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## **Beyond *The New Jim Crow***

Author: Mechthild Nagel  
Title: Professor  
Affiliation: SUNY Cortland  
Location: Cortland, New York, USA  
E-mail: Mecke.Nagel@cortland.edu

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## **BEYOND THE NEW JIM CROW**

### **Abstract**

This article challenges contemporary critiques of the U.S. prison system and argues instead that we are experiencing a penal system that most resembles the dehumanizing conditions of nineteenth-century slavery. Through revisionist histories and examinations of international trends in penal management, it argues against simplistic reform and instead advocates for excarceration.

### **Introduction**

*Dedicated to Tiyo Attallah Salah-El, penal abolitionist*

*There are prisons, and there are prisons. They may look different, but they're all the same. They're all confining. They all limit your freedom. They all lock you away, grind you down and take a terrible toll on your self esteem.*

*There are prisons made of brick, steel and mortar. And then there are prisons without visible walls, prisons of poverty, illiteracy and racism. All too often, the people condemned to these metaphorical prisons--poverty, racism and illiteracy--end up doing double time. That is, they wind up in the physical prisons, as well. Our task, as reasonable, healthy, intelligent human beings, is to recognize the interconnectedness and the sameness of all these prisons, and then do something about them.*

*--Rubin Hurricane Carter, 1994*

Michelle Alexander's (2010) bestseller *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* has sparked a social movement and moral outrage across the United States. It is noteworthy that Black law professor Alexander's *liberal* analysis of the legal, historical landscape resonates with a heterogeneous public such as Black anti-prison activists and white conservative politicians who are rethinking the War on Drugs. This essay intends to clarify the ideological differences between those who critique the prison industrial complex and those who question mass incarceration. I argue that instead of witnessing the creation of a new, racist criminal justice system, we see a continuation of neo-slave penal conditions from Lincoln's emancipation decree of select groups of Black people in 1863 until today. So, instead of a "New Jim Crow," we clearly see a legal justification of permanent servitude and civil death reserved for a people in the U.S. legal apparatus beginning with the dehumanizing codification of an enslaved human counting as "three fifth of a person" (sic).

Alexander's liberal, reformist argument is in line with those who demand a decriminalization and *decarceration* policy change at the federal, state and local levels. It is a reformist tactic which avoids tackling systemic inequalities faced by poor and racialized communities across the United States. Abolitionists demand that nothing short of *excarceration* (and reparations owed to Black people) can overcome the horrific and enduring legacy of chattel slavery.

I argue that Black prisoners and Black feminist critiques of the prison industrial complex and of the 13<sup>th</sup> Amendment to the U.S. Constitution, which codifies state-sanctioned slavery, have paved the way for a protest movement against the carceral state. I suggest that Angela Y. Davis and Mumia Abu-Jamal (2014), drawing on W.E.B. DuBois's concept of *abolition democracy*, give a richer, more nuanced context of the persistent criminalization of Black men and women within a capitalist system than Alexander's critique of the reemergence of a racialized caste system in the context of mass incarceration. In order to understand the endurance of enslavement and the paradox of existence-in-Black, one needs to address the overlapping realities of slavery and prisons and go beyond labeling the prison crisis as a new Jim Crow. Penal abolitionist Angela Y. Davis gives us an important corrective to Alexander's liberal paradigm with the pertinent phrase "From the prison of slavery to the slavery of prisons" (Davis, 1998).

In the following, I present a revisionist criminal (in)justice history that not only focuses on the violence of state institutions and state actors but also includes Black insurrectionist actors, who have been left out of Alexander's non-abolitionist narrative. Hers, by contrast, stays safely within the ideological framework of reforming the racist system, tinkering at its unjust edges, namely over-incarcerating non-violent drug users, who make up about 25% of the prison population. Problematically, she has very little to offer in terms of decarcerating measures that would strike at the core of the carceral state. Her book does not give us a blue print for a sound justice (re)investment for those who have been effected the most by the oppressive systems of colonialism, genocide, slavery, white supremacy, capitalism, militarism, and public hetero-patriarchy. By contrast, abolitionist critics of the prison industrial complex seek to understand how (total) institutions interlock and how we mobilize effective resistance to repressive laws and agents.

## State-Sanctioned Slavery: From Slave Codes, to Black Codes to COINTELPRO

Whereas prison abolitionist Angela Davis notes the seamless “transformation” of chattel slavery into penal slavery, Alexander’s argument is based on a three-stage theory of repressive systems: slavery – Jim Crow – war on drugs, each brings a little more freedom or less total control by the state (p. 22). I will borrow her three stages to develop a dialectics, a dance of emancipation and repression, a spiral movement of life and death, highlighting three epochs, a variation on a theme:

- (1) the end of slavery brings the Emancipation Proclamation (1863) along with the 13<sup>th</sup> Amendment to the Constitution (1865);
- (2) the end of Black Reconstruction ushers in the repressive era of Jim Crow;
- (3) the end of Jim Crow culminates in the Civil Rights Voting Act (1965), along with the illegal Counter Intelligence Program (COINTELPRO) of the FBI and the war on drugs.

Instead of joining Alexander’s appealing progressive narrative, i.e. that each period ushers in a little more freedom for Black Americans, I argue the opposite is the case, making the case for abolition and reparations even more urgent.

### (1) The meaning of emancipation in times of slavery:

Lincoln’s Emancipation Proclamation mirrors the elites’ love-hate relationship with the oppositional couple of liberty-slavery. A benign reading may suggest a moral and legal paternalistic commitment that liberty is to be enjoyed in its full range only by some, even where its appeal is universal: “All men are created equal...” and thus enjoy full access to “life, liberty, and the pursuit of happiness.” Of course, the same constitutional text also enshrines the right of slave-holding states to count “others” as three fifth of a person, even when those “persons” are otherwise labeled as chattel, objects, not citizens. This contradiction, liberty and equality (for some, not for all), of course fuels the abolitionist imagination, creating a mass movement across the North (and Great Britain) to topple this torturous regime once and for all, just as the Haitian brothers achieved in their revolution against the French colonialists and slave masters. (In fact, Haiti is the only nation-state that defeated both slavery and colonialism and had to pay dearly for its victory.) At the height of abolitionist fervor, the Underground Railroad, repressive legislation with the Fugitive Slave Act (1850) is passed to engulf the entire union in the legal reality of chattel slavery (in apprehending “fugitives from service or labor”), and it finds judicial support with the equally infamous *Dred Scott* (1857) landmark decision: Black people (deemed free or unfree) are not entitled to citizenship or even personhood on American soil. Lincoln came up with the brilliant strategy to free only those Black men and women, who were enslaved in states hostile to the Union at the onset of the Civil War. Slave states who supported Lincoln and the Union were allowed to keep their Black populace enslaved. At one point, he also favored deportation of Black persons to Liberia. Thus the stage of such fractured commitment to total freedom was set for the convoluted logic of the 13<sup>th</sup> amendment to the U.S. Constitution. Titled “Abolition Amendment,” it sets slaves and indentured serfs free at the same time as it not only restricts freedom to those under legal penal control but effectively codifies state-sponsored enslavement of human beings. Furthermore, the radical demands of Frederick Douglass and

other abolitionists, namely, access to land for a landless freed people, were not granted, nor any other substantive measures that would go beyond guaranteeing mere survival (if that).

