

***The War on Drugs and Jim Crow's the Most Wanted:  
A Social and Historical Look at Mass Incarceration***  
**JOHN DEREK STERN<sup>1</sup>**

“The legal battle against segregation is won, but the community battle goes on.”  
-Dorothy Day, 1956.

The 1960s mark a significant historical period, spurred by the Civil Rights Movement and the enactment of the Civil Rights Act in 1964. It ended the infamous Jim Crow era laws, guaranteeing voting rights, interracial marriage, desegregation of schools, etc. to name a few. However, despite the progress made through the enactment of the Civil Rights Act, the promise of equal opportunity remains far from realized. Race-based discrimination has continued through public policies, albeit in more complex ways.

The War on Drugs is one instance of public policy that reveals systemic racism in our society. The implementation of the policy specifically targeted African American communities for possession of drugs leading to imprisonment of a large number of people from minority backgrounds. Michelle Alexander argues that the War on Drugs is representative of a nationwide Jim Crow epidemic that has specifically singled out African Americans, diminishing their rights as citizens (Alexander, 2014). Even though the practice is against the Fourth and Eighth Amendments of our Constitution, its continuation suggests a continuation of Jim Crow era laws, albeit in more complex ways. Mass incarceration, carried on through the War on Drugs, has severe collateral damage on minority communities as well. It is largely responsible for the devastation of urban communities, the rise of the super ghettos in cities across the country, and the institutionalization of a prison industrial complex. This essay examines the patterns of systemic racism perpetrated through the War on Drugs and mass incarceration policies. Following Michelle Alexander's argument, I argue that the War on Drugs is not only a new form of Jim Crow era discrimination, but also responsible for systemic racism in our criminal justice system perpetrated through the institutionalization of a prison industrial complex.

**Prisons: the historical context**

The institutionalization of prison systems in the US began in the eighteenth century, especially after Jeremy Bentham's panopticon design, which enabled detaining a large number of prisoners. While the panopticon model allowed the imprisonment of a vast number of people, the end of slavery after the Civil War and the need for free labor provided the rationale for the prison system, leading to the institutionalization of a prison industrial system in the country.

Early accounts of crime and punishment in the country show that corporal punishment was the preferred form of retribution, and imprisonment was limited

---

<sup>1</sup> John Stern is a Law and Society graduate from Ramapo College, currently a law student at St. John's University School of Law.

to minor crimes like debt. Legal historian Harry Elmer Barnes accounts that crime, as per the Act of 1788, included treason and felonies:

The Act of 1788 for 'punishing Treasons and Felonies, and for the better regulating of proceedings in cases of Felony,' there were sixteen capital crimes enumerated on the statute books-treason, murder, rape, buggery, burglary, robbery of a church, breaking and entry, robbery of person, robbery and intimidation in dwelling houses, arson, malicious maiming, forgery, counterfeiting, theft of chose in action, second offense for other felonies, and aiding and abetting any of the above crimes (Barnes, 1921, p. 39).

The crimes listed here are (for the most part) similar to what society deems as deviant in our present times, although possession of drugs or narcotics was not a crime under the Act of 1788.

The important difference between committing a crime in 1788 in opposition to today is the degree of punishment. Sending violators to the gallows was very common in the early years. In cases where the perpetrator's death sentence was not issued, Barnes (1921) explains:

Corporal punishment of another and less severe type was employed. The stocks, pillory, whipping, branding and the ducking-stool were the normal methods used for imposing punishment. For the lesser offenses fines were prescribed, with an alternate sentence of corporal punishment if the fine was not paid. ... Imprisonment was rarely employed as a method of punishment. Nearly all who were imprisoned for any considerable period of time were debtors, imprisonment for debt not having been abolished in New York State until the laws of April 7, 1819, and April 26, 1831, were passed, the latter in part as a result of the campaign against imprisonment for debt carried on by Louis Dwight of the Boston Prison Discipline Society (p. 39).

By the late 18<sup>th</sup> century, imprisonment with hard labor gained acceptance over death penalty, and was adopted in the penal system reforms. The Howard League for Penal Reform explains:

Although the 18<sup>th</sup> century has been characterized as the era of the 'Bloody Code' there was growing opposition to the death penalty for all but the most serious crimes... By the mid-18<sup>th</sup> century imprisonment, with hard labor, was beginning to be seen as a suitable sanction for petty offenders (Howard League, p. 1).

Imprisonment gained legitimacy as a more civilized form of punishment, but it was mostly a form of labor camp. Those found guilty of small crimes were assigned to hard labor during the day, and at night they were held in a detention ship with appalling living conditions.

