

Louisiana Incarcerated: Michelle Alexander's *The New Jim Crow* in Cajun Lands

Lobke van Meijel

Leiden University

Supervisor: Dr. F. de Zwart

Second reader: Prof. Dr. R. A. Boin

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Abstract

This essay tests Michelle Alexander's appraised theory on racial disparities in the mass incarceration system, a theory in which disparities are understood as consequences of a new racial caste system. In *The New Jim Crow* (2010), Alexander reviewed national incarceration trends in the United States. This project narrows the unit of analysis and zooms in on Louisiana. It thereby focuses on a part of the Deep South, a region that has been largely neglected in the discourse despite being at the forefront of mass incarceration and racial struggles. Using methods and data sources that resemble Michelle Alexander's methodology, this thesis finds strong support for assertions that incarceration in the US is riddled with discrimination, and that personal racial biases of actors in the criminal justice system still have significant impact on who gets punished in what way. Nevertheless, Alexander's theory still has major flaws, and needs additional strengthening to convincingly explain the system behind incarceration disparities.

Introduction

Strong racial disparities permeate the American incarceration system. For example, black Americans represent 33% of the country's prison population but only 12% of the general population (Pew Research Center, 2018). In contrast, 64% of Americans are white, yet they represent just 30% of the prison population (Pew Research Center, 2018). Just last September, *The Washington Post* shared dozens of academic articles about racism in the mass incarceration system, which it catalogued into ten different categories. Some of those studies highlight racial disparities in arrest rates, in pre-trial detention rates, and in bail amounts, while others elaborate on issues of jury representation, and on the disparities in plea deals that suspects of varying races get offered (Balko, 2018). In these studies, race consistently played a role in unequal treatment. For instance, separate state-specific studies for Kansas, Massachusetts, Missouri, New York, North Carolina, Tennessee and Wisconsin all demonstrated that blacks are highly overrepresented in traffic stop rates, search rates, and arrest rates (cited in Balko, 2018). After reviewing all those shared studies, *Washington Post* columnist Balko (2018) concluded that there is "overwhelming evidence" that the American criminal justice system is racist.

Experts continue to argue about the causes behind these disparities. Author Michelle Alexander, who is also an acclaimed lawyer and who taught at universities such as Stanford, explains the creation and persistence of such disparities in her own way. She argues that American mass incarceration is a new racial caste system, that seeks to oppress and marginalize black men. This idea originates from Alexander's 2010 book, *The New Jim Crow*, a book praised for its demonstration of "African Americans' current state of affairs" (Franklin, 2011, p. 147) and celebrated for having the "most comprehensive and persuasive" argumentation among

all New Jim Crow writers¹ (Forman, 2012, p. 24). This thesis contains a replication test of Alexander's arguments and conclusions, using similar data sources but a smaller unit of analysis. Instead of relying on mainly Northern examples, as Alexander and many other race theory authors have done (Eason, 2012), this project focuses on Louisiana. It works towards remedying what Eason has called the absenteeism and oversimplification of the South in the discourse (p. 278).

As this thesis will demonstrate, some facets of Louisiana's mass incarceration system mirror Alexander's findings. For instance, the overrepresentation of black persons in American prisons as discussed extensively by Alexander, is mirrored in Louisiana (Prison Policy Initiative, 2018a). Moreover, Alexander discusses the marginalizing impact of a 'civic death' post-incarceration, and Louisiana's restrictions for felons illustrate the concept well. Other case results, however, are left unexplained by Alexander's theory. For example, Alexander's singular focus on black/white-disparities fails to explain why the Latin American community is overrepresented in Louisiana's traffic and drug arrests (Ruiz & Joongyeup, 2009; Ruiz & Woessner, 2005). Alexander also largely neglects the potential impact of other factors on incarceration, such as class, which may be significant to a poverty-stricken state like Louisiana. To discuss such shortcomings, alternative theories and rival opinions are also brought in.

Following this introduction is a theory section, in which Alexander's New Jim Crow framework is clarified and in which rival theories are discussed. After that, there is a methodology section. The analysis of Louisiana will take up four separate sections, corresponding with four core propositions which derive from Alexander's explanation of mass incarceration. The first of these four sections elaborates on Louisiana's history with civil rights

¹ New Jim Crow writers comprise a group of scholars within race theory. A group that gained momentum in the 1990s, these authors zoom in on race inequalities within the justice system, and particularly on the impact of race in the war on drugs. They stress issues such as over-policing in neighborhoods with large black communities, and emphasize inconsistencies in drug crime penalties.

successes and drug laws. It caters to Alexander's proposition that systemic mass incarceration was purposively created to control black men after the Civil Rights Movement led to a breakdown of a previous oppressive system. A mixed-methods review of Louisiana's police practices comprises section two, and corresponds with Alexander's proposition that law enforcement discretion is used as a technique to round up black men into the system. Then, a third section reviews Louisiana court practices, to investigate the accuracy of Alexander's proposition that courts have "closed their doors" to discrimination challenges. Lastly, Louisiana's 'invisible punishment' phase will be scrutinized and examined in relation to Alexander's notion of a permanent 'civic death.' Some limitations to this essay will then be discussed, and a conclusion will be drawn.

Theoretical framework: Michelle Alexander's *New Jim Crow*

To comprehensively test Alexander's theory, it is necessary to explain how the theory is set up. Broadly speaking, Alexander (2010) argues that mass incarceration in the United States is a racial caste system created to control and marginalize black men. Racial disparities are consequences of this. In line with New Jim Crow discourse, she claims that the war on drugs is the main vehicle through which this system of targeted marginalization operates.

Alexander traces several systems of racial oppression, such as slavery, throughout American history. She emphasizes that each new system emerged shortly after the previous one broke down. Regarding mass incarceration, Alexander says incarceration rates experienced an "explosion" after successes of the Civil Rights Movement in the mid 1960s (p. 60). Using an analysis of drug laws, and quotes from influential political players, Alexander then makes the case that a new war on drugs ushered in this intensified incarceration. Said war on drugs started

with the Nixon administration, she argues, and its rules were “clearly designed” to round up black men (p. 72). Through her timeline, Alexander establishes a malevolent intent and target.

