

## A Colony In A Nation

by Chris Hayes

This book makes a simple argument; that American criminal justice isn't one system with massive racial disparities, but two distinct regimes. One (the Nation) is the kind of policing regime you expect in a democracy; the other (the Colony) is the kind you expect in an occupied land. In the Nation there is law; in the Colony there is only concern with order. In the Nation you have rights; in the Colony you have commands.

### Section I

- The U.S. is the most violent developed country in the world. America imprisons a higher percentage of its citizens than any other country in the world and for more than four decades the percentage has grown, often under the guise of addressing the violence.
  - ◆ Nearly one in every four prisoners in the world is an American, even though the U.S. has just 5% of the world's population.
  - ◆ For white Americans, lethal violence is nearly as rare as it is in Finland; for black Americans, it is nearly as common as it is in Mexico.
- The increase in incarceration dates back to the late 1960's, when three things happened simultaneously and resulted in emphasizing the concept of white fear.
  - a. The civil rights movement was successful in dislodging decades of Jim Crow and cracked open the vise of American racial hierarchy.
  - b. A once-in-a-century crime rate increase occurred over a 25 year span.
  - c. Street protests exploded.
- The rule of law became conflated with the maintenance of order and this connection dominates our politics to this day.
  - ◆ The people in power essentially determine what the definition of order means, and law is used as a tool to control actions, rather than a framework to provide social guidance.
- The policing in parts of America resembles the British occupation of the colonies, with its emphasis on order and lack of respect for individual's rights and property. These parts of America have become a Colony within the Nation of America.
  - ◆ Policing in the Nation concentrates on law. In the Colony it concentrates on order.
  - ◆ In the world's most punitive criminal system, the application of punishment is uneven in the extreme.
  - ◆ All colonial systems have integrated the colonized into government power, while still keeping the colonial subjects in their place.

- The book *The New Jim Crow*, argues convincingly that our current era represents not a shift from previous eras of white supremacy and black oppression, but continuity with them.
  - ◆ Jim Crow was dismantled as a legal entity in the 1960s, but was re-conceived and reborn through mass incarceration.
  - ◆ As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow.
  - ◆ This oppression has spread into the poorer white class as economic dislocation and unrest have grown.
- Race largely defines the boundaries of the Colony and the Nation. In many places the two territories alternate block by block, in a patchwork that is known to only those who live within them. This is the legacy of a post-civil-rights social order that gave up on desegregation as a guiding mission and accepted a country of defacto segregation between “nice neighborhoods,” “inner cities,” and “bedroom communities.” None of this came about by accident.
- In the Nation, the criminal justice system functions like your laptop's operating system, quietly humming in the background. In the Colony, it functions like a computer virus: constantly intruding and interrupting your life at the most inconvenient times.

## Section II

- The Nation people frequently say, "If a cop tells you to do something, why didn't you do it?" However, the result of any misunderstanding is usually resolved without any violence.
  - ◆ Frequently codes state it is a crime to "fail to comply with the lawful order or request of a police officer." In the Colony, this results in the police being empowered to take any action, should they determine any citizen did not immediately follow a request to their satisfaction.
  - ◆ The people effectively do not have any property or personal rights, when police are involved. Just think of the uproar if this implementation of the law were used to keep order on the Harvard campus - it would be a totally unacceptable form of policing to the students affected.
- Police forces have become more and more like occupying forces, in their dress, their equipment, their vehicles, and their tactics.
  - ◆ The military and the police have similarities in the way they are structured, but their missions are quite different - at least in how they were originally designed.
  - ◆ When the British were required to act more aggressively in the colonies, they became an invading, occupying force to be resisted at all costs. This is now true of police forces operating within American Colonies.
- Our country was founded by men who refused to comply with British law, because it was so unfair. That is our heritage and we should not be surprised if populations within what are effectively colonies react in a similar fashion.