While the eighteenth-century reforms set the beginning of a process, it was Jeremy Bentham's design of the 'panopticon' that institutionalized the notion of prison. Early prison designs were poorly constructed, which made it impractical to detain large number of prisoners. The Howard League for Penal Reform explains that in 1791 "Bentham designed the 'panopticon'. This prison design allowed a centrally placed observer to survey all the inmates, as prison wings radiated out from this central position. Bentham's 'panopticon' became the model for prison building for the next half century (Howard League, p. 1). This singular innovation was the first brick laid in regards to mass incarceration, as it allowed the states to imprison on a large scale and became an essential piece to the foundation of many prisons.

Furthermore, the end of Civil War and the victory of the Union created a new demand for labor as slavery was abolished. While on the one hand African Americans were promised freedom from slavery by the Thirteenth Amendment, on the other, through a prison system a new form of bonded labor was instituted. Kim Gilmore argues that the system of slavery, the Thirteenth Amendment, and the penal systems have a symbiotic relationship, responsible for the legitimation of mass incarceration:

Built into the 13th Amendment was state authorization to use prison labor as a bridge between slavery and paid work. Slavery was abolished 'except as a punishment for crime.' This stipulation provided the intellectual and legal mechanisms to enable the state to use 'unfree' labor by leasing prisoners to local businesses and corporations desperate to rebuild the South's infrastructure. During this period, white 'Redeemers' -- white planters, small farmers, and political leaders -- set out to rebuild the pre-emancipation racial order by enacting laws that restricted black access to political representation and by creating Black Codes that, among other things, increased the penalties for crimes such as vagrancy, loitering, and public drunkenness (Gilmore, p. 1).

Although slavery was illegal, southern states empowered by the 13<sup>th</sup> Amendment instituted the Black Codes, which would eventually become the infamous Jim Crow Laws. Black Codes and Jim Crow laws increased the severity of petty crimes, and acts such as loitering or jaywalking resulted in imprisonment. A majority of newly freed African Americans found themselves in prison, and back on the plantations. The criticism from labor unions restricted the use of prison labor to state use system only. Gilmore elucidates:

Labor unions, which had always been skeptical about prison labor, aggressively lobbied against the leasing of convicts to private corporations. Throughout the Depression years, unionists made it clear that an expanded use of prison labor would further imperil an already overfull work force and intervene in "free markets" in ways that threatened the stability of capitalism and laid bare its most excessive failures. Slowly, prisons and jails solved this problem by developing a 'state-use' system in which prison labor was used solely for state projects. This solution

eliminated the competition between convict labor and union labor, while still enabling convicts to offset their cost to the state (Gilmore, p. 1).

By the mid 1900s, the use of convict labor for state projects was well established, and a number of private prisons were instituted to manage the prison population.

The Civil Rights Act dismantled Jim Crow laws but the use of convict labor remained. The War on Drugs policy, enacted in 1971 by President Nixon, supplanted Jim Crow laws with new measures to incarcerate populations for possession of drugs. While the law did not explicitly target communities, the enforcement of the law disproportionately burdened African American communities. Like post-Civil War Black Codes and Jim Crow laws, the War on Drugs was the next platform to repeat the cycle of incarcerating African Americans. However, this time around it was not exclusive to the South but throughout the entire United States.

### **The War on Drugs**

In June of 1971, President Nixon declared War on Drugs, to classify and regulate the use of drugs and other substances. This policy, as Drug Policy Alliance notes, “increased the size and presence of federal drug control agencies, and pushed through measures such as mandatory sentencing and no-knock warrants” (DPA). In 1970, after Nixon’s declared War on Drugs, the Comprehensive Drug Abuse Prevention and Control Act (CDAPC) was enacted to create a list of scheduled drugs. The Act included marijuana in the list of Schedule I drugs, with heroin and LSD. This led to a process of criminalizing marijuana use despite recommendations of a high-level committee to decriminalize the possession and distribution of marijuana for personal use (DPA, p. 1). Marijuana accounts for hundreds of thousands of arrests each year. The listing of marijuana as a Schedule I drug is a clear example of the intention of the federal government to make sure popular drugs carry the most severe penalties.

Although President Nixon instituted the policy, President Reagan expanded the reach of the War on Drugs, leading to “skyrocketing rates of incarceration...The number of people behind bars for nonviolent drug law offenses increased from 50,000 in 1980 to over 400,000 by 1997” (DPA, p. 1). The enactment of the Anti-Drug Abuse Act of 1986 introduced a mandatory minimum sentence punishment for possession and use of controlled substances. Jail sentences varied from 5-10 years based on the drug and amount in possession (PBS, p.1). The idea behind mandatory minimum sentences was to encourage the government to prosecute high-level drug offenders. However, the amounts that triggered a substantial sentence were often lower than those high-level drug trafficking (PBS, p. 1).

