Michelle Alexander

## CHAPTER 4

# The Cruel Hand

Today a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or a black person living “free” in Mississippi at the height of Jim Crow. Those released from prison on parole can be stopped and searched by the police for any reason—or no reason at all—and returned to prison for the most minor of infractions, such as failing to attend a meeting with a parole officer. Even when released from the system’s formal control, the stigma of criminality lingers. Police supervision, monitoring, and harassment are facts of life not only for all those labeled criminals, but for all those who “look like” criminals. Lynch mobs may be long gone, but the threat of police violence is ever present. A wrong move or sudden gesture could mean massive retaliation by the police. A wallet could be mistaken for a gun. The “whites only” signs may be gone, but new signs have gone up—notices placed in job applications, rental agreements, loan applications, forms for welfare benefits, school applications, and petitions for licenses, informing the general public that “felons” are not wanted here.

BOOK  
EXCERPT

Criminals, it turns out, are the one social group in America we have permission to hate. Like the “coloreds” in the years following emancipation, criminals today are deemed a characterless and purposeless people, deserving of our collective scorn and contempt. Hundreds of years ago, our nation put those considered less than human in shackles; less than one hundred years ago, we relegated them to the other side of town; today we put them in cages. Once released, they find that a heavy and cruel hand has been laid upon them.

### No Place Like Home

The first question on the minds of many released prisoners as they take their first steps outside the prison gates is where will they sleep that night. Figuring out how, exactly, to do that is no easy task, however, when your felony record operates to bar you from any public housing assistance.

Housing discrimination against people branded felons (as well as *suspected* “criminals”) is perfectly legal. During Jim Crow, it was legal to deny housing on the basis of race, through restrictive covenants and other exclusionary practices. Today, discrimination against felons, criminal suspects, and their families is routine among public and private landlords alike.

Remarkably, under current law, an actual conviction or finding of a formal violation is not necessary to trigger exclusion. Public housing officials are free to reject applicants simply on the basis of arrests, regardless of whether they result in convictions or fines. Because Af-

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frican Americans and Latinos are targeted by police in the War on Drugs, it is far more likely that they will be arrested for minor, nonviolent crimes. Accordingly, HUD [Housing and Urban Development Department] policies excluding people from housing assistance based on arrests as well as convictions guarantee highly discriminatory results.

Perhaps no aspect of the HUD regulatory regime has been as controversial, however, as the “no-fault” clause contained in every public housing lease. Public housing tenants are required to do far more than simply pay their rent on time, keep the noise down, and make sure their homes are kept in good condition. The “One Strike and You’re Out” policy requires every public housing lease to stipulate that if the tenant, or any member of the tenant’s household, or any guest of the tenant, engages in any drug-related or other criminal activity on or off the premises, the tenancy will be terminated.

The [U.S. Supreme] Court ruled in 2002 that, under federal law, public housing tenants can be evicted regardless of whether they had knowledge of or participated in alleged criminal activity. According to the Court, William Lee and Barbara Hill were rightfully evicted after their grandsons were charged with smoking marijuana in a parking lot near their apartments. Herman Walker was properly evicted as well, after police found cocaine on his caregiver. And Perlie Rucker was rightfully evicted following the arrest of her daughter for possession of cocaine a few blocks from home.

No one knows exactly how many people are excluded from public housing because of criminal records, or even the number of people with criminal records who would be ineligible if they applied. We do know, however, that roughly 65 million people have criminal records, including tens of millions of Americans who have been arrested but never convicted of any offense, or convicted only of minor misdemeanors, and they too are routinely excluded from public housing. What happens to these people denied housing assistance or evicted from their homes? Where do they go? Thousands of them become homeless. A study conducted by the McCormick Institute of Public Affairs found that nearly a quarter of guests in homeless shelters had been incarcerated within the previous year—people who were unable to find somewhere to live after release from prison walls.

### **Boxed In**

Aside from figuring out where to sleep, nothing is more worrisome for people leaving prison than figuring out where to work. Some of the pressure to find work comes directly from the criminal justice system. According to one survey of state parole agencies, forty of the fifty-one jurisdictions surveyed (the fifty states and the District of Columbia) required parolees to “maintain gainful employment.”<sup>1</sup> Failure to do so could mean more prison time.