### (2) The meaning of Black Reconstruction and Jim Crow:

In his magisterial work *Black Reconstruction*, W.E.B. DuBois (1935/1976) argues that by 1876, Black people were arrested for trumped up, frivolous charges and his analysis of the brutality of the convict lease system leaves no doubt that “they were compelled to work ... as if they were slaves or indentured servants again” (p. 698). In the immediate aftermath of the Civil War, the Civil Rights Amendments (14<sup>th</sup> and 15<sup>th</sup>) along with the Union soldiers’ presence in the defeated south ensured that freed men (not women) were enfranchised, served on juries, and were elected to public office. Black people proved their moral standing as worthy citizens in a white supremacist polity that on the other hand wanted to show that Black people were savages and needed to be controlled by brute force, hence the birth of the Klan, as a paramilitary, terrorist organization that ruled the south and parts of the north with orchestrated acts of intense violence, including murder.

Angela Y. Davis (2005) notes that the death penalty, found to be objectionable in discussions over instituting the modern prison system, was kept within the American slave codes. White people were “merely” executed for the offense of murder of other whites, whereas enslaved Black people were treated to seventy death-qualified offenses in some Southern states (Davis, 2005, p. 37). Well into the twentieth century, Black men were regularly executed for the offense of rape where the victim was a white woman, even after systematic lynch terror was disrupted. Ida B. Wells-Burnett produced substantial evidence that consorting with white women was often the reason for lynching (Davis, 1982).

Convict leasing became a boon for Southern rebuilding effort after the Civil War and the sudden release of millions of Black people from bondage. Private white citizens petitioned the sheriff’s office to open the jail and “send me a slave” (cf. Oshinsky, 1995)—the petitioners did not have white prisoners in mind. Oshinsky’s book *Worse than Slavery* (1996) makes clear that the mortality rate for Black convicts on the chain-gang was much higher than of enslaved people prior to 1865. As Abu-Jamal and Davis’s recent article (2014) notes, arguably, the Black Codes following “Emancipation” did not present a state of freedom. In fact, economic, social, and political disenfranchisement post 1865 seemed to look a lot like chattel slavery. It manifested itself economically, by white men throwing freed men and women into debt peonage, defrauding them of their homestead, private property. Legal, political, and social disenfranchisement occurred by enforcing Black Codes and thus criminalizing Black people as a group and condemning them to the murderous convict lease system. Another way of looking at enslavement is living “beyond the pale” (Nagel, 2014), i.e. a state of exception designed for a surplus people that deserve no protection from the state. If a slave master or lynch mob metes out “justice” against an enslaved person, there’s no mechanism of appealing to the law to stop the violence or to incriminate the perpetrators. Other people of color have also been affected through denaturalization, violence, and (cultural) imperialist processes which Andrea Smith (2010) calls the three pillars of white supremacy: slavery, genocide, and orientalism.

### (3) The meaning of the Civil Rights Movement and COINTELPRO:

World War II served as a catalyst for reigning in legal segregation. First, President Truman averted an embarrassing march on Washington, D. C. by Black activists desegregating the armed forces. And secondly, Black soldiers returning from the liberation of Dachau and Buchenwald concentration camps found it impossible to readjust to a subjugated status in the Jim Crow south. The landmark decision *Brown v Board of Education* (1954) overturned the hated *Plessy v Ferguson* (1896) decision that installed a “separate, but equal” doctrine; yet, *Brown* again built in a provision that slowed down integration “with deliberate speed,” an echo of the Emancipation Proclamation and the 13<sup>th</sup> Amendment. The message to Black Americans can be summarized thus: “Do not hasten your progress, because whites are not ready for you claiming equal standing.” This time, Black people again didn’t listen by delivering the second wave of abolitionism building a non-violent mass movement, also called the Burning Struggle, for engendering other civil rights movements such as women’s rights, just as the abolitionists did a century earlier. Its imminent success resulted in broad civil rights legislation, including an Affirmative Action Executive Order by President Kennedy, which was meant as a gesture of reparation to undo centuries of unequal opportunity. The Civil Rights Movement’s non-violent struggle for recognition was disrupted through the massive secret FBI operation COINTELPRO, which began in 1956 to destroy individual leaders’ reputation (e.g., Martin Luther King, Jr.) or outright assassinate them, as well as bomb offices such as Black Panther headquarters with the expressed goal of undermining the creation of a Black Messiah. The War on Drugs began much later in the Nixon years, which Alexander pinpoints as the beginning of the New Jim Crow.

Interestingly, Alexander’s book starts out with a sobering account of the paternal family genealogy of Jarvis Cotton that crystallizes the enduring violence faced by people of African descent and a white supremacist disregard for Black people as citizens from the founding fathers to today’s criminal justice system. Cotton’s great-great-grandfather was a slave and couldn’t vote; his great-grandfather was beaten to death by KKK for trying to vote; his grandfather, intimidated by KKK, and thus prevented from voting; his father, barred due to poll taxes and literacy tests; and Jarvis himself can’t vote because he is a felon, on parole in Mississippi. I ask: Isn’t it the case that we see through the centuries different faces of slavery? In what ways is Jarvis “freer” than his ancestors? Why then does Alexander label mass incarceration as a “New Jim Crow,” when we are ensconced in the legacy of hundreds of years of enslavement? Her famous words “We have not ended racial caste in America; we have merely redesigned it” (p. 2) also fit within the context of neoslavery. The term caste suggests the softer analysis of second-class citizenship but elides the more radical penal abolition demand of ending slavery in all of its forms. The following section outlines the U.S.’s exceptional standing as penal democracy.

### **Understanding the Global Legal Context: Revisiting the U.S. Slavery Statute**

*De jure*, prisoners are indeed slaves and considered civilly dead. The Thirteenth Amendment to the U.S. Constitution (1865) guarantees that chattel slavery continues as publically administered servitude. Slavery or indentured servitude is prohibited, but in an exception clause it is determined that as long as a person is duly convicted of a crime, that person is considered a slave of the state. *Ruffin v Commonwealth of Virginia* (1871) made this reading abundantly clear. Thus the racially coded *Dred Scott* decision during chattel slavery found a new life, as now state actors and others find it appropriate to refuse to give Black people equal dignity status. Under *Ruffin*

Black men still had “no *rights* which the white *man* was bound to respect” (*Dred Scott*, 1857), but in a post-Civil War era, *Ruffin* could no longer appeal to a racially explicit justification: convict status now serves as a placeholder for Blacks’ qualified standing in the white polity. Spielberg’s epic film *Lincoln* (2012) passes over the exception clause in silence while the congressional fight over the passage of the 13<sup>th</sup> Amendment plays a central role in defining Lincoln’s anti-racist pedigree.

