Introduction and Chapter One: Two Americas Hiding in Plain Sight

Many people readily understand how slavery and the ensuing period of Jim Crow held African American people down.

A few also understand that these racialized structures held everyone down, save for our upper crust.

More are also learning how Reconstruction after the Civil War contained a democratic promise for all, until its defeat by terror.

From the 1950s through the 1960s, many took part in the 2nd Reconstruction, winning voting rights and other civil rights, leading to the election of Obama.

But many Blacks are still held down, along with the rest of us. Why? Do we need a 3rd Reconstruction? This is what this book is all about.

‘Vagrant’ as the 2nd phase of racial caste: Jim Crow

- Under slavery, ‘caste’ was designated by skin color and a bill of sale.
- The 13th Amendment was passed early in 1865, abolishing slavery.
- The first draft, submitted by the Radical Republicans, stated: ‘All persons are equal before the law, so that no person can hold another as a slave; and the Congress shall have power to make all laws necessary and proper to carry this declaration into effect everywhere in the United States.’
- What passed, however, was different: ‘Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.’
- Thus ‘criminal conviction’ became the loophole allowed caste and servitude to re-emerge.

Top: Black men convicted as ‘vagrants’ at forced labor.
Below: White Southern poster backing Andrew Johnson vs GOP Congress
The ‘color line’ was drawn in every aspect of life—schools, housing, hotels, trains, restaurants.

Segregated rail cars were challenged in 1898 in the ‘Plessy vs Ferguson’ ruling by the Supreme Court. It declared for segregation that was ‘separate but equal.’

It was rarely ‘equal.’ One reason is that Blacks were kept from juries, since they weren’t on the voter rolls.

In addition to legal penalties for breaking ‘Jim Crow’ laws, there were extra-legal lynchings in keep Blacks ‘in their place.’

Together with 'convict labor', all these were designed to keep African Americans in a state of ‘slavery by another name.’
**2nd Reconstruction: From Civil Rights to the Black Revolt**

- WW2 and the sacrifices it demanded spurred opposition to ‘Fascism Abroad, Jim Crow at home,’ the Double V campaign.

- During the 1940s and early 1950s, several mass campaigns were organized in the South against the rape of Black women by white gangs and police. The Recy Taylor campaign, a major one, was organized by Rosa Parks.

- When the bus boycott and voter registration campaigns took off after the Supreme Court ‘Brown’ decision, many of these women-based groups served as the initial backbone.
Old Jim Crow Retreats in the face of the Black Revolt

- Police brutality events spark 1960s ‘hot summer’ riots.
- Murder of Dr. King sees rebellions in 180 cities, with army and national guard called out.
- FBI orders repression and assassinations in the Black Party Party.
- ‘Black Power’ begins to gain more political offices in major cities
‘Papachristou v. City of Jacksonville’
Vagrancy Laws Finally Overturned in 1972

- ‘Those generally implicated by the imprecise terms of the ordinance -- poor people, nonconformists, dissenters, idlers -- may be required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts.

- ‘Where, as here, there are no standards governing the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law.

- ‘It furnishes a convenient tool for "harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure."...

- ‘It results in a regime in which the poor and the unpopular are permitted to "stand on a public sidewalk... only at the whim of any police officer."

Above: Dr. King being arrested for ‘loitering’, part of the vagrancy laws. Below: Breakdancing in the street in the 1970s—harassment now lightens up a bit.
Backlash: ‘Law and Order’ and the start of the New Jim Crow

- In the 1968 campaign, both Wallace and Nixon drew anti-civil rights whites out of the Democratic Party, especially in the South.
- This realignment gave the GOP an opening to become the majority party, via ‘the Southern Strategy’
- Unlike Wallace, Nixon and future GOP candidates would use ‘code words’ and ‘dogwhistles’ to make racist appeals.
- ‘Law and order,’ crimes, welfare cheats, the need to cut ‘entitlements, and drugs were only a few.
The ‘War on Drugs’ opens the next door to the New Jim Crow

- Interview with John Ehrlichman:
  - "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying?
  - "We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities.
  - "We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news.
  - "Did we know we were lying about the drugs? Of course we did."
Chapter 2, The Lockdown: Reagan intensifies the war

- Along with Nancy Reagan’s ‘Just Say No’ media campaign, Reagan increased required minimum sentencing, turning many minor offenses into felonies.
- In 1986, Reagan passed more mandatory minimum provisions, and increase the penalty for crack cocaine over powder cocaine by 100 to 1
- Crack and powder are simply the same substance, but crack is more used by Blacks and powder by middle class whites.
The Huge Scope of the War on Drugs

- 31 million have been arrested for drug offences since it began.

