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Criminal Injustice: Considering White Privilege and Colonization in the Examination of Racial Bias in the United States Criminal Justice System

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Criminal Injustice: Considering White Privilege and Colonization
in the Examination of Racial Bias
in the United States Criminal Justice System

A Thesis

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ABSTRACT

Laws and institutions in the United States have consistently marginalized people of color throughout the country's history. This research examines the United States' criminal justice system while considering how the country's past of oppression has resulted in a racially biased system. Through analysis of policies, literature, and quantitative data, the primary goal of this research is not only to exhibit that racial discrepancies exist within the criminal justice system, but also to question how they persist in order to determine a solution. By utilizing both qualitative data collected through existing social theory as well as quantitative data showing varying perceptions of the American criminal justice system, the mixed method approach to this research strives to demonstrate that when it comes to justice for all, both the source of racial bias *and* the solution can be found in observing a history of colonialism and the pervasiveness of white privilege.

Keywords: *criminal justice, mass incarceration, racism, white privilege, prison reform*

INTRODUCTION

In reflecting on the broad history of the United States, many themes, symbols, and motifs come to mind. Ideas of equality, freedom, "the American dream," and wars bravely fought to ensure the promise of "life, liberty, and the pursuit of happiness" are at the forefront of history textbooks and grade school lectures. Looking deeper, however, a darker truth lies beyond these seemingly glamorized images of "the land of the free." Finding its roots with the first colonizers to set foot on American soil, slavery and the repercussions of racial oppression have had a persistent and lasting legacy that is as American as the flag itself. From abolition to segregation, from Jim Crow to the prison industrial complex, America's mask of equal opportunity becomes paradoxical when considering overwhelmingly pervasive systemic and institutional racism in the country. Why, then, does it seem that progress has not truly been made? In what ways are racial hierarchies maintained covertly in order to ensure that they are not questioned or examined too closely? Lastly, if these institutions and hierarchies are so clearly perpetuating inequality and injustice, why are critiques of them so hard to open to public discourse in order to determine a solution?

The readings discussed help to further develop an understanding that we live in a society which, through multiple means, continues to reinforce racial boundaries and oppression. In light of the overwhelming amounts of evidence presented in existing theory and alongside the increased numbers of studies examining our systems and institutions more closely, what can we identify as the primary reason, or reasons, that such a large part of society, specifically a large percentage of white Americans, reject the existence of racial bias within the country's criminal justice system?

What are steps that can be taken to make changes, end the prison industrial complex, stop the mass incarceration of black men, women, and children, allow equal justice under the law, and enforce ending police brutality? These systemic inequalities that run rampant in our country require an acknowledgement of white privilege, of hundreds of years of oppression, dehumanization and abuse, and a national, open conversation about what "justice" should really mean. Here, we search theoretical frameworks in order to determine if change is possible in the justice system and if so, how to begin bringing it about.

LITERATURE REVIEW

The literature used in this research aims to further explain the inequalities being addressed. They will offer information in order to help understand a cohesive timeline of racial oppression from the earliest days of America's existence. The majority of the literature used is focused on the changing face of racism and white privilege throughout the country's history. Beginning with slavery and following through to post-civil war America, the literature discussed will highlight everything from peon camps to the "Black Codes," Michelle Alexander's discussion of what she coined "the new Jim Crow," political moves against minorities, and laws or sanctions in place that specifically disadvantage minority groups or advantage whites.

In *Prison and Social Death*, Joshua M. Price uses an entire chapter to outline various means of oppression against minorities throughout America's history. Chapter Six of Price's book is titled "Racism, Prison, and the Legacies of Slavery" and immediately begins a critique of American prisons, incarceration, and the "racial caste system" by posing the question "is the institution of prison a descendant of the institution of slavery?" Price notes that the first recorded purchase of a slave "in what was to become the United States" was documented by John Smith in 1619 (Price, p.76). In a brief discussion of the justification of the dehumanization of enslaved men, women, and children, Price states that "the English borrowed a conceptual apparatus for understanding people of African descent as subordinate beings, savage, lawless, heathen, dissolute, and subhuman" (Price, p. 78). On a note that will only become increasingly relevant in the coming years, Price describes the 1676 uprising now known as "Bacon's Rebellion,"

detailing the "poor whites and African Americans" joining together against elite, white landowners. "White fear combined with white violence to shore up racial solidarity among whites against blacks" was the response from the landowning targets of the rebellion (Price, p. 78). This term, "white fear," becomes a common and persistent force in the continued oppression of minority groups.

In the same vein as dehumanization of slave bodies, policies and legislation soon came to deny any form of autonomy for enslaved individuals within the legal system. Price states:

> In the judicial rulings and legislative acts that established it, slavery began to take on the connotation of taking away (or denying) something essential in the humanity and citizenship of the enslaved. The slave was not quite American, not quite citizen; the slave was something of a foreigner, but a foreigner who was not due any regard, now someone protected by laws the same way a citizen is. In this sense, the enslaved shared qualities with a captive. When the prisoner is perceived as enemy, then domestic social organization contains elements of war within it. (Price, page 81)

Bacon's Rebellion marks the beginning of labeling individuals of African descent as "menacing" and "lacking self-control, including sexual self-control." These portrayals of slaves as animalistic and barbaric "are the chief components of the legal, social, psychological, institutional, and perceptual machinery that set up the rationale for racializing the captivity that is slavery," Price states. "This chain of associations has persisted over the last 350 years and maintains its potency through the present day" (Price, p. 81). Here, Price begins his critique of the criminal justice system.

