SESSION THREE:
BOOK DISCUSSION OF *TNJC* CHAPTER 3: THE COLOR OF JUSTICE

Part One: Legal History Regarding the Acceptance of Implicit Racial Bias, from Alexander *TNJC* ch.3

Yick Wo v. Hopkins (1886): Yick Wo was convicted of running a laundry business without a license. San Francisco denied licenses to all Chinese laundry operators. It granted licenses to all other laundry operators but one. Law enforcement had arrested more than a hundred Chinese people for operating laundries without licenses. The Court overturned Wo's conviction, saying, 'Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations, between persons in similar circumstances… the denial of equal justice is still within the prohibition of the Constitution.'

City of Los Angeles v. Adolph Lyons (1983): Lyons, an African-American man, was very roughly treated by white LAPD officers, placed in a chokehold, forced unconscious. SCOTUS decides he did not have the standing to challenge LAPD practice. Justice Thurgood Marshall dissented, citing chokeholds as potentially lethal – of the 16 chokehold victims who were killed by the LAPD in less than a decade, 12 were black – and officers' training being insufficient: 'The officers are taught to maintain the chokehold until the suspect goes limp, despite substantial evidence that the application of a chokehold invariably induces a "flight or flee" syndrome, producing an involuntary struggle by the victim which can easily be misinterpreted by the officer as willful resistance that must be overcome by prolonging the chokehold and increasing the force applied. In addition, officers are instructed that the chokeholds can be safely deployed for up to three or four minutes. Robert Jarvis, the city's expert who has taught at the Los Angeles Police Academy for the past 12 years, admitted that officers are never told that the bar-arm control can cause death if applied for just two seconds. Of the nine deaths for which evidence was submitted to the District Court, the average duration of the choke where specified was approximately 40 seconds.'[1] Recall Eric Garner.

McClesky v. Kemp (1987): Warren McKlesky, a black man, had killed a white police officer during an armed robbery in Georgia. His team appealed the death sentence on the grounds that death sentencing was too racially biased to be fair, and thus it violated the Eighth and Fourteenth Amendments. The Court accepted the statistical study about racially different outcomes as factual and true. But it ruled that unless the prosecutor had consciously and explicitly called for the death sentence for racial reasons, that the case was invalid. The Court's 5:4 majority opinion wrote, '[I]f we accepted McCleskey's claim that racial bias has impermissibly tainted the capital sentencing decision, we could soon be faced with similar claims as to other types of penalty.' Justice Brennan, writing his dissent, pointed out that the Court's decision 'seems to suggest a fear of too much justice.'[2] *McCleskey* was named one of the worst Supreme Court decisions since World War II by a Los Angeles Times survey among legal scholars.[3] In a New York Times comment, Anthony Lewis charged that the Supreme Court had "effectively condoned the expression of racism in a profound aspect of our law."[4] Anthony G. Amsterdam, a law professor at New York University, said in speech at Columbia, "McCleskey is the Dred Scott decision of our time."[5]

Armstrong v. United States (1996): Christopher Lee Armstrong was arrested for possession of and conspiracy to distribute fifty grams of crack cocaine. His federal public defenders were troubled that in the last 3 years, 48 defendents had been black, 5 were Hispanic, and none were white. Given that most crack offenders are white, they were puzzled. They suspected that whites were being diverted by federal prosecutors to the state system, where penalties for crack cocaine were far less severe. Armstrong's lawyers filed a motion asking the prosecutors to turn over their files to support their claim of selective prosecution under the Fourteenth Amendment. 'As in *McCleskey*, the Court did not question the accuracy of the evidence submitted, but ruled that because Armstrong failed to identify any similarly situated white defendants who should have been charged in federal court but were not, he was not entitled even to discovery on his selective-prosecution claim. With no trace of irony, the Court demanded that

