### The Annual Review of Criminal Justice Studies

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Editorial Board Claudia Lomeli-Rodriguez Grace Ann Cowherd Serena Raquel Gomez

Faculty Advisor Albert de la Tierra, PhD © Department of Criminal Justice Studies San Francisco State University

## The Annual Review of Criminal Justice Studies (ARCJS)

ARCJS is an open-access journal that publishes scholarly writings pertinent to the critical analyses of law, crime and justice systems and their entanglement with larger political economic processes.

ARCJS contributors explore how ideas and systems of crime, law and justice shape broader issues of social justice, especially those related to the experience of race, class, gender, sexuality, and age inequality in the U.S.

Ranging from the conception to the implementation to the transformation of law, crime and justice systems and ideas, *ARCJS* includes ethically reasoned critical analyses intent on contributing to the assessment of alternative solutions to problems associated with the identification, control and prevention of crime and delinquency.

#### Dear Readers,

It is my great pleasure to welcome you to the inaugural issue of *The Annual Review of Criminal Justice Studies*. As the faculty advisor of this undergraduate journal, I am proud to present the exceptional work of our contributors and the critical perspectives they bring to the field of criminal justice studies.

As we embark on this journey of knowledge production, it is important to acknowledge the political implications of our work. The criminal justice system is not immune to the power dynamics of our society, and research in this field has historically been used to justify oppressive policies and practices. However, our contributors have risen to the challenge of critically analyzing this system and have provided thought-provoking insights on the complexities of crime and justice.

The articles in this issue cover a range of topics, including the impact of policing on communities of color, the intersection of mental health and incarceration, and the role of history in our contemporary moment. Each author has demonstrated a commitment to rigorous research and a willingness to engage with difficult questions.

I would like to extend my sincere gratitude to our contributors for their hard work, dedication, and willingness to challenge the status quo. Their research reflects a commitment to social justice and the pursuit of a more equitable and fair criminal justice system.

I would also like to thank the many supporters and sponsors of this project. The faculty of the Department of Criminal Justice Studies laid the foundation and created the conditions for the establishment of this journal. Gina James, Carina Gallo, and Jeff Snipes nominated many student papers for inclusion in this issue. Department Chair Liz Brown encouraged and facilitated the development of this journal. Dean Alvin N. Alverez's Spring 2023 Professional Development Grants Initiative provided financial support for the printing and binding of this issue. And the leadership of the Editorial Board (Claudia Lomeli-Rodriguez, Grace Ann Cowherd, and Serena Raquel Gomez) brought this issue into being.

As we move forward, we must continue to critically examine the policies and practices that have led to mass incarceration and various forms of structural violence of which the criminal justice system is a part. This work is essential to building a society that is truly just and equitable for all.

In closing, I would like to encourage all readers to engage with the articles in this issue with an open mind and a critical eye. I hope that this journal will serve as a platform for meaningful dialogue and inspire further research in the field of criminal justice studies.

Sincerely,

Albert de la Tierra, PhD (aka "Professor Lobo") Faculty Advisor, *The Annual Review of Criminal Justice Studies* 

#### Dear Readers,

It is with great delight that I write this note introducing the inaugural issue of the journal, *The Annual Review of Criminal Justice Studies* (ARCJS). While the department has expressed a desire for a student-run journal for several years, it took the enterprising spirit of our newest tenure-track faculty member, Dr. Albert de la Tierra, or Professor Lobo as his students call him, for this project to come to fruition. Without Professor Lobo inspiring his students or applying his many gifts in this area, this journal would have taken much longer to happen. Thank you, Professor Lobo, for this gift to the department, our students, and to all interested in current topics in Criminal Justice Studies.

Professor Lobo's inspiration is infectious, demonstrated by his ability to get three of our best and brightest students in the department to serve as the inaugural editorial board. Claudia Lomeli-Rodriguez, Grace Ann Cowherd, and Serena Raquel Gomez serve as the editorial committee and have set the bar high for the quality and caliber of the journal in its very first go-around. Together, these remarkable students have compiled a compelling and exciting first issue that traverses the wide range of topics that interest our students. And their editorial expertise is already on display, through the selection of the articles, the arrangement of the issue, and most importantly, through the compelling topics and ideas that are presented herein.

These compelling topics range from a series of opening papers to topics on policing, courts, and incarceration. Ximena Nieves starts us off with the first article in the issue, looking at what Nieves calls the "unholy trinity" of racism, capitalism and mass incarceration. This article sets the theoretical stage for understanding the terrain of criminal justice studies in the current moment, as Nieves chronicles how mass incarceration emerged from the crises of racism and capitalism in the 1960s. Lucien Tomlinson continues this theme, writing about the decline of the welfare state and the rise of the police state, that first began over forty years ago as the US embarked on mass incarceration. Tomlinson notes how the policies of mass incarceration specifically dismantled government programs to alleviate poverty, and thus, the welfare state was replaced with the police state. Gabriel A. Camacho continues this theme by opening a conversation about the "positive correlation between crime rate and poverty rate", examining three competing perspectives on crime and showing how people's ideological leanings influence how they view the poverty-crime correlation.

The next part of the issue turns to policing. Eszter Winkelmayer begins this review with a look at racism in US law enforcement, providing a historical overview and critique, before turning to how data-based solutions can helpfully intervene. Winkelymayer traces how police departments are shaped by implicit bias, and how reforms can seek to eliminate this bias using data and education. Maria Gonzalez seeks to understand how police brutality emerges from the lack of accountability, and the specific impact this has on Black citizens in the US. Specifically, Gonzalez traces how stereotypes of race and crime, combined with the lack of accountability for police officers enabled by prosecutors and

legal protections, create the conditions for Black citizens to be "disproportionately victimized by law enforcement." Paola Saavedra Ramirez completes our review of policing by looking at how the abuse of power by law enforcement officers' "plagues" the criminal justice system. Saavedra Ramirez examines recent scandals in the LAPD and the Dublin Correctional facility to show how similar behavioral patterns shape different agencies, and the overarching theme of "control" that pervades these abusive behaviors.

Mario Alvarez Chavez begins the review of the courts, with a piece that examines wrongful convictions of innocent people. Alvarez Chavez shows how racial bias in policing and eyewitness accounts can lead to misidentification and wrongful convictions. Estafany Romero examines the role of plea bargaining in the courts, noting that this practice "continues to oppress marginalized communities." Romero further explains how this practice is traumatic for those who must go through it, and the mental and physical damage that comes from the need to accept a plea bargaining because one has few resources. Isaac Hoffman ends this section with a look at drug policy, specifically examining how reform and rehabilitation are opportunities to save lives. Hoffman examines how an emphasis on rehabilitation has the potential to decrease criminal behavior and also improve the socioeconomics of people subjected to drug prohibition policies. Editorial committee member, Grace A. Cowherd, concludes this section on the courts by examining how white supremacist values are embedded in court practice. Cowherd examines the practices of jury selection and sentencing to show how coloniality infuses court processing, working to disenfranchise Black citizens and preserve the hierarchical power of whiteness.

The final section reviews incarceration and begins with an article by one of the journal's editors, Claudia Lomeli-Rodriguez that provides an overview of how sexual abuse takes place in the federal system through the abuse of power by correctional officers. Lomeli-Rodriguez further examines a single prison, showing how the culture of an institution can "foster an environment where sexual abuse...is rampant." Heighley A. Hernandez continues this look at incarceration by looking at one of the most severe aspects of imprisonment, solitary confinement and its incredibly negative impacts on people who experience it. Hernandez writes forcefully that this practice should be abolished, and that society should create legal and legislative reforms to address. Finally, Eduardo Hernandez concludes this section, and this excellent first issue, by looking at how mass incarceration emerged from the U.S. imperial regime. Specifically, Hernandez looks at how mass incarceration and the prison industrial complex emerged directly from the military industrial complex, showing the roots of mass incarceration in warfare, counterinsurgency, and imperialism.

As you can likely already tell, this is an issue demonstrating the superb intellect of the students in the Criminal Justice Studies program at San Francisco State University. Each of these articles is also a testament to the future of what criminal justice policy may look like in the United States in the generations to come. Each article reveals how the future leaders of the system are already taking a close look at the ways the system has facilitated injustice and how they might work towards its undoing. I hope you read these articles and find what I have found—the collection of authors in this issue are inspiring, deeply engaged with the many issues that plague our systems, and hopeful about paths forward. With the

leadership of the authors in this journal, I am confident that the future holds a place where safety and security are enabled for all, and the criminal justice system is a mechanism for creating social justice, instead of injustice.

Sincerely

Dr. Liz Brown Chair, Department of Criminal Justice Studies

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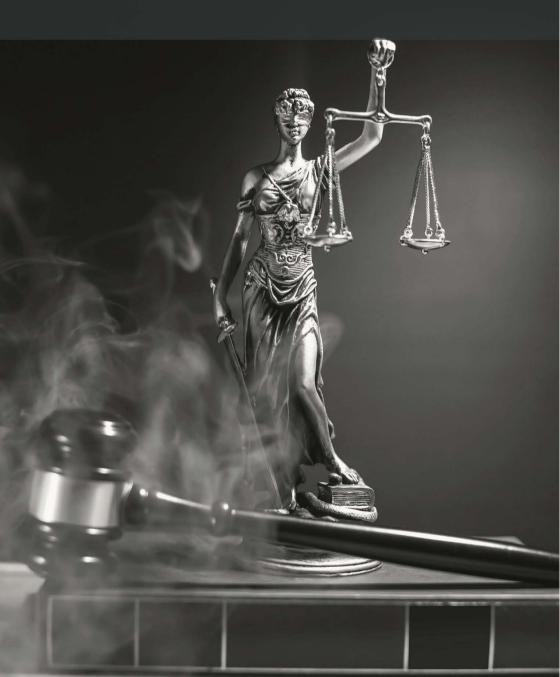
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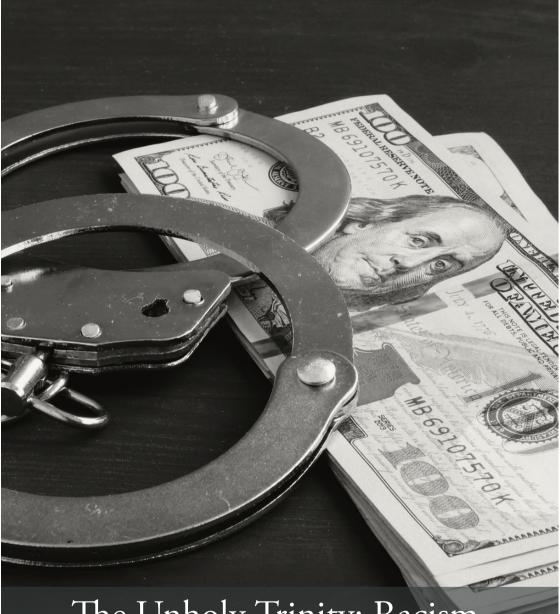
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# OPENING PAPERS





The Unholy Trinity: Racism,
Capitalism and Mass
Incarceration
Ximena Nieves

#### Introduction\*

In the midst of the COVID-19 pandemic, the Black Lives Matter movement grew into one of the largest social justice movements in U.S. history; and as protests against police brutality increased, it seemed as though instances of police brutality also increased. In the years since, more people have become keenly aware of the issues affecting Black and brown communities. But this newfound awareness only brings a buried history to light.

Police brutality is something that has been happening for centuries. Even after slavery was supposedly abolished, people of color and lower-income communities have been victims of police brutality, wrongful incarcerations, racialization, and above all, mass incarceration. This has not only been damaging to people's mental health and social mobility, but it has also supported the continuation of generational incarceration.

Mass incarceration is the by-product of racial discrimination through the police and court system. However, capitalism, and its array of dominating institutions, is the most to blame for the racial disparities Black and brown communities continue to endure—especially after the supposed victories of the Civil Rights Movement. For example, in the 1970s, the United States experienced a prison boom and with that came the creation of the prison industrial complex. The prison system shifted into an industry that has profited from the exploitation of prison labor and the success of this system incentivized people, including politicians, to capitalize off the prison industry. Minority groups

<sup>\*</sup> Thank you to Professor Lobo. An early version of this work was submitted as a paper for his course, CJ 300: Criminal Justice: A Cross-Disciplinary Perspective.

were left in a vulnerable position in society and at higher risk of incarceration as the prison industry developed into a form of racial and social control through political disenfranchisement and a new era of slavery in the 21<sup>st</sup> century.

#### **Mass Incarceration**

Mass incarceration is a heavily discussed topic when examining issues affecting minority groups, specifically Black and Brown communities. But what is it?

Mass incarceration is unique to the United States because it describes the extremely high incarceration rates of adults and young people in the United States. The *Institute to End Mass Incarceration* defines mass incarceration as a:

network of policing, prosecution, incarceration, surveillance, debt, and social control that is rooted in, builds upon, and reproduces economic and racial inequality and oppression. Some refer to this network as the carceral state, the penal state, or the criminal legal system.

This system has played an unprecedented role in history following the Civil Rights Movement and has been used to keep "criminals" off the streets, but Black and brown communities have endured the ramifications as they have been disproportionately affected by the rising incarceration rates.

In her book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander explains how incarceration rates have been on the rise since the prison boom in 1970, but this has not affected the fluctuating crime rates throughout the years (Alexander, 2010). If there is no correlation between rising crime rates and incarceration rates, how does the United States have the highest incarceration rate of any country in the world? How has the prison population in the United States more

than quadrupled from 1970 to today, from about 300,000 people to over 2 million? How are there more African American adults under correctional control, in prison or jail, on probation or parole than were enslaved in 1850 (TEDx Talks, 2013)? To put it simply: racism and capitalism.

Many of the factors contributing to the high incarceration rates of Black and brown communities, including over policing, police biases, wrongful convictions, etc., function for the benefit of the prison industrial complex. Black and brown communities face this never-ending cycle of racism and incarceration at the hands of capitalism.

Mass incarceration, capitalism and racism are intertwined and their involvement with one another is how different groups of individuals benefit the most. Because these institutions cannot be separated when discussing the racial and economic disparities of minority groups, it is essential to look at how the macro level factors that sustain the prison industrial complex work. When discussing mass incarceration and the prison industrial complex, capitalism and racism are categorized as macro level factors because they are "...whole groups of people rather than individuals," and they look at a society's organizational structures (Barlow and Kauzlarich, 2010). By being categorized as whole groups of people, racism and capitalism function as a system that influences individual choice, rather than functioning as individual choices that influence a system.

#### Capitalism and Racism

Capitalism and racism assist in the success and development of the prison industrial complex and mass incarceration. Although they are two separate entities, they cannot exist without the other. There are two different definitions for capitalism; one describes capitalism as an economic and social system where assets are owned and controlled by private parties; the other describes capitalism as the exploitation of workers for profit. According to the *International Monetary Fund*, capitalism was founded on six pillars: private property, self-interest, competition, a market mechanism, freedom and limited role of government (Jahan and Mahmud, 2015). There are various forms of capitalism, but it all depends on the role these pillars fulfill. Although the United States is considered a free-market economy, it should be labeled as a mixed economy because the government plays a dominant role in the market. The government acts as its own party with its own self-interest, that being the economy. Capitalism and capitalists benefit from racist ideology because of the self-interest pillar. It is often exploitative of people, no matter the consequences, as long as capitalists reap the benefits.

#### Mass Incarceration: Driven by Capitalism

So, how do these systems work together? Mass incarceration, capitalism and racism have historically always been linked. As the Civil Rights Movement was coming to an end, the era of mass incarceration can be said to have started with the prison boom of the 1970s. Incarceration rates increased in the following decades, as did myths regarding crime—such as dominant mythology that claimed "crime is committed by the poor," "drug addictions cause crime," etc. Politicians benefited from these myths and they used it to fuel people's fear of crime, which largely stereotyped people of color and lower income communities.

President Nixon initiated the tough-on-crime and war on drugs policies in the 70s that were intensified by President Clinton in the 90s with the 1994 Crime Bill. This bi-partisan politics of crime rhetoric left minority groups at higher risk of incarceration,

where they would endure maltreatment and exploitation, which later unfolded into the racism that continues today. As law and policy changes continued to be introduced, people of color and marginalized communities became easier targets for control. Because people of color were targets for mass incarceration, ending up in the prison system became seemingly inevitable and the harms became indefinite.

The prison system was able to legally develop into "the New Jim Crow" through the 13<sup>th</sup> amendment. Although the 13<sup>th</sup> amendment was meant to abolish slavery, it included a loophole for prisons to exploit inmate labor to maximize their profits. Policies with similar intentions, such as mandatory minimum sentencing and three strikes laws, continue to be put into place by politicians who fuel these stereotypes. In their book, *The Rich Get Richer and the Poor Get Prison*, Reiman and Leighton (2017) state:

...it is worth noting that private prisons and elements of the larger 'criminal justice industrial complex' make money from the system as it is, so they consciously lobby to protect and improve their profits.

Private vendors, investors and those who benefit from mass incarceration work to ensure that the system does not change and continue to target those who have the least power to change it: minority groups.

The government has no incentive to reform the criminal justice system and decimate mass incarceration because it fuels their number one interest and priority, the economy. As incarceration rates increase, so do the number of cheap workers. Different groups benefit from the prison industrial complex, from investors benefiting from cheap labor to maximize profits to universities benefiting from products made in exploitative conditions. According to Insider Higher Ed, "Furniture is one of

the most popular correctional enterprises products," (2020) and while universities in California are exempt from being legally obligated to buy from their correctional industries, they do so anyway, including San Francisco State University.

Most progressives agree that prison labor is exploitative because of the unjust wages they are paid. On average, incarcerated people can earn as low as \$0.14 to \$0.63 per hour, which is not enough to purchase basic necessities from prison commissaries or make a phone call to one's family (Prison Policy, 2017). According to the Golden Gate Xpress, San Francisco State University purchased more than \$600,000 from the California Prison Industry, known as CALPIA, where incarcerated workers earn between \$0.35 to \$0.95 per hour (2015). Although CALPIA's mission is to "reduce recidivism, increase prison safety, and enhance public safety by providing incarcerated individuals productive work and training opportunities," numerous workers have described their time in their program as exploitative and abusive. One inmate is quoted as stating "You're captive at the mercy of your jailer. You get what they give you and buy what they sell you. The only choice is to survive or not" (ACLU, 2022). Buyers are not aware of this abuse and exploitation because CALPIA's website ensures that their public appearance is positive and supportive of carceral reform.

Mass incarceration is beneficial to the prison industrial complex, which in the eyes of the government, is beneficial and necessary to the economy. The exploitative work from companies like CALPIA transcends beyond the prison walls and ensures that marginalized communities become entangled in the system that is mass incarceration.

#### Conclusion

Since primary school, students of different socioeconomic backgrounds have been reciting the Pledge of Allegiance not knowing that unless they are white, wealthy, heterosexual, ablebodied men, that promise of "liberty and justice for all" does not apply to them. What does "liberty and justice for all" mean if it does not apply to every individual in the United States? Civil rights activists, such as Martin Luther King Jr., Rosa Parks, Malcom X and John Lewis dedicated their lives fighting for the freedom and basic human rights or people of color and marginalized communities, but their work continues to be undone when systems like the prison industrial complex and mass incarceration benefit from the exploitation of minority groups.

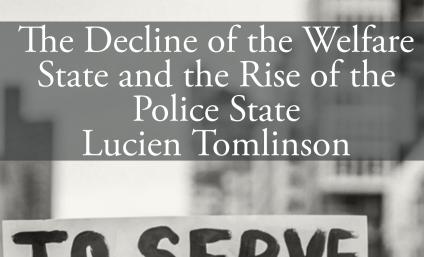
We may claim to value human life, but our societal actions and policies say otherwise. We have been taught that capitalism is how we keep the economy moving, so is it too optimistic to work towards a social reform, eradicating capitalism? It is clear that we need to end the decades-long practice and harm of mass incarceration, but where do we start? How do we continue where civil rights leaders left off when we face a torn world? Where does the solution lie?

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The United States' incarceration rates and wealth inequalities undo popular claims of American exceptionalism. According to prisonpolicy.org, 1.9 million people are locked up in over 6,000 facilities, while incarceration per 100,000 people is 664, nearly 6 times the United Kingdom's incarceration rate. In fact, the US incarcerates its citizens at a rate that no other country can rival. Worse, US mass incarceration falls along racial and classist lines; with the median White household being 7.8 times richer than Black (Brookings, households 2020). Black Americans disproportionately imprisoned, making up 38% of the prison population despite being only 13% of the United States population (Prison Policy Initiative, 2022). In the United States, there is a direct correlation between incarceration, race, and poverty. The United States government, on all levels, has responded to this correlation with the mass incarceration of those in poverty and minorities.\*

Looking through a macro lens, the lack of welfare support, the current systematic class war against those in poverty, and mass incarceration are recent phenomena with a redistribution of wealth occurring since the 1980s. The United States government has had a complete paradigm shift in the past forty years, from a welfare system that supported poor and minority communities to the modern status quo of mass incarceration and racial inequality. This path has led the United States distribution of wealth between White and Black Americans to increase dramatically, rising to a level not seen since pre-segregation America. In the past forty years, the

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<sup>\*</sup> Thank you to Professor Lobo. An early version of this work was submitted as a paper for his course, CJ 300: Criminal Justice: A Cross-Disciplinary Perspective.

United States has dramatically transformed, and that transformation has led to grave consequences: the rise of the police state and mass incarceration.

The modern state of mass incarceration disproportionately affects those in poverty. Adults in poverty are 3 times more likely to be arrested, and 15 times more likely to be charged with a felony than those above the federal poverty level. (Woravka, 2021). Incarcerated citizens in the United States today are made up of an excessive amount of low-income and minority populations, who make up three-fifths and two-thirds of the prison population, but only 10 and 25 percent of the total United States population, respectively. (Hayes, and Barnhorst, 2020.) This depicts an institution that is broken, but how the system broke and why is key to understanding the modern issue of mass incarceration and wealth inequality.

The carceral state truly began to be created in the 1980s. After the 1960s Civil Rights movement's momentous legislation achievements, the Civil Rights and Voting Rights Acts, Black communities would see two decades of socio-economic progress. This led to educational improvement and increased employment opportunities within those communities. (Farley, Hermanlin 1972). This progress continued throughout the 1970s. Black Americans, while being significantly economically disadvantaged compared to White Americans, would see a decrease in the racial wealth gap. "Earnings and wages relative to whites of the same sex rose during the 1970s, [but] they stagnated or declined during the 1980s." (Blau, Beller. 1992). Since then, wealth inequality between White and Black Americans has quadrupled. (Brandies University, 2010). This directly coincides with the defunding of many social programs and the rise of the modern police state.

In 1980, the United States only had a prison population of 300,000 people, which doubled every decade until hitting its peak of nearly 2 million in 2008 (Prison Policy Initiative, 2022). Using the phony "War on Drugs", Reagan would begin the United States' path to over-policing communities of color, beginning the first wave of incarceration booms.

Reagan's criminal justice policies would harm Black and Latino American communities at a higher rate than their White counterparts. (Prison Policy Initiative, 2022). By capitalizing on voters' fears to win elections, politicians on every level of government would use racist messaging. "During the 30 years, in which crime rates were increasing, politicians never took responsibility for it. They played to voters' fears by advocating 'law and order' and many varieties of 'getting tough on crime'". (Reiman, Leighton. 2017). Politicians would use crime as an effective way to win elections while taking money from private prison corporations. The uniquely American trend of mass incarcerations peaked in the 1990s but still targets minority communities, with over-policing that persists today. The United States has become a modern police state with the largest incarceration rate in the world. (Prison Policy Initiative 2022).

When Ronald Reagan was elected president in 1980, he promised the American people "the end of the era of big government." In reality, the Reagan Administration would go on to entirely alter the way in which the government treated its citizens. This began by creating and implementing a new economic philosophy, referred to as trickle-down supply-side economics, or Reaganomics for short. It was pitched as a system to end poverty by decreasing taxes and cutting government spending. In practice, the Reagan Administration aimed to keep Black people poor and in prison, by destroying the welfare systems many minority groups

relied on. This was achieved through several methods; the defunding of social programs, lowering of taxes on the rich, and privatization of the public sector.

In 1982, the United States would see some of the largest budget cuts to social programs under the Reagan administration's budget. These funding cuts eliminated 44 billion dollars in social programs, including direct welfare and education. The Reagan Administration needed to cut the budget after directing massive decreases in the rate of taxation for corporations and the wealthy. Reagan targeted federal subsidies in state education, significantly reducing states' education budgets. This has resulted in overall education budgets in the aggregate falling 30% from the 1970s to the 2000s. (Archibald, Feldman, 2006). Higher education would be the first to see their budgets cut when federal subsidies declined and, as Archibald and Feldman in their study on state education spending note, "for a given level of state spending, more spending on corrections ... will lead to less spending on higher education." (Archibald, Feldman, 2006).

The Reagan Administration, while cutting the education budget, would increase federal funds allocated towards corrections. This would continue past his presidency. States with reduced federal subsidies for education would follow in his example. "Between 1986 and 2013 the amount states spent on corrections increased by 141 percent, while higher education expenditures increased by 5.6 percent" (Reiman, Leighton, 2017).

The decline in federal and state education programs would have three major consequences. First, property taxes would become the main revenue for public education, therefore creating a form of economic segregation of the quality of education. This meant a school's funding came directly from the property taxes of its surrounding neighborhood, which deprived poor communities of previously allocated funding. (Gallagher, 2019). Second, universities would be forced to raise tuition to make up for budget needs, causing a rise in tuition of nearly 500% since 1986, outpacing inflation and forcing students and their families to shoulder the cost. (QianQian, 2019). Third, it would severely restrict the quality of education for Black Americans, leading to the gap between Black and White students' Bachelor's degree attainment to double between 1974 to 2014. (The U.S. Department of Education, 2016). These changes to how the government funded education had the effect of severely stagnating Black opportunities to attain wealth. (Franklin, 2013).

For all of Reagan's talk about the "End of The Era of Big Government", the Reagan Administration only decreased programs that helped the American people. (Danziger, Haveman, 1987). Even in the 1980s, it was known that cutting social programs for the poor would disproportionately harm minorities. In an economic report from 1987, Danziger and Haveman warned that the Reagan cuts disadvantage Black Americans and the poor. For example, they wrote, "Black [people] will suffer disproportionately from the Reagan programs because a higher proportion of black [people] are poor... relying on welfare support more than white [people]..." (Danziger, Haveman, 1987).

Additionally, Black Americans made up a significant portion of public sector employment. The Reagan Administration would eventually gut public sector jobs, in which 55% of those to lose their employment were Black. "Suppose the supply side miracle does succeed in stimulating economic growth, there is little to think this will significantly reduce poverty" (Danziger & Haveman, 1987).

