

The New Jim Crow: is suggested reading

A Study Guide

The New Jim Crow: Mass Incarceration in the Age of Colorblindness by Michelle Alexander

A Resource for the Jewish Community

This study guide is a resource to assist Jewish communities in group readings of Michelle Alexander's life-altering book, The New Jim Crow: Mass Incarceration in the Age of Colorblindness. It differs from other study guides in that it asks you to consider the material from a Jewish perspective. It was written by Diane Colello, Laura Kaplan and Chaia Lehrer, members of the Woodstock Jewish Congregation Task Force to End the New Jim Crow with extensive help from Ora Nitkin-Kaner, rabbinic student at the Reconstructionist Rabbinical College. Jewish teachings were added by Rabbi Jonathan Kligler and edits by Rabbi Mordechai Liebling. All those involved found that the analysis Alexander presents led us into challenging conversations and social action. We hope that the same is true for you. We offer it with love.

Introduction: THE NEW JIM CROW

In the traditional Haggadah – the Passover text that retells the ancient story of Jewish enslavement and liberation – the following statement appears: “Whoever expands upon the story of the Exodus from Egypt is worthy of praise.” Not only is expanding on the story of our liberation laudable, but it is also commanded: “In each and every generation, a person is required to view the story of leaving slavery as his or her own story.”

As Jews, we are commanded to remember and retell this ancient story. But there is a new story of slavery that is beginning to be told and retold across America.

In her Introduction to *The New Jim Crow*, author Michelle Alexander explains how she came to realize that the mass incarceration of people of color in the U.S. was a story that she needed to tell:

“Quite belatedly, I came to see that mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow...Through a web of laws, regulations, and informal rules, all of which are powerfully reinforced by social stigma, they [ex-offenders] are confined to the margins of mainstream society and denied access to the mainstream economy. They are legally denied the ability to obtain employment, housing and public benefits – much as African Americans were once forced into a segregated, second-class citizenship in the Jim Crow era.” (page 4, middle of 2nd paragraph)

For discussion:

1. What was your initial response to Alexander's theory that a system of mass incarceration exists in the U.S.?
2. As a Jew, what is your role in 'retelling' the story that Alexander presents in her book? How is this informed by the Passover commandment to retell stories of (Jewish) slavery?

Alexander writes that:

"The United States now has the highest rate of incarceration in the world, dwarfing the rates of nearly every developed country, even surpassing those in highly repressive regimes like Russia, China, and Iran...The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid..." (page 6, 3rd paragraph)

and that:

"...although crime rates in the United States have not been markedly higher than those of other Western countries, the rate of incarceration has soared in the United States while it has remained stable or declined in other countries." (page 7, middle of 2nd paragraph)

For discussion:

3. Do these statistics challenge your ideas about the fairness of the U.S. judicial system?

Alexander believes that the current system of mass incarceration is intimately intertwined with issues of race and class. She writes:

"...In the era of colorblindness, it is no longer socially permissible to use race, explicitly, as a justification for discrimination, exclusion, and social contempt. So we don't. Rather than rely on race, we use our criminal justice system to label people of color "criminals" and then engage in all the practices we supposedly left behind..." (page 2, 1st paragraph, 2nd sentence)

and

"I use the term racial caste in this book the way it is used in common parlance to denote a stigmatized racial group locked into an inferior position by law and custom. Jim Crow and slavery were caste systems. So is our current system of mass incarceration..." (page 12, middle of 3rd paragraph)

For discussion:

4. What personal experiences and beliefs about race and racial progress did you have before beginning this book?
5. What are your thoughts about describing mass incarceration as a caste system?
6. What role does race play in your identity as a Jew?

Alexander ends her Introduction by noting that it was not possible to write a brief, all-inclusive book, and she hopes others will look at the experiences of women, Latinos and immigrants as she is looking at the experiences of young Black men. Before briefly describing each chapter, she says, *"What this book is intended to do...is to stimulate a much-needed conversation about the role of the criminal justice system in creating and perpetuating racial hierarchy in the United States."* (page 16, 2nd paragraph)

Something to think about...

