SECTION TWO:
HOW THE SYSTEM WORKS

(Chapters Two and Three)

A bit of common sense is overdue in public discussions about racial bias in the criminal justice system. The great debate over whether black men have been targeted by the criminal justice system or unfairly treated in the War on Drugs often overlooks the obvious. What is painfully obvious when one steps back from individual cases and specific policies is that the system of mass incarceration operates with stunning efficiency to sweep people of color off the streets, lock them in cages, and then release them into an inferior second-class status.

(The New Jim Crow, p. 103).

We now turn to the criminal justice system itself—how it actually functions, as opposed to how it is advertised. Chapters two and three are devoted to describing and debunking the myths that have rationalized and sustained mass incarceration. These chapters demonstrate how unchecked police authority, fiscal incentives, and a
Supreme Court that has disregarded basic civil rights have all facilitated the emergence of a legal caste system.

The legality of mass incarceration does not distinguish it from earlier systems of racial and social control. As Martin Luther King Jr. famously wrote in his "Letter from Birmingham Jail":

We should never forget that everything Adolf Hitler did in Germany was "legal" and everything the Hungarian freedom fighters did in Hungary was "illegal." It was "illegal" to aid and comfort a Jew in Hitler's Germany. Even so, I am sure that, had I lived in Germany at the time, I would have aided and comforted my Jewish brothers.

It is not uncommon for people to say that when it comes to issues of racial justice, things are more complicated today than they were back in the days of the old Jim Crow. Back then, there were "whites only" signs, and everyone understood that black folks had to sit at the back of the bus. There was no denying the existence of a caste system. But today, things seem more complicated. Prisons are out of sight and out of mind. The "whites only" signs are gone, and nearly everyone denies racial bias. The justifications and rationalizations for mass incarceration seem more reasonable, because they are not explicitly based on race, and it is easy to imagine (especially if you are not directly affected) that nothing like an immoral caste system exists in the United States. It can be difficult to remember that not too long ago the old Jim Crow system was considered a sensible, rational response to a "complicated" situation in the South.

Dr. King's piercing honesty is instructive for us—how he refused to shrug off injustice when a given situation was
deemed “complicated.” In a sermon at the Temple of Israel in Hollywood in 1965, he insisted that “racial segregation must be seen for what it is—and that is an evil system, a new form of slavery covered up with certain niceties of complexity.” Similarly, Dr. King steadfastly resisted efforts to assign words like “sensible” or “reasonable” to policies and attitudes that reflect a basic disregard for people’s humanity. Like Dr. King, *The New Jim Crow* confronts our tendency to rationalize the suffering of others and the injustice that causes it. In these chapters, the book breaks through the veil of complexity that surrounds mass incarceration by exposing the principal myths that have been offered in its defense, including these:

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

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