Injustice at the Intersections: Race, Gender, Class, and Criminal Justice

Book · September 2024

CITATIONS
0

READS
1,524

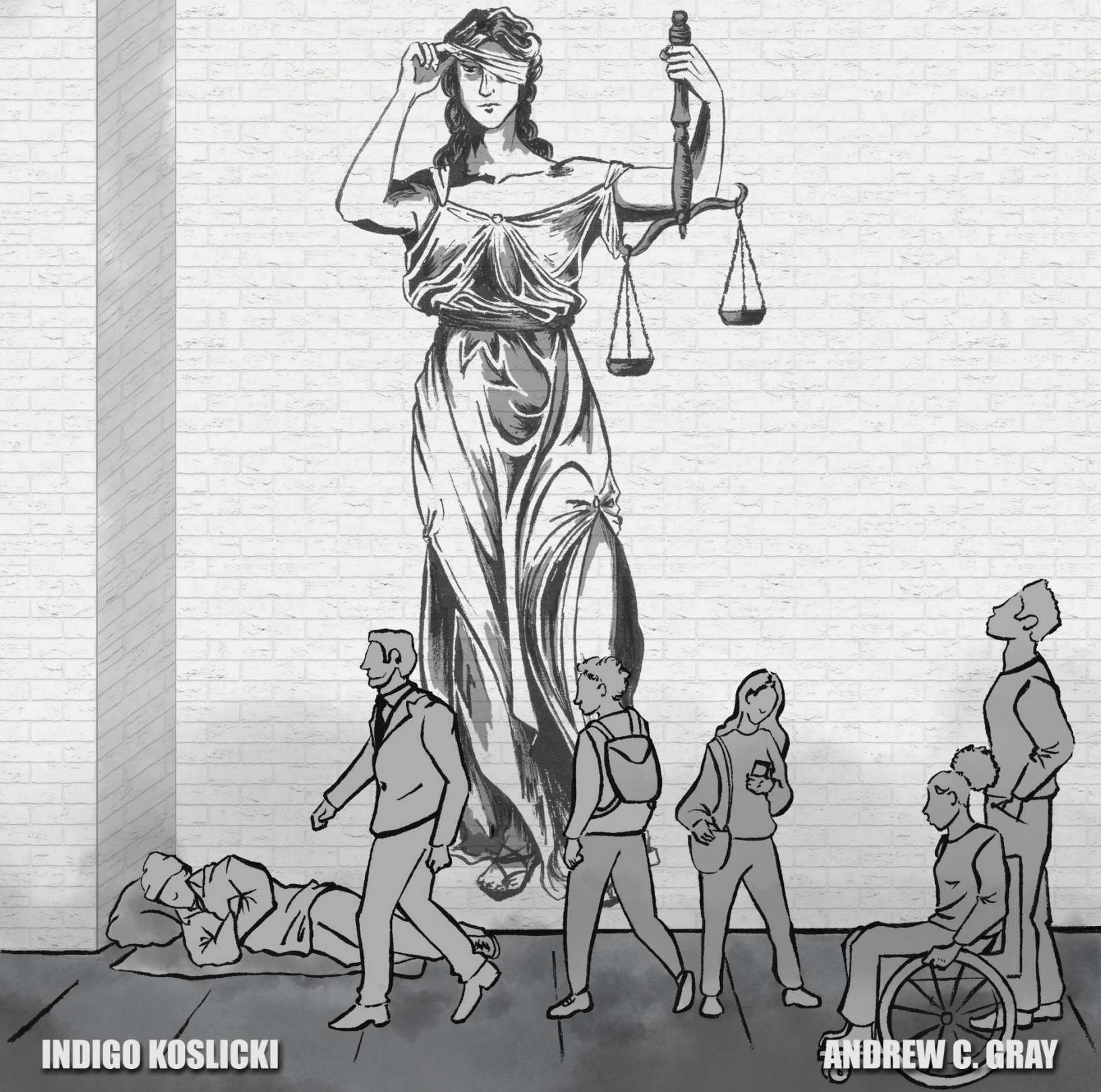
2 authors:

Indigo Koslicki
Ball State University
25 PUBLICATIONS **291** CITATIONS
SEE PROFILE

Andrew C. Gray
Ball State University
18 PUBLICATIONS **104** CITATIONS
SEE PROFILE

INJUSTICE AT THE INTERSECTIONS

RACE, GENDER, CLASS, AND CRIMINAL JUSTICE



INDIGO KOSLICKI

ANDREW C. GRAY

Injustice at the Intersections: Race, Gender, Class, and Criminal Justice

Cover art by Indigo Koslicki, 2024

Table of Contents

About this Open Textbook

This textbook is the culmination of several years of Dr. Koslicki's course material development for Ball State University's CJC 211 – Race, Gender, and Justice. After realizing that she essentially had a mini-textbook on her hands, she reached out to Dr. Gray to collaborate, and their powers combined created this open textbook. Thanks to the Textbook Affordability at Ball State (TABS) initiative, we were able to use our library's resources for copyright review, licensing, and more to educate ourselves on how to create an open and accessible resource that is the first of its kind.

One of the major issues with traditional textbooks on race, gender, class, and the criminal justice system is that laws, policies, data, court decisions, and events are always changing. While many rhythms of history repeat themselves, it's still important for textbooks to stay up to date, but in the traditional publishing world this means requiring students to go out and put down $80+ on the latest edition. In order to save costs, some faculty allow students to buy previous editions, but these quickly get outdated in an ever-changing landscape of legislation, politics, and institutional practices.

By publishing our textbook as an open textbook, our goal is to give students (and anyone who is interested) access to up-to-date information that is free and able to be regularly changed and updated by us, the authors, at no cost to the reader. Especially in an age of misinformation, biased reporting, unsourced social media claims, and political bans on books and subject matters in some states, we firmly believe that information about race, gender, class, and the criminal justice system should always be free and accessible.

For our readers

We've written this textbook with a 200-level (Sophomore) university audience in mind, and most of our students have taken an introductory criminal justice course. However, we've also made sure to revisit some of the basics of the criminal justice system in order to not leave any reader behind; we want this resource to be helpful to anyone who wants to learn more about U.S. criminal justice issues. We feel that some of the information we address really ought to be taught at the high school level (some of our students even express frustration that they wish they'd learned more about Native American history before university), but sadly even we didn't learn some of this information until we went on to get our PhDs. This needs to change, and this open textbook is a step towards bridging that historic and sociopolitical knowledge gap. We have bolded the terms and concepts that we believe are very important takeaways, though if you are a student, be sure to follow your instructor's recommendations and study guides, as applicable.

In order to be as transparent and informative as possible, we approach our references and citations a bit differently than a normal textbook. The open textbook format allows us to use

hyperlinks directly in our parenthetical citations, so you may always click on our citations to read more about the source. Even for sources where the full book or article is not available online, you will be able to see its full publication information just as you would for a traditional reference, but in many cases we were able to link to the full article so you can learn more beyond this textbook. We've found that many readers tend to gloss over the references section of most textbooks (we're guilty of this too sometimes), but when citations are hyperlinked, readers are more willing to see where information is sourced. Beyond peer-reviewed publications, academic books, and government reports, we try our best to stick to media sources that rate as the most fact-based and the least biased according to the Ad Fontes Media's Media Bias Chart and Media Bias Fact Check tools. We believe that it is more important than ever to combat misinformation and politicized rhetoric by using the most fact-based and evidence-based sources.

For Instructors

We decided to license this open textbook under a CC BY-NC-SA license, meaning that this open textbook may be "shared alike". This means that you are able to revise, edit, update, split up, etc. this textbook as you deem fit for your class goals and learning outcomes, as long as you attribute us, the authors, and do not sell derivative works commercially.

Even between the two of us, we choose different videos and media to show in class or use as assignments rather than incorporate into the weekly readings. The CC BY-NC-SA license means you can do the same thing that we do as needed: remove a documentary from this open textbook and instead watch it in class; replace a video clip with a story about your state's own legislation; change out a picture with a chart that aligns with your learning outcomes; bold and un-bold the terms that you would like; the opportunities are endless. We recommend that if you would like to do this, you copy over each chapter as a "page" on your learning management system (LMS) so you'll have the freedom to edit as needed.

Our goal is to update this open textbook regularly, so we would highly recommend checking back for updates rather than using the same downloaded copy every semester.

We are so glad you are using this resource either as a reader, instructor, or both! Please feel free to spread this resource far and wide, since education is the first step towards justice.

This page intentionally left blank

Chapter 1

Introduction to Race, Gender, Class, and the Criminal Justice System

Introduction

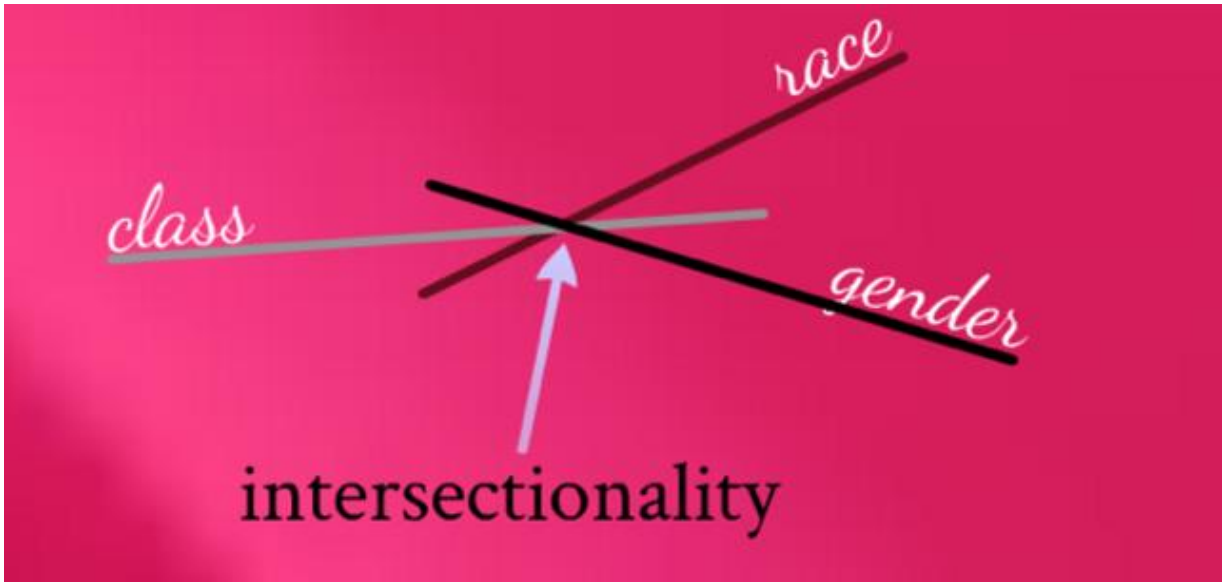
In this first chapter, we will focus on laying the groundwork and understanding of three major concepts – race, gender, and class – as well as how these concepts are interrelated. While the study of each one could be an academic major in and of itself, we really need to be able to have a working knowledge of the effect of all three in contributing to people's treatment within the U.S. criminal justice (CJ) system, as well as other important sociological outcomes and inequities (e.g. healthcare disparities, educational access, political representation, media representation, and a whole host of other non-criminal justice sociological aspects that all contribute to social and cultural constructions and definitions of racial, gender, and socioeconomic categories).

We don't need to tell you that these are all extraordinarily politicized subjects – these concepts themselves are politically constructed (at least in part)! It goes without saying that we will be delving into subjects, concepts, news stories, and histories that are politically fraught and may ruffle some feathers. We firmly believe that it's *good* to get some ruffled feathers in order to start questioning pre-existing assumptions and whether they are based on evidence or based on the assumptions/perceptions/worldviews that you've picked up from your family/peers/society and haven't been held up to the light of evidence yet. Your book authors are still going through that process, because keeping an open mind and learning outside of your own sphere of bias and influence is a life-long discipline.

That being said, the purpose of this text isn't to tell you who to vote for or to criticize political candidates for being who they are (*ad hominem* attacks). Rather, we present and sometimes criticize political figures' *policies* and the policy outcomes that have impacted some groups worse than others. This text cannot be apolitical (i.e., not talking about politics), bipartisan (i.e., finding a compromise between the two major U.S. political parties), or even politics-neutral (i.e., treating all policies as if they should be given equal consideration) while still faithfully addressing differences in policy outcomes and their impact on criminal justice system (CJS) inequities. However, it is *nonpartisan* in that it is not supporting any one political party; instead, this book relies on the principle of using evidence based in history as well as scientific/social science research to examine disparate policy outcomes (and hopefully solutions towards a more equitable society!).

Intersectionality

One of the primary concepts to kick off our introduction of terminology and to keep in mind as you go through the next few chapters is that of ***intersectionality***. The term "intersectionality" was first used by Kimberlé Crenshaw in a law essay titled, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies." In this paper, Crenshaw (1989) presents an argument that Black women in the U.S. face "double discrimination" in that they experience both sexism *and* racism at the same time, and that policy often falls short in accounting for such complexities. For instance, if a company hires White women and Black men are they violating antidiscrimination policies focused on gender or policies focused on race if they don't hire any Black women? Ultimately, then, intersectionality refers to the intersection of social categories that contribute to a person's differing experience within society (and within the criminal justice system), making their experience more unique and potentially more disadvantaged, depending on how society has historically treated (and currently treats) these different social categories. While this course is focusing primarily on race and ethnicity, gender, and class, other social categories include sexual orientation, disability, ancestry, immigration status, employment status, marital status, and more.



Intersectionality by Spaynton (2019)

Of course, we can't always propose and study policies that address these identities and statuses at once. However, examining these concepts and their outcomes through an intersectional lens is helpful in understanding how many factors contributing to marginalization and unequal treatment are interconnected. This in turn helps a variety of roles to do a variety of necessary things: policy-makers can propose policies that close discrimination loopholes; practitioners (police, corrections personnel, court personnel) can understand institutional practices that may disadvantage groups and can understand how to communicate with diverse groups with more cultural awareness; and researchers can conduct research studies that don't leave out

significant variables that could explain a great degree of unequal treatment. This optional link is a great resource for understanding intersectional justice more.

Defining Race, Gender, and Class

This brings us to the main meat of the first three chapters: defining and describing the social histories behind race (and ethnicity), gender (and sex and sexual orientation), and class. The next few chapters will take a deeper dive into the history of these groups' treatment in the US and the resulting US criminal justice system, but for now we'll just define these terms and explore what they mean.

Race & Ethnicity

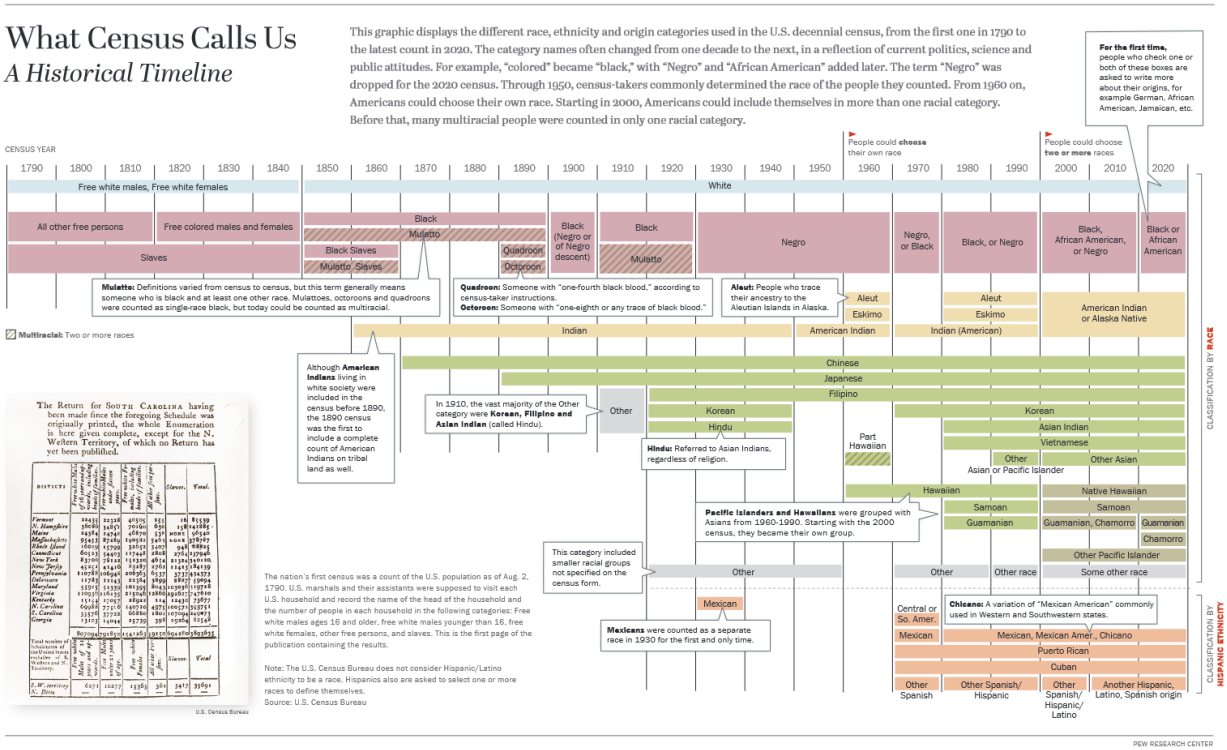
Race refers to a socially, politically, and economically constructed category of people with shared physical characteristics. What's meant by ***socially constructed***? This refers to the fact that concepts like race are created based on subjective sociocultural decisions, as opposed to an objective scientific metric. Why politically and economically in addition to socially constructed? Well, you'll see why throughout the week and throughout the course: one of the main reasons being that the racialization of people groups (particularly Black Americans and Indigenous Americans) have historically been tied to securing the economic and political advantage of White Americans (and White itself is a nuanced category that we'll get to in a bit). To be more specific, the involuntary enslavement of Black people during the transatlantic slave trade was for the economic purpose of exploiting a labor force for the Southern U.S. colonies' cotton, tobacco, and sugar cane plantations (Greenfield, 1997), and the colonization of Indigenous American lands was one of economic and politically legitimized expansion, as evidenced by the Indian Removal Act of 1830 (Thornton, 1998).

However, while racialization has been tied to social, economic, and political group power dynamics and the marginalization of minority groups by the political majority, these definitions can't be immediately abandoned, for two major reasons. Firstly, since racialized definitions have their roots in U.S. (and other nations') history, they are now an inseparable aspect of social consciousness, often informing implicit (and explicit) biases and stereotypes. As we'll explore throughout this summer session, these definitions are also inextricably tied to laws and policies of the criminal justice system, so we must understand and study racial disparities and inequities in order to constantly examine and reform the criminal justice system (both at the national/federal and local levels). Secondly, minority racial groups (such as Black Americans, Asian Americans, and Indigenous Americans) can find solidarity and support within their racial culture.

Ethnicity refers to shared cultural categories such shared geographic space (usually along national borders), language, heritage, cultural practices/communication/stories/cuisine, and

sometimes religion. For example, if someone is Vietnamese, their race is Asian and their ethnicity is Vietnamese.

These terms and their definitions are, however, very complex, and there are ongoing debates even today. For example, there was a great deal of debate before the 2020 U.S. Census as to whether to add a category for Middle Eastern or Northern African (MENA), and whether this should be considered a race or an ethnicity, and ultimately the 2020 Census did not include MENA as either category. An optional link that expands more into federal definitions and lived experiences of MENA people is here.

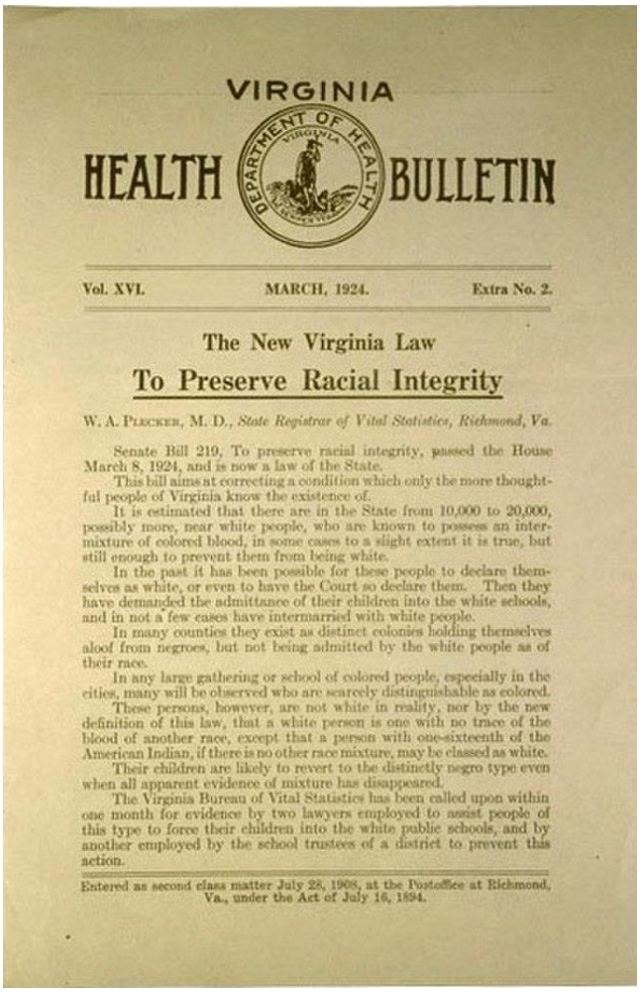


"What the Census Calls Us" by Pew Research Center, Washington, D.C. (2020) – Click to see the full size

The above chart by Pew Research Center (2020) is an excellent historical timeline that explores how racial and ethnic groups were defined by the U.S. Census and how these have been constructed by society and have changed over time (it's also an example of what *not* to call racial groups; see the Appendix for more). Particularly as it concerns Black Americans, you can see the political hierarchy that is ingrained into the definitions throughout the decades and with the White group being identified the same way decade after decade (though not all European immigrants were always considered White).

This timeline also shows that racial categorizations have been highly fluid over time. Early on, race was often viewed as a biological characteristic, and it was argued that certain racial groups were inferior to others based on these distinctions. These ideas led to America's preoccupation with the "one-drop" rule. For instance, only one hundred years ago, the Racial Integrity Act of

1924 was passed in Virginia, which declared that the “White” race only included persons with no trace of blood other than Caucasian in one’s ancestral lineage. However, one exception existed in this Act for persons with 1/16 or less Native American ancestry—they could still be considered White as an accommodation to Virginia elites who claimed to be descendants of Pocahontas (Library of Virginia, n.d.). While these ideas are now outdated and the terminology no longer acceptable, this timeline illustrates how the Census accounted for these “one-drop” distinctions with racial categorizations based on blood quantum (e.g., “Mulatto” - someone with both African/Black and other racial ancestry – and “Quadroon” - someone believed to have an ancestry that is ¼ African/Black).



VIRGINIA

HEALTH BULLETIN

Vol. XVI. MARCH, 1924. Extra No. 2.

The New Virginia Law

To Preserve Racial Integrity

W. A. Plecker, M. D., *State Registrar of Vital Statistics, Richmond, Va.*

Senate Bill 219, To preserve racial integrity, passed the House March 8, 1924, and is now a law of the State.

This bill aims at correcting a condition which only the more thoughtful people of Virginia know the existence of.

It is estimated that there are in the State from 10,000 to 20,000, possibly more, near white people, who are known to possess an intermixture of colored blood, in some cases to a slight extent it is true, but still enough to prevent them from being white.

In the past it has been possible for these people to declare themselves as white, or even to have the Court so declare them. Then they have demanded the admittance of their children into the white schools, and in not a few cases have intermarried with white people.

In many counties they exist as distinct colonies holding themselves aloof from negroes, but not being admitted by the white people as of their race.

In any large gathering or school of colored people, especially in the cities, many will be observed who are scarcely distinguishable as colored.

These persons, however, are not white in reality, nor by the new definition of this law, that a white person is one with no trace of the blood of another race, except that a person with one-sixteenth of the American Indian, if there is no other race mixture, may be classed as white.

Their children are likely to revert to the distinctly negro type even when all apparent evidence of mixture has disappeared.

The Virginia Bureau of Vital Statistics has been called upon within one month for evidence by two lawyers employed to assist people of this type to force their children into the white public schools, and by another employed by the school trustees of a district to prevent this action.

Entered as second class matter July 28, 1908, at the Postoffice at Richmond, Va., under the Act of July 16, 1894.

“Virginia Health Bulletin: The New Virginia Law to Preserve Racial Integrity, March 1924” by Document Bank of Virginia

Today, it is understood that the scientific racism of the past that emphasized these perceived biological/genetic distinctions between races that were argued to make Whites superior do not hold true. In fact, the Human Genome Project concluded in 2003 that humans share DNA that is 99.9% identical on average, that race does not have a genetic basis, and that more genetic variation exists within racial groups than between racial groups (Collins et al., 2003; Duello et al., 2021). As such, the National Human Genome Research Institute relies on definitions of race that also acknowledge the social and political foundations of these categories and how race was constructed to enforce a hierarchy that marginalizes some while providing privileges to other racial groups (These definitions can be found here).

One last concept in this category that's important to address is ***colorism,*** which refers to discrimination based on a person's skin tone, which can occur even within a single racial or ethnic group. While colorism can occur within a racial/ethnic group, often it can still be traced back to colonialism, where Western beauty standards influenced colonized groups to prefer more Western traits, such as lighter skin and eye color (this was also linked to better treatment by the White majority, especially if a minority racial/ethnic group was considered "White passing"). In non-colonized groups, colorism may still exist due to Western influences, or due to other cultural beliefs and practices. Colorism can also refer to discrimination from one group towards several others based on

assumptions of what the "outgroup"/targeted group looks like (for example, post-9/11, a lot of hate crimes not only targeted people of Middle Eastern descent, but also Indian descent because of ignorant assumptions about skin tone and religious practice).

Gender

Gender is sociologically constructed in that each society has a swarm of definitions of what it means to "act/behave/present like a man" or "act/behave/present like a woman"; this is separate from ***sex***, which refers to the genetic makeup of a human that mostly bifurcates into XX and XY chromosomes (though intersex people exist and are those who have chromosomal mutations that do not fall into this binary – e.g., XXY persons). A person whose gender identity corresponds with their sex assigned at birth is called ***cis-gender,*** while a person whose gender identity does not correspond with their sex assigned at birth is considered part of the trans* community (this asterisk [*] indicates that the term includes trans women, trans men, non-binary people, and other trans/non-binary/gender fluid identities). The reason for the term “sex assigned at birth” is not only due to a person being born as XX or XY, but also to recognize the practice of surgeons performing surgeries on intersex babies to assign them as one of two binary genders (this practice started based on a baseless theory in the 1960s and continues today, and is widely condemned by the LGBTQ community and some human rights groups) (Cohen, 2021; Human Rights Watch, 2017; Sundin, 2020). You may see the terms **AFAB** (assigned female at birth) or **AMAB** (assigned male at birth) used by a trans* or intersex person to describe the sex that was put on their birth certificate.

Sexual orientation refers to the gender and/or sex of the person that an individual is sexually attracted to. It can also refer to the *degree* of sexual attraction a person has, such as someone who is asexual or demisexual, though sometimes people in this community use the term *sexuality* to describe their presence/degree/absence of sexual attraction in order to differentiate from their romantic feelings, which could still align with common relationship orientations like being straight, gay/lesbian, bi-romantic, or pan-romantic (they may also identify as aromantic, meaning not feeling romantic attraction to any sex/gender).

While a whole lot more can be said about these categories in other classes, such as women's and gender studies, these are also important to examine in relation to the U.S. criminal justice system, given that women (particularly women of color) have faced historic disadvantages when it comes to representation within the criminal justice system as practitioners (judges, lawyers, police officers, etc.), have different patterns of criminal offending, and often face discriminatory treatment from the criminal justice system (Batton & Wright, 2019; Lorenz & Hayes, 2020). Trans people, especially trans women of color, are also very relevant to the criminal justice system given that transgender people are over 4x more likely to experience violent victimization than cisgender people are (Flores, et al., 2021), and trans women are disproportionately incarcerated compared to their general population (Lorenz & Hayes, 2020). Lastly, queer people overall have historically faced criminalization and discrimination in hiring within the CJ system. All of these groups and identities' experiences must therefore be

examined in conjunction with the CJ system, and in conjunction with other social identities (race and ethnicity) and statuses (socioeconomic status in particular).

Class/Socioeconomic Status

Socioeconomic status (SES) refers to socially-defined economic classes, though these definitions are very loose and need to be assessed through the lens of purchasing power rather than perception. For example, about half of U.S. adults identify themselves as "middle-class", but income inequality and wage stagnation (compensation not keeping up with worker productivity/output) paint a different picture, showing a stalling middle class rather than healthy growth (Mishel et al., 2015; Gallup, 2022). Economic growth is generally measured in terms of gross domestic product (GDP) (a term used for the total production value) and employment rate, but average households still feel the pinch of wages that aren't keeping up with the prices of goods and services (such as groceries and housing), which can be increased by private companies for many different reasons (Bhattarai & Stein, 2024) or by reciprocal tariffs imposed by other countries in retaliation against over-broad U.S. tariffs (Hersh & Bivens, 2025).

Even when perception is taken out of the equation, a lot of class metrics are sorely in need of updating. For example, the federal poverty guidelines for 2024 consider an annual salary of $15,060 or lower to be the poverty level for a single person (HHS, 2024); however, the national average asking cost of rent is now $1,900 a month ($844 in Indiana) (World Population Review, 2024) and the average grocery cost for a single adult (19 and older) is a minimum of $257.10 a month (USDA, 2024), meaning anyone making less than $25,885 annually will be homeless before the end of the year (the average Indiana renter barely makes things work under the federal poverty guideline, but that's not counting other expenses like utilities, internet, transportation, or clothing). These costs are averaged across the United States, but you can start to get a sense of how SES has a rather shaky definition that can be pretty unhelpful when it comes to policy.

Some scholars use ***concentrated disadvantage*** as a more meaningful social measure when assessing factors that can lead to disparate CJ outcomes (or other outcomes like physical health, mental health, and educational attainment). In general, concentrated disadvantage is a scale that aggregates the percentage of households located in geographic areas that are below the poverty line, percentage of people receiving public assistance, percentage of female-headed households, percentage of unemployment (of people 16+), and percentage of people younger than 18 (United Health Foundation, n.d.). This is a more concrete measure than perceived class or SES, since it's based on a standardized index and isn't based on income alone.

The last definition we'll get to here is ***social stratification.*** This refers to the inability of socioeconomic classes to move up to more affluent classes; it is the opposite of ***social mobility.*** As we go through this course, we'll discuss some of the historic and modern influences that perpetuate disadvantage (and how these correlate with race, ethnicity, and gender) and contribute to disparate experiences within the CJ system.

Additional Terms to Know

Institutional racism/systemic racism: this means that the policies and practices of an institution (such as the CJ system) lead to racially disparate outcomes, even if the individual personnel within the institution are not acting in a racially biased or discriminatory way. We prefer the term *systemic racism,* since a lot of people in the CJC field refer to the individual components of the CJ system as institutions (e.g. policing, courts, and corrections are known as the three main institutions within the CJ system). *Systemic racism* recognizes that the policies and practices throughout the CJ system are not just confined to one CJ institution (such as policing) but affect all of the related institutions.

Privilege: if certain groups are oppressed or marginalized by the hierarchies of race, gender, and class, that means that others are benefiting from being at the "top" of those hierarchical structures (whether they are aware of those benefits or not). These benefits amount to privilege, even if the person struggles with individual barriers to success due to low SES, personal hardships, or identity. Calling this "privilege" is not meant to undermine their struggles or hard work to overcome them, but to identify that there are still *societal* benefits granted to groups that fall higher in the historic hierarchies of inequity.

For example, due to America's patriarchal history (which we'll expand on in Chapter 5), women are – in general – marginalized and experience barriers and hardships based on their sex. When men do not have to change their behaviors to adjust for barriers the way women do, this is often called "male privilege". An illustration of this privilege is how a man may not even think about why a woman cannot go out for a run early in the morning when there are few witnesses around to keep her safe in case of a potential harasser/abductor. However, not all men have access to the same amount of male privilege: Black men may also know that they cannot run in certain areas/at certain times or they may be perceived as criminal offenders, when many White men do not even consider that people will perceive them this way. [One of your authors is a runner and this Runner's World article about the murder of Ahmaud Arbery was quite impactful and highly recommended as optional reading.] This is why it's also important to consider White privilege, as well as the intersection of identities that may give some groups greater freedoms and potential for success than those with one or more marginalized identities.

Stereotypes: generalizations about a group of people that often carry negative connotations.

Prejudice: negative or hostile attitudes held about a person based on the perceived group(s) they belong to or negative attitudes towards an entire group of people; often these attitudes are informed by stereotypes.

Discrimination: this means that a person or group implicitly or explicitly treats another person or group differently based on their identity or status.

Disparity: this means that there is a difference in outcome among groups. When we see a disparity in arrests or incarceration, for example, this is a flag for us to investigate deeper to see which policies/practices/factors are significantly contributing to the difference in outcome.

Before We Blast to the Past

In the next few chapters, we'll do a very sweeping, fast-paced tour through the major historic background that informs the disparate treatment of minority groups. You're going to encounter a lot of messy stuff, so buckle in. While this isn't a history class, the reason we'll be doing this is because knowing history is essential to knowing *why* we still see major inequities in the representation and treatment of minority groups in the U.S. criminal justice system. The United States has made some good strides in recognizing historic discriminatory treatment, but a whole lot of work remains *(especially* in the CJ system), and conflict along racial/ethnic, class, or gender lines does not just occur in a vacuum, but is very much informed by the past. Think of how history might tie into or inform present day issues and events, such as*:

- The historic roots of radicalized racist violence
- The First Amendment, the Communist Feminist, and the KKK
- The racial weaponization of white female victimhood and the rise of the "Karen"
- How the history and criminalization of abortion affects women, especially low-income women of color
- Gabby Petito and “Missing White Woman syndrome”
- Parallels between the 2024 Gaza Campus Protests and Kent State in the 1960s
- The history of law enforcement officers covering their faces
- U.S. state resistance to child marriage restrictions
    - [Note: the reference for the article’s statement that “the US Government calls child marriage a human rights abuse” comes from USAID, which has been shut down under the 2025 Trump Administration; thus the article’s citation link no longer works.]

*These links are optional and not required to read/listen, but are highly recommended for additional resources.

Chapter 2

A History of Colonialism at the Roots of the Criminal Justice System

Introduction

When determining the chapter order for this book, we struggled to figure out which major theme to address first, because all are significantly interrelated when considering our nation's history and the development of the CJS. We decided that ultimately it was best to go back to the very beginning and delve into the concept of colonialism, which informs the understanding of historic (and present-day outcomes) treatment of both Indigenous Americans and Black Americans. This chapter will focus specifically on defining and describing the colonial model and applying it to the treatment of Native Americans [note that "Indigenous Americans" and "Native Americans" will be used interchangeably throughout this chapter; "Indian" is only used when referring to the Bureau of Indian Affairs. You can always refer to the Appendix at the end of this textbook for guidance, and remember that these terms vary a bit when speaking of Indigenous Americans. It's always best to default to using the term that is used by members of the groups themselves (and be sure to specifically name the tribe if you are speaking of a particular tribe of Indigenous American)].

The Colonial Model

The **colonial model** is a method for understanding the group psychology outcomes of being oppressed by an outside invader, founded by a number of psychology, psychiatry, and social science scholars (such as Frantz Fanon, Robert Blauner, and Albert Memmi). Robert Staples (1975), one of the founders of Black Studies in the United States, applied this model to the treatment of Black Americans by the CJS, predominately the concept of *internal colonialism* (which we'll get to in a second). However, everything starts with *external colonialism*, which is best exemplified by the history of the United States' relationship with Native Americans.

External colonialism refers to an external country/national power that lays claim to another country/national power in order to exploit the land's resources, resulting in the oppression/exploitation of the land's original residents. [Note that this is different than international trade, which is a mutual agreement so that both nations/countries benefit from resource sharing.] ***Internal colonialism*** refers to disparities in political, economic, and social development within a domestic region due to one ethnic/racial group exploiting or subordinating a minority ethnic/racial group. However, these two concepts aren't mutually exclusive, as external colonialism often occurs in different phases, ultimately culminating in internal colonialism if the process isn't stopped by a major social shift.

Phases of External Colonialism

External colonialism is broken into four main phases, though scholars may differ depending on how they are applying the colonial model. The first phase is **invasion**, where the outside nation/entity (often called State with a capital "S" in political science literature) invades the nation/entity with the desired resource. Invasion may *start* as an attempt at trade negotiations, but the result is that the outside entity decides it is more expedient to take their desired resources by force.

The second phase is **establishing the colonies**, when the outside nation starts to create settlements to retain their control and expand their territories. According to McDonald and Dawson-Edwards (2023), this phase has three main processes: cultural imposition (the colonizers impose their way of life and values on the indigenous group), cultural disintegration (the indigenous group is forcibly stopped from practicing their own cultural expressions), and cultural recreation (the culture of the land starts to be modelled after the colonizers and not the original indigenous inhabitants). Forced removal of Native children and enrollment into Indian Boarding Schools starting in the early 1800s is an acute example of cultural disintegration. Children were horrifically abused, forced to cut their hair and change their names, forced to do unpaid labor, and medically neglected, and this continued until the 1970s (for reference, one of your author's parents were born in 1960, so when you hear about terms like "generational trauma", the passed-down trauma is very recently felt by the Millennial generation of Indigenous Americans; more on the outcomes later in the chapter) (Broubalow, n.d.).

The third stage is **creation of a power structure**, always done through coercion (force). This force can either be military or law enforcement (or both), though in the early stages of external colonialism it is often the military (after colonial rule is firmly established and a law enforcement institution is created by the colonizers, law enforcement is used too) (McDonald & Dawson-Edwards, 2023).

The final stage is **establishing and maintaining a hierarchy**. At this stage, colonial rule is firmly in place, a criminal justice system is in place (including an established legal code, law enforcement, and court system that will enforce the legal code in a way that favors the colonizers), and this criminal justice system and the political system (as well as societal cultural values due to the processes in the second phase and throughout the rest of the phases) will be utilized to maintain a hierarchy with the colonizers as the main beneficiaries.

Phases of Internal Colonialism

At this point, internal colonialism follows, where the Native population is regularly exploited and repressed. According to McDonald and Dawson-Edwards (2023), there are several markers of internal colonialism. ***Alienation*** occurs when present-day generations of the Native population no longer have knowledge of their cultural history, heritage, or values, and start to dislike their own ethnic identities. In the prior chapter we discussed ***colorism***, and how

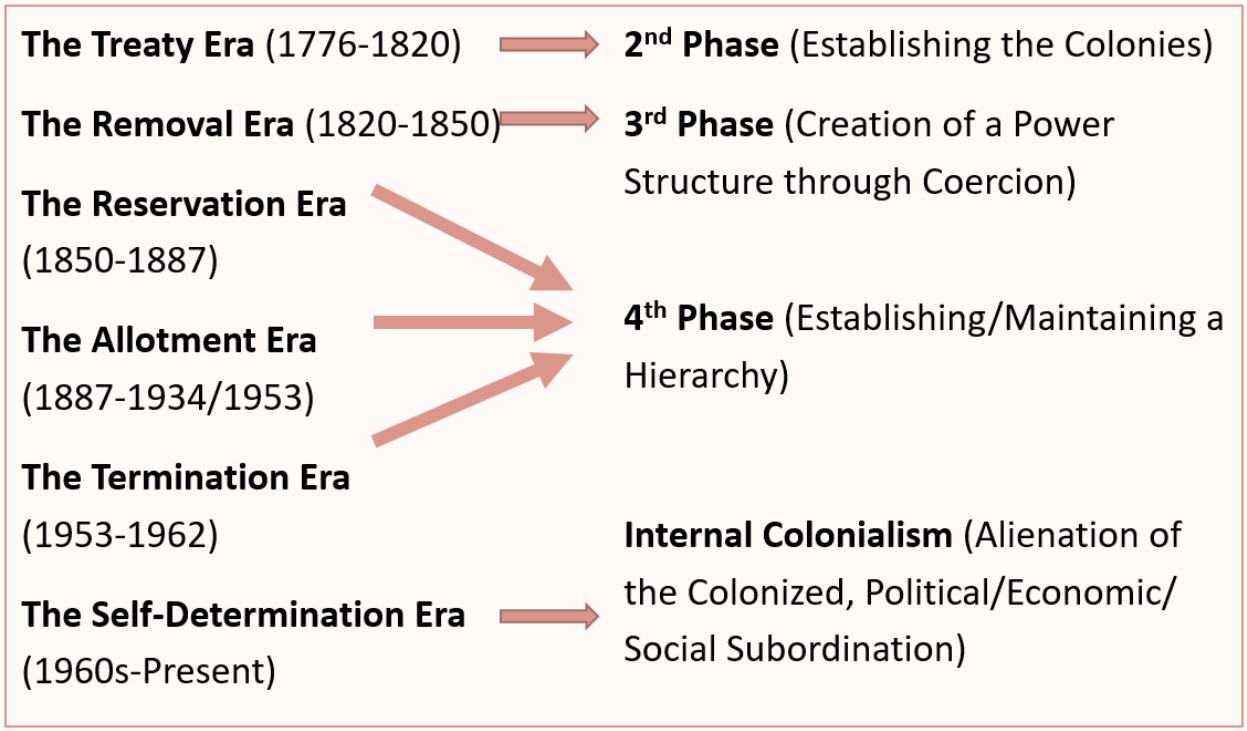
colonized groups with darker skin may dislike this skin color and prioritize lighter skin, due to the influence of the colonizers (both in culturally imposed beauty standards, and in the survivalist sense that lighter-skinned "White-passing" people were treated much better); these two concepts are inherently related, as colorism can stem from feelings of alienation in colonized groups.

If a group experiences exploitation and social, political, and economic subordination from another group within the same State/domestic nation and *the process starts when both groups live there*, there are also phases of internal colonialism as the hierarchy is established. According to Steinmetz and colleagues (2017), the first phase is ***geographic confinement***, meaning that the group in power passes laws that keep the marginalized population in designated geographic areas. This is similar to the creation of reservations when considering Native American history, and when applied to Black Americans, examples are Jim Crow segregation laws, sundown towns, and redlining (which will all be addressed in the next chapter). The next phase is ***entry of law enforcement into these spaces***, such as the over-policing of Black neighborhoods due to order maintenance/"Broken Windows"-style policing (Steinmetz et al., 2017). Note that this is a bit different from the external colonialism approach applied to Native Americans, where U.S. law enforcement is not present in reservations (each tribe may have its own tribal police force). The third phase is ***managing the colonized***, which entails the passage of laws that have a disparate impact on the marginalized group and/or differentially enforcing those laws (an example of the latter being a seemingly race-neutral law against marijuana possession leading to the arrest of a Black young man in possession, whereas a White young college student is released with a warning). The fourth and final phase, ***cultural devaluation***, is very similar to alienation, where the marginalized group's culture is so devalued by the majority that the marginalized group starts to devalue it as well. An example of this would be when a Black family names their children with stereotypically "White" names in order to give them better prospects when applying for jobs; the avoidance of culturally "Black" names may not be due to outright dislike of their culture, but due to the practical realization that the broader majority has biases against their culture.

This chapter will focus on the phases of external colonialism as applied to Native Americans, but you can see how the colonialism model can be applicable to historic treatment of Black Americans as well, which we'll get deeper into in the next chapter.

Historic Eras of U.S./Native American Interaction

The image below illustrates how historic U.S./Native American eras align *roughly* with the phases of external and internal colonialism, with each era discussed at length throughout this chapter (the 1st Phase of external colonialism, invasion, will be addressed below but took place before the U.S. became an established nation in 1776, so it does not appear on the chart).



"Eras of Native American/U.S. Relations and the Phases of Colonialism" by Koslicki (2023)

Expansion of U.S. colonies into Indigenous Americans' lands has a long and messy history, which will be touched on briefly below. However, though there has been progress in the treatment of Indigenous Americans by the federal legal system, the outcomes of both forms of colonialism are still felt to the present day, as explored later in this chapter. Throughout this textbook, we will return to the experiences of Indigenous Americans at each stage/institution of the CJS.

Invasion

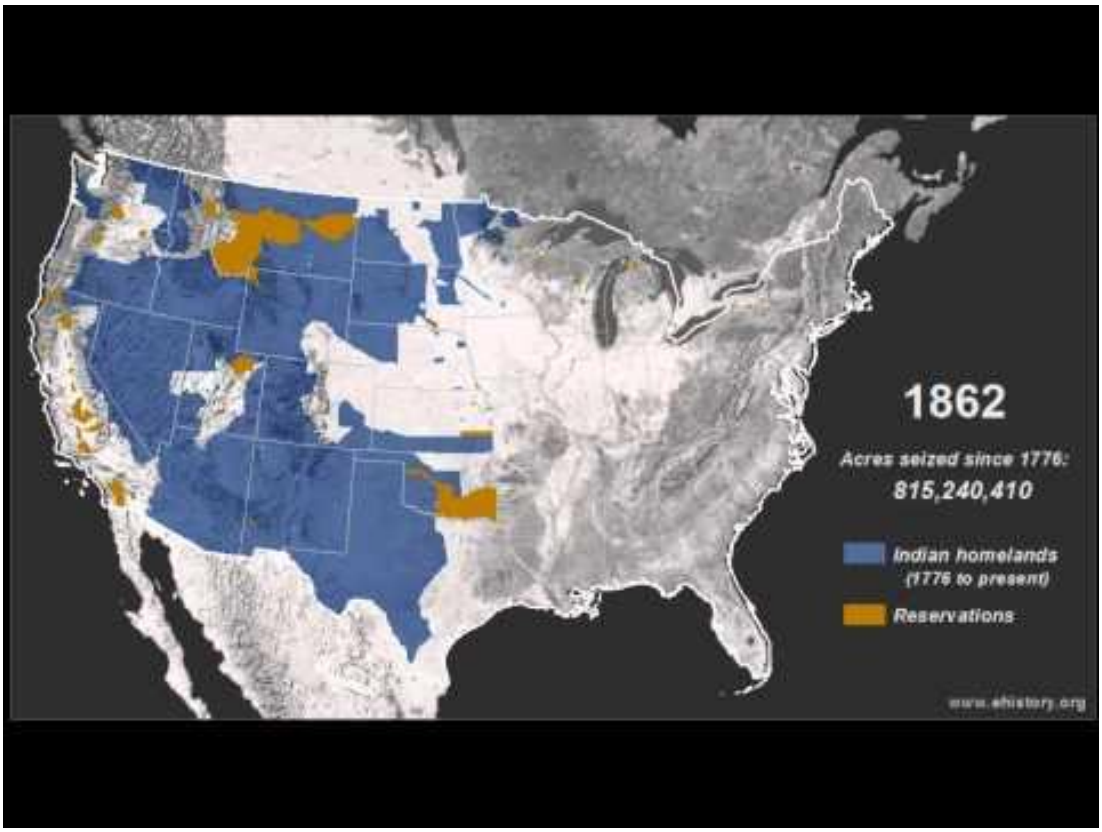
Invasion, the first phase of external colonialism, applies to Native American/U.S. relations starting with the first entry of colonists from the UK settling into North America, starting with Jamestown, Virginia in 1601 (technically Roanoke was the first attempt, but this settlement disappeared). While this era takes place before the U.S. officially existed, it's helpful to start here to gather some context.

This era quickly saw the first Anglo-Indigenous war when a series of conflicts led to the first Anglo-Powhatan War in 1610 (Encyclopedia Virginia, n.d.). The second and third Anglo-Powhatan Wars spanned from 1622-1646, leading to a near half-century of conflict. Ultimately, Jamestown survived, and went on to become a tobacco plantation (which used the Transatlantic slave trade, starting in 1616 to function). Jamestown was essentially the first major example of how colonists treated the Native Americans, and the Native American reaction to their establishment. It also illustrates the historic overlap between slavery and the colonization of Native American lands.

Establishment of the Colonies

Establishment of the colonies is the second phase of external colonialism, and starts around 1754, at the start of the French and Indian War. The French and Indian War started when French settlers and Native American tribes both allied against the British (it's worth noting that some Native American tribes assisted the British due to pre-existing treaties and agreements, and also due to some Native American tribes being hostile towards each other; allying with the colonists could facilitate their own tribes' expansion). The majority of the Native American tribes were, however, on the French side of the war, due to integration with the French settlers that included trade and even intermarriage, and because the British side wished to expand into French territory that was occupied by multiple Native American tribes.

Pontiac's War (1763-1766) followed several years later, when multiple Native American tribes attempted to push the British out of the Great Lakes region. This is, unfortunately, the first documented use of smallpox blankets being used by the colonists to infect Native Americans as a form of biological warfare (biological warfare existed long before this, but this is the first documented use of it being used by the colonists) (Wills, 2021). This war ended with a series of treaties and negotiations, which created a bit of a draw for the war - neither side can be said to have "won" outright, and the British colonists essentially entered into a relationship with the tribes that was similar to that of the French (who had long respected Native American sovereignty more than the British had).

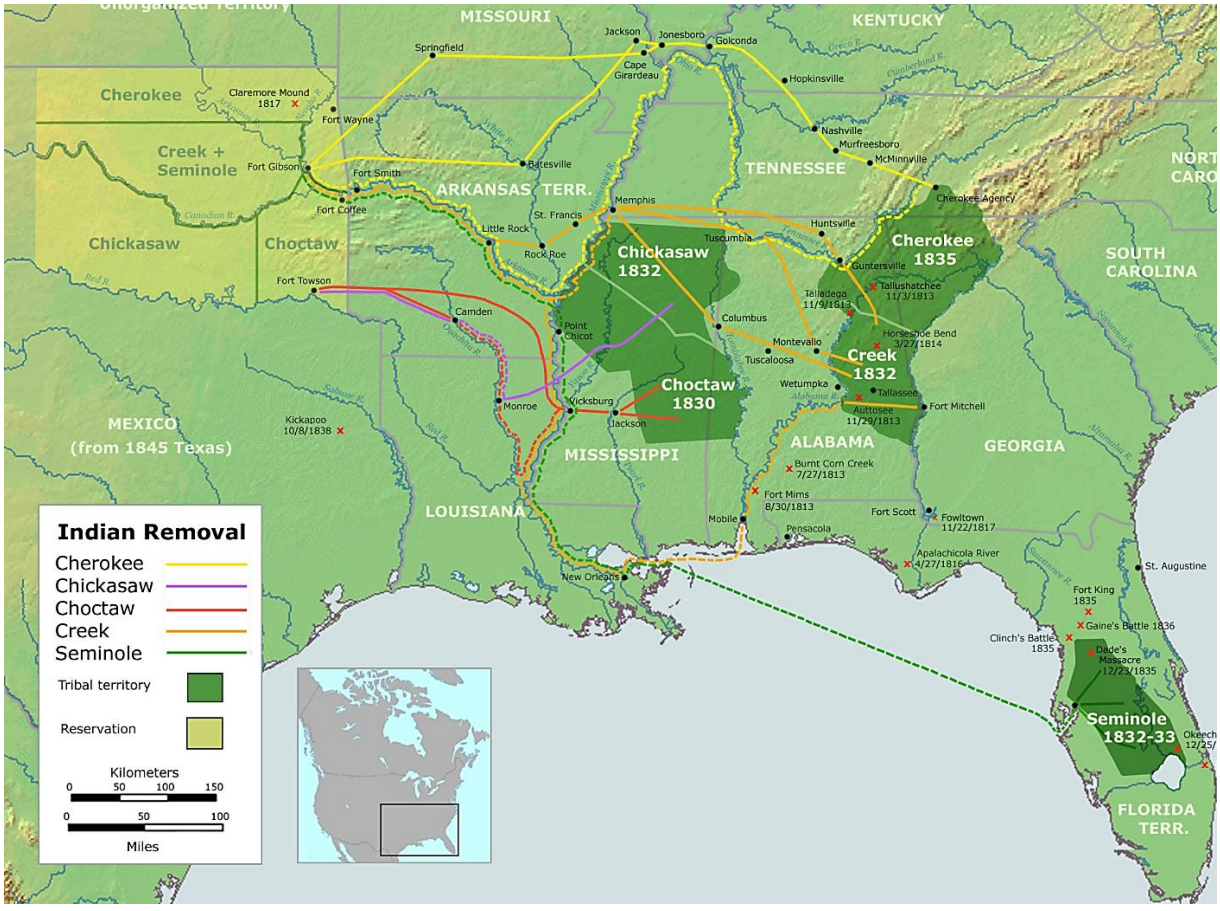


"The Invasion of America" by eHistory.org (2014)

The Treaty Era

Ten years later, during the American Revolution (1766-1783), most Native Americans sided with the British due to the treaties and negotiations that were created in the aftermath of Pontiac's War. Following America's victory, the British handed over all eastern colonies, and did so without consulting with the resident Native American tribes. Thus starts the history between Native Americans and the U.S., and not on a good foot. The video above is a visual illustration of the Native American land that was taken after our federal government was established in 1776, and also corresponds to the historic eras that we will explore throughout the rest of this page (the **Removal Era, Reservation Era, Allotment Era, Termination Era,** and **Self-Determination Era**).

The Removal Era



"Map of the route of the Trails of Tears" by [Nikater (2007)]

The Removal Era also aligns with the external colonialism phase of ***power maintenance*** (through coercion); however, some aspects of the second phase continue, e.g. cultural imposition, disintegration, and recreation. The ***Indian Removal Act of 1830*** ushered in this era by calling for the relocation of all Eastern tribes to the west of the Mississippi. This forced

relocation was extremely destructive to the tribes' ways of life, and the land they were removed to was completely different than what these tribes were used to for survival. The paths of forced relocation came to be known as the ***Trail of Tears,*** which displaced bout 60,000 native Americans, and about 10,000-14,500 died during the relocation (that's about 16-25% of those who were forced to relocate) (Thornton, 1984). Disease, starvation, and exposure to the elements all contributed to the death toll, and many historians call this an example of ethnic cleansing (some even call it genocide) (McGuire, 2020).

The Supreme Court of the United States (SCOTUS) at the time also took a mixed stance towards Native Americans. In ***Cherokee Nation v. Georgia*** (1831), the SCOTUS asserted that the tribes had no rights to sue in response to the removal of their rights, arguing that they were a domestic group and not a sovereign foreign nation (sovereign foreign nations could press charges, but not domestic groups at this time). However, a year later in ***Worcester v. Georgia*** *(*1832), the SCOTUS ruled that Native American tribes should be seen as their own sovereign nations. Unfortunately, Andrew Jackson (president at this time) and the federal government did not enforce this ruling. This fraught relationship between Federal and Native American law and how they interact is still an issue in modern times, which we'll discuss throughout the course.

At this time, the ***Bureau of Indian Affairs*** - which is still the main federal agency for handling Native American affairs and issues - was also established.

The Reservation Era

The Reservation Era aligns with the fourth phase of external colonialism, ***establishing/maintaining a hierarchy,*** since during this time, the U.S. continually demonstrated its power to shape Native American relations on its own terms, rather than having open/equal negotiations with the tribes. The ***Indian Appropriations Act*** of 1851 brought on this era by appropriating land to create reservations for the tribes. Native American tribes were pushed to create treaties in order to stay on their land (as long as they stayed within reservation boundaries). However, these treaties were often not respected by the U.S.

"Little Big Horn victory dance" by Fansler (1886)

A notable example of this was the violation of the Fort Laramie Treaty and the resulting battle of Little Big Horn in 1876. This treaty violation occurred when floods of White people started entering the Great Sioux Reservation in search of gold. The U.S. demanded that the Sioux leave their own reservation, and sent General George Custer when the Sioux refused to leave their own reservation. Custer's entry ushered the Battle at Little Big

Horn, where he and his men were defeated (the picture below is an 1886 photograph of a Sioux victory dance commemorating the event 10 years later). However, U.S. targeting of the Sioux continued, so the tribe eventually sold their reservation and split into smaller reservations (Duran et al., 1998). Other similar targeting of tribes continued, such as the Wounded Knee Massacre, where over 300 Lakota were killed.