"After slavery was abolished, the primary mechanism of social death migrated from the institution of chattel slavery to the criminal justice system," says Price. Negative stereotypes imposed on people of color by whites "came to serve as the justification for establishing a new kind of captivity" (Price, p. 81). Keeping in mind the economic gain provided to whites by

slavery, abolition posed a threat to white wealth and economy. "If the end of slavery made it impossible to hold human beings any longer as private property, the birth of the penitentiary made it possible to hold human beings as public property, that is, as property of the state." Price describes a "loophole" in the Thirteenth Amendment that, although the amendment itself was abolishing slavery, excluded "freedom" for slaves who had been convicted of felonies (Price, p. 81).

Following abolition and entering the era of Reconstruction, many states put forth laws in order to continue disenfranchising the newly freed former slaves. "Black Codes," which Price describes as "explicitly racial laws," enabled southern states to make more arrests on the basis of denying rights by acts such as making intermarriage a "felony punishable by life in prison." Once the "freed" slaves had been arrested and sentenced to jail time, the new laws "authorized sheriffs and law enforcement to hire out prisoners." By expanding the laws targeted towards African Americans and developing a "partnership between law enforcement" and "the agricultural industrial sectors," freed men and women continued to be "exploited for the needs of capital" (Price, p. 84). Price discusses the relationship between capital and law and order in a recollection of Fredrick Douglass' identification of the system evolving within the United States, even before it had a name:

> The immense amount of capital that had backed slavery exercised undue control over politics and civil society and thus deformed the culture in deep ways. The resulting dynamic rooted racism deeply within many social institutions. Long before such terms as the "prison industrial complex," Douglass saw with perspicacity how the entwining of race, money, and the criminalization of people of color disfigured the republic. He was unrelenting in his poor opinion of the nation's halfhearted attempts to incorporate fully African Americans and other people of color. (Price, p. 85)

Both W. E. B. Du Bois and Frederick Douglass addressed the criminal justice system as a means of maintaining a "racial caste system" and "nip in the bud the democratic possibilities implicit in Reconstruction" (Price, p. 85). "By ensnaring recently freed men and women through the criminal justice system, they were able to secure the inexpensive services of a large class of African Americans," Price says of southern industrialists leading up to the birth of the "convict lease system" (Price, p. 85). The convict lease system was born following the end of the Civil War and, according to Price, continued existing in some states "as late as the 1940s."

The system allowed states to "lease people convicted of felonies to private companies for their labor," which in turn allowed states to "recuperate much of the cost of incarcerating people." While the convict lease system was initially developed to resemble the institution of slavery and free labor as much as possible, the "profit motive" allowed for it to become "an effective mechanism to try to reinstitute racial subordination." "In some states, more than 90 percent of the convicts leased by the state were African American" (Price, p. 86). Touching again on the previously mentioned idea of "social death," Price states that the institutions that gave birth to the convict lease system succeeded in "re-creating a social institution that produced and reproduced social death now that slavery had been abolished" (Price, p. 87).

As African Americans had been continually stereotyped and criminalized since the earliest settlements in America, time and space did not alter these racial tensions. "Imputing crime to color knew no geographic bounds within the United States," says Price while discussing the rapid expansion of the American prison system after the Civil War. Price closes the chapter with a harsh, albeit realistic, abasement of the legacy of slavery and racial oppression as it continues to exist today. The "contemporary social death," as Price refers to it, "in its modern avatar of the prison, emerges from several tributaries, especially the history of slavery and the

subsequent subversion of democracy during Reconstruction, the imposition of the convict-lease

system, and the imputation of crime to color, which we have not, even now, surmounted" (Price,

p. 90).

In *Racism as Manic Defense*, Neil Altman,and Johanna Tiemann discuss Kleinian

psychological explanations for racial stereotyping. According to the authors, the "manic

defense," a term originally used by Melanie Klein, can manifest in some "forms of racism." In

psychological terms, the authors acknowledge that social dynamics do "produce and reinforce

racism." In referencing Joel Kovel, Altman and Tiemann state that "capitalist economic systems

produce and reinforce racism as a way of ensuring that there will always be a pool of poorly paid

workers" (Altman and Tiemann, p. 130). In addressing the stereotypes placed upon African

Americans by whites throughout America's history, the authors state:

> Consider how the violence entailed in forcibly wrenching people from their
> homes, their families, and their cultures and enslaving them got transformed
> into an image of the violent black man. Or consider how the routine sexual use
> of black women for the sexual education or pleasure of white men got
> transformed into an image of the sexually predatory black man. These
> processes, of course, are ongoing. They can be found, for example, in the
> stereotype of the violently criminal, ghetto-dwelling black male that results in
> "racial profiling" and the disproportionate imprisonment of black men, while
> white society turns a blind eye to white police brutality in the ghetto. . . The
> point is not to deny that these phenomena exist, but rather to observe that racist
> white Americans experience them as inherent in black people, while disavowing
> that they are also found in whites, and that, in any case, they may be induced by
> discriminatory housing and employment practices, for example (Altman and
> Tiemann, p. 132)

In *Racial Inequality After Racism: How Institutions Hold Back African Americans,*

Frederick C. Harris and Robert C. Lieberman discuss the War on Drugs alongside Nixon and

Reagan-era politics, Jim Crow, segregation, the criminal justice system, and a proposal for a "racial-equality stress test." "African Americans," the authors begin, "are nearly three times as likely as non-Hispanic whites to be poor, almost six times as likely to be incarcerated, and only half as likely to graduate from college." Additionally, the authors state that "the average wealth of white households in the United States is about 13 times as high as that of black households." Later in their discussion, Harris and Liebermann note that the "United States is a postracist country" not in the eradication of racism, but in the increasingly "hidden nature" of it (Harris and Liebermann, p. 10).