Alexander explains two techniques that empower the vehicle (the War on Drugs) to specifically capture and round up black men. Law enforcement officials’ professional discretion is key to the first of these techniques. Instead of seeing it as given and generally justifiable because of the efficiency and flexibility that discretion can offer, Alexander claims “extraordinary” discretion is granted to “[ensure] that conscious and unconscious racial beliefs and stereotypes will be given free rein” (p. 103). Alexander calls the second technique “closing the courthouse doors” (p. 103). Court rulings, she claims, have erased virtually all opportunities to challenge racial discrimination in the criminal justice system.

Alexander then explains that the roundup, as described above, is the first of three stages of punishment that is followed by a second stage of formal control. This formal control envelops all forms of incarceration—including pre-trial detention, parole, and probation—making the issue about 6.8 million incarcerated Americans in total (Prison Policy Initiative, 2018b). Under this period of formal control, Alexander writes, “every aspect of one’s life is regulated and monitored by the system, and any form of resistance or disobedience is subject to swift sanction” (p. 186).

A permanent marginalization and ‘civic death’ marks the third and final stage. Alexander uses a mix of legal stipulations and societal practices to explain what an ex-felon’s “invisible punishment” entails (p. 197). She mentions how American governments exclude ex-felons from welfare programs, how their driver’s licenses are suspended, and how access to housing and employment is drastically decreased by both the government and private landlords. Alexander also argues that legal debts upon release make it practically impossible not to cycle back into the system. Alexander lastly discusses felon disenfranchisement and social stigma,

which hamper political or social resistance to the racial caste system even further. This final stage, Alexander argues, thus secures that an ex-felon's debt to society is never paid, and that one will remain a "second-class citizens" forever (p. 197).

In short, Alexander explains that mass incarceration, as a racial caste system created with the malicious intent to capture and marginalize black men, has created and perpetrated the disparities discussed by experts today.

Rival theories

The decision to use Michelle Alexander's *The New Jim Crow* as the main text in this thesis deserves some additional justification. Yale Law professor and Pulitzer Prize winner James Forman Jr (2012) singled out the book's contribution to the literature. Lawyer Jonathan Wood (2015) stated that Alexander "succeeded in bringing the cultural colonialism of the indigent African-American community into the mainstream" (p. 175). Professor Robert Perkinson (2011), an expert on punishment and race in the US, called Alexander's work an "engaging text for teachers" (p. 596). Activist and scholar James Kilgore (2015) summarized the reception quite well, saying the work "has received extraordinary critical and popular acclaim" (p. 283). This reception is the reason why Alexander's work is at the forefront of this thesis. Other authors with rival theories, however, are not excluded.

If Alexander's New Jim Crow theory cannot adequately account for facets of Louisiana's incarceration system, alternative considerations will be presented. For this project, the focus of these alternative considerations is twofold: one group of authors casts doubt on Alexander's argument that racism is the reason behind incarceration disparities. A second group broadens the idea of systemic targeting, thereby breaking with Alexander's focus on black men.

Loic Wacquant (2014), James Kilgore (2015) and Nathaniel Lewis (writing for the *People's Policy Project*, 2018) criticize the tendency of New Jim Crow writers to downplay the causal role of class. This is problematic, they argue, as those decisions may illustrate a system that targets the poor rather than the black (Kilgore, p. 292). Wacquant (2014) traced the impact of historical policy decisions in a similar fashion to Alexander. However, his focus on the history of the decline of welfare programs leads to his conclusion that the system is targeted by class in the very first place. Lewis (2018) stresses even stronger that class trumps race. His research finds that not race but class answers the question of who gets incarcerated.

Other authors disagree with Alexander about which groups are targeted. Janaé Bonsu (2017) makes a historical statement that resembles Alexander's when she argues that the Nixon administration was racist in its motives to start the war on drugs. However, she argues, "black women, especially trans women, who sell or trade sex are especially targeted" (p. 67). Kilgore also nuanced Alexander's argument. He agrees that mass incarceration is an "assault" on targeted populations (p. 286), but in defining those populations, he emphasizes the impact of class and gender. Furthermore, there are authors like Steven Raphael (2012) and Alisa Roth (in Dolnick, 2018). They stress the large overrepresentation of persons with mental health disorders among incarcerated populations, and argue that mentally ill people are incarcerated because the country "has never quite known" how to deal with mental illnesses (Dolnick, 2018, para. 7).

If the analysis of Louisiana's incarceration system does not match Alexander's propositions, or if it exposes weak spots in Alexander's theory, rival explanations other authors will be considered. Such considerations will aid in clarifying the explanatory power of Alexander's text, and can highlight theoretical issues that need additional strengthening.

Case and methodology: a replication setup with a congruence case study

Because the South is under-analyzed in both Alexander's theory and in the broader New Jim Crow discourse, the choice to investigate a Southern state serves to negate that absence. Additionally, the decision to study Louisiana is a choice for a congruence test model (Evera, 1997, p. 59), which allows for rich data collection and gives Alexander's theory a considerable chance to hold up.

Louisiana has been at the forefront of the mass incarceration phenomenon: up until 2018, it had the nation's highest imprisonment rate, and it was even dubbed the "world's prison capital" (Fares & Levinson, 2018, para. 78). Even on a city basis, Daniels, Weber and Wool (2018) found that New Orleans jailed more people than any other urban center in the US. Regarding the emphasis on race, Louisiana is also a logical state to study. Firstly, some of the biggest national racial disparities mirror those of Louisiana: blacks make up 32% of the population but account for 66% of all incarcerated Louisianians, whereas whites make up 60% of the general population and only 30% of the incarcerated population (Prison Policy Initiative, 2018a). Additionally, the state has a rich history regarding prominent battles for racial justice.

Regarding data sources and methods of analysis, this thesis predominantly follows Alexander's example. After all, she made a case about the American incarceration system, and Louisiana operates within that system. Therefore, if Alexander's theory holds, data sources that resemble those of Alexander are expected to illustrate discrimination in similar ways.

