



negate city 2012

Michelle Alexander

**GO TO TRIAL:
CRASH THE JUSTICE SYSTEM**



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NEGATECITY PARANOIA SERIES

(o_O) 2012 Free Vegan Ice Cream If You Leave Right Now

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This article originally appeared in the New York Times on March 10th, 2012.

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Thanks to Mountain Dew & 311 for allowing me to never sleep.

Design: Johnny Utah

ISBN: FML-0-12345-666-4

Distributed by SODA CURE

(The Sad, Overfed, DVD-Addicted Collective of Unavailable Emotional Recluses)

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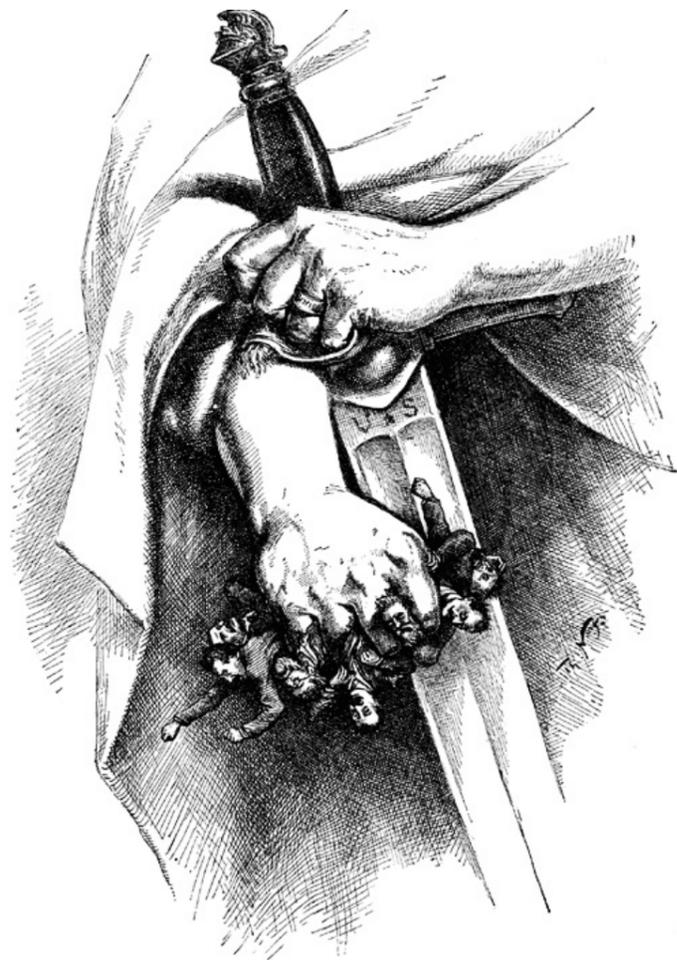
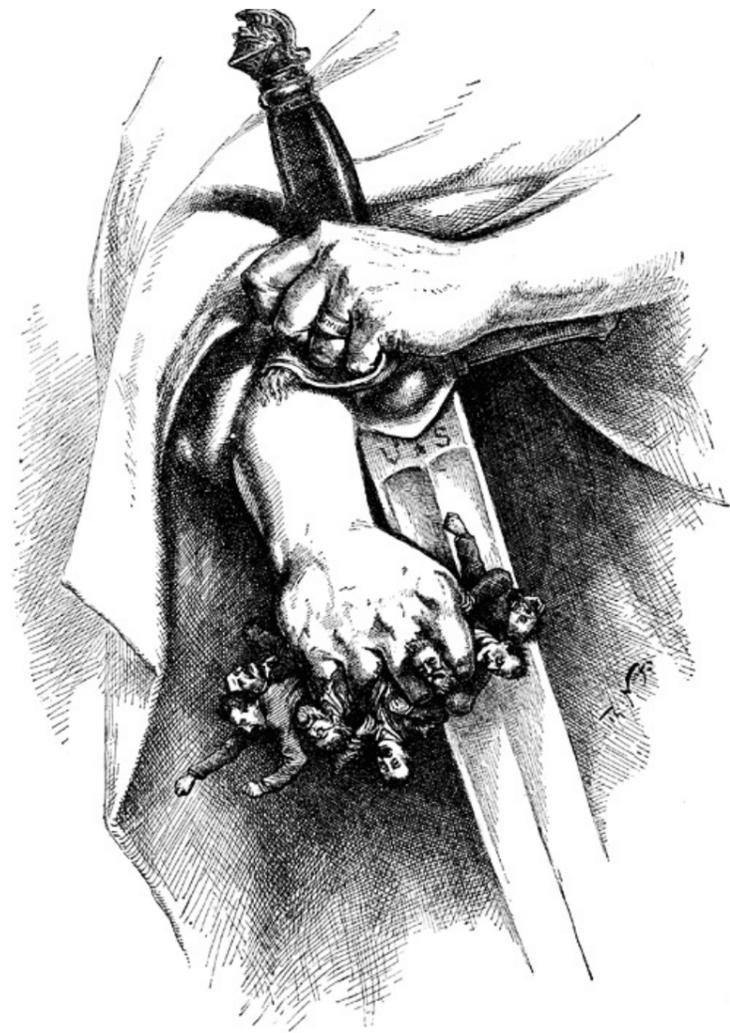
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AFTER years as a civil rights lawyer, I rarely find myself speechless. But some questions a woman I know posed during a phone conversation one recent evening gave me pause: “What would happen if we organized thousands, even hundreds of thousands, of people charged with crimes to refuse to play the game, to refuse to plea out? What if they all insisted on their Sixth Amendment right to trial? Couldn’t we bring the whole system to a halt just like that?”