> Neither the left nor the right has produced convincing explanations of this predicament, much less solutions to it. The two sides' shortfalls stem from a common problem: a focus on individuals rather than institutions, which obscures the powerful role that history has played in shaping today's inequalities. Historical legacies are the key reason numerous civic, social, and economic institutions continue to affect marginalized communities in deeply unequal ways, even though these institutions appear to be race neutral on the surface. (Harris and Liebermann, p.10)

The authors discuss the "stress tests" that were conducted by many banks across the United States and Europe during the course of the 2008 financial crisis. These tests are intended to "diagnose the banks' unseen weaknesses and vulnerabilities to shocks." Here, the authors present their ultimate proposal:

> Many of the same hidden forces that financial stress tests reveal-- faulty assumptions, a lack of internal safeguards, unrecognized bias-- are also at work in a broad range of public and private institutions in the United States in ways that contribute to racial inequality. Policymakers should consider adapting the stress-test model to help identify and counteract such forces by designing what would amount to stress tests for institutional racism.

The authors go on to negate the "colorblind" myth that has become a pervasive idea in society, stating that it ignores the fact that "apparently race-neutral practices often mask deeply

unequal arrangements." Referring to Jim Crow and the era's voting restrictions (poll taxes,

grandfather clauses, literacy tests) as well as drug laws based on the colorblindness principle,

Harris and Liebermann acknowledge that the consequences of the idea of race are extremely real

and extremely harmful. The question which institution deserves "the most scrutiny," and they

follow with an answer:

> The most obvious and important candidate is the U.S. criminal justice system,
> which today incarcerates about 900,000 African Americans-- a number that
> accounts for close to half of all the inmates in the United States. No aspect of
> contemporary American life presents starker racial disparities. People of color
> (including blacks, Hispanics, and other minorities) represent about 40 percent of the
> U.S. population but account for around 60 percent of those imprisoned. The U.S.
> Bureau of Justice Statistics estimates that one in three African American men will
> go to prison at some point in his life. According to the American Civil Liberties
> Union, one in every 15 African American men is incarcerated, as opposed to only
> one in every 106 white men (Harris and Liebermann, p. 17)

To be sure, Harris and Liebermann's quickness to debunk the myth of a colorblind

society is effective and based on a solid foundation of evidence, however, the broad numbers of

incarceration rates presented may result in a dismissal of the myth's gravity. In a 2010 article

published in the Canadian Journal of Political Science entitled *And Justice for Some: Race,*

Crime, and Punishment in the US Criminal Justice System, Jon Hurwitz and Mark Peffley delve

deeper. The authors hypothesize that "most Whites will fail to see the discrimination in the

justice system" and will therefore operate on the assumption that the system is, in large,

"colourblind and fair." More specifically, Hurwitz and Peffley argue that because of preexisting

assumptions acknowledging a supposed link between race and criminality, whites are more likely

to heavily support "punitive policies," regardless of the criminal's race, because of their faith in

the system (Hurwitz and Peffley, p. 457). In contrast, the authors observe that "African

Americans see discrimination in virtually every nook and cranny of the justice system and do not

trust the police or the courts to mete out justice fairly and equitably, especially when people of color are involved" (Hurwitz and Peffley, p. 458).

Hurwitz and Peffley conducted the "National Race and Crime Survey (NRCS)" in hopes to gather quantitative data detailing perceptions of the criminal justice system held by both white and black Americans. The initial questions of the survey asked respondents about both perceived fairness of the system as well as policies and police-civilian relationships (Hurwitz and Peffley, p. 463). Based on the findings from the initial survey questions regarding system fairness or bias, the authors state that it would be "impossible to avoid the conclusion that Blacks and Whites inhabit two separate perceptual domains" (Hurwitz and Peffley, p. 464). Following a scenario provided to respondents "in which a police officer was accused of brutally beating a [White/Black] motorist who had been stopped for questioning," the researched asked whether the respondent felt that the police department would conduct an investigation of the incident. In the initial findings, Hurwitz and Peffley observe that "general fairness beliefs" played out differently based on the race of both the respondent and the motorist. "White respondents," the researchers state, " naively process the fairness items in a racial vacuum, as if it is possible to evaluate the fairness of the justice system without reference to race" (Hurwitz and Peffley, p. 467). In the final and perhaps most telling and disturbing of the survey experiment conducted by Hurwitz and Peffley, the respondents were asked questions about capital punishment:

> In the racial argument condition, individuals are asked the same question, only preceded by the statement "Here is a question about the death penalty. Some people say that the death penalty is unfair because most of the people who are executed are African Americans."; and in a non-racial argument condition, the baseline question is preceded by "Some people say that the death penalty is unfair because too many innocent people are being executed." (Hurwitz and Peffley, 468)

The data resulting from the final set of questions posed by Hurwitz and Peffley's study are staggering. As only black respondents lessened in their support when presented with the "treatment conditions," an increase of support is observed from white respondents when presented with the racial condition. "While the innocence argument makes virtually no difference, Whites in the racial condition, upon hearing of the discriminatory properties of the death penalty actually become *more*, rather than less, supportive, to the point where more than three out of four individuals favour capital punishment in this treatment group" (Hurwitz and Peffley, p. 470). Here, there is a measurable example of the preexisting notion of black criminality in the minds of white Americans.