The Allotment Era

The Allotment Era also corresponds with the fourth phase of external colonialism, ***establishing/maintaining a hierarchy*** (while also having the aspect of assimilation from the second phase), and was brought on when the federal government switched gears on its strategy following continued conflict by passing the ***Dawes Act*** (also known as the General Allotment Act) in 1887 to try a new strategy of assimilation. The government's rhetoric at the time was that - since tribal cultural ideals were in conflict with those of the U.S. government - if tribes were assimilated into U.S. society, the tribes' own cultural norms and practices would be weakened (Dennis, 1971).

The Dawes Act attempted to assimilate Native Americans by giving each family land to impose a Western system of individual property ownership. While on its face it seems like a generous move of the federal government to give land (especially since the land promised to Black families during Reconstruction was not so freely given), in reality this act was extremely destructive to tribal culture in that it dissolved tribal hierarchy and attempted to force a single Western system of ownership (a sort of "one size fits all") onto many different tribes with their own concepts of property ownership (Bobroff, 2001). Additionally, several tribes were initially excluded from the act, and children of Native American families often did not inherit the land their parents received, as many were forced into the federal Indian Boarding School system (this report, published last year by the Bureau of Indian Affairs, details the atrocities committed by these schools) (U.S. National Archives, 2022). The act also established a system of attempting to discern Native American bloodlines, called "blood quantum", to determine who should receive land and who should be "detribalized" (Grande, 2015).

Lastly, Native Americans were often victims of fraudulent land transfers, leading them to lose approximately 65% of the acres that were allotted to them during this time (Indian Land Tenure Foundation, n.d.), and the expansion of the act in 1898 (this expansion is called the Curtis Act) also dissolved tribal courts.

After the destructive nature of the act became apparent, John Collier, head of the Bureau of Indian Affairs at this time, pushed to end the allotment system in order to preserve Native American culture, and influenced President Franklin D. Roosevelt to support the end of allotment. Due to his influence, Congress passed the ***Indian Reorganization Act*** in 1934, which ended allotment, prohibited further allotment, and encouraged Native Americans to rebuild their tribes and national sovereignty.

The Termination Era

After Roosevelt's tenure as president, the U.S. attempted another pass at an assimilation strategy (thus the Termination period still aligns with the fourth phase of external colonialism, ***establishing/maintaining a hierarchy***). This second assimilation strategy began with ***The Termination Act*** of 1953, which terminated 13 tribes, meaning Native Americans' special status (such as being tax-exempt and having their own tribal sovereignty) was also terminated. This also led to U.S. states having jurisdiction over these tribes' civil and criminal laws (in direct contradiction to the SCOTUS decision in Worcester v. Georgia, which recognized tribal sovereignty).

This led to the displacement of nearly 35,000 Native American landowners into urban areas, as losing their tax-exempt status meant they now had to pay property taxes, which many could not afford. Initiatives like the Urban Indian Relocation Program also attempted to relocate Native Americans through promises of economic opportunities, which often fell through (Howard University School of Law, 2023). Many of the issues of unemployment and resulting crimes of poverty (e.g. alcohol and substance abuse) that we see in reservations today stem from economic outcomes of this act and the Termination period (which ended around 1963).

The Self-Determination Era

The Civil Rights era of the 1960s assisted in ushering in a new era of Native American activism, which has come to be known as the Self-Determination Era (which aligns with the aftereffects of external colonialism, namely ***alienation***, and moves into internal colonialism and its associated political/economic/social subordination) and is the current era in U.S./Native American relations. There are notable positive movements associated with this period, such as the ***Red Power Movement***, which was similar to the Black Power Movement in its organization and pressures exerted on the federal government to recognize tribal rights, Native Americans organizing for environmental justice (due to the importance of land and water within many tribal cultures), the re-establishment of tribal courts in the 90s and notable successful SCOTUS cases between the 60s-80s, and lastly, a (much more recent) awareness of the epidemic of missing and murdered Indigenous women (MMIW) (Howard University School of Law, 2023).

Specific to these last three issues, between the 1960s-1980s, the SCOTUS ruled on nearly 80 cases that had to do with Native American rights, and most of these were decided in favor of Native American tribes. In the 1990s, tribal courts were re-established, and can now operate without interference of U.S. courts. However, ***CFR courts*** (CFR stands for Code of Federal Regulations - we will get more into the intersection of U.S. courts, tribal courts, and CFR courts later in this course) were also established for those reservations that do not have their own tribal courts, and these CFR courts remain under U.S. federal jurisdiction.

Native American protesters and allies bring awareness to water and land rights, by [Mobilus in Mobili (2017)]

The epidemic of MMIW - which we will also discuss later in this textbook - is also a pressing issue that is now thankfully recognized as an urgent problem by the federal government. However, the fact this epidemic exists in the first place is indicative of the problematic after-effects of external colonialism, namely, ***alienation of the colonized***. Due to the generational trauma inherent to the cultural genocide that Native Americans experienced in the earlier eras, many Native American reservations face problems stemming from generational trauma: namely poverty, addiction, domestic violence. Due to the history of economic subordination, reservation residents often lack access to resources to help in preventing these kinds of offending. For example, the 2018 National Survey on Drug Use and Health (NSDUH) found that 10% of Native Americans have a substance abuse disorder, 25% reported binge drinking in the last month, and 1 in 5 Native American young adults (18-25 years old) have a substance abuse disorder (Kaliszewski, 2022). The risk factors for addiction among Native Americans include historic and generational trauma, violent victimization, poverty, and unemployment, among other factors (Kaliszewski, 2022). As of 2018, 25.4% of Native Americans were living in poverty, compared to 17.6% of the general U.S. population (PovertyUSA, 2023).

Some things are looking more hopeful in very recent years. For example, educational attainment among Native Americans has greatly increased between the 2010 and 2020 U.S. Censuses, with a 39.% increase in Associate's degrees, 39.7% increase in Bachelor's degrees, and 52.1% increase in graduate degrees among Indigenous Americans (U.S. Census, 2021). Attaining a higher education degree is still related to overall higher earnings, so this may assist in bringing many Native families out of poverty and unemployment. Additionally, greater

societal awareness of the problem of MMIW and historic abuses – like federal Indian Boarding Schools – is mobilizing more federal and local efforts towards righting historic wrongs.

Conclusion

As you can see by the end of this chapter, generational effects of the U.S. federal government's treatment of Indigenous American tribes are long-lasting and significant, and directly tie into socioeconomic status as well. The continued loss of land and inability to have reclaimed land calculated at market level have left many Indigenous Americans with little to no generational wealth that assists in stabilizing proceeding generations, and cultural genocide such as the placement of Native children in boarding schools to destroy their cultural heritage has many negative after-effects. We will return to Indigenous Americans' experiences with the CJS throughout the course, but for now, we will move to a discussion of anti-Black racism in the United States, which can be conceptualized through the internal colonialism process that we described in this chapter.

Chapter 3

A History of Anti-Blackness at the Roots of the Criminal Justice System

Introduction

While there is much to cover regarding the experiences of all racial and ethnic minority groups in the U.S. criminal justice system (CJS), at the very foundation of the United States' founding is the institution of slavery, which has significantly impacted the legal treatment of Black Americans throughout U.S. history and into modern times. We will be highlighting the experiences of different groups at different intersections of the CJ system (policing, courts, corrections, etc.) throughout this textbook, but – just like last chapter addressed the treatment of Native Americans – this chapter will examine the history of Black Americans' experiences and treatment in the United States, given these groups' presence and treatment before the formal establishment of the nation in 1776. As you read through this chapter, recall last chapter's discussion of the internal colonialism process and see how the first few stages apply to this history, as well as how this history relates to modern-day issues with the CJS' treatment of Black Americans.

Please note that some of the images and videos in this chapter depict difficult material (e.g., lynching) and outdated/offensive language present in some pictures of historic documents. These media are shared not out of approval of the content, but to avoid the sugar-coating of historical facts and unjust events. Concerning language, some of these terms were self-selected by Black individuals and groups (such as the full title of the Green Book and the NAACP, described later in this chapter) because of the existing word usage of that point in history and in order to claim the words out of choice rather than being labeled without their choice; as always, visit the Appendix for recommendations on terminology to use and avoid when describing marginalized groups that aren't your own.

Slavery

The institution of slavery was used to fuel the economy of Southern U.S. colonies, and thus was protected by law. ***Slave codes*** were laws that were developed by the colonies that determined what enslaved people could and could not do, and ***slave patrols*** (one of the first legitimized law enforcement groups in the U.S. - more on these when we discuss the history of policing) were authorized to enforce these codes, often in brutal ways (Hadden, 2003; Library of Congress, n.d.). Each colony/state (depending on the era) had its own collection of slave codes, but all defined enslaved people as property, not persons, and their enslavement was considered permanent unless explicitly freed (however, free Black people were also strictly controlled by

these codes) (Library of Congress, n.d.). Watch the following video for a summary of the history of Black enslavement and the legal system:

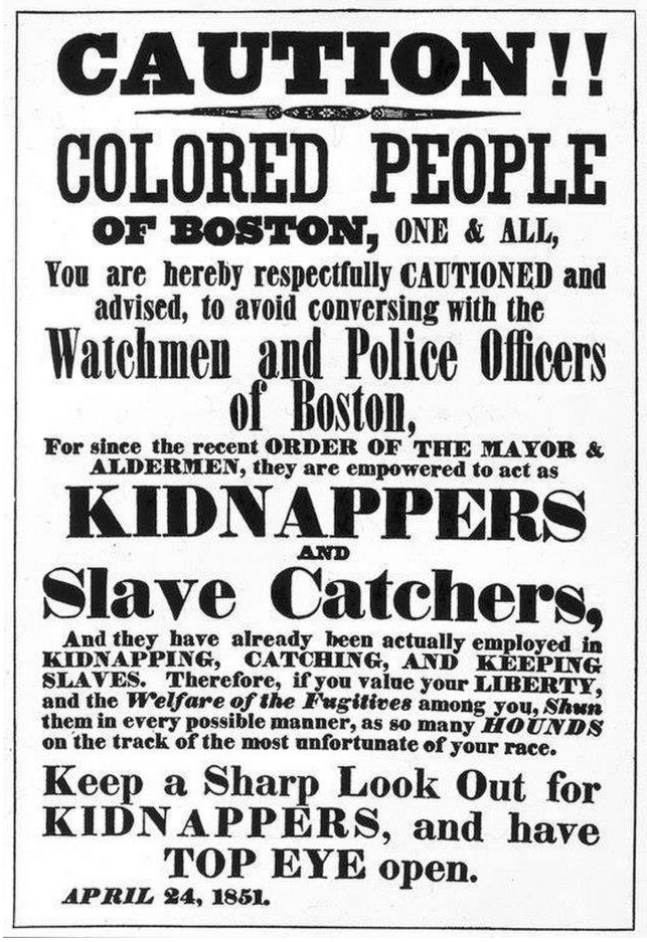
"Slavery to Mass Incarceration" by Equal Justice Initiative (2015)

The Civil War and Reconstruction

Slavery continued to be practiced, and was federally legitimized in 1787 with the ***Three-fifths Compromise,*** which counted slaves as three-fifths of a person when determining the number of seats in the U.S. House of Representatives, thus allowing Southern states more political power of representation while still withholding voting rights from enslaved Black people (the three-fifths ratio in particular was negotiated as a way to settle whether enslaved people should be considered people or property) (Finkelman, 2013). However, many Northern states were starting to view slavery in a negative light, and would not abide by the ***Fugitive Slave Act of 1793's*** requirement to return escaped enslaved people to their state of origin (Morris, 1974). This led to Congress passing the ***Fugitive Slave Act of 1850,*** which criminalized the aiding of escaped enslaved people and penalized law enforcement officers who did not arrest escaped enslaved people. However, many Northern states started resisting this act through various means, such as posting warning signs like the one shown below as well as encouraging jury nullification during jury trials of suspected escaped fugitives (Collison, 1995). This frustrated

Southern states, who wanted Northern states to cooperate with the Fugitive Slave Act and their own state laws (such as restricting abolitionist speech) (Finkelman, 2011). This led to the Confederate states seceding and citing the right to slavery throughout their Confederate Constitution (Lillian Goldman Law Library, 2008), starting the Civil War.

In 1863, President Lincoln signed the ***Emancipation Proclamation*** following a Union victory in battle (the Civil War was not yet over), which emancipated enslaved people within Confederate states (however, non-Confederacy states that still practiced slavery were exempt, so the Emancipation Proclamation did not end slavery across the U.S.) (Finkelman, 2011). Congress finally passed the ***13th Amendment*** in 1865, which abolished slavery and indentured servitude across the U.S. In 1868, Congress ratified the ***14th Amendment,*** which endowed citizenship and equal protection to all people born or naturalized in the U.S., including formerly enslaved people, and then in 1870 ratified the ***15th Amendment,*** which allowed formerly enslaved people to vote (however, the right for women of color to vote came much later).


CAUTION!!

COLORED PEOPLE

OF BOSTON, ONE & ALL,

You are hereby respectfully CAUTIONED and advised, to avoid conversing with the

Watchmen and Police Officers of Boston,

For since the recent ORDER OF THE MAYOR & ALDERMEN, they are empowered to act as

KIDNAPPERS AND Slave Catchers,

And they have already been actually employed in KIDNAPPING, CATCHING, AND KEEPING SLAVES. Therefore, if you value your LIBERTY, and the *Welfare of the Fugitives* among you, *Shun* them in every possible manner, as so many *HOUNDS* on the track of the most unfortunate of your race.

Keep a Sharp Look Out for KIDNAPPERS, and have TOP EYE open.

APRIL 24, 1851.

"Fugitive Slave Law warning poster, Boston African American National Historic Site, 1851" by U.S. National Park Service

For the 13th Amendment, however, keep in mind that there is an exception - "except as a punishment for a crime whereof the party shall have been duly convicted" - to its abolition of slavery that still exists today. This is known as the ***Exception Clause*** or the ***Punishment Clause.*** Quite a number of U.S. states (Indiana being one of them) still mirror the Constitution's language and the Exception Clause of the 13th Amendment, though some states have recently voted to remove this (such as Oregon, Alabama, Tennessee, and Vermont in 2022). However, even states that do not allow for slavery as a form of punishment are known to pay extremely low wages for prison labor (see this chart for state-by-state data), leading critics to still make comparisons to slavery.

Going back to our overview of history, in 1865, Union general William Tecumseh Sherman issued Special Field Order No. 15, which was signed by Lincoln and designated about 400,000 acres of land to be reserved for Black people to own and govern, with 40 acres allocated per

family (where the term "40 acres and a mule" came from; the mule came at a later agreement from Sherman) (Foner, 2011). This order was later overturned by Andrew Johnson following Lincoln's assassination. However, Sherman's order ushered in a new era known as ***Reconstruction*** which followed in formerly Confederate states, spanning from about 1867 to 1877. Watch the video below for more information about the Reconstruction Era:

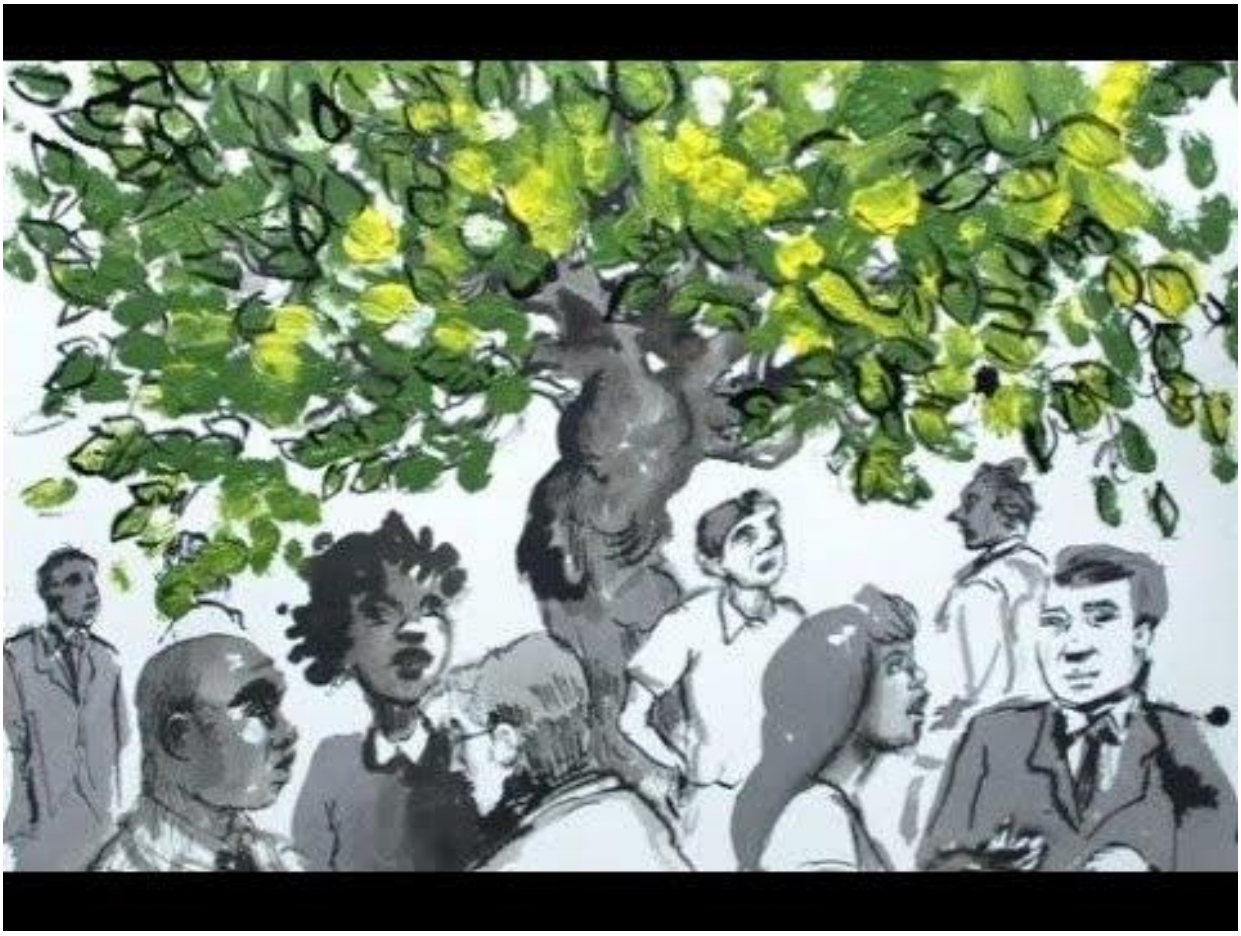
"Reconstruction in America" by Equal Justice Initiative (2020)

Jim Crow and the Great Migration

When federal troops - whose presence was necessary to enforce the ***Reconstruction Act of 1867*** in reluctant Southern states - were withdrawn due to an order of new president Rutherford B. Hayes, white supremacist violence against Black people surged, bringing Reconstruction to a rather immediate end in 1877. While many think of white supremacy as being confined to hate groups such as the Ku Klux Klan in this era, white supremacist rhetoric was codified into law, enforcing segregation through ***Jim Crow*** laws, which were further legitimized through the U.S. Supreme Court's ruling in ***Plessy v. Ferguson,*** which allowed the states to enforce segregation laws as long as the laws enforced accommodations that were "separate but equal" (Oyez, n.d.). In spite of the 15th Amendment, Southern states passed laws that required poll taxes and literacy tests for voters, which the U.S. Supreme Court ruled as

constitutional in ***Williams v. Mississippi*** (Lacy, 1973). Violence against Black people who exercised their rights (or engaged in minor behaviors that were disliked) was prevalent and normalized at this time, leading to a brutal period of public lynchings. The Equal Justice Initiative has counted more than 4,400 racial lynchings between Reconstruction and WWII (Equal Justice Initiative, 2017).

In the present era, the ***Emmett Till Anti-Lynching Act*** was passed quite recently in March 2022; until that year, no federal legislation that specifically targeted lynching existed. Watch the following video for more information about this period (warning: discusses cases of racialized violence and brutality; however, depictions are artist renderings and not photographs):

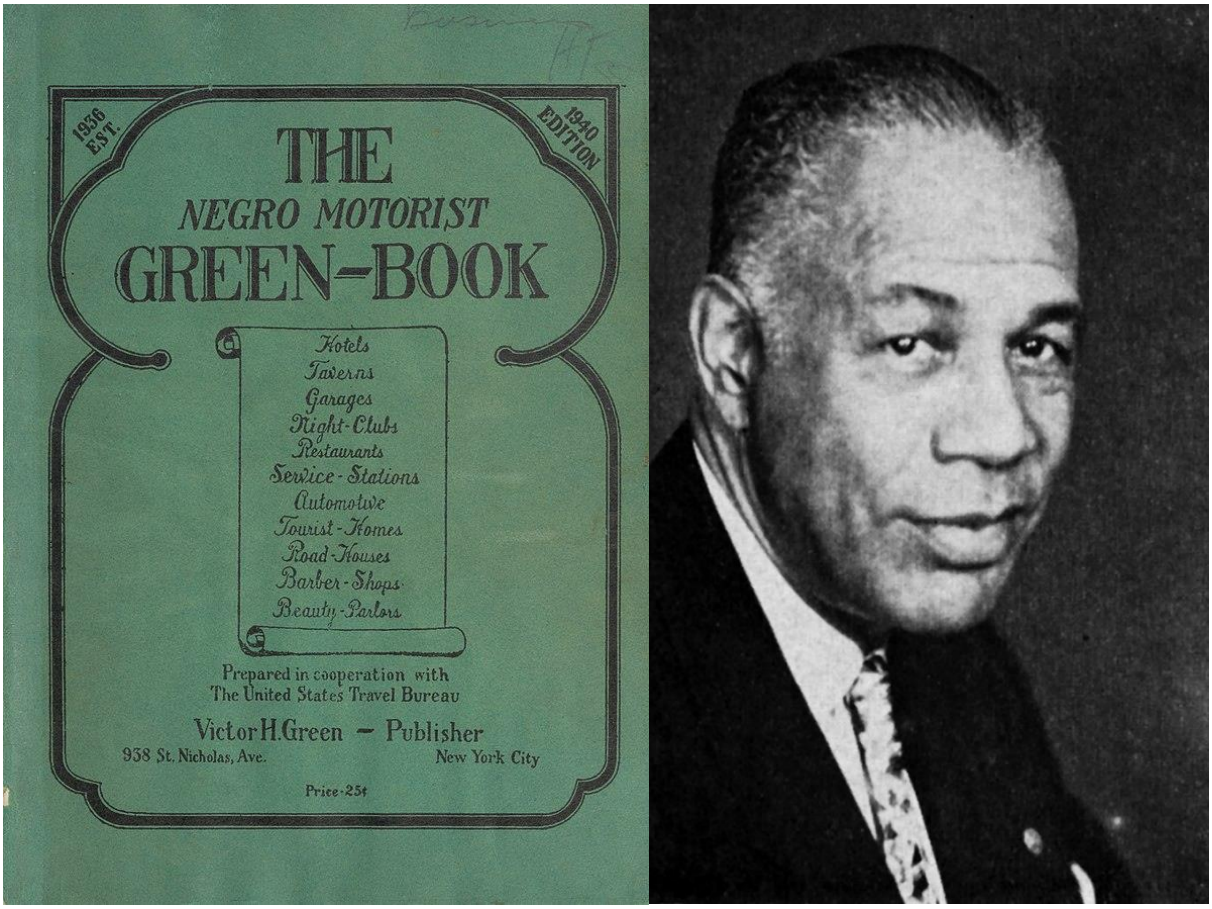


"Terror Lynching in America" by Equal Justice Initiative (2016)

Due to this violence and the lack of opportunities for success and education in the South, many Black people (approximately 6 million by the end of the era) began to move to Northern states between the 1910s-1920 (though some historians count up until the 1970s; the majority of the migration happened up until the 1920s); this has become known as ***The Great Migration.*** WWI also contributed to the appeal of Northern states, since many factories were left in need of more workers while soldiers were at war, so this provided lucrative economic opportunities at

the time. Keep this in mind, since immigration and factory work will play into our future examination of class/SES as well.

Not everyone in Northern states welcomed Black families, however, and there were cases of violence and race-related violence, particularly in ***The Red Summer of 1919,*** when White soldiers - returning from WWI - reacted violently when finding that many economic opportunities were limited due to Black people having moved Northward and filled the factory positions (Voogd, 2008). Many northern towns - starting in the Jim Crow era - were not welcoming to Black people, using local laws to enforce segregation on Black people. These were called ***sundown towns,*** since some laws prohibited Black people from being present after sundown (which meant they were unable to live in these towns). Given the presence of sundown towns and Jim Crow laws, and to promote safety in travel across the U.S. for Black Americans, *The Negro Motorist Green-Book* was founded by Victor Hugo Green (1892-1960; pictured below) and then published annually beginning in 1936 until the passage of the Civil Rights Act of 1964. This publication was specifically used "to identify services and places relatively friendly to African-Americans so they could find lodgings, businesses, and gas stations that would serve them along the road" (Library of Congress, n.d.).



Left: Cover of the book "The Negro Motorist Green-Book" (1940 edition) by Victor Hugo Green – New York Public Library scan of cover; Right: Victo Hugo Green by The New York Age, 1958

Click here for an interactive map of sundown towns that allows you to hover your cursor for more information about all the locations of suspected and confirmed sundown towns (unfortunately many of these are in Indiana).

Starting in the 1930s, ***redlining*** - a process of excluding POC from buying houses based on justification of financial risk - became a common practice to enforce segregation without the need to establish unconstitutional segregation laws. Simultaneously, federal housing policies supported the movement of White families into the suburbs (e.g., the Housing Act of 1949) and early suburban communities (e.g., Levittown) excluded POC from purchasing homes through restrictive racial covenants that explicitly told tenants to not permit anyone but members of the Caucasian race to use or occupy the premises (Nodjimbadem, 2017; Blidner, 2019). These acts of continued segregation, racialized violence (such as the Tulsa Massacre) and race-related riots continued into the 1960s, paving the way for the Civil Rights Era.

The Civil Rights Movement

Disappointed at Republican political inaction to discourage racist violence, and at President Hoover's abandoning of Roosevelt's efforts to revive the economy during the Great Depression, Black voters started aligning with the Democrat party after the 1920s, leading to a historic party voter and platform realignment in the U.S. as well (U.S. House of Representatives, n.d.). Roosevelt had also been able to appoint 9 U.S. Supreme Court justices between 1937 to 1943 , and the majority of these justices showed a willingness to take racially discriminatory laws more seriously (McMahon, 2000), as evidenced by the notable cases *Brown v. Board of Education, Gaines v. Canada*, and *Shelley v. Kraemer*. President Truman's administration likewise issued executive orders to end racial discrimination, but political inaction stymied progress (McMahon, 2000). It was largely up to Black civil rights leaders and White and Asian (such as Yuri Kochiyama) allies to carry the movement.

Unfortunately the majority of the police institution was leveraged against Civil Rights protesters. An example of the level of police violence inflicted on protesters is **Bloody Sunday**, when police attacked nonviolent protesters marching across the Edmund Pettus Bridge in Alabama with batons and tear gas (Kajeepeta & Johnson, n.d.). Applying the internal colonialism model from the last chapter, this would align with the phase of *managing the colonized*, with the police differentially enforcing laws (here, brutalizing Black people exercising their First Amendment rights to protest) in order to suppress Black Americans and maintain a power hierarchy. Additionally, federal law enforcement engaged in unconstitutional surveillance of civil rights activists and groups, such as Rev. Dr. Martin Luther King Jr. and the Southern Christian Leadership Conference (SCLC) under the justification that they were "subversives" and Communist threats to the United States (Martin Luther King Research & Education Institute, n.d.).

In spite of the maltreatment, Dr. King, the SCLC, and the National Association for the Advancement of Colored People (NAACP) continued to press all levels of government to grant equal rights to Black Americans. Starting as far back as the 1940s, the NAACP brought light to

racial discrimination in the U.S. armed forces and sent W. E. B. Du Bois, a notable sociologist and civil rights activist, to the United Nations to decry colonialism and its resulting discrimination (Library of Congress, n.d.). The NAACP's influence assisted in overturning legal segregation through the U.S. Supreme Court Case ***Brown v. Board of Education*** in 1954 (Library of Congress, n.d.). Two other notable events also galvanized the Civil Rights Movement, both occurring in 1955. In August 1955, two White men brutally beat and murdered a 14-year-old Black boy, Emmett Till, after he'd allegedly whistled at a White woman. His mother, Mamie Till Bradley, decided to hold an open casket funeral and invited the media to share the devastating images of Emmett's body, which shocked the nation (see this optional link for a sobering discussion of how Till's lynching affected the Civil Rights Movement; WARNING: these images are graphic).

The second event occurred in December 1955, when Rosa Parks was arrested for refusing to give up her segregated bus seat because the "White" section of the bus was full. Dr. Martin Luther King Jr. declared a bus boycott, which was one of the first large-scale non-violent acts of protest used by the Civil Rights Movement.

Thanks to the efforts of Dr. Martin Luther King, Jr., John R. Lewis, and other major leaders of the Civil Rights Movement, the ***Civil Rights Act of 1964*** and the ***Voting Rights Act of* 1965** were passed. However, a series of race-related riots followed this time period, culminating in the assassination of Dr. Martin Luther King, Jr. (we will address these in more depth when discussing policing).

In reaction to the violence faced by the Black community, the ***Black Power*** movement emerged in 1966, advocating for a more assertive movement towards gaining political and economic power and self-governance, given that they saw that systemic racism in the nation's laws would impede any equal co-existence between Black and White communities (Joseph, 2009). One of the most well-known groups within the movement, the Black Panther Party, advocated for Marxist ideology and revolution, though the focus of the party turned more towards community activism and elections near the 1970s (Joseph, 2009). However, their militant approach throughout the existence of the movement led to much controversy and negative press coverage, which led much of the nation to view them as illegitimate and dangerous in comparison to the non-violent Civil Rights Movement (Joseph, 2009).

Conclusion

We're stopping here for now, though we're certainly not finished with discussing race, particularly anti-Blackness, and the U.S. CJ/legal system. As we cover the three main CJ institutions (policing, courts, and corrections), we will cover more present-day issues (as well as several in the past, now that you have a good historical foundation) throughout the course of this text.

Chapter 4

A History of Economic Class and Justice in the United States

Introduction

In this chapter, you will be introduced to the earliest ideas around economic/social class in the United States. We will cover the rights that were limited to persons based on their status around politics, citizenship, and the justice system. Inequality along social and/or economic lines has existed in nearly every society, past and present. We'll discuss some of the explanations provided for why inequality exists. Then, towards the end of the chapter, we will cover this history of immigration and citizenship laws in the U.S. which were often influenced by both economic concerns as well as concerns around race and ethnicity.

Class in Early America

When we look at the origins of class conflict and class consciousness in the United States, we can begin with the founding of this country itself. Class conflict was at the center of founding fathers' beliefs and the debate over the U.S. Constitution and, therefore, the foundations of our country's ideas around law and justice.

Early Colonialism

While the U.S. held promise as the land of opportunity for European settlers, the influence of the British colonizers carried hierarchical ideas regarding class and poverty. An example of a British carry-over was the term "waste people", which was created by British colonizers when referring to sending the poor to the wasteland (another word for wilderness) of the new world (Isenberg, 2017). "Waste people" later evolved into the term "white trash" much later (in the early 19th Century), carrying a connotation of White people who are idle and deserving of the poverty they live in. Unfortunately, founding fathers like Benjamin Franklin and Thomas Jefferson shared similar thoughts regarding social mobility, being of the mind that the poor should move into the frontier and unsettled parts of the U.S. (a concept known as ***horizontal mobility,*** meaning regional movement across a horizontal plane, instead of ***upward mobility,*** which is the ability to move upward in socioeconomic status) (Isenberg, 2017). This placed the poor in a bind, as a failure to move across the frontier - a highly dangerous prospect - was perceived as idleness, but moving across the frontier required sufficient resources to have a

higher chance of survival and success (anyone still play Oregon Trail anymore?). From the 1960s onward, this idea that the poor were idle and thus deserved their fate came to be known as the ***just world fallacy*** (this term also includes concepts such as victim-blaming, not just poverty), which still predicts many people's views of income inequality as being deserved or inevitable (Smith, 2010).

Federalists vs. Antifederalists

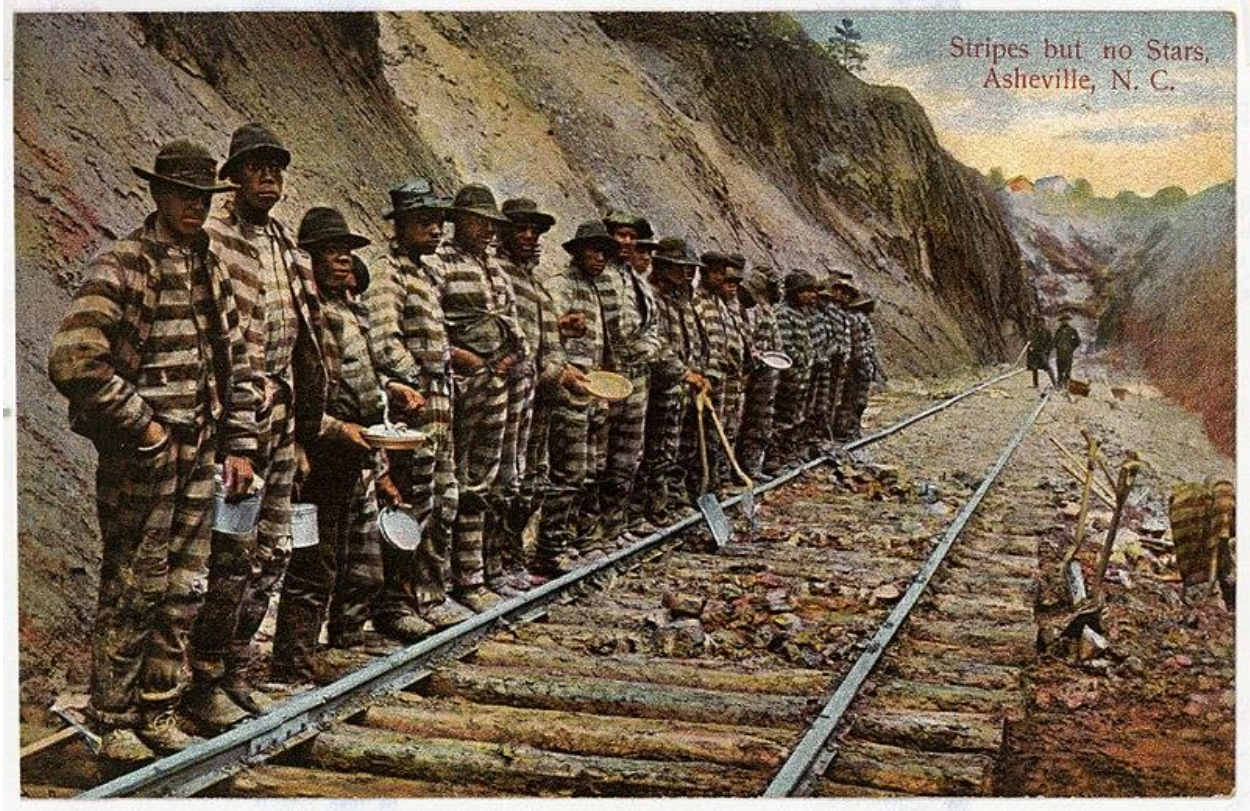
Gregory C. Leavitt (2015) provides a detailed history of the pursuit of justice in the U.S. and begins by illustrating the class struggle apparent between the Federalists and Antifederalists. For all intents and purposes, the Federalists represented the "haves" - wealthy Americans – while the Antifederalists were representatives of the "have-nots" - the less wealthy, common people (Leavitt, 2015). Specifically, the Antifederalists were a party opposing the creation of a powerful, centralized federal government since this type of government often resulted in disenfranchisement and a loss of rights among the common people. Instead, they favored a more localized government that kept political powers closer to the people. On the other hand, Federalists were typically men of a wealthier standing who favored establishing a federal government within the Constitution since that would enable them to "enhance and protect their commercial activities and property rights..." (Leavitt, 2015, xi). The fear of the Antifederalists, then, was that the U.S. government would operate in the same way as the British government had before the Revolutionary War.

Illustrating these concerns, the Federalists, who dominated the Constitutional Convention, did what they could to prevent involvement from common Americans in governmental processes (Leavitt, 2015). This was done through restrictions on voting and running for office. Specifically, to participate in either, it was required that an individual own a certain amount of property in the state they lived in. This resulted in the earliest elections being determined only by wealthy, property-owning White men, and the Federalist founding fathers wanted that to continue to be the case (Seven, 2023).

Antifederalists did what they could to combat the Federalists, though, and this was accomplished through the Bill of Rights. Specifically, the Bill of Rights included the first ten amendments to the Constitution and were designed to provide basic rights to common Americans that would protect them from an abusive centralized government. While Federalists argued such measures were not necessary, the Bill of Rights was ultimately written into the Constitution (Leavitt, 2015). As this discussion illustrates, class tensions and struggles have been central to the American condition since the founding of this country and have been directly tied to legal precedents established in documents such as the U.S. Constitution and Bill of Rights.

Class in 19th and early-20th Century America

Class struggles persisted beyond the U.S.'s founding. In the South, much of the economy was built on the system of slavery. Thus, when slavery ended, the Southern economy took a major hit. Instead of their work being relegated to enslavement, newly free Black Americans were now a direct source of economic competition to (lower income) White Americans. This competition sparked various tensions and, in part, influenced the practice of lynching in the South. However, the now-absent source of cheap labor that had been present through slavery also brought about the convict leasing system. In brief, Southern states made it legal for prisons to lease out inmates for labor to various companies and plantations. As a result, prisons started to grow in inmate population size, especially the Black inmate population, spurred by more arrests and the benefits prisons could receive from providing a labor force to the Southern economy.



"Stripes but no Stars" – African American "convicts" leased to build the railroad in Asheville, North Carolina by Mountain Express/T.H. Lindsey (1892)

We also can see class struggle throughout the industrialization period with workers' rights movements, worker strikes, and direct involvement of criminal justice agents. Police in cities throughout the Northern U.S. took on the role of enforcing laws around labor to the benefit of ruling class/wealthy/elite Americans (Harring, 2017). In fact, law enforcement was used to surveil worker movements (e.g., attempts at unionization), infiltrate and disrupt worker

movements (sometimes through violent force), as well as surveil immigrant groups coming to the U.S. in search of work and a new life (Harring, 2017). As such, early law enforcement often operated against the lower-class. An example of this can be seen with the Grand Rapids, MI furniture strike that took place in 1911. Specifically, in response to poor working conditions and low pay (60-hour work weeks and only earning $2 per day) in furniture factories, it was estimated that around 7,000 workers (many of whom were European immigrants) ended up on strike (Jaworowski, 2022). Eventually, Mayor Ellis allowed for the city to establish "peace patrols" (pictured below) that were a new police force of around 100 men - assembled partly with strikers themselves as deputized officers carrying nightsticks - tasked with surveilling the furniture factories (Jaworowski, 2022). Thus, the city used the strikers against each other while also supporting some of the men who were on strike. (For the full story, see Jaworowski's news article, *On strike: The 1911 furniture workers' war of attrition.]*

"The riot police of the Grand Rapids Police Department that were deployed during the 1911 furniture workers strike" by Grand Rapids Daily News (1911)

In fact, Leavitt (2015) argues that it's not until the Great Depression that the federal government began to shift its focus to human rights over property rights regarding work and employment. At that time, then, the conditions and concerns of common Americans began to take political priority over private property rights for the first time in U.S. history (Leavitt, 2015). Additionally, though not a formal amendment to the Constitution, President Franklin D. Roosevelt put forth

an idea and call for action referred to as the *Economic Bill of Rights* (or *Second Bill of Rights*) in 1944 during his State of the Union to Congress. In this call, Roosevelt argued for providing the American people a higher standard of living: that all Americans should have a right to a job; a right to enough income for food, clothing, and recreation; the right to have a decent home; a right to protections from things like monopolies and unemployment; and a right to education among others (Sunstein, 2006; see also Open Culture's article on this topic which includes a transcript of what FDR says in the video below).

"FDR – A Second Bill of Rights Speech – 01-11-1944" by Separation of Corporation and State (2015)

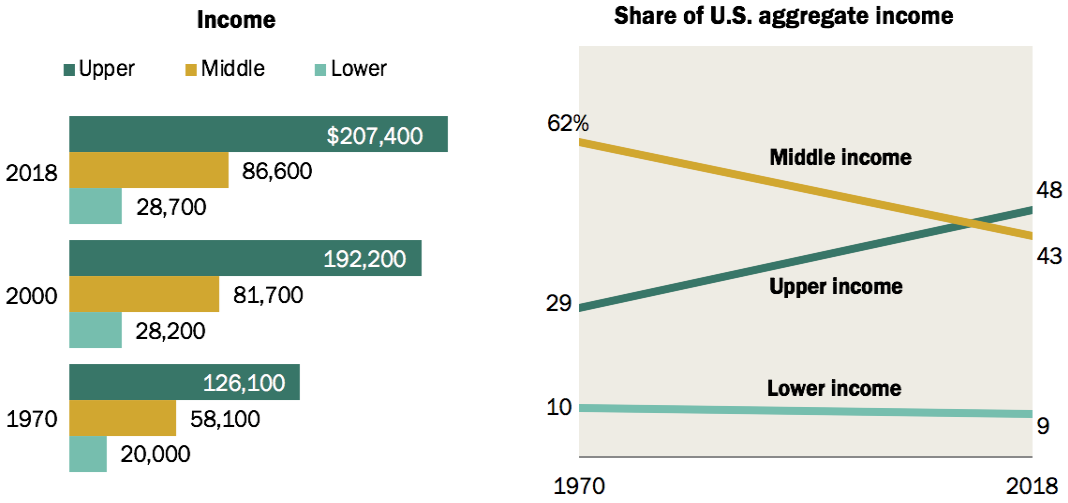
Class and Inequality Today

When we talk about economic inequality, we often refer to income inequality, but wealth inequality is also a major issue in the U.S. **Income** is defined by the amount of money an individual (or household) earns within a year. This can include hourly pay, salaried pay, royalties from writing a book, and other sources of new money being earned. **Wealth** is defined as the amount of assets an individual (or household) has offset by the debts the individual (or

household) has accumulated. **Assets** include any type of property with a monetary value that the individual (or family) owns, such as a vehicle, house, and/or savings/retirement accounts to name a few. On the other hand, **debts** are calculated by looking at how much the individual (or household) owes on things like credit cards, medical bills, student loans, mortgages, and car loans to name a few. So, to calculate wealth, you would take an individual's (or household's) assets and subtract their debts from that amount for a total. As such, some Americans have no wealth, and a portion of Americans even have negative wealth with debts that are greater than their assets.

The gaps in income between upper-income and middle- and lower-income households are rising, and the share held by middle-income households is falling

Median household income, in 2018 dollars, and share of U.S. aggregate household income, by income tier



Note: Households are assigned to income tiers based on their size-adjusted income. Incomes are scaled to reflect a three-person household. Revisions to the Current Population Survey affect the comparison of income data from 2014 onwards. See Methodology for details.
Source: Pew Research Center analysis of the Current Population Survey, Annual Social and Economic Supplements (IPUMS).
"Most Americans Say There Is Too Much Economic Inequality in the U.S., but Fewer Than Half Call It a Top Priority"

PEW RESEARCH CENTER

Graph depicting the gaps between upper-income houses and middle- and lower-income houses, in "Trends in Income and Wealth Inequality" by Pew Research Center, Washington D.C. (2020)

In 2020, Pew Research Center released a report on trends in income and wealth inequality in the U.S. since 1970. As the trends show, while middle income households earned the most income as an aggregate in 1970, their share of income has declined every year since then. On the other hand, upper income households have seen their share of the total U.S. income grow over the same period and now earn more of the aggregate income than middle income households. Lower income households have stayed fairly stable in their share of the total income but did drop one percentage point by 2018.

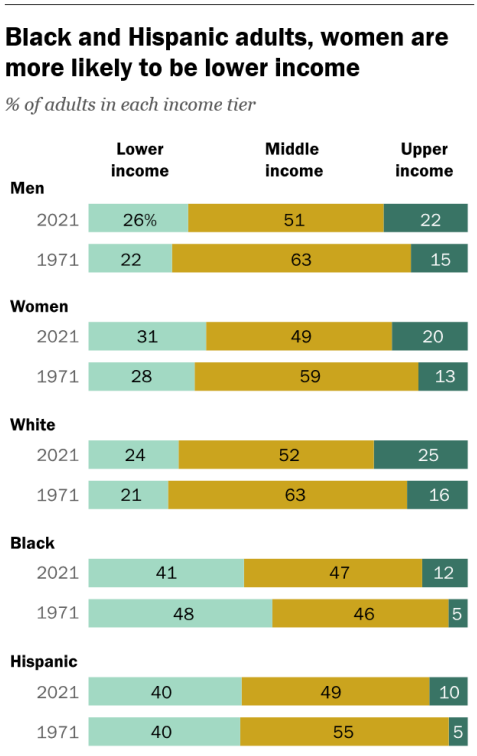
Similarly, when looking at wealth, the greatest gains have been seen by upper income families from 1983 to 2016 while middle income families have lost wealth in the aggregate. Again, lower income families saw a slight decline in their share of wealth as well.

Race/ethnicity and gender all intersect with economic standing as well. As the below image shows from Pew's 2022 report on the middle class, income is typically lower among Black and Hispanic adults and women. This 2022 report also shows continued trends in income noted in the figures here but extended to 2020. That is, upper income households have continued to see increasing incomes at a rate beyond middle- and lower-income households. The aggregate share of income continued to fall for middle-income households relative to upper-income households into 2020.

Spotlight: How does the Pew Research Center define who is *middle-income* or *middle class*?

As outlined in their report, *How the American middle class has changed in the past five decades* (Kochhar & Sechopoulus, 2022):

> *...'middle-income' adults in 2021 are those with an annual household income that was two-thirds to double the national median income in 2020, after incomes have been adjusted for household size, or about $52,000 to $156,000 annually in 2020 dollars for a household of three. 'Lower-income' adults have household incomes less than $52,000 and 'upper-income' adults have household incomes greater than $156,000.*



"Black and Hispanic adults, women are more likely to be lower income" by Pew Research Center (2022)

As we outlined in Chapter 1, federal poverty guidelines as of 2024 consider an annual salary of $15,060 or lower to be the poverty level for a single person (HHS, 2024). However, some research highlights problems with poverty that are even more dire. For instance, "**deep poverty**" is defined as households that have an income below 50% of the poverty threshold by the Center for Poverty Research at the University of California, Davis (2022). So, deep poverty by 2022 standards for a single person household would be persons making an income of $6,795 or less per year. In 2021, around 6.2% of all Americans and 48.4% of all persons living in poverty were living in deep poverty (Center for Poverty Research, 2022; a graph illustrating deep poverty can be found here).

Competing Explanations of Inequality: Individual vs. Structural

When we look at explanations of why poverty and inequality exist, there tends to be a focus on either 1) the individual or 2) structural factors that limit opportunities to finding upward mobility.

First, we'll discuss the individual-level explanations. For example, Edward Royce (2015) argues that many Americans and policymakers tend to not see poverty as the problem itself. Instead, the individuals living in poverty are the problem; it's their own fault that they have not improved their economic class. Historically, there have been theories suggesting that individuals who live in poverty have bad genes, moral failings, tend to bad behaviors, a low work ethic, and no employable skills. As such, from this perspective, poverty is viewed as a symptom – a byproduct of individual failings – not a problem in and of itself (Royce, 2015, p. 5). In sum, individual theories of poverty argue that poverty isn't a systemic structural problem; instead, it's a problem of individuals born from their own shortcomings. To address poverty then, self-improvement is what's needed, not social reforms.

One example of a theory that grew out of these individualistic approaches is the *culture of poverty*, which argues that poverty is the result of "bad" values held by individuals in society. Specifically, people who subscribe to the arguments from the culture of poverty believe that people are poor because they lack the motivation and drive necessary to find financial success (Royce, 2015). Instead of poverty resulting from failings in the political economy of the U.S., it is the result of deficiencies among those living in poverty. Thus, instead of acknowledging structural issues leading to poverty and inequality, arguments from the culture of poverty perspective argue that it is a person's own fault they are living in poverty; thus, they just need to work harder and save more to find financial success.

Royce (2015) argues that, as a whole, individualistic approaches are often too simplistic. By placing the blame on individuals, individual perspectives – like the culture of poverty - obscure the root causes of poverty and inequality and the consequences of poverty. Therefore, Royce argues for a structural understanding. Specifically, Royce (2015, p. 5) writes:

> *We need to recognize that the problems of poverty and inequality are inextricably bound to power-laden economic and political structures. These determine the allocation of resources and opportunities, who gets what and how much. Theories attributing poverty to the failings of the poor neglect the big picture: the severity of the poverty problem ultimately depends on the availability of decent-paying jobs and the responsiveness of government to the needs of less-advantaged citizens.*

Poverty is about more than individuals. In fact, poverty and inequality result from forces that are often outside of an individual's direct control including economic, political, cultural, and social forces. Racial and ethnic minority groups, women, and members of the LGBTQ+ community have faced discrimination within workplaces, disparities in pay, and segregated

conditions that limit access to jobs and other opportunities, among other factors that limited their ability to find work and financial success and stability. Thus, to address poverty and inequality, the structural approach argues that we need policies in place that provide support and opportunities that people in lower economic standing can access and benefit from.

History and Criminalization of "Homelessness"

The U.S. adopted many of its legal precedents from England, including vagrancy statutes. Originally, vagrancy statutes in England were developed to punish people who were viewed as enabling vagrancy. Specifically, the first statute that was passed in 1349 "made it a crime to give alms to any who were unemployed while being of sound mind and body" (Chambliss, 1964, p. 68). This means that if someone provided an unemployed person with financial help (e.g., gave them money or food), they could be found guilty of a crime if the unemployed person could technically be working. As the statute argues, if an individual can find sustenance by begging from others, they may allow themselves to stay idle and give into vice. Thus, to compel vagrants to work, it was made a crime to offer them support.

"'Nomads of the Street' – Street children in their sleeping quarters, New York" by Riis (1914)

However, it was also a crime for someone to leave a work arrangement "without reasonable cause or license" or "before the term agreed upon" (Chambliss, 1964, p. 68). So, if someone was employed and left that position without a "reasonable" cause and/or before the term of the contract ended, they could have faced criminal charges and imprisonment as a punishment. Ultimately, these laws were established in England as a means to "force laborers (whether personally free or unfree) to accept employment at a low wage in order to ensure the landowner an adequate supply of labor at a price he could afford to pay" (Chambliss, 1964, p. 69).

By the 1500s, vagrancy laws evolved in England to a shifted focus "from an earlier concern with laborers to a concern with *criminal* activities" (Chambliss, 1964, p. 71). Specifically, a statute established in 1530 was changed to state that a person who could labor but was begging instead and could not provide proof of receiving an income through lawful means would be

punished. Punishments varied by severity for different levels of idleness and unlawfulness, but the death penalty did become an acceptable punishment for vagrancy a few years after this change.

The foundations of vagrancy laws established in England were brought to the United States and were used to control criminals and other "undesirable" classes of people. In particular, the laws were used "as a mechanism for 'clearing the streets' of the derelicts who inhabit the 'skid roads' and 'Bowerys' of our large urban areas" (Chambliss, 1964, p. 75) since poorer persons were deemed those most likely to engage in criminal activity. These vagrancy statutes further evolved partially into Black Codes/Jim Crow-related laws with a racial component. For example, vagrancy statutes made it illegal for Black Americans to not carry proof of their employment with them at all times. Additionally, Maryland only applied vagrancy laws to "free" Black persons in America (Chambliss, 1964). Further, the U.S. more explicitly focused vagrancy laws on controlling crime and undesirables, such as New York's lumping prostitution with vagrancy.

In sum, vagrancy statutes made it a crime to be unhoused and without visible means of support. While vagrancy laws were eventually ruled unconstitutional in the U.S., they have essentially been replaced by "quality-of-life" ordinances and other similar laws. In some jurisdictions, specific acts like sleeping outside (in public), panhandling/begging, public intoxication, eating in public areas, and other similar behaviors associated with homelessness are illegal. This can create worse conditions for individuals too. For example, if someone is unhoused and arrested for violating one of these ordinances, they can be expected to pay fines/fees that have no means to pay and/or receive a criminal record that lessens their chances of finding work even further. Today, we continue to see tension in the legal system over how to handle homeless/unhoused populations and this has culminated in a recent U.S. Supreme Court decision in *City of Grants Pass, Oregon v. Johnson* (2024) that will allow localities to "be able to arrest, ticket, and fine people for sleeping outdoors on public property, even if leaders have failed to produce enough affordable housing or shelter for everyone in the community who needs it" (National Alliance to End Homelessness, 2024).

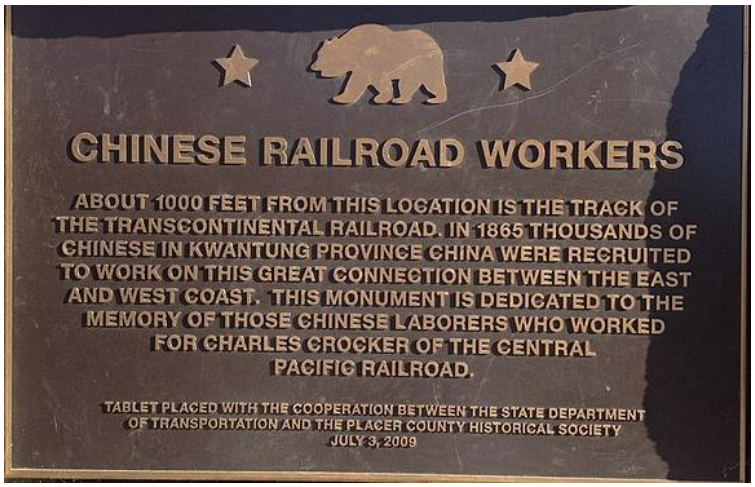
History of Unequal Rights and Immigration

This history of immigration and citizenship in the United States has long been intertwined with economic concerns as well as race and ethnicity. Before we get into this discussion though, it's important to first layout some key terms. First, when we talk about ***naturalization*** – or naturalized citizenship – we are referring to the process through which an immigrant can receive the status of "citizen" (Haney López, 1996). On the other hand, ***birthright citizenship*** refers to the process wherein someone is granted citizenship by being born within that nation; this is the most common way people acquire citizenship (Haney López, 1996). Notably, the U.S. Constitution in its original form did not define citizenship and Haney López (1996) suggests this is likely due to the assumption that "the English common law rule of jus soli would continue" (p.

39), which grants citizenship to "'all' born within a nation's jurisdiction" (p. 39). However, as we'll see, citizenship – whether naturalized or granted by birth – often did not extend to racial-ethnic minorities until 1940 (birthright) and 1965 (naturalization) (Haney López, 1996).

