

How It Works

Precisely how the system of mass incarceration works to trap African Americans in a virtual (and literal) cage can best be understood by viewing the system as a whole. In earlier chapters, we considered various wires of the cage in isolation; here, we put the pieces together, step back, and view the cage in its entirety. Only when we view the cage from a distance can we disengage from the maze of rationalizations that are offered for each wire and see how the entire apparatus operates to keep African Americans perpetually trapped.

This, in brief, is how the system works: the War on Drugs is a vehicle through which extraordinary numbers of black men are forced into the cage. The entrapment occurs in three distinct phases, each of which has been explored earlier, but a brief review is useful here. The first stage is the roundup. Vast numbers of people are swept into the criminal justice system by the police, who conduct drug operations primarily in poor communities of color. They are rewarded in cash-through drug forfeiture laws and federal grant programs-for rounding up as many people as possible, and they operate unconstrained by constitutional rules of procedure that once were considered inviolate. Police can stop, interrogate, and search anyone they choose for drug investigations, provided they get "consent." Because there is no meaningful check on the exercise of police discretion, racial biases are granted free rein. In fact, police are allowed to rely on race as a factor in selecting whom to stop and search (even though people of color are no more likely to be guilty of drug crimes than whites) -effectively guaranteeing that those who are swept into the system are primarily black and brown.

The conviction marks the beginning of the second phase: the period of formal control. Once arrested, defendants are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to "load up" defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the drug war's harsh sentencing laws, people convicted of drug offenses in the United States spend more time under the criminal justice system's formal control-in jail or prison, on probation or parole-than people anywhere else in the world. While under formal control, virtually 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. This period of control may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released. They are transferred from their prison cells to a much larger, invisible cage.

The final stage has been dubbed by some advocates as the "period of invisible punishment." This term, first coined by Jeremy Travis, is meant to describe the unique set of criminal sanctions that are imposed on individuals after they step outside the prison gates, a form of punishment that operates largely outside of public view and takes effect outside the traditional sentencing framework. These sanctions are imposed by operation of law rather than decisions of a sentencing judge, yet they often have a greater impact on one's life course than the months or years one actually spends behind bars. These laws operate collectively to ensure that the vast majority of people convicted of crimes will never integrate into mainstream, white society. They will be discriminated against, legally, for the rest of their lives—denied employment, housing, education, and public benefits. Unable to surmount these obstacles, most will eventually return to prison and then be released again, caught in a closed circuit of perpetual marginality.

In recent years, advocates and politicians have called for greater resources devoted to the problem of "prisoner re-entry," in view of the unprecedented numbers of people who are released from prison and returned to their communities every year. While the terminology is well intentioned, it utterly fails to convey the gravity of the situation facing people upon their release from prison. People who have been convicted of felonies almost never truly re-enter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to everyone else. They become members of an undercaste – an enormous population of predominately black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status. This is the final phase, and there is no going back.