In *The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment*, Noami Murakawa and Katherine Beckett further discuss the War on Drugs, looking inside the systems in place, and crime statistics:

> The irony is that criminal justice expansion itself has been constituted by, and is predicated on, the intensification of racially guided preferences and racially influenced policies-- more discretionary actors, more self-reinforcing administrative punishments, perceptions, and policies linking racial order to "law and order"-- so that, in effect, the "deviation" of intentional racial harm becomes less discernible as the "background" of race-laden penality becomes more widespread. The tendency to frame the question in terms of individual intent obscures the systemic, institutional, political, and cultural processes that have led blacks and Latinos to experience incarceration at unprecedented rates, and it contributes as well to the penology of racial innocence. (Murakawa and Beckett, p. 711)

The authors posit that "criminal justice expansion has expanded and deepened the reach and impact of penal institutions, and has exacerbated racial inequality in ways that render disaggregation particularly problematic" (Murakawa and Beckett, p. 715). In the years between 1980 and 2000 (beginning with the War on Drugs), "the national black drug arrest rate more than

quadrupled." Followed shortly by mandatory minimum sentences, racially-charged drug convictions, and broken windows policing, astonishing amounts of arrests were made within African American communities.

In *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander takes a direct approach when addressing the inherent and pervasive racism within America's criminal justice system. The book, published in 2010, is written in the context of its time: through the election of President Barack Obama, American society leans towards an illusion of "colorblindness," an idea that racism is no longer present, while immensely disproportionate numbers of minorities and marginalized groups, specifically black Americans, are being routinely incarcerated and being denied basic liberties by biased and racialized American institutions.

As the entirety of *The New Jim Crow* calls out the injustices of the justice system and the inherently dangerous idea of "colorblindness," the focus of this research proposal is to identify key events that have led to or contributed to the United States' consistent path of inequality and othering. Alexander's discussion of Ronald Reagan's "War on Drugs" introduces us to more recent racialized events politically, but also to the dawn of mass incarceration. Alexander quickly points out that although the drugs were of little concern to the American public, the real "war" being waged was based on race. "By waging a war on drug users and dealers, Reagan made good on his promise to crack down on the racially defined 'others'-- the undeserving" (Alexander, p. 49).

Here, Alexander enters into a discussion of the exploitation of inner-city communities in the midst of rapidly rising unemployment rates, deindustrialization, and economic collapse. As

Reagan's War on Drugs directly addressed the increasing presence of crack-cocaine within these communities, African Americans suffered increasing blows from political and media stereotyping. "The decline in legitimate employment opportunities among inner-city residents increased incentives to sell drugs--most notably crack-cocaine," Alexander states. Although crack and its powder form, cocaine, are "pharmacologically almost identical," the shorter but more intense high from the drug allowed it to be sold in smaller amounts and at a lower price. As crack gains prevalence in 1985 in the whirlwind of globalization, joblessness, deindustrialization and homelessness, the "fierce backlash against the Civil Rights Movement" was given an opportunity to "manifest itself through the War on Drugs" (Alexander, p. 51).

Alexander argues that "racial politics and fear mongering" introduced a reaction to the growing presence of crack-cocaine that fostered "an all-out war." In 1986, legislation was passed by the House granting $2 billion to "the antidrug crusade" which allowed both "illegally obtained evidence in drug trials" and "the death penalty for some drug-related crimes." To make matters worse, the Anti-Drug Abuse Act was signed into law the same year, introducing "mandatory minimum sentences for the distribution of cocaine, including far more severe punishment for the distribution of crack--associated with blacks-- than powder cocaine, associated with whites" (Alexander, p. 53). Hurwitz and Peffley state that "the notorious 100:1 provision of the Federal Crack Cocaine Law of 1986" declared that sentencing would be the same for "one hundred grams of powder cocaine (used primarily by whites) as for one gram of crack cocaine (used primarily by African Americans), despite the gram-for-gram pharmacological equivalence." Also worth noting is the percentage of the population that these two racial categories comprise: African Americans made up only 13% of the American population in 1996, but 48% of the

country's prison population. Additionally, 41% of the death sentences doled out by the justice system in the years between 1976 and 1997 were African American (Hurwitz and Peffley, p. 765).

In the years following the start of the War on Drugs, what Alexander refers to as "a new racial caste system" begins to appear. Here, we see the emergence of what we now know as "mass incarceration" emerging simultaneously alongside the increasing budgets offered to law enforcement agencies. As Alexander makes a case for a racially oppressive justice system, she gives mass incarceration of people of color, specifically black Americans, the name "The New Jim Crow" as a way of addressing head-on the renaming of an oppressive institution that never truly went away.