This policy spiraled the prison population during the 1980s, and prison beds were filled up for minor offenses. Additionally, laws such as California’s three strikes law amplified the process. In fact,

the law imposed a life sentence for almost any crime, no matter how minor, if the defendant had two prior convictions for crimes defined as serious or violent by the California Penal Code. According to official ballot materials promoting the original Three Strikes law, the sentencing scheme was intended to 'keep murders, rapists, and child molesters behind bars, where they belong.' However, today, more than half of inmates sentenced under the law are serving sentences for nonviolent crimes (Stanford, p. 1).

The three strikes law sentenced people for victimless drug crimes, and in a two-decade span, millions of people have been incarcerated. The data from the Stanford Three Strikes Project shows that more minorities were targeted and charged with small crimes, and these often added up to three total charges, sentencing them to life in prison. Through public pressure, and the passing of Proposition 36, the three strikes law has been struck down. In the first eight months after the enactment of Proposition 36, over 1,000 prisoners were released from custody. Of the inmates released, the recidivism rate stands at less than 2 percent, a number well below state and national averages (Stanford, p. 1).

The law imposed a life sentence for almost any crime, no matter how minor, if the defendant had two prior convictions for crimes defined as serious or violent by the California Penal Code. According to official ballot materials promoting the original three strikes law, the sentencing scheme was intended to 'keep murders, rapists, and child molesters behind bars, where they belong.' However, today, more than half of inmates sentenced under the law are serving sentences for nonviolent crimes (Stanford, p. 1).

The War on Drugs' only purpose is to control and imprison, not protect. Policies that have given support to the War on Drugs are detrimental to society, and only provided a new system of fueling private prisons with inmates in the post-Jim Crow era. The War on Drugs increased federal prison population exponentially, by almost 790-percent, according to the ACLU. Fareed Zakaria explains:

Mass incarceration on a scale almost unexampled in human history is a fundamental fact of our country today,' writes the New Yorker's Adam Gopnik. 'Overall, there are now more people under 'correctional supervision' in America--more than 6 million--than were in the Gulag Archipelago under Stalin at its height...' So something has happened in the past 30 years to push millions of Americans into prison. That something, of course, is the War on Drugs. Drug convictions went from 15 inmates per 100,000 adults in 1980 to 148 in 1996, an almost tenfold increase. More than half of America's federal inmates today are in prison on drug convictions. In 2009 alone, 1.66 million Americans were arrested on drug charges, more than were arrested on assault or larceny charges. And 4 of 5 of those arrests were simply for possession (Zakaria, 2012. p, 1).

Further, as ACLU data shows, a black man "is 3.73 times more likely to be arrested for marijuana possession than a white person is, despite approximately equal rates of drug use." Additionally, NAACP data demonstrates African

Americans constituted “nearly 1 million of the total 2.3 million incarcerated population... incarcerated at nearly six times the rate of whites.” The model of using prison as a means to suppress African Americans is an old algorithm used post-Civil War. The new model may look different and not be discriminatory on the surface, but accomplishes the same goal.

### **The prison industrial complex and mass incarceration**

Incarceration as the method to regulate drug use radically changed the prison culture in our society, institutionalizing a prison industrial complex. Rachel Herzing of Public Research Associates defines the prison industrial complex as “the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to what are, in actuality, economic, social, and political ‘problems’” (Herzing, p. 1). Private prisons are a stark example of this partnership between government and industry. The increase in incarceration rates resulted in a new demand for more facilities, which spurred the growth of private prisons, leading to institutionalization of an entire for-profit supply chain, from building prison infrastructure to providing food for inmates to day-to-day management.

The prison industrial complex has its origin in the Rockefeller drug laws. Brian Mann argues that there is link between the War on Drugs and the Rockefeller drug laws of the 1970s, named after their champion, Gov. Nelson Rockefeller, which put even low-level criminals behind bars for decades. “Those tough-on-crime policies became the new normal across the country” (Mann, 2013, p. 1). The system of addressing possession and use of narcotic drugs through the penal system led to the social acceptance of “get tough on crime” philosophy. It was widely believed that longer prison systems would discourage individuals from using drugs. This social perception legitimized the War on Drugs and the institutionalization of private prisons.