Louisiana's War on Drugs and Civil Rights Movement

Alexander ties the start of the war on drugs, and the system mass incarceration with it, to the timeline of the Civil Rights Movement's successes. This timeline is significant for Alexander's explanation of systemic racial disparities, since she argues that mass incarceration

should be understood as a purposively oppressive system that arose after the previous oppressive system broke down due to civil rights successes. If Alexander is correct, the timeline of the Civil Rights Movement's successes in Louisiana should be connected to an intensification of highly punitive anti-drug measures. Continued white protest to newly gained rights should also be apparent. Lastly, Louisiana's timeline should imply malicious intent.

Amund Tallaksen (2015) wrote a dissertation on drug laws in Louisiana between 1880 and 1980. Instead of marijuana, the first decades of Tallaksen's timeline are spent on crack cocaine. In the late 19th century, there was no criminalization of cocaine on the horizon. There were, however, already early associations between cocaine and crime. Throughout the 1880s and 1890s, these associations worsened and societal connotations about cocaine shifted. From being a drug for the white middle-class, cocaine became a drug for the poor and for working class blacks. During these decades, Tallaksen writes, the stereotype of the "cocaine fiend" emerged (p. 46): negative ideas about the poor and about working-class blacks intermingled with ideas about cocaine use and crime, and its conjoined symbol became a tool for Jim Crow supporters and "campaigns to regulate the sale and use of psychoactive drugs" (Tallaksen, 2015, p. 47). Katheryn Russell's "criminalblackman," (1988, p. 14) a term that denotes this conflation of blackness and crime—a conflation that Alexander frequently criticizes²—thus seems to have a longstanding past in Louisiana.

At the turn of the century, Tallaksen writes, a city ordinance in New Orleans restricted the sale of cocaine to licensed physicians. Though formal laws criminalizing the use or possession of cocaine were still absent, city police officials conducted cocaine dives in black communities—they just used a 1871 law to round people up instead, one which allowed law

² Alexander cites national datasets which find that nearly identical percentages of black and white Americans use drugs. She also cites emergency room visit statistics to counter "any notion that drug use among blacks is more severe or dangerous" (p. 99).

enforcement to arrest and convict persons based on a “‘dangerous and suspicious’ character” (p. 57). Arrests intensified in 1910, when police began a “crusade” against cocaine (Tallaksen, 2015, p. 60). Tallaksen writes that this crusade was not about race and cites historian Mara Keire, who argued the crusade aimed to quell dissent over alcohol regulations (cited in Tallaksen, 2015, p. 60). Later that year, cocaine possession did become a criminal offense in New Orleans. Tallaksen argues that this second ordinance, which officially made possession a misdemeanor, stood in “sharp contrast to any previous Louisiana law” (p. 64).

State government failed to pass general punitive anti-drug legislation, but the federal government had more success. In 1915, Congress passed the Harrison Narcotics Act, and created a Narcotics Division to enforce the punitive new drug law. Consequently, Americans—including Louisianians—began serving federal prison sentences for drug offenses. These new inmates were overwhelmingly white. State politicians disagreed with imprisonment, and preferred to deal with addicts through dispensary clinics, but after a political battle with the federal Narcotic Division drug clinics were forced to close down. The clinic in Shreveport, a highly conservative city in Northern Louisiana, became the very last American drug clinic to close. Louisiana’s early 20th century stance toward drugs still seemed very lenient, compared to current tough on crime attitudes and to the federal politics at the time.

Marijuana and heroin

In the 1920s, marijuana and heroin emerged as new popular drugs, but as Tallaksen writes, Louisiana’s initial responses to these new popular drugs lacked “strong racial undertones” (p. 124). Even though laws surrounding marijuana and heroin were punitive, police focused mainly on the mafia and organized drug traffickers.

From the 1950s onwards, black Louisianians began to dominate the small-scale heroin trade. This changed ideas about those involved in marijuana and heroin, and created what

historian David Courtwright called a “caste dimension” in the illegal drug markets in New Orleans (cited in Tallaksen, 2015, p. 156). The caste dimension, along with geographically segregated heroin markets, led to a decline of white heroin users. Law enforcement agencies sought and found measures to effectively police black neighborhoods. Soon, arrest rates corresponded to such concentrated policing—almost 80% of New Orleanians arrested on heroin charges in the mid-fifties were black men. In this concentrated policing, race was a factor. The 1950s head of the NOPD Narcotics Squad, Clarence Giarusso, stated:

We made cases in Black neighborhoods because it was easy. We didn't need a search warrant, it allowed us to meet our quotas, and it was ongoing. If we found dope on a Black man we could put him in jail for a few days and no one cared. He has no money for a lawyer, and the courts are ready to convict. (cited in Tallaksen, 2015, p. 179)

Generally, punitive measures against drug possession in Louisiana also toughened during the 1950s. This was partly due to federal laws, but also because of strong campaigns of some state politicians. This punitive turn, as described by Alexander, thus already seemed to be prevailing in Louisiana's 1950s, a full decade before the Civil Rights Movement's most pivotal successes. This casts doubt on Alexander's claim that the war on drugs was an intended response to civil rights successes.

Nevertheless, Tallaksen's review of the 1960s does align with Alexander's historical analysis. Tallaksen argues that in Louisiana, civil rights battles coincided with increasing instances of street crime. Street crime was already socially conjoined with blackness, and media exacerbated this. The “issue of black crime,” Tallaksen writes, “arose as a useful tool for segregationists across the South” (p. 225). Due to rising fears about ‘black crime,’ Louisiana supported segregationist politicians. Although some influential organizations' maintained

sentiments against severe punitive measures, politicians in Louisiana increasingly mirrored “the president’s language about a ‘war on drugs’” (Tallaksen, 2015, p. 285). In line with Alexander’s narrative, incarceration rates grew. In 1967, 30% of inmates at the Louisiana State Penitentiary were serving time for drug sentences (Tallaksen, 2015, p. 241)—a percentage even higher than the current national average of 20% (Prison Policy Initiative, 2018b). Another author of a comprehensive narrative about Louisiana’s history, Adam Fairclough (1999), emphasized that the significance of the 1960s should not be downplayed. He states that in response to the Voting Rights Act, “devious stratagems” were used to silence black voices at the voting booths (p. 387, 396). Fairclough illustrates this with an example: in one Louisiana election, where the outcome was deemed undesirable, numerous votes were disqualified and a new election was called (1999). Lots of these disqualified voters were black felons. Both Tallaksen and Fairclough thus emphasize that the 1960s were a decade of continued efforts to suppress black voices. Alexander’s narrative about the emergence of mass incarceration fits logically into this.