- About 500,000 are in jail today for drug offenses, as opposed to 41,100 in 1980—an increase of 1100%

- Most drug arrests are for nonviolent crimes, and 80% are for marijuana

- By the end of 2007, more than 7 million drug offenders are behind bars, on probation or on parole. That’s one out one every 31 adults,
The War on Drugs vs. the Bill of Rights

- 4th Amendment: ‘The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.’

- ‘Terry v. Ohio’ in 1968 made ‘stop and frisk’ not in violation of the 4th Amendment, so long as it was ‘reasonable’ for self-protection and not solely a search for evidence.

- ‘Florida v. Bostick’ in 1991 ruled that even though a man was in the back of a bus and blocked by several police, he was ‘free to leave’ and thus implied ‘consent’ to have his baggage searched.
‘Operation Pipeline’
Driving While Black or Brown

- In 1986, a racially biased drug courier profile was introduced to the highway patrol by the DEA, ‘Operation Pipeline’.
- The highway drug interdiction program which has, to date, trained approximately 27,000 police officers in 48 participating states to use ‘pretext stops’ in order to find drugs in vehicles.
- The techniques taught and widely encouraged by the DEA have implicitly (if not explicitly) encouraged the targeting of minority motorists.
- The traffic codes are so detailed that it is practically impossible for a normal, sober and thoughtful person to drive more than a few blocks without making some technical violation.
- When stopped for any suspected traffic violation, ‘Ohio v. Robinette’ ruled that when the police complete making a citation, they are not required to tell you that ‘you are free to go.’ They can then ask you other unrelated questions to get you to allow a search, and anything found in that search is admissible, even something in the purse of a passenger.

**Population stopped**

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<th>White</th>
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Blacks were over 3.5 times as likely as whites to be stopped.

**Reason for stop**

- 68% of whites and 58% of blacks were stopped for a moving violation; the majority of blacks for an equipment or license problem.
- 43% of whites and 32% of blacks were stopped for equipment and license problems.
- 7% of blacks were also more likely to be stopped for investigative reasons.
Why Racial Profiling Matters

- The pervasiveness of racial profiling by the police in the enforcement of our nation's drug laws is the consequence of the escalating the so-called war on drugs.

-Drug use and drug selling are not confined to racial and ethnic minorities in the U.S.; indeed five times as many whites use drugs.

-But the war on drugs has, since its earliest days, targeted people of color. The fact that skin color has now become a proxy for criminality is an inevitable outcome of this process.

-'The Common Characteristics of Drug Couriers,' 1985 Florida guidelines cautioned troopers to be suspicious of rental cars, "scrupulous obedience to traffic laws," and drivers wearing "lots of gold," or who do not "fit the vehicle," and "ethnic groups associated with the drug trade." Traffic stops were initiated by the state troopers using this overtly race-based profile.

"I did a lot of stupid stuff when I was young," the President said to inmates, "but I was just in an environment where you could afford to make some mistakes. I had more of a margin of error than a lot of kids do, particularly if they're in a low-income community that is surrounded by a lot of drug activity."
Why Bother Giving Top Priority to Drug Arrests?  
It’s Not like More Serious Violent Crime Has Faded Away

- Remember that the War on Drugs was started for POLITICAL reasons, to help the GOP win elections by shifting Wallace-voting whites into their ranks.

- Many police Departments initially saw it as a distraction from more important tasks.

- So how to give an inventive to make the shift?

- We begin with ‘Asset Forfeiture.’ The property of drug dealers, guilty or not, can be seized and used to enrich police departments. Courts then make it easier.

- In ‘United States v. $124,700 in U.S. Currency’, a driver was arrested for speeding. He was asked if drugs were in the car’ No, he said, and agreed to a search. $124,700 was found bundled in batches in a cooler, and was seized. The lower court opposed the seizure, but a higher court reversed.
Add Military Equipment and Training at Low or No Cost

- The ‘Military Cooperation with Civilian Law Enforcement Agencies Act’ is a United States federal law enacted in 1981 that allows the military of the United States to cooperate with its law enforcement agencies.

- Operations include assistance in counterdrug operations, assistance for civil disturbances, special security operations, combatting terrorism, explosive ordnance disposal (EOD), and similar activities.

