

The Roots of White Supremacy:  
A Comparative Historical Analysis of the US Criminal Justice System

by

Antonio Lamont Moore

A Thesis Presented in Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts

Approved November 2023 by the  
Graduate Supervisory Committee:

Jennifer Keahey, Chair  
Linda Kim  
Tricia Redeker-Hepner

ARIZONA STATE UNIVERSITY

December 2023

## ABSTRACT

This thesis explores the historical development of the criminal justice system across four eras. The system has been utilized to control and exploit Black people for economic gain. After the American Revolution, and the rise of the penitentiary, many argued that imprisoning individuals for labor was reminiscent of the institution of slavery itself, which highlights the criminal justice system's potential to target and control Black people. During the pre-Civil War era, white slave owners established slave patrols to prevent enslaved Black people from leaving their plantation, and to control the movement of Blacks more broadly. These early slave patrols provided an institutional foundation for the later development of the modern police force. During Reconstruction, the Ku Klux Klan adopted the methods of slave patrols to maintain white supremacy and control over Blacks with lynching becoming everyday occurrences. During the Jim Crow era, Black communities faced widespread discrimination, and the system was used to enforce racial segregation and maintain white dominance. The Civil Rights Movement marked a turning point against Jim Crow. However, the post-Civil Rights era was met with the War on Drugs and the rise of mass incarceration, which disproportionately affected Black communities. To gain equality, Black people have consistently been met with backlash, often supported by the criminal justice system. While reforming the system is necessary, it is unlikely to eliminate racism and white supremacy. A more comprehensive approach is needed to address the root causes of these issues and ensure equality and justice for all.

Keywords: white supremacy, racism, color-blind, police violence, slave patrol, slavery, convict leasing system

## ACKNOWLEDGMENTS

I want to thank the most prominent supporter in my life, my mother, Sherita Y. Moore. You have been there for me my entire life and helped me get through the most challenging and best times. I may have only sometimes listened to your advice at earlier stages in my life, and, as a result, I had a few slip-ups. The advice finally cemented in my mind and made me the best version of myself. You gave me the confidence to get this far in my life, and I hope you take pride in everything that has come to fruition. I love you with all my heart, Mom!

Secondly, I want to thank three people who have done a lot to get me to the position that I am in now: Anthony J. Branton, Rebecca R. Tate, and the late Robert Tate. You all helped me during a rough time when I was in a very rough place and gave me all the love a family would give. In that regard, you are my family, and I love you for everything you did for me and all the support I have received. Thank you, Mrs. Tate, for being the mother figure I needed when I was far away from home, and thank you, Anthony Branton, for being the brother I needed in this period of my life. I love you all with all my heart as well.

Finally, I want to give a special thanks to all the members of my thesis committee: Dr. Jennifer Keahey, Dr. Linda Kim, and Dr. Tricia Redeker-Hepner. Each of you has helped me throughout this program, and I would not be where I am today without you. You all encouraged and inspired me to push myself past my limits and gave me the support and confidence I need to advance my education. Thank you so much again for everything you have done for me.

## TABLE OF CONTENTS

CHAPTER	Page
1 INTRODUCTION .....	1
Problem Statement .....	3
My Contribution .....	4
Terminology and Issues .....	5
Theoretical Framework .....	7
Methodology.....	8
Thesis Outline.....	11
2 PRE-CIVIL WAR ERA .....	13
Rise of the Penitentiary .....	13
History of the Slave Patrol .....	16
3 RECONSTRUCTION ERA .....	20
Rise of the KKK .....	20
Black Codes and Convict Leasing .....	22
Stopping the Black Codes .....	25
The End of Reconstruction.....	26
4 JIM CROW ERA .....	28
Jim Crow, Age of Segregation.....	28
The End of Jim Crow .....	32
The Impact of Civil Rights on Convict Leasing .....	34

CHAPTER	Page
5 POST-CIVIL RIGHTS ERA .....	36
The Black Panthers.....	36
The War on Drugs and Mass Incarceration .....	38
The Black Lives Matter Movement .....	42
6 DISCUSSION .....	46
7 SO, WHERE DO WE GO FROM HERE? .....	52
REFERENCES .....	57

## CHAPTER 1

### INTRODUCTION

Welcome to the United States (U.S.), where everyone is entitled to equal protection and fair treatment by the law. Yeah, I almost threw up writing that, so I can only imagine how you felt reading it. Oh wait, are you, not someone who has been discriminated against because of their skin color by the country's criminal justice system for centuries? If you say “no,” you must not be Black. As a Black man myself, it is hard knowing that I live in a country where the police can brutalize, kill, and treat Black people in an inhumane way based on the perceived threat that Black skin portrays in the white mind. It is hard knowing that Black people are imprisoned more than any other racial group due to systemically racist institutions not giving my people the same treatment that they give white people. I used to work in a jail where 50% of the inmate population consisted of Black men; this is in a state where the Black demographic is only 26.8% (“2020 Alabama Census: Population and Demographic Data,” 2020) of the population. Finally, it is hard knowing that we Black people are the victims of laws that directly target our skin color. Suppose racism was explicit during the pre-Civil War era. In that case, it has gone underground in our current time, where the criminal justice system gives lip service to civil rights reforms while continuing to target Black people for arrest and imprisonment disproportionately. Why is this the case, and how did it start? Well, give me a small amount of your time, and I will give you the history of the criminal

justice system in this country and show you that the more things change, the more they stay the same.<sup>1</sup>

As a Black man born and raised in Birmingham, Alabama, it is evident to me that white supremacy, an ideology of keeping white people in a dominant position, and racism, the act of discriminating against someone based on their race, have fiercely affected Black people throughout the various states and the United States as a whole. I grew up in the middle of the Deep South, where Southern white people celebrated Confederate flags and rebel society. I went to an all-black elementary, middle, and high school in the 1990s and early 2000s, at a time when the segregation of schools was illegal. After the passage of the Civil Rights Act in 1964, the nation extolled the narrative of racial desegregation, but it was also confirmed that no white people went to Black schools like mine. It was not just a coincidence that this was the case for me, mainly as I lived in a state where Governor George Wallace (1963) declared “segregation now, segregation tomorrow, and segregation forever.” In the 1990s, when I was a Black kid going to a de-facto segregated Black school, my situation made me wonder if Wallace's dream was still alive. I am not saying this is not an issue for other races; I am saying these disturbing issues targeted Black people due to the historical material legacy of slavery, which has shaped the development of the modern criminal justice system.

---

<sup>1</sup> In this thesis, I actively engage the voice of Black liberation and consciousness theories and movements. As an analytical device, I use the language of Black and white people to denote a racially bifurcated system of social control that first emerged in settler colonial societies, such as the United States, and that continues to shape the development and implementation of criminal justice today. While I choose this language as an analytical device for unpacking the broadest racial patterns throughout U.S. history, it is essential to remember that skin color is skin deep. At a more particular level of analysis, it is evident that a Black person can think white and that a white person can think Black. As a general trend, however, the broader pattern signifies.

With that in mind, I am about to tell you about the changing features of the criminal justice system throughout the history of the U.S. and how white supremacy played a role in this. I will show you how this system has affected Black people throughout history and how it has always kept either that de jure or de facto knee on all our Black necks. Finally, once I am done, you will understand how the weaponization of the criminal justice system has been used to keep Black people in inferior roles in society using the third system, the carceral system of jails and prisons. This journey will not be pretty, so I hope you are ready.

### **Problem Statement**

The U.S. criminal justice system has been built to exploit and control Black people to establish the racial hierarchy of white people, primarily by denying Black people their fundamental civil rights, most importantly, the right to vote. This denial of civil rights using the criminal justice system is accomplished in several ways through imprisonment, disenfranchisement laws, and even killings by police officers. Black people are disproportionately incarcerated, with “more Black people in prison, jail, or on probation or parole than were enslaved in 1850” (Alexander, 2020, p. 224). Right now, in the U.S., “almost two million people are in detention and correctional facilities, and they imprison Black people at a rate three times higher than white people, and nearly five times higher in state prisons” (Craigie et al. 2020 Nellie 2021; Sawyer & Wagner, 2022). DeVylder (2022) states that police violence in the U.S. disproportionately affected Black people more than white people, leading police officers to violently assault, racially profile, and murder Black men and women at an alarming rate. Unarmed Black men are killed at a rate five times that of white men by the police in this country (Robinson, 2017). Within



the U.S., police officers over-police Black communities, which leads to large numbers of arrests that place Black people into jails and prisons across the country.

Despite employing approximately 780,000 officers, police departments in the United States do not have standardized rules governing the use of force (Lyle & Esmail, 2016). Another alarming fact is that “police departments in major urban areas have admitted the existence of formal procedures to maximize the number of Black people, and Latinos, arrested, even in the absence of probable cause” (Davis, 2003, p. 31). Finally, it seems that the white supremacy ideology that permeates the criminal justice system is even powerful enough to cause Black law enforcement officers to exhibit the same racist attitudes as their white counterparts, as well as abuse and kill their other Black people.

### **My Contribution**

This thesis contributes to the current literature by showing how the criminal justice system has always functioned to exploit, criminalize, and control Black people in order to maintain white supremacy by denying Black people their civil rights. I accomplish this by tracing how the historical links, beginning with the Slave Codes, expanded into the current system of the new Jim Crow. I also attempt to bring meaning to the term Jim Crow, as the term varies amongst scholars and is used in various ways. Finally, I make the case that simply reforming the criminal justice system is ineffective since white supremacy and racism are fundamental to its existence. Altogether, abolishing the system and creating a new one is the only way to prevent the exploitation and abuses done to the Black community.

## Terminology and Issues

White supremacy is the belief that the white race is inherently superior to other races and that white people should have control over people of other races. This ideology exerts itself through the social, economic, and political systems that collectively enable white people to maintain power over people of other races. For my research, examples of these from a legal code perspective include the following: the Slave Codes, the Black Codes, the system of Jim Crow laws, and the new Jim Crow (Alexander, 2010), which exists in the current post-Civil Rights era. White supremacy also exerts itself in other institutional systems, such as racial capitalism. According to Robinson (2000), the concept of racial capitalism is discussed in his book *Black Marxism: The Making of the Black Radical Tradition*. While the book does not give a precise definition, it can be interpreted as “a system of exploitation where capitalism and racial hierarchies are deeply intertwined and mutually reinforcing” (p. 2), which shows how white supremacy ideology can be beneficial in exploiting the labor of the subordinated race for the dominate race's benefit. In the U.S., it appears that the main effect of white supremacy is the denial of equal and civil rights amongst the subordinated races, specifically Black people. The criminal justice system serves as that vehicle to achieve this goal due to how convicted criminals can be denied many fundamental rights that citizens enjoy, an example being the right to vote.

Racism is any program or practice of discrimination, segregation, persecution, or mistreatment based on membership in a race or ethnic group (Delgado & Stefancic, 2001). I have chosen to discuss two forms of racism: overt racism and covert/color-blind racism. Overt racism, a purposeful action directed at a specific person or group, was the

most dominant form of racism preceding the post-Civil Rights era. This racism presents itself outwardly through hate crimes, going Blackface, and lynching, making overt racism easy to spot. On the other hand, covert, also known as color-blind racism, is a dominant racial ideology that justifies contemporary racial inequality in the Post-Civil Rights era (Bonilla-Silva, 2013, p. 14).