Landing a job after release from prison is no small feat. “I’ve watched the discrimination and experienced it firsthand when you have to check the box,” says Susan Burton, a formerly incarcerated woman who has dedicated her life to providing women released from prison the support necessary to reestablish themselves in the workforce. The “box” she refers to is the question on job applications in which applicants are asked to check “yes” or “no” if they have ever been convicted of a crime. “It’s not only [on] job [applications],” Burton explains. “It’s on housing. It’s on a school application. It’s on welfare applications. It’s everywhere you turn.”<sup>2</sup>

Nearly every state allows private employers to discriminate on the basis of past criminal convictions. In fact, employers in most states can deny jobs to people who were arrested but never convicted of any crime. Only ten states prohibit all employers and licensing agencies from considering arrests, and three states prohibit some employers and occupational and licensing agencies from doing so.<sup>3</sup>

For most people coming out of prison, a criminal conviction adds to their already problematic profile. About 70 percent of offenders and ex-offenders are high school dropouts, and according to at least one study, about half are functionally illiterate.<sup>4</sup> Many offenders are tracked for prison at early ages, labeled as criminals in their teen years, and then shuttled from their decrepit, underfunded inner city schools to brand-new, high-tech prisons.

Adding to their troubles is the “spatial mismatch” between their residence and employment opportunities.<sup>5</sup> Willingness to hire ex-offenders is greatest in construction or manufacturing—industries that require little customer contact—and weakest in retail trade and other service sector businesses.<sup>6</sup> Manufacturing jobs, however, have all but disappeared from the urban core during the past thirty years. Jobs can be found in the suburbs—mostly service sector jobs—but employment for unskilled men with criminal convictions, while difficult to find anywhere, is especially hard to find close to home.

An ex-offender whose driver’s license has been suspended or who does not have access to a car, often faces nearly insurmountable barriers to finding employment. Driving to the suburbs to pick up and drop off applications, attend interviews, and pursue employment leads may be perfectly feasible if you have a driver’s license and access to a vehicle, but attempting to do so by bus is another matter entirely.

### **The Black Box**

While all job applicants—regardless of race—are harmed by a criminal record, the harm is not equally felt. Not only are African Americans far more likely to be labeled criminals, they are also more strongly affected by the stigma of a criminal record. Black men convicted of felonies are the least likely to receive job offers of any demographic group, and suburban employers are the most unwilling to hire them.<sup>7</sup>

In an effort to address the rampant joblessness among black men labeled criminals, a growing number of advocates in recent years have launched Ban the Box campaigns. These campaigns have been successful in cities like San Francisco, where All of Us or None, a non-profit grassroots organization dedicated to eliminating discrimination against ex-offenders, persuaded the San Francisco Board of Supervisors to approve a resolution designed to eliminate hiring discrimination against people with criminal records. San Francisco’s new policy (which took effect in June 2006) seeks to prevent discrimination on the basis of a criminal record by removing the criminal-history box from the initial application. An individual’s past convictions will still be considered, but not until later in the hiring process, when the applicant has been identified as a serious candidate for the position.

While these grassroots initiatives and policy proposals are major achievements, they raise questions about how best to address the complex and interlocking forms of discrimination experienced by black ex-offenders. Some scholars believe, based on the available data, that black males may suffer more discrimination—not less—when specific criminal history information is not available.<sup>8</sup> Because the association of race and criminality is so pervasive, employers may use less accurate and discriminatory methods to screen out those perceived to be likely criminals. Popular but misguided proxies for criminality—such as race, receipt of public assistance, low educational attainment, and gaps in work history—could be used by employers when no box is available on the application form to identify criminals. [B]anning the box is not enough. We must also get rid of the mind-set that puts black men “in the box.” This is no small challenge.

A recent study by the National Employment Law Project (NELP) suggests that many employers refuse to consider people with criminal records for a wide range of jobs, despite the fact that the Equal Employment Opportunity Commission (EEOC) has advised employers that flat bans may be illegal.