In *Gendering the Carceral State: African American Women, History, and the Criminal Justice System*, Kali N. Gross and Cheryl D. Hicks discuss the growing attention being paid to mass incarceration and its implication on people of color. In their work, the authors acknowledge racial disparities in the system. According to Gross and Hicks, in 2001, 44 percent of the population of juvenile prisons were African American despite the fact that only 13 percent of the overall population of the country was African American. Additionally, the authors discuss what they refer to as "the connection between blackness, white supremacy, and the unequal application of punitive justice in America." Although there has been an uptick in research regarding racial bias within the justice system, Gross and Hicks take a specific approach in order to highlight that these biases are not specifically targeted towards black men (Gross and Hicks, p. 357).

"In 2009 one in every three hundred black women had been imprisoned; for Latinas that statistic is one in every seven hundred and four; for white women it is one in every 1,099," the

authors state. "Historical context illuminates how social, economic, and structural factors have left black women among those most devastated by the War on Drugs and, as a result, more disproportionately represented in prison than black men" (Gross and Hicks, p. 357). The authors clearly anticipate a reaction of surprise or skepticism to this statement, as they follow it by saying "gender matters" before discussing how history has had a tendency to overlook the suffering of women within virtually every realm of society (Gross and Hicks, p. 358).

> From early laws that stipulated the status of the offspring of enslaved African women and Englishmen would follow the condition of the mother, to rape laws that failed to include protections for black women, the legal system left black women particularly vulnerable to violence and sexual assault. At the same time, early American justice harshly punished black women who took the law into their own hands to defend themselves. From enslaved black women sentenced to hand for killing rapist-masters and overseers to those black women after emancipation who were criminalized and lynched for fending off rape or killing would-be rapists, African American women in the United States have been harmed by politicized protection. (Gross and Hicks, p. 359)

Ultimately, Gross and Hicks argue that future work aimed at addressing injustices in criminal justice and policy *must* be political. In addition to the racial injustices that are primarily discussed in this review, Gross and Hicks insist on taking into account the intersections of race and gender as they converge with the justice system, as each individual experience will differ based on these factors. "These are important steps in the ongoing struggle to remedy the racist failings of the U.S. criminal justice system and to protect the lives of African American women and girls" (Gross and Hicks, p. 363).

In *Black Rage Confronts the Law*, Paul Harris discusses "Racism, Rage, and Criminal

Defense" in chapter six. The chapter opens with a discussion of the 1972 case *United States v. Alexander* as a pivotal moment in using insanity as a defense. Following an altercation that began with racially-charged epithets between five Marines and three black men, Murdock Benjamin shot and killed two of the white Marines. In the trials that followed, a psychiatrist examined Benjamin and posited that he had "predisposing factors" which may have led him to "'overreact' to possible physical threats." These predisposing factors were Benjamin's life leading up to the night of the shooting. The defendant came from a poor background, having been abandoned by his father and living a largely chaotic childhood in Los Angeles. At the time of the trial, the legal standard for an insanity plea was "any abnormal condition of the mind that substantially affected mental or emotional processes and substantially impaired behavior control." "Legally," states Harris, "mental illness was not limited to psychosis." Unfortunately, the legal standard was ignored entirely in Benjamin's case (Harris, p. 128).

During the trial, the judge specifically instructed members of the jury that they were "not to concern themselves with the issue of how a 'rotten social background' affected Benjamin." Following Benjamin's attorney and psychiatrist discussing the defendant's past, the "judge became agitated and refused to allow the jury to consider the social and economic environment of the defendant," clearly showing the judge's "determination to keep race and poverty out of the jury's decision-making process." Here, Harris says, is an example of "a judge reinforcing the myth of the colorblind courtroom" (Harris, p. 129). Benjamin was found guilty of second-degree murder and made an appeal.

After some hesitation about the way in which the trial was conducted, "the majority opinion stated that the ultimate responsibility for the deaths was society's inability 'to eliminate explosive racial tensions' and 'to deny access to guns.'" "The judges then rationalized their

failure to rule that the jury should have been allowed, in clear terms, to consider the racial and economic evidence by repeating the old standby that the court's role is limited and that it cannot be concerned with the broad issues of justice" (Harris, p. 130). In a dissent written following the trial, Judge Bazelon put forth a statement that "reverberated through the legal community." The dissent urged those within the criminal justice system to consider the "'root causes of crime.'" Bazelon went on to state that "there is a significant causal relationship between violent criminal behavior and a 'rotten social background.'" In closing, he stated that realizing this to be true would "require us to consider, for example, whether income redistribution and social reconstruction are indispensable first steps toward solving the problem of violent crime'" (Harris, p. 131).

Almost ten years later, Richard Delgado proposes that "environmental adversity, primarily poverty, is a root cause of crime." He follows by posing the question that if indeed racism and poverty contribute to crime or criminality, "should this fact mitigate criminal responsibility?" Harris explains that "English and American jurisprudence historically has been rooted in the concept of individual responsibility," a doctrine "identified with the capitalist myth that every person has free choice, unconstrained by class, race, religion, or gender." Harris refers to this as a "notion of free choice," a "fiction" that continues to dominate ideas of "American jurisprudence" (Harris, p. 132). However, the author argues that alternatives to this fiction of free choice do exist, as well as alternatives to "the failure of the penal system to recognize the role of racism and poverty" (Harris, p. 141).