Color-blind racism emerged as a powerful ideology that served to defend the existing racial order of white supremacy. In a 1998 Detroit area study on racial ideology, Bonilla-Silva (2013) developed four frames that describe how color-blind racism operates. These frames are abstract liberalism (“I am all for equal opportunity, and that is why I oppose affirmative action”), cultural racism (“Blacks are poor because they do not have proper values”), naturalization of matters that reflect the effects of white supremacy (“Neighborhood segregation is a sad but natural thing since people want to live with people who look like them”); and minimization of racism and discrimination (“There are racists out there but they are few and hard to find”) (Bonilla-Silva, 2013, pp. 70-72).

In the U.S., white supremacy and racism are co-constructed and co-dependent concepts. They are interrelated and two sides of the same coin. Eliminating either of these structures would be impossible if the other exists. Furthermore, these concepts exist to maintain the status quo of white people's superiority over others and reinforce each other to resist changes to that status quo, which could be the result of the social, economic, or political power of the minority group. This presents a challenge when trying to reform the criminal justice system in the U.S. since it was built with white supremacy and racism.

## **Theoretical Framework**

Critical Race Theory (CRT) is a framework developed by Derrick Bell, Alan Freeman, and Richard Delgado that examines the relationship between race, racism, and power (Delgado & Stefancic, 2017). Originating in the 1970s as a response to stalling and rollback of progress made during the Civil Rights era, it questions the very foundations of the liberal social order, including equality theory, legal reasoning, and principles of constitutional law (“Key Terms of Race, Equity, and Social Justice,” 2022, p. 32). This framework builds on Critical Legal Studies (CLS) and was a response to the reported failures of CLS to address the effects of race and racism adequately and appropriately in U.S. jurisprudence (Decuir & Dixson, 2004, p. 26, as cited in Delgado & Stefancic, 2001). CRT provides the necessary framework to examine the power of race in the scope of the criminal justice system and how the white race uses it, both consciously and unconsciously, to maintain white supremacy.

CRT is based on two propositions: (1) racism is ordinary, not an aberration, and (2) our system of white-over-color ascendancy serves important purposes, both psychic and material, for the dominant group. Furthermore, CRT has the following features:

- 1) Ordinariness means that racism is difficult to address or cure because it is not acknowledged (Siegel, 2020, p. 1073).
- 2) Interest convergence racism advances the interests of white elites and working-class whites, meaning that large segments of society have little incentive to eradicate it.

- 3) Social construction holds that race and racism are products of social thought and relations. Not objective, inherent, or fixed, races are categories that society invents, manipulates, or retires when convenient.
- 4) Voice-of-color holds that because of their different histories and experiences with oppression, Black, American Indian, Asian, and Latino writers and thinkers may be able to communicate to their white counterparts the very matters that the whites are most unlikely to know. Minority status brings a presumed competence to speak about race and racism (Delgado & Stefancic, 2017, pp. 8-11).

CRT will be beneficial in my argument to show how, despite the progress that was made during the Civil Rights era, the combined power of overtly racist and color-blind legal systems has enabled the colonial institution of racism to remain prevalent within the U.S. criminal justice system. The comparative historical information presented in this thesis shows that racism is systemic; it is structurally built into the very bedrock of national institutions, where it has been strategically placed to ensure the maintenance of white domination and privilege through the subjugation of minority rights, including those of Black people in particular.

### **Methodology**

This thesis examines the historical development of the criminal justice system throughout four eras: the Pre-Civil War (16<sup>th</sup> century - 1865), the Reconstruction era (1865 - 1877), the Jim Crow era (1877 - 1965), and Post-Civil Rights (1965 - present) using a comparative historical analysis. My research questions are the following:

1. How has white supremacy shaped the development of the U.S. criminal justice system across the four eras of U.S. history?

2. How did overt racism contribute to maintaining white supremacy using the criminal justice system during the pre-Civil War, Reconstruction, and Jim Crow eras?
3. How has color-blind racism contributed to white supremacy in the post-Civil Rights era using the criminal justice system?

A comparative historical analysis is “concerned with the casual analysis, an emphasis on processes over time, and systematic and contextualized comparisons” (Mahoney & Rueschemeyer, 2003, p. 6). Unlike all other major methodological traditions in the social sciences, there are no textbooks on comparative historical methods. Existing books on comparative-historical analysis deal with the methods only briefly and focus mainly on the types of topics analyzed by comparative-historical researchers and influential figures, including Adam Smith, Karl Marx, and Max Weber, in the research tradition (Lange, 2013, p. 2). Thus, comparative-historical methods produced some of the best works in the social sciences, and many of the best social scientists use them to analyze critical social issues. However, there needs to be more discussion of what such methods entail.

A comparative-historical analysis has four main defining elements: social scientific, comparative method, aggregated unit of analysis, and within-case methods. Two are methodological since works in the research tradition use comparative and within-case methodologies. The epistemology of comparative-historical analysis is also defined by seeking social scientific knowledge and believing that insight may be attained by comparative-historical and other methodologies. The unit of analysis is also a key component of comparative-historical analysis, with an emphasis on larger social groups (Lange, 2013, pp. 3-4). Comparative historical methods have been utilized by influential

social scientists throughout history and have made significant contributions to our understanding of social change, including state-building, nationalism, capitalist development, social movements, and democratization. This method was essential to my research examining how white supremacy operated within the criminal justice system between the four eras.

My goal was to show how institutional systems adapted over relevant periods to maintain white supremacy in the U.S. In order to perform my analysis, I first needed to review historical and current data related to my topic thoroughly. This data was gathered from books, research articles, and journals of historians and academic accounts during the relevant eras. The research articles and journals were obtained online through search engines such as Arizona State University's (ASU) One Search, Google Scholar, and JSTOR. Some keywords I used were *Slave Codes*, *slave patrols*, *Black Codes*, *Jim Crow*, *convict lease system*, *prison industrial complex*, *lynching*, *police violence*, and *mass incarceration*. Secondly, I searched library sources for relevant books detailing the historical events during the periods I wanted to explore. This search was done exclusively using ASU's One Search, allowing me to narrow down and obtain digital and physical copies of books that offer a historical overview of my research topic.

My research aimed first to understand how racism has affected Black people through the criminal justice system by examining two forms of racism in U.S. society: overt racism and color-blind racism. Secondly, I wanted to understand how these forms of racism have played a part in upholding white supremacy in the post-Civil Rights era despite the progress made during the Civil Rights movement for Black people in the U.S. Third. I examine how a more profound, underlying factor, which I believe is capitalism,

contributes to the perseverance of white supremacy within society. Using the gathered data, I analyzed the criminal justice system, as detailed in the following chapters.

### **Thesis Outline**

In chapter two, I give a historical account of the beginnings of the U.S. criminal justice system, starting with the creation of the slave patrols and the usage of the penitentiary during the pre-Civil War era. Next, I will move to chapter three, where I will discuss the Reconstruction era, which entails the end of the Civil War, the rise of the Ku Klux Klan (KKK), and the beginnings of the convict leasing program. The Black Codes will also be extensively explained within this section as to how they played a part in instituting the convict lease system. This chapter will also explain how the Reconstruction era ended due to the results of the contested election of 1876 and the compromise that resolved the conflict surrounding this event. Chapter four will discuss the beginning of the Jim Crow era and the laws enforced during this time. I will discuss how this era affected the lives of Black people and the social and political processes, such as the Civil Rights Movement and passage of federal legislation, that eventually led to the end of the Jim Crow era. I also briefly return to explain the demise of the convict leasing system. Chapter five will serve as a historical background in the post-Civil Rights era. I will begin this chapter by giving a brief history of the Black Panthers. Next, I will discuss the most prominent issue that has affected this era: the War on Drugs. I will explain how this war has contributed to the disproportionately high amount of Black people in jails and prisons. I will then discuss the police's role in upholding white supremacy in this era. I will show how they disproportionately brutalize and murder Black people and outline



their practice of over-policing Black communities. This chapter will end my historical background on the four eras.

Chapter six will show my analysis of the historical data. I will compare the periods against each institution within them to show similarities and patterns over time. Furthermore, I will state what the overall goal is in maintaining white supremacy in the U.S. In chapter seven, I conclude with a detailed path forward to eliminate White Supremacy in the criminal justice system. I will also show how white people who want to change can do so by addressing their racial status and using it to combat the effects of color-blind racism in U.S. society.

## CHAPTER 2

### PRE-CIVIL WAR ERA

#### **Rise of the Penitentiary**

In the American colonies, before the American Revolution, most criminals were confined to workhouses with no real intentions of this being a system to reform their behavior. After the American Revolution, poverty and crime in the new country began to pose a problem. During this time, the penitentiary was an institution that simultaneously punished and rehabilitated its inhabitants as a new punishment system emerged (Davis, 2003, p. 26). While Southern states participated in the two waves of American prisons in the late 18th and early 19th centuries, building penitentiaries at a similar rate as their Northern counterparts, the debate over the penitentiary in the South was a debate over the meaning of a republican government. The ideology of republicanism played a crucial role in developing the penitentiary system. Republicanism emphasized sacrificing a citizen's freedom to guarantee the rights of others, making the penitentiary appealing to advocates of this ideology. It allowed for the precise measurement of the amount a criminal owed to society and the removal of their freedom (Ayers, 1984, pp. 40-42).

This punishment was believed to allow convicts to reflect on their crimes and gain forgiveness. The criminal law before the penitentiary relied on brutal and inhumane punishments, often resulting in jurors refusing to convict and criminals escaping punishment (Ayers, 1984, p. 43). The penitentiary offered a more precise and psychological form of punishment, relying on self-imposed terror and reflection on past crimes to promote reformation. It was seen as a means to remove the disturbing elements of society and transform them into intelligent and virtuous citizens (Ayers, 1984, p. 44).

Initially, religion was proposed as a solution to this apparent problem. Englishman John Howard first proposed a system of institutionalization to use the evangelical faith as a foundation (Ayers, 1984). However, this solution would only last for a while. Capital punishment under these principles was replaced by hard labor and public punishment as people still did not trust the use of prisons at this time.

Some pushed back against the penitentiary as some saw it as akin to slavery.

Historian Adam Hirsch (1992) best reflects this as he states:

One may perceive in the penitentiary many reflections of chattel slavery as it was practiced in the South. Both institutions subordinated their subjects to the will of others. Like Southern enslaved people, prison inmates followed daily routines specified by their superiors. Both institutions reduced their subjects' dependence on others to supply essential human services such as food and shelter. Both isolate their subjects from the general population by confining them to a fixed habitat. Both coerced their subjects to work, often for longer hours and less compensation than free laborers. (p. 71)

Southern ministers, as a group, had little support for the penitentiary and viewed it as a threat to God's law. The penitentiary also faced opposition from evangelical Christians and those who saw it as an unnecessary intrusion into honorable conflict (Ayers, 1984, pp. 56-57). State governors were the prominent supporters of the penitentiary despite their limited power. They called for various improvements, including the building and supporting a penitentiary. However, the ultimate decision to create penitentiaries lay with state legislators, who sometimes went against the voters' opposition (Ayers, 1984, p. 53). Financial concerns were a significant factor in the

operation of penitentiaries, with officials looking for ways to make money, such as charging admission fees for visitors (Ayers, 1984, p. 64). Work was seen as crucial in the penitentiary system, but lawmakers faced opposition from local workers who felt their livelihoods were threatened by prison labor. Some states, like Georgia and Mississippi, successfully used prison labor to generate profits, but most penitentiaries struggled financially. Discussions about leasing penitentiaries to private businesspeople to alleviate financial burdens were also held. However, leasing convicts undermined the restoration of the prisoner's sense of obligation to a just society (Ayers, 1984, p. 68).

