



U.S. Courts Adopt White
Supremacist Values
Grace A. Cowherd

The historical past of the United States of America is one that remains present, however, specifically for the African American community, because many of the hardships and disparities they deal with are inescapable. Precisely within our criminal justice system, Black Americans are constantly left at a disadvantage based on the design of our country centuries ago which was founded on a white supremacist hierarchy. This paper will provide evidence using scholarly articles which are comprised of case studies that prove and elaborate on these injustices, and how the role of white supremacy still stands today. Qualitative research shows that there is a strong correlation between the history of slave patrols and the over-policing that many low income communities of color experience today. Peer-reviewed articles in this research paper also employ qualitative research that examines how neglecting Black Americans of a fair trial through jury discrimination and unequal sentencing, is a considerable factor in mass incarceration. The aftereffects of being incarcerated will also be a major focus. Utilizing theories from scholarly research, this paper exposes America's white supremacy state, and how it has disproportionately affects the Black community. An attention to this matter is crucial in bettering our communities of color for a more equitable lifestyle.*

Coloniality is a practice that is nothing short of new to our society. We have seen colonialism take place when settlers stole and exploited the land and ideologies of Native Americans centuries ago. However, this heinous act now goes beyond what we are used to seeing. Colonialism stems from acquiring political

* Thank you to Professor Gina James. An early version of this work was submitted as a final project for her course, CJ 330: Research Methods.

control of another group or community. Like Native Americans, Black Americans were subjected to violence, labor exploitation, and enslavement which led to a political and cultural dominance over the Black community. In this case that is what Black Americans are being subjected to today. Courts have adopted many colonial practices that are geared towards disenfranchising, disregarding, and gaining control over people of color. Brown and Bargainer (2018), noted that today's courtrooms are clear indications of colonial order. This institution manifests itself through the “courtroom working group” which includes the judge, prosecutor, and the defense attorney. Each of these positions hold value to unite these roles, rather than divide. Each of these positions are typically homogeneous and are usually all white. Stepping foot into any courtroom today and its colonial values are easily apparent. Judges and attorneys are, typically white, arguing on behalf of the colonized, which are typically people of color, silencing their voices because of legal vernacular and process. The attire is also a clear indication of status representation and racial hierarchy. Court processing is maintained on the status of racial inequality. Similar to colonialism, exploiting values and preserving white hierarchy is the only way our country can progress through our criminal justice system and establish power over those who come from different wealth gaps.

White America targeting and attacking the Black community is a historical and constant occurrence in America. The concept of race was made up as a social construct for the sole purpose of providing white supremacists and confederates a reason to degrade those who did not look like them. During the period ranging from 1801 to 1835, many slaves had to go to the Supreme Court to claim their entitlement to freedom. At the time Chief Justice John Marshall had the authority over each ruling of all 14

freedom-related cases. Few cases existed where a whole jury deemed a particular slave to be free. This was based on the circumstances that there was either written proof that the slave was free, the individual was never legally a slave, or the slave's mother was considered free, therefore, it was proven that there was no way they could have been born into slavery. However, Chief Justice John Marshall overturned each verdict that granted each person freedom (Finkelman n.d). This evidence proves that no matter the circumstance or legitimate proof that is provided, internal racial biases will always come forth and present themselves, resulting in inequitable trials. In an interview that has a specific focus on slavery in the Supreme Court, Paul Finkelman mentions a powerful point that "Americans all know "their rights."...that's incredibly important to understanding the way the Constitution and Supreme Court interacted with the politics of slavery and race and ultimately, the ending of slavery and then the struggle against segregation in the 20th century" (Franklin n.d). Paul Franklin is trying to convey that the foundation of American rights was not conceptualized on the basis of equity. Our "rights" still fight against African American communities today within the courtroom, our communities, and in policing , which is why today, authorities disregard Black Americans seeking justice based on white historical values. Although judges hold the deciding factor, the jury also plays an important role in deciding one's future. Jury discrimination is a real problem we face and research suggests that it is imperative to diversify our jury pools for defendants of color to be judged from jurors of similar cultural backgrounds.