Michelle Alexander wants to stimulate a discussion and start a mass movement to end the New Jim Crow. How do you see yourself and your values reflected in that discussion and movement? How do your Jewish identity and values inform your understanding of this information?

Chapter 1: THE REBIRTH OF CASTE

“At the first conference on religion and race, the main participants were Pharaoh and Moses...The outcome of that meeting has not come to an end. Pharaoh is not ready to capitulate. The exodus began, but is far from having been completed...Let us dodge no issues. Let us yield no inch to bigotry. Let us make no compromise with callousness.”

-- Rabbi Abraham Joshua Heschel, opening address at the National Conference on Religion and Race, Chicago, January 14, 1963. Reprinted in his book “The Insecurity of Freedom” (Jewish Publication Society, Philadelphia 1966)

Chapter 1 describes the historical transition from slavery to Jim Crow to the New Jim Crow. Alexander presents this history as a series of movements and events that repeatedly recur:

“Since the nation’s founding, African Americans repeatedly have been controlled through institutions such as slavery and Jim Crow, which appear to die, but then are reborn in new form, tailored to the needs and constraints of the time...there is a certain pattern to this cycle. Following the collapse of each system of control, there has been a period of confusion–transition–in which those who are most committed to racial hierarchy search for new means to achieve their goals within the rules of the game as currently defined. It is during this period of uncertainty that the backlash intensifies and a new form of racialized social control begins to take hold...The most ardent proponents of racial hierarchy have consistently succeeded in implementing new racial caste systems by triggering a collapse of resistance across the political spectrum.” (Page 21, bottom paragraph)

As we study Alexander’s book, we are shaping ourselves into educators; we are committing to retell the history of a present-day slavery and to sharing it with our communities.

Exercise: In small groups, spend 20-25 minutes looking through Chapter 1 and reviewing the historical trends that led to today’s system of mass incarceration. How would you teach this history? Create a timeline together which allows you trace the history of systemic control of people of color. Consider making use of some of the following markers (or creating your own):

- The economics of slavery
- Use of racial bribes, extending special privileges to poor whites in an effort to drive a wedge between them and black slaves
- Following the Civil War, a re-imagining of blacks as menacing and dangerous
- Development of ‘black codes’ to control the black population
- Development of convict laws and vagrancy laws that made it a crime to be without work
- Gains in voting rights during Reconstruction, as well as the subsequent backlash following its collapse

- Aggressive enforcement of criminal offenses against blacks, opening up an enormous market for convict leasing
- The nation's first prison boom, in which prisoners were disproportionately black
- Segregation laws proposed as part of a deliberate effort to drive a wedge between poor whites and blacks
- Activism of the Civil Rights Movements, as well as Rev. Martin Luther King's 'Poor People's Movement,' which sought to build bonds across racial lines
- Rise of mass incarceration from Nixon's 'law and order' positions of 1968
- Ronald Reagan's attack on 'welfare queens', as well as his War on Drugs and the media blitz that followed
- Current harsh penalties for drug offenses, which increased in the decades since Reagan's terms and during the Clinton administration

For discussion:

1. What new information about the history of slavery and Jim Crow did you learn?
2. What do you feel are the similarities and differences among slavery, Jim Crow and the New Jim Crow?
3. How are your ideas about justice and criminal justice challenged or enforced by Alexander's historical outline?

Chapter 2: THE LOCKDOWN

Hear this, you who trample upon the needy,
 And bring the poor of the land to an end,
 Thus says the Infinite, your God:
 I hate, I despise your feasts...
 Take away from me the noise of your songs;
 To the melody of your harps I will not listen.
 But let justice well up as waters,
 And righteousness as a mighty stream. (Amos 5:21-24)

How the criminal justice system actually functions is quite different from what we see on TV or study in Civics class. Chapter 2 is devoted to describing just what sustains mass incarceration. Alexander details how diminished Fourth Amendment rights against unreasonable search and seizure, enhanced police authority, fiscal incentives to local law enforcement agencies for drug arrests, and a Supreme Court that has disregarded basic civil rights have all facilitated the emergence of a legal caste system.