We won't go over every piece of legislation pertaining to immigration (for that you can go to the Immigration History Timeline linked here); instead, we'll focus on a few of the major points in history. At the earliest point, we see the *Nationality Act of 1790*, which was the first law establishing eligibility guidelines for naturalization as well as the procedures that immigrants would have to follow to become citizens; however, this law also limited this right to include only free White people (Immigration History, n.d.). Then by the end of that decade, Congress approved laws that deported "persons deemed political threats to the United States" through the *Alien and Sedition Acts of 1798* (Immigration History, n.d.). As mentioned earlier, issues around race/ethnicity and birthright citizenship existed and this is clearly exemplified in the *Dred Scott v. Sandford* (1857) SCOTUS decision that ruled "slaves and free African Americans were not citizens of the U.S. and were not entitled to the rights and privileges of citizenship..." (Immigration History, n.d.) - this decision was not overturned until the end of the Civil War and the passing of the *Civil Rights Act of 1866* and the 14th Amendment (1868) reinforced the concept of *jus soli* even further by guaranteeing citizenship to anyone born in the U.S. (Haney López, 1996). Then with the *Naturalization Act of 1870*, the right to naturalize as an American citizen was extended to persons of African nativity and descent (Immigration History, n.d.).

The year 1868 saw the *Burlingame Treaty* which was an "international agreement [that] secured US access to Chinese workers by guaranteeing rights of free migration to both Chinese and Americans" (Immigration History, n.d.) - this treaty was an important deal for the Transcontinental Railroad's construction in the U.S. since there was a major reliance on Chinese laborers. However, in 1882, both the *Chinese Exclusion Act*, which placed restrictions on Chinese immigration (and was extended further in 1904 and not repealed until 1943), and the *Immigration Act of 1882*, which widened the focus by restricting other "undesirable persons" from being able to immigrate, were passed (Immigration History, n.d.).



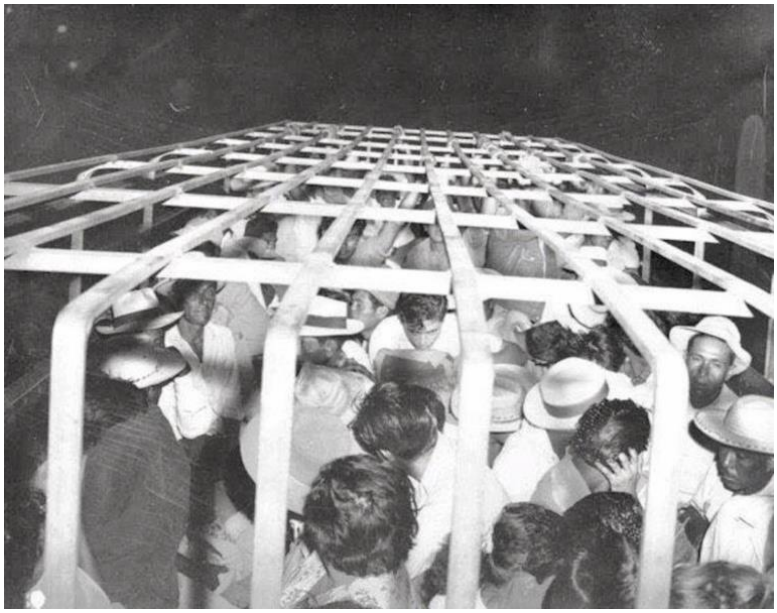
"Chinese Railroad Workers" – a plaque commemorating Chinese laborers who worked on the Transcontinental Railroad in California, by Gillfoto (2012)

The year 1868 saw the *Burlingame Treaty* which was an "international agreement [that] secured US access to Chinese workers by guaranteeing rights of free migration to both Chinese and Americans" (Immigration History, n.d.) - this treaty was an important deal for the Transcontinental Railroad's construction in the U.S. since there was a major reliance on Chinese laborers. However, in 1882, both the *Chinese Exclusion Act*, which placed restrictions on Chinese immigration (and was extended further in 1904 and not repealed until 1943), and the *Immigration Act of 1882*, which widened the focus by restricting other "undesirable persons" from being able to immigrate, were passed (Immigration History, n.d.).

The *Chinese Exclusion Act* faced a challenge in the case of *United States v. Wong Kim Ark* (1898). Wong Kim Ark was a Chinese American born in the U.S. to parents who were lawful permanent

residents of the country. Ark had gone to China to visit family and, on return from his trip, he was denied entry back into the country – despite his being born here – and was forbidden to set foot on U.S. soil. This left him stranded on a ship in the harbor until his case was decided by the U.S. Supreme Court. Ultimately, the Court ruled in Ark's favor and stated that he was a U.S. citizen due to the 14th Amendment, which grants citizenship to all persons born in the country.

However, in spite of this ruling in 1898, a previous decision by SCOTUS in 1884 (*Elk v. Wilkins*) ruled this didn't apply to Native Americans, thus they were not citizens and had no rights as such – in fact, Native Americans were not recognized as citizens until the *Indian Citizenship Act of 1924* (Immigration History, n.d.).



U.S. Border Patrol carrying out Operation Wetback by loading Mexican immigrants into trucks and transporting them for deportation, by U.S. Border Patrol Museum, (1954)

Referred to as Mexican Repatriation (1929-1936), Border Patrol repeatedly detained and deported Mexicans, including some U.S.-born citizens as a reaction to the economic (i.e., the Great Depression) and political crises that were occurring at this time (Immigration History, n.d.). A similar round-up and deportation of up to one million Mexican persons nationwide (some of whom were lawful citizens of the U.S.) was carried out by the Immigration and Naturalization Service (INS) in 1954 through what they called "Operation Wetback" ("wetback" being a slur used for Mexican persons in reference to passing through the water of the Rio Grande River to enter Texas) (Equal Justice Initiative, n.d.). As a part of this operation, border agents were charged with "descending on Mexican American neighborhoods, demanding identification from 'Mexican-looking' citizens on the street, invading private homes in the middle of the night, and raiding Mexican businesses" and, regarding the economics of this operation, these individuals were deported "at the deportee's expense and cost some people all the money they had earned while working in the U.S." (Equal Justice Initiative, n.d.).

It was not until the ***Nationality Act of 1940*** that citizenship was actually extended to all persons born here and racial restrictions on naturalization were lifted in 1952, though a quota system based on national origin that remained in place through the *Immigration and Nationality Act of 1952* (Haney López, 1996; Immigration History, n.d.). The *Immigration and Nationality Act of*

1965 then set the groundwork for what would inform immigration policy in the decades to come (Immigration History, n.d.).

Moving into the 21st Century, concerns around immigration have culminated in the creation of the Department of Homeland Security (DHS) and a travel ban placed on persons from many Muslim countries. Following the terrorist attacks of 9/11 the year earlier, the Homeland Security Act (2002) established the DHS and, in 2006, the Secure Fence Act "mandated that the Secretary of Homeland Security... achieve operational control over U.S. international land and maritime borders including an expansion of existing walls, fences, and surveillance" (Immigration History, n.d.). During the Obama Administration in 2014, thousands of families from Central America fleeing violence in their home countries came to America and overwhelmed Border Patrol centers, leading the Obama Administration to purchase a large warehouse, with sections partitioned by chain link fencing; this drew heavy criticism at the time (Miroff, 2020). While these sections were initially created to designate areas for specific populations (e.g., mothers with children, family groups, unaccompanied young men, etc.), the Trump Administration came under fire in 2018 for changing Border Patrol policy to allow for the separation of children from their parents, leading to much controversy about "kids in cages" (Miroff, 2020). Not only were over 5,000 children separated from parents, but there were also no processes in place to reunite them or track them (PBS, 2022). The COVID-19 pandemic effectively ended the warehousing by allowing Border Patrol justification to deport migrants due to public health reasons (Miroff, 2020). Currently, attempts by the Biden Administration to pass border security bills have stymied due to partisan political maneuvers in Congress, so the administration issued an executive order to restrict asylum to only migrants who enter the country through legal means (The White House, 2024).

Overcrowding of families at Border Patrol's McAllen, TX, station, by Department of Homeland Security Office of the Inspector General (2019)

Regarding immigration from non-Central and South American countries, in 2017, the Trump administration passed a series of executive orders prohibiting a selection of predominately Muslim countries from being able to travel to the U.S., including for refugee resettlement (Immigration History, n.d.). Though there were legal challenges against these orders, the U.S. Supreme Court ultimately upheld most provisions outlined in a third version of what has been referred to as the "Muslim Travel Ban" or just "Muslim Ban" (Immigration History, n.d.).

Today, the 14th Amendment, as it concerns immigration, faces new challenges from the second Trump Administration. On January 20th, 2025, President Trump signed an executive order ending birthright citizenship; specifically, stating that "people born in the United States will not be automatically entitled to citizenship if their parents are in this country either illegally or temporarily" (Howe, 2025). However, within three days of that order being issued, it was already being challenged by a federal judge who barred the administration's enforcement of the order, and others also came forward concerned with the legality and unconstitutionality of the order (Howe, 2025). As of August 7th, 2025, the U.S. Justice Department intends to ask the Supreme Court to rule on Trump's order and its constitutionality; a decision that could significantly shape the U.S.'s handling of immigration and understandings of constitutional rights (Alexander, 2025). We will discuss more about present-day immigration enforcement and Immigration and Customs Enforcement (ICE) in Chapter 11.

Conclusion

As this chapter has shown, class and economic inequality have long been factors shaping political and social outcomes in the United States. While it may seem easy to place the blame on individuals for being unable to secure a higher economic standing, economic class is a much more complicated matter to contend with. Structural conditions and political decisions have shaped the class structure in the U.S., including disparities across race/ethnicity and gender (as will be discussed more in the next chapter). Additionally, these same class concerns are complexly intertwined with the history of immigration and citizenship policy in the U.S. with racial, ethnic, and national origins shaping who could come to this country and become citizens while economic pressures (e.g., the Great Depression, the need for laborers to build railroads) also shaped these policies.

Chapter 5

A History of Gender at the Roots of the U.S. Criminal Justice System

Introduction

By this point, you're already seeing the intersection of race and class/socioeconomic status (SES) at multiple points throughout history. Here we'll highlight the intersection of gender and class/SES (which also ties in with race/ethnicity throughout U.S. history) to provide a final foundational step towards understanding these minority groups' treatment in the modern CJ system.

Be warned, in addition to other topics in this chapter, we're going to tackle the criminalization of reproductive choice (speaking both of the criminalization of abortion, and the legalization of eugenic sterilization). We'll also be briefly addressing medical practices that were sexually abusive, as well as ableist abuse. We understand that abortion is a very controversial subject and many people have personal and religious views concerning its moral status; however, given its criminalization and the SCOTUS decision in *Dobbs v. Jackson* - as well as the economic impact on women and AFAB people, and especially low-income women of color - it is something we have to tackle during discussions of the CJ system and its history.

The Colonial Era

Witch Hunts

Gender norms were also largely carried over by European settlers, with women being seen as primarily having the duty of being a wife and mother, and in charge of domestic tasks. Colonists were also largely homogeneous in religious views, with religious sects such as the Puritans believing women to be inherently more prone to spiritual deception (Kocic, 2010; Reis, 1997). Unfortunately, a mixture of isolation, religious extremism, misogyny, and potentially socio-political maneuvering culminated in a mass ***moral panic*** (a pervasive public belief that something will destroy society or lead to moral decay) known as ***witch trials*** (Adams, 2008). While most people immediately think of the Salem witch trials of 1692-1693 in Massachusetts, they began earlier in Connecticut in 1662, where witchcraft was considered a capital crime (Klein, 2018). At least 25 people died during the Salem witch trials and 11 people were executed during the Connecticut witch trials; ***78% of those convicted of witchcraft were women, most of whom were unmarried and/or childless*** (Klein, 2018; Reis, 1997; Roach, 2013).

"Examination of a Witch" depicting the trial of Quaker preacher Mary Fisher in 1656, by C.H. Matteson, 1853

Scholars who've examined the witch trials from a gender lens assert that the women who were executed were higher class or more publicly-known, which raised concern among authorities that others might follow their non-conformist behaviors which threatened the patriarchal norms of the day (Kocic, 2010). Others who take a socio-political view state that, in Salem (the Connecticut witch trials were not studied), there were competing factions within Salem who used witchcraft accusations to attempt to obtain more public standing and power (Kocic, 2010). Still others explain the odd behaviors of the women accused of witchcraft as being caused by ergot poisoning (Blumberg, 2007). Since society is a complex interrelationship of cultural views of gender, socioeconomic power, and disability/mental health (among many other things), the witch trials may indeed be explained by a combination of all of these hypotheses.

The 19th Century

Reproduction, Midwifery, and the Criminalization of Abortion

In the colonial era, the entire realm of reproductive health and childbirth was left to women, including the termination of unwanted pregnancies, which was not seen as a moral, legal, or

social issue until after "the quickening" (a religious term referring to when the fetus first moves in the womb; this was seen as the moment at which the fetus received a soul) (Kuxshausen, 2020). Medical practices at this time were focused on "restoring the menses", which included the use of herbal recipes shared among families and communities (Johnson, 2017).

However, moving from the colonial era into the 19th Century, a process of criminalization occurred in conjunction with a movement of physicians (who were male, given the slow acceptance of women into higher education and scientific fields) to monopolize the field (Klepp, 2009; Kuxhausen, 2020). Physicians in the 19th Century were not seen as a professional field and were often looked down upon in society (at this time, anyone could portray themselves as a physician without any legitimate degree or training), so a number of physicians that had attended reputable medical schools gathered together to attempt to professionalize the field (Johnson, 2017). A major figure of this movement was ***Horatio Storer***, who was morally opposed to abortion and thought that targeting the practice as immoral would set the medical field apart as moral by comparison. Due to his widespread influence, eventually 40 anti-abortion statutes and laws were codified across multiple states (an 1860 statute in Connecticut went so far as punishing women who received abortions, and the abortionist, with up to five years in prison and a fine of today's equivalent to at least $30,000) (Johnson, 2017).

Abortion legislation granted medical exceptions, however, so women who were able to afford a certified physician were still able to obtain abortions, thus leading to an economic (and racial/ethnic, as access to economic success was tied to historic treatment) divide in access (Kuxhausen, 2020). Emerging alongside the rhetoric that reproduction must be overseen by the new field of physicians was the concept of ***hysteria*****,** linking neuroticism and nervousness to women's reproductive organs. This rhetoric was distinctive in who it was used towards: upper, middle-class women were framed as weak and hysterical and in need of physician attendance, while women of color and working-class/poor women were seen as strong and fertile (Briggs, 2000). While the sexist origins of the words "hysteric" and "neurotic" negatively affected the social treatment of White women and have impacted women's treatment within the CJ system since the terms were created (Auerhahn & Leonard, 2000; Gainford, 2017), the framing of women of color as hyper-fertile and strong was significantly more physically destructive. In the 1840s (pre-Civil War), James Sims, the so-called "father of modern gynecology" conducted his experiments on enslaved Black women without any form of anesthetic (Owens, 2018). Other physicians at the time experimented on women of color and poor Irish women (Irish immigrants were not considered "White" until later in the 19th Century) (Owens, 2018). As a noteworthy and disturbing aside, a 2022 U.S. Senate investigation confirmed that ICE was performing invasive medical procedures on detained immigrant women, including unwanted sterilization, under the first Trump Administration (U.S. Senate Permanent Subcommittee on Investigations, 2022). With the second Trump Administration's unprecedented increase in immigrant detainment, concerns of this increasing have renewed, with evidence of immigrant women's health violations already having been reported (Mehrotra & Cameron, 2025).

An optional podcast episode that covers much of this history in depth is from NPR's Throughline: ***Before Roe: The Physician's Crusade (2022)*** (56 min. listen; the transcript can be accessed here).

Creating and Controlling "Born" Criminals

Putting all of this together, later in the 19th Century when abortion became criminalized, middle and upper-class White women were able to receive better medical care and to obtain abortions through physicians, while poor women and women of color were seen as hardy, incapable of feeling pain, and hyper-fertile (Owens, 2018; Kuxhausen, 2020). How does this relate to criminal justice? Well, two things: Firstly, right before Horatio Storer's successful movement to criminalize abortion, there were growing fears that White, middle-class women's increasing use of abortion was negatively impacting the racial and economic composition of the nation. In the early 19th Century, abortion was generally sought by low-income and/or single women and was generally accepted; it wasn't until more White, middle-class women were using it in the second half of the 19th Century that a wider group of legislators and physicians grew to be concerned (Storer himself used a lot of anti-immigrant rhetoric by warning that too many White women's abortions will lead to the nation being overpopulated with immigrants) (Johnson, 2017; Kuxhausen, 2020). This also serves as the early example of the "great replacement theory" that we still hear about today, and which has led to deadly racist hate crimes. As for the second relationship with criminal justice, enter in Lombroso's positivist school of criminology and the growing acceptance of ***eugenics*** to control the growing population of women of color, poor women, and the disabled.

As a quick recap, remember that Lombroso proposed that a portion of humanity was born criminal, as they were "atavistic" (throwbacks to a prior evolutionary state), and that physical deformities and traits correlated with criminality. He also deemed people of African ancestry as "atavistic" and used his theory to promote ideas that Black people were inherently criminal (a relevant example of ***scientific racism***, using "science" to promote racially discriminatory ideas or conclusions (Rafter, 1997)). Other early positivist theorists took his ideas and combined them with emerging evolutionary and hereditary theories, proposing the terms "feeble-mindedness", "imbeciles" and "degeneracy" to describe people who were developmentally disabled, mentally impaired, or socially undesirable (Rafter, 1997). These criminologist theorists and a rising movement of psychiatrists - both groups looking to establish themselves as "white collar", upper-middle class fields (as with physicians) - began to equate mental and physical "unfitness" (plus other socially undesirable behaviors, like women's promiscuity) with "moral unfitness", and advocating asylums to remove people classified as such from the rest of society (Rafter, 1997). Recall that colonial era term "waste people", and how it evolved into "white trash" in the 19th Century? Yes, it's as dehumanizing as it sounds, and this movement combined this, misogyny, early criminology, and scientific racism and took it to its logical conclusions, leading to a eugenics movement that started in the 1870s. Watch the following video (06:15 min. run time):

Fear and Eugenics, by PBS (2022)

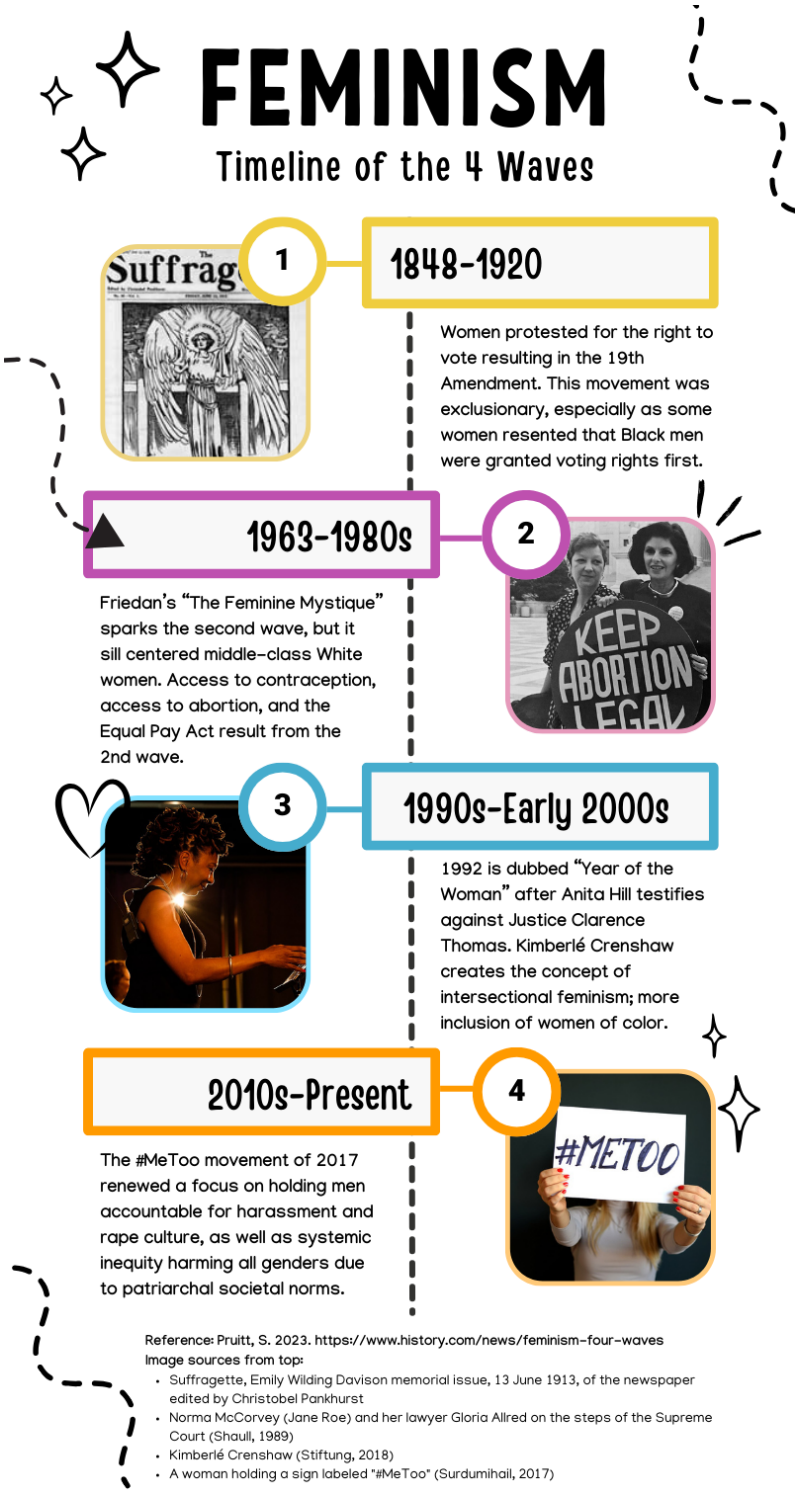
The 20th & 21st Centuries

During the aforementioned eugenics movement (which lasted from about the 1870s to 1940s), the fear was not only that racial/ethnic minorities, low-income people, and those who were "morally unfit" were procreating, but also that middle-class White women were not bearing enough children. Even among White women, misogynist expectations of “decency” and “morality” were leveraged to force examinations for STIs, remove women from general society, imprison and torture them, and even force them to undergo sterilization under the “American Plan” (which ran from the 1910s to 1950s) (Stern, 2025). Thus, only an incredibly narrow subpopulation of women were favored for childbearing, and even this “desirable” status could easily be lost by any action or behavior considered “unladylike”.

Even President Theodore Roosevelt echoed Storer's earlier rhetoric by stating that it was White women's "patriotic" duty to have more children, or else the White race would be threatened because too many White women were choosing to limit family size, and women of color were having too many children (Kuxhausen, 2020). Hopefully you're starting to see the intersection of race & ethnicity (concerns about immigrants; advocating for White racial hierarchy), class (the jockeying for socioeconomic status among emerging professions; the criminalization of the poor), and gender (control of reproductive choice; women were predominately among those who were sterilized) throughout this chapter, as well as some connections to present-day issues (e.g. the "great replacement" theory that was cited by the perpetrator of the Buffalo mass shooting in May 2022). Before we wrap the chapter up, however, we need to address the historic issues of the 19th and 20th Centuries and their relation to the four waves of feminism, since this informs our criminal justice system as well.

The First Wave of Feminism

The first wave of feminism actually started a little earlier than the 19th Century, when Elizabeth Cady Stanton and Lecretia Mott organized the first U.S. women's movement in 1848 (Pruitt, 2023). As the movement gained traction, the various movement groups were not entirely homogeneous in their goals: some Suffragettes (the name given to women protesting for suffrage – the right to vote) exclusively wanted the right to vote; others wanted more equal access throughout U.S. institutions, including access to careers within the criminal justice system. However, groups were split across race and class lines instead of ideological lines, with White, middle-class women largely not accepting notable Black suffragists (Bailey, n.d.). As Pruitt (2023) notes, while the early women's movement was also linked to the abolition of slavery, some leaders of the movement were angered by the passage of the 15th Amendment, which granted Black men the right to vote 50 years before the passage of the **19th Amendment**, which granted voting rights to women. This racial resentment was made clear in the exclusion of Black women's rights leaders like Ida B. Wells from the national movement (Pruitt, 2023).



"Feminism: Timeline of the 4 Waves" by Koslicki (2024)

In 1920, the 19th Amendment was finally ratified, giving women the right to vote relatively late in comparison to other democratic nations (New Zealand granting the right in 1893, Norway in 1913, Canada in 1917, and the UK in 1918) (MacNamara & Burns, 2021). While the 19th Amendment and 15th Amendment ideally should have also opened the polls to Black women, the issues we discussed in Chapter 3, such as poll taxes, literacy tests, and mob violence, were still significant barriers to Black people enjoying their rights to vote.

WWII and the Second Wave of Feminism

A real-life "Rosie the Riveter" operating a hand drill at Vultee-Nashville, Tennessee, working on an A-31 Vengeance dive bomber, by Palmer (1943)

When men had left many factory positions unfilled and production had to increase for the war effort of World War II (WWII), many women were able to enter traditionally male-dominated spheres in the workforce. You may recall a feminist criminological theory (one of the first of the feminist criminological school) proposed by Adler (in her book *Sisters in crime: The rise of the new female criminal* in 1975). Adler hypothesized that the increased entry of women into the workforce would increase the opportunity for women to commit more crime, as they are no longer constrained to the home. She specifically examined the 1940s - the time at which women started working outside the home *en masse* - and theorized that more emancipation of women like this would eventually lead to rates of women's offending that would reach that of men's.

Adler's work was certainly influential in that she was among the first to really examine why women's criminal offending is different than that of men's in the U.S., but her hypothesis had a major blind spot: prior to the 1940s, many working-class women (many of whom were immigrants and women of color) ***were already working outside the home***. In metropolitan areas, the jobs they worked were often factory positions (given the industrial revolution) such as sewing and textile production (Orleck, 2000). By only examining the entry of White, middle-class women into the workforce, Adler had failed to control for a large population of other women who had been working outside the home well before the 1940s.

This is an example of the myopia that followed the women's liberation movement into the second wave of feminism, starting in 1963. When men returned from WWII, White, middle-class women were largely edged back into the home and outside of the work spheres, and the Cold War made America hyper-fixated on the nuclear family in the 1950s, with White, middle-class women encouraged to be "happy homemakers" with lots of children (O'Keefe, 2014). If you think of the 1950s housewife in heels, lipstick, and pearls, this was an intentional societal

message: feminine beauty was White, domestic, subservient to men, and a mother (O'Keefe, 2014).

Betty Friedan challenged this in her 1963 best-seller, *The Feminine Mystique*, which was the result of her research finding that many women were dissatisfied with the gendered expectations that they be housewives who shouldn't have political or career ambitions. This publication is seen as the official start of the second wave of feminism and its resulting **"Women's Liberation"** movement (Pruitt, 2023). Major advances in women's rights were won during the second wave: ***Griswold v. Connecticut*** (1965) granted married couples the right to contraception, ***Eisenstadt v. Baird*** (1972) granted unmarried people the right to contraception, and ***Roe v. Wade*** (1973) granted the right to abortion access in the first and second trimesters of pregnancy (we will discuss more about these cases' constitutional foundation in the next chapter) (Pruitt, 2023). The **Equal Pay Act** also passed in the beginning of the second wave (1963), requiring that men and women should receive equal pay for equal work (Pruitt, 2023). However, it wasn't until the **Equal Credit Opportunity Act** passed in 1973 that women were given the right to open a bank account without signatures from their husbands (though this right was actually won in the 1960s, many banks still refused to get on board until the Equal Credit Opportunity Act mandated it) (Adam & Aldrich, 2023).

Entering into the 1980s and all its shoulder pad power, women were making greater strides in the workforce. However, Pruitt (2023) notes that the second wave began to peter out with the Reagan Administration.

The Third Wave

Starting in the 1990s, the third wave of feminism brought attention to workplace sexual harassment and the glass ceiling. While women were beginning to re-enter the workforce in the 70s, 80s, and 90s after being pushed out in the 50s, there was still a great deal of patriarchal resistance (as we'll address later in this textbook, the representation of women in criminal justice roles is particularly low even now). Pruitt (2023) notes that the third wave officially began in 1992, when Rebecca Walker – a leader of the third wave – watched Anita Hill testify against Supreme Court Justice (then nominee) Clarence Thomas, alleging sexual harassment when he was chair of the Equal Employment Opportunity Commission and she was his adviser (Gross, 2021). While Clarence Thomas was still nominated to the U.S. Supreme Court and is a current Justice, Hill's testimony inspired many women to run for political office across the nation, making 1992 come to be called the "Year of the Woman" (Jacobs, 2018; Pruitt, 2023).

The third wave finally saw a more intersectional lens, and we were able to call it that thanks to Kimberlé Crenshaw's creation of the concept of "intersectionality" (as discussed in Chapter 1). The third wave also saw increased awareness of trans rights.

The Fourth Wave

Pruitt (2023) states that there's some difficulty in determining whether we're just in a continuation of the third wave or in a separate fourth wave; we would agree that we are in a separate fourth wave given the greater openness to inclusivity and intersectional feminism, as well as the broader conversations about how patriarchy harms all genders.

"We were never silent. We were silenced. And ignored" by Perkins (2018)

Pruitt (2023) points to the #MeToo movement going viral after Harvey Weinstein's sexual misconduct became public in 2017 as the start of the fourth wave of feminism. #MeToo actually began much earlier in MySpace in 2006 after Tarana Burke, when counseling a 13-year old sexual abuse survivor, realized that she wanted to say "me too" in response to the survivor's story, but couldn't due to her counseling role (Sweeny, 2020). However, after Weinstein's sexual assault allegations came to light, and due to the wider prevalence of different social media channels beyond MySpace, the #MeToo movement spread like a wildfire in 2017 across social media and became a national and international movement for women and people assigned female at birth (AFAB) to raise awareness of how prevalent sexual assault and gender-based violence truly is.

Specific to the criminal justice system, the #MeToo movement also brought greater attention towards not just the prevalence of gender-based violence, but also the underreporting and incredibly low prosecution, conviction, and sentencing rates for sex crimes (Sweeny, 2020). This movement also brought greater attention to ***rape myths*** (described more in Chapter 11) that members of juries and practitioners in the criminal justice system commonly believe, such as the belief that what a woman or AFAB person was wearing "encouraged" the assault; the "What Were You Wearing" art exhibit by Jen Brockman brought national attention and many similar exhibits for showing the outfits worn when survivors were sexually assaulted, among the outfits being several children's dresses (Travers, 2017).

Due to the prevalence of social media, there have been numerous offshoots, as well as misunderstandings, of what the feminist movement is. For example, many people have

criticized #GirlBoss Feminism for being anti-feminist in its celebration of individual women's capitalist successes, but usually with no recognition of the exploitative nature of capitalism in the United States, where there are no social safety nets for failure, or the internalized misogyny that fuels woman-on-woman bullying (Wynn, 2024). We would agree that, while this movement calls itself "feminist", it is inherently anti-feminist, as the ultimate goal of feminism is to break down unequal power structures that lead to gender-based exploitation and obtain an equitable and egalitarian society where all genders have a leveled playing field that accounts for the intersections of race, ethnicity, sexual orientation, culture, and socioeconomic status (Sharkey & Hawk, 2016). It's for this reason that the "TERF" ("Trans-exclusionary radical feminist") movement is also criticized as not truly embracing feminism, as this movement rejects the experiences of trans women, who also experience misogyny and gender-based discrimination and violence in addition to societal transphobia. The recent waves of "transvestigations" of cis-gender women – such as the baseless accusations of Summer 2024 Olympian boxer Imane Khelif being a man – are also an apt example of how transphobia hurts all women by demonizing them if they do not fit into a very narrow, gendered box of what femininity "should" look like.

Unfortunately, as with all the "waves" of feminism, there has been bad-faith backlash against the movement (i.e., feminism as we defined above, not the #GirlBoss or TERF versions and other offshoots) and its terminology. For example, the term ***toxic masculinity***, though referring to behaviors socially ascribed to or expected of men that are unhealthy, was interpreted by anti-feminist groups to mean that *all* men were being called toxic. Just like the warning sign "toxic water" by a lake does not indicate that all water *in the world* is toxic, "toxic masculinity" was meant to convey that not all masculinity is toxic, just behaviors that harm all genders, such as the expectations that boys not cry or express emotions, that boys not play in so-called "feminine" sports or games, that boys/men handle their problems using violence, or that men can't be emotionally vulnerable to their male friends (to name a few) (Cantor, 2021).

A sign protesting the connection between toxic masculinity and gun violence at a March for Our Lives event in Portland, Oregon, by Sarahirk (2018)

However, in the current day there still seems to be a major backlash against the feminist movement, particularly as expressed in the rise of the #RedPill and #BlackPill movements, which are expressly misogynist and seek to re-establish a gender hierarchy from before the feminist movement came to be. Adherents of these movements believe that women actually run the world and that men have lost rights, with rights being perceived as a zero-sum game rather than an equally shared freedom (ADL, 2019; Marche, 2016). The #BlackPill movement is particularly troubling from a criminal justice standpoint, as its adherents embrace a belief that the system is "too far gone to change" and may engage in suicide or mass homicide incidents (ADL, 2019). Indeed, while there have been several recent incidents of mass killings carried out by "incels" (involuntarily celibate men), a recent study by Lankford and Silva (2024) found that sexual frustration and misogyny is linked to most mass shootings in the United States carried out by young men, indicating an even greater need to address toxic masculinity and other patriarchal social moors that communicate to young men that women are a deserved commodity (rather than human individuals with their own attractions and desires) and that violence is an acceptable way to get what they want or make a statement.

Conclusion

That was a whole lot of deep stuff in the course of one chapter. When it comes to the topic of reproductive rights and the criminalization of abortion, it's important to examine the historic roots of all institutions (not just the criminal justice system or its main institutions that make up the system) so you can start to see some of the influences in the present day. Regarding the present wave of feminism, the violent backlash against women's rights is a particularly troubling one, especially as social media enables disillusioned people to fall down the "rabbit hole" of radicalization, and is an apt example of how patriarchy harms everyone. We will continue to examine gender (and its intersection with class and race/ethnicity) as we go through the social construction of crime, our criminal justice institutions, and our chapter on gender-based violence.

Chapter 6

The Social Construction of Crime

Introduction

Now that we've covered some of the historical foundations and influences that have shaped law and justice in the United States, this chapter emphasizes the importance of discussing definitions of crime. These are quite well connected, given that how society defines crime and criminality significantly dictates police activity and how courts operate. Police are known as the "gatekeepers" of the CJ system, meaning that they are the first CJ institution that decides who should enter into the criminal justice "funnel" (i.e., who should make their way through the adjudication and corrections process); while this is largely true given their wide degree of discretion over who to arrest, legislation that defines crime dictates whether police should make the arrests in the first place. Both legislation and the police are the foundational places to start when we get to discussions of lack of resources in the courts, too many caseloads for public defenders, the reliance on plea bargaining (due to limited court resources and heavy caseloads), mass incarceration, and heavy caseloads for probation and parole officers: addressing any of these issues in a vacuum will fail to address the root cause of *why* there are so many cases and inmates being incarcerated in the first place, as well as why there are racially disparate rates of incarceration.

What this means is that we have to examine the social construction of laws if we want to examine how law enforcement works, and also how inequities in law enforcement can begin before police officers themselves make a decision whether or not to arrest. Specifically, we will: cover theoretic approaches to how crime is defined; connect the social (and political) construction of crime to our prior examination of gender, class, and the criminalization/control of reproduction; address sexual orientation and gender identity and the history of criminalization; and address the war on drugs as a final illustration of the social construction of crime. Notably, our prior discussion on the history of vagrancy laws in chapter 4 would also fit into this discussion of how laws come to be implemented and enforced.

As a heads up, we will be covering the legislation surrounding abortion and reproductive rights up to modern times in this chapter. Personal views on abortion are informed by many different values and faith practices; the intent of this page is not to criticize anyone's personal views, but instead to speak of how abortion laws were formed and how these affect women's rights in the present day. As a society we've always had a plurality of viewpoints concerning questions of abortion and its regulation, so the main point is that criminalization of abortion is a phenomenon that is very much worth looking at through a critical criminological lens.

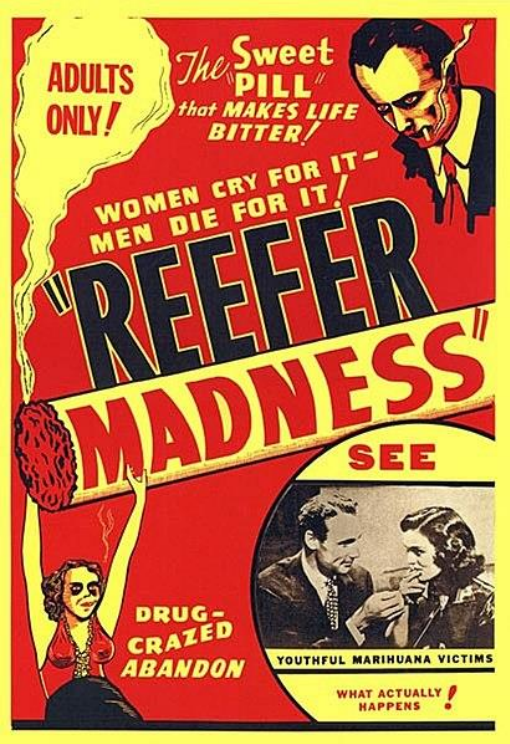
Defining Crime

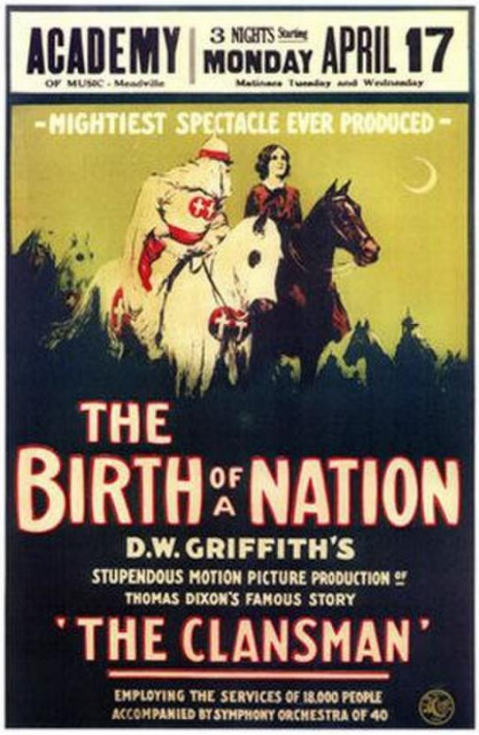
Critical Criminology

Hopefully you all remember some of the major criminological theories that you learned in introductory classes to the CJS and criminological theory (we'll get deeper into some of these in the next chapter, too). The majority of these theories - whether classical, positivist, sociological, ecological, or a mixture of these - may go about forming hypotheses in very different ways, but they all ask a common question: **what increases the likelihood that someone will commit crime/deviance?** In this fundamental question, the definition of "crime" or "deviance" is already assumed, so criminologists focus mainly on the collection of variables that may increase or decrease the likelihood that someone will offend.

Critical criminology, however, reframes the question. Instead of taking the definition of crime or deviance as already being assumed, critical criminologists ask: **why are certain behaviors defined as crime? Who gets to define them as crimes, and in what way do they benefit from defining behaviors as such?** As such, critical criminologists fall under the Conflict Theory umbrella as they specifically examine the social construction of crime (how crime gets defined by society), and also the political construction of crime (who gets to benefit [i.e., who gets an increase in political/social/cultural/economic power] from defining a behavior as a crime?).

In his book, "The Social Reality of Crime," Richard Quinney (originally published in 1970 but re-printed in 2001) provides an overview of the process of how behaviors become criminalized and the roles that power and conflict play in those decisions. In general, he argues that it is the powerful people and groups in society that ultimately construct the law and what behaviors will be defined as criminal. As such, they also determine who will be labeled as criminals since people in power are also enforcing and administering the laws. In doing so, Quinney also highlights the importance of understanding "selective enforcement" of the law, or how social factors (e.g., race, class) and criminal stereotypes inform how the law is enforced and who is more often targeted/perceived as criminal. Then, the media (also controlled by the powerful) communicates to the public what behaviors are crimes and who should be viewed as criminals within society.





Left: A poster for the movie "Reefer Madness" by Motion Picture Ventures (1936/2018); Right: A poster for the movie "The Birth of a Nation" by Epoch Producing Co. (1915)

Drugs are a great example of how social factors inform what actions become "criminal" as illustrated by propaganda films such as *Reefer Madness* (and will be discussed later), but other relevant examples that we've already covered include slave codes, Jim Crow laws (which arose concurrently with negative media portrayals of Black Americans such as in the 1915 film *The Birth of a Nation* that cast the Ku Klux Klan as U.S. heroes keeping Black people [White actors in Blackface makeup] - who were depicted as unintelligent and predatory towards White women – controlled), vagrancy laws (see chapter 4), local legislation in sundown towns, or the 1953 Termination Act. None of the behaviors targeted by these laws were considered *mala in se* (evil in and of themselves), but because of the race or class of the people engaging in these behaviors, and the economic/political/cultural gain that could be achieved by those enacting these laws.

It's important to note that most critical criminologists do consider some behaviors to be human rights violations (e.g., murder; sexual assault; domestic violence; any act of violence or harm or deprivation of someone else's rights), so they are not saying that everything is moral until society or culture declares it immoral. However, their focus is on the power differential between groups in society, and how this differential is enforced through law (and law enforcement, since the police exist to enforce laws that may be inequitable from their inception). Critical criminologists pay more attention to the *State* (here, meaning the governing body) and how it defines crime or commits human rights violations, as well as *corporations* (and

how economic power influences political decision-making), instead of taking an individual-level focus on how citizens behave or commit crimes.

Examples of the Social (& Political) Construction of Crime

The Criminalization of Abortion and Reproductive Care

In the last chapter, we left off with the eugenics movement and the early roots of the "great replacement theory" (we'll address it later in the course, but the earliest roots of this conspiracy started with antisemitic myths, but the U.S. eugenics movement is a relevant example of its evolution). Remember the two main sociopolitical reasons behind the rhetoric of the eugenics movement:

1. Fears that White, middle/upper class women were not having enough children
2. Fears that minority and poor women were having too many children

The legislative response to these fears was to pass further restrictions on abortion access, while also tolerating (and sometimes even enforcing) sterilization of minorities. For example, between 1933-1973, approximately 7,600 women were forcibly sterilized, and the majority (66%, or about 5,000) of these women were Black (Newman, 2018). Around the same time frame (1932-1972), the Tuskegee Experiments led to the deaths of over 100 Black men from untreated syphilis; the three main investigators in this infamous study were eugenicists, and their beliefs in racist eugenics largely informed their study (Lombardo & Dorr, 2006). Continuing the movement of Horatio Storer to criminalize abortion, abortion was a felony in nearly every U.S. state by the early 1900s (with some states allowing exceptions as long as the abortion was conducted by a licensed physician).

It's worth noting that many Americans still did not see abortion (especially before fetal viability) as immoral; a wide variety of views on its morality and acceptability existed across the nation, especially during time periods of great economic hardship (e.g., the Great Depression) or disease outbreaks that could cause birth defects (such as the rubella outbreak of the early 1960s) (Winny, 2022). Women continued to abort pregnancies through many different means, many of which were extremely dangerous. Medical advances started making birth control more accessible and reliable, but laws also restricted the access and legality of birth control, such as laws stemming from the 1873 ***Comstock Act,*** which made "obscene literature" illegal, and defined contraceptives as falling under the "articles of immoral use" category, thus prohibiting any selling, shipping, or advertising of birth control. It's worth it to pause here and revisit the question of the social construction of crime: which groups in society have a voice in defining what is "obscene" or "immoral"? How have ideas of "obscenity"/"immorality" changed over time?

Finally in 1965, ***Griswold v. Connecticut*** ruled that married couples may purchase and use contraception. In 1972, this right was extended to unmarried people as well. In their decision on *Griswold*, the U.S. Supreme Court cited a right to privacy that is implicitly understood in the Constitution as an ***unenumerated right*** (the SCOTUS at this time uses the word "penumbra", meaning the right is not clearly written but resides in the shadow or is reflected by other rights) (Griswold v. Connecticut :: 381 US 479, 1965). Unenumerated rights are legal rights that are inferred or implied from other rights in the Constitution, or from existing laws that were derived from Constitutional rights, and are protected under the ***9th Amendment*** of the Constitution.

Norma McCorvey (Jane Roe); cropped from an image by Lorie Shaull (1989/2017)

Privacy continued to evolve as an unenumerated right with ***Roe v. Wade*** in 1973. The SCOTUS held in *Roe* that the 14th Amendment guaranteed the right to privacy, and the Court instituted a trimester system to balance when the woman's interest should be prioritized vs. the state's interest for the pregnancy to continue. This trimester system essentially allowed the right to abortion in the first trimester, and allowed states to create incremental regulations as the trimesters advanced (Cornell Law Legal Information Institute, n.d.). Therefore, it's important to realize that *Roe* didn't guarantee an immutable right to abortion at every stage of pregnancy, but struck a compromise between women's privacy and bodily autonomy and state interests, depending on the fetal development stage. Almost two decades later in 1992, ***Planned Parenthood v. Casey*** upheld the spirit of *Roe,* but overturned the trimester framework, replacing it with the concept of fetal viability (understanding that viability can change with medical advancement), and clarifying that state law must allow exceptions post-viability for "pregnancies which endanger the woman's life or health" (Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 1992). It's important to note that three of the Republican-appointed Justices (Kennedy, Souter, and O'Connor) joined in the concurrence, emphasizing the need for *stare decisis* (the legal doctrine to stand by previous court precedent) and the importance of privacy and liberty as derived from the 14th Amendment due process clause (Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 1992).

However, most recently in 2022, the SCOTUS in ***Dobbs v. Jackson Women's Health*** overturned both *Casey* and *Roe*, stating that the regulation (up to criminalization) of abortion decisions should be left up to individual states. The *Dobbs* decision is therefore a very relevant example of the social and political construction of crime, especially given the long history of political criminalization of abortion in spite of a plurality of public views, and widespread public acceptance of abortion before "the quickening" before the mid-19th Century. It's also an alarming decision from a legal standpoint for several reasons:

1. The erosion of *stare decisis* and precedent – *Stare decisis* is not a permanently binding legal standard, but is a doctrine that assists in establishing legal consistency and maintaining the Court's air of impartiality. Essentially, by relying on the precedent set by past cases, the SCOTUS demonstrates a consistent interpretation of constitutional rights while allowing for some adjustment as society evolves.

The majority opinion in *Dobbs* disregards the precedent set by *Roe* and *Casey*, claiming that these are not established historical rights, instead preferring a period in history when abortion was criminalized. However, as we addressed in the last chapter, this history of criminalization is not clear-cut and was not established until the mid-1800s. The criminalization movement was also motivated by white supremacist rhetoric. The Court's majority decision also contrasts with the decision of the Republican-appointed justices in *Casey*, who asserted that the Court should not radically change constitutional interpretation and should preserve privacy (this indicates a greater amount of political polarization in modern times, as the *Dobbs* decision was clearly divided by the justices' political parties).

2. Privacy rights and other unenumerated rights – *Roe* and *Casey* were pivotal in establishing precedent for privacy rights under the 14th Earlier cases, such as ***Griswold v. Connecticut*** (which affirmed the privacy and liberty of couples to use birth control without government regulation) and ***Loving v. Virginia*** (which struck down a law banning interracial marriage) also set the foundation of tying the 14th Amendment to privacy rights. By overturning *Roe* and *Casey* and leaving the decision to the states, the SCOTUS opens the door for overturning other cases that used this evolution of 14th Amendment precedent to further affirm privacy. These include ***Lawrence v. Texas*** and ***Obergefell v. Hodges,*** which are important LGBTQ rights-affirming cases that we will address later in this chapter.

When it comes to precedent regarding privacy, in layman's terms, it's all or nothing. Either privacy precedent is upheld, or it is overturned, and every case that used this precedent as a foundation is now up for legal challenge. The majority in the *Dobbs* decision assures that these other cases are not threatened, but there is nothing legally binding to assure citizens that this is the case beyond trusting the justices at their word. Justice Thomas has already stated that SCOTUS should reconsider *Griswald, Obergefell,* and *Lawrence.*

3. The political polarization of the SCOTUS – Ultimately, the concerning takeaway from the Court's majority opinion in *Dobbs* and in other major cases it's ruled on this session is the sharp division along politically polarized lines, and the clear statement by the majority opinion that public opinion should not affect SCOTUS decisions. While we expect our justices to be impartial interpreters of the Constitution, their appointment process (appointed by the president, who may not have won the public vote – three SCOTUS justices were appointed by Trump, a president who lost the popular vote) is inherently antidemocratic and carries a risk of minority (minority political party, not minority race/ethnicity) rule. This is a notable example of the political construction of crime and criminal-justice-related decision-making.

While the majority opinion asserts that voters have the power to decide abortion at the state level, SCOTUS recently ruled in ***Merrill v. Milligan*** that politically partisan gerrymandering (congressional maps that significantly weaken the other political party and/or the voting power of POC) may continue. Bringing this home, Indiana's own state maps are among the most gerrymandered in the nation (Hocker, 2021). This is a further erosion of democracy, and strengthens politically partisan gerrymandering that essentially guarantees that the political party currently in power in local legislative branches will remain in power, removing decision-making power from citizens.

Lastly, consequences can be (and have already been in some states) dire for women. The threat of criminal penalties for healthcare providers has led to women with miscarriages and life-threatening pregnancy complications being left untreated until the women are near death (Grossman et al., 2023). The most recent analysis of Texas maternal healthcare after its abortion ban shows a 52% increase in pregnant women requiring blood transfusions due to miscarriage-related hemorrhage, since the legal consequences for providing abortions (assisting the evacuation of miscarried remains through medication or surgery is still medically considered an "abortion") are leading providers to not provide miscarriage care until the mother is in life-threatening medical crisis (Surana et al., 2025). Even before *Dobbs*, the Pregnancy Justice Center has identified ***1,331 cases of women being arrested or detained for losing their pregnancies between 2006-2020*** (Pregnancy Justice, 2021). Many of these women are women of color and of low SES, and a lot of these arrests are based on the accusation that drug use caused their miscarriages (even when medical experts weigh in that the drug and/or amount does not usually cause miscarriage).

A very recent example from Ohio was the case of Brittany Watts, a Black woman who had a miscarriage of a wanted pregnancy at 22 weeks. Her doctors were concerned about whether inducing an abortion (the term "abortion" is used for any evacuation of a pregnancy, whether or not the fetus is viable, so it's used for miscarriage care too) would violate Ohio's abortion laws (Ohio banned abortion after 6 weeks following the *Dobbs* decision; a statewide vote after Brittany Watts' case made abortion legal up to fetal viability again). She was at extremely high risk of medical complications that could leave her "on death's door", but doctors were still hesitant based on the law at the time (Duncan, 2024). She returned home because of the long wait times at the hospital, and she miscarried at home. When she returned to the hospital for post-miscarriage care, the nurse called the police on her and the police charged her with "abuse of a corpse", a felony. No one could reply to Ms. Watts' attorney's question of what she was supposed to do with the miscarried remains of her pregnancy (Duncan, 2024). Charges against Ms. Watts were dropped in January 2024, but her case is one among many women being denied care due to post-*Dobbs* laws (only she had criminal charges thrown in). Twenty women and two OBGYNs brought a case against the Texas' abortion laws, *Zurawski v. Texas*, claiming that Texas' laws denied them abortions in spite of extreme medical complications; the Texas Supreme Court, however, dismissed the case and refused to clarify when medical exceptions could be used as justification for abortion (Jarrett & Barakett, 2024). The Texas Supreme Court claimed that exceptions should be determined by doctors, though these doctors

are hesitant to approve any exceptions due to the threat of criminal penalties. A critical criminologist would ask: who benefits from these laws? Who does not?

LGBTQ+ Criminalization and Rights

The criminalization of the LGBTQ+ community and evolution of LGBTQ rights is also an example of the social and political construction of crime, and a good illustration of the evolution of privacy as an unenumerated right rooted in the 14th Amendment. Regarding sexual orientation, same-sex relationships were criminalized through sodomy laws starting in the 1920s. Before then, only *sexual assault* with the intent to commit sodomy was criminalized at the federal level, but many states had their own criminalization laws dating back to colonial times. Early anti-sodomy laws were formed with a religious understanding that sex must always be procreative, so they didn't explicitly target same-sex couples, but instead targeted any sexual activity outside of a married couple intending to bear children; it wasn't until the late 19th Century and early 20th Century that homosexuality as a sexual orientation was demonized and pathologized, leading to more targeted enforcement (especially against gay men) (Chauncey et al., 2003). This an example of ***differential enforcement*** of the law, which is another major focus of critical criminology (and ties in well with the war on drugs, which we'll get to later on this page).

Starting in the 1950s, some states began to recognize consensual same-sex activity and sought to decriminalize it, though other states upheld their criminal codes (Weinmeyer, 2014). In 1969, the Stonewall Riots were a catalyst in bringing civil rights attention towards LGBTQ rights. The video below helps to clear up some myths and provide some good historic background about Stonewall.

"How the Stonewall Riots Sparked a Movement" by History (2018)

In 1986, the SCOTUS in *Bowers v. Hardwick* upheld criminal sodomy laws, with the opinion of the court making a social norms argument, while the dissenting opinion cited the right to privacy. However, in 2003, the SCOTUS reversed their prior decision in ***Lawrence v. Texas,*** striking down a Texas sodomy law and all other state sodomy laws in the process, citing the right to privacy implicit in the 14th Amendment due process clause. Some years later in ***Obergefell v. Hodges*** (2015), SCOTUS ruled that the 14th amendment protects the right to marry for same-sex couples. Even more recently, last year (2022), Congress passed the Respect for Marriage Act, requiring all states to recognize same-sex and interracial marriages.

Unfortunately, in spite of the Respect for Marriage Act securing one LGBTQ right, there's been a recent rash of states criminalizing trans* healthcare, and a recent rash of political rhetoric attempting to demonize people in the queer community, echoing homophobic myths about queer people being dangerous to children that popped up earlier in US history (Weinmeyer, 2014). In 2022, more than 145 anti-trans bills were introduced in 34 states' legislative sessions, and as of January 2023, 11 states have proposed new bills to criminalize providing trans healthcare to minors (and even adults, such as Oklahoma's bill to make it a felony to assist anyone under the age of 26 with gender-affirming care) (Habeshian, 2023). 19 states now ban gender-affirming care for those 18 and under, and most recently, Florida passed several bills that criminalize bathroom use that corresponds with one's gender identity, penalizes doctors who perform any gender affirming care, and allows courts to interfere if a minor (even with permission from a parent) seeks care out of state (Leonard, 2023). Florida's most recent SB254 also allows the state to gain temporary custody of a child whose parents allow them to receive gender-affirming care. Indiana's recent SB480 also passed, which requires civil penalties for anyone who provides gender-affirming care to minors under 18 or who helps a minor access such care. It's worth noting there that a number of major medical societies, such as the American Medical Association (AMA), the Endocrine Society, and American Academy of Pediatrics (AAP) are strongly opposed to the criminalization of evidence-based gender-affirming care, but much of this legislation is driven by cultural and political rhetoric (Park et al., 2021; Simona et al., 2021).

Critically Analyzing the War on Drugs

A final example of a broad collection of laws and policies that should be examined through a critical criminological lens is the war on drugs. Again, this is a perfect example of the question asked by critical criminologists: *who* gets to define crime, and *why* are these behaviors defined as crime? How did these definitions change over time, and how are they changing now? The war on drugs also ties directly into the militarization of the police (which we will address in the other pages and readings this week), given the major increase in funding and military transfers from the federal government to local law enforcement agencies to combat drugs, as well as the changing legislation that encouraged zero-tolerance enforcement of drug laws (leading to practices such as no-knock drug raids). For the purposes of this chapter, we'll highlight marijuana and the crack vs. powder cocaine sentencing disparity.