As reiterated before, race and class play a large role in the outcome of various hearings surrounding the Black community. Individuals from communities of color have experienced far too many unfair trials. Whether that may be due to education

disparities, court authority bias, or even unfair judgment stemming from internal racism that is being projected from those in the jury pool. Jurisdictions across the country are failing to assist criminal defendants with their cases by providing jury candidates with the same ethnic or cultural values, or can be visually described as their peers (Joshi et. al, 2015). Diversifying cultural values potentially could make or break one's case. On multiple occasions, defense attorneys are forced to present their case to an all white, upper-middle class jury pool who are held responsible for determining the guilt or innocence of someone who can not resonate with any characteristic similarities (Joshi et. al, 2015). Outside of having to deal with the inequalities of a jury that is focused on dismantling your character, the overall idea of racism and discrimination within the courts is one other aspect Black minorities are faced with.

The U.S Supreme Court has weighed in on countless acts of racism against the Black Community. Black lives are constantly being patrolled, similarly to our past history of slave patrols. The same concept still stands today. Through laws being implemented such as stop and frisk, it has been made legal for authorities to overpolice and detain those in low income communities of color just on the basis of stereotypes and internal bias. Stop and frisk has been a leading factor in the disproportionate amount of Black Americans being inserted into the system. Inevitably, this leads to innocent men and women being tried unfairly. Stop and frisk has become a clear gateway to mass incarceration within the black and brown community and nearly violates their 4th amendment rights. Alongside stop and frisk, The United States Supreme Court has ruled that you are not able to challenge race discrimination and disparities in court. It does not matter the severity of racial discrimination, you must provide proof of ill intent and racial bias which is nearly impossible to prove when pleading a case.

According to Stanchi (2021), references have failed to acknowledge the court as being a main contributor to racism, however, in numerous cases, the court has been blatant in upholding racist practices and ideologies. One specific instance was the prosecution of a 16 year old male convicted by an all white jury in Jena, Louisiana. The Black student was involved in an interracial fight at his high school. The white jury only heard one witness who was white, called forth by a white prosecutor for a case that was being judged by a white man. The courtroom was set up in an extremely segregated way, seating all whites on one side of the room while the African-American defendant and his supporters on the other. The jury convicted Mychal Bell of two felonies and he is now facing 22 years in prison (Quigley n.d). This case is a prime example of the racial disparities African-Americans face in the courtrooms, whether it be for minor infractions or simply an intentional wrongful conviction. The effects of unfair trials eventually lead to harsh sentencing which inevitably aids in the production of mass incarceration. Continuing the process and cycle of mass incarceration, the issue truly begins within neighborhoods. Structural racism is a term that was coined in order to generate a clearer meaning for red-lining. In an article that breaks down the meaning and relationship between violence and red-lining, these few authors describe the term as, “practices of the 1930s potentially contribute to increased rates of firearm violence through changes to neighborhood environments, namely through preclusion from homeownership, poverty, poor educational attainment, and concentration (i.e. segregation) of Black communities. These downstream mediating factors serve as points for policy interventions to address urban firearm violence” (Poulson,Neufeld, Dechert, Allee, and Kenzik 2021). In-turn, crime statistics have been at an all-time high for many years.

Similarly, poverty rates are increasing at a constant speed along with crime rates.

Communities that are considered areas of poverty are often left out of the conversation when it comes to topics of bettering our community, through government resources as well as educational resources. Nick Woravka conducted "A comparison of Poverty Rates and Crime Rates" and noted that there are many factors that contribute to crime in the United States (Woravka 2021). However, the evidence that Nick provides in his research, proves that poverty is the main cause of crime throughout the United States. For example, in 2020, countless families and individuals became jobless due to the worldwide pandemic. According to the FBI Crime Data Explorer, the United States alone witnessed nearly 25% increase of homicide rates which was a sky-rocket increase compared to the previous year (2023). This statistic clearly proves the effect economic hardships have on communities.

The issue of Crime rates having a direct correlation with poverty rates is at the fault of many institutions including courts, policing, detention centers, and the Prison Industrial Complex. However, this can also fall under the category of it being purely a governmental problem. The government retains the power to oversee each institution and provide solutions to better our communities and neighbors and they fail to do so. Police systems are put into place to keep crime rates down and keep safety at a high. However, our police unions thrive off of harm and unjust arrest in low-income communities of color. Housing inequality also plays a big factor in keeping the U.S. crime rates at a high. Low-income families are left at a disadvantage when it comes to seeking housing in safer neighborhoods. Our historical past has proven that large banks were designed to dismiss minorities from obtaining housing loans which prevents them from living in a safer

environment. As a result, they are forced to live in poverty and resort to crime as means of survival.