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The woman was Susan Burton, who knows a lot about being processed through the criminal justice system.

Her odyssey began when a Los Angeles police cruiser ran over and killed her 5-year-old son. Consumed with grief and without access to therapy or antidepressant medications, Susan became addicted to crack cocaine. She lived in an impoverished black community under siege in the “war on drugs,” and it was but a matter of time before she was arrested and offered the first of many plea deals that left her behind bars for a series of drug-related offenses. Every time she was released, she found herself trapped in an under-caste, subject to legal discrimination in employment and housing.

Fifteen years after her first arrest, Susan was finally admitted to a private drug treatment facility and given a job. After she was clean she dedicated her life to making sure no other woman would suffer what she had been through. Susan now runs five safe homes for formerly incarcerated women in Los Angeles. Her organization, A New Way of Life, supplies a lifeline for women released from prison. But it does much more: it is also helping to start a movement. With groups like All of Us or None, it is organizing formerly incarcerated people and

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encouraging them to demand restoration of their basic civil and human rights.

I was stunned by Susan’s question about plea bargains because she — of all people — knows the risks involved in forcing prosecutors to make cases against people who have been charged with crimes. Could she be serious about organizing people, on a large scale, to refuse to plea-bargain when charged with a crime?

“Yes, I’m serious,” she flatly replied.

I launched, predictably, into a lecture about what prosecutors would do to people if they actually tried to stand up for their rights. The Bill of Rights guarantees the accused basic safeguards, including the right to be informed of charges against them, to an impartial, fair and speedy jury trial, to cross-examine witnesses and to the assistance of counsel.

But in this era of mass incarceration — when our nation’s prison population has quintupled in a few decades partly as a result of the war on drugs and the “get tough” movement — these rights are, for the overwhelming majority of people hauled into courtrooms across America, theoretical. More than 90 percent of criminal cases are never

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tried before a jury. Most people charged with crimes forfeit their constitutional rights and plead guilty.

“The truth is that government officials have deliberately engineered the system to assure that the jury trial system established by the Constitution is seldom used,” said Timothy Lynch, director of the criminal justice project at the libertarian Cato Institute. In other words: the system is rigged.

In the race to incarcerate, politicians champion stiff sentences for nearly all crimes, including harsh mandatory minimum sentences and three-strikes laws; the result is a dramatic power shift, from judges to prosecutors.