Exercise: Humankind's tendency to rationalize the suffering of others, and the injustices which contribute to it, makes it easy for us to believe the often-repeated 'facts' listed below about the criminal justice system.

In your large group, ask one person to be the 'recorder', while the rest of the group participates with eyes closed. The recorder reads each statement below aloud, and invites participants to raise their hand for each

statement that they believed to be true before reading *The New Jim Crow*. The recorder marks down how many people raised their hands, and then shares the results with the group after all the questions have been asked:

- Surging incarceration rates can be explained by crime rates;
- Most people cycling in and out of the criminal justice system are violent offenders;
- People of color are more likely to use illegal drugs than whites;
- People of color are more likely to sell illegal drugs than whites;
- The drug war has been focused on rooting out violent offenders and drug kingpins;
- Most people charged with crimes are provided with meaningful legal representation;
- The U.S. Constitution's guarantee of "equal protection under the law" protects racial minorities from bias in the criminal justice system.

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None of the above statements are fact, yet their widespread acceptance, and perpetuation by the media, has enabled our national community to deny or altogether ignore the truth about mass incarceration and its impacts across the United States.

In your group, look through Chapter 2 and pull out some key facts on the following issues:

1. Convictions for drug offenses
2. The Stop-and-Frisk rule
3. 'Fishing expeditions'
4. The prioritization of drug-law enforcement

For discussion:

1. Where do you get the information that has formed your opinions on crime and incarceration?
2. What are your personal experiences with the criminal justice system?
3. What are the experiences of your Jewish community with the criminal justice system?

Chapter 3: THE COLOR OF JUSTICE

"There shall be one law among you for stranger and citizen alike" (Exodus 12:49)

"And I charged your judges at that time, saying: 'Hear the causes between your people, and judge righteously between every person, including the stranger that lives among you. You shall not be partial in judgment: hear the small and the great alike.'" (Deuteronomy 1:16-17)

Chapter 3 explains the racial dimensions of the system illuminated in Chapter 2. Alexander puts the question plainly: *“How could the War on Drugs operate in a discriminatory manner, on such a large scale, when hardly anyone advocates or engages in explicit race discrimination? That question is the subject of this chapter.”* (Page 102, middle of bottom paragraph)

Americans of all races sell and use illegal drugs at remarkably similar rates. Surveys frequently suggest that white youth are even more likely to engage in illegal drug dealing than black youth. Yet the fact is that Black Americans are incarcerated, on probation, or parole in numbers grossly disproportionate to the population. The official explanation for the disparity – higher crime rates among blacks – while not true, is consistent with dominant racial narratives going back to slavery.

For discussion:

1. What values around drugs did you learn from your family? From your friends? From your broader community?
2. What narratives did you grow up with around drugs and being Jewish?

Alexander writes:

African Americans—particularly in the poorest neighborhoods—are subjected to tactics and practices that would result in public outrage and scandal if committed in middle-class white neighborhoods...resulting in jaw-dropping numbers of African Americans and Latinos filling our nation’s prisons and jails every year. We are told by drug warriors that the enemy in this war is a thing—drugs—not a group of people, but the facts prove otherwise.”(page 98, 2nd paragraph)

In the last half-century our nation has become officially color-blind, yet the War on Drugs has been seen to efficiently bring people of color under the control of the criminal justice system and keep them in a second-class status. This has been done by granting law enforcement huge discretion regarding whom to target and then allowing the courts to immunize the entire system against claims of racial bias:

“The NYPD made 50,300 marijuana arrests in 2010 alone, mostly of young men of color. As one report noted, these marijuana arrests offer ‘training opportunities’ for rookie police who can practice on ghetto kids while earning overtime. These arrests serve another purpose as well: they ‘are the most effective way for the NYPD to collect fingerprints, photographs and other information on young people not yet entered into the criminal databases.’ A simple arrest for marijuana possession can show up on criminal databases as ‘a drug arrest’ without specifying the substance or the charge, and without clarifying even whether the person was convicted. These databases are then used by police and prosecutors, as well as by employers and housing officials—an electronic record that will haunt many for life. More than 353,000 people were arrested and jailed by the NYPD between 1997 and 2006 for simple possession of small amounts of mari-juana, with blacks five times more likely to be arrested than whites.” (middle page 136)

For discussion:

3. How does reading these statistics make you feel?

Alexander writes:

“Title VI [of the Civil Rights Act of 1964] prohibits federally funded programs or activities from discriminating on the basis of race, and the regulations employ a ‘disparate impact test’ for discrimination—meaning that plaintiffs could prevail in claims of race discrimination without proving discriminatory intent.” (page 137, last sentence)

Alexander then describes how the Supreme Court, in 2001, *“concluded that Title VI does not provide a ‘private right of action’ to ordinary citizens and civil rights groups; meaning that victims of discrimination can no longer sue under the law. The Sandoval decision virtually wiped out racial profiling litigation nationwide. Nearly all of the cases alleging racial profiling in drug-law enforcement were brought pursuant to Title VI of the Civil Rights Act of 1964 and its implementing regulations.”*

For discussion:

4. What are the benefits and pitfalls of aiming toward color-blindness in our attempt to transcend racism?
5. Reflect on this in terms of you as an individual, our society and our legal system.

Chapter 4: THE CRUEL HAND

“Let not the repentant sinner imagine that he cannot become righteous on account of the iniquities he has committed. This is not so. He is tenderly loved by the Creator as if he had never sinned. Even more so, his reward is great, since he has tasted sin and overcome it. The sages said “Where repentant sinners stand even the thoroughly righteous cannot stand” (Berachot 34b); that is their merit is superior to that of persons who never committed a sin, because the repentant had to exert greater effort in mastering their impulses.”
“It is a flagrant sin to say to a repentant person: ‘Remember your past deeds,’ or to mention them in his presence so as to embarrass him, or to recall similar incidents that are reminiscent of what he did.” Moses Maimonides (12th Century), from his *Laws of Repentance*

Chapter 4 describes how the felon’s debt to society is never paid, even after completing his sentence:

“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 gone, but the threat of police violence is ever present.” (page 141, middle paragraph)

Alexander goes on to describe how the label of felon gives the formerly incarcerated the strong message that they are not wanted in mainstream society:

“A task force of the American Bar Association described the bleak reality facing a petty drug offender this way: The offender may be sentenced to a term of probation, community service and court costs. Unbeknownst to this offender, and perhaps any other actor in the sentencing process, as a result of his conviction he may be ineligible for many federally-funded health and welfare benefits, food stamps, public housing and federal educational assistance. His driver’s license may be automatically suspended, and he may no longer qualify for certain employment and professional licenses. If he is convicted of another crime he may be subject to

imprisonment as a repeat offender. He will not be permitted to enlist in the military, or possess a firearm, or obtain a federal security clearance. If a citizen, he may lose the right to vote; if not, he becomes immediately deportable.” (bottom of page 142)

For discussion:

1. Compare what the Torah writes about Cities of Refuge (Joshua 20:1-6) with the Mark of Cain (Genesis 4:11-16). Is a criminal meant to be marked? Kept separate from society? For how long?
2. Compare the reality of life after incarceration with Maimonides’ prohibition against shaming the sinner or reminding him of his sin. Is it ever appropriate to brand a criminal as incapable of tshuvah, or repentance? On what basis?