For marijuana, watch the video below for a good quick history about its criminalization, especially as criminalization was tied to racist myths. Click the "Watch on YouTube" link since it's age-restricted (there's some discussion about the racist roots behind the propaganda myths that marijuana will lead to sexual assault and rape).

"The Racist Origins of Marijuana Prohibition" by Business Insider (2018)

As a quick side note, marijuana was actually being transported *from* the U.S. to Mexico more than vice versa (Mexico had criminalized it before the U.S. did). However, this back-and-forth movement assisted in establishing the narrative that it was a "Hispanic" drug. As for the video's discussion on ***Harry Anslinger,*** he's a very important figure to know. Anslinger is known as the "father of the war on drugs" because, even though it was Nixon's administration that officially declared the war on drugs, Anslinger was the main person to set up the rhetoric and policy action. Anslinger also made a whole host of racist comments regarding drug use and why he wanted to criminalize marijuana that we're not going to repeat here, but you can look them up if you're so inclined.

Narratives about crack cocaine also took on a racist tone. Crack cocaine was a more widely-available, cheaper version of cocaine, while powder cocaine was the purer (and thus much

more expensive) form; this meant that people in low-income neighborhoods (which also tend to overlap with communities of color, given historic issues of redlining and discrimination) were more likely to access and use crack cocaine (Vagins & McCurdy, 2006). The "crack baby" myth emerged in the 1980s-1990s, arguing that babies born to mothers who used crack cocaine would have terrible developmental defects and would likely end up as criminal offenders. This term was based on a very weakly designed "study" of about 20 babies, and even though it has since been disproven (all cocaine is not healthy for fetal development, but there is no difference between crack and powder cocaine when it comes to pregnancy outcomes), the awful term and its connotations stuck around and informed policymaking (Newkirk, 2017). The term had a heavy racial connotation, blaming Black mothers for drug use, and arguing that Black children will be born with inherent defects and a higher likelihood towards criminality (Goulian et al., 2022). The fear that "crack babies" were growing up into relentless and remorseless violent offenders - called "superpredators" - also evolved in the 1990s. It was often only applied to young men and boys of color, and we will explore this term more in our unit on juvenile justice.

All of these myths and moral panics surrounding crack cocaine culminated in the 1994 Crime Bill, which introduced the crack vs. powder cocaine sentencing disparity of **100:1** (meaning that possessing 100 grams of powder cocaine would carry the same sentence as possessing just 1 gram of crack cocaine). This led to widespread racial disparities in mass incarceration, and while it was reduced to a ratio of **18:1** with the **2010 Fair Sentencing Act**, the ratio is still not 1:1 in spite of crack and powder cocaine having the same harmful effects, and in spite of our evolving understanding of drug use being a public health crisis as opposed to a criminal one. We will definitely explore more about the aftereffects of the crack vs. powder cocaine sentencing disparity in our corrections unit, but for now, we will turn to additional theories of criminal offending and victimization, and then policing and how the police are often leveraged to enforce socially and politically constructed laws.

Conclusion

Hopefully you're already seeing the threads of how all of our chapters relate to each other, and how the changing definition of crime has dictated policing, which has also dictated many present-day issues (racial profiling and police brutality, mass incarceration, the militarization of the police, etc.). In the next chapter, we will dive more into additional theories of criminal offending and victimization.

Chapter 7

Race, Gender, Class, Crime and Victimization

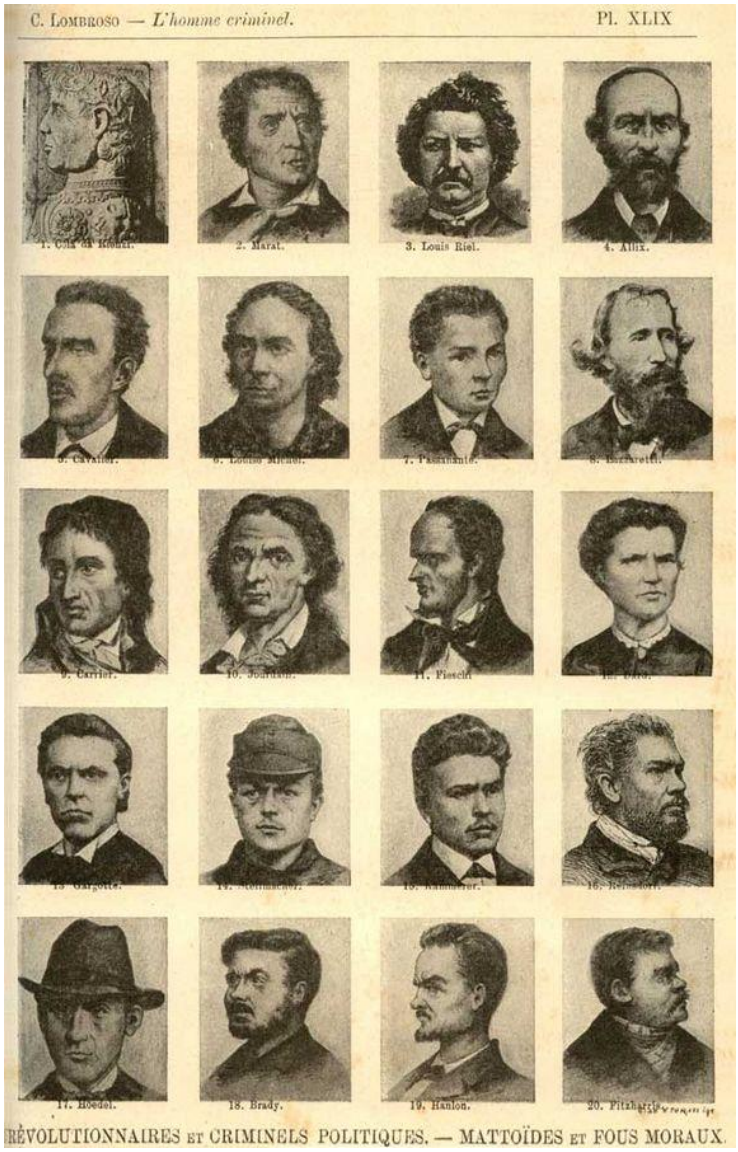
Introduction

In this chapter, you will be introduced to a brief history of criminological theory before transitioning into a more direct examination of theories focused on class, race, and gender in relation to crime and victimization. These will help to round out your knowledge of the different explanations for offending before we get into the main institutions of the criminal justice system, especially as some of these theories either inform criminal justice system practitioners and/or explain some of the differential outcomes of criminal justice policies (and broader sociological factors) across race, gender, and class lines.

The Classical School of Criminology

Before criminology became a more established field of study, much of the social thought about crime was based in religious ideas, such as Christian beliefs arguing that people who committed crimes were inherently evil or under the devil's influence. However, during the Enlightenment period (17th and 18th centuries), ideas about crime and criminal offending evolved and Cesare Beccaria and Jeremy Bentham were key figures in the rise of what's come to be known as the Classical School of Criminology. The general ideas expressed by classical theorists can be summarized in three points. First, is the idea that the motivation to commit crime exists in everyone, and what matters is whether an individual acts on that motivation. Second, is the assumption that individuals are rational and perform what Bentham refers to as ***hedonistic calculus*** when making decisions about whether they are going to commit crime or not. Essentially, individuals perform a cost benefit analysis to determine if committing the offense would be worth it. Third, Beccaria argues that for crime to be effectively deterred, punishments must be certain, swift, and severe. Specifically, the potential negative costs of being caught committing the offense must be certain to happen and quick in application. However, while the punishment should be severe enough to deter the offense, punishments should match the crime instead of being overly harsh. In sum, if the punishment doesn't outweigh the benefits of committing crime, the individual is more likely to commit the offense.

The Rise of Positivist Criminology: Cesare Lombroso and an Early "Biological" Explanation



"Picture of Criminals" by Cesar Lombroso (c. 1880)

Eventually, the influence of positivism (using the scientific method to test theories) arose in criminology with arguments being put forth stating that through scientific investigations we can begin to understand the facts of crime by looking at social or individual factors that are related to crime. In contrast to the Classical School's focus on free will and rational decision-making, positivist criminology is grounded in determinism or the idea that individuals do not have complete free will and, instead, crime is the result of factors that are often beyond a person's control.

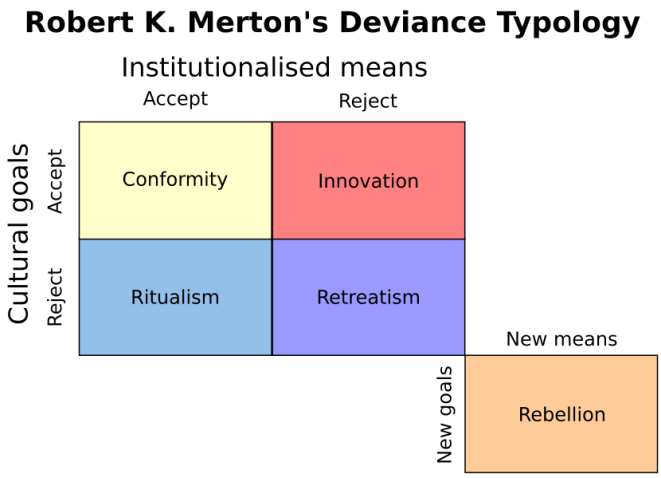
To illustrate this idea, Cesare Lombroso provided one of the earliest theories based in positivist criminology through his focus on biological evolution in his book, *The Criminal Man*, published in 1876. Specifically, Lombroso presents the theory of ***atavism*** and argues that people who commit crime are born criminals; that criminals are people who have not evolved biologically at the same pace as non-criminal persons. Lombroso outlined various *atavistic stigmata* – physical manifestations of atavism – that he believed showed that a person or people were still in a prior evolutionary stage. Some of these physical traits included things like head size and shape; the size of a person's facial features (e.g., lips, nose); and skin tone among others – features that were largely based on racial and ethnic stereotypes and characteristics that differed from common European/"White" features (recall from Chapter 5 that this is an example of **scientific racism**: using pseudoscience [while claiming to follow the scientific method] to try to justify racist ideas). Eugenicists latched onto many of the ideas that Lombroso presented to argue that people outside of the White race

were inherently more criminal, in spite of scientific evidence failing to uphold his theory. In the section that follows, two additional theories are presented as other examples of positivist criminology but with a focus on class inequality as a factor leading to crime. While these follow the positivist method, they are often classified in their own groups (such as the Critical School or Chicago School) in order to differentiate from biological theories that evolved from Lombroso's work.

The Critical School and Early Class-Based Theories

In direct critique of the ideas from Lombroso and others, Willem Adriaan Bonger – one of the first critical theorists – took an approach to understanding crime that moved outside of the individual. Specifically, Bonger took ideas from the work of Karl Marx [if you want to learn more about Marx and his theory's link to critical criminological theories, head here] and proposed a theory arguing that economic class and inequality is the driving factor predicting why crime was committed. In doing so, Bonger presented a theory in 1916 arguing that crime is the result of *egoism*. Specifically, ***egoism*** is presented as a rejection of altruism in that it involves placing your self-interests above those of others. In contrast then, ***altruism*** is defined by Bonger by a selfless concern for others' wellbeing. Drawing from Marx, he argues that capitalism creates egoism by pitting people against each other in competition for goods and resources. Thus, criminal offending is inherent to a capitalist system wherein the wealthy class will exploit the lower class – even through criminal actions - for their own gains while the lower class is drawn to crime for survival.

Following the trend of focusing on external factors, Robert K. Merton developed another theory of crime with a focus on class in 1938. Specifically, he argued that the inability to attain resources through legitimate means can create "strain" and lead to criminal offending. When a society places a high emphasis on material goals (like the "American dream" of a nice house in the suburbs and a nice car) and de-emphasizes the legitimate means to achieving those goals, ***anomie*** – a breakdown of social values and norms – can arise. In this state of anomie, people will adapt, and this may include what Merton referred to as ***innovation***. Specifically, people trying to achieve the valued materials goals of a



A diagram depicting Robert K. Merton's Social Strain Theory, by Wykis (2007)

society may innovate by finding "illegitimate" (i.e., criminal) means to achieve those goals. The diagram below shows Merton's different types of responses; "innovation" represents criminality, but "retreatism" may also lead to behaviors that are criminalized (such as using drugs to cope with the inability to achieve the cultural goal of the "American dream" through institutionalized/legitimate means).

Macro-Explanations, Race, and Crime

Like Bonger, W. E. B. Du Bois and was highly critical of ideas around race and crime presented by Lombroso and others. In his 1899 book, *The Philadelphia Negro*, Du Bois presents one of the first studies of race (conducted by a Black American man) that also considered crime and justice issues. In doing so, he situates racial discrimination and class as key issues facing Black Americans and why crime may be higher among this group – not some form of biological inferiority as Lombroso's theory suggested. As such, he argues that crime is the result of social factors including a lack of harmony with one's environment that can arise from instability and movement between places. With regards to the economy, Du Bois argues that since the Black population was disproportionately members of the lower economic class - often as a result of discriminatory practices in the labor market – at the time of his study, any additional negative economic condition (e.g., financial stresses, industrial depressions) would affect them hardest. Thus, he suggests the higher crime rate among Black Americans may be the result of these compounding negative economic conditions while also acknowledging that statistics suggest Black Americans are more likely to be arrested for less serious offenses and serve longer sentences relative to White Americans.

W. E. B. Du Bois, c. 1907

Though Du Bois is not credited, some of his ideas are reflected in the Chicago School's theory of social disorganization that was established by Shaw and McKay in 1942. In their research, Shaw and McKay found that crime was often highest in the center of cities (e.g., Chicago, hence the eventual name "Chicago School") and that these areas with higher crime rates often had similar structural characteristics such as larger immigrant and ethnic minority group populations, residential instability, and higher levels of poverty. In combination then, these factors were argued to lead to ***social disorganization*****,** which created conditions that increased the likelihood of crime. What is important to the discussion of race and immigration from this study though, is that Shaw and McKay found that these crime rate patterns persisted regardless of what racial/ethnic group was living there. So, crime was higher in the center of the city regardless of the majority racial/ethnic group living

there and even as racial/ethnic groups moved into communities outside of the central city crime rates remained lower. Thus, they argued that race/ethnicity and immigration themselves weren't related to crime, it was the other structural conditions of poverty and instability that mattered.

William Julius Wilson expanded on these ideas even further in two of his books, *The Truly Disadvantaged* (1987) and *When Work Disappears* (1996). In his work, Wilson drew attention to the changes that cities underwent in the decades following World War II including demographic and economic shifts in combination with discriminatory policies that resulted in unique structural conditions. Specifically, many cities became much more racially diverse as a result of the Great Migration, industries that were once located at the center of cities began to leave to the suburbs or abroad, and the people that could afford to leave did so while economic inequality and residential segregation confined racial/ethnic minority groups, particularly Black Americans, to the city. Wilson referred to this combined loss of jobs, increasing poverty, and proliferation of segregation as ***concentrated disadvantage*** and provides data showing that these factors led to severe levels of unemployment among the urban Black population. Wilson argued that given the proliferation of poverty and lack of employment opportunities, inner-city communities turned to alternative means to make money and obtain the resources needed to live – such as through illicit drug markets (see also Waverly Duck's [2015] book for further discussion of these factors and drug market operations).

While these examples don't encapsulate every theory examining the relationships between race and crime, they illustrate major perspectives that have evolved throughout history. Additionally, these examples illustrate the importance of considering the intersecting factors of race and class in studies of crime. Notably, recent research continues to uphold many of the arguments put forth here. For example, Krivo et al. (2018) conducted a nationwide study of a sample of neighborhoods and found that most neighborhoods experienced a decline in crime from 1999 to 2013 (which is consistent with the national crime drop illustrated by Pew Research Center in the figure below). That said, there was a selection of neighborhoods that have experienced a slight increase in crime and these neighborhoods were ones that had a population that was predominantly Black. However, this relationship was shown to be the result of deepening forms of economic disadvantage that were more common in Black neighborhoods resulting from factors such as the impact of the Great Recession of 2008.

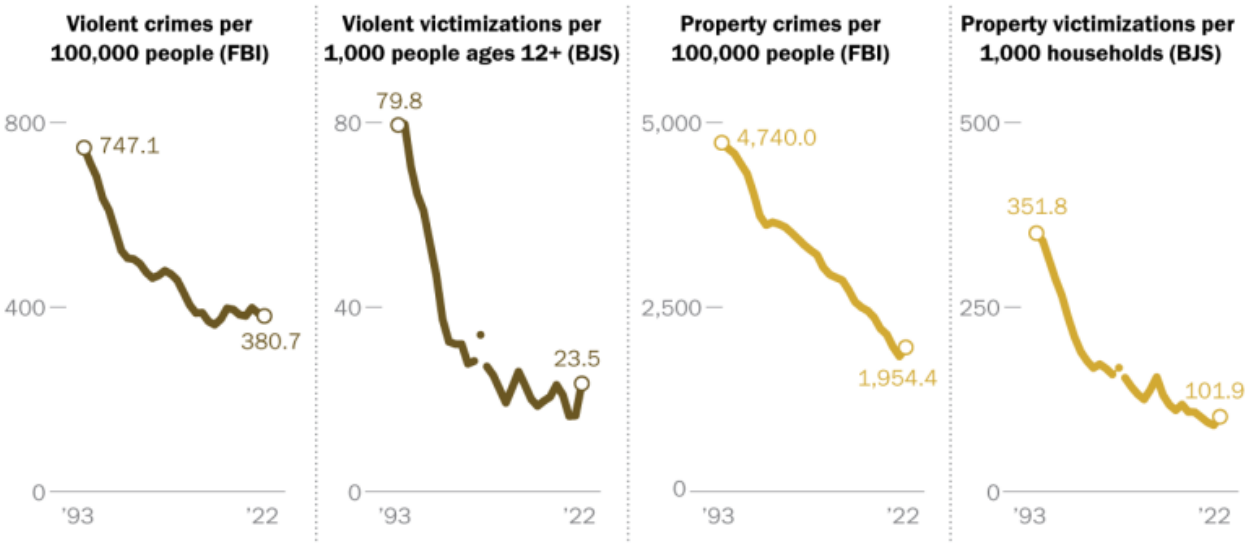
Additionally, Krivo and colleagues' (2018) study illustrated how neighborhoods that saw a growth in immigrant populations actually had lower levels of crime – violent and property – consistent with other research on the matter. For example, in a special report of the American Immigration Council, Martínez and Rumbaut (2015) wrote:

> *For more than a century, innumerable studies have confirmed two simple yet powerful truths about the relationship between immigration and crime: immigrants are less likely to commit serious crimes or be behind bars than the native-born, and high rates of immigration are associated with lower rates of violent crime and property crime. This holds true for both*

legal immigrants and the unauthorized, regardless of their country of origin or level of education. In other words, the overwhelming majority of immigrants are not 'criminals' by any commonly accepted definition of the term. For this reason, harsh immigration policies are not effective in fighting crime. Unfortunately, immigration policy is frequently shaped more by fear and stereotype than by empirical evidence.

U.S. violent and property crime rates have plunged since 1990s, regardless of data source

Trends in U.S. violent and property crime, 1993-2022



Note: FBI figures include reported crimes only; BJS figures include unreported and reported crimes. 2006 BJS estimates are not comparable to those in other years due to methodological changes.
Source: Federal Bureau of Investigation (FBI), U.S. Bureau of Justice Statistics (BJS).

PEW RESEARCH CENTER

"U.S Violent and property crime rates have plunged since 1990s, regardless of data source", graph in "What the data says about crime in the U.S." by Pew Research Center, Washington D.C. (2024)

For a more recent examination of the immigration-crime link, see Crawford's [2023] article covering a research study from Stanford economist Ran Abramitzky and co-authors titled, *Law-Abiding Immigrants: The Incarceration Gap Between Immigrants and the US-born, 1870-2020*.

Nogales border wall and concertina wire, photo by [U.S. Customs and Border Protection, 2019]

Gender and Crime

When looking at the history of criminology, we can see a pretty clear absence of discussions related to gender and offending up until around the 1970s. This doesn't mean that women were always ignored as offenders (or victims); however, much of the early thought on crime cast women offenders as either being more masculine like men, purely evil, or that women are more controlled by their biology (e.g., menstrual cycle) or emotions in a manner that makes them sometimes act irrationally (just like the concept of "hysteria" described in Chapter 5). For the most part though, most criminological theories and early tests of those theories ignored women and focused on men's offending – partly because men have always been more likely to commit crime than women – and just assumed that the factors that drove men to commit crime effected women in the same manner. In response to this, Feminist Criminology arose and called for criminologists to give more attention to women, including arguments being made that specific theories addressing gender should be developed and tested. Within Feminist Criminology are a few underlying ways gender is understood to contribute to understanding crime. For example, there are "gendered crime" and "gendered pathways to offending" approaches to understanding crime.

According to the ***gendered crime*** approach, criminologists need to consider gendered situational expectations and opportunity structures when studying crime. One way this is done is by looking at gender as a "situated accomplishment" or how people "do gender." Women and men both "do gender" in everyday life – that is, they subscribe to normative beliefs about masculinity and femininity and behave in ways that correspond to the expectations of what it means to be a man or woman. When we look at violence as an example, it's long been claimed that committing violence – fighting, etc. - is a way of demonstrating masculinity. As such, James Messerschmidt argues that when a man's manliness is challenged in a social situation, one response to reassert their masculinity may be through violence. Thus, violence may be one method that men sometimes use to "do gender." Another gendered crime approach considers the "blurred boundaries between victimization and offending" and argues that experiences with victimization can be a key *situational* factor that leads to crime. One example of this would be a situation where a woman experiencing abuses by a spouse or intimate partner retaliates and commits violence against the partner that was abusing them.

As for the ***gendered pathways*** approach, this focuses on things such as what specific factors/life experiences may lead women to commit crime, recidivate after incarceration, or desist from committing future crimes. For instance, the "blurred boundaries between victimization and offending" is examined again here as a potential explanation; however, this connection is not confined to an immediate situation in this case. Instead, research like Mary Gilfus' (1992) has shown through interviews with incarcerated women that many of them shared childhood experiences such as (sexual) abuse and neglect, had experiences with running away from home, and had committed crimes for survival purposes at times. In fact, the video you will watch in Chapter 13, "Life after Lockup", is a fitting example of the interviewed women's pathways to crime; while the women interviewees share similarities with the men (e.g., parents with drug addiction), the women faced struggles with experiencing sexual abuse as girls and using prostitution to survive while homeless. More recent research has also shown that negative experiences in childhood continue to influence women's offending later in life while these same experiences don't have the same relationship with men's offending (Liu et al., 2021). As these different approaches show, gender is an important factor to consider when studying crime given the different experiences and expectations men and women have in society.

Victimology

Victimology is the scientific study of victims and victimization. This includes a focus on various aspects such as why the likelihood of experiencing victimization may be higher for some people, what the legal rights of victims are, how rates of victimization vary across geographic spaces, victim-offender relationships, and ***victim precipitation*** (victim precipitation refers to ways someone may put themselves at an increased risk of victimization, either passively [like forgetting to lock your car door] or actively [like instigating a bar fight]. It's important that we

aren't blaming victims though! The choice to commit a crime is still ultimately the offender's). When we talk about victimization, it's important to note that it is not always random. Instead, it is the combination of environmental, demographic, and personal characteristics. For some types of offenses, it's even more likely to be that the offender will be someone the victim knows instead of a stranger to the victim.

Looking at crime data and the National Crime Victimization Survey (NCVS), we can establish some general trends in the demographics of who is most likely to experience victimization. Those most likely to experience victimization include men, younger people, people from lower socioeconomic status, people living in more urban spaces, and Black Americans and Native Americans. On the other hand, women (except in the case of gender-based violence, which we'll address in the next chapter), the elderly, wealthier persons, and people of other racial/ethnic groups tend to have lower rates of victimization. In the remainder of this chapter, we'll focus on crimes and victimization at the hands of powerful actors (e.g., corporations).

Widening the Scope of Victimization?

Importantly, victimology has brought attention to the importance of understanding criminal victimization. However, some arguments have been made that we may want to expand our understanding of "victimization" to look beyond just what behaviors society has defined as "criminal." By only looking at criminal codes, we are often looking only at behaviors of persons with less access to power and resources while the behaviors of those in power (e.g., corporations) that may cause harm - but are not labeled as "crimes" - get overlooked (think back to the previous chapter's focus on how laws are developed and behaviors come to be defined as crime). As such, the focus on criminal law may limit our understanding and the scope of victimization.

One way our scope of understanding may be expanded is by considering ***structural violence***, which is defined as a deliberate impairment of fundamental human needs by actors in power (Galtung, 1969). Johan Galtung, a Norwegian sociologist, developed this concept in his work and argued that "violence" is present when social, economic, and cultural forces work to keep certain groups from meeting their basic needs and achieving a higher quality of life. This "violence" is not produced through direct conflict like assault or murder; instead, it's often kept invisible in the structures of a society (e.g., policies that result in unequal outcomes between groups). For example, it's argued that healthcare disparities are an indicator of structural violence in that we can see that preventable diseases kill millions worldwide due to poverty and a lack of resources available to families when trying to secure treatments. As such, the impairment of needs placed on people originates in institutions that have power over them. Notably, while structural violence isn't referring directly to overt violence, it does create the conditions that allow for overt violence to occur more often, which we can see in the relationship between economic inequality/concentrated disadvantage and crime.

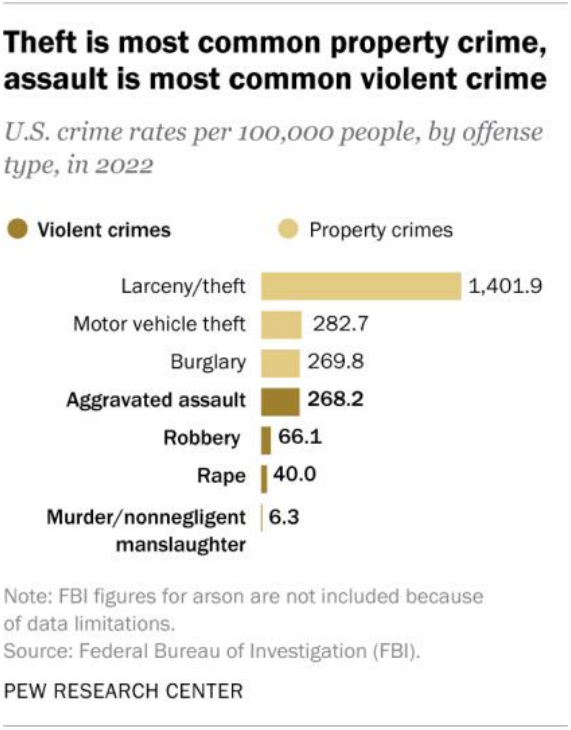
Another consideration may be to look more closely at state-sanctioned violence as well. ***State-sanctioned violence*** includes actions committed by the State (or government) that can include political corruption/repression, human rights violations, and misconduct or violence committed by actors in the justice system (e.g., police, correctional officers). Oftentimes, crimes committed by the State (or its actors) can be hard to identify or prove, and they can also be minimized by those in power (e.g., the action is depicted as legal or necessary for the protection of the country and citizens). The victims often largely come from marginalized communities. That said, state-sanctioned violence can also include times when the State (or its actors) refuse to take action and assist those in need. Agencies may overlook particular acts or fail to investigate/prosecute certain actors who have victimized others. Historically, we can see this in the failure to arrest and prosecute people who were actively involved in lynching Black Americans while, today, we can see this in the failure to investigate/penalize/prosecute police officers who have used excessive and/or deadly force under questionable circumstances.

Sometimes you gotta' laugh so you don't cry. Meme template by Gudim (2017), shared with permission

A final realm in which we may want to expand our understanding of victimization is with regard to harms caused by white-collar or corporate entities. The harm and crimes committed by white-collar and corporate offenders include fraud, environmental crimes, manufacturing violations, mortgage fraud, and unsafe work conditions among others. Importantly, white-collar and corporate crimes are not tracked the same as crimes that we most commonly think of (e.g., murder, robbery, burglary) and there's no national database on these types of offenses, so a lot of what we know can be pretty limited to specific cases. And while we may think of these types of crimes as carrying mostly a financial burden for their victims, there are times when physical harm occurs as well. For instance, ***corporate violence*** (Kappeler & Potter, 2005), which often falls outside the bounds of "violence" as defined in the index crimes, includes deaths and injuries related to dangerous work conditions and negligence as well as corporations ignoring or violating health and safety regulations. One example of corporate violence would include producing and selling a faulty product like the Ford Pinto in the 1970s, which had a design flaw that Ford decided to overlook because of the costs associated with fixing the problem resulting in around 900 deaths that no one at Ford was held legally/criminally accountable for.

Race and Victimization

When it comes to crime and victimization, it's important to keep in mind that most Americans regardless of race, ethnicity, and gender never commit serious crimes or are victimized. Additionally, most crimes are ***intraracial*** – involving an offender and victim sharing the *same* race/ethnicity - instead of ***interracial*** – involving an offender and victim from *different* racial/ethnic groups. Further, when someone is the victim of a crime it is more often than not a property offense.



"Theft is the most common property crime, assault is the most common violent crime", graph by [Pew Research Center (2024)]

That said, violent crime is still an issue and the trends from 2005 to 2019 are provided in the table below. As this table shows though, violent victimization rates have declined by the end of this timeframe for every racial-ethnic group, especially for the Black and "Other" groups. A question this might raise though, is why is victimization higher among some racial-ethnic groups relative to others? The answer is pretty straightforward when we think about what variables are related to crime. Victimization rates being disproportionately higher among racial-ethnic minority groups is largely due to the same kinds of factors leading to higher crime rates: segregation/isolation, deindustrialization, and the concentration of poverty/inequality in places.

TABLE 1
Rate of violent victimizations, by victim race or ethnicity, 2005-2019

Victim race/ ethnicity	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019*
Total	28.4 †	--	27.2 †	25.3 †	22.3	19.3	22.6	26.1 †	23.2	20.1	18.6	19.7	20.6	23.2	21.0
White[a]	27.7 †	--	26.8 †	25.9 †	21.5	18.3	21.6	25.2 ‡	22.2	20.3	17.4	19.6	20.8	24.7 ‡	21.0
Black[a]	32.7 †	--	34.9 †	28.5 †	30.6 †	25.9 ‡	26.4 ‡	34.2 †	25.1	22.5	22.6	22.3	21.8	20.4	18.7
Hispanic	25.9	--	22.4	20.3	22.2	16.8	23.9	24.5	24.8	16.2	16.7	18.2	20.7	18.6	21.3
Other[a,b]	34.3 ‡	--	28.9	24.1	15.6 ‡	22.7	23.2	23.6	25.2	23.0	25.7	19.0	17.4	25.3	24.0

Note: Rates are per 1,000 persons age 12 or older. Violent-crime categories include rape or sexual assault, robbery, aggravated assault, and simple assault, and they include threatened, attempted, and completed occurrences of those crimes. BJS created standard errors and presented testing for statistically significant differences among National Crime Victimization Survey (NCVS) estimates in this table using generalized variance function parameters. See appendix table 1 for standard errors.
--Estimates for 2006 should not be compared to other years and are excluded from this table. See *Criminal Victimization, 2007* (NCJ 224390, BJS, December 2008).
*Comparison year.
†Difference with comparison year is significant at the 95% confidence level.
‡Difference with comparison year is significant at the 90% confidence level.
[a]Excludes persons of Hispanic origin (e.g., "white" refers to non-Hispanic whites and "black" refers to non-Hispanic blacks).
[b]Includes Asians, Native Hawaiians, other Pacific Islanders, American Indians, Alaska Natives, and persons of two or more races.
Source: Bureau of Justice Statistics, NCVS Victimization Analysis Tool, 2005-2019.

A table depicting the rate of violent victimizations, by victim race or ethnicity, 2005-2019 from the [Bureau of Justice Statistics (2020)]

Lauritsen, Heimer, and Lang (2018) set out to explore this in their research examining disparities in male violent victimization across multiple decades from 1973 until 2010. In this study, they find that younger Black and White men living in poverty in urban spaces, and who are unemployed are most likely to be victimized while the same is largely true for Latinos, except for poverty not having a unique influence on Latino victimization. Based on their findings, they conclude that the disparities between racial-ethnic groups can be explained by differences in sociodemographic factors like poverty. Specifically, they found that the disparities in victimization experiences between White and Latino men disappear completely when controlling for demographic factors, these same factors explain 70% of the difference between Black and White male victimization, and though Black and Latino men share similar sociodemographic positions, Black men were still at a higher risk of victimization. Thus, Lauritsen et al. (2018) argue that if economic/employment opportunities and other similar factors were more similarly distributed across communities, disparities in violent victimization would not be as pronounced.

Conclusion

We covered a lot of ground here, but when discussing race, gender, class, and justice, it's important to delve deeper into criminological theory beyond what you usually get in your introductory courses. The evidence supporting these theories (at least the ones we discussed with recent evidence, not Lombroso's positivism!) also helps to discern myth from fact, since a lot of myths around race and crime get tossed around by political pundits, candidates, and media sources (while this seems notable during an election year, this is a tale as old as time and has driven many fear-based, "tough on crime" policies that lead to many of the disparate outcomes that we'll discuss in future chapters). For now, we'll expand a bit more on gender-based violence in the next chapter.

Chapter 8

Gender-Based Violence

Introduction

Gender-based violence and crimes against women and people assigned female at birth (AFAB) is a salient topic that spans the institutions of our police, courts system, and corrections. The topic of gender-based violence includes domestic violence and intimate partner violence, as well as human trafficking (particularly when the purpose of the trafficking is for sexual exploitation and forced domestic labor, though we will describe all forms in this chapter). Please be aware as we cover this material that some of it will be discussing sensitive issues and that the documentary you will be watching describes and portrays the results of domestic violence in graphic detail.

The National Domestic Violence Hotline can be contacted at 1-800-799-7233 and more resources can be found at https://www.thehotline.org/. Even if you are not a victim/survivor, this site is a very good resource about learning how to recognize abuse, power and control dynamics, and why people abuse. If you are a university or college student reading this text as part of your course, your university or college will likely also have support and counseling services, as well as a Title IX office that may assist you or a student you know if there are problems with gender-based violence on your campus.

Domestic Violence and Intimate Partner Violence

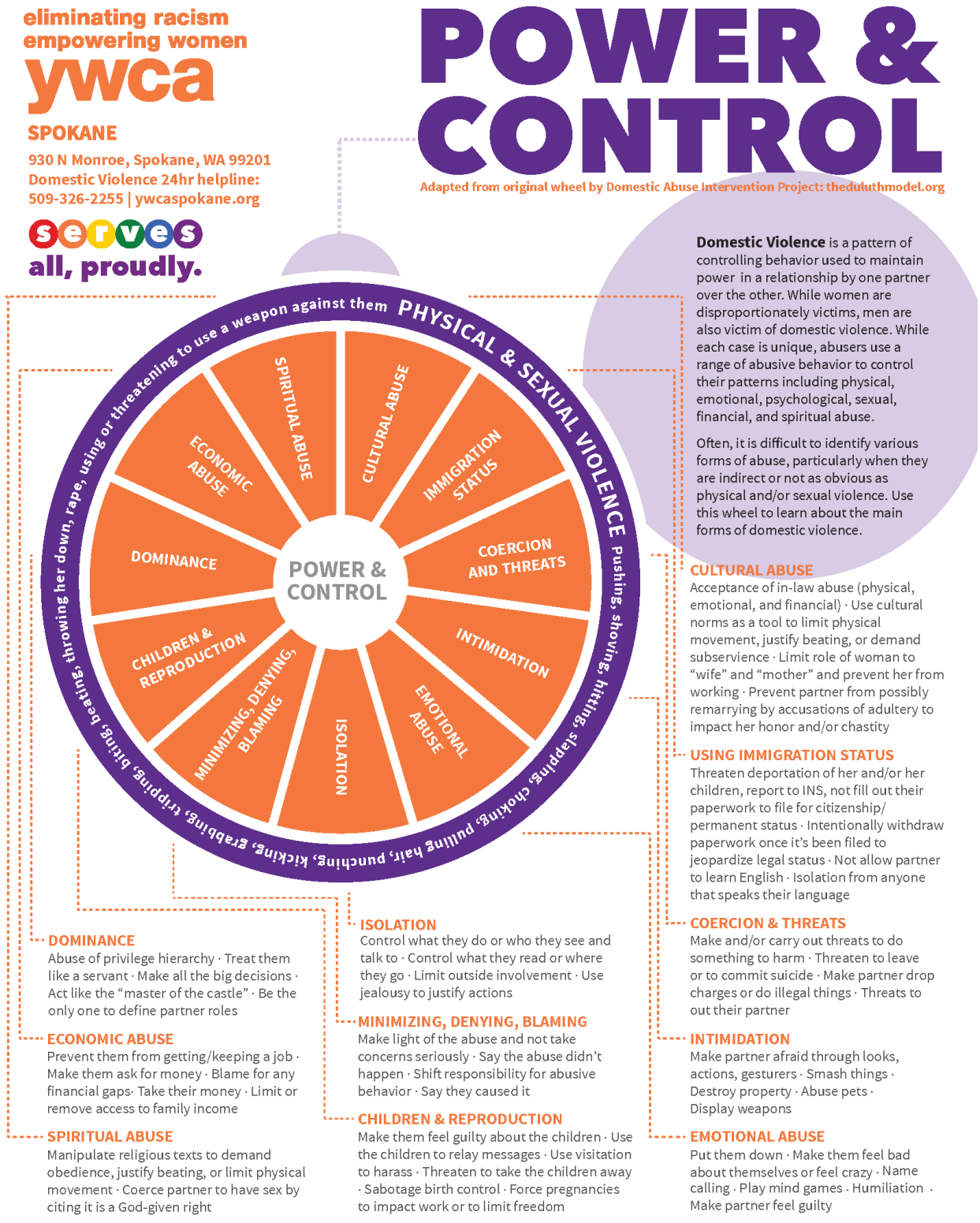
Definitions and Statistics

When it comes to acronyms to use, ***domestic violence*** (DV) is a more expansive term, since it can (in academic settings) refer to anyone in a domestic setting who experiences abuse (physical, sexual, emotional, psychological, or reproductive) from a perpetrator in the same domestic setting. While many use it to refer to partners in an intimate relationship, it can include roommates, children, or other family members in the same household. *However*, states vary in their definition, so you will always need to see how states define their statutes. You can look up each state's definition here.

Intimate partner violence (IPV) is a more specific definition of *only* those who've experienced violence from a partner in an intimate relationship, and also applies to prior intimate relationships where the abuser is no longer in the same domestic dwelling space as the victim/survivor. For example, dating partners who have not moved into the same place

together, or prior relationships where one partner has moved away from their ex are both examples of IPV where the victim and perpetrator are not in the same domestic dwelling.

When it comes to defining domestic abuse, many refer to the ***power and control wheel,* created by Domestic Abuse Intervention Programs (DAIP)** as a helpful visual (click here to view and learn more about it). It's very beneficial in giving a lot of examples of how to identify signs of abuse. However, note the main drawbacks of the original wheel: **1.)** it is written in terms of the perpetrator being male and the victim/survivor being female (so it overlooks situations where the woman is the abuser, as well as same-sex relationships). **2.)** It only focuses on physical and sexual violence (economic and emotional abuse are mentioned, but not included in the violence labels against the black background of the wheel). This first issue is due to the differences in prevalence (**1 in 4 women experience severe IPV**, as opposed to 1 in 9 men experiencing severe IPV) and the higher likelihood of women experiencing fatal IPV (being a victim of homicide from their male partner or ex-partner) (Campbell et al., 2007; NCADV, n.d.; Petrosky et al., 2017). However, IPV can occur in the reverse and in same-sex couples, with male and LGBTQ victims being hesitant to report due to gendered expectations and the fear of being outed by law enforcement. For a wheel that goes beyond physical and sexual DV and can apply to many types of relationships, the wheel below provides more coverage of other types of abuse (which can overlap, as multiple forms of abuse can be used by an abuser to exert control) and is more inclusive in its language use.

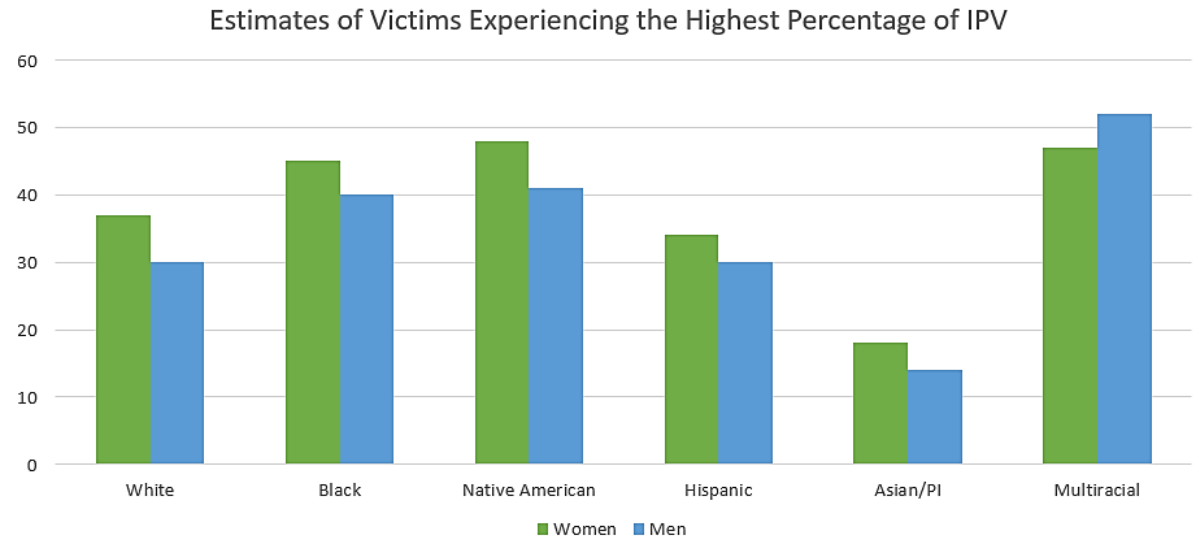


The Spokane YWCA Power & Control Wheel, adapted from the original model by DAIP. Redistributed with permission from [Spokane YWCA (n.d.)](#) Click image to see full size.

Additional Statistics

As of 2015, the rate of IPV victimization was 5.4 per 1,000 for women and 0.5 per 1,000 for men. For physical and sexual violence estimates, 32% of women will experience physical violence sometime in their lifetimes (28% of men), and 15% of women will experience sexual violence in their lifetimes (7% of men) (Office for Victims of Crime, 2018).

Concerning race/ethnicity, Indigenous Americans (48% for women and 41% for men) and multiracial (47% for women and 52% for men) survivors experience the highest rates of IPV, with Black people (45% women and 40% men) following, then White (37% women and 30% men), then Hispanic (34% of women and 30 % of men), and Asian/Pacific Islander experiencing the lowest rates (18% women and 14% men) (Office for Victims of Crime, 2018). Below is a helpful visual for all of those numbers and stats:



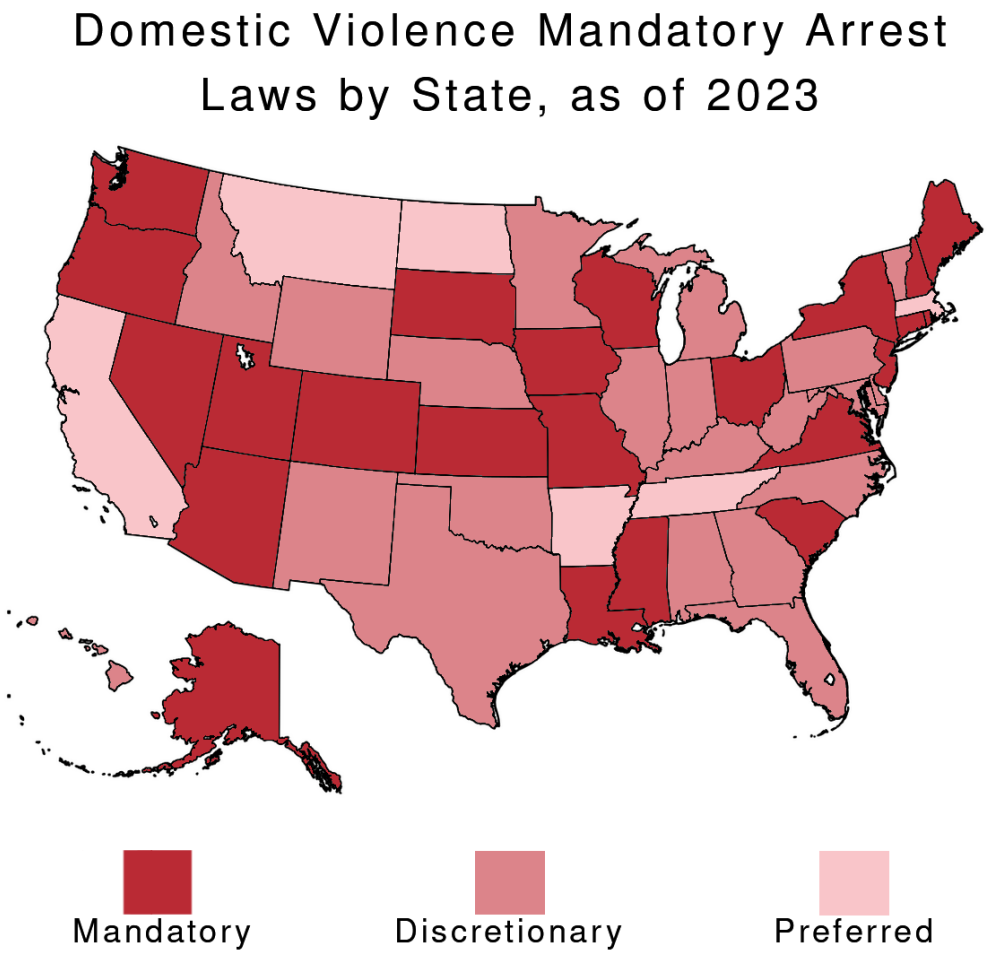
"Estimates of Victims Experiencing the Highest Percentage of IPV", chart by Office for Victims of Crime (2018)

Specific to Native American women, the U.S. is starting to recognize the epidemic of Indigenous American women who have disappeared or been found murdered (this crisis is labeled ***Missing and Murdered Indigenous Women,*** or ***MMIW***). While there are other contributing factors (such as sex trafficking and sexual assault - 67% of which is committed by perpetrators that are not Indigenous), domestic violence also plays a role (NIJ, 2013). Read more about this here (optional page): Native Hope – Missing and Murdered Indigenous Women. As far as other important statistics, the murder rate for women living on reservations is 10x higher than the national average. As of 2020, 5,293 incidents of MMIW have been reported, but only 690 have been logged into the federal MMIW database that was created to better track and assist in responding to this crisis (National Criminal Justice Training Center, 2022). The next chapter will

also expand a bit into the intricacies around tribal courts, which also relates to the difficulty in addressing this crisis.

Mandatory Arrest Policies

When it comes to law enforcement, there's been a lot of contention regarding how law enforcement should respond to domestic violence. Unfortunately, due to a history of misogyny and law enforcement being a predominately male-dominated, heteronormative field, there's been a great deal of reform efforts to ensure that law enforcement treats DV and IPV seriously and with trauma-informed care. For a bit of perspective, marital rape wasn't made illegal across the U.S. until one of your authors was 3 years old (the other hadn't been born yet), so – while we are olds – that's pretty recent in the whole grand scheme of things, and for a lot of law enforcement departments until then, domestic disputes were seen as something that the couple would "sort out" privately (unless small children were also victimized).



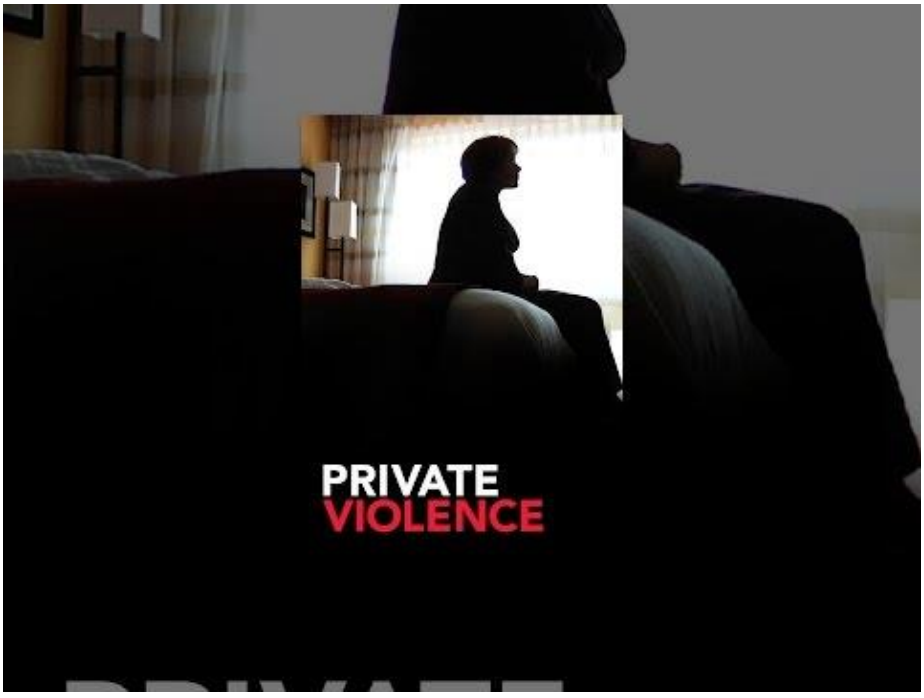
"Domestic Violence Mandatory Arrest Laws by State, as of 2023" by Indigo Koslicki (2024); map template by Wolfson (2019)

Because of this, states started enacting ***mandatory arrest policies,*** dictating that law enforcement must make an arrest when they have probable cause to believe that DV has occurred. You can see from the map above that 23 states and Washington, D.C. have mandatory arrest policies for DV (to get even more specific, Maine, Oregon, Rhode Island, Washington, and Washington, D.C. require arrest in all relationships for DV, and the others require it *except* in dating situations) (Durfee & Fetzer, 2014). Other states have "discretionary" policies, meaning that the arrest decision is entirely up to the responding officer's judgment. "Preferred" policies mean that making an arrest is heavily emphasized, but not mandatory.

While initial research showed promise for mandatory arrest policies, unfortunately subsequent research has shown that it does not reduce the likelihood of re-offense of DV (Hoppe et al., 2020). There is also evidence of a racial bias, and cases where the victim/survivor is White increases the likelihood of arresting the perpetrator (McCormack & Hirschel, 2018). When it comes to training law enforcement in ways to respond to DV/IPV, what are ways to do this correctly?

Why Do They Stay? What About the Courts?

One of the issues that comes up (from law enforcement practitioners, jurors, prosecutors, judges, and others), is "why do victims/survivors stay"? More training that brings awareness could help, although there are other legal constraints that essentially tie the hands of practitioners who *are* aware and wish to do the right thing. Watch the following documentary for a deeper discussion and portrayal of many of the issues that surround cases of severe intimate partner violence and police and court responses (heads up: discussion of physical and emotional abuse and images of physical injuries) [Run time: 1 hr. 17 min.]:



Restraining Orders, Gun Laws, and Self-Defense

As mentioned in the above documentary, many women who've killed their abusers and end up incarcerated express that they feel safer behind bars than they did when their abuser was able to find and target them. This speaks to the sad reality of multiple shortcomings of the criminal justice system, which we'll cover briefly in this section.

Restraining Order Enforcement (or Lack Thereof)

Women who are the targets of DV or IPV are often encouraged to get a restraining order. A *restraining order* (also called a protection order) is an official order issued by a judge specifying that a particular person (the restrainee) must avoid the applicant (the protectee) (Nickel, 2013). The protectee must file a petition for one at a local court and then attend an *ex parte* hearing (this is a civil court hearing where both parties don't have to be present) (LII, 2022), where she [we will use "she" in this example given the statistics shared above about women being the most likely to experience severe IPV] will present evidence of having been harmed by the restrainee. Upon review of the evidence and application, the judge will issue the restraining order.

Keep in mind that in many states, this is a process done in *civil court*, not *criminal court*, meaning it is separate from any criminal case proceedings and the evidence presented by the protectee isn't automatically used to pursue criminal charges against the restrainee. However, as with the violation of other civil statutes, violating a restraining order may still lead to jail time (or probation, fines, or other common penalties).

This is where the first shortcoming becomes apparent: not all protection orders are effective, nor are they all *enforced* effectively. Longer-term and permanent protection orders are shown to be more effective in reducing continued IPV victimization, but short-term orders are not as effective (Holt et al. [2002] even found that women with temporary protective orders experienced *more* psychological abuse from their abusers than women without any protective orders) (Benitez et al., 2010). Some protective orders are also too general and do not suit the specific situations faced by protectees, resulting in continued abuse (Logan & Walker, 2001), and stalking in particular is a situation that many protective orders fail to account for (Tjaden & Thoennes, 1998). Regarding enforcement, ideally the restrainee has already been arrested to be processed through the criminal court system while the restraining order is issued through the civil court system: several studies show that this lowers the likelihood of continued abuse (Benitez et al., 2010). However, this is not always the case.

A very tragic example of this is in the case details of *Castle Rock v. Gonzales* (2005), when Gonzales obtained a restraining order against her estranged husband. He then kidnapped her children, and when she contacted the police, they told her to wait and see if he'd return the children. Instead, he drove to a police station, opened fire, and died in the shootout – the three children were found dead in the back seat of his truck (it's unclear if he'd shot them beforehand

or if they died in the shootout) (Siegel, 2012). Gonzales claimed that the Town of Castle Rock Police Department failed to protect her 14th Amendment rights to life, liberty, and property by failing to enforce the protective order, but ultimately the U.S. Supreme Court ruled that she had no ground to claim that her rights were violated, essentially stating that there is no constitutional right to having the police actually *enforce* one's restraining order. Gonzales then took her case to the Iner-American Commission on Human Rights, which ruled that the United States continuously fails to protect victims and survivors of domestic violence (Siegel, 2012). While the ruling has no actual enforcement weight (no penalties on the United States), the decision shows how far the U.S. falls from international human rights standards when it comes to handling domestic and intimate partner violence.

Gun Laws and Domestic Violence

A picture depicting more than 1,200 firearms seized from individuals legally barred from possessing them, by Office of the Attorney General of California (2011)

The case of *Castle Rock v. Gonzales* also calls attention to another problem with DV and IPV in the U.S.: access to firearms greatly increases the severity of abuse (even if the abuser does not use the firearm, having one greatly increases the threat and control that they can wield over their victim). The majority of intimate partner homicides (where the victim is killed by the abuser) are perpetrated by firearms, and women who are pregnant are at a particularly higher risk (homicide is the primary cause of death for women who are pregnant) (Tobin-Tyler, 2023). The United States generally did not intervene in firearm ownership by abusers (seeing both issues as private matters) until 1968, when the federal Gun Control Act prohibited firearm ownership by people convicted of felony domestic violence (keep in mind, though, that much domestic violence can be considered or plea bargained down to misdemeanor level) (Tobin-Tyler, 2023).

The Violence Against Women Act (VAWA) of 1994 addressed this shortcoming by prohibiting firearm ownership by anyone who was the restrainee of a restraining order or convicted of any felony, but this only applied to current/former spouses, current/former cohabitants, and co-parents of shared children, leading to what was called the "*boyfriend loophole*" (Tobin-Tyler, 2023). The Violence Against Women Act also failed to create a mechanism for removing the firearms from an abuser, which is called the "*relinquishment gap*"; some states allow for courts to require the surrender of firearms upon DV/IPV charges or protective order issuance, but the ones that don't have this requirement are governed by VAWA, which has this loophole and

essentially just relies on the "honor system" that abuse suspects will surrender their firearms on their own accord (Tobin-Tyler, 2023); see this page for differences among states: Battered Women's Justice Project.