The League of Nations passed the first global anti-slavery convention in 1926, which propelled the U.S.’s legitimation of the “peculiar institution” onto the international stage, since its government signed onto it with reservations, citing verbatim the language of the exception clause:

United States of America  
(March 21st, 1929 a)

Subject to the reservation that the Government of the United States, adhering to its policy of opposition to forced or compulsory labour *except as punishment for crime of which the person concerned has been duly convicted*, adheres to the Convention except as to the first subdivision of the second paragraph of Article 5, which reads as follows:

"(I) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes." [emphasis added]

With this reservation language, the United States has the dubious distinction for being the only nation-state defending slavery. If I understand correctly the double exception language embedded here, the U.S. delegation also expressly condoned the notorious convict-lease system; however, convict-*corvée* underwent “reform” by abolishing private actors profiteering from prisoners’ labor. As Abu-Jamal and Davis (2014) point out convincingly, “[t]he Union’s victory over the Confederacy in the Civil War and the ratification of the 13th, 14th, and 15th Amendments to the Constitution during Reconstruction spelled slavery’s doom. Within a few years, however, the system thought buried by war was exhumed and given new life under the program of leasing convicts as labor. It was slavery in every sense but its name. Indeed, as it was public instead of private ‘slavery,’ it was in some ways worse.” Thus, earning formal, abstract rights and colorblind legal instruments did little to ensure that the lives or civil rights of freed men and women were

## **Neo-Slavery Meets the New Jim Crow**

### 1. A New Racial Caste system?

Alexander provocatively writes that racial caste status has not been relinquished, it has only been redesigned in the age of colorblindness (p. 2). It is a powerful statement that has been cited extensively. Yet, I fear that with this bold thesis the book actually is at its weakest because it devolves into a performative contradiction. Is it a new racist segregated system or does mass incarceration have the hallmarks of chattel slavery of yesteryears? Alexander seems to want to argue both sides. The contemporary War on Drugs confirms the New Jim Crow status of Black men qua convicts (not Black women—are they also considered a “collateral” as whites are described to be ensnared in this war?). She argues that they can never evade their felon label and

that in fact the system depends on the prison label, not prison time (p. 136). Taking her cue from *Dred Scott* (1857), she writes:

Today a criminal freed from prison has scarcely more rights, and arguably less respect, than a freed slave or a black person living “free” in Mississippi at the height of Jim Crow. Those released from prison on parole can be stopped and searched by the police for any reason—or no reason at all—and returned to prison for the most minor of infractions, such as failing to attend a meeting with a parole officer. Police supervision, monitoring, and harassment are facts of life not only for all those labeled criminals, but for all those who “look like” criminals. Lynch mobs may be long gone, but the threat of police violence is ever present. (p. 138)

Here Alexander clearly articulates that a) any Black person can be a target of arbitrary state power and b) vestiges of slavery live on in today’s Black America.

Yet, Alexander contradicts herself by clearly stating that today’s “mass incarceration” is not similar to the prior systems: “Just as Jim Crow, as a system of racial control, was dramatically different from slavery, mass incarceration is different from its predecessor” (p. 195). She finds that virulent racism is gone, and Black children may dream of ascending to the presidency (p. 197). Yet, she also acknowledges that the “penal system may be as brutal in many respects as Jim Crow (or slavery)” (p. 197).

I argue that the ontological status of Blackness attaches to the existential condition of “unfreedom” and at best “second-class citizenship.” Whites possess freedom, while Black people do not. Natal alienation, as Orlando Patterson (1982) notes, refers to the lack of belonging:

I prefer the term “natal alienation,” because it goes directly to the heart of what is critical in the slave’s forced alienation, the loss of ties of birth in both ascending and descending generations. It also has the important nuance of a loss of native status, of deracination. It was this alienation of the slave from all formal, legally enforceable ties of “blood,” and from any attachment to groups or localities other than those chosen for him by the master, that gave the relation of slavery its peculiar value to the master. The slave was the ultimate human tool, as imprintable and as disposable as the master wished. And this is true, at least in theory, of all slaves, no matter how elevated. (p. 7)

Given the 13<sup>th</sup> Amendment, we can clearly see the continuation of slavery behind prison walls, and as Alexander shows, as “released” felon. Patterson also notes that existential status of slaves as “social death” (p. 5). Micro-aggressions amounting to social death occur daily in prisons. Tiyo Salah-El shed his slave name while imprisoned and legally changed his name. When I visit him, I have to give his “committed name,” since the white guards do not recognize his right to his new name and identity. Yet, “community policing” is another side of the penal democracy, which favors selective targeting, expressed in the protest response of “driving while Black” or even “breathing while Black.” Since 2014, the social movement of Black Lives Matter has blown apart the notion that Black lives are “only” endangered while incarcerated. But many imprisoned intellectuals have written about the white supremacist state’s seamless surveillance, including the school-to-prison pipeline. It has just evaded Alexander’s vision.

Pace Alexander, I argue that the war on drugs did not jumpstart “the New Jim Crow.” Even during the height of the Civil Rights Movement, Black people were policed, harassed, murdered by the state due to the FBI’s controlling COINTELPRO (i.e., counterintelligence program). This repressive policy focused on the Black Panther, in addition to Martin Luther King among thousands of others, in part to root out “any Black Messiah” and to do anything to destroy and decimate the reach of the Panthers into Black America. This included state-sanctioned murder, as the killings of Chicago activists Fred Hampton and Mark Clark made abundantly clear. These insurrectionist Black freedom fighters disappear from Alexander’s liberal historical lens. As marooned freedom fighter Assata Shakur (1987) put it, as a Black woman “I don’t have the faintest idea how it feels to be free” (1987, p. 60). So while it is true that the expansion of the prison industrial complex has engulfed millions of Black Americans like never before since the end of the Civil War (1865), it is not the case that repressive policing has not always been a permanent reality in the past. It may have been the psychic reality of a “minimum security” prison, i.e. “the streets,” rather than life behind bars, i.e. “maximum security” prison (Shakur, *ibid.*), but it has been the experience of penal slavery all along. The social, economic, political costs endured and debt “owed” to white people (through debt peonage, unscrupulous lending agents, landlords, bosses) continue the existence of slavery in a colorblind polity (Coates, 2014b).

Alexander’s focus on the War on Drugs as propelling the New Jim Crow makes other repressive policy changes less significant. However, youth of color, especially Black youth, have been severely impacted by “Zero Tolerance” policies in schools, creating a veritable “school-to-prison” pipeline. Drug use or sales is eclipsed by citations and punishment for “talking back,” for wearing the wrong type of clothing, for carrying cell phones to the classroom, and other petty “offenses.” White kids do not get criminalized on the scale of Black kids—witness six-year old child Salecia Johnson being arrested and handcuffed in kindergarten for having a temper tantrum—and the police standing by their decision to handcuff and press charges against the child! (Campbell, 2012). It is so engrained in a Black child’s psyche that a) they will be confronted with whites’ compassion deficit, and that therefore b) to them prison is part of becoming adult, a normalized rite of passage. A six-year old boy when asked what he plans to do when he’s grown up, answered pensively “well, first, I’ll go to prison to put that behind me, then I will go to college” (Nagel, 2008).

## 2. Cyclical evolution or more of the same neo-slave penal regime?

Alexander relies on Loïc Wacquant’s stage theory of the cyclical nature of racial caste in the U.S. (p. 207). In support of his theory, she proposes that “we have witnessed an evolution ... from a racial caste system based entirely on exploitation (slavery), to one based largely on subordination (Jim Crow), to one defined by marginalization (mass incarceration)” (*ibid.*). This elegant stage theory, which takes us from ante bellum times to today’s war on drugs as the major culprit for locking up Black men, has its merits, yet it leaves out major existential and material aspects in each phases – the categorization of slavery merely as a problem of capitalist exploitation. Alexander is silent on the well-established concept of natal alienation noted above and of the gendered violence of chattel slavery, the systematic rape of Black women and girls whose children “followed the condition of the mother” (see Constitution of Virginia, 1669). Her stage



two brings about Jim Crow, which is reduced to the issue of “subordination,” or in legal terms “second class citizenship.” Is this true?