The Reagan Administration aimed to reduce welfare payments, despite the decrease in cash welfare, having the effect of

increasing crime in communities. One study found that children of welfare recipients turned to crime when they lost welfare as a source of income; "Terminating cash welfare benefits of these young adults increased the number of criminal charges by 20%." (Oxford University Press, 2022). The Administration signed several pieces of legislation into law to severely limit the aid that went to poor youth; cutting Medicare, food stamps, and cash benefits. Many of these previously guaranteed benefits to the disadvantaged would now require full-time employment the moment they turned 18, all to ensure those receiving "handouts" would be "productive members of society". (Brandeis University, 2010). The Reagan Administration attempted to drive individuals into the job market by reducing the welfare cash benefits but, as noted, "welfare [benefits] has a much larger discouragement effect on criminal activity than it does on formal work." (Oxford University Press, 2022).

Ronald Reagan had racist tendencies long before he ran for president, as revealed in a leaked phone call with President Richard Nixon when Reagan was governor of California. "Those monkeys from those African countries—damn them, they're still uncomfortable wearing shoes!" (Reagan, 1971). Reagan knew his programs disadvantaged Black Americans and used white-southern anger throughout his campaign to reach voters in southern states. Reagan used racist "dog-whistle" coded language as a form of social control to appeal to conservatives and southerners, while flying under the radar of moderates. This is known as the "Southern Strategy", beginning as soon as Reagan launched his 1980s campaign. For example, Reagan announced his run for president using the language "restore state's rights" in Philadelphia, Mississippi, at the site of an infamous murder of three civil rights workers by sheriff deputies and the Klu Klux Klan. Throughout his

campaign, Reagan used hateful language such as "welfare queen", essentially using the imagery of a Black woman obtaining welfare to enrage and drive white voters in the South to their polling places. (Bruney, 2020). As Bernie and Messerschmitt, in *Criminology a Sociological Approach* discuss, politicians using a "narrative" and "characters" to create fear in the population to distort the image in the minds of the public is an effective way to fearmonger. Reagan would successfully achieve this and pave the way for Conservatives to take complete control over the south, campaigning on "states' rights", "law and order", and "public safety".

The Reagan Administration's destruction of the American welfare state and his support of racism ended two decades of Black economic growth and led to decades of oppression and mass incarceration. The Reagan administration purposely created a system that disadvantaged the poor and minorities in the United States. He used racist messaging to drive white Southerners to vote and demolish a system that benefitted many Black Americans. Reagan began the system of mass incarceration with the racially motivated defunding of welfare programs, leading to wealth inequality between White and Black Americans being the greatest since after the end of segregation in 1968. (Brandies University, 2010). Targeting desperately needed welfare aid and education, the Reagan Administration created the opportunity for future policymakers to incarcerate minority and poor communities in a disproportionate amount. This initial deterioration of the welfare state led directly to the modern issue of mass incarceration, and wealth inequality we see today.

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A Conversation: The Positive Correlation Between Crime Rate and Poverty Rate Gabriel A. Camacho

#### Introduction\*

I want you to ask yourself, what is a crime? And further, where does crime come from? For most people, the second question proves much more complicated than the first one. This is because people have so many factors motivating them to commit or not commit crimes no system has ever been able to prevent them entirely, try as they might. Welcome to the field of criminology.

In this paper, I will be introducing the importance of criminology through the illustration of criminological ideologies and the three different levels of analysis criminologists use as a means for understanding criminal(ized) behavior. To demonstrate the distinctions between these levels of analysis and ideologies, I will be presenting two initial interviews with my colleagues, and another two follow-up interviews with the same colleagues conducted a year later. Within the first interview, I will be presenting the statistical fact that there is a positive correlation between the crime rate and poverty rate. Additionally, I will be analyzing the level of analysis each of my interlocutors uses to come to their conclusions, as well as identifying the criminological ideology they invoke. Lastly, it should be noted that I will be using Hugh D. Barlow's book, *Explaining Crime: A Primer in Criminological Theory* to support my analysis.

#### The Three Ideologies of Criminology According to Barlow

Barlow (2009) illustrates three of the common competing ideological perspectives in criminology: conservative, liberal, and

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<sup>\*</sup> Thank you to Professor Lobo. An early version of this work was submitted as a paper for his course, CJ 300: Criminal Justice: A Cross-Disciplinary Perspective.

critical. The three ideological perspectives are composed of multiple theories that support their view of criminal behavior. Conservative criminology is the belief that criminal law is a codification of moral precepts and anyone who breaks this law is either psychologically or morally defective. One theory derived from this ideology is the self-control theory, the view that individuals with low levels of self-control are more likely to commit a crime than individuals who have higher levels of self-control (Barlow 2009). According to Barlow (2009), characteristics such as short-time perspective, adventure-seeking, indifference, and the inability to hold meaningful relationships are signs of low levels of self-control. This theory proposes ineffective parenting as a major cause of crime, emphasizing child development and how a person's moral understanding may reflect their parents' explanations for criminal behavior.

On the other hand, liberal criminology explains criminal behavior through either social structure (the way society is organized) or social process (the way people acquire social attributes) (Barlow 2009). There are a few theories that explain crime through the social structure: strain theory, transmission theory, and conflict theory. Strain theory argues when people cannot achieve a goal through socially acceptable means, their frustration leads them to crime. Transmission theory presents the argument that individuals are impacted by the exposure to norms, values, and lifestyles they see daily. Hence, consistent exposure to criminal role modeling may lead them to crime. In contrast, conflict theory argues society is characterized by conflict since criminality is a product of differences in power when people compete for scarce resources and other conflicting interests (Barlow 2009). Theories that compose in explaining crime through the social process are associational theory, control theory, and labeling theory. Associational theories assert individuals often become criminals due to having a close association with a relative or friend is a criminal (Barlow 2009). Control theory asserts crime and delinquency often arise from the disconnection that the individual feels towards society. Lastly, labeling theory argues individuals who are often labeled or treated as a criminal may influence to identify themselves as criminals (Barlow 2009).

Lastly. although liberal criminology locates criminogenic forces in the social structure and social process of society, critical criminology focuses more on the social structure while also proposing a change in society, the economy, and other social structures that may incentivize criminal behavior. They call for a radical change in the economic, cultural, and political structure of the country (Barlow 2009). For example, the Marxist theoretical perspective locates the social structure as being both crime and criminal justice have reinforced and strengthened the power of the state and the wealthy over the poor (Barlow 2009). To remedy this root cause, the Marxist theory proposes a change in the economic structure of capitalism. (Barlow 2009). following section, I will introduce you to the three different levels of analysis many criminologists use to classify and differentiate the different criminological theories as presented in this section (Barlow 2009).

# The Three Different Levels of Analysis in Criminology

The three different levels of analysis according to Barlow (2009) consist of macro, meso, and micro. First, the macro level of analysis focuses on the "big picture" of crime, it views crime as the property of whole groups rather than the property of individuals. This level of analysis focuses on social structure not only concerning crime but also attempts to make sense of everyday

behaviors by viewing their relations to their neighborhood and community. In connection to liberal criminology, theories such as strain theory, transmission, and labeling theory are examples of theories that have used the macro level of analysis. Second, the meso level of analysis focuses on examining specific groups, communities, and organizations. Lastly, the micro level of analysis focuses on the ways individual interacts with others and with groups to which they belong. According to Barlow (2009), this level of analysis shares an emphasis on the social process by which people and events become criminals.

Having outlined these three different ideologies and levels of analysis, we will now proceed to the interviews. In the following sections, I will be presenting two colleagues of mine, William and Omar, and their thoughts on the statistical reality that there is a positive correlation between crime rate and poverty rate. In their response to the following questions I will be asking during the interview, I will determine both the level of analysis and their ideology when coming to their conclusion and view towards crime.

### A Discussion with William

The first person I interviewed is a childhood friend named William, who is currently majoring in Statistics. During his time in school, William stated he has familiarized himself with the topic of US crime through his research, with a particular eye toward macrolevel statistics as they relate to his field of study. At the beginning of the interview, I asked William what topics come to mind when he thinks of the fact there is a positive correlation between the crime rate and the poverty rate in the United States. William initially responded with the words race and crime, but he further added rather than only explaining crime as a racial subject, one should also account for immigration, poverty, and other systemic

factors that play a role in our criminal justice system. He begins to present the argument if one group is committing more crimes than the other it may well be because of their income. He further clarifies by explaining how people with lower income are more likely to commit a crime due to necessity and to "feel good."

By "feel good", William explains poor people tend to not only steal goods for survival but also goods that will fulfill their pleasures; whether it be an expensive watch or a cheap toy. He further notes people living in a high-stress environment are more likely to commit crimes. As studies have shown people in high-stress environments tend to have reduced long-term decision-making abilities due to the accumulated stress and need to devote energy to shorter-term issues. Williams' reasoning as to why he believes poor individuals are more susceptible to committing a crime is in correspondence to transmission theory given the poor environment and poor lifestyle. It is also apparent William uses the self-control theory as he claims poor people tend to lack rationale and self-control due to a lack of human resources such as food.

Furthermore, when discussing mass incarceration in the US there were two points William brought forth in the conversation. The first being America's history in sentencing people for drug-related crimes, and the second being how our country holds harsh sentencing in comparison to other countries. William used California's "Three Strikes" law as his first example of excessive sentencing because rather than the law sentencing people to their corresponding crime, it sentenced people disproportionately. He drew attention to how this law targeted many people within Latin American and African American communities. For his second example, he emphasized how President Bush's introduction and criminalization of crack in the US has led many people within poor communities to end up in prison. People become addicted to crack

as a result of its availability, and as crack became criminalized it led to drug trafficking. William expressed that while many people went to prison, the high-level officials responsible for the drug's introduction to society went unpunished.

Additionally, when discussing the question of why former convicts commit the same crimes after being released, William responded it was because of their lack of resources. Many of these people have a harder time financially recovering from the days they spent in jail, such as being unable to find a suitable job due to their criminal record. At the end of our conversation, William concluded our criminal justice system along with policymakers should not focus on bringing retribution to the people but focus primarily on deterring crime and rehabilitating former criminals. Based on the conversation I had with William and how his points covered both the social structure and social process to explain criminal behavior, I have concluded he has a liberal criminological view of the issue.

### A Discussion with Omar

The second person I interviewed is another friend named Omar, who is currently majoring in political science and has a habit of watching documentaries related to the topic of crime. Similar to William, Omar also believes lower-class individuals are more likely to commit a crime due to necessity, but also points out young individuals are also susceptible to stealing luxury items. Omar uses micro-level analysis to explain why criminal behavior is most common in young people. Omar argues teens of low income will be susceptible to intrusive thoughts such as stealing luxury items the other classmates have in school. Although these items are not necessarily human necessities, they are items that help them feel a sense of belonging in their community, more specifically towards their peers at school. In alignment with the transmission theory

presented by Barlow (2009), many teens, according to Omar, are susceptible to crime given their desire to fit in with other classmates and fit into the "social hierarchy". Omar further adds teens tend to neglect future consequences and are often exposed to crime through their peers and social circle.

Furthermore, Omar uses macro-level analysis in his explanation to emphasize how certain laws can lead someone to resort to committing a crime. He provides the example of civil disobedience, when a person feels a certain law is unfair or even a violation of their rights would resort to going against a particular law as an act of protest. This point is in further support of the strain theory described by Barlow, as individuals who fail to achieve a goal through socially acceptable means, can often lead to crime out of frustration. The act of civil disobedience may call into question certain laws that restrict an individual from obtaining human necessities.

Additionally, when asked about topics such as mass incarceration and the question of why poor people tend to be incarcerated for repeated violations of the same law, Omar responded by giving the example of Chicago's redlining. Chicago's redlining was Chicago's division between the lower class and higher class members of society, as people who were associated with the lower class of society were placed together. This division has not only enforced an impoverished environment but also a social division between the two social classes. Omar presented the Three Strikes law in California to support his argument on how the criminal justice system targeted minorities. Lastly, his comment on how the media has criminalized minorities, one example being Trump's remarks on the Mexican and Hispanic community during his presidency can associate with the labeling theory (Barlow 2009). Remarks such as "Get him off the streets! Three-Strikes

Law", Omar emotionally exclaimed when discussing America's classification of the "super predator". The "super predator" referred to the image of an African American man that was convicted of raping a white woman, and was broadcasted nationwide as a threat.

In conclusion, Omar expressed many similar views to William, but both shared different reasoning for explaining criminal behavior. Although both shared a liberal criminological perspective, Omar used a micro level of analysis through his example of how teens may be susceptible to crime due to labeling, parenting, and peer pressure due to differences in social status and the people they associate with. William, on the other hand, focused his reasoning on a macro level of analysis to explain criminal behavior in communities with low income. In the following section, I will be presenting the discussions I had with my two colleagues a year after this interview. In these follow-up discussions, I will be presenting any changes in ideology, in addition to, new points being presented.

# A Follow-Up Discussion with William

After reviewing the points William made in the previous conversation, William noted that he has had a change in his criminological ideology. William associates himself with critical ideology more than liberal ideology. When asked why there has been a change in ideology, he responded by saying radical criminology aligns more with his beliefs. Since radical criminology proposes a change in the economic, cultural, and political structure of the country (Barlow 2009), William also proposes a change in America's economy. He argues crime ultimately arises from the basic human needs which are not met by elements of modern society. Hence, those root causes are better addressed by making fundamental changes to society rather than adjusting to the criminal

justice system itself or making simple small changes such as tinkering with incremental policy changes. In the following paragraphs, William uses a micro level of analysis to explain how ineffective parenting and an individual's disconnection from society may lead them to crime.

One of the criticisms he presents is the concept of nuclear families. According to William, a nuclear family is a social norm in that a child is to be raised by only two parents, and it is the full responsibility of the parents to monitor who the child can interact with. As a result of the child being isolated from society, this negatively impacts them psychologically. If the parent were to be abusive or someone of bad influence on the child, it may well lead the child to have their own destructive and violent criminal behavior. The less the parents care for the child, the less likelihood for the child to live an honest life. William's reasoning aligns with one of the reasons for self-control theory according to Barlow (2009), which states ineffective parenting may impact the child's development and moral understanding may reflect their parent's definition of criminal behavior.

In addition, when asked if he were to agree with the self-control theory, William responded by saying he will align himself with the theory but not its solution. This is because he still criticizes the idea that two parents raising their children on their own is the best practice. The self-control theory implies that if both parents were not to be "ineffective" towards raising their child then there would be less crime. William argues this is quite impossible given the social structure in the United States. He describes how the child would have to be lucky in having two parents to learn from with the condition both parents provide good influence and attention. He explains how many parents today tend to share little time with their children as many low-income parents today are obligated to have

more than one job to support their family. According to William, by restricting the child's interaction with others as described in the nuclear family, it would be difficult for the child to speak against abuse and other negative beliefs that can often be presented by their parents.

Lastly, William comments if a child doesn't have a good education, they will be denied economic opportunities. Therefore without the ability to live a good and independent life, they will view society as unfair and have a lack of respect toward social norms and laws. More importantly, it will predispose them to a lack of connection to dignified social institutions. The presented argument aligns with control theory, which asserts crime and delinquency often arise from the disconnection the individual feels towards society (Barlow 2009). When asked if control theory aligns with his beliefs, he agreed and further added that an individual's lack of connection towards society is a large portion of answering why people commit crimes.

# A Follow-Up Discussion with Omar

Revisiting the conversation with Omar, I have asked if he has had any changes in his criminological ideology. Omar responded by stating he still aligns himself with liberal criminology when it comes to explaining criminal behavior. Similar to William's argument on ineffective parenting, Omar further adds it may lead to the child being more susceptible to peer pressure. In reflection of the association theory, the child may associate themselves with others who commit crimes and indulge in their activity due to peer pressure. Omar provides the example of his friend, and how the abuse and neglect he received from their parents as a child led them to delinquency. Although his friend was hanging out with the "wrong crowd" it gave them a sense of belonging. Although most

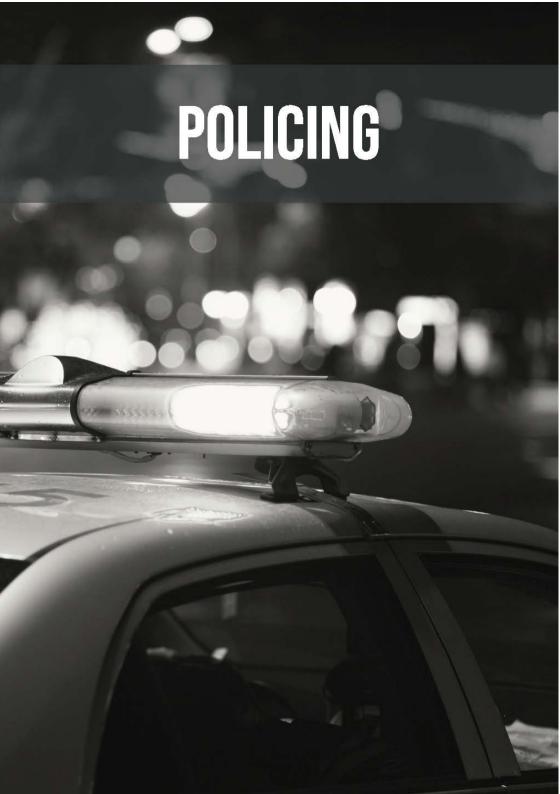
of the views Omar holds today are very aligned with the views he has had a year ago, he still informs himself with a variety of topics related to youth and crime. Given this paper is in focus on the positive correlation between the poverty rate and crime rate, we could not come to a connection between his presented arguments during the second interview.

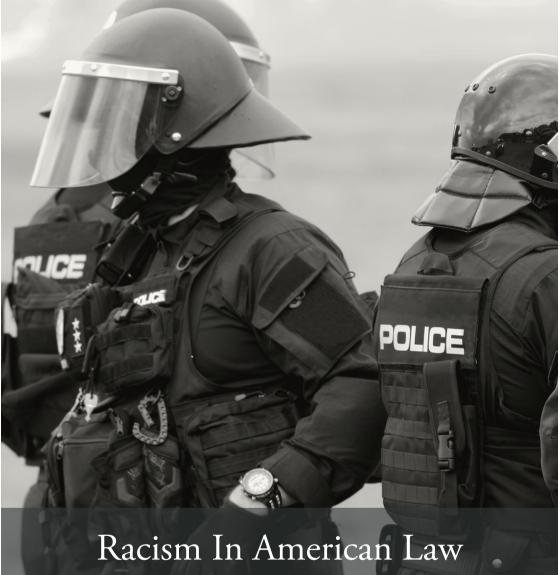
#### Conclusion

In conclusion, the three different ideologies in criminology along with the three levels of analysis help explain people's reasoning when explaining criminal behavior. The interviews conducted with my colleagues William and Omar have not only helped me reflect on the different theories presented within the ideologies but have also reinstated the fact there is a positive correlation between the crime rate and poverty rate in the United States. Omar has expressed a liberal approach to criminology and expressed a micro level of analysis when explaining his reasonings. While William expressed a critical approach to criminology and expressed a macro level of analysis when explaining his reasonings. Both of my colleagues through these two interviews have not only helped in my research but also enforce an understanding of criminal behavior in the United States.

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Racism In American Law
Enforcement: A Brief History,
Critique, And Data-Based
Solutions
Eszter Winkelmayer

Racism and law enforcement have had a complex, intertwined relationship since the inception of the United States—an unholy union exacerbated by the passing of the hypocritical Thirteenth Amendment in 1865. This Constitutional provision technically abolished involuntary servitude, with one major caveat: "except as punishment for a crime whereof the party shall have been duly convicted" (U.S. Const. amend. XII. §1). When powerful, racist Southern whites 'lost' their slaves after the Civil War, they immediately enacted policies to maintain their power, such as those seen in the Jim Crow South, as well as successfully used the Thirteenth Amendment to re-enslave African Americans almost immediately after the ink was dry on the legislation (Aponte-Rios, 2005).\*

While many policies of the Jim Crow era, such as legalized segregation, may be long gone, The Constitution allows for the continued enslavement of African Americans, which is made brutally evident by the overrepresentation of Black people in the U.S. prison population. As Michelle Alexander put it, "mass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow" (Alexander, 2010, p. 4).

Unbelievably, as Cory Booker noted, "we now have more African Americans under criminal supervision than all the slaves back in the 1850s" (DuVernay, 2016). So, not only is slavery still technically legal, but it is also affecting vastly larger numbers of the African American population than ever seen before. The old-

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<sup>\*</sup> Thank you to Professor Steve Ford. An early version of this work was submitted as a paper for his course, CJ 400: Police and Public Policy.

school racism, the disparities among ethnic and socioeconomic lines, the degradation and dehumanization of African Americans, even slavery itself—these things have not gone anywhere.

### A Brief History Of American Law Enforcement

It would be difficult to conceive of a law enforcement system built on the virtues of slavery, social control, and genocide to be anything less than absolutely steeped in racial disparities. In the beginning of the 1700s, the U.S. saw its first iteration of law enforcement in the form of patrols made up of makeshift groups of white citizens who acted as slavecatchers who profited from using violence to return runaway slaves to their imprisonment and forced servitude. Because these bands of for-profit slavecatchers were the first incarnation of law enforcement in America, the racial biases and racially charged motivations of law enforcement agencies in the U.S. have directly descended from the aggressive slavecatchers of the Antebellum South (Aponte-Rios, 2005).

Hate groups arising during the Reconstruction era such as the Ku Klux Klan reinforced, and continue to perpetuate, misconceptions about African Americans that were popularized in the early 20<sup>th</sup> century by America's first ever blockbuster, *The Birth of a Nation* (Griffith, 1915). This horrific film confirmed the white supremacist, fictionalized version of the Civil War and reinforced many of the detrimental stereotypes of African American males perpetuated during this period: that they were animalistic, cannibalistic, and hypersexual (Aponte-Rios, 2005).

The Birth of a Nation heralded a massive cultural shift towards the terrorism of the African American community and showed extreme violence against Black bodies. The film also featured a plot prominently concerned with an African American man going on a crime spree, which included the sexual attack of a

white woman (Griffith, 1915). This equated the image of the criminal with the image of a Black man in the minds of Americans at the time, an abhorrent association which astonishingly continues to this day (Aponte-Rios, 2005).

# **Raw Data Uncovers Implicit Bias**

Archaic attitudes equating criminality with Blackness have become interwoven within the fabric of the U.S. criminal justice system. The Thirteenth Amendment essentially legalized the reenslavement of African Americans by empowering racist law enforcement to incarcerate large numbers of people of color – specifically, Black men (Alexander, 2010, p. 110-111). When disproportionately high numbers of Black men are incarcerated, the idea tying criminality to Blackness is reinforced and propagates an endless feedback loop of racial bias that supports racist practices that continue to incarcerate Black men. This problem is illustrated most effectively by the raw data itself. For example, the table below reproduces findings from a study conducted by Stanford University (Parker, 2016) regarding the Oakland Police Department based on data gathered in 2014:

	Percentage	Likelihood	Likelihood	Likelihood
	of total	of being	of being	of being
	police	handcuffed	searched	arrested
	stops	during stop	during	during
			stop	stop
African	60%	25%	20%	16.7%
American				
men				
White	13%	6.7%	5%	7.1%
men				

In a city with a population of 390,724, in which "34.5 percent is white, 28 percent is African American, and 25.4 percent is Latino, according to 2010 census data," the above numbers are highly disproportionate. This speaks to a deeply seated racism in the Oakland Police Department, especially when considering that out of all the above noted stops African American men were subjected to, "officers were no more likely to make a recovery from those searches," than from the searches conducted on white men (Parker, 2016).

If there was no evidence recovery, or even reasonable suspicion of evidence recovery, for the searches during the stops recorded in this study, the aggressive targeting of African Americans by the Oakland Police Department clearly is not based on objective, 'color-blind' policing. Rather, it echoes an older America, one in which bands of armed militia believe they can do whatever they want to African Americans, including imprisoning, and enslaving them (Aponte-Rios, 2005). No matter how faint, the legacy of slavery and genocide can still be felt in the racial biases ingrained in the policies and procedures of law enforcement agencies that have been proven by their own raw data to be racist.

Racially biased law enforcement policies can be seen on a state level and on a federal level, for example the passing of legislation such as Bill Clinton's 1994 *Violent Crime Control and Law Enforcement Act*. This \$30 billion crime bill "created dozens of new federal capital crimes, mandated life sentences for some three-time offenders, and authorized more than \$16 billion for state prison grants and expansion of state and local police forces" (Alexander, 2010). Legislation like this has absolutely packed the U.S. prison system, which saw an increase in population from one million in 1994 (at the time of the enaction of Clinton's crime bill) to 6.15 million as of 2020 (USAFacts, 2020). This is not a recent

problem. As Johnson (2020) observes, "between 1973 and 2009, the rate more than quadrupled." This dramatic increase in the prison population is accompanied by the disproportionate incarceration of minority populations, primarily African American and Hispanic men of lower socioeconomic classes. So, what can be done to reverse this inequity, and moreover, can the gathering and sharing of raw data help?

## New Data - New Policing

Today's law enforcement agencies stand on the precipice of finally having the tools and ability to make truly impactful systemic changes regarding racial disparities. The relatively new advent of data gathering technologies is the key to the possibility of seismic shifts in policy and procedure. Systems like the FBI's National Incident-Based Reporting System (NIBRS) gather raw data regarding crimes in real time, as well as the law enforcement responses in each case. NIBRS "captures details on each single crime incident—as well as on separate offenses within the same incident—including information on victims, known offenders, relationships between victims and offenders, arrestees, and property involved in crimes" (FBI, 2023).

After data is gathered using systems like NIBRS, it can then be analyzed to specifically seek out evidence of racial and socioeconomic disparities in the criminal justice system using the raw data itself. When understood properly and used appropriately, accurate data collection can be the key driving force of the criminal justice system. This must, of course, be a thorough and complete gathering of raw, detailed, and accurate data; every data point and every outlier must be examined. Without collecting 100% of accurate criminal justice data, there is no hope to analyze a truly realistic picture of crime in the U.S. and, as such, no substantive

change will take place in a criminal justice system which upholds racial biases and systemic racial disparities.

The Stanford study of the Oakland Police Department's stop and searches (discussed above) is just one example of a group of researchers who collected and analyzed accurate law enforcement data and, thereby, exposed racial disparities within a law enforcement organization. As detailed in the table above, the Oakland Police Department has a noticeable tendency towards racial bias when it comes to their traffic stop and search procedures. As the study's authors put it, "Racial disparities are real, as this research shows. Differences exist in how police officers treated African Americans compared to those of other ethnic groups" (Parker, 2016).

While the researchers clarify that their findings did not point to overt racism, they noted that this was not exclusively an individual problem as much as an overarching, institutional issue (Parker, 2016). The intricate workings of implicit racial biases, held in the subconscious beliefs of individuals is, however, a majorly problematic component of this institutional problem.