In addition, this process of criminalization of drugs, where “entire groups of people of particular social circumstances... (were) targeted by law enforcement for surveillance, punishment, and control” (Herzing, p. 1), was a tool to subjugate lower class citizens, in particular African Americans. Michelle Alexander, in her path-breaking work *The New Jim Crow*, compares criminalization of drugs with Jim Crow laws. For instance, she argues that systems of segregation such as denial of voting rights present during Jim Crow were perpetuated through the War on Drugs. She argues that “an extraordinary percentage of black men in the United States are legally barred from voting today” due to an unfair criminal justice system that has mass imprisoned and classified an incredible number of African Americans as felons for victimless drug charges (Alexander, 2010, p. 1). “Once you’re labeled a felon, the old forms of discrimination- employment discrimination, housing discrimination, denial of the rights to vote, denial of educational opportunity, denial of food stamps and other public benefits and exclusion from jury service- are suddenly legal... we have not ended racial caste in America; we have merely redesigned it” (Alexander, 2010, p. 2). While the Civil Rights Act aimed to bring in racial equality, it failed to address racial prejudice.

For over two centuries racial biases have been entrenched in law. The country was formed under slavery, when African Americans were considered to

be “three- fifths of a man, not a real, whole human being” (Alexander, 2010, p. 26). Following the abolition of slavery, the suppression of African Americans continued through Jim Crow laws. The Civil Rights Act formally dismantled the Jim Crow system of discrimination in the public sphere- public accommodation, employment, voting, education, and federally financed activities. The Supreme Court in *Heart of Atlanta Motel v. U.S.* (1964) upheld the civic rights of African Americans under the Commerce Clause. Yet, as Alexander argues, the patterns of discrimination continued even after the enactment of the Civil Rights Act. She explains that after the dismantlement of Jim Crow laws,

conservative whites began, once again, to search for a new racial order that would conform to the needs and constraints of time. This process took place with the understanding that whatever the new order would be, it would have to be formally race- neutral- it could not involve explicit or clearly intentional race discrimination. A similar phenomenon had followed slavery and Reconstruction, as white elites struggled to define a new racial order with the understanding that whatever the new order could be, it could not include slavery. Jim Crow eventually replaced slavery, but now it too had died, and it was unclear what might take its place. Barred by law from invoking race explicitly, those committed to racial hierarchy were forced to search for new means of achieving their goals according to the new rules of American Democracy (Alexander, 2010, p. 40).

The War on Drugs provided the new platform to discriminate against African Americans without officially banning their rights through written laws like in the Jim Crow era. Thus, racism did not end but was rather re- embodied through another outlet. The War on Drugs “could finally justify an all-out war on [an] ‘enemy’ that had been racially defined years before” (Alexander, 2010, p.52). The War on Drugs became a chief medium through which private prisons were filled through disproportionate targeting of African Americans. For instance, despite a US Sentencing Commission report that found racial bias in the sentencing of African Americans on crack and cocaine charges, Congress dismissed the review of the process. Additionally, the inability to challenge discriminatory practices in the Court further legitimized the process. “The court has closed the courthouse doors to claims of racial bias at every stage of the criminal justice process, from stops and searches to plea bargaining and sentencing, mass incarceration is now off limits to challenges on the grounds of racial bias” (Alexander, 2010, p. 194).

A good example showing the Supreme Court’s reluctance to address race issues is the landmark case *McCleskey v. Kemp* (1987). In 1978, the petitioner, a black man, was convicted in a Georgia trial court of armed robbery and murder, arising from the killing of a white police officer during the robbery of a store. An all-white jury recommended the death penalty on the murder charge. The trial court followed the recommendation, and the Georgia Supreme Court affirmed. The petitioner sought habeas corpus relief in Federal District Court. His petition included a claim that the Georgia capital sentencing process was administered in

a racially discriminatory manner in violation of the Eighth and Fourteenth Amendments. The statistical data provided by McCleskey showed a bias towards jurors to sentence African Americans to death compared to whites, clearly showing that in the over 2,000 murder cases that occurred in Georgia during the 1970s black defendants who killed white victims had the greatest likelihood of receiving the death penalty (Justia).

However, the Court rejected the petitioner's claims by stating that statistics were insufficient to demonstrate unconstitutional discrimination under the Fourteenth Amendment or to show irrationality, arbitrariness, and capriciousness under the Eighth Amendment. This particularly shows that proving racial discrimination is difficult in the court system, as many times discrimination is not a cause and effect relationship, but rather a correlation based on the question of disproportionate burden.

### **The prison industrial system, surveillance, and racial bias**

The system of filling of prisons through criminalization of drugs has evolved hand in hand with a surveillance system. Since the landmark *Terry v. Ohio* case of 1968, the Court has substantially expanded police power to search and seize, limiting the right to privacy of individuals.