The public feared that prisoners hidden from the public would face injustices inside the institutions. Contrary to this, the people did not like seeing and hearing the convicts in public and wanted them kept out of sight, leading to the ultimate prison use. In every decade from the 1790s to the 1850s, some Southerners argued that the penitentiary was an essential part of any enlightened government. At the same time, other Southerners warned that the penitentiary presented a real and immediate threat to American freedom, contrary to the ideals of the American Revolution. (Ayers, 1984, p. 35).

So, what did this new penal system, rapidly being built throughout the South, mean to Black people and enslaved people at the time? It was unique because “all Black prisoners had been free men before they were incarcerated, and slaves seldom appeared on rolls in Southern prisons” (Ayers, 1984, p. 61). Few enslaved people were incarcerated for crimes, and local customs were the most desired choice when dealing with petty offenses they committed. Another issue with Blacks in prison was that mixing whites and Blacks in prison may lower the status of the white man and improve that of

the Black people. Ayers (1984) wrote that the Virginia governor in 1849 complained that “uniting Black and white in one common association” in the penitentiary “can be productive of nothing else but mischief: it necessarily makes the negro insolent and debases the white man: it is offensive to our habits and prejudices as well as to our feelings and policy, and ought to be discontinued” (p. 62). This problem of mixing Black and white inmates was eventually solved by leasing Blacks out to work beyond the penitentiary as laborers, which began a far more systemic problem with the prison systems.

### **History of the Slave Patrol**

Policing in America has its roots in the slave patrols, which were established in 1704 to maintain control over enslaved Blacks and prevent insurrections (Hadden, 2001, p. 19). With the threat of enslaved people running away and possible insurrections, politically and economically elite white men began establishing a series of laws collectively known as the Slave Codes to govern the behavior of enslaved people, freed Blacks, and even poor whites who ran afoul of the system. The patrollers were empowered by these laws and enforced them against Blacks, whether enslaved or not. Runaway slaves posed a massive problem for the enslavers, so professional slave trackers, using what they called slave hounds, tracked and captured runaway slaves (Spruill, 2016, p. 45).

The slave patrols began in South Carolina over concerns about the growing slave population and, more alarming, a possible Spanish invasion (Haddon, 2001, p. 19). It was the “increased alarm about a Spanish invasion, coupled with rumors of a slave insurrection, that finally drove South Carolinians to create their first regular, official slave

patrols in 1704” (Haddon, 2001, p. 19). This militia was split into two forces: one to repel a foreign attack and another to deter slave revolts (Hadden, 2001, p. 20). According to Hadden (2001, p. 19), slave patrols between 1704 and 1721 frequently included men of superior social status, not just poor slaveless whites. Interestingly enough, enslaved Black people were allowed to serve in the militia, but “another slave insurrection in 1720 brought an end to enslaved people in the militia and stimulated a significant reorganization of patrols” (Hadden, 2001, p. 21). It was not until the 1730s that the patrollers' duties expanded to maintain order amongst the whole population, including white servants, not just enslaved Black people (Hadden, 2001, pp. 21-22).

One of the duties of the slave patrol was to enforce the Slave Codes. These laws regulated the behavior of the enslaved, free Blacks, and white people throughout the colonies and later states. They restricted the movement of Blacks, restricted their ability to gather, allowed the patrols to enter their quarters in search of weapons, and stopped potential insurrections. For white people, these laws prevented whites from harboring, helping, or buying stolen goods from enslaved people. In South Carolina, the slave code also required white men to serve in the patrols (Hadden, 2001, p. 21). It empowered all citizens to stop and check enslaved people for passes and to detain them if necessary.

Not long before, the other colonies copied the model used by South Carolina. An example of slave patrols in other states is Virginia, in 1727, due to failures of local laws being enforced that dealt with slavery and created a law to use the militia against enslaved people, creating their first formal slave patrols (Hadden, 2001, pp. 29-30).

Tennessee formed its first patrols in 1806, thereby “regulating the colored population”

(Henry, 1968, p. 180).<sup>2</sup> Louisiana formed its first patrols in 1807, with dual control of them by the militia and parish judges until 1821, when the state legislature controlled the government entirely (Taylor, 1963, p. 170; Williams, 1972, p. 400). Missouri entered the Union in 1820 as a slave state and had to control its slave population with its patrol. These patrollers worked twelve hours per month, or as many hours as the court appointing desired, received twenty-five cents per hour, and were charged to exert control over the slave community (Spruill, 2016, p. 49). Nearly all southern states had formed patrols during this period to control slave behavior.

For many decades, these slave patrols terrorized Blacks with “patrollers carrying out their duties on foot and horseback, both day and night, armed with guns, negro whips, given the situation, bloodhounds” (Hadden 2001, p. 12, 18, & 20). These patrollers were also the first responders to threats and actual slave insurgencies. They were defenders of the core principle of Southern race relations, white domination, and Black subordination (Spruill, 2016, p. 49). Furthermore, the enslaved person patrolling system functioned in the belief that every facet of Black life was suspect, warranting aggressive police intervention and criminal investigation, and with the tacit assumption that slave patrols were needed to protect whites from Black insubordination and criminality (Spruill, 2016, p. 49).

These patrols ultimately laid the groundwork for creating the modern police forces, with some historians “asserting that the transition from slave patrols to publicly funded police departments was smooth in the South and North” (Durr, 2015, p. 875). Furthermore, Walker and Katz (2018, p. 32) in their book state the following:

---

<sup>2</sup> The term “colored,” now considered pejorative, is a previous iteration of Black identity.

Policing in the southeastern states where slavery existed had a distinctive institution: the slave patrol. Because the white majority was so concerned about the slave revolts (of which there were many) and runaway slaves, they created this new form of law enforcement. The slave patrols were the first modern police force in the United States. The Charleston, South Carolina slave patrol, for example, had about 100 officers in 1837 and was far more significant than any northern city police force at that time (as cited by Brucato, 2020, p. 115).

More police forces were formally established in multiple cities throughout the country well into the late 1850s.

The end of the slave patrol came with the South's defeat in the Civil War in 1865. Additionally, the passage of the 13<sup>th</sup> Amendment to the U.S. Constitution, which abolished slavery in the country, meant their role was done. The 13<sup>th</sup> Amendment also signaled the end of the Slave Codes enforced during this time. However, “although slavery and the patrols were legally dismantled, vestiges of the patrol system survived” (Hadden, 2001, p. 168). The groundwork for policing had already been laid, which was only strengthened by local police departments receiving training from the Union armies (Hadden, 2001, p. 168). The worst legacy these patrols left would spill over into the new era of Reconstruction, with the newly instituted Ku Klux Klan (KKK) adopting many of the methods practiced by the pre-Civil War slave patrols.



## CHAPTER 3

### RECONSTRUCTION ERA

#### **Rise of the KKK**

After the passage of the Reconstruction Act of 1867, men dressed in white hoods began riding through the southern states. They aimed to terrorize newly freed Black people, and they would travel to their homes and whip and beat them. These people aimed to “take the law into their own hands in defiance of the law and Union army” (Hadden, 2001, p. 207). This collective eventually came to be called the Ku Klux Klan. Compared to slave patrols, the KKK mainly fulfilled the same function as its antecedent patrol system. Rapidly growing in political influence, particularly among Southern whites who desired a return to slavery, the KKK grew into a domestic terrorist organization that worked to restrict the movement of Black people, in part by patrolling Black neighborhoods, breaking up their social gatherings, placing burning crosses in Black yards, and lynching Black men, women, and children to instill a continual state of threat and fear. KKK members also took the weapons of Blacks as they believed “disarming freedmen served to counteract theft, intimidate freedpeople, and assert white supremacy” (Fitzgerald, 1997, pp. 193-194). White men from all areas of society, rich and poor, were members of the KKK, just like the patrollers.

The first KKK meeting was held in Tennessee in 1865. It originally started as just a way to curb boredom for six young men to play pranks on people, but the ideals of what they did quickly spread. Feagin (2000, p. 58) states that this group became a way for “the South's white elite, often with the collusion of the presidents and northern elites, to establish an extensive terrorist campaign against the Reconstruction state governments

and newly freed Black southerners; with the ultimate objective of ending Reconstruction and to prevent political and economic equality for Black people.” What started as pranks eventually turned into utter brutality when Klansmen started lynching Black people throughout the South. What were the police doing at the time these groups were terrorizing Black people? It turns out that they did not do anything. For example, in North Carolina, some of the sheriffs, the deputies, and the local officials were all members of the KKK (Hadden, 2001, p. 210). Another instance is when armed Klansmen attacked Blacks in Wilmington in 1867, the police were unwilling to arrest or punish them for their assaults (Hadden, 2001, p. 217). With these practices and policies in effect, the Klan was unofficially deemed the actual law enforcement of the South (Hadden, 2001, p. 219).

Other legitimate law enforcement agencies were in the southern states during this period. Union troops enforced the rights of Black people alongside the Freedman's Bureau, responsible for the supervision and management of all matters relating to the refugees and freedmen and lands abandoned or seized during the Civil War, duties previously shared by military commanders and U.S. Treasury Department officials (The Freedmen's Bureau, 2021). During this time, some southern police departments even hired Black officers. Montgomery and Vicksburg had admitted a great deal of Black officers by 1870. Norfolk's force comprised three percent Blacks, but this paled compared to the city's population, which was nearly half-Black (Hadden, 2000, p. 217). Most cities did not accept that Black police officers could enforce their laws. Open defiance and resistance were typical and led to some gunfire exchanges between the police and local vigilantes, which resulted in a white man's death in 1876, leading to Columbia residents believing the police had become too lax. These residents felt the need

to take matters into their own hands and formed “slave patrol-like” posses that rode around Black communities terrorizing them (Hadden, 2001, p. 218). Overall, “Southern whites were forced to adopt laws and policing methods that appeared racially unbiased, but they relied upon practices derived from slave patrols and their old laws that had traditionally targeted Blacks for violence” (Hadden, 2001, p. 219).

### **Black Codes and Convict Leasing**

The post-Civil War era in the Southern states witnessed a significant increase in the incarceration rates of freed people. The increase in incarceration rates, particularly among Black people, was a consequence of the Black Codes. The Black Codes “were in effect the revisions of the old Slave Codes and expressed open defiance on the part of white leaders” (Feagin, 2000, p. 59). The Black Codes restricted Black people’s labor market mobility and served as a means of social control. These codes “proscribed a range of actions such as vagrancy, absence from work, breach of job contracts, the possession of firearms, and insulting gestures or acts that were criminalized if the person charged was Black” (Davis, 2003, p. 28). In 1865, the first of these laws was passed in Mississippi, South Carolina, and Louisiana. Alabama was on track to pass the Black Codes that same year. However, they never did due to Christmas and concerns about federal hostility directed at Mississippi and South Carolina after passing their codes (Wilson, 1965, pp. 66-76). Every other former Confederate state eventually passed its version within the first two years after the war.