[1] Dave Gilson, "Thurgood Marshall Blasted Police for Killing Black Men With Chokeholds," *Mother Jones*, December 4, 2014
[2] *McCleskey v. Kemp*, 481 U.S. 279, 327 (1989), Brennan, J., dissenting
[3] David Savage, "Roe vs. Wade? Bush vs. Gore? What are the worst Supreme Court decisions?", *Los Angeles Times*, October 23, 2008
[4] Anthony Lewis, "Abroad at Home: Bowing to Racism", *New York Times*, April 28, 1987
[5] Adam Liptak, "New Look at Death Sentences and Race," *New York Times*, April 29, 2008; as evidence of the impact of McCleskey, consider the Georgia Supreme Court decision in 1995: '[The Court held] that 98.4 percent of the defendents selected to receive life sentences for repeat drug offenses were black required no justification… To date, not a single successful challenge has ever been made to racial bias sentencing…' (Alexander, p.114)

Armstrong produce in advance the very thing he sought in discovery: information regarding white defendants who should have been charged in federal court… The Court justified this insurmountable hurdle on the grounds that considerable deference is owed the exercise of prosecutorial discretion. Unless evidence of conscious, intentional bias on the part of the prosecutor could be produced, the Court would not allow any inquiry into the reasons for or causes of apparent racial disparities in prosecutorial decision making.'[6]

The Courthouse doors were closed. The Court gave prosecutors full discretion to have unspoken, implicit racial bias. This reversed *Yick Wo v. Hopkins*. Racially selective enforcement was now accepted. Consequently, 'a report in 2000 observed that among youth who had never been sent to a juvenile prison before, African Americans were more than six times as likely as whites to be sentenced to prison for *identical crimes*. A study sponsored by the U.S. Justice Department and several of the nation's leading foundations, published in 2007, found that the impact of biased treatment is magnified with each additional step into the criminal justice system.'[7]

Purkett v. Elm (1995): About 30% of black men are already ineligible for jury service for life because of the legal status attributed to their criminal background. And in many previous cases, the Supreme Court had already upheld convictions of black defendants by all-white juries in situations where the exclusion of black jurors was obvious. But *Purkett* went a step further. The prosecution used 'jury shuffling' to reduce the number of black jurors, and used different questions of juror candidates based on race. But as long as race was never explicitly stated, the Court upheld whatever reason the prosecutors gave for not selecting a particular juror. In *Purkett*, the prosecutor used the following explanation for why he struck black jurors from being empaneled: 'I struck [juror] number twenty-two because of his long hair. He had long curly hair. He had the longest hair of anybody on the panel by far. He appeared not to be a good juror for that fact… Also, he had a mustache and a goatee type beard. And juror number twenty-four also had a mustache and goatee beard… And I don't like the way they looked, with the way the hair is cut, both of them. And the mustache and the beards look suspicious to me.'[8]

Alexander v. Sandoval (2001): The Alabama Department of Public Safety decided to administer state driver's license tests only in English. The plaintiffs argued that non-English speakers were then discriminated against. SCOTUS concluded that ordinary citizens and civil rights groups claiming discrimination by state/federal agencies can no longer sue those agencies. This includes for reasons of racially disparate impacts. 'The system of mass incarceration is now, for all practical purposes, thoroughly immunized from claims of racial bias.'[9]

Matthew Fogg, a former US Marshal, and DEA agent of 32 years, said (see the 2 minute video from Brave New Films where Matthew Fogg is interviewed: https://www.youtube.com/watch?v=8ImeWd5gFTo):

> "We were jumping on guys in the middle of the night, all of that. Swooping down on folks all across the country, using these sorts of attack tactics that we went out on, that you would use in Vietnam, or some kind of war-torn zone. All of the stuff that we were doing, just calling it the war on drugs. And there wasn't very many black guys in my position. So when I would go into the war room, where we were setting up all of our drug and gun and addiction task force determining what cities we were going to hit, I would notice that most of the time it always appeared to be urban areas. That's when I asked the question, well, don't they sell drugs out in Potomac and Springfield, and places like that? Maybe you all think they don't, but statistics show they use more drugs out in those areas than anywhere. The special agent in charge, he says 'You know, if we go out there and start messing with those folks, they know judges, they know lawyers, they know politicians. You start locking their kids up; somebody's going to jerk our chain.' He said, 'they're going to call us on it, and before you know it, they're going to shut us down, and there goes your overtime.' What I began to see is that the drug war is totally about race. If we were locking up everybody, white and black, for doing the same drugs, they would have done the same thing they did with prohibition."[10]