Through analyzing the severity of this uprising issue, many factors are involved and can be used for further analysis. On a macro level approach, we can examine poverty as a result of nationwide inequalities, a struggle that minorities have been dealing with for centuries. The United States has experienced an unequal and imbalanced distribution of wealth and resources to sustain a healthy and livable life. The wealth gap, being a main cause of poverty, is still intact as a way to divide our society and also as a contributor to capitalism and to maintain the racial hierarchy. Aladangady et. al, (2021) from the Board of Governors of the Federal Reserve System took note that “In the United States, the average Black and Hispanic or Latino households earn about half as much as the average White household and own only about 15 to 20 percent as much net wealth.” As the years go on, that gap is predicted to only increase.

The correlation between poverty rates and crime rates can be seen as a clear indication of systemic inequality. Just like the racial wealth gap, systemic inequality presents itself through racism and disenfranchisement. Systemic and structural inequality is often built into institutions, policies, and practices. Low-income communities of color are left at a disadvantage through not being provided advancement opportunities pertaining to work, adequate education ,which includes; lack of higher education resources and assistance, and sustainable housing.

As the cycle repeats itself, incarceration is sure to be seen by at least half of the group that gets released each year, after analysis of the Criminal Justice Fact Sheet published by the NAACP (2021). Professor and author Michelle Alexander presented a wonderful lecture at the University of Chicago,

interpreting and analyzing her book, “The New Jim Crow: Mass Incarceration in the Age of Colorblindness. Alexander makes it very clear to her audience the importance of understanding the history behind mass incarceration and how the world perceives the African American community. She touches on many topics such as the caste system and how that is prevalent in our country today, the evolution of mass incarceration, laws that prohibit African Americans from seeking justice, and how the media plays a large role in making sure there is a focus on criminalizing black Americans when they are being victimized.

Michelle provides a great metaphor in which she stated that mass incarceration has turned back the clock in the United States. Instead of moving forward and being able to recognize the core problem and disparities the Black community faces today, we have only managed to make the matter worse at the fault of white America including past and current legislation. The topic of race in America today is a truth that many Americans are eager to deny which prevents us from moving forward. We often hear about homicide rates and violence in places that are heavily populated by communities of color when in reality that is not the only community where it takes place. The topic of gun control focuses on violence in black and brown neighborhoods where violence is perceived to be the highest, however, the number of guns in a neighborhood should not be the leading factor as to what considers a neighborhood to be safe. A safe community should be based on the number of good jobs and health care services. Rather, these “violent communities” consist of advanced prisons and poor education institutions which strip black and brown minorities from valuable opportunities.

The conversation began to lead to the crisis of the War on Drugs. The war on drugs became a gateway to demonize black

Americans and contribute to mass incarceration and had more to do with racial politics than anything. It had little to do with helping those who had been affected. Michelle then analyzed the caste system, which is a system that overwhelmingly “locks poor people into a permanent second-class status” (Alexander 2013) and that was the exact outcome of the War on Drugs. Alexander then proceeds to mention that “our criminal justice system now functions as a system of racial and social control rather than a system of crime prevention and control” (2013). With our government having an underlying goal to incarcerate Black individuals as a new-age slave labor tactic, there is no pressure on rebuilding the criminal justice system because this is exactly what it was intended to be. There is a stigma that most black men under the age of 18 are rendered permanently unemployable, guaranteeing that most will filter in and out of prison for the rest of their lives. Unfortunately, it is inevitable based on this stigma.

When crack began to take over in inner-city communities, the administration at the time chose to utilize the media to publicize those who were directly affected, calling them crack babies, crack dealers, crack whores, etc. The typical television content, at the time, was filled with news stations creating the stereotype firsthand and deliberately throwing Black Americans who were affected by the war on drugs in a negative spotlight, criminalizing them, by all means, necessary when in reality, they were victims.