Prior to 1968, "it was generally understood that the police could not stop and search someone without a warrant unless there was a probable cause to believe that the individual was engaged in criminal activity... a basic Fourth Amendment principle" (Alexander, 2010, p. 63). *Terry* expanded the notion of warrantless search to include suspicious behavior as a preventive measure. In this case, which challenged the arrest of three men in front of a jewelry store without probable cause, the Supreme Court affirmed that police officers could interrogate and frisk suspicious individuals without probable cause for an arrest, providing police officers can articulate a reasonable basis for the stop and frisk. When an officer of the law has the ability to confront an individual merely based on whatever he believes constitutes suspicion, it leaves society vulnerable. When the means to justify a warrantless search are endless, it creates a less free society. For instance, the *Terry* rule was used to target African Americans for sporting flat brim hats and hooded sweatshirts. Although the objective of *Terry v. Ohio* was to prevent serious crime, it has implications beyond this case as it radically expanded police authority to investigate crimes where there is a reasonable basis for suspicion (ACLU, p. 1).

*Terry v. Ohio* was the stepping-stone towards a diminished right of privacy and enabled the establishment of a surveillance system. In later cases such as *Whren v. United States* (1996), the Court further limited the privacy rights of individuals against warrantless searches and seizure in the Fourth Amendment by allowing law enforcement the ability to stop a person in a motor vehicle based on pretext. As Professor Alexander claims, the pretext of a "traffic stop (was) motivated not by any desire to enforce traffic laws, but instead motivated by a desire to hunt for drugs in the absence of any evidence of illegal drug activity... pretext stops... have received the Supreme Court's unequivocal blessing" (Alexander, 2010, p. 67).

She explains the greater implication of *Whren* is that diminished rights and mass incarceration gained legal recognition. Alexander notes that in *Whren*, specifically:

Although the officers weren't really interested in the traffic violation, they stopped the pair anyway because they had a 'hunch' they might be drug criminals... according to the officers the driver has a bag of cocaine in his lap... On appeal, *Whren* and *Brown* challenged their convictions on the ground that pretextual stops violate the Fourth Amendment. They argued that because of the multitude of applicable traffic and equipment regulations, and difficulty of obeying all traffic rules perfectly at all times, the police will nearly always have an excuse to stop someone ..... Allowing the police to use minor traffic violations as a pretext for baseless drug investigations would permit them to single out anyone for drug investigation without any evidence... that kind of arbitrary police conduct is precisely what the Fourth Amendment was intended to prohibit. The Supreme Court rejected their argument (Alexander, 2010, pp. 67-68).

Together *Terry v. Ohio* and *Whren v. United States* paved the path of warrantless searches that led to increase in police surveillance and mass incarceration. With no privacy from searches on foot or in a vehicle, and "with no requirement that any evidence of drug activity actually be present before launching a drug investigation police officers... judgment... would be influenced by... racial stereotypes" (Alexander, 2010, p.108). Together, the War on Drugs and expanded police power to stop and frisk built a perfect machine to mass target and incarcerate. Law enforcement stopped individuals based on previous bias or profiling and justified that action through various pathways like a routine traffic stop.

Additionally, *Illinois v. Caballes* (2005) shows the extent to which the surveillance power of police has been expanded. In this case, Roy Caballes was stopped for speeding by a state trooper in Illinois. During the stop, the trooper noticed an Atlas, an air freshener, and some suits in the car. He asked Caballes for permission to search the car and was denied. A second trooper arrived at the scene with a drug-sniffing dog. While walking around the car, the dog alerted the trooper to the presence of drugs. The first trooper searched the car and found marijuana in the trunk. Caballes was arrested, tried, and convicted of a narcotics offense. The Illinois Supreme Court reversed the trial court's decision, arguing that use of the dog "unjustifiably enlarge[ed] the scope of a routine traffic stop into a drug investigation." The state of Illinois appealed to the U.S. Supreme Court... [which found] a dog sniff conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has any right to possess does not violate the Fourth Amendment (ABA, p. 1).

The jurisprudence on search and seizure clearly demonstrates a shift in law from protection of constitutional rights to privacy to legitimizing surveillance through stop and frisk as a justified means to conduct a search. *Terry* and *Whren* chipped away at the Fourth Amendment's protection from warrantless search

and seizure, which is inherently a right to privacy. Furthermore, in the 2002 case *Lockyer v. Andrade* the Court upheld the constitutionality of mandatory sentencing laws. In *Lockyer v. Andrade*, the jury found Andrade guilty and then found that he had three prior convictions that qualified as serious or violent felonies under the three strikes regime. Because each of his petty theft convictions triggered a separate application of the three strikes law, the judge sentenced him to two consecutive terms of 25 years to life.