In the following, I show parallels between the Jim Crow period and slavery. Extreme and arbitrary forms of violence prevail; Black entrepreneurs who were competing successfully with white business owners face threat and certain ruin; white supremacist riots swept the South terrorizing Black people that they have no legal rights and by extension, lacking moral standing. Thousands faced the dire choice between potential lynching, extra-legal execution, or flight. Ida B. Wells-Barnett, who chronicled the lynchings chose the latter. A dignitarian ethics has never been extended to Black people, as Kant, dignity scholar par excellence, makes clear in his racist ruminations (Kant, 2004). Instead, under the merely formal aspects of freedom after 1865, people of African descent continued to experience a special kind of violence: a compassion deficit, which emanated from all institutions which controlled their lives, and continues to this day.

Under the brutal convict lease system, Black convicts paved the streets of Atlanta, toiled in mining industries in Birmingham and were thus coerced to industrialize the post-Civil War South: they served as unpaid laborers creating the racial state (Lichtenstein, 1996, cited in Davis, 2003, pp. 34-5). Their living quarters were so appalling and diseases were rampant; securitization was achieved by riveting a metal spur to their feet and they were overcome by “shackle poisoning” from wearing the iron leg shackles on the chain gang (Oshinsky, 1996, cited in Davis, *ibid.*, p. 32). So much for death from natural causes! Nowhere are penal plantations described as death camps, fitting descriptions for the Parchman Farm or Angola (“The Farm”). Furthermore, rounding up men and women selectively under Black Codes eerily resembles modern day sweeps (stop-and-frisk) in American cities. During the Jim Crow era, the Clan used extra-legal terror to lynch Black people, while the sheriffs (by day) also enforced the Black Codes, i.e. offenses that no white citizen was charged for such as walking after sunset or walking in groups. Angela Y. Davis (2003) writes:

We have learned how to recognize the role of slave labor, as well as the racism it embodied. But black convict labor remains a hidden dimension of our history. It is extremely unsettling to think of modern, industrialized urban areas as having been originally produced under the racist labor conditions of penal servitude that are often described by historians as worse than slavery. (p. 35)

Chattel slavery was abolished, only to reemerge through legal maneuvering as penal slavery (James, 2005, xxix).

To be sure, Alexander also comments on the cruelty of Jim Crow’s convict lease system by citing Douglas Blackmon’s study *Slavery by Another Name* (2008) and Oshinsky’s study of the Parchman Farm (1996). She even mentions briefly the exception clause of the Abolition Amendment and the *Ruffin* case noting that “the court put to rest any notion that convicts were legally distinguishable from slaves” (Alexander, 2010, p. 31). I argue that her own acknowledgement of these conditions of neo-slavery under Jim Crow also puts to rest any notion that “mere subordination” was at work in creating a new caste system, measurably different from chattel slavery. Alexander is silent about the fact that the Southern prisons were filled with a vast

majority of white people in the ante bellum period. Post 1865, all of the sudden, whites were no longer fit to serve much (if any) prison time, whereas freed Black men and women were condemned to hard labor and the chain gang during the establishment of the Black Codes (Davis, 2003, p. 29).

The third element of Alexander's stage theory suggests that mass incarceration leads to marginalization. As many critical race theorists have pointed out, today's second-class citizen, the racialized subject qua felon, lacks our collective sympathy, since the system and the state are officially post-racial, i.e. colorblind. On the other hand, it is also problematic because for instance, as Mary Ann Curtin points out (2000), of the parallels between convict-leasing and the contemporary private prison experiment (cited in Davis, *ibid.*, pp. 36-7). Various prison corporations benefit from owning prisons and advertise with catchy slogans "if we build it, they will come," profiting directly from human misery. In addition, prison industries such as TWA, Microsoft, Victoria's Secret contract prisoners who get paid a fraction of minimum wage (Nagel, 2002). And tell prisoners who toil on the plantation of Angola State Penitentiary (a slave plantation, converted into a prison post-1865) that they are not exploited for forfeiting a living wage, a pension plan, and meaningful health care. They are forced to see medical staff who often lost their licenses and are barred from working outside prisons. Prisoners are not allowed to unionize, as the courts recently confirmed, due to the exception clause in the 13<sup>th</sup> Amendment. Several states still condemn prisoners to hard labor without pay (Schwartzapfel, 2014).

Black Panther Assata Shakur's brush with "the law" while awaiting trial is telling. Told in no uncertain terms by the guard to sweep the floor (i.e. condemned to unpaid labor), she defies the guard declaring: "you can't make me work!" The guard doesn't miss a beat and cites the Thirteenth Amendment—prisoners are after all mere slaves. It gets Shakur thinking and writing the following before the onset of "mass incarceration":

That explained why jails and prisons all over the country are filled to the brim with Black and third world people, why so many Black people can't find a job on the streets ... Once you're in prison, there are plenty of jobs, and, if you don't want to work, they beat you up and throw you in the hole. ... Prisons are part of this government's genocidal war against Black and third world people. (Shakur, 1987, pp. 64-65)

Nevertheless, the guard wasn't exactly correct in her legal interpretation of the Constitution due to Shakur's remand status. But in the U.S., remand prisoners are barely treated as persons presumed innocent. They do not live in separate quarters and even have to wear prison orange jumpsuits adorned with stomach and leg shackles to court.

Alexander misses the larger context of the prison industrial complex and how this massive web is tied to the control and surveillance of a people that cannot be trusted with being left alone, i.e. enjoying negative freedom. And contrary to Wacquant's prediction, each system is not less total—in fact, the registration system starts prenatally!

At the very least, we are seeing the endurance of the slavery legacy, of the ruthless demonization of a people where white elites "impute crime to color" (Douglass, 1883, cited in Davis, p. 30). Slave Codes morph into Black Codes and these have enduring legacy in the neo-slavery "post-

racial” carceral setting. The Baldus Study so poignantly shows that it is practically impossible for a white man to receive the death penalty for the offense of killing a Black girl; by contrast, it is highly likely for a Black man to be executed for being implicated in the death of a white person (Baldus et al., 1990, p. 315). Alexander tellingly mentions the racist continuation from ante Bellum *Dred Scott v Sanford* that declared that a Black man had no rights that a white man needed to respect, to *Plessy v Ferguson*, cementing Jim Crow law with a “separate, but equal” fiction, to *McCleskey*, who brought the Baldus study to the Supreme Court’s attention. Yet, the justices “feared too much racial justice” (in the words of the dissenting judge) and erred on behalf of a spiteful endorsement of penal slavery; and thus ordered death for McCleskey who was convicted of killing a white man (Alexander, 2010, p. 189). Clearly, Alexander is very well capable of seeing the continuation of civil death from the prison of slavery to the slavery of the prison industrial complex, but she ignores this analysis in her optimistic liberal narrative. In summary, Alexander’s oscillation between two competing paradigms can be summarized with this Zizekian formula (“I know ..., but nevertheless, I believe ...”). She commits herself to this fetishistic disavowal: “I *know* very well that the current penal system is ‘worse than slavery,’ but I *believe* that it is an echo of Jim Crow and the second-class citizenship has to be dismantled by ending the war on drugs, so that Blacks can rise up unencumbered by racialized policing.”