[6] Alexander, p.117
[7] Ibid, p.118
[8] Ibid, p.122, citing *Purkett v. Elm*, 514 U.S. 765, 771 n.4 (1995) Stevens, J., dissenting and quoting prosecutor
[9] Ibid, p.139
[10] John Vibes, "DEA Agent Speaks Out: We Were Told Not to Enforce Drug Laws In Rich Communities," *Free Thought Project*, March 10, 2015; http://thefreethoughtproject.com/dea-agent-drug-laws-intentionally-rich-communities/.

Part Two: Jewish Law vs. Other Law Codes: A Comparison on Criminal Justice

Equality of People Under the Law
Should your punishment be based on how wealthy or poor your victim was?

Goal: Punishment or Payment *Person's Worth: Based on Wealth*	*Goal: Healing* *Person's Worth: Equal*
Code of Hammurabi: [197] If a man has broken another man's limb, his own shall be broken. [198] If a man has destroyed an eye or a limb of *a poor man*, he shall pay one maneh of silver. [199] If a man has destroyed an eye or a limb of *the servant* of another man, he shall pay one-half of a mina. [200] If a man has made the tooth of another to fall out, one of his own teeth shall be knocked out. [201] If the tooth be that of *a poor man*, he shall pay one-third of a maneh of silver.	Exodus 21 [18] If men have a quarrel and one strikes the other with a stone or with his fist… he shall only pay for his loss of time, and shall take care of him until he is *completely healed*… [30] If a ransom is demanded of him, then he shall give for the redemption of his life whatever is demanded of him. Leviticus 24 [22] There shall be *one standard* for you; it shall be *for the stranger as well as the native*, for I am the LORD your God.

Judicial Torture and Self-Incrimination
What kind of procedures are fair?

Western Law	Jewish Law
Ancient Greece: 'In the fourth century BCE, Aristotle listed five different ways to prove guilt that may be used in legal proceedings and he included torture among them. In general, torture was used by the Greeks only when it came to the testimony of slaves and, in certain situations, foreigners.'[11] *Ancient Rome:* 'Early Roman law is similar to Greek law in that it also limited torture to slaves… The institution of torture…was eventually expanded to include free men… Between the second and fourth centuries the institution was expanded to include new types of people and situations. The various emperors had the power to authorize torture for new cases and were responsible for expanding the institution of torture in Roman law.'[12] *Pre-Modern and Modern Europe:* Roman law experienced a revival in Europe in the twelfth century, which included torture. 'By the sixteenth century a substantially similar law of torture was in force from the Kingdom of Sicily north to Scandinavia, from Iberia across France and the German Empire to the Slavic East. Well into the eighteenth century the law of torture was still current everywhere, and it survived into the nineteenth century in some corners of central Europe.'[13] *England:* 'According to available records, between 1540 and 1640 the Privy Council or the monarch ordered torture in eighty-one cases. Many of these cases involved political crimes, such as treason; but more than a quarter involved 'ordinary' crimes such as murder, robbery, burglary and horse stealing.'[14]	'Jewish law has never authorized judicial torture. In fact, judicial torture of an accused would serve no purpose in Jewish law because even voluntary confessions are inadmissible as evidence [because of the two eyewitness requirement of Deuteronomy 17:16; 19:15]… *Jewish law's rejection of judicial torture is unique in Western civilization, especially because it is so ancient*.' 'The law against self-incrimination relates to the accused's vulnerability.'[15] 'Jewish law's criminal law paradigm is based on the Biblical verse, "And the congregation shall save" [Num.35:25]. According to the Talmud, this verse establishes a principle, in terms of which one of the key responsibilities of any criminal court is to protect the interests of the accused by finding legally acceptable ways to "save" him from conviction.'[16]