Andrade appealed his conviction, which was overturned by the Ninth Circuit. The Supreme Court found that the Ninth Circuit was incorrect and Andrade's double life sentence was not in violation of the Eighth Amendment's cruel or unusual clause. The Supreme Court could have dismantled California's three strike law. Many would argue that two 25 years to life sentences for petty theft seems quite cruel and unusual. Upholding mandatory sentencing laws as constitutional has also added to mass incarceration. Alexander explains that "mandatory sentencing laws are frequently justified as necessary to keep 'violent criminals' off the streets, yet those penalties are imposed most often against drug offenders and those who are guilty of nonviolent crime" (Alexander, 2010, p. 91). Although Andrade did not commit a drug crime, the decision to uphold mandatory sentencing laws has allowed the incarceration of individuals to long sentences for drug and non-drug related offenses.

The most recent case that comments on the Fourth Amendment is *Rodriguez v. United States*, decided on April 21st, 2015. It reversed the precedent that was set in the case discussed above, *Illinois v. Caballes*. In *Caballes*, the court legalized the use of drug-sniffing dogs for routine traffic stops. Justice Ginsburg delivered the majority opinion:

This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation.

Ginsburg's explanation is vintage Fourth Amendment protection of privacy against illegal search and seizure. Because waiting for a drug-sniffing dog surpasses the usual time for a routine police stop, it falls under the unreasonable clause of the Fourth Amendment. This decision is the first in decades to put some sort of limit on police and unreasonable searches, but there are still some questions that are left unanswered. How long is too long in regards to what's considered a reasonable time limit on a traffic stop? Regardless of the time restraint, *Rodriguez* can be viewed as a win towards resurrecting the power of the Fourth Amendment and it will remain to be seen how the Court rules from this point forward.

Since the beginning of the War on Drugs, the Court has dwindled the Fourth Amendment to coincide with an over empowering police force. As the Fourth Amendment protection from illegal search and seizure dwindled, it allowed for

more arrests to be made as the Court legitimized policies that condone no knock warrants. The diminished right has opened the door for police officers to invade people's property, whether that is in a vehicle or somebody's backpack on the street, with the aim to find drugs to make an arrest. This transgression has opened the door to mass incarceration.

Further, the pattern of arrests in stop and frisk cases also demonstrates that police arrests are led by profiling of individuals based on race and ethnicity. NYPD's stop and frisk policy is a case in point about expansive surveillance power of police and racial bias. The policy, modeled after Wilson and Kelling's broken windows theory on redirecting policing to address disorder in society as a preventive measure, targeted African Americans and Latinos. The NYPD's own reports on its stop-and-frisk activity confirm what many people in communities of color across the city have long known: the police are stopping hundreds of thousands of law abiding New Yorkers every year, and the vast majority are black and Latino (NYCLU, p. 1). The NYCLU report found that "from 2002 to 2011 black and Latino residents made up close to 90 percent of people stopped, and about 88 percent of stops – more than 3.8 million – were of innocent New Yorkers. Even in neighborhoods that are predominantly white, black and Latino New Yorkers face the disproportionate brunt" (NYCLU, p. 1).

You tube videos posted by anonymous bystanders and victims' stories corroborate the data on NYPS's unconstitutional practices. In a letter to the New York Times, titled "Why Is the N.Y.P.D. After Me?," Nicholas K. Peart, a victim of stop and frisk procedures, recalled his experience: "When I was 14, my mother told me not to panic if a police officer stopped me. And she cautioned me to carry ID and never run away from the police or I could be shot. In the nine years since my mother gave me this advice, I have had numerous occasions to consider her wisdom" (Peart, 2011, p. 1). In his letter, Peart included an instance of how a police officer pulled a gun on him, on his 18th birthday at 96th Street and Amsterdam Avenue in Manhattan, even as he was just sitting on a chair by the street. He writes that the experiences

changed the way I felt about the police. After the third incident I worried when police cars drove by; I was afraid I would be stopped and searched or that something worse would happen. I dress better if I go downtown. I don't hang out with friends outside my neighborhood in Harlem as much as I used to. Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer's gun at my head. For a black man in his 20s like me, it's just a fact of life in New York (Peart, 2011, p. 1).

The role of the police is to protect and deter crime. When the police instead instill a sense of fear into African American people, they are accomplishing the same agenda as the Jim Crow laws of the South did generations ago.