Why might she be involved in performative contradictions or disavowals? I suggest it has to do with a professional audience Alexander has in mind: the civil rights community of which she is a part. ACLU or NAACP lawyers have a passion for reforming the status quo, but as she says, many folks in the civil rights community have been rather silent about mass incarceration and the epidemic reach of the dragnet ensnaring Black boys and men during the escalation of the war on drugs. Alexander has been singularly effective in reaching this group by shedding light that this calamity is not about criminal justice, rather it is about racial justice and indeed a civil rights issue of crisis dimension (p. 9). Lest they be accused of activist lawyering, attorneys do not use inflammatory rhetoric such as labeling criminal justice apparatus as “prison industrial complex” or prisoners and felons as “slaves.” So, Alexander treads carefully between liberal rhetoric of the abstract rights bearing individual and procedural democracy and a plethora of U.S. Supreme Court cases where it is clear that the law simply is not just, especially for Black people. She chronicles egregious cases, where the high court has condoned torture by state actors (i.e., police chokeholds, arbitrary arrests, racial profiling) and the wholesale abandonment of the Bill of Rights (passim).

### **Whose Narratives?**

Alexander boldly claims that her book “is not written for everyone.” In fact, I would argue that Alexander’s book is written for specific (mainstream) reform-minded audiences in mind, and not for penal abolitionists. It is remarkable that this is a book that has landed on the *New York Times* bestseller list and is read widely in book clubs around the United States. Politicians have started to change their tune on “harsh justice” and some of us (criminal justice activists) have been able to impress on our local prosecutors to have courage to rethink punishment when long prison sentences are proven to be abysmal failures. In fact, we have over 90 million Americans with a criminal record, often preventing them from pursuing choice housing, jobs, and much needed education (EIO coalition, 2014). Nowhere is the crisis more acute than in Black America, when one in three Black men will face incarceration or some kind of judicial supervision in his

lifetime. It goes without saying that surveillance does not stop at innocence, as we know from the “stop-and-frisk” policy of Bloomberg’s New York. Nationwide, a Black man has a fifty percent chance to find himself arrested by the time he is 23 years old (Brame et al., 2014). Mass incarceration has focused on the Black man as a species, in terms of Russell-Brown’s (2009) “criminalblackman” which refracts Foucault’s (1976/1990) famous comment about the homophobic invention of “the homosexual as a species.” As Angela Y. Davis (2003) and others have noted, such sober statistics disguises another alarming development, namely, that Black women are the fastest rising group given all incarceration. American Indians, as well as transgender and gender nonconforming people of color are also disproportionately targeted, but since they are marginalized persons, they are disappeared from most policy discussions.

Thus, her second audience—of white politicians, civil rights attorneys, prosecutors and judges—might resonate better with the term of “mass incarceration” than with the more politically controversial concept of “criminal injustice” (Rosenblatt, 1999) or the “prison industrial complex” used by prisoners of war, political prisoners and other penal critics (Shoatz, 2013; Davis, 2003; James, 2005):

A phrase like "mass incarceration" obviates the fact that "mass incarceration" is mostly localized in black neighborhoods. In Chicago during the '90s, there was no overlap between the incarceration rates of black and white neighborhoods. The most incarcerated white neighborhoods in Chicago are still better off than the least incarcerated black neighborhoods. The most incarcerated black neighborhood in Chicago is *40 times* worse than the most incarcerated white neighborhood (Coates, 2014a).

We may ask: *What happened to prisoners’ protest movements and insurrectionist prisoners’ narratives?*

Alexander’s third audience is that of prisoners, a few of them having encouraged her to write the book. As somebody who has focused on writing about prisoners’ life and learned a great deal about prisoners from my students and friends who are locked up (Nagel, 2008), I certainly appreciate that she acknowledges their voices rather than writing them out of existence, as it so often happens in criminological treatises. Thus, I am bewildered that prisoners’ protests including the famous 1971 Attica, NY uprising, where men demanded a modicum of civility concerning sanitary items, lawbooks, and be treated as men, not as animals, disappear in her broad historical analysis. The Attica prisoners organized their prison takeover in response to the state’s killing of California’s most famous politicized prisoner, George Jackson. Alexander doesn’t mention victories such as a prisoners’ Bill of Rights in California, conjugal visits in New York, thanks to Attica, and the abolition of the hated trustee system in the South, which condoned prisoners’ shootings of other convicts (Parenti, 1999, pp. 164-5). It is as if one writes about the ills of American chattel slavery without mentioning David Walker, Frederic Douglass, Harriet Tubman, John Brown, Nat Turner, and Sojourner Truth, and the radical maroon communities in the struggles to abolish slavery (cf. Shoatz, 2013). Alexander does mention the reformist reentry organization “All of Us or None” which receives state funding, but she avoids naming the abolitionist group Critical Resistance, whose co-founder is Angela Davis.

One prominent prisoner not mentioned in her book is Mumia Abu-Jamal (1995) who signified on Douglass's stirring speech "What, to an American Slave, is the 4<sup>th</sup> of July?" (1852) with his own "What, to a Prisoner, is the 4<sup>th</sup> of July?" Douglass's searing critique of the hypocrisy of the state's celebration of the freedom of its citizens, when millions of men, children, and women were subjected to shackles and violence, is echoed in Abu-Jamal's soliloquy on the meaning of Mandela and De Clerk getting a Liberty Metal in Philadelphia. Despite celebrating the end of apartheid, he notes that the "African majority, even after the awards, still isn't free" (p. 138). Abu-Jamal does not clarify the meaning of freedom, yet, clearly, he means that abolition democracy is not made overnight: reparations, land return and redistribution of wealth are all part of demands to fully enfranchise a landless majority that has been oppressed for over three hundred years by white minority rule. Furthermore, it is important to note that Abu-Jamal's bestseller brought trouble to him as his "privileges" on death row were revoked for the offense of "engaging in the business or profession of journalism" which earned him thirty days in solitary confinement (1996, p. xxi).

As Northrup's abolitionist narrative *Twelve Years a Slave* makes abundantly clear, enslaved persons forfeit the right to literacy, and death or other severe punishment were a natural consequence to keep the captive population terrorized. It is no coincidence that the vast majority of U.S. prisoners are barely functionally literate beyond 5<sup>th</sup> grade education, and special sanctions are handed out to those who dare to write legal briefs challenging the terms of the incarceration. They are dubbed jailhouse lawyers, and given what they endure thanks to arbitrary punishment by wardens, the modern-day plantation masters, these unsung marooned heroes produce neo-slave resistance narratives in the contemporary penal colony (cf. Abu-Jamal, 2010; Shoatz, 2013). It seems that insurrectionist prisoners, whether as jailhouse lawyers or doctors, determined to take care of their own health, are particularly policed by the state, as they question the right of the state to hold them and others captive and boldly imagine a different kind of democracy (cf. James, 2005, xxxii; Abu-Jamal, 2010, passim).

Thus, the concerns of the prison audience are overshadowed by the primarily targeted audience, especially the white middle-class and elite, who have so far been comfortably ignorant about the prison industrial complex. In fact, prosecutors, sheriffs and the like would arguably hold that violent crime is down precisely because policing has been increased and more people are being locked up (albeit for non-violent crimes or for offenses that wouldn't be criminalized elsewhere, e.g., Portugal, Denmark, or the Netherlands). They want to believe religiously in the old philosophical adage that violent crime is stopped only through overzealous prosecution in order to *deter* others (if not the *predicate* offender). Alas, what is noticeable in this justification of punishment (deterrence) is a penchant for retribution. Revenge tends to trump all other reasoned approaches to penalty along a fetishistic disavowal formula: "I *know* very well that retribution is another word for revenge, but I *believe* that it really works and represents a measured desert-based punishment that approximates proportionality of the offense." An eye for an eye ideology is thus disguised in the language of abstract rights bearing individual deemed innocent before acquitted or punished in a court of law.