[11] Rabbi Dr. Warren Goldstein, *Defending the Human Spirit: Jewish Law's Vision for a Moral Society* (New York: Feldham, 2006), p.225
[12] Ibid, p.226 – 228
[13] Ibid, p.230, quoting John Langbein, *Torture and the Law of Proof*, 3
[14] Ibid, p.234
[15] Ibid, p.237, 240 italics mine
[16] Ibid, p.264 – 265

SESSION THREE:
BOOK DISCUSSION OF *TNJC* CHAPTER 3: THE COLOR OF JUSTICE
Leader's Notes

Introduction, Personal Question: Are You Biased?
NOTE TO LEADER: Before this week's session, please email out the link to the Harvard Implicit Bias Test: https://implicit.harvard.edu/implicit/user/agg/blindspot/indexrk.htm. Tell people that it's not something you're asking them to share. It's just for personal reference. It also helps us understand how implicit racial bias exists, even among well-intentioned people, and how it might play out among the police, prosecutors, and so on. We're going to see how the law and the Supreme Court allows for implicit racial bias.

Overview
Recall Session One (lesson from Genesis 3): We learned that God's justice is restorative, not retributive. He didn't 'retaliate' against humanity, even though there were consequences because when children lock their parents out of the house, everything is harder. In our day and age, there may be consequences that we impose on some people, but if we are following the God of the Bible, this God seeks to restore, so we need to seek to restore. God does not delight in punishing, so we cannot delight in punishing. We must delight in restoring.

That's important because in parallel with that, Dr. Alexander talks about the rise of the mass incarceration system as a racial caste system. In chapter two, Dr. Alexander talks about law and policy changes during the War on Drugs, especially during Reagan's presidency but including Bill Clinton's. Now in chapter three, we're going to look at how the implicit and unspoken racial bias of police officers, prosecutors, judges and sentences were all made legally okay.

Content Questions
1. (Optional) Listen to the audiobook reading of *The New Jim Crow* chapter 3, from the beginning to the 11:30 min mark. That translates to p.97 – 102 in the book. What reactions do you have?
2. City of Los Angeles v. Adolph Lyons
    a. Notice Thurgood Marshall's dissent once again.
    b. This protected the LAPD, and all police departments, from being sued on the use of potentially lethal force. This is perhaps why the BlackLivesMatter movement started, because it has to be a matter of changing public opinion now, since the police cannot be challenged in court.
3. McClesky v. Kemp
    a. So as long as the prosecution doesn't say, 'I believe the death penalty is appropriate because he's black,' the death penalty is acceptable. So the implicit or non-verbal racial bias is accepted in court.
    b. This starts to overturn the principle of Yick Wo v. Hopkins, where the Fourteenth Amendment was supposed to ensure the equal application of justice.
4. Armstrong v. United States
    a. Plea bargaining is unfair because it is actually coercion of the defendant. The story of Erma Faye Stewart illustrates how the plea-bargaining system has a racially biased effect.[17] According to the Eighth Amendment of the U.S. Constitution, Stewart had a right to a speedy trial by her peers. But after a month in jail, as a single mother, she was desperate to get out of jail to care for her

[17] Stewart's story can also be found on Frontline, "The Plea," *PBS WGBH*, June 17, 2004; I also included it as part of the previous session: "On Nov. 2, 2000, Erma Faye Stewart, then 30 and a single mother of two, and Regina Kelly, then 24 and a single mother of four, were arrested as part of a major drug sweep in Hearne, Texas. As reported by "Frontline," the 27 individuals arrested in the sweep was indicted by a single informant later proven to be unreliable. All but one of the 27 are African-American. Both women proclaimed their innocence and were given public defenders who offered them little guidance and insisted that they plead guilty – Stewart's lawyer reported not remembering Stewart, despite signing her plea agreement. Kelly and Stewart were both told that if they did not agree to a plea bargain, which amounted to probation, they would face "five to 99 years." With a bail of $70,000 and two small children at home, Stewart took the deal and was sentenced to 10 years probation. But after a five-month wait for the trial to begin, the state's case fell apart. Everyone that didn't take a plea bargain, including Kelly, was found not guilty. Stewart, on the other hand, fell into destitution because of the plea bargain – unable to secure food stamps or federal education money, unable to vote, evicted from public housing and forced to pay a $1,000 fine and court fees on a minimum-wage salary. Kelly and Stewart's stories are far from isolated incidents. In the United States, almost 95 percent of all felony convictions are secured without a jury. They are settled via a plea bargain — a unique facet of American law that allows the prosecutor to offer a reduced sentence in exchange for defendants waiving their rights to a jury trial and pleading guilty to the charges presented." (http://www.mintpressnews.com/bargain-new-report-highlights-unfairness-drug-plea-agreements/174762/).