Mass incarceration and surveillance policing promoted through the War on Drugs and the prison industrial complex have many impacts on society as well. Institutionally, they militarized the police and justified excessive use of

force. Although done in the name of security, as public protests of the last two years show, this has resulted in an erosion of trust in society. Communities, especially minorities, are fearful of the police. Socially, the arrests have collateral effect on family structure. Many families are broken apart due to the economic, social and moral burden of incarceration. Young children are especially vulnerable when a parent or sibling is incarcerated. Child Trends, a nonprofit, nonpartisan organization talks about the ill impacts of mass incarceration on children's mental health. Their study shows that about 1.5 million minor children have a parent (mostly fathers) incarcerated in state or federal prison in the United States, and there is significant variation along racial and ethnic lines:

One in every 15 African American children has a parent in prison, compared with 1 in every 42 Hispanic children and 1 in every 111 white children. But *all* of these children are more likely than their peers to exhibit academic difficulties, emotional problems, and antisocial behavior. In fact, it seems that incarceration, by itself, places children and families at increased risk—above and beyond the influence of parental mental health, educational, and employment issues—for a number of negative outcomes including family instability, poverty, and aggressive behavior. Examination of national data on children of unmarried couples in urban settings has revealed that, compared with other similarly-vulnerable children, those who have experienced parental incarceration are 40 percent more likely to have an unemployed father; 32 percent more likely to have parents living separately; 25 percent more likely to experience material hardship; and 44 percent more likely to exhibit aggressive behavior (Child Trends, 2013, p. 1).

Mass incarceration has had discernible impacts in poor and minority communities who have been disproportionately impacted by drug enforcement strategies (Stevenson, 2011). The negative impacts include felon disenfranchisement laws, displaced children and dependents, increased rates of chronic unemployment, destabilization of families and increased risk of re-incarceration for the formerly incarcerated (Stevenson, 2011, p. 1).

Even more disturbing is that politicians and the general public do not perceive “how high incarceration rates in poor communities of color tear apart the very social relationships that offer the best opportunity to nurture the well-being of our children and ultimately the common good of society. The effects of incarceration for an individual are well documented. These include: earning less money over the course of a lifetime (by age 48, the typical former inmate has earned \$179,000 less than if he had never been incarcerated), finding it harder to stay employed, being less likely to become married, and highly likely to suffer a wide range of medical and psychological problems. ... And for mothers who raise a child of an incarcerated father, they face multiple challenges, including, but not limited to, disruptions in parenting, inability to supervise children adequately, loss of role models, and need for public welfare supports that are increasingly difficult to gain” (Mikulich, 2010, p. 1).

The disruption of social relationships due to the War on Drugs has left inner cities in dismay. The ghetto is now transformed into a super ghetto with all avenues of society decimated. When a system is set into place that continues to deteriorate poor ghetto areas, there is no room for class/social mobility, the very basis of our capitalist economic system. Sarah Shannon and Christopher Uggen argue that incarceration is responsible for the deterioration of ghettos. Citing the work of Wacquant (2001), they note that “the extreme racial disparities in prison populations demonstrate that mass imprisonment is the fourth in a series of social institutions, starting with slavery, designed to control African Americans as a subordinate caste. ... Prior to the 1970s, policy makers attempted to ameliorate poverty and racial inequality through social welfare policies. Wacquant argues that neoliberal economic changes and the dwindling social safety net of welfare programs since that time has led to the ‘hyper-incarceration’ of blacks as a means of managing and obscuring these disparities” (Shannon and Uggen, p. 1).

From the New Deal up until the War on Drugs, social welfare had been the focus of the federal government. This philosophy brought the United States out of the Great Depression. President Roosevelt increased the federal government with the development of welfare programs like the Food Stamp Plan and The Resettlement Administration. These programs were set into place to help those in extreme poverty overcome their situation. Today, it is not the agenda of the federal government to help poverty stricken groups overcome their situation. Policies implemented through the War on Drugs look to target and imprison rather than address structural issues such as poverty. Roosevelt’s New Deal ideology is no longer the driving force of the federal government but instead there is a new system that profits from incarceration.

Studies show that imprisonment has a cyclical effect on individuals and do not lower drug use. Cassia Spohn and David Holleran, for example, discovered that there is “no evidence that imprisonment reduces the likelihood of recidivism. Instead, we find compelling evidence that offenders who are sentenced to prison have higher rates of recidivism and recidivate more quickly... We also find persuasive evidence that imprisonment has a more pronounced criminogenic effect on drug offenders than on other types of offenders (Spohn and Holleran, 2002, p. 1).

Tough on crime policies have not positively benefited society but in fact created social upheaval, as “in schools and the workplace, the language of crime and punishment is used as a tool to interpret and address non-crime problems, a practice Simon (2007) calls ‘governing through crime.’ Common in these analyses is that change in penal policy is driven by political strategy, not by an actual increase in crime” (Shannon and Uggen, p. 1). At a larger level, the War on Drugs and mass incarceration have legitimized a crime focused, punitive culture in society.