The limitations in Alexander’s timeline

Tallaksen’s numbers, however, counter Alexander’s claim that crime rates cannot fully explain the racial incarceration disparity. This disparity is significant for Alexander’s argument about unfair racial targeting. In contrast, Tallaksen cites the historically black newspaper *The Louisiana Weekly*, which acknowledged that 80% of violent crimes in the state’s biggest city were indeed committed by the black community (Tallaksen, 2015, p. 293). A Louisiana-based sociologist, Dr. Millie Charles, claimed drug traffic as the main reason for crime spikes, and a local DEA official argued that the local drug trade was “99% black” (cited in Tallaksen, 2015, p. 294, 295). With such different local numbers, Alexander’s claim that crime rates cannot explain incarceration disparities may have been overgeneralized.

Moreover, Tallaksen's and Fairclough's historical narratives both hint toward a bigger issue in Alexander's theory, as they underline Alexander's inattention to the impact of class. Like other Jim Crow writers, Alexander explicitly chooses to focus on the war on drugs when tracing back mass incarceration. She claims this singular focus is "simple," arguing that drug crime convictions are the foremost contributor to the "systemic incarceration of people of color" (Alexander, 2010, p. 60). As Fairclough writes, it is fictitious to claim that nonracial factors explain racial inequalities completely. Nevertheless, Fairclough says, class and race intersect, and "class, rather than color" may explain why black people still "lag behind" whites (p. 470). In the final chapters of his analysis, Tallaksen also describes the war on poverty, and how it escalated due to the Reaganomics of the 1980s. Budget cuts and decisions to stop anti-poverty programs, both nationally and in Louisiana, increased class segregation and exacerbated living conditions in impoverished, heavily policed housing projects. Since a war on poverty was initiated around the same period as the war on drugs gained momentum, could it be that poor people, not black people, became the main target of a new oppressive system of mass incarceration?

The pervasiveness of class disparities clarify that targeting based on class is plausible. The Prison Policy Initiative (2015) found that nationwide, the average income of incarcerated Americans is 41% lower than that of non-incarcerated Americans. In New Orleans, Louisiana's biggest city, 85% of those who are arrested are considered too poor to hire an attorney (Vera Institute of Justice, 2018). According to the American Civil Liberties Union ([ACLU], 2015), Louisiana also upholds the long-prohibited practice of 'debtor's prisons,' by illegally incarcerating the poor "for their inability to pay" (p. 10). It may be possible that Alexander is right in saying that the war on drugs is the greatest catalyst for the emergence of a system of mass incarceration marked by race and class disparities. However, without investigating

alternative timelines—for instance, one which highlights class targeting—Alexander’s determinative connection between the war on drugs and mass incarceration is doubtful.

Such doubts stress a causal fallacy. Beyond the hints given by Tallaksen and Fairclough, authors like Nathaniel Lewis and Loïc Wacquant stress potentially alternative causes for an unequal mass incarceration system marked by disparities. After conducting his own historical analysis, Wacquant (2014) concluded that the mass incarceration system targets “first by class, second by race, and third by place,” (p. 35) thereby offering two alternative causal factors for incarceration disparities. Lewis, writing for the People Policy’s Project (2018), acknowledged that there are “two common explanations” for disparities in the system, namely race and class. To test the explanatory power of both explanations, Lewis completed four tests using three composite indices in regression models. He used datasets from the National Longitudinal Study of Adolescent to Adult Health, and created multiple class measures. He found that class has a large and significant impact on whether someone has ever been arrested, whether adults have been incarcerated at some point; and on whether they have or had been incarcerated for more than a month or year. Since race in itself was not statistically significant for any of these four tests, he concluded that his analysis supports those who claim class to be a prime motivator for incarceration disparities.

Unlike Wacquant and Lewis, Alexander chose to explicitly focus on race. Considering the many other studies that highlight the impact of race on unequal treatment in America’s criminal justice system (Balko, 2018), this is in itself a valid focal point. However, in contrast to Wacquant and Lewis, and in contrast to authors with a much narrower focus, Alexander’s broad historical analysis includes very few control variables. She also makes large, far-reaching and general claims about a historical intent behind the rise of mass incarceration. Her analysis resembles more an argumentative narrative—substantiated by some studies and cited remarks,

but also by major assumptions of intent and cause. By neglecting to include alternative potential causal factors, such as class, Alexander thus created a narrative with a questionable cause.

Targeting in Louisiana's law enforcement

Policing practices, especially those in the war on drugs, are significant for Alexander's theory because they illustrate how discretion for law enforcement is an instrument, as Alexander believes, to disproportionately capture black men. The conflation of blackness and criminal behavior, the so-called 'criminalblackman,' (Russell, 1988, p. 14) plays a large role here. After all, in a system that targets black men, discretion works as an instrument only if targeted criminals are believed to be black men. To support Alexander's theory, data on Louisiana's police practices should indicate that black men are indeed rounded up disproportionately. In addition, large discretionary powers should be relatively uncontrolled in Louisiana's law enforcement agencies, and it must be legitimately plausible that they are so uncontrolled for the specific purpose of targeting and trapping black men in the system.