The discrimination ex-offenders experience in housing, employment, and social services increases poverty, homelessness and unemployment, while African Americans are targeted in particular:

“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 Perlle Rucker was rightly evicted following the arrest of her daughter for possession of cocaine a few blocks from home. The Court ruled these tenants could be held civilly liable for the nonviolent behavior of their children and caregivers. They could be tossed out of public housing due to no fault of their own.”

(Page 147, top, 2nd sentence)

The campaign to ‘ban the box’ persuades employers to remove the check box that asks applicants about their criminal records on hiring applications. This gives ex-offenders the chance to present their qualifications before disclosing their past. Alexander explores the depth of the problem:

“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 . . . Without disconfirming information in the job application itself, employers may (consciously or unconsciously) treat all black men as though they have a criminal record, effectively putting all (or most) of them in the same position as black ex-offenders. The research suggests that banning the box is not enough. We must get rid of the mind-set that puts black men ‘in the box’.” (page 152, middle of bottom paragraph)

For discussion:

3. What does Judaism teach us is our responsibility towards those who repent?
4. What does Judaism teach us is our responsibility to the needy? Does a criminal forfeit their right to assistance when they commit a crime?

Chapter 5: THE NEW JIM CROW

“Do not stand idly by while your neighbor’s blood is being shed.” (Leviticus 19:16)

“Over and above personal problems, there is an objective challenge to overcome inequity, injustice, helplessness, suffering, carelessness, oppression. Over and above the din of desires there is a calling, a demanding, a waiting, an expectation. There is a question that follows me wherever I turn: What is expected of me? What is demanded of me?”

Rabbi Abraham Joshua Heschel, *Who Is Man?* p. 107 (Stanford University Press, 1965)

Alexander examines the shame and stigma that plague African American families and communities at large. Writing about the similarities and the differences between the Old and the New Jim Crows, Alexander explains that whereas during the Old Jim Crow period, racial hostility was widespread and fully accepted, today it is no longer acceptable to voice racial hostility. Instead, racial indifference among white people is the norm:

“Today, most Americans know and don’t know the truth about mass incarceration. For more than three decades, images of black men in handcuffs have been a regular staple of the evening news. We know that large numbers of black men have been locked in cages. In fact, it is precisely because we know that black and brown people are far more likely to be imprisoned that we, as a nation, have not cared too much about it. We tell ourselves they ‘deserve’ their fate, even though we know - and don’t know – that whites are just as likely to commit many crimes, especially drug crimes. We know that people released from prison face a lifetime of discrimination, scorn, and exclusion, and yet we claim not to know that an undercaste exists. We know and we don’t know at the same time.” (page 182, center paragraph)

For discussion:

1. What blindness to injustice did you grow up around? What blindness to injustice exists in your current communities?
2. How does racial privilege contribute to a person’s ability to connect with the problem of mass incarceration? How does class privilege affect it?
3. How does the fact that ‘we know and we don’t know’ about the suffering of others affect your personal spirituality? The spirituality of our Jewish communities?

Chapter 6: THE FIRE THIS TIME

“Rabbi Tarfon taught: It is not up to you to finish the task, but neither are you free to desist from it!” (Wisdom of the Sages 1:21)

Chapter 6 begins with an analysis of why civil rights groups have avoided the fight against mass incarceration and are in a state of denial:

“Challenging mass incarceration requires something civil rights advocates have long been reluctant to do: advocacy on behalf of criminals....The ‘politics of respectability’ has influenced civil rights litigation and advocacy, leading even the most powerful civil rights organizations to distance themselves from the most stigmatized elements of the community, especially lawbreakers. Advocates have found they are most successful

when they draw attention to certain types of black people (those who are easily understood by mainstream whites as 'good' and 'respectable') and tell certain types of stories about them."(page 226, bottom paragraph)

Alexander describes the huge task at hand to address mass incarceration:

"If we hope to return to the rate of incarceration of the 1970s—a time when many civil rights activists believed rates of imprisonment were egregiously high—we would need to release approximately four out of five people currently behind bars today. Prisons would have to be closed across America, an event that would likely inspire panic in rural communities that have become dependent on prisons for jobs and economic growth. Hundreds of thousands of people—many of them unionized—would lose their jobs."