There were many negative outcomes of the War on Drugs. Harsh minimum sentences became pertinent and Black Americans were locked up at a more rapid rate and for longer than those who had committed murders. Once you are labeled a felon you are subject to more discrimination such as housing discrimination, employment discrimination, exclusion from jury service, and denial of the right to vote. Drug offenders also became banned from

federal financial aid for schooling which only contributes to a lack of education. This unfortunately incited fear geared toward communities of color.

The Criminal Justice system has no shame in displaying discrimination and racism against those who are identified as minorities. In an article titled Purpose of Prisons, the author pointed out the four major purposes of our prison system stating:

These purposes are retribution, incapacitation, deterrence, and rehabilitation. Retribution means punishment for crimes against society. Depriving criminals of their freedom is a way of making them pay a debt to society for their crimes. Incapacitation refers to the removal of criminals from society so that they can no longer harm innocent people. Deterrence means the prevention of future crime. It is hoped that prisons provide warnings to people thinking about committing crimes and that the possibility of going to prison will discourage people from breaking the law. Rehabilitation refers to activities designed to change criminals into law-abiding citizens and may include providing educational courses in prison, teaching job skills, and offering counseling with a psychologist or social worker. (2009).

The author then concluded that even though these are set to be the main purposes of prisons, as a society we have unfortunately strayed away from these initiatives. Now, in harsh prison facilities, prisoners are refused a proper education and rehabilitation to properly learn from their mistakes, which is the ideal concept of the prison system. The justice system takes more pride in giving long, unnecessary sentences, especially to people of color as a way to simply remove them from the street and into a facility.

The 13th amendment was put into place to legally keep slavery alive, however, just through imprisonment. The 13th amendment states that “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction” (1865). When the 13th Amendment was in full effect Black citizens were sent to prison for very minor infractions, then “leased out” to perform duties to those in need, which was termed “convict leasing”. Today, the circumstances have only changed in the slightest. This issue has only worsened severely over the years. Most incarcerated black men come from poor and low-income communities, making it nearly impossible for them to be able to afford high-quality attorneys. The system has been aware of this issue but continues to take advantage of this circumstance. The continuous high rate of minorities entering the prison system, leading to overpopulation, has only made access to resources more difficult, making prison an unhealthy living condition. Tax-paying citizens continue to wonder where their dollars are being contributed to if we are consistently hearing about inadequate living conditions due to overpopulation. Perhaps the overpopulation rate is more severe than we think.

Prosecutors are becoming extremely harsh with the number of offenders they are sending to prisons, and are cruel with sentencing strategies or lack thereof. More and more people are being sent to prison every day and each with longer sentences. In an article from prisonpolicy.org titled *Mass Incarceration: The Whole Pie*, the authors went over the facts of why incarceration rates are rapidly increasing. According to Sawyer and Wagner, the two most important reasons why overpopulation is so repetitive in US prisons are “The high cost of low-level offenses” and “Misdemeanors: Minor offenses with major consequences”

(Sawyer and Wagner 2020). Both authors state “ Most justice-involved people in the U.S. are not accused of serious crimes; more often, they are charged with misdemeanors or non-criminal violations. Yet even low-level offenses, like technical violations of probation and parole, can lead to incarceration and other serious consequences” (Sawyer and Wagner 2020). They both believe it is ideal to invest in “community-driven safety initiatives” to reduce the rapid incarceration rates. This means providing alternate opportunities for offenders with low-level offenses such as minor drug possession. For example, attending a rehabilitation center may be more effective rather than relying on the prison system. This could also cut back on overpopulation. The authors also recognized that “For behaviors as benign as jaywalking or sitting on a sidewalk, an estimated 13 million misdemeanor charges sweep droves of Americans into the criminal justice system each year... These low-level offenses account for over 25% of the daily jail population nationally, and much more in some states and counties” (Sawyer and Wagner 2020). Instead of the initial thought being to prosecute people with minor offenses, implementing more ticketing could solve this issue. Countless other solutions could be implemented into creating a safer and more effective environment in the US prison system along with reducing the amount of incarcerated individuals.