young children. She had inadequate support from a public defense lawyer. So she accepted the plea bargain and was branded a drug felon even though the entire case of Hearne, TX was later thrown out.

b. Stewart's story is not an isolated incident. Amazingly:

> 'In the United States, almost 95 percent of all felony convictions are secured without a jury. They are settled via a plea bargain — a unique facet of American law that allows the prosecutor to offer a reduced sentence in exchange for defendants waiving their rights to a jury trial and pleading guilty to the charges presented.'[18]

c. What about this Eighth Amendment right to a speedy trial? Prosecutors are essentially threatening you with the uncertainty of facing a higher mandatory sentence for drug related crimes, so you can plead guilty to a lesser charge. You therefore 'voluntarily' waive your Eighth Amendment rights. Michelle Alexander, in a NY Times article, writes,

> 'If everyone charged with crimes suddenly exercised his constitutional rights, there would not be enough judges, lawyers or prison cells to deal with the ensuing tsunami of litigation. Not everyone would have to join for the revolt to have an impact; as the legal scholar Angela J. Davis noted, "if the number of people exercising their trial rights suddenly doubled or tripled in some jurisdictions, it would create chaos."'[19]

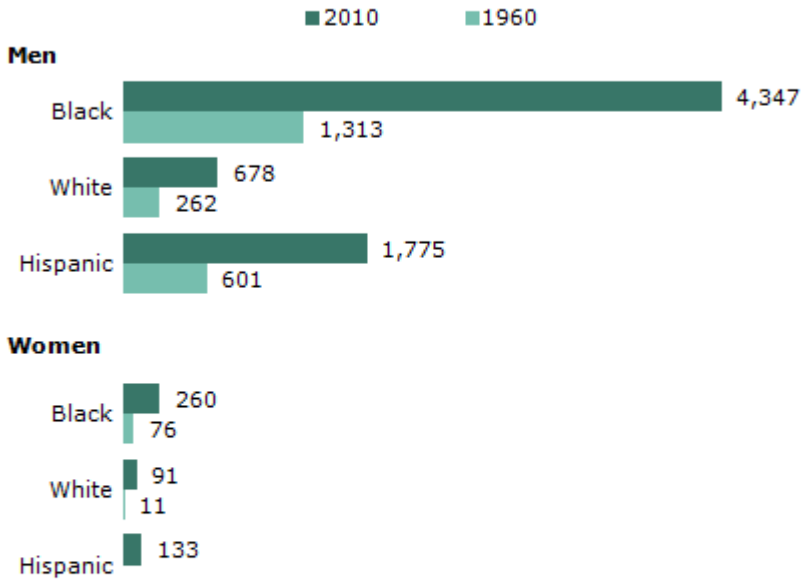
d. Do defense attorneys have an incentive to have the defendant plead guilty? Yes because they're overworked. It will reduce their caseload. Prosecutors and defense attorneys are known to reach agreements even before talking to their clients. And defendants often are not well informed, so their lives are really in the hands of the system.
   i. This was written by lawyers in the Harvard Law Review, taking responsibility for this problem: 'I'd like to divide this intellectual failure into two components. First, lawyers have failed properly to catalog, appreciate, and interrogate the negative costs of how we police and how we jail. Second, we have failed to scrutinize the purported benefits, both because of a bizarre undertheorization of the amount of harm actually caused by what we popularly call "crime" and because of a scandalously underdeveloped account of whether caging humans leads to less "crime." In order for the legal system to unleash police on poor communities such that the United States came to imprison black people at a rate six times that of South Africa during the height of Apartheid, it was necessary for popular culture and legal culture to develop and nurture serious intellectual pathologies. So deeply have these pathologies captured the legal elite that the wholesale normalization of this brutality has become arguably the chief daily bureaucratic function of most of us who work in the system.' (http://harvardlawreview.org/2015/04/policing-mass-imprisonment-and-the-failure-of-american-lawyers/)
   ii. See also: http://www.slate.com/articles/news_and_politics/crime/2015/10/police_and_prosecutors_condemning_mass_incarceration_ignore_their_own_role.html