- The legislation was promoted during the Presidency of Ronald Reagan in the context of the War on Drugs, and is considered a part of a general trend towards the militarization of police.

- The federal Posse Comitatus Act of 1878 forbids the U.S. military from conducting domestic law enforcement activities, embodying "the traditional American principle of separating civilian and military authority." There have been exceptions made, however: in 1981, Congress enacted legislation allowing military involvement in drug interdiction at U.S. borders. In the late 1990s, following the Oklahoma City bombing, there were proposals to further limit the act to allow military participation in law enforcement activities in chemical/biological weapon and terrorism cases.
Reshaping Our Courts:
If arrested, you will face a jury of your peers? Not likely.

- The overwhelming majority of criminal cases never reach trial. The prosecution may dismiss charges, perhaps because of a lack of evidence.
- Sometimes prosecutors decide not to refile charges after a felony defendant prevails at the preliminary hearing. And some defendants escape conviction through pretrial motions, like a motion to suppress evidence.
- But most cases end with a plea bargain. A 2012 New York Times article reported that 97% of federal cases and 94% of state cases end via plea bargain.
- When charges are serious, prosecutors can still bluff defense attorneys and their clients into pleading guilty to a lesser offense.
- As a result, people who might have been acquitted because of lack of evidence, but also who are in fact truly innocent, will often plead guilty to the charge. Why? In a word, fear.
- And the more numerous and serious the charges, studies have shown, the greater the fear. That explains why prosecutors sometimes seem to file every charge imaginable against defendants.
Felony: The Trap in the Plea Deal

- A person who has committed a felony is a felon, and upon conviction of a felony in a court of law a person is known as a convicted felon or a convict.

- In the US, where the felony/misdemeanor distinction is still widely applied, the feds define a felony as a crime punishable by death or imprisonment in excess of one year. Nearly all states are the same.

- If punishable by exactly one year or less, it is classified as a misdemeanor. The actual prison sentence handed out has no effect on this; the classification is based on the maximum sentence possible under law. You can agree to probation, and still be a felon.

- The manufacture, sale, distribution, or possession with intent to distribute of certain types and/or quantities of illegal drugs is a felony. In a few states, mere possession for person use is also a felony.
Chapter 3: How does a ‘colorblind’ criminal justice system produce racialized results?

‘McCleskey v. Kemp’ was a far-reaching 1987 Supreme Court decision. Warren McCleskey, a Black man, was convicted of robbery and the murder of a white police officer in Georgia, and sentenced to death.

His defense against the death penalty produced a deep and comprehensive scientific study revealing racial bias when the victim was white.

Defendants charged with killing white victims were 4.3 times as likely to receive a death sentence than defendants charged with killing blacks.

The Court said that even if the statistical data were accepted at face value, the defense failed to show evidence of conscious, deliberate bias by law officials associated with the particular case, and it dismissed evidence of general disparities.

Evidence of conscious intentional bias is almost impossible to come by in the absence of some kind of admission by police or other witness. Catch 22.
Edward Clary was arrested for possession with intent to distribute 67.76 grams of cocaine base, i.e., ‘Crack’. Clary pled guilty to possession with intent to distribute the drug, punishable by a mandatory minimum sentence of 10 years imprisonment.

Prior to sentencing, Clary, a black male with no previous record, filed a motion challenging the constitutionality of the crack statute and contended, inter alia, that the sentence enhancement provisions contained in it violated his equal protection rights guaranteed by the Fifth Amendment.

The District Court in St Louis agreed with Clary, and overturned his sentence.

The prosecutor appealed to the 8th District Court, which rejected Clary. It held that only ‘proof of a conscious or intentional discriminatory purpose’ on the part of Congress would be valid, i.e., the lawmakers would have stated or written that their aim was to punish Blacks unduly.
Chapters 4 & 5: How ‘Felon’ and Indifference Shape a New ‘Undercaste’

- ‘Felon’ is the new brand for caste, taking over from ‘vagrant’ or ‘colored’. Felons are the group everyone is allowed to openly dislike and treat as 2nd class.

- About 20 million people have a felony conviction in the US today. That works out to about 1 in 12 adult Americans.

- About 25% of the total US adult Black population has a felony, while 6.5% of adult non-blacks have a felony conviction—nearly four times as many.

- A record 6.1 million Americans are forbidden to vote because of felony disenfranchisement, or laws restricting voting rights for those convicted of felony-level crimes, rising from an estimated 1.17 million in 1976 to 6.1 million today.