The Supreme Court ruled in 1978 that threatening someone with life imprisonment for a minor crime in an effort to induce him to forfeit a jury trial did not violate his Sixth Amendment right to trial. Thirteen years later, in *Harmelin v. Michigan*, the court ruled that life imprisonment for a first-time drug offense did not violate the Eighth Amendment’s ban on cruel and unusual punishment.

No wonder, then, that most people waive their rights. Take the case of Erma Faye Stewart, a single African-American mother of two

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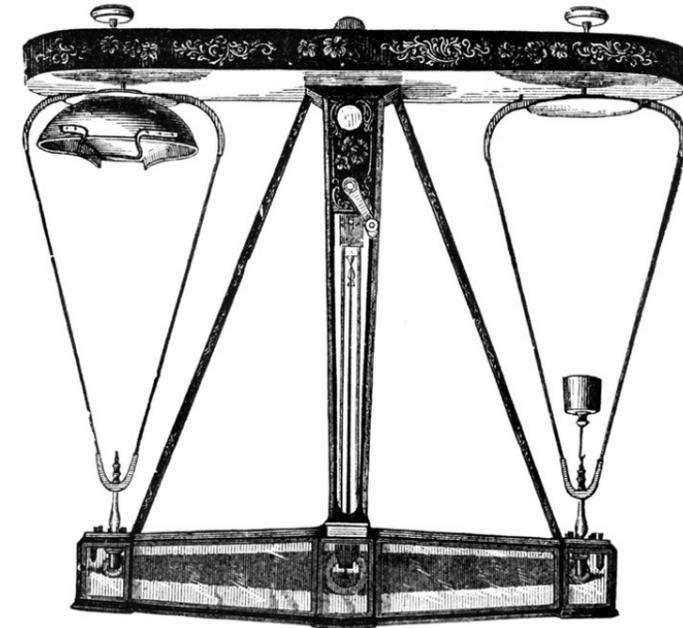
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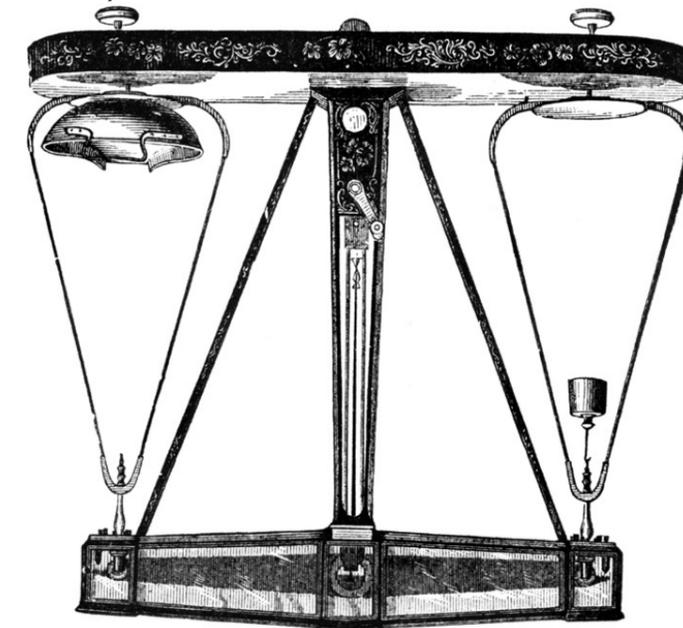
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As for other minor charges, I think it's still worth considering. The more we make going to trial an accepted and encouraged activity for people, the faster we have a chance of crippling the legal system, and the most likely response for that is new legislation that makes the punishments for such crimes less harsh, in order to keep them out of the legal system. That would be a victory! Of course, one alternative would be that they hire more judicial goons to keep up with the ballooning case loads and lock up everybody, but that would probably just end up in mass riots and extreme social upheaval, which, at least to this anarchist on probation, is even more of a victory.

There's a really exciting chance here to fuck up a corrupt system by using its own flaws against it. The Constitution, that venerated god-document that so many people look to for justice, law, and order, has explicit provisions (in the 6th amendment) that, if followed to the letter, would completely topple America's legal system and expose the monumental discrepancies between crime and punishment in this

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On the phone, Susan said she knew exactly what was involved in asking people who have been charged with crimes to reject plea bargains, and press for trial. "Believe me, I know. I'm asking what we can do. Can we crash the system just by exercising our rights?"