5. The cumulative result is a discrepancy in incarceration rates by race. This is from the Pew Research Trust:

[18] Frederick Reese, "No Bargain: New Report Highlights Unfairness of Drug Plea Agreements," *Mint Press News*, December 10, 2013
[19] Michelle Alexander, "Go to Jail: Crash the Justice System," *New York Times*, March 11, 2012

Incarceration Rates, 1960 and 2010

Inmates per 100,000 U.S. residents



Note: Incarceration rates are for total prisoners in local, state and federal correctional facilities. Total prisoners includes persons under age 18. Hispanics are of any race. Whites and blacks include only non-Hispanics. In 2010, whites and blacks include only those who reported a single race. Asians, Native Americans and mixed-race groups not shown. A figure for Hispanic women in 1960 is not shown due to small sample size.

Source: For 1960, Pew Research Center analysis of Decennial Census data (IPUMS); for 2010, Bureau of Justice Statistics data http://www.bjs.gov/content/pub/pdf/cpus10.pdf

PEW RESEARCH CENTER

This chart shows how incarceration has increased in general. It also shows that the *proportion* of black people (as part of the overall population) imprisoned under the 'new Jim Crow' is actually slightly more (and worse) than when the old Jim Crow system was in place. The Civil Rights Movement succeeded in pushing back the old Jim Crow when the Civil Rights Acts of 1964 and 1965 were passed. But incarceration rates are worse now than before.

6. To sum up, how has the system worked so unfairly against blacks? Alexander argues that it happens in two steps
    a. First, grant law enforcement extraordinary discretion about who to stop and search and how, 'thus ensuring that conscious and unconscious racial beliefs and stereotypes will be given free rein.'
    b. Second, close the doors to the courtroom if you want to sue the criminal justice system for operating in a racially discriminatory way.

7. The legal history shows that at one time, in *Yick Wo v. Hopkins* (1886), the Supreme Court recognized that equal treatment under the law is required by the Fourteenth Amendment, and differences in the way a law is carried out is unconstitutional. But during the war on drugs, the law and the courts have decided that police can police different communities differently, that prosecutors can treat different defendants differently, that sentences can be handed down differently, and that jurors can be interviewed and evaluated differently.
    a. All of the implicit racial bias in people at every stage of the criminal justice process is now deemed to be ok!! As long as no one says something racist, racism is okay.

b. (Optional) One chink in the armor of government agencies is noted by Cheryl K. Chumley, "Federal Court Rules SWAT Teams Aren't Exempt from Lawsuits" (*Washington Times*, August 28, 2014), 'SWAT teams beware: Innocent victims can sue. That's the ruling of the U.S. Second Court of Appeals in New York, issued in a case of a homeowner whose constitutional rights were infringed by a police raid that resulted in the killing of a man. Ronald Terebesi said Connecticut SWAT members forced their way into his home in 2008, looking for a drug suspect. Police had a warrant and while they were only seeking for "a small amount of drugs meant only for personal use," they used stun grenades and shot Mr. Terebesi's friend a half dozen times — ultimately killing him, court filings indicated, Mediaite reported. Mr. Terebesi sued, claiming the police used excessive force, especially since there were no guns in the home. Mr. Terebesi won his lower court case, but police appealed, claiming immunity. Now the appeals court found that Mr. Terebesi at least has the right to sue. The U.S. Supreme Court, meanwhile, has previously ruled that government officials can't be sued for civil damages, unless their conduct violates the constitutional rights of individuals. The appeals court ruled: "The plaintiffs presented evidence indicating that all of the defendants understood that the warrant was for a small amount of drugs meant only for personal use. The basis for the officers' entry, in other words, was related to an offense that was neither grave nor violent," Mediaite reported.' Ronald Terebesi is white. His friend who was shot, Gonzalo Guizan, appears to be white as well (a black and white picture was available on line). Later, five towns in Fairfield Country pooled resources and paid $3.5 million to compensate the victim's family (Mario Anzuoni, "Connecticut Cops Pay $3.5 Million After Killing Unarmed Man in SWAT Raid," Reuters, February 21, 2013).