However, there is hope. According to the Stanford researchers, "police departments in Oakland and elsewhere can overcome a subtle bias problem. Using better data, providing education, and becoming informed are the first steps" (Parker, 2016). In fact, even civilians can take a test to measure their implicit racial biases at any time, with resources such as the Implicit Association Test (IAT) created by Project Implicit (Project Implicit, 2011). If resources like the IAT exist for laypeople, surely a more sophisticated version could be created and implemented for use by law enforcement agencies in Oakland and beyond.

# The Future Of Data-Informed Policing

How will the issue of racist policing be dismantled? As with most large problems, the taking of small and significant steps is essential. Some solutions to racial disparities in law enforcement data suggested by Johnson (2020) provide a path forward. For example, reexamining long sentences, mandatory minimum sentences, preparing incarcerated individuals to re-enter society, and reducing unnecessary harm to the families of the incarcerated, are a handful of reform strategies, along with helping ex-prisoners find and keep employment, identifying transitional housing, and providing mentoring. These are just a few of the solutions found by collecting, analyzing, and properly interpreting raw criminal justice data.

The Stanford researchers proposed some of the most workable solutions, such as to make data accessible, train officers in social tactics, and to increase positive community contact, but, the problem is even deeper than mere police reform. "Independent of one's own values, biased attitudes can arise from observing how other people behave toward African Americans in a given situation or environment" (Parker, 2016). Because America is firmly rooted in racism, slavery, and genocide, the racial disparities in the criminal justice system are based in history and, therefore, historically embedded in law enforcement policy and procedure.

There is a path to law enforcement and criminal justice reform, however, as there are social justice activists and allied academics, such as Jennifer Eberhardt who led the Stanford study, working to analyze data to aid in the creation of well-researched, data-based policy. The final piece of the puzzle, of course, will be the compliance of the individual police departments and law enforcement agencies regarding the recording and reporting of data. For data-informed policies to be properly executed, all

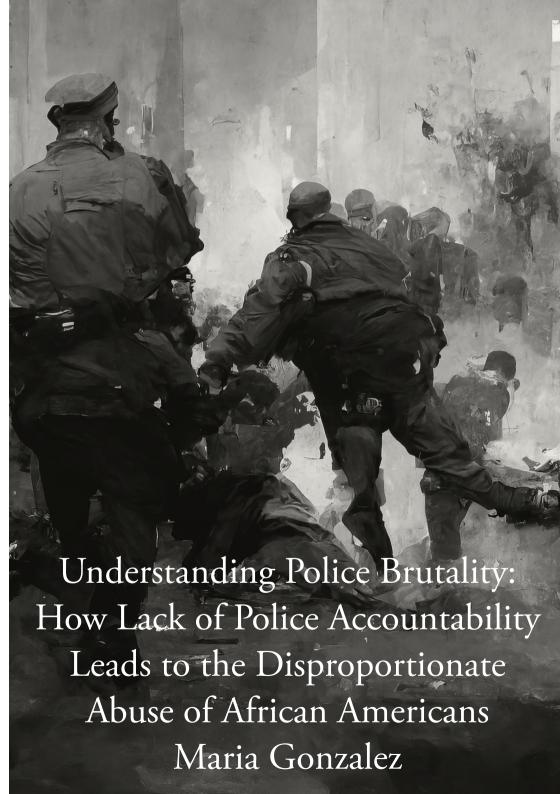
individual police departments and all law enforcement agencies must update their data-gathering technology, examine their raw data, and truly implement new, non-racially biased policies while holding themselves accountable to a much higher standard than ever before. This will be an uphill battle, to be sure, but the future of law enforcement looks less bleak when considering the implementation of data-informed policies based on the analysis of raw data.

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### **ABSTRACT\***

Police misconduct, particularly police brutality (the use of excessive and unwarranted force), has become a systemic issue. Police brutality is being reported and documented at higher rates due to technology. Black communities are disproportionately affected by police brutality. However, police brutality is not being addressed even when sufficient evidence is present. The lack of accountability for police brutality has led to death and physical harm to many individuals, especially Black people. Thus, for this research paper, I investigate whether the lack of accountability explains why African Americans disproportionately experience police brutality. I found three potential reasons. First, violence against African Americans seems justified due to stereotypes that depict Black people as criminals, violent, and dangerous. Second, prosecutors are enabling police brutality as they protect police officers due to self-interest or fear of retaliation by police. Third, law enforcement agencies and police officers have used the code of silence and police immunity to evade accountability. With my findings based on statistical and qualitative analyses, I argue that these three factors explain how the lack of accountability for police brutality result in African Americans being disproportionately victimized by law enforcement.

### INTRODUCTION

To serve and protect. That is the oath of duty police officers take. In theory, they are supposed to keep us safe. They are supposed to

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<sup>\*</sup> 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.

be our protectors, yet they are not. Police misconduct has become a systemic issue as many incidents have increasingly become documented through police officers' body cams, surveillance cameras, and phone recordings by bystanders and victims. Police misconduct is the unlawful actions or inappropriate conduct toward an individual the police officer has detained. Police misconduct can range from excessive force, police brutality, abuse of power, racial profiling, planting evidence, mishandling evidence, witness tampering, lying, and sexual assault, to name a few. For this research paper, I will specifically address police brutality, which is the use of excessive and unwarranted force.

Police brutality has led to the death and physical harm of many individuals. Because of the rise of police brutality and lack of reporting, The Washington Post has created a database that continuously reports and updates the numbers of individuals killed by police. Since 2015, The Washington Post was able to track 8,381 fatal police shootings, with 1,057 fatalities occurring in the past 12 months (WP Company, 2023). Police brutality has become an alarming problem, but it is not being addressed, as officers are not being held accountable for their misconduct. Worse, African Americans are particularly affected by police brutality.

According to The Washington Post database, compared to white Americans, Black Americans are more than twice as likely to be killed by police, even when they account for approximately 14 percent of the U.S. population (WP Company, 2023). Black people repeatedly suffer from police brutality even when their population is relatively low. Thus, my research will examine how the lack of accountability for police brutality plays a role in how African Americans are more susceptible to police brutality.

When conducting research, six peer-reviewed sources were analyzed to reveal three potential reasons for the absence of

accountability for police brutality and why it disproportionally affects African Americans. First, my research examines the notion of "justifiable force" as it is used to legitimize violence against African Americans. "Justifiable force" is deeply rooted in stereotypes of African Americans being criminals, violent, and dangerous, which can explain why African Americans are often the targets of police brutality. Second, my research examines how prosecutors enable police brutality due to prosecutors' self-interest or fear of retaliation by police. Prosecutors are influential players in the criminal justice system who can decide whether or not to indict police officers for their misconduct. They not only have the power to determine who to indict but also decide and influence the severity of the punishment. Finally, I will examine how the code of silence and police immunity explains police officers' ability to evade personal liability for acts of brutality. Put simply, laws and unwritten rules shield police officers from being held liable for police brutality. My research is based on statistical and qualitative analyses which indicates that these three reasons can explain the absence of accountability and the fact that police brutality is not being addressed, which helps explain why African Americans remain disproportionately victimized by law enforcement.

#### LITERATURE REVIEW

# **Justified Violence Against African Americans**

The kidnapping and enslavement of Africans was made possible with the justification that Black people were not human but rather inferior creatures who were animal-like and could be enslaved and kept as property to be exploited. The removal of their humanity justified the hundreds of years of bondage, rape, torture, lynching, and killings. The notion of Black people being inferior and more

animal-like than human became a stronger sentiment after the emergence of scientific racism.

Scientific racism, also referred to as biological racism, was a period when scientists had theories that explained and justified racial hierarchies. Scientists such as Carl Linnaeus, the "father of modern taxonomy," created the first hierarchal classification system where he named, ordered, and ranked living organisms, including humans. He was the first to classify humans as *homo sapiens* and he separated humans into four categories: *Americanus*, *Asiaticus*, *Africanus*, and *Europeanus*.

Johann Friedrich Blumenbach was another scientific racist who, like Linnaeus, categorized humans into five categories: *Caucasians, Mongolians, Ethiopians, Americans*, and *Malays*. Both Linnaeus and Blumenbach categorized and ranked humans based on their different physical traits, which according to them, was due to environmental differences. These differences would create racial distinctions and a racial hierarchy where one race was superior to the others. Linnaeus and Blumenbach would place *Caucasians* and *Europeanus* (white people) on top of the racial hierarchy due to their supposedly desirable traits and morals, while *Africanus* and *Ethiopians* (Black people) were at the bottom due to their "unpleasant" physical features and purported lack of morals.

These scientific racists utilized very demeaning language when explaining Black people's traits, while they marveled about how beautiful and intelligent white people's traits were. Linnaeus and Blumenbach would pave the way for other scientists to further look at racial differences that expanded beyond physical traits. Their work would contribute to the birth of criminology, where scientists such as Cesare Lombroso and Frederick Hoffman claimed that certain physical traits found among Black people made them criminals.

White supremacy also emerged from scientific racism, thrusting and solidifying white people's position on top of the racial hierarchy, leaving Black people at the bottom of the hierarchy. While scientific racism has many complexities to it, what it achieved was justifying Black people's inferiority and thus justifying the violence against them. The notion that Blacks are inferior and criminal legitimized violence against them—we have seen this throughout history with Jim Crow, the War on Drugs, and now police brutality. It is why we see over and over again white police officers get away with physically harming and killing unarmed Black people who, most of the time, had done nothing wrong but be born Black.

The belief that African Americans are inferior was strengthened throughout the period of scientific racism, a belief that keeps being perpetuated until today. As a result, Black people are more susceptible to police brutality as the belief of Black people's inferiority, and later on, their supposed criminality justified the violence against them. As a result of these beliefs, African Americans are constantly stereotyped as criminals, violent, and dangerous, exposing them to more police contact.

A report by the Public Policy Institute of California revealed that Black residents in California are 16 percent more likely to be stopped by police. The report also found that despite having less than 6 percent of California's population, Black Californians account for nearly 20 percent of injuries and fatalities at the hands of police (Premkumar et al., 2021). African Americans' increased exposure to police contact raises the likelihood that police officers will use violent force deemed necessary and appropriate due to these stereotypes. Furthermore, increased exposure to police contact increases the probability and rate of incarceration for Black people.

Devon W. Carbado (2016), Professor of Law at UCLA School of Law, argues that these stereotypes not only increase police contact but also help maintain these stereotypes, strengthening the perception that Black people are criminals, violent, and dangerous. Thus, when African Americans experience police brutality, it is often assumed to be justified because they are presumed to be "criminals," "violent," and "dangerous" people that must be treated accordingly—meaning the use of excessive and unwarranted force. Unfortunately, these stereotypes have informed how police officers interact with African Americans, increasing the likelihood of Black people experiencing police brutality.

For instance, the same report by the Public Policy Institute of California revealed that "Black people who are stopped by police are over 3.2 times as likely (i.e., over 220% more likely) to have an officer aim or discharge a firearm at them than whites" (Premkumar et al., 2021, para. 51). Moreover, an article on police brutality and racial bias found two studies that indicated Black men are 2.5 times more likely to be killed compared to white men and Black people that were fatally shot were more likely to be unarmed compared to white people (Peeples, 2020). These studies have shown that African Americans are more susceptible to police brutality as violence against them has become justified due to stereotypes, which might also explain why there is virtually no accountability for police brutality.

All this begs the question, how can you keep police officers accountable for police brutality when the conduct is presumed to be justified? The lack of accountability for police brutality further perpetuates violence against African Americans, and if it is not penalized or corrected, it will continue. The next section suggests police brutality will continue because the state does not prosecute

police officers' misconduct in order to keep certain relationships and reputations intact (Trivedi & Van Cleve, 2020).

### **Prosecutors Enable Police Brutality**

A 2010 study identified almost 8,300 misconduct allegations involving over 11,000 officers. Of those accusations, only 3,238 led to any legal action, and only 33% were convicted. In another study in 2017, 72% out of 8,000 sworn police officers did not believe police officers who consistently did a poor job were held accountable (Fischer-Baum, 2014; Morin et al. 2017, as cited in Trivedi & Van Cleve, 2020). These studies concluded that misconduct cases are hardly convicted, nor do police officers themselves believe officers will be held accountable for misconduct. In this review of literature, I found that prosecutorial discretion can explain this phenomenon.

Prosecutors are powerful players in the criminal justice system as they have the discretion to choose who to indict, the type of offense to charge, and suggest the duration and severity of the penalty. Prosecutors are known to protect police officers from being held responsible for police brutality and other misconduct through plea bargaining or by not bringing any charges. Prosecutors protect police officers from liability for two reasons: self-interest or fear of retaliation by police.

For one, prosecutors hardly want to prosecute police officers due to self-interest, as prosecutors greatly need police officers to do their job: "Prosecutors ostensibly protect police so that police can bring in and help convict more cases, thereby—theoretically—increasing public safety" (Trivedi & Van Cleve, 2020, p. 912). Prosecutors need police officers as they provide information and evidence needed to convict cases. Prosecutors also need police officers to testify in court to help prosecutors make

their cases and increase the chance of winning, as police officers are considered reliable and star witnesses. There is a dependency between prosecutors and police officers. Both need each other to improve public safety and thus maintain their position of power. In the case of prosecutors, the more cases they win implies better performance and, in turn, increases the likelihood that prosecutors get reelected. Prosecutors, therefore, protect police officers as they need the wins to get reelected and maintain their power.

The second reason prosecutors protect police officers from liability for police brutality is due to the fear of retaliation by police. Law-enforcement agencies and police officers control the streets and thus the cases and the narrative in courts. Prosecutors depend on police officers to tell the story of what happened as they are considered star witnesses (Trivedi & Van Cleve, 2020). If prosecutors do not align with police officers' demands, prosecutors do not get the support of the police that is greatly needed to convict cases. In that sense, police officers have created a culture of silence that if prosecutors do not play nice with police officers, they will retaliate.

Retaliation is in the form of police officers "forgetting" court appearances, withholding information, or police officers working with other prosecutors who are more compliant with police culture (Trivedi & Van Cleve, 2020). Police culture has, in turn, instilled fear in prosecutors. Not wanting to be on the wrong side of law enforcement or lose their next election, many prosecutors refuse to hold police officers accountable.

Prosecutors not holding police officers accountable offers another explanation as to why African Americans are disproportionately targeted by police. Police officers are able to use police brutality against African Americans as they know prosecutors will shield them from prosecution through plea

bargaining or no indictment. Not only are police officer justifying their excessive and unwarranted force against African Americans, but prosecutors are further justifying and enabling the force by not sanctioning the violence. Police brutality will continue if prosecutors do not address and sanction the behavior. What's more, police culture has proven to be a shield that protects police officers from liability.

# Shielding Behind the Code of Silence and Police Immunity

The code of silence, which is a big part of police culture, shields police officers from liability. Teressa Ravenell (2022), a professor at Villanova University's Charles Widger School of Law argues that:

Today, the code of silence protects officers who violate civil rights through violence and other misconduct. Additionally, the blue wall sometimes requires that officers not just stand mute, but that they lie to protect their fellow officers. (p. 907)

The code of silence, also known as the blue wall, is an unwritten rule among police officers that requires police officers to have the backs of other officers by keeping quiet or lying about their misconduct. The code of silence heavily relies on a brotherhood culture that creates a sense of unity, trust, and loyalty making police officers more likely to protect each other. Police officers are firmly loyal to one another because trust and loyalty are seen as essential for police officers to be effective and put themselves in harm's way (Ravenell, 2022). The code of silence has permitted police officers to keep quiet and lie about misconduct that violates fundamental rights.

One of the ways law enforcement agencies and police officers have been able to use the code of silence is by not

disclosing data. In 2022, The FBI collected use-of-force data from 8,046 out of 18,514 federal, state, local, and tribal law enforcement agencies (Federal Bureau of Investigation, 2022). In other words, less than 45% of law enforcement agencies provided use-of-force data to the FBI, and around 55% of law enforcement agencies did not wish to participate in the data collection. That means more than 10,000 law enforcement agencies did not want to disclose or be transparent about their practices, nor were they compelled to disclose their data as it was not mandatory.

The code of silence permits police officers to withhold information to protect themselves. The code of silence is a tactic heavily ingrained in police culture that prevents officers from being held liable for misconduct such as police brutality. Not only are prosecutors protecting police officers from liability, but police officers are protecting themselves through their silence. Thus, no one in the criminal justice system is truly addressing police brutality and the disproportionate victimization of African Americans.

Additionally, qualified immunity is another reason police officers are not held liable for police brutality, as it shields them from being sued—leaving African Americans or anyone who experiences police brutality with little hope for justice. Qualified immunity protects police officers from liability for civil lawsuits. In cases of police misconduct, it is hard to sue police officers unless it violates a clearly established constitutional right. Courts have made it easy to grant qualified immunity because they ". . .avoid deciding the question of whether the officer's conduct violated the Constitution and rule instead on whether the constitutional right in question was clearly established" (Carbado, 2016, p. 1520). In other words, courts have refused to examine whether police conduct violates the Constitution, giving officers more leeway to

argue that their conduct does not violate any constitutional rights. The court's refusal to examine whether police conduct violates the Constitution is due to the current system that checks police power, which is thought to be effective.

Law enforcement fear what can come from engaging in police brutality or other violent conduct, which is great financial loss (Carbado, 2016). Fear of costly civil lawsuits disincentivizes police officers from engaging in police brutality and other misconduct. However, the reality is that the fear of costly civil lawsuits does not deter police officers from engaging in police brutality. Successful civil lawsuit cases against police officers almost always end with indemnification. Indemnification is when police officers' employers, that is taxpayers and police departments, are the ones paying out the settlements rather than the officers themselves. Carbado (2016) argues that "Combining qualified immunity with indemnification creates a world in which plaintiffs rarely win cases against police officers (because of civil liability protection that qualified immunity affords), and when plaintiffs do win, police officers suffer no financial consequences (because of financial liability protection that indemnification affords)" (p. 1523). In other words, qualified immunity already makes it virtually impossible to bring cases against police officers, and even when lawsuits against police officers are successful, police officers are still not held accountable as they are not receiving the financial punishment.

What's more, when courts must decide whether to grant qualified immunity, they almost always grant immunity to police officers. An analysis of qualified immunity found that "In 10 out of 13 cases involving excessive force claims, three out of five unlawful warrant execution claims, and nine out of 10 unlawful warrantless searches and arrests claims, the Court granted police

officers' qualified immunity" (Braaten & Vaughn, 2023, p. 88). In order to successfully defeat the defense of qualified immunity, plaintiffs must identify cases where courts have ruled against the officer in similar circumstances. Plaintiffs must not only prove a violation of a clearly established constitutional right, but they must identify precedent cases with similar circumstances to defeat the defense of qualified immunity. These standards make it challenging for victims of police brutality to win a civil lawsuit, thus offering more protection to police officers.

All this offers another explanation as to why we don't see accountability for police brutality. The justice system is shielding police officers, with prosecutors, judges, and police officers all playing a role in preventing police accountability for police brutality. All these hurdles make it impossible for African Americans to receive justice for police brutality, sending a message that violence against Black people or anyone who experiences police brutality will go unpunished.

### OPPOSING VIEW: REPORTING SEVERE CONDUCT

Sanja Kutnjak Ivković et al. (2018) conducted a survey on 11 police agencies on the Midwest and East Coast of the United States. The survey was performed on more than 600 sworn officers in an effort to measure police integrity. The survey consisted of 11 questions about different scenarios of police misconduct, with seven questions measuring the severity of the scenarios, the appropriate and expected discipline, and their willingness to report misconduct (Ivkovic et al., 2018). The survey examined how the code of silence, which prevents police officers from "ratting" out other police officers, is a reason police officers are reluctant to report misconduct and why police agencies have maintained high integrity. The survey found that police officers are likely to report

severe conduct. For instance, the scenarios of using unjustifiable deadly force and falsifying drug possession reports were more likely to be reported (Ivkovic et al., 2018). This indicates that if police officers are more likely to report unjustifiable deadly force and the falsification of drug possession reports, then it is likely that excessive and unwarranted force will be reported.

However, one of the shortcomings of this survey is that the sample size was too small to accurately predict whether certain misconduct will be reported. A bigger sample size is needed to conclude that misconduct, in this case, police brutality, will get reported. Additionally, the survey found that if the punishment for misconduct is severe, it is less likely the misconduct will be reported (Ivkovic et al., 2018). The fear of getting other fellow officers penalized for their misconduct can deter officers from reporting. Hence, what does that say about police brutality? The punishment for police brutality is typically a civil lawsuit, that if lost, can be costly. Therefore, police brutality might go unreported, as the punishment for that conduct can be expensive.

### PROPOSED RESEARCH METHODS

Police brutality has become an issue widely affecting African Americans that is not being addressed, as police officers who participate in such misconduct are not held accountable. Through my literature review in understanding police brutality and how it disproportionately affects African Americans, I found little statistical data on the reporting of police brutality. Only statistical data found on police brutality is dated back to the early 2000s and does not accurately reflect the current issues with police brutality.

The most recent data on police brutality comes from the FBI, but the data is incomplete as more than 55 percent of all law enforcement agencies in the United States did not participate in the

report. Due to the lack of reporting, the FBI may shut down the database, potentially limiting the little data available on police brutality. With limited data available on police brutality, we cannot accurately understand how African Americans and other racial and ethnic groups are being affected by police brutality.

My proposed research methods would set out to collect data on police brutality by gathering data from law enforcement agencies and other organizations to better understand the gravity and seriousness of police brutality. I plan on requesting information from law enforcement agencies since they have been unwilling to release their reports. I also plan on collecting data from alternative organizations that might have data on police brutality. Finally, I plan on surveying different communities of different races, ethnicities, and economic backgrounds to see at what frequency people in those communities are experiencing police brutality. I want to see how frequently people experience police brutality and potentially reveal other groups affected by police brutality that we have yet to learn about.

My proposed research methods would hopefully uncover at what rate African Americans experience police brutality and whether other races and ethnic groups also experience police brutality at high rates. The data collected will hopefully also give a better understanding of the level of police brutality happening in this country, as little data is available to fully comprehend the gravity and seriousness of police brutality. Police brutality is an existing problem, specifically affecting African Americans, yet not enough information has been released or reported on about the frequency and seriousness of this misconduct. If we want to find solutions for police brutality, we must better understand how police brutality works, who it is affecting, and at what rate.

#### DISCUSSION

### **Summary of Findings**

The primary objective of this research was to understand why police brutality is not being addressed and whether it explains why African Americans are likely victims of police brutality. My research found that African Americans are more likely to experience police brutality due to stereotypes that claim they are inferior and presumptions that they behave in dangerous, violent, and criminal ways. These myths influence and explain why police officers treat Black people in a threatening and hostile manner and helps explain how police brutality is justified in the eyes of the criminal justice system. Also, my research revealed that police officers are less likely to be prosecuted for police brutality due to the prosecutorial discretion offered to them by prosecutors who need police officers to do their job. Finally, my research found that qualified immunity and the code of silence further prevent police officers from being held liable for police brutality as both shield officers from accountability.

My findings suggest that race plays a role in who is likely to be a target of police brutality, indicating that African Americans are the main targets. However, the lack of accountability for police officers who engage in such misconduct raises the likelihood that African Americans will continue to be disproportionately brutalized by the police. That is because no one is keeping police officers accountable for police brutality, meaning they will continue to engage in that behavior until they are penalized. They have the freedom to exercise their power with impunity on whoever they wish and until someone regulates their power and holds them accountable, police brutality will continue to occur, and the Black population will continue to suffer.

# **Practical Implications**

To create more accountability for police brutality, leveling the playing field in the courts would be an ideal solution as it would give plaintiffs a chance to win. Qualified immunity makes it impossible to hold officers accountable in civil cases, especially when plaintiffs have many more hurdles to prove.

If police officers lose their civil cases, they should be held responsible for some portion of the financial settlement rewarded to the plaintiff. Adding the financial penalty that comes out of the pocket of police officers instead of their employers would dissuade them from engaging in police brutality.

Moreover, in criminal prosecutions, an independent prosecutor with no relation to police officers should be handling cases against police officers. Having an independent prosecutor will remove the bias that regular prosecutors tend to have over police officers. It would mean prosecutors would no longer be able to shield police officers from being held liable. These potential solutions would bring more accountability for police officers who engage in police brutality while also deterring them from engaging in misconduct.

This essay should encourage organizations to want to propose solutions for more accountability for police brutality. Not only are people experiencing police brutality getting physically harmed, but they are getting killed with impunity. Specifically, African Americans are most affected by police brutality as they are unjustifiably targeted. These injustices can be resolved with the help of organizations that can lobby for legislative change. New policies that focus on holding police officers accountable is much needed. We can no longer rely on prosecutors or judges to hold police officers accountable. It is up to the public and organizations to stand up against police abuse and keep their power in check.

Lastly, this essay should encourage scholars to conduct more research on the implications police brutality has on communities and distinct races and ethnic groups. More research is needed to understand how frequently police officers engage in police brutality and whether they are held accountable.

# Gap in the Literature

When conducting research for this essay, I had a hard time finding current statistical evidence that showed how often police officers are being held accountable for police brutality. I found one source with statistical data from 2010 that revealed how many individuals filed lawsuits against police officers and how many of those cases got convicted. There is limited data on how many police officers have been sued, convicted, or received plea bargains for police brutality. I would have wished that more statistical data was available to visualize how many people are not only experiencing police brutality but are pursuing legal action against police officers and how often those cases end in convictions or plea bargains.

In my literature review, one article mentioned how hard it is to find information about police officers that take plea bargains for police misconduct as "...the plea process erases police misconduct via charge bargaining, appeal waivers, and Heck preclusion, among other strategies" (Trivedi & Van Cleve, 2020, p. 917). Plea bargaining essentially can erase police misconduct with various strategies, such as prosecutors dropping charges related to the misconduct. Prosecutors are making it difficult to see whether police officers were, in fact, guilty of police brutality. We cannot accurately predict who is guilty of police brutality as pleabargaining has "whitewashed" police misconduct (Trivedi & Van Cleve, 2020).

# Importance of Studying this Gap

It is critical to know more information about how many police officers are sued, convicted, or offered a plea bargain to understand the rate police officers are being held accountable for police misconduct. Understanding how many police officers were sued, convicted, or took plea bargains will reveal whether the justice system is effectively working on punishing wrongdoers. It would also reveal whether the criminal justice system keeps police power in check. Lastly, this information would uncover the many cases of police brutality that were concealed via plea bargaining. It would reveal cases where charges were dropped or adjusted to hide and minimize police misconduct.

#### **Future Study**

A potential future study would incorporate analyzing secondary sources such as public court and police reports and news articles to reveal how many police officers have been accused of police brutality in the Bay Areas' largest police departments. Not much information is available on how many police officers have been accused of police brutality, as privacy laws allow police departments to withhold information. Thus, there is no concrete number of how many police officers have engaged in police brutality. With the use of public court and police reports and news articles, I will try to piece together a database with a rough estimate of the number of police officers who engaged in police brutality in the biggest police departments in the Bay Area.