Several studies and investigations into Louisiana's law enforcement agencies support Alexander's claims about the pervasiveness of biased policing. The US Department of Justice [DOJ] investigated the New Orleans Police Department [NOPD] in 2011, and found that the NOPD "engages in patterns of misconduct that violate the Constitution and federal law" (Civil Rights Division, 2011, p. vi). Among these patterns are Fourth Amendment violations, namely unreasonable searches, seizures and detentions. Alexander discussed such violations at length, arguing that the "basic [constitutional] principle" has become muddled through efforts to undermine the clarity of the concepts of consent and reasonable cause (p. 63-69). Additionally, the DOJ found "the NOPD engages in a pattern or practice of discriminatory policing" and argued that the NOPD enforced the law unfairly, based on characteristics such as race and

ethnicity (p. iv). Although the NOPD has some formal anti-bias policies, the DOJ argued that the NOPD failed to implement countermeasures against the impact of such bias. In fact, the NOPD's black to white youth arrest rate ratio is almost 16:1—a disparity that is “not nearly as extreme” in national trends, and which “cannot plausibly be attributed entirely” to underlying crime rates (Civil Rights Division, 2011, p. 39). The NOPD, therefore, illustrates Alexander's claim about the prominence of biased policing excellently.

According to a 2018 publication of the Southern Poverty Law Center [SPLC], the NOPD is not an outlier. Though formal anti-bias policies of the NOPD were inefficient, 109 of the 310 law enforcement agencies in Louisiana lacked anti-bias policies *entirely* (p. 10). Louisiana's race disparities in marijuana possession arrests also correspond to Alexander's cited numbers. The SPLC found that black people in Louisiana were 2.9 times as likely to be arrested for marijuana possession as white people (2018). The NOPD, with its arrest disparity ratio of 2.6 (p. 8), thus performs better than average in this regard.

Other large-n experiments also find evidence for biased policing. Jim Ruiz and Matthew Woessner (2005) studied racial profiling in Louisiana's war on drugs and found indications of racial profiling patterns in officers' decisions on who to stop in traffic. They focused on traffic stops on Louisiana's major interstate highway, the I-10, which experts deem a significant location in illegal drug trafficking (cited in Ruiz & Woessner, 2005). Ruiz and Woessner found that an “extraordinary number of stops” (p. 189) were justified because of ‘improper lane use’ and ‘following too closely,’ (which, together, account for 41% of traffic arrests and 75% of drug arrests) rather than speeding (50% of traffic arrests, but only 20% of drug arrests). The authors argue that such justifications match established patterns of racial profiling. Improper lane use and following too closely, they argue, are more likely based on an officer's hunch than a

measurable offense like speeding. Relying on hunches, Ruiz and Woessner argue, gives free rein to racial bias.

Other potential targets

However, in Ruiz and Woessner's research (2005) black men do not form the largest group affected by bias. In their results, the Latin American community was especially targeted: Latin Americans made up just 2% of the Louisiana population at the time of the authors' study, but accounted for 24% of traffic arrests and a staggering 40% of drug arrests (p. 186). Whereas the authors conclude that arrest data provide "compelling support" of racially biased policing (p. 193), their analysis suggests the influence of a '*criminallatinx*.'³

In 2009, Ruiz revisited the drug interdiction, this time with fellow researcher Joongyeup Lee, and the overrepresentation of Latin Americans persisted. In this second project, Ruiz and Lee focused on court dispositions, and examined I-10 drug arrest records. Based on Ruiz's earlier research, the authors hypothesized that Latin Americans would likely receive harsher sentences than whites. They found that Latin American arrestees were incarcerated 50% of time after guilty pleas⁴, whereas only 25% of white arrestees with guilty pleas were incarcerated. No correlation was found between the race of arrestees and the amount of drugs confiscated. Ruiz and Lee therefore concluded that hispanic arrestees receive "stiffer sentences" than their white counterparts (p. 247).

A profile by the Prison Policy Initiative (2018a) relativizes Ruiz's findings. State-wide imprisonment rates show no overrepresentation of Latin American persons in Louisiana prisons and jails. The Latinx community accounts for 4% of Louisiana's population, and 4% of the state's imprisoned population (Prison Policy Initiative, 2018a, fig. 6). In contrast, blacks

³ Ruiz and Woessner did not elaborate on gender.

⁴ Plea deals are a common practice between American prosecutors and defendants. In the case of a guilty plea, defendants take accountability for charges without going through trial. In exchange, prosecutors often lessen the severity of their charges.

account for 66% of those imprisoned in Louisiana while they only make up 32% of the total population (Prison Policy Initiative, 2018a, fig. 6). Such conflicting results are likely caused by different units of analysis and because the PPI profile included imprisonment rates of pretrial defendants, instead of focusing solely on persons who entered guilty pleas.

Regardless, the overrepresentation of the Latinx community in Ruiz's studies highlights that particular groups are notably absent in Alexander's theory. Latin Americans constitute just one of numerous groups. Alisa Roth, for example, wrote about mentally ill persons in the United States, and argued that jails and prisons are "de facto warehouses for the mentally ill" (Dolnick, 2018, para. 2). She claims that putting mentally ill persons in jails and prisons, mainly for nonviolent misdemeanors, is the latest solution to handling this demographic group (Dolnick, 2018), thereby making an argument resembling that of Alexander, who also attributed the extreme growth of mass incarceration to "nonviolent offenses" (Alexander, 2010, p. 102). Roth's nationwide claim about how mentally ill Americans are disproportionately incarcerated is supported in Louisiana: Dennis Grimes, warden of East Baton Rouge Parish Prison, noted that over half of all inmates is on mental health medication (Fares & Levinson, 2018). Roth's argument, and statements made by actors such as Dennis Grimes, thus unfold a problematic feature of Alexander's theory. Since Alexander focuses only on black men, she does not account for potential (police) practices that target other demographic groups.

Alexander's sole focus on black men results in an oversimplified depiction of reality. In her introduction, Alexander explicitly stated this limited focus, and acknowledged that other groups may be disadvantaged in the system too. However, she then aims to educate readers about an intentionally targeted and oppressive caste system. In her text, all targets are linked by one skin color and one gender, and the mentioned disparities that arise from the system are discussed in terms of white men versus black men. In contrast, rival theories and evidence from

Louisiana suggests that the system of mass incarceration targets and captures many more ‘undesirable’ groups in disproportionate ways. Consequently, Alexander’s oversimplification can lead to critical misinterpretations of the very system she aims to explain.