- The way around taxes in colonial times was to smuggle in goods from other countries and avoid the King's taxes - one of the biggest smugglers in colonial times was John Hancock. This smuggling not only brought in goods, but also supported additional commerce that frequently was the difference between life and death for the people involved.
  - ◆ This is also true of the drug trade in inner cities supporting people who otherwise would have no other means of supporting themselves.
  - ◆ As in colonial times, citizens in these places consider the police their enemy.
- In the Colonies the laws were unenforceable because the market demand was nearly limitless, as was the case in the time of Prohibition, and is the case in the Colonies today.
- In colonial times the French and Indian War incurred such a tremendous debt for the British that they chose to enforce smuggling and tax laws through police actions to recover that debt. This further enraged the colonists and quickly resulted in the Revolutionary War. The War on Drugs made the same mistake in dealing with the emerging Colonies inside American in the 1980s.
  - ◆ In this environment citizen's Fourth Amendment rights became casualties of war.
  - ◆ In Ferguson, MO - and elsewhere - the police were also charged to enforce laws that were specifically targeted to fill the city treasury so that taxes would not have to be raised. The police became armed tax collectors, with traffic stops, and municipal fines designed to get the most money from their citizens. By 2015, fines and fees would make up more than 20% of the city's total revenue.
- Presented with a challenge to its power, an illegitimate regime will often overreact, driven by the knowledge that all they have is force. This statement is illustrated over-and-over again in police forces throughout the country today.
- For subjects of authoritarian rule, humiliation is the permanent state of existence.
  - ◆ In the run-up to the Revolution, the Crown attempted to crack down on smuggling with rituals of public humiliation and the citizens reacted by 'tar and feathering' the offending Crown officers. How similar is this situation to what is going on in the Colonies today?
- The Bill of Rights is the direct result of these excesses by the British Crown. The loss of many of these rights in the modern Colony, due to the use of police to enforce social and financial demands bears a frightening similarity to the British actions in the eighteenth century.
- Police training now conditions police to the dangers of working in areas where most of the people carry guns. In this environment it is much easier to see how police could kill a 12yr old girl with a toy gun, or an unarmed man running away from the police.

## Section III

- When “war zone” is the term commonly applied to poor urban neighborhoods the police are naturally going to approach these areas as if they were in an isolated region in Afghanistan, particularly when the police are, themselves, not a part of the community.

- To be outnumbered and afraid in a land not your own, and to attempt to bring it under your control is the great recurring theme of the American experience, and it is shot through at every moment by fear, violence, and subjugation.
  - ◆ Within a century or two, settlers and the U.S. government had succeeded in ethnically cleansing, conquering, and corralling the continent's indigenous peoples. Slaves were simply a southern extension of this process.
- The police have taken over from other areas of society in dealing with disturbed or mentally ill people. A recent study found 25% of people killed by police were suffering from mental illness.
  - ◆ Police, acting as the interface with people most of us don't want to either acknowledge or have any contact with, is a recipe for problems.
  - ◆ The police are not equipped to deal with every social ill, but we insist they be the 'point of our spear' in dealing with the Colony.
  - ◆ We ask police to be social workers, addiction counselors, mental health workers, and community mediators. We wouldn't hand a social worker a gun and have them go out into the streets to apprehend criminals, but we do the opposite to the police every day.
- The Second Amendment is the ultimate check against tyranny. An armed populace repels tyranny, but its practical effect has been the opposite.
  - ◆ If the people are armed enough to threaten the state's control, then the state's monopoly on violence is in question, and it therefore often acts less like it's enforcing the law than putting down an insurrection.
  - ◆ The gun: an armed populace must be subdued with even greater arms. Thus police soon become armed combat teams, with an armed combat team mentality.

## Section IV

- Despite the fact non-white people are disproportionately the victims of crime, the criminal justice system, as a whole, is largely built on the emotional foundation of white fear.
  - ◆ White fear keeps the citizens of the Nation wary of the Colony and fuels their desire to keep it separate, i.e. white flight from encroaching blacks and emigrants.

- The War on Drugs marked a period of quickly escalating imprisonment of an increasing percentage of our population. However, it wasn't just drug arrests that increased the prison population, but required sentencing requirements imposed during this time.
  - ◆ White fear drove both these developments and became defined at a time when the concept of 'order at any cost' became politically popular.
  - ◆ What differentiates white fear as a social and political force from fear felt by an individual is the belief structure, often implicit and never articulated, in which that fear rests. The fear is of those who appear different from ourselves.
  - ◆ If violence is routine, then "they" don't experience fear the same way we do. We - the hardworking, who have come so far - shouldn't have to fear.
- White fear emanates from knowing that white privilege exists and the anxiety that it might end.
- Our brain is wired to identify threats, not to process statistics. That is the key takeaway in understanding both the media and political discourse.
- Because white fear is a constant, even when threats have subsided, it functions as a one-way ratchet in constructing the architecture of the Colony.
  - ◆ It can build prisons, but it can not knock them back down.