#### CONCLUSION

As discussed above, justified violence, enabling prosecutors, the code of silence, and police immunity are a few reasons for an absence of accountability for police brutality and why African

Americans remain disproportionately victimized by police officers who engage in police brutality. Stereotypes about African Americans have informed and justified the violence against Black people. The label of being criminals, violent, and dangerous has dictated the treatment of African Americans by police officers, making them more susceptible to police brutality. Moreover, prosecutors are failing to prosecute police officers who engage in police brutality due to self-interest or fear of retaliation. Police officers are of value to prosecutors as they need them to win cases to maintain their jobs. Thus, winning cases and reputations are more important for prosecutors than addressing police brutality. Lastly, the code of silence and police immunity protects police officers from being held accountable for police brutality. Police officers shield themselves through the code of silence, which requires police officers to stay silent or to lie about any misconduct because loyalty and trust are important in police culture. Qualified immunity also shields police officers, as it protects police officers from liability, and even if they are held liable, police officers do not pay the financial obligation. All in all, accountability for police brutality does not seem to be happening from any side of the criminal justice system.

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# The Plague of the Criminal Justice System: Abuse of Power by Law Enforcers Paola Saavedra Ramirez



The criminal justice system is an ideological system comprised of "heroes" who "serve and protect" the "community." This is a myth. The criminal justice system has been designed to prioritize the interests of a few over the protection of the communities it runs through. This system feeds lies to its enforcers, enabling their gross misbehavior by framing their work as being in the name of justice, peace, and order. This ideological system tells its enforcers that there are bad guys out there, and that they aren't one of them. This creates a superiority complex among enforcement professionals (such as police officers) which often manifests in the abuse of their power over the communities they interact with. This mentality (the superiority complex) prioritizes power and control and has little concern about the resulting schism between communities and law enforcement.\*

The Los Angeles Police Department (LAPD) is an example of a police department with a tarnished relationship with its community. LAPD in recent years has faced scrutiny for the presence of police deputy gangs in their district. These deputy gang members have initiations and tattoos that set them apart from other police gangs. The gangs are powerful enough to overtake a whole precinct by running many of the operations, such as the "Banditos" that run East L.A.'s police units. In these operations, officers that choose to not participate, are exiled, not given back up when requested, beaten, or worse according to eyewitnesses (Goodyear 2022). Police gangs in LAPD were uncovered by civilian investigation groups. This has yet to be investigated by the federal

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<sup>\*</sup> Thank you to Professor Lobo. An early version of this work was submitted as a paper for his course, CJ 300: Criminal Justice: A Cross-Disciplinary Perspective.

government or local police departments, with no comments given by the LAPD or Sheriff's Department.

Similarly, The Dublin Correctional Facility has been known to have many cases of sexual abuse toward their inmates. Inmates and prison guards described the situation inside the women's correctional facility to be a "rape club." Inmates who reported these abuses were punished by guards who placed the inmates that spoke out into solitary confinement (Egelko 2022). Correspondingly, a federal women's prison in Oakland has been described as an "abuse-plagued" federal facility. The warden of this facility was one of five guards to be charged with sexual abuse, the other guards have been charged with similar crimes of varying degrees (AP News). Guards at both the Dublin correctional facility and the Oakland federal prison placed inmates who reported abuse in solitary confinement. Internal investigations in 2022 found that 27 federal prisons that house female inmates throughout the U.S. had backlogged more than 8,000 cases regarding abuse. With hundreds of these abuse reports being about sexual abuse in particular (Ossof 2023).

These examples illustrate behavioral patterns that are similar in the different sectors of law enforcement. Officers participating in police gangs withhold backup from their own officers for not complying with their internal system of governance. The motives are consistent through the accounts of their actions: the desire for control goes hand in hand with the propensity for abuse of power.

Law enforcement doesn't have power on its own, in a natural, objective, or essential way. Power is gained, for example through controlling and dominating a community. The criminal justice system is plagued by dishonesty and a lack of integrity; contrary to the ideologically assumed core values of justice, peace,

and order. If these values were truly upheld, officers would be held accountable for their actions. Unfortunately, this is often not the case, as seen in the over 8,000 federal women's prison abuse complaints that were backlogged for years, or when bystander officers witnessed abuse of power by the LAPD and different women's prisons. The criminal justice system prioritizes power and control over integrity and honesty; the real criminals are in law enforcement uniforms that serve to frame them as brave heroes who create safety for the public.

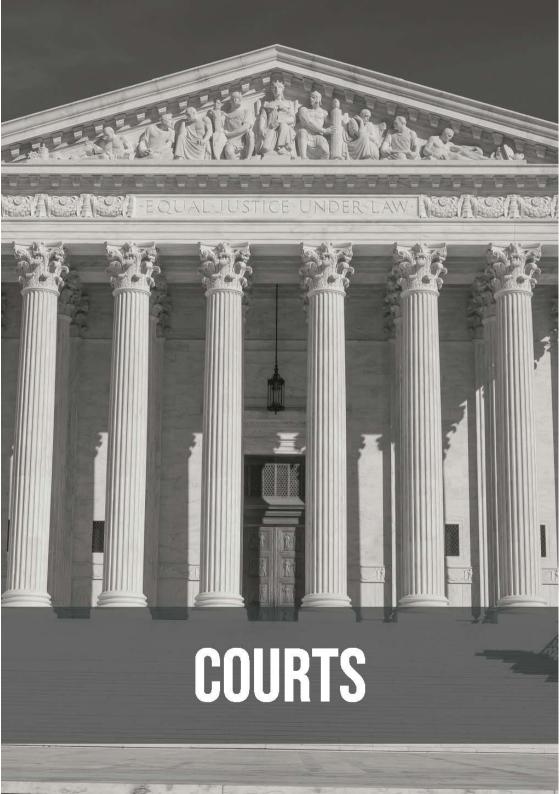
One of the definitions of plagued is, "a disastrous evil or affliction" (Merriam-Webster n.d.). The criminal justice system is a plague that has spread and is responsible for officers abusing their power. Choosing to look at the officers themself as "bad apples" disqualifies any accountability for the criminal justice system to take ownership of what it has created. The criminal justice system is plagued, and it spreads its ailments to its enforcers. The system is diseased, and this is what turns newly recruited officers into power-abusers who are upheld by systems of control. Societal and individual trust in the criminal justice system will be lost if it admits that the system is inherently flawed, and the system will lose its ideological power and control over the masses. Therefore, it actively chooses to allow different types of abuse.

The most widely believed myth is that the criminal justice system in the United States is a well-established system that was made to serve and protect communities. There are two different realities of the criminal justice system, ideological and cultural. The ideological component of the criminal justice system props it up as the champion force for good, prosocial values and attempts to portray law enforcement actions in communities as just. The cultural reality of the criminal justice accepts abuse of power to adhere to the intentions of the ideological goals. The abuse of

power reflects the cultural need to control communities by whatever means necessary, to then be able to publicize the ideological message to the public as being the only true form of the criminal justice system. This system was not made to protect, it was made to *control*.

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The Innocent Can Still
Be Found Guilty
Mario Alvarez Chavez

#### Abstract\*

Wrongful convictions target specific groups of people within society in the U.S. The criminal justice and court systems are heavily influenced by the racial biases that surround their integral processes when it comes to convicting citizens of their accused crimes. African American men are heavily targeted when it comes to being convicted of a violent crime that they did not commit, when compared to that of white males. These racial biases can be viewed through careful observation of prior research and shows how these biases have been ingrained within the training police officers undergo. It is also evident that these biases are seemingly present in the minds of victims of violent crimes. As racial stereotypes obscure their sense of judgment when it comes to identifying the perpetrator of the crime from a group of people in a lineup. A lineup is a method of identification that is used in order to help victims identify the offender from a group of people who have been arrested and match a similar description. Statistics on the groups of people that are wrongfully convicted are analyzed, as well as cases that involve the use of different kinds of evidence which have led to wrongful convictions. The systems in place that are meant to fairly convict offenders of their crimes are heavily flawed and outdated as statistics clearly outline the margins of error included within every wrongful conviction that is made. These findings may also suggest which racial group is targeted the most when it comes to being wrongfully convicted as a result of errors created from these flawed systems. Changes in policies such as

<sup>\*</sup> 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.

making it mandatory for investigators to film interrogation, could reduce the rate of wrongful convictions. However, the enforcement of policy changes can be ignored by those in power, in order to reap the underlying benefits that come with a wrongful conviction.

#### Introduction

In the United States, the court and criminal systems are praised for taking into account the rights bestowed upon the citizens that reside within the U.S. Despite the court and criminal justice system being able to confidently convict someone of a crime, it would make sense for there to be no errors in these processes, especially in situations that involve violent crimes such as murder or sexual assault crimes. However, there are serious instances in which the innocent are found guilty, and along with this there seems to be specific groups of people that are targeted by the unfair and cruel hand of the law. For the crime of murder, African American men are far more likely to be wrongfully convicted when compared to that of any other race, despite the criminal justice system in place that is purported to extract the truth, and mete out a fair justice system. First, this research paper will investigate the perceived biases in the justice system that lead to wrongful convictions. According to Carmicahel and Kent (2017), people who are perceived as minorities are associated with a sense of danger and may come off as a potential threat. This reflects U.S history with the enslavement of African Americans, segregation, and Jim Crow laws. Throughout this era, racial stereotypes were being formed and implemented in every aspect of society. Thus, resulting in African American men being at higher risk of being treated poorly and punished by the law for a crime that they did not commit. "The rate of official misconduct is considerably higher among murder exonerations with black defendants than those with white

defendants, 76% compared to 63%" (Gross et al. 2017, p. 6). These procedures that decide and convict criminals are viewed as being reliable and sacrosanct by many; however, there are racial biases ingrained within every aspect of the criminal and court systems within the U.S. Secondly, this research paper will examine how an archaic justice system along with racial biases, contribute to an unfair justice system that disproportionately penalizes African Americans. The current criminal procedural process is very flawed and provides enough space for genuine human error, thus leading to a potential wrongful conviction. Aside from people that are convicted due to genuine human error, there are individuals who have been found guilty of a crime solely due to the fact that they may "resemble" racial stereotypes that are founded and rampant throughout all areas of the criminal justice system and even society. Finally, this paper will explore potential changes that could be made in order to prevent wrongful convictions.

While there are several improvements that could be made to the criminal justice system which would result in more accurate convictions, the willingness to adopt new policies and training is up to the people in power. This may include making it mandatory for every department to make it required for integrations to be recorded, as this simple suggestion is not in place in several states. By having potential solutions needing to be approved by those who hold the power to change policies, there are various political and racial motivations these powerful individuals uphold which result in wrongful convictions that end up hurting African American men the most. Racial stereotypes are deeply ingrained within every aspect of the criminal justice system. By not making any changes to policy or law enforcement training, these racial stereotypes will continue to heavily influence the processes that lead up to the false conviction of African American men for violent crimes in the U.S.

# Literature Review/Racial Biases Ingrained Within Policing

In the U.S, the criminal justice system has been historically riddled with racial biases and stereotypes that tend to burden the lives of people of color. This is no different from the way that the current systems in today's society treats people of color, as this is most evident with the way that African American men are unfairly treated through the criminal justice system. Like with any criminal incident someone is arrested, given a trial or plea deal, then is convicted, and finally they are given a sentence. However, this process does not work fairly for everyone, as African American men are not only facing the law, but they also face an unjust system that is heavily influenced by these historic and unfair racial biases and stereotypes. A wrongful conviction is essentially manifested prior to an arrest even being made as society has always been influenced by racial stereotypes that portray African Americans as some kind of threat to their well being. This is evident through historical statutes such as with Jim Crow laws, segregation, and slavery. "The perceived threat posed by minority populations' result in support for coercive social control efforts that largely target street crimes committed by minority groups" (Carmichael & Kent, 2017, p. 62). Even before anyone is arrested, African Americans along with others who are viewed as being part of a "minority group," are at a much greater risk of being arrested for any behavior they commit; as police are heavily convinced to strictly police and monitor areas with a much larger minority population. With there being more of a police presence surrounding the neighborhoods of African Americans when compared to that of White individuals, it is clear that African Americans are at a much higher risk of being detained and possibly put on trial for a crime that they did not commit. With these racial biases still present within and outside of the criminal justice system, African

Americans who are exonerated are treated less fairly throughout the duration of their sentence, when compared to the White prisoners who have been exonerated. According to Gross et al. (2017) black defendants faced more unjust treatment as 76% of black defendants were treated poorly when compared to that of the 63% of white exonerees who also faced unfair treatment from other authority figures. According to Albrecht et al. (2022) this unfair treatment may include harassment such as ignoring genuine legal questions and possibly even establishing a sentence solely based on race. These displays of oppression mirror the racial biases and stereotypes that may be used by those in power who will treat African American exonerees with much less care, prior to even recognizing that they may be innocent. Accompanying this with already overpoliced Black neighborhoods, it becomes evident that African Americans will always have a higher risk of being the victim of a wrongful conviction. Due to the racial stereotypes ingrained within society, African Americans are already viewed as a threat that needs further policing, which in turn will lead to more unfair treatment once they have been unjustly incarcerated. Racial biases and stereotypes play a role in the wrongful convictions of African American men; however when combined with a flawed and outdated system, the chance of being wrongfully convicted increases drastically.

# Flawed and Outdated System

With any system that is created; with the intent of being used on a daily basis and as well as being heavily relied upon, mistakes and errors of any kind are bound to occur throughout its many different processes. This can be seen with how the current criminal justice system has been operating as there are mistakes such as those of human error or even loopholes within the system which allow for

potentially crucial errors to occur that possibly lead towards the wrongful conviction of someone who is innocent. With very serious cases that involve violent personal crimes such as with sexual assault, the need for accurate evidence is vital as it is important that the these violent cases are solved accurately, as well as setting up a fair trial for a defendant. Surprisingly, as noted by Free and Ruesink, (2012) it is disturbing that errors committed by witnesses are present within about 93 percent of rape cases. Not only is this high number of mistakes alarming, but it also stems from the fact that within these errors made by witnesses, Free and Ruesink also make note that these errors come as a result of problems that derived during the process that involves cross-racial identification. With a high volume of errors coming from witnesses, the criminal justice system will still rely on its courts to use these witness testimonies that clearly cannot always be accurate. It is also disturbing that with such a high rate for inaccuracy when it comes to using witnesses for evidence, they inaccurately identify the offender a majority of the time. This coincides with the previously mentioned idea of there being racial biases and stereotypes in play that can lead towards a potential wrongful conviction. Carmichael and Kent, (2017) suggest that clear legislative changes need to be made as individuals cannot be blamed for these wrongful convictions, but rather the crucial mistakes that result in wrongful convictions reflect systemic errors. These systemic errors have originated from the outdated criminal justice system that is still relying on the witness testimonies of those who are influenced by their perceived racial biases and stereotypes.

When using evidence in a trial, courts could begin to change the way that they use witness testimonies as people's memories can prove to be a major factor when it comes to how reliable their testimony may be. According to Kleider-Offutt et al. (2017) people's memory can be hazy, thus they will choose someone who resembles the actual offender of a crime. This results in misidentification and the potential conviction of someone who is innocent. It is clear that the criminal justice system is flawed with its continuous use of testimonies from witnesses who have faulty memories. With this in mind, it is not surprising that wrongful convictions exist within a system that strives to gain the truth and apply fair punishments on those who break the law. As people who are convicted for violent crimes that they did not commit struggle to maintain their innocence, those who are innocent that are disputing drug related charges face a similar scenario.

DNA evidence has become much more commonly used and by many, is now seen as a standard use of evidence that is "reliable." Even with the rise of DNA evidence being used in cases across the country, it can be difficult for the use of DNA evidence to be used in favor of the defendant, which could be used in order to prove innocence; however, this is overlooked. Saber et al. (2022) have mentioned that it can be a lot harder for a defense team to prove the innocence of someone, through the use of DNA evidence, who is facing drug related charges as opposed to someone who is facing crimes relating to those that are violent. This is yet another flaw that pertains to the criminal justice system as it overlooks those who are being charged with crimes that are not considered to be violent. DNA evidence can at times be extremely reliable when it comes to proving someone's innocence or guilt, however when it comes to people who face drug related charges, DNA evidence is limited. Thus, there is a higher chance for those who are innocent of a drug related crime, to face a verdict of guilty for a crime of which they did not commit.

It has become evident that within the criminal justice system there are processes which outline the potential for crucial errors which could be made and result in the conviction of someone who is innocent. The use of witness testimonies can be heavily clouded by the racial biases and stereotypes that influence the decisions some of these individuals will make who just so happen to be called upon and relied on when they are expected to provide evidence in a court of law. With their decisions being influenced by such biases, their evidence can be faulty and inaccurate which will lead towards a wrongful conviction. Witness testimonies can also simply become inaccurate through the faulty memory of someone who is called to be a witness in a trial. With their fault memory being a factor, they will then rely on what they believe to be the most likely option, which oftentimes can be far from the truth when it comes to picking who was really involved in the crime. Not only is it witness testimonies that can help with the conviction of someone who is innocent, but DNA based evidence can leave the innocent stranded when it comes to being convicted for drug related charges; DNA evidence can be overlooked and harder to find when it comes to being used as a possible defense for someone who is innocent of the drug charges they are being accused of. With evidence being used and or overlooked, the likelihood for wrongful convictions continues to exist as the criminal justice system will continue to employ these methods when it comes to the trial of someone who is innocent.

# **Ignoring Change**

Based on the review literature, it is clear that change is needed in order to prevent any further wrongful convictions from occurring in the U.S. Yet, there are several states and police departments which refuse to strive for any change that could help with making

the convicting process more reliable and dependable. These motives may consist of wanting to maintain power and a particular image that pertains to the values of a community that does not want to push for legislative change that could help with convicting people who are truly guilty of their crimes. Carmichael and Kent, (2017) suggest that it is rather surprising that there are not that many states who make it mandatory for officers and investigators to film police interrogations, even though the cost for making such a policy mandatory would be so little. The interrogation process can at times play a major role when it comes to someone being convicted for a crime that they did not commit, as with the wrong intentions, someone could be easily persuaded into confessing and or pleading guilty for a crime that they did not commit. This is why it would be vital for change to occur, thus making it mandatory for every state to institute a policy in which officers and investigators are required to film any interrogations that are made against the defendant. As noted by Carmichael and Kent, it would cost departments very little to push for such a change, but avoiding this change and pursuing the guilty plea very well could be in line for what department heads want. In order to maintain their power and image of being seen as a strong authority figure who arrests the correct offenders, they are aiding in the wrongful conviction of the innocent.

Another instance in which maintaining power plays a crucial role in the wrongful convictions of innocent African American men, has to do with the lack of diversity when it comes to who is in charge of decision making positions within the criminal justice system. Authors Free and Ruesink through their observations have discovered how large of an impact there is when people of color are excluded from positions in the criminal justice system that involve crucial decision to be made when a trial is

occurring. "Nationally, 90 percent of all state and federal judges are white, despite the fact that over 25 percent of the US population is nonwhite" (Free & Ruesink, 2012, p. 196). With power being maintained by mostly white state and federal judges, the lack of diversity will continue to target the innocent who are not white, which will in turn result in further wrongful convictions of African American men. According to Free and Ruesink, (2012) the presence of white prosecutors may also lead to higher chances that people of color are to be rejected from participating as jurors. With even further exclusion on areas that pertain to those who have some say on what is to happen in a trial, people of color are placed in a position where they will face more unfair treatment and conditions as they will have no say on the trial of someone who is potentially innocent.

Change is required in order to prevent any convictions of the innocent and as author Lippman notes, (2011) in order to successfully prevent the conviction of the innocent the three branches of government must work together in order to come up with policies that can bring in change that can prevent wrongful convictions. Even as change may be desired and is possible, there are people in areas of power within the criminal justice system that wish to maintain the same processes that have wrongfully convicted the innocent over several years. Even if change can be simple and cost-efficient, some individuals value their power over the innocent and will continue to convict the innocent as it benefits them. The lack of diversity within these areas of power also must be examined and diversified in order to see a much more fair and true system at work that seeks to convict the guilty and not the innocent.

# **Opposing Viewpoint**

With the issue that pertains to those who are wrongfully convicted of a crime, there is also a critique they face which is that the amount of people who are wrongfully convicted is much smaller than others make it out to be. Even though it is clear that this issue of wrongful convictions exists and must be taken seriously, some scholars protest the need for widespread attention on this matter. With this in mind, there are critiques being made that strive to make it clear to the rest of society that the issue with wrongful convictions is rather minute and that less attention should be focused on the small number of cases of wrongful convictions that occur in the U.S.

According to Cassell, (2018) the estimates of wrongful convictions that occur within the US is a rather small and insignificant figure between 0.0001% and 5%. Cassell presents this figure and makes it clear that as other scholars who devote their time to trying to understand why wrongful convictions occur in the first place, they should become less concerned with the issue as it rarely happens in this country. Wrongful convictions are present and do exist as they typically target people of color, but Cassell makes the claim that even though people are worried about being wrongfully convicted, they should not be worried as this rarely happens at all. This view implies that the criminal justice system does have flaws, however it is extremely rare and should not be considered. Despite this claim, as other studies have shown, wrongful convictions do happen, and are currently still targeting people of color and in particular African American men across the US. This is an issue that simply cannot be overlooked, as the innocent are still suffering the consequences of incarceration.

### **Proposed Methods**

In order to conduct research on why wrongful convictions occur, a method of doing so that would work best would be by looking at several case studies. By looking at case studies of those who have been wrongfully convicted of violent crimes, it can be observed and examined as to how and what steps were taken which could have potentially led to the wrongful conviction. A quantitative case study would work best in order to learn about the process which leads to most wrongful convictions.

While case studies could work best for conducting research that could lead to a better understanding of why wrongful convictions happen, interviews with exonerees can also help greatly in the research for understanding why the innocent may be found guilty. By conducting interviews that are seen as qualitative methods, one can obtain a better understanding straight from the source of someone who is innocent. Possible similarities could arise as more interviews are done with exonerees therefore, and thus a better understanding of why the innocent are found guilty, can be obtained.

### **Discussion/Findings**

Wrongful convictions occur as a result of the racial biases and stereotypes that influence the thoughts and decisions of those in power or are asked to be witnesses in a trial that involves someone who is of color. The conviction of the innocent can also stem from unreliable and flawed methods such as using witnesses who have bad memories or having DNA evidence being difficult to use in certain cases that do not always involve violent crimes. With DNA evidence, it is not that it can be unreliable, it is that it can be overlooked and is much harder to use in order to prove the innocence of someone who is being charged with drug related

crimes. The innocent can also be convicted as those who are in power will ignore and or refuse to pursue any changes that could be made which would help with preventing wrongful convictions. Department heads will avoid such change even if it is cost-efficient, if it means keeping their image and position intact. Also the positions within the criminal justice that focus on bringing potential change and are in charge of certain decisions are obtained mostly by people who are white, and lack diversity. Without a diverse criminal justice system, wrongful convictions can continue to occur throughout the entire US.

#### **Practical Implications**

In order to help prevent any future wrongful convictions from occurring, change must be made at several levels within the criminal justice system and outside of it as well. This can be done through education and training which has to have a focus on getting rid of the racial biases and stereotypes some people are taught by those before them. Also regulating and implementing policies that make it mandatory for police officers and investigators to film interrogations as this is a relatively easy fix that does not cost a lot to implement. Lastly, diversifying the positions within criminal justice which are responsible for making crucial decisions that can lead to someone being convicted and sentenced for a crime. This can be seen as a lot of positions such as with judges, prosecutors, and even jurors are mainly white across the U.S. By creating diversity, more perspectives are brought in that could help with the prevention of wrongful convictions.

#### Gaps in Literature

Areas that require further research in order to help with the overall issue of wrongful convictions has to do with the various ways

women can be targeted and affected by wrongful conviction. According to the Federal Bureau of prisons, the overall population of prison inmates are men which means there is a need for more research to be done on how women are wrongfully convicted. This is crucial as even though they may have a much smaller population size, it is clear that wrongful convictions still occur within the population of women inmates. With this in mind, by recording data and performing case studies of women who have been wrongfully incarcerated, the reasons for them being wrongfully convicted could be further understood. With a better understanding, changes could be implemented that could help with preventing the wrongful conviction of a woman.

Another gap in literature that could be examined even further is how mental illness can play a role with the wrongful conviction of someone who is innocent. People with a mental illness may often be overlooked in today's society, however they must be acknowledged and more research must be done in order to see how many people who are mentally ill have been convicted for a crime that they did not commit. This would require interviews to be done of people who have been exonerated and must also include people who are mentally ill and are currently incarcerated. By conducting interviews with several people who have a mental illness and are incarcerated as well as those who have been incarcerated, a potential pattern could be discovered as to why they may have been found guilty for a crime that they did not commit.

#### **Future Research**

By producing more research as to why women are wrongfully convicted, it could bring more attention and possible change which could help with the prevention of wrongful convictions all together for both women and men. By exploring and conducting more research as to why women are facing wrongful convictions despite their small population size, the flawed criminal justice system can be brought to light and advocating for change would become much more common and appealing for those who were not aware of the issue.

#### **Importance of Continuing Research**

With more research being done to explore why people who are mentally ill may face a high chance at being wrongfully convicted for a crime that they did not commit, it can help with providing more information as to how the mentally ill are poorly treated within prison and outside with the rest of society. By filling in this gap of literature, it not only helps with coming up with solutions that could help prevent wrongful convictions, it could help with inspiring more change that could be made that would address the obstacles and challenges the mentally ill face when confronted by officers of the law and other authority figures in general. It can shed a light on how differently these people are treated when compared to others in society who do not suffer from a mental illness.

#### Conclusion

With case studies and interviews being made public, society will come to learn more about how certain challenges arise when it comes to being a person of color, women, or having a mentally illness, which can produce harsh realities that lead these individuals towards a life of imprisonment. All for simply existing and being found guilty for a crime that they did not commit. By making these research methods and findings available to the public, society will become aware of how flawed and outdated the current criminal justice system is and how even a court system that is viewed by many as sacrosanct, is subject to errors and racial biases that result

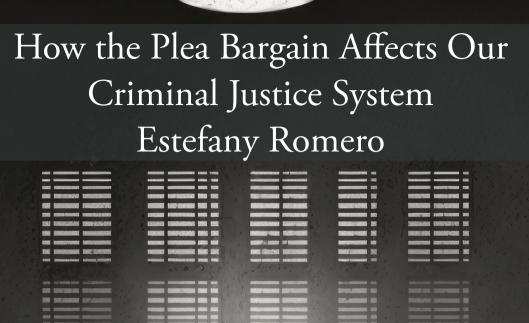
in the incarceration of someone who is innocent. With these findings, changes towards training and policies could be made that divert off of the path that is heavily influenced by racial stereotypes and biases, which is what ultimately causes wrongful convictions to occur.