Louisiana’s courtroom doors

A significant reason for mass incarceration’s efficiency, Alexander posits, is that significant court rulings have evaporated opportunities to challenge racial bias. Alexander explicitly mentions several of such rulings, using *McCleskey v. Kemp* (1987) as her first example. In *McCleskey*, the US Supreme Court ruled that Fourteenth Amendment challenges on grounds of unequal treatment were moot unless they included “clear evidence of conscious, discriminatory intent” (Alexander, 2010, p. 109). According to Alexander, this meant that the system tolerates racial bias as long as nobody admits it. Alexander’s second example, *Clary v. United States* (Government of the United States, 1994) pertained to a particular issue in the American drug war. In *Clary*, the defendant argued that drug laws discriminated against blacks because possession of crack cocaine—popular among black cocaine users—was punished harsher than possession of powder cocaine, which was primarily used by whites.⁵ The district court handed out a lenient sentence. The prosecution appealed the sentence, and the Federal Court of Appeals disagreed with the district court’s leniency, invoked *McCleskey v. Kemp*, and argued the defendant had not proven a conscious discriminatory intent. Alexander also analyzed the impact of *Purkett v. Elem* (Government of Louisiana, 1995), which she believes closed the

⁵ The punishment disparity between crack and powder cocaine originates from the Anti-Drug Abuse Act of 1986. This act established mandatory prison sentences for possession of both crack and powder cocaine, but penalties got triggered at 5 grams of crack versus 500 grams of powder. Over the years, this disparity has decreased to a ratio of 18-to-1 (ACLU, 2006).

courtroom doors for issues of racial discrimination in the justice system even further.⁶ Alexander claims the final nail to the coffin came in 2001, when a US Supreme Court ruling ultimately “wiped out racial profiling litigation nation-wide” (p. 137).

Alexander’s chosen examples are mainly US Supreme Court cases, and it is the question if Louisiana courts have closed their doors in similar ways. Because the US Supreme Court is the highest court of the nation and thereby acts as a leader, Louisiana’s own courts and the Fifth Circuit Court of Appeals have limited agency to open or close their doors to discrimination challenges. Nevertheless, if Alexander’s theory is correct, an analysis of court rulings should indicate that Louisiana judges support the aforementioned Supreme Court rulings in service of the mass incarceration system.

A particular hotbed for discussions in Louisiana has been the issue of jury discrimination (Lopez, 2018). Because Louisiana courts have frequently ruled on this issue, the following analysis focuses mainly on Louisiana’s experiences with this one topic. First, the jury selection process will be explained briefly.

In American jury selections, a long list of potential jurors is shortened through a process of elimination strikes. Some potential jurors are challenged for cause, which means that for whatever reason is given, a juror is struck because they cannot give an impartial verdict. Other times, prosecutors and defense attorneys use peremptory challenges to strike potential jurors. In such cases, attorneys have the right to reject and thereby strike a limited number of potential jurors without having to state a reason. That is, unless opposing attorneys invoke *Batson v. Kentucky* (Government of the United States, 1986) and object that the peremptory strike is unconstitutionally discriminatory. In the case of a *Batson* challenge, the reason for the strike

⁶ In *Purkett v Elem*, the US Supreme Court elaborated on the issue of potentially discriminatory jury strikes. The Court held that for a strike to be considered invalid, discriminatory intent must be “inherent” in a prosecutor’s justification to strike a prospective juror from the definitive jury. Such intent was not deemed inherent in *Purkett*, where the prosecutor struck two black jurors for having “long curly hair,” and a “mustache and goatee type beard” (in Alexander, 2011, p. 122).

must be voiced and its constitutionality must be contemplated by the Court, using concrete discrimination detection measures that the Supreme Court established in its original *Batson* ruling. However, in that ruling, the Supreme Court also held that any explanation for a for jury strike will suffice as long as it is not explicitly discriminatory, no matter its (im)plausibility.

According to legal analyst Ian Millhiser (2018), at least one of Louisiana's significant courts, namely the Fifth Circuit Court of Appeals, structurally denies instances of jury discrimination. This Court has ruled on hundreds of *Batson* challenges since 1986, but sided with defendants on only two occasions. Millhiser believes this low percentage is unrealistic, and claims the Fifth Circuit has "abdicated its responsibility to prevent jury discrimination" (2018, para. 3). Millhiser makes his case using the Court's recent ruling in *Chamberlin v. Fisher* (2018), which he summarizes as "latest chapter" in an "concerted effort... [to] leave convictions in place even if they are the product of racial jury discrimination" (Millhiser, 2018, para. 4). At stake in *Chamberlin* (Government of the United States, 2018) were two prosecutorial strikes of black jurors. The prosecution justified the strikes based on the jurors' answers to three voir dire questions, but did not explain why a white juror with the same three answers was not struck. To investigate whether jury discrimination had occurred, the Fifth Circuit sketched a race-neutral scenario of the prosecutor's reasoning. Ultimately, the Court deemed their race-neutral scenario, which was purely hypothesized and unconfirmed by the prosecutor, as sufficient proof to uphold Chamberlin's conviction. The defendant's discrimination claim was disputed, and *Batson* and *Purkett* were invoked to argue that proof of purposeful discrimination needed to be both inherent and explicit in the prosecution's explanation to grant a mistrial. The *Chamberlin* ruling matches Alexander's examples of courts' sentiments, and suggests courts offer very little space to meaningfully investigate a discrimination claim.

Such *Batson* rulings are also made in state-specific courts. In 2006, the Louisiana Supreme Court ruled on an appeal by Allen Snyder, a black defendant who had been sentenced to death by an all-white jury (Government of Louisiana, 2006). Snyder claimed the prosecution had used peremptory jury strikes in a racially discriminatory fashion. Louisiana's highest court invoked *Purkett* and disagreed. *Snyder* is just one of many cases where blacks are unrepresented in Louisiana juries. The Louisiana Capital Assistance Center demonstrated that in 80% of the criminal trials in Jefferson Parish, there is "no effective black representation" on juries (cited in Smith & Sarma, 2012, p. 368). Another study, by Reprieve Australia (2015) investigated 332 recent trials in Caddo Parish. Reprieve found an "extremely statistically significant" race disparity in discretionary strikes, which the organization suggests is neither innocent nor coincidental (p. 9, 11). The widespread persistence of ineffective black jury representation in Louisiana supports Alexander's argument that American courts are not openminded to issues of racial discrimination.