Of course, Alexander and I agree on the ruse of such blame game given the racist implications of the war on drugs. She acknowledges with refreshing honesty a turn in her political commitment, moving away from a belief in the post-racial, democratic system which duped her: "Never did I

seriously consider the possibility that a new racial caste system was operating in this country. The new system had been developed and implemented swiftly, and it was largely invisible, even to people, like me, who spent most of their waking hours fighting for justice” (p. 3). Despite her vague understanding of the oppressive “legacy of slavery and Jim Crow” (ibid.), the seductive ideological force of the procedural, colorblind, well-ordered aspects of criminal justice is unrelenting. To underscore how easy it is to be ensnared in colorblind ideology, I want to mention again the journalist Abu-Jamal, who after all was a Black Panther at the tender age of 15, something haunting him in the closing statements of the prosecution in the death penalty phase of his trial over a decade later. In *Live from Death Row* (1996), he writes that he still naively believed in getting justice and relief from the hanging judge Sabo presiding over his case when he turned to the appeals process to seek his freedom (p. xvi). It is easy enough to believe that one poor judgment by a mean spirited judge (and prosecutor, hiding exculpatory evidence and promulgating coerced confessions). Thus, Americans of all political persuasions, including political prisoners, are caught up in believing that the criminal justice system is in fact just. However, many political prisoners and prisoners of war and their allies in the streets have chronicled amply the obverse being true. Philosopher Angela Y. Davis’s 1972 acquittal of murder, kidnapping and criminal conspiracy charges by an all-white jury did not prove that the system “works;” instead it showed that a vibrant world-wide movement organizing on her behalf for 22 months made all the difference.

### **Choosing Excarceration over Decarceration**

Both reform and more radical opponents of mass incarceration agree that *decarceration* is an urgent strategy to employ. Alexander argues fervently for the decriminalization of drug use, which, astonishingly, has resonated with white mainstream politicians and the U.S. Justice Department. It is a curious coincidence that the publication of her book coincided with the national launching of an ultra-conservative think tank devoted to the motto “Right on Crime,” suggesting that the drug war has utterly failed and that therapeutic approaches to an addiction problem are urgently needed. The conservative ideology of fiscal responsibility may have finally been put to good use. At 80 billion dollars in direct costs associated with incarcerating prisoners (NYT ed., May 25, 2014), policy wonks like Newt Gingrich admit that the drug war is a failure and strains state’s budgets.

Penal abolitionists caution that some aspects of decarceration, presented as alternatives to incarceration, may lead to increasing the dragnet of the carceral state, e.g., drug court, which has a low success rate. Furthermore, if the person ordered to years of drug court attendance once fails to supply clean urine tests, she may be sent back to jail. Electronic monitoring also has been used as an added punitive measure, rather than as a decarceration tool (Kilgore, 2015). Prison abolitionists go further by demanding an *excarceration* strategy, which implies the application of transformative justice. Transformative justice means that all institutions, not just the penal system, have to be dismantled and rebuilt differently.

The behemoth of the criminal justice system can accommodate all kinds of alterations or reforms, collectively called alternatives to incarceration (ATI). ATI tend not to be excarceration practices, given that the judicial focus is still on the carceral: if one violates sanctions such as the mobility terms of the electronic bracelet, of drug court, etc., the person usually gets returned to jail or prison. The digital age has ensured a perplexity that confirms Foucault’s notion of

regulatory power at work, namely, that the carceral panopticon is truly everywhere, especially in one's living room. Hence I disagree with Alexander following Wacquant who argues that "[w]ith each reincarnation of racial caste, the new system ...'is less total, less capable of encompassing and controlling the entire race'" (cited in Alexander, p. 22). Exactly the opposite is the case. Alexander emphasizes herself that nowadays more Black men are under "correctional" control than were enslaved in 1850 (p. 175). That does not even account for those who are on parole or probation and mandated to diversion programs (ATI). It's difficult to even label ATI as part of the decarceration strategy; it is part of the Probation Office in many jurisdictions.

The threat of being "violated," i.e., found guilty of technical violation of parole or probation conditions, looms large. The court, social workers, parole officers, probation office, make it clear to defendants that they still have to pay a debt to society through submitting to drug court sanctions, and mental health evaluations. In addition, they are literally indebted with a proliferation of fees—ensuring that the person of interest will never walk "free" from state supervision. Alexander helpfully gives a catalogue of such privatized services, whose fees often are also encumbered by prisoners: public defender application, bail investigation, per diem (during pre-trial detention), supervision by parole or probation, child support, etc. (pp. 150-51). At least to me, it is clear that the slavery image looms large here; what is new is that this "life-on-the-installment plan" (Salah-El, personal communication, 2003) in the "slave-ship that doesn't move" (N'Zinga, 2000) is publicly executed enslavement of millions of people, instead of being privately administered, as chattel slavery was till 1865.

In comparison to whites, Black citizens possess fewer driver's licenses and other identification cards, which are now requirements for voting (akin to a poll tax) in some states, but there is a tacit understanding that they are supposed to be "registered" in the system. An anecdotal illustration: a friend and neighbor has been racially profiled over the years on different occasions—on her porch or in her car in a town in upstate New York, which is predominately white. Every time, the police runs her license, they exclaim in disbelief to her "why don't we have you in the system? When did you move here?" And they are shocked to find out she's been living in town for ten years without having a criminal record. We can only speak of successful practices of decarceration when a) the rate of criminal ensnarement drops to the level of whites; b) the sentencing practices (i.e. anti-Black harsh justice) drop to the level of whites; c) the "criminalblackman" is a stereotype of the past and that all Black people are truly considered innocent before proven guilty; d) there's an expectation that Black children finish high school and go on to college. At that point, we could begin to see that the system is indeed less ensnaring the "usual suspects" (sic).

How does the conceptual contrast of decarceration and excarceration compare to anti-slavery narratives? During the 1820s, vigorous discussions took place between those who demanded a *gradual* abolition of slavery and those like David Walker and Frederick Douglass, who demanded *radical* and immediate abolition. At the same time, they both had different perceptions of the racial nature of the constitution: Douglass denied that there was a racial contract (cf. Mills, 1999; Sundstrom, 2012) and Walker would probably have had difficulties with Douglass's pragmatist political style, namely, working with groups that were overtly racist. Douglass also had a procapitalist bias and critiqued labor unions (Davis, 1998).

In summary, today's reformists, who wish to address the excesses of mass incarceration and converting capital punishment into calls for life imprisonment without parole, are somewhat similar to white abolitionists, who favored a gradual anti-slavery approach along with repatriating Blacks to Africa (Liberia), appeasing white supremacists fears of an emancipated people. Those who now favor penal abolition, contesting all aspects of penality, not just (mass)incarceration, compare to radical abolitionists of chattel slavery. Their dogged determination to bring about abolition democracy compares to current freedom fighters, as James's anthology of prisoners' voices makes clear: *The New Abolitionists: (Neo)Slave Narratives and Prisoners' Writings* (2005). In fact, one of the contributors, Tiyo Attallah Salah-El, could not receive a copy of that book in the Pennsylvania prison where he has been locked up for over three decades for an offense he didn't commit (personal communication), since the book contained two problematic terms: "abolition" and "slave." Using the word "slave" is a fighting word in a U.S. prison: One of my Black students received the treatment of the "box," i.e., solitary confinement for three months, for complaining to be treated like a slave within earshot of a guard. In a training session, a program administrator explained to me that the use of terms like "slave" when it refers to prisoners will be punished; the analogy given was "it's like crying fire in a crowded theater." In fact, what the overseers, i.e. correctional personnel, wish to avoid is another slave insurrection such as the Attica rebellion of 1971. However, it is ironic that prisoners are punished for articulating exactly what they are in the eyes of the state: enslaved people.