The answer is yes. The system of mass incarceration depends almost entirely on the cooperation of those it seeks to control. If everyone charged with crimes suddenly exercised his constitutional rights, there would not be enough judges, lawyers or prison cells to deal

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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.”

Such chaos would force mass incarceration to the top of the agenda for politicians and policy makers, leaving them only two viable options: sharply scale back the number of criminal cases filed (for drug possession, for example) or amend the Constitution (or eviscerate it by judicial “emergency” fiat). Either action would create a crisis and the system would crash — it could no longer function as it had before. Mass protest would force a public conversation that, to date, we have been content to avoid.

In telling Susan that she was right, I found myself uneasy. “As a mother myself, I don’t think there’s anything I wouldn’t plead guilty to if a prosecutor told me that accepting a plea was the only way to get home to my children,” I said. “I truly can’t imagine risking life imprisonment, so how can I urge others to take that risk — even if it would send shock waves through a fundamentally immoral and unjust system?”

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So...yeah. All that's really scary. And that's not even scratching the surface of the thousands of other higher-risk and higher-profile cases, in the *smashy-smashy* genre or in the *damn that seems fucked but it was a crime of necessity* genre, or conspiracy, or terrorism, or whatever. Then things get really hairy, and the difference between a for-sure plea and an unlikely worst-case-scenario trial can be decades in prison, not months or years.

But! The majority of folks won't be grappling with those high-profile cases, they'll be mulling over what to do after getting caught with weed for the first time or driving without a license or locking themselves in a building to keep some heartless bastard from taking it away. In the case of any sort of "political" crime, like occupying something, I'd say definitely consider going to trial. In the light of this article, you know you have the potential to gum up the works by doing so, and when you stand before the judge/attorney, you'll acutally look

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So I went for it. I knew I had a reasonably good chance of weaseling my way out via good lawyers/community service/relatively clean record/white privilege. And there was this other feeling like if I went to trial, I'd have to face the real world, which is basically the opposite of how I've been trying to live my life, since the real world is awful and I am a failure in it. Trial is something that feels heavy and cinematic, a ceremony with robes and decorum and your honor. A place where petty thieves and sloppy vandals won't be looked upon favorably, the way they might when explaining to certain friends that causing property damage or merchandise loss are tactics that are more materially meaningful to them than civil disobedience (when it comes to doing our part to harm the oppressive capitalist regime of the state, that is).

You can't say that shit to a judge! And you also can't say that you were just pissed off or bored or depressed, and that doing crime at least felt real, so that's why you did it. Or that if you never got caught, you'd probably still be doing it (or that you ARE still doing it even though you did get caught, or that you are still doing it and that you plan to do it to the judge right after court lets out). And so you become a

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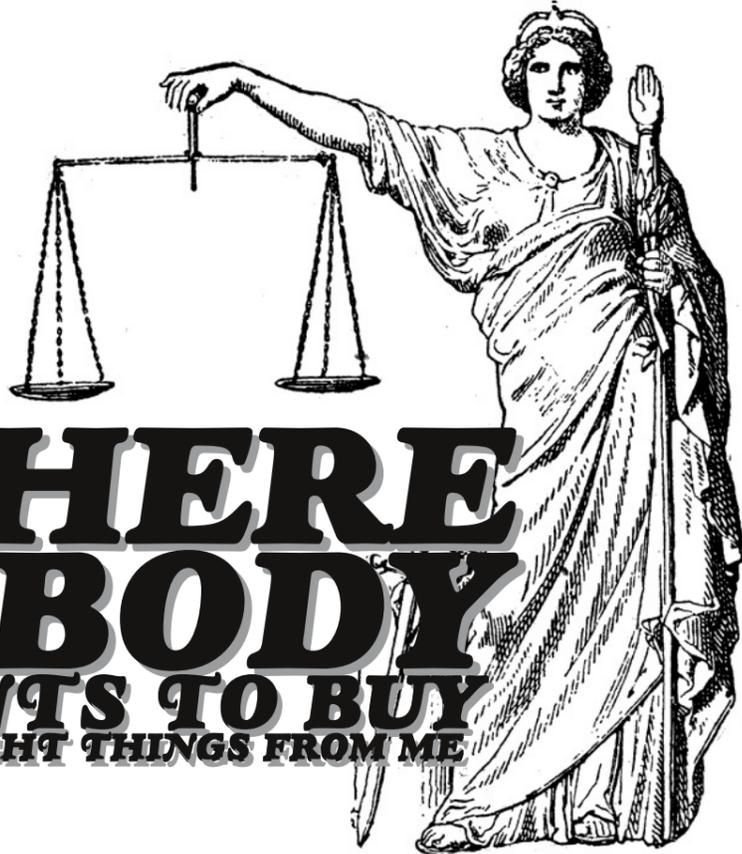
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Susan, silent for a while, replied: "I'm not saying we should do it. I'm saying we ought to know that it's an option. People should understand that simply exercising their rights would shake the foundations of our justice system which works only so long as we accept its terms. As you know, another brutal system of racial and social control once prevailed in this country, and it never would have ended if some people weren't willing to risk their lives. It would be nice if reasoned argument would do, but as we've seen that's just not the case. So maybe, just maybe, if we truly want to end this system, some of us will have to risk our lives."