NELP’s study of Craigslist.com, which operates in more than four hundred geographic areas, found that employers blatantly violate EEOC guidelines. Hundreds of ads precluded consideration of individuals with criminal conviction histories.<sup>9</sup> For example:

“We are looking for people with ... spotless background/criminal history.”  
—*Job ad for warehouse worker or delivery drivers, September 2, 2010, CORT Furniture Rental*

“ALL CANDIDATES WILL BE E-VERIFIED AND MUST CLEAR A BACKGROUND CHECK (NO PRIORS).” —*Job ad for manufacturing jobs, October 5, 2010, Carlisle Staffing (staffing firm operating in Chicago area)*

“IN ORDER TO QUALIFY AS A DRIVER FOR FEDEX, YOU MUST HAVE THE FOLLOWING: ... Clean criminal record, no misdemeanors, no felonies.”  
—*Job ad for diesel mechanic/delivery driver, September 24, 2010, contractor for FedEx Ground*

Although each of these statements violates the EEOC prohibition against blanket hiring bans, employers and their recruitment/staffing agencies routinely limit the pool of qualified candidates to those with spotless records, thus excluding millions of people from having the opportunity even to interview for jobs. Millions find themselves locked out of the legal economy, and no one with a record has a more difficult time getting hired than black men.

### **Debtor’s Prison**

Throughout the United States, newly released prisoners are required to make payments to a host of agencies, including probation departments, courts, and child-support enforcement offices.

Two-thirds of people detained in jails report annual incomes under \$12,000 prior to arrest. Predictably, most ex-offenders find themselves unable to pay the many fees, costs, and fines

associated with their imprisonment, as well as their child-support debts (which continue to accumulate while a person is incarcerated).

Although “debtor’s prison” is illegal in all states, many states use the threat of probation or parole revocation as a debt-collection tool. In fact, in some jurisdictions, individuals may “choose” to go to jail as a way to reduce their debt burdens, a practice that has been challenged as unconstitutional.<sup>10</sup> Adding to the insanity, many states suspend driving privileges for missed debt payments, a practice that often causes people to lose employment (if they had it) and creates yet another opportunity for jail time: driving with a suspended license.<sup>11</sup> In this regime, many people are thrown back in prison simply because they have been unable—with no place to live, and no decent job—to pay back thousands of dollars of prison-related fees, fines, and child support.

### Let Them Eat Cake

So here you are—a newly released prisoner—homeless, unemployed, and carrying a mountain of debt. How do you feed yourself? Care for your children? There is no clear answer to that question, but one thing is for sure: do not count on the government for any help. Not only will you be denied housing, but you may well be denied food.

The Temporary Assistance for Needy Family Program (TANF) imposes a five-year lifetime limit on benefits and requires welfare recipients, including those who have young children and lack child care, to work in order to receive benefits. In the abstract, a five-year limit may sound reasonable. But consider this: When one is labeled a criminal, forced to “check the box” on applications for employment and housing, and burdened by thousands of dollars in debt, is it possible that one will live on the brink of severe poverty for more than five years and thus require food stamps for oneself and one’s family?

The five-year limit on benefits, however, is not the law’s worst feature. The law also requires that states *permanently* bar individuals with drug-related felony convictions from receiving federally funded public assistance. The statute does contain an opt-out provision, but as of 2010 only thirteen states and the District of Columbia had opted out entirely. Most states have partially opted out, affording exceptions for people in drug treatment, for example.<sup>12</sup> It remains the case, however, that thousands of people with felony drug convictions in the United States are deemed ineligible for food stamps for the rest of their lives, including pregnant women, people in drug treatment or recovery, and people suffering from HIV/AIDS—simply because they were once caught with drugs.

### The Silent Minority

Forty-eight states and the District of Columbia prohibit inmates from voting while incarcerated for a felony offense. Only two states—Maine and Vermont—permit inmates to vote. The vast majority of states continue to withhold the right to vote when prisoners are released on parole. Even after the term of punishment expires, some states deny the right to vote for a period ranging from a number of years to the rest of one’s life.<sup>13</sup>

No other country in the world disenfranchises people who are released from prison in a manner even remotely resembling the United States. In fact, the United Nations Human

Rights Committee has charged that U.S. disenfranchisement policies are discriminatory and violate international law.