When the U.S. Supreme Court ruled in *New York State Rifle & Pistol Assn., Inc. v. Bruen* (2022) that a New York law requiring extra steps to obtain an unrestricted concealed carry license was unconstitutional, the Fifth Circuit of the U.S. Court of Appeals interpreted this to mean that VAWA's prohibition against domestic abusers owning firearms was also struck down (Stemple, 2023). This meant that a defendant, Zackey Rahimi, accused of multiple violent crimes and assault against his ex-girlfriend, was allowed to maintain possession of his firearms (in spite of being under a restraining order) in the eyes of the Fifth Circuit. In June 2024, however, the U.S. Supreme Court overturned the Fifth Circuit's decision, reaffirming that temporarily disarming a person "found by a court to pose a credible threat to the physical safety of another" is in line with the 2nd Amendment (*United States v. Rahimi, 2024*).

Women who Kill in Self-Defense

When women with severely abusive partners end up killing their partners in self-defense, self-defense laws tend to fall short and courtroom personnel and jury member biases can make it difficult for a self-defense claim to work in the defendant's favor. Self-defense laws, for example, generally require an active attack and that the victim has no means of escape; however, many abused women are unable to kill their attackers unless the attacker is distracted or asleep. This means that – though these women explain their actions as being motivated by self-protection from future severe abuse (and possibly protection of their children) – they cannot claim that they were being attacked at the exact time of their commission of homicide. As of 2016, New Jersey was the only state in the U.S. that considers a history of domestic abuse to be relevant to the defense claim of duress ("duress" meaning that the defendant was compelled to commit the criminal action, such as self-defense or by being forced through coercion), and Florida is the only state that's made "battered woman syndrome" (BWS)[1] its own defense (Penal Reform International, 2016).

Adding to the disparity, studies show that in heterosexual relationships, if the woman is abused and kills her abusive male partner, she will get a longer average sentence than a man will get if he is *not* being abused and kills his female partner (ACLU, 2006). This points to lawyer, judge, and jury biases about women, such as assumptions that women shouldn't be violent or that they were deserving of the abuse (we will cover more about misogynist jury biases in Chapter 11).

There are some signs of progress in this area with several states, such as New York and Illinois, passing laws to allow for resentencing if crimes were committed in reaction to abuse

[1] You will likely see "BWS" still used in the court system and in many legal documents when researching this subject. However, activists and criminal justice professionals prefer "IPV", since this gender-neutral term recognizes that the psychological effects of severe abuse from an intimate partner affect all genders similarly.

victimization, but other states' legislation attempts (like Louisiana) have recently failed to pass. Some legal experts suggest updating self-defense laws to recognize that abuse victims are under a more constant threat and unable to retreat (Bettinson & Wake, 2024), but it would take an act of Congress (such as an update to VAWA) to make this a nationwide change.

Human Trafficking

Domestic violence and intimate partner violence aren't the only crimes that disproportionately victimize women, girls, and people assigned female at birth. Human trafficking, whether for sexual exploitation, forced domestic labor, or other forms of exploitation, predominately impacts women, particularly women of color. This final portion of this chapter will cover human trafficking in all its forms, as well as myths and justice system challenges surrounding this crime type.

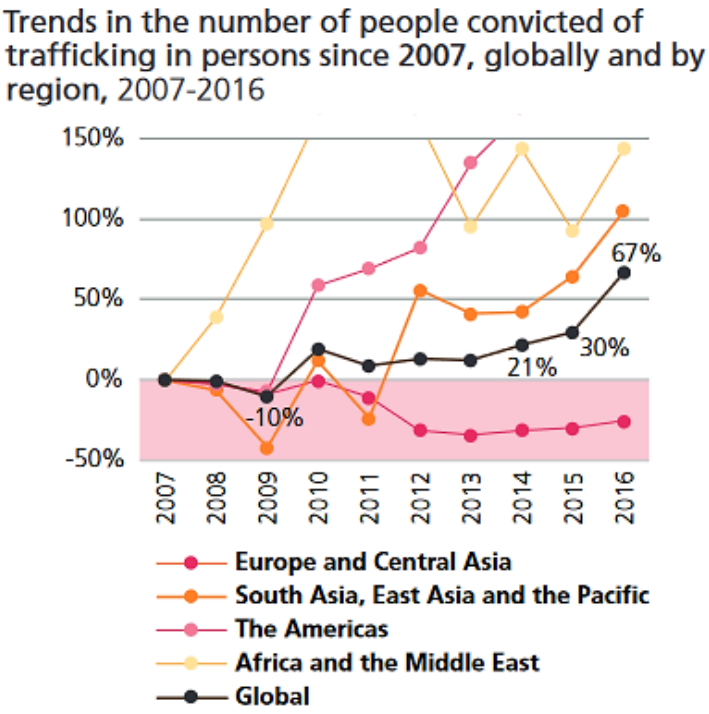
Definition & International Statistics

Given that much human trafficking occurs across borders, including international borders, it's important for all nations to have an agreed-upon definition of what trafficking entails (though this remains a significant issue, even across states within the U.S.). For this reason, the United Nations created a definition that consists of three main components (UNODC, n.d.):

- The Act:
  - Recruiting, transporting, transferring, harboring, and/or receiving people
- The Means:
  - Threats of force/use of force, coercion, fraud, deception, abuse of vulnerable persons, giving payment or benefits, abduction
- The Purpose:
  - For exploitation of any sort
  - E.g., sexual exploitation, forced labor, domestic servitude, forced marriage, organ removal, child soldiers, etc.

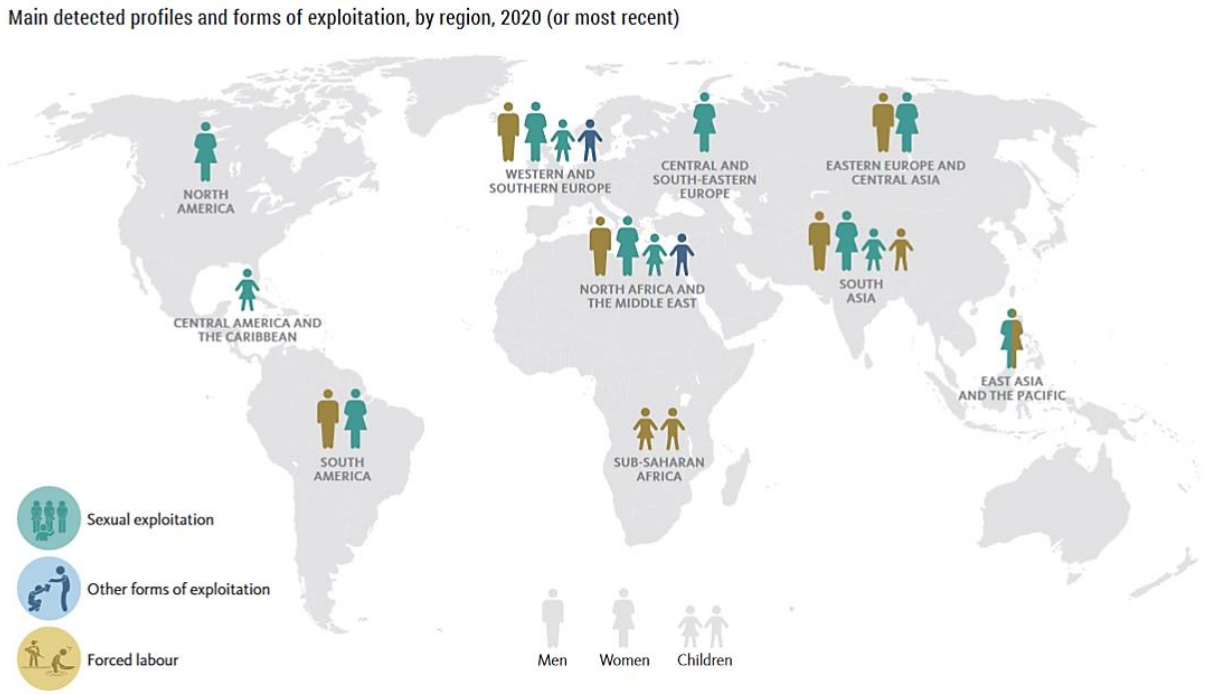
Human trafficking is different from migrant smuggling, since smuggling always crosses borders, while human trafficking can stay within a country's border (with only regional movement instead). Migrant smuggling also carries a degree of consent from those being smuggled, whereas people who are trafficked do not consent to their conditions (they may consent to a fraudulent offer by the perpetrator that ends up being deceptive and false). Migrant smuggling can put people at risk of becoming trafficked but does not inherently lead to trafficking.

Reported trafficking is increasing globally and has been increasing across all global regions since 2015. This is likely due to a mixture of better reporting, better government response, but also unfortunately an increase in the number of victims. As you can see by the figure here, all regions that are tracked across the world have seen increases since around 2015.



"Trends in the number of people convicted of trafficking in persons since 2007, globally and by region, 2007-2016", chart by the UNODC (2020)

As of 2021, approximately 27.6 million people are trapped into forced labor of all sorts worldwide (U.S. Department of State, 2022). As of 2018, trafficking for sexual exploitation makes up the majority of known human trafficking (UNODC, 2020). However, this is not equally distributed across continents/regions. As you see in the figure below, the most common form of human trafficking in the Americas, Central and Southeastern Europe, South America, East Asia, and the Pacific is sexual exploitation of women and sometimes girls. In Central America and the Caribbean, trafficking of girls but not adult women is the most common. In Western and Southern Europe and North Africa and the Middle East, trafficking for sexual exploitation is about as common as other forms of labor trafficking, and trafficking for non-sexual forced labor is the most common form of human trafficking in Africa and the South Asia. See the map below for an visual of this distribution.



"Main identity profiles and forms of exploitation, by region, 2020 (or most recent)", chart by UNODC (2023)

United States Statistics

Within the U.S., human trafficking convictions have also increased, due to a combination of better reporting and investigation, but also increased victimization. The ***Trafficking Victims Protection Act*** of 2000 created a federal focus on this crime and commitment to better criminal justice system responses, but the U.S. still has some ways to go at the state level. Nationally, between 2011-2020, prosecutions for human trafficking have increased 84%, with the majority of perpetrators being male (92%), White (53%), U.S. citizens (95%), and having no prior conviction (66%) (BJS, 2022). This latter aspect, no prior convictions, is unique among offenders, as most offenders have a prior record - this likely indicates the difficulty in prosecuting traffickers until a major case is investigated; trafficking is one of those crimes that is likely very underreported.

Beyond actual prosecution data, we see a much greater figure of victimization by looking at data compiled by the National Human Trafficking Hotline (**1-800-373-7888**). As of 2021, the hotline has received 10,360 cases since its inception at 2007, with 13,277 victims total, the majority of these cases dealing with sex trafficking or a combination of sex and labor trafficking (Human Trafficking Hotline, n.d.). Not everyone is aware of the hotline or can safely access it, so these figures are still likely underreported. Some estimates gauge cross-border trafficking into

the U.S. to be between 14,000-50,000 victims per year, and estimates for within country trafficking in the U.S. vary between 600,000-800,000 victims per year (McGough, 2013).

There are many challenges that accompany the investigation and prosecution of human trafficking crimes and the main ones are:

- Identification challenges
    - It's difficult to identify victims due to their constant relocation by traffickers.
    - Cross-jurisdiction relocation can be challenging when law enforcement agencies do not have cross-communication with other agencies.

- Investigation challenges
    - Victims are often reluctant to cooperate with law enforcement out of fears of retaliation from their traffickers.
    - Cross-border trafficking cases require local law enforcement to quickly contact and share resources with the Federal Bureau of Investigation (FBI).

- Prosecution challenges
    - State statutes on human trafficking have been slow to develop, leading to prosecutors charging suspects with other crimes out of fear of losing the case (McGough, 2013).

As for the victims, it's important to be aware of the identities of those most impacted by human trafficking. About 40% of human trafficking victims are Black women; about 24% are Latina women; and about 40% are Indigenous women (the math doesn't add up to 100% because this is from a compilation of studies; victimization also depends on region within the U.S.) (BJS, 2011; Ferguson, 2016). LGBTQ+ youth are also at higher risk of victimization, as rejection from their families after coming out, and subsequent homelessness, places them at extra risk (Martinez, 2013). Unfortunately, there are a lot of myths in the U.S. about human trafficking, such as the myth that “cheese pizza” is a code word used by traffickers, or that there are underground trafficking tunnels built by Democrats to traffic children (a QAnon myth that we will cover in Chapter 15). The Polaris Project, the nonprofit that operates the U.S. National Human Trafficking Hotline, has assembled a list of these myths and facts that you can explore here.

Conclusion

There is much, much more that can be said on this issue, and you can probably draw some connections between the content of this chapter and our previous chapters covering the history of misogyny rooted in the U.S. criminal justice system. Keep all of this in mind also as we go into our courts section. How do we better educate the courtroom workgroup (the judge, prosecutor, defense attorney, and - if a jury trial - the jury) about the dynamics of abuse? What

does it look like for a woman and/or queer/trans person to have a "jury of their peers" in a culture that only recently started to recognize DV/IPV as a crime and not a private issue? Regarding human trafficking, how do we do a better job of tracking cross-border crimes when our law enforcement institution is so decentralized? These are all questions to keep in mind as we continue turn to the three main criminal justice institutions: police, courts, and corrections.

Chapter 9

How the Past Influences the Present in Policing

Introduction

With the advent of social media, more awareness has spread regarding issues in police bias, use of force, and issues in accountability. However, it's important to keep in mind that these developments didn't just occur randomly, but were informed by historical movements leading up to their continued evolution. You've already probably encountered some discussion regarding historical connections to racial profiling, racialized police brutality, and militarization - and are probably starting to piece things together from our previous materials on the history of the CJC system in general and the history of the war on drugs - but it's important to cover these in depth.

Dr. Koslicki's research focus and background is in law enforcement, so she has to hold herself back from going too in-depth about policing and militarization (her main research areas are militarization, police use of force, and police technology) beyond the scope of this course. However, if you need a quick background of policing's structure and history, check out Chapter 5 of her introductory textbook, and definitely look into an advanced policing course if you are a CJC major or minor, and we'll delve into these issues a lot more in-depth. For now, we will highlight some aspects of policing - particularly regarding race and class - so you can better understand how we got to where we are today.

Historic Background

The Pre-Political Era to the Professionalization Era

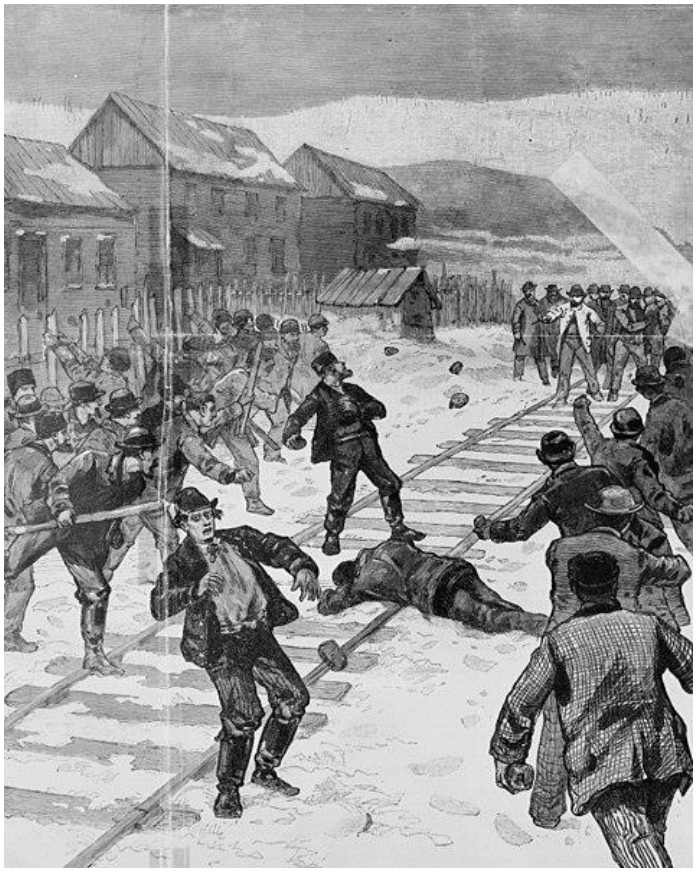
The Pre-Political/Colonial Era

If you've taken an introductory criminal justice course, you'll remember that there are three main eras in policing history: the Political Era (1840s to early 1900s), the Professionalization Era (early 1900s to 1970s), and the Order Maintenance Era (1980s to present). Keep in mind that if you read other textbooks, you might find the Order Maintenance Era to be called the "Community Era", but this is rather myopic, for reasons we'll get to later in this chapter. Most textbooks also start with the Political Era, but it's not like policing just randomly popped out of nowhere about 60 years after the U.S. became an independent nation. This pre-political era was comprised of loose law enforcement/protection groups in the Northern colonies known as the night watch, as well as a local constable who was in charge of organizing the night watch and serving warrants. However, in the Southern colonies (and later states), there was an additional

law enforcement group known as ***slave patrols***, who were organized, armed militias that were given the authority to use force to enforce slave codes and control the movements of enslaved Black people (Hadden, 2003). Because these groups were well organized, and given authority by the government to use force to enforce domestic laws (in this case, slave codes), they are seen as the first law enforcement group in the U.S. Hopefully you are seeing the connection here with the social construction of crime and law, and how this affects policing: if the laws are systemically discriminatory, law enforcement - an institution that exists to enforce these laws - will also be systemically discriminatory. While we have progressed beyond this terrible past, this is why present-day discussions still highlight ***systemic/institutional racism*** *(*especially regarding policing, in conversations following the 2020 murder of George Floyd), meaning that even if individual law enforcement practitioners aren't acting in a racist or biased way in the present day, there are still laws, policies and practices that law enforcement enforces that have discriminatory outcomes (there is also the issue of implicit bias, which we will address in the next page).

The Political Era

The Political Era started when U.S. police reformers looked "across the pond" to the U.K., where Sir Robert Peel established the London Metropolitan Police Force and tried to shape it around the idea of discipline, expertise, a paramilitary rank structure and uniform appearance, and principles of gaining community trust and preventing crime rather than just responding to it. The U.S. police successfully borrowed this paramilitary rank structure and uniform appearance, but – due to the close political ties between politicians, corporations, and very localized police forces (police in America are *decentralized*, meaning there is no single national regulatory agency controlling the police, whereas police in the England are *centralized*, meaning all territorial police forces report to the Home Office), the Peelian principles didn't



An illustration titled "Pennsylvania – the mining troubles in the Schuylkill region – attack on the Coal and Iron Police by a mob of Polish Strikers" by Joseph Becker/Library of Congress (1888)

quite stick. Other goings-on during this tumultuous time in America influenced the development of quite a different police institution than one would find in the U.K.

Around the same time Sir Robert Peel's reforms started to be adopted in the U.S. (in the mid-1800s to early 1900s), there was also an emerging ***labor movement*** in metropolitan areas in the U.S., as factory workers - many of whom were immigrants - started to object to the harsh conditions of their workplaces (this was before any labor laws and regulations that we know today, such as minimum wage, overtime, safety regulations, and child labor laws, existed). The mandate of the police at this time was to control the "***dangerous classes***", which predominantly meant immigrants, labor strikers, and free Black people (especially as more Black families migrated northward later on during the Great Migration) (Miller, 1977).

Because of this and the rampant corruption that occurred due to the close political ties between politicians (and corporations) and the police, this is known as the "political era". In the North and Northeast, public and private police were often used as ***strikebreakers*** to break up laborers who organized to protest poor working conditions; for example, the Pinkerton National Detective Agency was a private detective force used by corporations to crack down on labor organization, and the Coal and Iron Police in Pennsylvania were a law enforcement agency controlled by the state but paid for by coal companies (Encyclopedia Brittanica, n.d.). In a modern-day understanding, this would be like your home state forming a state-controlled police agency that was funded by Amazon - a major blending of political and corporate control over what should be a public safety agency.

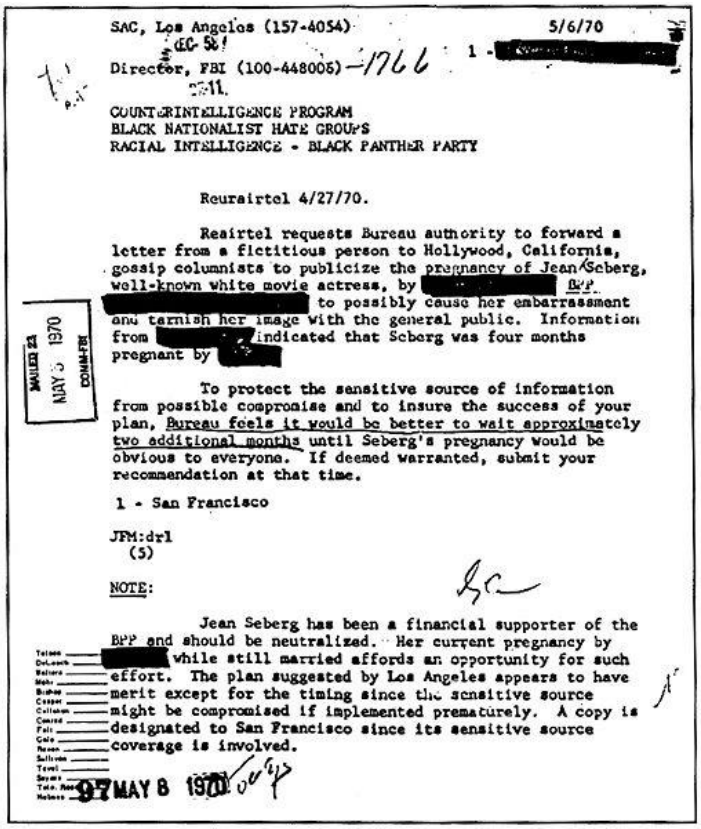
In the South, the police were used to enforce Jim Crow segregation laws. Politicians also empowered racist vigilante groups like the Ku Klux Klan (we'll cover them more in our unit on hate groups) to carry out many "law" enforcement activities (the "law" at the time being surveillance and segregation of Black people). Back in the North, an influx of racist violence followed World War I. Some servicemen returning from the war reacted violently to the increased presence of Black people due to the Great Migration (especially when Black people were hired to do jobs previously held by White people). One of the most notable events was called ***Red Summer***, when over 2 dozen race-related riots following racist violence broke out across 26 different cities in 1919 (U.S. National Archives, n.d.).

The Political Era came to a close due to the ***Wickersham Commission***, which was a 1929 ***blue ribbon commission*** (a committee of scholars and experts called together by an executive, usually the president or a state governor, to study a pressing social issue and give recommendations) that was established by President Hoover to examine the aftermath of Prohibition era policing. The commission found widespread police corruption and extreme aggression in policing tactics, which prompted reformers to examine how to fix policing.

The Reform/Professionalization Era

Some textbooks say that the Reform Era started in the early 1900s, but it didn't really take off until after the Wickersham Commission, so there is some overlap between the eras. ***August Vollmer*** is the big name in the era, as he's one of the major reformers who's known for advocating for all police recruits to undergo psychological testing and other qualification tests, requiring all recruits to attend a training academy, advocating for better scientific methods of investigation, and advocating for increased specialization (before Vollmer's time, police were known as generalists, meaning they carried out patrol and detective work, with only a few agencies having a specified detective unit. Vollmer pressed for specialized training per unit to increase efficiency and professionalism). ***O.W. Wilson,*** one of Vollmer's proteges, continued this movement towards reform, and was one of the first reformers to really push for the hiring of POC and women.

However, not all levels of law enforcement appreciated Vollmer and Wilson's vision when it came to diverse hiring. ***COINTELPRO*** (Counter-Intelligence Program) is an example of a federal-level law enforcement program that violated constitutional rights under the guise of breaking apart pro-Communist groups from the 1950s until 1971. However, COINTELPRO didn't just target more militant groups like the Black Panthers, but also targeted non-violent civil rights groups like the Southern Christian Leadership Conference (SCLC). Watch the video below for some background information (heads up, a slur is uncensored in this video); while this video is about 4 years old (Jeff Sessions is no longer Attorney General), it still shows some alarming comparison between COINTELPRO's activity in the 50s-60s and monitoring of civil rights movements and social justice protests in more modern times.



SAC, Los Angeles (157-4054) 5/6/70

Director, FBI (100-448006)

COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST HATE GROUPS
RACIAL INTELLIGENCE - BLACK PANTHER PARTY

Reurairtel 4/27/70.

Reairtel requests Bureau authority to forward a letter from a fictitious person to Hollywood, California, gossip columnists to publicize the pregnancy of Jean Seberg, well-known white movie actress, by [redacted] BPP [redacted] to possibly cause her embarrassment and tarnish her image with the general public. Information from [redacted] indicated that Seberg was four months pregnant by [redacted]

To protect the sensitive source of information from possible compromise and to insure the success of your plan, Bureau feels it would be better to wait approximately two additional months until Seberg's pregnancy would be obvious to everyone. If deemed warranted, submit your recommendation at that time.

1 - San Francisco

JFM:drl
(5)

NOTE:

Jean Seberg has been a financial supporter of the BPP and should be neutralized. Her current pregnancy by [redacted] while still married affords an opportunity for such effort. The plan suggested by Los Angeles appears to have merit except for the timing since the sensitive source might be compromised if implemented prematurely. A copy is designated to San Francisco since its sensitive source coverage is involved.

97 MAY 8 1970

"A COINTELPRO document outlining the FBI's plans to 'neutralize' Jean Seberg for her support for the Black Panter Party" by Held (1970); click the image to see full size

COINTELPRO came to an end in 1971 following a burglary that found and exposed confidential documents about its targets and operations. Following the media coverage of these leaked documents, as well as the widespread public unrest after Rev. Dr. Martin Luther King, Jr.'s assassination, the nation started to lose trust in the criminal justice system. Crime rates were also starting to rise, leading policymakers to believe that a new approach was necessary for policing.

"COINTELPRO: Why Did the FBI Target Black Activists Fighting for Equality? | NowThis" by *NowThis Impact (2018)*

The Order Maintenance Era and Present Day

The Order Maintenance/"Community" Era

A lot of textbooks call the following era the "Community" Era, but due to the influence of Broken Windows theory, it really ought to be called the "Order Maintenance" Era. The war on drugs was in full swing, and Broken Windows theory intersected with the war on drugs, leading to two main foci:

1. Aggressive crackdowns on drug crimes and other nuisance crimes
2. Working with the community to better understand where suspicious behavior is occurring

Recall the video we watched about the racist roots of marijuana criminalization in Chapter 6. The war on drugs was evolving throughout the 1900s, but starting to come to a head in the 1970s onward, after Nixon's 1971 declaration of the war on drugs. This intersection of historic events led to two main focuses in policing: 1. to crack down on drug crimes (both from the war on drugs and from Broken Windows Theory's persuasive - though unproven - argument that cracking down on nuisance crimes would prevent violent crimes), and 2. to work with the community to better understand where suspicious behavior is occurring, and because community trust assists the police in doing their jobs more effectively (this second focus was primarily gained from Broken Windows Theory). This latter reason is primarily why many textbooks call this the "Community Era", though it's important to realize that the war on drugs and Broken Windows Theory's focus on zero-tolerance policing led to very different outcomes depending on the neighborhood's racial demographics and SES, with predominately White, middle and upper-middle class neighborhoods benefiting from more community-oriented programs and funding, and neighborhoods of color and low-income neighborhoods experiencing less funding and more enforcement (Choi et al., 2002; Jones-Brown, 2000).

A lot of textbooks and scholars recommend community-oriented policing as a potential remedy to militarization, but it is very important to keep in mind that community-oriented policing has this rocky past of inequitable outcomes. One of the main reasons is that "community-oriented policing" is a very vague philosophy, and many law enforcement agencies at the height of the war on drugs thought that they were enacting "community-oriented policing", when in reality their officers were given directives to crack down on drug crimes, including using SWAT teams to serve narcotics warrants and participate in proactive policing (SWAT was initially intended for being *reactive* to respond to crisis events) (Kraska, 2001). The components that most authors address (community partnership, an organizational component, and problem-solving) are more concrete measures than just a vague philosophy, but it can still be difficult to ensure that **1.)** these three components are distributed equitably across all groups within the jurisdiction (e.g. community partnerships exist across all neighborhoods and aren't clustered in the middle-class neighborhoods and lacking in the low-income neighborhoods); **2.)** the organizational component isn't just confined to one unit (some law enforcement agencies have a separate community policing unit, while other officers' units are not required to put community partnerships into practice) and is well understood (i.e. how does the mission statement get put into practice instead of just being lip service?); and **3.)** the problem-solving philosophy maintains a *restorative perspective* (restoring community relationships) instead of a zero-tolerance one (e.g. using excessive arrests for nuisance crimes).

Back to more recent history, while there was a lot of focus on community-oriented policing from the 1980s (up to the present day), there was a great deal of non-community-oriented policing

going on, which was starkly visible across racial lines. Not only was the war on drugs over-focused on communities of color, but an alarming example of militarization occurred in 1985: the ***MOVE bombing*** in Philadelphia, PA. MOVE was a Black radical liberation movement in Pennsylvania, which was a religious, communal Black power movement (Anderson, 1987; Roane, 2021). MOVE had had prior altercations with the Philadelphia Police Department (PPD), including a shootout when the PPD tried to serve a court order for MOVE to leave its headquarters. MOVE was disliked by neighbors and several city officials, leading to a great deal of conflict between the group and PPD (Roane, 2021). MOVE left to a new headquarters in 1981, and four years later the PPD obtained warrants for several MOVE members' arrests for several crimes (disobeying the court order, as well as illegally possessed firearms and terrorist threats). In response, the Philadelphia mayor labeled MOVE a terrorist organization, the PPD cleared the neighborhood of non-MOVE members, and the event resulted in the PPD commissioner ordering police helicopters to bomb the headquarters (Trippett, 2001). 11 people (6 adults and 5 children) were killed, 61 evacuated houses were destroyed, and some survivors say that the police fired on MOVE members who ran from the fire started by the bombs (NPR, 2005). This little-known story is one of the more sobering examples of the capacity of local law enforcement to use military force and tactics on domestic targets. The video below by France 24 English (a French public broadcast service but in English) provides an international perspective of this widely forgotten event along with interviews with people who witnessed the event (16:16 min. runtime).

"Attack on Black liberation group MOVE: The day Philadelphia bombed its own citizens" by France 24 English (2021)

A little later, the ***1033 Program*** was created in the 1990s to transfer surplus military equipment to any participating law enforcement agency (the agencies just pay for shipping), and the goal was to assist agencies in the war on drugs. Much of this equipment can be considered neutral (e.g. sleeping bags, first aid kits, office supplies, and other things that aren't expressly *military* in their purpose and use), but the most concerning transfers are equipment and weaponry that were designed specifically for wartime use (e.g. mine-resistant vehicles, tracked vehicles, rifles chambered for NATO rounds, body armor and carrying systems, and camouflaged uniforms). As your textbook explains, this equipment can affect law enforcement culture and officers' mindsets, with officers now seeing suspects as the "enemy" with an "us versus them" type of perspective. There are also no mandatory training requirements for participants in the 1033 Program, so officers may also have no familiarity with the safe use and maintenance of the equipment they receive. Additionally, as addressed in your textbook, community members can perceive this equipment negatively, viewing the police as an occupying force instead of an institution that is present to protect and serve the public (Institute of Intergovernmental Research, 2015).

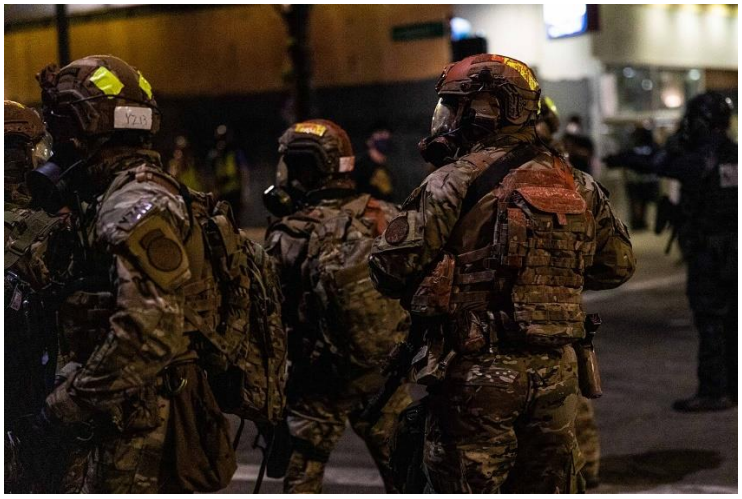
A mine-resistant vehicle acquired by the Summit County Sheriff's Office in Northeast Ohio, by Wambsgans (2014)

This is why, in addition to equipment (which falls under the ***material dimension*** of police militarization), militarization scholars also assess the ***cultural, operational,*** and ***organizational***

dimensions (measures of culture and language; normalized use of SWAT teams; and structure of agency aspects after the military, respectively) (Kraska, 2001). However, a lot of people focus on the material dimension, since this is very countable but also immediately noticeable, especially by members of the public. The following link goes to one of the best visualizations of the use of the program, as well as the distribution of equipment types (and overall cost transferred to each state) between 2010-2020. Where is your state on this chart?

Charting the $1.7B Transfer of Military Equipment to Police Departments (Routley, 2020)

The Modern Era



Members of the U.S. Border Patrol Special Operations Group, alongside Federal Protective Service, OFO Special Response Team and U.S. Marshals deployed to Portland, Oregon, photo by U.S. CBP (2020)

Speaking of the visual aspect of militarization, this became a much more publicly recognized issue following the 2014 BLM protests in Ferguson, where many of the responding police agencies used military equipment and tactics in a way that was found (in a government assessment report) to increase community tension and confusion (Institute for Intergovernmental Research, 2015). This again was brought into very widespread, national attention following the 2020 BLM protests across the U.S. following the murder of George Floyd and killing of Breonna Taylor in a no-knock raid. The police response to the 2020 Portland demonstrations is a relevant example of this issue, and also draws attention to the militarization of federal law enforcement agencies, in addition to local ones. For Portland specifically, responding agencies under the Department of Justice (DOJ) included ATF (Alcohol, Tobacco, Firearms, and Explosives), the DEA (Drug Enforcement Administration), and the US Marshals. Agents from the Department of Homeland Security (DHS) also responded. There were several alarming issues from a constitutional/legal and scholarly perspective. Vladeck (2020) provides an excellent breakdown from a legal and states' rights perspective that can be found here, with the main points being that state laws in Oregon (like many states) allow federal agencies to come and assist in enforcing *Oregon state laws.* One such law is the requirement that law enforcement officers clearly identify themselves and state the reason for arresting a suspect (ORS 133.235 and ORS 133.245), which was not the case in Portland.

Another issue with Operation Diligent Valor (the name of the federal mission in Portland) is that it did not align with the powers granted by the Insurrection Act of 1807, which authorizes the use of U.S. Military and National Guard troops to respond to special cases of civil unrest. Agents from the DOJ and DHS do not receive the same crowd management training as National Guard troops do (though National Guard troops are also not trained for domestic police-work beyond emergency crowd management), and there were documented instances of police brutality and inappropriate tactics. Similar tactics and rhetoric used by the first Trump Administration appears to be reflected by the actions of the second Trump Administration in August 2025, with Trump deploying the National Guard to Washington, D.C. under the justification of high violent crime rates (in spite of violent crime in D.C. being at historic lows) (Hunnicutt & Bose, 2025). During the 2020 BLM protests, the first Trump Administration used a narrative that links cities with large non-White populations to high violent crime (a narrative that has long been used to justify racialized law enforcement policies) and threatened takeover of "Democrat cities" for failing to curb this supposed threat (Zhang, 2025). While a section of the Home Rule Act allows presidents to take control of Washington, D.C. police for 30 days in the case of an emergency, there is no legal precedent for doing so for other cities' police. This optional podcast by The New York Times explains the legal issues around this current takeover and its connection to 2020 (a transcript is also available in the linked page): The Daily (August 12, 2025) – Trump Sends the National Guard into Washington, D.C.

Following the anti-lockdown protests in 2020, several news publications have also drawn attention to the difference in law enforcement response in contrast to responses to the BLM protests, raising questions about the racial and ideological differences (Zhou & Amaria, 2020). Current research shows that the police used force in response to the BLM protests more than 51% of the time (and 94% of the BLM protests were peaceful; i.e. no violence from protestors), whereas police used force 33% of the time in response to ideologically right-wing demonstrations (ACLED, 2021). Research by one of your textbook authors and her colleagues also found that police used more indiscriminate force in protests for left-wing causes (including BLM) compared to right-wing causes (anti-COVID lockdown protests, "Stop the Steal") in 2020-2021, and officers were less likely to be present for right-wing protests, even controlling for the presence of protesters carrying weapons (Koslicki et al., 2025).

Research of previous demonstrations has also shown that protest management strategies used by the police tend to evolve along with Black protests, meaning that the strategies are more likely to be embraced when Black demonstrations occur (Bryant, 2019). A recent Reuters investigation also examined police trainers with far-right ties, who have used many racial and gender slurs during their training and have ties to extremist groups such as the Proud Boys (Harte & Ulmer, 2022). Additionally, while law enforcement agencies explicitly prohibit officer affiliation with white supremacy groups (in the 1950s-1970s officers could, and many were, be affiliated with the Ku Klux Klan), the FBI is concerned that local law enforcement strategies to mitigate white supremacy group affiliation are inadequate (German, 2020). The racial differences in police response to demonstrations, and concerns regarding white supremacy

group infiltration into policing, continues to be a major area of research, especially following the 2020 demonstrations.

Conclusion

In response to the heavily militarized police response to the 2020 BLM protests and the publicized killings of unarmed POC, several states have passed or proposed legislation to mandate de-escalation training, and some have passed limits on the use of the 1033 Program. H.R. 1280 - the George Floyd Justice in Policing Act of 2021 - is also a federal bill that has passed the House but ultimately died in the Senate (read more about it here), but legislation has come slowly. There is also question among scholars as to whether we should move past our "three eras of policing" framework and accept that we are in a new era (Dr. Koslicki would argue that we entered into a new era of Homeland Security post-9/11; see Chapter 4 of her Introduction to Criminal Justice open textbook): regardless, there is no question that there is still a lot of work that must be done to reach a fair and equitable policing system that protects the rights of all U.S. residents. In the next chapter, we'll tackle some of these reform ideas.

Chapter 10

Possible Reforms for Policing

Introduction

Reform has been an ongoing discussion regarding policing, starting way back to 1845, when the NYPD adopted Sir Robert Peel's reforms. Various reform efforts and ***blue ribbon commissions*** (government-appointed committees that investigate the cause of police issues and offer research-based solutions) have been commissioned across the policing eras, with notable ones being the Wickersham Commission (the 1929 investigation of police brutality following Prohibition), the Kerner and Katzenbach Commissions (the 1967 investigations of the police response to racial unrest, and the overall criminal justice system's needs for improvement), and the 2015 President's Task Force on 21st Century Policing (which examined police response to the 2014 Ferguson protests, police brutality, and emerging technologies, among other topics). One of the main things to keep in mind for any commission or reform recommendation, however, is that the U.S. police institution is ***decentralized***, meaning that there is no central federal authority that sets policies that all police agencies must follow. Police agencies must follow constitutional decisions and state law, but other than that, it is largely up to agencies to dictate what their general policies are. Because of this, there is no way to mandate a reform, short of congressional action (such as the George Floyd Justice in Policing Act addressed on the previous page). With this in mind, we will review a few common recommendations. As we go through them, ask yourselves how police agencies should balance the immediate needs in crime prevention and response, their unique community's needs, and historic issues in their community, and how to address each.

Foundational vs. Soft Reforms

Reform recommendations tend to fall on a spectrum, with some being more foundational (e.g., dismantling, rebuilding, or significantly shifting the structure and organization of policing), and others being "soft" (retaining the general structure and organization of pre-existing police agencies but addressing some aspects). We'll go through each of these categories.

Foundational Reforms

Some of the commonly heard foundational reform recommendations for policing are ***abolition*** of the police and ***defunding*** the police. These are not the same thing, though defunding has sometimes been proposed as a short-term step towards a long-term goal of abolition. Abolition refers to a long-term goal of replacing the police institution entirely with community or public

groups that will oversee safety. This model tends to accompany additional policy recommendations that target poverty, unequal education, housing, and employment access, and other restorative justice goals that emphasize community cooperation. While there is evidence that non-police community groups can reduce violence, this perspective needs far more research, would have to be implemented extremely slowly (withdrawing any security source too quickly usually leaves a vacuum that can be filled by illegitimate militia or vigilante groups), and would have to be accompanied by the aforementioned broader social welfare policies (Sharkey, 2020).

Defunding the police, on the other hand, is a new term, though not an entirely new concept . Redistributing city budgets to enhance social services that may be more appropriate as first responders to non-law enforcement calls, or are services that can prevent criminal development (such as education) is essentially the concept in a nutshell, meaning that the police still exist and are not being done away with, but instead will be preserved for specific law enforcement functions. Watch this video that breaks down the concept more extensively and explains the differences between defunding the police and abolishing the police:

"What 'defund the police' really means" by Vox (2020)

We can look at Eugene, Oregon and the CAHOOTS (Crisis Assistance Helping Out on the Streets) program as one of the real-world examples of how foundational reforms can be implemented.

For around three decades, the White Bird Clinic – a non-profit social services center – in Eugene has operated CAHOOTS, which pairs medics and crisis workers who serve as first responders to behavioral health crises as an alternative to law enforcement officers. What CAHOOTS provides through their crisis services is intervention, counseling, medical care, transportation, and referrals to other services as needed (Turner, 2022). In 2017, CAHOOTS responded to an estimated 17,000 calls – about 17% of all service calls – for the city of Eugene (Turner, 2022). Besides providing specially trained responders as an alternative to the police, programs like CAHOOTS also have the potential to save cities money. As of 2022, CAHOOTS was reportedly operating on a budget of around $2 million while saving the city about $14 million in ambulance/emergency room expenses and another $8.5 million in public safety expenses (Turner, 2022). Despite these benefits though, the CAHOOTS program has recently faced some budgetary shortfalls as a result of difficulties in maintaining federal funding under the current Trump administration as well as concerns that the city of Eugene may also cut funding (Wilk, 2025).

This (as with any reform effort) is certainly something that must be tailored to each municipality's circumstances (for example, are there any existing social services that can be enhanced, or does the city need to start from square one and create some? Which ones? What are the specific issues that the city itself needs to prioritize, such mental health, drug addiction, or homelessness?) and is a process that requires strategically planned phases. Any reform effort will look different per municipality, but we can look to similar cities to see what was successful, what can be borrowed, and how to best apply reforms to each area. Safer Cities is a nonprofit that tracks reform efforts that would fall under the “defunding the police” umbrella, such as violence intervention programs, mobile crisis centers, and Narcan access programs, to reduce the burden on law enforcement by harnessing other harm reduction strategies.

Soft Reforms

There are many "soft" reforms that have been proposed, with community-oriented policing being the big one that tends to be proposed whenever there is an instance of police wrongdoing that’s widely publicized. However, we've already seen how this hasn't worked very well so far, given that it was a philosophy that was often turned into “zero-tolerance” policing when put into action. The rest of this section will run down the list of some of the most common additional reform recommendations that you’ll see in bills and policies:

Implicit Bias Training

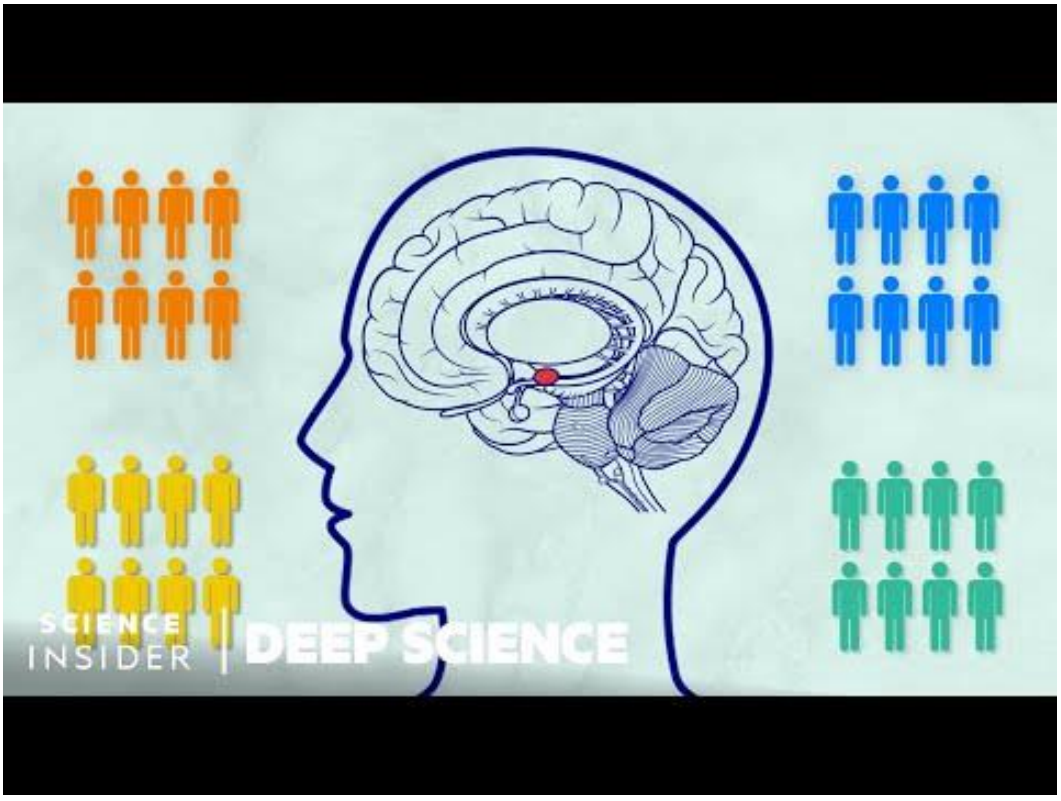
Implicit bias training comes from a perspective that - as social creatures - we are socialized into in-group and out-group biases and stereotypes from an early age and can act on these stereotypes unknowingly. The purpose of these types of trainings is to bring officers into a more conscious awareness of how their biases manifest, so they can be more reflective on their actions. There is some evidence so far that implicit bias trainings do work in increasing officers' use of bias management strategies (e.g., consciously thinking about whether they are using information that is situationally relevant when making decisions, using information from a

credible source, and ensuring that they are not linking specific crime types to specific racial/ethnic/SES demographics); however, there is no nationally agreed-upon training curriculum, so results are mixed (IACP, 2020; Redfield, 2020). The IACP recognizes that the best improvements usually come with broader organizational changes as well (which is the case for a lot of the following reforms) (IACP, 2020).

For a powerful photo gallery of how implicit biases may affect viewers' interpretations of race, ethnicity, gender, and class, **see Bayeté Ross Smith's "Our Kind of People" gallery**.

For your own personal education, you can use the tests designed by Project Implicit to learn about potential implicit stereotypes that you hold but aren't yet aware of. These aren't meant to shame anyone or get you canceled (the site uses SSL encryption and keeps everything confidential), but to help everyone confront their own biases and recognize them. However, if you feel reticent to take them or see the results, you can see how this would be difficult in a group setting with other officers. Confronting implicit biases requires a lot of personal humility, and different approaches to training need to be explored to determine how best to allow participants to confront their biases without the fear of shame or judgment from others.

Additionally, there are some problems with using implicit bias tests as a *training tool* rather than a *research metric*. The below video discusses the issues in measurement and validity, and some of the drawbacks of trainings that aren't standardized (such as the trainings being reactionary rather than preventative and more of a "Band-Aid" fix).



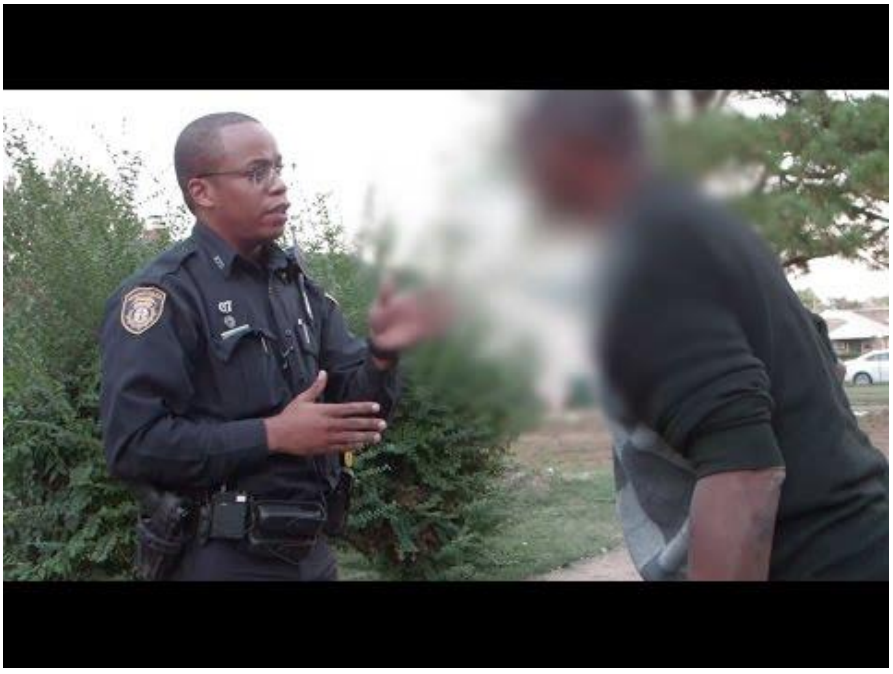
"What Everyone Gets Wrong About Implicit Bias Trainings" by Insider Science (2020)

Cultural Competency Training

Cultural competency refers to the ability to learn and be able to respond appropriately to different groups based on their backgrounds and experiences (so instead of being "color-blind" to group identity, officers learn how to understand different groups' experiences and respond appropriately). A lot of this relies on hiring officers that are able and ready to be empathetic, able to speak a second language if there is a non-native English-speaking group (or groups) in the jurisdiction, and the law enforcement agency's willingness to listen to community input and monitor different groups' needs and characteristics. More needs to be known about how many departments specifically train their officers in cultural competency. As with any of the trainings mentioned on this list, departments need to also treat any training as ongoing, and not just something to check off as being done for the year.

Crisis Intervention Teams

CIT is a model developed in Memphis that then spread throughout the nation. CIT training is standardized, so it is much easier to measure its impact across different departments in the United States, and according to the American Psychiatric Association, CIT training has been shown to be very effective in reducing the likelihood of arrest, increasing the likelihood of mental health service referral, and decreasing the likelihood of officers using any force more than verbal commands (Ellis, 2014). See the video below for more about CIT training (content advisory: an interviewed patient describes a suicide attempt and intimate partner violence. You may skip this part from 7:53-9:08 if you're not in the right headspace for this content):



"How Memphis has changed the way police respond to mental health crises" by PBS Newshour (2015)

Unfortunately, CIT is not free from criticisms – even from leadership within the training program. Ron Bruno, a retired police officer and current CEO of Crisis Intervention Team International, has outlined some of these critiques (Westervelt, 2020). Specifically, he says that, while there have been successful implementations of CIT, some departments don't actually embrace the ideals of the program and see the training more as a box to check or a one-time exercise. Beyond the departments themselves, Bruno is also critical of the ways cities and counties often fall short in integrating CIT with other mental healthcare services or fail to route calls from law enforcement. As such, Bruno emphasizes the need for alternative community-based services that can respond to crises besides the police (like the CAHOOTS model).

Procedural Justice

Procedural justice is a concept that focuses on the *process* through which decisions are made. If officers are fair and transparent during the decision-making process (such as during a traffic stop or any other police-citizen interaction), citizens will be more likely to feel that they were treated justly, regardless of outcome (Tyler, 2003). There are four main elements to procedural justice: these are ***neutrality*** (officers do not give differential treatment, except based on behavior); ***respect*** (officers treat community members with respect and aren't condescending or rude); ***active participation*** (officers allow citizens to ask questions or explain their side of the situation to provide context); and ***trustworthiness*** (officers demonstrate that they can be trusted). Studies do show that procedural justice improves community members' overall perceptions of the police, as well as their overall perceptions of police legitimacy, but more is needed to examine other outcomes (like use of force) and how to standardize this training so it can be copied across police departments).

Body-Worn Cameras

Body-worn cameras (BWCs) tend to get a lot of fanfare and recommendations, especially following any illegitimate police use of force event. BWCs hold great promise for police accountability, but studies are currently mixed as to whether they reduce police use of force and complaints against the police (Lum et al. 2019). The main issue is that, going back with our issue of the police institution being decentralized, there is no federally mandated set of policies that police agencies must implement along with their BWCs (policies like when officers should activate their cameras, whether officers are allowed to view camera footage before writing their reports, and how often supervisors should randomly review camera footage are all important but vary widely across agencies). Unfortunately too, research by one of your authors shows that these policies may not prevent fatal police force when in place (but remember, this study only looks at fatal police force, not other types of force that are a lot more common) (Koslicki et al., 2023). As with all of these reform recommendations, a broader organizational culture of police accountability and community responsiveness needs to be implemented to increase the likelihood that BWCs will have a positive effect.

Increasing Diversity in Hiring

In addition to community-oriented policing and body-worn cameras, increasing the diversity of police department ranks is another popular reform recommendation. We want to be careful of the nuance here: increasing the diversity of any workforce increases creativity and resilience and is always a good thing (Armache, 2012); however, when it comes to *reducing police abuse of force*, there are overall mixed findings in existing research. The most recent meta-analysis (essentially a study of studies) on correlates with police use of force shows that female officers use less force, but there are no significant correlates between officer race and force (Bolger, 2015).

Specific to gender, female officers are less likely to use force than male officers (Bolger, 2015), and they are less likely to conduct traffic searches – though when they *do* conduct searches, they are more likely to find contraband than male officers (Shoub et al., 2021). However, increasing women's representation in police departments has been a very slow-going process, with only a 51% increase since 1997 (when looking at the overall police population in the U.S., the women comprised 14% of all police in 2020, compared to 10% in 1997) (BJS, 2022). Looking at the racial/ethnic composition of female officers, the representation is even smaller: 6% are Black women and 3% are Latina (BJS, 2022). For comparison, women comprised 50.5% of the U.S. population overall in 2020, so they are still severely underrepresented among police ranks (U.S. Census, 2020).

"FBI and Omaha Police Department stand united in the Heartland Pride Parade" by FBI (2016)

Concerning other gender minorities and the queer community, there is unfortunately very little research about the representation of LGBTQ officers in law enforcement. With law enforcement traditionally being a field dominated by cis-gender, heterosexual men, it is difficult for queer people to find acceptance, especially if they do not fit into stereotypically "machismo" gender expectations. The Department of Justice and nonprofits like Out to Protect have made recent efforts to attempt to recruit from the LGBTQ community, but with LGBQ people being **6x more likely to be stopped by the police** than the general public (Luhur et al., 2021), it is difficult to overcome these barriers to trust when recruiting.

In regard to race, Bolger's (2015) meta-analysis showed no statistical differences between race/ethnicity of police officers and use of force. Further, Menifield and colleagues (2019) find that there's no racial differences among officers when it comes to explaining the higher rate of killings of people of color, indicating that there are larger systemic issues explaining racially disproportionate police killings beyond just White officers targeting Black or Latino suspects. However, more recent research has shown that, in some areas, White officers use force much more often than Black officers do, especially when in Black neighborhoods (Hoekstra & Sloan, 2020), and that more racially (and gender) diverse task forces use force less than homogenous task forces (Nicholson-Crotty & Li, 2024).