References

- Alexander, Michelle, author. (2010). *The new Jim Crow : mass incarceration in the age of colorblindness*. New Press
- B N, Chatteraj. (n.d.) National Criminal Justice Reference Service. (2011). Social, psychological, and economic consequences of imprisonment. Retrieved from <https://www.ojp.gov/ncjrs/virtual-library/abstracts/social-psychological-and-economic-consequences-imprisonment>

- Brito, Sabbeth, K. A., Steinberg, J. K., & Sudeall, L. (2022). RACIAL CAPITALISM IN THE CIVIL COURTS. *Columbia Law Review.*, 122(5). <https://doi.org/info:doi/>
- Brown, E., Bargainer, G. (2018). Race and Crime: Geographies of Injustice, *The Colonial Order of the Court* (pp. 290-331). <https://www.jstor.org/stable/10.1525/j.ctv5j0279.12>
- Butler, P. (2018). EQUAL PROTECTION AND WHITE SUPREMACY. *Northwestern University Law Review*, 112(6), 1457-1464.
- Davison, M. "The Racist Roots of Mass Incarceration in the US." *National Catholic Reporter*, 1 June 2021, <https://www.ncronline.org/news/justice/racist-roots-mass-incarceration-us>
- Equal Justice Initiative. (n.d.). Criminal justice reform. Retrieved from <https://eji.org/criminal-justice-reform/>
- Gramlich, J. "From Police to Parole, Black and White Americans Differ Widely in Their Views of Criminal Justice System." Pew Research Center, Pew Research Center, 27 Aug. 2020, <https://www.pewresearch.org/fact-tank/2019/05/21/from-police-to-parole-black-and-white-americans-differ-widely-in-their-views-of-criminal-justice-system/>
- Hutchinson, D.. (2022). "With All the Majesty of the Law": Systemic Racism, Punitive Sentiment, and Equal Protection. *California Law Review.*, 110(2). <https://doi.org/10.15779/Z389Z90C8X>
- Innocence Project. (2018, August 1). The 13th Amendment, slavery and prison labor: A conversation with Angola warden Burl Cain. Retrieved from <https://innocenceproject.org/13th-amendment-slavery-prison-labor-angola-louisiana/>
- Jeffries, H. (Host). (n.d.) Teaching Hard History (No. 1) [Episode 11]. Slavery in the Supreme Court - w/ Paul Finkelman. Learning for Justice. <https://www.learningforjustice.org/podcasts/teaching-hard-history/american-slavery/slavery-in-the-supreme-court>
- National Archives and Records Administration. (n.d.). The 13th Amendment to the U.S. Constitution: Abolition of slavery (1865). Retrieved from <https://www.archives.gov/milestone-documents/13th-amendment>
- Prison Purpose. Purposes of prisons. stop the crime. (n.d.). Retrieved May 5, 2023, from <http://www.stoptheaca.org/purpose.html>

- Quigley, B. *Racial Discrimination and the Legal System: The Recent Lessons of Louisiana*. United Nations Chronicle
<https://www.un.org/en/chronicle/article/racial-discrimination-and-legal-system-recent-lessons-louisiana>
- Roediger, D. (n.d) Historical Foundations of Race.
Smithsonian.<https://nmaahc.si.edu/learn/talking-about-race/topics/historical-foundations-race>
- Stanchi, K. (2021). The Rhetoric of Racism in the United States Supreme Court. Boston College Law School. *Boston College Law Review*, 62(4), 1250-1320.
- Starkey, B. S. (2010). Criminal Procedure, Jury Discrimination & the Pre-Davis Intent Doctrine: The Seeds of a Weak Equal Protection Clause. *American Journal of Criminal Law*, 38(1), 1-48.
- The Sentencing Project. (2016, June). The color of justice: Racial and ethnic disparity in state prisons. Retrieved from
<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>
- Tuttle, I. (2013, August 19). Justice for the system: there is no institutional racism in our courts and police stations. *National Review*, 65(15), 31.
https://link.gale.com/apps/doc/A338894231/OVIC?u=sfsu_main&sid=bookmark-OVIC&xid=05636642
- Wagner, P., & Sawyer, W. (2020). Mass incarceration: The whole pie 2020. Prison Policy Initiative. Retrieved from
<https://www.prisonpolicy.org/reports/pie2020.html>
- Wrenn, C.M. (2018, September 28). Arizona Public Media. Re-entering the workforce after prison harder for non-whites. Retrieved from
<https://news.azpm.org/p/news-splash/2018/9/28/138061-re-entering-the-workforce-after-prison-harder-for-non-whites/>