The Newest Jim Crow

Recent criminal justice reforms contain the seeds of a frightening system of "e-carceration."

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In the midterms, Michigan became the first state in the Midwest to legalize marijuana, Florida restored the vote to over 1.4 million people with felony convictions, and Louisiana passed a constitutional amendment requiring unanimous jury verdicts in felony trials. These are the latest examples of the astonishing progress that has been made in the last several years on a wide range of criminal justice issues. Since 2010, when I published "The New Jim Crow" — which argued that a system of legal discrimination and segregation had been born again in this country because of the war on drugs and mass incarceration — there have been significant changes to drug policy, sentencing and re-entry, including "ban the box" initiatives aimed at eliminating barriers to employment for formerly incarcerated people.

This progress is unquestionably good news, but there are warning signs blinking brightly. Many of the current reform efforts contain the seeds of the next generation of racial and social control, a system of "e-carceration" that may prove more dangerous and more difficult to challenge than the one we hope to leave behind.

Bail reform is a case in point. Thanks in part to new laws and policies — as well as actions like the mass bailout of people locked in New York City jails that's underway — the unconscionable practice of cash

bail is finally coming to an end. In August, California became the first state to decide to get rid of its cash bail system; last year, New Jersey virtually eliminated the use of money bonds.

But what's taking the place of cash bail may prove even worse in the long run. In California, a presumption of detention will effectively replace eligibility for immediate release when the new law takes effect in October 2019. And increasingly, computer algorithms are helping to determine who should be caged and who should be set "free." Freedom — even when it's granted, it turns out — isn't really free.

Under new policies in California, New Jersey, New York and beyond, "risk assessment" algorithms recommend to judges whether a person who's been arrested should be released. These advanced mathematical models — or "weapons of math destruction" as data scientist Cathy O'Neil calls them — appear colorblind on the surface but they are based on factors that are not only highly correlated with race and class, but are also significantly influenced by pervasive bias in the criminal justice system.

As O'Neil explains, "It's tempting to believe that computers will be neutral and objective, but algorithms are nothing more than opinions embedded in mathematics."

Challenging these biased algorithms may be more difficult than challenging discrimination by the police, prosecutors and judges. Many algorithms are fiercely guarded corporate secrets. Those that are transparent — you can actually read the code — lack a public audit so it's impossible to know how much more often they fail for people of color.

Even if you're lucky enough to be set "free" from a brick-and-mortar jail thanks to a computer algorithm, an expensive monitoring device likely will be shackled to your ankle — a GPS tracking device provided by a private company that may charge you around $300 per month, an involuntary leasing fee. Your permitted zones of movement may make it difficult or impossible to get or keep a job, attend school, care for your kids or visit family members. You're effectively sentenced to an open-air digital prison, one that may not extend beyond your house, your block or your neighborhood. One false step (or one malfunction of the GPS tracking device) will bring cops to your front door, your workplace, or wherever they find you and snatch you right back to jail.

Who benefits from this? Private corporations. According to a report released last month by the Center for Media Justice, four large corporations — including the GEO Group, one of the largest private prison companies — have most of the private contracts to provide electronic monitoring for people on parole in some 30 states, giving them a combined annual revenue of more than $200 million just for e-monitoring. Companies that earned millions on contracts to run or serve prisons have, in an era of prison restructuring, begun to shift their business model to add electronic surveillance and monitoring of the same population. Even if old-fashioned prisons fade away, the profit margins of these companies will widen so long as growing numbers of people find themselves subject to perpetual criminalization, surveillance, monitoring and control.

Who loses? Nearly everyone. A recent analysis by a Brookings Institution fellow found that "efforts to reduce recidivism through intensive supervision are not working." Reducing the requirements and burdens of community supervision, so that people can more easily hold jobs, care for children and escape the stigma of criminality "would be a good first step toward breaking the vicious incarceration cycle," the report said.

Many reformers rightly point out that an ankle bracelet is preferable to a prison cell. Yet I find it difficult to call this progress. As I see it, digital prisons are to mass incarceration what Jim Crow was to slavery.

If you asked slaves if they would rather live with their families and raise their own children, albeit subject to "whites only signs," legal discrimination and Jim Crow segregation, they'd almost certainly say: I'll take Jim Crow. By the same token, if you ask people in prison whether they'd rather live with their families and raise their children, albeit with nearly constant digital surveillance and monitoring, they'd almost certainly say: I'll take the electronic monitor. I would too. But hopefully we can now see that Jim Crow was a less restrictive form of racial and social control, not a real alternative to racial caste systems. Similarly, if the goal is to end mass incarceration and mass criminalization, digital prisons are not an answer. They're just another way of posing the question.

Some insist that e-carceration is "a step in the right direction." But where are we going with this? A growing number of scholars and activists predict that "e-gentrification" is where we're headed as entire communities become trapped in digital prisons that keep them locked out of neighborhoods where jobs and opportunity can be found.

If that scenario sounds far-fetched, keep in mind that mass incarceration itself was unimaginable just 40 years ago and that it was born partly out of well-intentioned reforms — chief among them mandatory sentencing laws that liberal proponents predicted would reduce racial disparities in sentencing. While those laws may have looked good on paper, they were passed within a political climate that was overwhelmingly hostile and punitive toward poor people and people of color, resulting in a prison-building boom, an increase in racial and class disparities in sentencing, and a quintupling of the incarcerated population.

Fortunately, a growing number of advocates are organizing to ensure that important reforms, such as ending cash bail, are not replaced with systems that view poor people and people of color as little more than commodities to be bought, sold, evaluated and managed for profit. In July, more than 100 civil rights, faith, labor, legal and data science groups released a [shared statement of concerns](#) regarding the use of pretrial risk assessment instruments; numerous bail reform groups, such as [Chicago Community Bond Fund,](#) actively oppose the expansion of e-carceration.

If our goal is *not* a better system of mass criminalization, but instead the creation of safe, caring, thriving communities, then we ought to be heavily investing in quality schools, job creation, drug treatment and mental health care in the least advantaged communities rather than pouring billions into their high-tech management and control. Fifty years ago, the Rev. Dr. Martin Luther King Jr. [warned](#) that "when machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, extreme materialism and militarism are incapable of being conquered." We failed to heed his warning back then. Will we make a different choice today?