The message communicated by felon disenfranchisement laws, policies, and bureaucratic procedures is not lost on those, such as Clinton Drake, who are effectively barred from voting for life.<sup>14</sup> Drake, a fifty-five-year-old African American man in Montgomery, Alabama, was arrested in 1988 for possession of marijuana. Five years later, he was arrested again, this time for having about \$10 worth of the drug on him. Facing between ten and twenty years in prison as a repeat offender, Drake, a Vietnam veteran and, at the time, a cook on a local air force base, took his public defender's advice and accepted a plea bargain. Under the plea agreement, he would "only" have to spend five years behind bars. Five years for five joints.

Once released, Drake found he was forbidden by law from voting until he paid his \$900 in court costs—an impossible task, given that he was unemployed and the low-wage jobs he might conceivably find would never allow him to accumulate hundreds of dollars in savings. For all practical purposes, he would never be able to vote again. Shortly before the 2004 presidential election, he said in despair:

I put my life on the line for this country. To me, not voting is not right; it led to a lot of frustration, a lot of anger. My son's in Iraq. In the army just like I was. My oldest son, he fought in the first Persian Gulf conflict. He was in the Marines. This is my baby son over there right now. But I'm not able to vote. They say I owe \$900 in fines. To me, that's a poll tax. You've got to pay to vote. It's "restitution," they say. I came off parole on October 13, 1999, but I'm still not allowed to vote. I was on the 1965 voting rights march from Selma. I was fifteen years old. At eighteen, I was in Vietnam fighting for my country. And now? Unemployed and they won't allow me to vote.<sup>15</sup>

### **The Pariahs**

[M]any ex-offenders will tell you that the formal mechanisms of exclusion are not the worst of it. The shame and stigma that follows you for the rest of your life—that is the worst.

One need not be formally convicted in a court of law to be subject to this shame and stigma. As long as you "look like" or "seem like" a criminal, you are treated with the same suspicion and contempt, not just by police, security guards, or hall monitors at your school, but also by the woman who crosses the street to avoid you and by the store employees who follow you through the aisles, eager to catch you in the act of being the "criminalblackman"—the archetypal figure who justifies the New Jim Crow.<sup>16</sup>

Practically from cradle to grave, black males in urban ghettos are treated like current or future criminals. [T]he prison label is not something that a black man in the ghetto can ever fully escape. For those newly released from prison, the pain is particularly acute.

During Jim Crow, blacks were severely stigmatized and segregated on the basis of race, but in their own communities they could find support, solidarity, acceptance—love. Today, when those labeled criminals return to their communities, they are often met with scorn and contempt, not just by employers, welfare workers, and housing officials, but also by

their own neighbors, teachers, and even members of their own families. This is so, even when they have been imprisoned for minor offenses, such as possession and sale of a small amount of drugs. Young black males in their teens are often told “you’ll amount to nothing” or “you’ll find yourself back in jail, just like your father”—a not-so-subtle suggestion that a shameful defect lies deep within them, an inherited trait perhaps—part of their genetic makeup. “You are a criminal, nothing but a criminal. You are a no good criminal.”<sup>17</sup>

### **Gangsta Love**

For some, the notion that black communities are severely stigmatized and shamed by criminality is counterintuitive: if incarceration in many urban areas is the statistical norm, why isn’t it socially normative as well? But just because the prison label has become normal does not mean that it is generally viewed as acceptable. Poor people of color, like other Americans— indeed like nearly everyone around the world—want safe streets, peaceful communities, healthy families, good jobs, and meaningful opportunities to contribute to society. The notion that ghetto families do not, in fact, want those things, and instead are perfectly content to live in crime-ridden communities, feeling no shame or regret about the fate of their young men is, quite simply, racist.

The predictable response is: What about gangsta rap and the culture of violence that has been embraced by so many black youth? Is there not some reason to wonder whether the black community, to some extent, has lost its moral compass?