c. Recall in Session One, when we studied Genesis 3 and mentioned the Stanford Prison Experiment, and how criminals are the most despised group of people in the U.S. because it's 'okay' to despise them. It's easy to treat them as inhuman. God never treats people as inhuman. That brings us to the last thought. Let's look at Scripture. I've been calling our attention to the Jewish law because, even though God was still preparing people for Jesus and this wasn't the full disclosure of his heart, we do see some very important things.

Leader: This is important background information, especially for a skeptical audience.

- Drug use is higher in the white community than among blacks. That is incomprehensible since most people sent to prison on drug charges are black.
    - 'People of all races use and sell illegal drugs at remarkably similar rates. If there are significant differences in the surveys to be found, they frequently suggest that whites, particular white youth, are more likely to engage in illegal drug dealing than people of color.'[20]
    - 'The National Household Survey on Drug Abuse reported in 2000 that white youth aged 12 – 17 are more than a third more likely to have sold illegal drugs than African American youth. Thus the very same year Human Rights Watch was reporting that African Americans were being arrested and imprisoned at unprecedented rates, government data revealed that blacks were no more likely to be guilty of drug crimes than whites and that white youth were actually the most likely of any racial or ethnic group to be guilty of illegal drug possession and sales… White youth have about three times the number of drug-related emergency room visits as their African American counterparts.'[21]
    - As of a report released in March 2015, white men and heroin use: The number of heroin overdoses quadrupled from 1,842 in 2000 to 8,257 in 2013—with a significant boost among people between the ages of 18 and 44, particularly white men.[22] This is because Oxytontin is a synthetic heroin, and...

[20] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2011), p.99 cites U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, *Summary of Findings from the 2000 National Household Survey on Drug Abuse* (Rockville, MD: 2001) reporting 6.4% of whites, 6.4% of blacks, and 5.3% of Hispanics were current illegal drug users in 2000; Alexander also cites 2 other studies from 2007 saying the same thing. But two 2006 and one 2003 study shows that white adolescents are more likely than their black counterparts to use illegal drugs.
[21] Alexander, p.99
[22] Edwin Rios, "White Men Are Overdosing on Heroin at a Record Rate," *Mother Jones*, March 9, 2015

- When we include LEGAL, PRESCRIPTION drugs like Vicodin and Oxycontin, we again see a discrepancy between perception and reality by race. A TIME magazine article from 2011 summarizes a study: 'The study, which was published Monday in the *Archives of General Psychiatry*, controlled for variables like socioeconomic status because rates of severe drug problems tend to be greater amongst the poor. Despite this, Native American youth fared worst, with 15% having a substance use disorder, compared to 9.2% for people of mixed racial heritage, 9.0% for whites, 7.7% for Hispanics, 5% for African Americans and 3.5% for Asians and Pacific Islanders.'
- Of course, where do white people buy illegal drugs? From other white people. Not black people. So why haven't policemen camped out next to white fraternities??? Or helicoptered into mansions owned by white people???

- The discrepancy is not because the black community is more violent.
  - 'Violent crime rates have fluctuated over the years and bear little relationship to incarceration rates – which have soared during the past three decades regardless of whether violent crime was going up or down. Today violent crime rates are at historically low levels, yet incarceration rates continue to climb.'[23]
  - 'In the federal system, homicide offenders account for 0.4 percent of the past decade's growth in the federal prison population, while drug offenders account for nearly 61 percent of that expansion… As of September 2009, only 7.9 percent of federal prisoners were convicted of violent crimes.'[24] State prison data is harder to interpret and varies state by state.
  - And the most important part is how many people are under correctional control outside of prison. 'Of the nearly 7.3 million people currently under correctional control, only 1.6 million are in prison.'[25] Those outside the walls of a cell are the people who are second-class citizens in our society, often without voting rights, access to public housing benefits and food stamps, and much less desired for a job.