The "black rage defense" is discussed as a way of acknowledging what Bazelon referred to as the "root causes of crime" (Harris, p. 141):

> Justified rage against racial and economic oppression fueled the civil rights movement. Its fury kept the young men and women of the Student Nonviolent

Coordinating Committee (SNCC) warm as they filled the jails of the South. Rage was turned into the eloquence of Malcolm X as he educated white and black alike. It became the eloquent poetry and prose of Maya Angelou. Without such appropriate rage, there would only be depression, dejection, and inaction (Harris, p. 145)

Perceptions of Criminal Injustice, Symbolic Racism, and Racial Politics by Ross L. Matsueda and Kevin Drakulich dicsuss perceptions on policing, the death penalty, and affirmative action based on factors such as race and socioeconomic status (SES). Additionally, the authors discuss group conflict theory, survey-based numerical data, and contemporary racism. "Group conflict theories of crime argue that dominant groups maintain hegemony over subordinate groups by using the legal system to realize their interests (Matsueda and Drakulich, p. 164).

The authors identify two distinct forms of racism: laissez-faire racism and contemporary racism. Laissez-faire racism is used "to emphasize that modern racism is no longer overt; rooted in beliefs about biological superiority, or institutionalized in blatantly racist systems such as slavery segregation, or Jim Crow laws" (Matsueda and Drakulich, p. 166). Rather, contemporary racism "is covertly embedded in valued American institutions such as free markets and ideologies such as equal opportunity." Now, the authors argue, racism has evolved to be "covert; institutionalized; and consonant with cherished American values such as hard work, individualism, and democracy" (Matsueda and Drakulich, p. 167). The ultimate hypothesis of the authors is that "perceived criminal injustice against blacks in part shapes racist beliefs among both blacks and whites" (Matsueda and Drakulich, p. 168).

This research will relate to what Joshua Price referred to in *Prison and Social Death* as "white fear" in its attempt to identify the reason that discussions of criminal justice reform are so difficult, specifically for white people. As recent years have brought an increase in conversation about police

brutality against marginalized groups, there has also been a rise in tensions when discussing racism and white supremacy. In the foreword to her book *White Fragility*, Robin DiAngelo makes clear one crucial way that whiteness, although all race is socially constructed, allows privilege. "But whiteness goes even one better: it is a category of identity that is most useful when its very existence is denied" (DiAngelo, p. ix). This fact in itself shows one way in which "colorblind" ideology can be so pervasive. If white people are not forced to acknowledge their own race, they can also deny the consequences of a system that disadvantages other races. "Deeply held white associations of black people with crime distort reality and the actual direction of danger that has historically existed between whites and blacks" (DiAngelo, p. 63).

> It has been well documented that blacks and Latinos are stopped by police more often than whites are for the same activities and that they receive harsher sentences than whites do for the same crimes. Research has also shown that a major reason for this racial disparity can be attributed to the beliefs held by judges and others about the cause of the criminal behavior. For example, the criminal behavior of white juveniles is often seen as caused by external factors-- the youth comes from a single-parent home, is having a hard time right now, just happened to be at the wrong place at the wrong time, or was bullied at school. Attributing the cause of the action to external factors lessens the person's responsibility and classifies the person as a victim him or herself. But black and Latinx youth are not afforded this same compassion. . . When black and Lantinx youth go before a judge, the cause of the crime is more often attributed to something internal to the person-- the youth is naturally more prone to crime, is more animalistic, and has less capacity for remorse. . . Whites continually receive the benefit of the doubt not granted to people of color-- our race alone helps establish our innocence (DiAngelo, p. 63)

Ultimately, DiAngelo proposes that racial issues and racism be faced head on. Some proposals, which she refers to as "interruptions," can take a few forms. One suggestion offered is to "challenge objectivity" by "suggesting that a white person's viewpoint comes from a racialized frame of reference." Another interruption is to pose a "challenge to white solidarity," which the

author explains is "a fellow white disagreeing with our racial beliefs." Yet another is a "challenge to meritocracy" through acknowledging that "access is unequal between racial groups." Among many others, a final one relevant to the topic of the literature assessment is a "challenge to universalism," which DiAngelo describes as "suggesting that white people do not represent or speak for all of humanity" (DiAngelo, p.103).

In *Interrogating Racism: Toward an Antiracist Anthropology* by Leith Mullings takes an anthropological approach to discussing racism within both formal and informal institutions. "Although racism may be socially constructed," the author says, "racism has a social reality that has detrimentally affected the lives of millions of people" (Mullings, p. 669). Following a discussion of racism across time and space, Mullings asserts that "recent migratory processes have produced new manifestations of racism in various areas of the world, and new sites of racialization are being created by the ever expanding prison-industrial complex" (Mullings, p. 674).

> Because the "United States is the world's most avid incarcerator. . ." (Sudbury, 2004, p. xiv) of racialized peoples, social scientists have begun to interrogate the ways in which policies and practices in media, education, and criminal justice reinforce the criminalization of people of color. Ferguson's (2000) ethnographic study of a high school demonstrates that, although in everyday operations the school is race blind, through institutional practices and cultural representation the school ultimately tracks young African American boys into prison. Media practices frequently rationalize the indiscriminate incarceration of black men (Page 1997b). The war on drugs, mass incarceration, urban community destruction, and gentrification all may be spatially linked into constructing contexts for cumulative disadvantage (Mullings, p. 680)

Although the United States is "the most punitive nation in the world," "incarcerates more people than any country in the world," is "the global leader in the rate at which it incarcerates its citizenry" and more than "one in one hundred Americans" were

incarcerated at the time of Hurwitz and Peffley's research, white supremacy and colonialism are surely visible in other countries. "There is considerable evidence that citizens are more punitive when they attribute criminal behaviour to dispositional considerations rather than to environmental factors such as a discriminatory justice system," Hurwitz and Peffley say (Hurwitz and Peffley, p. 462). Here, we see that the problem is indeed racial at the most fundamental levels. As individuals attribute traits like criminality based on racial biases, they maintain a sense of trust in their systems regardless of disproportionate numbers because they feel that those who are overrepresented in the system are there because they have more natural criminal tendencies based on their race. However, these assumptions of race and criminality are not independent within only the United States, as colonialism and racial bias are surely pervasive in justice systems on a global scale.