The War on Drugs’ incarceration effects have validated the prison industrial complex and implicit racism in policing practices. It’s one thing to say drugs are bad morally, socially, and politically. However, to take the next step and codify law that makes it okay to target and imprison an entire race amounted to a new Jim Crow era. The policy has denied entire communities the right to exercise their political rights and live safe and secure lives in the absence of fear

of violence. Individual freedom, the bedrock of our democratic values, does not extend to African Americans in the same way as it does to others. The promises of the Civil Rights Act can only be fulfilled by addressing the injustices of our criminal justice system, more particularly the prison industrial complex supported through the War on Drugs.

*References:*

Barnes, Harry Elmer. (1921). Historical Origin of the Prison System in America. *Journal of Criminal Law and Criminology*, 12(1), pp.35-60.

Bergner, Daniel. (2014). Is Stop-and-Frisk Worth It? *The Atlantic*. April 1st.

Center for Evidence- Based Crime Policy. (n.d.) Broken Windows Policing. George Mason University. Retrieved from: <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/>

Child Trends. (2013). Parents in Prison: Why Keeping Low- Level Drug Offenders in Prison Hurts Kids, and What the Justice Department Is Doing to Help. *Child Trends*, August 22.

National Association for the Advancement of Colored People. (n.d.). Criminal Justice Fact Sheet. Retrieved from: <http://www.naacp.org/criminal-justice-fact-sheet/>

Day, Dorothy. (1956). *The Catholic Worker*. November 2.

Drug Enforcement Agency. (n.d.). Drug Schedules. Retrieved from: <https://www.dea.gov/druginfo/ds.shtml>

Drug Policy Alliance. (2014). A Brief History of the Drug War. *Drug Policy Alliance*. Retrieved from: <http://www.drugpolicy.org/facts/new-solutions-drug-policy/brief-history-drug-war-o>

Gilmore, Kimberly. (n.d.). Slavery and Prison - Understanding the Connections. *History Is a Weapon*. Retrieved from: <http://www.historyisaweapon.com/defcon1/gilmoreprisonslavery.html>

Herzing, Rachel. (n.d.). What is the Prison Industrial Complex? *Political Research Associates*. Retrieved from: [http://www.publiceye.org/defendingjustice/overview/herzing\\_pic.html](http://www.publiceye.org/defendingjustice/overview/herzing_pic.html)

The Howard League for Penal Reform. (n.d.). History of the Prison System. Retrieved from: <http://howardleague.org/history-of-the-penal-system/>

Klejment, Anne. (1986). *Dorothy Day and the Catholic Worker: a bibliography and index*. New York: Garland.

Mikulich, Alex. (2010). IT'S CRIMINAL! The Consequences of Mass Incarceration without Social Justice. Loyola University, New Orleans. December 1. <http://www.loyno.edu/jsri/its-criminal-consequences-mass-incarceration-without-social-justice>

N.P.R. (2013). The Drug Laws That Changed How We Punish. National Public Radio. February 14.

Peart, Nicholas. (2011). Why Is the N.Y.P.D. After Me? *The New York Times*. December 17.

Shannon, Sarah and Christopher Uggen. (n.d.). Incarceration as a Political Institution. University of Minnesota. Retrieved from: [http://users.cla.umn.edu/~uggen/Shannon\\_Uggen\\_BW\\_10.pdf](http://users.cla.umn.edu/~uggen/Shannon_Uggen_BW_10.pdf)

Spohn, Cassia and David Holleran. (2002). The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders. *Criminology*, 40(2), pp. 329-358.

Stevenson, Bryan. (2011). Drug Policy, Criminal Justice, and Mass Imprisonment. Global Commission on Drug Policy. Retrieved from: [http://www.globalcommissionondrugs.org/wp-content/themes/gcdp\\_v1/pdf/Global\\_Com\\_Bryan\\_Stevenson.pdf](http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Com_Bryan_Stevenson.pdf)

Sterling, Eric. (n.d.). How Did It Come About that Mandatory Minimum Sentences for Drug Offenses Were Passed in 1986? *Public Broadcast Station*. Retrieved from: <http://www.pbs.org/wgbh/pages/frontline/shows/snitch/primer/>

New York Civil Liberty Union. (n.d.). Stop-and-Frisk Campaign: About the Issue. Retrieved from: <https://www.nyclu.org/en/issues/racial-justice/stop-and-frisk-practices>

PBS. Frontline. (n.d.). Thirty Years of America's Drug War: A Chronology.

Stanford Law School. Justice Advocacy Project. (n.d.). Three Strikes Basics. Retrieved from: <https://law.stanford.edu/stanford-justice-advocacy-project/three-strikes-basics/>

Zakaria, Fareed. (2012). Incarceration Nation. *Time Magazine*. April 2.