[I]t is helpful to step back and put the behavior of young black men who appear to embrace “gangsta culture” in the proper perspective. For those black youth who are constantly followed by the police and shamed by teachers, relatives, and strangers, embracing the stigma of criminality is an act of rebellion—an attempt to carve out a positive identity in a society that offers them little more than scorn, contempt, and constant surveillance. A war has been declared on [young black men], and they have been rounded up for engaging in precisely the same crimes that go largely ignored in middle- and upper-class white communities—possession and sale of illegal drugs. For those residing in ghetto communities, employment is scarce—often nonexistent. Schools located in ghetto communities more closely resemble prisons than places of learning, creativity, or moral development. And because the drug war has been raging for decades now, the parents of children coming of age today were targets of the drug war as well. Any wonder, then, that many youth embrace their stigmatized identity as a means of survival in this new caste system? Should we be shocked when they turn to gangs or fellow inmates for support when no viable family support structure exists? After all, in many respects, they are simply doing what black people did during the Jim Crow era—they are turning to each other for support and solace in a society that despises them.

### **The Minstrel Show**

None of the foregoing should be interpreted as an excuse for the violence, decadence, or misogyny that pervades what has come to be known as gangsta culture. The images and messages are extremely damaging. Again, though, it is useful to put the commodification of gangsta culture in proper perspective. The worst of gangsta rap and other forms of blaxploitation (such as VH1’s *Flavor of Love*) is best understood as a modern-day minstrel show,

only this time televised around the clock for a worldwide audience. It is a for-profit display of the worst racial stereotypes and images associated with the era of mass incarceration—an era in which black people are criminalized and portrayed as out-of-control, shameless, violent, over-sexed, and generally undeserving.

Like the minstrel shows of the slavery and Jim Crow eras, today's displays are generally designed for white audiences. The majority of consumers of gangsta rap are white, suburban teenagers.

Many people are unaware that, although minstrel shows were plainly designed to pander to white racism and to make whites feel comfortable with—indeed, entertained by—racial oppression, African Americans formed a large part of the black minstrels' audience.

Historians have long debated why blacks would attend minstrel shows when the images and content were so blatantly racist. Some have suggested that perhaps blacks felt in on the joke, laughing at the over-the-top characters from a sense of “in-group recognition.”<sup>18</sup> It has also been argued that perhaps they felt some connection to elements of African culture that had been suppressed and condemned for so long but were suddenly visible on stage, albeit in racist, exaggerated form.<sup>19</sup> Undeniably, though, one major draw for black audiences was simply seeing fellow African Americans on stage.

It seems likely that historians will one day look back on the images of black men in gangsta rap videos with a similar curiosity. Why would these young men, who are targets of a brutal drug war declared against them, put on a show—a spectacle—that romanticizes and glorifies their criminalization? Why would these young men openly endorse and perpetuate the very stereotypes that are invoked to justify their second-class status, their exclusion from mainstream society? The answers, historians may find, are not that different from the answers to the minstrelsy puzzle.

As a tidal wave of punitiveness, stigma, and despair washed over poor communities of color, those who were demonized—not only in the mainstream press but often in their own communities—did what all stigmatized groups do: they struggled to preserve a positive identity by embracing their stigma. Gangsta rap—while it may amount to little more than a minstrel show when it appears on MTV today—has its roots in the struggle for a positive identity among outcasts.

### **The Antidote**

When the system of mass incarceration collapses (and if history is any guide, it will), historians will undoubtedly look back and marvel that such an extraordinarily comprehensive system of racialized social control existed in the United States. How fascinating, they will likely say, that a drug war was waged almost exclusively against poor people of color—people already trapped in ghettos that lacked jobs and decent schools. They were rounded up by the millions, packed away in prisons, and when released, they were stigmatized for life, denied the right to vote, and ushered into a world of discrimination. Historians will likely wonder how we could describe the new caste system as a system of crime control, when it is difficult to imagine a system better designed to create—rather than prevent—crime.

None of this is to suggest that those who break the law bear no responsibility for their conduct or exist merely as “products of their environment.” To deny the individual agency of those caught up in the system—their capacity to overcome seemingly impossible odds—would be to deny an essential element of their humanity.

Rather than shaming and condemning an already deeply stigmatized group, we, collectively, can embrace them—not necessarily their behavior, but them—their humanness. As the saying goes, “You gotta hate the crime, but love the criminal.” This is not a mere platitude; it is a prescription for liberation. If we had actually learned to show love, care, compassion, and concern across racial lines during the Civil Rights Movement—rather than go color-blind—mass incarceration would not exist today.

### Endnotes

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