"'Race' becomes conflated with criminality, and the political right of Indigenous people to control their own lives as legal subjects disappears," Chris Cunneen and Juan Tauri's state in Chapter Four of their book *Indigenous Criminology*. Here, the authors examine the global impact that racism plays from policing to penitentiaries. The chapter, which is titled *Policing, Indigenous Peoples and Social Order*, describes the experiences of indigenous peoples within various criminal justice systems. The authors focus primarily of the indigenous peoples of Australia and Canada. Quoting an earlier work from Cunneen, the authors that that "It is perhaps not surprising that state policing of Indigenous people is controversial, given that it is an activity deeply implicated within the wider trends of colonization and nation building." Addressing the roots of the issue, Cunneen and Tauri state that "the historical roots of policing in settler societies were embedded in colonial

relations—from enforcing the laws of the colonizer, to acting as a 'civilising' force of assimilation" (Cunneen and Tauri, p. 68).

The authors take special care to stress the importance of the evolution of policing as it strips away the individual rights and liberties Indigenous peoples the world over. "Various approaches" to creating justice systems are discussed by Cunneen and Tauri, even pointing out that, in the southern United States, "many police forces" came about "from their roots in slave patrols." "Contemporary criminalization legitimates excessive policing, the use of state violence, the loss of liberty, and diminished social and economic participation," the authors state. "Criminalisation also permits an historical and political amnesia in relation to Indigenous rights" (Cunneen and Tauri, p. 68). We heavily consider the words of Cunneen and Tauri in order to stress the problematic nature of associating the criminality of an individual based on race. While previous works have detailed that black individuals are commonly perceived as more criminal by nature, does this also mean that Indigenous peoples the world over are criminal based on their race as well? Do these ideas of a "natural" disposition toward crime determined by race limit themselves to only the heavily colonized and displaced groups of non-white peoples (African Americans, Latinx populations, and Indigenous peoples of all countries), or do they extend to *all* non-white peoples? If we reject ideas of racially-determined propensity for criminality, then is it not crucial to, again, acknowledge white privilege in observations of how criminality is viewed through policy and the justice system?

In a final attempt at shedding light on the issues inherent in the American criminal justice system, Daniel Epps's *The Consequences of Error in Criminal Justice*, published in a 2015 volume of the Harvard Law Review, discusses the problematic nature of what he

refers to as "the Blackstone principle." The principle, which is an oft quoted and significant contributor to the structure of everything from criminal law to the Constitution, states: "Better that ten guilty persons escape, than that one innocent suffer" (Epps, p. 1067). While in theory this adage holds water in its rejection of the possibility of convicting an innocent person, Epps states that it simultaneously has a profoundly negative effect on the course of jurisprudence and perceptions of the justice system in the eyes of the public.

"By design," Epps states of the Blackstone principle, "the system will create more high-profile acquittals of defendants who are commonly considered guilty—think of O.J. Simpson, Casey Anthony, or George Zimmerman—than high-profile convictions of defendants who are seen as innocent" (Epps, p. 1105). These cases, as the author explains, are perceived by the public as the strict adherence of the United States criminal justice system to the Blackstone principle. In other words, these "high-profile" cases ensure the American public feels sure that their justice system would prefer to allow a possibly guilty person go free due to lack of proof of guilt than to incarcerate an innocent American for a crime they did not commit.

In his article, Epps also touches on the problematic nature of plea bargains. "Our avowed commitment to the Blackstone principle is part of the problem," Epps states. "We are unwilling to live up to the full promise of the principle, which is partly why plea bargaining is the default means of criminal adjudication today" (Epps, p. 1123). Although trials benefit defendants in criminal cases, plea bargains too often reach the defendant first. Epps states that "risk aversion by defendants to plead guilty notwithstanding the prospect of a trial conducted under defendant-friendly procedural rules" (Epps, p.1144).

While the literature shows that racism has branches that have extended into virtually every institution in the United States whether it be social or political, the policies and practices of the American criminal justice system is deeply rooted in a history of violence towards and oppression of marginalized groups, specifically people of color. Because of this, racism and implicit bias are learned from the very earliest stages of socialization, and acknowledging that people of color are being disadvantaged means one must also acknowledge that, as a result, white people are advantaged. Rather than looking towards immediate reform of the systems at play, this research is aimed at displaying a need for public discourse, even if it is uncomfortable for white people to acknowledge the problems within the institutions that have helped them. Without productive discourse aimed at recognizing the systemic racism that has been built on centuries of racism and white supremacy, it is impossible to lead to significant change.