Southern states faced fiscal and institutional constraints after the Civil War. Reluctant to expand taxation capacities, these states perceived taxation as benefiting Black communities at the expense of white taxpayers. Additionally, Southern politicians

prioritized regional autonomy and refused federal aid, limiting their ability to modernize the region and secure federal support. As a result, Southern states lacked the financial resources to build state-of-the-art carceral facilities to accommodate the rising number of prisoners. Facing overcrowding and limited funds, politicians in Southern states sought cost-effective alternatives to expanding state-run prison facilities. Convict leasing emerged as one such solution, characterized by the leasing of prisoners to private companies or individuals.

This fast-growing industry by the Southern states to make prisoners work became what is known as the convict lease system, and this “system emerged as a functional replacement for slavery in the South” (Adamson, 1983, p. 555). Since these laws were only charged to Black people, formerly enslaved Blacks were forced “back into an exploitative labor system that resembled the plantation regime in all but name” (Hinton & Cook, 2021, p. 267). Unlike other forms of penal labor, the state was absolved of housing and caring for prisoners, and custodial responsibility was given to lessees. Privatizing carceral functions allowed the state to accommodate the growing prison population without incurring significant costs (Schwarz, 2023). This system caused a radical change in the composition of the incarcerated population. Sentences became longer, the population became younger and almost entirely Black, and the number of convicts rose sharply, which ensured an extensive and reliable workforce of those most suited to maximum productivity in the labor camps. Alexander (2020) describes that enforcing the Black Codes opened up an enormous market for convict leasing, in which prisoners were contracted out as laborers to the highest private bidder.

Nevertheless, why was this allowed to happen in the first place? Was not the 13<sup>th</sup> Amendment explicitly designed to prevent slavery? It turns out that the 13<sup>th</sup> Amendment did abolish “except as a punishment for a crime, where one was duly convicted,” which was what Southern states relied on to enforce their laws against newly freed Black people. With that exception, tens of thousands of Black people were arrested, fined, and had to work off their debts. With no way to pay their debts, they were forced into this system of hard labor. With this system in place, the criminal justice system had effectively started on its path to upholding white supremacy and keeping Blacks in a state of second-class citizens.

However, the convict leasing system soon became increasingly abusive and exploitative. Leasing camps were sites of neglect, abuse, and alarmingly high mortality rates, with prisoners living in poor conditions, facing malnutrition, and being subjected to physical punishments, leading many to consider the system worse than slavery (Schwarz, 2023). At least on the plantation, enslavers were incentivized to keep their slaves alive and cared for (Davis, 2003, p.32). Despite these inhumane conditions, few Southern whites fought for abolition on humanitarian grounds, highlighting the influence of white supremacy in shaping carceral policies. Prisoners regularly suffered exposure, insect bites, frostbite, and shackle poisoning due to the iron against their skin, all to the benefit of southern state governments and private companies, as “the convict lease system was a profitable economic substitute for slavery in the post-Civil War South” (Davis, 2003, p. 33; Adamson, 1983, p. 558). The Black Codes and the carceral system had all but removed the very freedoms that newly freed Black people had hoped for in the South, but hope was on the horizon.

## **Stopping the Black Codes**

When the new Congress was in place in 1866, the legislators in the session immediately moved to combat the Black Codes with two new bills: The Freedmen's Bureau Bill, which extended the previous Freedmen's Bill's work for two years to provide food, shelter, clothing, medical services, and land to displaced Southerners, including newly freed Black people, and the Civil Rights Bill of 1866, which was aimed at giving citizenship to all people born in the U.S. Congress was able to pass the Freedmen's Bureau Bill. However, President Andrew Johnson vetoed it, and the attempt to override it failed. Congress eventually passed a version of this bill. While it was again vetoed, they successfully overrode the veto to make the bill law. President Johnson later vetoed the Civil Rights Bill, but this veto was successfully overridden. Next, Congress passed the 14<sup>th</sup> Amendment in 1866, ratified in 1868, to give all Black people citizenship and equal protection of the law. Congress would later pass the 15<sup>th</sup> Amendment, which prevented denying the right to vote based on color. All of these acts had the effect of eliminating the Black Codes throughout the country.

The country's convict lease system would live on regardless of Congress's actions. Due to the punishment clause in the 13<sup>th</sup> Amendment and the economic benefits of prison labor, this system would persist for decades to come. Fortunes were made off the backs of Black convict labor, and many industries and infrastructures were built from this. Cheap iron from mining and building the railroads in the South and Peachtree Road, located in the heart of Atlanta, Georgia, are just a few relics of this labor (Ayers, 1984,

pp. 191-192; Davis, 2003, p. 34). You can honestly say that the South was still being built on the complex and forced labor of Black people and continued to be built well after slavery was officially abolished.

### **The End of Reconstruction**

The presidential election of 1876 featured the candidates Republican Rutherford B. Hayes and Democrat Samuel J. Tilden. Unlike in today's politics, the democrats were the reactionaries or conservatives during this time, and the republicans were the liberals. This election would be the tipping point to the end of Reconstruction as the results came down to a vote in the House of Representatives. Neither candidate won enough votes in the House to secure the presidency, so the "Compromise of 1877" was made.

Historically, according to Woodward (1991), the evidence to prove the terms of the agreement is questioned because there exist no formal documents or agreements to confirm its existence. Woodward argues that Democrats would accept Hayes as president in a compromise of the following: withdrawal of troops from the southern states, appointing a Democrat to his cabinet, construction of a railroad, restoring the South through legislation to industrialize it, and the right to handle Blacks without any involvement from northern states. The theory Woodward had proposed was criticized. Peskin (1973) argues that a foregone conclusion was that Hayes was already planning to remove federal troops from the South, and neither the railroad nor the promised legislation ever happened. Les Benedict (1980) states that a deal did exist but was not enforceable, and an election commission recommended the results of the presidency.

Regardless of what deals did or did not exist at the time, the election of President Hayes and the withdrawal of troops from the South ended Reconstruction. It was at this

time that “Black Southerners felt sold back down the river into virtual enslavement, and all three of the new constitutional amendments — so far as Blacks were concerned — were rendered dead letters for a century to come” (Kennedy, as cited in Feagin, 1995, p. 58). Southern states, the courts, and federal actions left Black people without any protections to their rights and “whites in the north and the south joined once again in solidarity on behalf of the overarching white group interests” (Feagin, 2000, pp. 58-59) and ushered in the next era we will explore: the Jim Crow Era.



## CHAPTER 4

### JIM CROW ERA

#### **Jim Crow, Age of Segregation**

With the withdrawal of the last federal troops from the South in 1877, white Southern Democrats had effectively gained political power in every southern state's government. This event set the stage for these states to create an entirely new system of legal oppression against Black people with the Jim Crow laws. The term Jim Crow derives from a racist minstrel tradition that emerged in the early 19th century when a white minstrel named Thomas Daddy Rice popularized its performance. Over the century, Jim Crow minstrels propagated bigoted generalizations and caricatures of dark individuals, advancing and developing the racial partition. Be that as it may, the Jim Crow framework went past amusement and became profoundly imbued within the texture of Southern society. Thus, in the post-reconstruction era, Jim Crow morphed from white entertainment into a legally codified racial caste system that operated primarily, but not exclusively, in southern and border states between 1877 and the mid-1960s. In this way, it was more than a series of rigid anti-Black laws; it was a way of life (Pilgrim, 2000).

The Jim Crow era is historically marked by a significant decline in the status of Black people in the South, as this population faced increasing discrimination and limited opportunities. It was characterized by segregation and oppressive laws that profoundly impacted the lives of Black people, especially those in the South. According to Pilgrim (2000), during this era, Black people were subjected to extreme violence, and “Black people had little legal recourse against these assaults because the Jim Crow criminal justice system was all-white: police, prosecutors, judges, juries, and prison officials.”

During this period, the criminal justice system was further taking shape to be weaponized against Black people. The status quo of white supremacy was still the norm, and the objectives were simple: subjugate Black people, keep them under control, and deny them their civil rights, specifically the right to vote, to further white supremacy to preserve that status for whites throughout the South. This system did not want to see Blacks as equals and exerted itself in many ways to accomplish this over the decades that encompassed Jim Crow, mainly through preventing Black people from voting. Let us start with the U.S. Supreme Court decision in *Plessy v. Ferguson* as one of the biggest catalysts to criminal justice abuse. In 1890, Louisiana passed a law called the Separate Car Act, an example of a Jim Crow law, which separated whites and Blacks on trains. In 1892, Homer Plessy bought a train ticket and entered a white-only train car. He was of mixed race and knew what he was doing at the time. He was arrested and accused of violating the law. His case eventually made it to the U.S. Supreme Court, and they ruled the following:

The object of the [Fourteenth] Amendment was undoubtedly to enforce the absolute equality of the two races before the law. However, like things, it could not have been intended to abolish distinctions based upon color or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. (*Plessy*, 163 U.S. at 543-44)

The Supreme Court's decision in *Plessy v. Ferguson* established "Separate but Equal," reinforcing legal segregation. The majority opinion argued that legislation could not overcome social prejudice and that enforcing racial segregation did not constitute

inferiority. The only dissent came from Justice Harlan, who argued that the ruling deprived Blacks of equal protection under the law.

So, the Supreme Court's decision led to many racially discriminatory laws being passed and enforced by the criminal justice system. Examples include, in Oklahoma, the illegality of mixed boating; in Georgia, Black people and white people had separate public parks; and in Birmingham, Alabama, a Black and white person could not play dominoes or checkers together. These are a few of the hundreds of laws passed throughout this period. The most damaging effect of these laws was the disenfranchisement of Black people, which cut them off from political power in the South.

What happened when Black people violated these laws? With any crime violation, you are arrested by the police and processed through the legal system. Let us look at how this usually played out. The laws passed during this time were layers of the criminal justice system exerting complete social control over Black people's lives and expanding white supremacy throughout the states in this new era. Another layer would be the police and the violence they inflicted or let happen to Black people. Between 1920 -1932, police violence data showed that more than half of all Black people killed by whites were killed by police officers (Feagin, 2000, p. 147). Lynching was an instrument that was used by police officers during the time as well, with “six thousand lynchings of Black men and women from the 1870s-1960s” (Feagin, 2000, p. 147).

One known case of police lynching a Black man came in Atlanta, Georgia, when Thomas Finch, a hospital orderly, was brutally lynched by Atlanta police in 1936. He was accused of raping a white woman in a hospital closet, even though hospital staff stated

that such an event would be impossible since everyone would have heard them.

Nevertheless, he went with the officers and hours later was dumped in front of the same hospital bloody, beaten, and shot multiple times. He died of his injuries, and his lynching was never prosecuted. The officer who was responsible for the lynching was never prosecuted and later went on to run an area chapter of the KKK (Rosenwald, 2020).