### **Conclusion: Beyond Emancipation towards Liberation and Abolition Democracy**

Alexander's argument can be summarized this way: She argues that mass incarceration engendered the New Jim Crow. The pretext for indiscriminate arrests and selective punishment of Black men is the government's policy war on drugs. She convincingly shows that the badge of felon status renders one permanently into social exile and social death (p. 158). Thus the New Jim Crow can only be dismantled if the drug war were eradicated, the majority of prisoners, especially Black males, were released and felons destigmatized. It is as if she waved a magic wand and made racism qua penal servitude disappear in the context of a capitalist democracy.

I am, of course, all for pursuing sensible measures of decarceration. My key concerns with her approach remain that Alexander short-circuits an in-depth analysis of the mechanisms of the prison industrial complex, and she doesn't sufficiently take seriously the racialized nature of the prison itself, in fact of replicating the slave-like conditions of torture and dependence, from its birth in Philadelphia and then ideologically buttressed through the exception clause of the Thirteenth Amendment. Legally reducing people to slaves makes it easier to institute a death row and justify state-sanctioned executions; thus the United States is one of very few nations that still murders its citizens and others. Therefore, not only mass incarceration needs to be destroyed, but the modern Benthamian project, as it was first executed on American territory, needs to be declared inhumane and untenable with contemporary concerns for human rights. And the wholesale criminalization of Black people did not start with the advent of the drug war, but it started with the Slave Codes, so that the stigma that crime is singularly foisted upon a Black male and increasingly Black female, giving white people literally a carte blanche to commit crimes with impunity because we possess the color of innocence. To be sure, white people also get arrested, but it is as if an affirmative action policy were in place: to lock up just so many



whites that it does not look too blatantly like the fact that only one group of people is capable of committing criminal acts.

So, following other penal abolitionists, I maintain that incarceration is the only way to rid ourselves of racialized penal servitude, and the state's step towards true manumission or emancipation would result in the abolition of the exception clause in the so-called Abolition Amendment. Joy James correctly presents this conundrum of the Amendment: "[it] ensnares as it emancipates" (2005, p. xxii). She explains that emancipation is a state-governed, legally binding agreement, imposed by the dominant party upon its subjects.

In his *Narrative* (1845), Douglass spells out what it means to seek not manumission (from above) but liberation (from below) in his battle with a slave-breaker, Mr. Covey:

The battle with Mr. Covey was the turning-point in my career as a slave. It rekindled the few expiring embers of freedom, and revived within me a sense of my own manhood. It recalled the departed self-confidence, and inspired me again with a determination to be free. The gratification afforded by the triumph was a full compensation for whatever else might follow, even death itself. He only can understand the deep satisfaction which I experienced, who has himself repelled by force the bloody arm of slavery. I felt as I never felt before. It was a glorious resurrection, from the tomb of slavery, to the heaven of freedom. My long-crushed spirit rose, cowardice departed, bold defiance took its place; and I now resolved that, however long I might remain as slave in form, the day had passed forever when I could be a slave in fact. I did not hesitate to let it be known of me, that the white man who expected to succeed in whipping, must also succeed in killing me. (Douglass, 1845/1994, p. 65, cited in Sundstrom, 2012)

Today, prisoners write courageously under the watchful eye of the censors from the tomb of solitary confinement or death row, and some of them even miraculously maintain their dignity refusing to be a slave of the system or forfeit their beliefs. Political prisoner Herman Wallace was never meant to leave alive Angola penitentiary, formerly a slave plantation, after forty-two years of solitary confinement, because its long-time warden determined that lifers die inside and get buried in the cemetery. A Black Panther, Wallace was railroaded through a trial accused of murdering a guard, and sentenced to the tomb, longer than any prisoner in the world (Bhalla, 2012). He left prison in 2013 holding up his fist and dying a mere two days later.

What would abolition democracy look like to a political prisoner like Wallace? As DuBois suggests, it would mean to dismantle *in toto* all institutions that bear the vestiges of bondage. Angela Davis adds that the reparations movement should start advocating for the end of the death penalty (2005, p. 35). Tiyo Salah-El (2007) favors turning abandoned prison sites into healing and caring centers, and retrain former guards to become social workers. From the Quakers to mainstream criminologists, it is clearly established that white-collar crime (i.e. multinational corporations, finance capita, etc.) cause more criminality than street crime, yet there's hardly a conviction that follows their wreckage on communities and lives lost due to corporate crime. In addition, legal drugs (pharmaceuticals, alcohol, tobacco) cause much more harm, death, and destruction than all of the illegal, criminalized drugs combined (Drucker, 2011). A vision of abolition democracy would return to many of the tenets of the 10-point program of

the Black Panther Party, the organization that brought American children the breakfast school program, Head Start. Eliminating capitalist exploitation, the penal system, including policing, as well as the military industrial complex would be part of an overhaul program and charting life-affirming institutions and a type of communalism cherished by Tanzania in its decolonial phase.

What needs to be done to discontinue the horrifying trend that one in three Black men today will be incarcerated in his lifetime? This statistic doesn't even account for the hundreds of thousands who will find themselves frisked and arrested and released without being charged. Or, those who are simply shot in the back by rogue police, a haunting reminder that extra-legal lynchings are not violent acts of the past. Once formally freed from chattel bondage, Black people were not given reparative means to get free education, vocational training, jobs, homestead farming—the rallying cry of “forty acres and a mule”: Land reform was indeed executed in the Carolina islands by General Sherman who consulted with freed citizens, but it was swiftly annulled (Gates, 2013). Black homesteading was also crushed through dubious mechanisms that resulted in a freed family being shackled by share cropping till the Great Migration brought an end to it (see Coates, 2014b).

The promise of yesteryear's reparations rings hollow in the bowls of the slaveship that doesn't move (N'Zinga, 2000). Dismantling capitalism which buttresses the prison industrial complex will be an important step in getting towards abolition democracy, but it is not something law professor Alexander is prepared to advocate for. And another great migration of freed Black men and women from the diasporic penal colonies of rural white America to the cities and other areas that offer jobs, housing, healthcare, education, culture, sports paid for by reparation dividends will provide more peace, wellbeing, and security than any paramilitary police force, national guard, judicial system ever could pretend to accomplish.

Abolition democracy is a call to reclaim the common, to end U.S. imperialism and endless warfaring and its concomitant domestic pacification strategy through the prison industrial complex. Alexander calls for an end to mass incarceration, but not an end to incarceration. Critics such as Marie Gottschalk (2015) argue that a complete end of punitive drug policies will still leave prisons and jails at massive levels because only the low hanging fruit gets attended to in reform discussions: the non-serious, non-violent, and the non-sex offenses. Ending life imprisonment, death sentences, mandatory minimum sentences for violent offenses would slowly reverse the incarceration rate that has turned the U.S. into the world's biggest jailor.

## References

- Abu-Jamal, M. & A. Y. Davis. (Jan. 20, 2014). Alternatives to the Present System of Capitalist Injustice. *The Feminist Wire*. Retrieved from <http://thefeministwire.com/2014/01/alternatives-to-the-present-system-of-capitalist-injustice/>
- Abu-Jamal, M. (2009). *Jailhouse lawyers: Prisoners defending prisoners v. the U.S.A.* San Francisco, CA: City Lights Books.
- Abu-Jamal, M. (1995). *Live from death row*. Reading, MA: Addison-Wesley.
- Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the era of colorblindness*. New York, NY: The New Press.