Why Many Reform Efforts Fail

As we saw in the previous chapters, national efforts to reform the police have been around for almost as long as there have been police: the New York City Municipal Policing Act of 1845 attempted to adopt Sir Robert Peel's reforms, then the Professionalism/Reform Era followed due to political corruption, then the Order Maintenance Era arose out of policing's legitimacy crisis, and we've had repeated calls for reform whenever there is national coverage of a police killing of an unarmed person, Black citizens, and people in mental health crises. It can be demoralizing to realize that – no matter what reform efforts are attempted – historic problems tend to persist. For a much deeper dive into police cultural dynamics and how these make the police occupation resilient to change, head over to Chapter 7 of Dr. Koslicki's Introduction to Criminal Justice open textbook, but for now, we will cover several other major factors that get in the way of widespread police reform.

Qualified Immunity

Many police reformers point to the lack of accountability that stems from ***qualified immunity***, which essentially shields government officials from civil lawsuits for behavior conducted in the commission of their duties, except in cases of violating "clearly established" constitutional rights (LII, 2023). This is not a long-standing right, but instead was granted by the U.S. Supreme Court in 1982 in ***Harlow v. Fitzgerald***. While the goal was to protect actions by government officials done in "good faith" (i.e., believing they were acting appropriately according to their

training and role) that could still result in damages to citizens (for example, an officer causes financial loss to a homeowner when breaking the door down to serve a search warrant), the reality has been a broad protection of officers in spite of poor conduct, since determining a "clearly established" constitutional right violation is far more complex than it seems (Jeffries, 2010).

In the minority of cases when a "clearly established" constitutional right violation *is* determined to have occurred by the court, the defendant (the government official accused of having violated the plaintiff's right) has a right to appeal under *Mitchell v. Forsyth* (1985), which Lammon (2022) argues has expanded far beyond the intended due process goal and now provides government officials unbalanced power to stall civil rights lawsuits.

Essentially there is an imbalance of power that has evolved from the original goal of qualified immunity, which leaves individual officers largely protected from the lawsuit aspect of accountability for when they violate others' civil rights. Some reform advocates call for abolishing qualified immunity; others call for scaling it back with clearer definitions of "clearly established" constitutional rights violations; and others propose mandatory professional liability insurance (such as what doctors and lawyers carry), where the individual insurance holder's insurance rates go up with repeated claims of malpractice (Levine, 2020).

Police Unions

The Fraternal Order of Police, a national police union, endorses a political candidate from 2008, by Warner (2008)

Police unions, like other unions, are collective bargaining organizations that try to ensure good working conditions for employees and protect them against exploitation from employers; however, *unlike* other unions, police unions come under much criticism for protecting problem officers from being disciplined. For this reason, the American labor movement disavows police unions, particularly given the messy police history that we covered in previous chapters about police mainly being used as strikebreakers against other labor union movements (Clark, 2020). Police union presidents are also often quite openly anti-reform, spending millions of dollars to block reform legislation and using their large political and financial sway to endorse or demonize political candidates (Scheiber et al., 2021). Some reform advocates call for the abolition of police unions

altogether, while others recommend a significant restructuring to preserve protection of officer working conditions (e.g., limiting over-long patrol shifts) while eliminating the protection of officer wrongdoing (Fisk & Richardson, 2017).

"Wandering Officers"

In spite of the vast majority of police agencies requiring background checks, there is still a problem of some police departments hiring officers who have been fired from previous police departments. This issue was sadly spotlighted recently in the killing of Sonya Massey: Sean Grayson, the deputy who shot her, had worked at six law enforcement agencies over four years before the fatal shooting incident (Sanchez, 2024). In Illinois, where the fatal shooting occurred, another police department – the Robbins Police Department – was found to employ officers fired from other law enforcement agencies at an alarming rate (17% of all the department's hires since 2000 had been previously fired) (Toner, 2024).

However, this isn't just a problem in Illinois. A study of Florida law enforcement found "wandering officers" to be a serious threat to police legitimacy as well (Grunwald & Rappaport, 2020), though unfortunately there isn't much research beyond these studies due to the difficulty of gaining law enforcement agency cooperation when tracking their hiring decisions. The U.S. Justice Department has a nationwide database of decertified officers, the **National Decertification Index (NDI)**, but this database only collects records from 44 out of 50 states, and to be recorded on the NDI, officers have to have been fully decertified (officers can be fired or found guilty of misconduct but still not lose their certifications in some instances) (Ingram, 2020). Because of little awareness that the NDI even exists, only about 19% of the nation's law enforcement agencies have accessed it when vetting applicants (Ingram, 2020).

Conclusion

There's a whole lot more that can be said about each of these reform ideas and barriers to reform, as well as others that we didn't cover. As you progress in your CJC courses, always think of short-term solutions and long-term solutions, as well as how to break huge issues (like racial profiling or police militarization) into more manageable parts that could be addressed through policy and legislation. Also always question what the potential outcomes and unintended consequences might be, what past history has shown us, and who may be disproportionately affected (as we saw through Broken Windows-style policing). Keeping all of these things in mind, as well as keeping an eye on current research, will assist in shaping our policing institution as we progress through changing events (and consistent issues that just take on more modern faces).

Chapter 11

Race, Gender, Class, and the Courts

Introduction

The courts institution is comprised of multiple actors - often called the ***courtroom workgroup*** - and where there are multiple positions of power, there are also multiple avenues where bias can creep into what is supposed to be an impartial system. We've already addressed how the foundational root of a lot of systemic racial injustice can be the laws themselves, which the police institution enforces. However, prosecutors have the highest discretion in all of the CJ system in that they can decide whether to drop the cases that are transferred to them from the police. Additionally, prosecutors are also bound by laws that may have encoded bias, and they are also either appointed by the mayor or elected by voters, and both of these systems can carry a bit of political grandstanding to stay in the good graces of a partisan mayor or partisan public. Judges can also be selected via partisan election and may wish to appear "tough on crime" or enforce certain crimes more harshly to cater to the public will. Defense attorneys - if public offenders - may also deal with so many cases that they devote little time to each defendant, and may let their biases affect the quality of their defense. That said, in comparison to prosecutors, defense attorneys have less power within the courtroom. They often aren't brought into the equation until the prosecutor has already made the initial decisions to pursue the case or not, which also contributes to the defense having less time to review cases. Lastly, the way jurors are selected, as well as the biases of jurors themselves, all play a role in the fate of the defendant. This page will cover a few major issues that occur across the process, and if you need some more background information about our bicameral court system and basic function and practices, head over to Chapter 8 and Chapter 9 of Dr. Koslicki's Introduction to Criminal Justice textbook.

Composition and Operation of the Courts

Courtroom Workgroup Demographics

One factor to consider about the court system is the disparities between who works as lawyers, who the judges are, and how the jury is selected (more on juries later). Every year, the American Bar Association (ABA) conducts a survey that collects the demographics of lawyers throughout the U.S. In 2023, the ABA reported that there were over 1.3 million lawyers nationwide as of January 1, 2023; however, there were racial/ethnic and gender disparities in who practices law. Regarding the gender of laws (as reported by 45 states), only 39% of lawyers identify as women and though this is much improved from the 1950s-1970s when only 3% of lawyers were women, they are still greatly outnumbered by men (ABA, 2023). Only 4,006 lawyers identified as

LGBTQ according to a survey conducted by the National Association for Law Placement (2022), but the ABA (2023) states there's a lack of reliable estimates on LGBTQ representation overall.

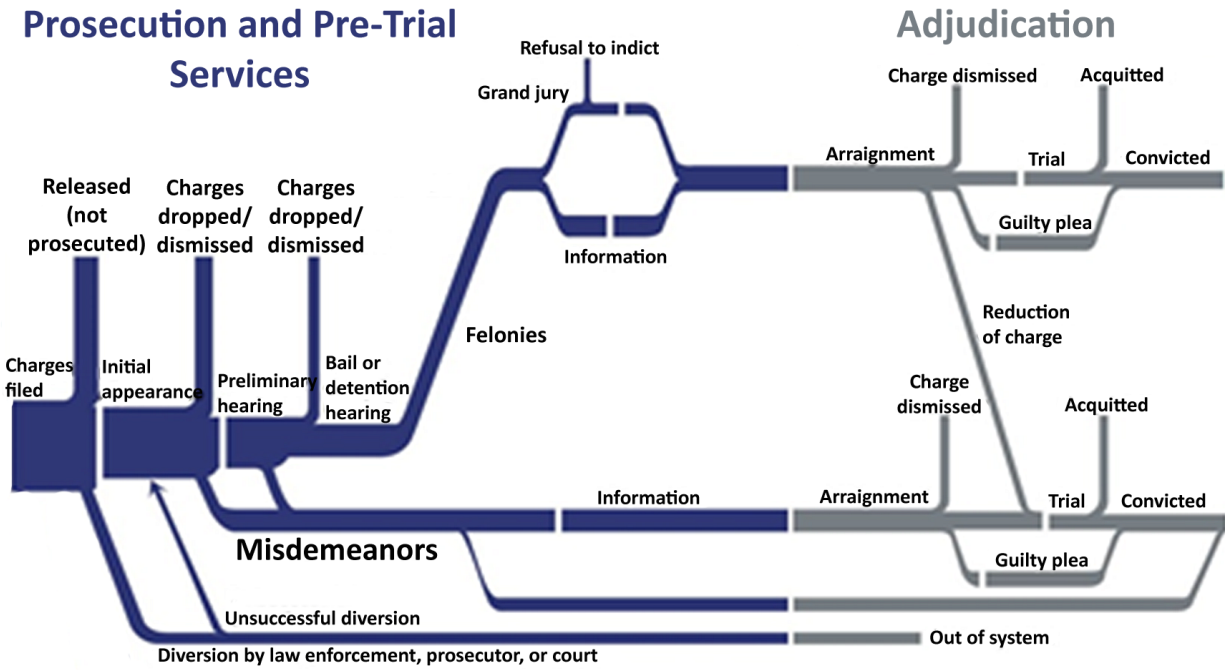
Regarding race/ethnicity (as reported by 21 states), the ABA (2023) acknowledges that there's an overrepresentation of White lawyers (88.7% compared to being only 58.9% of the total U.S. population) while Asian lawyers make up 6% of the profession (around 6.3% of the total U.S. population is Asian); despite being 13.6% of the total U.S. population, Black Americans are only 5% of all lawyers (which has not changed much in the last decade – 4.8% in 2013); Hispanic persons are about 19.1% of the U.S. population and only 6% of lawyers; Native Americans are 0.7% of lawyers compared to the 2.7% of Americans that claim Native American heritage; and, finally, around 3% of lawyers identify as "mixed-race" (which is comparable to their share of the total U.S. population). Notably, the reported statistics above don't differentiate prosecutors and defense attorneys from others who practice law; however, other reports have noted that around 95% of elected prosecutors are White (Wolfe, 2020).

While demographic data on all judges throughout the U.S. is unavailable, the Brennan Center for Justice provides a yearly report on the diversity of Supreme Court Justices from each state. According to the May 2024 update, state supreme courts do not match the diversity of the populations they serve (Merriman et al., 2024). Regarding race/ethnicity, only 20% of all state supreme court justices are persons of color and there are *18 states without any persons of color serving as justices* – even though 12 of those states have total person of color populations that are 20% or more of the state's population (Merriman et al., 2024). There are no Black justices in 25 states, no Latino justices in 39 states (plus DC), no Asian justices in 42 states, and no Native American justices in 46 states (plus DC) (Merriman et al., 2024). While 57% of justices are men, there are no women serving on the Oklahoma Court of Criminal Appeals nor the South Carolina Supreme Court, and 4 states have only 1 woman serving as a state justice (Merriman et al., 2024). Breaking it down further intersectionally, Merriman et al. (2024) report that 25 states have no women of color serving as supreme court justices, and in 13 states (and DC) there is only one woman of color justice. Finally, when we look at the prior professions of state supreme court justices, we see that 38% were once prosecutors while only 9% served as public defenders (Merriman et al., 2024).

In an ideal system where court procedures are truly race-neutral and no one makes decisions based on subconscious bias, the race/ethnicity and gender breakdown should be irrelevant to how the court system operates. However, being aware of these disparities is important because both the lack of representation of people of color within the legal profession and in state courts can undermine the legitimacy of the court system and can contribute to disparities regarding which defendants end up going to jail or prison (Wolfe, 2020). The statue of Lady Justice may be blindfolded, but "color-blind" CJC policies contribute to overall racial disparities because of societal biases (Alexander, 2020; Bonilla-Silva, 2010).

Disparities in Law and the Courts

There are several examples of the intersection between legal biases and how these affect the courts, and we will walk through various examples as they arise through the criminal justice "flowchart" (specifically that top "Felonies" branch, going from Bail to Trial).



Cropped version of the American Criminal Justice System Flowchart, by the [Bureau of Justice Statistics (1997)]

Pretrial Detention & Bail

Pretrial detention refers to the time a person who has been arrested spends in jail prior to their court appearance. What's important to note is that this means that some people are being held in jail before they've even been found guilty and convicted of a crime. While some people are held in pretrial detention because of the potential danger they pose or their risk of trying to flee, most people who are stuck in pretrial detention are there because they can't afford the bail amount that has been set for them. ***Bail*** – sometimes referred to as cash bail - is an amount of money set by the court that an arrested person must pay in order to be released pretrial. What this means is that if someone doesn't have funds to secure their release, they are stuck in pretrial detention until their court date (even if they are innocent). However, sometimes the individual or their family will work with a bail bond agent to grant their freedom until their trial; though this agreement with a bond agent can come with its own pitfalls as well. Ultimately, the way this system operates disproportionately harms lower-income people and persons of color. The following video provides a deeper look at pretrial detention, bail, and bond agents:

"Who Makes Money From Bail?" by CNBC (2019)

The 6th Amendment and Indigent Defense

A significant issue affecting justice towards people of low SES and POC is ***indigent defense*** (the provision of a defense attorney to someone who cannot afford to hire their own before trial). Under the 6th Amendment, case law has evolved to guarantee the right to counsel to anyone unable to afford their own (*Gideon v. Wainwright)* and this counsel must also be effective (*Powell v. Alabama). **Ineffective counsel*** is "below an objective standard of reasonableness" and delivered such that - if it wasn't for the counsel's errors - there is a reasonable probability that the case would have had a different outcome. Thus, *Powell v. Alabama* asserts that indigent defendants are guaranteed a right to effective counsel, and are given chances to raise concerns if their counsel is ineffective (see *Martinez v. Ryan* in the paragraph below as an example of one of these protections). While this sounds good on paper, in reality, the courts are overwhelmed with cases and public attorneys are overburdened with cases and often underpaid, which means they have little time to devote towards their assigned defendants. While there is little research collecting national statistics on defendants that are assigned public attorneys due to indigence, because BIPOC defendants tend to also be of low SES due to

historic issues addressed earlier in this textbook, there is a greater tendency for public attorneys to have POC and poor defendants, and implicit biases and underfunding play a role in ineffective counsel (Marucs, 1994; NACDL, 2022). ***According to the Innocence Project, 1 in 5 exonerated people (people who were sentenced but later found innocent) raised claims of ineffective and insufficient counsel from their public defenders*** (West, 2010).

What happens when ineffective counsel occurs several times for the same defendant (for the initial case and on appeal)? If you remember from your introductory criminal justice course, we have a bicameral court system, meaning that local and state matters stay within that branch of the court system, federal matters are decided by district and circuit courts in the federal branch, and both branches meet at the SCOTUS, which has the authority to try both cases. So in most cases, a case will stay in its "branch". However, ***Martinez v. Ryan*** in 2012 ruled that defendants may claim ineffectiveness of counsel in order to obtain a *habeas* hearing at a federal court (so, in a sense, they get to hop over from the state "branch" to the federal "branch"). Two recent death row cases came to last year's SCOTUS docket with the question of whether evidence of innocence could be presented during these *habeas* hearings in ***Shinn v. Ramirez.*** Listen to the podcast below, and be sure to track the issues - the procedural law is a bit complex, but it is important to track this to make sense of the ruling of this case (listening up to the 50 min. mark is required; beyond this is optional and deals with other discussion):

Strict Scrutiny (2022): *Innocence Isn't Enough*

The ruling in this case is legally jarring. Essentially, if a defendant is too poor to obtain a private defense attorney with their own funds, it may be considered their own fault if the counsel is ineffective. While they are able to receive a federal hearing if there was ineffective counsel at the state level, they are not able to present any *evidence* that is uncovered by the federal investigation at the hearing. ***Innocence is not enough to get a federal court to hear evidence that your rights were violated when you were given bad lawyers.***

Plea Bargaining

After a defense attorney is obtained or provided (and fingers crossed that they're effective!), the courtroom flowchart proceeds on to plea bargaining or a trial. While we may think of courtroom scenes in television and movies where the prosecutors and defense attorneys go head-to-head, most criminal cases don't go to a full trial in reality. Instead, despite our right to a trial, most criminal cases are resolved outside of the courtroom through an agreement between the prosecution and defense – this process is referred to as ***plea bargaining*** (ABA, 2021). In fact, in 2009, 97% of cases resulting in a conviction in urban state courts were decided through guilty pleas while 90% of federal court cases were in 2014 – 90% of the guilty pleas in both instances came from plea bargains (Subramanian et al., 2020). What this bargain typically involves is the defendant offering a guilty plea for a lesser charged offense or only one of the charges brought against them if there are multiple, or a guilty plea for the initial charge but with a promise of a recommendation for a more lenient sentence from the prosecution (ABA, 2021). According to the ABA (2021) benefits of plea bargaining include: saving defendants time

and money, defendants receiving lesser sentences, saving prosecutor time and expenses, removing uncertainties of trials, and keeping the burden on the courts lower than going to trial for every case. However, there are also concerns that arise from the reliance on plea bargaining. For instance, a defendant may plead guilty even if they are innocent out of fear that they may be found guilty by a jury in trial anyway, a person who's been in pretrial detention (remember our earlier discussion) is more likely to agree to a plea to get out of jail, people are more likely to plea if prosecutors can pursue a death sentence, and race/ethnicity and gender play a role as well (Subramanian et al., 2020). Specifically, research shows that Black men receive the lowest amount of leniency within plea deals while White women receive the most leniency (Subramanian et al., 2020). In a study conducted by Carlos Berdejó (2018), White defendants were 25% more likely to have their most serious initial charge amended or dropped compared to Black defendants. Regarding misdemeanor charges, White defendants were around 45% more likely to see their top charge amended/dropped and this disparity is even more stark when looking at misdemeanor charges with incarceration as a potential punishment – Whites were nearly 75% more likely to see those charges amended, dropped, or dismissed relative to Black defendants (Berdejó, 2018). Further, White defendants facing felony charges were nearly 15% more likely to see their charge reduced to a misdemeanor than Black defendants (Berdejó, 2018). When comparing defendants with no prior convictions, White defendants were 25% more likely to receive a charge reduction compared to Black defendants (Berdejó, 2018). Even for serious felony offenses, White defendants were about 6% more likely to have their charge reduced compared with Black defendants (Berdejó, 2018). When a case goes to trial, it often results in a sentence that is 64% longer on average than sentences that are imposed through pleas (Subramanian et al., 2020).

Voir Dire and Jury Selection

If the defendant does not choose to plea bargain and insists on their innocence, then the case will proceed to a trial, which gets us to the issue of ***jury selection***, which plays a major role in our right to a jury of our peers. This is an area/process of the court system where both attorneys are able to have influence in which jurors are selected for a trial. What does a "jury of our peers" mean, both in theory and in practice? Unfortunately, historically (and in the present day) there is the potential for a lot of bias in the selection (and subsequent decision-making) of juries. Watch the video below to see how this process plays out.

"The Big Problem with How We Pick Juries" by Vox (2018)

Additionally, jurors themselves are often paid a very low wage, so - while employers must give workers time off to serve on juries - these workers will still be losing income when they serve on a jury, since employers aren't required to *pay* employees for the time they take off for jury duty, and the federal minimum wage only applies to employers and not the court system (for example, the Indiana daily wage for jury duty equates to $5/hr.). This can lead to potential jurors trying to fudge details to get out of jury duty, unless they are financially stable enough to forego lost wages (which, again, can often lead to race and class disparities given the correlation between financial stability and race). One study has shown that class/SES may be the strongest explanatory factor behind *why* jurors are selected (Fukurai, 1994); however, many studies focus predominately on race and gender, which - though incredibly important in their own right - we know is limited when we examine the issue through an intersectional lens that accounts for economic and class power.

Jury Deliberation

After juries are selected, ***jury deliberation*** is another area/process of the court that is not often addressed in discussions of the "courtroom workgroup". However, studies confirm that race,

gender, and class all affect jury deliberations, with the question of which one being most influential (e.g. is race more influential? Class? Gender?) being answered differently based on the crime type and defendant characteristics (Cantone et al., 2019; Mazzella & Feingold, 1994; Rerick et al., 2019; Wuensch et al., 2002; York, 2006). Keep in mind that juries are members of the public, so they are just as affected by societal stereotypes, messages, and biases that we pick up - often implicitly - through cultural messaging from our families, peers, news, advertising, media, and much more. What can be done to address the implicit biases carried into the courtroom by members of the jury?

While the Vox video above addresses race, there are also many considerations to keep in mind when evaluating juries and gender, both in terms of gender-based violence against women (so the jury is deciding a case where the defendant is accused of victimizing a woman), and in terms of crimes committed by women. Considering the former (gender-based violence against women), this is a relevant example of implicit biases carried into the courtroom by jurors. There is much research on jury deliberations and ***rape myths*** (erroneous beliefs about rape victimization, such as the myth that a victim will always fight back if they do not consent, or that the victim's clothes influence the perpetrator's behavior) that shows that higher belief in rape myths decreases the likelihood that the jurors will find the defendant guilty of rape (Dinos et al., 2015; Leverick, 2020). Given the prevalence of rape myths in society and media (Edwards et al., 2011; Kahlor & Easton, 2011; Sacks et al., 2018) and studies that show their influence on people's behavior (Franuik et al., 2008; Kahlor & Easton, 2011), this is a concerning trend and one of the reasons the majority of sexual violence perpetrators (against adults; statistics change if the victim is a prepubescent minor) receive light sentences and are not incarcerated (RAINN, 2022).

For crimes committed by women, studies show that when a female defendant is more conventionally attractive, mock jurors are less likely to consider her guilty (Mazzella & Feingold, 1994). Other societal influences (not just perceived attractiveness) carry a lot of sway with jurors, particularly stereotyped beliefs that women should be more nurturing and caring (which means they are judged more harshly when they do not display these traits, especially if they are mothers). For example, studies examining IPV/DV find that - in cases where the female IPV victim ends up killing her abuser - mock jurors are less likely to determine this as self-defense if they believe the woman is a "bad" wife or mother and if she was verbally aggressive (Follingstad et al., 1996), and mothers who fail to protect their children from an abuser (known as "failure to protect" laws) are often prosecuted more often than fathers (Stanziani & Cox, 2021). Stanziani and Cox (2021) find gender not to be significant in their own study when controlling for domestic violence victimization, which may mean that being a victim of domestic violence is more influential than gender on juries' deliberations (this means that jurors see domestic violence victims, regardless of gender, as complicit if their abuser also abuses their child).

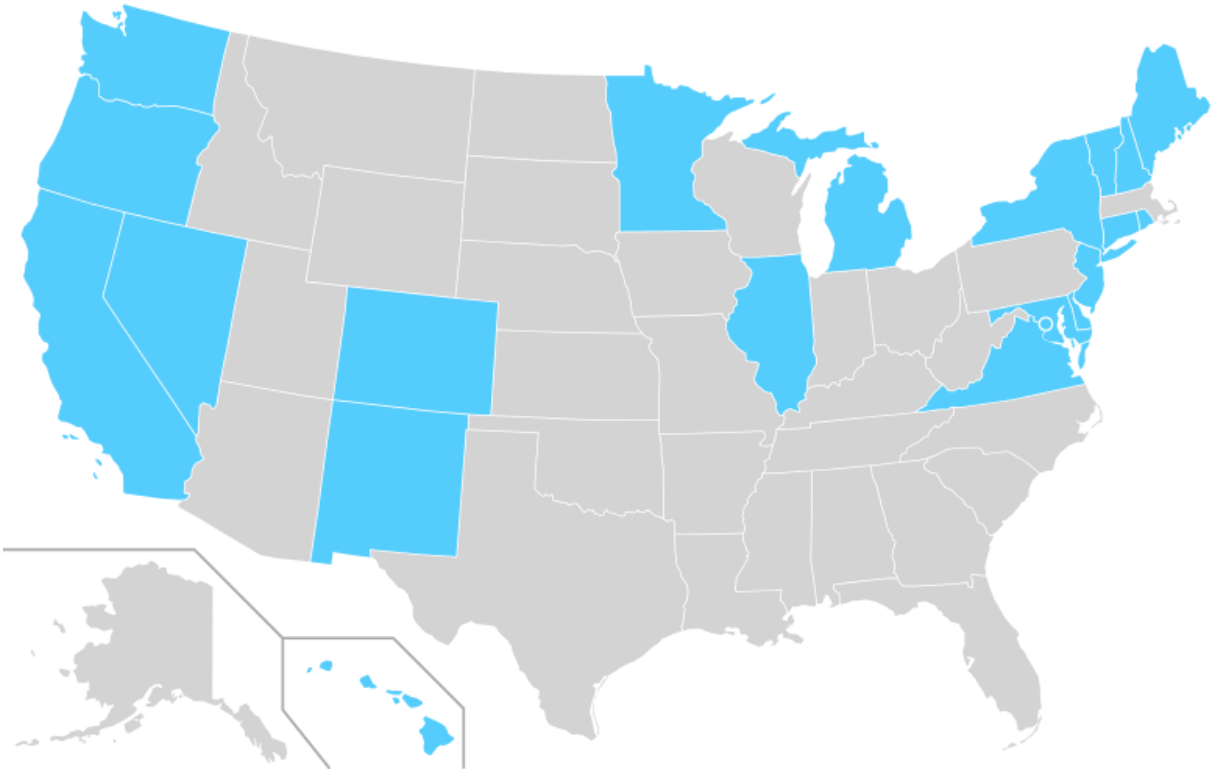
Other crime types, such as child sex abuse, do not penalize women in this way, but intimate partner violence seems to still carry a lot of victim-blaming bias from jurors. In this case, when you think of a right to a jury of one's peers, how is the justice system to ensure that the peers

don't either **1.)** overly sympathize with the defendant due to their beliefs in rape myths or victim-blaming, or **2.)** evaluate the defendant more harshly because of implicit biases about gender roles/gendered behavior expectations (and this latter question can be applied to race/ethnicity and class/SES)?

On the topic of gender, it's important to also address biases against other gender minorities, especially trans* people. A major inequity that the trans* and wider queer community faces is that of the ***trans/gay panic defense.*** The trans/gay panic defense (or "LGBTQ+ panic defense" as the LGBTQ+ Bar prefers, given its wider inclusivity) refers to a strategy employed by defendants charged with violent crimes wherein they attempt to alleviate some of their criminal liability by weaponizing the perceived or real gender identity/expression or sexual orientation of their victim (LGBTQ+ Bar, n.d.). In essence, the defense argues that the "violent actions are both explained and excused by their victim's real or perceived sexual orientation or gender identity/expression. The goal of this strategy is to employ homophobia and transphobia to persuade a jury into fully or partially acquitting the defendant" (LGBTQ+ Bar, n.d.). Whether this defense finds success or not, whenever the defense pushes this narrative, it results in discrediting LGBTQ+ victimization experiences and implies their lives are not worth as much as others, which enforces the idea that violence enacted against LGBTQ+ persons is acceptable depending on the conditions surrounding the incident (LGBTQ+ Bar, n.d.; Movement Advancement Project, 2024).

There are three main variations in how this defense is deployed. First, the defendant may allege that the romantic/sexual advance made on them by the victim – who they perceived as or knew to be LGBTQ - caused them to have a nervous breakdown therefore they were influenced by and acted on "insanity" or a "diminished capacity" (LGBTQ+ Bar, n.d.). Second, the defendant may use a "defense of provocation" and allege that the advance made by the victim provided a reasonable basis for lashing out with violence – even if it's murder (LGBTQ+ Bar, n.d.). Third, is the "defense of self-defense," which involves the defendant alleging that "they believed the victim intended to cause serious bodily harm because of the victim's sexual orientation or gender identity/expression... This strategy requires the defendant to argue that their victim's LGBTQ+ identity made them a greater threat than a heterosexual and/or cisgender person" (LGBTQ+ Bar, n.d.).

While LGBTQ+ panic defenses are still attempted today, some states have taken efforts to ban this strategy (Michigan being the most recent to do so in July 2024). The map provided below from the Movement Advancement Project (2024) depicts which states prohibit the reliance on the victim's sexual identity/orientation as a defense for the defendant. For a specific example of the LGBTQ+ panic defense in action, see this Washington Post article covering the case of Matthew Shepard's murder from 1998: Wyoming Judge Bars 'Gay Panic' Defense.



States that have banned (in blue) the gay and trans panic defense, updated as of 2024, by RayneVanDunem (2018); modified to update

Special Issues Related to Courts

While we'll discuss sentencing in the next chapter, we'll address three issues here that don't occur during the typical "flowchart" of the courtroom process, but still have to do with the courts institution and race: felony voting disenfranchisement, immigration proceedings, and the tribal court system.

Felony Voting Disenfranchisement

Felony voting disenfranchisement, the loss of your right to vote after conviction of a felony, is an issue that disparately affects Black people, with one of the major contributing factors being the war on drugs, which we addressed last week. As of 2022, ***Black people are disenfranchised at a rate 3.5 times higher than people of other races*** (1 in 19 Black people is disenfranchised) (Uggen et al., 2022). In Alabama and Tennessee, one out of every 13 adults cannot vote due to disenfranchisement, and in Florida, 1.1 million people could not vote (as of 2022) (Uggen et al., 2022). For the full report on voting disenfranchisement, including a map of states with the highest populations of disenfranchised people, visit "Locked Out 2022: Estimates of People Denied Voting Rights" by the Sentencing Project.

Mississippi permanently disenfranchises any person convicted of a felony, and Arizona permanently disenfranchises those convicted of two felonies (Uggen et al., 2022). While the US Supreme Court has ruled in the '70s that felony voting disenfranchisement does not violate the 14th Amendment, the stark racial lines and co-occurrence of rising disenfranchised POC with the war on drugs warrants further examination. Voting disenfranchisement leaves those most impacted by the criminal justice system unable to participate in casting their vote for future personnel in the courtroom workgroup (as well as for local, state, and federal elections and legislation).

The Tribal Court System

The interplay between state courts and the tribal court system is also an interesting one that has its share of complexities. ***Tribal courts*** are directly under control of specific tribes, and have been established since the ***1934 Indian Reorganization Act*****.** These courts are directly controlled by tribal officials who enact the tribe's own code and regulations, so each court can vary vastly depending on the tribe's culture. Conversely, ***Courts of Indian Offenses (CFR Courts)*** exist for Indigenous American defendants in jurisdictions where specific tribes have not established their own tribal courts (meaning that these CFR Courts are regional and cover multiple tribes) and enforces the U.S. federal legal code (CFR stands for "Code of Federal Regulations"). There are five CFR Courts across the U.S., with all but one trying cases across several tribes (see the U.S. Department of the Interior: Indian Affairs, n.d., for a list of which tribes fall under which CFR Courts). CFR Courts are run by the Bureau of Indian Affairs, can only try offenses where an Indigenous American is a defendant, and can only impose sentences up to a year.

What happens when an Indigenous American defendant is accused of a federal crime? A June 2022 US Supreme Court Case (***Denezpi v. United States***) recently considered this issue, when Mr. Denezpi - a member of the Navajo Nation - was sentenced by a CFR Court after being found guilty of rape, and then was tried and sentenced by a federal court for the same crime. Denezpi sued under the 5th Amendment's double jeopardy clause, stating that he was being tried twice for the same crime. However, the US Supreme Court held (6-3) that, since the tribal jurisdiction and US federal jurisdiction are separate entities, then this case did not violate the 5th Amendment. However, the dissenting justices held that this decision was against the original intent of the Constitution, which sought to protect the same people from being charged with the same crime twice. Additionally, since CFR Courts abide by the U.S. federal legal code, even though the two courts are of separate jurisdictions, the criminal code used in both courts was the same (Denezpi v. United States, 2022). What are your thoughts?

Related to the last chapter, there's also been some evolving legislation allowing U.S. coordination with tribal courts to address the crisis of missing and murdered Indigenous women (MMIW). Federally, these include the ***Not Invisible Act*** and ***Savanna's Act*** (both signed in 2020) which created a joint commission between the Department of Justice (DOJ), Department of Interior, and tribal jurisdictions to address violent crime, and federal and tribal coordination of training and data tracking for MMIW, respectively. As a question to ponder,

how should U.S. government best contribute its resources to the crisis of MMIW while also respecting tribal authority?

Immigration and Customs Enforcement Proceedings

Immigration status is another issue that has received much attention in 2025 due to the unprecedented actions of the current presidential administration. Non-citizens who are here legally face what are essentially two court systems if they violate the law: the state criminal court (or federal court, if the crime is a federal felony) for the actual crime adjudication proceedings, and deportation proceedings from Immigration and Customs Enforcement (ICE) (not an actual court system, but very similar in its proceedings) if the crime is determined to be serious enough to warrant deportation. Because ICE deportation proceedings aren't actual state or federal courts, the procedural laws surrounding them are different and the constitutional guarantees of the right to an attorney or other due process proceedings do not apply (the proceeding procedures are listed here). Immigration advocates argue that this is essentially charging people of the same crime twice (the penalty of the crime, plus deportation - in spite of their legal immigrant status), thus violating the ***double jeopardy*** clause of the 5th Amendment. Because the ICE proceedings aren't a "true" court system, the courts do not hold that this dual process violates the double jeopardy clause, but there is fear that it still violates the intent of the clause. Given that marijuana is still considered a Schedule I substance at the federal level, marijuana possession can still lead to deportation. See this optional link for a case describing one man's experience.

The above issue has been controversial long before the first and second Trump Administrations. Regardless, up until recently, this pattern has been the general practice: the Department of Justice presides over immigration courts with federal DOJ judges, and ICE carries out the deportation order if given by the judge. However, in early 2025, the Trump Administration invoked the Alien Enemies Act of 1798 to fast-track detention and deportation of immigrants (even legal residents) based only on suspicion of criminal activity (rather than the post-criminal conviction process described in the paragraph above).

The Alien Enemies Act is a wartime act that allows the deportation of foreign nationals during times of declared war or invasion. Congress (not the president) has the power to declare war under Article 1, Section 8 of the Constitution; however, the president may declare invasion (though historically this as only been interpreted in the literal sense, such as an invading nation, not the subjective sense, like the rhetoric of an “invasion” of immigrants) (Ebright, 2025). Under the argument that some Venezuelan immigrants are part of the Tren de Aragua gang and some immigrant attendees of pro-Palestine campus protests are tied to Hezbollah, the second Trump Administration began to deport immigrants based on suspicion (such as tattoos) rather than criminal conviction or transparent evidence (Kanno-Youngs et al., 2025; Offenhartz et al., 2025; Phillips & Rangel, 2025). Further, ICE carried out deportations in defiance of federal judicial orders, both deporting residents to out of state detainment facilities and to the El Salvadorian prison CECOT (Centro de Confinamiento del Terrorismo), a prison known for serious human

rights violations that the second Trump Administration paid $6 million to the El Salvadorian president to lease (Alemán & Cano, 2025; Kunzelman, 2025).

At the present time of this textbook's 2025 edition (August), the second Trump Administration has accelerated its deportation efforts while also firing immigration judges (in spite of Congressional approval to authorize funding for immigration judges), which has led to longer times between detained immigrants being held in detainment facilities and their ability to have their cases heard by federal immigration judges (Bustillo, 2025). This has led to major overcrowding of detention centers such as the so-called "Alligator Alcatraz" (formerly South Florida Detention Facility) leading to reports of major human rights violations such as medical neglect and abuse (Holmes, 2025). Many of these detainees have been held without any criminal charges and are being barred access to civil rights attorneys (the majority of detainees overall since the unprecedented immigration crackdown of the second Trump Administration does not have a criminal record) (Garsd, 2025; Schneider, 2025). Not only have critics raised concerns about due process rights (which are protected for all people in the U.S. regardless of citizenship status under the 5th Amendment), but these actions overall have raised serious concerns regarding the separation of powers and the president and ICE completely disregarding the federal judiciary (Bryant, 2025; Green et al., 2025).

Conclusion

This was a very quick rundown of some major issues contributing to disparities in the court institution, but hopefully you're seeing some issues that affect race, gender, and justice within the courts beyond prosecutor and judicial biases. Our ideal of innocence until guilt is proven, and justice being "blind", is often frustrated based on historic practices and societal biases, and has been laid bare in the modern day by current actions undertaken by ICE and the second Trump Administration. The issue of *Shinn v. Ramirez* also directly relates to our next chapter, the death penalty.

Chapter 12

Sentencing and The Death Penalty

Introduction

The sentencing process lies at the transition point between the courts institution and the corrections institution. Many of the practices and ethical issues we've discussed in the previous chapters will dictate the length and type of sentences that defendants receive, which will then dictate the prison and jail populations. In this chapter, we will discuss types of sentences - including the death penalty - as well as issues in false convictions.

Types of Sentences and Sentencing Guidelines

Defendants may receive sentences that are either determinate or indeterminate, as well as consecutive or concurrent (to continue with the theme you've probably picked up from previous chapters, which one is used all depends on the jurisdiction and/or state).

Determinate vs. Indeterminate

Determinate sentences are those that are a fixed length, and the defendant must serve the entirety of that length of incarceration. For example, if a defendant is given a sentence of five years in prison, they must serve all five years. **Indeterminate** sentences, on the other hand, are those that are not a fixed length, so the judge has discretion in giving a range of years (e.g., 2-5 years), and then a **parole board** (a committee of people - usually appointed by the governor - who review offenders' cases and behavior while incarcerated) may allow the defendant to have early release within that range of time to serve out the rest of their sentence in the community (LII, 2021).

Consecutive vs. Concurrent

Consecutive sentences are those that follow one-after-another. Since most people violate several laws during the commission of a criminal event, they can be convicted and sentenced for multiple crimes (unless a count bargain was arranged with the prosecutor during plea bargain negotiations). If the defendant is sentenced for multiple crimes and must serve them consecutively, as soon as the sentence for one crime is done, then they will start serving time for their next criminal conviction, and so on. For example, say someone is convicted and sentenced for breaking and entering (1 year), burglary (2 years), and destruction of property (1 year), under a consecutive sentencing scheme, they would have to serve 4 years total. Consecutive sentences have been criticized as being one of the major contributors to mass

incarceration (which we will talk about in the next few chapters) since it creates very long overall sentences for defendants (Galvin, 2022).

Conversely, a **concurrent** sentence means the defendant can serve all of these sentences at the same time. So for the same example, their total time served would be 2 years, since while serving time for the burglary, they are *concurrently* serving time for the breaking and entering and the destruction of property. As you can imagine, a concurrent sentence is one that will contribute to lower overall prison populations, since defendants will serve their time quicker. However, some victims (or victim's family) may be concerned about the lack of what they perceive as justice if the defendant serves their time all at once. In cases of domestic violence and intimate partner violence especially, since some state laws are still quite lax about domestic abuse, prosecutors may pursue every charge possible in order to keep the abuser behind bars and away from the victim(s); however, if the judge chooses a concurrent sentence (remember that the jury decides whether or not to convict, and the judge decides the sentence), the abuser will be released when the longest sentence has been served.

Sentencing Guidelines

For most of America's history, sentencing followed an indeterminate scheme and judicial sentencing decisions were very vulnerable to implicit (or outright explicit) biases. During the peak of the war on drugs, growing criticism of long sentences being ascribed to predominately Black and low-income defendants - while White and affluent defendants for similar crimes received much shorter ones - led to a demand for more standardized guidelines that all judges should follow in order to mitigate bias and make sentencing more equal. Other critics were less worried about discrimination and bias, but more worried about some crimes not receiving *enough* incarceration time (remember that this was during a very crime control-oriented era). In 1980, Minnesota became the first state to create **sentencing guidelines** (a standardized document showing which crimes should receive which sentence lengths, while also accounting for the offender's prior record and other relevant factors), followed soon after by the **Sentencing Reform Act of 1984**, which enacted the Federal Sentencing Guidelines in 1987 (Mitchell, 2017).

The primary goals of the Sentencing Reform Act were to amend sentencing disparities and establish a sentencing commission to constantly research and update federal sentencing guidelines. The U.S. Sentencing Commission has been an official entity since this act, and you may browse their most recent (2023) sentencing guidelines manual here (for optional reading). However, while these guidelines started out as mandatory with the Sentencing Reform Act, in ***United States v. Booker*** (2005), the U.S. Supreme Court ruled that they are no longer mandatory but rather advisory (strongly recommended) for federal justices to follow.

Because of our division between the federal and state courts systems, these federal guidelines do not apply to individual states, who can either follow the federal model as their own

foundation, or may create an entirely different set of sentencing guidelines for all judges within the state to follow.

The image to the right is an example of Washington State's Adult Sentencing Guidelines Manual (2023), since Washington has received widespread recognition for the clarity of their guidelines. Each offense has a different seriousness level assigned to it, based on different legislative statutes. Each defendant also receives an "offender score" based on prior offense record and other aggravating and mitigating circumstances. The grid is then used to match up the seriousness level to the offender score, and each box shows the sentencing range (the lower line) and the midpoint (the upper line). So for example, if someone committed Burglary 1, that is considered a VII seriousness level. If the defendant's offender score is 0, then their sentencing range would be 15-20 months, with the midpoint being 17.5 months. You may also see Indiana State's sentencing guidelines here (for optional reading).

Seriousness Level	Offender Score 0	1	2	3	4	5	6	7	8	9+
LEVEL XVI	LIFE SENTENCE WITHOUT PAROLE/DEATH PENALTY									
LEVEL XV	280m 240 - 320	291.5m 250 - 333	304m 261 - 347	316m 271 - 361	327.5m 281 - 374	339.5m 291 - 388	364m 312 - 416	394m 338 - 450	431.5m 370 - 493	479.5m 411 - 548
LEVEL XIV	171.5m 123 - 220	184m 134 - 234	194m 144 - 244	204m 154 - 254	215m 165 - 265	225m 175 - 275	245m 195 - 295	266m 216 - 316	307m 257 - 357	347.5m 298 - 397
LEVEL XIII	143.5m 123 - 164	156m 134 - 178	168m 144 - 192	179.5m 154 - 205	192m 165 - 219	204m 175 - 233	227.5m 195 - 260	252m 216 - 288	299.5m 257 - 342	347.5m 298 - 397
LEVEL XII	108m 93 - 123	119m 102 - 136	129m 111 - 147	140m 120 - 160	150m 129 - 171	161m 138 - 184	189m 162 - 216	207m 178 - 236	243m 209 - 277	279m 240 - 318
LEVEL XI	90m 78 - 102	100m 86 - 114	110m 95 - 125	119m 102 - 136	129m 111 - 147	139m 120 - 158	170m 146 - 194	185m 159 - 211	215m 185 - 245	245m 210 - 280
LEVEL X	59.5m 51 - 68	66m 57 - 75	72m 62 - 82	78m 67 - 89	84m 72 - 96	89.5m 77 - 102	114m 98 - 130	126m 108 - 144	150m 129 - 171	230.5m 149 - 198
LEVEL IX	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	53.5m 46 - 61	59.5m 51 - 68	66m 57 - 75	89.5m 77 - 102	101.5m 87 - 116	126m 108 - 144	150m 129 - 171
LEVEL VIII	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	53.5m 46 - 61	78m 67 - 89	89.5m 77 - 102	101.5m 87 - 116	126m 108 - 144
LEVEL VII	17.5m 15 - 20	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	47.5m 41 - 54	66m 57 - 75	78m 67 - 89	89.5m 77 - 102	101.5m 87 - 116
LEVEL VI	13m 12+ - 14	17.5m 15 - 20	24m 21 - 27	30m 26 - 34	36m 31 - 41	42m 36 - 48	53.5m 46 - 61	66m 57 - 75	78m 67 - 89	89.5m 77 - 102
LEVEL V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	47.5m 41 - 54	59.5m 51 - 68	72m 62 - 82	84m 72 - 96
LEVEL IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	17.5m 15 - 20	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	61.5m 53 - 70	73.5m 63 - 84
LEVEL III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	19.5m 17 - 22	25.5m 22 - 29	38m 33 - 43	50m 43 - 57	59.5m 51 - 68
LEVEL II	0-90 days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	19.5m 17 - 22	25.5m 22 - 29	38m 33 - 43	50m 43 - 57

Statute (RCW)	Offense	Class	Seriousness Level
10.95.020	Aggravated Murder 1	A	XVI
9A.48.020	Arson 1	A	VIII
9A.36.011	Assault 1	A	XII
9A.36.021(2)(a)	Assault 2	B	IV
9A.36.021(2)(b)	Assault 2 With a Finding of Sexual Motivation	A	IV
9A.36.120	Assault of a Child 1	A	XII
9A.36.130	Assault of a Child 2	B	IX
9A.76.170(3)(a)	Bail Jumping with Murder 1	A	VI
9A.52.020	Burglary 1	A	VII
9A.44.083	Child Molestation 1	A	X
9A.44.086	Child Molestation 2	B	VII
70.245.200(2)	Coerce Patient to Request Life-ending Medication	A	Unranked
69.50.415	Controlled Substance Homicide	B	DG-III
70.74.180	Explosive Devices Prohibited	A	IX
9A.56.120	Extortion 1	B	V
70.245.200(1)	Forging Request for Medication	A	Unranked
9A.32.055	Homicide by Abuse	A	XV
79A.60.050(1)(c)	Homicide by Watercraft - Disregard for the Safety of Others	A	VII

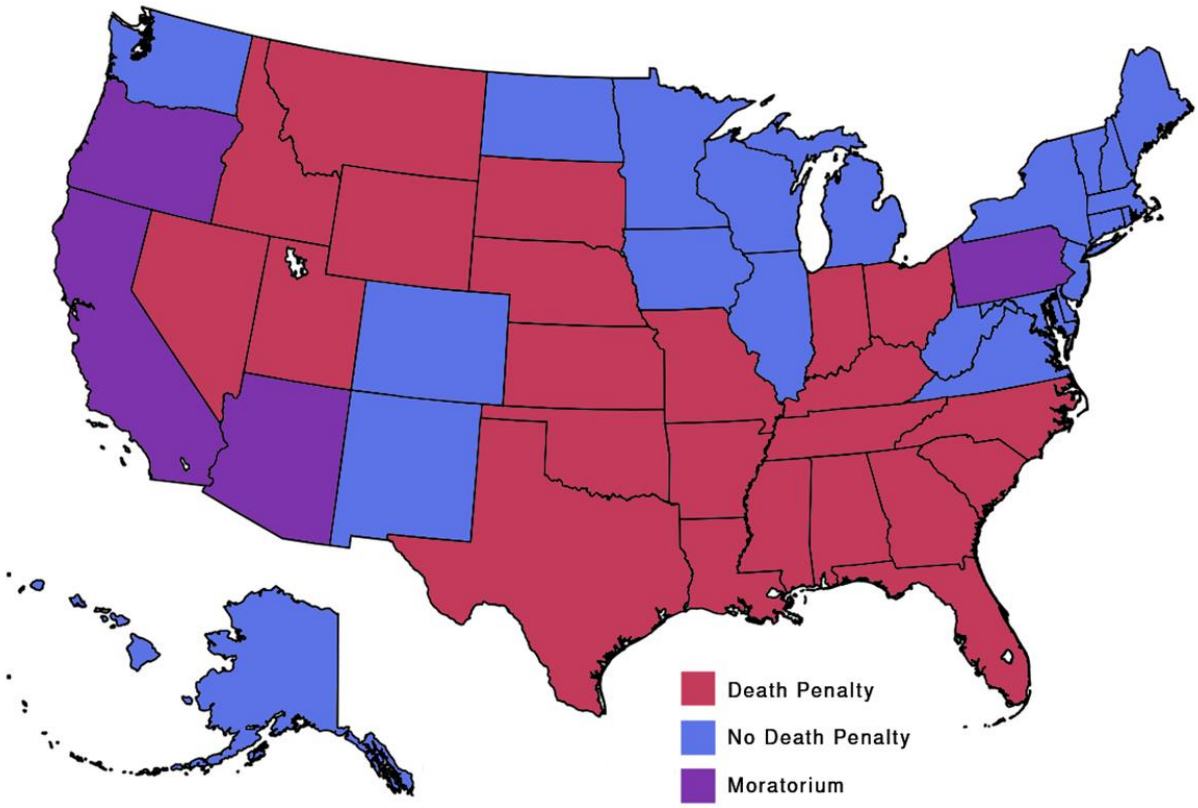
The Death Penalty

No discussion of courts and sentencing is complete without in-depth coverage of the death penalty. The United States is unique among analogous ("analogous" meaning similar or comparative in terms of development, GDP, and similar democratic political structures) nations in its continued practice of the death penalty. For example, Germany banned the practice in 1949 and 1987 (German reunification is the reason behind the two dates), Australia banned it in 1985, and both Canada and the UK banned the practice in 1998. Approximately 2/3 of the countries in the world have abolished the death penalty (Amnesty International, 2023). The United States is 9th in the list of countries with the most executions, as of 2021, following China, Iran, Egypt, Saudi Arabia, Syria, Somalia, Iraq, and Yemen (Amnesty International, 2023).

Evolution of the Death Penalty

The death penalty was carried into the U.S. through the old colonial codes borrowed and brought over from British colonizers. However, some colonies (and later states) established their own rules of when it could/couldn't be used. Throughout US history, some states have placed ***moratoriums*** - temporary bans or pauses in law or policy - on capital punishment, and others have permanently banned the practice. The map below created using data from the Death Penalty Information Center (2023) and other state statutes shows each state's current standing with capital punishment, with states that have permanently banned the practice in blue and those that have placed moratoriums on the death penalty in purple.

At the federal level, the US has also gone through a series of moratoriums and changes. in the first of these cases, ***Furman v. Georgia*** (1972), SCOTUS ruled that the death penalty was unconstitutional as a violation of the 8th amendment (remember that the ***8th Amendment*** protects against cruel and unusual punishment). Specifically, the Court ruled that it violated the 8th amendment when applied in an arbitrary or discriminatory manner, and the Court confirmed that people of color were being disproportionately sentenced to the death penalty, even holding criminal offenses constant (Cornell Law School, n.d.). This national moratorium was short-lived, however, as four years later, in ***Gregg v. Georgia*** (1976), SCOTUS ruled that the death penalty was not a violation of the 8th amendment, as long as it was a sentence restricted to homicide cases and was not arbitrarily applied, but instead was applied after careful consideration of the offender's case and character (Cornell Law School, n.d.). This decision re-instated the practice of the death penalty in states that had not previously banned the practice.



States Death Penalty Statutes, as of 2023, by Indigo Koslicki (2024); map template by Wolfson (2019)

However, questions over whether the death penalty was being applied in a discriminatory way against people of color and the poor continued. In 1987, the case ***McClesky v. Kemp*** raised this particular concern in light of studies that were showing that the death penalty was still being disproportionately applied to Black defendants. The specific study used in the defendant's (Warren McCleskey's) case had found that the death penalty was still being arbitrarily applied, with Black defendants who were tried for killing White victims receiving the death penalty more often than any other offender/victim racial dyad. In a 5-4 vote, SCOTUS ruled that the study was not enough to demonstrate that the death penalty was systemically discriminatory; essentially, racially discriminatory *motivation* must be proven by defendants on appeal, not just the racially discriminatory outcome (McCleskey v. Kemp, 481 U.S. 279 - 1987). Justice Powell, one of the majority, later regretted his vote, and continued studies that show racial disparities in the application of the death penalty still persist (Liptak, 2020). Specifically, Phillips and Marceau (2020) found that when the victim is White, the defendant is **17x more likely** to be sentenced to the death penalty than if the victim is Black. Critics of the death penalty, including former Justice Stevens (one of the dissenting Justices in the case), have compared the devaluing of Black lives as compared to White lives to the practice of legal lynching in the South (Liptak, 2020), a comparison further explained by civil rights lawyer Brian Stevenson in the required

video below [note: as we'll discuss more later in this chapter, Alabama as of this year no longer allows judges to override jury verdicts]:

"Bryan Stevenson on Justice and Capital Punishment | Bob Herbert's Op-Ed.TV"by CUNY TV (2014)

While the US still allows for the death penalty in spite of evidence of racially disproportionate sentencing, there's been further evolution of the law regarding *who* can receive the death penalty. In ***Atkins v. Virginia*** (2002), SCOTUS ruled that the death penalty cannot be applied to defendants with severe intellectual disability. However, states are allowed to define what constitutes a severe intellectual disability, leading many scholars and civil rights lawyers to criticize the decision as an "empty holding", as many severely intellectually disabled people still sit on death row (Barger, 2008; Hagstrom, 2009; White, 2009 - note: the Court decision used the R-word for those with intellectual disabilities, so the linked articles use this word as well; heads up to sensitive readers). Three years later, SCOTUS ruled that juveniles cannot be sentenced to death if they were juveniles at the time of the crime in ***Roper v. Simmons*** (2005).

Public Opinion and Political Actions

Public opinion regarding capital punishment has changed quite a bit over time. As you can see by the figure to the right, in the mid-late '60s, the majority of Americans were opposed, likely due to the influence of the Civil Rights Movement and its effects in waking people up to racial injustice and the ways in which the criminal justice system was discriminatory towards Black Americans.

Historically, there was a violent crime spike across the United States from the '70s to the mid-'90s, and you can see that this correlates with a decline in opposition/increase in favor towards the death penalty for someone convicted of murder. After the crime spike starts going down in the mid-'90s, we see an increase in opposition against the death penalty again. We are currently now at a record low, since this graph ends in 2022 and only has to do with murder. As of 2023, 50% of the public now believes the death penalty is applied unfairly (47% believes it is applied fairly) (Gallup, 2024). This is notable since right now there's a general perception that violent crime is increasing, yet unlike in the past, this is not accompanied by increased approval of the death penalty.

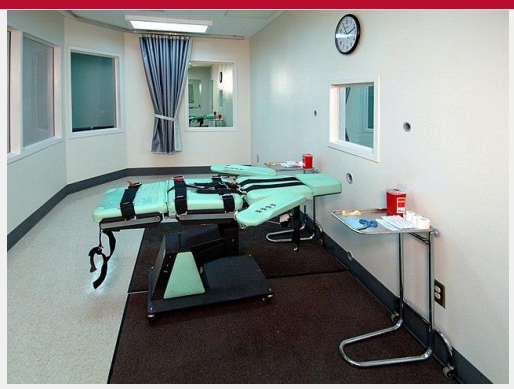
Many who do not support the death penalty point to multiple issues, such as discrimination, wrongful convictions, its lack of deterrence effect, and its expense compared to life without parole. Concerning the first of these - arbitrary sentencing that discriminates on race - many studies still show that when the defendant is Black, prosecutors are more likely to pursue the death penalty, *especially* if the victim is White (Death Penalty Information Center, n.d.). Concerning wrongful convictions, since 1973, ***197 people have been exonerated from death row*.** Many of these wrongful convictions come from lack of (or improper use of) DNA evidence, mistakes in eye witness testimony, and rampant prosecutorial misconduct (Death Penalty Information Center, 2023; Innocence Project, 2023). While much media coverage concerns police misconduct, prosecutorial is more hidden due to its low visibility (it is much easier for people to witness police misuse of force on a public street than it is to witness prosecutorial corruption behind closed doors). According to the Prosecutorial Accountability Project, more than 600 cases have been found so far since 1972 in which prosecutorial misconduct led to a capital punishment sentence that was either overturned by a higher court, or where the convicted person was eventually exonerated (Death Penalty Information Center, 2023).