However, rulings from Louisiana do not always back Alexander's reasoning. In *Campbell v. Louisiana* (Government of Louisiana, 1998), a case that ultimately made it to the US Supreme Court, some Louisiana courts acted in ways that seemingly closed courtroom doors to discrimination challenges, but simultaneously acted in ways that question Alexander's claim that black men are the system's target. Campbell, a white petitioner, was convicted for murder. Louisiana's district judge denied Campbell's claim that the jury makeup violated his constitutional rights,⁷ but did so *because* of the defendant's white race: because Campbell was white, he could not file a challenge based on the racial makeup of his jury. The Louisiana Court of Appeals disagreed with the lower court's decision and called for a hearing on Campbell's claim, thereby seeming to reopen the courtroom doors for discrimination challenges.

⁷ Campbell made an overarching claim based on his constitutional rights of due process, equal protection, and fair representation.

Louisiana's Supreme Court, however, agreed with the position of the first judge, and closed the proverbial doors to discrimination challenges again. This back and forth reasoning in *Campbell*, and the ultimate willingness of the US Supreme Court to make time to discuss this discrimination challenge, suggests two breaks with Alexander's logic. First, it indicates that courts vary in their willingness to discuss potential discrimination. Beyond that, in this one example there are already two courts that are willing to imprison a white man without contemplating his claim. These two issues have significant consequences.

That courts vary in their willingness to engage with discrimination claims, posits the question whether Alexander has overstated how closed American courthouse doors are. Louisiana courts struggled over *Campbell* five years *after* the US Supreme Court ruling that Alexander claimed wiped out discrimination litigation. Alexander's claim that "mass incarceration is now off-limits to challenges on the grounds of racial bias" (p. 194) is therefore simply false, even if opportunities to make such challenges have decreased.

The second point that *Campbell* raised was about courts' willingness to condemn white defendants to the marginalizing effects of the incarceration system. The presence of whites among the incarcerated is one that Alexander already briefly attempted to negate. She argued that some presence of white men in the system is "essential" to maintain a "veil of colorblindness," and describes these incarcerated whites as "collateral damage" (Alexander, 2010, p. 204-205). This metaphor heavily understates absolute numbers. As both Jonathan Wood and James Forman noted in their reviews of Alexander's theory, 60% of American prisoners are not black, "one-third of our nation's prisoners are white," and "one cannot pick and choose those that are caught up in the dragnet" (Forman, 2012, p. 58; Wood, 2015, p. 182). Moreover, as Forman noted, 33% of the nation's imprisoned population is "a lot" of collateral

damage (p. 58). As such, Alexander is unconvincing in explaining how a group that the system was supposed to protect instead of round up is still so present among incarcerated Americans.

A Louisianian civic death

Alexander writes extensively on ex-felons' civic deaths. In the final, permanent stage of punishment, ex-felons are reintegrated in the greater community but with severely lessened access to services and opportunities. For Alexander's national argument to be valid, I should find that Louisiana severely restricts the presence and opportunities of ex-felons in its workforce, residences, roads, government programs, and ballots.

The most explicit illustration of civic death is stripping a felon's right to vote. The Sentencing Project stated that 2.5% of Americans are disenfranchised because of a felony conviction (2016). Louisiana disenfranchises even more Americans, namely 3.04% of its population (Sentencing Project, 2016, p. 15, table 3). And, as black persons are disproportionately incarcerated, one can expect disenfranchisement to also disproportionately impact the black community. This is true for Louisiana: the Sentencing Project estimated that 6.27% of blacks in Louisiana are disenfranchised (p. 16, table 4).

It is likely that Louisiana's voting laws will become more inclusive in the near future, as Governor Edwards is set to sign a bill in March 2019 that would reinstate voting rights for parolees and for Louisianians on probation for felonies. Still the law would require a five-year waiting period, which, in comparison with other states, is still a harsh disenfranchisement regulation. Moreover, according to a study by William Arp III and Berlisha Morton (2005), Louisiana's process to restore voting rights is a "well kept secret" (p. 629). State officials have not spoken out about streamlining this process, which suggests it is not considered a priority.

Therefore, even if disenfranchisement policies become more lenient, the unclear restoration process likely hinders a significant real improvement.

Voting is not the only issue at stake, as Alexander also addressed how ex-felons are restricted from additional services and practical opportunities. Again, Louisiana has plenty examples that mirror such restrictions. Regarding employment, The Alliance for a Just Society (2016) found that with 389 different bans and restrictions for ex-felons, Louisiana's workforce is the least accessible workforce in the country (p. 5). Richard Webster, writing for the *Times-Picayune* (2016), also said that Louisianian ex-felons face "far more obstacles in finding a job than anywhere else in the United States" (Webster, 2016, para. 1). Finding housing is also more difficult, as Louisiana follows the federal Fair Housing Act and excludes (ex-)felons from being protected against discriminating practices (JobsForFelonsHub.com). JobsForFelonsHub.com reasoned that Louisianian ex-felons may find an apartment if their criminal record is old and non-violent, but stressed that "chances are slim" for those with violent or recent crimes (JobsForFelonsHub.com, para. 17). For both employment and housing, then, Louisiana decreases its societal opportunities for ex-felons significantly.

Louisiana also cripples its ex-felons with debt and strips them from accessing government aid programs. The Alliance for a Just Society calls Louisiana's legal fees and debt system "excessive" in a 2015 publication (p. 2). In this publication, Louisiana is also said to charge indigent defendants with legal fees regardless of their ability to pay (2015). Moreover, the state "routinely" holds defendants in contempt if they are unable to pay up (2015, p. 6), thereby returning persons to a state of formal control. Regarding government aid, Louisiana's government actively restricts ex-felons' access to the nation's biggest welfare programs, SNAP (a food stamp program) and TANF (a cash assistance program), and established additional drug tests for all TANF applicants in Louisiana (Alliance for a Just Society, 2015; Congressional

Research Service, 2016). Overall, Louisiana's current regulations thus support the lack of access and opportunities described in Alexander's book.