In a foreword for *The Journal of Criminal Law and Criminology* entitled "Addressing the Real World of Racial Injustice in the Criminal Justice System," Donna Coker makes a case for community organization and "challenges to white thinking about crime" in order to bring about new, progressive policies to restore justice. Specifically, Coker details ways in which the "Innocence Movement" can assist in "changing white perceptions regarding crime, black criminality, and the criminal justice system." To start, the author suggests a challenge against the faith that white individuals have in the justice system. This challenge would include discussions of "fairness and accuracy," experiences of exonerees, and potential for racial bias in acting officials within the justice system. Next, Coker states stresses that discussions of the experiences of exonerees can show err on the side of the system through detailing misconduct. Lastly, Coker insists on "focusing on cases of police and prosecutorial misconduct leading to the conviction of

the innocent" offers a "way of talking about the harms that flow from misconduct in the cases of the 'guilty'" (Coker, p. 875).

In Epps's analysis of the potential for harmful outcomes in the criminal justice system operating under the guise of a strict adherence to a principle that rejects the possibility of convicting an innocent, the author posits that, if not for commitment to the Blackstone principle, "we might design some kind of adjucative process less demanding than full-blown trials but with more built-in safeguards than the unregulated plea process." If this were accomplished, the resulting system could be utilized in the resolution of existing cases (Epps, p. 1148). Epps even goes so far as to suggest that even if no tangible alterations are made to the criminal justice system as an institution, "simply identifying better, non-Blackstonian justifications for procedural rules" and aiming to "change public perceptions of how the system creates errors" could have noticeable beneficial effects within the system (Epps, p. 1147).

These readings have helped further develop an understanding that we live in a society which, through multiple means, continues to reinforce racial boundaries and oppression. In light of the overwhelming amounts of evidence presented in these readings alongside the increased numbers of studies examining our systems and institutions more closely, what can we identify as the reason that such a large part of society, specifically, white people, struggle to acknowledge racial inequality, even in the criminal justice system? What are steps that can be taken to make changes, end the prison industrial complex, stop the mass incarceration of black men, women, and children, allow equal justice under the law, and enforce ending police brutality? These systemic inequalities that run rampant in our country require an acknowledgement of white privilege, of hundreds of years of oppression, dehumanization, and abuse, and a national, open conversation about what "justice" should really mean.

CONCLUSION

It is absolutely crucial that racism is looked at as exactly what it is: an established, deeply rooted, volatile system of oppression based on skin color that has been continuously reinforced by politics, policy, media, and socialization throughout every moment of America's existence. This research is intended to show that while white privilege shows in many ways, it is glaringly obvious within literature, statistics, policing data, personal experience, court documents and prison sentences that it is disadvantaging minorities in the justice system every day. If, as the study from Hurwitz and Peffley shows, white individuals "tend to believe that African Americans are dispositionally oriented to crime, and, consequently, tend to have no problem with the differential apprehension, prosecution and incarceration rates in the penal system," then how could the same individuals posit that their society is colorblind (Hurwitz and Peffley, p. 472)? If "colorblind" implies a society in which individuals and institutions alike do not see race, it also leaves us with the implication of the ability of those adhering to colorblind ideology to ignore their own whiteness, or, more specifically, the privileged societal position afforded only by their whiteness. Herein lies a primary problem in addressing racial disparities within our justice system.

> Because most Whites believe the justice system is fair and equitable, no remedial policies are necessary to correct racial disparities or restore an imbalance in racial justice. And believing that the justice system provides equal treatment to all, that it punishes only those individuals who deserve to be punished and that the punishment fits the crime, allows Whites to turn a blind eye toward the many forms of racial injustice that are so pervasive in the Black community. (Hurwitz and Peffley, p. 473).

As discussed by Daniel Epps, even the prevalence of plea bargaining offers a substantial disadvantage to innocent individuals. Virtually any aspect from which the American criminal justice system can be observed is an unflattering one. Whether it be historical, economic, racial, or procedural, the imbalance of the scales of justice is loud and clear, particularly from the perspective of minorities. The findings that resulted from this research were both expected an unexpected. While one who had done previous reading on the topics of sociology, prisons, and criminology would likely assume that minorities would view the system as inherently unfair and racially bias, it is not likely that they would have anticipated the staggering number of white individuals who not only do not find fault in the system, but actually believe it to be truly colorblind.

So, again, the researcher lands on the topic that is both the problem and the solution: white privilege. Through their race, white people are offered many privileges, but perhaps the most harmful of these is the ability to assume they exist in a "colorblind" society that held together by "colorblind" systems and institutions. At the crossroads, however, there is another possible path. As whites struggle to acknowledge racism in the justice system or fully grasp the weight of their own privilege, their lower odds of experiencing run-ins with the justice system leave them with an advantage when it comes to policy and voting rights. By following the prescription of Donna Coker and having conversations that force white individuals to acknowledge their privilege in some way and recognize racial bias in their systems, there is a chance of policy change and new, improved legislations. As Epps points out, it need not be a deconstruction of the entire system we have been left with after all this time, but simple, small changes that can lead to more equitable treatment, opportunities, and justice for all.

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Vita

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Following the completion of her B.A. in 2015, Jane took a year off before attending Mercer University's School of Law. After a brief time in law school, she elected to leave in order to get a M.A. in Sociology in order to pursue a career that would involve helping to write legislation and working more closely with individual communities. Jane began attending graduate school at the University of New Orleans in August of 2018 after researching the regional need for community activism and prison reform.