As for the lack of deterrence effect, those who support the death penalty sometimes argue that capital punishment will deter people from committing homicide when they know that execution will be the penalty. However, research has found evidence for a ***brutalization effect,*** meaning there can sometimes be an *increase* in homicide following an execution (Vito & Vito, 2017). As for the expense of the death penalty, research has found that the death penalty is more expensive than an alternative sentence such as life without parole, due to a combination of the jury selection process (more rigorous and therefore more resource-intensive when the prosecutor makes a death-eligible charge), expenses from death row (which requires more

security and specialization than most levels of prisons), legal costs due to appeals, and - if the execution is actually carried out (some inmates on death row die of natural causes, have their sentences commuted, or are successfully exonerated) - the cost of the execution drugs themselves (California Commission on the Fair Administration of Justice, 2008; Cook, 2009; Death Penalty Information Center, 2023; Spangenberg & Walsh, 1989). This is true for both states and at the federal level, as found by the Judicial Conference of the United States (Gould & Greenman, 2010).

For prison personnel who were directly involved in the execution process, a recent investigation has found that interviewed personnel reported trauma and mental, physical emotional impacts; the interviewees who witnessed executions no longer support the death penalty and have changed their political views to match their lack of support (Eisner, 2022). The interviewees' reasons varied, with many citing the traumatic impact of watching botched executions, preparing inmates for executions, and the lack of access to psychological support (Eisner, 2022). Politically, however, decision-making about the death penalty may not always follow public opinion. For example, the Trump Administration resumed federal death row executions after a 17-year pause, and continued to do so in the "lame duck" period (the period after a general presidential election but before the new president takes office, in this case when Biden had been elected); this led to 13 executions, which was more than in the previous 56 years combined (Tarm & Kunzelman, 2021). The current DOJ Attorney General under the Biden Administration, Merrick Garland, paused federal executions for investigation (Office of the Attorney General, 2021), but the future of the death penalty at the federal level is uncertain.

SPOTLIGHT: Methods of Execution and the 8th Amendment



[**Content warning**: this section discusses details of human suffering during botched and completed executions.]

Today lethal injection is the most prevalent form of execution at the federal level and for states that still continue to enact the death penalty. However, America has historically experimented with a number of different methods - such as the electric chair - that came to be declared unconstitutional by several states (no federal/U.S. Supreme Court decision has ever declared a specific execution method as a violation of the 8th Amendment, but some states have). Remember that the **8th Amendment** protects against "cruel and unusual punishment", though the U.S. Supreme Court stands by its 1890 decision that the death penalty is only cruel and unusual if the method involves

"torture or a lingering death" (*In re Kemmler, 1890*). Because the electric chair was not *intended* to cause torture or a lingering death, the U.S. Supreme Court ruled that it was constitutional even though it had never before been used on a human; William Kemmler, the defendant in question on death row, was then executed by electric chair and the execution went horribly. The first electrical current (strong enough to have killed a horse during a prior experiment) did not kill him, and the second burst his capillaries under his skin, causing him to appear to sweat blood, and essentially charred his brain from the inside (New York Times Archives, 1890). The presiding doctor stated "I have seen hangings that were immeasurably more brutal than this execution, but I have never seen anything more awful", and George Westinghouse, the leading developer of the electrical current at the time, stated that "they could have done a better job with an axe" (New York Times Archives, 1890; Rosenwald, 2017).

Regardless, the use of the electric chair continued, with another notable case arising in 1947. In *Louisiana ex rel. Francis v. Resweber*, Black teenager Willie Francis (who may not have even been guilty), survived a botched electric chair execution attempt and was scheduled for a second attempt, so the attorney who took up his case appealed to the U.S. Supreme Court under the argument that this was cruel and unusual to put Francis through the ordeal twice (King, 2008). The U.S. Supreme Court again rejected the argument that the electric chair, even when the first attempt malfunctions, is cruel and unusual (*Louisiana ex rel. Francis v. Resweber*, 1947). Much later in 1997, more national scrutiny was turned towards the electric chair when Cuban refugee Pedro Medina - who insisted on his innocence in the murder of a schoolteacher - was executed and foot-long flames burst from his head underneath the metal helmet he was required to wear (Baker, 1997). The state supreme courts of Georgia and Nebraska soon ruled the electric chair as unconstitutional after this event, though the U.S. Supreme Court remains silent.

Early in 2024, in January, a new controversial method was tested on Kenneth Eugene Smith, who was sentenced due to committing a murder-for-hire (the jury voted to convict for a life sentence, but the judge overruled this decision and chose the death penalty - a practice that is no longer allowed in Alabama). Smith was initially scheduled to be executed via lethal injection, but administrators could not find a vein for the PICC line and his execution was botched after several hours of attempts. Similar to the case of Willie Francis, Smith's attorney petitioned for a stay of execution under the argument that the initial execution attempt was traumatic and further attempts would be cruel and unusual. This petition was rejected, and Smith was again scheduled for execution, but this time using nitrogen gas, which had never before been used on a human (even the American Veterinary Medical Association condemns the use of nitrogen gas for animal euthanasia [Spady, 2024]). However, as with *In re Kemmler* in 1890, the U.S. Supreme Court allowed this experimental method to continue. While the State of

Alabama expected death in a matter of seconds, witnesses stated that Smith was conscious for several minutes and thrashed violently (BBC, 2024; Chandler 2024). Many of the states that still practice the death penalty are exploring alternatives to lethal injection because large manufacturers of the different drugs needed for lethal injection refuse to let their products be used for executions (Murphy, 2024). Do you think experimentation with new and untested methods is in line with 8th Amendment protections against cruel and unusual punishment?

Photo above is of the San Quentin State Prison lethal injection room, by California Department of Corrections and Rehabilitation, 2010

False Convictions

Unfortunately, false convictions (whether to death row for accused capital murder, or to prison for other offenses) are an issue that plagues our criminal justice system. The National Registry of Exonerations reports **3,519 exonerations since 1989** for any crime, and these are the cases that have been taken up by pro-bono attorneys and non-profits working towards justice, meaning this figure does not account for smaller cases that did not reach widespread attention, or cases where the defendant or their family members have now passed away (and thus were unable to reach out for assistance) (NRE, 2024). For further optional investigation, you can see the NRE's interactive database of exonerations here, where you can see exonerations by state, race, crime type, and more.

Specific to the death penalty, **197 exonerations from death row have been reported since 1973**, according to the Death Penalty Information Center (2024). For both general exonerations and exonerations from death row specifically, there are many issues that can lead to false convictions, such as eye witness misidentification, false confessions made under extreme pressure, racial and ethnic discrimination (from witnesses, attorneys, and juries), and the use of evidence other than DNA (pre-1987, DNA was not gathered as part of investigations, so this is why the National Registry of Exonerations counts from 1989 onward, when lawyers first started using DNA to re-investigate cases where the defendant may have been innocent).

Specific to non-DNA evidence, while 44% of exonerations were found to be due to Brady violations as discussed in our last chapter, there are also problems of false convictions based on bad investigatory practices and what's known as "junk science" or pseudoscience in forensics investigations. Listen to or watch this required video below (you may stop after 56:11) to hear a discussion by M. Chris Fabricant - a lawyer and author of "Junk Science and the American Criminal Justice System" speak about some of the problems with our system's reliance on pseudo-scientific forensics methods. One thing in particular that he points out is how our court system, being based on the precedence set before it, is inherently opposed to the evolution and constant testing/revising/retesting that the scientific method entails (he calls this *eminence-*

based wisdom [precedent] over *evidence-based wisdom* [science-based]). How should we approach the use of forensics methods during trials and "expert witness" testimony in an evidence-based way rather than an eminence-based way?

"'Junk Science and the Criminal Justice System' – Chris Fabricant and NCIP Discussion" by [Northern California Innocence Project (2022)]

As a follow-up note, the bill that is mentioned in the video has since passed, but only for the State of California.

Conclusion

The subject of sentencing is one that is often driven by personal and ideological beliefs about justice and morality, but it is important to factually assess the outcomes and impacts of sentencing decisions, especially when "science" is used in ways that may carry out *injustice* or inhumane sentencing. Ideologically and politically-driven sentencing decisions also significantly impact our corrections institution, which we will turn towards in the next chapter.

Chapter 13

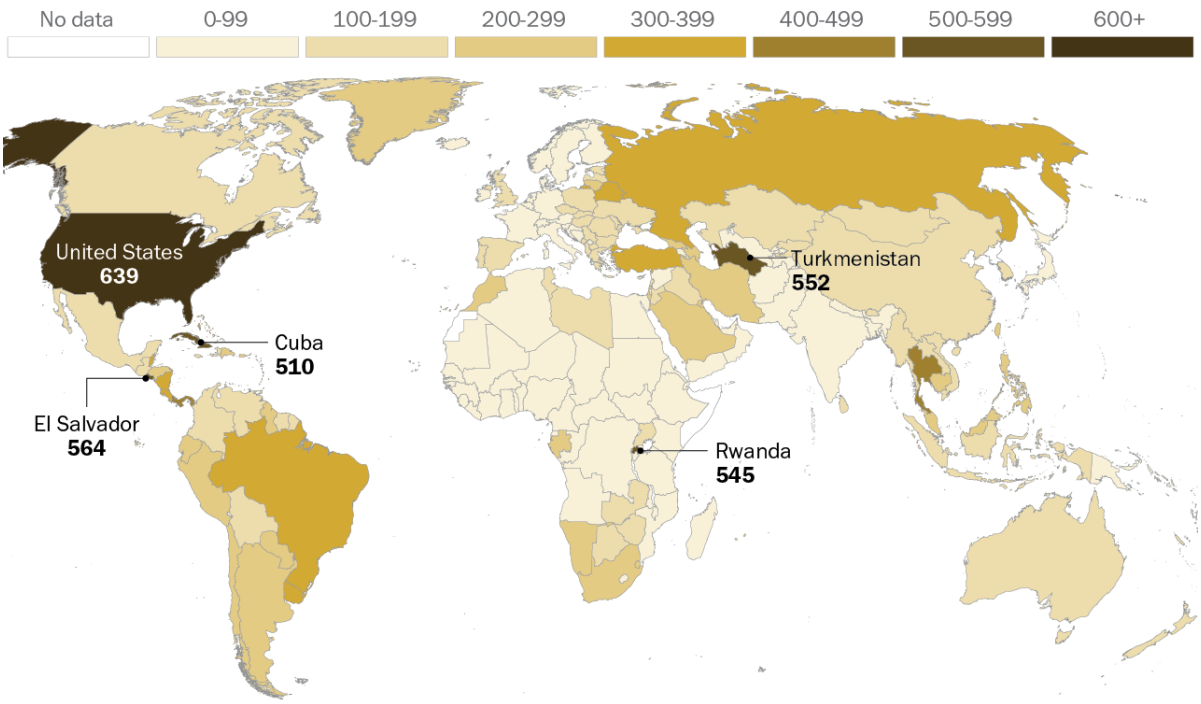
Race, Gender, Mass Incarceration, and Reentry

Introduction

While we addressed some important aspects of the courtroom workgroup and sentencing in Chapter 11, it is still extremely important to address how sentencing affects incarceration rates, which also affects re-entry (addressed in our next chapter), which then affects a person's ability to gain financial stability (thus affecting SES), which - along with other factors - makes it more likely for former offenders to recidivate and reoffend. This "revolving door" of incarceration therefore has a compounding impact, leading to major difficulties in re-establishing a pro-social, stable life.

U.S. incarcerates a larger share of its population than any other country

Incarceration rate per 100,000 people of any age



Note: Figures reflect most recent available data for each country. Territories are counted separately.
Data accessed Aug. 10, 2021.
Source: World Prison Brief, Institute for Crime & Justice Policy Research.

PEW RESEARCH CENTER

A world map showing the incarceration rates per country, with the U.S. having the highest rate, in "America's Incarceration Rate Falls to Lowest Level Since 1995" by Pew Research Center, Washington D.C. (2021)

Additionally, some sentencing policies contribute to mass incarceration by removing the chance of re-entry altogether, such as in the recent case of Allen Russell, who was sentenced to life in prison without the chance of parole after being found in possession of marijuana in 2019 in Mississippi (it is now legal to use marijuana medicinally in the state), due to a mandatory sentencing law for habitual offenders (Warren, 2022). Read the full case and arguments presented here: High court upholds life sentence for Forrest Co. man convicted of marijuana possession. The following sections will examine this problem in depth, while providing an overview of the experiences of major minority (race/ethnicity and gender) groups.

Before we get into specific groups, though, it's important to keep the overall picture in mind. ***The U.S. is home to about 4% of the world's population, but holds about 25% of the world's prison population*** (U.S. Census, 2023; World Population Review, 2023). Put another way, about 1 in 5 inmates around the world is incarcerated in the U.S.; the figure above puts this in a visual and international comparison to other nations.

After addressing mass incarceration, this chapter will cover the "revolving door" in terms of reentry and the barriers that contribute to formerly incarcerated people returning back to jail or prison.

The Black Community and Mass Incarceration

Due especially to the war on drugs and its disparate impact on communities of color, Black people's incarceration rates are much higher than their representation in the U.S. general population, more than any race/ethnicity. Black people are overrepresented in prisons and jails, while White people and Asian people are underrepresented (Latinos and Indigenous Americans are overrepresented as well, but not so much as their Black counterparts (Wang, 2024).

When it comes to state prisons, Black people are incarcerated at **5 times the rate** of White people (Nellis, 2021). Wisconsin has the highest rate of Black incarceration; looking locally at Indiana, we are higher than the national average (1 in 81 Black Americans being incarcerated) at 1 in 61 Black Hoosiers being incarcerated (Nellis, 2021). According to a pivotal study by Blumstein (1999), about 20-24% of the racial disparity found in prisons was not due to actually higher offense rates, but due to drug sentencing. These findings have been consistently supported, with the most recent study showing that rates are around 30-35% (however the overall racial disparity in prisons is declining), and that these disparities are explained largely due to differential arrest rates for drug crimes and weapon possession offenses (Beck & Blumstein, 2018).

Latino Americans and Mass Incarceration

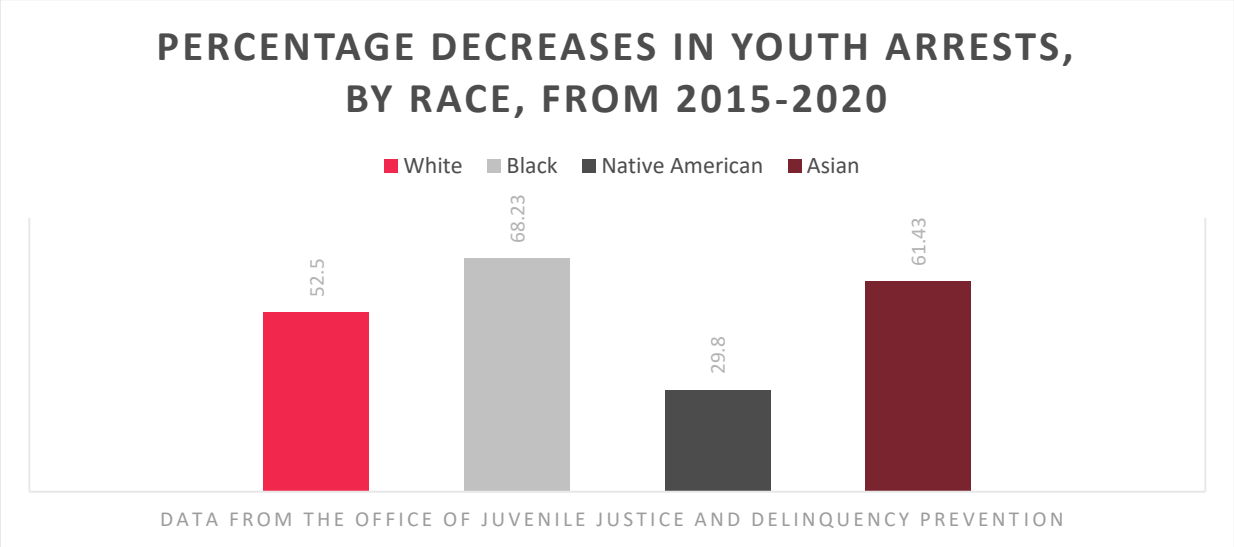
Research was slow to examine the impact of the criminal justice system on Latino Americans; it took the Civil Rights movement of the '60s to spark research into other racial and ethnic groups as well, so studies started to emerge in the '70s. While this means we only have about 50 years of data to examine, research has consistently shown trends in discrimination. For example,

compared to 29% of White defendants charged with drug offenses, 46% of Latino defendants were charged with drug offenses (and 48% Black defendants) (Kamasaki, 2002). Three times as many Latino men ages 25-29 were sentenced to prison for drug offenses than White men, and Latino men are 33% less likely to be released pre-trial than White men (Kamasaki, 2002). Keep in mind that this is all occurring in spite of no significant differences among racial/ethnic groups and drug use (Kamasaki, 2002), recalling our video in Chapter 5 about the racialization of marijuana.

Once they are convicted, Latinos also receive harsher sentences and less rehabilitation in prison. Looking at all age groups of Latinos (not just 25-29 year old men cited above), Latinos are incarcerated at ***nearly twice the rate of Whites,*** though in some states this figure is much higher (The Sentencing Project, 2003). When in prison, Latinos are half as likely as Whites to receive any substance abuse treatment at the federal level; for state prisons, Latinos are also less likely than Whites to receive treatment (about 34% of Latinos receive treatment, where as about 52% of Whites receive treatment) (The Sentencing Project, 2003). Most recently, during the COVID-19 pandemic, Latino jail inmates were decarcerated at a lower rate (23%) than White inmates (28%) (decarceration refers to reducing jail populations by releasing low level offenders, especially pre-trial inmates that have not yet been convicted) (Prison Policy Initiative, 2021).

Indigenous Americans and Incarceration

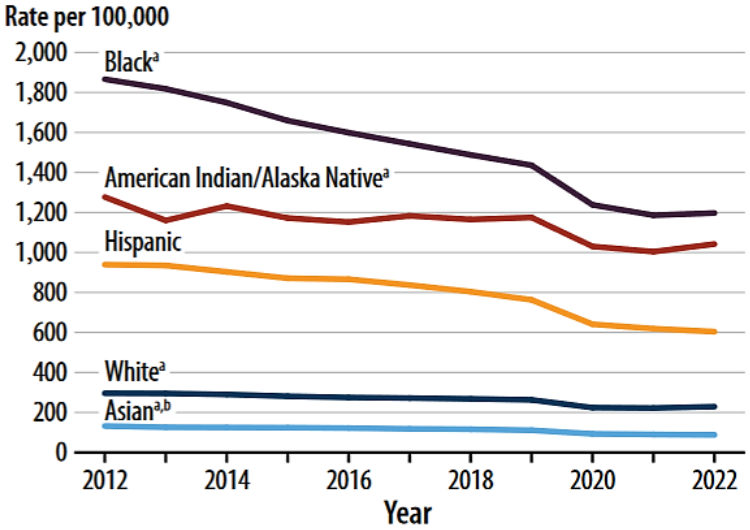
Since incarceration rates are initially driven by arrest rates, it's important to look at recent arrest trends before we look at incarceration rates. When it comes to Native youth, while recent policies and practitioners have been more attentive to disproportionate arrest rates of Black and other minority youth, the same attention has not been paid to Indigenous youth. Instead, we see arrest rates of Native youth decreasing at a much lower rate than the trends for young people of other races. Reasons for this include the school-to-prison pipeline (which we'll cover in the third page for this week), status offenses, and technical violations of probation.



Because of this, Native youth are confined at a rate higher than the rates of White, Latino, and Asian youth ***combined*** (they are confined at a rate of 85 per 100,000, as compared to White [27 per 100,000], Latino [35 per 100,000], and Asian [5 per 100,000]). Black youth are the only group with a higher confinement rate, at 115 per 100,000 (Prison Policy Initiative, 2021).

When examining adults, Indigenous Americans are also severely over-represented for their share in the general population (only 0.9% of the general U.S. population identifies as American Indian/Alaska Native). The figure to the right shows that the incarceration rate of American Indians/Alaskan Natives is increasing, compared to decreasing incarceration rates for Latino and Asian people, and slight increases in White and Black people. At the federal prison level, Native Americans are over-represented as well (they comprise 2.1% of the federal prison population, which seems low at first glance, but is still more than twice their share of the general U.S. population (Prison Policy Initiative, 2021).

Imprisonment rates of adult U.S. residents, based on sentenced prisoners under the jurisdiction of state or federal correctional authorities, by race or Hispanic origin, 2012–2022



Source: Bureau of Justice Statistics, Federal Justice Statistics Program, 2022 (preliminary), National Corrections Reporting Program, 2021, National Prisoner Statistics, 2012–2022, Survey of Inmates in State and Federal Correctional Facilities, 2004, and Survey of Prison Inmates, 2016; and U.S. Census Bureau, postcensal resident population estimates for January 1 of the following calendar year.

One of the greatest difficulties in understanding more details about the scope of Indigenous American incarceration rates is the lack of clear and consistent data. Often Native Americans are classified as "Other Race" in race and ethnicity categories in government data collection. They may also be grouped into a catch-all category of Native Hawaiian, Pacific Islander, and American Indian/Alaska Native people, in spite of the different histories and experiences of each of these groups. As the U.S. finally becomes more attentive to Native American issues, we hope that better data will catch up to provide a better understanding of how to address Native American over-representation in prisons and jails.

Women and Incarceration

While the number of incarcerated men far outnumbers the number of incarcerated women, the percentage of incarcerated women is ***increasing at 2x the rate*** than that of men (Prison Policy

Initiative, 2023). There are a number of explanations for this: the war on drugs widened the net of the criminal justice system, meaning more women were arrested for things like marijuana possession that did not used to be so strictly enforced; increased poverty of women also contributes to a rise in "crimes of poverty" (e.g. petty theft, fraud, substance abuse); income inequality also contributes to this increase in poverty and homelessness of women. We also have seen increased drug use and addiction among women, and an overall more punitive criminal justice system approach towards female offenders.

While policymaker attention towards the problem of mass incarceration has led to recent decreases in prison populations, we've also seen that the prison population decreased at a higher rate for men than that of women (7.1% decrease for men, compared to a 2.6% decrease for women). Much of women's incarceration comes from counting jail populations - as of 2023, there are 76,000 women in local jails, 72,000 in state prisons, and 23,000 combined across federal, immigration, and youth facilities. This means that there are more women in jail than in any other holding facility, and ***60% of these women in local jails have not been convicted yet*** (Prison Policy Initiative, 2023). Keep in mind that women are less likely than men to be violent offenders, so it is alarming that we have seen an increase in the preference to hold women in jail pre-trial instead of releasing them (as we will cover later in this page, women are also more likely to be caretakers of dependent children, so holding a mother before her trial can be very disruptive to her children); increased poverty rates among women also leads to a lower likelihood for women to make bail.

While jails are usually shorter incarceration periods than prisons, there are many unique issues that women face: women have a higher mortality rate in jails than men (2x higher), mainly due to deaths of drug and alcohol intoxication or severe mental illness when booked, plus deaths by suicide; jails also offer fewer services to women than to men (jails are very underfunded compared to prisons, so often they only offer services to the majority, who tends to be men) (Prison Policy Initiative, 2023). However, this isn't to say that prisons are much better at meeting women's needs. Watch the two videos below for a coverage of the specific needs and issues that women face in prisons, as well as the gender-specific paths to offending that many incarcerated women have experienced. Also note the statistic in the second video about housing 10x the mentally ill than hospitals do.

"American prisons are hell. For women, they're even worse" by PBS NewsHour (2018)

"What life is like for the mentally ill in prison" by ABC News (2018)

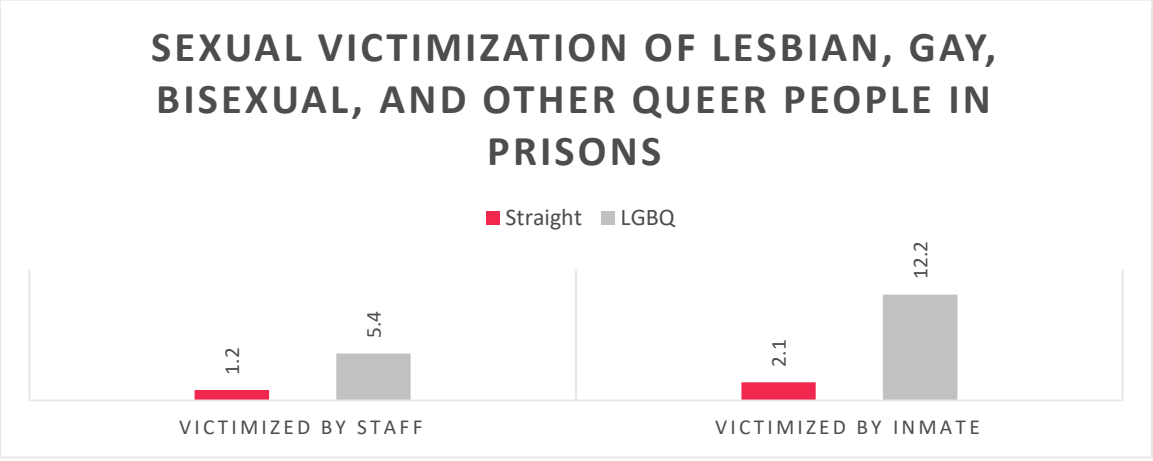
As discussed in the videos, women of color in particular are impacted: they are more likely than White women to be incarcerated, and are more likely to come in with histories of physical and sexual abuse and severe mental illness. The imprisonment rate for Black women is the highest among women at 62 per 100,000, followed by Latina women at 49 per 100,000, and then White women at 38 per 100,000 (The Sentencing Project, 2023).

Lastly, some quick statistics really illustrate the unique issues that women face while incarcerated, that still receive little attention from policymakers. According to the Prison Policy Initiative (2023):

- 26% of women experienced homelessness in the year before their arrest that led to incarceration (compared to 16% of men)
- Incarcerated women report disabilities at higher rates (50%) than men
- 76% of incarcerated women have a past or current mental health problem
- Women are more likely than men to be caretakers of minor children and more likely to be single parentsprior to their incarceration
- Women are 3x as likely as men to be sexually victimized by staff in prison and jails

The LGBTQ+ Community and Incarceration

Women who identify as lesbian or bisexual are more likely to receive longer sentences than straight women, and are more likely to be placed in solitary confinement (Meyer et al., 2017). For all LGBTQ+ people, solitary confinement is a major problem that is disproportionately faced by the community. LGBTQ+ people of color in particular are ***2x as likely*** to be placed in solitary than White LGBTQ+ inmates (Prison Policy Initiative, 2023). This is due in large part to the rates of violent victimization that LGBTQ+ people face in prison, and the lack of adequate resources in prisons to ensure their safety and protection; prison staff end up placing LGBTQ+ inmates in solitary confinement as an attempt to protect them, but this carries many negative consequences, which we'll address below. The figure below by Koslicki (2024) illustrates the awful victimization rates that we know of in state and federal prisons (data from the National Inmate Survey, 2011-2012).



Solitary confinement is shown to increase the likelihood of inmates developing psychological (anxiety, depression, suicidal ideation, psychosis, and self harm) and physical distress (Shalev, 2017). Solitary confinement also inhibits access to mail, phone calls, visitation, job training opportunities, education, and other programs that help to fill the social and psychological needs of inmates and prepare them for a higher likelihood of successful reentry upon release. One of the major impacts on the LGBTQ+ community is that solitary confinement also inhibits the earning of good-time credit (often earned through things like participating in programs, such as the prison library or kitchen), meaning that LGBTQ+ people who remain in protective custody for years are more likely to serve their maximum sentence, since they are not able to build good-time credit that makes them eligible for early release (National Coalition of Anti-Violence Programs, 2016).

Regarding trans* people specifically, there are about 5,000 trans* people in state prisons as of 2016 (this 2016 data was released in 2020, so it's the most recent we have) (Herring & Widra, 2022), and an estimated 1,827 trans* people in jails as of 2012 (Beck, 2014). Unfortunately these statistics are older, but they are the most recent ones that we have.

Trans* inmates experience sexual victimization at a rate ***10x higher*** than cisgender inmates (Beck, 2014). One of the reasons for this is because trans* inmates are almost never housed according to their gender identity, which opens them up to victimization at the hands of other inmates. Federal law does allow state prisons to house trans* people according to their gender identity instead of the sex and gender they were assigned at birth, with evaluations done by the state on a case-by-case basis. however, this almost never happens. This NBC news investigation found only 15 inmates that were housed according to their gender identity, compared to the 4,890 trans* prisoners that they examined (heads up, there's a description of an attempted rape in the video at the top of the website): Sosin (2020) Trans, imprisoned - and trapped

Alternatives to Incarceration

Given the problems with mass incarceration in the U.S., much recent research has been done to explore alternatives. Standard alternatives to incarceration have always been ***probation*** (a community sanction where the person does not serve any sentence behind bars) and ***parole*** (a release into the community on good behavior after the person has served some of their sentence behind bars); these are known collectively as ***community supervision***. However, these are both also plagued by issues and inequities. For example, Black Americans make up about 30% of the adult community supervision population (but only about 13% of the general U.S. population), and also experience higher revocation rates than White and Latino Americans. Probation fees also place a major burden on low-income probationers, which can lead to revocation of their probation and even incarceration if they fail to make a required payment. Courts also have a lot of discretion regarding conditions of probation, examples being: not being allowed to sit in the front seat of a car; not being allowed to get pregnant while on probation; not being allowed to consume alcohol (when substance abuse was not part of the initial offense); having to abide by a curfew (Klingele, 2013).

Specialty courts (also called ***problem-solving courts***) are some alternatives that were designed to divert low-level offenders from incarceration by emphasizing treatment programs based on their special needs. Common examples of specialty courts are drug courts, mental health courts, and veteran's courts. Evidence is positive so far that drug courts reduce recidivism and drug abuse (Haskins, 2019), but more research is needed to see if the other types are effective (and what the mechanisms are behind what makes some effective and some ineffective).

Reentry and Barriers to Reentry

Defining Recidivism

Before we can get to a deeper discussion of reentry, we need to discuss an issue about the definition of ***recidivism***. One of the major problems in the criminal justice field when discussing reentry and treatment programs is that there's no specific, agreed-upon definition of recidivism. "Recidivism", depending on the study or program you're reading/assessing, can mean:

- Being arrested for a new crime (keep in mind, though, that being arrested doesn't mean that one actually committed the crime
- Being charged of a new crime (however, a charge can be plea-bargained out, so this doesn't always lead to being incarcerated for a new crime)
- Being sentenced for committing a new crime (again, this doesn't always lead to being incarcerated for a new crime, since the offender can be sentenced to probation instead)
- Being incarcerated for committing a new crime (which is what we speak of when talking about the "revolving door")

Given these different definitions of "recidivism" that get thrown around, policymakers sometimes make the wrong conclusions when they read different studies that use different definitions. We really need a standardized definition. For the rest of this page, many of the statistics you will see here count "recidivism" as being *arrested* for a new crime.

Current Statistics

About 610,000 people are released from prisons (both state and federal) each year; specific to Indiana, 10,988 prison inmates were released in Indiana as of 2019 (Prison Policy Initiative, 2022). As for state and federal jails, about 10,203,730 people were released as of 2019 (243,482 from Indiana) (Prison Policy Initiative, 2022).

Unfortunately, the majority (68%) of people who are released are re-arrested within 3 years (BJS, 2018). Most of these new arrests are for crimes of poverty (drug abuse, larceny, and public disorder), especially for people whose first offense was non-violent. For people whose first

offense was a violent offense, the rate of recidivism is higher, with the majority (28.4%) being new arrests for assault, followed by public order offenses (15.6%), drug trafficking offenses (11.1%), robbery (7.2%), larceny/theft (7.1%), and drug possession (6.4%). Other than assault and robbery, however, rearrest for other violent crimes like rape or homicide remain quite low (2.2% and 1.9%, respectively) (United States Sentencing Commission, 2019). Regarding the crimes of poverty especially, formerly incarcerated people tend to be disproportionately impacted by poverty, unemployment, and homelessness. Women and people of color experience these hardships at particularly high levels.

Barriers to Re-Entry

These stats segue into a much-needed discussion of barriers to re-entry for formerly incarcerated people. Homelessness has a disproportionate impact on women in particular: studies show that 75-80% of women struggle to find stable housing upon release (the percentages vary depending on the area studied, since some places have higher costs of living) (Carter & Marcum, 2017). This places them at a higher risk of sexual victimization when homeless and living on the streets; this consequently increases the risk of them developing or exacerbating serious mental illness, which in turn contributes to women's offending (Wright et al., 2012). For women with children, homelessness also prevents them from regaining custody of their children (Brown & Bloom, 2009). Family reunification is consistently shown to be a protective factor against parents' recidivism, as well as a protective factor against the child committing crime (Denney et al., 2014; Fahmy et al., 2019), so it's of particular importance to address the homelessness crisis faced by former inmates.

"The barriers to reentering society after prison" by PBS NewsHour (2021)

In addition to the barriers of homelessness, poverty, and unemployment, special consideration needs to be given to elderly people who were formerly incarcerated. Due to long prison sentences (especially during the war on drugs), many inmates spend years behind bars - think of all the technology changes that have occurred in just the last 10 years; people who were incarcerated for longer than that often face an entirely different society than the one they knew before being incarcerated. Watch the video above to learn more about the invisible barriers to reentry, especially for older former inmates.

Personal Accounts and Recommendations to Assist Reentry

Watch the video below (run time: 56 min.) for an excellent overview of some former inmates' struggles with re-entry, recidivism, and establishing lives upon release. While you watch, pay particular attention to the issues and recommendations that Dr. Miller brings up:

"Full Documentary: Life After Lockup" by PBS NewsHour (2022)

Conclusion

This chapter had a lot of stats, but hopefully you're all now better informed about the overall overrepresentation of major minority groups in our incarcerated populations, and that you've picked up some insights about some of these people's personal lives and journeys. As you continue through the course and your future courses, think about some of the barriers shared and ways that we can start to overcome them, so former inmates are not serving their sentences for the rest of their lives. While we addressed older adults in this chapter, the next chapter will cover juveniles and the juvenile justice system, so it's also good to start thinking about ways to assist juvenile reentry, and what invisible barriers that juveniles might face that are different than those of older adults.

Chapter 14

Juvenile Justice and Intersectionality

Introduction

As we've covered throughout this text, there's significant overlap between offending, policing, sentencing, and incarceration, and this is no less true when it comes to society's treatment of juveniles. This chapter will examine a brief history of juvenile justice in the U.S., juvenile and police contact and the school-to-prison pipeline, the modern juvenile justice system, juvenile sentencing and incarceration, and juvenile-focused alternatives.

The History of Juvenile Justice

Up to the late 1800s

In the early 1800s, many juvenile offenders were dismissed and did not go through a formalized justice system or sentencing process. From the colonial era up to the 1800s, there was a larger reliance on informal social control (remember that ***informal social control*** refers to non-government institutions and entities, such as families and neighbors, keeping others from offending and demonstrating disapproval of certain actions; the stereotypical grouchy neighbor yelling "get off my lawn" to a bunch of squirrely kids is a perfect example of informal social control. By contrast, ***formal social control*** is the involvement of formal government institutions and systems to control a person's behavior, so like the neighbor being a jerk and calling the police on the squirrely kids. We will see a transition towards formal social control occurring throughout the 1800s when it comes to juveniles). There was also a general understanding that children, if incarcerated or held for any reason, shouldn't be incarcerated alongside adults.

In the East Coast, ***Houses of Refuge*** were one of the first types of holding institutions for juveniles. They were created to house and feed vagrant children, while also providing education and vocational skills. However, these Houses of Refuge were not as positive as that last sentence sounds. They were created long before child labor laws were put into place, so many Houses of Refuge put children to work as manual laborers with harsh and unsafe working conditions (Ra Do, 2022). Houses of Refuge also relied on using corporal punishment, solitary confinement, and inhumane abuses as discipline, and disproportionately confined immigrant youth, particularly those of Irish descent (Ra Do, 2022; Shelden, 2005). You can start to see that even the first forms of juvenile "justice" had disparities across ethnic and socioeconomic status lines, which are still unfortunately present today. As for racial discrimination, this was very obvious in the South, where Black youth were often not even considered separate from adults,

and were therefore subject to the same harsh prison sentences and inmate labor camps as adults (Webster, 2020). Houses of Refuge, while still very problematic in their own way, were often not even an option for Black juvenile offenders (a decade after their creation, they began to accept some Black youth, though these children faced a disproportionately high death rate within these Houses of Refuge compared to their White peers) (Bell, n.d.; Frey, 1981). Both pre- and post-slavery, segregation laws criminalized activities done by Black people if done in areas designated for Whites under Jim Crow laws, which also netted many Black youth into the system. We still see that the majority of youth sentenced as adults are Black youth (Children's Defense Fund, 2020), thus continuing this historic legacy of equivocating Black juvenile offenders with Black adults. Societal biases and stereotypes also tend to reinforce the myth that Black youth mature faster than young people of other races, which is still a prevalent stereotype/myth today, and usually referred to as **adultification.**

Houses of Refuge morphed into ***Reformatories***, which were similar but carried a philosophy that offenders should be rehabilitated (sometimes Houses of Refuge are referred to as "reformatories", which is technically correct, as "reformatory" has become a catch-all term for any forced holding facility of youth at this time; Reformatories, however, were more explicit in their ideology that young offenders could be reformed). Unfortunately these were often just as punitive and abusive, with strategies for rehabilitation still based largely on Puritan ideas of moral reform through manual labor and education.

At the same time, legal understanding of juvenile justice was evolving in the mid-late 1800s. The first legal term you should all be aware of is ***in loco parentis,*** which is an understanding that the state/government should act "in the place of the parent". This was established by two key cases: ***Ex Parte v. Crouse*** (1839), which approved the state removal of children from abusive home environments; and ***People ex rel. O'Connell v. Turner*** (1870), which finally limited government placement of youth into reformatories, stating that they can only do so in response to criminal activity, not poverty/homelessness (up until this time, Houses of Refuge and other reformatories were confining children who had not even committed a criminal offense).

Finally, in 1899, the ***Illinois Juvenile Court Act*** was passed to create a separate juvenile court system, and we still generally use this dual system today (it has evolved and its current structure will be illustrated later in this page, but we still generally adhere to the philosophy and primary goals). The Act had four primary goals: 1. separation of minors from adults; 2. youth confidentiality in offending records; 3. community-based corrections; and 4. individualized justice. At the same time, legal understanding came to include the concept of ***parens patriae***, which literally means "the state as the parent", meaning that the state/government has the duty to intervene for the protection and rehabilitation of children if the child's guardians are insufficient.

The 20th and 21st Centuries

For a large part of the early 20th Century, the Illinois Juvenile Court Act's new juvenile court operated without much change, until later in the 1960s and 1970s, when the Civil Rights Movement brought national attention towards youth civil rights in addition to Black civil rights and those of other racial/ethnic groups, women, and LGBTQ+ people. Up until this time, while the juvenile court operated according to noble goals, it was lacking in many important civil rights protections that adults enjoy. The first case to challenge this was ***Kent v. United States*** (1966), which allowed for the right to counsel (a component of the 6th amendment) to extend to juveniles, after Kent was transferred to adult court without an attorney to defend him. A year later, in ***In re Gault*** (1967), after a teen was sentenced to a reform school (after being accused of making obscene prank calls) without notification of Gault's parents or any notification to Gault of what he was being charged with, the U.S. Supreme Court ruled that juveniles must be granted the same rights granted to adults under the 14th amendment Due Process clause, especially the right to be informed of charges (which is also a component of the 6th amendment), right to confront witnesses, and the right against self-incrimination (this latter right also being inherent in the 5th amendment) (U.S. Courts, n.d.). Lastly, ***In re Winship*** (1970) changed the standard of proof needed for juvenile conviction to be *beyond a reasonable doubt*, the same standard of proof as required to convict an adult of a criminal offense. Juvenile conviction used to be based on a "preponderance of the evidence" before *Winship*, which is the standard of proof for civil court, and a much lower standard of proof. *Winship* finally elevated juvenile conviction to require the same strength of evidence and prosecutorial casework as is required for adults.

In 1974, the nation also experienced a major reform of the juvenile justice system with the ***Juvenile Justice & Delinquency Prevention Act (JJDPA)***. This act did not replace the Illinois Juvenile Court Act, but instead refocused the nation's strategy for treatment of juveniles on four main goals:

1. Deinstitutionalization of status offenders (remember that ***status offenses*** are offenses that are only considered offenses because of one's status as a minor. An example of this would be truancy; it's not illegal for an adult college student to skip out on their classes! Status offenses used to carry potential incarceration sentences, so the JJDPA called attention to this and sought to find alternative solutions and sentences to status offenses instead of incarceration.)
2. Sight and sound separation (this is the prohibition of sight and sound contact with adults when juveniles are placed in adult facilities)
3. Adult jail and lockup removal (this is the limitation of the amount of time juveniles can spend in adult jails; often this is 6 hours for urban areas, 24 hours for rural areas)

4. Disproportionate minority contact (this refers to a commitment to examine and reduce disproportionate contact between minority juveniles and the CJ system)

The JJDPA was renewed in 2018, with additional requirements for individual states to reduce racial and ethnic disparities in their juvenile justice systems (more about this in your Chapter 12).

Flash forward 30-40 years from the passage of the first JJDPA, and we saw a few more developments in the law for juveniles in the 21st Century. First of these was ***Roper v. Simmons*** (2005), which declared the execution of juveniles and those with severe mental impairment to be unconstitutional under the 8th amendment (connecting back to the racial disparities inherent with the death penalty that we discussed last week, the youngest known juvenile who was executed was George Stinney, a 14 year-old Black boy who was interrogated alone [this was before *Kent, Gault,* and *Winship*] and then convicted by an all-white jury in 1944). ***J.D.B. v. North Carolina*** (2011) expanded the Miranda warning of the 5th amendment to juveniles questioned by the police (while *In re Gault* affirmed juveniles' rights against self-incrimination, this was understood to be a right during court proceedings and not earlier during police questioning; *J.D.B. v. North Carolina* changed this to require that juveniles receive the same Miranda warning as adults do before police interrogation). A year later, both ***Miller v. Alabama*** and ***Jackson v. Hobbs*** declared juvenile life without parole (JLWOP) to be unconstitutional under the 8th amendment, and ***Montgomery v. Louisiana*** (2016) mandated that *Miller v. Alabama* and *Jackson v. Hobbs* be applied retroactively, meaning that people who were sentenced to JLWOP for crimes committed while they were still minors would have their cases reviewed and be re-sentenced.

Juvenile/Police Contact

Not only did the war on drugs increase police-juvenile contact, especially for young people of color, but a moral panic in the 1990s also brought many juvenile offenders into the system. The ***superpredator*** myth at the root of this moral panic was a theory started by a political scientist who argued that there was an increasing population of very violent juveniles who were beyond reform or rehabilitation (Bogert & Hancock, 2020; Boghani, 2020). The myth was also highly racialized, focusing on "urban" (the '90s code word for Black) juvenile offending specifically (Bogert & Hancock, 2020; Jennings, 2014). Policymakers and politicians ran with this moral panic, passing punitive laws, including JLWOP sentences and mandates that police enforce "quality of life" crimes more harshly.

Remember that "quality of life" crimes were the focus of Broken Windows Theory - created in the 1980s and still popular in the 1990s - which emphasized harsh enforcement of minor offenses like loitering, graffiti, and public drunkenness under the assumption that this would prevent violent crime. While this theory was not empirically proven, it was very popular at the time because it offered a simple solution to complex social problems, and the theory, the war on drugs that it informed, and the "superpredator" myth all created the perfect storm of

punitive policies for juveniles in the U.S., and contributed to continued racial disparities in the juvenile justice system.

At the same time (but not gaining much scholarly attention until the 2000s), the ***school-to-prison pipeline*** was another process that contributed to disproportionate minority contact with the police (and thus with the criminal justice system). The school-to-prison pipeline refers to the criminalization of school misconduct and status offenses, as well as the use of school resource officers (SROs) or municipal police officers to enforce these policies through arrest. Watch the required video below for an explanation behind the process and statistics (heads up, there is some footage of officer assault of a minor):

"The school-to-prison pipeline, explained" by Vox (2016)

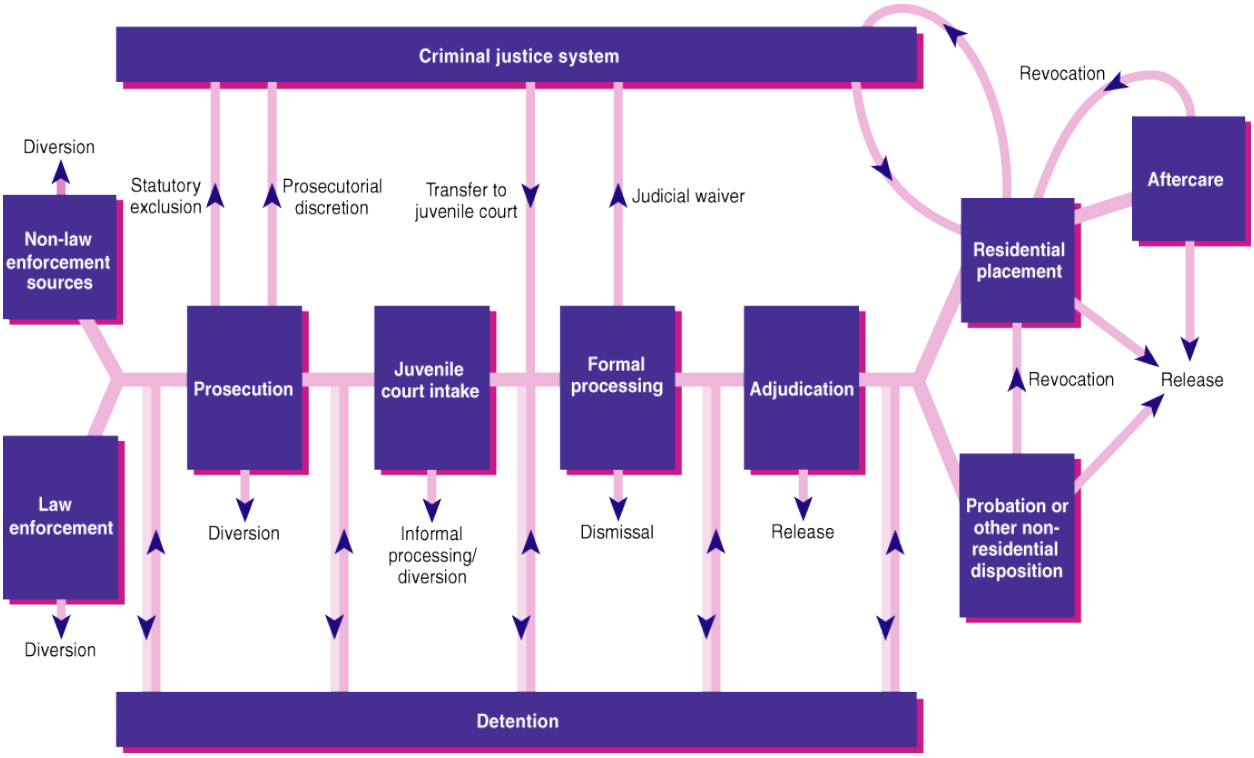
While this video is several years old now, recent statistics on the school-to-prison pipeline are still discouraging. According to the ACLU (2023):

- Schools with police report **3.5x** as many arrests as schools without police presence/SROs
- Black boys face the highest likelihood of arrest

- Black girls are **4x more likely** than white girls to be arrested
- While student misconduct is often linked to traumatic childhood events or mental health issues, **only 3 states** have the recommended student-to-counselor ratio
    - 1.7 million students are in schools with SROs but no counselors
    - 6 million students are in schools with SROs but no school psychologists

The Modern Juvenile Justice System

The diagram below shows the juvenile justice system flowchart, with the top bar labeled "Criminal justice system" referring to the adult system. This indicates that – while the youth system ideally flows through the middle steps, juveniles may be referred to adult court at multiple steps in the process, through multiple means (statutory exclusion (which means the crime requires that the perpetrator be tried as an adult from the very beginning; this depends on the state), prosecutorial discretion, or judicial waiver).



"Case Flow Diagram of the Juvenile Justice System" by the Office of Juvenile Justice and Delinquency Prevention (2021). Click to see full size.

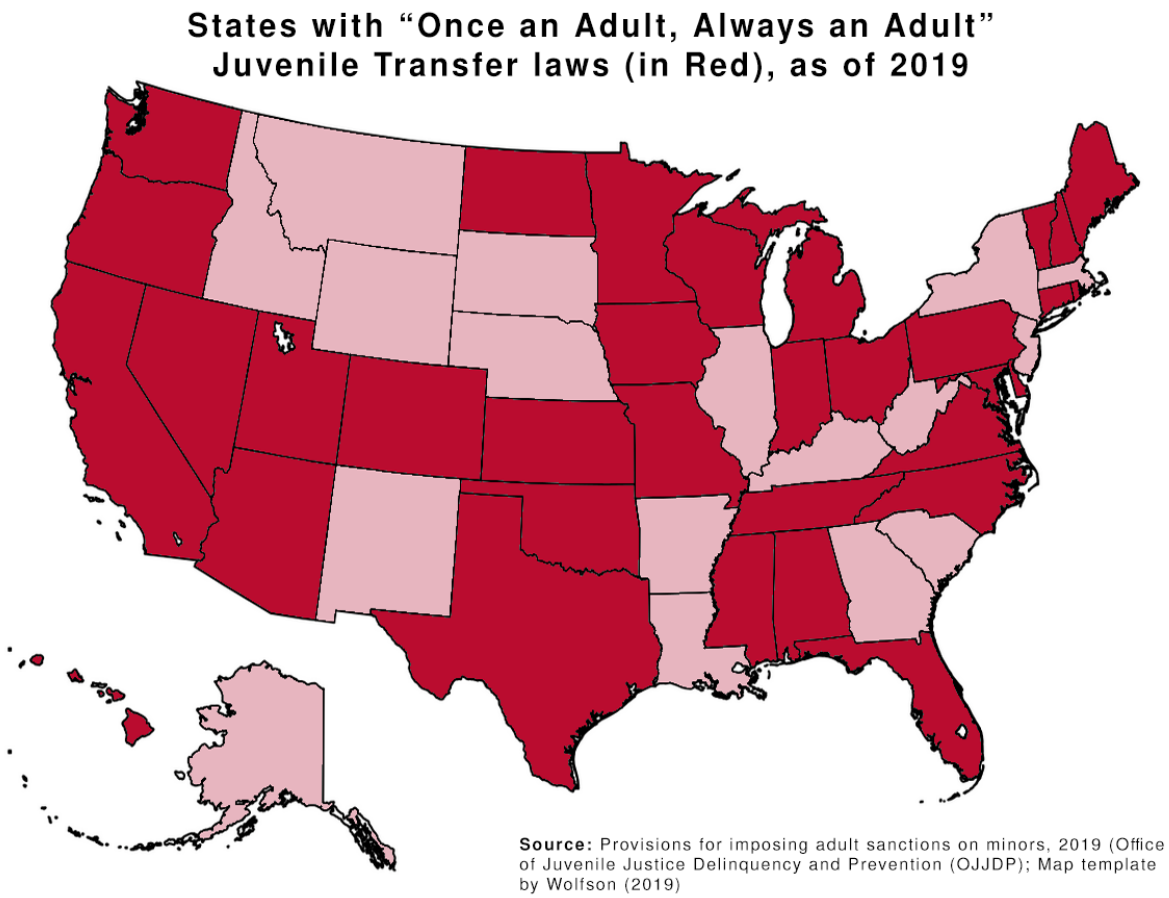
Residential placement refers to an incarceration or treatment facility specific to juveniles. However, if tried as an adult, the juvenile may end up in an adult facility (remember that the JJDPA goal of sight and sound separation is an ideal and not always a reality, sadly).

Due largely to increased policing during the war on drugs and the "superpredator" moral panic, there was a surge in youth being tried and sentenced as adults in the 1990s-2000s. In fact, in 1990-2000, an estimated 250,000 youth were tried and sentenced as adults *every year* (National Juvenile Justice Network, 2008). In the 2010s, there were some encouraging signs that this trend was decreasing. In 2015, 75,900 youth were sentenced to adult court, and in 2019, even fewer (53,000) youth were sentenced to adult court (this is an 80% decrease from the 1990s-2000s estimate) (Kelly, 2023) . Unfortunately, in the present day we are seeing many states and components of the juvenile justice system falling back on old punitive policies rather than progressing with the science of child and human development (Imprint, 2020). Recent political rhetoric about increases in violent crime – in spite of evidence to the contrary – may also roll back much progress in the juvenile justice system (Rovner, 2023).

Additionally, these sentencing numbers aren't evenly distributed across the U.S.; as with a lot of criminal justice issues, juvenile transfer laws vary widely by state. According to the National Conference of State Legislatures (2024), these types of transfer laws tend to fall under one of four main categories:

- **statutory exclusion** – indicates crimes that require any offender automatically be tried as an adult (this means if a juvenile commits one of these crimes, they do not see the juvenile justice system but instead immediately go to adult court)
- **judicially controlled transfer –** indicates that all juvenile cases must start in juvenile court, and can only be transferred to adult court if the judge believes the facts of the case require transfer
- **prosecutorial discretion –** indicates that the prosecutor may decide during the charging process whether the juvenile should be tried in juvenile or adult court (for certain offenses)
- **statutory exclusion and prosecutorial discretion –** indicates a blend of the above two systems (except judicially controlled)

These definitions don’t encompass another form of transfer law: "once an adult, always an adult". Essentially this means that once a juvenile is charged as an adult, any subsequent offense is automatically tried in adult court (there is "no going back", even if they are found innocent in the initial trial as an adult). **Thirty-five states** have these transfer laws as of 2019 (Office of Juvenile Justice and Delinquency Prevention, n.d.). The map below by Koslicki (2024) visualizes these states (in red).



Holding offense seriousness and record constant, there are still disproportionate numbers of minority and low-SES juveniles who are transferred to adult court. Adult sentencing practices severely limit the available rehabilitative programs for these juveniles. This practice also increases youth vulnerability to victimization, and the following trauma and learning from other inmates puts these juveniles at higher risk of recidivism than if they were placed in juvenile residential placement (NJJN, n.d.). Taking all of this into consideration, how do we address these disparities and ensure a more rehabilitative environment for juveniles?

Conclusion

This last question is one that has long been asked, but policies and legislation have been slow to take hold to actually address these issues and push towards reform. How we treat our society's children is a major reflection on our justice system and culture as a whole, and we need to change things in the juvenile system if we hope to divert them from offending as adults. If we can successfully divert and help young people to avoid getting involved in the criminal justice system, we can reduce the revolving door of mass incarceration and alleviate the case burden of courts, probation, and parole officers.

Chapter 15

Hate Crimes, Hate Groups and Domestic Terrorism

Introduction

This chapter will address some special topics that are intrinsically linked to race, gender, and other marginalized identities, and are especially timely in this most recent decade (though really, when are any of the things we're covering not timely?) We will first address hate crimes and then we will discuss hate groups and domestic terrorism. While many hate crimes can be perpetrated by individuals, organized hate groups are also a historic and current problem in the United States, and there are many signs pointing towards violence increasing from organized hate groups and domestic terrorist groups. While this chapter won't be able to cover every hate group in the U.S., we'll cover some history and some current ones, especially as they relate to current events.