When Do Felons Get Their Voting Rights Back?

*Source: The Sentencing Project*
It’s Not Just Voting. 
Felon Status Is the New Segregation

- Exclusion from obtaining certain licenses, such as a visa, or professional licenses, such as barber or hairdresser, required to legally operate (making some vocations off-limits to felons)
- Exclusion from purchase and possession of firearms, ammunition, and body armor.
- Ineligibility for government assistance or welfare, including being barred from federally funded housing.
- Many job applications and rental applications ask about felony history and answering dishonestly on them can be grounds for rejecting the application, or termination if the lie is discovered after hire.
- Most bonding companies do not issue bonds to felons, which effectively bars them from certain jobs. Additionally, most landlords do not rent to felons due to the risk of legal liability if the renter commits another crime.
- It is legal to discriminate against felons. A common term of parole is to avoid associating with other felons. In some neighborhoods with high rates of felony conviction, this creates a situation where many felons live with a constant threat of being arrested for violating parole.
- Many banks refuse service to felons.
Is ‘Gangsta Love’ the New ‘Black is Beautiful’ Solidarity? Or the New Minstrel Show? Or None of These?

- Oppression always gives rise to a culture of resistance marked by its conditions.

- ‘Thug Culture,’ writes Orlando Patterson, ‘is simply the black urban version of one of America’s most iconic traditions: the Wild West.

- ‘America’s first gangsta thugs were Billy the Kid and Jesse James. In the youth thug cultures of both the Wild West and the inner cities, America sees inverted images of its own most iconic values, one through rose-tinted glass, the other through a glass, darkly.’

- Thug Culture, he continues, ‘is a ghetto brand of core American mainstream values: hypermasculinity, the aggressive assertion and defense of respect, extreme individualism, materialism and a reverence for the gun.’

- On the other hand: “I grew up as looking for somebody to love me in the streets. You know, my mother was always working, my father used to be doing his thing. So I was by myself. I’m here looking for some love. I ain’t got nobody to give me love, so I went to the streets to find love.”

Spike Lee did several films—Mo Better Blues, Tales from the Hood—taking on ‘thug life’ in video as modern-day Minstrel, exaggerations turning on Blacks. Left: Tupac Shakur.
Whites as ‘collateral damage’ in the War on Drugs

- A substantial minority of whites are also victims of the drug wars, even if their prison experiences and sentences are relatively lighter.
- The author, however, makes a broader point: American society on the outside shifts to preferring ‘order’ over ‘justice.’
- The prevailing ‘order,’ then, uses the new undercaste as a weight to hold everyone down and hold back progress for all.
- The ‘white-skin privilege’ is simply inequality viewed from the bottom up, and no more in the class interest of any worker than the worm on a hook is in the interest of the fish.

Who Is My Neighbor? Us, Them and ‘The Other’

- The practice of ‘Othering’ was the prevalent cultural perspective of the European imperial powers, which was supported by the fabrications of scientific racism, such as the pseudo-intellectual belief that the size of the cranium of the non-European Other was indicative of the inferior intelligence of the colored peoples designated as the non-white Other.

- In 1951, the United Nations officially declared that the differences among the races were insignificant in relation to the anthropological sameness among the peoples who are the human race.

- Despite the facts, in the U.S., the artificial distinctions against ‘the Other’ remain, especially in government forms that ask a U.S. citizen to identify and place him or herself into a racial category, as in the questionnaires of the census bureau.

- In practice of ‘Othering,’ immigrants and refugees endure the experience of socio-political reductionism with the artifice of racial classification, as implied in the terms such as "illegal immigrant" (from overseas) and "illegal alien" (for Mexicans) in the U.S.

Are prisoners bad people? Or people who have done bad thing at certain times in their life? The first is ‘othering. The second is humane.

Parable of the Good Samaritan
The 3rd Reconstruction Today:
Combat Mass Incarceration and End the War on Drugs

- Work to dismantle the prison-industrial complex—take the money out of it. Reduce prison populations, rather than build new prisons.
- Advise arrestees what the full meaning of pleading to a felony means for their entire life.
- Get rid of mandatory sentencing, leave leeway to judges and juries.
- Reduce or abolish bail requirements for nonviolent crimes,
- Decriminalize most drugs, spend more on public health and treatment.
- Help released inmates with housing, jobs, mail, phones and bank accounts.
Critical Review: Is Anything Missing from ‘The New Jim Crow’?