- Baldus, D. C., Pulaski, C. A., & Woodworth, G. (1990). *Equal justice and the death penalty*. Boston, MA: Northeastern University Press.
- Bhalla, A. (Dir.). (2012). *Herman's House*. Documentary. First Run Features.
- Blackmon, D. (2008). *Slavery by another name: The re-enslavement of Black people in America from the Civil War to World War II*. New York, NY: Doubleday.
- Brame, R., Bushway, S. D., Paternoster, R., & Turner, M. G. (2014). Demographic patterns of cumulative arrest prevalence by ages 18 and 23. *Crime and Delinquency*, 60(3), 471-486.
- Campbell, A. (April 17, 2012). Police handcuff 6-year-old student in Georgia. *CNN*. Retrieved from <http://www.cnn.com/2012/04/17/justice/georgia-student-handcuffed/>
- Coates, T. (May 21, 2014b). The case for reparations. *The Atlantic*.
- Coates, T. (May 1, 2014a). This town needs a better racist. *The Atlantic*.
- Curtin, M. A. (2000). *Black prisoners and their world, Alabama, 1865-1900*. Charlottesville, VA: University Press of Virginia.
- Davis, A. Y. (2005). *Abolition democracy: Beyond empire, prisons, and torture*. New York, NY: Seven Stories Press.
- Davis, A. Y. (2003). *Are prisons obsolete?* New York, NY: Seven Stories Press.
- Davis, A. Y. (1998). *The Angela Y. Davis reader* (J. James, Ed.). Malden, MA: Blackwell Press.
- Davis, A. Y. (1981). The myth of the black rapist. In *Women, race and class*. New York, NY: Random House.
- Douglass, F. (1883/1955). *The life and writings of Frederick Douglass. Vol. 4: Reconstruction and after* (Phillip S. Foner, Ed.). New York, NY: International Publishers.
- Dred Scott v Sanford*, 60 U.S. 393 (1857).
- DuBois, W.E.B. (1976 [1935]). *Black Reconstruction*. Millwood, NY: Kraus-Thomson.
- Education From the Inside Out Coalition (EIOC) (2014). Unnecessary and counterproductive: SUNY's criminal history screening policy. Center for Community Alternatives. Retrieved from FairAccessstoEducationAct\_White Paper 2014.pdf
- Foucault, M. (1976/1990). *History of sexuality: An introduction*, Vol. 1. New York, NY: Vintage.
- Gates, H. L. (Jan. 7, 2013). The truth behind '40 acres and a mule.' *The Root*. Retrieved from [http://www.theroot.com/articles/history/2013/01/40\\_acres\\_and\\_a\\_mule\\_promise\\_to\\_slaves\\_the\\_real\\_story.html](http://www.theroot.com/articles/history/2013/01/40_acres_and_a_mule_promise_to_slaves_the_real_story.html)
- Gottschalk, M. (2015). *Caught: The prison state and the lockdown of American politics*. Princeton, NJ: Princeton University Press.
- James, J. (2005). Introduction: Democracy and captivity. In J. James (Ed.), *The new abolitionists: (Neo)slave narratives and contemporary prison writings*. Albany, NY: SUNY Press.
- Kant, I. (2004). *Observations on the feelings of the sublime and beautiful*. Oakland, CA: University of California Press.
- Kilgore, J. (10/17/2015). Electronic bracelets are not the answer. *Voice of the Monitored*. Retrieved from <https://voiceofthemonitored.files.wordpress.com/2015/10/report-cover.png>
- League of Nations. (1926). Slavery convention: Penal matters. Retrieved from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-3&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-3&chapter=18&lang=en)
- Lichtenstein, A. (1996). *Twice the work of free labor: The political economy of convict labor in the new South*. New York, NY: Verso.

- Mills, C. (1999). Whose fourth of July? Frederick Douglass and “original intent.” In B. E. Lawson and F. M. Kirkland (Eds.), *Frederick Douglass: A Critical Reader*, (pp. 100–42). Malden, MA: Blackwell Publishers.
- Nagel, M. (2014). Beyond the pale: Reflections on the vulnerability of black life in the U.S. In S. N. Asumah and M. Nagel (Eds.), *Diversity, social justice, and inclusive excellence*. Albany, NY: SUNY Press.
- Nagel, M. (2008). Prisons as diasporic sites: Liberatory voices from the diaspora of confinement, *Journal of Social Advocacy and Systems Change*, 1, March: 1-31. Retrieved from: [http://web.cortland.edu/nagelm/papers\\_for\\_web/prisondiaspora.pdf](http://web.cortland.edu/nagelm/papers_for_web/prisondiaspora.pdf)
- Nagel, M. (2002). “Prisons, big business, and profit: Whither social justice?” In S. N. Asumah and I. Johnston-Anumonwo (Eds.), *Diversity, multiculturalism, and social justice*, 361-85. Binghamton, NY: Global Publications.
- Northrup, S. (1853/2013) *Twelve years a slave: Narrative of Solomon Northrup, a citizen of New-York, kidnapped in Washington City in 1841, and rescued in 1853*. Vancouver, BC: Engage Books.
- N’Zinga, S. (2000). *A disjointed search for the will to live*. Baltimore, MD: SexPol Ed.
- Oshinsky, D. (1996). “Worse than slavery”: *Parchman farm and the ordeal of Jim Crow justice*. New York, NY: The Free Press.
- Parenti, C. (1999). *Lockdown America. Police and prisons in the age of crisis*. New York, NY: Verso.
- Patterson, O. (1982). *Slavery and social death: A comparative study*. Cambridge, MA: Harvard University Press.
- Rosenblatt, E. (1999). *Criminal injustice: Confronting the prison crisis*. Boston, MA: Southend Press.
- Ruffin v Commonwealth of Virginia*, 62 Va. 790, 796 (1871).
- Salah-El, T. A. (2007). A call for the abolition of prisons. In M. Nagel and S. N. Asumah (Eds.), *Prisons and Punishment: Rethinking Global Penalty*. Trenton, NJ: Africa World Press.
- Shakur, A. (1987). *Assata: An autobiography*. Chicago, IL: Lawrence Hills Books.
- Shoatz, R. M. (2013). *Maroon the implacable: The collected writings of Russell Maroon Shoatz* (Quincy Saul & Fred Ho, Eds.). Oakland, CA: PM Press and Ecosocialist Horizons.
- Smith, A. (2010). Indigeneity, settler colonialism, white supremacy. *Global Dialogue*, 12(2).
- Spielberg, S. (Dir.). (2012). *Lincoln*. Motion picture. DreamWorks.
- Sundstrom, R. (2012). Frederick Douglass. *The Stanford Encyclopedia of Philosophy*. Retrieved from <http://plato.stanford.edu/archives/fall2012/entries/frederick-douglass/>
- Schwartzapfel, B. (2014). American prison workforce. *The American Prospect Longform*. Retrieved from <http://prospect.org/article/great-american-chain-gang>
- Russell-Brown, K. (2009). *The color of crime*, 2<sup>nd</sup> ed. New York, NY: New York University Press.
- Thirteenth Amendment to the U.S. Constitution (1865).
- Walker, D. (1829). *An appeal to the colored citizens of the world*. Retrieved from <http://docsouth.unc.edu/nc/walker/walker.html>