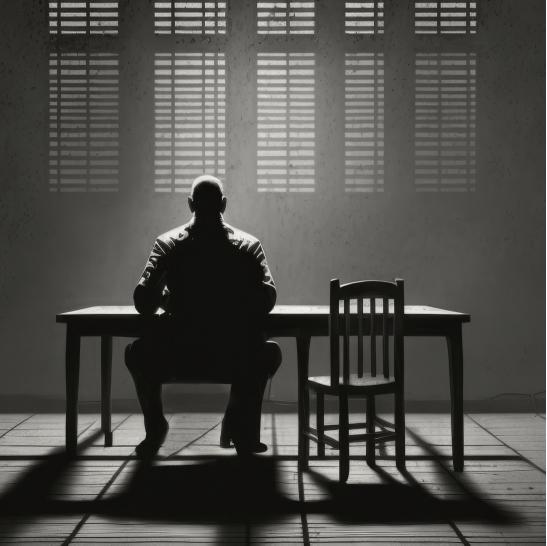
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The criminal justice system continues to oppress marginalized communities. In our current criminal justice system, many innocent individuals are being falsely accused of a crime they didn't commit. Law enforcement targets African Americans and Latinos because they fit the stereotypical image of a criminal. Due to the neighborhood they live in they are more likely to get incarcerated because they experience over-policing, racial profiling, poverty, and a lack of resources.\*

African Americans and Latinos are often offered a plea deal as a way to manipulate them to say they're guilty. Prosecutors try to convince them by telling them they will receive a lesser charge. This process can cause stress because they want to get back to their families and continue the normal life they had. Many individuals plea out because they believe they will be released sooner than their original date. The majority of the time they can't afford cash bail or a trial. While incarcerated, African Americans and Latinos continue to be oppressed as they are held in harmful and violent conditions. They experience traumatic events that cause mental and physical damage. And it all starts with the plea bargain, an ineffective and oppressive tool that marginalized communities.

Plea bargaining is an agreement that occurs between the prosecutor and the defendant. It began during the Salem Witch Trials in 1692 when witches were accused of practicing witchcraft and pleading guilty prevented them from having a trial to prove their innocence (Meyer 2022). It was seen as inappropriate and unethical but in 1967, it gained popularity. This process is still widely used in the United States criminal justice system. It's

<sup>\*</sup> Thank you to Professor Sam Moussavi. An early version of this work was submitted as a paper for his course, CJ 320: Literature in Criminal Justice.

commonly used to convince defendants into pleading guilty in hopes of receiving a shorter sentence and a lesser charge.

There are three different types of plea bargaining: charge bargaining, sentence bargaining, and count bargaining. Charge bargaining allows the defendant to plead guilty to reduce charges. Sentence bargaining offers a different charge in return for pleading guilty. Count bargaining is when the defendant has the option to plead guilty to other charges they have. These three different processes only benefit prosecutors because it saves them their time and can focus on other pending cases.

According to the article, Prisons are Packed because Prosecutors are Coercing Plea Deals and Yes, It's Totally Legal, the author states "More than 97 percent of federal criminal convictions are obtained through plea bargains, and the states are not far behind at 94 percent" (Neily, 2019). This is important because the majority of criminal convictions are due to individuals being coerced into pleading guilty. They are being pressured to take the blame for a crime even if they didn't commit it. The majority of the individuals inside prison are only there due to having to plead guilty in hopes of being released from prison earlier than their original sentence. Plea bargains can lead to false convictions and overcrowded jails or prisons.

There is a lot of controversy about the plea bargain because it creates inequality in the criminal justice system. It's more likely for an individual that identifies as African American and Latino to be offered the plea bargain in comparison to someone who is white. The plea bargain system violates human rights and constitutional rights. It violates human rights because individuals are giving up their opportunity to show their innocence. In addition, it violates three amendments such as the Fourteenth, Sixth, and Fifth Amendments. The Fourteenth Amendment allows the state to have

equal protection under the law for everyone. In addition, the Sixth Amendment highlights the rights of criminal defendants such as having a right to a lawyer, the right to know the charges, the right to a public trial, and the right to know who are the accusers. The Fifth Amendment gives individuals the right to remain silent to avoid being incriminated. These amendments give individuals the power to fight for their freedom and innocence. Once they accept the plea bargain they are stripped from their rights and can't defend themselves anymore. It prevents them from having a fair trial and from being innocent until proven guilty.

The plea bargain process is used to mass incarcerate. Prison systems profit from every inmate that is incarcerated. They receive a large budget that has to be distributed to all parts of the prison system such as improving the living conditions for the inmates and paying the staff. For example, Rikers Island is known to be the most corrupt and dangerous jail. It's located in New York and the inmates experience harsh conditions. The article, Comptroller Stringer: Cost of Incarceration per Person in New York City Skyrockets to All-Time High, states "Annual cost of incarceration grew to \$556,539 a person per year - or \$1,525 each day" (Varghese & Estrella, 2021). It's important to know how the criminal justice system has increased the annual cost of being incarcerated. In this case, the city of New York has to continue to increase the system's budget to afford to incarcerate thousands of people. This leads to mass incarceration because the majority of the individuals inside the jail are due to taking plea bargains and being charged with minor crimes. They receive money from every inmate that enters Rikers Island. The inmates experience mental and physical damage. The system only benefits people in power and marginalized communities are the most affected. The plea bargain

continues to generate money for the criminal justice system by incarcerating individuals who fit the stereotypical image of crime.

In my opinion, the plea bargain is ineffective because it targets African Americans and Latinos. It's an unfair process because many individuals aren't able to defend themselves due to not being able to afford a trial. It creates inequality and harms many low-income communities.

In the reading, Justice or Just Us? American Plea Bargaining, In J. C. Curtin (Ed.), *Crime and Wealth: Readings in the Political Economy of Criminal Justice*, Walsh claims:

Perhaps not surprisingly, it is the economically disadvantaged who make up the bulk of all guilty pleas entered in criminal courts since they comprise the bulk of all criminal defendants, and do not possess the resources to pursue lengthy adjudication through trial process. (Walsh, 1997)

This is important because low-income communities are the most affected by injustices in the criminal justice system. The plea bargain is used to coerce individuals into thinking they committed a heinous crime. Marginalized communities don't have access to resources or information that helps them know their rights and how they can help with the law. When they are offered plea bargains they are more likely to take them because they have families and jobs that they need to attend to. They don't want to be in prison for a long time so they try their best to negotiate to leave earlier. Prosecutors try to convince them that it's the best thing to do and sometimes threaten them if they don't take it. This creates fear and anxiety because they have to live in regret and continue to reflect on previous events that lead them there. It's morally wrong to interfere with an individual's opportunity to prove they're innocent.

Some people will say the plea bargain is an effective process because it saves everyone involved time. Legally, it's a contract that occurs between the prosecutor and the defendant. The prosecutors offer it when they predict an unsuccessful trial due to the lack of evidence. It's allowed because it provides benefits for prosecutors and judges. Prosecutors can improve their conviction rates and judges can focus on other pending trials. The judges approve the plea bargain process and don't deny it unless they believe it's unfair or they are being too nice. They're not able to offer a plea deal but the defendant can express to the judge that they are pleading guilty. It's legal for a plea bargain to occur in many criminal justice cases to avoid having many trials. Many will say that the defendant is getting a good deal and are avoiding having to be in court. It helps them confess since some of them are guilty and did commit the crimes they are being charged for. It allows for time to be saved and can prevent the defendant from being misrepresented due to public defenders having loads of cases that they have to solve.

Morally, the plea bargain is wrong because individuals have to give up their rights and are forced to take the plea. Prosecutors try to convince them and use tactics that appeal to their emotions to make them fear being in prison for a long sentence. Sometimes those who are innocent have to face consequences for a crime they didn't do. It's wrong for people in power to be able to get away with crimes and be the only population to afford a trial. Those who agree with the plea bargain system will say that it's the right thing to do because it allows individuals to reflect on the crimes they committed. It's important to acknowledge how committing a crime is morally wrong and that punishment is necessary to put order in society. Some believe that having plea bargains can help solve crime rates because people have the opportunity to confess and it

allows for them to be removed from society which leads to creating a safer environment.

The plea bargain connects to economic and political disparities. The criminal justice system targets marginalized communities due to being economically disadvantaged. African Americans and Latinos are always overrepresented and associated with criminality. The mass media always portrays them as criminals because of the environment they live in and their background. They can't afford to have cash bail or a trial because it's expensive and they have to support their families. The article, How Much Do California Lawyers Cost? the Taboo Question--Part 2 Litigation Fees (Brace Yourself), explains "For most cases that are litigated through trial, you will spend (from start of the case to finish of trial) from \$80,000 to \$150,000 or more" (Davidson, 2018). This shows trials take many days to solve and it's not always certain they will get the outcome they want. Some individuals believe that trials should cost money because they take time and it's a long process that is necessary to solve a crime. Prosecutors and public defenders have to prepare themselves to deliver speeches and legal statements.

Low-income individuals find it hard to afford to have the luxury of proving their innocence in court because they have to take care of their families while maintaining a minimum-wage job. For example, the story of Kalief Browder is important because he was failed by the criminal justice system. He was African American and was only 16 years old when he was sent to Rikers Island. He was falsely accused of stealing a backpack and was offered to take a plea bargain. He didn't take the plea because he thought it was unfair for him to claim he committed a crime when he didn't. Unfortunately, he had to spend three years in jail because his family couldn't afford to pay for bail or a trial. Throughout his time in jail,

he wanted to commit suicide six times because of the conditions he lived in and the inhumane treatment he received. Due to the traumatic experiences he encountered in Rikers after he was released he committed suicide in his own home. His story is essential to reform the criminal justice system because it portrays the unfairness that occurs for many individuals who look like Kalief Browder. Being inside the system can harm their lives because they will have a criminal record and it will be hard to get back to their normal lives. They have to live with the traumatic experiences they face with the criminal justice system which can lead to becoming mentally ill.

From a political perspective, the plea bargain process helps temporarily solve the issue of crime in society. Political representatives are always under pressure to solve a crime or be "tough on crime" and they try to solve it by using more mass incarceration. Arresting people that look like they commit crimes or for small crimes allows them to show society that they are enforcing more protection. It's also a way to show they have a good reputation. Politicians don't show the realities of how unjust the criminal justice system is. Believers of the plea bargain will counter-argue that politicians use it in their favor to help incarcerate those who are guilty and are generous with the sentences they give them. Using the plea bargain is wrong because it violates their constitutional rights. It gives power to the prosecutor and politicians try to avoid observing how unfair the process is. When plea bargaining was first initiated it was seen as unethical and wasn't used in court until a few years after. In our modern time, it's still used in various cases and it's normal.

Getting rid of the plea bargain system will allow individuals to have access to a trial. It will reform the criminal justice structure because it will initiate respect for the law due to prosecutors having to convince defendants to plead guilty to avoid doing the paperwork for a trial. This process is ineffective because it leads to mass incarceration and marginalized communities are the dominant population of being inside jails or prisons. It's very overused and prosecutors take advantage. Abolishing the plea bargain will allow for fewer innocent individuals to be falsely accused and incarcerated. It will prevent people in power to use the plea bargain as a way to coerce an individual to take the blame for a crime they didn't commit or to threaten their families. Individuals like Kalief Browder deserve to prove they are not guilty and should have access to a lawyer. Defendants should have the option to choose if they want a bench trial or a jury trial. Having non-profit organizations where law students or community members can help public defenders will allow for better representation in court. Public defenders deserve more funding and more resources. There needs to be more awareness of the unfairness inside the criminal justice system. Removing the plea bargain will allow individuals to prove their innocence. Creating laws, rehabilitation centers, and funding marginalized communities will allow individuals to receive the help they need and know their rights.

In conclusion, plea bargains are one of the injustices that take place in the criminal justice system. The common populations that have the highest plea bargains are African Americans and Latinos because they lack resources and are targeted. It creates economic disparities because they can't afford to have a long expensive trial. The plea bargain has expanded into three different sections which makes it hard for individuals to turn down a plea deal. Prosecutors coerce defendants to plead guilty so they can receive a shorter sentence. There are a lot of controversies because it creates inequality and individuals have to forfeit their rights. This process is used to mass incarcerate because they are convincing the

majority of the defendants to plead guilty even if they didn't commit the crime. The prison system benefits from this because it allows them to receive more funding. Some will say that plea bargain has many benefits because they save everyone time and prosecutors can improve their incarceration rates. They also believe that the defendant is receiving a fair sentence when claiming they're guilty. Morally the plea bargain is wrong because it creates fear among the defendant. Those who agree will state that they're already guilty and need to reflect on their crimes. From a political perspective, it creates an illusion for society and makes them think politicians or the government is solving high crime rates. The first step in reforming the criminal justice system is to get rid of the plea bargain because it will allow defendants to prove their innocence and have trial access. It will prevent innocent individuals from being falsely incarcerated. Offering opportunities to law school students to become interns and community members to become activists will help defendants know their options. Change needs to occur to help build a fair system and help defendants live a better life without fearing the criminal justice system.

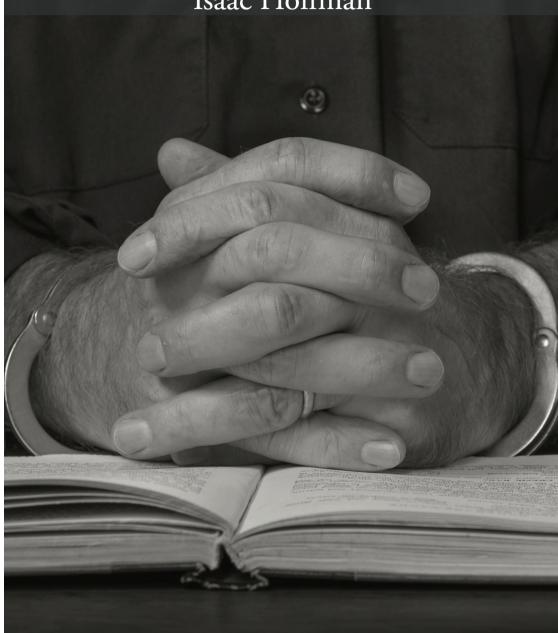
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Drug Policy Reform and Rehabilitation:
Opportunities to Reduce Recidivism
and Improve Lives
Isaac Hoffman



### Abstract\*

The drug crisis in the United States is one of extreme magnitude, and one that is highly divisive because there is no clear solution. There are certainly some people who will never have the desire to get clean nor to stay out of prison; and they will remain in a cyclical system of release and re-arrests. However, many addicts and other chronic drug offenders do in fact desire to get clean and lead legitimate lives, but it is impossible to accomplish this without a proper support system or while living on the streets. That is why I believe it is essential to shift the criminal justice system's focus from a punitive one to a rehabilitative one, in cases in which there is a clear problem that must be addressed (e.g., homelessness, addiction, unemployment, mental health). This literature review utilizes both qualitative and quantitative studies with evidence to support the following claim: More lenient sentences for low-level drug crimes, combined with wider utilization of rehabilitationoriented programs (e.g., drug counseling, job training, education, and treatment for addicts), will produce a drop in recidivism numbers. In addition, it will save money, and improve the overall quality of life of ex-offenders and addicts. The qualitative studies in this literature review make cogent arguments which speak to the unjustness of drug crime sentencing, and provide insight into the benefits of rehabilitative-focused methods. The quantitative studies in this review also find benefits in rehabilitative-focused drug court and prison educational/job-training participation. These benefits are not only represented in reductions of future criminal behavior, but also improvements in other socioeconomic factors.

<sup>\*</sup> 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.

#### Introduction

The drug crisis in the United States is one that is interconnected with many other issues such as mass incarceration, homelessness, and far too few programs that are designed to help ex-offenders reintegrate into society. It seems a nearly impossible task to attempt to solve the drug epidemic without examining the other underlying contributors. Major criminal justice reform is needed to make progress towards ending the drug crisis, and it will require a shift from a punitive focus to a rehabilitative one. This research paper examines issues regarding the duration of punishment for drug-related crimes, and it explores less punitive methods of punishment focused on rehabilitation for offenders. addresses the opposing viewpoints to drug sentencing reform and rehabilitation; this section also presents counter arguments and evidence to support sentence reform and rehabilitation. In the next two sections, it examines both qualitative and quantitative studies which discuss the unjust sentencing practices used for drug offenders and demonstrate the benefits of rehabilitative programs.

Excessive sentencing, even for simple possession charges, is a major contributor to mass incarceration due to previous convictions, mandatory sentencing laws, and add-on charges that can force sentences to be served consecutively. All of these can turn what would otherwise be a one year maximum sentence into a life sentence. To use one example, a Mississippi man was recently given a mandatory sentence of life in prison for the possession of 43 grams of marijuana, due to a prior conviction in 2004. His case will be addressed more in-depth later in this paper, but it serves as just one example to illustrate the unjustness of current drug sentencing practices, and how they prey on society's vulnerable populations, sometimes giving no opportunities for second chances.

The practice of handing out high sentences for low-level charges contributes greatly to the problem of mass incarceration and is extremely taxing on federal and state budgets. In many studies, drug courts have proven to be an effective solution to combat recidivism. In a 154-participant study published by the Journal of Criminal Justice, titled Assessing the Effectiveness of Drug Courts on Recidivism, it was found that: "The vast majority of adult drug court evaluations, even the most rigorous evaluations, find that participants have lower recidivism than non-participants. The average effect of participation is analogous to a drop in recidivism from 50% to 38%; and these effects last up to three years" (Mitchell et al., 2011, p. 60). More lenient sentences for low-level drug crimes, combined with wider utilization of rehabilitation-oriented programs (e.g., drug counseling, job training, education, and treatment for addicts), will produce a drop in recidivism numbers, save money, and improve the overall quality of life of ex-offenders and addicts. This should influence policymakers' decisions to implement these changes into the corrections system.

#### **Review of Literature**

# Oppositional View: Mandatory Minimum Sentencing is Just in Drug Cases

There are some that contend that current drug sentencing laws are just, and that they deter criminals from [re]offending. Jodi L. Avergun, former chief of staff to the head of the DEA, argues this stance in an essay published by Greenhaven Press. Her main argument supports the use of mandatory minimums to target particularly egregious drug crimes, such as trafficking, and drug crimes that involve children. Avergun (2010) cites advances made by the PROTECT Act of 2003, which enhanced law enforcement

and prosecutorial authority against crimes committed against children and made changes to federal sentencing policy. She states, "The people who would sink to the depths of inhumanity by targeting their trafficking activity at those with the least ability to resist such offers are deserving the most severe punishment" (Avergun, 2010, p. 9). Obviously, no one would argue with this point. It is irrefutable that any crime which targets children is abhorrent, and those criminals deserve to be punished to the full extent of the law.

Avergun's other arguments are that mandatory minimum laws are an essential tool to force criminals to cooperate with law enforcement, that they deter criminals, and that they provide "uniformity and predictability in sentencing" (Avergun, 2010, p. 9). However, the use of mandatory minimums as a prosecutorial tool to force cooperation is one that is susceptible to abuse because prosecutors are able to threaten defendants with lengthy prison sentences to get them to sign plea deals and force convictions. Also, while mandatory minimums do provide predictability and uniformity to drug sentences, that isn't necessarily a positive outcome when they are applied consistently to low-level offenders (regardless of prior convictions) in both federal and state cases; and when judges are forced to ignore extenuating circumstances due to some states' harsher sentencing guidelines. This point is exemplified by the case of Allen Russell, a Mississippi man who was sentenced to life in prison for the possession of 43 grams of marijuana. His case will be discussed next.

### Injustice in Sentencing

In 2019, Allen Russell was sentenced to life in prison for the possession of 43 grams of marijuana, and the sentence was recently upheld by a Mississippi circuit court on appeal, despite dissenting

opinions from many judges. His charge came with a mandatory life sentence due to a home burglary he committed in 2004 (Brown, 2021). During that time, burglary was not considered a violent crime in Mississippi unless there was evidence of violence. However, that changed in 2014, making all burglaries violent crimes. That is why Russell is now serving life without the possibility of parole–For a crime in which another person in Mississippi may only serve one year. His case is just one of many examples of injustices that occur in the sentencing of drug offenders in the United States criminal justice system.

# Sentencing Impacts on Mass Incarceration

Mass incarceration, as it is often labeled in the United States, can be characterized by a rate of incarceration which significantly exceeds either historical norms, or trends seen in similar countries (Garland, as cited in Adelman, 2021, p. 1). And, despite only 5% of the world's population residing in the United States, "it houses 25% of the world's prison population." This is stated by Judge Lynn Adelman, a district judge for the Eastern District of Wisconsin, in a paper published by the Federal Sentencing Reporter law journal. Adelman (2021) goes on to explain a couple of contributing factors to the rise of mass incarceration in the nation which include the tough-on-crime sentiments of the past fifty years (which are largely the same today), as well as the rise of the drug trade during the Nixon administration. During which, federal and state lawmakers turned their sights onto more punitive sentencing policies, and the labor market in urban areas for young men dwindled; these factors, combined with the already high levels of drug use in the nation, contributed to the immense profitability of the illegal drug trade. Therefore, it became a "major source of economic opportunity for inner-city males" (Adelman, 2021, p. 2).

With this rise of the drug trade came increased addiction, unemployment, and much harsher sentences for drug crimes, culminating in extremely high incarceration rates. Adelman (2021) describes the use of "harsh penal laws as a surrogate social policy" (p. 3) to attempt to manage a struggling population through incapacitation, while legitimate social policies and rehabilitative approaches seem to be the most viable answer. Additionally, incarceration does not even seem to be a deterrent to drug crime; if anything, it makes the drug trade more profitable. This is the issue that arises when black markets, of any sort, are created. As it is stated by Adelman, "The Sentencing Commission and other researchers have acknowledged that incapacitating a low-level drug seller for a long time prevents little, if any, drug selling; the crime is simply committed by someone else" (Adelman, 2021, p. 3). This then begs the question: Why not pour more resources into implementing sweeping policies, especially as it pertains to these low-level offenders, focused on rehabilitation, when it is so difficult to combat the illegal drug trade with a punitive focus? The next section analyzes studies that have found benefits in drug court and prison educational/job-training participation with quantitative data. These benefits are not only represented in reductions of future criminal behavior, but also improvements in a multitude of other socioeconomic factors.

# Benefits of Rehabilitation Programs Represented in Statistical Data

The drug court model is a rehabilitative method that has shown to be an effective way of handling offenders with substance-abuse issues. It diverts offenders away from prison, jail, or probation, and into a supervision and treatment program that is overseen by a judge, with additional communication between law enforcement, treatment staff, and the court throughout the duration of the program. Studies have shown drug courts to be highly effective in treating addiction, lowering recidivism, and helping to reduce some of the societal strains mentioned by Adelman (2021), such as the "...disenfranchisement" of released prisoners, the harmful impacts of prison on them, and to the communities they come from as a whole (p. 2).

In an article published by the *Journal of Criminal Justice*, Ojmarrh Mitchell et al. measure the impact of drug court participation on recidivism. It is a meta-analysis, collecting data from 154 studies: 92 from adult drug courts, 34 from juvenile drug courts, and 28 from DWI drug courts. The compiled results from these findings showed that drug court participants had lower recidivism rates than non-participants. Mitchell et al. (2012) stated that, on average, the effect of participation in drug court programs is equal to "...a reduction in drug-related recidivism from 50% to approximately to 37%" (p. 69). They also noted that adult drug courts were the most effective in reducing recidivism of the three. This finding alone supports the claim that drug courts simply make people less likely to reoffend, while at the same time treating issues of addiction.

These reductions in recidivism have also remained consistent during the study of follow-up periods of offenders after the completion of their programs. This includes follow-up periods of three years, as noted by Mitchell et al. in their study, and one-and-a-half years, as echoed in a similar study by Michael Rempel et al., published 2012 by the *Journal of Experimental Criminology*. Rempel et al. use self-reported criminal behavior, re-arrests up to 2 years, and sentence length of the cases on 1,156 drug court participants and 625 comparison offenders to answer the question of whether drug court participation deters future criminal activity.

Their findings indicated that "...drug court participants were significantly less likely to engage in any criminal behavior (40% vs. 53%), drug-related crime (36% vs. 50%), DWI/DUI (19% vs. 27%), and property crime (4% vs. 10%)" (Rempel et al., 2012, p. 181). They did note that this follow-up period of 18 months is relatively short, and could be a possible limitation in their research.

Nevertheless, this should open the door for consideration of expanding treatment programs to a greater number of jurisdictions, and implementing rehabilitation programs for different drug crimes. Mitchell et al. address a hypothesis which suggests that lowering the criteria for programs similar to the drug court treatment model and expanding the number of eligible offenders could prevent a significant number of drug crimes that would otherwise be committed (Bhati & Roman, 2010, as cited in Mitchell et al., 2012, p. 70). This reduction would likely be due to improvements in socioeconomic factors, which have shown in research to be a benefit of rehabilitative programs, and they are seldom addressed through the criminal justice system's typical approach.

# Benefits of Rehabilitative Programs Represented in Qualitative Data

The main goal of rehabilitative programs is obviously to prevent future drug-related crime and reduce recidivism, however these socioeconomic improvements are an important byproduct of their implementation, particularly in familial relationships, increased employment, and minor improvements in physical and mental health. As it pertains to drug courts, the benefits that mainly emerge are increased employment, and decreased conflict within families. This was indicated in another 18-month follow-up study written by Mia Green and Michael Rempel in 2012, consisting of

interviews with past offenders. During these follow-up interviews, they reported less of a need for "employment, educational, financial assistance, and public financial assistance services," and they also reported significant decreases in family conflict (Green & Rempel, 2012, p. 169). Moreover, rehabilitative programs such as vocational training and prison education programs are even better suited to combat these issues, in addition to homelessness and mental/physical wellbeing.

### Prison Education

According to John Esperian in an article published by the Journal of Correctional Education, the general consensus in this field of research is that "...educating prisoners contributes significantly to reducing recidivism," and statistics support this claim (Esperian, 2010, p. 323). Esperian argues for further funding and implementation for prison education programs, on the basis that they significantly reduce recidivism and reduce costs associated with long-term incarceration. He uses qualitative interviews with professionals directly involved in prison education to support his research. Esperian (2010) claims that the number of offenders unable to be rehabilitated is quite small in comparison to most criminals, and the educational opportunities provided by these programs should be offered to all incarcerated persons (p. 331). He cites several studies to support this claim, including a 1997 study involving 3600 incarcerated men and women. The ones who participated in prison education programs showed 29% reductions in recidivism rates (Steurer et al., 1997, as cited by Esperian, 2010, pp. 323-324). These educational programs allow for prisoners to be better prepared to reintegrate into society following their release. They improve employment outcomes, "...sharpen rationality and

critical thinking" (Esperian, 2010, p. 329), and generally allow for a much easier transition into life after incarceration.