The future may look optimistic, as Louisiana has been working on serious criminal justice reforms. In 2015, the State Legislature created the Louisiana Justice Reinvestment Task Force. This Task Force gave advice on how to reform the state's incarceration system to benefit both the state's finances and the people in the incarceration system. In late 2017, the first provisions of the so-called Justice Reinvestment Initiative were implemented. One major change came in January 2018, as child support debts now no longer accumulate while a person is incarcerated (O'Donoghue, 2017). Since August 2018, Louisiana judges can suspend and waive outstanding legal fees, fines and payments. Moreover, in most cases, ex-felons who cannot pay their outstanding dues will not have their probation extended—at least not because of their financial situation. In addition, reforms included a revocation of wait periods to apply for business licenses and government welfare programs, albeit only for non-violent crime offenders (O'Donoghue, 2017).

Nevertheless, Louisiana continues to have the second biggest incarceration systems of the US, and the impact of small victories on the bigger picture should not be overestimated. The fact that 75% of voters supported a November 2018 amendment to prohibit Louisianians with felony records from holding any political office (Charles, 2018) is just one example to nuance the scale of these victories.

Is civic death a targeted, racial issue?

Coming back to theory, Louisiana's web of regulations mostly reaffirms Alexander's claim that the mass incarceration system marginalizes people "based on the prison label" (p. 14). Louisiana's restrictions closely match the examples given in Alexander's chapter *The Cruel Hand*. The reliance on this label, however, puts into question to what extent the civic death is

attributable to a racist incarceration system. Undoubtedly, black ex-felons will face harsh societal barriers that exacerbate marginalization throughout their post-incarceration lives, and more so than white ex-felons. However, as the aforementioned Louisiana regulations confirm, these post-incarceration measures are based on prison labels. There is no additional racial distinction in said prison label. Alexander's theory focuses on circumstances created and worsened by American incarceration systems, not on general racism in the US. Hence it is invalid to attribute the consequences of general societal racism to the incarceration system.

Using Alexander's logic, a plausible racial argument can still be made about the incarceration system's responsibility for the civic death. A decision to not guide societally disadvantaged groups on how they can navigate those societal biases better and improve their post-incarceration opportunities, can be construed as a decision to worsen the marginalization of disadvantaged groups of ex-felons. Nevertheless, Alexander does not make this argument and instead simply zooms out to discuss the impact of societal racism on felons' post-incarceration opportunities. In broadening that scope, Alexander steered away from racial consequences that can be attributed to the incarceration system. As such, Alexander has not proven the civic death, as a component of the mass incarceration system, to be a racially oppressive matter.

Limitations

Because of this essay's single case study format, some limitations should be discussed. For one, the focus on Louisiana limits the extent to which conclusions can be generalized. Nevertheless, the flaws exposed in Alexander's theory stand even if they were highlighted by just one state. This is particularly so as Louisiana was chosen for its potential as a 'most likely' case, one that offered Alexander's claims a good chance to hold up. As a second limit, it was

sometimes difficult to find data sources that completely match Alexander's chosen data sources, because all data had to be specific to Louisiana. For instance, Alexander was able to discuss both federal court rulings and rulings from other states to illustrate her point, whereas publicly available court rulings from Louisiana were limited. To remedy this I zoomed in on one courtroom issue—namely that of jury discrimination. Because jury discrimination is a topic frequently debated in Louisiana, it was still possible to find Louisiana-based rulings that allowed for a meaningful discussion of Alexander's arguments.

Conclusion

In *The New Jim Crow*, Michelle Alexander gave her explanation of the origin and pervasiveness of racial disparities that mark the American incarceration system today. Such disparities are, according to her book, symptoms of a racially oppressive caste system that was created with the intent to round up and marginalize black men.

Louisiana's analysis supports Alexander's claims that American incarceration is riddled with racism. This is apparent from both in-depth investigations as well as conclusions from statistical studies. For instance, the federal investigation into the NOPD demonstrated clearly that racial bias is still a factor in policing, and large-n studies on the jury makeup of Louisiana parishes strongly suggest that black Louisianians are regularly excluded from juries for irrelevant reasons. Another major argument made by Alexander and reaffirmed by Louisiana is that ex-felons face additional marginalization even after formal control ceases.

However, studying Louisiana's incarceration system has also highlighted the flaws in Alexander's explanation of mass incarceration. Louisiana's historical timeline, for example, called into question to what extent other factors besides race determine who goes to jail. The second section on police practices clarified that Alexander's limited focus on black men likely

leads to an oversimplified understanding of the systemic targeting that Alexander aims to prove. After all, evidence from Louisiana suggests that other groups such as Latin Americans and Americans with mental health issues are disproportionately rounded up as well. Regarding American courtrooms, *Campbell v. Louisiana* illustrates that courts' doors are not always shut to discrimination challenges. Moreover, the section clarified that Alexander has not credibly explained the significant presence of white Americans in the nation's incarcerated population. Finally, as becomes apparent in the fourth section on civic death, Alexander mistakenly attributes the consequences general racism in the United States to the criminal justice system.

As other authors stated, Michelle Alexander wrote a book about racism in the American criminal justice system that is comprehensive and accessible to a broad audience (Forman, 2012; Franklin, 2011). She also discusses significant studies about race in the United States, and refers to celebrated authors in the field. For these reasons, *The New Jim Crow* can greatly contribute to useful dialogue about the purpose of punishment in the United States, and it can empower activists to discuss which measures work best to diminish the impact of racial bias. In addition, Alexander's work, albeit misguided at times, can establish a greater awareness among Americans that racial bias and racism are still present in the United States today. Academically speaking, however, Alexander's explanation of the system that drives incarceration disparities still has numerous major errors and assumptions. For *The New Jim Crow* to become a truly convincing text, Alexander still needs to clarify and sharpen some of her arguments surrounding issues such as intent and collateral damage.

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