Michelle Alexander is the author of "The New Jim Crow: Mass Incarceration in the Age of Colorblindness."

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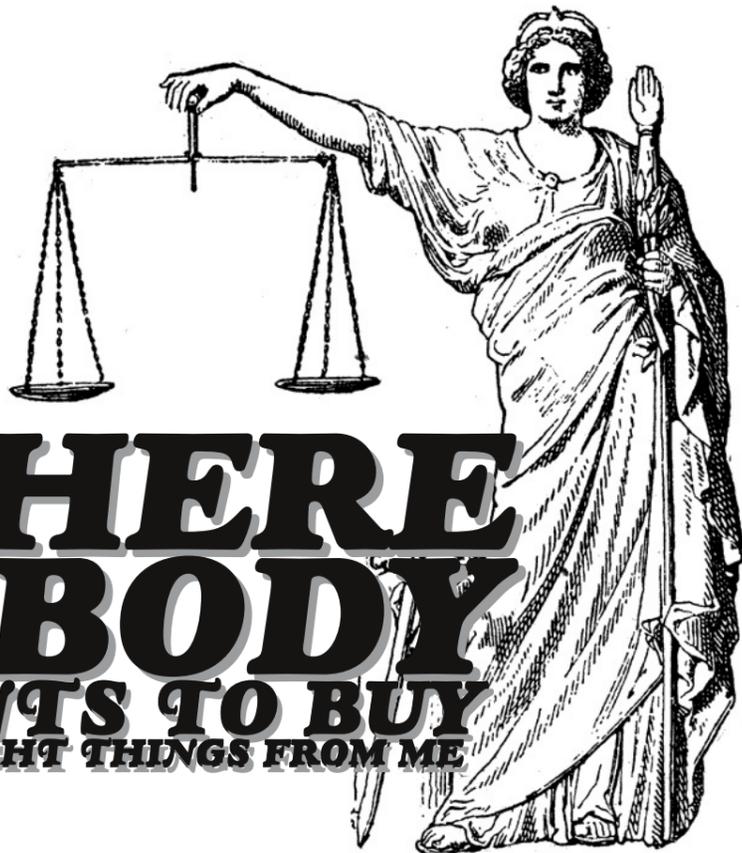


**IS THERE
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GOING TO TRIAL AS SECONDARY DIRECT ACTION | **this one anarchist on probation**

I'M an anarchist on probation. I got that way by taking a plea. I was motivated by the same fear and uncertainty Susan mentioned in the article above. In the town I live in, a kid with basically the same charges as me went to trial and got 3 months in jail and a \$17,000 fine. Granted, he had felony priors and represented himself instead of getting an attorney, but it didn't make it less scary. The deal is, as long as I do a few hundred hours of community service and cop to a few lesser charges, there won't be any fine or jail time, just probation. Pretty standard stuff.

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