# Suggestions for Implementation

These sentiments are echoed by Dewey et al. (2020), in their examination of methodological approaches to prison educational They provide suggestions for and vocational programs. widespread implementation of these programs in the nation's prison administrations, and discuss how to gauge their success. The research team collected information on these programs through qualitative interviews and observations during in-person visits to eight different prison administrations. Dewey et al. (2020) provide a number of suggestions for successful implementation which include: Staff and stakeholders with a genuine investment in the future success of the prisoners, "...job driven vocational partnerships with the community," providing incentives, encouraging success, providing individualized class environments which cater to different learning styles, providing the same opportunities for prisoners of all ages and sentence lengths, and increasing access to technology to ease the transition into a "technologically based society" (pp. 57-58). Arguably the most important of which is the "...offering [of] a range of vocational courses and training that provide trade certification in demand on the regional labor market" (Dewey et al., 2020, pp. 76-77). It should be ensured that legitimate and long-term employment opportunities that pay a living wage are made available to those who successfully participate in these programs, even those with felony convictions, because employment is one of the largest determinants of recidivism. Rehabilitation is the end goal, and it must be made clear to participants that an opportunity and a path to a legitimate life is attainable by them.

# HBCU Prison-to-College Pipeline

Many HBCUs are creating programs with the goal of providing a path for incarcerated persons to continue their education after release. Carillo (2022) discusses this in an article published by NPR. Carillo interviews Stanley Andrisse, an endocrinologist and professor at Howard University's College of Medicine. Andrisse is a felon, once facing a 20 year sentence at the age of 21, and many of his medical students are formerly incarcerated themselves. With the help of a mentor he had while he was still incarcerated, he was able to acquire his Ph.D. and MBA. His path to where he is is extraordinary, but the goal of HBCUs with this program is to allow others to follow, through the construction of a "prison-to-college pipeline" (Carillo, 2022).

## **Proposed Research Methods**

The incarceration of drug criminals and the sentences imposed on them in the United states is a highly contentious issue. Concerning drug crime, a shift in the criminal justice system's focus from punitive to rehabilitative has shown to have been promising in multiple qualitative and quantitative studies. These studies have discussed the injustices in sentences imposed on low-level drug criminals, as well as demonstrated a multitude of benefits that would be made possible through wider implementation and funding of prison rehabilitative programs. Additionally, the studies covered demonstrate the reductions in recidivism related to drug court, educational, and vocational program participation and graduation, as well as improvements in other socioeconomic factors for the participants, their families, and the communities they hail from.

My proposed research plan will focus on studying the positive effects of all of the rehabilitative programs previously

discussed through the use of qualitative interviews and quantitative surveys conducted with rehabilitative program participants, their families, and other important stakeholders including: prison and program staff and administrators, employers, and presiding judges. The data collected would focus largely on structural factors that contribute to the success of these programs, socioeconomic and psychosocial changes in the participants, and factors which contributed to sentences imposed.

#### Discussion

# **Practical Implications**

All of the findings put forward in this research point towards the conclusion that rehabilitative methods can be used as an effective alternative to incarceration where it concerns drug offenders. Further research in this field undoubtedly is required. However, in the present it seems apparent that, as a whole, drug crimes sentences are unreasonably high. In my analysis of Avergun's viewpoint essay on mandatory minimum sentencing, I addressed the unfortunate outcome of judges forced to comply with sentencing guidelines and to pass unreasonably long sentences down to low-level offenders. In his essay on justly sentencing drug offenders, Judge Adelman lists several cases in which he opted away from unnecessary guideline ranges in favor of sentences more conducive to the betterment of the offenders and their communities. He notes that the burden of correcting mass incarceration should not fall to judges. Instead, that burden rests on lawmakers, which is true. However, Adelman also states that judges should not shy away from the responsibility of addressing mass incarceration. "Ultimately, the only way to reduce or eliminate mass incarceration is to send fewer people to prison and for shorter periods. Many defendants in drug cases are likely to be eligible for such treatment"

(Adelman, 2021, p. 9). When it is viable, and in the shared interests of society and the offender, judges should use discretion—They should opt for shorter sentences, and treatment or rehabilitation as an alternative. It is also clear that rehabilitative programs (drug courts, prison education, and vocational programs) all show tremendous promise. All of which are statistically proven to reduce recidivism, which should, ultimately, be the main goal of the criminal justice system.

## Gap in the Literature

One recurring gap in existing research on drug courts and rehabilitation is the small sample size of these studies due to a lack of widespread implementation of rehabilitative programs, as well as short follow-up periods studied, oftentimes of only three years. Each recidivism study referenced in this literature review indicated that participation in rehabilitative programs produced notable benefits in lowering recidivism. However, it is difficult to predict with any certainty if these same reductions in recidivism would translate to a federal policy in which rehabilitative programs were offered to all offenders whose cases were applicable. It is essential for this gap in the research on prison rehabilitation to be studied further, as this would help to answer the question of whether significant reductions in recidivism carry over to larger sample sizes. More extensive follow-up studies after program completion would also reveal if the benefits of rehabilitation remain consistent long term.

# Suggestions for Future Study

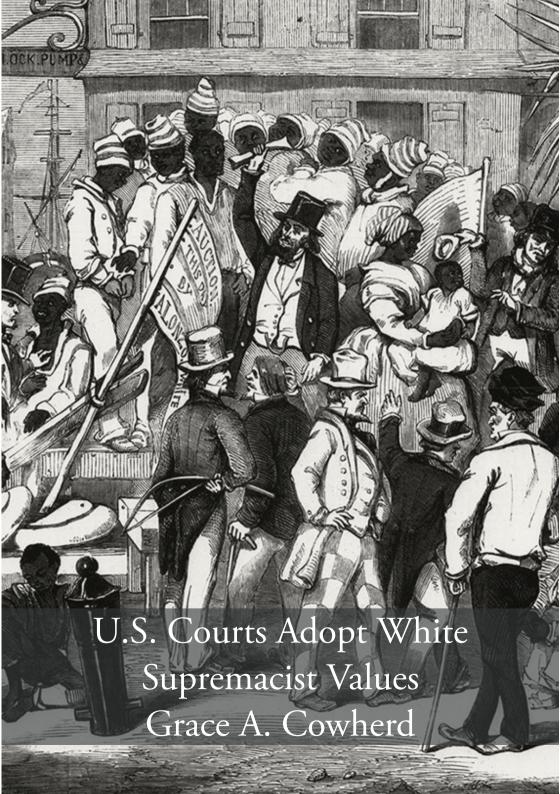
Further research in this field of study should include interviews and surveys conducted with people directly involved in drug treatment and rehabilitation programs in order to determine what factors are most conducive to the participants' success. Dewey et al. (2020) made valuable contributions in their research on different approaches to prison education, and that research should be built upon to make these programs better. As rehabilitation programs become more widely utilized in the country, further research should also include analysis of secondary sources that gauge their effectiveness by measuring recidivism, program completion rate, and conducting multiple-year follow-up studies after completion.

#### Conclusion

Regardless of whether all, some, or none of the rehabilitative programs discussed in this paper are implemented at the federal level, most people who are incarcerated will be released at some point in time. Roughly 600,000 men and women are released every year, and it is essential to the health of the nation and its communities that they are provided with the best possible opportunities to remain out of prison; this is done by granting them the skills necessary to lead legitimate lives. This includes the provision of a job that pays a liveable wage, and the required knowledge and preparation for a transition into life after incarceration. The vast majority of people incarcerated for drug crimes are not irredeemable threats to society. "Unfortunately, there is no litmus test to determine which individuals have the potential to change or to recidivate. And that, it would seem, is the primary reason that the opportunity must be extended to all incarcerated felons" (Esperian, 2010, p. 331). Most offenders can be rehabilitated, and the most logical solution seems to be to prepare them for reintegration back into society.

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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

<sup>\*</sup> 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, uppermiddle 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 redlining, 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. Lowincome 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, incarcerartion 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 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 justiceinvolved 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.

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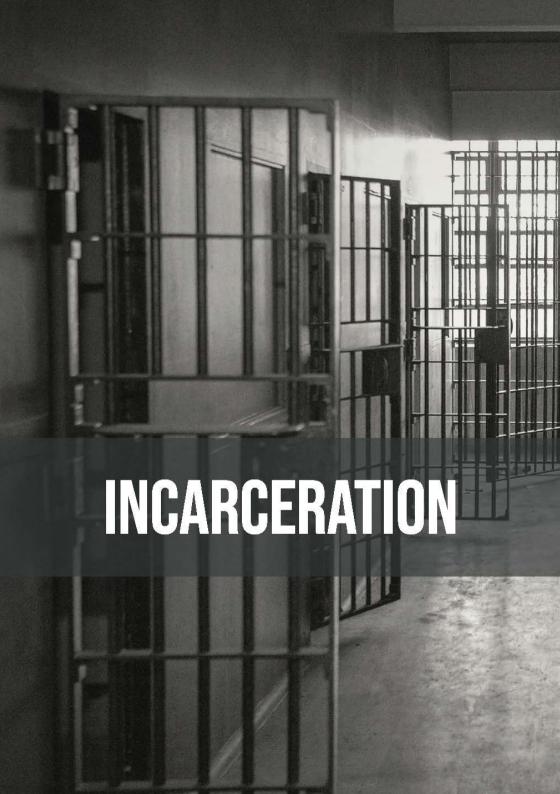
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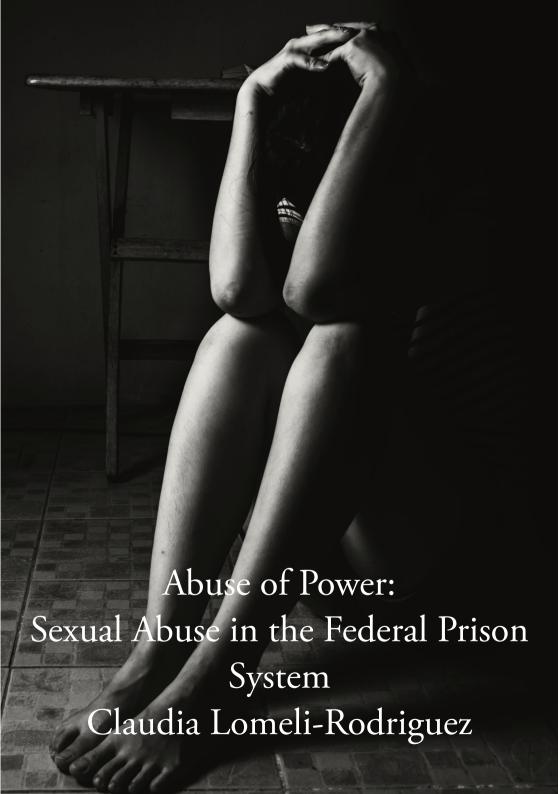
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#### Introduction\*

Convicted rapists are not the only sexual predators lurking in the federal prison system. Throughout the federal prison system, there is a systemic pattern of prison staff using their power and control to create a prison culture that sexually abuses prisoners through the use of coercion and force. This culture of abuse is further enabled by systemic failures that impede thorough investigations thereby protecting prison employees from being held accountable for their sexually abusive conduct.

This essay serves as an introduction to the systemic abuse of federal inmates and is broken down into four sections. The first section defines sexual abuse of inmates and introduces past and current examples of prisons with cultures of sexual abuse. The second section explains methods sexually abusive prison staff use to force themselves onto inmates. These explanations are written to give a general idea of sexual abuse but avoid going into detail. A common pattern of sexual abuse is also explained and analyzed. With an understanding of these concepts, the third section features a meso-level analysis of a single prison. This case study will explore how prison staff culture can foster an environment where sexual abuse of inmates becomes rampant. Finally, a summary of a report on the sexual abuse of federal female inmates by the Senate's Permanent Subcommittee on Investigations will explain how the sexual abuse of inmates by staff is a systemic issue plaguing the federal prison system.

<sup>\*</sup> Thank you to Professor Lobo. An early version of this work was submitted as a paper for his course, CJ 300: Criminal Justice: A Cross-Disciplinary Perspective.

## The Reality of the Sexual Abuse of Inmates

To understand the reality of sexual abuse of inmates, we must define sexual abuse, learn prison staff's role, and review a few examples of cultures that enable the sexual abuse of inmates. These examples will showcase a culture where inmate abuse is rampant and normalized.

Under federal law, sexual abuse of inmates is defined as any sexual activity, consensual or nonconsensual, involving an inmate and prison staff (Office of the Inspector General, 2005). The unfortunate reality of sexual abuse in prisons is that inmates are more likely to be abused by staff than by other inmates (Hall, 2015). In 2007, Beck and Harrison found that over 50% (5,605) of inmate sexual abuse allegations were against prison staff (Hall, 2015). Between 2011-2012, 59% (34,100) of prisoner sexual abuse allegations were against staff (Beck et al, 2013). While these statistics are over a decade old, they are some of the most recent available data available. Additionally, their age does not change the fact that there is an alarming number of inmates being sexually abused by staff. While all sexual abuse is abhorrent, staff-oninmate sexual abuse deserves special attention as these predators are funded by the taxpayers to maintain order and safety inside prisons, not go on power trips that victimize human beings. The sexual victimization of inmates is often discussed or viewed as a humorous topic, but the reality is that these are traumatic events that haunt victims.

As an example of a culture of abuse, consider the Dublin Federal Correctional Institution (FCI Dublin), a federal prison located in California. Bob Egelko has written multiple articles detailing a series of sexual abuse occurring in the Dublin prison. A grand jury has charged former Dublin Federal Correctional Institution guard, John Bellhouse, with five counts of sexually

abusing prison inmates (Egelko, 2022). In total, Bellhouse is facing six charges of abusing three different women between late 2019 and 2020. Bellhouse is not the only FCI Dublin employee to be charged with sexually abusing inmates. Former warden, Ray Garcia, has been convicted to a nearly six-year federal sentence after sexually abusing three victims (Egelko, 2023). James Highhouse, the former prison chaplain, sexually victimized a woman and is serving a seven-year sentence (Egelko, 2022). Former prison guard Ross Klinger is awaiting sentencing (Egelko, 2022). Enrique Chavez, a former prison guard, pleaded guilty to sexually abusing a woman and is serving a 20-month sentence (Egelko, 2023). An investigation by the Associated Press found that inmates who alleged sexual misconduct were disregarded or punished by guards. Even more shocking, the Dublin facility has been referred to as "the rape club" by those within the prison (Balsamo & Sisak, 2022, as cited in Egelko, 2022, para. 6). The accounts of abuse in Dublin Correctional Institution are not over. According to a 2022 report by the Senate's Permanent Subcommittee on Investigations, "As of May 2022, OIG and/or BOP were investigating at least 17 additional current or former employees at FCI Dublin for sexual misconduct" (p. 17).

FCI Dublin is not alone, the Senate Subcommittee found three additional federal prisons with sustained and protected prolonged cultures of sexual abuse against inmates. The additional prisons were MCC New York, MDC Brooklyn, and FCC Coleman. In MCC New York, two officers have been convicted of sexually abusing inmates (Permanent Subcommittee on Investigations, 2022). Colin Akparanta is serving 40 months in prison after sexually abusing seven discovered victims. Rudell Mullings is wrapping up a seven-year sentence after his 2016 conviction of sexually abusing a victim in 2015. In 2017, MDC Brooklyn had

three of its staff convicted of sexually abusing their inmates (Permanent Subcommittee on Investigations, 2022). Lieutenant Carlos Martinez was sentenced to five years imprisonment and victimized a single inmate. Lieutenant Eugenio Perez sexually abused five inmates and is serving a 25-year sentence. Officer Armando Moronta sexually abused three inmates and is serving a 10-year sentence. In FCC Coleman, 15 women settled with the United States Government after filing a civil lawsuit alleging that they were sexually abused by eight staff members. Of these eight, six have admitted to the sexual abuse of 10 inmates however, due to a legal loophole (discussed below) all escaped prosecution.

In the four previously mentioned BOP institutions with cultures of sexual abuse, 19 inmates were sexually abused, 11 staff members were convicted, 17 are still pending investigation, and six are confessed predators who will never see consequences. In addition to these cultures of abuse, the report found that "BOP employees sexually abused women in their custody in at least two-thirds (19 of the 29) of the facilities where BOP has held incarcerated women this past decade" (Permanent Subcommittee on Investigations, 2022, p. 18). A shortcoming of this report is that it focused on the sexual abuse of women inmates, leaving out male victims. Despite this drawback, the report still showcases sexual abuse is widespread in federal prisons.

Staff-on-inmate sexual abuse is not a modern problem. The sexual abuse of inmates by prison staff is deeply embedded in our prison history. One example can be found by looking back to the 1868 investigation of San Francisco's Industrial School. This school was California's first attempt at reforming juveniles under an incarceration model (Macallair, 2015). The investigation revealed a multitude of abuse occurring within the school, the most relevant is the Superintendent's sexual abuse of girls. Testimony of

girls revealed that the Superintendent, Colonel Joseph Wood, allowed girls certain freedoms in exchange for sexual favors, more accurately abuse (Macallair, 2015). One of the state's earliest forms of incarceration reveals a longstanding abuse of the power dynamic between prison staff and prisoners. The San Francisco Industrial School, FCI Dublin, MCC New York, and MDC Brooklyn are not outliers, they are historical and present examples of abuse in the American prison system. By noticing this pattern of abuse in multiple prisons, it is important to understand how these cultures of sexual abuse operate.

#### **How Sexual Abuse of Inmates Occurs**

This section briefly reviews how the act of sexual abuse in prisons occurs. A detailed account of incidents of sexual abuse is not necessary since a general summary will sufficiently convey how these incidents occur within an institutional cultural context.

Within these cultures, the staff use their power over inmates to sexually abuse them. Physical force is an obvious (and abhorrent) method used to rape inmates, but it is not the only strategy of sexual abuse. A second method that staff use to wield power and sexually abuse inmates includes claims of "consensual" sex. Researchers have observed sexual abuse where both parties claim to consent and have a romantic relationship (Hall, 2015; Calhoun & Coleman, 2002). While there may be claims of consensual sex occurring between inmates and staff, it is not only illegal but highly questionable if consent can occur between prisoners and staff.

Inmates and prison staff are never on equal footing. Inmates are under the direct supervision of prison staff resulting in a power imbalance. According to Calhoun and Coleman (2002), "Power dynamics between front-line correctional workers and inmates are

one of the most salient qualities of day-to-day interactions in the correctional institution" (p. 113). Inmates are dependent on staff to provide daily necessities and to oversee safety and peace. With prison staff controlling daily aspects of an inmate's life, it is doubtful that inmates are in a position to consent to sexual or romantic relationships—do they have free will or do they live under a state of constant duress?

In a prison where multiple inmates were being sexually abused by staff, inmates reported consent due to feeling "powerlessness" or "obligated being that the [correctional officer] has the upper hand" (Calhoun & Coleman, 2002). There is an undeniable power dynamic that prison staff holds over inmates which undermines the believability of an inmate's ability to consent.

The use of coercion extends to other methods of inmate sexual abuse. Prison staff uses coercive methods such as promising rewards or threatening punishment as a way to sexually abuse inmates (Hall, 2015). An example of using rewards to sexually coerce inmates is through "trading" (Calhoun & Coleman, 2002). In trading, prison staff offers inmates special privileges in exchange for sex. Aside from drugs or other banned contraband, prison staff may also use an inmate's vulnerabilities to gain an upper hand and offer special privileges.

For example, during a victimization survey by Calhoun & Coleman (2002), an inmate recalled that a correctional officer allowed his victim (a different woman) to make phone calls during a personal emergency if she agreed to take off her pants and sit with her legs spread open while he watched. The inmate remarked that the victim agreed because it was her only option and the officer had the power to "help" her make the call.

Both Hall (2015) and Calhoun & Coleman (2002) found rampant use of trading to coerce prisoners into sexual relationships. Trading is a prime example of the power dynamics present in prison staff-inmate relationships, there is no consent because of the awful power imbalance staff holds. Inmates have no bargaining power and "agree" to sex out of necessity or feeling unable to say no.

Hall (2015) found "coercion, power, and control" as a common theme in the sexual abuse of inmates (p. 36). The study observed a five-step formula staff use to "groom, coerce, and control their victims" (p. 35). The first step is that staff identify the inmate they will target. Staff will then groom the victim by forming a personal relationship which can include friendly conversations, presents, and finding ways to spend time with them (U.S. Department of Justice, 2005, as cited in Hall, 2015). The third step is to begin making inappropriate sexual advances toward the inmate (U.S. Department of Justice, 2005, as cited in Hall, 2015). Another step staff take is to secure a private area where they will sexually abuse the inmate. The final step is to sexually abuse the inmate using "coercion, power, and control" (Hall, 2015, p. 26). Hall argues power and control are inherent in an institutional setting and can be strengthened when coercion is added to the mix. This formula is not exclusive to Hall's study.

The same pattern is present in a 2002 victimization survey by Calhoun and Coleman. Some of the inmates interviewed sympathized with the working conditions and social isolation prison staff must endure. Calhoun and Coleman (2002) found prisoners were able to "draw parallels between their lives and the lives of the officers" (p. 122). The inmate's ability to relate to staff leads to a closer bond between inmates and staff, which falls under step two of Hall's formula. Step five is evident as the prison where

inmates are being interviewed has staff that was able to coerce or manipulate inmates to "consensual" sexual activity (Calhoun and Coleman, 2002).

In short, the sexual abuse of inmates takes place primarily through the power dynamic afforded to prison staff. At their disposal, they are free to use force, intimidation, and coercion. Claims of consensual sex are undermined by the power staff holds over prisoners that eliminates the possibility of an inmate's free will. At its root, staff-on-inmate sexual abuse is a coercive tactic that uses power and control to trap inmates into abusive sexual contact. With a basis of how sexual abuse occurs, it is important to see how these abusive cultures are created.

#### How Federal Prison Staff Form a Culture of Sexual Abuse

Given that prisons often hide their cultures of sexual abuse, one may ask how these cultures form. This section aims to answer this question through a meso-level analysis of prisons. A meso-level analysis explores how one's social community and environment can encourage criminal behavior (Barlow & Kauzlarich, 2010). This section argues federal prisons are a social environment that encourages staff to abuse inmates in what was assumed to be a repercussion-free zone.

There is an alarming pattern of sexual abuse occurring within the federal prison system. It is difficult to label the actions of staff as one-time scandals. The amount of abuse occurring throughout the nation has surpassed the rationalization that this is an issue of a few bad apples. The concept of bad apples is the idea of there being a few bad actors in a large system.

Colleen Walsh (2021) uses this phrase when describing a systematic issue that should no longer be considered the lone actions of a corrupt individual. Federal Prison staff at individual

institutions seem to have formed social environments where sexual abuse is normalized. From within these prisons, it is an open secret that staff participates in a culture of abuse. This open secret is evidenced by examples such as FCI Dublin being coined "the rape club" by both inmates and staff (Balsamo & Sisak, 2022, as cited in Egelko, 2022, para. 6).

The social environment of the prison encourages sexual abuse to occur because the offenders are protected. For example, FCC Coleman relocated all female inmates from the prison to prevent a PREA auditor from interviewing female inmates that were being sexually abused by prison staff (Permanent Subcommittee on Investigations, 2022). A PREA auditor is in charge of auditing prisons for compliance with the Prison Rape Elimination Act (PREA) policies which aim to eradicate sexual abuse from occurring in prisons (Bureau of Justice Assistance, 2021 as cited in Permanent Subcommittee on Investigations, 2022). The removal of female inmates allowed staff to continue their predatory acts while also keeping their victims from speaking about their abuse.

Prison staff also use their power over inmates to protect each other by punishing victims that come forward. An investigation by the Associated Press in FCI Dublin found that inmates who came forward with their reports of abuse were "ignored and even placed in solitary confinement" (Balsamo & Sisak, 2022, as cited in Egelko, 2022, para. 6). Calhoun and Coleman (2002) found that inmates who came forward faced harassment by staff and complicit officers would retaliate against the victim's loved ones. Victims of sexual abuse were left even more powerless and vulnerable to abuse as they had no safe space to report their victimization. Prison staff took advantage of the

power afforded to them to create a hunting ground where they can sexually assault prisoners and suppress their testimony.

In summary, a social environment that can be described as a culture of sexual abuse was formed where sexual violence was not only accepted but protected. Prison staff not only band together to cover up their crimes but also use their power and intimidation to silence inmates from reporting their victimization. The perpetuation of these sexual abuse cultures is a systemic issue seen throughout the federal prison system.

# How Sexual Abuse of Inmates is a Systemic Issue in the Federal Prison System

Similar to how the cultures of abuse are not the actions of a few bad apples, individual prison cultures are not isolated to certain settings. The norms at induvial prisons are part of a systemic failure that allows thousands of inmates to be sexually abused across the federal prison system. To understand this systemic issue, we can turn to the Senate's staff report by the Permanent Subcommittee on Investigations (2022) titled "Sexual Abuse of Female Inmates in Federal Prisons." The committee found that the social cultures of individual prisons are upheld at a systemic level due to the Federal Bureau of Prisons (BOP) inability to properly investigate the sexual abuse of inmates and hold staff accountable for their crimes.

BOP allows individual prisons to sustain their cultures of abuse by failing to gather key data that allows investigators to find patterns of abuse. The Permanent Subcommittee on Investigations found that BOP uses PREA policies to prevent sexual abuse and PREA audits to determine if prisons abide by such policies. If a prison passes the audit, BOP can conclude that the prison is not at high risk of staff-on-inmate sexual abuse (Permanent Subcommittee on Investigations, 2022).

The problem with this system is that the PREA audits have been proven to be unreliable in determining if there are cultures of sexual abuse within a prison (Permanent Subcommittee on Investigations, 2022). The subcommittee points out that FCC Coleman and FCI Dublin were never flagged by audits despite there being numerous cases of sexual abuse from the two prisons. By being dependent on an unreliable audit system, BOP is allowing prisons to hide their sexually abusive cultures.

The possibility of finding sexual abuse is further tainted due to BOP failing to "Systemically Analyze PREA Complaint Data" (Permanent Subcommittee on Investigations, 2022, p. 22). PREA requires BOP to have a database of compliant data to be used to determine if improvements can be made to prevent sexual abuse of inmates (Permanent Subcommittee on Investigations, 2022). BOP can also use the complaint data to identify individual prisons or people that have a pattern of sexually abusing inmates but elects not to do so (Permanent Subcommittee on Investigations, 2022). Despite having the resources to find cultures of abuse at their fingertips, BOP allows for patterns of sexual abuse of inmates to continue for months or years on end.