As a warning again like what we stated in Chapter 1, we're going to wade a bit heavily into politics here. The purpose of this course isn't to share political opinions, but to keep you all aware of the current statistics and research, and - since CJC policies are decided at the political level, and political ideologies can be linked to violence and domestic terrorism - sometimes it's unavoidable. The point of this course isn't to villainize a specific politician or people who vote one way or another, but to draw attention to current trends of hate groups and the institutions that they are infiltrating (and the people being most harmed). With that being said, let's delve into some of the issues.

Hate Crimes - Definitions and Highlights

Definition & General Statistics

The Department of Justice (DOJ) defines a ***hate crime*** as "a crime motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender identity, or disability" (Department of Justice, n.d.), and further breaks down the definition into two elements: the criminal act and a hateful motivation. According to the most recent data of hate crime commission in the United States (2024), the overall rate of hate crimes in the U.S. decreased slightly by 3.7% since 2024. However, hate crimes are still elevated above their pre-2020 levels, following a major spike in incidents and offenses in the year 2020 (with the majority of those being anti-Black hate crimes) (FBI, n.d.). The majority (53.2%) of single-incident hate crimes were motivated by bias against race, ethnicity, and national origin, followed by religion (23.5%), sexual orientation (17.2%), gender identity (3.9%), disability (1.5%), and gender (1.0%)

(Department of Justice, 2025). The majority of hate crime perpetrators are White, men, and strangers to the victim (Bureau of Justice Statistics, 2021; Department of Justice, n.d.).

While the above categories are larger groupings for ease of reporting, it's important to disaggregate each group to see the trends of hate crimes experienced by each identity group. We'll explore some of the major groups below, but if you're interested in tracking a specific group over the years, the FBI's Crime Data Explorer is a useful tool (click on "show more" under the "Bias" box to see all the different identity categories tracked by the FBI).

Anti-LGBTQ+ Hate Crime

Sexual orientation and gender identity hate crimes make up a total of 21.7% of all hate crimes committed in 2024 (Department of Justice, n.d.). The Human Rights Campaign has also started tracking gender identity-bias hate crimes and has counted at least 44 trans* people being killed due to violent hate crime in 2020, 57 in 2021, 41 in 2022, 32 in 2023 and 32 again in 2024. The majority of these victims were trans women of color, and the increase in fatalities is jarring: **between 2016-2020, anti-trans* killings increased by 171.4%**. This figure is going back down in recent years, but is still alarmingly high. Politicized rhetoric accusing trans* people of victimizing children and other transphobic myths is contributing to these violent actions (Santoro, 2022).

Of anti-LGB hate crimes, the majority are perpetrated against gay men. However, LGBTQ groups (e.g. multiple queer people of varying LGBTQ identities being targeted as a group, such as at a Pride parade) experienced increased hate crime victimization by 21.4% between 2022-2023(victimization decreased slightly as of the latest 2024 statistics). As of the latest stats (2024), anti-LGBTQ group crimes have increased again by about 8.4%.

Much of these increases can be explained by the rise in violent anti-LGBTQ threats, especially in reaction to recent years' Pride parades, with one prominent example being the attempt of a hate group, Patriot Front, to violently disrupt a Pride parade in Idaho (Bellware & Pietsch, 2022). According to the Armed Conflict Location & Event Data Project (2022), the LGBTQ community is one of the most frequently targeted minority groups by violent mobs (not just individualized acts of violence) in the U.S., and much of this rise in violence may be explained by the infiltration of anti-LGBTQ rhetoric into mainstream politics (e.g. calling LGBTQ people "groomers"), mobilization of hate groups, and the spread of this rhetoric on social media (ACLED, 2022; Allam, 2022).

Anti-Black Hate Crime

When breaking down the FBI's latest (2024) hate crime statistics by the race of the victim, Black people remain the most targeted at 26.3% of all single-bias hate crimes (when looking just at the race/ethnicity/ancestry category, they make up more than half at 51.1%) (FBI Crime Data Explorer, n.d.). These crimes don't just occur in a vacuum, but are informed by a long history of racial bias. The murder of Ahmaud Arbery in 2020 was a chilling example of how history is

reflected in the present, with many observing how his murder was like a modern-day lynching (Taylor & Vinson 2020). Some research has even found that there is “lesser compliance with, and enforcement of, hate crime legislation” in areas with a history of lynching and with a larger Black population still (King et al., 2009, p. 309). Specifically, police were less compliant with federal hate crime laws and were less likely to file reports of hate crimes targeting Black Americans, and there was even some evidence that hate crimes were less likely to be prosecuted in areas with a history of lynching Black Americans (King et al., 2009).

Several national tragedies occurred in recent years that highlight the continued trend of hate crimes being committed against Black Americans. In the first several months of 2021, 57 historically Black colleges and universities (HBCUs) and churches received bomb threats, with much of the wave of threats coinciding with February, which is Black History Month (Yawn, 2022). In May 2022, a White man killed 10 people in a mass shooting at a grocery store in Buffalo known to be frequented by Black residents. Given his extensive documentation of racist rants and fears of a "great replacement" - recall from Chapter 5 that this is a conspiracy theory that argues that increasing numbers of immigrants and BIPOC will replace White people in the U.S. - authorities agree that this mass shooting was an anti-Black hate crime (Jones, 2022). This racially-motivated mass shooting parallels that of the Charleston church shooting in 2015, where a white supremacist gunman murdered nine parishioners of a Black church (Robles et al., 2015). While the 2020 BLM movement has awoken many Americans to racial justice and injustice issues, the country must still remain vigilant that anti-Black hate crimes are still occurring at an alarming rate, and that a white supremacist backlash is a serious present-day concern.

Anti-AAPI Hate Crime

Together, Asian Americans and Pacific Islanders are referred to as AAPI, and there's been an alarming increase in anti-AAPI hate. Unfortunately due to COVID-19’s country of origin and the use of "China flu" and "Wuhan flu" by former President Trump and other well-known politicians (Mangan, 2020), a lot of anti-Asian sentiment was stoked among a number of Americans. Watch this video below for more information about how anti-Asian hate crimes rose in the wake of COVID-19 (run time: 7:55 min.):

"An epidemic of hate: anti-Asian hate crimes amid coronavirus" by Los Angeles Times (2020)

Professor Russell Jeung, mentioned in the video above, started the project Stop AAPI Hate, which started tracking hate crimes against AAPI people in the U.S. since mid-March 2020. According to the most recent report (as of December 2021), **10,905 hate incidents have been perpetrated against AAPI people between March 2020 and December 2021**, with the most frequently victimized being AAPI women (61.8%) (Yellow Horse, Jeung, & Matriano, 2021). The majority of incidents were reported by Chinese Americans (42.8%); however, as the video above mentions, other AAPI people are often targeted due to general anti-AAPI bias and due to perpetrator ignorance about national origin - of the reported incidents, 16.1% of victims were Korean Americans, 8.9% were Filipino Americans, 8.2% were Japanese Americans, and 8.0% were Vietnamese Americans (the rest of those who reported victimization did not provide specific national origin) (Yellow Horse, Jeung, & Matriano, 2021). According to a different report, which tracked police records for hate crime arrests, reported anti-AAPI hate crimes to have increased **by 150% between 2019 and 2020** (Center for the Study of Hate and Extremism, 2021). Some of these crimes have been deadly, such as the race and gender-motivated killing of 8 people (6 being Asian women) in the Atlanta area in March 2021 (Shivaram, 2022).

As referenced in the video, anti-AAPI hate has had a long history in the U.S., with accusations that Chinese Immigrants were coming to steal Americans' jobs starting as early as the 1850s (Brockell, 2021). This anti-AAPI sentiment was not just a feeling of the general public, but was reinforced by the U.S. government as well, with the U.S. Supreme Court ruling that Asian people could not testify in court in 1854 (People v. Hall), and with the **Chinese Exclusion Act of 1882** banning Chinese immigration (this almost included U.S.-born citizens of Asian parents, as in the case of United States v. Wong Kim Ark in 1897, but the Supreme Court finally ruled in

favor of Wong's citizenship and return to the U.S. - until then, he was stuck passing from ship to ship at the harbor) (Brockell, 2021; Klein, 2021). Other notable anti-Asian public hate crimes were the **Rock Springs massacre** of 1885, where 28 Chinese immigrants were killed by a White mob and 79 of their homes were burned, and the **1900 San Francisco bubonic plague outbreak**, where Chinese immigrants were blamed and forcibly quarantined by the police, with their property searched and destroyed without warrants (Brockel, 2021; Little, 2020). Further on in history, there was the forcible detainment of Japanese Americans during WWII – as a personal note, the grandfather of some close friends of one of this book's authors, Dr. Koslicki, was interned in one of these camps and passed away just last year; history is closer than you think. As late as the mid-1970s and early 1980s, the KKK also had a hand in anti-AAPI hate by launching attacks against Vietnamese refugees who relocated to the U.S. at the end of the Vietnam war (Brockell, 2021).

While Asian Americans are often called a "model minority" (a damaging stereotype in its own right, given that it places heavier expectations on a group in order for them to be culturally accepted as "normal") and are underrepresented in crime statistics, they are still experiencing anti-AAPI victimization and have been for at least 170 years in the U.S.

Anti-Islamic and MENA Hate Crime

Religion-motivated hate crimes against Muslims, as well as national origin-motivated hate crimes against people of MENA (Middle East and North African) ancestry both skyrocketed post-9/11, as some Americans scapegoated Muslim Americans and MENA Americans (as well as some people of Asian descent - such as Indian Americans, due to racist and colorist ignorance - or South Asian people who are Muslim) (Alfonseca, 2021; Mishra, 2017; Sikh Coalition, n.d.). As such, the rise in hate crimes post-9/11 overlapped in victims who were targeted for their religion, and victims who were targeted due to their *assumed* religion based on the color of their skin. According to the FBI's statistics **between 2000 and 2001, anti-Islamic/Muslim hate crime increased by 1617%** due to 9/11 (Alfonseca, 2021).

"American Muslims reflect on how 9/11 changed America as they knew it" by PBS NewsHour (2021)

As referenced in the video, not only did hate crimes occur from the general public, but political actions raised many human rights and racial profiling concerns. The Patriot Act opened the door for increased racial profiling against MENA people under the guise of anti-terrorism efforts, leading some scholars to link this to Japanese internment back in WWII (Pitt, 2011). More recently in 2017, the Trump Administration banned Muslim immigration from several countries where many refugees were fleeing persecution; the administration's use of anti-Muslim rhetoric and false claims made many concerned that this would escalate Islamophobic fears that were ignited during 9/11 (Shane et al, 2017).

Statistically, **hate crimes perpetrated due to anti-Islamic motivation are the second-highest in religion-motivated hate crimes** (8.7% of religion-motivated hate crimes are anti-Muslim). While the number of anti-Islamic hate incidents started decreasing since a spike in 2016, they have not yet returned back to pre-9/11 rates (they have **increased by 782.8%** between 2000 and 2024) (Department of Justice, n.d.).

Antisemitic Hate Crime

The most frequently victimized religious community among religion-motivated hate crimes is the Jewish community (69.4% of religion-motivated hate crimes are anti-Jewish/anti-Semitic, as of 2024 data) (Department of Justice, n.d.), and the Jewish community has remained the most frequently victimized among religion-motivated hate crimes for at least the last 20 years (Department of Justice, n.d.). While the majority of these crimes include harassment and vandalism, there has been an alarming trend in notable killings due to antisemitic motivation since 2016, such as: the 2018 mass shooting at the Tree of Life Synagogue (the shooter claimed that Jewish people were responsible for enabling the "great replacement" of Whites with immigrants); the 2019 mass shooting at the Chabad of Poway synagogue; the 2022 bomb threats made to various Jewish community centers and synagogues; and the 2023 arrest of a neo-Nazi suspected of planning a deadly shooting of a Michigan synagogue (these are unfortunately only a few examples).

We want to note here that there's been an unfortunate, and inaccurate, equivocation between antisemitism and people protesting Israel's actions towards Gaza/Palestine since October 2023. The reason this equivocation is inaccurate is because – as the FBI defines above – hate crimes require the targeting of an individual (or gathering of individuals) based on antagonism towards their religion, ethnicity, race, culture, etc. Criticizing a *nation's* actions is not hate speech (and certainly not a hate *crime* due to the 1st Amendment), just as criticizing the actions of China's current Communist government against the Uyghurs is not hate speech against Chinese people, though the targeted slurs and attacks on Chinese Americans in the wake of the COVID-19 pandemic were. It should also be noted that even some Jewish groups, such as Jewish Voice for Peace, have joined in the criticism of Israel's actions, as anti-Zionism is not the same as antisemitism (Jewish Voice for Peace, n.d.). The history of Israel and Palestine is a long and complex one (some good starting points are here and here), but for our purposes in this section, the main focus is on *targeted* hate *crimes* against Jewish *people*. However, while criticizing a nation or government's actions is not sufficient evidence of bigotry against people, there has also been an increase in antisemitic hate crimes *against people* since Israel's attack on Gaza. Some of these could be considered ethnonationalist (as covered more below) in their motivation, with the deadly June 2025 attack of pro-Israel protesters in Boulder, Colorado potentially serving as an example (Hutchinson, 2025); other examples of deadly attacks, such as the killing of two Israeli embassy employees in May, 2025, are not ethnonationalist in motivation but the suspect is alleged to have said that he "did it for Gaza" (Sutherland, 2025). The majority of recent antisemitic hate crimes have not entailed physical violence, but have entailed slurs and hate speech that has been especially fostered online on platforms like X, TikTok, Facebook, Instagram, and 4chan (4chan in particular has long been known for antisemitic, other bigoted speech, and fostering damaging conspiracy theories based on race, ethnicity, gender, and other identities) (Frenkel & Myers, 2025; Sutherland, 2025). This is particularly alarming, as these social media platforms are leading to a rise in antisemitic sentiment – some of which has long historic roots, explained below – that goes far beyond critique of the actions of Israel's government.

The longest-standing trend in antisemitism is its disturbing history of being woven into conspiracy theories, especially political and/or anti-government conspiracies that resonate with the far-right (Byington, 2020). An example of this was the popularity of ***QAnon*** *in the early 2020s***.** QAnon is a conspiracy theory that blends political conspiracies - namely, that a group of Democrats engages in human trafficking and harvests a chemical from children's blood - with antisemitic beliefs - that there is a Jewish plot to control the world (a conspiracy that was started in 1903 with the publication of "The Protocols of the Elders of Zion", a book that was fabricated to look as though it was written by some secretive Jewish cabal (Whitfield, 2020). Additionally, the argument that Democrats are harvesting children's blood is rooted in a medieval false claim, known as ***blood libel,*** that Jews were using children's blood for rituals and has persisted through the centuries, even into the 1920s in the US (Anti-Defamation League, 2012; Wong, 2020). QAnon and antisemitism were linked to the January 6th insurrection/coup attempt (Djupe & Dennen, 2021). Additionally, while QAnon influencers splintered a bit due to social media crackdowns after 2021, many influencers reemerged on X and were recruited by current FBI director Kash Patel – himself a proponent of QAnon – to join President Trump's social media platform, Truth Social (Gilbert, 2025; Joffe-Block et al., 2024). While the Trump Administration has made a show of cracking down on antisemitism in universities (particularly due to pro-Palestine protests), it is important to note the integration of antisemitic conspiracy theories into the social media rhetoric and conspiracy theories that still underlie many political movements' beliefs due to this long history of antisemitism in the U.S. and earlier [hence why "Jewish space lasers" came to no surprise to anyone knowing the underlying context of the antisemitism and white supremacy, such as the 1903 "Protocols of the Elders of Zion"] (Beauchamp, 2021).

Hate Groups and Domestic Terrorism

A History of Hate Groups

When people mention hate groups in the United States, most immediately think of the Ku Klux Klan (KKK), which was founded in 1865, immediately after the Civil War and in response to Reconstruction's attempt to desegregate the South and provide Black people with land and the means to live as free citizens. When the KKK was first founded, it was made up of many former Confederate soldiers, and members primarily targeted Republican (then the party of Lincoln) voters, as these were the majority of voters who supported Reconstruction. Other militant white supremacist organizations, such as the Knights of the White Camelia and the White League, joined in with the Klan, with the overall goal of bringing the South back to a pre-Civil War state (i.e. re-establishing white rule and slavery of Black people) through violent and deadly means (Du Bois, 1935), while also recruiting Democrat policymakers who could assist them in their goals (Foner, 1988).

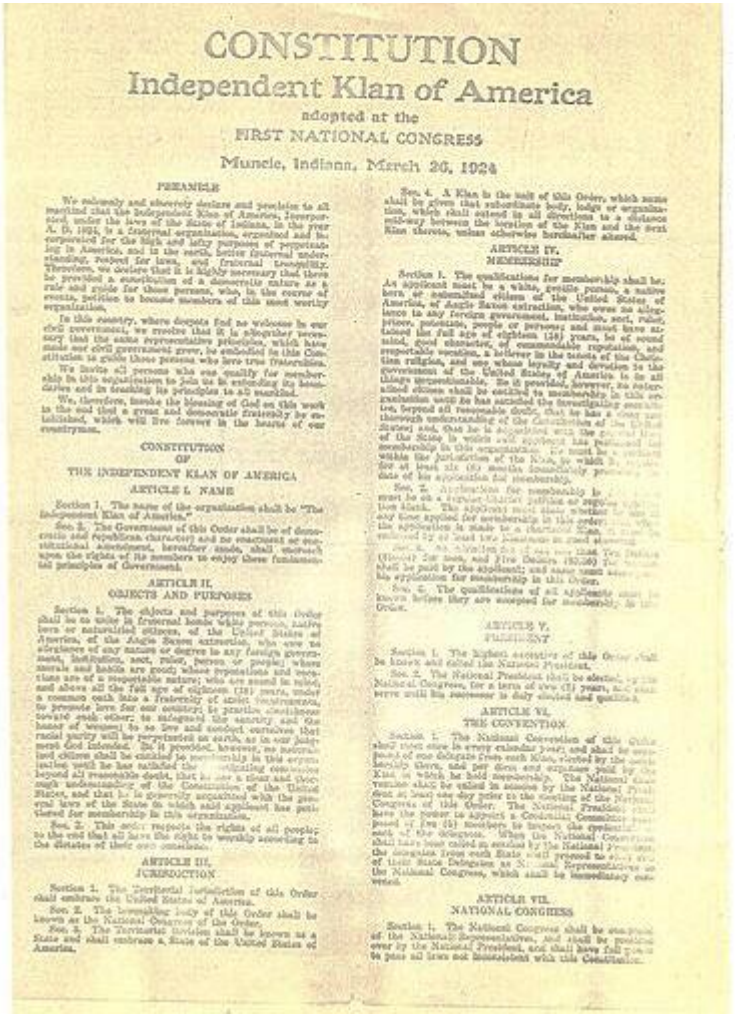
The KKK's first "wave" (it had three historically) concluded after the federal government passed a series of acts and declared the Klan a terrorist organization, which deterred membership and increased criminal penalties. However, in 1915, a second wave began due to the influence of D.W. Griffith's film, *Birth of a Nation,* that was KKK propaganda, depicting the group as the heroes who delivered the South from violent Black people and their White allies (Clark, 2022). This new wave of the Klan was clearly still anti-Black, but also came to adopt an anti-Catholic, anti-Semitic, and anti-immigrant stance as well (Blee, 1991). This second wave was extremely successful in capitalizing on white nationalist fear and recruiting members, and saw a membership growth to 1.5 to 4 million (Fryer & Levit, 2012).

"Ku Klux Klan gathering of Muncie Klan No. 4"; among the signs is "we stand for law and order". Photograph by W. A. Swift (1922); from the Ball State University Libraries W. A. Swift Photographs Collection

In the middle of the second wave of the KKK, the two main political parties of the U.S. underwent what's referred to as ***the New Deal Realignment***, when Franklin D. Roosevelt's New Deal radically shifted the Democrat party platform. Roosevelt's New Deal Coalition included Catholics (i.e., many European immigrants), Jews, and Black people, and Roosevelt appointed 9 justices to the Supreme Court throughout his tenure that made great strides towards racial equality (McMahon, 2000). This drew more Black, Catholic, Jewish, and pro-union people to the Democrat party, leading the KKK to shift away from their goal of recruiting Democrat politicians (who no longer represented their interests) and towards recruiting mainly among Protestants (Baker, 2011). For a bit of unfortunate local history, about **1 in 5 of the eligible population of Indiana were members of the KKK** at the time of the second wave (Fryer & Levitt, 2012). While the second wave of the KKK is said to be less violent than the first and third waves, violent terrorist acts, lynchings, and intimidation techniques such as cross burnings were common. The KKK started to experience major declines in membership due to the Great Depression and the years following, and the national organization dissolved in 1944 (Odlum, n.d.).

The third wave of the KKK started not long after, in 1946, though the national KKK organization did not last long before it splintered into a number of separate factions in the 1960s, all of

which were known locally as the Ku Klux Klan (though they were no longer a nationally unified group). These splintered groups primarily targeted Civil Rights leaders and activists in addition to acts of violence and terror towards the general Black population. While there was much Black resistance against KKK terrorism, the government response was mixed: the FBI had informants throughout the KKK; local law enforcement officers could be found among the ranks of the KKK, not as informants but as fully committed members (Fryer & Levitt, 2012; Tucker, 1991).



CONSTITUTION

Independent Klan of America

adopted at the

FIRST NATIONAL CONGRESS

Muncie, Indiana, March 26, 1924

PREAMBLE

CONSTITUTION OF THE INDEPENDENT KLAN OF AMERICA

ARTICLE I. NAME

ARTICLE II. OBJECTS AND PURPOSES

ARTICLE III. JURISDICTION

ARTICLE IV. MEMBERSHIP

ARTICLE V. PRESIDENT

ARTICLE VI. THE CONVENTION

ARTICLE VII. NATIONAL CONGRESS

"The Constitution of the Independent Klan of America adopted at their First National Congress in Muncie, Indiana on March 26, 1924. It is modeled after the United States Constitution." By Indiana State Library and Historical Bureau, 1924

The KKK has continued to operate as fractured, independent groups across the U.S., with a peak of violence in the 1950s-80s, and then a drop in membership and activity in the decades afterwards (a couple of contributing factors being continued inter-group conflict and the groups' reliance on outdated recruiting tactics, whereas modern white supremacist groups are more savvy in using the internet and social media to recruit) (Southern Poverty Law Center, 2022). Some names may still be familiar in the modern day, even if the KKK is fading in its influence: the first is ***Stormfront***, a white supremacist website created in the 1990s, was created by a former KKK leader and was in operation until 2017, when it was brought down by the Lawyer's Committee for Civil Rights Under Law (Augustin, 2017; Southern Poverty Law Center, n.d.); the second is ***David Duke,*** former leader of the KKK who attended the "Unite the Right" rally in Charlottesville and endorsed Donald Trump as having an agenda aligned with white supremacist interests (Trump disavowed these endorsements, though he denied knowing who David Duke was in spite of making earlier comments about him being a neo-Nazi) (Domonoske, 2016; Kessler, 2016; Manchester, 2017).

Hate Groups and Domestic Terrorism Today

While the KKK is still around, a white supremacist movement called the ***white power movement*** evolved during the third wave of the KKK and provided the foundation for the white supremacist militias that we see today. Listen to the podcast below (run time: 48 minutes) to learn about this development (heads up: hate speech and depictions of violence). While you listen, pay attention to how the strategies of the white power movement changed over time, and how the ***lone wolf narrative*** is insufficient in describing the dynamics of these groups (and how these dynamics pose a problem to law enforcement). Also take part of the main players in the movement, their motivations, the main book that inspired racist guerilla warfare, and the strategies and tactics used by this movement that relate to modern-day domestic terrorist groups. Click here for the podcast's transcript.

Throughline by NPR (2020): The Modern White Power Movement

As stated in the intro of the podcast, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) have both warned that white supremacists are the most persistent and significant terrorism threat to the United States, and that domestic terrorism is a greater threat than international terrorism (Breuninger, 2022; DHS, 2020). Domestic terrorism as a whole can be divided into several categories:

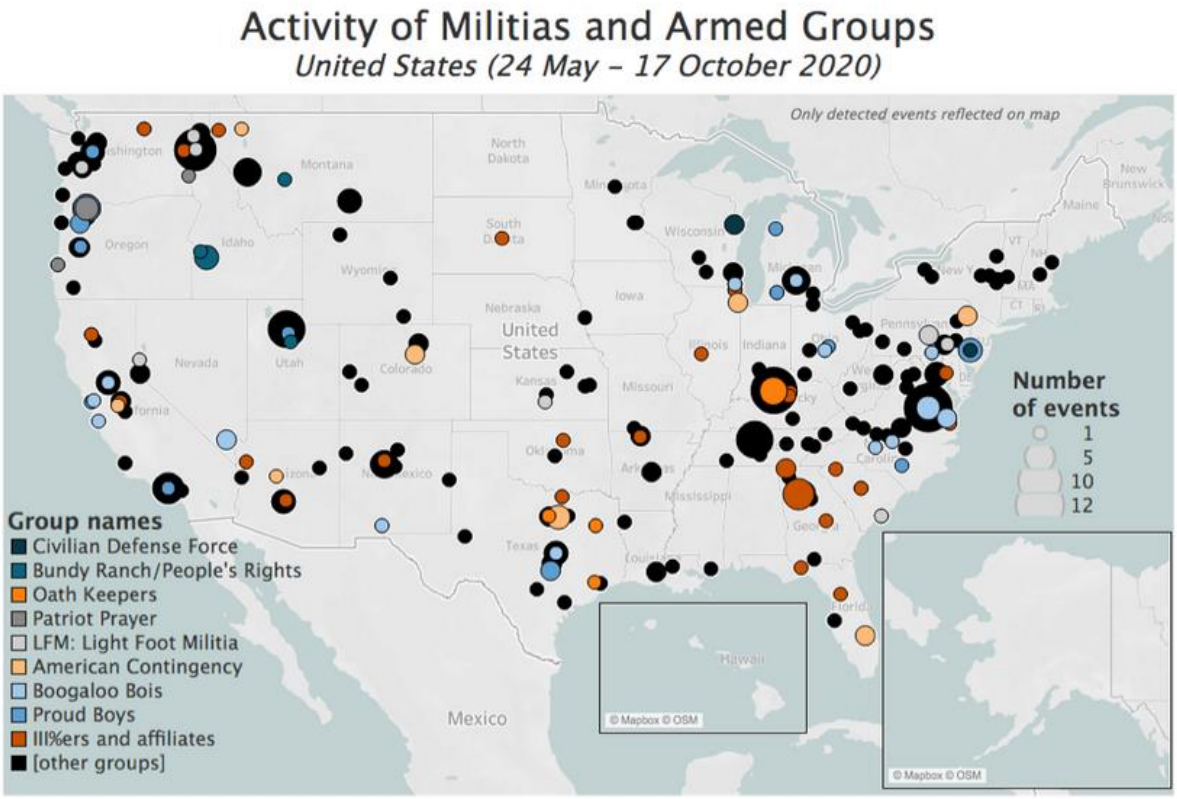
- Ethnonationalist: Violence to advance ethnic/nationalist goals
- Religious: Extremist religious groups, such as the Islamic State and al-Qaeda
- Right-wing: Can be further divided into 1. white supremacist groups; 2. anti-government groups; 3. incel groups (plus groups that overlap two or all of these categories)
- Left-wing: Anarchist groups, militant Antifa and pro-communist groups

The Center for Strategic and International Studies (CSIS) examined all terrorist incidents between 1994 and 2019 in the U.S., and found that **religious extremists were responsible for the most deaths** (especially due to the 9/11 terrorist attacks, which were motivated by religious extremism), but that **right-wing groups were responsible for the highest number of attacks, and the deadliness of these attacks is increasing** (Doxsee et al., 2022). Breaking the data down further, the CSIS found that most right-wing attacks in the 1990s were against abortion clinics, but changed to predominately target minorities, government facilities, and religious institutions after 2014; for left-wing attacks (which rose between 2000-2005, and then decreased by 2006) the primary targets were animal research labs, farms, and construction projects that were seen to pose threats to animals or the environment (Jones et al, 2020). The late 2010s have seen increases across categories, with right-wing attacks being the highest; the greatest spike was in 2020, and while there has been a decrease since, this remains the highest category (Doxsee et al., 2022).

When looking at fatalities, the CSIS found that over this time frame, religious terrorism was responsible for 89.5% of deaths (86.3% of all deaths were due to the 9/11 attacks alone), right-

wing terrorism was responsible for 9.7% of deaths, left-wing terrorism was responsible for 0.6% of deaths, and ethnonationalism caused 0.1% of deaths (Jones et al., 2020).

The Armed Conflict Location and Event Data (ACLED) Project has also been tracking political violence and violent extremist groups, pictured in the map below:



"Standing By: Right-Wing Militia Groups and the United States Election" by Hampton Stall, Rodabeh Kishi, and Clionadh Raleigh (2020). Armed Conflict Location & Event Data Project (ACLED), © 2020 ACLED All rights reserved. Used with permission from ACLED

While this heat map shows up to 2020, ACLED has continued to track domestic terrorism and has found that far-right militia activity in 2022 exceeded that of 2021. The top motivation for far-right militia activity is white nationalism/white supremacy, followed by a second primary motivation of being anti-LGBTQ+.

Hate Group Integration into the Political and CJC Spheres

As we've discussed in our policing unit, there is a problem with white supremacist groups infiltrating law enforcement (as well as our military). The FBI warned about this as early as 2006, and several other research centers on domestic terrorism and hate groups have also confirmed this as a problem (Downs, 2016; German, 2020). Additionally, several of the militia

groups addressed above actively appeal to law enforcement, and some groups, such as Oath Keepers, are comprised of law enforcement and military veterans (among other members) (ACLED, 2021). In 2021, the House approved an amendment to the annual military spending bill would mandate reporting of white supremacist activity in any federal law enforcement agency and branch of the military; however, the votes were largely split across party lines, with all "no" votes coming from one party (Schnell, 2022).

Republican[2] reluctance to seriously investigate these groups has become a concerning trend in recent years, and there have been many recent examples of the militia groups mentioned above being accepted into local partisan groups or elections. For some recent examples:

- The Republican branch in Portland, OR, voted to use militia groups - such as the Three Percenters and Oath Keepers - as security in 2017 (Wilson, 2017)
- A county commissioner in Traverse County, MI refused to denounce the Proud Boys when asked and instead stepped back into the Zoom meeting with a rifle (Armus, 2021)
- State representatives (still in office unless "former" included after their names) found on an Oath Keepers membership list include: Mike Clampitt (R-NC), Don Dwyer (R-MD, former); Mark Finchem (R-AZ, former); Keith Kidwell (R-NC); David Eastman (R-AK); Scott Baldwin (R-IN); Steve Tarvin (R-GA); Wendy Rogers (R-AZ), Chad Christensen (R-ID, former), and Phil Jensen (R-SD); other members were found who were/are running as candidates or are local party officials (Arnsdorf, 2021)
- A militia group successfully organized a recall group to oust a Republican from the Shasta County, CA Board of Supervisors to create a far-right majority on the board (Wilson, 2022)
- The Miami-Dade County, FL, Republican party has at least six members that are current or former members of the Proud Boys (Mazzei & Feuer, 2022)
- Similar to the event in Shasta County, CA, far-right members of the Nevada State GOP, including at least one who claims Proud Boys membership, voted to censure the Republican Nevada Secretary of State (Scherer, 2021)
- At the federal level, the House Select Committee investigating the January 6th insurrection uncovered evidence that former president Trump continued to tweet rallying tweets after militia groups, including Proud Boys and Oath Keepers responded with their intent to storm the Capitol. There is strong evidence that he also ordered that security scanners be removed so armed attendees could enter the Stop the Steal rally, assisted in planning for attendees of his rally to march to the Capitol, and intended to accompany them (witnesses so far have largely been members of the Republican party testifying about Trump's actions and the extremist violence) (Phillips, 2022a; Phillips, 2022b)

[2] We appear to harp on Republicans/Conservatives in this chapter not out of any attempt to sway readers towards who they should vote for, but to draw attention to unprecedented actions of a political party's integration of what used to be considered "fringe" or "alt" ideologies. Given that the U.S. has only two major political parties, *any* political party that does this can seriously undermine the democratic process and voter voice.

- A recent survey by the Chicago Project on Security and Threats (CPOST) found that 12 million Americans support the use of violence to restore former president Trump to power (Lerner, 2023)
- A neo-Nazi domestic terror group, the Base, has renewed calls for membership in reaction to the Harris/Walz campaign. The founder of the Base is a former DHS analyst who is now based in Russia, and the goal of the group is accelerationism and antisemitism (DOJ, 2023; Makuch, 2024).

Conclusion

The political infighting of one political party (as described above) with extremist white supremacist groups gaining more power and influence is an alarming trend in a nation where there are only two political parties, since extremist politics can have direct impact on CJC policies, economic and health policies that influence crime/recidivism, and the overall wellbeing of minorities. Particularly given the United States' history with white supremacist groups, the rise of these factions within a political party will threaten the gains that have been made in civil rights and justice over America's history. See our final conclusion chapter for an overview of where we should go from here.

Chapter 16

Conclusion - Where Do We Go from Here?

We've just covered a lot of heavy stuff in this open textbook, and you've probably realized while reading that no recommendation is sufficient for addressing some of the vast and complex issues that the CJC system (and broader society) faces when it comes to discrimination against marginalized groups. While it is true that societal problems of bias are too complex and historically entrenched for one quick fix, the purpose of this textbook is to not encourage a sense of pessimism, but instead a sense of **1.)** the full nature of the problem, and **2.)** how we can realistically work towards change. This requires a breakdown of each issue into long-term and short-term goals; meaning we should always ask ourselves: what is the overall goal? How do we get there in five years? What do we do today? As future or current practitioners in the CJC field, future or current researchers in CJC or related fields, and as everyday citizens, we can each contribute towards attaining a more just CJC system, even if our roles seem small when compared to the enormity of injustice. The purpose of this page is to share a few concrete steps that you can take as you leave this class.

Step 1. Keep Learning

We've barely scratched the surface of all there is to know about race, gender, class, and justice, and the intersectionality of identities and how these contribute to differing CJC experiences; entire academic disciplines have been formed around each of the major subjects that we've covered in this textbook.

So, if we covered something (or multiple things) that really piqued your interest, dive in deeper! Examine the issues in depth, and learn more about the subject and about yourself in the process. Something to look into is what we call evidence-based practice (EBP), which means solutions that have statistical evidence behind them showing that they've worked to reduce recidivism or violence in the past. While these may not be the "silver bullet" to address all of the problems of injustice or inequitable treatment, studying new programs to see if they work, and implementing those that do, is a major step in the right direction.

Whatever you end up doing (or are currently doing) - especially if it relates to the criminal justice field - it is highly important that you adopt a habit of constant learning, especially as relates to marginalized groups and cultures. This is a key step in developing cultural competency and overall awareness of how your actions impact others' lives. Another great tool is taking Harvard's Implicit Associations Tests (IAT) to learn more about where you might have implicit biases so you are more consciously aware of how you view other groups as you learn and interact.

A part of continuing to learn also includes being able to identify science vs. pseudoscience, as well as, being mindful of everyday errors in reasoning that we all can fall susceptible to (Bachman & Schutt, 2018). In the opening chapter of their textbook, *Fundamentals of Research in Criminology and Criminal Justice*, Bachman and Schutt (2018) give voice to these errors and provide a guide to overcoming them. These everyday errors include overgeneralization, selective observation, illogical reasoning, and resistance to change. ***Overgeneralization*** is an error stemming from concluding that something we have observed or know to be true for one case (or some cases) is a fact for *every* case. To make any kind of conclusion or generalization about something we've seen, we must put what we observed to the test and see if it holds under the scrutiny of the scientific method (more on this method later). ***Selective observation*** is an error that's made when you choose to only consider or believe things that align with your own personal preferences or beliefs about a topic. In other words, we must be open to the possibility that what may be true and factual won't always align with what we've learned and held to be true in the past. ***Illogical reasoning*** occurs when we jump to conclusions or argue a point that's based on invalid assumptions we've made on a given topic. For instance, we want to be sure to look at the research on a topic and become familiar with what is already known before making any assertions based on what we already believe to be the case. Finally, we need to be wary of our ***resistance to change***, which is defined as a reluctance to change our ideas of things despite new evidence or information on the topic being produced.

Notably, these errors in reasoning can inform and be informed by pseudoscience. ***Pseudoscience*** is defined by claims that are said to be "scientifically proven" by people who believe them to be true (Bachman & Schutt, 2018), however, many of these claims have not actually been put to the test following the scientific method. As Bachman and Schutt (2018) also point to, an example of this would be the work of Cesare Lombroso and other early criminologists who claimed biological markers of "atavism" like we covered in earlier chapters. While they claimed to use the scientific method, they were only studying the skulls and bodies of people who were already in prison (no control group), and they let their assumptions dictate their research methods rather than the other way around. Ultimately, the true scientific method is a ***transparent*** process in that the methods, procedures, and analysis can all be replicated; additionally, scientific research is all reviewed and evaluated by independent peer researchers before it can be published (Bachman & Schutt, 2018). Thus, to combat the errors outlined above as well as pseudoscience, we need to be sure we are engaging with the kind of knowledge that's been developed from these types of investigations.

Step 2. Spread the Word

Hopefully you've all learned at least one thing in this textbook that took you by surprise or that you weren't aware of before. Chances are, if you didn't know about it before, your friends and family don't know about it either. You are definitely free (and encouraged!) to share this textbook, the overall summary of the knowledge you've learned, and any of the linked citations and media referenced throughout the pages (like the embedded YouTube videos and podcast episodes), as these are all free to share and very informative on the issues at hand.

Step 3. Organize (Wisely)

If there are one or two topics we've covered that you are really passionate about, then find local groups to join so you can help to spread more awareness about these issues. Pivotal policy change for civil rights has always started with organization, such as the civil rights movement, women's suffrage, Stonewall, and many of the other events listed throughout this course.

However, if you are looking to organize, do this wisely, as most groups are found through social media, and this week has addressed the dangers of social media when radicalizing people and recruiting for hate groups. Always be aware of misinformation, and research the group to ensure that it is reputable and not anti-democratic. Examine what the group shares as news, and what information the members of the group share. One way to do this wisely is through media literacy - learning how to discern whether information sources can be trusted. This entirely free "course" (you can use it as a resource and read through it quickly like a book, so don't be deterred by the word "course") is a great help in this area (feel free to share this resource to friends and family as well): Web Literacy for Student Fact-Checkers. When checking the veracity of news sources, we highly recommend the Ad Fontes Media's Media Bias Chart, as well as Media Bias/Fact Check for sources that aren't included in Ad Fontes Media's chart.

Step 4. Vote!

Gaining the right for *all* citizens to vote was a long and difficult process. While we have specific dates in mind like the ratification of the 15th and 19th Amendments, the right to vote for some groups came even later, such as for Indigenous Americans (which occurred in 1924). While it's sometimes disappointing to only have two major political parties (we are unique among democratic nations, given that most have many parties to choose from without the power being monopolized by just two), it is still of utmost importance to vote for the candidates that you think will best advance equitable treatment for all groups in society.

This doesn't just mean voting for federal elections (even though those are still very important); this means voting at the state and local levels as well, since you've hopefully learned throughout this course that much policy that either helps or harms marginalized groups is at the state level. At the local level, the mayor and city and county commissioners also have a lot of sway in decisions like who gets to be police chief, whether a bigger jail should be built (or if the funds should be used towards treatment programs), housing, and other local social services that could assist in keeping people out of crime.

It may seem like a small act to show up and press a few buttons in the voting booth, but collectively this makes a major difference for the lives of many within the United States.

Beware of fraudulent websites that promise to register you to vote but aren't actually legitimate. Vote.org is a reputable site that you can use to look up your registration by state, but the best way to register and check your registration status is to Google your own state plus "voting registration" to find the correct website (it will end in ".gov") that describes the

requirements for your state. **Look this up early, since there are usually registration deadlines that occur well before actual voting day!**

Step 5. Take Care of Yourselves and Each Other

The more you get invested in justice work, the more you open yourself up to the chance of burning out. It's a difficult field and sometimes it's hard not to be disappointed and disillusioned when you look at the news and it looks like society is going nowhere (or even backwards sometimes). Make sure to prioritize your own mental health. While everyone's situation is different, here are some ways to do this:

- If you're working in the CJC field, remember to prioritize yourself and not just the job. If you're in an organization that doesn't align with your values, do not sacrifice your wellbeing for an organization that you are at odds with. Find one that aligns best with your values.
- Declare one day of the week as a non-news and non-work day. Disengage and do something that is completely non-work and non-CJC/society related.
- Find at least one non-CJC hobby or pastime that you really enjoy. Bonus points if it's with other like-minded people.
- Get invested at the local level, since this is where you're likely to see the most immediate change. Even if it's not directly CJC-related, volunteering for a societal need, such as a food pantry, shelter, or Narcan distribution, will be fulfilling to know that - while you may not be changing the entire world - you're helping others along. This will also keep you surrounded by like-minded people, because no one working in the justice field should feel like they're going it alone (though that often happens, unfortunately).

All of these steps may seem like little things, but they add up over a lifetime of dedication to learning and working towards equity and justice. I hope these steps will help you as you start learning more about these issues. As former congressman and civil rights activist John Lewis said, “the work towards justice is the work of a lifetime” (full quote here). Keep at it, and take care of yourselves and each other along the way.

Appendix

Use This, Not That – Recommendations for Race, Gender, Class, and CJC Terminology

Introduction

Language evolves constantly, and - especially when it comes to discussions of race, ethnicity, gender, class, etc. - it can be difficult sometimes to know what to use without using offensive or outdated terms. This is a guide to assist you all in knowing the current preferred terminology, which ones to avoid, and which ones depend on the context.

Note that some of what's here may not align with other textbooks or articles that you encounter, such as the capitalization of Black. The tables below will sometimes include links if you want to read up more on why the information here is a little different than what you might see elsewhere.

The Golden Rule

Our main rule that we personally go by is to call others what they wish to be called. There are sometimes disagreements among groups (any groups based on race, ethnicity, gender, etc.), so the below is a general guide, but you may meet people who prefer a different term. Our advice is to always be willing to listen and respect others' choices and reasons behind why they prefer a specific term.

A Note on Plurals

Sometimes people struggle about how to pluralize common terms used for race, ethnicity, gender, and sexual orientation. The best rule to follow in our experience is to use this format: "**The [group name] community**" or "**[group name] people/folks**". For example, "the Black community" or "Black people" or "Black folks". ***Avoid*** "**the [group name]s**". For example, unless you're referring to a family whose last name is Black, saying "the Blacks" is cringe. This is because this conveys a sense of *othering* in the English language, meaning that the format presents the group as different or alien to the writer. In addition to othering, the reduction of a group to “the [_]s” can promote what sociologists refer to as ***essentialism***, which carries three harmful assumptions: that social groups (e.g., gender, race, class) have fixed/discrete categories (often for biological or innate reasons); that these differences and categories are unchanging; and that these differences must be maintained (van Hooft, 2023). Essentialism can promote and perpetuate stereotypes, given that it paints every member of the group with a broad brush and assumes that there is no variation or diversity among people fitting a certain category. Instead, through an intersectional framework (as we use and stress throughout this textbook), it’s

important for us to recognize how multiple identities can overlap and intersect in shaping an individual's experience – we aren't defined just by our race or by our gender or by our class, but by all of these things interacting together in complex ways. Thus, while the change in language seems subtle, the semantics are important.

Some textbooks and articles you may encounter refer to groups just with an "s" at the end and no "the" before the group, (e.g., "Blacks and Asians"). This is also acceptable, though currently the first format in the above paragraph is preferred.

General Group Terms

Term	It Depends	Avoid**
Minorities	In broad generalization, "minorities" is fine if you are speaking of multiple groups in comparison to the majority group. However, it's best to be as specific as possible (e.g., "gender minorities", "ethnic minorities"). Some groups, such as women, are also not minorities in the *population* but are still minorities in positions of power. "Marginalized groups" helps to describe groups that experience the hardships from societal power differentials.	If you're speaking of a *specific* race (or ethnicity, or gender, etc.), always name that *specific* group. For example, using "minorities" when one really just means "Black people" can be a form of implicit (unwitting/unintended) erasure.
POC (people of color)	This generally refers to racial and ethnic minorities. Some prefer "BIPOC" (Black, Indigenous, and People of Color) to highlight the experiences of Black and Indigenous communities, given their historic treatment and experiences in the U.S.	Again, if you're speaking of a *specific* race or ethnicity, just use that race or ethnicity's preferred name/term. ***DO NOT use the term "colored people".*** This term is outdated and now considered offensive.
LGBTQ+	This is generally acceptable when you are referring in general to people who identify as lesbian, gay, bisexual, transgendered, queer, and other minority sexual orientations, gender orientations, and gender identities. **Queer** is also generally acceptable as a catch-all for people who are not heterosexual and/or cisgender.	As with the above terms, avoid using this term when you're only addressing a specific group (e.g., you're only talking about minority sexual orientations but not gender identity [which would be the trans* community]. In this case you could use "LGB").

Terms for Race and Ethnicity

Preferred	It Depends	Avoid**
Asian Anyone whose ancestry can be traced back to an Asian country **AAPI** Also an acceptable general group term for Asian Americans and Pacific Islanders	Note: specificity is preferred if you are speaking only about Americans with roots from one Asian country. For example, Chinese Americans, Vietnamese Americans, or Indian Americans (not to be confused with American Indians).	**Oriental** This is an outdated term that conveyed "exotic" othering of people of Asian descent. It was actually used in federal documents in the US up to 2016 (along with "Negro"; see below).
American Indian; Indigenous Americans These are general terms for Indigenous people of the United States (tribes should be named if speaking of a specific tribe). Note that Indigenous Hawaiians are usually called Indigenous Hawaiian or Pacific Islander.	**Native Americans** This term is fine to use, though some find it othering given that the word "native" can carry a negative connotation (given how it was used historically). An excellent guide for Indigenous terminology can be found here. (The guide is from Canada but still very useful)	**Indians** Though this is sometimes still used in the US (especially federal documents and agencies), it's criticized due to its history (Columbus mistakenly thought he'd arrived to India, and the human rights violations he committed have added a lot of baggage to the term). However, if some Indigenous people prefer "**American Indian**", call people what they prefer.
Black A racialized classification of people who are generally of African ancestry (though this category is socially constructed based on politics and skin color). Preferred because it includes Black people whose lineage can't be traced to Africa, and it encompasses people who aren't American citizens.	**African American** This is also a common term, but somewhat more limiting in that it only focuses on American citizens and does not include those whose lineage can't be traced to Africa (e.g., the Caribbean).	**"The blacks", "colored", "Negro"** You may encounter some old readings that use these words. While historic readings are important for seeing the political and social context of the criminal justice system at the time, these terms are very offensive and should never be used in present-day writing.

		More info here on the evolution of language
Latino This refers to an ethnicity shared among those from Latin American countries. Spanish is a gendered language, so “Latina” is used if speaking exclusively of women. “Latino” is used for men and for the general community.	**Hispanic; Latinx/Latiné** “Hispanic” is often used along with “Latino” in some social science and government studies, though some criticize it because it originates from Spain’s (*Hispania’s*) colonization of many South American countries. “Latinx” was created in effort to be more gender-inclusive (since the -o ending is masculine in Spanish) but seems to be generally not preferred by the Spanish-speaking community. “Latiné” has been proposed as being gender-inclusive without the foreign “x” ending. More on the history of the terms here.	**Spanish** Spanish people are from Spain (and the term is fine to use when referring to people from Spain). Spanish-*speakers* can be all over the world, and include Latin-Americans, so as with the advice above, be specific about which group you are referring to and don’t use “Spanish” when you mean Latin Americans, Mexicans, Chicanos, etc.
White A racialized social category for people with light-colored or olive skin, with ancestry that's generally from Europe. Who has been considered "White" has changed historically, hence why race is often called a social/political construction.	**Caucasian** While it's still used today, "Caucasian" is a term with roots in scientific racism (the use of science in an attempt to justify or legitimize racial categories and hierarchies). The guy who created the term tied it in with his advocacy for white supremacy, so while this term is in the "it depends" category, a strong argument could be made to move it to the "avoid" category. More on the term here.	

Terms for Gender & Sexuality

See this link for an excellent list of more terms and best practice for LGBTQ+ terminology: GLAAD Media Reference Guide. For some extra general pointers:

Term	It Depends	Avoid**
Women	**Female (adj.)** Using "female" as an adjective (e.g., female suspect) is fine when clarifying that you're describing people in a certain role (e.g., suspects) or profession that happen to also be women.	**Female (noun)** Using "female" as a noun when referring to female humans is often a form of implicit bias and dehumanization (particularly when male humans are still referred to as "men"). It is also sometimes used by transphobic people to differentiate the female sex from those who identify as women.
	Women and AFAB Sometimes it's appropriate to use "women and people assigned female at birth" when you want to specify experiences that are shared by those with XX chromosomes but who may not all identify as women, like reproductive healthcare access.	**People with uteruses** Use "women and AFAB" if referring to the experience of people with uteruses. "People with uteruses", though sometimes used in the healthcare field, reduces the person to one body part which is dehumanizing (and you never hear of men/AMAB people being referred to as "people with prostates").
Trans woman/Trans man; The Trans* community/Trans* folks Trans* is an umbrella term, with the asterisk (*) encompassing other trans identities that don't fall into the man/woman binary	**Transsexual** "Transsexual" is an outdated term (since trans* is about gender identity), but sometimes still used by some individuals in the community, especially of older generations. It's best to avoid this term unless explicitly told by a member of this community that this is how they identify.	**Transman; Transwoman; Transgendered; Hermaphrodite; Biologically female; Biologically male** "Transman" and "Transwoman" are often used in transphobic circles who argue that trans women aren't women (or trans men aren't men) and therefore use the words without a space to try to create a separate gender

	category. This is often seen as offensive in the trans* community. "Transgendered" is grammatically incorrect; "hermaphrodite" is an outdated and now considered offensive term; "biologically female/male" is criticized due to use in transphobic circles (preferred is **AFAB/AMAB** - assigned female at birth/assigned male at birth)

Terms for Class and Status

The Pratt Institute Libraries provides a table detailing some general rules regarding "Inclusive Language" in reference to socioeconomic status and classism. For this table, follow the link here*. For some additional ones (note that this table's headers are a bit different from the ones above):

Term to avoid	Comments	Alternatives
White trash/trailer trash	Everyone knows this is derogatory, but that still doesn't seem to stop people from using it. NPR's "Code Switch" has a good explanation here. In case you haven't gotten to Chapter 4 yet, head over there to see where "white trash" came from and its very problematic origins.	If you're specifically describing people in poverty who are White, just say "White people struggling with poverty" or "under-resourced White people"
Hillbilly/redneck	"Hillbilly" took on a dual meaning, both of violence and being uncivilized on the one hand, and being pioneering and celebrating "romanticized rurality" on the other (Harkins, 2012). It's sometimes still used as a self-label by people (especially from Appalachia or the Ozarks) who identify with the latter meaning, but don't use it to describe	Just say "people from rural Appalachia" or "people from the Ozarks" if that's the group you're talking about. If you're talking about White people who lack access to education and resources, just say that.

	anyone unless you're part of the group and know the person you're describing self-identifies too. "Redneck" has a much more complex history, but today still carries connotations of being a White person who is anti-intellectual and working-class.	
Well-spoken/articulate	When applied to minorities, especially Black people, and people who are working class or low SES, this is conveying an assumption that people from their group generally do not speak well and you are surprised.	Context is important, as always: if the person is known as a regular public speaker, then by all means complement their public speaking. But outside of that context, don't make this comment and instead reflect on why you were surprised.
Illegals/Illegal Aliens	Calling someone by an adjective is dehumanizing, as we covered above regarding "female" being used as a noun, and here it is equating the person themselves with criminality. "Alien" is also othering and dehumanizing.	"Unauthorized immigrant" is far more accurate and humanizing by using "unauthorized" as an adjective rather than its synonym ("illegal") as a noun.

* You might see the term "homeless" used in this open textbook occasionally, rather than "unhoused". This is another example of the evolution and debate over language use. One of your authors prefers "homeless" because 1.) people can be part of the "hidden homelessness" population, meaning they lost their own homes (whether that be a house, apartment, etc.) but are temporarily residing with friends and relatives, and ultimately, 2.) a lot of people who are or were formerly homeless call themselves that. A good discussion on the debate over this term can be found here. An argument could be made for both terms having their place, with "homeless" meaning anyone without a home, and "unhoused" meaning someone without a home and lacking stable access to humane housing conditions. Ultimately, we hope that the energy put towards helping this population is greater than the energy put towards this debate.

Terms Specific to Criminal Justice

Term to avoid	Comments	Alternatives
Criminal/ Perp (short for "perpetrator")	Our system is based on the due process ideal that people are innocent until proven guilty, so oftentimes "criminal" is used inappropriately, when someone is not yet convicted. "Criminal" is also dehumanizing and – given the injustices of our system as covered in this textbook – may be a label attached to someone who is innocent.	**Offender** (general) **Suspect** (if not yet tried in court) **Defendant** (if in court but not yet convicted) **Convicted offender** (if convicted in court)
Convict	This is another issue of labeling, and for people who were formerly incarcerated and now trying to establish a stable life outside of prison/jail, this label is one of the major barriers to finding stable employment and housing. Additionally, our system ideally hinges on "doing the crime, doing the time", but the "convict" label makes formerly incarcerated people "do the time" well after their release.	**Convicted offender** **Formerly incarcerated person** (if referring to someone who has been released from prison)
Prisoner	One more label of a person based on their status. It's also not accurate when speaking of people incarcerated in jails, not prisons (you may encounter the word "inmate" as a catch-all term for both jails and prisons).	**Incarcerated person**
Addict	Yet again, this is dehumanizing because it's calling someone by a label (as if the label is inescapable).	**Person struggling with addiction** **Person who abuses drugs/alcohol**

The Victim vs. Survivor Debate in CJC

The term "victim" – in regard to violence against women – often carries negative connotations like weakness, powerlessness, and vulnerability while "survivor" – a term preferred by many feminist theorists – is used to highlight a woman's agency as well as their strength and resolve in overcoming the trauma that they experienced (*Kelly et al., 1996*; *O'Shea et al., 2024*; *Papendick & Bohner, 2017*). That said, it is important for us to consider the preferences of the person who experienced the harm and how they describe themselves or would like to be described. Some people prefer to identify as a "survivor" because it highlights that they survived what happened to them and that they are healing while others prefer "victim" because it offers validation to the harm they experienced (*Davis et al., 2023*).

Common Words & Phrases

Besides thinking about the terminology we use to refer to groups, there are other general words and phrases that have a long history stemming from problematic origins. For examples of these other words and phrases, please see this CBC News article, "*Words and phrases you may want to think twice about using*" (Hwang, 2021). As the article is titled, this isn't an ultimate prohibition against using some of these terms but rather a call to think twice and consider your context and intention: for example, if you're going to an actual powwow, that's great! Use the word and enjoy your experience. If you're using it as an informal term for a meeting, just use "meeting" or "let's put our heads together" or some other idiom without a messy history. As another example, Steinmetz and colleagues (*2013*), cited in this textbook, use the phrase "urban ghetto" very intentionally: Steinmetz is speaking to the unjust, government-enforced confinement of a group to one geographic location, which happens to be in urban (rather than suburban or rural) areas in the U.S.; he's not using it as slang or in a derogatory sense. Mainly, just be considerate and call/treat people as you would want to be called/treated.

Not included in that article are phrases with misogynist origins, so let's cover a few here too. These two articles have a number of phrases and words with sexist origins: "*7 phrases you didn't realize have sexist meanings*" and "*12 everyday expressions you didn't realize were sexist*". As the latter article points out, try out a term when describing a man; if it sounds weird, that's probably because it is!

It goes without saying, avoid any and all slurs against anyone's identity. If you're unsure about whether a term is a slur, just don't use it.