The incident that happened above was troubling, but it was not uncommon. What is scary is that even if the police had accused Finch and arrested him, he probably would have been what I would call *legally lynched* by the courts. I say this because “between 1930 and 1967, Black men made up 89 percent of all those executed of all those executed for rape across the nation” (Feagin, 2000, p. 150). Fair juries did not favor Black people in an overtly racist society. All-white juries were the norm even though the U.S. Supreme Court's decision in *Norris v. Alabama* (1935) ruled that Blacks could not be excluded from juries; nevertheless, it was not fully enforced then.

Black people challenged Jim Crow laws by boycotting streetcar lines in many cities. However, these protests did not significantly change white attitudes about segregation. So, instead of trying to end racial segregation, they focused on improving segregated spaces to make them equal to whites. However, while these efforts may lead to some improvement in their lives, they would be meaningless in gaining political power, which is what Black people truly needed. As the Jim Crow era continued in U.S. society, it took “nearly half a century before an organized mass movement would directly challenge this system” (Litwack, 2009). It was not until World War II that many Blacks began to challenge Jim Crow laws, breaking them and risking the consequences.

## The End of Jim Crow

World War II highlighted the hypocrisy of democratic ideals in the face of racial discrimination, leading to increased questioning and activism in the Black community. The war also marked a change in the relationship of Blacks to whites in U.S. society because they began to challenge the traditional inferior position attributed to Blacks, which brought about the Civil Rights Movement, the fight to end Jim Crow laws, and legal segregation. In 1954, the U.S. Supreme Court ruled in *Brown v. Board of Education* that segregation in public schools was unconstitutional, overruling *Plessy v. Ferguson* and “Separate but Equal.” This decision was the turning point for ending formal racial segregation throughout the states.

Next, we had a tragedy with Emmett Till, a 14-year-old Black kid from Chicago. Till was visiting relatives in Mississippi and, on August 24<sup>th</sup>, 1955, encountered 21-year-old Carolyn Bryant at the grocery store she owned with her husband, 24-year-old Roy Bryant, both of whom were white. Carolyn claims that Emmett whistled and made inappropriate gestures at her, a clear violation of societal norms in the Jim Crow South. In the early morning of August 28<sup>th</sup>, 1955, Roy Bryant and his half-brother, 36-year-old John William Milam, went to Mose Wright’s, Till’s great-uncle, house and abducted Emmett (Houck & Grindy, 2008, p. 15). These two men lynched Emmett, beating and mutilating him before shooting him in the head and throwing him in the Tallahatchie River. It would be three days before his body was found. The two men were tried for murder but were acquitted by an all-white jury in state court (Houck & Grindy, 2008, p. 105).

The tragic events of Emmett Till set the stage for Rosa Parks when, in 1955, she was arrested for refusing to give up her seat on the segregated buses in Montgomery, Alabama, which she may have done before Emmett's story (Houck & Grindy, 2008, p. 25). This event led to *Browder v. Gayle* (1956), with the U.S. Supreme Court upholding its rulings and desegregating the buses in the city. In 1957, nine Black students, the Little Rock Nine, enrolled in Little Rock Central High School. Arkansas governor Orval Faubus used the National Guard to stop these nine students, defying court orders, from attending Little Rock Central High School. It was not until President Dwight Eisenhower took command of and ordered the National Guard to support the integration of the school (Executive Order 10730, 1957). More events like this continued with states using law enforcement, jailing movement leaders, and beating protesters. The breaking point was on March 7<sup>th</sup>, 1965, and was the catalyst to end the current Jim Crow era.

On that Sunday, a group of civil rights marchers began to head out of town when they encountered Alabama state troopers and deputies from the sheriff's office. These officers violently beat and tear-gassed these marchers in what came to be known as "Bloody Sunday." Little did these officers know that the effects of this day would lead to significant legislation within the U.S. Congress, leading to passages of two laws with extreme consequences for Jim Crow society. The first law was the Civil Rights Act of 1964, which outlawed discrimination based on race, religion, sex, and national origin. This law was only half of what was needed, and the second law, the Voting Rights Act of 1965, secured the rest. This law enforced the 14<sup>th</sup> and 15<sup>th</sup> Amendments in securing the right for Black people to vote throughout the country.

These two laws signaled the end of the Jim Crow era. Black people had effectively gained the legal protections they were promised over a century ago. The most important of these was the power to vote freely throughout the U.S., which finally allowed Blacks to gain political power, further complimented by the 24<sup>th</sup> Amendment, which eliminated poll taxes.<sup>3</sup> We were entering a new time in U.S. society where we could finally look beyond the overtly racist society plaguing Black people. It sounds too good to be true. It turns out hatred is a very flexible tool when it is realized that a racial minority group has finally gained political power, and the tools used to oppress Black Americans in the criminal justice system will exert themselves in a new way. It is time to move into the era where color-blind racism and a new system of Jim Crow would reign supreme in maintaining white supremacy.

### **The Impact of Civil Rights on Convict Leasing**

Towards the end of the 19<sup>th</sup> century, the convict lease system became more trouble than it was worth. Throughout the decades of the lease system, public outrage remained constant, and the economic and political situation at the time greatly influenced the continuation of this system. Towards the end of the lease system, the prices of convicts rose dramatically, indicating their value as a commodity. However, the actual cost of convict leasing was estimated to be around \$670 per year, including upkeep expenses, making it unprofitable for private individuals or corporations. The Depression

---

<sup>3</sup> Poll taxes required that people pay in order to be able to vote in elections. Their primary objective was to prevent minority people in the South from voting, particularly Black people.

of 1907 further impacted the profitability of convict leasing, leading to the closure of many enterprises that relied on convict labor (Mancini, 1978).

The demise of the convict lease system can be attributed to the undermining of its economic and social utility. The system's profitability to private businesspeople declined, while the state recognized the value of chain gangs. The rise in prices of commodities produced by convict labor, as evidenced by the Wholesale Price Index for farm products and building materials, contributed to the costliness of a lease (Mancini, 1978). However, the states understood the profitability of chain gangs. Ultimately, the convict lease system in the South played a significant role in perpetuating racial subordination and exploitation. However, its demise was brought about by a combination of economic, political, and social factors (Mancini, 1978). Thus, the chain gang system replaced convict leasing to exploit prison labor as a cost-effective alternative.



## CHAPTER 5

### POST-CIVIL RIGHTS ERA

Although the legal nature of Jim Crow laws ended with the passage of federal laws in 1964 and 1965, it did not end the problems of Black people in the country. The civil rights movement was an uphill battle, but it was won, right? It should be a happy ending for people who have been oppressed for too long, right? Let us say that an institution created to protect white supremacy from Black people gaining political power and equal rights will not change with the passage of a few laws. Under the guise of a new system of mass incarceration, the criminal justice system began to show its roots in the most unique ways. Here is a quick question: What kind of person can be legally deprived of fundamental civil rights? The answer is a convict, and the criminal justice system was well set up to incarcerate as many Black people as possible to prevent them from participating in the political process. However, first, let us talk about the Black Panthers.

#### **The Black Panthers**

In the late 1960s, the Black Panthers, a group of Blacks organized in Oakland, California, to promote Black nationalism to combat police brutality through armed resistance, began to assert their influence. The criminal justice system could not let an organization like this stand. From 1969 through 1971, at least 40 Panthers were killed either by the police or by undercover actions as a result of the police (Berger, 2013, p. 7). For example, Chicago Police, with the help of the FBI, assassinated Black Panther members Mark Clark and Fred Hampton in 1969. After secretly having Hampton drugged, this heavily armed team entered their apartment and shot up the entire place.

Reports state the Panthers only fired one shot instead of the police firing close to 100. It was a murder squad sanctioned by law enforcement.

Something else happened during this time as well. The ability of the Black Panthers to arm themselves left many in positions of power fearful of them. The Mulford Act (1967) was passed in California to disarm the Panthers, which made it hard for the group to perform what they intended: protect themselves from a reactionary state, which, with the assassinations of two of their members, was a legitimate fear. Also, this looks similar to what states did to Black people during the Reconstruction and Jim Crow eras. The Panthers continued to be abused by law enforcement throughout the 1970s, with many of their leaders still falsely arrested and imprisoned for decades. Eventually, the Black Panthers disbanded in 1982.

The Black Panthers were among the first groups in this new era to advocate for and fight for Black rights, but they were not the only ones who were victims of the system. The FBI played a significant role in the surveillance and persecution of Black leaders and organizations involved in the Civil Rights Movement (Bonilla-Silva, 2001, p. 109). Martin Luther King Jr., Elijah Muhammad, Malcolm X, and Stokely Carmichael were among those targeted by the FBI. The surveillance of Martin Luther King Jr. was pervasive, with the FBI delving into his private life with the intent of discrediting him. The FBI's persecution of leaders like Elijah Muhammad and Malcolm X was less consistent compared to their treatment of King and the Southern Christian Leadership Conference (SCLC) (Bonilla-Silva, 2001, p. 110). All that either of these leaders and organizations wanted to do was to defend Black people from a system built for centuries to enslave, exploit, abuse, and murder them. Unfortunately, the system fought back using

that same racial fear and prejudice it had always had against them. We saw what a system built to keep white supremacy intact can do when threatened. However, the terror they suffered from law enforcement during their time shows the fear the white majority had of a Black social movement group. However, this was only the beginning of what the system can do. The age of mass incarceration was on the rise, and its effect on Black people in the decades to come will be devastating.

### **The War on Drugs and Mass Incarceration**

Since 1980, the number of people incarcerated or under state supervision in the U.S. has increased dramatically. That increase in incarceration rates is due more to the War on Drugs and related sentencing practices than to changes in crime itself. The War on Drugs, often thought to have begun as a response to crack cocaine, was a strategic effort by the Reagan administration. The media campaign surrounding crack cocaine perpetuated negative racial stereotypes, encouraging discrimination. That campaign resulted in a significant increase in convictions in the U.S. today, with the U.S. having the highest incarceration rate in the world, which disproportionately affects racial and ethnic minorities. With these facts, “nothing has contributed more to the systematic mass incarceration of people of color in the United States than this ongoing war” (Alexander, 2010, p.76).

Racial disparities in incarceration cannot be explained by drug crime rates because research shows that people of color use and sell illegal drugs at equal rates as whites (Alexander, 2010). Many Americans deny that the criminal justice system is a tool of racial control, attributing crime rates, black culture, or bad schools as the causes. This misunderstanding is influenced by the shocking images of the Jim Crow era, which

shaped the understanding of racism as individual bigotry rather than a structural system (Alexander, 2010, p. 227). Racism manifests not only in individual attitudes but also in the basic structure of society, known as structural racism. The system of mass incarceration functions as a racial caste system, trapping Black people through various laws, institutions, and practices. The War on Drugs serves as a vehicle that forces a large number of Black men into the criminal justice system (Alexander, 2010, p. 230). These facts show that the U.S. penal system has become a system of social control, primarily targeting people of color.