Patterns of abuse are further suppressed by the BOP Office of Internal Affairs (OIA). BOP OIA is required to produce an annual report that details BOP employee wrongful conduct for the purpose of allowing BOP to recognize patterns of misconduct and areas for improvement in BOP training (Permanent Subcommittee on Investigations, 2022). The reality of the report is that it does not allow for the identification of patterns as it fails to include key facts about who abused the inmate, where the abuse occurred, and if the abuser has a history of allegations (Permanent Subcommittee on Investigations, 2022). Without such data, BOP is unable to

determine if they are employing serial predators or if their institutions are suffering from a culture of abuse.

The lack of proper investigations also allows for the cultivation of a repercussion-free prison system. BOP lacks the ability to keep up with investigating allegations of sexual abuse which leads to staff escape without any accountability. In 2020, BOP OIA reported a backlog of 554 allegations of sexual abuse from federal inmates (Permanent Subcommittee on Investigations, 2022). By 2021, the BOP OIA was only able to close investigations on approximately 40% of those cases (220) (Permanent Subcommittee on Investigations, 2022). The failure to keep up with this backlog allows for cases to pend for long periods of time. The longer investigations pend, the more unrealistic it is to prove sexual abuse (Permanent Subcommittee on Investigations, 2022). Unable to prove is an important distinction from proven false, the long wait time passing from sexual abuse to the closure of the allegation allows for testimony or recollection of events to be lost. It is not that the prison staff is found innocent, it is that there is no longer evidence to sustain that sexual abuse occurred (Permanent Subcommittee on Investigations, 2022). The backlog investigations gives sexual abusers the upper hand and may allow them to escape accountability.

Another systemic failure preventing proper investigations of sexual abuse allegations is that when the Department of Justice's Office of the Inspector General (OIG) cannot keep up with sexual abuse allegations, they return them to BOP OIA for investigation (Permanent Subcommittee on Investigations, 2022). Typically, BOP OIA notifies OIG about inmate allegations and the OIG is supposed to conduct an independent investigation. However, when OIG declines to investigate, BOP OIA assumes responsibility for an investigation. The issue with this is that BOP OIA is

investigating their own employees and in doing so "has the ability to compel BOP employees, as conditions of employment, to sit for interviews about allegations about them" (Permanent Subcommittee on Investigations, 2022, p. 6). The permanent subcommittee found that compelling employees to speak triggers the Garrity interviews loophole which allows BOP employees to confess and face no legal consequences.

The Garrity interview loophole comes from a 1996 case *Garrity v. New Jersey* heard by the Supreme Court which ruled that compelled statements from government employees are ineligible to be used as evidence in their prosecution and BOP OIA must prove any evidence they have is not a result from compelled statements (Permanent Subcommittee on Investigations, 2022). As a result of this loophole, multiple BOP employees have admitted to sexually abusing inmates and have faced no consequences (Permanent Subcommittee on Investigations). It is in the BOP staff's best interest to admit to everything in a compelled statement as they can then escape accountability when caught sexually abusing inmates.

A final systemic failure of BOP is that its officials do not see the sexual abuse of inmates as a systemic issue. In interviews with BOP officials, the Permanent Subcommittee of Investigations (2022) recorded statements that blame individual employees and prisons for sexual abuse and not any failure of BOP policy or practices. This mindset could explain why there were no reforms to BOP policy after the discovery of institutional abuse in four of their prisons and opted to instead make changes to individual prisons (Permanent Subcommittee on Investigations, 2022). Despite having sexual abuse occur in 19 of their 29 prisons with female inmates in the past 10 years, BOP did not make any systemic policy or practice changes until 2021 when after the discovery of the

rampant sexual abuse occurring in FCI Dublin (Permanent Subcommittee on Investigations, 2022).

In summary, employee misconduct in federal prisons surpasses OIG and BOP's ability to properly investigate crimes and allows abusive staff to escape repercussions. The systemic failures that prevent investigations and justice are BOP's failure to use PREA data to pinpoint problematic employees and prisons, OIA reports suppressing data that may reveal individuals or prisons with patterns of sexual abuse, backlogs that slow down investigations, therefore, tainting their integrity, the Garrity loophole that exempts staff from prosecution, and BOP officials refusal to see sexual abuse as a systemic issue. Victims of staff sexual abuse are not only failed in their prisons but are further let down by BOP's refusal to take action in preventing sexual abuse in their facilities.

#### Conclusion

To review, the ongoing events in the federal prison system serve as a stark reminder that the incarceration setting allows for a power imbalance that emboldens prison staff to victimize their inmates. Federal prison staff have created social circles that view sexual abuse as acceptable behavior. These cultures are willing to use power, control, and coercion over inmates to not only sexually abuse them, but to silence them as well. A meso level of analysis considers the social influence of criminal behavior (Barlow and Kauzlarich, 2010). In a meso level of analysis, the social environment cultivated by staff is concerning. The prison became a space where sexual abuse by staff was built and guarded. The Bureau of Prisons further silences victims of sexual abuse by not taking systemic actions to prevent further victimization. Essentially, BOP investigations are sabotaged from the start, allowing for sexual abuse to continue without repercussions.

Around the nation, federal prisons are the hunting ground for sexual predators to abuse prisoners.

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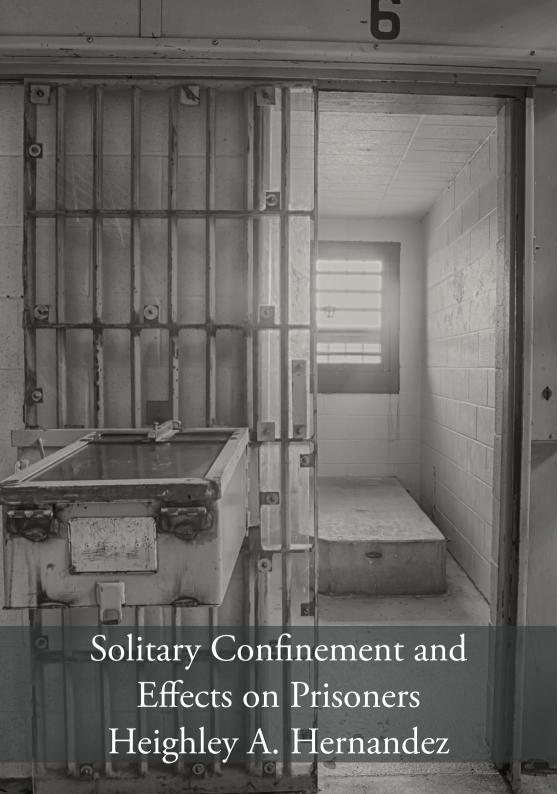
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#### Abstract\*

This paper discusses the effects that solitary confinement has on prisoners. The use of solitary confinement is one of the most controversial steps correctional facilities take in the current world. The common justifications for confining inmates in solitude are that some are unmanageable in normal environments, being used for discipline, protecting the individual inmate, and administrative purposes. Nonetheless, there are various negative consequences of confining prisoners. These include psychological distortion, which causes perceptual changes, distortions, disturbed affection, disrupted thought contents, and impulse control challenges. The paper establishes a position that solitary confinement should be abolished. To facilitate this, society should use artificial intelligence (AI), increase mental health resources, seek legal and legislative reforms, and collaborate with other professional organizations. Future research is recommended to investigate why the use of solitary cells increased in the 1860s after its earlier decline and the possible positive effects of this method on individuals and the correction facilities at large.

#### Introduction

Solitary confinement has been an issue of concern among various professionals. The issue's intensity is weightier in the United States (US) than in any other country. For instance, the US incarcerates its citizens more than any country (Hagan et al., 2018). Research also indicates that there have been increased cases of mental and

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other chronic health conditions among prisoners (Hagan et al., 2018). Such health conditions can be attributed to the solitary confinement in which most incarcerated individuals find themselves. Indeed, Ahalt et al. (2017) reported that the US holds almost 25% of incarcerated people globally. The country is also considered a leader in the number of solitary confined individuals globally. The implication is that as the number of prisoners increases in the country, many prisoners put in solitary confinement also increase. The importance of the issue of solitary confinement in the field of study is that it has various health implications associated with it. Thus, it is an issue that threatens human rights.

An understanding of the significance of the topic comes from its definition. Solitary confinement can mean various environments, such as special housing units, restrictive housing, supermax, administrative segregation, or correctional facilities (Hagan et al., 2018). It can generally be defined as isolation units for retaining inmates for between 22 and 24 hours a day with minimal contact with the other prisoners (Cloud et al., 2021; Hagan et al., 2018). Putting the inmates in these isolation cells restricts them from accessing and using personal belongings, correctional programs, or any other time outside the cell for personal hygiene. Placing some inmates in solitary confinement is to intensify their punishment, perhaps because they are problematic when kept with other prisoners. Data indicates that every year, 18% and 20% of jail inmates and prisons experience solitary confinement in the US (Hagan et al., 2018). Thus, there is a considerable number of inmates who end up being in these confined cells, thereby posing concerns about their welfare and well-being when in correctional facilities.

The use of solitary confinement is an emulation of the past. Prison is an example of the institutions in society that have retained

their similarity from the 19th century (Haney, 2003). Most of the prisoners have been housed in facilities built more than half a century ago, which implies that they are likely confined in the way they used to be in the past. The practice of solitary confinement in the US started in the early 19th century, specifically in the 1820s (Cockrell, 2013). Initially, there were only two prisons, one in New York and another in Pennsylvania. Although isolating prisoners became widely used in Europe and America, it quickly became oldfashioned. In the early times, solitary confinement was considered cruel to the inmates (Cockrell, 2013). There started to be a sharp decline in the use of these solitary cells by the 1860s, and it would be expected to vanish in Europe and the US (Cockrell, 2013). Nonetheless, a new phase of solitary cells emerged in the 1980s, with approximately 60 solitary prisons that hold almost 20 000 prisoners in the US (Cockrell, 2013). This confirms that the currently witnessed solitary confinement in the US originates from the early 19th century.

Despite the increasing use of confinement cells, it remains detrimental to the health and welfare of the prisoners. According to Ahalt et al. (2017), inmates sleep, eat, and use the toilet inside the cells. Additionally, these confinements usually do not receive natural light. They are equipped with a bed, toilet, sink, and all the other possessions of the inmate (Ahalt et al., 2017). It is deducible from this description that solitary confinements deprive an individual of social interactions and an open space. The confinement cells are usually used for temporarily holding refractory or violent prisoners under the authorization of the controller, governor, or the officer in charge (Coid et al., 2003). Initially, the purpose of solitary cells in the US was to rehabilitate the inmates (Shen, 2019). The cells offered the best services

through which the prisoners could maintain silence and restrain them from being tempered by their fellows.

Other reasons also exist for the continued use of isolation cells in the US. The first purpose of these confinements was disciplinary segregation. Disciplinary segregation was used when inmates violated rules guiding prions (Shen, 2019). Nonetheless, there are legal limitations to the kind of discipline that prisons administer to the inmates. For example, most prisons are required to give due process rights to inmates who are charged with misconduct (Shen, 2019). Prisoners can also be subjected to disciplinary segregation when they become disruptive to deprive them of social interaction for a considerable time (Haney et al., 2020). In the 1790s, prison officials were required to seek approval from a board of external oversight to administer solitary confinement for more than two days (Vines, 2022). Another justification for the use of isolation cells was for protective custody. This is where the inmates are confined to give them safety, especially those believed to be under threat from the prison's general population (Shen, 2019). Lastly, the confinement was also for administrative purposes. This is where a prisoner could be removed from the overall population because their presence threatened self, property, staff, and other inmates (Shen, 2019). Most commonly, the prisoners who witnessed the administrative segregation are those with mental illness who find it challenging to conform to the prison's regulations (Andersen et al., 2000). However, an issue arises when mentally ill prisoners are disproportionately put into solitary confinement because of their conditions rather than finding help.

Amid the justifications for its use, solitary confinement has faced various oppositions. Various legal challenges have been put against the isolation cells because they pose a psychological threat to the inmates (Grassian, 1983). Sometimes, the prisons do not have sufficient mental health facilities, forcing them to use isolation cells as rehabilitation centers for inmates with mental issues (Coid et al., 2003). The challenges that prisoners faced in these confinements started in the 19<sup>th</sup> century. For example, various cases of physical mortality and morbidity in the isolation cells were reported in the 1830s (Grassian, 1983). Therefore, the continued persistence of those cases makes the confinements inappropriate for the health and well-being of the prisoners. Indeed, the constitution also does not allow unusual and cruel punishment of inmates (Vines, 2022). Reports indicate that solitary confinement is disruptive and too violent for prisoners (Mears et al., 2021). Evidently, it is imperative to investigate the topic of solitary confinement to ensure that prisoners also have their human rights preserved. The purpose of this paper is to explore the effects that solitary confinement has on prisoners and what society can do to minimize the intensity of its effects.

# **Effects of Solitary Confinement on Prisoners**

An investigation of the solitary confinement effects on prisoners presents various commonalities, differences, and nuances across the various publications. The commonality across the articles indicates that solitary confinement interferes with the social connectedness of the prisoners, which is one of the basic human rights. Evolutionarily, humans differ from other species since they depend on social living (Shen, 2019). Through social interaction, individuals can learn by observation, navigate complex hierarchies, experience effective cultural development, and attain social norms. Furthermore, Ahalt et al. (2017) stated that when individuals are isolated from social interaction, they tend to develop negative attitudes and hypersensitivity, withdraw from others, and

experience depression and emotional breakdowns. From this commonality in literature, it is deducible that putting prisoners in solitary cells deprives them of their social lives, derailing them from achieving the purpose for which they were taken to prison – for correction and rehabilitation.

The nuances that emerge from the literature is that the social segregation of prisoners in isolation cells develops other psychological conditions. Andersen et al. (2000) reported that psychiatric disorders among prisoners in solitary cells were 28%, while those in non-solitary confinement were 15%. Apparently, confining the inmates in solitary cells deprives them of social interactions, hence the increased psychiatric issues. Similarly, an interview with inmates in Massachusetts solitary confinement in 1983 revealed that most of them experienced paranoid ideation, perceptual distortions, and difficulties with memory (Hagan et al., 2018). These psychological effects of confining the prisoners in isolation also advance into other serious physical conditions. Halvorsen (2017), for example, reported that inmates in solitary confinement experience stimuli oversensitivity, severe headaches, and weight loss. It is then possible to state that various studies complement each other regarding how people experience different challenges in various solitary confinements.

Common differences also emerge in the literature on how confining inmates in solitude affects their well-being. According to Shen (2019), many relationships on the effect sizes of solitary cells exist depending on the populations. An example is the finding that stronger social interactions can decrease mortality risks by 50% in prisons (Shen, 2019). Apparently, social isolation promotes glucocorticoid hormone secretions that further cause changes in the concentration of cortisol. As a result, humans experiencing such changes risk experiencing psychological and physiological

impacts. However, another study presents a different viewpoint on social isolation's effect on individuals. Specifically, Hagan et al. (2018) found that 40% of individuals linked to primary mental care had a history of being in solitary confinement during their most recent incarceration. Albeit the difference in the approach to explaining the effects of solitary isolation on the prisoners, some similarity still exists. There is an indisputable relationship between being in isolation cells and developing mental health issues.

## **Thematic Analysis**

The research question that guides this thematic analysis is: What are the consequences of solitary confinement on prisoners?

# Overall Psychiatric Effects of Solitary Confinement

There is a unanimous agreement in the literature that solitary confinement psychologically impacts prisoners. Through a national survey, Vines (2022) revealed that a combination of uninterrupted solitary confinement and capital punishment imposes deep psychological trauma on prisoners. Another survey by Coid et al. (2003) indicated that women and men in confinement cells had been admitted for psychiatric treatment. These two sources conclude that putting an individual in isolation cells significantly impacts the prisoners' development and advancement of psychological issues.

Explanations exist for the development of psychological trauma for those in solitary confinement. Bennion (2015) reported that specialized cells expose inmates to prolonged stress. Such individuals stand a risk of developing psychiatric deterioration. Coid et al. (2003)'s survey further showed that prisoners who have been put in solitary cell conditions reported suicidal tendencies, mental disorders, and histories of deliberate self-injury. For

instance, a third of patients with schizophrenia reported that they had been put under solitary confinement (Coid et al., 2003). This shows some correlation between isolation in solitude and the development of mental health issues. Furthermore, Knowles (2004) presented an authentic example of Sam Mandez, who, in 1996, developed psychiatric issues after being incarcerated in Colorado. At age nineteen, Mandez was mentally sounded before being subjected to a controversial conviction, where jurors later confirmed that he might have been innocent. After sixteen years of solitary isolation, Mandez developed various mental issues such as schizoaffective disorder, schizophrenia, and depression (Andersen et al., 2000). What might have advanced Mandez's condition is that he could be innocent when convicted and later put into solitary isolation.

Once someone is in isolation, they are disconnected from social interaction. Therefore, Mandez might have been willing to share his plight with anyone but could not because of solitary confinement. The depressive environment that the isolation subjected him to could have been responsible for developing the various psychological issues. Mandez's experience in solitary confinement can further be explained using results from a longitudinal study by Chadick et al. (2018). According to Chadick et al. (2018), segregated inmates have higher risks of developing depression, anxiety, somatoform complaints, and post-traumatic disorder. It is then explicable that once someone is confined in solitude, they become exposed to a depressive environment from where they undergo or experience other psychiatric conditions.

## Perceptual Changes

Perceptual changes are a common theme that emerges as an effect of solitary confinement on prisoners. The change in perceptions is a psychological problem that emerges as someone gets confined and is characterized by hyperresponsivity to stimuli from the external environment (Grassian, 1983). Perceptual changes can also manifest when someone becomes highly sensitive to noise or water rushing through the pipes, complaining that such movements are so loud (Grassian, 1983). When such individuals get out of the correctional facilities, the situation worsens, and how they interact with the people around them also becomes different.

Essentially, the use of confinement in solitude is aimed at making correctional facilities to be safer. Nonetheless, their excessive use can cause high levels of disorder, especially when there is no counseling for individuals after coming out of the cells (Ahalt et al., 2017). Prisoners in most US states can be released from solitary confinement in dire situations directly to society (Ahalt et al., 2017). In the absence of transitional programming, the released individual is likely to have developed worsened perceptual changes that will also change how they operate in the community. Thus, the confinement cells affect the prisoners and society at large.

# Perceptual Distortions

Similar to perceptual changes, this theme also emerges as a deeper impact of solitary confinement. Research shows that most prisoners in restricted cells tend to develop distortions in their perceptions characterized by experiences of derealization and hallucination (Grassian, 1983). Some prisoners who were under confinement in the study by Grassian (1983) commented that they could hear voices in the form of whispers. Such voices often whispered frightening things to them while alone in the confinement cells. Grassian (1983) further elaborated that perceptual distortions in the form of hallucinations were common within the visual sphere, with reports that the walls of the cells were wavering. Likewise, Winters

(2018) also stated that people confined to small cells could persevere in an environment where their sensory experiences were completely distorted. Sometimes, those confinement cells were lined in a row and composed of metals, making them have extreme temperatures such as being too hot or cold. Such adverse environmental changes within the cells could have fueled and created an opportunity for the perceptual distortions to intensify.

The perceptual distortions also interfere with how the prisoners get managed in correctional facilities. For example, there is always minimal to no variation in smell and human touch (Winters, 2018). Therefore, whenever the prisoners are taken to restrained escorts, when there is an introduction of any smell, they feel overwhelmed and develop a sense of fear. In some instances, inmates develop powerful illusions that make the distorted perceptions more complex and personalized. (Grassian, 1983). An example is when the prisoners can come out with four trays for breakfast during their break time or do things that are weird than what is expected of them. Apparently, inmates must feel a sense of distress and pain over any form of symptom before complaining about it. In most instances, however, the prisoners will lose awareness of what is happening because of distorted perceptions (Haney, 2003). Thus, they become unable to express any discomfort or challenge during the time they interact with the prison officials or others during the breaks. Thus, distorted perceptions also prevent prison officials from identifying issues among prisoners.

# Disturbed Affection

Disturbed affection is another common issue with prisoners placed in confined cells. Grassian (1983) indicated that most prisoners from the confinements of solitude report free-floating anxiety in addition to recurrent diaphoresis, panic, tachycardia, and dread of impending death episodes. This kind of ordeal interferes with the affections of the individuals. Other common psychological conditions in solitary isolation that affect particular affection include mood and personality disorders (Halvorsen, 2017). With interfered personalities and moods, the inmates in solitary cells find it challenging to converse with their loved ones seamlessly. They lose the affection that they might have preserved for people they have been considering to be close to them.

Another explanation for the interrupted affection is that when someone is isolated for a long time, they tend to be socially withdrawn (Haney, 2003). Likewise, Ahalt et al. (2017) further demonstrated that the derivation of reasonable social interaction and contact could result in trauma. In such instances, they become more attached to themselves than others, hence the feeling of no need to be affectionate to anyone. Sometimes, the isolation is so intense that some inmates feel detached from their family members. The solitary confinements have strict rules regarding visits, the use of phones, and other privileges (Winters, 2018). Such restrictions continue to distance individuals from those who can offer them social support. When they get used to the situation, it becomes challenging for the prisoners to regain their affection.

## Disturbances in Thought Content

Solitary cells also affect prisoners by making their thought contents disturbed. Grassian (1983) reported that some prisoners in solitude experience primitive fantasies of aggression, such as torture, revenge, and mutilation of the prison wardens or guards. Some of those fantasies are uncontrollable and so intense. Coid et al. (2003) further explained that spatial restrictions in solitary cells relate to victimization in their daily lives. A prisoner commented, "I have

lost my trust in people" (Tayer et al., 2021). Under normal circumstances, people always have one person whom they can trust. However, they find it challenging to reunite with others when they are put in confinement. This makes them have their thought contents changed. Indeed, research shows that almost all prisoners in solitary cells have experienced at least intrusive thoughts or ruminations, which is also an extensive hypersensitivity to the stimuli coming from the external environment (Haney, 2003). Therefore, how such individuals think has changed, and there is nothing much that can be done to change them.

## Impulse Control Challenges

Cases of impulse control have been reported among prisoners in solitary confinement. Grassian (1983) reported that prisoners in confinement cells have admitted that they have experienced instances of inability to control their impulses during random violence. It is also reported that even in those corrective facilities where there are programs for impulse control, prisoners did not show any improvement (Campagna et al., 2019). The challenge is that in case of violence involving a prisoner, there are chances that they also participated in creating that tussle. Therefore, it becomes challenging for them to control themselves (Haney, 2003). Some of the prisoners also demonstrate extreme levels of anger where they feel like they want to destroy the legal system, which they deem unfair (Tayer et al., 2021). Interestingly, such extreme emotions are retainable, and the prisoners can still experience them even months after they are released. Halvorsen (2017) presented a case study with the story of Nikko Jenkins, a mentally challenged inmate in Nebraska. The individual has most of his sentence time in solitary confinement. Weeks after his release, Nikko gruesomely committed four murders (Halvorsen, 2017). It is then justifiable that an individual can experience impulse control challenges even several times after they have come out of the solitary cells.

### Physical Harm

In addition to the psychological effects of solitary confinement on prisoners, cases of physical harm are also common. For example, Beebe et al. (2020) reported that prolonged stay in confinement cells could cause physical harm to someone's body. This can be an escalation of psychiatric conditions that advance into self-harm or other physical conditions, such as headaches emanating from the condition of the cells. Additionally, evidence indicates that prisoners tend to involve themselves in self-harming and dangerous activities that can be fatal (Kaba et al., 2014). It is deduced from this finding that if an individual develops ideations of self-harm and is confined, it can be easy for them to achieve their acts because there is no person to share their disturbances with. In 2019, cases of death were recorded in Virginia, where the Fourth Circuit addressed the issue of confining inmates for more than 23 hours a day with no reasonable breaks (Vines, 2022). Albeit the unclarity on the possible cause of the death, it is concludable that it might have resulted from cases of self-harm or other conditions in the cells. Cockrell (2013) reported many instances where inmates in solitary confinement get severe headaches. In some cases, such as in Kansas, hidden criminal justice systems within the prison come up with more punitive measures for handling their inmates (Sakoda & Simes, 2021). Thus, getting help becomes challenging in extreme headaches since there is no concern for the prisoner's wellbeing.

There are also other health complications that inmates in solitary cells can develop. The confinement cells create a situation where persistent hypertension can develop (Williams et al., 2019).

Prolonged stay in solitary confinements also causes other neurological complications (Bennion, 2015). If the punitive measures are heightened, watching what happens with the inmates will be impossible, hence the chances of physical harm.

### **Topic Analysis**

After exploring the effects solitary confinement has on prisoners, the position is that it should be abolished. Evidently, solitary confinement only has negative mental and physical health implications for the inmates. Thus, there are various ways society can respond to the issue of solitary confinement.

It is necessary to abolish solitary confinement, but society can also ensure that there is artificial intelligence (AI) to monitor the lives of inmates. Evidence indicates that some secret legal systems in prisons heighten the kind of punishment the inmates receive beyond what the law requires (Tayer et al., 2021). Therefore, the best way to ensure that solitary confinement is completely abolished and never used is to install AI to monitor prisoners' activities. Indeed, Shen (2019) stated that solitary confinement creates an opportunity to embrace the use of AI. Various activities in the corrective facilities require keen monitoring to ensure that human rights are equally preserved, even in incarcerated people.

A probable reason for putting inmates in confinement is mental health issues, which might make them hostile to the other prison population. Nonetheless, such psychiatric conditions advance with time, and early monitoring can help prevent the worsening of the situation. Cloud et al. (2021) revealed that increased clinical services could be used to prevent the escalations of mental health issues among prisoners. Paradoxically, the proportion of individuals with mental health issues is higher among

those in solitary confinements than among the general population (Mears et al., 2021). This justifies the proposition that it is possible to abolish solitary cells and establish an effective monitoring system, AI, to help identify those with conditions earlier and subject them to earlier clinical interventions.

Society can also consider legal reforms to eliminate solitary confinement and find better ways of managing prisoners. Part of the US Constitution's Eighth Amendment condemns excessive and cruel punishments for anyone (Shen, 2019). Confinement violates the Eighth Amendment as it imposes cruel punishment on prisoners. To justify this, the Fourth Circuit, in May 2019, was the first court of appeal to prove that solitary confinement violates the Eighth Amendment (Beebe et al., 2020). Nonetheless, this only followed the death row in those confinement cells. The real situation in these cells is that inmates are housed in small rooms for more than 22 hours daily with limited social contact and access (Andersen et al., 2000). During confinement, the inmates cannot access medical or psychiatric care.