## Section V

- Even today, the discussion around homelessness focuses primarily on the problem of the non-homeless seeing too many homeless people, not on the problem of too many people lacking homes.
  - ◆ We aren't as concerned with problems as we are with having those problems made visible to us.
- Property values and crime became the watch words for blacks in the neighborhoods, i.e. the neighborhoods were becoming seedy.
  - ◆ Again, a value is placed on white middle class order and nothing else is considered.
  - ◆ Problems of appearance are addressed, while the underlying social problems are ignored (repair the "broken windows" solution).
- The problem with "community policing" is that so often the cops being called to enforce community norms are not part of the community itself.
- Urban police have constructed an entire judicial system around low-level offenses. The goal being to sort city residents according to their obedience and orderliness.
  - ◆ The result is to penalize juveniles, who are acting out their independence, and to permanently relegate them to having a criminal record.
- To resolve urban problems requires local, state, and federal agencies to not just cooperate, but to prioritize the work and work it through over years/generations.
  - ◆ Getting rid of the ghetto requires a multi-generational commitment for which white voters have very little appetite.
- The signature achievement of the reign of order is that a person can live in the Nation and never know what hardships may befall the Colony

## Section VI

- America is a wrathful land. Americans like to humiliate wrongdoers. We like to punish.
  - ◆ In this light it is dangerous to turn over our judicial system to the democratic process, but we repeatedly insist on doing this.
  - ◆ The European criminal justice system is far more bureaucratic and more insulated from electoral politics than our own. The result is less of a 'blood lust' in the application of justice.
- It is the strong anti-aristocratic strain in the American legal tradition that has made our punishment system so remorseless and harsh.
  - ◆ The American system views punishment as the great equalizer. Thus the system of punishment found equality in a race to the bottom: everyone gets punished harshly.
  - ◆ In Europe the move was to push everyone into the category once reserved for the nobles: the sphere of humane treatment was widened to include everyone.
  - ◆ The United States focuses on offenders and punishment, while victims are often ignored. Each person is responsible for themselves.
- By emphasizing each crime individually, it makes it almost impossible to approach solutions using a statistical approach. One single crime so inflames the white fear, without regard to any analysis of frequency, I.e the Willy Horton impact on the 1998 presidential election.
- Crime in America is associated with the 'lower classes', the ghetto, the others, the Colony.
- What would crime look like where people also worried about overly punitive policing and prosecution?
  - ◆ Hundreds of examples of this are operating right now, across every single state of the union.
- Policing on four-year college and university campuses, public and private, give us a very good view of policing and prosecution based on the impact punishment would have on the wrongdoers.
  - ◆ All these schools draw their student bodies disproportionately from upper echelons of society, and they are places where parents and administrators outright expect students to engage in illicit behaviors.
  - ◆ Campuses have some kind of internal justice system, composed of both campus police and extensive disciplinary codes.
  - ◆ These schools are places where it is understood that young adults act out, experiment, and violate rules in all kinds of ways.
  - ◆ If you took this behavior out of the Nation and placed it in the Colony, it would provide material for articles on the pathologies of poverty that hold back people of color, I.e. people sleep all day; engage in loud conversations; have multiple sexual partners; indulge in drunken arguments and brawls; consume large quantities of controlled substances.
  - ◆ The police and administration at colleges do not handle their citizens as do the police and prosecutors in the Colony. Allowance is made for young people in colleges, but criminal records are permanently formed for the very same acts in the Colony.
  - ◆ Frequently, just off campus, these same police display no such leniency when dealing with people perceived to be in the Colony and not the university.

- Subtly, but unmistakably, we have moved the object of our concern from crime to criminals, from acts to essence.
  - ◆ It is the criminal around whom we craft our policy. We must keep him at bay.
  - ◆ The criminal is the crime. He is a subject of the Colony and, as such, deserving of no mercy.
- Citizens can be forgiven, but subjects are unforgivable. Again, we need only look back to the American Revolution to see a comparison we can understand.
  - ◆ The Colony pays tribute to the Nation. The citizens enjoy tangible gains at the expense of the subjects, even though those gains may not be material.