Mass incarceration is classified as a criminal justice rather than a racial justice or civil rights issue. However, it is essential to recognize that mass incarceration is the most damaging manifestation of the backlash against the civil rights movement (Kilgore, 2015, p. 37). It keeps a large portion of the Black community out of mainstream society and perpetuates white supremacy. The system of mass incarceration operates in three phases: the roundup, the period of formal control, and the period of invisible punishment. The period of invisible punishment refers to the criminal sanctions imposed on individuals after their release from prison, such as parole and probation, perpetuating their marginalization and denying them fundamental rights and privileges (Alexander, 2010, p. 230). One of these denial of rights was the right to vote. Felon disenfranchisement laws effectively suppressed the Black vote during the Jim Crow era and continue to do so in the age of mass incarceration (Alexander, 2010, p. 240). The Census Bureau's counting of incarcerated individuals as residents of the jurisdiction in which they are incarcerated further exacerbates racial disparities. Additionally, racial bias in jury selection and the

Supreme Court's protection of racial bias in the criminal justice process contribute to the perpetuation of mass incarceration (Alexander, 2010, p. 241).

Local police departments took steps and focused on increasing policing and arrests in disadvantaged areas, which led to increased arrests and incarceration of Blacks (Bobo & Thompson, 2006). Black men became the biggest victims of this war throughout the 1980s, creating a significant gender gap in Black communities, with more Black adult women than men. Mass incarceration, fueled by the disproportionate imprisonment of Black men, is also a significant factor contributing to the absence of Black fathers in families. By 1991, one-fourth of young Black men in the country were now under the control of the criminal justice system (Alexander, 2010). In 2004, 43.3 percent of inmates were Black men, although they made up only 13 percent of the population. As a result, “more Black adults are under correctional control today—in prison or jail, on probation or parole—than were enslaved in 1850, a decade before the Civil War began” (Alexander, 2010, p. 239). The consequences of the drug war have significantly affected the lives of Black people, undermining employment prospects and disenfranchising nearly two million Black Americans.

Blacks also believe that drug laws are unfairly enforced against their communities and that government officials profit from drug abuse. Drug offenses were supposed to apply to everyone equally. However, the War on Drugs, cloaked in race-neutral language, offered whites opposed to racial reform a unique opportunity, in a color-blind racist ideology, to express their hostility towards Blacks and Black progress without being exposed to the charge of racism (Alexander, 2010, p. 69). An example of racial bias in drug enforcement is the difference in prison sentences for crack cocaine and powder

cocaine. Crack cocaine, which primarily affects Black communities, has much harsher sentencing guidelines than powder cocaine, which is more commonly associated with white users (Small, 2001). That disparity reinforces post-slavery discrimination, perpetuates racial injustice in the criminal justice system, undermines legitimacy, and leads to distrust and disillusionment among Black people. This reduced trust is reflected in lower expectations of police performance.

The federal government's response to the drug crisis was largely ineffective, failing to address root causes and perpetuating racial oppression. The current approach to the War on Drugs disrupted and disproportionately affected Black and Brown communities. One of the most apparent problems with the federal government's approach to the drug problem is its biased enforcement of drug laws. This results in disproportionate arrest, conviction, and incarceration rates for Black and Brown people. Based on the false assumption that Blacks are more likely to use drugs than whites, racial profiling, which is rooted in color-blind racist ideology, has been used to justify these discriminatory practices. As a result, punitive drug policies created a racially segregated legal system with prisons reminiscent of southern plantations and wide racial disparities in arrests, convictions, and sentences.

The War on Drugs perpetuated a cycle of injustice and disproportionately affected Black communities. The biased enforcement of drug laws and the disenfranchisement of drug convicts further marginalized these communities. Mass incarceration defines the meaning of blackness in America, equating Black people, especially Black men, with criminals (Alexander, 2010, p. 244). Black people are disproportionately labeled as felons, leading to severe restrictions in employment, housing, welfare benefits, and

education. The stigma of criminality for whites is different and nonracial, while for black men, it is fundamentally a racial stigma (Alexander, 2010, p. 246). However, there is hope in a growing movement challenging this war and its effects on the mass incarceration of Blacks. With the change in public attitudes and the increase in awareness, there is an opportunity to address the root causes of drug usage and the criminalization of drugs, which could lead to the end of this war on Black communities. Increased funding for drug treatment, restoration of voting rights for former felons, and programs to reduce heroin overdose deaths have gained traction in recent years. This shift in public opinion is further reinforced by popular culture, such as television shows and movies, which have heightened public awareness of the drug war (Small, 2001).

### **The Black Lives Matter Movement**

On February 26<sup>th</sup>, 2012, Trayvon Martin, a 17-year-old Black teenager, was walking from a store in Sanford, Florida, and was observed by George Zimmerman, a 28-year-old white-passing Hispanic man. Zimmerman called 911 on Martin, alleging that the community had experienced break-ins and a suspicious person was in the area; in which he described Martin as “on drugs and up to no good” and complained that “these assholes always get away” (George Zimmerman's 911 call, 2012). Zimmerman then confronted Martin and started chasing him, resulting in Zimmerman shooting and killing Martin, who was unarmed at the time. It would take ten days for Martin's death to be covered outside of local media and for it to gain national attention (Stelter, 2012). Zimmerman was arrested and charged with 2<sup>nd</sup>-degree murder and manslaughter. The results of the trial of Zimmerman ended with a not guilty verdict on all charges, allowing Martin's death to become just simply a Black person killed by so-called vigilante justice.

The Black Lives Matter (BLM) movement, born out of the controversy surrounding the killing of Trayvon Martin, along with other recent killings of unarmed Black men, gained popularity by protesting violence against the Black community. The movement and its use of social media platforms, such as Facebook and Twitter, has played a crucial role in its growth and impact using #BlackLivesMatter, sparked debate about police abuse, racial tensions, and the militarization of police departments. It became a voice to protest against the violence inflicted on Black people throughout the U.S. by police officers, most of whom are white officers.

The media drew attention to the BLM movement and the racial divide in the U.S., especially involving the deaths of young Black men due to questionable use of force by police. Police brutality against Black people is as old as the institution itself. This feature has not changed even in the post-Civil Rights era, as Feagin (2001, p. 148) asserts that “white elites use or allow police harassment to keep Black residents in their place.” Black people comprise 13 percent of the U.S. population. However, they are disproportionately victims of police shootings, accounting for 31 percent of all police shooting victims. These alarming statistics highlight racial disparities in police killings and raise concerns about the use of force by law enforcement. Institutional racism plays a role, with the presence of institutional racism in police departments perpetuating discriminatory practices and encouraging police abuse. Police abuse and brutality have significant consequences for society.

The BLM movement has faced its share of over-policing and surveillance by the criminal justice system. Following the death of George Floyd in May 2020, “there were more than 43,350 National Guard troops across 34 states” (Glaser, 2021) to use against



BLM protesters. Furthermore, Glaser (2021) also points out how local law enforcement used military aircraft surveillance against the protesters to monitor them. While protesting the summer following George Floyd's death, I even ran into this. I was threatened by police with jail and harassed a few times while protesting the death of George Floyd in the summer of 2020 in Mobile, Alabama. During one protest march, a young Black woman broke a car window of a police cruiser; she told me to my face that she did it after the fact. She was arrested, and the federal government tried to destroy a young Black woman's life over a broken police car window. It was all just an attempt to control a movement centered around Black people and to scare them into submission.

The BLM movement has gained significant attention and sparked meaningful conversations about racial inequality and police brutality. However, there are certain ideological stances, such as color blindness, that may explain why some individuals feel discomfort with BLM and prefer the notion of All Lives Matter (ALM). ALM is explicitly color-blind; that is, the movement endorses 'the belief that race should not and does not matter' (Neville et al., 2000, p. 60). While this may seem like a noble concept, with some supporters of ALM claiming that their color-blind position is more inclusive, seemingly interpreting 'Black Lives Matter' as 'Only Black Lives Matter' (Atkins, 2019), it reflects a limited understanding of bias and discrimination and an unwillingness to acknowledge the existence of racism in contemporary society (West et al., 2021, p. 1140).

Blue Lives Matter, which is a pro-police, anti-reform movement in the U.S. that emerged as a reactionary response to the BLM movement, seeks to repress social unrest and uphold white supremacy (Shanahan & Wall, 2021). Blue Lives Matter portrays the

police as victims, and the movement has gained significant traction in the United States, with instances of violence and support from prominent figures like former President Donald Trump. While social movements and countermovements often represent marginalized groups, Blue Lives Matter is a reactionary right-wing countermovement with close ties to the state. Police unions play an essential role in supporting and monitoring the interests of police officers. Blue Lives Matter was created in response to and aims to disrupt and discredit the BLM movement.

The struggle for Black rights in the U.S. continues as systemic racism persists within the criminal justice system. The targeting of Black leaders and organizations, mass incarceration, the War on Drugs, the emergence of the Black Lives Matter movement, and the countermovement of All Lives and Blue Lives Matter all highlight the ongoing challenges faced by Black communities in the post-Civil Rights era. It is crucial to acknowledge and address these issues to work towards a more just and equitable society for all.

## CHAPTER 6

### DISCUSSION

My goal in this thesis was to compare and analyze the U.S. criminal justice system, first by detailing how it evolved concerning the institution of slavery and also by unpacking the shift from overt racism to color-blind racism in the post-Civil Rights era. Several institutions have maintained white supremacy using two forms of racism: overt racism and color-blind racism. The analysis shows how overt and color-blind racism has been mobilized throughout this system to disenfranchise Black people, subvert their political power, and exploit them for free and cheap labor to keep white supremacy intact for political and economic gain. These acts were accomplished through imprisonment and exploitation by the penal system, terror by law enforcement agencies, and disenfranchisement by racist laws and policies throughout all four eras. This comparison helped highlight the similarities in how each system was used to control Black people to accomplish the goal of white supremacy. Furthermore, it exposed how the post-Civil Rights era changed the concept of racism, making it more color-blind allowing the same practices to be used without openly revealing the racist nature behind it.

First, an observation I made during my research concerns the term Jim Crow. Throughout the literature, every author seemed to understand what Jim Crow was, but there is no uniform definition of the term, which makes it challenging to define what the New Jim Crow means. It is alarming that such a common term as Jim Crow and its dark period in U.S. history has no clear meaning. The primary contribution of my thesis to the broader literature on racial justice is to develop a more coherent understanding of Jim Crow. Therefore, Jim Crow can be defined as a system designed to racially oppress Black

people to deny the equal application of fundamental civil rights. That is what it is all about denying civil rights denies political power, more specifically, the power of voting. This denial of rights is the same effect the New Jim Crow has with mass incarceration, which bars convicted felons from voting; the weakening of the Voting Rights Act of 1965; and the gerrymandering of Black areas to reduce their influence in government. White supremacy survives as long as Black people have no political power to challenge it effectively, and Jim Crow protects that status quo.

Second, all four eras featured a legal system aimed at controlling Black people to restrict, criminalize, and deny them their civil rights. The first of these laws was the Slave Codes. These codes legally regulated the lives of the enslaved, free Blacks, and even white people and completely denied Black people civil rights. After these laws were abolished during Reconstruction, the Black Codes emerged as their replacement. While slavery had been abolished then, these laws sought to restrict Black behavior in other ways, including controlling their ability to earn a living, denying Blacks their civil rights, criminalizing their behavior, and forcing them into prisons and the convict leasing system. Jim Crow laws emerged as the third legal system, which followed the same structure as the previous legal systems in criminalizing and controlling Black behavior. This system explicitly denied Black people their civil rights through numerous laws that prevented the right to vote and be equal citizens in society.