They are protecting prisoners from cruel punishments proceeds from the need to show everyone decency and maturity within society (Vines, 2022). This is something that solitary cells highly violate. Another instance was in 2005 when a group of prisoners in Ohio complained that solitary confinement violates the Eighth and the Fourteenth Amendments (Shen, 2019). Currently, the US is trying to get away from solitary confinement due to the increasing number of cases of deaths in the cells (Vines, 2022). However, the effectiveness of these legal reforms is questionable. There has been a decline in the use of solitary confinement since the 1860s (Cockrell, 2013). Therefore, even if some states drop the use of such confinement cells, there is a possibility that they will later be used in the future. Thus, an effective legal reform should

completely and unanimously abolish solitary confinement across all states.

Additionally, legislative and policy changes can help effectively abolish solitary confinement. The legislatures have been unconcerned with the condition of prisoners in solitary confinements until very recently. Specifically, the oversight of legislatures over confinement cells has almost been non-existent (Shen, 2019). It was only in 2018 when President Trump signed the "First Step Act," which sought to prohibit solitary confinement of juveniles (Shen, 2019). Between 2015 and 2019, the legislatures in Dakota also sought to limit their overreliance on solitary confinement (Cloud et al., 2021). These advances create opportunities legislators can use to fight to abolish such cruel punishments. Ahalt et al. (2017) recommend using an evidencebased approach in making legislative reforms for the use of solitary cells. The evidence to be used in such justifications is the data on the psychological and physical harm that confinement in solitude has caused to the prisoners and society at large.

Establishing an extensive mental health resource in corrective institutions seeking legal and legislative reforms is also imperative. The units for solitary confinement should be held accountable for presenting extensive mental health care targeted at addressing the psychological pains inmates undergo (Haney, 2003). This calls for the establishment of the step-down and deescalation programs earlier enough before their release. It will ensure that there is a healthy transition from the correctional facilities to society without having to cause any form of harm to the individual and the community. Evidence indicates that solitary cells create an environment in which an individual gets mental distortion and can easily develop psychotic conditions (Cockrell, 2013). The implication is that releasing individuals directly into the

community without proper psychotherapy is likely to destroy further that person's life (Winters, 2018). Thus, it is necessary to have proper screening services for every individual before being released (Cloud et al., 2021). Achieving all these requires the effective involvement of mental health professionals who clears the prisoners under the condition that they are mentally sound and fit to get into society.

Partnering with professional organizations can also help get the required facts to facilitate the abolition of solitary cells. The America Psychological Association, as a professional organization, has rejected using solitary cells, terming them useless (Vines, 2022). Legal, mental health, corrections, and human rights organizations have also presented their recommendations on the reforms that need to be made regarding solitary confinement (Haney et al., 2020). The "North Dakota Department of Corrections and Rehabilitation" (ND DOCR) 2015 recruited staff that was well versed in helping the prisoners prepare for reentry into the community (Cloud et al., 2021). Another professional group that can be involved in seeking to make reforms in the legal system is neuroscience. The involvement of neuroscience can help diagnose and test every incarcerated individual's mental status (Lobel & Akil, 2018). Such diagnosis can help identify individuals with mental health, giving them specialized services before being put in solitary cells (Chadick et al., 2018). Thus, employing professionals is necessary to control how prisoners get handled before implementing the reforms to eliminate solitary confinement.

#### Conclusion

In conclusion, it is necessary to abolish solitary confinement. This follows from the adverse effects that it has on the prisoners. The available literature indicates how solitary cells emerged in the early

19<sup>th</sup> century, after which they were phased out and later returned in the 1860s. The same complaints have persisted over the years, but their use seems to intensify. This means that it is necessary to compare and contrast the effects of the punitive measure on the inmates and how the lack of using the confinement method affects the management of prisons. There are many similarities, nuances, and differences across the literature trying to explain some of the effects of solitary confinement on prisoners.

Despite the different ways the available publications present their facts, it is easy to deduce that they all agree that solitary confinement has adverse effects on prisoners. For instance, solitary cells act as a cruel punishment, which further heightens the development of trauma among prisoners. Other effects of the punitive measure in incarceration centers include perceptual changes, distortions of perceptions, disturbed affection, disturbed thought content, and challenges with controlling impulses. The nature of solitary confinement is that an individual gets put in a very small room that rarely receives natural light for an average of 22 hours a day. When such happens, the inmates tend to develop psychological complications. Interestingly, advancement of these conditions happens at high rates since no one is readily available for consultation or to share their challenges. The broken social contact intensifies the severity of the psychological effects that the prisoners get in the correction centers through the confinements.

Analysis of the available literature also confirms that solitary confinement can cause physical harm to inmates. In most cases, the psychological conditions advance to the physical manifestation. For example, individuals with poor impulse control can easily cause harm to themselves while in confinement or to others when released to society. Once an individual commits

murder after getting released from the correctional centers, there are chances that the public will be angered and might harm them. Nonetheless, the conditions in the solitary cells are also detrimental to the overall physical health of the inmates. There have been cases of extreme headaches or self-harm in confinement cells. All these challenges create an opportunity through which society can get involved in addressing the challenges that affect prisoners and the overall community in terms of abolishing solitary confinement.

The topical analysis of solitary confinement's effects on prisoners creates an opportunity for society to get involved. Society can consider creating AI to monitor the overall mental health of the inmates, have legal and legislative reforms, increase the mental health resources accessible by the prisoners, and collaborate with professional organizations. Essentially, the aim is to abolish solitary confinement. Nonetheless, it is a process to achieve zero use of solitary cells. Hence society must contribute and ensure that there are no adverse cases of prisoners dying in confinement cells. All these recommendations from the literature are feasible.

An evaluation of the literature used in this paper indicates that the facts presented herein are valid and dependable. The strength of the research articles used in the paper is that they can sufficiently answer the research question. Specifically, all the sources could contribute to the facts that explain solitary confinement's effects on prisoners. Additionally, the sources complemented each other. For example, an article could present information, then another elaborates on it to help further understand the point. Furthermore, all the articles used presented their facts based on research. Most of these publications were based on primary research, which means that the information contained therein is first-hand.

Nonetheless, the only weakness in the articles is that they tend to look only at the negative sides of solitary confinement without looking at its positive side. The publication that tried to address the necessity of solitary cells only stated that it helps manage prisons effectively. This is because some inmates with mental issues are uncontrollable and might not interact peacefully with others, hence have to be confined. Another case was to save the inmates from harm by another fellow. Nonetheless, there was an argument that despite the positive effects of solitary confinement on correctional facilities, it is highly detrimental to individual prisoners. However, there was no analysis of the possible reasons for an individual finding themselves in prisons. Understanding such information could be necessary for determining the process the prisoners should undergo before being taken to solitary cells.

There were various points of divergence and disagreement among the scholars. The most common disagreement is on the actual cause of the effects that confinement causes the individuals. Some scholars believe that social isolation escalates the psychological conditions among inmates, while others believe that preexisting conditions advance inmates' ordeals in the cells.

What is unknown about the research topic is the ability to confirm that an individual is guilty before being incarcerated and put in the confinement of solitude. There have been instances where the jury admits that the prisoner was innocent, but they are already in custody. The challenging thing is that there is no mention of when such cases have been retrieved. Inmates falsely prosecuted can develop psychological complications; hence putting them into solitary cells only worsens their situation. Perhaps, transitional programs when such prisoners are released could be necessary to ensure they do not retain lasting trauma.

The gap in the available literature explains why solitary confinement gained popularity and use in the 1860s. The available research explains that the US started to use solitary cells in the early 19th century then there was a decline in such systems. Later, solitary cells regained their use, and professionals and researchers again advocated for their abolition. Researching why the US regained its use of solitary confinement could help avoid situations where people have to return to the same system that is so detrimental to the prisoners.

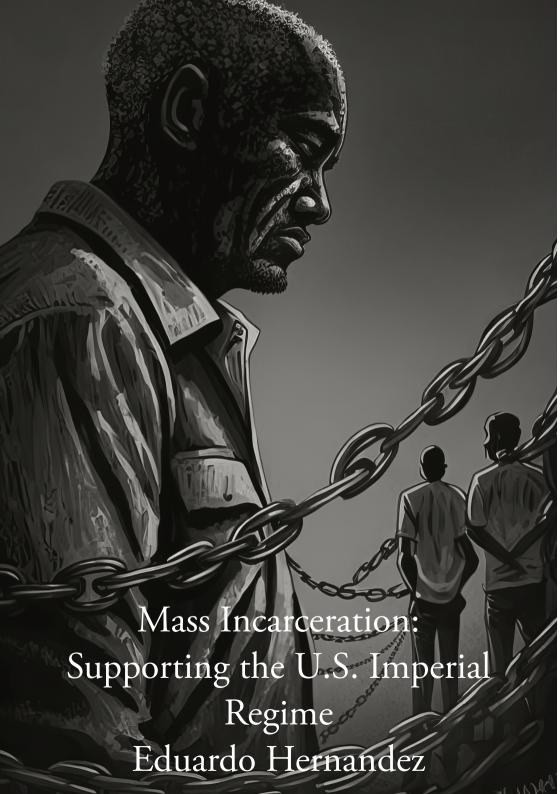
The recommended next step in the research is investigating the positive effects of solitary confinement. This will help achieve an objective approach to whether solitary cells should be abolished or retained. It is also necessary to investigate why solitary cell use regained popularity in the 1860s after the earlier decline almost immediately after their adoption.

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In the late 20<sup>th</sup> century, the U.S. began implementing "tough on crime" policies that contributed to the mass incarceration of people of color, immigrants, and the poor. Currently, the United States holds the highest incarceration rate in the world, "...where approximately 2.2 million people are locked up with an additional 4.6 million people on probation or parole" (Mauer, 2018, para. 6). This paper will examine a fundamental issue with incarceration in the US: private interest groups and companies profit off the prison labor system.\*

There is a basic structure to the cycles of incarceration in the United States: the exploitation of the marginalized groups results in the criminalization of poverty which legitimizes hyperpolicing of vulnerable communities resulting in racialized mass incarceration. Throughout the cycle, monied interested benefit, and as mass incarceration grew, the Prison Industrial Complex began to take shape.

The U.S. military establishment, by virtue of its inherent perpetual drive to conquer, sought means to attract and influence civilian entities within the U.S. government by establishing a mutual relationship with private prisons. This relationship was driven based on the economic theory of capitalism, which in turn, developed into what became known as the Military Industrial Complex.

I will demonstrate, through a macro level perspective, how these two phenomena intersect with each other. And in so doing, I will be analyzing the origins behind mass incarceration by

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<sup>\*</sup> Thank you to Professor Lobo. An early version of this work was submitted as a paper for his course, CJ 300: Criminal Justice: A Cross-Disciplinary Perspective.

describing "how that makes the US criminal justice system exceptional compared to other industrialized nations" (de la Tierra, 2022). As such, I will address how the criminal justice system is impacted by The Military Industrial Complex, The Prison Industrial Complex, and mass incarceration.

First, a parallel can be drawn between enabling institutions of power like the U.S. military establishment to be operating alongside the Military Industrial Complex. A domestic military operation—the Prison Industrial Complex being subsidized by the U.S. military—has contributed towards the systematic exploitation and oppression of the prison population—largely comprised of people of color and the poor—from the profits accumulated by prison labor. As incarceration rates increased, private prisons and jail administrators engaged with defense contractors corporations by virtue of a unique business opportunity presented before them. In his 1961 farewell address, U.S. President Eisenhower precisely warned against the corruptible nature of the U.S. military establishment by guarding "against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex". As such, the United States achieved its formidable influence as an imperialistic regime on planet Earth.

Next, when referring to the term, "Prison Industrial Complex", scholars and activists have an overwhelming consensus in describing the relationship between the U.S. government and its carceral state sustained by its criminal justice system. According to the international movement, "Critical Resistance", the Prison Industrial Complex is a term used to describe the "overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems" (Potter, 2020, para. 1). Within the numerous criminal justice systems, the country holds "almost 2 million

people in 1,566 state prisons, 102 federal prisons, 2,850 local jails, 1,510 juvenile correctional facilities, 186 immigration detention facilities, and 82 Indian country jails" (Sawyer & Wagner, 2023, para. 2). Presently, the U.S. maintains the highest incarceration rate in the nation, holding about 25% of the world's prison population in the United States. Some of the unintended consequences of mass incarceration have been condoned as a civil rights issue among social justice leaders on the grounds of high recidivism rates, the exploitation of prison wage labor, and the overcriminalization of normal behavior, such as poverty.

Secondly, Albert De la Tierra's article "Settler Colonial Governance and the Impossibility of a "Good Cop" demonstrated how the United States, historically, has been the most significant example of settler colonialism: "Australia and Canada are wellknown examples of settler colonial states, but the United States is the quintessence of settler colonialism" (Hixson, 2013, p. 1 as cited by de la Tierra, 2022, p. 173). Under the aegis of "manifest destiny", the idea of expanding "democracy" and "capitalism" across the North American continent because it was destined by God, the US engaged in settler colonialism by acting as the "violent external invaders to exploit land, labor, and resources and then stay" (de la Tierra, 2022, p. 173). The widespread belief by settlers in expanding towards the western territories is perceived by the country's founding principles known as American exceptionalism. This example highlighted how the colonist's actions against a tyrannical government in the late 18th century beginning with The Revolutionary War irreparably transformed the United States from its early days as a settler colonial society into the metastasized version we see today, as a formidable imperialistic nation, thereby permeating into the fabric of society; fear, oppression, and racism through its subsequent discriminatory policies that enabled mass incarceration.

Thirdly, the Prison Industrial Complex can also be extended to operate with the Military Industrial Complex. A rudimentary explanation behind the Military Industrial Complex is required before advancing further theories and connecting concepts together. Delivered in a farewell address to the American people from the Oval Office on January 17, 1961, President Dwight D. Eisenhower first coined the phrase "Military Industrial Complex" as a heed to the nation against the military establishment from the "acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex" (National Archives Web Team, Dec 2022, para. 1). Described as a United States corporation, "FPI" was created as a prison labor program designed for inmates incarcerated for federal offenses, whereby the unofficial phrase used to illustrate the symbiotic relationship between government agencies—namely the Federal Prison Industries, Inc. (FPI), doing business as UNICOR—and the Department of Defense, "where a conglomeration of a total of 27 different entities exist within the department" (Garamone, 2022, para. 9) will be referenced hereinafter. According to the Federal Bureau of Prisons website, "UNICOR is the trade name for Federal Prison Industries (FPI): a wholly owned, self-sustaining government corporation that sells market-priced services and quality goods made by inmates" (Federal Bureau of Prisons, para. 1). By establishing the correlation between private prisons and the federal government under "UNICOR", the merits of this paper are substantiated.

An overview of UNICOR reveals 83 prison factories across the country are currently in operation, where more than 12,000 inmates earn an hourly wage between 23 cents to \$1.15 per hour (Berkely Review at Berkeley, 2020, para 1). While not an

exhaustive list, the items listed herein demonstrate how heavily implicated the Prison Industrial Complex is involved in sustaining a domestic military operation, where according to Flounders (2011), inmates are tasked to manufacture: "high-tech electronic components for Patriot Advanced Capability 3 missiles, launchers for TOW (Tube-launched, Optically tracked, Wire-guided) antitank missiles, and other guided missile systems" (Flounders, 2011, para. 1).

Through its prison labor program, this U.S. government corporation (UNICOR) earned nearly half a billion dollars in net sales annually. Despite the social welfare and public health problems arising from inmates being subjected to slave-like conditions while incarcerated, prison labor programs are a constitutionally protected activity under the U.S. Constitution. Section one of the Thirteenth Amendment reads: "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" (National Archives, May 2022, para. 3). For our purposes, UNICOR is recognized not only by the 13th Amendment, but operates in accordance with federal law pursuant to Title 28 § 345.10 of the Code of Federal Regulations, which provides physically able inmates, who are not a security risk, or health adverse, meaningful work for inmates confined in a federal institution (Department of Justice, 28 CFR 345.10). As such, prison inmates or "the duly convicted" do not have "a constitutional right to be free of forced servitude" (Benns, 2021, para 14).

Moreover, the ongoing severity of problems associated with private prisons and their contractual agreements with the Department of Defense, for the procurement of military surplus goods in exchange for the cheap labor costs associated from inmate labor, serves as a testament to the broader societal forces being shaped by prisons today. Notwithstanding the sentiments expressed by prisoners who favor being employed by prisons, where "the majority of incarcerated people wish to be productive while in prison. They want, and often need, to earn money to send home to loved ones and pay for basic necessities while incarcerated" (ACLU, 2022, para. 20). Of course, as the old adage goes, "Idle hands are the devil's workshop" (Taylor, The Living Bible, Proverbs 16:27) cautions against the consequences of being unproductive or lazy. These sentiments, however, appeal to a smaller audience, [prisoners] whose beliefs are presented as fallacious, at best. While it may be righteous or even admirable that certain segments of the incarcerated population would "like to work"—regardless of the underlying problems associated with poor working conditions, that enjoy no protection from labor laws—this should not negate the overwhelming broader concerns occurring within prison labor which provide "no union protection, overtime pay, vacation days, pensions, benefits, health and safety protection or Social Security withholding for its inmates" (Flounders, 2016, para. 30). The unfortunate reality behind these prisoner work programs contracted through UNICOR, particularly in Angola, illustrate how prison labor practices today have remained unchanged, but rather enabled the "mass incarceration of African Americans which only replaced slave labor with prison labor" (Selby, 2021).

Despite abolishing chattel slavery in 1865— "the enslaving and owning of human beings and their offspring as property", (Dictionary.com, 2023)— an examination into Louisiana State Penitentiary presented a fundamental flaw of the criminal justice system whereby, prison wage labor became an extension of slave labor in the 21st century. Known as "The Angola Plantation", which

was named after the former slave plantation that occupied the territory, 5,300 prisoners are serving their sentences on farmland spanning 18,000 acres and often alluded to as modern-day slavery. Accordingly, the quality-of-life conditions are reported to be very much akin to slavery and are substantiated from the findings based on the article on the Angola Plantation written by Daniele Selby (2021)—a Digital Content Strategist from the Innocence Project:

Prisoners incarcerated at Angola are paid a few cents an hour to work the same fields, picking cotton, corn, and more, from the same land slaves were forced to work 200 years ago, which essentially became a place where slavery never ended (para. 11)

Needless to say, the evolution of slavery into mass incarceration evidently occurs among the *eligible* prisoners being forced to work for prison labor programs contracted through the UNICOR corporation. Now that a basic understanding of both the Prison Industrial Complex and the Military Industrial Complex has been achieved, a further inquiry can now examine how these two independent concepts intersect with each other.

Private corporations such as Apple, Tesla, and Microsoft are but a few corporations that have a significant vested economic interest in profiting from the Prison Industrial Complex. The uniforms, supplies, and gear manufactured by inmates in prisons around the country are shipped to clothe, equip, and sustain the US military's efforts to occupy resource-rich lands for conflict minerals in the African continent. These ingredients are then shipped off to the manufacturing industry located on the Asian continent where current battery technology and devices used in products (iPhones, laptops, and video game consoles) are produced from minerals found in mining camps. From the outset, the military surplus manufactured from the hands of cheap prison labor

indirectly enabled the U.S. military's conflicts or engagements around the world. In describing "conflict minerals", Katalin Csatadi (2022) reports policymakers have defined the term "3TG"—Tantalum, Tin, Tungsten, and Gold—when referring to the ingredients used to build components of laptops and mobile phones (Csatadi, 2022, para. 3). Many international companies sourcing 3TG minerals have arguably done nothing to mitigate their efforts in the detection of smuggling, fraud, or conflict as, "evidence published by Global Witness in 2022 indicated that companies including Apple and Samsung have found up to 90% of minerals did not come from mines validated for security and human rights standards" (Csatadi, 2022, pg. 3).

Accordingly, the response provided by multibillion-dollar tech companies like Apple and Intel, when prompted to identify how their supply chains are affected regarding the mining of conflict minerals, amounts to an unsatisfactory explanation. As claimed in "The ITSCI Laundromat" by Global Witness (2022), "Apple and Intel have reportedly monitored their Rwanda supply chains since around 2011 and have been warned about the high risk of sourcing smuggled minerals but have seemingly applied few meaningful mitigation measures" (p. 11). This proves to be a sobering reminder of the inherent dangers behind the violence afflicting the African continent for its natural resources because conflict minerals are being mined to "influence and finance armed conflict, human rights abuses, and violence" (Earthworks, 2022, para. 1). From the exploitation of children being forced to endure abusive and demanding labor in the mining camps, from which human rights violations can be deduced, the ensuing aftermath of the manufacturing processes fuels the United States' punishment economy, capitalism, from the products sold to the public by Apple, Tesla, and Microsoft. As we are reminded behind the

impetus of employing the military under any circumstances, "the justification for the maintenance and employment of military force is in the political ends of the state" (Huntington, 1957, pg. 65). As such, the U.S. military establishment has always been a vehicle to advance the U.S. government's interests abroad through foreign policy, where under these circumstances, "American foreign policy since 1945 has primarily been driven by the goal of being hegemon of the world capitalist economic system" (Sullivan, 2000, para. 5).

Notwithstanding the fact, Congress hasn't declared war since 1945, the question behind the legitimacy of the authorizations into the U.S. militant occupation of the African continent is pertinent to addressing the fundamental flaw the United States holds as a "Settler-Colonial" state—whose objectives are rooted in its imperialistic desires to conquer as a regime. According to Turse (2022), the security situation in Western Africa has only worsened based on the occupation of U.S. forces into several African countries—Democratic Republic of Congo (DRC), Mauritania, Morocco, Senegal, and Somalia. A quietly released report published by the Pentagon demonstrates the "latest of evidence of systemic American military failures across the continent" (Turse, 2022, para. 1). The justification behind the U.S. occupation of the African continent points towards the enormous amount of wealth stowed in underground deposits found through the mining camps of Africa. As reported by Katie Brigham (2023) from CNBC, the African continent has "an estimated \$24 trillion in untapped mineral resources" (para. 1), however, broadening this scope is essential to understand the greater implications caused by the United States' invasion and colonization of foreign lands outside the African continent. The mining of conflict minerals is not exclusively found within the African continent, in fact, "Conflict minerals can be extracted at many different locations around the

world" (RMI, 2023, para. 2). This conveniently provides the U.S. military establishment with a moral and economic justification to engage in "international relations" by imposing unwarranted influence, yet again, to occupy foreign land, just as their predecessors accomplished during the 18<sup>th</sup> century with the end goal of sustaining the country's economic market of capitalism.

Furthermore, this connection undeniably links the Prison Industrial Complex operating alongside the Military Industrial Complex and further demonstrates how the U.S. Government engaged in a domestic military operation through the employment of law enforcement around the country. Historically as an institution, law enforcement has preyed on, exploited, and incarcerated minorities based on policies disproportionately targeted vulnerable communities of color based on seemingly normal behavior. Moreover, the minorities that have been incarcerated by law enforcement are subsequently subjected to harsh treatment while imprisoned. By illustrating this mutual relationship connecting the Military Industrial Complex with that of the Prison Industrial Complex, I will hereafter introduce and discuss how a macro level lens is operating in the article on how these systems of power are perpetuating systemic inequalities in the United States, and in doing so, elaborate on further criticisms of this phenomenon.

Next, a macro level of analysis which according to Barlow and Kauzlarich (2010) are:

Some theories deal mainly with large-scale social patterns such as social change or the social, economic, and political organization of society. Crime is viewed as a property of whole groups of people rather than as a property of individuals. Because they focus on how societies are

organized, these theories usually relate crime to social structure (p. 6)

History will demonstrate policing in the United States constructed animosity and hatred among racial groups exclusively occurring in a particular city or region. Evidenced in post-Civil War during the Jim Crow era, racial tensions were exacerbated between civilians and law enforcement which can be attributed towards the discrimination and segregation enforced and perpetuated by local police agencies. As such, under a macro level of analysis, the nexus between the US government and law enforcement is evidenced when crime is observed as a property of whole groups. Consequently, this results in the systematic targeting of vulnerable populations using police dragnets combined with the subsequent incarceration of minorities in certain geographical regions of the U.S. to criminalize poverty, thereby oppressing minority populations.

Furthermore, mass incarceration has undoubtedly affected hundreds and thousands of people across marginalized neighborhoods and communities in the United States. One example that can be attributed to this fact is the U.S. War on Drugs campaign authorized by the Nixon administration. The U.S. War on Drugs conveniently placed law enforcement around the country to be in, yet again, a position of unchecked authority to target and criminalize certain neighborhoods, with the expressed purpose of, criminalizing certain neighborhoods occupied by African American and Latin populations. This disproportionately affected people of color where according to The Sentencing Project, the result of these "tough on crime" policies have increased the prison population from "about 330,000 in 1972 has mushroomed to 2.2 million today" (Mauer, 2018, para. 6). More importantly, being incarcerated significantly places disadvantages unto an

individual's life, despite serving their debt to society. Flounders (2018) precisely described the consequences a newly released inmate faces in society as "lifelong discrimination to secure student loans, access to public housing, the right to vote, and the possibility of being hired for a job" (Flounders, 2018, para. 19). This demonstrated the US government's lack of forethought when enacting such punitive measures because it focused on short term strategies designed to remove the drug offenders from society based on the penological justifications of deterrence and incapacitation, resulting in a perpetuating cycle of punishing poverty through incarceration.

Additionally, for my last example, I will untangle a web of concepts inherently associated with the Prison Industrial Complex by addressing which factor is most prevalent to examine as a researcher from three issues: police, court, or incarceration. By doing so, I will emphasize policing. The factors leading to mass incarceration can be traced back to the police, as an institution, which has historically participated in racial profiling tactics and discrimination against minorities, where according to the Sentencing Project (2018), "African Americans are more likely to be arrested, convicted, and incarcerated than similarly situated white Americans" (para. 20). During the tough-on-crime era, in which disproportionate drug sentencing guidelines were enacted during the late 20th century, it wasn't a coincidence how the US government sought, targeted, and exploited the African American population and Latin(x) communities through mandatory minimum sentencing laws for non-violent offenses. Moreover, African Americans were disproportionately incarcerated at a significantly much higher rate for a considerable length of time as opposed to Whites.

In conclusion, the over-incarceration among people of color, immigrants, and the poor has significantly posed a systemic injustice throughout the past half-century. The fundamental flaw in the United States demonstrates how the Prison Industrial Complex is financed by the U.S. Defense Department (DOD) which represents a driving mechanism to bolster the country's punishment economy, capitalism. From an economic perspective, it's indicative of how the Department of Defense outsourced basic goods to the Prison Industry, hence the exploitation of a vulnerable population within the carceral state. By exploiting the prison population, mainly consisting of minorities, the US government's supremacy over its criminal justice system was sustained, in part by the military and defense industry represented as the Military Industrial Complex, to achieve its primary objective as an imperialistic nation "under God". The mass incarceration of minorities, immigrants, and the poor has allowed for a renewed sense of urgency in solving this dual phenomenon operating under this symbiotic relationship between The Prison Industrial Complex and the Military Industrial Complex.

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