(page 230 middle of first paragraph)

She warns:

"They [the private prison system] are deeply interested in expanding the market—increasing the supply of prisoners—not eliminating the pool of people who can be held captive for a profit."

And that,

"Even beyond private prison companies, a whole range of prison profiteers must be reckoned with if mass incarceration is to be undone, including phone companies..., gun manufacturers..., private health care providers..., the US military..., corporations..., and the politicians, lawyers, and bankers who structure deals to build new prisons often in predominately white rural communities..." (page 231, bottom paragraph)

For discussion:

1. How does it feel to learn about our prison system as a money-making operation?

Alexander presents a 'lengthy to-do list for reformers' that includes eliminating the War on Drugs by eradicating financial incentives granted to law enforcement, ending the targeting of communities of color, rescinding mandatory drug sentences, legalizing marijuana and perhaps other drugs and more. She calls for job training programs, career opportunities for prison workers, a ban on the box on job applications asking for felony convictions and drug treatment programs. However Alexander warns us against partial goals and a limited perspective:

"Those who believe that advocacy challenging mass incarceration can be successful without overturning the public consensus that gave rise to it are engaging in fanciful thinking, a form of denial. Isolated victories can be won—even a string of victories—but in the absence of a fundamental shift in public consciousness, the system as a whole will remain intact. To the extent that major changes are achieved without a complete shift, the system will rebound. The caste system will reemerge in a new form, just as convict leasing replaced slavery, or it will be reborn, just as mass incarceration replaced Jim Crow." (page 234, 3rd paragraph)

This section gives Jews an opportunity to reflect on the similarities between anti-semitism and racism.

Alexander writes:

"Finally, we must admit out loud that it was because of race that we didn't care much what happened to "those people" and imagined the worst possible things about them". (page 238, middle paragraph)

For discussion:

2. In our history as Jews, we have been treated as “those people.” How do we as Jews think about incarcerated people of color?

In our discomfort as a society to discuss race, Alexander fears our tendency to work on reforms which will likely produce some change but not address the caste system created for African Americans:

“Admittedly, though, the temptation to ignore race in our advocacy may be overwhelming. Race makes people uncomfortable. One study found that some whites are so loath to talk about race and so fearful of violating racial etiquette that they indicate a preference for avoiding all contact with black people.” (page 238, bottom paragraph)

For discussion:

3. How comfortable are you talking about race? With whom and why?

Alexander challenges us to abandon the desire for a colorblind society replacing it with an ability to talk about race upfront. She posits that colorblindness becomes racial indifference which is far more dangerous and widespread than out and out racial hostility.

P. 241, middle paragraph:

“The deeply flawed nature of colorblindness, as a governing principle...purports to see black and brown men not as black and brown, but simply as men—raceless men—who have failed miserably to play by the rules the rest of us follow quite naturally. ...Our blindness also prevents us from seeing the racial and structural divisions that persist in society: the segregated, unequal schools, the segregated, jobless ghettos, and the segregated public discourse—a conversation that excludes the current pariah caste.”

In culmination, Alexander explores the creation of a mass movement reflective of the more radical goals of the Civil Rights Movement:

“If we want to do more than just end mass incarceration—if we want to put an end to the history of racial caste in America—we must lay down our racial bribes, join hands with people of colors who are not content to wait for change to trickle down, and say to those who would stand in our way: Accept all of us or none.” (page 258 bottom)

For discussion:

4. How does our fear keep us from accepting the challenge of building and being part of this movement? What other obstacles or concerns might prevent you from contributing to this effort?
5. If we accept Alexander’s arguments as outlined in this book, what steps can we take to undo the system she describes, both as individuals and as a community? List some of these steps and discuss how to proceed. With whom should we form alliances and why? What do you see as potential obstacles and successes in doing this work as Jews?