The fourth system, the New Jim Crow, was the most difficult to connect due to the color-blind nature of its laws with subtle and similar effects. Examples include enforcing drug laws throughout the War on Drugs, which has put millions of Black men in jail or prison and disenfranchised them from voting. These laws were supposed to be

racially neutral but were applied to Black communities at a disproportionate rate. The application of these laws at such a disproportionate rate has led to the disenfranchisement of millions of Black men, denying them the political power and voice they deserve and combat white supremacy. Another example includes stop and frisk laws, which were also supposed to be color-blind yet were disproportionately applied to Black and Brown people. As a result, I would argue that the New Jim Crow, with its color-blind ideology, is the most dangerous legal system, as it allows for plausible deniability in its application.

Third, all four eras featured an agency that enforced the legal system, which was used to maintain white supremacy through racist tactics. First, we had the slave patrollers, who enforced the Slave Codes and maintained order in society, which included their main priority in controlling the lives of Black enslaved people. The patrollers would also patrol Black areas and frequently stop them to check and see if they were identified correctly with a pass from their owners. The police forces evolved from the slave patrols and would continue to enforce the white supremacist legal systems in place during each subsequent era, with little change to the overall structure and tactics used.

During Reconstruction, while not a legitimate law enforcement organization, the KKK performed the same task as the slave patrols, which included terrorizing Black people, controlling their movement and behaviors, and maintaining white supremacy. The KKK also had some legitimacy from local law enforcement, who some called the KKK the actual law enforcement. In the Jim Crow era, the police enforced the Jim Crow laws, enforcing disenfranchisement laws that maintained white supremacy. This maintenance was achieved through acts of police violence, such as lynching, and would continue until the mid-1960s when Jim Crow was abolished. In the post-Jim Crow era,

the over-policing of Black communities, disproportionate interactions with Black people, and police brutality and murders, which is the contemporary form of lynching, are all practiced by the modern police forces. These acts mean that more Black people are excluded from the political process, either through death or imprisonment, by the actions taken by police officers.

Fourth, each era had an institution designed to control Black people, intending to exploit Black people for economic gain. The first institution was slavery, which exploited enslaved Black people for the economic benefit of the Southerner enslavers in the pre-Civil War era. Once slavery was abolished, this institution was replaced by subsequent ones, with the only difference being that they were based on criminal conviction. The convict leasing system was the functional replacement for slavery, which was used to exploit cheap labor from mostly Black convicts by private businesses and state governments for economic gain.

Once convict leasing was abandoned due to the additional costs and lower profits from using the convict leasing system, chain gangs became the de facto slavery system to exploit Black labor for economic gain during the Jim Crow era. Finally, the prison industrial complex formed in the post-Civil Rights era to accomplish the goal of exploiting Black people for economic gain through cheap labor and profit and to exclude Blacks from economic and political power. Due to the laws and policies of the 1980s, Black men were imprisoned disproportionately, and their labor was exploited for the benefit of the private business owners. Private prisons also became a feature during this era, in which these prisons would be paid by state and federal governments per inmate

they kept. Now, the economic gain included increasing the whole number of inmates within the system. Blacks became the de facto targets for this new form of exploitation.

Finally, across the history of each era, each effort to gain equality for Black people was met with some form of backlash, supported by the criminal justice system, to restore and maintain the status of white supremacy. At the end of slavery, it took two Congressional overrides of President Andrew Johnson's vetoes during Reconstruction to establish the Freedman's Act and the Civil Rights Act of 1866. The 13<sup>th</sup> Amendment included the punishment clause, which allowed for Black people to be placed back into slavery conditions through the use of the penitentiary. Along with the 13<sup>th</sup> Amendment, the 14<sup>th</sup> Amendment gave Black people citizenship and equal protection of the law, and the 15<sup>th</sup> Amendment made denying the right to vote based on color unconstitutional.

These Amendments became ineffective at the end of Reconstruction with the withdrawal of federal troops by President Hayes, leading to the end of the progress for Black people during this time. The U.S. Supreme Court decision in *Plessy v. Ferguson* further eroded the effort to gain equality by creating the Separate-But-Equal doctrine. The Civil Rights Act of 1964 and Voting Rights Act of 1965 were the latest attempts at achieving equality by restoring the power of the 14<sup>th</sup> and 15<sup>th</sup> Amendments, but color-blind racist ideology took effect, which led to laws and practices being enforced that imprisoned, brutalized, murdered, and disenfranchise Black people in the New Jim Crow.

This backlash also extended to groups fighting for equality. During the Civil Rights Movement, individuals who fought for Black equality were systematically subjected to police violence and resistance from the states. After the Black Panthers organization formed, whose purpose was to advocate for Black equality and rights, the

FBI and police launched a campaign to murder and imprison them. The newest organization, Black Lives Matter, is currently facing this backlash, which includes over-policing of protests and demonstrations aligned with the group and countermovements designed to diminish their influence, examples being All Lives Matter and Blue Lives Matter.



## CHAPTER 7

### SO, WHERE DO WE GO FROM HERE?

Throughout this thesis, I argue that the U.S. criminal justice system has not changed its primary purpose: to restore and maintain the status of white supremacy and dominion over Black people by denying civil rights, most importantly, the right to vote. This domination has been maintained using overt and color-blind racism through legal systems and institutions to control Black people's lives. To accomplish this, I have employed a comparative historical analysis to give a detailed history of the periods, analyzed and compared the legal systems and institutions, and shown how white supremacy and racism influenced their development and purpose, which was to control Black people.

One of my goals was to show how white supremacy has shaped the development of the U.S. criminal justice system across the four eras of U.S. history. White supremacy served as the default ideological structure of U.S. society, and the criminal justice system contributed to maintaining this structure. The Slave Codes were created to maintain dominance over enslaved Black people, and the slave patrols enforced that dominance, and slavery was the institution used to help enact that dominance. The Black Codes served the same purpose as this legal system, criminalizing Black people to deny them of their rights, terrorizing them with the KKK assisted by law enforcement who looked the other way, and placing Black people back into a form of slavery with the convict leasing system, which later included chain gangs. Jim Crow and Separate-But-Equal legislation continued the maintenance of white supremacy for decades, denying Black people the rights they were afforded since Reconstruction. The police continued to enforce these

laws to achieve this absolute goal of denying political power. Finally, mass incarceration due to the War on Drugs imprisoned millions of Black people destroyed their communities and denied them the same rights they had been denied in this new Jim Crow era.

Another of my goals was to show how overt racism has contributed to maintaining white supremacy during the pre-Civil War, Reconstruction, and Jim Crow eras using the criminal justice system. The Slave Codes and slavery were overtly racist systems designed to target Black people to maintain white supremacy. These systems created a new entity, the slave patrols, whose goal was to terrorize and control enslaved Black people. The Black Codes accomplished the same goals as the Slave Codes in an overtly racist way due to how they openly and explicitly targeted freed Black people to return them to a state of having no political power. The KKK was created for first pranking and then brutalizing, policing, and lynching Black people openly and publicly. During this period, law enforcement agencies refused to stop the KKK; some joined and participated in their actions. The Jim Crow era displayed its racism in the separate-but-equal doctrine. Laws removed the civil rights of Black people and regulated their lives; police lynched and displayed grave acts of violence against Black people, and Civil Rights leaders fought for their rights.

My final goal was to show how color-blind racism has contributed to white supremacy in the post-Civil Rights era using the criminal justice system. Color-blind racism is extremely dangerous in that it covertly exerts itself. This form of racism allows the system to hide behind a veil of ignorance and allows plausible deniability. An example is that one can say, “These laws do not mention race or color in any way, so they

apply to everyone equally,” yet neglect to state that police officers unequally apply these same laws against Black communities. Police officers who disproportionately target Black people with policies like “stop and frisk” are another example. These laws are supposed to apply to everyone equally as they are written, so what else explains why Black people are disproportionately the targets of these policies? When Black men are murdered at a higher rate than any other race in the country by police officers, we hear people say, “Well, if they had just complied, then they would not have been killed.” What is even more alarming is that the criminal justice system is so powerful in its application of white supremacy that it can even turn Black law enforcement officials against their own, which I witnessed firsthand as a corrections officer in a county jail with a majority of Black staff.

So, the real question is, where do we go from here? For starters, we could eliminate the punishment clause in the 13<sup>th</sup> Amendment to end involuntary servitude as a form of punishment. On a national level, this solution poses the problem of implementation. In order to change the 13<sup>th</sup> Amendment, we would have to amend the U.S. Constitution, which is a complicated task as it would take two-thirds of both houses of Congress to propose the resolution to amend the Constitution and then three-fourths of all states to ratify it. In today's politically charged environment, that is not something that will be allowed to happen. However, on a state-by-state level, there is some hope.

In November of 2022, four states, Alabama, Oregon, Tennessee, and Vermont, voted to abolish involuntary servitude as a form of punishment in their state constitutions. This path would be viable for repairing the 13<sup>th</sup> Amendment because there is a second way to propose a constitutional amendment. If two-thirds of states proposed removing the

punishment clause from the U.S. Constitution due to inactivity by Congress, and three-fourths ratified the proposal, that would be a viable solution. With the states already on the path to eliminating this clause statewide, this solution becomes more plausible.

Eliminating this clause would finally correct a system of exploitation that has plagued Black people for centuries. Another solution would be abolishing private prisons, which exploit convicts by incarcerating them in institutions.

In terms of reforming the system, I argue that these efforts seem hollow at best and will never work. The system is designed to ensure that white supremacy is maintained above all else, and trying to eliminate racism from the system would be impossible since it is inherently a white supremacist institution. If police reform is proposed, the ones who would be in charge of that reform would be products of that same systemic racism. Logically, it follows that they would go on to create another system, camouflaged in color-blind racist ideology, and claim they have created a better institution.

The bigger problem is the disenfranchisement that continues to affect Black people, which even prevents them from using their political power to elect people who would want to change the system for the betterment of Black communities. Anti-gerrymandering laws and federal legislation that prevent states from denying convicted felons the right to vote would be sufficient. However, those laws would have to be passed by Congress, whose members must be voted into office, which loops back to the problem of Black convicted felons not being able to vote.

So, again, I ask, where do we go from here? White supremacy and racism will always be intertwined, two sides of the same coin, and one will always exist for as long

as the other does. This country was founded and built on the exploitation of Black people, and the denial of their equality and white supremacy is the root from which it has all grown. A professor once told me, “White supremacy is the default,” and I believe it. Unless there is a complete abolishment of all systems, even those beyond the criminal justice system, such as capitalism, political institutions, and even the legal system of the U.S. Constitution itself, which all of these gain power from, followed by a system built with the inclusion and ideals of every American, Black, Brown, white, and every other color alike, this default will remain intact.