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8. Remind people of the comparison between the Babylonian Code of Hammurabi and the Jewish law. See notes in Session Three of this curriculum.
   a. Jewish law held that every human life was of equal value. You weren't punished for a crime based on how rich or poor your victim was.
   b. Jewish law held that each action needed a proportional punishment. You didn't stack crimes up like in the three strikes law. Nor would a first time offense for drug trafficking get the same punishment as murder (life imprisonment).
   c. Jewish law was based on the principle of restorative justice, where the victim could name a compensation, up to the limit of proportionality. The victim's needs for restoration was more important than a strict retributive principle.

9. What about the issue of self-incrimination and judicial torture?
   a. Most Western peoples starting from Greece and Rome used torture in the courtroom. It's called judicial torture. Especially for slaves and servants, but sometimes for everyone. That's similar to the issue of plea bargaining today, because the accuser makes you choose which accusations you want to plead guilty to. It's a form of coercion and self-incrimination and in a sense there is a threat of torture in the form of the sentence.
   b. Jewish law prevented torture. Bringing an accusation against someone required two witnesses and the accused person could not be one of them. This rabbi Dr. Warren Goldstein of South Africa says, '*Jewish law's rejection of judicial torture is unique in Western civilization, especially because it is so ancient*.' 'The law against self-incrimination relates to the accused's vulnerability.'[26] And 'Jewish law's criminal law paradigm is based on the Biblical verse, "And the congregation shall save" [Num.35:25]. According to the Talmud, this verse establishes a

[23] Alexander, p.101
[24] Alexander, p.101
[25] Alexander, p.101
[26] Rabbi Dr. Warren Goldstein, *Defending the Human Spirit: Jewish Law's Vision for a Moral Society* (New York: Feldham, 2006), p.237, 240

principle… one of the key responsibilities of any criminal court is to protect the interests of the accused by finding legally acceptable ways to "save" him from conviction.'[27] This is why one of the Ten Commandments is to not bear false witness against your neighbor. You've got to tell the truth and find the truth in a legitimate way.

c. This is still important because the effect of mandatory minimums is to be coercive towards the accused person. The prosecutor gets to choose what charge to bring against the accused, and the accused is pressured to plea-bargain, pleading guilty to the lesser offense. It's a way to apply pressure to the accused so they 'voluntarily' give up their Eighth Amendment right to a trial by a jury of their peers.

10. What's the point of looking at the Old Testament?
    a. If you aren't Jewish or Christian, you don't have to take this text as authoritative, but it's important to take it as influential. The idea of universal human dignity comes from Judaism and Christianity. It's important to ask yourself where you think human dignity comes from.
    b. It's to show that when you compare the Jewish law with its neighbors, you see that you can't really explain the Old Testament as a product of its times. You have a real argument that it wasn't written by human beings alone. I think there was someone else involved!!
    c. Again, it's not the full picture of the heart of God, as shown in Jesus. But God was training His people and preparing them to appreciate Jesus. It's to show that there are definite ways that we have NOT moved 'beyond' the Old Testament. There are still things it has to teach us. And Jesus will show us even more.

11. Actions: Once again, this is why it's important to take some action steps:
    a. Policing:
        i. Implicit racial bias training for police officers has been shown to make a difference!
        ii. Body cameras worn by police officers have been shown to make a difference when they deal with routine stops, checks, and use force when they need to.
    b. Prosecutors:
        i. Put public pressure on elected city prosecutors
        ii. Check the Families Against Mandatory Minimums website (famm.org). See the previous session's notes for some instructions
    c. Supreme Court:
        i. We don't influence the Supreme Court directly. This is why the Black Lives Matter movement has been important. We need to have a change in general public awareness, and then perhaps changes legislation, representation, and then finally Supreme Court justices.

[27] Ibid, 264 – 265