Michelle Alexander gets high praise for what she says, but also tough criticism for what she doesn’t say.

Joseph Osel is a critical theorist who studied Society, Politics, Behavior & Change at The Evergreen State College and Existential-Phenomenology at Seattle University. He says:

‘According to Alexander’s history, there is no Malcolm X or George Jackson, no Frantz Fanon, no Richard Wright, no Eldridge Cleaver, no Angela Davis, no Huey P.Newton, no Bobby Seale...

‘No Black Panther Party, no Black Power Movement, no self-determination, no prison struggles, no political prisoners. Suspiciously ...

‘Almost no 1960’s, no 1970’s, no Black History, no Black Criticism, no Black Radicalism, no radicalism, no class struggle.’
Even if the Critics Are Right—Prisons are an instrument of Class Rule—There Are Still Changes to Be Won

- We just have a clearer idea of what we’re up against.

- The ‘prison industrial complex’, ie all the suppliers of prison goods and services, amounting to $25,000 a year per inmate, their profits are secondary.

- Prisons mainly serve a political end, the imposition of ‘law and order.’

- Most of the time, the infractions are individual and thus minor. But at times of social insurgency, their political character stands out.

- Eugene Debs in 1918 was arrested for an antiwar speech and sentenced to a term of 10 years. President Harding commuted his sentence in 1921.

Above: Arrested strikers taken to prison

While there is a lower class, I am in it, while there is a criminal element, I am of it, and while there is a soul in prison, I am not free.
- Eugene V. Debs
Where to Start? Anywhere, but what does an ex-offender need most?

- A state ID and/or drivers license.
- A cell phone with voice mail.
- A postal box with a street address.
- A bank account for depositing and cashing paychecks.
- Food stamps for a year (Some states deny them to drug offenders).
- Ability to obtain licenses for barbering or hairdressing, etc.
- Removal of ‘the box’ from public jobs applications.
- Housing in neighborhoods low in gang activity.
- Medicaid Card.
Where Else? Break up the ‘School-to-Prison’ pipeline

- What is it? Exclusionary disciplinary policies, specifically zero tolerance policies, that remove students from the school environment.
- This increases the probability of a youth, dumped on the street, coming into contact with the incarceration system.
- Approximately 3.3 million suspensions and over 100,000 expulsions occur each year. This number has nearly doubled since 1974.
- Rates escalating in the mid 1990s as zero tolerance policies began to be widely adopted. Rising rates of the use of expulsion and suspension are not connected to higher rates of misbehaviors.
What else? Change the Drug Laws

- There is evidence that many illicit drugs pose comparatively fewer health dangers than certain legal drugs.
- The health risks of MDMA (Ecstasy) have been exaggerated, and the risks from cannabis use also overstated.
- Health problems from the use of legal substances, particularly alcohol and tobacco, are greater, even than from cocaine use.
- Many trials have shown beneficial effects associated with psychoactive drug use, such as LSD. MDMA could also replace heroin.

Prop 64 ✓
Marijuana will be legal for recreational use in California.
What Else? Restore Justice to the Courts

- Problem: Millions of people who are currently employed by law enforcement or in prisons would be forced to find new jobs. Prisons would have to close down in rural areas that have become dependent on prisons as their economic base.

- Prevent cities from bankrolling their budgets on things like traffic tickets and court fines.

- Bar the imposition of financial conditions for pretrial release for most misdemeanors.

- Stop condemning defendants to years, decades, or even life in prison for relatively minor crimes, handing down sentences that serve no public safety purpose.

- Ensure adequate resources for public defenders offices. Allow for a public defender in ALL cases.

Left: Khalief Browder, arrested for stealing a backpack. Held 3 years at Rikers without trial, mostly in solitary. Committed suicide shortly after his release.

Right: Ronald Elston, life sentenced, free after 33 years for nonviolent robbery.
Conclusion: Progressive Change Must Include ‘the Least of Us’

- The New Jim Crow will end when communities of color and working people generally fully understand that this is our struggle and that we must work together to dismantle this new caste system.

- The New Jim Crow will end when we confront and challenge the white supremacist bias in our laws, policing practices, prosecutorial discretion, adjudication and sentencing.

- The New Jim Crow will end when we no longer use criminal convictions to deny people the right to vote, access to housing, education, employment and other human rights.

- The New Jim Crow will end when we focus on improving the conditions of people instead of locking them up for their responses to their conditions.

- The struggles against the New Jim Crow must include felons, ex-offenders and their families at the center.