## REFERENCES

- Adamson, C. R. (1983). Punishment after Slavery: Southern State Penal Systems, 1865-1890. *Social problems*, 30(5), 555-569.
- Alexander, M. (2020). *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press.
- Atkins. (2019). Black Lives Matter or All Lives Matter? Color-blindness and Epistemic Injustice. *Social Epistemology*, 33(1), 1–22.  
<https://doi.org/10.1080/02691728.2018.1483879>
- Ayers, E. L. (1984). *Vengeance and justice: crime and punishment in the 19th century American South*. New York: Oxford University Press.
- Blow, C. M. (2012, March 16). *The New York Times*. Retrieved from The Curious Case of Trayvon Martin: <https://www.nytimes.com/2012/03/17/opinion/blow-the-curious-case-of-trayvon-martin.html>
- Bobo, L. D., & Thompson, V. (2006). Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System. *Social Research*, 73(2), 445-472.
- Bonilla-Silva, E. (2013). *Racism without racist: color-blind racism and the persistence of racial inequality in the United States (3rd ed.)*. Rowman & Littlefield Publishers, Inc.
- Bonilla-Silva. (2001). *White supremacy and racism in the post-civil rights era*. Lynne Rienner Publishers.
- Branch, M. (2021). 'The nature of the beast:' the precariousness of police work. *Policing & Society*, 31(8), 982-996.
- Browder v. Gayle, 142 (F. Supp 1956).
- Brucato, B. (2020). Policing Race and Racing Police: The Origins of US Police in Slave Patrols. *Social justice*, 47((3/4 (161/162))), 115-136.
- Chappell, A. T., & Lanza-Kaduce, L. (2010). Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary-Bureaucratic Organization. *Journal of contemporary ethnography*, 39(2), 187-214.
- Craigie, T., Grewert, A. C., Kimble, C., & Stiglitz, J. E. (2020). *Conviction, Imprisonment, and Lost Earnings. How Involvement with the Criminal Justice System Deepens Inequality*. New York City, New York: Brennan Center for Justice at New York University School of Law.

- Davis, A. Y. (2003). *Are Prisons Obsolete?* New York: Seven Stories Press.
- DeCuir, J. T., & Dixson, A. D. (2004). "So When It Comes out, They Aren't The Surprised That It Is There": Using Critical Race Theory as a Tool of Analysis of Race and Racism in Education. *Educational researcher*, 33(5), 26-31.
- Delgado, R., Stefancic, J., & Harris, A. (2017). *Critical Race Theory: an introduction*. New York: New York University Press.
- DeVylder, J. E., Anglin, D. M., Bowleg, L., Fedina, L., & Link, B. (2022). Police Violence and Public Health. *Annual Review of Clinical Psychology* 18, 527-552.
- Dulaney, M. W. (1996). *Black police in America*. Bloomington, Indiana: Indiana University Press.
- Durr, M. (2015). What is the difference between slave patrols and modern day policing? Institutional violence in a community of color. *Critical Sociology*, 41(6), 873-879.
- Ellis, B. R., & Branch-Ellis, N. (2020). Living in an Age of Colorblind Racism and Police Impunity. *Phylon*, 57(2), 105-125.
- Executive Order 10730. (1957). Desegregation of Central High School. <https://www.archives.gov/milestone-documents/executive-order-10730>
- Feagin, J. R. (2000). *Racist America: roots, current realities, and future reparations*. New York: Routledge.
- Ferber, A. L. (1999). The construction of race, gender, and class in white supremacist discourse. *Race, gender, & class*, 6(3), 67-89.
- Fitzgerald, M. W. (1997). The Ku Klux Klan: Property Crime and the Plantation System in Reconstruction Alabama. *Agricultural history*, 71(2), 186-206.
- Frankenberg, R. (2001). The Mirage of an Unmarked Whiteness. In B. B. Rasmussen, E. Klinenberg, I. J. Nexica, & M. Wray, *The Making and Unmaking of Whiteness*. United States: Duke University Press.
- Gallagher, C. A. (2003). Color-Blind Privilege: The Social and Political Functions of Erasing the Color Line in Post Race America. *Race, gender, & class (Towson, Md.)*, 10(4), 22-37.
- Glaser, A. (2021, January 10). *Who decides when there are helicopters? Experts weigh in on National Guard monitoring protests*. Retrieved from NBC News:

- <https://www.nbcnews.com/business/business-news/who-decides-when-there-are-helicopters-experts-weigh-national-guard-n1253599>
- Hadden, S. E. (2001). *Slave patrols: law and violence in Virginia and the Carolinas*. Cambridge, Mass.: London: Harvard University Press.
- Henry, H. M. (1968). *The police control of the slave in South Carolina*. New York, Negro Universities Press.
- Hinton, E., Cook, D., Meares, T., & Sampson, R. (2021). The Mass Criminalization of Black Americans: A Historical Overview. *Annual Review of criminology*, 4(1), 261-286.
- Hirsch, A. J. (1992). *The rise of the penitentiary: prisons and punishment in early America*. New Haven: Yale University Press.
- Houck, & Grindy, M. A. (2008). *Emmett Till and the Mississippi press*. University Press of Mississippi.
- Jones, N., Brown, K., Heitz, K., Kelekay, J., Raymond, G., Duran, E. B., & Elyassi, G. R. (2023). "Other than the Projects, You Stay Professional": "Colorblind" Cops and the Enactment of Spatial Racism in Routine Policing. *City & Community*, 22(1), 3-21.
- KEY TERMS OF RACE, EQUITY, AND SOCIAL JUSTICE. (2022). *PM. Public Management*, 104(2),, 30-41.
- Kilgore, J. W. (2015). *Understanding mass incarceration: a people's guide to key civil rights struggle of our time*. New York, New York; London, England: The New Press.
- Lange, M. (2013). *Comparative-historical methods*. Los Angeles, California: London: SAGE.
- Les Benedict, M. (1980). South Democrats in the Crisis of 1876-1877: A Reconsideration of Reunion and Reaction. *The Journal of southern history*, 46(4), 489-524.
- Litwack, L. F. (2009). "Fight the Power!" The Legacy of the Civil Rights Movement. *The Journal of southern history*, 75(1), 3-28.
- Lyle, P., & Esmail, A. M. (2016). Sworn to Protect: Police Brutality - A Dilemma for America's Police. *Race, gender & class*, 23((3-4)), 155-185.



- Mahoney, J., & Rueschemeyer, D. (2003). *Comparative historical analysis in the social sciences*. Cambridge, U.K.: New York: Cambridge University Press.
- Mancini, M. J. (1978). Race, Economics, and The Abandonment of Convict Leasing. *The Journal of Negro history*, 63(4), 339-352.
- Nellie, A. (2021, October 13). *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Retrieved June 2023, from The Sentencing Project:  
<https://www.sentencingproject.org/reports/the-color-of-justice-racial-and-ethnic-disparity-in-state-prisons-the-sentencing-project/>
- Neville, Lilly, R. L., Duran, G., Lee, R. M., & Browne, L. (2000). Construction and Initial Validation of the Color-Blind Racial Attitudes Scale (CoBRAS). *Journal of Counseling Psychology*, 47(1), 59–70. <https://doi.org/10.1037/0022-0167.47.1.59>
- Norris v. Alabama, 294 (U.S. 1935).
- Peskin, A. (1973). Was There a Compromise of 1877? *The Journal of American history*, 60(1), 63-75.
- Pilgrim, D. (2000). *WHAT WAS JIM CROW*. Retrieved from JIM CROW MUSEUM:  
<https://jimcrowmuseum.ferris.edu/what.htm>
- Plessy v. Ferguson, 163 (U.S. 1896).
- Ragin, C. C. (1994). *Constructing Social Research: The Unity and Diversity of Method*. Thousand Oaks, California: Pine Forge Press.
- Robinson, C. J. (2000). *Black Marxism: the making of the Black radical tradition*. University of North Carolina Press.
- Robinson, M. A. (2017). Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint From January 1, 2015, Through December 31, 2015. *Journal of Black studies*, 48(6), 551-571.
- Rosenwald, M. S. (2020, July 19). *A Black man accused of rape, a white officer in the Klan, and a 1936 lynching that went unpunished*. Retrieved from The Washington Post: <https://www.washingtonpost.com/history/2020/07/19/atlanta-lynching-police-ku-klux-klan/>
- Ross, D. L. (2009). *Civil Liability in Criminal Justice (5th Edition)*.
- Sawyer, W., & Wagner, P. (2021). Mass Incarceration: The Whole Pie 2022. *Corrections Forum*.

- Schwarz. (2023). "The Spawn of Slavery"? Race, State Capacity, and the Development of Carceral Institutions in the Postbellum South. *Studies in American Political Development*, 37(2), 181–198. <https://doi.org/10.1017/S0898588X22000281>
- Shelden, R. G., & Vasiliev, P. V. (2018). *The rise of the penitentiary: prisons and punishment in early America*. Waveland Press.
- Siegel, M. (2020). Racial disparities in fatal police shootings: An empirical analysis informed by critical race theory. *Boston University law review*, 100(3), 1069-1092.
- Singh, N. P. (2014). The Whiteness of Police. *American quarterly*, 66(4), 1091-1099.
- Small, D. (2001). The War on Drugs Is a War on Racial Justice. *Social research*, 68(3), 896-903.
- Spruill, L. H. (2016). Slave Patrols, "Pack of Negro Dogs" and Policing Black Communities. *Phylon*, 53(1), 42-66.
- Stelter, B. (2012, March 25). *In Slain Teenager's Case, a Long Route to National Attention*. Retrieved from The New York Times: <https://www.nytimes.com/2012/03/26/business/media/for-martins-case-a-long-route-to-national-attention.html>
- The Freedmen's Bureau*. (2021, October 28). Retrieved from National Archives: <https://www.archives.gov/research/african-americans/freedmens-bureau>
- The George Zimmerman Trial: Critical Phone Calls*. (2012, 02 26). Retrieved from UMKC School of Law: <http://law2.umkc.edu/faculty/projects/ftrials/zimmerman1/zimcalls.html>
- Tomaskovic-Devey, D., & Warren, P. (2009). explaining and eliminating racial profiling. *Contexts (Berkeley, Calif.)*, 8(2), 34-39.
- U.S. Census Bureau. (2020). 2020 Census of Population and Housing: Alabama. U.S. Census Bureau. <https://data.census.gov/table/DECENNIALDP2020.DP1?t=Black+or+African+American&g=040XX00US01&d=DEC+Demographic+Profile>
- Wallace, G. C. (1963, January 14). The Inaugural Address of Governor George C. Wallace. Montgomery, Alabama. <https://digital.archives.alabama.gov/digital/collection/voices/id/2952/>
- Warren, P. Y. (2010). The continuing significance of race: An analysis across two levels of policing. *Social science quarterly*, 91(4), 1025-1042.

- Warren, P. Y., & Farrell, A. (2009). The Environmental Context of Racial Profiling. *The Annals of the American Academy of Political and Social Science*, 623(1), 52-63.
- West, Greenland, K., & Laar, C. (2021). Implicit racism, colour blindness, and narrow definitions of discrimination: Why some White people prefer “All Lives Matter” to “Black Lives Matter.” *British Journal of Social Psychology*, 60(4), 1136–1153. <https://doi.org/10.1111/bjso.12458>
- Wilson, C. P., Wilson, S. A., & Thou, M. (2015). Perceptions of African American Police Officers on Racial Profiling in Small Agencies. *Journal of Black students*, 46(5), 482-505.
- Wilson, T. B. (n.d.). *The Black codes of the South*. 1965: University, University of Alabama Press.
- Woodward, V. C. (1991). *Reunion and Reaction: The Compromise of 1877 and the End of Reconstruction*. Cary: Oxford University Press, Incorporated.